

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

COST MANAGEMENT SERVICES,) DOCKET UG-061256
INC.,)
) ORDER 06
Complainant,)
) ORDER GRANTING PETITION
v.) FOR ADMINISTRATIVE
) REVIEW, REVERSING IN PART
CASCADE NATURAL GAS) ORDER 05
CORPORATION,)
)
Respondent.)
.....)
WASHINGTON UTILITIES AND) DOCKET UG-070332
TRANSPORTATION COMMISSION,)
) ORDER 03
Complainant,)
) ORDER ACCEPTING CMS'
v.) PETITION FOR
) INTERLOCUTORY REVIEW;
CASCADE NATURAL GAS) DENYING PETITION; ORDER
CORPORATION,) CONSOLIDATING DOCKET
)
Respondent.)
.....)
In re Notification of Contract and) DOCKET UG-070639
Arrangement between)
) ORDER 01
CASCACADE NATURAL GAS)
CORPORATION,) ORDER CONSOLIDATING
) DOCKET
and its subsidiary)
)
CGC ENERGY, INC.)
.....)

SUMMARY

- 1 ***SYNOPSIS.** This Order reverses in part the Initial Order, allowing CMS to continue and amend its complaint against Cascade. We accept CMS' petition for interlocutory review of the order denying intervention and consolidation with Cascade's tariff filing in Docket UT-070332, deny CMS' petition concerning intervention, and consolidate Dockets UG-070332 and UG-070639 on our own motion.*
- 2 **NATURE OF PROCEEDINGS.** Docket UG-061256 involves a complaint by Cost Management Services, Inc. (CMS), against Cascade Natural Gas Corporation (Cascade or the Company), asserting, among other issues, that Cascade is violating state and federal law by selling natural gas at retail to customers that take transportation-only service (non-core customers) without the necessary contracts and tariffs on file.
- 3 Docket UG-070332 involves tariff revisions Cascade filed in response to Order 03 in CMS' complaint proceeding in Docket UG-061256. The tariff revisions establish schedules for retail gas sales to non-core customers and associated services. The Commission suspended the tariff schedules in Order 01 following the March 14, 2007, open meeting.
- 4 Docket UG-070639 involves Cascade's notice to the Commission that it intends to make retail gas sales to non-core customers through a reactivated affiliate, CGC Energy, Inc.
- 5 **APPEARANCES.** John A. Cameron and Francie Cushman, Davis Wright Tremaine, LLP, Portland, Oregon, represent CMS. Lawrence H. Reichman and James M. Van Nostrand, Perkins Coie, LLP, Portland, Oregon, represent Cascade. Edward A. Finklea and Chad M. Stokes, attorneys, Cable Huston Benedict Haagensen & Lloyd LLP, Portland, Oregon, represent the Northwest Industrial Gas Users (NWIGU). Simon ffitich, Assistant Attorney General, Seattle, Washington, represents the Public Counsel Section of the Washington Office of the Attorney General (Public Counsel).¹ Gregory J. Trautman, Assistant Attorney General, Olympia, Washington, represents

¹ Judith Krebs initially represented Public Counsel in this matter.

the Washington Utilities and Transportation Commission's (Commission) regulatory staff (Commission Staff or Staff).²

6 **PROCEDURAL HISTORY.** CMS filed a formal complaint against Cascade in Docket UG-061256 on August 1, 2006, asserting that Cascade was violating state law by selling natural gas at retail to non-core customers without tariffs, special contracts or other Commission-regulated mechanisms in place.³

7 On January 12, 2007, the Commission entered Order 03 in that docket, after considering the parties' cross-motions for summary determination. The Commission found Cascade in violation of certain state laws and Commission rules, assessed a penalty against Cascade and required it to file with the Commission gas supply tariffs and existing gas supply contracts consistent with Order 03. After determining that there were material facts in dispute as to whether Cascade provided an undue preference or advantage to non-core customers under RCW 80.28.090 or discriminated under RCW 80.28.100, the Commission denied the parties' motions for summary determination and set the matter for hearing. The Commission found insufficient facts as to whether Cascade violated RCW 80.28.190 in making gas sales outside of its service territory and that CMS must amend its complaint if it seeks to pursue this claim further. The Commission also directed Staff to investigate Cascade's existing contracts and competitive activities.

8 On February 12, 2007, Cascade filed with the Commission in Docket UG-070332 revisions to its Tariff, WN U-3, reflecting gas supply service options available to non-core customers. CMS moved to intervene in the tariff filing and to consolidate the filing with the complaint proceeding. The Commission suspended Cascade's tariff filing at its March 14, 2007, open meeting.

