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Jeff Killip
Executive Director and Secretary
Washington Utilities & Transportation Commission
P.O. Box 47250
Olympia, WA 98504-7250

RE: **UG-210838 Cascade Natural Gas Corporation Comments**

Dear Director Killip,

Cascade Natural Gas Corporation ("Cascade" or "Company") submits the following comments in response to Washington Utilities and Transportation Commission ("Commission") Staff's August 22, 2024, Open Meeting Memo in Docket UG-210838 ("Staff Memo"). For nearly two decades, Cascade has worked collaboratively with its Conservation Advisory Group ("CAG") to design programs that would result in aggressive energy efficiency achievements. This approach has generated significant energy savings and customer benefits over time. The collaborative, and solutions-focused nature of the project has resulted in a better program for Washington customers.

Cascade was surprised and disappointed in Staff's Open Meeting Memo which represents a significant departure from the traditional collaborative approach to energy efficiency. The Company has a consistent track record of working transparently and creatively with its CAG to find ways to achieve all available energy savings that push the Company toward stretch goals. When challenges to achieving targets have been steep, Cascade's CAG has partnered with the Company to identify new pathways to continue forward momentum and achieve as many savings as possible. This mutual trust and collaboration have yielded strong results and a dynamic and growing program. The sudden interjection of retroactive penalties seems both unnecessarily punitive and deeply counterproductive. Penalties will not encourage a better program but will instead discourage Cascade from taking the risks necessary to pursue aggressive targets in an uncertain environment.

As outlined in further detail in the Comments below, Cascade recommends that the Commission reject the proposed penalties, which are not grounded in law or rule, and instead encourage the continued collaboration and adaptive management of the energy efficiency program that has consistently provided increasing therm savings over time.

Comments

1. **Approved targets are set at a point in time, based on the information known at the time the target is set. The energy landscape since 2021 has shifted dramatically.**

The therm savings goals for the 2022-2023 biennium were based on the Conservation Potential Assessment ("CPA") filed in June 2021. Work on that CPA began in June 2020. Cascade worked with its CAG on the development of the CPA. Many of the baseline assumptions in the CPA were based on pre-Covid data. The world changed dramatically during 2020 due to the Covid-19 pandemic. As the CPA was being developed, the Company discussed the changing environment with its CAG. During the October 7, 2020, CAG meeting, Commission Staff stated they were instructing companies to pursue all conservation. The sentiment was that the Commission wanted companies to keep shooting for goals and adaptively manage as much as possible.

Model building in the CPA includes many assumptions on market conditions, consumer choice, and ultimately savings opportunities. Cascade worked closely with Applied Energy Group ("AEG"), the CPA vendor, to tailor modeling assumptions for a 20-year forecasting horizon using the best information available at the time. Page 3 of the CPA report, filed on June 15, 2021, states:

> Potential Impacts of Current or Future Legislation: At the time of publication of this report, there is significant activity in the Washington Legislature regarding carbon policy, electrification, and related topics that could impact on future natural gas energy efficiency opportunities.
>
> Because no new laws explicitly affecting the future consumption of natural gas have currently been passed potential impacts of this type of legislation have not been considered in the baseline projection or the energy efficiency estimates provided in this report. In future studies, it will be important to review the legislative landscape to determine whether adjustments to the base line or applicability of energy efficiency measures are required.

The Washington policy landscape is evolving rapidly. Legislative, rule, and code changes since 2021 have had a dramatic impact on the Company's energy efficiency program. The Washington State Energy Code ("WSEC") 2021 edition revision was in the rulemaking process during the biennium and became effective July 1, 2023, for residential and March 15, 2024, for commercial. The revised WSEC was a significant departure from the 2018 WSEC. The addition of the need for efficiency credits for projects makes code compliance far less straightforward. Utilities, design professionals, and building officials are having to invest a great amount of time and energy to fully understand and comply with the significant changes to Washington's residential and commercial energy code. Additionally, there were multiple delays when the WSEC was being drafted and implemented, resulting in the disparate effective dates of the two energy codes. In addition, the Washington Climate Commitment Act ("CCA") went into effect January 1, 2023. The CCA has generated some uncertainty, particularly in the commercial and industrial segments of Cascade's customer base, around the future of natural gas. All these changes combined have created a significant amount of uncertainty in the Washington energy landscape.

