[Service Date July 25, 2002]

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION,	)	DOCKET NO. UG-001116
Complainant,	)	
v.	)	COMMISSION ORDER ACCEPTING SETTLEMENT
PUGET SOUND ENERGY, INC.,	)	
Respondent.	)	
. . . . .	)	

SYNOPSIS: *The Commission issued a complaint alleging that Puget Sound Energy, Inc. (PSE), Respondent, allowed its anti-drug and alcohol misuse prevention program to lapse during the period 1997 to 2000, contrary to Commission rules. The Commission simultaneously accepts a proposal by Commission Staff and the Respondent to settle the complaint without hearing by payment of penalties in the amount of $50,000 and by investment of $56,000 in process improvements. Chairwoman Marilyn Showalter dissents.*

I. SUMMARY

1 **PROCEEDINGS:** The Washington Utilities and Transportation Commission's Pipeline Safety Staff conducted an inspection of Puget Sound Energy, Inc.'s, anti-drug and alcohol misuse prevention program on July 12, 2000. On July 10, 2002, the Commission issued a Complaint alleging that Puget violated WAC 480-93-010, which adopts and incorporates Title 49 of the Code of Federal Regulations ("CFR"), Part 199, by failing to maintain an anti-drug and alcohol misuse prevention plan for its covered gas pipeline employees during the years 1997 through 2000.

2 **SETTLEMENT AGREEMENT:** On July 10, 2002, the Commission Staff and Puget ("Parties") filed a Settlement Agreement that proposes to resolve all issues raised in the Complaint.

II. MEMORANDUM

3 On July 12, 2000, Commission Pipeline Safety Staff conducted a drug and alcohol program inspection of Puget. On July 10, 2002, the Commission issued a Complaint alleging violations of WAC 480-93-010, which adopts the provisions of 49 CFR Part 199. The Parties have reached agreement on the resolution of the issues raised by the Complaint and voluntarily entered into the attached Settlement Agreement. The Settlement Agreement reflects the Parties' proposal to the Commission for resolution of all outstanding issues alleged in the Complaint and constitutes a Settlement Agreement within the meaning of WAC 480-09-466.

4 In summary, the Settlement Agreement provides for the following actions to be taken by Puget to resolve the outstanding Complaint:

> (1) Puget will pay the Commission penalties totaling $50,000 for apparent violations of WAC 480-93-010 (Compliance with certain federal standards required), which adopts and incorporates 49 CFR, Part 199. Puget will continue to act in compliance with the substance abuse plan for covered employees that it instituted in March 2001 (the "2001 Plan"), including random drug testing at a rate equal to or greater than the required minimum level. The 2001 Plan complies with WAC 480-93-010 and 49 CFR, Part 199.
>
> (2) Puget will spend an amount totaling approximately $56,000 to implement an anti-drug and alcohol misuse awareness-training program for all of its employees. This additional training will consist of a 30-minute mandatory training session for all employees covering Puget's "Substance Abuse Plan for Covered Employees" and Puget's "Substance Abuse Plan for Non-Covered Employees." The cost of this program shall be paid for with shareholder funds, and will not be recovered through rates.

5 The Company failed to meet the drug testing requirements of WAC 480-93-010 and 49 CFR, part 199, during a four year period and had no such testing program for a considerable portion of that time. The Company acknowledges the existence of facts from which the Commission could conclude that it had violated the rule, and proposes along with Commission Staff that the Commission simultaneously issue a complaint against it and accept a settlement between the parties that provides for payment of a penalty but no formal acknowledgment of existence of a violation.

6 The circumstances of this event are of grave concern to the Commission. There is a clear link between substance abuse impairment of key personnel and risk of hazard in the transportation of natural gas. The questions that we face in this docket are how to respond to those circumstances.

7 We recognize that the primary function of penalties is to gain compliance. The direct concern of any penalty is compliance by an accused violator. An additional concern is the demonstration to other regulated entities and the public that the while the Commission encourages compliance, it will take appropriate action, including the assessment of penalties, when it discovers violations.