9 Cascade, CMS and Staff filed motions seeking clarification of Order 03 on March 22, 2007. Also on March 22, Cascade filed responses to CMS' petition to intervene, and

² In formal proceedings such as this, the Commission's regulatory staff functions as an independent party with the same rights, privileges, and responsibilities as other parties to the proceeding. There is an "ex parte wall" separating the Commissioners, the presiding Administrative Law Judge, and the Commissioners' policy and accounting advisors from all parties, including regulatory staff. See RCW 34.05.455.

motion to consolidate Dockets UG-061256 and UG-070332. These pleadings spawned responses and additional motions.

- 10 On March 30, 2007, Cascade filed a letter in Docket UG-070639 stating that it was reactivating its affiliate CGCE to make retail sales of natural gas to non-core customers, including customers outside of Cascade's service territory.⁴
- 11 On May 17, 2007, Administrative Law Judge Ann E. Rendahl entered an initial order, Order 05, in the complaint proceeding, and an interlocutory order, Order 02, concerning Cascade's tariff filing. The orders denied CMS' motion to amend its complaint in Docket UG-061256 and closed the complaint. Further, the orders denied CMS' petition for intervention and motion for consolidation with Docket UG-061256.
- 12 On May 29, 2007, CMS filed a petition for review of Order 05 in Docket UG-061256 and the interlocutory order, Order 02, in Docket UG-070332. The Company and Staff filed answers on June 13 supporting the decisions in the initial and interlocutory orders.⁵

MEMORANDUM

I. CMS' Petition for Interlocutory Review

A. Interlocutory review.

- 13 Under WAC 480-07-810(2), the Commission has discretion to review an interlocutory order, and may accept review if:

(a) The ruling terminates a party's participation in the proceeding and the party's inability to participate thereafter could cause it substantial and irreparable harm;

³ The earlier procedural history in Docket UG-061256 is set forth in Order 03 in that docket, and will not be repeated here.

⁴ Cascade notified the Commission it planned to make sales through the affiliate because its proposed tariff filing was suspended on March 14, and certain contracts were due to expire at the end of March, such that filing new contracts 30 days in advance was not an option. *See* Cascade letter, filed March 30, 2007, in Docket UG-070639.

(b) A review is necessary to prevent substantial prejudice to a party that would not be remediable by post-hearing review; or

(c) A review could save the commission and the parties substantial effort or expense, or some other factor is present that outweighs the costs in time and delay of exercising review.⁶

CMS asserts the decision to exclude it from the proceeding harms CMS, claiming that Cascade's alleged cross-subsidization of rates affects it as well as Cascade's customers, and that it is the only party with expertise to address the issue.

14 We accept CMS' petition for interlocutory review, finding CMS has satisfied the first criterion for discretionary review: The Order terminates CMS' participation, and the termination may cause it substantial harm. In addition, under the third criterion, we exercise our discretion to clarify the standard for intervention in a proceeding and the limits of the Commission's jurisdiction under *Cole v. Washington Utilities and Transportation Commission*.⁷

B. CMS' Intervention in Docket UG-070332

15 After Cascade filed tariff revisions to include gas supply service in Docket UG-070332, CMS filed a petition to intervene. CMS argued that its interests as a competitive marketer were aligned with those of Cascade's ratepayers asserting "Cascade's cross-subsidization of competitive gas sales at the expense of the customers of its regulated utility services also harms CMS."⁸ CMS also asserted an agency relationship with Cascade's customers, stating it "directly represents the interests of its clients as customers of Cascade."⁹ CMS argued that it must be a party in the tariff proceeding to pursue a remedy effectively in its complaint proceeding in Docket UG-061256.¹⁰

⁵ Due to an administrative lapse, a substantial period of time has passed awaiting the entry of this Order. We regret the delay.

⁶ WAC 480-07-810(2) (a), (c).

⁷ 79 Wn.2d 302, 485 P.2d 71 (1971).

⁸ CMS Petition to Intervene, ¶ 6.

⁹ *Id.*, ¶ 7.

¹⁰ *Id.*, ¶ 8.

