



1120 N.W. Couch Street, Tenth Floor
Portland, OR 97209-4128
PHONE: 503-727-2000
FAX: 503-727-2222
www.perkinscoie.com

James M. Van Nostrand
PHONE: (503) 727-2162
FAX: (503) 346-2162
EMAIL: JVanNostrand@perkinscoie.com

March 14, 2007

VIA ELECTRONIC MAIL
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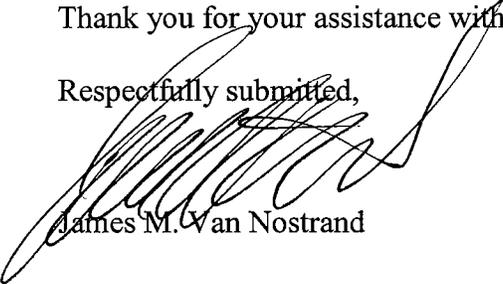
Re: *In the Matter of Public Utility Commission of Oregon's Staff Request to Open an Investigation into the Earnings of Cascade Natural Gas, Docket UG 173*

Dear Filing Center:

Enclosed please find an original and one (1) copy of the Motion for Summary Judgment of Cascade Natural Gas Corporation in the above-referenced docket. This was filed electronically with the OPUC on this date, and will be served both electronically and by U.S. Mail on those parties listed on the OPUC's current service list.

Thank you for your assistance with this filing.

Respectfully submitted,



James M. Van Nostrand

cc: Service List

Enclosures

32032-0007/LEGAL13089338.1

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UG 173

In the Matter of the)	
)	
PUBLIC UTILITY COMMISSION OF)	MOTION FOR SUMMARY
OREGON)	JUDGMENT OF CASCADE
)	NATURAL GAS CORPORATION
Staff Request to Open an Investigation into)	
the Earnings of Cascade Natural Gas.)	

Pursuant to ORCP 47 and OAR 860-001-0000(3), Cascade Natural Gas Corporation ("Cascade" or the "Company") respectfully moves the Oregon Public Utility Commission (the "Commission") to grant summary judgment in this proceeding.

I. INTRODUCTION

This proceeding was commenced by the Commission in response to a Staff recommendation to initiate a show cause proceeding under ORS 756.515. Staff has now submitted its direct case in this proceeding, which recommends a \$1.4 million, or 1.9%, reduction in Cascade's Oregon rates. Staff's direct case demonstrates that there is no basis upon which this proceeding may continue. Cascade respectfully submits that summary judgment is warranted for the following reasons:

(1) The relief requested in Staff's direct case is contrary to the Commission's orders in Docket UM 903, which adopted an Earnings Sharing Mechanism that expressly allows Cascade to retain two-thirds of earnings in excess of the earnings threshold. Cascade acted on the incentives provided by the Earnings Sharing Mechanism in growing its Oregon revenues and reducing its costs of operations. The relief requested in the Staff direct case would violate the Earnings Sharing Mechanism and deprive

Cascade of the benefits to which it is entitled under that Mechanism. Staff's direct case would violate the Earnings Sharing Mechanism in two respects:

(a) First, Staff proposes to arbitrarily reset Cascade's authorized return on equity ("ROE") rather than following the methodology for determining the ROE benchmark prescribed by the Commission in its orders in Docket UM 903 and in its administrative rule (OAR 860-022-0070(5)(c)). Staff's direct case is based primarily on a recommended reduction in Cascade's authorized ROE to 10.00%. This reduction in ROE, combined with the recommended use of a 45% equity ratio, accounts for \$1.143 million of the \$1.401 million rate reduction proposed in the Staff direct case. Adjusting the ROE in the manner proposed by Staff, however, is contrary to the Commission's orders in Docket UM 903, which established an ROE benchmark for Cascade and prescribed the methodology by which this benchmark will be adjusted to reflect changes in capital costs over time.

(b) Second, after having proposed lowering the ROE benchmark in violation of Commission orders, Staff compounds the departure from Commission orders by proposing to take away from Cascade the two-thirds of "excess" earnings that Cascade is allowed to retain under the Earnings Sharing Mechanism. Under Staff's direct case, there is no "sharing" in the Earnings Sharing Mechanism: rather, 100% of the earnings in excess of the newly and arbitrarily defined ROE benchmark would be disgorged and returned to customers. This relief can be granted only if the Commission's earlier orders are vacated or

repealed. Staff's case, which amounts to a collateral (yet unstated) attack on these orders, is fundamentally flawed and must be dismissed.

