

**BEFORE THE WASHINGTON  
UTILITIES AND TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND  
TRANSPORTATION COMMISSION,

Complainant,

v.

CASCADE NATURAL GAS  
CORPORATION,

Respondent.

DOCKET PG-150120

NARRATIVE SUPPORTING  
SETTLEMENT AGREEMENT

**I. INTRODUCTION**

1 Staff of the Washington Utilities and Transportation Commission (Staff) and  
Cascade Natural Gas Corporation (CNGC or Company) (collectively, the parties) have  
settled all issues in Docket PG-150120, which concerns CNGC's compliance with  
regulations governing maximum allowable operating pressure (MAOP).

2 This Narrative is intended to provide the evidentiary basis for Commission approval  
of the settlement agreement (Agreement) entered into by the parties in this case. Nothing in  
this Narrative modifies the Agreement. The parties respectfully request that the Commission  
approve the Agreement without conditions, pursuant to WAC 480-07-750.

**II. PROPOSAL FOR REVIEW**

3 The parties understand that the Commission intends to review the Agreement at a  
public settlement hearing. Consistent with WAC 480-07-740(2)(b), the parties will present  
one or more witnesses each to testify in support of the Agreement and to answer questions  
concerning its terms, costs, and benefits.

### III. APPLICABLE LAW

4 The Commission has authority under RCW 80.01.040 to regulate CNGC in the public interest. RCW 81.88.065 gives the Commission authority to “develop and administer a comprehensive program of gas pipeline safety” in accordance with RCW 81.88. The Commission has jurisdiction over CNGC because it is a “gas pipeline company” within the meaning of RCW 81.88.010(4), WAC 480-93-005(13), and WAC 480-93-223.

5 In 1970, the federal government promulgated minimum pipeline safety standards in accordance with the Natural Gas Pipeline Safety Act of 1968. One set of standards required pipeline operators to establish the MAOP for every pipeline segment in the operator’s service territory. Operators must maintain documentation sufficient to prove compliance.

6 During the period relevant to the Complaint in this docket, CNGC’s duty to establish MAOP documentation in compliance with federal standards was defined by the following regulatory scheme:

#### **WAC 480-93-018(1)**

“Each gas pipeline company must maintain records sufficient to demonstrate compliance with all requirements of 49 CFR §§ 191, 192 and chapter 480-93 WAC.”

#### **49 C.F.R. § 192.13**

“(a) No person may operate a segment of pipeline listed in the first column that is readied for service after the date in the second column, unless: (1) The pipeline has been designed, installed, constructed, initially inspected, and initially tested in accordance with this part; or (2) The pipeline qualifies for use under this part according to the requirements in § 192.14.

Pipeline	Date
Offshore gathering line	July 31, 1977.
Regulated onshore gathering line to which this part did not apply until April 14, 2006	March 15 2007.
All other pipelines	March 12, 1971.

“(b) No person may operate a segment of pipeline listed in the first column that is replaced, relocated, or otherwise changed after the date in the second column, unless the replacement, relocation or change has been made according to the requirements in this part.

Pipeline	Date
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Offshore gathering line	July 31, 1977.
Regulated onshore gathering line to which this part did not apply until April 14, 2006	March 15 2007.
All other pipelines	November 12, 1971.

“(c) Each operator shall maintain, modify as appropriate, and follow the plans, procedures, and programs that it is required to establish under this part.”

**49 C.F.R. § 192.503(a)**

“No person may operate a new segment of pipeline, or return to service a segment of pipeline that has been relocated or replaced until—(1) It has been tested in accordance with this subpart and § 192.619 to substantiate the maximum allowable operating pressure; and (2) Each potentially hazardous leak has been located and eliminated.”

**49 C.F.R. §§ 192.517 and 192.603**

Together, these provisions require that operators maintain MAOP records for the life of the pipeline to which the records pertain.

**49 C.F.R. § 192.603(a)**

“No person may operate a segment of pipeline unless it is operated in accordance with this subpart [§§ 192.601-192.631].”

