

**BEFORE THE WASHINGTON  
UTILITIES AND TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND  
TRANSPORTATION COMMISSION,

Complainant,

v.

CASCADE NATURAL GAS  
CORPORATION,

Respondent.

DOCKET PG-150120

ORDER 03

FINAL ORDER APPROVING AND  
ADOPTING SETTLEMENT  
AGREEMENT WITH CONDITIONS

**I. MEMORANDUM**

- 1 **PROCEEDING.** On July 12, 2016, the Washington Utilities and Transportation Commission (Commission) initiated an adjudication against Cascade Natural Gas Corporation (Cascade or the Company) based upon the formal complaint (Complaint) filed by the Commission's regulatory staff (Staff).<sup>1</sup> The Complaint alleged that Cascade violated Order 01 in this docket, entered on February 12, 2015, when it failed to file its maximum allowable operating pressure (MAOP) compliance plan by August 12, 2015, and that the Company failed to maintain required records or documentation of its MAOP. On December 15, 2016, Staff and Cascade filed a Settlement Agreement (Settlement), which purports to resolve all of the issues in this proceeding. By this Order, the Commission approves that Settlement with conditions.
- 2 **APPEARANCES.** Sheree Strom Carson, Perkins Coie LLP, Bellevue, Washington, represents Cascade. Julian Beattie, Assistant Attorney General, Olympia, Washington, represents Staff.

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<sup>1</sup> In formal proceedings, such as this, the Commission's regulatory staff participates like any other party, while the Commissioners make the decision. To assure fairness, the Commissioners, the presiding administrative law judge, and the Commissioners' policy and accounting advisors do not discuss the merits of this proceeding with the regulatory staff, or any other party, without giving notice and opportunity for all parties to participate. *See*, RCW 34.05.455.

- 3 **BACKGROUND.** From March 25, 2013, through October 18, 2013, Staff conducted a series of standard natural gas pipeline inspections of Cascade’s facilities in the Longview, Bellingham, and Kennewick, Washington districts.<sup>2</sup> Staff reviewed the Company’s records, policies and procedures, and pipeline facilities.<sup>3</sup> During these inspections, Staff requested additional documentation from the Company in order to confirm the MAOP of four of Cascade’s high pressure pipelines, which were randomly selected during the inspection.<sup>4</sup> Cascade provided Staff with documentation that “was missing some form of essential data necessary for Staff to judge whether the MAOP of the pipelines could be validated.”<sup>5</sup> Staff then asked the Company to provide a list of all high pressure pipelines that were missing this crucial information.<sup>6</sup> On September 27, 2013, Cascade provided that list, which included 28 segments, and Staff determined that additional information was still needed.<sup>7</sup>
- 4 On February 12, 2015, the Commission entered Order 01 in this proceeding, approving a settlement agreement between Staff and the Company that required Cascade to submit a written compliance plan within six months from the effective date of the order. The compliance plan would describe how Cascade intends to determine “the MAOP of all its high pressure pipelines in Washington for which there is insufficient documentation to confirm the current MAOP.”<sup>8</sup>
- 5 On January 12, 2016, Staff notified Cascade that the Company had missed the deadline, approved in Order 01, requiring Cascade to file its MAOP compliance plan.<sup>9</sup> The plan was due August 12, 2015.<sup>10</sup>
- 6 Cascade filed its MAOP Determination and Validation Plan (First MAOP Plan) on January 29, 2016. Staff reviewed the filing and noted in a letter to Cascade that this plan

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<sup>2</sup> *In re Commission Investigation of the Gas Pipeline System of Cascade Natural Gas Corporation*, Docket PG-150120, Stipulated Agreement, ¶¶ 4 and 5 (Feb. 12, 2015).

<sup>3</sup> *Id.*, ¶ 4.

<sup>4</sup> *Id.*, ¶ 5.

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*, ¶ 6.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*, ¶ 7(1).

<sup>9</sup> Letter from Alan Rathbun, Pipeline Safety Director, Commission, to Eric Martuscelli, Vice President – Operations, Cascade at 1 (Jan. 12, 2016).

<sup>10</sup> *Id.*

would need significant revisions.<sup>11</sup> In fact, Staff found no less than 13 areas of concern with the First MAOP Plan.<sup>12</sup> On April 29, 2016, the Company filed a revised MAOP Determination & Validation Plan (Second MAOP Plan). Again, Staff reviewed the plan and raised several issues of concern with Cascade. Staff's concerns with the Second MAOP Plan include, but are not limited to: (1) the Company's 10-year period for completing validation of MAOP on operating pipelines, (2) Cascade's proposed methodology for pressure testing pipelines, which is not permitted by code, and (3) the failure of the Company's proposal to verify the seam type on all segments as part of the validation process.<sup>13</sup> Cascade responded to Staff's concerns on July 8, 2016.

