

**BEFORE THE WASHINGTON  
UTILITIES AND TRANSPORTATION COMMISSION**

TREE TOP, INC.,	DOCKET UG-210745
Complainant,	ORDER 02
v.	DENYING RESPONDENT’S
CASCADE NATURAL GAS CORP.,	MOTION FOR SUMMARY
Respondent.	DETERMINATION

**BACKGROUND**

- 1 On September 24, 2021, Tree Top, Inc., (Tree Top or Complainant) filed with the Washington Utilities and Transportation Commission (Commission) a formal complaint (Complaint) against Cascade Natural Gas Corporation (Cascade or Respondent). The Complaint alleges that Cascade imposed an exorbitant overrun entitlement penalty on Tree Top that it asserts is not fair, just, or reasonable. On October 25, 2021, Cascade filed its Answer to the Complaint (Answer).
- 2 On November 17, 2021, the Commission convened a virtual prehearing conference before Administrative Law Judge Andrew J. O’Connell. At the prehearing conference, the Parties presented an agreed procedural schedule, which required Cascade to file its motion for summary determination on December 17, 2021, and Tree Top to file its response by January 6, 2022.
- 3 On December 17, 2021, Cascade filed its Motion for Summary Determination (Motion) and supporting documents, requesting the Commission dismiss Tree Top’s Complaint. Cascade argues Tree Top should be barred by the six-month statute of limitations imposed by RCW 80.04.240, which it argues began, at the latest, on the date Cascade’s invoices for the assessed overrun entitlement penalties were received by Tree Top on March 22, 2021.
- 4 On January 6, 2022, Tree Top filed its Response to Cascade’s Motion (Response) and supporting documentation, requesting the Commission deny Cascade’s Motion because

the six-month statute of limitations for its claim began the date Cascade collected the overrun entitlement penalties on June 24, 2021.

### DISCUSSION AND DECISION

5 The Commission may grant a motion for summary determination when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.<sup>1</sup> Here, based upon the declarations and exhibits submitted by the Parties, there is no genuine issue of material fact.

6 Cascade is a natural gas company that provides service to Tree Top at four locations under Schedule 663. On February 10, 2021, Cascade provided notice to Schedule 663 customers of an overrun entitlement period (Stage II) beginning February 12 and ending February 16 (entitlement period). Generally, once notified, Tree Top (or any other customer on Schedule 663) would be subject to penalties if it took a greater amount of natural gas than nominated during the entitlement period.

7 At times during the entitlement period, Tree Top took a larger amount of natural gas than nominated. Cascade charged Tree Top a total of \$198,844.87 in overrun penalties as a result.

8 On March 15 and 17, 2021, Cascade emailed Tree Top's agent (Cost Management Service, Inc.) and stated that it would be charging certain Schedule 663 customers, including Tree Top, overrun charges.

9 On March 22, 2021, Tree Top received an invoice from Cascade charging it for the overruns. That invoice indicated a due date for payment of April 15, 2021.

10 On April 14, 2021, Cascade disclosed to Tree Top that the overrun entitlement penalty was calculated based upon the Green River trading hub, but Cascade had not actually purchased gas from that hub during the entitlement period.

11 On June 24, 2021, Tree Top remitted payment of the overrun entitlement penalty to Cascade, but indicated it was doing so under protest.

12 On September 24, 2021, Tree Top filed its Complaint.

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<sup>1</sup> WAC 480-07-380(2)(a).

13 Tree Top claims that the overrun entitlements were unreasonable. It does not claim that the overrun entitlements were unlawful. The issue presented by Cascade's Motion is, therefore, whether Tree Top filed its Complaint within the six month statute of limitations starting from the time the cause of action accrued. We determine that Tree Top filed its Motion within the required statute of limitations and that Cascade's Motion should be denied as explained below.

14 Cascade argues that the cause of action accrued when Tree Top was notified on March 15, 17, and, at latest, March 22, 2021, of the overrun penalty charges. Tree Top argues that, according to statute, the cause of action accrued when Cascade actually collected the charges on June 24, 2021. Even if the cause of action could accrue prior to Cascade's collection, Tree Top argues that the earliest date it could have accrued was April 14, 2021, when Cascade disclosed to Tree Top that it based the overrun entitlement penalties on the Green River trading hub, but had not purchased gas from the Green River trading hub during the entitlement period.

15 The governing statutes here are RCW 80.04.220 and RCW 80.04.240. The former states:

When complaint has been made to the commission concerning the reasonableness of any rate, toll, rental or charge for any service performed by any public service company, and the same has been investigated by the commission, and the commission has determined that the public service company has charged an excessive or exorbitant amount for such service, and the commission has determined that any party complainant is entitled to an award of damages, the commission shall order that the public service company pay to the complainant the excess amount found to have been charged, whether such excess amount was charged and collected before or after the filing of said complaint, with interest from the date of the collection of said excess amount.

