

**BEFORE THE WASHINGTON  
UTILITIES AND TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND  
TRANSPORTATION COMMISSION,

Complainant,

v.

PUGET SOUND ENERGY,

Respondent.

DOCKET PG-160924

ORDER 04

ORDER APPROVING  
SETTLEMENT AGREEMENT

**BACKGROUND**

- 1 On September 20, 2016, the Washington Utilities and Transportation Commission (Commission or WUTC) initiated a complaint against Puget Sound Energy (PSE or Company) as a result of Commission regulatory staff's (Staff) investigation into a natural gas explosion that occurred in the vicinity of 8411 Greenwood Ave. N in Seattle on March 9, 2016. On November 2, 2016, the Commission entered a Prehearing Conference Order establishing a procedural schedule.
- 2 On March 28, 2017, Staff and PSE filed with the Commission a multi-party Settlement Agreement (Settlement) and supporting Narrative. Under the Settlement, the Commission would impose a penalty of \$2.75 million on the Company, \$1.25 million of which would be suspended if PSE completes the Deactivated Gas Line Inspection and Remediation Program (Inspection and Remediation Program) negotiated by the parties. Staff represented that Public Counsel was not a party to the Settlement and had not yet taken a position on it.
- 3 On March 29, 2017, the Commission issued a notice suspending the existing procedural schedule and setting this matter for hearing on May 15, 2017. The parties subsequently informed the Commission that Public Counsel opposed the penalty provisions in the Settlement. On April 13, 2017, the Commission issued a notice establishing deadlines for Public Counsel to submit testimony in opposition to the Settlement and for Staff and PSE to submit responsive testimony.

- 4 Public Counsel submitted the testimony of Sebastian Coppola on its behalf on April 24, 2017. Mr. Coppola recommends that the Commission impose the maximum possible penalty of \$3.2 million for the violations alleged in the complaint and proposes that the Commission make five modifications to the Inspection and Remediation Program contained in the Settlement.
- 5 On April 28, 2017, Staff filed a Motion to Strike Portions of Public Counsel’s Testimony in Opposition to Settlement (Staff Motion), claiming that those portions addressed issues not before the Commission in this docket or were inconsistent with Public Counsel’s prior representations of its position on the Settlement. On May 1, 2017, PSE filed a Motion to Strike Portions of the Prefiled Direct Testimony of Sebastian Coppola on Behalf of Public Counsel (PSE Motion). The Company joined the Staff Motion and provided additional justification for the remedies Staff requested. On May 4, 2017, Public Counsel filed its opposition to both motions, contending that its position on the Inspection and Remediation Program evolved as a result of consultation with its witness who is knowledgeable in gas operations and that its recommendations are consistent with Commission discretion and fundamental fairness.
- 6 On May 5, 2017, the Commission entered Order 03, granting in part, denying in part, and holding in abeyance in part the Staff and PSE Motions. The Commission struck the portions of Mr. Coppola’s testimony that requested that (a) the Commission amend the complaint to add violations of Commission rules, and (b) the Commission deny PSE the ability to recover the costs of its Inspection and Remediation Program through the Company’s rates. The Commission provisionally denied the motions to strike the testimony proposing modifications to that program, subject to further evidence and argument at the hearing.
- 7 On May 8, 2017, Staff filed the testimony of Alan Rathbun, the Commission’s Director of Pipeline Safety, in support of the Settlement and in response to Public Counsel’s testimony. Mr. Rathbun explains Staff’s position on the penalty amounts to which Staff and PSE agreed and the Inspection and Remediation Program included in the Settlement.
- 8 Also on May 8, 2017, PSE filed the testimony of Catherine A. Koch, Director, Planning for PSE, and Duane A. Henderson, PSE’s Manager Gas System Integrity, in support of the Settlement and in response to Public Counsel’s testimony. Ms. Koch testifies that the Settlement “acknowledges the seriousness of the Greenwood incident and represents a carefully crafted balance that includes significant and substantial penalties, as well as

detailed improvements to PSE's gas safety program to prevent reoccurrence of such an event."<sup>1</sup> She questions Mr. Coppola's qualifications to opine on the Settlement and states that he presents no new information, analysis, or expertise to contradict Staff's findings. Mr. Henderson explains why PSE opposes each of the modifications Public Counsel has proposed to the Inspection and Remediation Program and corrects what he contends are factual errors in Mr. Coppola's testimony.