8 In accepting a settlement that proposes a penalty, the Commission will look to see whether the proposal is proportioned to the gravity of the apparent violations and to assure against future violations.[1] In setting the amount of a penalty, it is appropriate to consider many factors. These include the seriousness of the violations; the circumstances of the violation, including whether the violation is intentional; the cooperation of the respondent and its willingness and achievements in rectifying violations; the frequency of violations, and cooperation in investigations; whether or not the violation has been corrected; and the possibility of recurrence.

9 Here, we are satisfied that both the agreed sanctions and the process are appropriate.

10 **Seriousness of the violation.** Unquestionably, this is a serious violation. We may never know whether lack of the required testing program allowed an impaired person to make critical judgments that will contribute to a future incident. It is a very serious matter and warrants substantial action.

11 **Circumstances of the violation.** The program was allowed to lapse in the period after Puget Power merged with Washington Natural Gas to become PSE. The circumstances are by no means excusable, but they appear to be an isolated – albeit serious – event.

---

[1] *Order M.V. No. 136510, In re Joe Sicilia, Inc., app. No. H-4969 (Sept., 1967).*

12 **Cooperation and attitude.** The Company appears to have been cooperative following discovery of the problem. It did not delay progress toward rectifying the problem, and it has taken appropriate corrective action by bringing the testing program into complete compliance. Its attitude, particularly under new corporate leadership, has been positive.

13 **Gaining compliance; likelihood of recurrence.** Commission Staff is satisfied, as are we, that the company remains in full compliance and that the likelihood of recurrence of this violation is nil.

14 **Effect of a penalty.** A penalty should send a message, both to companies who violate the law and to others who are watching. The message must be clear, however, and it must be thoughtfully applied. An appropriate penalty must strike the right balance and send the right message. It must be large enough to connote the significance of the violation, yet appropriately scaled to recognize the degree of cooperation and correction obtained from the respondent. Here, a substantially larger penalty could discourage this or other regulated companies from disclosing problems that they discover and could impair their willingness to cooperate in correcting them. The sanctions imposed in this order include a penalty and also include program enhancements at shareholder expense that might not be otherwise obtainable. We are satisfied that an acceptable balance has been struck.

15 **Value of settlement and appropriateness of the settlement process.** The process by which this matter comes to the Commission is satisfactory and appropriate. By cooperating in a settlement process, the Company shares responsibility and ownership of the process and the result. While adjudications are an appropriate means of dispute resolution, they are not the only means. We believe that a less adversarial process is more likely to achieve a global resolution of issues and less likely than litigation to encourage hiding of relevant facts.

16 The state's Administrative Procedure Act encourages settlements, RCW 34.05.060, as does the Commission's procedural rule, WAC 480-09-466. The Commission has the full authority and the responsibility to inquire into and make an independent decision about a settlement proposal and its practical and policy implications. The Commission has full authority to accept or reject a proposed settlement and to enter into an adjudication.

17 Here, we are satisfied that the process was appropriate, that we have had a sufficient opportunity to review the underlying facts and circumstances, that the sanctions are sufficiently large to connote the seriousness of the Company's failures, and that the penalty is not so large as to discourage regulated companies from promptly correcting violations and from cooperating with the Commission while exercising its regulatory responsibilities.

18 We accept the settlement proposed jointly by the Company and Commission Staff, and adopt it as our own in this order.

III. FINDINGS OF FACT

19 The Washington Utilities and Transportation Commission is an agency of the State of Washington, vested by statute with authority to regulate in the public interest the rates, services, facilities, and practices of all persons engaging within this state in the business of supplying any utility service or commodity to the public for compensation, and related activities, including gas companies.

20 (1) Puget Sound Energy, Inc., is a privately owned company that engages in the business of providing electric and natural gas services for profit within the State of Washington.

21 (2) On July 10, 2002, the Commission issued a Complaint in which it alleged that Puget had violated Commission rules that adopt and incorporate federal regulatory standards relating to maintaining anti-drug and alcohol abuse prevention activities.

22 (3) On July 10, 2002, Staff and Puget filed a Settlement Agreement to resolve the alleged violations cited in the Commission's Complaint.

