

**BEFORE THE  
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND  
TRANSPORTATION COMMISSION,

Complainant,

v.

CASCADE NATURAL GAS  
CORPORATION,

Respondent.

DOCKET UG-210755

SETTLING PARTIES' BRIEF IN  
SUPPORT OF MULTIPARTY  
SETTLEMENT

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## I. INTRODUCTION

1. Cascade Natural Gas Corporation (“Cascade” or the “Company”) and the regulatory staff of the Washington Utilities and Transportation Commission (“Staff”, together with Cascade the “Settling Parties”) respectfully request the Commission approve the Multiparty Settlement Stipulation filed on March 22, 2022 (“Multiparty Settlement”).

2. **First**, the settled-upon rates are fair, just, reasonable and sufficient. As demonstrated by the record, Cascade has supported its need for an increase in revenue requirement based on the modified 2020 historical test year with adjustments. The evidence shows that 2020 is an appropriate test year because this is the most recent period for which Cascade had complete data at the time it was preparing for this proceeding, and it is the most representative of costs that will be incurred by the Company in the rate effective year. Further, maintaining 2020 test year rates unchanged would have resulted in a 4.72 percent rate of return (“ROR”), which is far lower than Cascade’s proposed overall ROR of 6.93 percent. Cascade also supported its request for end of period treatment, based on the same reasons that supported such treatment in Cascade’s last rate case, including that Cascade has failed to achieve its authorized ROR for several years. Likewise, Cascade’s hypothetical capital structure and cost of debt are maintained at levels approved in the Company’s last general rate case because issues that supported this structure have not changed significantly since the last rate case, as demonstrated by the evidence and testimony here. Thus, the record amply supports the revenue requirement and proposed rates reached by the Multiparty Settlement.

3. **Second**, no party raises any issue that warrants modification or rejection of the Multiparty Settlement’s terms. Non-Settling parties’ complaints regarding specific adjustments and methodologies should be rejected, not only because they are not supported or incorrect, but also

because the Settling Parties have shown that the overall result achieved in the settlement is reasonable and supported by the evidence, and opposing parties have not shown otherwise. Indeed, each component of the Multiparty Settlement is a result of compromise, and is lawful, supported by the record, and consistent with public interest. With respect to public interest, the settlement and underlying record address factors such as environmental health and greenhouse gas emissions reductions, health and safety concerns, economic development, and equity.

4. *Finally*, the Multiparty Settlement is a result of collaborative settlement negotiations involving all parties, consistent with Commission rules and established practice. For these reasons and as more fully described below, the Settling Parties request the Commission approve the Multiparty Settlement.

## II. LEGAL STANDARD

5. A full multiparty settlement is an agreement by some, but not all, parties to resolve all disputed issues between them. With respect to full multiparty settlements, the rules specify requirements for settling parties, opposing parties, and the Commission.<sup>1</sup> In determining whether to approve a proposed settlement, the Commission has consistently employed a standard of review that encourages settlements.<sup>2</sup> The Commission must decide whether the settlement terms are lawful and supported by an appropriate record, and whether the results are consistent with the public interest in light of all of the information available to the Commission.<sup>3</sup> The Commission “may approve [a proposed] settlement, with or without conditions, or may reject it.”<sup>4</sup> Approval

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<sup>1</sup> WAC 480-07-730; WAC 480-07-740; WAC 480-07-750.

<sup>2</sup> *See, e.g., WUTC v. Avista Corp., d/b/a Avista Utils.*, Dockets UE-080416 and UG-080417 (consolidated), Order 08, ¶ 79 (Dec. 29, 2008) (“We favor the resolution of contested issues through settlement when a settlement’s terms and conditions comply with the law and are consistent with the public interest.”); *see also* RCW 34.05.060 (informal settlements in administrative proceedings are “strongly encouraged”).

<sup>3</sup> WAC 480-07-750(2).

<sup>4</sup> *Id.*

of a settlement does not create precedent, nor does it establish settlement terms as a baseline for future litigation.<sup>5</sup>

6. Settling parties must submit a proposed agreement with sufficient time and information to afford the Commission reasonable opportunity to review the terms of the settlement and consider arguments opposed to, or in favor of, the settlement.<sup>6</sup> On timing, “[p]arties should inform the presiding administrative law judge as soon as they reach a settlement in principle and request that the commission suspend the procedural schedule....”<sup>7</sup> Further, in a general rate proceeding, “parties must submit [the] settlement agreement and supporting documentation to the [C]ommission at least sixty days prior to any statutory deadline for [C]ommission action or requested effective date of any tariff changes.”<sup>8</sup> On content, settling parties must file “supporting documentation sufficient to show the Commission that the proposal is consistent with the law and the public interest and that it is appropriate for adoption.”<sup>9</sup>

7. Opposing parties that “are not included in the [full multiparty settlement] have the rights set forth in WAC 480-07-740(3)(c).”<sup>10</sup> This includes the right to cross-examine witnesses supporting the settlement, the right to present evidence and arguments opposing the settlement, and the right to present evidence on how the commission should resolve disputed issues in the proceeding.<sup>11</sup> Notably, the rules do not require settling parties to conduct outreach, nor do they specify when or how settlement terms must be communicated to opposing parties.

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<sup>5</sup> *WUTC v. Avista Corp.*, Dockets UE-080416 and UG-080417 (consolidated), Order 08, ¶ 20.

<sup>6</sup> WAC 480-07-740(1).

<sup>7</sup> WAC 480-07-740(2)(c).

<sup>8</sup> WAC 480-07-740(2)(a).

<sup>9</sup> WAC 480-07-740(3).

<sup>10</sup> WAC 480-07-730(3)(a).

<sup>11</sup> WAC 480-07-740(3)(c).



### III. THE MULTIPARTY SETTLEMENT MEETS ALL PERTINENT LEGAL AND POLICY STANDARDS AND SHOULD BE APPROVED

#### A. The settled-upon rates are fair, just, reasonable, and sufficient.

8. Settling parties have agreed to an end result in terms of revenue requirement and rates that is fair, just, reasonable, and sufficient.<sup>12</sup> In approving a settlement, the Commission has stated that its “overarching concern . . . is with the end results produced under the settlement,” in accordance with the “end results” test enunciated in *Federal Power Commission v. Hope Natural Gas Company*.<sup>13</sup> Therefore, parties opposing a settlement cannot simply claim that a settlement fails to address their proposed adjustments or arguments. As stated by the Commission in one decision:

[W]hile [the non-settling parties] would have us make different adjustments, or assign different values to certain of the adjustments made in the Settlement Agreement, we are confident in our judgment, made on the basis of the record before us, that the overall result in terms of revenue requirement is reasonable and well supported by the evidence.<sup>14</sup>

9. As explained further below, the Multiparty Settlement meets all legal standards. No party opposes Cascade’s proposed rate spread and rate design, which are fair, reasonable, and supported by the record.<sup>15</sup> Opposing parties instead take issue with certain adjustments and

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<sup>12</sup> See RCW 80.28.020; *People’s Org. for Wash. Energy Res. v. WUTC*, 104 Wn.2d 798, 808 (1985) (en banc).

<sup>13</sup> *WUTC v. PacifiCorp d/b/a/ Pacific Power & Light Company*, Docket UE-032065, Order 06, ¶¶ 53-54 (Oct. 27, 2004); *Fed. Power Comm’n v. Hope Nat. Gas Co.*, 320 U.S. 591, 602, 64 S. Ct. 281, 288, 88 L. Ed. 333 (1944).

<sup>14</sup> *WUTC v. PacifiCorp*, Docket UE-032065, Order 06, ¶ 62. “This standard puts the settlement process in the context of a ratemaking process in which there is no single, correct result. While a proposed settlement may resolve an issue differently than how the decision-makers may have resolved it in a contested case, the ‘end results’ standard accommodates a range of possible outcomes, and provides a fairly wide comfort zone within which decision-makers can be confident in accepting a proposed settlement.” James M. Van Nostrand & Erin P. Honaker, *Preserving the Public Interest Through the Use of Alternative Dispute Resolution in Utility Retail Rate Cases*, 27 PACE ENVTL. L. REV. 227, 249-50 (2009-2010).