9 On May 9, 2017, in compliance with Order 03, Public Counsel filed redacted testimony for Mr. Coppola that reflects deletion of the portions the Commission struck.

10 The Commission conducted an evidentiary hearing on the Settlement on May 15, 2017. PSE renewed its motion to strike the portions of Mr. Coppola's testimony proposing modifications to the Inspection and Remediation Program in the Settlement on the grounds that Mr. Coppola lacked the necessary qualifications to testify as an expert witness about that program. The Commission denied that motion and admitted Mr. Coppola's testimony as previously redacted. We found that his industry experience was largely irrelevant to the issues presented in this docket but allowed his testimony into the record with the understanding that we would give that testimony the appropriate weight in reaching our decision. Each party then presented brief oral argument in support of its position on the Settlement.

### DISCUSSION AND DECISION

11 "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."<sup>2</sup> The Commission may approve the Settlement, with or without conditions, or reject it.

12 We approve the Settlement without conditions. We conclude that the record penalty PSE has agreed to pay provides an appropriate incentive to comply with its pipeline safety obligations and adequately punishes the Company for its violations of pipeline safety rules. We also find that the Inspection and Remediation Program is sufficiently structured and broad enough in scope to reasonably identify and remedy the type of network deficiencies at issue in this docket. Public Counsel's recommendations to the contrary are

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<sup>1</sup> Koch, Exh. CAK-1T at 2:9-12.

<sup>2</sup> WAC 480-07-750(1).

based on testimony that the Commission finds to be neither constructive nor credible, and we give it little weight in making our findings and reaching our conclusions.

### Penalty Amount

- 13 The Settlement requires PSE to pay a penalty of \$2.75 million for the Company's violations of Commission rules alleged in the complaint, of which \$1.25 million would be suspended if PSE timely completes the Inspection and Remediation Program. We must determine whether this penalty, including the suspension of a portion of it, is lawful, supported by an appropriate record, and consistent with the public interest.
- 14 In the early morning hours of March 9, 2016, a natural gas explosion rocked the business district in Seattle's Greenwood neighborhood. The settling parties' Narrative and Staff's Investigation Report describe the event, its genesis and aftermath, and the factors that contributed to it.<sup>3</sup> Public Counsel would have us find that "PSE's improper abandonment of the service line was the primary cause of the March 9, 2016, leak and explosion."<sup>4</sup> Staff in its Investigation Report, however, found "that the immediate structural cause of the natural gas leak and explosion was external damage to a threaded connection along the above-ground portion of the line . . . likely caused by human activity," and "that another cause of the leak and explosion was PSE's failure to properly abandon the line."<sup>5</sup>
- 15 We accept Staff's analysis for purposes of this proceeding but decline to make any finding or conclusion on this issue. The Commission is not a court of law. We need not, and do not, determine the primary or proximate causes of the March 9, 2016, incident or attempt to quantify or remedy the resulting harm. Rather, our sole responsibility in this docket is to enforce the Commission's pipeline safety regulations.
- 16 The Commission has repeatedly stated that its "ultimate objective in any enforcement action is to obtain compliance with applicable law."<sup>6</sup> The Commission considers 11

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<sup>3</sup> Narrative, Exh. SP-2 ¶¶ 8-15; Investigation Report, Exh. AR-2 at 3-4.

<sup>4</sup> Coppola, Exh. SC-1T at 11:15-16.

<sup>5</sup> Investigation Report, Exh. AR-2 at 5.

<sup>6</sup> *WUTC v. CenturyLink*, Docket UT-140597, Order 03, Final Order Approving Settlement Agreement ¶ 10 (Feb. 22, 2016); *accord, e.g., WUTC v. Ride the Ducks*, Docket TE-151906, Order 08, Order Approving Settlement Agreement with Conditions ¶ 8 (May 3, 2016).

factors when determining the appropriate action to further that goal in response to a company's violations of applicable law.<sup>7</sup>

