

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,

Complainant,

v.

CASCADE NATURAL GAS
CORPORATION,

Respondent.

DOCKET PG-150120

ORDER 05

FINAL ORDER APPROVING AND
ADOPTING AMENDED
SETTLEMENT AGREEMENT

- ¹ **PROCEEDING.** On March 29, 2018, Cascade Natural Gas Corporation (CNGC or Company) and the regulatory staff (Staff)¹ (collectively, Settling Parties) of the Washington Utilities and Transportation Commission (Commission) filed an Amended Settlement Agreement (Amended Agreement), attached to this Order as Appendix A and incorporated by reference in this Order. The Settling Parties request that the Amended Agreement supersede and replace Order 01 in the proceeding and the original Settlement Agreement (Settlement) approved and accepted by the Commission in Order 03.

MEMORANDUM

- ² **BACKGROUND.**² On July 12, 2016, Staff filed a Complaint against the Company, 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. Staff asserted that CNGC violated Order 01 in this docket, entered February 12, 2015, when the Company did not submit its maximum allowable

¹ 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.

² There is a great deal of procedural history associated with this docket, much of which has already been touched upon in Order 03. It will not be repeated here unless directly relevant to the Amended Agreement.

operating pressure (MAOP) compliance plan by the August 12, 2015, deadline.³ Staff also alleged that the Company failed to maintain required 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).⁴

3 On December 15, 2016, Staff and the Company filed a Settlement Agreement that imposed a \$2.5 million penalty on CNGC, with \$1 million of the penalty due immediately. The remaining \$1.5 million of the penalty was suspended pending the Company's compliance with specific tasks by their respective deadlines.⁵ Some of the relevant areas of compliance the parties negotiated are as follows:

§B(1)(b) CNGC will complete validation of the five segments it has identified as operating at 30 percent specified minimum yield strength (SMYS) or above that are missing critical information necessary to document the basis for validation of MAOP by December 31, 2017.

§B(1)(c) The Company retained TRC Pipelines Service LLC (TRC) to complete a records review of all remaining pipelines operating above 60 psig [pounds per square inch gauge]. The TRC MAOP records review will be completed by the end of the first quarter of 2017.

§B(1)(d)(i) The Company will submit an updated timeline/plan that includes additional segments to Staff by December 31, 2017.

§B(1)(d)(ii) CNGC and Staff will file an Amended Settlement Agreement by March 31, 2018, that reflects a completion date by which CNGC will document the basis for validation of all high pressure (greater than 60 psig) MAOP for the additional segments identified by TRC. The Amended Settlement Agreement will include a \$500,000 suspended penalty, imposed in full if the Company fails to comply with the completion date associated with any new high pressure segments identified by TRC.

³ Complaint ¶¶ 18-20.

⁴ *Id.* ¶¶ 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.

⁵ Settlement, §B.

§B(7) CNGC will submit to a third-party audit to determine baseline variance from the standards set forth in American Petroleum Institute (API) Recommended Practice 1173, Pipeline Safety Management Systems. Staff will provide input on the selection of the consultant. At a minimum, the audit will review the following company elements:

- a. Leadership and management commitment,
- b. Stakeholder engagement,
- c. Risk management,
- d. Operational controls,
- e. Incident investigation, evaluation, and lessons learned,
- f. Safety assurance,
- g. Management review and continuous improvement,
- h. Emergency preparedness and response,
- i. Competence, awareness, and training, and
- j. Documentation and record keeping.

Upon completion of the audit, the Company will submit the consultant's report to the Commission. The third-party audit and written report will be completed by December 31, 2017. The Commission will impose a \$500,000 suspended penalty if CNGC fails to submit the consultant's report by December 31, 2017.

- 4 On January 31, 2017, the Commission convened a hearing to clarify the terms and conditions of the Settlement. The forbearance provision in particular caused some concern for the Commission. That condition stated:

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 performs the actions set forth in this [Settlement] and complies with the terms of this [Settlement].⁶

- 5 CNGC explained its understanding of this provision as follows:

There is forbearance as long as the Company is performing the actions set forth in this [Settlement]. 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 ... [for] a violation of a settlement agreement and a Commission order, [the Commission would] have all the remedies that you

⁶ Settlement, §B(10).

always have available for that... This forbearance is based on the Company performing the actions set forth in this agreement and complying with the terms of this agreement.⁷

Staff also indicated that it viewed the forbearance language as allowing some flexibility for CNGC. It recognized that the third-party auditor was likely to find additional segments without validation such that these segments, as part of the original proceeding, should not be penalized separately but “fold[ed] into your list and you have to get [to] it all by 2023.”⁸ The Company agreed and stated that “there are limitations obviously to this forbearance provision.”⁹