<sup>15</sup> Cascade’s proposed rate spread and design methodologies remain the same as those approved by the Commission in *WUTC v. Cascade Natural Gas Corp.*, Docket UG-190210, Order 05 (Feb. 3, 2020). See also Myhrum, Exh. IDM-1Tr at 16:16-17:2 (explaining guiding principles behind the Company’s rate spread and rate design proposals, which are consistent with statutory and constitutional requirements). Rates described more fully in Archer, Exh. PJA-1T at 4:12-5:18; Archer, Exh. PJA-4; Myhrum, Exh. IDM-1T at 16:13-19:9; Myhrum, Exh. IDM-

methodologies. But these few contested issues, discussed below, should be rejected because Settling Parties have shown that the overall result achieved in the Settlement is reasonable and supported by the evidence, and opposing parties have not shown otherwise.<sup>16</sup>

1. Cascade’s revenue deficiency is established by the record based on the modified 2020 historical test year with adjustments.

10. Cascade has supported its need for an increase in revenue requirement based on the modified 2020 historical test year with adjustments, and opposing parties’ arguments should be rejected because (i) calculations show that maintaining 2020 test year rates unchanged would have resulted in a 4.72 percent rate of return (“ROR”), which is far lower than Cascade’s proposed overall ROR of 6.93 percent; (ii) Settling Parties’ treatment of unbilled revenue is consistent with the Commission’s orders and past practice; (iii) 2020 is an appropriate test year, and (iv) Cascade has provided testimony supporting end of period (“EOP”) treatment in this case to address impacts from continued under earnings.

i. The revenue requirement increase in the Multiparty Settlement is a reasonable compromise based on Cascade’s demonstrated revenue deficiency in the test year.

11. In its pre-filed direct testimony, Cascade provided testimony and data to support its initial proposed revenue requirement increase of \$13,752,286 (11.10 percent). To calculate adjusted rate base, Maryalice Gresham explained all of Cascade’s proposed test year restating adjustments

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3; Myhrum, Exh. IDM-4. In particular, Myhrum, Exhibit. IDM-3 “Revenue Distribution” demonstrates how Cascade has equitably applied its requested revenue increase across each schedule, including special contracts. *See also* Myhrum, Exh. IDM-1T at 17:11-18:10. And Myhrum, Exhibit IDM-4 “Analysis of Revenue” provides a detailed comparison of the Company’s current rates with those that are proposed by the Company in this case. *See also* Myhrum, Exh. IDM-1T at 18:11-19-5.

<sup>16</sup> Citations to the record in this brief are to Cascade’s pre-filed direct testimony filed on September 30, 2021. The pre-filed testimony formed the basis for further revisions and, ultimately, settlement. The exhibits that were revised during the course of discovery include: Archer, Exh. PJA-1Tr, Archer, Exh. PJA-3r, Archer, Exh. PJA-4r, Chiles, Exh. MAC 1-Tr, Gresham, Exh. MCG-1Tr, Gresham, Exh. MCG-2r; Gresham, Exh. MCG-5r, Kivisto, Exh. NAK-1Tr, Myhrum, Exh. IDM-2r, Myhrum, Exh. IDM-3r, Myhrum, Exh. IDM-4r, and Myhrum, Exh. IDM-5r. In addition, Cascade filed an errata to Chiles, Exh. MAC-4T on May 31, 2022.

that are made to annualize known and measurable changes that occurred during the test year.<sup>17</sup> She also described and provided supporting materials for four pro forma adjustments that are known and measurable changes beyond the test year that are not offset by other factors.<sup>18</sup> As outlined in Exh. MCG-2, actual results of operations for 2020 were updated for restating adjustments in column (C), and pro forma adjustments in column (E) to arrive at an adjusted 2020 test year.<sup>19</sup> Next, the adjusted rate base was multiplied by the proposed rate of return to calculate the required return. Cascade provided a revenue requirement calculation in Exh. MCG-3.<sup>20</sup> Finally, to convert Cascade's required net income into its revenue requirement, Cascade divided the required net income by the Company's conversion factor.<sup>21</sup>

12. Overall, this showed that Cascade's initial proposed revenue increase of \$13,752,286 was important to achieve the proposed rate of return of 6.93 percent.<sup>22</sup> And, importantly, maintaining 2020 test year rates unchanged would have resulted in a 4.72 percent rate of return, which is far below the Company's proposed ROR of 6.93 percent.<sup>23</sup>

13. After vetting the issues through the discovery process and settlement negotiations, Cascade agreed to reduce its revenue requirement as a result of four compromises, discussed below.<sup>24</sup> As shown in the testimony supporting the settlement, the negotiated increase of \$10,692,992 (8.64 percent) is a reasonable compromise that will enable Cascade (i) reasonable

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<sup>17</sup> See Gresham, Exh. MCG-1T at 5:5-8:3.

<sup>18</sup> See Gresham, Exh. MCG-1T at 8:4-13.

<sup>19</sup> See Gresham, Exh. MCG-1T at 2:13-16; Gresham, Exh. MCG-2.

<sup>20</sup> See Gresham, Exh. MCG-1T at 4:10-18; Gresham, Exh. MCG-3.

<sup>21</sup> See Gresham, Exh. MCG-1T at 4:10-18.

<sup>22</sup> The calculation of incremental revenue necessary to achieve the proposed ROR of 6.93 percent is included in column (G) on Gresham, Exh. MCG-2. The calculation of the incremental revenue required is also provided in Gresham, Exh. MCG-3, revenue requirement calculation.

<sup>23</sup> See Gresham, Exh. MCG-1T at 1-5; Gresham, Exh. MCG-2, column (F).

<sup>24</sup> See Chiles and Huang, Exh. JT-1T at 4:13-6:8; Chiles and Huang, Exh. JT-2.

and sufficient compensation for the service it provides, and (ii) the opportunity to earn “a rate of return sufficient to maintain its financial integrity, attract capital on reasonable terms, and receive a return comparable to other enterprises of corresponding risk.”<sup>25</sup>

- ii. The Settling Parties’ treatment of unbilled revenue is consistent with the Commission’s orders and past practice.

14. The Multiparty Settlement accepts Cascade’s treatment of unbilled revenues because it is the same method Cascade has applied consistently in the past, to its benefit or detriment. The only change Cascade made in this proceeding is to account for the Company’s decoupling mechanism and removal of supplemental schedules, as ordered by the Commission in Cascade’s last general rate case.<sup>26</sup> At the evidentiary hearing, Cascade’s witness Mark Chiles walked through the calculations that went into Cascade’s unbilled revenue adjustment before engaging in a dialogue with Commissioner Rendahl regarding the adjustment’s general concepts.<sup>27</sup> As Mr. Chiles explained, Cascade has consistently accounted for all appropriate billing determinates, including customer growth and the Company’s recent equity infusion.<sup>28</sup> This reliable application sometimes works in Cascade’s favor, and sometimes does not.<sup>29</sup> As Mr. Chiles states, “[c]onsistency has been the key here.”<sup>30</sup>

15. By contrast, AWEC’s proposed treatment of unbilled revenue is erroneous because it incorrectly adds unbilled revenue associated with the decoupling mechanism to total unbilled

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<sup>25</sup> *WUTC v. Avista Corp. d/b/a Avista Utils.*, Dockets UE-991606 & UG-991607, Third Suppl. Order, ¶ 324 (Sept. 29, 2000).

<sup>26</sup> *WUTC v. Cascade Nat. Gas Corp.*, Docket UG-200568, Order 05, ¶ 321 (May 18, 2021).

<sup>27</sup> Chiles and Rendahl, Tr. 58:16-64:11 (June 1, 2022).

<sup>28</sup> Chiles and Rendahl, Tr. 63:2-64:10 (June 1, 2022).

<sup>29</sup> Chiles, Tr. 41:16-18 (June 1, 2022).