(2) Continued maintenance of this show cause proceeding is contrary to the Stipulation in Docket UG 167, which provides a procedure by which the Commission may request that Cascade file a general rate case if the Commission determines that such review is necessary.

(3) The Commission failed to follow the statutory requirements of ORS 756.512 and ORS 756.515 in initiating this proceeding. Cascade did not receive the necessary notice advising it of the facts constituting the grounds of complaint and the exact relief requested, as required by OAR 860-013-0015.

Each of these points is discussed further in Section IV below.

II. SUMMARY JUDGMENT STANDARD

OAR 860-11-0000(3) states that the "Oregon Rules of Civil Procedure ("ORCP") shall govern in all cases except as modified by these rules, by order of the Commission, or by ruling of the ALJ." Motions for summary judgment are governed by ORCP 47C; summary judgment should be granted where the pleadings, depositions, affidavits, declarations, and admissions on file show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. Accordingly, when there are no factual issues and the dispute can be resolved by answering questions of law, summary judgment is appropriate. *In re Pacific Power & Light*, Docket UE 171, Order No. 05-726 (Jun. 6, 2005). No genuine issue as to a material fact exists if, based upon the record before the court viewed in a manner most favorable to the nonmoving party, no reasonably objective factfinder could find in favor of the nonmoving party on

the issues that are the subject of the motion. *Portland General Electric Company v. Oregon Energy Company, L.L.C.*, Docket UC 315, Order No. 98-238 (Jun. 12, 1998) (citations omitted). While, on its face, the rule applies to courts, the Commission has applied this standard in reviewing motions for summary judgment. *See, e.g., Metro One Telecommunications, Inc.*, Docket IC 1, Order No. 02-126, 2 (Feb. 28, 2002); *In re PacifiCorp*, Docket UE 111, Order No. 00-090 (Feb. 14, 2000) (applying ORCP 47 standard).

III. STATEMENT OF UNDISPUTED FACTS

A. Adoption of the Earnings Sharing Mechanism

In Docket UM 903, the Commission approved and adopted a settlement among the parties in that proceeding which included Cascade's Earnings Sharing Mechanism.¹ Adoption of the Earnings Sharing Mechanism was part of the Commission's investigation to examine the policies and procedures related to the recovery of purchased gas costs by Oregon's regulated gas distribution companies. The Earnings Sharing Mechanism is a risk-reward incentive sharing mechanism which annually allocates any earnings over an established threshold between the gas distribution company and customers in accordance with a specified sharing percentage.² As set forth in Order No. 98-543 in Docket UM 903, the earnings threshold number for Cascade was originally calculated by adding 7.1 % to the risk free rate, defined in the order as the rate case adjusted average yields of 5-, 7-, and 10-year U.S. Treasury debt securities.³ When Cascade's earned ROE from

¹ *In re An Investigation into Policy Issues and Procedures Associated with Recovery of Purchased Gas Costs by Oregon's Regulated Gas Distribution Utilities*, Docket UM 903, Order No. 98-543 (Dec. 23, 1998).

² *Id.*

³ *Id.* at 1.

utility operations falls below the threshold number, it is not required to share earnings with customers, also known as a "no-action band."⁴ When Cascade's earned ROE is above the threshold, revenues representing 33% of the earnings exceeding the no-action band are shared with customers.⁵ As articulated in Order No. 99-272, a no-action band of ROE plus 300 basis points was established before sharing would begin.⁶

The Earnings Sharing Mechanism was initially granted for a four-year trial period. Cascade succeeded in having earnings to share with customers in two of those four years. On February 19, 2004, Staff filed a motion, with the support of the Citizens' Utility Board ("CUB"), the Northwest Industrial Gas Users ("NWIGU"), other consumer groups and the utilities, to modify the sharing threshold calculation and extend the Earning Sharing Mechanism through 2006. The Commission approved that motion in Order No. 04-203 issued on April 6, 2004.⁷ Order No. 04-203 modified Order No. 98-543 to apply, on an interim basis for 2004, a threshold of 13.25% for Cascade (calculated as the sum of the ROE baseline of 10.25% plus 300 basis points) and to adjust the 2004 earnings threshold calculation, on an interim basis for 2005 and 2006, by 20% of any change in the risk free rate for the 12-month calendar year preceding the annual earnings review.⁸

⁴ *In re An Investigation into Policy Issues and Procedures Associated with Recovery of Purchased Gas Costs by Oregon's Regulated Gas Distribution Utilities*, Docket UM 903, Order No. 99-272 at 4 (Apr. 19, 1999).

