

Agenda Date: August 22, 2024
Item Number: D7

Docket: UG-210838
Company: Cascade Natural Gas Corporation

Staff: Byron Harmon, Regulatory Analyst
Quinn Weber, Regulatory Analyst

Recommendation

Issue an order in Docket UG-210838 finding that Cascade Natural Gas Corporation:

- 1) Has complied with the reporting requirements in Order 01 in Docket UG-210838;
- 2) Achieved 1,540,723 therms of its 2022-2023 biennial conservation target of 1,931,751 therms, a deficit of 391,028 therms;
- 3) Has not complied with conservation target in Order 01 in Docket UG-210838 in accordance with RCW 80.28.380; and
- 4) Is subject to penalties in the amount of \$695,638.81, pursuant to RCW 80.04.380.

Background

On June 16, 2024, Cascade Natural Gas Corporation (Cascade or Company) filed its Biennial Conservation Report (BCR) with the Washington Utilities and Transportation Commission (Commission) in Docket UG-210838, detailing the Company's acquisition of conservation savings, as required Biennial Conservation Plan (BCP) conditions. On June 24, 2024, the Commission filed a Notice of Opportunity to Comment and Notice of Opening Meeting. For the 2022-2023 biennium, Cascade reports that it acquired 1,540,723 therms of conservation savings, 79.7 percent of the accepted 1,931,751 therm biennial target.

RCW 80.28.380 requires Washington's gas utilities to "acquire all conservation measures that are available and cost-effective." Gas utilities are required to acquire this conservation by setting (and achieving) biennial conservation targets.¹ 2023 marks the second half of the 2022-2023 biennium, and as such, gas utilities must demonstrate the achievement of their biennial targets at the conclusion of the 2023 year.

Cascade, a gas-only utility, serves approximately 231,000 customers throughout Washington, including Aberdeen, Bellingham, Bremerton, Yakima, Walla Walla, and Longview.

¹ RCW 80.28.380.

Discussion

Commission Staff (Staff) reviewed Cascade's conservation report for compliance with relevant rules² and orders.³

Table 1, below, summarizes the Company's accomplishments in meeting its gas conservation targets, as detailed in both its biennial and annual conservation reports.

Table 1: 2022-2023 Conservation Targets and Achievements (therms)

Company	Conservation Target	Conservation Achieved	% of Target Achieved
Cascade	1,931,751	1,540,723	79.7%

2022-2023 were difficult years for conservation achievement. Cascade noted industrial/commercial customer confusion regarding building codes, as well as, among residential customers, a steep decline in new home energy efficiency rebate participation. The confusion around building codes can be seen from the negligible increase therms saved amongst industrial/commercial customers. Cascade also notes that other utilities in the region struggled to meet their conservation targets this biennium.

Table 2: Change in Therms Achieved in the Biennium by Program

	Targets	Savings Achieved	Difference
Residential	936,908	935,872	(1,036)
Low Income	37,524	24,778	(12,746)
Industrial/Commercial	957,319	580,073	(377,246)
Total	1,931,751	1,540,723	(391,028)

Despite *increasing* the budget for industrial/commercial programs, as shown on Table 3, Cascade did not achieve comparable savings to the increase in the amount spent. This is likely due to the Company's reliance on custom industrial/commercial projects discussed below.

² WAC 480-109-120.

³ *In the Matter of Cascade Natural Gas Corporation's 2022-2023 Biennial Acquisition Target Under RCW 80.28.380*, Docket UG-210838, Order 01 (Jan. 18, 2022).

**Table 3: Incentive and Admin Expenses Budgeted vs Amount Spent
for Each Conservation Program**

	Budgeted	Actuals	Difference
Residential	\$11,357,359	\$13,595,442	\$2,238,083
Low Income	\$3,643,991	\$1,752,507	(\$1,891,484)
Industrial/Commercial	\$8,604,288	\$4,501,966	(\$4,102,322)
Total	\$23,605,638	\$19,849,916	(\$3,755,722)

While Staff ultimately recommends a penalty for Cascade’s failure to meet its conservation targets, it evaluated evidence in favor and against the imposition of fees.

Factors against the issuance of a penalty

In July 2021, to address extenuating circumstances, a new law was passed allowing an electric utility to be considered in compliance even when failing to meet its biennial acquisition target for cost-effective conservation, in certain circumstances. RCW 19.285.0401(e) states that even if a utility has not achieved its target, it can be “considered in compliance” with its biennial acquisition target if there were “events beyond the reasonable control of the utility that could not have been reasonably anticipated or ameliorated prevented it from meeting the conservation target.”⁴

While there is no equivalent of RCW 19.285.040(1)(e) for gas companies, Staff looked for evidence of the following two items: (1) circumstances that would allow a Company to be “considered in compliance” under RCW 19.285.040(1)(e);⁵ and (2) demonstration of adaptive management as discussed in WAC 480-109-100(1)(a)(iv) (namely, continuous review and updates to adapt to changing conditions and technologies). The following discussion underscores some of the key dynamics underlying the Company’s achievement, as well as highlighting adaptive management techniques employed by the utility as they reacted to this biennium’s challenges.

⁴ RCW 19.285.040(1)(e) goes on to state: “Events that a qualifying utility may demonstrate were beyond its reasonable control, that could not have reasonably been anticipated or ameliorated, and that prevented it from meeting the conservation target include: (i) Natural disasters resulting in the issuance of extended emergency declarations; (ii) the cancellation of significant conservation projects; and (iii) actions of a governmental authority that adversely affects the acquisition of cost-effective conservation by the qualifying utility.”

⁵ RCW 19.285.040(1)(e) provides circumstances where a qualifying electric utility can be “considered in compliance” with the biennial acquisition targets.

