

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,

Complainant,

v.

CASCADE NATURAL GAS
CORPORATION,

Respondent.

DOCKET NO. UG-060256

**COMMENTS OF PUBLIC COUNSEL
(Reformatted Replacement)**

May 22, 2007

Public Counsel respectfully submits these comments in response to the Commission's May 9, 2007, Notice for Comments on Cascade's Conservation Plan filed in this docket. We recommend that the Commission not approve Cascade's Conservation Plan, for the reasons set forth herein.

I. INTRODUCTION

Public Counsel believes that Cascade's "Conservation Plan" is insufficient for numerous reasons, as discussed in these comments, and as summarized below:

- ***Lack of a clear implementation plan.*** The filing shows that Cascade does not yet have a clear plan for implementing a portfolio of conservation programs.

- ***Cascade has not yet determined who will administer the conservation programs.*** The Company does not yet know who will administer the programs. Cascade states in the filing that the Company plans to have a third party administer all of its conservation programs, with the exception of the low-income weatherization program. The Company further indicates that it is considering the Energy Trust of Oregon (ETO), but ultimately this has not yet been determined.
- ***Cascade's extensive reliance on the Energy Trust of Oregon is problematic for numerous reasons.*** Energy Trust of Oregon is not authorized to do business in Washington and has not decided whether or not to operate in the State of Washington. It is currently authorized by and accountable to the Oregon Public Utility Commission, not the Washington Utilities and Transportation Commission (WUTC).
- ***No clear plans to issue an RFP within 30 days.*** Cascade does not indicate whether it will issue a Request for Proposals (RFP) within 30 days of Plan approval, as required by the settlement and the Commission's Order. The 4-page Conservation Plan is silent on this issue. The filing appears to suggest that the ETO may develop and issue the RFP, which raises conflict of interest concerns.
- ***The proposed conservation targets are very low and are not supported by analysis.*** Cascade fails to explain how it arrived at the targets against which it proposes to have its performance evaluated and rates increased.
- ***Lack of true penalties for performance failures.*** Rather than including true penalties, Cascade's plan instead would simply allow for slightly reduced financial recovery if the Company fails to meet its extremely conservative targets.

II. COMMENTS

A. Requirements of Order No. 05

Pursuant to the Commission's Order No. 05 in this docket, Cascade filed a Conservation Plan on May 7, 2007, for the Commission's consideration in conjunction with the proposed pilot decoupling mechanism. Cascade's Conservation Plan is seriously deficient when measured against the requirements of Order No. 05 and should be rejected by the Commission. Most significantly, the Plan highlights the fact that Cascade has not yet formulated an implementation

plan to undertake expanded conservation programs. Because of this critical failure on Cascade’s part, as well as additional flaws of the plan described below, the Commission should not approve the Conservation Plan. As a result, the implementation of the three year decoupling pilot program should not commence, nor should Cascade be permitted to accrue any decoupling deferrals.

In its Order No. 05, the Commission made the implementation of the pilot decoupling mechanism, and accrual of any deferrals, contingent upon Cascade filing a Conservation Plan to be reviewed and approved by the Commission.¹ The pilot decoupling mechanism could result in significant additional revenues provided by residential and commercial customers. These additional revenues from decoupling deferrals are in addition to the projected costs of \$2 to \$3 million annually for the conservation programs, which would also be provided by ratepayers.²

The Commission’s Order No. 05 makes clear the decision to grant the pilot decoupling mechanism was conditional only. The order did not guarantee that decoupling would be adopted. The Commission stated, “Promoting energy conservation is a goal that we strongly support, and provides a highly appealing rationale for decoupling on its face.”³ After outlining and recognizing the potential disadvantages and problems with decoupling, including shifting risk to ratepayers, weakened price signals to promote conservation, and violation of the

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¹ Order No. 05 at ¶81.

² Program costs from Appendices B and C to Conservation Plan.

³ Order No. 05 at ¶ 71.

“matching principle,” the Commission’s Order states:

Considering these concerns, we must examine carefully the stipulated proposal to determine whether the record is sufficient to prove the potential advantages from decoupling outweigh its potential disadvantages in this case.

A fundamental test in this regard is the likelihood of increased conservation as a result of implementing a decoupling program.

Order No. 05 at ¶¶ 75-76.