⁵ *Id.* at 7.

⁶ *Id.*

⁷ *In re An Investigation into Policy Issues and Procedures Associated with Recovery of Purchased Gas Costs by Oregon's Regulated Gas Distribution Utilities*, Docket UM 903, Order No. 04-203 at 3-4 (Apr. 6, 2004).

⁸ *Id.* at 3.

B. Extension of the Earnings Sharing Mechanism and Narrowing the Earnings Deadband

In Docket UG 167, the Commission in April 2006 approved a Stipulation among the parties in that proceeding which provided that the Earnings Sharing Mechanism would continue to remain in place through September 30, 2010.⁹ The Stipulation further provided that, unless the Commission authorized a different baseline ROE, the earnings threshold calculation would continue to be determined in accordance with Order No. 04-203 in Docket UM 903.¹⁰ The Stipulation also narrowed the earnings deadband from 300 basis points to 175 basis points.¹¹ As part of the Stipulation, Cascade also agreed that, if requested by the Commission no later than December 31, 2007, Cascade would agree to submit a general rate filing no later than April 1, 2008, and bear the burden of proof in such filing.¹²

C. Initiation of this Show Cause Proceeding

On August 8, 2006, Staff filed a Request to Open an Investigation into the Earnings of Cascade Natural Gas (the "Staff Report") at the Commission's public meeting. In the Staff Report, Staff requested that the Commission: (1) summarily investigate the rates of Cascade under ORS 756.515; (2) conclude that the information contained in the Staff Report provided sufficient grounds to warrant a hearing be held on reasonableness of the rates; and (3) order that a statement be issued to Cascade notifying it of the hearing and that a notice setting a pre-hearing conference be issued.¹³ As support, Staff provided figures showing the rate of return ("ROR") and ROE for the last

⁹ Order No. 06-191, Appendix A at 4.

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.* at 3.

¹³ Staff Report at 2-3.

ten years based on Cascade's annually filed results of operations. Staff stated that the figures reflected "typical regulatory adjustments" to actual operating income and rate base, such as normalizing for weather.¹⁴ Staff also asserted that the 2005 results also included several additional adjustments identified by an audit of Cascade's books conducted by Staff.¹⁵ On this information, Staff concluded that the Company is over-earning and that rates should be lowered by as much as \$2.309 million, or 3.3% overall, based on an authorized ROE of 9.25%.¹⁶ Staff also offered sensitivity analysis figures showing that a 9.75% ROE would result in a decrease in revenue requirement of \$2.048 million, or 2.9% overall.¹⁷ Staff concluded that the results of its sensitivity analysis demonstrate that when assuming a 50 basis point premium to Staff's recommended cost of equity, the recommended rate reduction is reduced 0.4%.¹⁸

In the public meeting on August 8, 2006, the Commission voted in favor of accepting the recommendations in the Staff Report to commence this show cause proceeding. No order or other notice was issued as a result of the vote taken at the public meeting. Subsequent to the public meeting, a notice of pre-hearing conference was issued on August 18, 2006. The notice stated the time and date for the conference and the agenda items, including the setting of a schedule for the proceeding, but did not include a statement concluding that the information contained in the Staff Report provided sufficient grounds to warrant a hearing. The notice did not otherwise state the grounds supporting the institution of the show cause proceeding.

¹⁴ *Id.* at 2.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

On February 15, 2007, Staff filed its direct testimony supporting its position. Much of Staff's testimony is devoted to explaining the various adjustments made to Cascade's 2005 results of operations which Staff used to arrive at its recommended revenue requirement. Staff witness Ed Durrenberger provided testimony as the Staff's revenue requirement summary witness, and presented Staff's recommendation that the Commission reduce Cascade's revenue requirement by \$1.4 million, which would result in a 1.9 percent rate decrease.¹⁹ An exhibit prepared by Mr. Durrenberger reflected the \$1.4 million reduction as a result of various adjustments made by Staff, a suggested ROR of 8.66%, and an implied ROE of 10%.²⁰ Mr. Durrenberger explained that the foundation of Staff's analysis was Cascade's 2005 results of operations as reported in Cascade's Spring Earnings Review and Statement of Operations and Rate of Return-Twelve Months ended September 30, 2005.²¹ The testimony did not explain why Staff's recommended revenue requirement differed from that recommended in the Staff Report.