- 16 The Order denied CMS' petition to intervene, finding CMS' agency relationship with Cascade's customers insufficient to establish a substantial interest in Cascade's tariff filing, and therefore CMS lacked standing.¹¹ The Order also addressed the Commission's jurisdiction under *Cole* to consider the impact of Cascade's rates on CMS or its customers.¹² Further, the Order found that CMS' participation was not essential to a determination of the issues in the tariff proceeding, as other parties and interested persons could effectively address CMS' issues without presenting issues of jurisdiction.¹³
- 17 CMS seeks review, asserting it has a vital interest in participating in the tariff docket to ensure that the Commission's decision in the complaint proceeding produces remedies that are fair and effective. CMS objects that the Order focuses only on whether CMS can demonstrate a substantial interest, arguing the Commission should have addressed whether CMS' participation would serve the public interest.¹⁴ CMS asserts that it is an essential party – it brought the violations to the Commission's attention and only CMS has the expertise to address natural gas supply, pricing and pipeline capacity issues.¹⁵
- 18 Staff and Cascade both support the decision to deny intervention.¹⁶
- 19 Granting a petition for intervention is a discretionary act.¹⁷ The standard for granting intervention is whether “the petitioner qualifies as an intervenor under any provision of law and that the intervention sought is in the interests of justice and will not impair the orderly and prompt conduct of the proceedings.”¹⁸ Under our rules, a presiding officer may grant intervention “[i]f the petition discloses a substantial interest in the subject matter of the hearing or if the petitioner's participation is in the public interest.”¹⁹

¹¹ Order 05, ¶ 24.

¹² *Id.*, ¶¶ 25-26.

¹³ *Id.*, ¶ 26.

¹⁴ CMS Petition for Review, ¶ 21.

¹⁵ *Id.*, ¶ 20.

¹⁶ Staff Response, ¶ 2, Cascade Response, ¶¶ 20-26.

¹⁷ See RCW 34.05.443(1): “The presiding officer *may* grant a petition for intervention at any time...” (Emphasis added).

¹⁸ *Id.*

- 20 We agree that CMS has not demonstrated a substantial interest in the subject matter of the tariff proceeding. CMS is a competitor of Cascade in supplying gas to non-core customers, and is not subject to Commission regulation. While CMS may be interested in how the Commission resolves Cascade’s proposed tariff, CMS is not a customer of Cascade and has no “substantial interest,” as the term is used in determining intervention and standing, in the outcome of the proceeding. In addition, CMS’ asserted agency relationship with its customers is too remote to demonstrate a substantial interest. In fact, those customers of CMS that are also Cascade customers can effectively represent themselves in the tariff proceeding, or seek representation from NWIGU or Public Counsel.
- 21 Further, we do not find CMS’ participation in the tariff proceeding necessary to serve the public interest. CMS is not an essential or indispensable party. The public interest in the tariff proceeding – fair, just, reasonable and sufficient rates and terms - is effectively represented by Public Counsel, Commission Staff, or parties with demonstrated standing, such as NWIGU.
- 22 Finally, we agree with the Order’s conclusion as to the Commission’s limited jurisdiction to address the economic effects of a regulated public utility’s rates or practices on an unregulated competitor. Following the precedent established in *Cole*, the judge concluded that the Commission’s discretion in considering petitions for intervention was similarly constrained. We agree.
- 23 In *Cole*, a customer brought a complaint against the Washington Natural Gas Company concerning the company’s low-cost leasing and “dry-out” rate. The Oil Heat Institute sought to intervene to show the impact of the company’s practices on fuel oil dealers. The Commission denied the Oil Heat Institute’s intervention, finding that only customers of a public service company could bring rate complaints and that the Oil Heat Institute had no standing. The Commission also held it had no jurisdiction “to examine the economic effects of practices of a regulated public service utility upon nonregulated competitors.”²⁰

¹⁹ WAC 480-07-335(3).

²⁰ *Cole*, 79 Wn.2d at 304.

24 The state Supreme Court upheld the Commission's decision that only customers of a regulated utility have standing to intervene before the Commission to address the regulated utility's rates.²¹ Furthermore, the court upheld the Commission's determination of its jurisdiction, finding that the public interest the Commission must protect is the interest of customers of regulated utilities, not those of an unregulated competitor.²²

25 We affirm the Order's decision on this issue. Under *Cole*, the Commission lacks jurisdiction to address CMS' concerns as a competitive gas marketer about the impact or effect of Cascade's proposed gas supply tariffs in Docket UG-070332. Therefore, we find the administrative law judge did not err or abuse her discretion under the Administrative Procedure Act or our rules in denying CMS' petition to intervene in the tariff proceeding. CMS' petition for interlocutory review on this issue is denied.

C. Consolidation of Dockets

26 In addition to petitioning to intervene in the tariff proceeding in Docket UG-070332, CMS moved to consolidate that docket with the complaint proceeding in Docket UG-061256. CMS asserted that its concerns about cross-subsidization of rates in the complaint docket could not be considered effectively without consolidating the two proceedings. The Order denied CMS' motion, finding that the facts and principles of law were sufficiently different and that the burdens of proof in the two proceedings would rest on different parties.²³

27 CMS does not contest this decision, but requests the Commission now consolidate the tariff proceeding with a recent filing Cascade made in Docket UG-070639 to reestablish an affiliate to make gas supply sales.²⁴ Having found CMS lacks standing to intervene in the tariff proceeding and because it is not a party to the affiliate proceeding, CMS lacks standing to move the consolidation of the two proceedings.