**49 C.F.R. § 192.619(a)**

“No person may operate a segment of steel or plastic pipeline at a pressure that exceeds a maximum allowable operating pressure determined [using a method approved in this section].” The operator must have documentation that substantiates its determination. *See Appendix A* for the full text of 49 C.F.R. § 192.619(a).

7           The Commission has authority to issue complaints under RCW 81.04.110. Under WAC 480-93-223, the Commission may impose a civil penalty of up to two hundred thousand dollars for each violation of any commission order or rule in WAC 480-93, including federal regulations adopted therein by reference. The maximum penalty for a related series of violations is two million dollars.

8           Under WAC 480-07-730, a “full settlement” is “[a]n agreement of all parties that would resolve all issues in a proceeding.”

9           WAC 480-07-750 provides, “The commission will approve settlements when doing so is lawful, when the settlement terms are supported by an appropriate record, and when the

result is consistent with the public interest in light of all the information available to the commission.”

#### IV. AGREED STATEMENT OF THE CASE

10 In 2013, Staff conducted standard natural gas pipeline inspections in CNGC’s Washington service territory. During these inspections, Staff requested that CNGC provide documentation sufficient to confirm the MAOP of randomly-selected high pressure pipeline segments. CNGC failed to provide sufficient documentation for certain randomly-selected segments. As a result, Staff opened an investigation into CNGC’s compliance with applicable MAOP regulations.

11 To address CNGC’s lack of documentation, Commission Staff and CNGC agreed to a systematic process designed to provide Staff detailed information regarding CNGC’s high pressure pipeline system and to establish a timeline by which CNGC would determine the MAOP of all its high pressure pipelines in Washington.

12 On February 2, 2015, Staff and CNGC executed a Stipulated Agreement under which the Company agreed to “submit to the Commission a written plan that Cascade intends to implement for the purpose of determining the MAOP of all its high pressure pipelines in Washington for which there is insufficient documentation to confirm the current MAOP.”<sup>1</sup> The Commission approved the Stipulated Agreement on February 12, 2015, in Order 01 in Docket PG-150120. Pursuant to Order 01, CNGC was required to submit its MAOP compliance plan by August 12, 2015.

13 CNGC failed to submit its MAOP compliance plan by August 12, 2015.

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<sup>1</sup> *In the Matter of the Investigation of the Gas Pipeline System of Cascade Natural Gas Corporation*, Docket PG-150120, Order 01, Order Accepting Agreement and Closing Docket, Attachment A (“Stipulated Agreement”) (Feb. 12, 2015).

14           On January 29, 2016, CNGC submitted its initial MAOP Determination & Validation Plan.

15           On April 29, 2016, CNGC submitted its revised MAOP Determination & Validation Plan. The revised MAOP Determination & Validation Plan demonstrated that CNGC had operated, and was continuing to operate, 116 high pressure pipeline segments without compliant MAOP documentation.

16           On July 12, 2016, the Commission issued a formal complaint against CNGC. The Complaint alleged two causes of action, summarized as follows: (1) violation of a Commission-ordered compliance deadline; and (2) failure to maintain compliant MAOP records for at least 116 pipeline segments.

17           CNGC filed an answer to the complaint in which it admitted some allegations in the Complaint and denied some allegations in the Complaint. CNGC does not contest that it missed the deadline for filing its MAOP plan or that it lacks compliant MAOP records for at least 116 pipeline segments. CNGC further responded in the answer that it had commenced a systematic process designed to provide the necessary information regarding CNGC's high pressure pipeline system.

18           On September 2, 2016, the Commission issued a prehearing conference order. The order stated, among other things, "Parties are encouraged to consider means of resolving disputes informally."

19           Following issuance of the prehearing conference order, the parties engaged in good faith negotiations to resolve the Commission's allegations. Ultimately, the parties agreed to execute a full settlement.