7 On July 12, 2016, Staff filed a Complaint against Cascade, alleging two causes of action and requesting that the Commission impose a penalty of up to \$200,000 for each of the violations alleged, or up to the maximum of \$2 million per category of violation. First, Staff asserts that Cascade violated Order 01 in this docket, entered February 12, 2015, when the Company did not submit the MAOP compliance plan by the August 12, 2015, deadline.<sup>14</sup> In its Answer, filed on July 29, 2016, Cascade acknowledged this failure but explained that it was "due to extenuating circumstances regarding the absence of a key employee."<sup>15</sup>

8 In its second cause of action, Staff alleges that Cascade failed to maintain required records or documentation sufficient to confirm the MAOP of at least 116 high pressure pipeline segments in violation of WAC 480-93-018(1), 49 Code of Federal Regulations (C.F.R.) § 192.13, 49 C.F.R. § 192.503(a), 49 C.F.R. § 192.517, 49 C.F.R. § 192.603, and/or 49 C.F.R. § 192.619(a).<sup>16</sup> In its Answer, the Company states that it recognizes that there is missing documentation, and Cascade continues to work on full approval of

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<sup>11</sup> Letter from Alan Rathbun, Pipeline Safety Director, Commission, to Eric Martuscelli, Vice President, Operations, Cascade at 1 (Feb. 18, 2016).

<sup>12</sup> *Id.*, attached data requests.

<sup>13</sup> Letter from Alan Rathbun, Pipeline Safety Director, Commission, to Eric Martuscelli, Vice President – Operations, Cascade at 1 and 2 (July 7, 2016).

<sup>14</sup> Complaint, ¶¶ 18-20.

<sup>15</sup> Answer, ¶ 12.

<sup>16</sup> Complaint, ¶¶ 11 and 21. Under WAC 480-93-018(1), each gas pipeline company must maintain records sufficient to demonstrate compliance with all requirements of 49 C.F.R. § 192. The regulations within this section of the C.F.R. relate to the establishment of appropriate MAOPs for pipeline segments in operation and the substantiation of those MAOPs with records the operators are obligated to maintain for the life of the pipeline. *Id.*, ¶¶ 12-17.

its plan to confirm the pipelines' MAOP, as was required by the agreement approved in Order 01.<sup>17</sup>

9 Cascade filed its response to Staff's concerns with the Company's Second MAOP Plan on August 12, 2016. The Commission convened a prehearing conference in this matter on August 31, 2016.

10 In correspondence dated September 2, 2016, Staff informed Cascade that it:

agrees that the addition of nearly 400 pipeline branch segments with missing critical information places your original plan submission of April 29, 2016, incomplete. Until [Cascade] can give [S]taff a completed inventory of these branch segments including location, length and missing information, it is impossible for [S]taff to evaluate your plan.<sup>18</sup>

Further, Staff requested an update from the Company on its expected completion of the leak survey.<sup>19</sup> Staff also noted that "the fact that the joint type is still unknown must be taken into consideration in your Transmission Integrity Management Plan (TIMP)."<sup>20</sup>

11 On December 15, 2016, Staff and Cascade filed a Settlement Agreement (Settlement), attached to this Order as Appendix A and incorporated herein, which purports to resolve all of the issues in this proceeding. The parties also filed a Narrative Supporting the

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<sup>17</sup> Answer, ¶ 27.

<sup>18</sup> Letter from Alan E. Rathbun, Pipeline Safety Director, Commission, to Eric Martuscelli, Vice President-Operations, Cascade at 1 (Sept. 2, 2016).

<sup>19</sup> *Id.*

<sup>20</sup> *Id.* at 1-2. The federal Pipeline and Hazardous Materials Safety Administration (PHMSA) requires pipeline operators to implement both a gas Distribution Integrity Management Plan (DIMP) and a Transmission Integrity Management Plan (TIMP) to assure pipeline integrity and the safe transportation of energy products across the pipeline system. Though slightly different in approach, both plans are founded on the requirement that the operator of the natural gas pipeline should know its pipeline system, understand the relative risks in the system, and have a plan to manage those risks proactively and effectively. PHMSA rules specify how operators must identify, prioritize, assess, evaluate, repair, and validate the integrity of pipelines. The evaluation determines the importance of each threat and assigns a rank based on potential consequences and likelihood of failure. These plans must rely on certain data, including design, construction, inspection, and testing, to calculate the Maximum Allowable Operating Pressure (MAOP); those data are identified in the Complaint as missing. The Commission requires complete and accurate documentation in all areas of integrity management to ensure the Company has made an accurate risk assessment and is addressing the highest risks proactively.

Settlement (Narrative). The terms and conditions agreed to in the Settlement will be discussed in more detail below. On January 31, 2017, the Commission convened a hearing to clarify the terms and conditions of the Settlement.

## II. SETTLEMENT

12 Under the Settlement, the Commission would impose a \$2.5 million penalty against Cascade, with \$1 million of the penalty due within 10 business days of the effective date of the Order approving the Settlement. The Commission would suspend \$1.5 million of the penalty pending the Company's substantial compliance with specific tasks by their respective deadlines, as set out in the Settlement.<sup>21</sup>

### a. Documentation of MAOP Validation

13 The Settlement requires Cascade to document the basis for MAOP validation of every pipeline segment operating above 60 pounds per square inch gauge (psig), and the documentation must be completed in compliance with the requirements in 49 C.F.R. § 192.619.<sup>22</sup> The Company must complete documentation of 50 percent of the segment miles by December 31, 2018.<sup>23</sup> If Cascade fails to meet this compliance deadline under the Settlement, the Commission will impose \$250,000 of the suspended penalty.<sup>24</sup>

14 Cascade must complete all of its documentation of pipeline segments operating above 60 psig by December 31, 2023.<sup>25</sup> Again, if the Company fails to meet this compliance deadline, the Commission would impose another \$250,000 suspended penalty.<sup>26</sup>

### b. Validation of Highest Risk Segments

15 Cascade has identified its five highest risk segments that are currently operating at 30 percent specified minimum yield strength (SMYS)<sup>27</sup> or above and currently missing

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<sup>21</sup> Settlement, ¶ 13.