Staff witness Judy Johnson offered testimony sponsoring an adjustment to Federal and State Income taxes resulting from the change in recommended revenue requirement.²² Staff witness Mike Dougherty offered testimony proposing adjustments to Administrative and General Costs resulting from the Staff's audit findings of the Company's 2005 results of operations.²³ Staff witness Thomas Morgan offered testimony proposing to reduce the allowed ROE to 10.00% using a 45% equity ratio (which

¹⁹ Staff / 100, Durrenberger / 1.

²⁰ Staff / 102, Durrenberger / 4.

²¹ Staff / 100, Durrenberger / 2.

²² Staff / 200, Johnson / 2-3.

²³ Staff / 300, Dougherty / 2.

produces an overall ROR of 8.66%) or, alternatively, to reduce the allowed ROE to 9.00% using a 55% equity ratio (which produces an overall ROR of 8.39%).²⁴

IV. ARGUMENT

The Commission should grant summary judgment for Cascade. The evidence offered by Staff – consisting of the Staff Report, which presumably served as the basis for initiating this proceeding, and Staff's direct testimony – even when viewed in a manner most favorable to Staff, demonstrates that there is no genuine issue as to any material fact and that Cascade is entitled to judgment as a matter of law.

A. Staff's Request for Relief is Contrary to the Commission's Orders in Docket UM 903, which Adopted an Earnings Sharing Mechanism that Expressly Allows Cascade to Retain Two-Thirds of Earnings in Excess of the Earnings Threshold.

Cascade is operating under the Earnings Sharing Mechanism as authorized by the Commission in Docket UM 903 under Order Nos. 98-543 and 99-272.²⁵ In Order No. 98-543 the Commission concluded that "the proposed PGA mechanisms and associated earnings reviews in the stipulations fall within the range of acceptable plans."²⁶ The Earnings Sharing Mechanism expressly allows Cascade to retain 100% of earnings up to the earnings threshold and to retain a portion of earnings in excess of the prescribed earnings threshold. In adopting the earnings threshold, the Commission encouraged utilities to achieve earnings with the following assurance:

An earnings threshold set at 300 basis points above the benchmark ROE will protect the interest of ratepayers and allow the company the opportunity to pursue increased

²⁴ Staff / 400, Morgan / 5.

²⁵ *In re An Investigation into Policy Issues and Procedures Associated with Recovery of Purchased Gas Costs by Oregon's Regulated Gas Distribution Utilities*, Docket UM 903, Order No. 98-543 (Dec. 23, 1998); Order No. 99-272 at 4 (Apr. 19, 1999); Order No. 04-203 at 3-4 (Apr. 6, 2004).

²⁶ Order No. 98-543 at 2.

earnings through cost management and operating efficiencies.²⁷

In Order No. 99-272, the Commission adopted 33% as the appropriate sharing percentage to be applied to "excess" earnings. In other words, the utility would retain 67% of earnings above the earnings threshold, and would return 33% to customers. According to the Commission's Order No. 99-272:

[A] proposed sharing percentage of 33 percent provides reasonable results for both shareholders and should be adopted for the company. This degree of sharing is significant enough to ensure customer that the LDC's earnings are not excessive, while allowing LDCs to benefit from productive management of the business.²⁸

Order No. 99-272 thus enunciates a clear policy decision by the Commission that the purpose of the Earnings Sharing Mechanism is to encourage utilities to "pursue increased earnings through cost management and operating efficiencies," and to allow utilities to "benefit from productive management of the business." Customers, for their part, would benefit from sharing to the extent a utility's efforts produced "excess" earnings that would be returned in part to customers. The Commission expressly found that customers' interests were adequately protected by setting an earnings threshold set at 300 basis points about the benchmark ROE, and allowing them to share one-third of any earnings above that threshold.

Cascade responded to this clear regulatory incentive by growing its Oregon revenues and reducing its costs of operations, and managed to share earnings with customers in two out of the four years of the initial trial period. Indeed, Staff

²⁷ Order No. 99-272 at 8.