6 On March 20, 2017, the Commission approved and adopted the Settlement with conditions in Order 03. As discussed below, two of the five conditions imposed by the Commission have particular relevance to the Amended Agreement. First, the Commission conditioned approval of the Settlement on “the suspended [\$1.5 million] penalty apply[ing] to all of the compliance provisions.”¹⁰ In addition, the Commission ordered that “[t]he forbearance provision should never preclude enforcement action in the case of Company violations that lead to death, personal injury, or property damage.”¹¹

7 **AMENDED AGREEMENT.** On March 29, 2018, Staff and CNGC filed an Amended Agreement as required by the original Settlement §B(1)(d)(ii), which stated:

CNGC and Commission Staff will file an Amended Settlement Agreement with the Commission by March 31, 2018, that reflects a completion date by which CNGC will document the basis for validation of all the high pressure (greater than 60 psig) MAOP for the additional segments identified by TRC.¹²

⁷ Carson, TR 52:10-15; 53:7-10; 54:18-21.

⁸ Beattie, TR 81:15-20.

⁹ Carson, TR 82:21-22.

¹⁰ *Wash. Util. & Transp. Comm’n v. Cascade Nat’l Gas Corp.*, Docket UG-150120, Order 03 ¶ 42.

¹¹ *Id.* ¶ 45.

¹² The Settlement also provided that TRC would complete its review of the Company’s MAOP records and identify additional pipeline segments operating above 60 psig which are missing critical information necessary to document the basis for MAOP validation by the end of the first quarter of 2017. Settlement, §B(1)(d). CNGC would then incorporate any additional pipeline segments found by TRC to be operating above 60 psig without documentation for its MAOP validation and submit an updated timeline/plan to Staff by December 31, 2017. On December

8 In the Narrative Supporting the Amended Agreement, CNGC and Staff state they agreed to revise the work schedule detailed in the Settlement “to more adequately address risk for the entire population of segments and facilities missing critical documentation to validate MAOP.”¹³ The modified timeline/plan does not focus on mileage of pipeline segments completed, as the Settlement did, and instead it requires the Company to validate the MAOP of the higher to moderate risk segments and facilities with a risk score of 75 or greater by December 31, 2023, and to validate the MAOP of the lower risk segments and facilities with a risk score below 75 by December 31, 2028.¹⁴ In determining the risk score for each pipeline segment and facility, the Company considered the following factors:

- Percent specified minimum yield strength (SMYS) of pipe and fittings based on the most stringent criteria for missing pipe characteristics,
- Available pressure test records,
- Number of high consequence areas on pipeline segment,
- Segment class location,
- Low frequency electric resistance welded and unknown seam types when percent SMYS greater than 25 percent,
- Pipe vintage with special consideration for pre-code pipe with unknown characteristics,
- Pipe material, installation characteristics, or maintenance records that indicate increased risk, and
- Segment length.¹⁵

9 The Company has identified eight additional segments currently operating at 30 percent SMYS or above that are missing critical information needed to document the basis for validation of MAOP.¹⁶ Unless the percent SMYS of a pipeline segment is reduced

29, 2017, the Company filed an updated timeline/plan for additional segments identified by TRC as operating above 60 psig without the information necessary to document the basis for MAOP validation. TRC found 2,553 additional segments and 336 facilities missing documentation to confirm the current MAOP. MAOP Determination & Validation Plan at 5 (December 2017).

¹³ Narrative Supporting Amended Agreement ¶ 24.

¹⁴ Amended Agreement, §B(1)(a)(i)-(ii).

¹⁵ Narrative Supporting Amended Agreement ¶ 25.

¹⁶ Amended Agreement, §B(1)(a)(iii).

below 30 percent through testing or other approved validation means, CNGC will complete validation of the eight additional segments by December 31, 2018.¹⁷

- 10 Finally, the Company and Staff recommend that the Commission waive \$500,000 of the remaining \$1.5 million suspended penalty. The Settling Parties explain that the \$500,000 penalty was associated with fulfillment of a condition that required CNGC to submit to a third-party audit, performed by Jacobs Consultancy, to determine the Company's baseline variance from the standards set forth in API Recommended Practice 1173, Pipeline Safety Management Systems.¹⁸ CNGC filed the written audit report from Jacobs Consultancy on December 14, 2017.¹⁹ The parties assert that this condition has been fulfilled and that the corresponding penalty should be removed.²⁰ Further, the remaining \$1 million suspended penalty shall continue in effect until CNGC completes "the documentation of the validation of MAOP for its pipeline segments and facilities operating above 60 psig, and has otherwise complied with the Revised Compliance Program [set forth in the Amended Agreement]," on or before December 31, 2028.²¹
- 11 The Settling Parties contend that the Company has worked diligently to fulfill its responsibilities under the Settlement and has taken interim steps providing "for the continued safety of CNGC's system while the Revised Compliance Program is carried out."²² They cite to such interim steps as 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).²³ Staff and the Company conclude that these steps "are best practices that will enhance the long-term integrity of [CNGC's] system."²⁴