28 In addressing the affiliate filing, the Initial Order recommended consolidation of Cascade's tariff and affiliate filings, as both filings address how Cascade will make

²¹ *Id.*, at 305-306, citing RCW 80.01.040(3).

²² *Id.* at 306.

²³ Order 02, ¶¶ 27-28.

²⁴ *Id.*, ¶¶ 23-25.

retail sales of natural gas in the future.²⁵ Staff and Cascade do not oppose consolidation of the two filings. The Commission has discretion to consolidate proceedings on its own motion where the facts and principles of law are related.²⁶ The tariff filing addresses Cascade's proposal for gas supply service to non-core customers. Similarly, Cascade's affiliate filing concerns Cascade's practices in selling natural gas at retail to non-core customers. Thus, in the interest of judicial economy and because the parties do not object, we consolidate on our own motion the tariff filing in Docket UG-070332 and the affiliate filing in Docket UG-070639.

29 After entering this Order, the Commission will schedule a prehearing conference in the consolidated proceeding to establish the parties to the proceeding, consider any other petitions to intervene and establish a procedural schedule. Further, we expect Cascade to make a choice whether to pursue the tariff filing or make retail sales through an affiliate, as the proposals propose the same thing – a means for Cascade to make retail sales to non-core customers. Choosing one proposal will allow the parties to more efficiently evaluate Cascade's retail gas supply practices going forward.

II. Initial Order Clarifying Order 03

30 After the Commission entered Order 03 in CMS' complaint, Cascade sought clarification that the Commission had resolved all issues in dispute. Cascade asserted that there were no issues to resolve regarding undue preference and undue discrimination, because CMS had not presented a claim on the issue. Cascade argued, in the alternative, that Staff could investigate any remaining issues and that the Commission should close the docket. CMS urged rejection of Cascade's request as an untimely petition for review of Order 03, and requested a hearing, to include the issues of cross-subsidization raised in its amended complaint.

31 The Initial Order denied Cascade's claim that the Commission had resolved all of the issues in the complaint. The Initial Order found that the primary issue for decision was not whether CMS had presented a claim for undue preference and discrimination, but the process for considering the claim. Finding that Cascade had raised sufficient concerns about CMS' standing and Commission jurisdiction over CMS' proposed

²⁵ Order 05, ¶ 59.

²⁶ See WAC 480-07-320.

amended complaint, the Initial Order found merit in Cascade’s proposal to close the docket and allow Staff to conduct an informal investigation of the remaining issues, including the propriety of Cascade’s contracts.²⁷ The Initial Order also determined that Cascade had not violated the Commission’s Order or WAC 480-80-143 in filing its existing contracts with the Commission. Finally, the Initial Order found CMS in violation of the protective order in Docket UG-061256, assessing a \$4,000 penalty.

32 CMS seeks review of the Initial Order. CMS argues that by dismissing its complaint, the Initial Order “countermands” the Commission’s directives in Order 03. Both Cascade and Staff support the decision in the Initial Order.²⁸

A. Standing and Jurisdiction

33 The primary issue on review concerns the Commission’s jurisdiction over CMS and its allegations that Cascade provided undue preferences, engaged in discriminatory acts and subsidized rates. This issue involves both the Commission’s subject matter jurisdiction, as well as CMS’ standing to bring the claim. We find the Initial Order interpreted the Commission’s jurisdiction under the complaint statute, RCW 80.04.110, too narrowly, and the limitation on the Commission’s jurisdiction under *Cole* too broadly. For the reasons discussed below, we reverse the Initial Order, allowing CMS to pursue and amend its complaint.

34 The Initial Order found that CMS had standing under RCW 80.04.110(1) to bring its original complaint alleging violations of RCW 80.28.090 and RCW 80.28.100 – undue preferences and discrimination – but that CMS lacked standing to amend its complaint to raise issues such as cross-subsidization, because they concern the reasonableness of rates.²⁹ Interpreting the Commission’s complaint statute, RCW 80.04.110(1), the Initial Order found that the Commission lacks jurisdiction to hear matters related to the reasonableness of rates, when they are raised by a party that is not a customer of the Company.³⁰ CMS argues that this reasoning is based on a strained reading of RCW 80.04.110(1).³¹ We agree.

²⁷ Order 05, ¶ 36.

²⁸ Cascade Response, ¶¶ 4, 19; Staff Response, ¶¶ 2-4.

²⁹ Order 05, ¶ 42.

