

**BEFORE THE
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,

Complainant,

v.

CASCADE NATURAL GAS
CORPORATION,

Respondent.

DOCKET PG-150120

CASCADE NATURAL GAS
CORPORATION'S RESPONSE TO
STAFF'S MOTION TO IMPOSE
SUSPENDED PENALTIES

1 In accordance with WAC 480-07-375(4), Cascade Natural Gas Corporation (“Cascade” or the “Company”), responds to the staff of the Washington Utilities and Transportation Commission’s (“Staff”) Motion to Impose Suspended Penalties filed on January 30, 2025 (“Motion”).

I. INTRODUCTION

2 On March 20, 2017, the Washington Utilities and Transportation Commission (“Commission”) entered Order 03, which approved and adopted a Settlement Agreement with Conditions in this proceeding. After Cascade completed certain requirements under the Settlement Agreement, an Amended Settlement Agreement was subsequently approved by the Commission. Cascade’s compliance with that Amended Settlement Agreement, and whether all of the suspended penalty should be levied is at issue in the Motion.

3 Staff filed its Motion, requesting the imposition of the entirety of the suspended penalty even though the suspended penalty covers numerous compliance topics. The category at issue in the Motion, “Leak Surveys,” had no penalty amount associated with a violation of that section of the original Settlement Agreement. Imposing the entirety of the suspended penalty is disproportionate and inconsistent with the intent of the Settlement Agreement.

CASCADE’S RESPONSE TO STAFF’S
MOTION TO IMPOSE SUSPENDED
PENALTIES

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II. BACKGROUND

4 The Commission initiated an adjudication against Cascade based on a Complaint that
alleged Cascade was in violation of a Commission order because it failed to file its maximum
allowable operating pressure (“MAOP”) compliance plan and it did not maintain required
records or documentation of its MAOP. Staff and Cascade reached a settlement that would
impose a \$2.5 million penalty, with \$1 million due within ten days of the final order, and \$1.5
million of the penalty suspended pending Cascade’s substantial compliance with specific tasks.¹
On March 20, 2017, the Commission entered Order 03, which approved and adopted a
Settlement Agreement with Conditions. Cascade completed certain requirements under the
Settlement Agreement and reached an Amended Settlement Agreement with Staff to reflect any
outstanding obligations and reduced the suspended penalty to \$1 million.

5 Ultimately, the Amended Settlement Agreement was approved by the Commission.
Cascade’s compliance with that Amended Settlement Agreement and whether any of the
suspended penalty should be levied is at issue in Staff’s Motion.

A. The First Settlement Agreement in PG-150120 Assigns Specific Dollar Values to Each Section for the Suspended Penalty

6 There were approximately nine broad components or categories of the parties’ initial
Settlement Agreement that required Cascade’s compliance. With each category or requirement,
the Settlement Agreement assigned a certain penalty value if Cascade failed to comply with that
term. The total amount of the potential suspended penalties when combined amounted to \$1.5
million. The components or categories, and the corresponding penalty established were as
follows:

- a. Document the Basis for Validation of MAOP
 - i. 50% of segment miles by December 31, 2018 (\$250,000 of suspended penalty)

¹ Order 03 at ¶ 12.

- ii. All segments above 60 psig by December 31, 2023 (\$250,000 suspended penalty)
- b. Validation of Highest Risk Segments (no penalty established for noncompliance)
- c. TRC's Records Review and Findings (\$500,000 suspended penalty)
- d. Prioritization of Pipeline Validation (no penalty established for noncompliance)
- e. Leak Surveys (no penalty established for noncompliance)
- f. Pressure Reductions (no penalty established for noncompliance)
- g. TIMP and DIMP evaluation (no penalty established for noncompliance)
- h. MAOP Six-Month Status Reports and appointing a Cascade Settlement Representative (no penalty established for noncompliance)
- i. API 1173 and Third Party Audit (\$500,000 penalty)

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In the initial Settlement Agreement, the parties contemplated submitting an Amended Settlement Agreement once Cascade had updated timelines and plans. By the time the Amended Settlement Agreement was approved, Cascade had completed the following actions: the validation of the highest risk segments, the TRC records review, prioritization of pipeline validation, and the third party audit requirement. The total potential penalties attributed to the remaining noncompleted compliance items from the original Settlement Agreement was approximately \$500,000 for the MAOP validation compliance task. But, as discussed below, the parties removed any specific allocation of the suspended penalty from a specific compliance task in the Amended Settlement Agreement in favor of a broader discretionary mechanism, consistent with the Commission's instruction in Order 03.²

² Order 03 at ¶ 42; Order 05 at ¶¶ 6, 14.