In pertinent part, the latter states:

All complaints concerning overcharges resulting from collecting unreasonable rates and charges . . . shall be filed with the commission within six months in cases involving the collection of unreasonable rates . . . from the time the cause of action accrues, and the suit to recover the overcharge shall be filed in the superior

court within one year from the date of the order of the commission.

- 16 The Commission has held that the test for accrual is not when the aggrieved party actually discovers the injury, but when the aggrieved party *in the exercise of reasonable diligence should* discover the injury.<sup>2</sup> The general rule is that an aggrieved party who has notice of facts sufficient to put it on inquiry is deemed to have imputed notice of all facts that reasonable inquiry would disclose – that is, “facts that are naturally and reasonably connected with the fact known, and to which the known fact can be said to furnish a clue,” but not every conceivable fact that could be discovered from inquiry.<sup>3</sup> Using this standard, Tree Top’s argument that the cause accrued when Cascade disclosed on April 14, 2021, that it had calculated the overrun penalties using the Green River trading hub despite not purchasing gas at the Green River trading hub during the entitlement period must fail. Upon receipt of the invoice from Cascade on March 22, 2021, coupled with the additional information regarding the charges provided by Cascade on March 15 and 17, 2021, Tree Top should have, in the exercise of reasonable diligence, discovered that Cascade used the Green River trading hub to calculate the overrun penalties. That fact is directly and reasonably connected with the amount Cascade charged.
- 17 Appropriately, but for the language found in statute, Cascade’s argument that Tree Top’s Complaint is barred by the statute of limitations would succeed. Washington’s legislature, however, identifies in both relevant statutes that the Company’s collection of the charge is a critical threshold.<sup>4</sup>
- 18 Adhering without conscience to the actual collection of the charges in the context of utility regulation pursuant to Chapter 80.04 RCW would render an absurd result whereby a customer could indefinitely toll the date when an injury is incurred by refusing to remit payment. We agree with Cascade that such an absurd result could not have been intended.

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<sup>2</sup> *AT&T Commc’ns, et al., v. Qwest Corp.*, Docket UT-051682, Order 04 Interlocutory Order, 5, ¶ 20 (Jun. 8, 2006), citing *Enter. Timber Inc. v. Wash. Title Ins. Co.*, 76 Wn.2d 479, 457 P.2d 600 (1969).

<sup>3</sup> *Diimmel v. Morse*, 36 Wn.2d 344, 348, 218 P.2d 334, 337 (May 11, 1950), citing *Hawkes v. Hoffman*, 56 Wash. 120, 126, 105 P. 156, 158 (Nov. 30, 1909), *Rehm v. Reilly*, 161 Wash. 418, 297 P. 147, (cited by *Enter. Timber Inc.*, 76 Wn.2d at 483, 457 P.2d at 602).

<sup>4</sup> RCW 80.04.220 reads in pertinent part “. . . whether such excess amount was charged *and collected* . . .;” and RCW 80.04.240 reads in pertinent part “. . . resulting from *collecting unreasonable rates* . . .” and “. . . within six months in cases *involving the collection of unreasonable rates*. . . .” (Emphasis added.)

Instead, we read the statutes applicable to this case in conjunction with the general rule of constructive notice. The cause of action in this case accrued, therefore, no sooner than the identified due date of April 15, 2021, on the invoice received by Tree Top on March 22, 2021. Cascade would have and should have expected, by the due date, to collect the overrun entitlement penalties. Tree Top's refusal to remit an overdue payment until June 24, 2021, cannot reasonably or justifiably toll its cause of action. We find that the cause of action in this case could not, pursuant to Chapter 80.04 RCW, accrue sooner than April 15, 2021, but neither could it be delayed any later than April 15, 2021, according to Washington case law.

19 Thus, Tree Top timely filed its Complaint within six months of April 15, 2021, the date on which the cause of action accrued in this case. Accordingly, we determine that Cascade's Motion, based on the assertion that Tree Top failed to file its Complaint within the applicable statute of limitations, should be denied.

**ORDER**

**THE COMMISSION** denies Cascade Natural Gas Corp.'s Motion for Summary Determination.

DATED at Lacey, Washington, and effective February 3, 2022.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

/s/ *Andrew J. O'Connell*  
ANDREW J. O'CONNELL  
Administrative Law Judge

**NOTICE TO PARTIES: This is an Interlocutory Order of the Commission. Administrative review may be available through a petition for review, filed within 10 days of the service of this Order pursuant to *WAC 480-07-810*.**