<sup>22</sup> Settlement, Section V(B)(1).

<sup>23</sup> *Id.*, Section V(B)(1)(a)(i).

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*, Section V(B)(1)(a)(ii).

<sup>26</sup> *Id.*

<sup>27</sup> SMYS is a term used to describe “the minimum stress a pipe may experience that will cause permanent (plastic) deformation.” Narrative, n. 3. Operating pressure in a pipeline is typically referenced as a percentage of SMYS. *Id.* The higher the SMYS' percentage, the more likely it is

MAOP validation documentation.<sup>28</sup> The Company will complete the validation of all five segments by December 31, 2017.<sup>29</sup> No penalty for noncompliance is associated with this provision of the Settlement.<sup>30</sup>

**c. TRC's Audit and Findings**

16 The Company hired TRC Pipelines Service LLC (TRC) to review Cascade's records of all of its remaining pipelines operating above 60 psig.<sup>31</sup> TRC will complete its review of the Company's records by the end of the first quarter of 2017.<sup>32</sup> While the Settlement discloses 116 pipeline segments that are missing MAOP validation records, Mr. Jeremy Ogden, Director of Engineering Services for the Company, revealed at the Settlement hearing that Cascade had at least 516 total pipeline segments that were lacking validation documentation.<sup>33</sup> There is no penalty associated with Cascade's or TRC's noncompliance with this provision.

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that "a failure will result in a rupture rather than a leak." *Id.* A pipeline segment with a SMYS of 30 percent or more "subjects the pipeline to a rupture failure." *Id.*

<sup>28</sup> *Id.*, Section V(B)(1)(b).

<sup>29</sup> Cascade identified these segments as: (1) the 16-inch North Whatcom transmission line in its Bellingham district, (2) the 8-inch and 12-inch Bremerton transmission line in its Bremerton District, (3) the 16-inch Fredonia transmission line in its Mt. Vernon District, (4) the 16-inch March Point transmission line in its Mt. Vernon District, and (5) the 12-inch South Longview high pressure line in its Longview District. Response to Bench Request No. 1 (Feb. 1, 2017) and Ogden, TR 34:6-14.

<sup>30</sup> Only certain compliance provisions within the Settlement have been assigned a suspended penalty amount. However, Cascade agrees that, if it fails to comply with the terms and conditions of the Settlement, even those provisions not assigned a specific monetary penalty, the Commission would still have "all the remedies you always have available for [violation of a settlement or violation of a Commission order]." Carson, TR 53:6-10.

<sup>31</sup> *Id.*, Section V(B)(1)(c).

<sup>32</sup> *Id.*

<sup>33</sup> Judge Friedlander: Help me understand if we're being duplicative in those numbers. We've got 116 segments, but 400 branch segments. Are those 400 branch segments along the 116 segments or are they separate?

Mr. Ogden: Your Honor, those would be separate from the 116 segments.

Judge Friedlander: Okay. So we've actually got perhaps 516 total segments or – so far?

Mr. Ogden: Yeah, depending on what the results of the TRC work are.

TR 83:21-84:5.

- 17 Cascade will update its risk matrix with any additional pipeline segments operating above 60 psig identified by TRC's review as missing critical information necessary to document the MAOP validation in order to identify mitigation prioritization.<sup>34</sup> The Company will also update its plan to include any pipeline segments operating above 60 psig, in addition to the 116 segments identified in the Settlement Agreement, and provide the update to Staff by December 31, 2017.<sup>35</sup> By March 31, 2018, Cascade and Staff will file an Amended Settlement Agreement with the Commission reflecting the date by which the Company will complete documentation of MAOP validation for the additional pipeline segments identified by TRC.<sup>36</sup> There is no penalty associated with Cascade's noncompliance with the above deadlines. The Amended Settlement Agreement, however, will include a \$500,000 suspended penalty if the Company fails to comply with the completion date for this compliance item.<sup>37</sup>

**d. Prioritization of Pipeline Validation**

- 18 Cascade will prioritize the documentation of MAOP validation based on risk to public safety, with risk considerations including, but not limited to: (1) segment class location; (2) location of high consequence areas; (3) segment SMYS percentage based on the most stringent criteria for missing pipe characteristics; (4) pipe vintage with special consideration for pre-code pipe with unknown characteristics; (5) pipe material, installation characteristics, or maintenance records that indicate increased risk; and (6) low frequency electric resistance welded (ERW) and unknown seam types when SMYS are greater than 25 percent.<sup>38</sup> The Settlement does not designate a suspended penalty if the Company fails to comply with this prioritization.

**e. Leak Surveys**

- 19 In addition, Cascade will conduct leak surveys at least quarterly of all pipeline segments that have not been validated and that have preliminary SMYS calculations of 20 percent or greater.<sup>39</sup> The Company will return the pipeline segments to leak survey intervals prescribed by federal regulations once Cascade has information to substantiate that the

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<sup>34</sup> *Id.*, Section V(B)(1)(d).