¹⁷ *Id.*

¹⁸ Amended Agreement ¶ 15.

¹⁹ *Id.*

²⁰ Narrative Supporting Amended Agreement ¶ 38.

²¹ *Id.* ¶ 12.

²² Narrative Supporting Amended Agreement ¶ 39.

²³ *Id.*

²⁴ *Id.* ¶ 43.

DISCUSSION AND DECISION

- 12 When reviewing a settlement, the Commission considers whether approval of the agreement is lawful, the settlement terms are supported by an appropriate record, and whether the result is consistent with the public interest in light of all the information available to the Commission.²⁵ We may approve the proposed settlement without condition, approve the proposed settlement subject to one or more conditions, or reject the proposed settlement.
- 13 In the year since we approved the original Settlement, CNGC has completed validation for five of the highest risk pipeline segments identified in the Settlement hearing, incorporated the additional segments identified by TRC into a formal plan for validation of MAOP, prioritized validation of the additional segments based on relevant risk factors. All of these actions met the deadlines contained in the Settlement. Staff agrees that the Company has worked diligently to comply with the terms of the Settlement and collaborated with Staff to determine a reasonable timeline for validating MAOP that advances public safety. CNGC has reduced operating pressure on its unvalidated pipeline segments, conducted additional leak surveys, accelerated action on any leaks or repairs associated with the identified segments, and incorporated specific segments into its TIMP. Each of these measures also further the public interest and public safety.
- 14 Through all of these actions, the Company has demonstrated its commitment to compliance with the Settlement. For this reason we find it reasonable to grant the parties' request to waive \$500,000 of the suspended penalty. Consistent with our decision in Order 03, we do not believe this amount should be associated with or tied to compliance of the condition that CNGC submit to a third-party audit to determine the Company's baseline variance from the standards set forth in API Recommended Practice 1173. Further, the remaining \$1 million suspended penalty should serve as a strong incentive for fulfillment of the provisions in the Amended Agreement. The remaining suspended penalty shall remain in effect until CNGC has completed all of its obligations under the agreement, and the entirety of the remaining suspended penalty shall apply to all of the conditions. We will not parse out any of the suspended penalty for individual commitments within the Amended Agreement.
- 15 The "forbearance" provision within the Amended Agreement does not preclude enforcement action if CNGC fails to fulfill its obligations under statute, rule, or provisions in the Amended Agreement. Moreover, as we clearly stated in Order 03, our approval of the Amended Agreement is based upon "the ability of both Staff and the

²⁵ WAC 480-07-750(1).

Commission to pursue penalties and other remedies for intentional violations of any statute, rule, or provision in CNGC's safety standards manual, or for unintentional violations that lead to personal injury, death, or property damage."²⁶

- 16 Based on the above discussion, we find that the Amended Agreement is in the public interest in light of the information available to the Commission, not contrary to public law or offensive to public policy, and supported by the evidence as a reasonable solution to the issues at hand.

FINDINGS OF FACT

- 17 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:
- 18 (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.
- 19 (2) Cascade Natural Gas Corporation (CNGC 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. CNGC is engaged in Washington in the business of supplying utility services and natural gas to the public for compensation.
- 20 (3) On March 20, 2017, the Commission approved a Settlement Agreement (Settlement) between the Company and the Commission's regulatory staff (Staff). The Settlement imposed a \$2.5 million penalty, of which \$1 million was due following approval of the Settlement, and \$1.5 million was suspended pending completion of several conditions within the Settlement.
- 21 (4) Among other things, the Settlement required CNGC to: (1) document the basis for validation of the maximum allowable operating pressure (MAOP) for the five highest risk pipeline segments by December 31, 2017; (2) retain TRC Pipelines Service LLC (TRC) to complete a review of the Company's records to identify all remaining pipelines operating above 60 pounds per square inch gauge (psig) without critical information necessary to confirm the basis for

²⁶ Order 03 ¶ 45.

validation of MAOP by the end of the first quarter of 2017; (3) submit a plan to Staff for validation of MAOP that includes the additional segments by December 31, 2017; (4) collaborate with Staff to file an Amended Settlement Agreement (Amended Agreement) by March 31, 2018, that reflects a completion date for all the high pressure MAOP for the additional segments identified by TRC; and (5) submit to a third-party audit to determine baseline variance from the standards set forth in American Petroleum Institute Recommended Practices 1173, and subsequent filing of the audit findings with the Commission by December 31, 2017.