- 17 Staff undertook a thorough application of those factors to this case.<sup>8</sup> Staff found that factors counseling a higher penalty amount included that the violations alleged in the complaint were very serious, caused substantial harm, and raise questions about the adequacy of PSE's oversight of its natural gas distribution system.<sup>9</sup> Staff also accounted for the facts that PSE is the state's largest natural gas company, and the Commission has imposed several significant penalties against the Company for safety violations in the past.<sup>10</sup> Staff nevertheless does not construe the violations to be intentional as the Commission has defined that term.<sup>11</sup> Staff determined mitigating factors to be that external forces contributed to the incident that resulted from these violations,<sup>12</sup> and that PSE was cooperative and responsive, has accepted responsibility for the violations, and agreed to complete an extensive and thorough Inspection and Remediation Program, all of which reduce the likelihood of recurrence of the violations and enhance the safety of the Company's network.<sup>13</sup> Staff concludes that a penalty of \$2.75 million, the highest the Commission has ever assessed for pipeline safety violations,<sup>14</sup> strikes the proper balance between these factors. Ms. Koch testified for the Company that the penalty amount "is severe, but PSE is willing to accept it in the form proposed in the spirit of compromise of all issues in this case and to avoid further litigation."<sup>15</sup>
- 18 Public Counsel disagrees with the proposed penalty assessment and advocates that the Commission impose the maximum possible penalty of \$3.2 million. Public Counsel offers no explanation for why or how this higher amount would be a more effective incentive for the Company to comply with its pipeline safety obligations. Rather, Mr. Coppola contends that the amount of damage that resulted from the incident, PSE's prior

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<sup>7</sup> *In re Enforcement Policy of the Commission*, Docket A-120061, Enforcement Policy at 7-9.

<sup>8</sup> Narrative, Exh. SP-2 ¶¶ 32-43; Staff Investigation Report, Exh. AR-2 at 8-9.

<sup>9</sup> Narrative, Exh. SP-2 ¶ 32.

<sup>10</sup> *Id.* ¶¶ 41-43; Rathbun, Exh. AR-1T at 5:9-18.

<sup>11</sup> Narrative, Exh. SP-2 ¶ 33; Rathbun, Exh. AR-1T at 4:17 – 5:7.

<sup>12</sup> Rathbun, Exh. AR-1T at 4:8-15; Staff Investigation Report, Exh. AR-2 at 5.

<sup>13</sup> Narrative, Exh. SP-2 ¶¶ 34-36 and 39-40.

<sup>14</sup> Rathbun, TR 89:6-10.

<sup>15</sup> Koch, Exh. CAK-1T at 4:5-7.

violations of Commission rules, and the Company's additional failures to follow procedures "make[] it abundantly clear that there are systemic problems with the Company's processes and its ability to follow procedures that ensure the safe operation of its gas system. This multitude of failures warrants imposing at the least the maximum \$3.2 million of penalties alleged in the Complaint."<sup>16</sup> Mr. Coppola also disagrees with Staff's analysis of the 11 factors the Commission considers in taking enforcement action. He particularly takes issue with Staff's conclusion that PSE did not intentionally violate Commission rules. He claims, "Although the Company did not intentionally fail to deactivate the service line at 8409 Greenwood Avenue North, the failure of not having a robust inspection program that would ensure the line was actually deactivated and also not removing the inactive gas line rise to a level of irresponsibility and imprudence that approximates an intentional act."<sup>17</sup>

- 19 Mr. Coppola, however, has no training or experience in determining the appropriate penalties for violations of law or in the safe operation of a gas system. Nor did he demonstrate an understanding of the range of, and rationale for, various enforcement alternatives to ensure that companies correct violations and minimize future safety issues. He has no familiarity with PSE's system and processes beyond the information provided in this docket and did not review prior Commission penalty assessments other than those involving PSE. In fact, Mr. Coppola asserts that his opinions are based on "common sense," not on pipeline engineering.<sup>18</sup>
- 20 The Commission has previously assigned less weight to witnesses with no specialized knowledge or expertise in penalty assessments or the specific subject matter of the docket. In *WUTC v. CenturyLink*,<sup>19</sup> the Commission rejected Public Counsel's recommendation to impose the maximum penalty of over \$11 million for violations arising from the failure of the telecommunications company's 911 system. In that case, the Commission gave the testimony of Public Counsel's witness little weight, finding that it "demonstrated less familiarity with 911 services and Commission enforcement policies

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<sup>16</sup> Coppola, Exh. SC-1T at 26:6-10.