<sup>35</sup> *Id.*, Section V(B)(1)(d)(i).

<sup>36</sup> *Id.*, Section V(B)(1)(d)(ii).

<sup>37</sup> *Id.*

<sup>38</sup> *Id.*, Section V(B)(2).

<sup>39</sup> *Id.*, Section V(B)(3).

SMYS for the segments is below 20 percent or the Company has information to validate the segments' MAOP.<sup>40</sup> Cascade will notify Staff when a segment returns to code-based survey intervals.<sup>41</sup> The Settlement does not provide a penalty if the Company fails to comply with these provisions.

**f. Pressure Reductions**

20 The Company will maintain all segments that are not validated, with low frequency seam welds or unknown seam types, and with preliminary SMYS calculation of over 30 percent, at a 20 percent pressure reduction.<sup>42</sup> Cascade will return the segments to previous operating pressures once information becomes available to identify that the seam type is not low frequency Electric Resistance Welded (ERW) or to substantiate SMYS below 30 percent.<sup>43</sup> The Company will notify Staff when a segment returns to a previous operating pressure.<sup>44</sup> The Settlement does not provide a penalty if Cascade fails to comply with this section.

**g. TIMP and DIMP**

21 The Company will incorporate pipeline segments preliminarily calculated at greater than 20 percent SMYS into its TIMP, with baseline assessments of these segments being completed by December 31, 2020.<sup>45</sup> Cascade's TIMP and Distribution Integrity Management Program (DIMP) will be re-evaluated and updated as required upon the Company's completion of its MAOP validation.<sup>46</sup> The Settlement does not establish a penalty if Cascade fails to fulfill the obligations within this section.

**h. Cascade Settlement Representative**

22 The Company will designate a representative responsible for executing the Settlement.<sup>47</sup> This individual will provide Staff with written status reports every six months addressing, at a minimum, the progress made towards completion of the MAOP

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<sup>40</sup> *Id.*

<sup>41</sup> *Id.*

<sup>42</sup> *Id.*, Section V(B)(4).

<sup>43</sup> *Id.*

<sup>44</sup> *Id.*

<sup>45</sup> *Id.*, Section V(B)(5).

<sup>46</sup> *Id.*

<sup>47</sup> *Id.*, Section V(B)(6).



validation.<sup>48</sup> Cascade has designated Mr. Eric Martuscelli, Vice President of Operations for the Company, as its Settlement representative.<sup>49</sup> The Settlement does not authorize imposition of any penalty or suspended penalty if Cascade fails to provide the written reports every six months as required by this provision.

- 23 The Settlement is silent on the issue of a Staff point person to monitor the Company's progress under the Settlement. It is our expectation that Staff will designate such a person and alert the Commission to whom it has chosen.

**i. API 1173 and Third Party Audit**

- 24 Cascade agrees to submit to a third party audit of any baseline variance of the Company's practices from the standards set forth in the American Petroleum Institute Recommended Practice 1173, Pipeline Safety Management Systems (API 1173).<sup>50</sup> The audit will include, at a minimum, a review of Cascade's: (1) leadership and management commitment; (2) stakeholder engagement; (3) risk management; (4) operational controls; (5) incident investigation, evaluation, and lessons learned; (6) safety assurance; (7) management review and continuous improvement; (8) emergency preparedness and response; (9) competence, awareness, and training; and (10) documentation and record keeping.<sup>51</sup> Staff will provide input on the selection of the third party auditor.<sup>52</sup> Cascade will file the audit report with the Commission, and the Settlement provides for a \$500,000 penalty against the Company if it does not file the audit report by December 31, 2017.<sup>53</sup> However, the Settlement prohibits Staff from recommending additional penalties against Cascade as a result of the findings in the

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<sup>48</sup> *Id.*

<sup>49</sup> Commissioner Rendahl: Just to verify, Mr. Martuscelli, in this paragraph, subparagraph 6, so it says CNGC will designate a representative who will take responsibility for executing the agreement and you are that representative?

Mr. Martuscelli: I am.

TR 29:11-17.

<sup>50</sup> *Id.*, Section V(B)(7).

<sup>51</sup> *Id.*

<sup>52</sup> *Id.*

<sup>53</sup> *Id.*

third party audit report.<sup>54</sup> Cascade will have a reasonable opportunity to correct any violations of federal regulations that may be revealed in the audit report.<sup>55</sup>

- 25 The Company will begin an initiative to align its operations with the standards of API 1173.<sup>56</sup> Staff will review Cascade’s progress in implementing these changes, and the Settlement provides that compliance with API 1173 may be subject to an audit but will not be the basis for any penalties.<sup>57</sup>

**j. Cost Recovery and Future Penalties**

- 26 The Settlement prohibits Cascade from seeking the recovery of penalties it pays as part of the agreement, but the Company is permitted to seek recovery of costs to comply with the Settlement, including, but not limited to: (1) recovery through deferral and amortization; (2) general rates; and (3) a tracker mechanism.<sup>58</sup> Further, Staff agrees to forbear recommending penalties to the Commission if it discovers similar violations relating to documentation of the MAOP validation pertaining to Cascade’s high pressure pipe (i.e., with greater than 60 psig) while the Company complies with the requirements set forth in the Settlement.<sup>59</sup>

**III. NARRATIVE**

- 27 Both Staff and Cascade contend that the Settlement advances the public interest.<sup>60</sup> The Company states that its Second MAOP Plan provided for a ten-year window for the MAOP validation completion, and the Settlement has reduced that to seven years.<sup>61</sup> Cascade contends its Compliance Program, which uses a variety of methods to confirm MAOP,<sup>62</sup> is “prioritized using a weighted risk matrix containing numerous risk factors.”<sup>63</sup> In addition, Cascade has already begun implementing “interim measures to

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<sup>54</sup> *Id.*

<sup>55</sup> *Id.*

<sup>56</sup> *Id.*, Section V(B)(8).