²⁸ Order No. 99-272 at 8.

acknowledged Cascade's accomplishments in this regard in the OPUC Staff Audit 2006-001, dated May 22, 2006 (the "Audit Report"). The Audit Report states that Cascade's rates are significantly lower than those for the other two natural gas companies operating in Oregon (15% lower than for NW Natural Gas and 18% lower than for Avista Utilities).²⁹ The Audit Report acknowledges that "[f]or non-gas expenses, Cascade continues to throttle down on operating expenses, which are aligned to recent Cascade initiatives to reduce costs."³⁰ The Audit Report also states that "Cascade's aggressive cost-cutting has benefited both the Company and customers."³¹

Granting the relief requested in Staff's direct case is possible only by changing the current state of the law, *i.e.*, by abandoning the mechanism established by the Commission in Docket UM 903. Cascade has successfully pursued the incentives offered under the Commission-approved mechanism – a fact that Staff readily acknowledges in the Audit Report – and that mechanism was expressly found to adequately protect the interests of customers. In fact, on a going forward basis, the mechanism provides even greater protection for customers through the narrowing of the deadband from 300 basis points to 175 basis points under the Docket UG 167 Stipulation. Staff's direct case is contrary to the current state of the law, and there is no basis for considering it. The Commission has already determined that that Cascade's earnings sharing threshold is just and reasonable in Docket UM 903, leaving no genuine issue as to any material fact in this proceeding with regard to excess earnings.

²⁹ Audit Report at 34.

³⁰ *Id.* at 18.

³¹ *Id.* at 35.

1. Staff's Proposal Would Violate the Earnings Sharing Mechanism by Arbitrarily Re-Setting ROE in a Manner Contrary to the Commission's Orders.

Staff proposes to arbitrarily reset Cascade's authorized ROE, rather than following the methodology for determining the ROE benchmark prescribed by the Commission in its orders in Docket UM 903. Staff's direct case is based primarily on a recommended reduction in Cascade's authorized ROE to 10.00%. This reduction in ROE, combined with the recommended use of a 45% equity ratio, accounts for \$1.143 million of the \$1.401 million rate reduction proposed in the Staff direct case.

Adjusting the ROE in the manner proposed by Staff is contrary to the Commission's orders in Docket UM 903, which (1) established an ROE benchmark for Cascade, and (2) prescribed the methodology by which this benchmark will be adjusted to reflect changes in capital costs over time. In Order No. 04-203, Cascade's benchmark ROE was set at 10.25%.³² Moreover, Order No. 04-203 also prescribed the methodology to be used to adjust the earnings thresholds in 2005 and 2006:

The parties further agree that earnings thresholds would be adjusted in 2005 and 2006 by twenty percent (20%) of any change in the risk free rate for the 12-month calendar year preceding the annual earnings review.³³

The risk free rate was defined in Order No. 98-543 as "the rate case adjusted average yields of 5-, 7- and 10-year U.S. Treasury debt securities."³⁴ According to the Commission, "[t]he change in the risk-free rate represents a reasonable proxy for the change in the company's cost of equity capital."³⁵

³² Order No. 04-203 at 3.

³³ *Id.*

³⁴ Order No. 98-543 at 1-2.

³⁵ Order No. 99-272 at 7.

Adopting a methodology for updating the earnings threshold is specifically required by Commission rule:

The Commission will update the value for the earnings threshold annually for each LDC, pursuant to a mechanism established by order of the Commission for each LDC, to reflect changes in conditions in the capital markets.³⁶

That was the precise purpose of Order No. 04-203: to establish the mechanism for updating Cascade's earnings thresholds for 2005 and 2006, in accordance with the procedures prescribed by OAR 860-022-0070(5)(c).

Applying the mechanism prescribed for Cascade in Order No. 04-203 produces a benchmark ROE of 10.51%.³⁷ After adding the 300 basis point deadband, the earnings threshold for Cascade is 13.51%. So long as Cascade's earnings do not exceed this threshold, there is no required sharing with customers. Suggesting otherwise is squarely contrary to the Commission's own rules:

Earnings threshold: *There will be no revenue sharing* for years when a gas utility's return on equity from utility operations in Oregon is *lower than the earnings threshold* determined by the Commission for each LDC.³⁸

Staff's proposal in this proceeding utterly disregards the Commission's previous orders and the Commission's rules. In fact, Staff's proposal to re-set the benchmark ROE in this proceeding is precisely what the Commission stated should *not* occur in connection with the Earnings Sharing Mechanism:

[T]he earnings review mechanism should be fair to all parties and efficient to administer. The objective should be simply to determine whether or not an LDC's earnings are excessive prior to passing through prudently incurred gas costs in rates. It should not be structured so as to turn each

³⁶ OAR 680-022-0070(5)(c).

