

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

In the Matter of the Petition of

CASCADE NATURAL GAS
CORPORATION,

for an accounting order authorizing
deferred accounting treatment of loss in
margin due to Company sponsored
conservation programs, or, in the
alternative, the continuation of the pilot
decoupling mechanism that was approved
in Docket UG-060256

DOCKET UG-101656

RESPONSE OF NW ENERGY
COALITION TO NOTICE OF
OPPORTUNITY TO COMMENT

1. The NW Energy Coalition (Coalition) submits this response to the Notice of Opportunity to Comment dated November 8, 2010. The Commission seeks comments on the extent to which its Policy Statement in Docket U-100522 (Policy Statement)¹ may impact the procedural posture of this case, specifically the Petition filed by Cascade Natural Gas Corporation (Cascade).²
2. We begin our comments by reviewing the context for this case – in particular, the Commission’s stated objective (in the Policy Statement) of improving utility conservation performance through appropriate regulatory mechanisms. These mechanisms may include both limited decoupling (lost margin recovery) and full decoupling proposals. Because Cascade’s

¹ *In the Matter of the Washington Utilities and Transportation Commission’s Investigation into Energy Conservation Incentives*, Docket U-100522, Report and Policy Statement on Regulatory Mechanisms, Including Decoupling, to Encourage Utilities to Meet or Exceed Their Conservation Targets (November 4, 2010).

² The Notice was directed to “all parties” although party status will not be determined until December 1, when the Prehearing Conference occurs and the Commission rules on intervention requests (including the Coalition’s intervention request, filed today). Pending that ruling, we ask the Commission to consider the Coalition’s comments due to our role as a signatory to the Settlement Agreement that led to Cascade’s pilot decoupling mechanism (Docket UG-060256), as well as our participation in the conservation inquiry that led to the Policy Statement. Both the Settlement Agreement and the Policy Statement are relevant to this case.

filing will likely be precedential, we recommend that the Commission be careful not to take action -- including procedural action -- that would discourage rather than encourage Cascade from continuing and enhancing its conservation efforts. We also recommend that the Commission exercise a certain degree of regulatory flexibility when evaluating the Petition, in order to take into account any exigencies and benefits that may exist due to Cascade's filing.

3. We then discuss Cascade's two-part proposal. Regarding the request for an accounting order to defer lost margin due to conservation, we suggest that the Commission hold this part of the Petition in abeyance while Cascade decides whether to conform (and does conform) the request to the Policy Statement. Regarding the request to extend the pilot decoupling mechanism, we recommend that Cascade not pursue such an extension, but focus instead on its "primary request" to seek lost margin deferral.³

A. Preliminary Comments

4. The Commission undertook the inquiry in Docket U-100522 with the objective of "improving [the] performance of investor-owned electric and natural gas utilities (IOUs) in the delivery of conservation resources to customers."⁴ To that end, the Policy Statement sets forth guidance on "regulatory mechanisms designed either to remove barriers to utilities acquiring all cost-effective conservation or to encourage utilities to acquire all cost-effective conservation."⁵ Because the impact of lost margin is one such barrier, the Policy Statement states that utilities should not be "unduly impacted by lost margin attributable to those conservation efforts."⁶

³ Cascade Response to Public Counsel Motion to Dismiss, at ¶ 5 (lost margin deferral is Cascade's "primary request" in this case as opposed to extension of the pilot decoupling mechanism).

⁴ Policy Statement at ¶ 1.

⁵ Policy Statement at ¶ 12.

⁶ Policy Statement at ¶ 35.

5. These are critically important objectives. As conservation plays an increasingly significant role in Washington State’s resource mix, it is crucial for the Commission to adopt all pertinent policies, rules, and mechanisms that serve to improve utility delivery of conservation resources. In this regard, we appreciate the Commission’s willingness to open and conduct the inquiry in Docket U-100522; to examine the myriad of issues that relate to conservation delivery; to consider a variety of potential regulatory mechanisms (including full and limited decoupling) that may promote cost-effective conservation; and, ultimately, to memorialize key objectives and principles in the Policy Statement.
6. For reasons of timing, this case will be the first case in which the Commission applies the Policy Statement in practice. The Commission has also stated that it may use its evaluation of Cascade’s Petition to revisit the principles outlined in the Policy Statement.⁷ Thus, this case has the potential to impact not only Cascade, but other investor-owned utilities in Washington State via the mechanisms they may decide to file for approval (or not to file) depending on the decisions that the Commission makes in this case.
7. Given the Policy Statement’s stated objectives, and also recognizing that this case is akin to a “test case” for later proceedings, we believe that the Commission should be careful not to take action – including procedural action -- that could have the possible unintended consequence⁸ of discouraging rather than encouraging Cascade and other utilities from continuing and enhancing their conservation efforts. For example, dismissal of the entire

⁷ The Policy Statement states at ¶ 15: “After our evaluation of the Cascade pilot and the company’s recent filing, we may revisit the natural gas limited decoupling principles enunciated in this policy statement.”