## V. AGREED DESCRIPTION OF SETTLEMENT AGREEMENT

20 The Agreement settles all issues in this docket between the parties. Agreement ¶ 16.

The principal aspects of the agreement are described below:

### A. Monetary Penalty

21 CNGC agrees to a total monetary penalty of \$2,500,000, of which \$1,500,000 will be suspended on the condition that CNGC completes specific compliance tasks as set forth in the agreed Compliance Program. CNGC must pay the non-suspended penalty amount of \$1,000,000 within ten business days after the effective date of the order approving this Agreement. Agreement ¶ 13.

### B. Compliance Program

22 The Compliance Program consists of steps CNGC will take to document the basis for validation of MAOP for high pressure lines, the prioritization of work, protections that will be in place during the validation process, progress reports to the Commission, and a best practices audit that CNGC has agreed to undertake. These points are described below:

- CNGC will document the basis for validation of the MAOP of every pipeline segment operating above 60 psig<sup>2</sup> in accordance with 49 C.F.R. § 192.619.
  - For the 116 pipeline segments currently identified as missing critical information necessary for documenting the basis for validation of MAOP, CNGC agrees to document the basis for validation of the MAOP on 50% of the mileage by December 31, 2018, and 100% of the mileage by December 31, 2023. Each of these deadlines is subject to a \$250,000 suspended penalty if CNGC fails to substantially comply.

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<sup>2</sup> Pounds per square inch gauge. The designation “gauge” indicates that a reading has been adjusted to ignore the surrounding atmospheric pressure, which is 14.7 psi at sea level.

- There are five segments currently operating at 30% SMYS<sup>3</sup> or above, which are missing critical information necessary to document the basis for validation of MAOP. CNGC agrees to validate these pipeline segments by December 31, 2017.
- CNGC has retained a consultant to complete a records review of all remaining pipelines operating above 60 psig. This will be completed by the end of first quarter 2017, and any additional pipeline segments found to be operating above 60 psig and missing critical information will be incorporated into the risk matrix to identify mitigation prioritization. Staff and CNGC will file an amended Settlement Agreement with the Commission by March 31, 2018, that reflects the date by which CNGC will document the basis for validation of the additional high pressure segments. If CNGC fails to substantially comply with the completion date in the Amended Settlement, it will be subject to payment of the \$500,000 suspended penalty.
- CNGC has established priorities for completing the work using the risk considerations set forth in Section 2 of the Compliance Program.
- CNGC will conduct leak surveys four times annually for all unvalidated pipeline segments with preliminary SMYS calculations of 20% or greater.
- CNGC agrees that all unvalidated pipeline segments with low frequency seam welds or unknown seam types, with preliminary SMYS calculations of over 30%, shall be maintained at a 20% pressure reduction.

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<sup>3</sup> SMYS (specified minimum yield strength) is a term used in steel pipe design to indicate the minimum stress a pipe may experience that will cause permanent (plastic) deformation. Operating pressure in a pipeline is typically referenced as a percentage of SMYS. The greater the percentage, the more likely a failure will result in a rupture rather than a leak. Generally, a SMYS of 30% or greater subjects the pipeline to a rupture failure.

- Line segments preliminarily calculated at greater than 20% SMYS will be incorporated into CNGC's transmission integrity management program (TIMP), with baseline assessments completed by December 31, 2020. Upon completion of MAOP validation, CNGC's TIMP and distribution integrity management program (DIMP) will be re-evaluated and updated as required.
- CNGC will designate a representative who will take responsibility for executing the settlement agreement and provide written status reports every six months.
- CNGC will submit to a third party audit relating to API Recommended Practice 1173, Pipeline Safety Management Systems (PSMS), and submit to the Commission the consultant's report by December 31, 2017. CNGC will be subject to a \$500,000 suspended penalty for failure to submit the report by the deadline. The results of the third-party audit shall not be the basis for Staff recommendations of additional penalties, and if the audit identifies violations of code, CNGC shall have a reasonable opportunity to correct such violations.
- CNGC will commence a program to align its operations with the standards of API 1173. API 1173 is a recommended practice and, as such, compliance with API 1173 may be subject to audit but shall not be the basis for penalties.
- CNGC will not seek recovery of penalties paid as part of this Agreement but may seek recovery of its costs to comply with the terms of this Agreement through deferral and amortization, general rates, and a tracker.
- The current and suspended penalties imposed by the Commission as part of the Agreement include penalties for any continuation of the violations during the period of correction. Commission Staff agrees to forbear recommending penalties to the



Commission if it discovers similar violations relating to MAOP validation pertaining to CNGC's high pressure pipe (greater than 60 psig) while CNGC complies with the terms of the Agreement.