B. The Settlement Agreement is Amended and Potential Deferred Penalties Apply to All Provisions of the Agreement

8 The Amended Settlement Agreement was submitted to the Commission and approved in Order 05, on June 13, 2018. As part of the Amended Settlement Agreement, the suspended penalty was reduced to \$1 million.³ The remaining compliance items included six items from or consistent with the original Settlement Agreement, including 1) document the basis for validation of MAOP, 2) leak survey, 3) pressure reductions, 4) TIMP and DIMP evaluation, 5) MAOP Six-Month Status Reports, and 6) commencing a program to align with API recommended practice 1173.

9 The leak survey compliance task requires Cascade to leak survey a minimum of four times annually all unvalidated pipeline segments with preliminary specified minimum yield strength (“SMYS”) calculations of 20% or greater.⁴ Staff’s Motion is based on the alleged violation of this leak surveying provision in the Amended Settlement Agreement.⁵ Specifically, Staff’s Motion claims that because Cascade’s mapping was not accurate, the leak survey on one pipeline segment was not actually performed “over” the pipeline.⁶

C. Cascade Complied with the terms of the Settlement, Regularly Updated Staff that there might be a leak, and Fixed the Leak Once Discovered.

10 Consistent with the Amended Settlement, Cascade has submitted to the Commission six-month status reports, which report on the progress made towards completion of MAOP validation, among other items.⁷ After Cascade submits these reports, it regularly meets with Staff to discuss the contents, answer questions, and provide updates.⁸ At these meetings, and in these reports, Cascade provided regular updates to Staff about the potential leak at issue, and its work to find the leak.

³ Amended Settlement Agreement, ¶ 12.

⁴ Amended Settlement Agreement, ¶ 14.

⁵ Motion at ¶ 5.

⁶ Motion at ¶ 6.

⁷ Declaration of Ryan Privratsky (“Privratsky Decl.”) at ¶ 3.

⁸ Privratsky Decl. at ¶¶ 6-9, 13.

1. Pressure Test Shows Potential Leak and Cascade Informs Staff

11 On May 23, 2023, Cascade notified WUTC Pipeline Safety Staff of an upcoming pressure test of the pipeline segment crossing the Swinomish Channel.⁹ During the test, pressure was held above the minimum test pressure (600 psig) for the duration of the test, but the segment sustained a constant pressure drop that did not appear to be consistent with temperature change.¹⁰ The segment was placed back into service to perform a leak survey to pinpoint the location of a potential leak. Then, on June 6, 2023, Cascade conducted a leak survey of the land portion of the pipeline segment during which no leaks were discovered.¹¹

12 On June 22, 2023, Cascade held one of its regular meetings with Staff to discuss the six-month MAOP status report. At that meeting, Cascade mentioned there was a failed pressure test, indicative of a potential leak, on a segment that was subject to the Amended Settlement.¹²

13 Over the next couple of months, Cascade completed three additional leak surveys, none of which discovered the location of the leak.¹³ Then on September 29, 2023, Cascade filed its MAOP six-month status report with the Commission, where it reported the suspected leak.¹⁴ At that point in time, Cascade determined it would need to move forward with replacing the line because it could not identify the leak. Cascade then held a meeting with Staff on October 11, 2023, to discuss the six-month status report.¹⁵ There, Cascade again discussed the pipeline segment that had the potential leak.¹⁶ The following month, on December 4, 2023, Cascade again conducted a leak survey that included the subject segment and no leaks were discovered.¹⁷

⁹ Privratsky Decl. at ¶ 4.

¹⁰ *Id.*

¹¹ Privratsky Decl. at ¶ 5.

¹² Privratsky Decl. at ¶ 6.

¹³ Privratsky Decl. at ¶ 7.

¹⁴ Privratsky Decl. at ¶ 8. *See also* Cascade's Six Month Status Report at p. 5 (Sept. 29, 2023).

¹⁵ Privratsky Decl. at ¶ 9.

¹⁶ *Id.*

¹⁷ Privratsky Decl. at ¶ 11.

a. Staff claims that “Staff had not received any information” regarding the leak until it was discovered after nine months,¹⁸ but Cascade notified Staff of the leak almost immediately after the leak was suspected in June 2023 and, further, Cascade provided written information regarding the potential leak multiple times in reports filed with the Commission.¹⁹ In fact, on October 13, 2023, Cascade requested additional time to complete documentation of the MAOP validation. In its request, Cascade explained in detail that the first reason for the extension was to complete validation on the segment since it had been unable to locate the potential leak.²⁰ Staff reviewed Cascade’s extension request and recommended that the Commission grant it, which it did.²¹

2. The Location of the Leak is Discovered, Staff is Immediately Informed, and the Leak is Repaired

14 On March 22, 2024, Cascade discovered the location of the leak in a farm field away from homes, pedestrian access, and traffic.²² That same day, Cascade notified Staff of the leak after it established a safety perimeter around the leak.²³

15 Cascade submitted its six-month MAOP status report to the Commission on March 28, 2024, where it reported discovery of the leak and provided Cascade’s plan for repair.²⁴ On March 29, 2024, Cascade responded to an email from Staff regarding the relevant line segment.²⁵ Cascade continued to reevaluate the leak on a weekly basis from March 29, 2024, through May

¹⁸ Motion at ¶ 6.