³⁰ *Id.*, ¶ 46, citing *Cole*, 79 Wn.2d at 306-307. The Initial Order’s use of the term “jurisdiction” in this regard is somewhat confusing. We interpret the Initial Order to mean that the Commission has subject

35 RCW 80.04.110(1) provides, in relevant part:

Complaint may be made by the commission of its own motion or *by any person or corporation*, chamber of commerce, board of trade, or any commercial, mercantile, agricultural or manufacturing society, or any body politic or municipal corporation, or by the public counsel section of the office of the attorney general, or its successor, by petition or complaint in writing, *setting forth any act or thing done or omitted to be done by any public service corporation in violation, or claimed to be in violation, of any provision of law or of any order or rule of the commission*: **PROVIDED**, That no complaint shall be entertained by the commission except upon its own motion, as to *the reasonableness of the schedule of the rates or charges* of any gas company, electrical company, water company, or telecommunications company, unless the same be signed by the mayor, council or commission of the city or town in which the company complained of is engaged in business, or not less than twenty-five consumers or purchasers of such gas, electricity, water or telecommunications service, or at least twenty-five percent of the consumers or purchasers of the company's service: **PROVIDED, FURTHER**, That when two or more public service corporations, (meaning to exclude municipal and other public corporations) are engaged in competition in any locality or localities in the state, either may make complaint against the other or others that the rates, charges, rules, regulations or practices of such other or others with or in respect to which the complainant is in competition, are unreasonable, unremunerative, discriminatory, illegal, unfair or intending or tending to oppress the complainant, to stifle competition, or to create or encourage the creation of monopoly, and upon such complaint *or upon complaint of the commission upon its own motion*, the commission shall have power, after notice and hearing as in other cases, to, by its order, subject to appeal as in other cases, correct the abuse complained of³²

36 The first part of this statute establishes the Commission's subject matter jurisdiction over any violation of law, rule, or order of the Commission by a public service company, and gives standing to anyone to bring a complaint against the company for

matter jurisdiction over the reasonableness of rates, but non-customers generally lack standing to invoke that jurisdiction.

³¹ CMS Petition for Review, ¶¶ 12, 14-15.

³² RCW 80.04.110(1) (emphasis added).

the same. The first proviso establishes subject matter jurisdiction over the reasonableness of rates, but limits standing to complain about such to customers, designated public officials and the Commission itself. The second proviso establishes subject matter jurisdiction over anticompetitive practices by public service companies, but limits standing to complain about such to competing public service companies and the Commission.

- 37 While we agree that CMS has no standing under the statute to bring a complaint under the second proviso, we do not agree that the first proviso limits CMS' ability to amend its complaint to raise issues of cross-subsidization in relation to its claims of undue preference and discrimination. These claims are not rooted in "the reasonableness of the schedule of the rates" charged by Cascade, but in alleged violations of law prohibiting undue preferences and discrimination.³³ The mere fact that rates can be both the result of unlawful acts and unreasonable cannot deprive a complainant of standing or divest the Commission of jurisdiction over the unlawful acts. Were it otherwise, the first proviso would swallow the rest of the statute as all that would remain would be unlawful acts that produce "reasonable" rates. We are hard put to imagine many circumstances where illegal acts could result in rates that could be deemed reasonable as a matter of law.
- 38 Under the Initial Order's interpretation, a non-customer could never bring a complaint of discrimination or undue preference that might implicate a public service company's rates. Such an interpretation violates the maxim that statutes must be construed to give meaning to all language and "no portion is rendered meaningless or superfluous."³⁴
- 39 A more reasonable interpretation of RCW 80.04.110(1) would give effect to both the first clause and the first proviso of the statute. Thus, "any person or corporation" may bring an action founded in claims of undue preference or discrimination ("violations of law") to the Commission for resolution, even if it could implicate the "reasonableness" of a company's rates. Rates may be unreasonable, however, without implicating "violations of law." Thus, only the Commission, customers and

³³ RCW 80.28.090, .100.

³⁴ *Kilian v. Atkinson*, 147 Wn.2d 16, 21, 50 P.3d 638 (2002).

designated public officials may complain against the reasonableness of rates under the first proviso.

40 Having addressed CMS’ standing under the statute to bring and amend its complaint, we now address our jurisdiction over the subject matter of CMS’ allegations under *Cole*. There, the court upheld the Commission’s interpretation that it “had jurisdiction only to consider the competitive practices of one regulated utility upon another regulated utility and no other business.”³⁵ The court found that the Commission’s regulatory authority to regulate in the public interest under RCW 80.01.040(3) is “qualified by the following clause ‘as provided by the public service laws’ ...”.³⁶ Stating that the appellants did not identify any section of Title 80 to demonstrate Commission jurisdiction over nonregulated fuel oil dealers, the court found the Commission had correctly determined it lacked jurisdiction to consider the oil dealers claims.³⁷

41 *Cole* is clearly distinguishable. Beyond our authority to regulate in the public interest under RCW 80.01.040(3), the first clause of the complaint statute, RCW 80.04.110(1), is a specific grant of subject matter jurisdiction over claims by “any person or corporation ...,” of any act or omission that violates any law, order or Commission rule.