⁸ Staff expressed a similar concern in the context of Public Counsel’s pending Motion to Dismiss. In its Response to Public Counsel’s Motion, Staff noted that the original goal of Cascade’s pilot decoupling mechanism was to “encourage and develop conservation in Washington.” Staff then expressed a concern over the “possible unintended consequences of an outright rejection of Cascade’s petition at this time” – because such an action might have the “ultimate effect of discouraging conservation by public utilities in this state.” Staff Response at ¶ 4.

Petition at this early stage -- as Public Counsel requests in its Motion to Dismiss -- could ultimately deter Cascade from continuing to actively pursue cost-effective conservation programs. We recommend that the Commission consider the potential for such an outcome.

8. Further, while the Policy Statement speaks for itself in terms of the elements and criteria that the Commission desires to see in a decoupling proposal, we recommend that the Commission also take into account any particular exigencies and benefits that may exist. We also recommend that the Commission weigh the elements and criteria in the Policy Statement against the overall conservation benefits that Cascade's filing produces. Full consideration of the Petition allows for this balanced review, whereas early dismissal of the Petition on procedural grounds does not. For this reason, we urge the Commission to exercise a certain degree of regulatory flexibility when it evaluates Cascade's filing.

B. Cascade's Petition

9. Cascade frames its Petition in two parts. The company seeks, as its "primary request," an accounting order that authorizes deferred accounting treatment of loss in margin due to company-sponsored conservation programs.⁹ Alternatively, Cascade asks the Commission to continue the pilot decoupling mechanism that was approved in Docket UG-060256.¹⁰

1. Request for Lost Margin Deferral

10. Cascade's request for deferred accounting treatment is functionally equivalent to a lost margin recovery mechanism, or limited decoupling, designed to address the revenue impacts of Cascade's conservation programs and to compensate the utility for the effects of those programs. The Policy Statement explicitly endorsed such a mechanism for natural gas utilities in order to

⁹ The Petition itself does not refer to the accounting order as the company's "primary request." In its Response to Public Counsel's Motion to Dismiss, however (at ¶ 5), Cascade uses those words to describe the order.

¹⁰ *WUTC v. Cascade Natural Gas Corporation*, Docket UG-060256, Order 05 (January 12, 2007) (hereafter "Order 05").

protect them from loss of earnings that are a direct result of conservation programs, both programmatic and educational.¹¹

11. The Policy Statement lays out several elements that a request for limited decoupling should include.¹² The proposed mechanism should conform to certain criteria regarding the relationship of found margin to lost margin; the scope of covered conservation measures; and the application to all customer classes.¹³ Revenue recovery under the mechanism will be conditioned upon a utility's level of achievement with respect to its conservation target.¹⁴ Finally, the utility must make a proposal for lost margin recovery in its direct testimony in the context of a general rate case.¹⁵

12. Cascade's request for an accounting order meets none of these requirements. The request is a bare-bones filing that lacks the support of direct testimony and an accompanying general rate case. The request does not include a target level of conservation achievement or any of the other elements that the Policy Statement requires. Nor does the request conform to the various criteria listed in the Policy Statement.

13. It is important to note, though, that Cascade filed the Petition at the beginning of October, several weeks before the Commission released its Policy Statement. Because the Policy Statement had not yet been issued, Cascade could not have divined how the Commission

¹¹ Policy Statement at ¶¶ 16-17, *citing* RCW 80.28.260(3) and *WUTC v. Avista Corporation*, Dockets UE-090134 and UG-090135 (consolidated), Order 10 (December 22, 2009).

¹² These elements include a true-up mechanism; evidence regarding the proposal's impact on the utility's return on equity; an earnings test; evidence of any source of found margin; the proposal's impact on customer rates; and evidence regarding how the mechanism effectively removes weather as a factor influencing the results of the utility's lost margin analysis. *See generally* Policy Statement at ¶18.

¹³ Policy Statement at ¶ 18.

¹⁴ Policy Statement at ¶ 18.

¹⁵ Policy Statement at ¶¶ 18, 36.

intended to proceed with respect to limited decoupling. Thus, it would be inappropriate to dismiss the accounting request based solely upon its inadequacies relative to the Policy Statement.¹⁶

14. This does not mean that the parties and the Commission must review Cascade's request in a regulatory vacuum. The Policy Statement provides ample guidance to consider the request for lost margin deferral so long as Cascade first receives a full and fair opportunity to conform its request to the Policy Statement (by making an amended filing). The time period for Cascade to decide whether to conform its request, and to submit an amended filing, could be three months, six months, or some other time period that the Commission deems appropriate.
15. Until such time as Cascade does conform its filing, *e.g.* by filing a general rate case, presenting direct testimony, and addressing the other elements and criteria set forth in the Policy Statement, we recommend that the Commission hold the request for an accounting order in abeyance without establishing a protocol for discovery and without scheduling hearing and briefing dates. During this period, we also recommend that the Commission require Cascade to maintain its conservation programs at least at current levels so there is no decline in conservation pending conformance of the request to the Policy Statement.
16. In our view, giving Cascade the opportunity to conform its accounting request has several advantages. First, it confirms that the Policy Statement provides an appropriate "road map" for scrutiny of limited decoupling proposals, including Cascade's request for lost margin deferral.