**C. Status of Order 01**

23 The Commission's final order approving the Agreement will supersede and replace Order 01 in this docket.

**VI. THE PROPOSED SETTLEMENT IS IN THE PUBLIC INTEREST AND THE PARTIES' INTERESTS**

**A. Joint Statement of the Parties**

24 The parties submit that their Agreement advances the public interest. Within the meaning of WAC 480-07-750(1), the Agreement is lawful, contains terms that are supported by an appropriate record, and achieves a result that is consistent with the public interest in light of all the information available to the Commission. The Commission should approve the Agreement without conditions.

25 The Commission has, by rule, affirmed its support for "parties' informal efforts to resolve disputes without the need for contested hearings." WAC 480-07-700. If the Commission adopts the Agreement, the parties will benefit by avoiding the expense, inconvenience, uncertainty, and delay inherent in a litigated outcome. The public will similarly benefit if this dispute concludes without further expenditure of public resources.

26 Both parties were represented by counsel during the settlement process. Negotiations proceeded in good faith. The end result reflects a compromise of litigation positions. The parties agree that the Settlement Agreement is consistent with the Commission's Enforcement Policy.

## **B. Statement by CNGC**

### **1. Introduction**

27 CNGC is responsible for the construction and maintenance of an extensive natural gas pipeline system and has numerous programs and procedures in place to ensure that its system is safe. CNGC is committed to operational excellence and full compliance with federal and state regulations. The Company believes it operates and maintains a safe and reliable system, but also recognizes that continuous improvement is necessary.

28 The Agreement entered into by CNGC and Commission Staff is a compromise of the parties' positions. It settles a matter that has been at issue for more than three years. It is consistent with the public interest and CNGC's interest.

### **2. The 2015 Stipulated Agreement**

29 The Agreement will replace the Stipulated Agreement that CNGC and Staff entered into in February 2015, which required CNGC to file a MAOP Validation Plan with the Commission in August 2015. There was no penalty associated with the 2015 Stipulated Agreement, which acknowledged that there were some high pressure pipelines in CNGC's Washington service territory that were missing some data necessary to confirm the pipelines' MAOP and allowed CNGC to complete a systematic validation of MAOP on segments where the information was missing. Although there was a delay by CNGC in submitting the written MAOP Validation Plan required by the Stipulated Agreement, CNGC has since filed an MAOP Validation Plan; filed a revised plan; and commenced in-situ testing and a third-party records review to address the pipeline segments where documentation necessary to validate MAOP is missing.

### 3. The Compliance Program accelerates the MAOP Validation Plan

30 The MAOP Validation Plan that CNGC submitted to the Commission in April 2016, set forth a ten year time frame for completing validation of the 116 segments (representing 222 miles of pipeline) identified in the Company's Washington service territory for which the Company is missing critical information necessary to validate MAOP. The Compliance Program that CNGC has agreed to in this settlement will accelerate that work; CNGC has committed to complete validation of the 116 segments by 2023.

31 As part of this settlement, CNGC commits to a Compliance Program, which employs a variety of methods to confirm MAOP including, but not limited to, in-situ testing (an in-service, non-destructive method to determine yield strength), removing lines from service and pressure testing, replacing lines, verifying line fittings, down-rating, or accepting the most stringent criteria for a specific segment with a valid pressure test but missing other MAOP-confirming documentation. In advance of this Agreement, work on the Compliance Program has already begun, resulting in 300 in-situ tests being completed and over one mile of pipeline being replaced. To ensure that all segments missing documentation are identified and validated, CNGC has retained a consultant to review all of CNGC's records and identify any additional segments that lack information to validate MAOP. This will be completed by March 31, 2017.