<sup>17</sup> *Id.* at 31:3-8.

<sup>18</sup> *See, e.g.*, Coppola, TR 127:4-6 (testifying that "there's no engineering issues in the recommendations I'm making. It's common sense items.").

<sup>19</sup> Docket UT-140597, Order 03, Final Order Approving Settlement Agreement (Feb. 22, 2016).

than found in other testimony and record evidence in this proceeding.”<sup>20</sup> We make a similar finding here and accordingly give little weight to Mr. Coppola’s opinions.

21 We find far more credible and convincing the testimony of Mr. Rathbun, Ms. Koch, and Mr. Henderson, all of whom are engineers with decades of experience in gas pipeline operations and safety in general, and with PSE’s systems and processes in particular. Staff also has extensive experience evaluating the factors the Commission considers when taking enforcement action. We agree with Staff’s analysis and application of those factors in this case.

22 We rely on the testimony of Staff’s and PSE’s witnesses and our own judgment to conclude that \$2.75 million is an appropriate penalty for the violations alleged in the complaint. Indeed, \$2.75 million is the highest penalty the Commission has imposed for a violation of pipeline safety regulations and is among the highest penalties the Commission has ever imposed. That amount is within the statutory boundaries the legislature established. The penalty recognizes the severity of the violations and the resulting harm, as well as the Company’s acceptance of responsibility, cooperation, and agreement to take appropriate steps to minimize the possibility of future violations. We find that this penalty furthers the goal of ensuring future compliance and is adequately punitive. Accordingly, we find that the penalty amount in the Settlement Agreement is lawful, adequately supported, and consistent with the public interest by providing an appropriate punishment and incentive for PSE to comply with its regulatory obligations.

### **Suspension of \$1.25 Million**

23 Staff and PSE agree that the Commission should suspend \$1.25 million of the penalty on condition that PSE timely complete the Inspection and Remediation Program established in the Settlement. Staff supports the suspension with an analysis of the five factors in the Commission’s Enforcement Policy that the Commission considers when determining whether to suspend any portion of an assessed penalty.<sup>21</sup> According to Staff’s analysis, the circumstances of the violations alleged in the complaint are unique, and the Company has agreed to implement a comprehensive compliance plan, the completion of which Staff will closely monitor.<sup>22</sup> Accordingly, suspension of a portion of the penalty is

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<sup>20</sup> *Id.* ¶ 13.

<sup>21</sup> *In re Enforcement Policy of the Commission*, Docket A-120061, Enforcement Policy at 11.

<sup>22</sup> Rathbun, Exh. AR-1T at 7:1 – 8:12.

appropriate because “the company has taken appropriate action to reduce the likelihood of recurrence.”<sup>23</sup> For its part, “PSE is committed to fully implementing the Inspection [and Remediation] Program, and the contingent penalty is the Commission’s insurance that PSE will do just that.”<sup>24</sup>

24 Public Counsel takes issue with suspending any portion of the penalty. According to Mr. Coppola, “The \$1.25 million contingent penalty amount is a ruse. It is likely that PSE will never pay this amount because it has agreed to implement the compliance program in Appendix A and knows it is in the Company’s self-interest to follow through with its commitment.”<sup>25</sup>

25 This shows a profound misunderstanding of the concept of a suspended penalty. The *intent* is that PSE never pay this money. The Commission values compliance with its safety regulations much more highly than receipt of penalty monies. Even for a company the size of PSE, \$1.25 million dollars is a significant sum. We agree with Staff and PSE that suspending that portion of the penalty and giving the Company the opportunity to avoid paying it gives PSE a greater incentive to timely comply with safety requirements than imposing the full penalty and relying solely on “the Company’s self-interest to follow through with its commitment.”<sup>26</sup> The Commission’s Enforcement Policy contemplates suspending penalty amounts under just such circumstances.<sup>27</sup>

26 As our touchstone in an enforcement action is fostering compliance with applicable regulations, we conclude that suspending \$1.25 million of the \$2.75 million penalty on condition that PSE complies with the deadlines and provisions of the Inspection and Remediation Program is lawful, adequately supported, and consistent with the public interest as an appropriate incentive for PSE to comply with the program and enhance the safety of its natural gas distribution system.