Ultimately, the Commission concluded, “The inclusion of the Conservation Plan, with its mechanisms and commitments to ensure the Company delivers on the promise of conservation through real incentives and penalties, leads us to conclude that the proposed decoupling mechanism may increase Company-sponsored conservation.”⁴ The Commission further stated, “we condition our full acceptance of the proposed decoupling mechanism pending review and approval of the Company’s Conservation Plan.”⁵

B. Cascade Does Not Have a Clear Implementation Plan

As described above, the Commission conditioned its “full acceptance” of the pilot decoupling program pending review and approval of Cascade’s Conservation Plan. In doing so, the Commission sought to ensure that Cascade “delivers on the promise of conservation.”⁶ In order to fully deliver on this promise however, Cascade must have a clearly articulated implementation plan, with specific timelines and benchmarks for achievement of significant results. The plan filed by Cascade falls far short on this score.

⁴ Order No. 05 at ¶ 78.

⁵ Order No. 05 at ¶ 81.

⁶ Order No. 05 at ¶ 78.

Cascade devotes less than one page of its Conservation Plan to describing its “implementation plan to achieve therm savings targets.”⁷ Cascade begins this section by stating:

In order to maximize participation levels and the acquisition of therms savings targets identified above, the Company *is planning to* have a third party provide program delivery and administration of all of its conservation programs with the exception of the Low-Income Weatherization Program. Cascade is working closely with the Energy Trust [of Oregon] *to determine if* their approach in Oregon *may be able to be* leveraged into Cascade’s Washington service territory.

Conservation Plan, p. 4 (emphasis added).

The conditional and tentative phrasing in this single paragraph illustrates that Cascade does not yet have a firm grasp as to exactly how the Company plans to implement an expanded portfolio of conservation programs. An April 24, 2007, memorandum from the ETO to Cascade, included as Appendix E to the filing, states in part that ETO is providing “a brief proposal for providing *planning services* to Cascade *to support future program implementation.*”⁸ .

The Settlement and the Commission’s Order indicated that the conservation potential study being performed by Stellar Processes for Cascade would likely provide a key foundation for formulation of the Conservation Plan, including the savings targets. The Commission’s Order states in part, “Cascade has contracted with a consultant to prepare an assessment of the energy efficiency program potential in its service area in Washington. This report should provide a foundation for developing the Conservation Plan and savings targets.”⁹ But surprisingly, Cascade’s Conservation Plan barely even mentions the Stellar report. The only mention is on page one of the four-page plan, stating that the advisory group met in late February to discuss the results of the report.

⁷ Conservation Plan, p. 4.

⁸ Appendix E, p. 1 (emphasis added).

⁹ Order No. 05 at ¶ 78 and *See also*, Settlement Agreement, at Section 15(e), p. 12.

At the hearing in this case, Commission Staff witness Ms. Steward stated that in her view, the Conservation Plan would establish a timeline that identifies key benchmarks and the specific dates by which Cascade would achieve those benchmarks. In response to a question from Commissioner Oshie, and expanding upon statements by Mr. Weiss of the Northwest Energy Coalition, Ms. Steward stated:

A. (Ms. Steward) And I would just add that what we foresee is that for 2007 what we will decide, what will be in the plan are some set benchmarks that they have to achieve, you know, a short list, *they have to issue the RFP, they have to receive a short list by such and such a date, they have to have contracting done by such and such a date.* And Paragraph e(iv) on page 12 talks about the, at the very bottom, the demonstration by the end of 2007 that the Company has contracted with a qualified third party.

Tr. 206:7-16 (emphasis added).

The Plan filed by Cascade, however, fails to do this in any fashion whatsoever. The plan includes only one vague and noncommittal sentence that mentions dates of upcoming actions.

The last page of the plan includes the following statements:

The results of the study [by the ETO] will provide Cascade with the necessary planning information needed to determine the most cost-effective way to provide administration and delivery of its conservation programs in the state of Washington. This study *should* be completed [sic] by the end of June, which *should* allow adequate time to implement the conservation programs commencing October 1st, provided the plan has received Commission approval.

Conservation Plan, p. 4 (emphasis added).

This is totally inadequate to provide assurance to the Commission or Cascade customers that Cascade will “deliver on its promise” of achieving conservation savings.

For his part, Mr. Stoltz of Cascade also represented that additional details that would be included in the Conservation Plan. In response to a question from Commissioner Oshie regarding when the mechanics of the pilot decoupling program would begin, and when

conservation targets would be reviewed, Mr. Stoltz responded as follows:

- A. (Mr. Stoltz) I have – I think it’s the Company’s thought that that would be part of the conservation plan that will be filed with the Commission, so those kinds of details that have not been worked out yet, when we would take measurements and whether we want to do it on a basis that’s coincident with the rate changes or do we want to do it on a fiscal year basis or calendar year basis, I think those are the kinds of details that will be developed in the conservation plan that will be filed with the Commission.