³⁷ See Appendix A for the calculation.

³⁸ OAR 860-022-0070(5)(c) (emphasis added).

PGA filing into an annual rate case or show cause hearing where the company's earnings would be subject to detailed review and adjustment. ***Indeed, such scrutiny may eliminate any incentive for the company to pursue efficiencies.***

....

Our primary goal in this docket is to establish a process for ensuring that the company's earnings are not excessive prior to passing through increases in gas costs. **It is not to transform a PGA process into an opportunity to micro-manage the company's earnings.**³⁹

In its direct case, Staff has submitted "detailed and technical arguments relating to cost of equity in this proceeding," contrary to what the Commission envisioned in issuing its Order No. 99-272.⁴⁰ Rather than a "straightforward earnings test to be applied in conjunction with gas cost trackers," Staff is proposing a complete re-examination of the Company's capital costs, *i.e.*, to "micro-manage the company's earnings." Doing so requires rejection of the Commission's previous orders in Docket UM 903 and repeal of the Commission's rules regarding the Earnings Sharing Mechanism. A proper calculation of Cascade's earnings threshold – using the 10.25% benchmark ROE set in Order No. 04-203 and adjusting it upward in accordance with Order No. 04-203 under the mechanism required by OAR 860-022-0070(5)(c) – produces a benchmark ROE of 10.51% and an earnings threshold of 13.51%. Inasmuch as Staff's case fails to demonstrate any earnings in excess of this threshold, this proceeding should be terminated.

³⁹ Order No. 99-272 at 6, 8 (emphasis added).

⁴⁰ *Id.* at 8.

2. Staff's Proposal Would Violate the Earnings Sharing Mechanism by Stripping away Commission-Approved Incentives.

Staff's recommendation to reduce Cascade's revenue requirement by \$1.4 million, which would result in a 1.9 percent rate decrease and suggested ROR of 8.66% and implied ROE of 10% essentially strips away incentives provided by the Earnings Sharing Mechanism. After proposing to lower the ROE benchmark in violation of Commission orders, Staff compounds the departure from Commission orders by (1) eliminating any deadband (either the 300 basis point deadband established in Order No. 99-272 or the narrower 175 basis point deadband approved in Docket UG 167), and (2) proposing to take away from Cascade the two-thirds of "excess" earnings that Cascade is allowed to retain under the Earnings Sharing Mechanism. Under Staff's direct case, there is no "sharing" in the Earnings Sharing Mechanism: rather, 100% of the earnings in excess of the newly and arbitrarily defined ROE benchmark would be disgorged and returned to customers. This relief can be granted only if the Commission's earlier orders are repealed. In the absence of repeal, Staff's case is fundamentally flawed and must be dismissed.

Staff's proposal amounts to impermissible collateral attack on the Commission's orders in Docket UM 903, and should be rejected as a matter of law. The Commission has previously rejected such collateral attacks on its orders. For example, in Docket UM 995, PacifiCorp sought an order authorizing it to recover certain deferred excess net power costs.⁴¹ Industrial Customers of Northwest Utilities ("ICNU") argued that replacement power costs resulting from the sale of PacifiCorp's Centralia plant should be

⁴¹ *In re Application of PacifiCorp for an Accounting Order Regarding Excess Net Power Costs*, Dockets UM 995, UE 121, UC 578, Order No. 02-469 (Jul. 18, 2002).

disallowed as imprudently incurred.⁴² PacifiCorp responded that ICNU's recommendation that the Commission deny of recovery of these costs required reexamination of the Commission's prior order approving Centralia's sale and, as such, amounted to a collateral attack.⁴³ The Commission agreed, and in allowing recovery for the replacement power costs, noted:

ICNU's argument revisits the conclusions of that order, reading the sale and the arrangement to purchase market power to replace lost generation from the perspective of later events. That is not the perspective from which we judge the prudence of a utility's decisions.⁴⁴

In similar fashion, Staff's proposal in this proceeding seeks to revisit – and effectively vacate – the conclusions and determinations of the Commission's orders in Docket UM 903. Such a reexamination constitutes an impermissible collateral attack and should be denied.

B. The Show Cause Proceeding Is Contrary to the Settlement Reached in Docket UG 167, Which Provides a Procedural Mechanism for a General Rate Case.