<sup>30</sup> Chiles, Tr. 63:11-12 (June 1, 2022).

revenue.<sup>31</sup> AWEC attempted to remove all the unbilled revenue from the revenue requirement; however, they simply did not calculate it correctly so AWEC’s adjustment removes more unbilled revenue than Cascade had in total.

iii. The Settling Parties’ 2020 historical test year is appropriate.

16. Cascade chose the 12-month period ending on December 31, 2020, as the test year because this period was the most complete period for which Cascade had data available at the time it was preparing for this proceeding, and it is the most representative of the costs that will be incurred by the Company in the rate effective year.<sup>32</sup>

17. Public Counsel’s questions concerning Cascade’s 2021 Commission Basis Report (“CBR”) are irrelevant and do not prove that 2020 is inappropriate as a test year. Public Counsel addresses the CBR for the first time in hearing, attempting to use Cascade’s CBR to demonstrate that the revenue requirement increase negotiated in the Multiparty Settlement is “too high” based on “actual results in 2021.”<sup>33</sup> The CBR, while a useful tool for summarizing a company’s annual operations, is not appropriate for determining whether the Multiparty Settlement in this proceeding is in the public interest. A company’s CBR requires certain adjustments and disallows others that are appropriate for consideration in a general rate case.<sup>34</sup> As Mr. Chiles testified, all of the adjustments that are typically made in a general rate case are not accounted

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<sup>31</sup> See Chiles, Exh. MAC-4T at 7:3-5.

<sup>32</sup> See Gresham, MCG-1T at 3:6-11; Kivisto, Exh. NAK-1T at 4:19-5:2.

<sup>33</sup> Garrett, Tr. at 87:22-88:12 (June 1, 2022).

<sup>34</sup> Compare WAC 480-90-257 (commission basis reports must include summary information to show results of operation but may not include adjustments that annualize price, wage, or other cost changes during a reporting period) with WAC 480-07-510(3) (for general rate proceeding filings, the company must provide detailed support for its proposals, including a description of its capital structure and rate of return, calculations and support for its restating and pro forma adjustments, a detailed portrayal of revenue sources, whether it has achieved its authorized rate of return, actual rate base and results of operation for the test year, affiliate and subsidiary transactions reports.).

for in the CBR.<sup>35</sup> Additionally, the CBR requires rate base to be determined using the average of monthly averages instead of end of period.<sup>36</sup> Accordingly, Public Counsel’s attempt to compare Cascade’s 2021 CBR and this proceeding’s EOP 2020 test year is like comparing apples to oranges.

18. It is always the case that the test year results will not perfectly reflect conditions in the rate effective period. That is why by commission rule,<sup>37</sup> restating and pro forma adjustments are made to the test year. The Commission has long relied on these adjustments to modify the test year results to better reflect the conditions during the rate effective period. Public Counsel’s proposal to use a 2021 test year thus aims to address an issue that has already been addressed more correctly through standard restating and pro forma adjustments.

19. The Settling Parties also must point out that Public Counsel’s proposed revenue requirement, which relies on its selective use of a 2021 test year and AMA rate treatment, contains calculation errors that have not been corrected. As explained in Exh. MAC-9X, Cascade notified Public Counsel that its formulas contained errors that distort Public Counsel’s proposed adjustments to restate revenues. Public Counsel’s witness acknowledged its errors at the hearing, but Public Counsel has yet to correct them.<sup>38</sup>

iv. EOP treatment is appropriate and supported by the record.

20. The record in this proceeding supports maintaining Cascade’s recently-approved EOP rate treatment. The Commission has acknowledged that EOP is “both an important and

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<sup>35</sup> See Chiles, Tr. at 26:24-29:1 (June 1, 2022).

<sup>36</sup> See Chiles, Tr. at 51:10-52:10 (June 1, 2022).

<sup>37</sup> WAC 480-07-510(3)(c).

<sup>38</sup> Garrett, Tr. 88:17-18 (June 1, 2022) (“[B]ut we made some mistakes in our -- in our adjustments....”).

appropriate tool” under certain circumstances.<sup>39</sup> In particular, EOP treatment is approved under one or more of the following conditions: abnormal growth in plant; inflation and/or attrition; significant regulatory lag; or failure of utility to earn its authorized ROR over an historical period.<sup>40</sup> Applying this standard in Cascade’s prior rate case, the Commission concluded that it was “appropriate to value Cascade’s rate base on an EOP basis given the Company’s ongoing capital investments and its failure to earn its authorized rate of return over several years” but noted concerns with Cascade’s evidence supporting the request.<sup>41</sup>

21. Addressing the Commission’s concerns from last year regarding evidence, Cascade submitted ample evidence in this proceeding to support EOP rate treatment. As discussed in Nicole Kivisto’s direct testimony, Cascade’s cost of doing business in Washington continues to increase, despite the Company’s measures to control costs and increase efficiencies.<sup>42</sup> When MDU Resources Group Inc. purchased Cascade in 2007, the Company was suffering from years of declining investment in its system and an accumulation of deferred maintenance.<sup>43</sup> To address this, the Company has invested over \$453 million, primarily to improve the safety and reliability of its distribution system in Washington.<sup>44</sup> Company witness Patrick Darras provides detailed information on the 2020 capital investments for which the Company is requesting recovery, which describes the scope, costs, and need for each improvement.<sup>45</sup> As just one example, the

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<sup>39</sup> *WUTC v. Puget Sound Energy*, Dockets UE-190529 and UG-190530, Order 08, ¶¶ 227-228 (July 8, 2020); *see also WUTC v. Puget Sound Energy, Inc.*, Dockets UE-130137 and UG-130138 (consolidated), Order 07, ¶¶ 46-48 (June 25, 2013).

<sup>40</sup> *WUTC v. Cascade*, Docket UG-200568, Order 05, ¶¶ 162-163.

<sup>41</sup> *Id.* ¶ 161.

<sup>42</sup> Kivisto, Exh. NAK-1T at 4:3-18.

<sup>43</sup> *Id.* at 4:5-7.

<sup>44</sup> *Id.* at 4:7-9. While much progress has been made, Cascade must continue to focus on system improvements, and estimates it will invest more than \$178 million between 2022 and 2026 to ensure safety and reliability. *Id.* at 4:9-11.

<sup>45</sup> *See* Darras, Exh. PCD-1T at 12:16-54:9.

Walla Walla Gate Project eliminates bypass during cold weather events and addresses supply issues, which are critical to providing excellent service to customers.<sup>46</sup>

22. The Company also continues to experience increases in labor and personnel costs.<sup>47</sup> Ms. Kivisto testifies that the region was already facing a tight labor market prior to the pandemic, and COVID-19 has amplified challenges. As explained by Company witness Jim Kaiser, Cascade competes for labor with companies across the United States and struggles because its compensation targets generally lag behind median market levels.<sup>48</sup>

23. Ms. Kivisto further explains that there is progressive and significant impact of regulatory lag on Cascade's ability to recover costs, despite Cascade's recent implementation of cost saving measures.<sup>49</sup> For example, the Company is part of the One Vision, One Utility process that results in savings from sharing joint management, customer service, billing and payment processing, accounting systems, engineering support, and information technology.<sup>50</sup> However, even with these economies, Cascade has never met its authorized rate of return and earnings have been below target for the last six years.<sup>51</sup>

24. Meanwhile, the COVID-19 pandemic continues to impact customers and the overall economy. As the Commission stated in Cascade's last rate case: "Without EOP rate base treatment, Cascade will likely continue to under-recover in the rate effective period due to the

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<sup>46</sup> Exh. Kivisto, NAK-1T at 7:1-12; *see also* Darars, Exh. PCD-1T at 13:22-14:4; *see generally id.* at 27:6-32:8.

<sup>47</sup> Exh. Kivisto, NAK-1T at 4:12-15.

<sup>48</sup> Exh. Kivisto, NAK-1T at 8:16-18; *see also* Kaiser, Exh. JEK-1T at 5:8-6:3.