¹⁶ The Commission indicated its preliminary thinking on limited decoupling on October 5, 2010, when Chairman Goltz and Commissioner Oshie made a presentation to the State Energy Strategy Advisory Committee regarding the status of the conservation inquiry. The Notice of Presentation that the Commission issued, dated October 6, 2010 and filed in Docket U-100522, indicated that the Commission would be receptive to a limited decoupling proposal "in the context of a general rate case." But Cascade had filed its Petition one week earlier, before the presentation took place. Thus, the company should not be charged with foreknowledge regarding the Commission's intentions in early October, as documented in the Notice of Presentation.

Second, it gives Cascade the chance to conform its request to the Policy Statement and to provide appropriate evidentiary support for the lost margin deferral it seeks. Third, by holding the request in abeyance pending further action by Cascade, the Commission will be able to receive and review H. Gil Peach and Associates' evaluation of the pilot decoupling mechanism, which we understand is still underway.¹⁷

2. Request to Extend the Pilot Program

17. The second part of Cascade's Petition concerns the company's alternative request to extend the pilot decoupling program for another three years. This proposal would reinstate the program that the Commission approved in early 2007 in Order 05, and that expired of its own terms on September 30, 2010. The Petition is not clear as to the exact three-year period that the extension would encompass, *e.g.*, October 1, 2010 through September 30, 2013 or some other period.
18. Once again, the Petition presents little more than a bare-bones request with no supporting detail or justification. Here, though, the main problem with the extension request stems less from nonconformance with the Policy Statement and more from nonconformance with Order 05 and the Settlement Agreement in Docket UG-060256 (which are binding upon Cascade). To obtain an extension of the pilot program, Cascade was required to present its request by October 1, 2010, as part of a general rate case that included a "thorough evaluation" of the pilot program.¹⁸ Cascade did not meet any of these requirements. Nor, in response to Public

¹⁷ The timing of the H. Gil Peach and Associates evaluation raises an issue for proceedings that consider decoupling mechanisms. As noted, the evaluation is still underway. This means that the evaluation will not be available for Commission and stakeholder review until long after the Cascade pilot expired – which makes the use of the evaluation more problematic. In future cases, we recommend that the Commission consider requiring completion of an evaluation before the underlying decoupling program expires – recognizing, of course, that an early evaluation will not be able to assess the entire period during which the program is in place.

¹⁸ Order 05, Appendix A, ¶ 15c.

Counsel's Motion to Dismiss, did the company attempt to explain why those requirements had not been satisfied.¹⁹

19. We are further disturbed by Cascade's failure to inform the Coalition during the decision-making process that led to the request to extend the pilot. Because the Coalition signed the Settlement Agreement, and because Ms. Dixon is a member of Cascade's Conservation Advisory Group (CAG),²⁰ it was reasonable to expect Cascade to keep Ms. Dixon apprised of any concern the company might have had regarding the Settlement Agreement's requirements (such as the need to file a general rate case as a precondition to extending the pilot). It was also reasonable to expect the company to advise the Coalition if it sought any modification to the Settlement Agreement or relief from Order 05. Yet no such involvement, notice, or advice ever took place. In fact, Cascade did not even tell Ms. Dixon about the filing and the request to extend the pilot.

20. In sum, the request to extend the pilot has several critical flaws, notably Cascade's failure to support the request in its filing; its failure to comply with the Settlement Agreement and with Order 05 in Docket UG-060256; its failure to defend the request in response to Public Counsel's Motion to Dismiss; and its failure to inform the Coalition (a Settlement Agreement signatory and CAG member) during the decision-making that led to the request. Under these circumstances, we believe that Cascade should continue to pursue lost margin deferral – its “primary request” in this case – rather than an extension of the pilot mechanism.

¹⁹ Cascade's Response to Public Counsel's Motion to Dismiss focuses exclusively on the company's request for lost margin deferral, which Cascade admits is its “primary request” in this case. The Response does not discuss the request to extend the pilot – which effectively concedes Public Counsel's arguments regarding the flaws with this proposal. Further, the Response makes no attempt to explain either the company's failure to comply with the Settlement Agreement or its failure to abide by Order 05.

²⁰ Cascade agreed to form the CAG as part of the Settlement Agreement. Order 05, Appendix A, ¶ 15(e)(i).

C. Conclusion

21. Earlier we discussed the increasing importance of conservation in Washington State and the Commission's recognition, in the Policy Statement, that limited decoupling and related mechanisms may serve to improve utility conservation performance. We agree with the Commission that regulatory tools can help drive utilities to acquire all cost-effective conservation. These comments, therefore, express our thinking as to how the Commission should consider the specific tools that Cascade seeks, via its Petition.
22. We look forward to participating in the Prehearing Conference on December 1 and other matters during the course of this case.
23. Dated this 18th day of November, 2010.

NW ENERGY COALITION

David S. Johnson, Attorney (WSBA 19432)
Danielle Dixon, Senior Policy Associate