IV. CONCLUSIONS OF LAW

23 The Washington Utilities and Transportation Commission has jurisdiction over the subject matter and the parties. Chapters 80.04 and 80.28 RCW.

24 (1) The Settlement Agreement, which is attached to this Order as Appendix A, is consistent with the public interest.

25 (2) The Settlement Agreement fully and fairly resolves the issues pending in Docket No. UG-001116. The terms of the Settlement Agreement should be accepted and adopted as the Commission's own as though set out herein.

26 (3) The Commission retains jurisdiction to effectuate the provisions of this order.

V. ORDER

27 THE COMMISSION ORDERS THAT The terms of the Settlement Agreement, as signed by representatives for the Parties and as set out in the attachment to this order, are hereby accepted and adopted by the Commission as its own for purposes of this proceeding. In doing so,

28 THE COMMISSION DISMISSES The Complaint, subject to PSE's payment of penalties specified in the Settlement Agreement no later than seven days following the date of this Order.

DATED at Olympia, Washington, and effective this ____ day of July, 2002.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

RICHARD HEMSTAD, Commissioner

PATRICK J. OSHIE, Commissioner

29 MARILYN SHOWALTER, Dissenting:

30 With the approval of this Settlement Agreement, both the Commission and Puget Sound Energy fail to live up to their responsibilities for pipeline safety. For *four years*, PSE had virtually no drug-testing program to speak of, much less one that meets numerous state and federal requirements. These requirements are designed to ensure that the men and women who make *judgments* when burying, repairing, and operating natural gas pipelines—judgments that can have life-or-death consequences long into the future—are not affected by alcohol or drugs. The gaping breadth and gravity of PSE's abdication cannot be squared with the Settlement Agreement in which PSE expressly denies it committed any violation. If PSE will not admit a violation, the Commission should proceed to hearing, and, if a violation is found, impose an appropriate penalty.

31 I begin with general observations, in Part A, on the subject of enforcing public safety rules, including settlement of enforcement actions, after which I will turn, in Part B, to the particulars of the Settlement Agreement itself.

A. GENERAL CONSIDERATIONS IN ENFORCING PUBLIC SAFETY RULES

1. Principles

32 Safety standards, including pipeline safety rules, exist to protect us from danger and injury. Cars, trucks, boats, airplanes, trains, and electrical appliances, and pipelines—just to name a few—are subject to rules that cover both how these items are manufactured and how they are operated. Most of the regulations are relatively objective: the speed limit is 60 mph, the pipeline thickness must be so many millimeters, blood alcohol level may not exceed .08, etc. Other rules may be less precise, but compared to economic regulation, which requires navigating complex economic, financial, and technological dynamics among multiple parties, safety regulation is relatively straightforward.

33 Enforcement of safety regulations is an exercise of police power, that is, of the authority of the government to impose restrictions for the sake of public welfare, order, and security. Violation of these regulations is subject to civil penalties (or, in the case of criminal laws, to criminal penalties). Usually the regulator, who has the job of enforcing the regulations, enjoys some degree of discretion in pursuing and punishing violations. The regulator exercises prosecutorial discretion in deciding

whether to investigate a violation, and in deciding whether to bring a complaint or charge. The regulator enjoys judicial discretion in deciding what kind of fine or other sanction may be appropriate.

34 The general considerations in determining an appropriate enforcement response to a violation include:

a) Specific deterrence

35 The response should deter the violator from offending again.

b) Rehabilitation

36 It may be appropriate to require the violator to undertake steps to correct the condition which led to the violation.

c) General deterrence

37 The response should send appropriate signals to other violators, would-be violators, non-violators, and the general public. These signals should foster adherence to the law.

d) Justice

38 Justice operates both as a minimum and maximum constraint. The response should be appropriate to the gravity of the offense. If the response is too harsh or over-reaching, it will be perceived as unfair to the violator or as an abuse of government power. If the response is too lenient, it will be seen as preferential and lax. There may, of course, exist individual mitigating circumstances, which justice (and mercy) may accommodate when warranted. Regulators should work toward fair and even-handed responses that uphold their responsibility to protect the public and inspire public trust in them to do so.