Tr. 213:6-16.

Once again, none of this information is included in the Conservation Plan filed by Cascade. The plan states, “[t]he level of annual recovery of recorded conservation deferred revenue is dependent upon the Company meeting the threshold [conservative] terms savings for each program year.”¹⁰ However, it is not clear what is meant by “program year.” The Company’s “conservative” targets appear to be for calendar years 2008 and 2009. On the other hand, Appendices B and C of the plan show targets for 2007-2008, 2008-2009. It is apparent that the “details” referred to by Mr. Stoltz have not been worked out.

C. Cascade Has Not Determined Who Will Oversee and Administer Its Conservation Programs

Cascade has not retained any additional staff to oversee and manage its conservation programs. Instead, it appears, based on the language in the Company’s Conservation Plan filing, that it plans to contract out the general oversight, monitoring and administrative function to a third party entity.¹¹ As a point of comparison, while Cascade and Avista have similar gas sales volumes to residential and commercial customers in Washington, and similar numbers of

¹⁰ Conservation Plan at p. 3.

¹¹ Conservation Plan, p. 4.

residential and commercial customers, Avista has administered its own natural gas DSM programs for several years.¹² This general oversight and administrative function includes tasks such as determining the overall DSM program budget, the range of programs to be offered, analyzing cost-effectiveness of programs, issuing RFPs for delivery of certain programs, and oversight and management of third party contractors. With respect to the program delivery function, Avista delivers some programs themselves, and in some cases it contracts with third party entities.

As discussed below, hiring out general oversight and administration of all its conservation programs to a third party entity, who will in turn contract out program delivery to other contractors who in turn have subcontractors, creates multiple layers of contractors. This could result in inefficiencies and attenuated accountability. In addition, it seems at best questionable whether this approach would result in any significant changes in Cascade's own corporate culture in support of conservation.

At hearing, Mr. Stoltz of Cascade indicated that the Company was considering the Energy Trust of Oregon (ETO) for administration of the conservation programs, but he also indicated that other entities were "already contacting the Company that are interested in becoming the third party administrator of the programs, including the Energy Trust of Oregon."¹³ But Mr. Stoltz added, "We don't know if it will be the best third party to administer this, but we think we can turn around an RFP very quickly, because there are many who are interested in

¹² Therms sold to Washington residential and commercial customers in 2005: Cascade, 189,848,862 therms; Avista, 165,276,615 therms; Average number of residential and commercial customers in 2005: Cascade, 172,848; Avista, 134,923. Annual Statistics of Natural Gas Companies, 1996 – 2005, Washington Utilities and Transportation Commission, p. 24 (Cascade) and p. 57 (Avista).

¹³ Tr. 205:22-25.

providing that service.”¹⁴ However, despite the “many” entities interested in program administration, Cascade appears to be looking only to the ETO, and to be selecting ETO without any kind of RFP process.

Cascade states that ETO’s study will help the Company determine “the most cost-effective way to provide administration and delivery of its conservation programs” in Washington.¹⁵ But since the ETO has a stated interest in administering the programs itself, this “study” would not constitute an independent study, but rather a single proposal.

D. Cascade’s Extensive Reliance on the Energy Trust of Oregon is Problematic

Cascade states that it is “working closely with the Energy Trust *to determine if their approach in Oregon may be able to be leveraged* into Cascade’s Washington service territory.”¹⁶ ETO’s April 24, 2007, memo to Cascade states that ETO’s analysis for Cascade will consider “the efficacy of the expansion of the Energy Trust’s operations to serve Cascade’s Washington customers.”¹⁷

While it may be appropriate for Cascade to look to the Energy Trust of Oregon for general guidance and strategic advice regarding implementing conservation programs, Public Counsel is concerned that Cascade appears to be planning to rely extensively on the ETO for both program administration and delivery. Ultimately, the ETO is authorized by, and accountable to, the Oregon Public Utilities Commission, and not the WUTC. As articulated in the ETO’s April 24, 2007 memo to Cascade, ETO does not currently have either a license or

¹⁴ Tr. 206: 2-6.

¹⁵ Conservation Plan, p. 4.

¹⁶ Conservation Plan, p. 4 (emphasis added).

¹⁷ Appendix E, p. 1.

permit to conduct business in Washington. ETO's memo indicates that their initial stage of analysis will include a description of the potential Energy Trust role, including "license, permit and other requirements to do business in Washington."¹⁸ This is presumably why their \$30,000 budget for planning services includes \$5,000 for legal counsel.¹⁹ While the ETO may have an interest in expanding their activities into Washington, Public Counsel does not believe it is appropriate for Cascade's ratepayers to fund ETO's exploration to pursue expansion in Washington.

