

**Exhibit No. AR-1T
Docket PG-160924
Witness: Alan Rathbun**

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

**WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,**

Complainant,

v.

PUGET SOUND ENERGY,

Respondent.

DOCKET PG-160924

RESPONSE TESTIMONY OF

Alan Rathbun

**STAFF OF
WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION**

Testimony in Support of Settlement Agreement

May 8, 2017

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1 **I. INTRODUCTION**

2

3 **Q. Please state your name and business address.**

4 A. My name is Alan Rathbun. My business address is 1300 S. Evergreen Park Drive
5 S.W., P.O. Box 47250, Olympia, WA 98504.

6

7 **Q. By whom are you employed and in what capacity?**

8 A. I am employed by the Washington Utilities and Transportation Commission as the
9 Director of Pipeline Safety.

10

11 **Q. Please summarize your educational background.**

12 A. I have a bachelor's degree in civil engineering from the University of Minnesota,
13 which I earned in June 1973.

14

15 **Q. Please summarize your professional experience in the field of pipeline safety.**

16 A. I have served as Director of the UTC Pipeline Safety Program on two occasions. My
17 first appointment began in August 2003 and ended September 2007. I was re-
18 appointed to the position in July 2015.

19

20 **Q. Are you familiar with the history of this docket?**

21 A. I am intimately familiar with the history of this docket. I supervised Staff's
22 investigation, which commenced on the morning of the explosion. I then co-authored
23 Staff's investigation report, which identified the root causes of the blast and

1 recommended appropriate penalties. Finally, I represented Staff throughout the
2 lengthy settlement negotiations that produced the Agreement. I am proud of my team
3 and believe we arrived at an agreement that holds PSE accountable for its past
4 mistakes while ensuring that the company does everything it can to reduce the
5 likelihood of reoccurrence. I readily recommend that the Commission approve the
6 Agreement without modification.

7
8 **II. TESTIMONY IN SUPPORT OF SETTLEMENT**

9
10 **Q. Have you read the testimony of Sebastian Coppola, which Public Counsel filed**
11 **to support its position opposing the agreed monetary penalty?**

12 A. Yes.

13
14 **Q. Remind us what that penalty is, please.**

15 A. Staff and PSE agreed that the company should pay a total penalty of \$2,750,000—
16 less than \$500,000 below the statutory maximum of \$3,200,000. Under the
17 Agreement, the Commission would suspend \$1,250,000 on the condition that PSE
18 completes a comprehensive compliance plan, which the parties refer to as the
19 “Deactivated Gas Line Inspection and Remediation Program.”

20
21 **Q. After reading Mr. Coppola’s testimony, have you had any second thoughts**
22 **about the penalty amount or the suspension provision?**

1 A. No. We negotiated the penalty in good faith, and I believe the amount is
2 appropriately punitive given the facts of this case. At this stage, I don't think the
3 public is served by further litigation over what is, in effect, a small difference in the
4 total penalty. It would better serve the public interest if Staff and Public Counsel
5 instead focused on implementation of the agreed compliance plan.

6

7 **Q. When did Staff first become aware of Mr. Coppola's involvement in this docket?**

8 A. Staff first became aware of Mr. Coppola's involvement during settlement discussions
9 in which he participated via telephone.

10

11 **Q. In Public Counsel's brief opposing Staff's Motion to Strike portions of Mr.
12 Coppola's testimony, Public Counsel claims that "PSE and Staff held several
13 settlement conferences to which Public Counsel was not invited or even aware
14 they occurred until they concluded. Any assertion otherwise is inaccurate and
15 misleading." Do you agree with that statement?**

16 A. No. That statement is in itself inaccurate and misleading. I am not aware of any
17 settlement conferences we had to which Public Counsel was not invited. To the
18 contrary, I feel that Staff was very transparent with Public Counsel throughout this
19 process. We shared all our data and even assisted Mr. Coppola on one occasion in
20 January when he informally requested Staff's analysis. Generally speaking, I think it
21 is unfair for Public Counsel to allege that it was shut out of the negotiations without
22 providing more specifics.

23

1 **Q. To what extent did Mr. Coppola participate in Staff’s investigation of the**
2 **Greenwood incident?**

3 A. He did not participate in any aspect of Staff’s investigation. He based his analysis on
4 his review of Staff’s investigation and PSE’s responses to data requests from Staff
5 and Public Counsel. In his response to PSE Data Request No. 002, Mr. Coppola
6 stated that he prepared no work papers of his own in this case.