A good example of the impact of the uncertainty can be seen in Cascade's new home program. Cascade's CPA estimated roughly 36,000 therms of economically achievable therm savings were available for new construction homes in 2023, however, the program received actual submissions for less than 2,500 therms. The result of the uncertainty around building code was both unpredictable and unavoidable, as rebate applications for new homes dropped from 649 in 2021 to just 39 in 2023, a 94% decrease. The commercial program experienced similar challenges due to changing energy codes and Appliance Standard updates. For example, the CPA forecasted 43,800 therms in savings potential in the biennium for commercial fryers. However, the commercial fryer measure had to be retired due to appliance standard updates in 2022.

Additionally, multiple school districts cancelled projects in the biennium that would have yielded roughly 15,000 therms in savings. A plant nursery in Walla Walla cancelled investment in gas expansion on site due to "Government's animus towards Natural Gas", which eliminated a project of roughly 10,000 therms. This trend continues with projects across the state which were terminated or modified due to uncertainty around the future of natural gas for their business.

Contrary to statements in Staff comments,[1] Cascade does not rely solely on custom commercial/industrial projects. Custom projects do have a longer timeline for implementation, often spanning multiple years, and provide an outsized impact on the program. However, Cascade continues to work with commercial/industrial customers on these projects because they have tremendous potential to deliver cost-effective therm savings and carbon reductions.

2. **Cascade has worked diligently with its CAG to navigate the rapidly changing energy landscape in Washington.**

Cascade disagrees with Staff's comments that the Company did not argue that extenuating circumstances prevented it from accomplishing its targets. [2] On the contrary, Cascade has consistently and clearly articulated the extenuating circumstances that were impacting the Company's ability to meet its BCP targets. Cascade clearly articulated the impact of the changing energy landscape on the program on page 5 of its 2022 conservation report, filed June 15, 2023, in Docket UG-210838.

> As goal setting is only an estimate, the achievable economic level of potential savings identified by a model is unable to fully account for industry changes which can also have a large impact on Program performance, such as the implementation of the 2018 Washington State Energy Code (WSEC) or changing market conditions that effect supply chains or consumer willingness to invest in energy efficiency upgrades.

[1] *See* Staff Memo at p. 2.
[2] *See* Staff Memo at p. 4.

Further, the 2022-2023 Biennial Conservation Report filed on June 16, 2024 in Docket UG-210838 includes discussions throughout the document of the extenuating circumstances faced by the Energy Efficiency Program throughout the biennium. As an example, page 5 states, "In 2022-2023, Cascade focused on increasing participation levels in the face of high inflation and a decrease in New Home Program rebates as a result of the 2018 WSEC". The section goes on to state:

> The C/I Program experienced supply chain slowdowns in 2022-2023, pushing project completion dates later than anticipated. Additionally, the impacts of pending energy code changes and territory specific gas restrictions caused confusion related to gas service in commercial spaces. This confusion resulted in hesitation to invest in energy upgrades related to natural gas equipment.

On page 27 of the 2024-2025 Biennial Conservation Plan, approved in January of this year, Cascade discussed the lingering effects of the Covid-19 pandemic that the Company was working through in 2022 and 2023 with program partners.

> Slowly recovering from the pandemic, the C/I Program faced additional hurdles, including environmental goals and proposed new energy codes which disincentivized natural gas use as a focus for decarbonization efforts.

Cascade has been upfront with both the Commission, Staff, and its CAG about the many challenges facing the program. Cascade has adaptively managed in collaboration with Staff and CAG members throughout the biennium, which has led to Staff-acknowledged record therm savings despite these challenges.[3] Although it is not possible to see the effects of significant program changes overnight, the collaboration and adaptive management has yielded results. One shining example is the "Point-of-Sale" rebate program, which offers instant rebates for qualifying measures installed by approved Washington contractors.