39 These principles are not always easy to balance, and different decision-makers will balance them differently. But regulators should be balancing *all* of these principles, not ignoring some of them. As I will discuss later, I think that the principles of general deterrence and justice have gotten short shrift in the Settlement Agreement.

2. Settlement Considerations

40 In a settlement agreement, the litigating parties present to the regulator a proposed resolution of the dispute. In the case of pipeline safety regulation, Commission Staff acts in an investigative and prosecutorial role, and the Commission acts in a quasi-judicial role. Unlike settlements of price-regulation cases, which typically involve many murky issues disputed by multiple parties, settlements of safety-regulation disputes typically involve two parties—the Staff and the regulated company—and determine a) whether a violation (or multiple violations) occurred and b) the appropriate response.

41 In evaluating how to respond to a violation of a safety rule, the Commission should weigh all of the principles discussed above. In the case of settlement agreements (as distinct from fully adjudicated cases), there may be some additional considerations.

a) Conservation of Resources

42 Fully litigating a contested case costs the time and money of the Commission and of the parties. In a world where the demand for government and corporate resources always exceeds the supply, it is surely a benefit to avoid these costs. This potential benefit, however, should be measured realistically. First, is the cost really being avoided? That is, if the parties do not reach a particular settlement, will the case actually go to a full adjudication before the Commission? In a contested rate case, there is no alternative. With respect to many safety violations, however, the Staff already has expended considerable resources thoroughly investigating the violation, with the result that the real dispute focuses not so much on the fact of a violation as on the consequences of it. In this situation, the parties negotiate over the penalty or other consequences, but if they fail to reach agreement, the regulated company will not necessarily want to proceed to a full-blown hearing. If the case does go to hearing, the considerable resources already expended in the investigation stage, in which the Staff and the company generally have become very familiar with the facts and issues, reduce the incremental costs of the hearing itself.

43 Second, the costs *and time* of trying to negotiate a settlement may be greater than simply going to hearing. Especially in cases where the underlying facts of a violation are not really contested—only the consequences are—the costs of lawyers and

managers engaged in rounds of settlement discussions may well exceed the costs of filing complaint, calling for an answer, and promptly proceeding to hearing, in the event a hearing actually is requested. A straightforward and prompt finding of violation and imposition of a penalty (or mitigation of penalty) may save everyone time and money. Indeed, this is how many violations of our transportation regulations are handled, and they are handled successfully and efficiently.

44 Third, and most important, the benefit of avoiding the costs of litigation must be weighed against the substantive provisions of the settlement agreement. If the alleged violation is grave but the proposed penalty is inappropriate, the settlement should be rejected and the costs of litigation endured. It is only by being willing to back up a serious charge with a full adjudication that the integrity of any enforcement system is maintained.

b) The Value of Reaching a Consensus

45 When parties can reach an agreement on the fair disposition of a contested case, their common sense of achievement, of reaching a meeting of the minds, and of cooperating together are thought to help form relationships that foster cooperation and understanding in addressing subsequent difficult issues, which continually arise in the regulatory environment. Further, just the fact that two or more "opposing" parties have found their way to agreement gives confidence that a fair result has been reached.

46 This theory has its limits, however, and even has a dark side. The close focus that parties give a particular case can cause them to lose the broader perspective of where the case fits in the scheme of things. The natural desire to resolve a conflict, the closed universe of a negotiation, and the interpersonal sympathies and pressures that develop in regulatory relationships can disorient one's enforcement compass and obscure one's general sense of direction. When this mis-orientation becomes chronic, critics will charge that a regulatory agency has been "captured" by those it regulates, and that a cooperative relationship is no more than a "cozy" relationship. At this time, for example, there are national charges that corporate officers, their supposedly independent accountants, and relevant regulators all have failed in their responsibilities, out of excessive and self-interested concern for the short term and a lack of long-term perspective (and moral backbone). This dynamic points out that reaching a consensus has little value if the consensus is not faithful to the

fundamental principles that should be guiding those achieving it. An important function of the Commissioners—who are not part of the negotiations that lead to the consensus among parties—is to act as an independent check, a fresh set of eyes, on the settlement agreement to ensure that the parties have not lost sight of any important principles.