By contracting out administration and oversight of conservation programs to a third party entity, it seems unlikely that a significant "corporate culture" shift would occur within Cascade to support conservation, despite advocacy to the contrary by the proponents of decoupling in this case.²⁰ Instead, what appears to be contemplated by Cascade's so-called "Conservation Plan" is multiple layers of contractors, with Cascade hiring out oversight and administration of its conservation programs to a third party entity who will in turn rely upon contractors and subcontractors for actual program delivery to Cascade's ratepayers. The ETO's 2005 annual report states:

We manage our programs with a small staff, deliver the majority of our programs through contracts with service providers, and provide services through a network of several hundred business trade allies around the state.²¹

In addition, utilizing the ETO does not help build capacity within Washington State for natural

¹⁸ (Appendix E, p. 2).

¹⁹ (*Id.*, p. 4).

²⁰ Order No. 05, ¶ 77.

²¹ The Energy Trust 2005 Annual Report, p. 13.

<http://www.energytrust.org/about/contact/annualreport.html>.

gas energy efficiency programs.²²

E. Cascade Does Not Have Clear Plans to Issue an RFP within 30 Days

The Settlement and the Commission's Order No. 05 require Cascade to issue an RFP within 30 days after the Commission approves their Conservation Plan.²³ Cascade's four-page Conservation Plan fails to even discuss this requirement, nor has a draft RFP been provided with the plan. This does not follow through on Ms. Steward's testimony to the Commission that the plan would specify a timeline for identifying a short list of potential candidates to deliver programs in response to the RFP, and that Cascade would take various other key actions, as described above. The only place in the four-page document where there is any mention of an RFP is in relation to the types of "administrative services" provided by the ETO staff.²⁴ Ultimately, it is not at all clear whether Cascade intends to issue an RFP, and who will develop and actually issue the RFP – Cascade or ETO.

To the extent Cascade intends to have ETO develop and issue the RFP, there may be conflict of interest concerns. Public Counsel understands that the ETO delivers some conservation programs itself, although in most cases it contracts with third party entities to deliver programs.²⁵ Neither Cascade's Conservation Plan, nor the ETO's April 24 memo provide any explanation as to how Cascade will determine if ETO will operate some programs itself for Cascade's Washington customers, or whether all programs will be contracted out to

²² The Energy Trust's 2005 Annual Report, for example, identifies one of their accomplishments as "Powered the growth of 476 Oregon businesses and strengthened the state's economy by relying upon trade allies to deliver our programs." (<http://www.energytrust.org/about/contact/annualreport.html>, p. 1).

²³ Settlement Agreement, section 15, e(iii), p. 12.

²⁴ Conservation Plan, p. 4.

²⁵ The Energy Trust 2005 Annual Report, p. 13.

<http://www.energytrust.org/about/contact/annualreport.html>.

other entities. It is not clear if ETO will issue an RFP for delivery of all programs, or simply for those programs it does not currently deliver itself. Will ETO make that determination, or will Cascade? On this issue, and others, the Conservation Plan raises more questions than it provides answers.

F. Cascade’s Proposed Therm Savings Targets are Low and Not Supported by Analysis

Among the many concerns Public Counsel has regarding the pilot decoupling mechanism proposed by the settling parties is that it creates an incentive for the Company to establish low conservation savings targets. This concern has been borne out in the proposed targets outlined in the Conservation Plan. At the top of page 3, the Conservation Plan simply provides two possible ranges for targets, including “Conservative” targets and higher “Best Case” targets. At the bottom of page 3 of the Conservation Plan, Cascade proposes to use the much smaller “Conservative” target to evaluate its performance and raise rates. However, Cascade provides absolutely no explanation of how either the lower “Conservative” case target or the higher “Best Case” target was derived. Most importantly, Cascade provides no justification for why the lower target should be used to evaluate its performance and collect additional revenues from ratepayers who are already paying for the cost of the conservation programs.

In the second paragraph of page 3 of the Conservation Plan, Cascade claims the annual therm savings estimates are based on “implementation of programs” as detailed in Appendix B & C. The “Conservative” target found on page 3 of the plan is nowhere to be found in the appendixes, nor can it be derived from the details Cascade claims is in the Appendixes. The “Best Case” target appears to be the sum of the targets for each rate schedule at the top of the

first (and only) page of each Appendix. However, the derivation of the target is absent. The efficiency measures listed in the Appendices for residential and commercial programs (Appendices B and C, respectively) show no therm savings individually that might, if added together, equal the total shown at the top of the Appendices. The record is therefore insufficient to establish targets as a basis for decoupling.