32 CNGC's Compliance Program is prioritized using a weighted risk matrix containing numerous risk factors, with SMYS being the primary risk driver. Using the risk matrix, an aggressive path to compliance has been established that addresses the Company's deficiencies within reasonably achievable deadlines and gives priority to segments based on relative risk.

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Although CNGC lacks documentation on the identified segments of pipeline, CNGC believes it is not operating its pipelines above MAOP and indeed has been operating at the current pressures for a number of years without incident. Even so, in addition to the aggressive path to compliance set forth in the Agreement, CNGC has implemented interim measures to ensure the continued safety of CNGC's system while the compliance program is carried out. These include reducing operating pressure, conducting additional leak surveys, accelerating action on any leaks or repairs associated with the identified segments, and incorporating specific segments into CNGC's Transmission Integrity Management Program (TIMP).

**4. Monetary penalties are significant but represent a compromise**

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CNGC and Commission Staff hold different views on the monetary penalty but have reached agreement as a compromise of positions in this matter. It is important to note that there have been no injuries to persons or property associated with the alleged violations. Rather, the violations alleged involve missing documentation and failure to meet a deadline. The monetary penalty is significant and in fact would be one of the highest penalty amounts imposed by the Commission for pipeline safety violations, despite the fact that CNGC is smaller than other companies that have paid less in penalties for incidents involving personal injury, property damage and loss of life, in prior cases.

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Suspended penalties are consistent with the Enforcement Policy because they will further the Commission's overall goal of compliance and better enable the Company to take all steps necessary to achieve full compliance. The Company is committed to complying with the timelines set forth in the Agreement, and the \$1.5 million in suspended penalties will serve as a significant incentive for CNGC to comply with these deadlines. The

Agreement also provides for the Commission and Commission Staff to stay apprised of the progress CNGC is making towards completion of the Compliance Program, through semi-annual written reports.

**5. CNGC is committing several million dollars to improve its system**

36 In addition to the significant penalties, CNGC is committing several million dollars through 2023 to complete the work set forth in the Agreement, some of which goes beyond what is required to remedy the specific violations alleged. CNGC estimates the work to comply with this Agreement will total approximately \$6-8 million in 2016-2017, and several million dollars in excess of that amount through 2023. Thus, the actual financial commitment that CNGC is making in this settlement is significantly more than the \$1,000,000 up-front penalty, and an important term of the Agreement is that CNGC may seek recovery of the costs for the work undertaken pursuant to this Agreement.

37 As previously noted, CNGC has agreed to settlement terms that go above and beyond resolving the specific violations alleged in the Complaint regarding missing documentation. As part of the compromise of the Agreement, CNGC has agreed to take steps to implement recommended practices, although these particular standards are not required by code. Specifically, CNGC has agreed to undergo a third-party audit to determine CNGC's baseline variance from the standards set forth in API Recommended Practice 1173, Pipeline Safety Management Systems. CNGC will submit to the Commission the report from the consultant addressing CNGC's baseline variance from these standards. CNGC is subject to significant suspended penalties if it fails to comply. Further, CNGC has also agreed to commence a program to align its operations with the standards of API 1173.

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It should also be noted that the steps Cascade is taking as part of the Compliance Program are best practices that will enhance the long-term integrity of its system. Many pipeline systems rely on historical operating pressures and decades-old records for documenting the basis of validation of MAOP, as currently allowed by the federal code, including through “grandfather” clauses. The comprehensive Compliance Program CNGC has agreed to in this Settlement, involving in-situ testing, pressure testing, replacing lines, verifying line fittings, etc., will provide better, more up to date, validation of safe operating pressures on Cascade’s pipeline system as compared to the decades-old records on which other pipeline systems rely.

## **6. Conclusion**

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In sum, CNGC recognizes the importance of having accurate records and is committed to achieving compliance through the Settlement Agreement. CNGC views the Settlement Agreement as a compromise of the parties’ positions, but one that assures public safety and allows CNGC to achieve compliance.