<sup>57</sup> *Id.*

<sup>58</sup> *Id.*, Section V(B)(9).

<sup>59</sup> *Id.*, Section V(B)(10).

<sup>60</sup> Narrative, ¶ 24.

<sup>61</sup> *Id.*, ¶ 30.

<sup>62</sup> *Id.*, ¶ 31.

<sup>63</sup> *Id.*, ¶ 32.

ensure the continued safety of [its] system while the compliance program is carried out.”<sup>64</sup>

- 28 In support of the Settlement provisions, the Company states, “[i]t is important to note that there have been no injuries to persons or property associated with the alleged violations ... the violations alleged involve missing documentation and failure to meet a deadline.”<sup>65</sup> Further, Cascade contends that its financial commitment is far greater than the \$1 million initial penalty the Company has agreed to pay. According to Cascade, it is also committing \$6-8 million in 2016 and 2017, with additional monies spent through the 2023 MAOP validation completion.<sup>66</sup> Finally, the Company points out that it has also “agreed to take steps to implement [API 1173], although these particular standards are not required by code.”<sup>67</sup>
- 29 Staff argues that the Settlement conforms with the Commission’s Enforcement Policy, adopted in Docket A-120061, which sets forth 11 factors, including the seriousness of the violations to the public and whether the violations were self-reported, which the Commission can look at “to determine the appropriate scope of enforcement and severity of punishment.”<sup>68</sup> While Staff notes that Cascade did not self-report the violations, Staff is satisfied that the Settlement “reflects the seriousness of [Cascade’s] violations”<sup>69</sup> and “is sufficient to punish the Company for its violations.”<sup>70</sup>
- 30 Cascade did not promptly correct the MAOP violations, but Staff is confident that “the Company understands the scope and gravity of the issue.”<sup>71</sup> Staff supports the penalty payment structure as the “suspended penalties are more appropriate for the Company’s ongoing, systemic failure to maintain compliant MAOP records.”<sup>72</sup> Finally, Staff notes

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<sup>64</sup> *Id.*, ¶ 33.

<sup>65</sup> *Id.*, ¶ 34.

<sup>66</sup> *Id.*, ¶ 36.

<sup>67</sup> *Id.*, ¶ 37.

<sup>68</sup> *Id.*, ¶ 45.

<sup>69</sup> *Id.*, ¶ 47.

<sup>70</sup> *Id.*, ¶ 52.

<sup>71</sup> *Id.*, ¶ 55.

<sup>72</sup> *Id.*, ¶ 65.

that Cascade's agreement to submit to an API 1173 baseline audit "represents a preliminary step as [the Company] works to improve its safety culture."<sup>73</sup>

#### **IV. SETTLEMENT HEARING**

- 31 At the Settlement hearing, Cascade indicated that it has already addressed 16 segments and replaced just under one mile of pipeline.<sup>74</sup> In addition, the Company has tested four of the five highest priority segments to determine grade and then taken those segments out of the high risk range above 30 percent SMYS.<sup>75</sup>
- 32 Mr. Mike Eutsey, in his new role at the Company as Manager of Standards and Compliance, stated that Cascade has created a procedure and a formal policy that will allow tracking of compliance and deadlines.<sup>76</sup> Specifically, the Company "will ensure that all the communication that goes back from [the Company] to [Staff] is then tracked initially through an email process and then formally on our compliance tracker and our important dates log."<sup>77</sup> Mr. Martuscelli added that, had Cascade had the tracking program in place that it has now when it missed its MAOP deadlines, the Company could have been in a better position to keep up on its responsibilities.<sup>78</sup> In addition, Mr. Martuscelli stated that Cascade has created a new department of system integrity within the Company and the future director of this division will be responsible for fulfilling the pledges made by Cascade in this Settlement.<sup>79</sup>
- 33 Cascade also described the six-month reporting requirement in more detail at the Settlement hearing. The Company pledged that it will use the report to alert Staff and the Commission to Cascade's progress on the MAOP validation. Mr. Martuscelli asserted that he "fully intend[s] that we would likely have discussion in between that period, and the six-month update would be a formality to what we've completed at that

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<sup>73</sup> *Id.*, ¶ 69.

<sup>74</sup> Ogden, TR 68:14-17.

<sup>75</sup> *Id.*, TR 68:24-69:2.

<sup>76</sup> Eutsey, TR 25:15-19.

<sup>77</sup> *Id.*, TR 25:20-24.

<sup>78</sup> Martuscelli, TR 27:13-24.