42 *Cole* does not cite, let alone discuss, RCW 80.04.110(1). That is the section of Title 80 found missing in *Cole* and at issue here.

43 Second, in *Cole*, the appellants included Cole, a utility customer and fuel oil dealer, and the Oil Heat Institute, an association of fuel oil dealers. As previously discussed, the court denied standing to the Institute. The court did, however, reach and resolve claims that certain utility practices violated RCW 80.28.090 and .100, similar to the allegations before us. Since Cole was a customer, the precise issue before us—an unregulated competitor’s standing to allege law violations that implicate the reasonableness of rates—was not addressed by the court.

³⁵ *Cole*, 79 Wn.2d at 306.

³⁶ *Id.*

³⁷ *Id.*

44 Thus, we reject the Initial Order’s finding in paragraph 42 that CMS has no standing under RCW 80.04.110(1) to address these specific issues and the finding in paragraph 45 that the Commission lacks jurisdiction to address CMS’ claims. We reverse the Initial Order’s decision to close the complaint and deny CMS’ motion to amend its complaint. In the interest of judicial economy, we find that CMS must be allowed to amend and pursue its complaint, as we suggested in Order 03.³⁸ After entering this Order, we will schedule a prehearing conference to establish a procedural schedule for the complaint proceeding in Docket UG-061256. We expect Staff to participate in the complaint proceeding. Staff may conduct its own investigation concerning Cascade’s contracts in existence when we entered Order 03. We clarify, however, that CMS, not Staff, bears the burden of proof on the issues of undue preference, discrimination, and cross-subsidization, as well as whether Cascade’s contracts existing at the time of Order 03, violate the Commission’s orders or rules.

B. Filing of Contracts and Staff Investigation

45 The Initial Order addresses CMS’ claims that Cascade has not complied with the requirement in Order 03 to file current gas supply contracts with the Commission as required by WAC 480-80-143.³⁹ The Initial Order found that Cascade had complied with the requirement to file *existing*, not current, contracts with the Commission, and rejected CMS’ claim that the Commission required Cascade to file existing contracts in compliance with WAC 480-80-143.⁴⁰

46 CMS continues to allege that Cascade is in violation of Order 03, that Cascade has not filed all of its current contracts with the Commission, and that the Commission should assess penalties against Cascade for these continuing violations.⁴¹ Cascade supports the decision in the Initial Order, asserting that it has filed with the Commission all contracts existing at the time of Order 03, and that the Order did not require the filing of its existing contracts to comply with the rule.⁴²

³⁸ The Commission has adopted a liberal pleading rule, allowing parties to amend their pleadings “on such terms as promote fair and just results.” See WAC 480-07-395(5).

³⁹ Order 05, ¶ 47.

⁴⁰ *Id.*, ¶¶ 48-50.

⁴¹ CMS Petition for Review, ¶ 5.

⁴² Cascade Response, ¶¶ 7-9.

47 We affirm the Initial Order on this issue, finding that Order 03 required Cascade to file with the Commission any contracts existing at the time of the Order. We did not intend Cascade to file its existing contracts for approval,⁴³ but to allow Staff and others to review whether the contracts were in compliance with state laws and regulations governing special contracts.⁴⁴

48 On a going forward basis, whether Cascade is complying with Commission rules, i.e., WAC 480-80-143, as to contracts it signed since we entered Order 03 is an issue CMS may raise in its complaint, or that Staff may raise separately. There is no evidence in the record to demonstrate such violations and we do not decide the issue here.

C. Staff Investigation

49 The parties, particularly Staff, sought clarification of the nature of the Staff investigation envisioned in paragraph 99 of Order 03:

Staff suggests that the Commission direct Staff to investigate Cascade's competitive activity to ensure the Company meets statutory requirements. [Footnote omitted] Because we require Cascade to file gas supply tariff schedules and its existing gas supply contracts with the Commission, we do not find it necessary to initiate a Staff investigation. We fully expect Staff to investigate Cascade's competitive activities thoroughly in reviewing these filings.