The Settlement Agreement provides that targets and benchmarks in the Conservation Plan filed with the Commission shall be “based upon the study [by Stellar Processes] and the recommendations of the Advisory Group.”²⁶ In the Conservation Plan as filed, however, the Stellar study is not mentioned in the section about performance targets, nor is it in the record in this docket. Public Counsel has been provided with a copy of the Stellar study and notes that the terms “Conservative” and “Best Case” used in Cascade’s Conservation Plan and the related therm savings amounts listed do not appear in the study.

The Settlement Agreement states, the Company will submit a plan with, “specific programmatic and energy efficiency targets and related benchmarks.”²⁷ The plan as filed, however, does not provide the specific therm savings to be gained from each of the conservation program measures listed in Appendix A, B and C, nor does it explain what analysis, if any, was used to derive the “Best Case” therm targets listed at the beginning of the Appendices for the specific conservation programs. As noted, it does not appear that the plan includes specific conservation savings for specific program measures from the Stellar study as the settlement provided.

²⁶ Settlement Agreement, Section 15, e(ii), p. 12.

²⁷ Settlement Agreement, Section 15, e (ii), p. 12.

G. The Plan Fails to Include True Penalties for Performance Failures

In its Order No. 05, the Commission conditioned approval of the Conservation Plan “on it definitively including penalties” in the event the Company fails to meet conservation targets and benchmarks.²⁸ The Commission has clearly recognized the distinction between penalties and incentives:

We note that the stipulation requires Cascade to develop a Conservation Plan that includes targets and benchmarks, and *possible* penalties and incentives.

Order No. 05 at ¶ 154.

Cascade has failed to provide for true penalties that actually cause the Company to face financial payments in the event it fails to meet even its proposed lower “Conservative” targets. Instead, the proposed plan allows Cascade to collect additional revenue from residential and commercial customers even when the Company has only achieved as little as 70 percent of its “conservative” target.²⁹ This does not constitute a true penalty. In contrast, in the recently adopted PSE Electric Conservation Incentive Program, PSE is assessed penalties in the event it fails to achieve conservation savings within approximately 10 percent of their target. That is, not only does PSE not receive additional revenues, but PSE shareholders must pay monies back to ratepayers in the event of inferior performance. PSE receives additional revenues, an incentive, only as its performance improves beyond its target.³⁰

Under Cascade’s proposal, the Company’s shareholders never pay a penalty to ratepayers for failing to meet the target. Instead, Cascade is rewarded even when it fails to reach a target

²⁸ Order No. 05 at ¶ 82.

²⁹ Conservation Plan, p. 3.

³⁰ *Washington Utilities and Transportation Commission v. Puget Sound Energy, Inc.*, Docket Nos. UE-060266 & UG-060267, Order No. 08, Rejecting Tariff Sheets; Authorizing and Requiring Compliance Filing, at ¶¶ 145 – 159.

that is unacceptably low and by its own description is “conservative.” This does not represent a true penalty, and provides yet another reason the Commission should not approve Cascade’s Conservation Plan.

H. Cascade’s Conservation Plan Filing Does Not Discuss its Evaluation Plan

As part of its conditional approval of a decoupling pilot in Order No. 05, the Commission required an evaluation process.³¹ Cascade’s Conservation Plan filing does not include an evaluation proposal or any discussion of this issue. Public Counsel believes that the evaluation component of any pilot that is approved is of critical importance. While Cascade was not ordered to file an evaluation proposal with the conservation plan, it is important that the design of the evaluation be established at the outset of the pilot for it to be of value. Public Counsel reserves the right to comment on the design of the evaluation process when that issue is brought before the Commission.

III. CONCLUSION

Public Counsel strongly supports conservation and energy efficiency efforts by energy utilities, including many of the successful efforts that have been undertaken by Washington companies without decoupling. Public Counsel continues to believe that decoupling is an expensive, unduly complex, overbroad, and ineffective means to achieve energy efficiency and that better approaches can be found.

In this case, the Commission has recognized the potential drawbacks to decoupling, and has, accordingly, approved a pilot only on the condition that the Company brings forward a well-

³¹ Cascade Order No. 05, ¶ 84.
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developed plan to achieve real improvements in energy efficiency. As these comments show, Cascade has not been able to meet that condition. For that reason, Public Counsel respectfully requests that Cascade's Conservation Plan be rejected and that its decoupling pilot not be approved for implementation.

Dated this 22nd day of May, 2007.

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