<sup>49</sup> Exh. Kivisto, NAK-1T at 5:17-6:8.

<sup>50</sup> Exh. Kivisto, NAK-1T at 6:9-19.

<sup>51</sup> Exh. Kivisto, NAK-1T at 6:20-22.



extreme economic volatility caused by the COVID-19 pandemic, which remains ongoing.”<sup>52</sup> The same remains true to a large extent today.

25. Thus, the testimony fully describes Cascade’s “ongoing capital investment program and its demonstrated historical underearning,”<sup>53</sup> the fact that “Cascade has failed to achieve its authorized ROR for several years,”<sup>54</sup> and continued economic volatility.<sup>55</sup> These are the reasons the Commission approved EOP treatment for Cascade in 2021, and Cascade continues to face these same challenges today.

2. Cascade’s hypothetical capital structure and cost of debt are supported by the record and maintained at levels approved in the Company’s last general rate case.

26. In this proceeding, Cascade recommends the capital structure be maintained at the ratio of 49.1 percent equity and 50.9 percent long-term debt, which is the same capital structure approved in the Company’s last two general rate cases.<sup>56</sup> This proposed capital structure is fully supported in the record. AWEC’s suggestion that actual 2020 data necessitates a change in capital structure should be rejected, because the issues that resulted in the Company’s capital structure have not changed significantly from the last rate case to this current case.<sup>57</sup>

27. Although Cascade issued \$50 million of long-term debt on June 15, 2022, to fund its capital program,<sup>58</sup> Cascade’s parent company has and will continue to add equity infusions in an

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<sup>52</sup> *WUTC v. Cascade*, Docket UG-200568, Order 05, ¶ 170.

<sup>53</sup> *Id.* ¶ 167.

<sup>54</sup> *Id.* ¶ 168.

<sup>55</sup> *Id.* ¶¶ 169-170.

<sup>56</sup> See Chiles, Exh. MAC-4T at 4:9-19; Exh. Nygard, TJN-1T at 4:1-20; see also *Cascade*, Docket UG-200568, Order 05, ¶ 82 (“[W]e conclude that it is reasonable to maintain Cascade’s equity ratio at 49.1 to provide stability in the Company’s capital structure in the face of increased gas costs. Cascade’s capital structure should therefore be maintained at a ratio of 49.1 percent equity and 50.9 percent long-term debt, as approved in the Company’s last general rate case.”).

<sup>57</sup> See Chiles, Exh. MAC-4T at 5:1-6:5.

<sup>58</sup> See Nygard, Hrg. Tr. at 102:13-103:12 (June 1, 2022).

effort to meet its goal of maintaining the optimal capital structure of 50 percent debt and 50 percent equity.<sup>59</sup>

28. Likewise, the overall ROR of 6.93 percent provides a reasonable return for Cascade’s investors at a fair cost to Cascade’s customers and is supported by testimony in the evidentiary record.<sup>60</sup> Updating with the debt issuance that was funded in June, the overall ROR would increase from 6.93 percent to 6.96 percent as follows:

**Table 1. Proposed Rate of Return**

<b>Proposed Rate of Return</b>			
	<u>Capital Structure</u>	<u>Cost</u>	<u>Component</u>
Common Equity	49.1%	9.40%	4.62%
Total Debt	50.9%	4.59%	2.34%
	<u>100%</u>		<u>6.96%</u>

3. Cascade’s COVID deferral is complete and accurate, and it is supported by substantial evidence.

29. The Multiparty Settlement accepts Cascade’s rate treatment of its COVID deferral, and AWEC’s proposal to reverse it should be rejected because AWEC miscalculates Cascade’s deferral data by omitting an entire month of 2020 data. Cascade explained this in response to an AWEC data request, which AWEC provided as page 12 to Exh. BGM-4, and Cascade provided further explanation on lines 3-6 of page 13 in Chiles, Exh. MAC-4T. Yet AWEC never corrected its mistake and continues to rely on the partial and incomplete data.

<sup>59</sup> See Nygard, Exh. TJN-1T at 4:7-20.

<sup>60</sup> See Nygard, Exh. TJN-1T at 2:6-15.

30. Cascade’s deferral request is supported by the latest available deferred accounting quarterly report, which was filed on April 26, 2022, in Docket UG-200479 and referenced in Chiles, Exh. MAC-4T. Further, as Mr. Chiles explained in his rebuttal testimony, “[t]he COVID deferral should not be reversed unless the Commission also reverses the deferred costs and imputed late payment revenues that Cascade included in Exh. MCG-5, adjustment R-8.”<sup>61</sup> These associated deferrals would result in a total increase to Cascade’s revenue requirement.

**B. The Commission’s approval of this Multiparty Settlement will not result in a normalization violation.**

31. Cascade’s treatment of protected excess deferred income taxes (“EDIT”) is currently being adjudicated in Docket UG-220198. Cascade’s filing in that docket is an attempt to correct the treatment of its protected EDIT to prevent a potential normalization violation identified by Puget Sound Energy (“PSE”) in a Private Letter Ruling (“PLR”) by the Internal Revenue Service in September 2021. As explained in Chiles, Exh. MAC-4T and Exh. BR-1, once PSE’s PLR was made public, Cascade evaluated whether the letter also applied to Cascade and, if so, how. This process took approximately two months to confirm, and it included conversations with internal and external tax experts, including the Company’s outside auditors, to ensure Cascade had considered the full implications of the PLR from both a tax and accounting perspective. Once Cascade determined its situation related to protected EDITs was similar to PSE’s, the Company scheduled a meeting with Staff in January 2022 to discuss the situation and potential path forward. That discussion included conversations about Cascade’s situation, proposed resolution, impact, and timing of a filing to resolve the potential normalization violation.

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<sup>61</sup> Chiles, Exh. MAC-4T at 13:19-14:1.

32. Cascade then had to determine how to appropriately resolve the potential normalization violation and calculate the impacts, given there were multiple rate cases and other protected EDIT rate changes that had occurred. Cascade, simultaneously, had to determine an appropriate path forward to get back into compliance with normalization rules for the past treatment and to set rates correctly going forward. Finally, Cascade consulted with PSE to verify that its proposal and calculations were consistent with PSE's outcome and calculations. It took Cascade multiple meetings internally and externally to develop and accurately calculate the impacts of its proposed resolution. Cascade filed Docket UG-220198 less than a week after final internal agreement.

33. The Commission suspended Cascade's filing in Docket UG-220198 and commenced an adjudicated proceeding regarding Cascade's EDIT filing on April 18, 2022. One week later, and after it had filed a notice of appearance in that docket, AWEC filed testimony in this proceeding seeking a revenue requirement reduction of \$2,127,568 related to Cascade's protected EDIT. No other party filed testimony in this proceeding related to Cascade's treatment of protected EDIT.

34. Although Cascade had only five business days to analyze, draft, and file testimony rebutting AWEC's proposal, Cascade discovered that AWEC's calculations were incorrect.<sup>62</sup> Pursuant to WAC 480-07-460(1)(b), "[a] party must file with the commission and serve all other parties with a motion to make substantive changes to any prefiled exhibits as soon as practicable after discovering the need to make that change." However, rather than file corrected testimony as required, AWEC instead issued a data request directing Cascade to make AWEC's corrections. Cascade declined, and AWEC never corrected its calculations.<sup>63</sup>

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<sup>62</sup> Chiles, Exh. MAC-4T at 16:12-17.

<sup>63</sup> See Exh. MAC-7X.

35. More important than AWEC's calculation errors, however, is the false sense of urgency AWEC is suggesting with its proposal. AWEC testified that a failure to consider protected EDIT reversals based on the test period would result in a normalization violation. This is not true. As Cascade witness Mark Chiles testified at the evidentiary hearing, the Company consulted with internal tax and accounting personnel and outside auditors, who determined that Cascade will not be at risk for a normalization violation as long as the Company has a plan to address the potential violation.<sup>64</sup> Cascade has the plan for correction in Docket UG-220198, and as long as Cascade follows that plan, "we're not at risk for [a] normalization violation."<sup>65</sup>

36. Approving the Multiparty Settlement and rejecting AWEC's erroneous proposal will preserve each party's right to address Cascade's proposed treatment of protected EDITs in Docket UG-220198, without risk of Cascade running afoul of the normalization rules.