### **C. Statement by Staff**

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Maximum allowable operating pressure, or MAOP, is the maximum pressure a pipeline or segment of a pipeline may safely hold during normal operation. Under federal regulations enforced by the Commission, operators must maintain accurate MAOP records.

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MAOP is not a mere recordkeeping issue. Indeed, from Staff’s perspective, MAOP is one of the pillars of pipeline safety. If an operator lacks accurate MAOP records, it cannot ensure the physical integrity of its system. MAOP is, therefore, foundational to ensuring an adequate margin of public safety.

42 The federal Pipeline and Hazardous Materials Safety Administration recently emphasized that the correct setting and validation of MAOP is “critically important for providing an appropriate margin of safety to the public.”<sup>4</sup>

43 As described above in the Agreed Statement of the Case, CNGC currently lacks compliant MAOP records for multiple high-pressure pipeline segments within its Washington service territory. To address this deficiency, and to remedy CNGC’s violation of Order 01, Staff agreed to a full settlement that includes a comprehensive MAOP compliance program and a substantial monetary penalty.

44 Staff will cover three issues in its statement. First, Staff will demonstrate that the Agreement is consistent with the Commission’s enforcement policy. Second, Staff will explain and defend the structure of the agreed monetary penalty. Finally, Staff will justify the Compliance Program’s inclusion of a best practices (API 1173) audit.

**1. The Agreement is Consistent with the Commission’s Enforcement Policy**

45 The Commission’s Enforcement Policy, promulgated in Docket A-120061, sets forth eleven factors the Commission may consider to determine the appropriate scope of enforcement and severity of punishment. As discussed below, Staff believes that the Agreement is consistent with the principles expressed within the Enforcement Policy.

**a. How Serious or Harmful the Violations are to the Public**

46 From Staff’s perspective, CNGC’s violation of Order 01 and ongoing failure to maintain compliant MAOP records are very serious. As stated above, MAOP is foundational to public safety. Further, CNGC’s violation of Order 01 is unacceptable. Regulated companies must comply with all Commission deadlines.

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<sup>4</sup> PHMSA, Pipeline Safety: Safety of Gas Transmission and Gathering Pipelines, Notice of Proposed Rulemaking, 81 Fed. Reg. 20722, 20727 (April 8, 2016).

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Staff is satisfied that the Agreement reflects the seriousness of CNGC's violations. CNGC will pay a substantial monetary penalty that is among the largest ever levied by the Commission in an enforcement action. The Company will also commence a comprehensive compliance program that address all aspects of its MAOP-related deficiencies.

**b. Whether the Violation is Intentional**

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From Staff's perspective, CNGC's failure to maintain compliant MAOP records is a systemic and continuing problem, rather than a discrete issue isolated to a particular service district or time-frame. The Agreement accounts for the broad scope of the Company's violations. Under the Agreement, CNGC must commence a robust compliance program that will address all aspects of the Company's MAOP compliance program, including its safety culture and corporate practices.

**c. Whether the Company Self-Reported the Violation**

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CNGC did not self-report its violations. Instead, Staff brought the violations to the Company's attention during standard inspections in 2013. From Staff's perspective, this fact weighs in favor of a higher monetary penalty.

**d. Whether the Company was Cooperative and Responsive**

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Staff's July 2016 Investigation Report described CNGC as "cooperative but not responsive," citing CNGC's violation of Order 01's compliance deadline and its failure to submit timely responses to Staff's October 2013 data requests. Staff stands by this description but recognizes that CNGC has been both cooperative and responsive during the settlement process. The Agreement reflects a good faith effort to bring the Company into compliance as soon as possible. The agreed Compliance Program is an aggressive plan to address the Company's recordkeeping deficiencies within reasonably achievable deadlines.



**e. Whether the Company Promptly Corrected the Violations and Remedied the Impacts**

51 CNGC did not promptly correct its violations. The Company submitted its initial MAOP validation plan more than five months after the August 2012 deadline set by Order 01. And even then, it asked for “allowances” to continue operating in violation of applicable MAOP regulations. From Staff’s perspective, this factor weighs in favor of a higher-than-average monetary penalty.