<sup>79</sup> *Id.*, TR 77:2-8.

time.”<sup>80</sup> The parties arrived on six-month updates to Staff and the Commission “so we’re not providing too many updates with too little information.”<sup>81</sup>

34 Cascade also acknowledged that the forbearance provision of the Settlement does not prevent the Staff from recommending and the Commission from imposing additional penalties for similar violations relating to documentation of the MAOP validation if the Company is not complying with the terms and conditions of the Settlement.<sup>82</sup>

35 With regard to paragraph 13 of the Settlement, this provision allows the Company to request modification of the assigned compliance penalty due to delays in compliance caused by “actions of parties beyond the control of [Cascade].” Mr. Martuscelli noted that local governmental permitting and right-of-way issues involved in the MAOP testing of the pipeline segments can be “pretty complicated” and might cause a delay in Cascade meeting a compliance deadline.<sup>83</sup> Staff stated:

Knowing the complexity of doing similar work involved including permitting and things like that, we wanted to at least assure that full compliance is our goal,

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<sup>80</sup> *Id.*, TR 47:16-21.

<sup>81</sup> *Id.*, TR 48:4-8.

<sup>82</sup> Ms. Carson: I think the Commission has the ability to enforce settlement agreements whether or not there are suspended penalties. And with the forbearance provision here, there is forbearance as long as the Company is performing the actions set forth in this agreement. So I think if the Company was to just ignore the TRC deadline, I think the Commission does have steps that it can take other than suspended penalties.

Chairman Danner: So what is the forbearance, then? .... Ms. Carson: You are agreeing to forbear as long as Cascade complies with the actions set forth in this agreement and complies with the terms of this agreement.

[...]

Commissioner Rendahl: ...if the Company does not comply, so in that last sentence, if the Company either is not performing the actions under the agreement or does not comply, then Staff’s agreement to forbear is null and void, and they can go after the Company for failing to comply with the agreement and bring a request for violating the settlement to the Commission. That’s what I understand you saying.

Ms. Carson: That’s my understanding. This forbearance is based on the Company performing the actions set forth in this agreement and complying with the terms of this agreement.

TR 52:7-15, 53:11-17, and 54:10-21.

<sup>83</sup> Martuscelli, TR 58:16-23, 59:4-6, and 59:18.

but that there might be circumstances in which something short of full compliance could be attained at – relative to the timelines especially.<sup>84</sup>

Cascade agreed, pledging that:

Our intent is full compliance with this plan, and should we find ourselves in a position where we think we may not meet one of the deadlines due to permitting or issues such as that, then we need to be connecting with Staff as quickly as we can to have that discussion prior to a deadline being missed...there's just an agreement that we will be in close contact throughout this effort and ensure we're on track, primarily with the six-month updates provided by [Eric Martuscelli, as stated in provision 6 of the Settlement].<sup>85</sup>

- 36 With regard to the Company's commitment to API 1173, Mr. Ogden stated that it had begun the process of searching for a consultant to work with Cascade on aligning "its operations with the standards of [API 1173]."<sup>86</sup> Staff provided Cascade with "some contacts that would be good contractors to look at."<sup>87</sup> From Staff's perspective, the purpose of this provision within the Settlement is to move the Company to an improved quality culture, and Staff would like "to see Cascade take the step forward beyond just compliance but to really look at building their safety culture within their organization."<sup>88</sup>

## V. DISCUSSION AND DECISION

- 37 Pursuant to WAC 480-07-750(1), the Commission will approve settlements when doing so is lawful, 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.

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<sup>84</sup> Rathbun, TR 22:20-25.

<sup>85</sup> Martuscelli, TR 24:1-6 and 24:15-18. Mr. Martuscelli followed up later by stating that, "I think they had suggested earlier that when we are designing these projects and have to get permitting, right-of-way issues can be fairly complicated." TR 58:16-19. He clarified that, if TRC Pipeline Service LLC (TRC) did not complete its records review by the first quarter of 2017, it would not be outside of the Company's control. TR 59:22-23.

<sup>86</sup> Settlement, Section V(B)(8). Ogden, TR 70:23-25.

<sup>87</sup> Ogden, TR 71:2-4.

<sup>88</sup> Rathbun, TR 80:18-81:7.

38 Thus, the Commission considers the individual components of the settlement under a three-part inquiry. We ask:

- Whether any aspect of the proposal is contrary to law.
- Whether any aspect of the proposal offends public policy.
- Whether the evidence supports the proposed elements of the settlement as a reasonable resolution of the issues at hand.

39 The Commission must reach one of three possible results:

- Approve the proposed settlement without condition.
- Approve the proposed settlement subject to one or more conditions.
- Reject the proposed settlement.

40 Cascade admits to failing in its obligation to provide the Commission with its MAOP compliance plan by the August 12, 2015, deadline and failing to maintain compliant MAOP documentation for at least 116 pipeline segments. The Company initially described these violations as simply “missing documentation and failure to meet a deadline,”<sup>89</sup> stressing that “there have been no injuries to persons or property associated with the alleged violations.”<sup>90</sup> We strongly disagree with this characterization. As Staff explained in its Investigation Report and the Narrative, “MAOP records are a basic building block of pipeline safety requirements,”<sup>91</sup> and are “not a mere recordkeeping issue.”<sup>92</sup> Like Staff, we see compliant MAOP documentation as “one of the pillars of pipeline safety ... [and a way the Company can] ensure the physical integrity of its system.”<sup>93</sup>

41 At the Settlement hearing, however, Cascade demonstrated more introspection regarding its failure to maintain accurate MAOP records, and it described the detailed steps the Company is taking not only to rectify the situation but also to prevent such lapses from occurring in the future. Overall, we view the Settlement as a positive step when it is combined with five additional safeguards that will hold the Company accountable for all of the long-term commitments it has made.