**C. The Cost Recovery Mechanism is consistent with Commission direction and public policy.**

37. Cascade's cost recovery mechanism ("CRM") was initiated in 2013, allowed to go into effect by operation of law in Docket UG-131959,<sup>66</sup> and Cascade has followed the same process for recovering costs related to its CRM in every rate proceeding since that date.<sup>67</sup> AWEC is the only party in this proceeding to take issue with Cascade's CRM, asking the Commission to order Cascade to refund \$1,128,100 in CRM-related costs.<sup>68</sup> But AWEC's proposed disallowance is not related to this proceeding at all; instead, AWEC demands a refund for rates established in

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<sup>64</sup> Chiles, Tr. at 36:25-37:13 (June 1, 2022).

<sup>65</sup> *Id.*

<sup>66</sup> *WUTC v. Cascade Natural Gas Corporation*, Docket UG-131959, Staff Open Meeting Memo for October 30, 2013 (Oct. 30, 2013). *See also* Mullins, Exh. BGM-1T at 29:9-10.

<sup>67</sup> *See* Chiles, Exh. MAC-4T at 19:6-8 ("[T]he CRM portion of the compliance filing in Docket UG - 200568 was consistent with the policy statement and all of Cascade's rate cases since the CRM was implemented in 2013.").

<sup>68</sup> Mullins, Exh. BGM-1T at 3, Table 1.

Cascade's prior rate case, Docket UG-200568. The Commission should reject AWEC's untimely and incorrect argument that Cascade's compliance filing did not comply with the Commission's final order, Order 05, in that prior docket.

38. The Commission's rules establish the process for disputing any compliance filing.<sup>69</sup> Any party may respond to and dispute a company's compliance filing, but WAC 480-07-880(4) requires that party a must do so within five days of the company's filing.<sup>70</sup> Staff, the Commission, and all parties in Docket UG-200568 were fully aware of Cascade's CRM costs when Cascade filed its initial testimony in June 2020 and, later, its compliance filing and workpapers on June 11, 2021.<sup>71</sup> Staff specifically inquired into the CRM adjustment on June 22, 2021, and Cascade immediately responded.<sup>72</sup> No party disputed Cascade's compliance filing, and on June 23, 2021, Staff issued its compliance letter stating that it had reviewed the Company's compliance filing and determined that it complied with Commission Order 05.<sup>73</sup> Accordingly, AWEC slept on its right to protest Cascade's CRM cost recovery in Docket UG-200568, and it has no right to seek a refund for those rates now.

39. AWEC is apparently aware that it has no right to seek a refund now, because it ignores WAC 480-07-880(4) and instead attempts to rely on WAC 480-07-880(7),<sup>74</sup> which allows the Commission to take steps if it "later discovers that the filing does not fully comply with the order authorizing or requiring the filing." But there is no such discovery here because there is no error.

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<sup>69</sup> WAC 480-07-880.

<sup>70</sup> WAC 480-07-880(4).

<sup>71</sup> Mullins, Exh. BGM-1T at 34:20-21.

<sup>72</sup> See *WUTC v. Cascade*, Docket UG-200568, Email thread from Christopher Michelson (filed on June 24, 2021).

<sup>73</sup> *WUTC v. Cascade*, Docket UG-200568, Letter from Staff Confirming the Company's Compliance with Order and Order 06 (June 23, 2021).

<sup>74</sup> See Mullins, Exh. BGM-1T at 35:22-36:3.

The CRM costs in both Docket UG-200568 and this proceeding are consistent with the Commission’s policy statement, which states:

Whether the Commission will allow into rates the costs associated with a resource acquisition requires utilities to demonstrate that the acquisition is “used and useful” in the service of providing electricity to customers. RCW 80.04.250; see Leonard S. Goodman, *The Process of Ratemaking* 799 (1998). To the extent any estimated costs for the final month are different for those embedded in the CRM, the company will adjust the subsequent period CRM to either recover or refund the difference.<sup>75</sup>

40. Cascade demonstrated in its initial<sup>76</sup> and rebuttal<sup>77</sup> testimony in this proceeding that its investments in this case are used and useful, and no party claims that such costs should not be recovered. Further, as Mr. Chiles testified at hearing, Cascade routinely explains the true-up process in rate case testimony.<sup>78</sup> In fact, Public Counsel proactively affirmed recovery of the Company’s CRM adjustment in this case.<sup>79</sup> Commissioner Rendahl was correct to question whether a Company should be allowed to make changes to rates that have not been granted explicit authorization from the Commission or otherwise been allowed to take effect by operation of law, and Cascade’s witness rightly responded, “no”.<sup>80</sup> Cascade’s CRM costs are supported by sufficient evidence and were allowed to take effect by operation of law pursuant to the Commission’s Policy Statement and the Company’s unopposed compliance filing in Docket UG-200568.

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<sup>75</sup> *In re the Matter of the Policy of the Washington Utilities and Transportation Commission Related to Replacing Pipeline Facilities with an Elevated Risk of Failure* (“Policy Statement”), Docket UG-120715, note 32, (Dec. 31, 2012).

<sup>76</sup> See Chiles, Exh. MAC-1T at 9:6-18, Myhrum, Exh. IDM-1T at 13:1-14:6, Gresham, Exh. MCG-1T at 5:12-19, and Gresham, Exh. MCG-5.

<sup>77</sup> Chiles, Exh. MAC-4T at 17:1-25:8.

<sup>78</sup> Chiles, Tr. 67:3-4 (June 1, 2022).

<sup>79</sup> Garrett, Exh. MEG-1T at 12:2-13. Although Public Counsel’s proposed recovery of Cascade’s CRM is theoretically correct, Public Counsel’s adjustments to restate revenues based on such costs are incorrect, as explained in Chiles, Exh. MAC-4T at 29:1-14.

<sup>80</sup> Chiles, Tr. at 67:8-16 (June 1, 2022).

41. AWEC's goal in this case is to eliminate Cascade's CRM altogether and refund costs that Cascade properly recovered in the past because AWEC simply does not support the CRM.<sup>81</sup> No party, not even AWEC, argues that recovery of Cascade's CRM investments incurred during this proceeding's test year should be denied. AWEC simply prefers to see the costs recovered through baseline rates in a general rate case rather than through Schedule 597.<sup>82</sup> However, whether the CRM should continue or be terminated is not for AWEC to decide and is ultimately irrelevant to whether Cascade's rates for used and useful investments determined a year ago should be refunded in this proceeding. AWEC's attempt to unravel Cascade's last rate case now, a year after it slept on its right to dispute the company's compliance filing, is inappropriate, unsupported, and should be rejected.

**D. Each component of the Multiparty Settlement is a result of compromise and is lawful, supported by the record, and consistent with the public interest.**

42. In evaluating individual components of a settlement proposal, the Commission examines (1) whether any aspect of the proposal is contrary to law; (2) whether any aspect of the proposal offends public policy; and (3) whether evidence supports the proposed elements of the agreement as reasonable resolutions of the disputed issues.<sup>83</sup> The first two prongs are usually easily met because rarely will settling parties propose terms that are contrary to law or public policy.<sup>84</sup> This is the case with the Settling Parties' Multiparty Settlement in this proceeding, and the Settling Parties describe below how the Settlement complies with the public interest standard.

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<sup>81</sup> "AWEC recommends that the CRM Schedule 597 be terminated." Mullins, Exh. BGM-1T at 33:10.

<sup>82</sup> "With the changes in regulatory policy since the Commission issued its Policy Statement in UG-120715, Cascade now has more than adequate opportunity to recover pipeline replacement costs in general rate cases, if it elects to do so." Mullins, Exh. BGM-1T at 33:12-15.