¹⁹ Privratsky Decl. at ¶ 6-9.

²⁰ Cascade’s Request for Extension of Complete Revised Compliance Program Item V.B.1.a.i at p. 2 (Oct. 13, 2023) (“Without being able to locate a leak, the decision has been made to move forward with replacement”).

²¹ Staff Open Meeting Memo at p. 2 (Dec. 21, 2023) (“Staff has reviewed Cascade’s extension request, accompanying justification, and projected validation timeline (see Memo Attachments 1), and supports extension of the completion date by amending the Amended Settlement Agreement.”).

²² Privratsky Decl. at ¶ 12.

²³ *Id.*

²⁴ Privratsky Decl. at ¶ 13. *See also* Cascade’s Six Month Status Report at p. 5 (March 28, 2024).

²⁵ *Id.*

2, 2024.²⁶ By early April 2024, Cascade was working with a contractor to repair the leak and ordered the materials to conduct the repair.²⁷

16 Cascade continued to keep Staff updated on the leak repair and answered questions during this time period.²⁸ On May 2, 2024, the work to repair the leak started and by May 15, 2024, the pipeline segment was repaired and back in service.²⁹ From the time of the pressure test in June 2023, throughout the entire process, Cascade updated Staff on the status of the leak and its repair, and in some instances, Staff was on site to observe the leak repair.³⁰ At no time, from its notification in June 2023 until service of its Motion last week (more than a year and a half), did Staff express any concern with Cascade’s leak survey or indicate in any way that Cascade was not complying with the Amended Settlement Agreement. On the contrary, Staff consistently reviewed Cascade’s status reports and recommended approval of Cascade’s requests for extensions to perform work required under the Amended Settlement Agreement.

17 After Cascade repaired the leak, the Company continued to cooperate and keep Staff informed as Cascade prepared various reports or reviewed the incident.³¹ Cascade disputes Staff’s claim that “The Company only reported the leak to Staff once it was found...”.³² Such claim is inaccurate and inconsistent with written status reports, discussions, and Staff’s statement that “the Company was responsive and cooperative in the investigation of the incident and repair of the line.”³³ While Cascade takes issue with Staff’s depiction of Cascade’s actions, the Company agrees with Staff that mapping inaccuracies resulted in delayed discovery of the leak.³⁴ The location of the leak, in a rural, marshy area also made identifying the leak particularly

²⁶ *Id.*

²⁷ Privratsky Decl. at ¶¶ 14-15.

²⁸ *Id.*

²⁹ Privratsky Decl. at ¶¶ 17-21.

³⁰ *Id.*

³¹ Privratsky Decl. at ¶¶ 22-30.

³² Motion at ¶ 10.

³³ Motion at ¶ 10.

³⁴ Motion at ¶ 6.

difficult. Cascade is working on making improvements to its mapping to help avoid similar situations in the future and looks forward to working with Staff to identify next steps to improve Cascade's mapping accuracy.

18 While Cascade takes mapping accuracy seriously, it is important to note that it is questionable that failure to survey the pipeline segment itself amounts to a violation of the Amended Settlement Agreement. As stated above, the provision at issue requires Cascade to survey unvalidated pipeline segments with preliminary specified minimum yield strength ("SMYS") calculations of 20% or greater. The pipeline segment in question was operating at a percentage of SMYS below 20%. To explain, when MAOP validation work began, the percentage of SMYS on the 8" Anacortes Line was preliminarily calculated as 34.41% at MAOP. Since the percentage of SMYS was over 30%, the pipeline was required to undergo a 20% pressure reduction per Section V.B.4 of the Amended Settlement Agreement. Through validation of the pipeline material properties completed in 2017, the percentage of SMYS at MAOP was lowered to 23.59%, but since the pipeline was under the pressure reduction, the pipeline was only able to be operated at a percentage of SMYS of 18.88%. Even with the percentage of SMYS below 30%, Cascade kept the line under the pressure reduction until MAOP validation was completed in 2024. Cascade also kept performing the additional leak surveys called for under Section V.B.3, even with the percentage of SMYS below 20%.³⁵

III. ARGUMENT

19 Staff's request to impose the entirety of the suspended penalty is unreasonable, inconsistent with the purpose of the Amended Settlement Agreement, and contrary to Commission policy. Conducting a leak survey over the MTVL1-1 segment of the Anacortes transmission line is only one of several provisions in the comprehensive Amended Settlement Agreement, and it is inappropriate to impose the maximum available penalties because

³⁵ See Privratsky Decl. at ¶ 31.