Over the last four years, the Point-of-Sale program has grown to comprise over 50% of the program by measures paid. This adaptive management practice has resulted in increased customer participation, improved access to the program for the customer, and more equity in offerings due to requiring less customer funds up front. This contributed to achieving significant programmatic efficiencies, as evidenced by the record 79% Direct Benefit to Consumer ratio of funds spent realized in 2023.

To combat the changing energy landscape and resulting customer hesitancy to invest in natural gas equipment, the program has invested significantly in fuel-neutral programs which provide customers with cost-effective energy savings regardless of fuel choice. Through collaboration with the CAG, incentives were increased for fuel-neutral insulation measures by an unprecedented 60% for the 2024-2025 Biennium.

[3] *See* Staff Memo at p. 4.

Cascade has actively monitored the building code rulemaking process and hired a dedicated building code specialist in 2022 to adaptively manage the challenges presented by a continually evolving energy code.

3. **Adaptive Management takes time – Cascade is on track for a record year in 2024.**

Year to date (pro-rata), the program has achieved 142% of its therm savings goal while only spending 129% of budget. The first 7 months of 2024 saw 16% more residential rebates paid compared to the same time period in 2023, which was a record year for the portfolio. The commercial program has a strong pipeline for the remainder of the biennium, with more than 800,000 therms identified in projects of various sizes. Streamlining program processes and building a strong foundation of employee training have resulted in rebate processing times dropping to under 4 weeks.

4. **The imposition of a six-figure penalty with no warning, no precedence, and no defined method for calculation is contrary to law and does not allow Cascade an opportunity for mitigation.**

Staff's memorandum was the first indication of a proposed penalty during any of the extensive collaborative process regarding the energy efficiency program. This is a concern as there is no law, rule, or order, indicating or allowing for such a penalty. While Cascade acknowledges the Commission has broad authority to assign penalties to public service companies, the Commission has well-established processes in such cases.[4] Staff's memorandum does not reflect the Commission's enforcement policy or the Commission's longstanding procedures. In this case, there has been no due process. The Company's CAG was not notified of Staff's intention to impose penalties on the Company, nor was it given an opportunity to support Cascade in the development of solutions. There has been no prior discussion concerning ramifications associated with not meeting targets, that, as mentioned above, are based on point in time information and subject to a constantly changing environment — not to mention pure customer choice outside of the Company's control. The use of the CAG has been the traditional adaptive management, collaborative approach to react and modify programs and offerings. To now circumvent the Commission's designated advisory group and propose penalties would undermine the CAG's collaborative approach and create a chilling effect on the innovative and ambitious goal-setting of the Company's dedicated energy efficiency team.

If penalties are to be considered, such process must be fair and consistent with the Commission's established policies and procedures, not a post-hoc creation applied retroactively.

5. **Penalties that are not clearly defined result in an increased risk in the regulatory environment and could lead to less reasonable access to capital.**

[4] *See* Docket A-120061, Enforcement Policy of the Washington Utilities and Transportation Commission (Jan. 7, 2013).

Cascade has experienced a series of ratings downgrades from rating agencies over the past couple of years. The most recent was a downgrade by Fitch Ratings from BBB+ to BBB that occurred on July 25, 2024. Fitch Ratings provides the following commentary related to Cascade:

> Challenging compact in Washington: Fitch believes the Washington regulatory compact remains somewhat challenging; authorized ROE's tend to be at or below prevailing industry averages and the use of average rate base valuations and historical test years exacerbates regulatory lag. This hinders Cascade's ability to materially improve its earned ROE and Fitch notes the utility has been earning below its authorized return for several years. A timely cadence of future rate case filings coupled with expectations for balanced regulatory outcomes should help improve earned returns and alleviate persistent regulatory lag.

Cascade requires ready access to financial markets to obtain funding under reasonable terms at regular intervals to continue to provide safe, reliable service to our customers. As the statement from Fitch Ratings illustrates, the financial markets pay attention to the regulatory environment in which a utility operates. Penalties not solidly grounded in an applicable law or rule will increase the perceived risk of the Washington regulatory environment and could further exacerbate the credit rating declines for Cascade. This is an important consideration for customers because it impacts Cascade's ability to access debt at reasonable rates. Further downgrades could immediately raise Cascade's cost of short-term borrowing and would increase the cost for future long-term borrowings.