<sup>83</sup> *WUTC v. PacifiCorp d/b/a Pac. Power & Light Co.*, Docket UE-032065, Order 06, ¶ 59 (Oct. 27, 2004).

<sup>84</sup> See James M. Van Nostrand & Erin P. Honaker, *supra* note 14 at 247-248 (noting that the first two inquires "set a rather low threshold for approval of a settlement").



43. On the third prong, Cascade’s initial filing, testimony and exhibits filed in support of the Multiparty Settlement, and hearing testimony adequately support the Settlement as a reasonable resolution of the contested issues. Further, the Commission has observed that “ratemaking is not an exact science.”<sup>85</sup> Thus, when making an examination of specific adjustments, close scrutiny of the individual adjustments is not required, and the Commission recognizes that “all settlements have a so-called black box quality to one degree or another—they are by nature compromises of more extreme positions that are supported by evidence and advocacy.”<sup>86</sup> Rather than rebut this evidence, non-settling parties’ response testimonies fail to specifically address the majority of Settling Parties’ settlement terms, further evidencing that such terms are reasonable compromises of the issues in this proceeding.

44. The Multiparty Settlement adequately addresses each of the contested issues in this proceeding and recommends a resolution that is consistent with the law and the public interest. Settling Parties agreed to a revenue requirement reduction from Cascade’s initial filing of \$13,725,286 (11.10 percent) to \$10,692,992 (8.64 percent). This reduction reflects four compromises, each of which is supported by the record.<sup>87</sup> First, the majority of this reduction is based on a compromise of Cascade’s treatment of its depreciation related expenses. As Settling Parties explained, they analyzed depreciation expenses using end of period depreciation, 2020 actual depreciation, and 2021 actual depreciation. Each methodology includes benefits and drawbacks, but no methodology is clearly “better” or more appropriate than the other. After considering all parties’ positions, Cascade and Staff agreed to a compromise that recognizes the differences in end of period and 2021 actual depreciation expense. Through reciprocal

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<sup>85</sup> *WUTC v. PacifiCorp*, Docket UE-032065, Order 06, ¶ 62.

<sup>86</sup> *Id.* ¶ 61.

<sup>87</sup> See Exh. JT-3 at ¶ 9; Chiles and Huang, Exh. JT-1T at 4:15-17.

concessions, the Settling Parties agree that Cascade will restate its end of period depreciation expense, resulting in a decrease to its revenue requirement of \$3,000,000.<sup>88</sup> This depreciation amount will not set a bar nor have any bearing on future rate cases. Cascade's next rate case will include different additions and retirements and, therefore, an entirely different depreciation number.

45. Only AWEC directly addressed this. Mr. Mullins recommends using actual 2020 depreciation expense, which produces a \$2,870,960 reduction to the revenue requirement.<sup>89</sup> However, AWEC's concerns have been addressed in the Multiparty Settlement, which reduces revenue requirement related to depreciation expense by \$3,000,000 – more than AWEC proposes.<sup>90</sup>

46. Second, the Settling Parties agreed that Cascade would reclass its rate base to correctly allocate a plant asset and its associated depreciation from Oregon to Washington, for a net increase to revenue requirement of \$4,973.<sup>91</sup> Third, as settlement compromise, Cascade agreed to revise its Washington State Allocations to Calendar Year of 2020, instead of 2019, which reduced the revenue requirement by \$10,741. None of the opposing parties took issue with either of these elements of the Multiparty Settlement.

47. Finally, Cascade agreed to reduce its revenue requirement by \$26,526, related to Director and Officer expense.<sup>92</sup> Thus, each component of the Multiparty Settlement is a result of compromise and is lawful, supported by the record, and consistent with the public interest.

Opposing parties may prefer different adjustments or reliance on different methods or test years,

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<sup>88</sup> See Exh. JT-3 at ¶ 10(1); Chiles and Huang, Exh. JT-1T at 4:18-5:8.

<sup>89</sup> Mullins, Exh. BGM-1T at 3:5-7; 17:1-21:2.

<sup>90</sup> Chiles, Exh. MAC-4T at 8:15-9:14.

<sup>91</sup> See Exh. JT-3 at ¶ 10(2); Chiles and Huang, Exh. JT-1T at 5:9-13.

<sup>92</sup> See Exh. JT-3 at ¶ 11; Chiles and Huang, Exh. JT-1T at 5:21-6:8.

but they have not shown that any specific element or the overall result in terms of revenue requirement is unreasonable or unsupported (as discussed more fully below).

**E. The Multiparty Settlement sufficiently accounts for relevant issues relating to the public interest.**

48. The Multiparty Settlement is a compromise of the few remaining disputed issues that Staff identified after a comprehensive investigation into the Company's operations and its initial filing. "Staff thoroughly reviewed the Company's initial filing and made some adjustments to the company's initial case, which are reflected in the settlement stipulation. Although the specific terms reached in this case are the result of compromises in each party's positions, Staff believes that overall the settlement stipulation would result in fair, just, and reasonable rates."<sup>93</sup> In other words, Staff concluded that the Multiparty Settlement is in the public interest considering the Company's initial filing and all the information Staff had available to it. Such information includes significant testimony from multiple parties regarding factors that contribute to the public interest such as environmental health and greenhouse gas emissions reductions,<sup>94</sup> health and safety concerns,<sup>95</sup> economic development,<sup>96</sup> and equity.<sup>97</sup>

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<sup>93</sup> Settling Parties, Chiles and Huang, Exh. JT-1T at 9:18-22.

<sup>94</sup> See, e.g., Kivisto, Exh. NAK-1T at 7:7-8:5, describing Cascade's Clean Energy Plans and capital expenditures on renewable natural gas and clean hydrogen; see also Darras, Exh. PCD-1T at 7:12-23, describing how Cascade's distribution enhancement projects incorporate environmental concerns.

<sup>95</sup> See, e.g., Darras, Exh. PCD-1T at 9:14-10:15, describing how Cascade accounts for health and safety when selecting its major projects; see also Exh. PCD-1T at 49:9-10, describing how Cascade's Bremerton Reg Station Project increases the safety and reliability of the gas distribution system; see also Kivisto, Exh. NAK-1T at 4:7-11.

<sup>96</sup> See, e.g., Darras, Exh. PCD-1T, generally, and at 6:1-14, describing how Cascade engineers work with various representatives to consider regional economic development when selecting major capital projects; see also Kaiser, Exh. JEK-1T, at 3-8, explaining how Cascade's non-union compensation process considered factors such as the economic impacts of COVID-19, market forces, and equity.

<sup>97</sup> See, e.g., Kivisto, Exh. NAK-1T AT 11:7-15, describing 1) Cascade's Big HEART grant program, 2) Cascade's Disconnection Reduction Plan, 3) Winter Help programs, 4) Cascade's Washington Energy Assistance Fund, and 5) Cascade's participation in Docket U-200291 (*In the Matter of the Response to the COVID-19 Pandemic*), all related to equity.

49. The Energy Project states that the Multiparty Settlement fails to take any step to promote equity and its rate increase will harm vulnerable customers. The Energy Project references RCW 80.28.425 as support for its argument, implying that the Multiparty Settlement is illegal because it does not expressly consider equity.<sup>98</sup> This statute provides:

The commission’s consideration of a proposal for a multiyear rate plan is subject to the same standards applicable to other rate filings made under this title, including the public interest and fair, just, reasonable, and sufficient rates. In determining the public interest, the commission may consider such factors including, but not limited to, environmental health and greenhouse gas emissions reductions, health and safety concerns, economic development, and equity, to the extent such factors affect the rates, services, and practices of a gas or electrical company regulated by the commission.<sup>99</sup>

50. First, note that because this case was filed prior to January 1, 2022, Cascade was not required to, nor did it, file a multiyear rate plan (“MYRP”) proposal. Therefore, the statute—which pertains to “a proposal for a multiyear rate plan”—does not clearly apply to this general rate case. And although the statute states that MYRPs are subject to the same standards as other filings, the factors listed in the second sentence appear to grant the Commission new explicit authority that is not clearly applicable in this proceeding.