c) Concessions and Conditions

47 Proposed settlements commonly contain concessions, which reduce the sanctions that potentially could have been imposed. These might include a finding of only one or two violations, when several were originally alleged; penalty amounts that are lower than what might have been imposed; partial or full suspension of penalty amounts; and even, as is the case here, an agreement not to find violation at all. Settlements also may contain conditions, which the violator agrees to perform. Failure to perform often brings the prospect of further sanctions.

48 In evaluating a proposed settlement containing concessions and conditions, it is useful to compare it to the straightforward application of the penalty statute that governs the proceeding. The basic sequence contemplated by most penalty statutes is: complaint alleging violations; admission of the violation or hearing to determine if there has been one; finding of a violation; penalty. Settlements that deviate from or this basic sequence should be justified in light of the general principles discussed above.

49 Of all things that might be conceded, the one that matters most is whether there is a finding of a violation. Without such a finding, there is no official record that a violation of a rule or law has occurred. Officially, *it did not happen*. Without such a finding, other jurisdictions have no official knowledge of misbehavior. Without such a finding, it is questionable, in my view, whether "penalties" may even lawfully be imposed (though some kind of payment, as a condition of avoiding a finding, might be proper). There may well be times when leniency, in the form of making no finding of a violation, is appropriate. Factors to consider, always in relation to the principles above, include: if the alleged behavior is slight, if the rule at issue is new or confusing, if the alleged violator has no history of misconduct, if no real harm has been done, if the alleged violator took affirmative steps quickly to remedy the situation, and any particular mitigating circumstances surrounding the conduct in question.

50 Of all things that most tempt regulators, it is the imposition of many conditions, designed to ensure that the regulated company performs up to standard—and sometimes beyond otherwise applicable general standards. In prosecuting and punishing violations, regulators have significant leverage over regulated companies. Regulators should be careful to exercise this power wisely and judiciously. They should not use the threat of a violation as a hammer to extract conditions that exceed the scope and gravity of the underlying violation. They should not abuse their power. Further, they should consider the resources it will take to monitor the conditions and their willingness to impose further sanctions if the conditions are not met—as distinct from simply imposing an immediate penalty and concluding the matter. Regulators generally have ongoing regulatory oversight over the companies they regulate, including the ability to ask for information, perform an audit, and so on. If a violator violates again the regulator, when imposing the second sanction, can take into account the prior violation.

51 With these general considerations in mind, I now turn to the particular context and terms of the proposed Settlement Agreement in this case.

B. EVALUATION OF THE PROPOSED SETTLEMENT AGREEMENT

1. Facts

52 Since 1990, federal rules (which the Commission has adopted as state rules) have required operators of natural gas pipelines to have drug and alcohol testing programs for "covered" employees. Covered employees include those who perform operations, maintenance, or an emergency-response function. The term does not include clerks, office workers, etc. It does include employees of private contractors as well as direct employees of a pipeline operator. Among other things, the rules require random testing of covered employees, follow-up on those who test positive, prohibitions against allowing employees to work on pipelines if they test above certain thresholds, referral to treatment programs, and full reporting annually of compliance with numerous requirements of the rules. The rules are fairly detailed and take up 20 or so pages. In general, they are designed to prevent employees from performing safety-related functions if they are under the influence of alcohol or drugs.

53 It appears that prior to its merger with PSE, Washington Natural Gas had an ongoing, compliant drug and alcohol program. Then, after the merger, PSE simply dropped the

ball. PSE has some 700 "covered" employees. It was required to provide updated lists of current employees to its tester (Virginia Mason Clinic) in order to allow the tester to administer a random-selection method and randomly test, throughout the year, at least 25% of covered employees annually. Instead, the actual percentages were 20% in 1997, 0.4% in 1998, **0%** in 1999, and **0%** in 2000.