Cascade used several adaptive management strategies during this challenging biennium. For example, the Company greatly expanded its trade ally program and point of sale offerings. Cascade responded to confusion over building codes with increased in-person outreach. 2023 was a record-setting year for Cascade in terms of conservation achieved.

Factors for the issuance of a penalty

Despite the laudable efforts noted above, Cascade did not meet its gas savings target for the 2022-2023 biennium. This places Cascade in violation of RCW 80.28.380 and the terms of its Biennial Conservation Plan.

Cascade did not request an exemption from penalties (RCW 80.04.380), nor does Cascade argue that extenuating circumstances prevented it from accomplishing its targets. While Washington's Covid Emergency ended in October of 2022⁶ and the Federal Covid emergency ended in April of 2023,⁷ Cascade does not attribute its program outcomes to the Covid-19 pandemic nor emergency restrictions.

Staff further highlights Cascade's historic pattern of large custom Commercial/Industrial projects. Every other year Cascade has been able to achieve a large custom project that has helped buoy the Company's conservation numbers. As noted in Staff's memo on Cascade's 2021 Annual Conservation Report "... Cascade did not meet its residential or low-income targets and would not have met its overall target if not for this single large project."⁸

⁶ [Inslee announces end to remaining COVID-19 emergency orders and state of emergency by October 31 | Governor Jay Inslee \(wa.gov\).](#)

⁷ [Bill Signed: H.J.Res. 7 | The White House.](#)

⁸ Dockets UE-190905, UG-190913, UE-190912, UG-190920, UE-190908, UG-200964, and UG-210838 2020-2021 ACR BCR Staff Memo at 7 (July 26, 2022).

Table 4: 2014-2023 therms saved through Custom I/C projects

Year	Custom I/C therms
2014	56,328
2015	485,136
2016	42,442
2017	105,635
2018	65,893
2019	153,377
2020	30,285
2021	510,000
2022	98,789
2023	47,666

Cascade was unable to achieve a large custom C/I project in 2022 or 2023. Staff opines that if this is a compliance strategy, that it is an inherently risky compliance strategy that did not work this biennium.

Basis for Fines for Failure to meet Gas Conservation Targets

This is a case of first impression. Fines have not been levied against a gas utility for failure to meet conservation targets accepted under RCW 80.28.380.

RCW 80.28.380 establishes the requirement that gas utilities acquire all cost-effective conservation. However, the statute does not provide language describing penalties for failing to meet the requirement nor failing to achieve conservation targets set in biennial conservation plans.

RCW 80.04.380 provides general provisions for fines for public service companies that fail to meet the requirements of an order or provision of Title 80. However, RCW 80.04.380 characterizes the fine as “Every violation of any such order, direction or requirement of this title shall be a separate and distinct offense, and in case of a continuing violation every day's continuance thereof shall be and be deemed to be a separate and distinct offense.” It is ambiguous how this applies in this case.

Staff provides various interpretations:

1. If failure to meet conservation targets equals one violation resulting in a \$1,000 fine.
2. If each therm the Company failed to achieve to meet the target constitutes a single violation and \$1,000 fine. Example: Cascade failed to meet its target by 391,028 therms, this would equate to a fine of \$391,028,000.
3. If failure to meet the target constitutes a daily failure to meet the conservation target for the biennium: $\$1000/\text{day} \times 365 \text{ days/year} \times 2 \text{ years} = \$730,000$.
4. If failure to meet the target constitutes a daily failure but is scaled to the percentage the Company failed to meet its target. Example: Cascade achieved 80 percent of its target, so being fined daily for 20 percent of days of the biennium equates to $\$1000/\text{day} \times 365 \text{ days/year} \times 2 \text{ years} \times 20 \text{ percent} = \$146,000$.
5. If the fine is equal to the avoided cost times the number of therms the Company failed to meet its conservation target by. Example: Cascade failed to meet its target by 391,028 therms and had an Avoided Cost of \$1.779/ therm.⁹ This would equate to: $\$1.779/\text{therm} \times 391,028 \text{ therms} = \$695,638.81$. This equates to 3.4 percent of Cascade's 2022 and 2023 Conservation spending. Staff further notes that Cascade had \$2,738,973 remaining in its biennium rebate budget.

Staff has reservations about each interpretation. 1. This fine is too small and signals that failure to meet conservation targets is inconsequential. 2. This fine is excessive. It goes too far in the opposite direction. 3. and 4. do not scale for the size of each utility. Each utility, regardless of its conservation targets would face the same scale of penalties. A 20 percent failure for a small utility would bear the same fine as a 20 percent failure for a large utility. 5. This method of applying a penalty that is proportional to the Avoided cost clearly ties the fine amount to the logic of avoided costs and the nature of the public interest. Though Staff notes that correlating the fine one-to-one with avoided cost results in a lower penalty per therm than penalties established under RCW 19.285.060(1) for electric utilities failing to meet their conservation targets.

Staff believes that tying the penalty to the avoided cost is the most appropriate penalty scheme because it connects the penalties to the statutory targets of RCW 80.28.380. Therefore, Staff recommends a penalty of \$695,638.81.

As of August 14, 2024, no party other than Staff has filed comments in this docket.

⁹ Cascade's 2023 IRP at 5-7.

Conclusion

Staff recommends the Commission find that Cascade's BCR complies with the reporting requirements in Order 01 in Docket UG- 210838. Cascade achieved 1,540,723 therms of its 2022-2023 biennial conservation target of 1,931,751 therms, a deficit of 391,028 therms and is not in compliance with the conservation target in Order 01 in Docket UG-210838. Staff recommends the Commission issue penalties in the amount of \$695,638.81, pursuant to RCW 80.04.380.