51. Even if RCW 80.28.425(1) did apply to this case and did modify the public interest standard, The Energy Project’s argument fails. The settlement sufficiently addresses and considers equity, especially given the current lack of specific guidance on this topic. And it should not be rejected or modified simply because the Multiparty Settlement does not explicitly label certain settlement conditions as equity-related. If this were the standard, presumably these explicit call-outs would be required in every settlement for all the factors listed in RCW 80.28.425(1). But specifying which settlement conditions are intended to satisfy specific

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<sup>98</sup> Collins, Exh. SMC-1T at 18: 21-19:7.

<sup>99</sup> RCW 80.28.425(1).

standards has never been—and is not—the rule. Even RCW 80.28.425(1) affords the Commission discretion and lists factors the Commission *may* consider in a MYRP public interest analysis.

52. To the extent RCW 80.28.425 calls for an increased level of equity or specific analysis of certain factors to meet the public interest standard, Cascade will comply when it files its MYRP. Cascade is following the multi-year rate case proceedings that are currently pending for Puget Sound Energy and Avista, and the Company looks forward to demonstrating compliance with RCW 80.28.425 in its first MYRP after those proceedings conclude.<sup>100</sup>

53. As for the current proceeding, even though the Multiparty Settlement does not contain the word “equity,” and even though RCW 80.28.425 does not apply to this proceeding, the Multiparty Settlement nonetheless incorporates relevant issues relating to equity, health and safety, and the environment, sufficient to meet the public interest standard. For example, as explained in pre-filed testimony and during the hearing, Cascade and its low-income advisory group have been working with The Energy Project and other stakeholders, including all the parties in this proceeding, on how to increase engagement of community-based organizations and how to better serve low-income customers.<sup>101</sup> The result is that Cascade already conforms with, or is in the process of implementing, all of The Energy Project’s proposals in this case.<sup>102</sup>

54. Further, as explained in the pre-filed direct testimony of Nicole Kivisto<sup>103</sup> and the rebuttal testimony of March A. Chiles,<sup>104</sup> on May 18, 2022, Cascade provided a disconnection reduction

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<sup>100</sup> See Chiles, Tr. 33:3-12 (June 1, 2022).

<sup>101</sup> See Collins, Tr. at 95:21-97:7 (June 1, 2022) (Explaining how the additional five percent of 2022/2023 program funding will be applied, building on work and communication that is already occurring between staff, Public Counsel, the Company, and other parties).

<sup>102</sup> Chiles, Exh. MAC-4T at 31:8-32:2.

<sup>103</sup> Kivisto, Exh. NAK-1T 13:7-12.

<sup>104</sup> Chiles, Exh. MAC-4T at 31:9-19.

plan, which the Commission took judicial notice of during the hearing.<sup>105</sup> This plan, a copy of which was filed in this proceeding in Exh. BR-3, Cascade’s Response to Bench Request No. 003, outlines in detail the specific path the Company is taking to help address the low-income segment of Cascade’s customer base, especially customers who represent marginalized communities, “including but not limited to rural, immigrant, tribal, or people of color.”<sup>106</sup> The disconnection reduction plan describes “outreach to target the hardest-to-reach customers with disabilities, language barriers, and limited access to communications.”<sup>107</sup>

55. As other evidence of Cascade’s efforts to address equity issues, Cascade has explained its ability to qualify customers for assistance based on either 200 percent of the federal poverty level or 80 percent area median income.<sup>108</sup> Ms. Kivisto also provided testimony on programs aimed at lessening the burdens of COVID-19, easing the financial impact of increased rates on vulnerable customers, and promoting conservation.<sup>109</sup> For example, Cascade’s Hardship Economic Assistance Receivable Temporary program helps customers who have lost their income due to the pandemic receive energy assistance.<sup>110</sup> Cascade’s WEAFF and its Winter Help programs provide needed bill assistance to low-income customers, and its Budget Payment Plan helps reduce bill volatility associated with seasonal fluctuations in usage.<sup>111</sup> Cascade has also been focused on conservation, and has increased its conservation budget by more than one hundred percent in the last four years, dedicating \$7.6 million in 2020 to such programs.<sup>112</sup>

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<sup>105</sup> Chiles, Hrg. Tr. at 76:13-18, 78:5-21 (June 1, 2022).

<sup>106</sup> Cascade Natural Gas Corporation, Disconnection Reduction Plan (May 2022) at 4.

<sup>107</sup> *Id.*

<sup>108</sup> Chiles, Exh. MAC-4T at 31:8-32:2.

<sup>109</sup> Kivisto, Exh. NAK-1T at 12:1-20.

<sup>110</sup> *Id.* at 12:12-20.

<sup>111</sup> *Id.* at 13:18-14:11.

<sup>112</sup> *Id.* at 14:12-15:3.

56. The record supporting the Multiparty Settlement also amply addresses safety concerns, which are of public interest. As explained in Nicole Kivisto’s testimony, one of the reasons the Company filed this rate case is because since 2008, the Company has invested over \$453 million to ensure system safety and reliability of its distribution system in Washington. While much progress has been made, Cascade estimates it will invest an additional \$178 million to ensure system safety and reliability between 2022 and 2026.<sup>113</sup>

57. Patrick Darras additionally explains how the Company prioritizes capital projects that improve safety and reliability. For example, “the bulk of Cascade’s major capital projects are either pipeline replacement projects that have been identified for safety reasons and to reduce risk on Cascade’s system, or system reinforcements or system expansions that are needed to ensure reliability and to accommodate growth on the Company’s system.”<sup>114</sup> Mr. Darras explains that the Company uses the Distribution Integrity Management Program as well as engineers and district managers to identify risks and develop safety-related projects based on risk.<sup>115</sup> He then provides an overview of the Company’s major capital projects that have been completed since the test year in the last rate case and explains how they increase safety and reliability of Cascade’s systems. For example, the new Bremerton Regulator Station replaces five smaller stations, “thereby increasing safety and reliability of gas distribution system in this area.”<sup>116</sup>

58. Thus, the record demonstrates that the Multiparty Settlement is consistent with the public interest. The revenue requirement increase reflected in the settlement is attributable to a limited set of adjustments that are justified by the record.<sup>117</sup> And the authorized rate of return maintains

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<sup>113</sup> *Id.* at 4:4:18.

<sup>114</sup> Darras, Exh. PCD-1T at 4:1-8.

<sup>115</sup> *Id.* at 4:15-5:20.

<sup>116</sup> *Id.* at 49:8-16.

<sup>117</sup> Chiles and Huang, Exh. JT-1T at 6:11-9:22.

the financial integrity of the Company while also protecting rate payers from an increase that is more than necessary. It also addresses engagement with community-based organizations, increased assistance for low-income customers, risk identification and mitigation, and measures to ensure the safety and reliability of Cascade’s systems.

#### **IV. THE SETTLEMENT PROCESS WAS FAIR AND INCLUSIVE**

##### **A. The Multiparty Settlement is the result of collaborative settlement negotiations involving all parties.**

59. No party except AWEC takes issue with the settlement process in this case. Although Public Counsel and The Energy Project also filed response testimony in addition to AWEC, neither complains that the settlement process was “cumbersome”, “had just started”, or was in any way out of the ordinary, as AWEC does.

60. AWEC’s claims do not reflect the settlement process in this case. AWEC states that Cascade and Staff negotiated the Multiparty Settlement without involving the other parties.<sup>118</sup> While technically true because that is the definition of a Multiparty Settlement, AWEC’s statement misrepresents the settlement negotiations. The Settling Parties were prepared to engage in negotiations beginning in January and they continued all-party discussions until February, where several proposals were presented and discussed. The Settling Parties engaged in informal negotiations with each other and the other parties following the February discussions, and the Settling Parties ultimately reached a full multiparty settlement after that meeting.<sup>119</sup> As required by WAC 480-07-740(2)(c), the Settling Parties informed the other parties and then the administrative law judge “as soon as” they had reached a settlement in principle.