In the Docket UG 167 Stipulation, the Company agreed that it would file a general rate case following one full fiscal year of experience under the Conservation Alliance Plan. Paragraph 9 of the Stipulation states:

If requested by the Commission no later than December 31, 2007, Cascade agrees to submit a general rate filing in Oregon ("2008 Rate Case") not later than April 1, 2008. Cascade shall bear the burden of proof in such filing, in accordance with ORS 757.210. The historic test period for purposes of such filing shall be fiscal year 2007 (the twelve months ended September 30, 2007), or such other period as may be agreed upon by the Parties.

⁴² Order No. 02-469 at 10.

⁴³ *Id.*

⁴⁴ *Id.* at 11.

Although the actual language of the Stipulation did not foreclose Staff's right to review and challenge the reasonableness of Cascade's rates prior to 2008, the intent of the provision was to have a full fiscal year of experience with decoupling before a general rate case would be required. This intent is evidenced by the fact that the historic test period was defined as the twelve months ended September 30, 2007.

The Stipulation already provides for the Company filing a rate case no later than April 1, 2008, and to bear the burden in such a proceeding. This show cause proceeding is inconsistent with this essential term of the Stipulation. As stated in Order No. 01-873, "[t]he Commission's policy has been to uphold agreements negotiated by parties at arm's length."⁴⁵ Continued maintenance of the show cause proceeding is simply unnecessary in light of the procedural safeguards for rate review provided in the UG 167 Stipulation.⁴⁶ The Commission is free to request that the Company file a general rate case if the Commission believes that the Company's rates are unjust or unreasonable. As explained above, however, the Earnings Sharing Mechanism is functioning precisely as it was intended to function. Accordingly, continued maintenance of this show cause proceeding is not warranted as a matter of law.

⁴⁵ Order No. 01-873 at 6, Docket No. UM 1002, *Wah Chang v. PacifiCorp* (October 15, 2001).

⁴⁶ In fact, the protections afforded to customers under the Earnings Sharing Mechanism have been considerably enhanced under the UG 167 Stipulation, where the Company agreed to reduce the earnings sharing threshold by 125 basis points so that the Company will begin sharing earnings growth successes with its customers much sooner than under the no-action band established in Docket UM 903. This recalibrated Earnings Sharing Mechanism will remain in place throughout the term of the Conservation Alliance Plan, and provides an effective response going forward to the "excessive" earnings issue raised by Staff.

C. The Commission Failed to Follow its Own Procedures in Initiating This Show Cause Proceeding as Mandated by Oregon Law.

ORS 756.515 allows the Commission on motion to summarily investigate any rate it believes may be unreasonable or unjustly discriminatory. That statute further provides that if, after making such investigation, the Commission is satisfied that sufficient grounds exist to warrant a hearing being ordered upon any such matter, the Commission shall "furnish any public utility or telecommunications utility or other person interested a statement notifying it of the matters under investigation, which statement shall be accompanied by a notice fixing the time and place for hearing upon such matters in the manner provided in ORS 756.512 for notice of complaint." ORS 756.512 provides that the Commission must serve a copy of the complaint upon the defendant, and shall give the defendant at least 10 days within which to respond to the complaint. Pursuant to OAR 860-013-0015, a complaint must set forth the specific acts complained of "in sufficient detail to advise the parties and the Commission of the facts constituting the grounds of complaint and the exact relief requested."

Cascade was not served with a "statement notifying [the utility] of the matters under investigation," as required by ORS 756.515. Although Staff requested that the Commission conclude that the Staff Report provides sufficient grounds to warrant a hearing and to issue a statement to Cascade, the Commission did not issue any such statement or order adopting the grounds in the Staff Report. The Commission's vote to initiate the show cause proceeding at the August 8, 2006 public meeting and notice of prehearing conference did not contain any explanation or description of the grounds warranting the investigation and as such cannot be characterized as a "statement notifying

[the utility] of the matters under investigation" within the meaning of ORS 756.515. Furthermore, neither the vote nor the prehearing conference notice provided "sufficient detail to advise the parties and the Commission of the facts constituting the grounds of complaint and the exact relief requested" as required by OAR 860-013-0015.

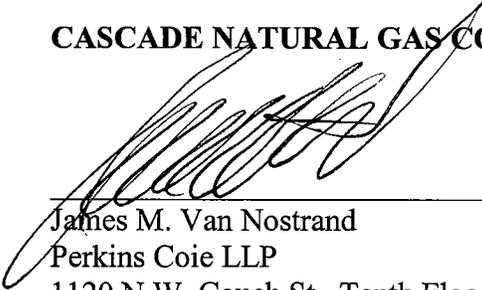
Accordingly, the Commission's failure to satisfy the procedural requirements of ORS 756.515, ORS 756.512, and OAR 860-013-0015 renders institution of the show cause proceeding null and void. As a result of the Commission's procedural error, maintenance of the instant proceeding is contrary to law and should be terminated.