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<sup>23</sup> *Id.* at 8:7-8.

<sup>24</sup> Koch, Exh. CAK-1T at 5:4-6.

<sup>25</sup> Coppola, Exh. SC-1T at 24:23 – 25:2.

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

<sup>27</sup> See *In re Enforcement Policy of the Commission*, Docket A-120061, Enforcement Policy at 11; Rathbun, Exh. AR-1T at 7-8.



### **Inspection and Remediation Program**

- 27 PSE, Staff, and Public Counsel developed a collaborative plan “to identify, inspect, and remediate two categories of gas service piping: (1) retired services that may still be active due to improper abandonment; and (2) active aboveground services that are susceptible to damage due to their location.”<sup>28</sup> The resulting Inspection and Remediation Program is attached as Appendix A to the Settlement Agreement. PSE and Staff contend that the program “is comprehensive and thoughtfully drafted”<sup>29</sup> and “reflects a methodical approach that ultimately addresses any outstanding concerns regarding deactivated gas facilities.”<sup>30</sup>
- 28 Public Counsel recommends that the Commission condition its approval of the Inspection and Remediation Program on five modifications: (1) strike the reference to PSE’s contractor, Pilchuck Contractors, Inc. (Pilchuck) in Population 2; (2) clarify the definition of “High Occupancy Structures” to include businesses; (3) set the “confidence levels” for Populations 3 and 4 at one percent to be consistent with Population 2; (4) require PSE to maintain additional documentation; and (5) direct or encourage PSE to remove aboveground facilities used to provide service that has been inactive for at least 12 months.<sup>31</sup> PSE and Staff oppose these conditions, both substantively and because they contend that Mr. Coppola is not qualified to make the recommendations, which therefore lack evidentiary support.<sup>32</sup> We agree with PSE and Staff and reject Public Counsel’s recommendations. We discuss each proposed condition below.

### **Pilchuck**

- 29 The Inspection and Remediation Program prioritizes PSE’s inspection of its retired service pipes into four “populations.” Populations 1 and 2 are certain “[s]ervices retired

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<sup>28</sup> Narrative, Exh. SP-2 ¶ 27; Settlement, Exh. SP-1, App. A at 1.

<sup>29</sup> Rathbun, Exh. AR-1T at 6:6.

<sup>30</sup> Koch, Exh. CAK-1T at 5:18-19.

<sup>31</sup> Coppola, Exh. SC-1T at 36:18 – 37:10. We describe the “populations” in paragraphs 29 and 31 below.

<sup>32</sup> PSE and Staff also continue to contend that Public Counsel acted improperly by recommending modifications to the Inspection and Remediation Program after having represented to the parties and the Commission that Public Counsel had no objections to that Program. We addressed this issue in Order 03 and adhere to our position that Public Counsel’s conduct does not rise to the level of prejudice to the other parties or to the Commission or otherwise provide a sufficient basis, standing alone, to exclude Public Counsel’s testimony or arguments on these issues.

by Pilchuck during 2000 to 2010.”<sup>33</sup> Mr. Coppola recommends that the Commission delete “by Pilchuck” from this description in Population 2 and thus include all such retired services, not just those that Pilchuck retired.<sup>34</sup> Mr. Henderson, however, explains that Pilchuck retired virtually all of these services, and the Program already requires the Company to inspect all services in Population 2 if the inspection of any one location shows that the retired pipeline carries gas, so removing the reference to Pilchuck would have no benefit.<sup>35</sup>

30 We agree with Staff and PSE. Mr. Coppola reviewed the documents PSE and Staff provided but lacks the same familiarity with the system as other witnesses. Accordingly, we give greater weight to Mr. Henderson’s and Mr. Rathbun’s testimony and decline to require a modification to the Inspection and Remediation Program that would have no practical impact and would not improve the Program’s effectiveness.