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<sup>89</sup> Narrative, ¶ 34.

<sup>90</sup> *Id.*

<sup>91</sup> Staff Investigation Report at 18.

<sup>92</sup> Narrative, ¶ 41.

<sup>93</sup> *Id.*

42 First, the Settlement parses the \$1.5 million suspended penalty among only a few compliance items, leaving several compliance provisions of the settlement without any suspended penalty or consequence for noncompliance. This would appear to limit the Commission's enforcement authority over certain provisions, and sends the wrong message about compliance with settlements. Instead, the suspended penalty should apply to all of the compliance provisions, and the Commission should use its discretion, based upon the severity of any noncompliance, to set the penalty amount, up to and including the full \$1.5 million suspended penalty. We condition our approval of the settlement on the Commission's ability to reimpose any portion of suspended penalties for failure to comply with any provision of the settlement.

43 Second, both Staff and Cascade have discounted the applicability of the Settlement's forbearance provision. The specific language provides that:

Commission Staff agrees to forbear recommending penalties to the Commission if it discovers similar violations relating to MAOP validation pertaining to [Cascade's] high pressure pipe (greater than 60 psig) while [Cascade] performs the actions set forth in this [Settlement] and complies with the terms of this [Settlement].<sup>94</sup>

44 This provision is not unique and was part of a Settlement between Staff and Cascade which was approved by the Commission in 2011.<sup>95</sup> However, that Settlement also included the following language:

Nothing in this Agreement affects the ability of the Staff to recommend penalties or other remedy for any intentional violation of any statute, rule or provision in Cascade's gas safety standards manual, nor any violation of any statute, rule or provision in Cascade's gas safety standards manual that leads to personal injury, death, or property damage. Cascade may contest any such enforcement action based on such a violation or violations, but Cascade will not use anything in this Agreement as limiting any such enforcement action.

45 During the Settlement hearing, Cascade acknowledged that the Settlement's forbearance "has obvious limitations."<sup>96</sup> We agree. The forbearance provision should never preclude

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<sup>94</sup> Settlement, Section V(B)(10).

<sup>95</sup> *Wash. Util. & Transp. Comm'n v. Cascade Natural Gas Corporation*, Docket PG-110443, Order 02, Final Order Accepting Settlement Agreement (Aug. 3, 2011). *See*, Settlement, ¶¶ 18-19.

<sup>96</sup> Carson, TR 82:20-22.



enforcement action in the case of Company violations that lead to death, personal injury, or property damage. As a result, we condition our approval of the Settlement on the ability of both Staff and the Commission to pursue penalties and other remedies for intentional violations of any statute, rule, or provision in Cascade's gas safety standards manual, or for unintentional violations of any statute, rule, or provision in Cascade's gas safety standards manual that lead to personal injury, death, or property damage.

- 46 Third, we are heartened by Cascade's commitment to communicate with Staff via written status reports, at a minimum of six month intervals, to address its MAOP validation progress for all segments missing critical information necessary to validate MAOP and identify and prioritize the risk to public safety. The frequency with which the Company communicates with Staff, though, should increase in the event of significant changes or developments in Cascade's progress. Our approval of the Settlement is thus conditioned on the requirement that the Company consult with Staff more frequently than every six months in the event of significant changes or developments in Cascade's progress in validating its MAOP.
- 47 Fourth, the Settlement provides that the suspended penalties will become due when Cascade fails to "substantially comply" with one of the provisions in the agreement. Staff explained its reasoning for this wording in the Settlement was to instill some flexibility for delays or noncompliance that are beyond the fault of the Company. The Commission has discretion in imposing or abstaining from imposing various remedies for noncompliance, including assessing a portion or all of the suspended penalty, without the caveat of "substantially." This word is superfluous, and given the Company's past lapse in documenting its MAOP validation, inadvisable. Thus, we approve the Settlement conditioned upon the removal of this qualification from Cascade's compliance.
- 48 Finally, within this same provision in the Settlement, the parties stated:
- [Cascade] reserves the right to maintain that substantial compliance has been met, or to request adjustment of the suspended penalties due to delays in compliance by Force Majeure or actions of parties beyond the control of [the Company], or to seek mitigation of the penalty.<sup>97</sup>
- 49 At the Settlement hearing, the Company clarified that "actions of parties beyond the control of CNGC" is limited to circumstances such as obtaining right-of-ways or

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<sup>97</sup> Settlement, Section V(A).

easements to perform pressure testing or securing permits from municipal authorities. Cascade admitted that its contractor, TRC, and TRC's review of the Company's MAOP validation within the completion deadline listed in the Settlement are not "beyond the control of [Cascade]." With this understanding, we agree that actions qualifying as beyond the Company's control should be narrowly construed.

50 We find that the Settlement, with these five conditions, is in the public interest in light of the information available to the Commission, not contrary to law or offensive to public policy, and supported by the evidence as a reasonable solution to the issues at hand.