52 The agreed penalty is sufficient to punish the Company for its violations but not so harsh that it will prevent the Company from focusing on compliance. For more on the penalty structure, including the justification for the suspended penalty, see Section VI.C.2 below.

**f. The Number of Violations**

53 The number of violations is not a particularly useful metric in assessing the Agreement’s impact on the public interest. As discussed above, CNGC’s failure to maintain compliant MAOP records is a systemic and continuing safety issue. The Agreement reflects this fact through the comprehensiveness of its Compliance Program. As stated above, the Compliance Program will address all aspects of the Company’s MAOP compliance program, including internal Company practices not governed by federal code.

**g. The Number of Customers Affected**

54 Accurate MAOP records are fundamental to public safety, and inaccurate or missing records create the potential for widespread harm. Fortunately, no MAOP-related incidents have occurred within CNGC’s Washington service territory to date. But that is no excuse to ignore the issue. The Agreement is an aggressive plan to bring the Company into compliance within reasonably achievable deadlines.

**h. The Likelihood of Recurrence**

55 From Staff's perspective, CNGC was largely unaware of its recordkeeping deficiencies until Staff brought them to light in 2013. Nevertheless, Staff is now satisfied that the Company understands the scope and gravity of the issue, and that it is committed to compliance on a going-forward basis.

**i. The Company's Past Performance Regarding Compliance, Violations, and Penalties**

At the time Staff issued its Investigation Report, it believed that CNGC had "adopted a lax or complacent attitude toward compliance."<sup>5</sup> The Investigation Report summarized recent enforcement actions that contributed to Staff's belief.

56 Given CNGC's compliance history, Staff believes that the Agreement properly includes both a substantial monetary penalty and a comprehensive compliance program. Staff does not believe that voluntary compliance is a viable option.

**j. The Company's Existing Compliance Program**

57 Staff is not aware of any voluntary MAOP compliance program. As stated above, the Agreement properly includes a comprehensive compliance program.

**k. The Size of the Company**

58 CNGC serves more than 272,000 Washington and Oregon customers. The Agreement contains an aggressive but reasonable plan of action that will bring the Company into compliance with all applicable MAOP regulations within reasonably achievable deadlines.

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<sup>5</sup> Staff Investigation Report at 17 (July 12, 2016).

## 2. The Monetary Penalty is Appropriately Structured

59 CNGC has agreed to the imposition of a significant monetary penalty of \$2,500,000. Under the Agreement, the Commission will suspend \$1,500,000 on the condition that CNGC complete specific compliance tasks as set forth in the agreed Compliance Program. CNGC will pay a meaningful “up-front” (i.e., non-suspended) penalty of \$1,000,000 within ten days after the effective date of the Commission order approving the Agreement.

60 The parties did not allocate the penalties. But from Staff’s perspective, it is logical to associate the \$1,000,000 non-suspended penalty with the Commission’s first cause of action, which alleged that CNGC failed to submit its original MAOP compliance plan by Order 01’s August 12, 2015 deadline. CNGC does not contest that it missed the deadline, thereby violating a Commission order. Because this violation is a past omission that cannot now be corrected or mitigated, a non-suspended penalty is appropriate.

61 Conversely, from Staff’s perspective, it is logical to associate the \$1,500,000 suspended penalty with the Commission’s second cause of action, which alleged that CNGC failed to maintain MAOP documentation for at least 116 pipeline segments. This is a systemic, ongoing violation that must be corrected as soon as possible, and CNGC has agreed to a detailed Compliance Program. The suspended penalty is integral to the Compliance Program because it gives the Commission a tool to ensure that CNGC timely performs critical compliance tasks.

62 Under the agreed Compliance Program, CNGC must establish compliant MAOP records for the 116 identified high-pressure pipeline segments that are currently known to lack critical information. The Commission will impose a \$250,000 suspended penalty if CNGC fails to validate 50% of the mileage by December 31, 2018, and another \$250,000

suspended penalty if the Company fails to validate 100% of the mileage by December 31, 2023. The suspended penalties will help the Commission secure compliance with these crucial deadlines.