50 The Initial Order determined that the Commission rejected a formal staff investigation of the contracts, and intended Staff to conduct an informal investigation.⁴⁵ The Initial Order directed Staff to conduct an informal investigation of the gas supply contracts

⁴³ WAC 480-80-143(1). The rule further provides that applications for approval of contracts must: (a) Include a complete copy of the proposed contract; (b) Show that the contract meets the requirements of RCW 80.28.090 (Prohibiting unreasonable preference) and RCW 80.28.100 (Prohibiting rate discrimination); (c) Demonstrate, at a minimum, that the contract charges recover all costs resulting from providing the service during its term, and, in addition, provide a contribution to the gas, electric, or water company's fixed costs; (d) Summarize the basis of the charge(s) proposed in the contract and explain the derivation of the proposed charge(s) including all cost computations involved; and (e) Indicate the basis for using a contract rather than a filed tariff for the specific service involved. If the basis for using a contract is the availability of an alternative service provider, identify that provider. WAC 480-80-143(5).

⁴⁴ Order 03, ¶¶ 93, 98, 99.

⁴⁵ Order 05, ¶¶ 52-53.

for sales inside and outside of Cascade's territory, and to consider whether Cascade engaged in undue preference or discrimination. The Initial Order directed Staff to bring a complaint should it find violations.⁴⁶

51 CMS objects to this decision, alleging that the Initial Order "leaves the Commission's regulatory responsibilities concerning Cascade's non-core gas sales in a complete muddle."⁴⁷ Cascade and Staff support the decision in the Initial Order, asserting that Staff is capable of conducting the investigation and will work with other interested parties when examining the issues.⁴⁸

52 While our Order allowed CMS to continue to pursue its claims of undue preference and discrimination, it was unclear whether CMS would choose to do so. In paragraph 99, we intended to allow Staff the option to pursue a formal investigation and complaint if CMS did not go forward with its complaint, or to conduct an informal investigation as a party to the complaint if CMS did go forward. The Initial Order's interpretation is reasonable, but we clarify our intent to allow the parties to move forward in this proceeding. Staff is aware of CMS' concerns and is skilled and capable of working with CMS, Public Counsel and NWIGU to investigate Cascade's actions. Given CMS' intent to amend its complaint and adjudicate its claims, we expect Staff to fully participate in the proceeding by investigating the issues CMS raises and recommending appropriate action. We did not intend that Staff bear the burden of proof on these issues, but that Staff would independently investigate CMS' claims to allow a complete assessment of the allegations.

III. CMS' Violation of Protective Order

53 The Initial Order finds that CMS, through its representatives, violated the protective order in Docket UG-061256 by filing certain confidential documents in an unredacted format with the Commission for posting on the Commission's web site, and by e-mailing them to CMS' president, who is not authorized under the protective order to

⁴⁶ *Id.*, ¶ 56.

⁴⁷ CMS Petition for Review, ¶ 16.

⁴⁸ Cascade Response, ¶¶ 15-18; Staff Response, ¶¶ 2-4.

view confidential documents.⁴⁹ The Initial Order proposes to assess a penalty of \$4,000 for the violations.⁵⁰

54 CMS claims the violations were clerical in nature and that CMS is blameless.⁵¹ CMS also asserts the \$4,000 fine is not proportional to the fine assessed on Cascade for violating laws and rules regarding Commission tariffs and rules for selling gas supply.⁵² Cascade asserts that CMS should be held responsible for its violations of the protective order, especially given CMS' violations of the protective order during the rate case in bringing its complaint.⁵³

55 We affirm the decision in the Initial Order that CMS, through its representatives, violated the protective order in Docket UG-061256, and should be responsible for the violations. We also affirm the decision to assess a penalty against CMS.

56 Through the e-mail in question, CMS' counsel sent three unredacted documents for posting to the Commission's web site, as well as to an unauthorized person. Whether or not Mr. Betzold reviewed the e-mail that included the confidential information, or any other unauthorized person reviewed the information posted to the web site, the harm lies in revealing the competitive information contrary to the protective order. CMS and its representatives are responsible for protecting and correctly handling confidential information in their possession.

57 However, because the violations were not intentional and CMS and its counsel immediately took steps to correct the errors, we mitigate the penalty amount to \$2,000. We expect CMS and its representatives to ensure further violations do not occur.

FINDINGS OF FACT

58 Having discussed above in detail the evidence received in this proceeding concerning all material matters, and having stated findings and conclusions upon issues in dispute

⁴⁹ Order 05, ¶ 63.

⁵⁰ *Id.*, ¶ 67.

⁵¹ CMS Petition for Review, ¶ 30.