### **High Occupancy Structures**

31 The services described in Populations 2 through 4 include “facilities that may have served High Occupancy Structures.”<sup>36</sup> The Inspection and Remediation Program defines the term “High Occupancy Structures” to mean “a building or an outside area . . . that is occupied by 20 or more persons on at least 5 days a week for 10 weeks in any 12-month period.”<sup>37</sup> Mr. Coppola recommends that the Commission clarify that this definition includes businesses.<sup>38</sup> Mr. Henderson explains that the settlement uses the Commission’s definition of “High Occupancy Structures” in WAC 480-93-005(14), and Mr. Coppola’s proposed modification reflects a lack of understanding of applicable Commission rules, could cause unnecessary confusion, and would not change the scope of the definition.<sup>39</sup>

32 Mr. Coppola does not acknowledge that the Commission has defined “High Occupancy Structures” or offer any explanation for how or why that definition should be “clarified” to include businesses. We agree with Mr. Henderson that such a revision “would

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<sup>33</sup> Settlement, Exh. SP-1, App. A at 2.

<sup>34</sup> Coppola, Exh. SC-1T at 33:23 – 34:13.

<sup>35</sup> Henderson, Exh. DAH-1T at 3:18 – 4:5.

<sup>36</sup> Settlement, Exh. SP-1, App. 1 at 2-3.

<sup>37</sup> *Id.* at 1.

<sup>38</sup> Coppola, Exh. SC-1T at 34:14-15.

<sup>39</sup> Henderson, Exh. DAH-1T at 4:16 – 5:5.

potentially diminish or change the purpose behind the meaning of High Occupancy Structures if the definition's focus shifted from a building's occupancy to its use."<sup>40</sup> We decline to do so and reject this proposed condition.

### Confidence Intervals

- 33 The Inspection and Remediation Program does not require PSE to inspect the entirety of its retired natural gas services. Rather, PSE will inspect samples in Populations 2 through 4 to identify services that PSE provided using facilities that are similar to those involved in the Greenwood incident and verify whether the services were properly retired. The sampling technique PSE will use includes a "confidence interval" of one percent for Population 2 and two percent for Populations 3 and 4.<sup>41</sup> "Statisticians use a confidence interval to express the degree of uncertainty associated with a sample statistic."<sup>42</sup> Here, the lower confidence interval for Population 2 means there is a lesser degree of uncertainty associated with the sampling PSE will use for that population.
- 34 Mr. Coppola contends that there is no valid reason to differentiate between the sampling PSE uses for the three populations and recommends that "[t]he Commission should set the confidence level at one percent for Population 3 and 4 to be consistent with Population 2."<sup>43</sup> Mr. Henderson explained that the Inspection and Remediation Program "was designed to methodically inspect PSE's gas facilities in sequence in order to prioritize the facilities the parties determined should be inspected first."<sup>44</sup> He testified that Public Counsel's recommendation to change the confidence intervals in that Program "is an arbitrary modification that would create no other benefit than 'consistency,' but which would substantively modify the plan, increase the number of initial inspections, and remove any prioritization among the populations."<sup>45</sup>

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<sup>40</sup> *Id.* at 5:3-5.

<sup>41</sup> Settlement, Exh. SP-1, App. A at 2-3.

<sup>42</sup> [http://stattrek.com/statistics/dictionary.aspx?definition=Confidence\\_interval](http://stattrek.com/statistics/dictionary.aspx?definition=Confidence_interval). The Settlement does not define the statistics terms it uses, and accordingly, we take official notice of this dictionary for this purpose.

<sup>43</sup> Coppola, Exh. SC-1T at 199:16-22.

<sup>44</sup> Henderson, Exh. DAH-1T at 6:20 – 7:1.

<sup>45</sup> *Id.* at 6:4-7.

35 Mr. Coppola confuses the term “confidence interval” with “confidence level,” both of which are used in the Inspection and Remediation Program,<sup>46</sup> and each of which has a very specific and different meaning.<sup>47</sup> He simplistically recommends that statistical values be the same for all populations for the sake of consistency, but he fails to recognize, much less address, the impact of that change. We are not so sanguine. We find Mr. Henderson’s testimony far more credible and reliable and reject Public Counsel’s recommendation to modify the confidence intervals.