63           The Compliance Program also includes a \$500,000 suspended penalty associated with high pressure “branch segments” connected to the 116 identified pipeline segments referenced above. CNGC believes that some of these branch segments lack compliant MAOP records but is unsure precisely which segments fall into that category. Under the Agreement, once CNGC pinpoints the problematic segments, the Commission will approve an Amended Agreement that includes a deadline by which CNGC will resolve the newly-identified deficiencies. The \$500,000 suspended penalty will promote compliance with whatever deadline the Commission imposes. Without a suspended penalty, the Company will have less incentive to identify noncompliant branch segments and to bring those segments into compliance.

64           Finally, the Compliance Program requires CNGC to submit to a third party audit that will analyze the Company’s adherence to American Petroleum Institute (API) Recommended Practice 1173. If CNGC fails to share audit findings with the Commission by December 31, 2017, the Commission will impose a \$500,000 suspended penalty. As with the deadlines discussed above, the suspended penalty will ensure that CNGC follows through with this important obligation.

65           Overall, the penalty structure is consistent with the public interest. CNGC should pay an “up-front” penalty for its violation of Order 01. But suspended penalties are more appropriate for the Company’s ongoing, systemic failure to maintain compliant MAOP

records. The parties respectfully request that the Commission approve both the total penalty amount and the agreed penalty structure without conditions.

**3. Explanation Regarding API Recommended Practice 1173 Audit**

66 Safe and effective pipeline operation requires awareness and management of many linked activities, yielding complex processes. While safety efforts may be applied individually to each activity, more effective safety performance is achieved when viewing linked activities as processes and when dealt with holistically

67 Pipeline safety management includes determining needs throughout the pipeline life cycle, provisioning sufficient qualified human and financial resources, identifying the proper sequence of a series of activities, monitoring and measuring the effectiveness of activities performed, and applying changes or corrections as needed.

68 API Recommended Practice (RP) 1173 was created at the recommendation of the National Transportation Safety Board (NTSB). Stakeholders, including pipeline operators, state, and federal regulators, collaborated in this effort to advance the goal of zero incidents. RP 1173 has been endorsed by both the NTSB and PHMSA.

69 The parties have agreed that CNGC will submit to a baseline RP 1173 audit. The audit, which will analyze CNGC's activities and processes with respect to at least ten organizational elements, represents a preliminary step as CNGC works to improve its safety culture. Not unlike our state's emphasis on "lean," RP 1173 has a guiding principle of plan-do-check-act. The practice is a continuous journey, not a discrete project or program. Ultimately, the audit will give CNGC a road map for continuous improvement.

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The Agreement properly requires CNGC not only to undertake the audit, but also to “commence a program to align its operations” with RP 1173.<sup>6</sup> In this way, CNGC will make practical use of the audit’s findings. Staff will monitor CNGC’s progress in implementing any operational changes and will provide technical assistance as needed.

**VII. CONCLUSION**


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The parties agree that the Agreement is lawful, that its terms are supported by an appropriate record, and that the result is consistent with the public interest in light of all the information available to the commission. Consistent with WAC 480-07-750, the parties respectfully request that the Commission approve the Agreement without conditions.

*Counsel for Commission Staff:*

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Dated: December 15, 2016.

Dated: December 15, 2016.

<sup>6</sup> Agreement, Compliance Program ¶ 8.

70 The Agreement properly requires CNGC not only to undertake the audit, but also to “commence a program to align its operations” with RP 1173.<sup>6</sup> In this way, CNGC will make practical use of the audit’s findings. Staff will monitor CNGC’s progress in implementing any operational changes and will provide technical assistance as needed.

## VII. CONCLUSION

71 The parties agree that the Agreement is lawful, that its terms are supported by an appropriate record, and that the result is consistent with the public interest in light of all the information available to the commission. Consistent with WAC 480-07-750, the parties respectfully request that the Commission approve the Agreement without conditions.

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Dated: December 15, 2016.

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<sup>6</sup> Agreement, Compliance Program ¶ 8.