7
8 **Q. In Staff’s Investigation Report, Staff references the fact that the gas explosion**
9 **may have been caused in part by human activity. What is the significance of**
10 **that activity in this context?**

11 A. Although an individual or individuals may have disturbed the above-ground pipe in
12 question, resulting in the structural damage leading to the leak and explosion, that
13 fact does not serve to diminish the gravity of the violations. It does, however, serve
14 to mitigate the penalty insofar as it demonstrates that the circumstances leading up to
15 the explosion were neither intentional nor willful on the part of PSE.

16
17 **Q. Mr. Coppola contends that PSE’s failure to have a robust inspection plan to**
18 **ensure the line was deactivated and failure to remove the inactive gas line rise to**
19 **a level of irresponsibility that “approximates an intentional act.” Is this**
20 **contention accurate?**

21 A. No. While the failure to deactivate the service line was a serious error on the part of
22 PSE in 2004, failure to remove the entire inactive service line was not, in Staff’s
23 opinion, a clear violation of the company’s procedures in place at that time. Staff is

1 aware of significant shortcomings in PSE's oversight of its contractors during this
2 time frame. Several orders by the Commission after 2004 dealt with those
3 shortcomings. PSE has made substantial improvements to its operations by
4 complying with those orders. Staff inspects some portion of PSE's operations nearly
5 every year and is therefore in the best position to understand whether PSE's current
6 quality control program is sufficient or deficient. There is no basis on which to
7 describe the error in 2004 as an intentional act.

8
9 **Q. Mr. Coppola identifies several past incidents where PSE failed to follow**
10 **procedures and safety rules. From that, he claims Staff has somehow attempted**
11 **to “diminish the severity of the Number of Violations” and finds that**
12 **disturbing. Do you have a reaction to this claim?**

13 A. Staff strongly disagrees. Staff identified all past enforcement actions taken against
14 PSE by the Commission. In each of these matters, the appropriate penalty was
15 assessed and a compliance plan was negotiated to address the concern. Staff has not
16 once lost sight of PSE's enforcement history before the Commission. I find the
17 suggestion that Staff, through this settlement, has attempted to diminish the severity
18 of the violations to be nothing short of offensive.

19
20 **Q. Does Public Counsel challenge any aspect of the proposed Deactivated Gas Line**
21 **Inspection and Remediation Program?**

22 A. Not initially, no. Public Counsel actively participated in the plan's creation. Despite
23 that fact, Mr. Coppola suggests revisions to the plan in his testimony. Public

1 Counsel’s last-minute change of position is both disappointing and unfair to the
2 settling parties. As Judge Kopta appropriately stated in his recent order, “parties
3 [should] be mindful that sudden and late changes in their positions result in
4 inconvenience, if not prejudice, to the parties who rely on their assertions.”¹

5 I believe the plan is more than adequate as currently written. All parties agree
6 that the plan is comprehensive and thoughtfully drafted. I recommend that the
7 Commission approve the plan as soon as possible. The sooner the Commission
8 approves the plan, the sooner PSE’s inspection and remediation deadlines become
9 effective.

10
11 **Q. Why is Staff satisfied with the agreed \$2.75 million penalty?**

12 A. I stand by the statement in the joint Narrative Supporting Settlement Agreement. I
13 believe that the monetary penalty, when viewed in context of the entire agreement, is
14 consistent with the principles expressed in the Commission’s Enforcement Policy
15 adopted in Docket A-120061. PSE’s failure to cut-and-cap the Greenwood Service
16 Line was a serious blunder that had devastating consequences. The penalty, which is
17 the largest assessed by the Commission in any pipeline-related matter, accounts for
18 those consequences. The company committed no intentional, willful violations and
19 has agreed to a comprehensive compliance plan that will minimize the likelihood of
20 reoccurrence.

21

¹ Order 03 in this docket, at 5, ¶ 14.

1 **Q. Why is it appropriate for the Commission to suspend a portion of the total**
2 **penalty?**

3 A. The Commission’s Enforcement Policy identifies five factors the Commission “will
4 consider in determining whether to suspend a portion of a penalty.”²

5 *(1) Whether this is a first-time penalty for this or a similar violation. This is a*
6 *first-time penalty. Staff does not contend that the company violated a Commission*
7 *order or disregarded prior technical assistance. The facts of this case appear to be*
8 *unique.*

9 *(2) Whether the company has taken specific actions to remedy the violations*
10 *and avoid the same or similar violations in the future. Examples include purchasing*
11 *new technology, making system changes, or training company personnel. The*
12 *company has agreed to implement a compliance plan that will systematically address*
13 *the company’s retired and above-ground service lines. The plan includes training and*
14 *reporting components. The plan has enforceable deadlines.*