### **Additional Documentation**

36 Public Counsel recommends that the Commission modify the provisions of the Inspection and Remediation Program governing PSE’s Quality Management systems to require the Company to include “a record of who performed each inspection of the work performed when deactivating a service line, or main, along with a check list of the verifications steps undertaken,” without which “there is a significant risk of a repeat incident.”<sup>48</sup> Mr. Henderson responds that “PSE is already required to maintain comprehensive records of work performed on its gas systems,” and Mr. Coppola offers no support for additional recordkeeping.<sup>49</sup>

37 We find no basis for requiring PSE to provide the additional documentation that Public Counsel recommends. Mr. Henderson is far more familiar with PSE’s recordkeeping than Mr. Coppola. We also have confidence in Staff that it will work with the Company during implementation of the Inspection and Remediation Program to track and collect any data the Commission does not already require that would further minimize the risk of

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<sup>46</sup> Populations 2 through 4 have the same confidence *level* of 99 percent, but vary in the confidence *interval* percentages. Settlement, Exh. SP-1, App. A at 2-3.

<sup>47</sup> In survey sampling, different samples can be randomly selected from the same population; and each sample can often produce a different confidence interval. Some confidence intervals include the true population parameter; others do not.

A **confidence level** refers to the percentage of all possible samples that can be expected to include the true population parameter. For example, suppose all possible samples were selected from the same population, and a confidence interval were computed for each sample. A 95% confidence level implies that 95% of the confidence intervals would include the true population parameter.

[http://stattrek.com/statistics/dictionary.aspx?definition=confidence\\_level](http://stattrek.com/statistics/dictionary.aspx?definition=confidence_level) (emphasis in original).

<sup>48</sup> Coppola, Exh. SC-1T at 35:2-7.

<sup>49</sup> Henderson, Exh. DAH-1T at 7:8 – 8:2,

another incident. We reject Public Counsel's proposal to require more records at this point.

### **Removal of Aboveground Facilities**

38 The Inspection and Remediation Program includes extensive provisions governing aboveground service inspections.<sup>50</sup> Public Counsel is not satisfied with leaving removal of any aboveground unmetered services to PSE's discretion, fearing another incident caused by just such facilities. Mr. Coppola recommends that the Commission "encourage or direct the Company to remove aboveground services that have been inactive for at least 12 months unless there is an agreement with the property owner that service will resume relatively soon."<sup>51</sup> Mr. Henderson testified that "Mr. Coppola's recommendation would require PSE to significantly increase its field and administrative resources" without "evidence that removal of the services would provide more benefit than PSE's current procedures and those called for in the Inspection Program."<sup>52</sup>

39 Again we place more reliance on Mr. Henderson's and Mr. Rathbun's familiarity with PSE's services and facilities. Indeed, Mr. Coppola's testimony provides nothing more than speculation that "many of the locations *likely* include services where the meter *may* have been removed . . . with a long period of inactivity of gas service" and pose a similar risk of another incident "because they are *likely* to be active gas lines holding natural gas at pressure."<sup>53</sup> Public Counsel has not provided sufficient evidence to demonstrate a need to eliminate the Company's discretion to determine when to remove aboveground unmetered services, and we decline to do so.

40 In conclusion, we agree with Staff and PSE that the Inspection and Remediation Program is a comprehensive and methodical approach to locating and remedying retired pipeline that poses a risk of another incident. All parties, including Public Counsel, participated in developing this Program and all parties, including Public Counsel, initially supported Commission approval. Public Counsel has not provided sufficient evidentiary support to prove that its subsequently proposed modifications are necessary or would improve or enhance the effectiveness of the Program. Accordingly, we find that the Inspection and

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<sup>50</sup> Settlement, Exh. SP-1, App. A at 4-5.

<sup>51</sup> Coppola, Exh. SC-1T at 35:9-22.

<sup>52</sup> Henderson, Exh. DAH-1T at 8:6-11.

<sup>53</sup> Coppola, Exh. SC-1T at 35:15-19 (emphasis added).

Remediation Program in the Settlement is lawful, supported by an appropriate record, and consistent with the public interest in identifying and remedying potentially hazardous retired pipeline in PSE's natural gas distribution system.