⁵² *Id.*, ¶¶ 29-32.

among the parties and the reasons therefore, the Commission now makes and enters the following summary findings of fact, incorporating by reference pertinent portions of the preceding detailed findings:

- 59 (1) The Washington Utilities and Transportation Commission is an agency of the state of Washington, vested by statute with authority to regulate rates, rules, regulations, practices, and accounts of public service companies, including gas companies.
- 60 (2) Cascade Natural Gas Corporation is a “public service company” and a “gas company,” as those terms are defined in RCW 80.04.010, and as those terms otherwise are used in Title 80 RCW. Cascade is engaged in Washington State in the business of supplying utility services and natural gas to the public for compensation.
- 61 (3) Cost Management Services, Inc., is a competitive gas marketer, supplying and selling natural gas to industrial and commercial customers, including Cascade customers who take transportation-only service from Cascade under Schedules 663 and 664. CMS also acts as an agent for these Cascade customers.
- 62 (4) When filing its amended complaint, the Schoenbeck affidavit and exhibit with the Commission on April 9, CMS allowed the unauthorized release of confidential information.

CONCLUSIONS OF LAW

63 Having discussed above all matters material to this decision, and having stated detailed findings, conclusions, and the reasons therefore, the Commission now makes the following summary conclusions of law incorporating by reference pertinent portions of the preceding detailed conclusions:

- 64 (1) The Washington Utilities and Transportation Commission has jurisdiction over the subject matter of, and parties to, this proceeding.

⁵³ Cascade Response, ¶¶ 28-29.

- 65 (2) The Commission has discretion under RCW 34.05.443(1) and WAC 480-07-335(3) to grant a petition for intervention if “the petitioner discloses a substantial interest in the subject matter of the hearing or if the petitioner’s participation is in the public interest.”
- 66 (3) The principal subject matter in Docket UG-070332 is the reasonableness of Cascade’s proposed tariffs. An unregulated competitor of a regulated utility does not have a substantial interest in rates charged to customers of the regulated utility. *Cole v. Washington Utilities and Transportation Commission*, 79 Wn.2d 302, 305, 485 P.2d 71 (1971).
- 67 (4) CMS’ participation in Cascade’s proposed tariff proceeding is not in the public interest, as other parties and interested persons, i.e., Public Counsel, NWIGU, and Staff, can effectively address CMS’ issues without presenting issues of standing or jurisdiction.
- 68 (5) CMS’ agency relationship with Cascade’s customers is not sufficient to establish a substantial interest in Cascade’s gas supply tariff filing where other parties can represent customer interests.
- 69 (6) The Commission has discretion under WAC 480-07-320 to consolidate proceedings “in which the facts or principles of law are related.” Dockets UG-070332 and UG-070639 both relate to Cascade’s retail sales of natural gas to non-core customers and involve similar issues of fact and law.
- 70 (7) Any person or corporation may file a complaint about any violation of law, or Commission rule or order by a public service corporation. *RCW 80.04.110(1)*.
- 71 (8) CMS has standing under RCW 80.04.110(1) to pursue allegations against Cascade of unlawful discriminatory or unduly preferential practices or rates, including allegations of cross-subsidization.
- 72 (9) The first proviso of RCW 80.04.110(1), which limits the persons who may file a complaint concerning the reasonableness of rates of a public service

company, does not divest a party alleging unlawful acts by the company of standing merely because the unlawful acts may implicate the reasonableness of rates.

- 73 (9) *Cole v. Washington Utilities and Transportation Commission*, 79 Wn.2d 302, 485 P.2d 71 (1971), is distinguishable and does not address whether a nonregulated competitor has standing to allege unlawful acts by a regulated company when the alleged acts implicate the reasonableness of the regulated company's rates.
- 74 (11) The Commission's Order 03 required Cascade to file its existing gas supply contracts with the Commission for review within 30 days, not for Commission approval under WAC 480-80-143(1).
- 75 (12) Paragraph 22 of the protective order, Order 02, in Docket UG-061256, provides that any party to the proceeding who divulges confidential information in violation of the order is subject to "penalties as generally provided by law."
- 76 (13) The Commission may assess penalties of up to \$1,000 under RCW 80.04.387 against any company that is not a public service company for violations of any Commission order.

ORDER

THE COMMISSION ORDERS:

- 77 (1) Cost Management Services, Inc.'s, Petition for Administrative Review of Order 05 in Docket UG-061256 is granted, in part, consistent with this Order.
- 78 (2) Cost Management Services, Inc.'s, Petition for Interlocutory Review of Order 02 in Docket UG-070332 is denied.

- 79 (3) Within 15 days following the effective date of this Order, Cost Management Services, Inc., must pay to the Commission's Public Service Revolving Fund a penalty of \$2,000 for violations of the protective order, Order 02, in Docket UG-061256.
- 80 (4) The Commission retains jurisdiction to effectuate the terms of this Order.

Dated at Olympia, Washington, and effective October ____, 2007.

WASHINGTON STATE UTILITIES AND TRANSPORTATION COMMISSION

MARK H. SIDRAN, Chairman

PATRICK J. OSHIE, Commissioner

PHILIP B. JONES, Commissioner