### **FINDINGS OF FACT**

51 Having discussed above in detail the evidence received in this proceeding concerning all material matters, and having stated findings and conclusions upon issues in dispute among the parties and the reasons therefore, the Commission now makes and enters the following summary of those facts, incorporating by reference pertinent portions of the preceding detailed findings:

52 (1) The Washington Utilities and Transportation Commission (Commission) is an agency of the State of Washington, vested by statute with authority to regulate rates, rules, regulations, practices, and accounts of public service companies, including gas companies.

53 (2) Cascade Natural Gas Corporation (Cascade or the Company) is a "public service company" and a "gas company" as those terms are defined in RCW 80.04.010, and as those terms otherwise are used in Title 80 RCW, and a "pipeline company" as that term is defined in RCW 81.88.010, and used in RCW 81.88 RCW. Cascade is engaged in Washington in the business of transporting natural gas, and supplying utility services and natural gas to the public for compensation.

54 (3) On February 12, 2015, the Commission approved a stipulated agreement between the Company and the Commission's regulatory staff (Staff) that required Cascade to submit its maximum allowable operating pressure (MAOP) validation plan within six months of the Commission's approval of the stipulation.

55 (4) Staff alerted the Company that it had not filed its MAOP validation plan by the August 12, 2015, deadline.

- 56 (5) Cascade filed its first MAOP validation plan on January 29, 2016. Staff reviewed this plan and found it did not comply with the condition in the stipulated agreement.
- 57 (6) The Company filed a revised MAOP validation plan on April 29, 2016. Staff confirmed and Cascade acknowledged that at least 116 of the Company's high pressure pipeline segments were being operated without sufficient MAOP-confirming documentation.
- 58 (7) On July 12, 2016, Staff alleged two causes of action against Cascade in a formal complaint: (1) the Company had violated the Commission's order approving the prior stipulated agreement which required Cascade to file its MAOP validation plan by August 12, 2016; and (2) Cascade failed to maintain records or documentation sufficient to establish, confirm, or validate the MAOP of at least 116 pipeline segments.
- 59 (8) On December 15, 2016, Staff and the Company filed a full settlement agreement (Settlement), which is attached to this Order as Appendix A and incorporated by reference.
- 60 (9) The Commission held a hearing on January 31, 2017, to clarify certain terms and conditions within the Settlement.

**CONCLUSIONS OF LAW**

- 61 Having discussed above all matters material to this decision, and having stated detailed findings, conclusions, and the reasons therefore, the Commission now makes the following summary conclusions of law, incorporating by reference pertinent portions of the preceding detailed conclusions:
- 62 (1) The Washington Utilities and Transportation Commission has jurisdiction over the subject matter of, and parties to, these proceedings.
- 63 (2) Pursuant to WAC 480-07-750, 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.
- 64 (3) With the five conditions listed in paragraphs 42, 45-47, and 49, the Settlement is lawful, its terms are supported by an appropriate record, and the result is consistent with the public interest in light of all the information available to the Commission.

- 65 (4) The Commission should conditionally approve and adopt the Settlement, attached to this Order as Appendix A and incorporated by reference in this Order, as a reasonable resolution of the issues presented.
- 66 (5) The Commission should retain jurisdiction to effectuate the terms of this Order.

**ORDER**

**THE COMMISSION ORDERS:**

- 67 (1) The Settlement Agreement filed by Cascade Natural Gas Corporation and the Commission's regulatory staff on December 15, 2016, which is attached to this Order as Appendix A and incorporated by reference, is approved and adopted subject to the conditions below.
- 68 (2) Cascade will remit the \$1 million penalty within ten business days of the effective date of this Order.
- 69 (3) In its discretion, the Commission may impose any of the suspended \$1.5 million suspended penalty for violations of any of the compliance items listed in the Settlement or in this Order. *See*, ¶ 42 above.
- 70 (4) The forbearance provision in Section V(B)(10) shall not prevent Staff and the Commission from pursuing penalties and other remedies for intentional violations of any statute, rule, or provision in Cascade's gas safety standards manual, or for unintentional violations of any statute, rule, or provision in Cascade's gas safety standards manual that leads to personal injury, death, or property damage. *See*, ¶ 45 above.
- 71 (5) Cascade shall alert Staff to significant changes or developments in Cascade's MAOP validation progress as soon as knowable, even if this communication is more frequent than the six month intervals described in Section V(B)(6) of the Settlement. *See*, ¶ 46 above.
- 72 (6) Any compliance by Cascade short of full compliance with any of the provisions in the Settlement or this Order does not forestall Staff from pursuing or the Commission from imposing any portion of the suspended penalty. *See*, ¶ 47 above.
- 73 (7) The Company may request adjustment of the suspended penalties due to delays in compliance caused by Force Majeure or actions of parties beyond the control of Cascade, pursuant to Section V(A) of the Settlement. The Commission understands "beyond the control of Cascade" as the Company has described it,

as limited to circumstances such as obtaining right-of-ways or easements to perform pressure testing or securing permits from municipal authorities and not including delays that may be caused by its contractor, TRC Pipelines Service LLC. *See*, ¶ 49.

- 74 (8) The Commission retains jurisdiction to effect the terms of this Order.

Dated at Olympia, Washington, and effective March 20, 2017.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

DAVID W. DANNER, Chairman

ANN E. RENDAHL, Commissioner

## **Appendix A**