61. The most curious allegation from AWEC is that Cascade and Staff simply settled too

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<sup>118</sup> Mullins, Exh. BGM-1T at 5:6-7.

<sup>119</sup> Huang, Exh. JH-1T at 5:7-6:6.



soon.<sup>120</sup> This is a disappointing accusation because it is not true. The parties had all been reviewing Cascade’s filing and had been engaged in discovery for over three months before all parties attended the first scheduled settlement negotiation in January. As Staff witness Joanna Huang testified, “Staff had conducted discovery, formulated its positions on the issues, and was prepared to negotiate on January 10.”<sup>121</sup> Yet because not all parties were prepared at that time, a new settlement conference was scheduled a month later. Being unprepared to participate in a scheduled settlement conference does not render the settlement process rushed, cumbersome, or anything other than a proper and collaborative process. Unfortunately, AWEC’s perception of the settlement process does not align with reality and usual practice.

62. AWEC’s claims further imply there is something inherently wrong with settling disputed issues early in settlement negotiations. AWEC argues that Cascade and Staff should have waited two more months to settle, to allow intervening parties to file response testimony and parties to engage in a third settlement conference in April.<sup>122</sup> Such a position is contrary to public policy and Commission practice,<sup>123</sup> practical experience, and common sense. The more time parties invest in costly discovery and solidify their litigation position by filing testimony and supporting exhibits, the less likely they are to move off those positions and invest in a compromise position.

63. Nonetheless, “Cascade and Staff *always* strive to reach consensus with other parties to achieve settlement on reasonable terms whenever possible. As a rule, the Settling Parties would not reach a multiparty settlement without first speaking to the other parties and concluding that a

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<sup>120</sup> Mullins, Exh. BGM-1T at 5:9.

<sup>121</sup> Huang, Exh. JH-1T at 6:4-6.

<sup>122</sup> Mullins, Exh. BGM-1T at 5:9-10.

<sup>123</sup> *WUTC v. Avista Corp.*, Dockets UE-080416 and UG-080417 (consolidated), Order 08, ¶ 88 (citing RCW 34.05.060).

full settlement on reasonable terms was not possible.”<sup>124</sup> This case was no different. The Settling Parties’ actions are not only examples of good faith and compromise, but they have also long been supported by the Commission and the Legislature. Informal settlements in administrative proceedings are strongly encouraged.<sup>125</sup> AWEC appears to be the only party in this proceeding who does not agree.

**B. Any schedule “compression” was caused by, and benefits, the non-settling parties.**

64. While AWEC argues that the Multiparty Settlement was reached too early in the process, it simultaneously argues that the Multiparty Settlement was filed too late. At the status conference held on March 10, 2022, the non-settling parties expressed concern that the Settling Parties had not filed their Multiparty Settlement yet, even though the Settling Parties had just recently reached their settlement in principle.<sup>126</sup> This backlash was unjustified and led to the extraordinary order that the Settling Parties file in the record a draft and confidential term sheet used in informal settlement negotiations.<sup>127</sup>

65. In fact, there was nothing out of the ordinary about any part of the settlement process, including the timing for filing the settlement stipulation and testimony. The Settling Parties reached settlement in principle on February 17, 2022, and the very next day notified the presiding officers, requesting suspension of the procedural schedule, as required by the rules.<sup>128</sup> After the new procedural schedule was set, they filed their Multiparty Settlement and supporting testimony accordingly, on March 22, 2022. This was a time span of 33 days from settlement to

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<sup>124</sup> Settling Parties’ Objection to Bench Request No. 002 (June 6, 2022).

<sup>125</sup> RCW 34.05.060.

<sup>126</sup> See Order 05 in this proceeding at ¶ 8 (March 11, 2022).

<sup>127</sup> *Id.* ¶ 9. The term sheet was ultimately stricken from the record. See Doyle, Tr. 12:6-7 (June 1, 2022).

<sup>128</sup> See WAC 480-07-740(2)(c) (“[p]arties should inform the presiding administrative law judge as soon as they reach a settlement in principle and request that the commission suspend the procedural schedule ....”).

filing. There is nothing at all unusual about this timing, and other settlements have followed similar timelines, especially since the settlement rules were amended in 2019. In Docket UE-210532, the time between notifying the presiding officer of reaching a full multiparty settlement and filing the settlement was 42 days.<sup>129</sup> In Docket UG-190857, it was 47 days.<sup>130</sup> I, and in Docket UE-200027, it was 56 days.<sup>131</sup>

66. Much has been said about “compression” of this proceedings’ schedule, but the Settling Parties not only filed all their materials pursuant to the rules and orders in this case, they also made several attempts to avoid or alleviate any perceived compression for all parties, and especially for the Commission. As stated above, the Settling Parties reached a full settlement in this proceeding on February 17, 2022, and notified the ALJ on February 18, 2022. In that notice, the Settling Parties requested that the Commission suspend the current schedule and set a status conference to set a new procedural schedule. Due to unfortunate scheduling issues that were not the fault of any party, that status conference was not held until March 10, 2022, twenty days after the Settling Parties’ request.<sup>132</sup> At the status conference, the Settling Parties requested to move the hearing date up to accommodate a June 1 effective date and to allow 60 days for the Commission to review the settlement with plenty of time before the suspension period ends.<sup>133</sup> The presiding officer responded that moving to an earlier hearing date would be impossible “due to the Commissioner’s schedules and to other competing priorities.”<sup>134</sup> The Settling Parties then

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<sup>129</sup> See *WUTC v. PacifiCorp d/d/a Pacific Power & Light Co.*, Docket UE-210532, Order 06 at ¶¶ 8, 10 (Jan. 18, 2022).

<sup>130</sup> See *Seattle Children’s Hospital, et. al, v. Puget Sound Energy*, Docket UG-190857, Order 04 at ¶¶ 6, 8 (March 2, 2020).

<sup>131</sup> See *WUTC v. Puget Sound Energy*, Docket UE-200027, Order 01 at ¶¶ 2, 4 (Sept. 3, 2020).

<sup>132</sup> The presiding officers initially set the status conference for March 3, 2022, but rescheduled it to March 10, 2022, due to a “scheduling conflict.”

<sup>133</sup> Barnett, Tr. 31:13-20 (Mar. 10, 2022).

<sup>134</sup> Pearson, Tr. 31:23-32:1 (Mar. 10, 2022).

proposed one schedule and the non-settling parties proposed another. The presiding officer selected the non-settling parties' schedule, which meant that the Settling Parties absorbed the burden of any schedule "compression."<sup>135</sup> For example, the Settling Parties had only five business days to review and analyze three sets of response testimony and draft rebuttal testimony.<sup>136</sup>

67. For complex proceedings such as general rate cases, "parties must submit a settlement agreement and supporting documentation to the commission at least sixty days prior to any statutory deadline for commission action or requested effective date of any tariff changes or other terms and conditions of the settlement."<sup>137</sup> In this proceeding, the Settling Parties submitted their settlement agreement and supporting documentation to the Commission 170 days prior to the statutory deadline. Closer review of the prehearing and status conference transcripts demonstrate that, like at the evidentiary hearing,<sup>138</sup> it is the non-settling parties that have consistently requested and received more time in this proceeding to their advantage and to the disadvantage of the Settling Parties, the presiding officers, and the Commission.

## V. CONCLUSION

68. For the reasons set forth above, Cascade respectfully requests that the Commission approve the Multiparty Settlement. Consistent with WAC 480-07-750(1), approval of the Multiparty Settlement is lawful, the settlement terms are supported by an appropriate record, and the result of the Multiparty Settlement is consistent with the public interest in light of all the information available to the Commission.

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<sup>135</sup> See Order 05, ¶ 10 and App. A to Order 05.

<sup>136</sup> See *id.*, App. A.

<sup>137</sup> WAC 480-07-740(2)(a).

<sup>138</sup> Paisner Tr. 105:15-23 (June 1, 2022) (Counsel for Public Counsel requesting and receiving additional time to file post-hearing briefs.).

Respectfully Submitted: July 1, 2022

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