15 *(3) Whether the company agrees to a specific compliance plan that will*
16 *guarantee future compliance in exchange for suspended penalties. As previously*
17 *stated, the company has agreed to implement a comprehensive compliance plan. The*
18 *suspended penalty will give the Commission a “hammer” to enforce this plan.*

19 *(4) Whether Staff and the company have agreed that Staff will conduct a*
20 *follow-up investigation at the end of the suspension period and that if a repeat*
21 *violation is found, the suspended penalties are re-imposed. Staff intends to monitor*
22 *the company’s progress in completing the compliance plan. The plan requires the*

² *In re Enforcement Policy of the Commission*, Docket A-120061, Enforcement Policy, at 11, ¶ 20 (Jan. 7, 2013) (“Enforcement Policy”).

1 company to inform Staff of its daily inspection schedule, so that Staff can observe
2 the work. It also requires the company to document all inspection and remediation
3 activity so that Staff can confirm the results. Finally, it requires the company to
4 update the Commission annually through the company's Continuing Surveillance
5 Annual Report.

6 (5) *Whether the company can demonstrate other circumstances exist that*
7 *convince the Commission to suspend the penalties.* Staff is satisfied that the company
8 has taken appropriate action to reduce the likelihood of reoccurrence. As stated in
9 previous testimony, Staff acknowledges that PSE's quality assurance program in
10 2004 had shortcomings. Since that time, Staff has observed substantial improvement
11 in this program, and the Compliance Plan provides additional opportunities for
12 improvement.

13
14 **Q. Should the Commission impose the maximum \$3.2 million penalty authorized**
15 **by statute?**

16 A. No. In my opinion, that penalty would be excessive because it is undisputed that PSE
17 committed no intentional violations. Even Mr. Coppola acknowledges that PSE "did
18 not intentionally fail to deactivate the service line."³

19 The Commission's Enforcement Policy states, "A company that willingly and
20 intentionally violates a Commission requirement may be dealt with more severely
21 than a company that unknowingly committed a violation."⁴ This provision suggests
22 that maximum penalties should be reserved for intentional misconduct—e.g., the

³ Coppola, Exh. No. SC-1T, at 31:3-4.

⁴ Enforcement Policy, at 8, ¶ 15.

1 company (1) ignores previous technical assistance; (2) commits repeat violations;
2 (3) hides or obscures the facts; or (4) otherwise failed to correct a known violation.⁵

3 None of these situations applies here.

4

5 **Q. In hindsight, the Greenwood explosion was preventable. Doesn't that fact weigh**
6 **in favor of a higher penalty?**

7 A. No. The Commission recently dealt with this question in Docket UT-140597, which
8 concerned a statewide 911 outage on CenturyLink's network. As in the present case,
9 Public Counsel opposed the Staff-CenturyLink settlement on the basis that the
10 agreed monetary penalty was insufficient. Public Counsel's primary argument was
11 that CenturyLink could have foreseen and eliminated the computer glitch that caused
12 the outage. The Commission concluded that foreseeability and preventability are not
13 necessarily aggravating factors:

14 No such enhanced penalty is required when a company's violations
15 are unintentional but foreseeable and preventable. *All or virtually all*
16 *violations of Commission requirements are foreseeable and*
17 *preventable, particularly when viewed in hindsight.* CenturyLink
18 could and should have been more aware of the vulnerabilities of the
19 systems and processes on which the Company relied to provision
20 911 service. That lack of awareness, however, is not an intentional,
21 willing, or even knowing violation of applicable law. Under the
22 circumstances presented here, CenturyLink's intent with respect to
23 the violations is neither an aggravating nor a mitigating factor in our
24 assessment of the appropriate penalty.⁶

25
26 The very same logic applies in this case. PSE's misconduct was not intentional
27 merely because the explosion was foreseeable and preventable.

⁵ *Id.*

⁶ *Wash. Utils. & Transp. Comm'n v. Qwest Corp. d/b/a CenturyLink QC*, Docket UT-140597, Order 03, Final Order Approving Settlement Agreement, at 7, ¶ 19 (Feb. 22, 2016) (emphasis added).

1

2

III. CONCLUSION

3

4 **Q. How do you recommend that the Commission proceed?**

5 A. I recommend that the Commission approve the Settlement Agreement without
6 modification.

7

8 **Q. Does this conclude your testimony?**

9 A. Yes.