54 PSE also was required to submit an annual report to the federal Office of Pipeline Safety providing details of its program (including results of testing, which are used to establish future years' required testing percentages for the industry), and to keep records of its actions under the program. Puget submitted ***no*** annual report for the years 1997, 1998, or 1999. Nor did it (nor could it) keep adequate records, because it did not perform the functions the records were supposed to document.

55 These and other deficiencies were uncovered in an audit performed by Commission Staff in July of 2000.

2. Settlement Agreement

56 Under the terms of the Settlement Agreement, Puget agrees to pay a $50,000 "penalty" and agrees to spend $56,000 on training supervisors to recognize symptoms of drug or alcohol use. There is no admission by Puget, and no finding by the Commission, that Puget violated any rule. To the contrary, the Agreement provides, in paragraph 16 that

> [N]o action taken or statement made by a Party in connection with the compromise reflected in this Agreement shall be deemed or construed to be an admission of the truth or falsity of any matter pertaining to any claim, demand, or cause of action referred to herein or relating to the subject matter of this Agreement, or any acknowledgment by such Party of any fault or liability to the other Party or to any other person or entity.

57 Thus, although Puget has written a letter to the Commission in which it "acknowledges that certain deficiencies existed in the execution of its drug plans during the audit years," and further acknowledges the key specific acts and omissions that Staff found to be "apparent" violations, Puget expressly refuses to admit to violating any rule. The majority, by adopting the Settlement Agreement, joins Puget and the Staff, in expressly not finding a violation.

3. Application of Principles and Other Factors

a) Specific Deterrence

58 I think it probable that Puget will operate an adequate program for the foreseeable future and will not re-offend, at least not on the scale of the past. Within a year after the audit, it had re-established a program that generally satisfies Staff. I would be more confident, however, had the Commission found a violation, as such a finding would convey our firm resolve to treat serious violations seriously, which approval of the Settlement Agreement does not.

b) Rehabilitation

59 Puget has demonstrated to Staff's satisfaction that it has "cured" its problem.

c) General Deterrence

60 The Settlement Agreement, and the Commission's approval of the Settlement Agreement, utterly fail to send the appropriate signals to other violators, would-be violators, and non-violators. They send the wrong signals. Puget had no drug or alcohol program to speak of for a period of *four years!* Puget failed to file any annual report at all for three years. These gross omissions undermine the integrity and trustworthiness in the safety of Puget's natural gas pipelines, which can fail (fatally) years after improper installment or repair. It is difficult to imagine a more gaping lapse of a serious safety responsibility. The message that is sent is: "Puget got off easy." That is a terrible message to send to any pipeline operator. Those who might be tempted to cut corners will take heart. Those who spent money for well-administered programs those four years justifiably may feel dismayed.

61 These were "umbrella" offenses, in the sense that they obscure numerous other, more specific, potential deficiencies. If one fails to file one's income tax forms, the IRS cannot evaluate any of numerous criteria in order to determine if appropriate taxes have been paid. That is why failure to file is a serious offense. The IRS does not say, "Pay a small fee, and as long as you are now current, we'll forget about the past." Further, the integrity of taxing system and the federal budget depend on everyone filing (and on the IRS enforcing). So, too, here, it is impossible to carry out or to

enforce the specific provisions of the drug and alcohol rules if the Company has no program to begin with, keeps no records, and files no documentation of its compliance (or non-compliance). For example, as mentioned, the information on random drug testing that is required in the annual reports is used to establish the percentage of employees that must be tested in the industry in future years. The integrity of that aspect of the national pipeline safety program depends on *all* pipeline operators filing their annual reports. All pipeline operators—and their regulators—must do their part in carrying out and enforcing these requirements.

d) Justice

62 The Settlement Agreement is neither fair nor just. Its leniency—particularly the absence of any finding of a violation—is grossly disproportionate to gravity of the offending conduct. If failure to have any meaningful program for a period of four years does not warrant a finding of violation, how can Staff or the Commission justify finding violations for any number of particular deficiencies of pipeline operators who *do* have on-going programs? If extended omissions in an area as inherently dangerous as pipelines do not qualify for a finding of violation, how can Staff or the Commission justify enforcing myriad consumer, service-quality, and reporting rules that, while important, generally do not have life-or-death consequences?