V. CONCLUSION

WHEREFORE, Cascade respectfully requests that the Commission grant this motion for summary judgment.

DATED: March 14, 2007.

CASCADE NATURAL GAS CORPORATION



James M. Van Nostrand

Perkins Coie LLP

1120 N.W. Couch St., Tenth Floor

Portland, OR 97209-4128

Tel: (503) 727-2172

Fax: (503) 346-2162

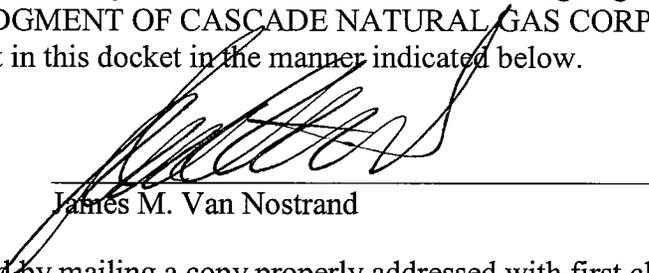
Attorney for Cascade Natural Gas Corporation

Appendix A

Cascade Natural Gas Corporation					
Calculation of the Earnings Threshold					
For The Twelve Months Ending 9/30/06					
Month	Five Year	Seven Year	Ten Year	Average	
Oct-05	4.33%	4.38%	4.46%	4.39%	
Nov-05	4.45%	4.48%	4.54%	4.49%	
Dec-05	4.39%	4.41%	4.47%	4.42%	
Jan-06	4.35%	4.37%	4.42%	4.38%	
Feb-06	4.57%	4.56%	4.57%	4.57%	
Mar-06	4.72%	4.71%	4.72%	4.72%	
Apr-06	4.90%	4.94%	4.99%	4.94%	
May-06	5.00%	5.03%	5.11%	5.05%	
Jun-06	5.07%	5.08%	5.11%	5.09%	
Jul-06	5.04%	5.05%	5.09%	5.06%	
Aug-06	4.82%	4.83%	4.88%	4.84%	
Sep-06	4.67%	4.68%	4.72%	4.69%	
Risk Free Rate				4.674%	
Risk Free Rate Rounded to Nearest 10th				4.70%	
Baseline Risk Free Rate (Calendar 1994)				3.40%	
Change in the Risk Free Rate over Baseline				1.30%	
20% of Change				0.26%	
Baseline Earnings Threshold (Authorized ROE Order 04-203)				10.25%	
Baseline ROE				<u>10.51%</u>	
Earnings Sharing Threshold		Baseline ROE + 300 Basis Points		13.51%	

CERTIFICATE OF SERVICE

I hereby certify that on the 14th day of March, 2007, I served the foregoing MOTION FOR SUMMARY JUDGMENT OF CASCADE NATURAL GAS CORPORATION upon all parties on the service list in this docket in the manner indicated below.



James M. Van Nostrand

The following were served by mailing a copy properly addressed with first class postage prepaid and/or via electronic mail:

DEPARTMENT OF JUSTICE

STEPHANIE S ANDRUS, ASSISTANT ATTORNEY GENERAL
REGULATED UTILITY & BUSINESS SECTION
1162 COURT ST NE
SALEM, OR 97301-4096
stephanie.andrus@state.or.us

CITIZENS' UTILITY BOARD OF OREGON

LOWREY R BROWN, UTILITY ANALYST
JASON EISDORFER, ENERGY PROGRAM DIRECTOR
ROBERT JENKS
610 SW BROADWAY - STE 308
PORTLAND, OR 97205
lowrey@oregoncub.org
jason@oregoncub.org
bob@oregoncub.org

CABLE HUSTON BENEDICT HAAGENSEN & LLOYD LLP

EDWARD A FINKLEA
CHAD M STOKES
1001 SW 5TH - STE 2000
PORTLAND, OR 97204
efinklea@chbh.com
cstokes@chbh.com

NORTHWEST INDUSTRIAL GAS USERS

PAULA E PYRON, EXECUTIVE DIRECTOR
4113 WOLF BERRY CT
LAKE OSWEGO, OR 97035-1827
ppyron@nwigu.org