**FINDINGS OF FACT**

- 41 (1) The 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 investor-owned natural gas distribution companies.
- 42 (2) PSE is a public service company regulated by the Commission, providing service as a natural gas distribution company.
- 43 (3) Staff and PSE entered into and filed a Settlement Agreement with the Commission on March 28, 2017, to settle the issues in the complaint against PSE concerning the March 9, 2016, natural gas explosion in the vicinity of 8411 Greenwood Ave. N in Seattle. The Settlement Agreement would have the Commission impose a penalty of \$2.75 million on PSE, \$1.25 million of which would be suspended if PSE timely and satisfactorily completes the Deactivated Gas Line Inspection and Remediation Program negotiated by the parties.
- 44 (4) The testimony in this proceeding of Alan Rathbun for Commission Staff and Catherine A. Koch and Duane A. Henderson for PSE is based on these witnesses' extensive expertise in pipeline safety and with PSE's pipeline system.
- 45 (5) Sebastian Coppola provided testimony for Public Counsel opposing the penalty agreed to in the settlement and recommending modifications to the Settlement Agreement. Mr. Coppola lacks significant experience with pipeline safety and with PSE's system.

**CONCLUSIONS OF LAW**

- 46 (1) The Commission has jurisdiction over the subject matter of, and parties to, this proceeding.
- 47 (2) The Commission makes no conclusion on the primary or proximate cause of the natural gas leak and explosion in the Greenwood neighborhood of Seattle on March 9, 2016.

- 48 (3) The Commission affords less credibility and weight to the testimony of Sebastian Coppola due to his lack of significant experience with pipeline safety and with PSE's system.
- 49 (4) The Commission rejects Public Counsel's recommendation to assess the maximum penalty of \$3.2 million as lacking sufficient evidence to prove that this amount would be more effective in achieving the Commission's primary objective of obtaining compliance with its pipeline safety regulations.
- 50 (5) A penalty of \$2.75 million for the violations alleged in the complaint is within the statutory limits and therefore lawful. The penalty is supported by the evidentiary record, including but not limited to an analysis of the factors the Commission considers in taking enforcement action. The penalty amount also is consistent with the public interest by providing an appropriate punishment and incentive for PSE to timely comply with its regulatory obligations.
- 51 (6) Suspending \$1.25 million of the \$2.75 million penalty on condition that PSE timely complies with the Inspection and Remediation Program is a lawful exercise of the Commission's discretion and is consistent with the public interest by enhancing PSE's incentive to comply with the Commission's pipeline safety regulations. This term of the Settlement Agreement is supported by the evidentiary record, including but not limited to consideration of factors the Commission considers when determining whether to suspend penalty amounts, and is consistent with the public interest by enhancing PSE's incentive to comply with the Commission's pipeline safety regulations.
- 52 (7) The Deactivated Gas Line Inspection and Remediation Program established in the Settlement Agreement is a comprehensive and methodical approach to locating and remedying retired pipeline that poses a risk of another incident. That program is a lawful means of fostering PSE's compliance with the Commission's pipeline safety regulations, is supported by the evidentiary record, and consistent with the public interest in compliance with pipeline safety regulations.
- 53 (8) The Commission rejects Public Counsel's recommendations to make modifications to the Deactivated Gas Line Inspection and Remediation Program as lacking sufficient evidence to prove that the proposed modifications would significantly enhance the effectiveness of that program or PSE's compliance with Commission pipeline safety regulations.

**ORDER**

54 THE COMMISSION ORDERS:

- 55 (1) The Commission approves and adopts the Settlement Agreement between Puget  
Sound Energy and Commission Staff, attached to this Order as Appendix A.
- 56 (2) The Commission denies Public Counsel's requests to condition approval of the  
Settlement Agreement on imposing the maximum statutory penalties for the  
violations alleged in the complaint and modifying the Deactivated Gas Line  
Inspection and Remediation Program established in the Settlement Agreement.
- 57 (3) The Commission assesses a penalty of \$2.75 million against Puget Sound Energy,  
\$1.25 million of which is suspended on condition that Puget Sound Energy  
satisfactorily and timely completes the Deactivated Gas Line Inspection and  
Remediation Program established in the Settlement Agreement. Puget Sound  
Energy must pay the \$1.5 million of the penalty that is not suspended within 10  
business days of the date of this Order.
- 58 (4) The Commission delegates to the Secretary the authority to approve parties'  
submissions in compliance with this Order.
- 59 (5) The Commission retains jurisdiction to enforce this Order.

Dated at Olympia, Washington, and effective June 19, 2017.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

DAVID W. DANNER, Chairman

ANN E. RENDAHL, Commissioner

JAY M. BALASBAS, Commissioner



Appendix A  
Settlement Agreement