63 The penalty of $50,000 is also paltry, considering the gravity and breadth of Puget's omissions, and considering Puget is the largest pipeline operator in the state, with total company revenues of $3.4 billion. Determining the "right" amount of a penalty is not an exact science, but a penalty of $50,000, especially when coupled with no finding of a violation, is feather-light.

e) Avoiding Costs of Litigation

64 This mantra sounds particularly off-key here. The Staff completed a thorough investigation and report. Puget has acknowledged the essential facts; it just hasn't admitted a legal violation. If the Settlement Agreement were rejected, I doubt a hearing, if in fact one were requested, would be very complicated or involve the expenditure of significant additional resources.

65 Meanwhile, how much time and money have been spent trying to negotiate the Settlement? The Staff audit was conducted *two years ago*. The Staff report was

completed more than one year ago. Suppose the Staff, immediately following the audit, simply had sought, and the Commission had filed, a complaint alleging that Puget failed to meet its percentages for random drug testing for four years, and failed to file annual reports for three years. Whether Puget admitted the violations or requested a hearing, the case, including imposition of appropriate (and timely) sanctions, could have been concluded within a few months. I think it likely that less money and less time would have been expended under that scenario, with no difference in expected future behavior.

f) The Value of Reaching a Consensus

66 When opposing parties in a dispute come to a meeting of the minds, the effect can be constructive, and the result can be balanced. Here, I think the parties somehow lost perspective, and elevated the goal of reaching an agreement above the principles that should inform the agreement.

g) Pending Federal Enforcement Action

67 At the Open Meeting, Puget intimated that it did not want to admit to a violation, because it faces similar charges at the federal level, which are not yet resolved. Since the state and federal rules are identical, and the required programs are under dual jurisdiction, Puget either violated both or neither rules. In general, I have no objection to coordinating the timing of two proceedings, within reason, but the result at the state level still needs to be appropriate, which in this case it is not. Perhaps the amount of the penalty should take into account the possibility of penalty amounts that might be imposed by another jurisdiction, but the same rationale does not apply to whether there should be a *finding* in our jurisdiction. Moreover, the entire matter has dragged on far too long. After a certain point in time, deference to another jurisdiction's process becomes an unjustified excuse.

h) Labor Relations Confusion

68 Puget explained that after its merger with Washington Natural Gas, it had difficulty dealing with various labor unions, including over the issue of drug-testing. While a few months of confusion might be understandable, years of neglect is inexcusable, and suggests much more than a labor-relations problem. In any event, it is the Company's legal responsibility to meet requirements at issue.

CONCLUSION

69 Puget Sound Energy carries a heavy responsibility, both legal and moral, to ensure the integrity and safety of its natural gas pipelines. An important aspect of this responsibility is the administration of drug and alcohol testing programs for employees whose work can affect the safety of pipelines years into the future. If Puget failed for four years to administer such a program, it should be required to own up to that fact, take its lumps, and move on.

70 This Commission carries a heavy responsibility, both legal and moral, to enforce laws and rules that protect the public from death and danger. The excellent work of our pipeline safety staff in investigating and bringing to light Puget's failures demands a corresponding commitment from Staff and this Commission to follow through with appropriate sanctions. Unfortunately, the Settlement Agreement and this Commission's approval of it fail to convey such a commitment. The majority proclaims this to be "a very serious matter" that "warrants substantial action." But their lenient action rings louder than their words.

71 In a time when many eyes are critically focused on corporate misbehavior and on regulators' ability to correct it, both Puget and this Commission should live up to their responsibilities. Over the long run, that is how to foster trust between a regulated company and its regulator, and that is how to foster trust by the public in corporate and governmental institutions.

72 This matter should be set for hearing to determine whether violations occurred, and if so, to further determine appropriate sanctions.

73 For the foregoing reasons, I dissent.

MARILYN SHOWALTER, Chairwoman