- 22 (5) On December 14, 2017, the Company filed the third-party audit findings of Jacobs Consultancy to review gaps in CNGC's pipeline safety culture and management systems.
- 23 (6) On December 29, 2017, CNGC filed its updated plan for validation of MAOP of the additional segments identified by TRC.
- 24 (7) On March 29, 2018, the Company and Staff filed an Amended Agreement, attached to this Order as Appendix A and incorporated by reference in this Order, which requires CNGC to document the basis for validation of the MAOP on all segments and facilities having a risk score of 75 or higher by December 31, 2023, and on all of the segments and facilities having a risk score of less than 75 by December 31, 2028.
- 25 (8) The Amended Agreement also contained a provision recommending that the Commission waive \$500,000 of the suspended penalty to reflect that the Company has complied with the Settlement provision mandating that CNGC file with the Commission the findings of the third-party audit to determine baseline variance from the standards set forth in API RP 1173.

CONCLUSIONS OF LAW

- 26 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:
- 27 (1) The Washington Utilities and Transportation Commission has jurisdiction over the subject matter of, and parties to, these proceedings.
- 28 (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.

- 29 (3) CNGC has met a number of conditions and requirements within the Settlement, including a requirement directing it to file the third-party audit to determine the Company's baseline variance from the standards set forth in American Petroleum Institute Recommended Practice 1173 by December 31, 2017.
- 30 (4) Because the Company has demonstrated its commitment to compliance with the Settlement by its significant progress on its Settlement commitments, the Commission should grant the Settling Parties' request to waive \$500,000 of the suspended penalty.
- 31 (5) The remaining \$1 million suspended penalty should continue in effect until the last condition in the Amended Agreement is fulfilled and should apply to all of the conditions in the agreement.
- 32 (6) The forbearance provision in the Amended Agreement does not forestall the Staff or Commission from pursuing enforcement action if CNGC fails to fulfill its obligations under statute, rule, or provisions in the Amended Agreement, for intentional violations of any statute, rule, or provision in CNGC's safety standards manual, or for unintentional violations that lead to personal injury, death, or property damage.
- 33 (7) We find the Amended Agreement 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.
- 34 (8) The Commission should approve and adopt the Amended Agreement.
- 35 (9) The Commission should retain jurisdiction to effectuate the terms of this Order.

ORDER

THE COMMISSION ORDERS:

- 36 (1) The Amended Settlement Agreement (Amended Agreement) filed by Cascade Natural Gas Corporation (CNGC or Company) and the Commission's regulatory staff on March 29, 2018, which is attached to this Order as Appendix A and incorporated by reference, is approved and adopted.
- 37 (2) The Commission grants CNGC's and Staff's request to waive \$500,000 of the suspended penalty. The remaining \$1 million suspended penalty will continue in effect until the last condition in the Amended Agreement is fulfilled and shall apply in its entirety to all of the conditions within the agreement.

- 38 (3) The Commission may impose any of the remaining suspended \$1 million penalty for violations of any of the compliance items listed in the Amended Agreement or in this Order.
- 39 (4) The forbearance provision in the Amended Agreement shall not prevent an enforcement action if CNGC fails to fulfill its obligations under statute, rule, order, or provisions in the Amended Agreement, preclude Staff and the Commission from pursuing penalties and other remedies for intentional violations of any statute, rule, or provision in CNGC's gas safety standards manual, or for unintentional violations of any statute, rule, or provision in CNGC's gas safety standards manual that leads to personal injury, death, or property damage.
- 40 (5) The Commission retains jurisdiction to effect the terms of this Order.

Dated at Olympia, Washington, and effective June 13, 2018.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

DAVID W. DANNER, Chairman

ANN E. RENDAHL, Commissioner

JAY M. BALASBAS, Commissioner

NOTICE TO PARTIES: This is a Commission Final Order. In addition to judicial review, administrative relief may be available through a petition for reconsideration, filed within 10 days of the service of this order pursuant to RCW 34.05.470 and WAC 480-07-850, or a petition for rehearing pursuant to RCW 80.04.200 and WAC 480-07-870.

Appendix A