6. Staff's legal analysis calling for $695,638.81 in penalties against Cascade is defective and contrary to statutory language and legislative intent.

Staff's legal analysis strangely begins at the end. Rather than starting with a legal basis to assess penalties, Staff starts with searching for reasons why the Commission should *not* apply a penalty.[5] Staff first analyzes Cascade, an all-gas utility, under the electric-only statute RCW 19.285.040 and the electric-only rule WAC 480-109-100.[6] The Energy Independence Act ("EIA"), RCW 19.285, and the Commission's rules implementing the EIA, WAC 480-109, both apply only to electric companies. Yet Staff's legal analysis relies on both the electric statute and the electric rule as determinative in its decision to recommend penalties against Cascade.[7] Staff even acknowledges that the statute and rule do not apply to Cascade, and it nonetheless "looked for evidence" of Cascade's compliance with the electric statute and rule.[8] Staff is seeking penalties against Cascade because, as Staff claims, it did not comply with a rule that Cascade is not obligated to comply with.

Staff next claims that Cascade is in violation of RCW 80.28.380 and the terms of its Biennial Conservation Plan, but Staff does not identify a prohibited act Cascade committed or an obligation Cascade failed to

[5] *See* Staff Memo, "Factors against the issuance of a penalty," p. 3.
[6] *See* Staff Memo at p. 3.
[7] *Id.*
[8] *Id.*

perform. As required, Cascade identified and acquired all conservation measures that were available to it. Staff even praises Cascade's efforts:

> 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.[9]

Yet, immediately after pointing out Cascade's "laudable efforts," Staff admonishes Cascade for not seeking an exemption from penalties or arguing in favor of extenuating circumstances.[10] Staff's suggestion is puzzling because RCW 80.28.380 does not provide for any such penalties, so Cascade would have no reason to seek an exemption or demonstrate extenuating circumstances. Staff even acknowledges that RCW 80.28.380 does not prescribe penalties for failing to achieve conservation targets set in either the statute or a company's biennial conservation plan.[11]

The legislature's silence regarding penalties is no oversight. Penalties are provided for in the EIA, and penalties were considered and rejected in the legislative history of RCW 80.28.380.[12] The legislature could have assigned a penalty mechanism in RCW 80.28.380 or it could have directed the Commission to. It did neither because the intent behind Washington's decarbonization efforts is to *encourage,* not mandate – to "support a smooth transition to a low carbon energy economy in Washington."[13] The legislature meant RCW 80.28.380 to provide clear and reliable *guidelines* for gas companies, not requirements or standards.[14] Staff's attempt to insert a penalty mechanism into RCW 80.28.380 is contrary to the letter and spirit of the law.

Cascade customers and the state of Washington are experiencing greater energy savings, more carbon reduction, quicker processing times, and the strongest energy efficiency program in Cascade's history. Cascade encourages the Commission to reject Staff's penalty recommendations, and instead support the continued collaborative and adaptive management approach to the Company's energy efficiency program. Cascade's energy efficiency program is a critical component of the Company's work to decarbonize its natural gas distribution system as energy efficiency continues to be the most cost-effective decarbonization strategy for Cascade and its customers. Should the Commission decide it does not have enough information to reject Staff's recommendation for penalties now, Cascade recommends that the Commission recess the decision for 60 days or set the matter for adjudication.

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9 Staff Memo at p.3-4.
10 Staff Memo at p. 4.
11 *See* Staff Memo at p. 5 ("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.").
12 *See* Amendments proposed but not adopted in April-May 2019 regarding penalties for noncompliance of ESHB 1257.
13 RCW 80.28.380 Notes.
14 *See Id.*

Cascade appreciates the opportunity to comment in this docket. If you have any questions, please direct them to me at (208) 377-6015.

Sincerely,

/s/ Lori A. Blattner

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