Cascade’s leak survey for that segment was not accurate. Cascade identified and repaired the leak,³⁶ Cascade kept Staff fully informed in the entire process, and imposition of any penalty is not warranted by the Amended Settlement Agreement or the Commission’s Enforcement Policy.

20 The Commission’s standard for imposing a penalty is outlined in its Enforcement Policy.³⁷ In deciding whether to impose penalties, the Commission will consider whether the company took “reasonable measures, based on the circumstances[.]”³⁸ The Commission’s Enforcement Policy sets forth several factors the Commission will consider when determining if penalties should be imposed, but also the level of penalty to be imposed.³⁹ Factors include

- Potential harm to the public.
- Whether the violation is intentional.
- Whether the company self-reported.
- Whether the company was cooperative and responsive.
- Whether the company promptly corrected the violations and remedied the impacts.
- The number of violations.
- The number of customers affected.
- The likelihood of recurrence.
- The company’s past performance.
- The company’s existing compliance program.

³⁶ “The leak was consistent with a Grade 3 leak pursuant to WAC 480-93-186, which is the lowest priority of leak.” Privratsky Decl. at ¶ 12.

³⁷ *In the Matter of the Enforcement Policy of the Washington Utilities and Transportation Commission*, Docket A-120061, Enforcement Policy for the Washington Utilities and Transportation Commission (January 7, 2013) (“Enforcement Policy”).

³⁸ *In the Matter of the Petition of Puget Sound Energy For Penalty Mitigation Associated with Service Quality Index No. 11 – Electric Safety Response Time Annual Performance for Period Ending December 31, 2021*, Docket UE-220216, Order 04 (Oct. 26, 2023).

³⁹ Enforcement Policy at ¶ 15.

- The size of the company.

21 As discussed below, Cascade proactively took measures to identify the leak, and once found, immediately took corrective action. Throughout the process Cascade provided updates to Staff and reported the leak in a timely manner. Staff’s Motion involves only one pipeline segment among many successfully surveyed. Additionally, the Commission should consider the Amended Settlement Agreement as a whole, including the various requirements that Cascade has complied with and will continue to be required to comply with.

A. The History of the Settlement Agreement Weighs Against Imposing the Full Penalty.

22 The Amended Settlement Agreement requires Cascade to leak survey certain segments, including the Anacortes Line MTVL1-1 at issue here, at least four times annually. Cascade recognizes that incorrect mapping information resulted in an inaccurate leak survey. However, imposition of the entirety of the penalty is inappropriate given the context of Cascade’s performance throughout this proceeding.

23 The Amended Settlement Agreement reduced the deferred penalty from \$1.5 million to \$1 million after Cascade demonstrated progress with the terms of the initial agreement, including in the areas where specific penalties were intended to be attributable. The Amended Settlement did not “parse out” specific penalties, and instead provided that “the Commission retains discretion” to impose any of the remaining suspended penalty as it sees fit.⁴⁰ Despite mapping errors, which were unexpected and were not contemplated in either the initial or Amended Settlement Agreement, Cascade has substantially complied with its obligations. The Commission should exercise its discretion to deny Staff’s Motion and continue suspension of the penalties.

⁴⁰ Amended Settlement Agreement at ¶ 12.

B. Commission Policy Weighs Against the Imposition a Penalty

24 The Commission has discretion to decline to impose penalties pursuant to the factors outlined in its Enforcement Policy.⁴¹ Those factors weigh against imposing a penalty because even if a violation of the Amended Settlement Agreement occurred, it was unintentional, Cascade reported the issue to Staff, Cascade cooperated with Staff, once the leak was found Cascade promptly corrected the issue, and no customers were affected.

25 Once Cascade’s pressure test showed a leak might be present, the Company immediately conducted multiple leak surveys to find the leak. Cascade believed it was surveying the line, but its mapping was off, showing the error was unintentional.

26 Cascade informed WUTC Staff when the pressure test showed there might be a leak through multiple reports and in conversations, and the Company reported the leak to Staff immediately when it found the source of the leak. Throughout the process Cascade communicated with Staff about its efforts to survey, identify, and fix the leak. As Staff acknowledges,⁴² Cascade was responsive and cooperative in both the investigation of the leak and its repair. Cascade admits the survey was not conducted over the actual line for this segment and notes the location of the leak made identification particularly difficult, but the leak itself was in a rural area and did not impact any customers.⁴³ Despite this, Cascade takes the mapping inaccuracies seriously. Cascade has made significant changes to improve its mapping accuracy over the years, as outlined in the Declaration of Ryan Privratsky, and Cascade is open to working with Staff to identify ways to further improve Cascade’s mapping systems that are technologically available and comply with the Commission’s rules. Cascade looks forward to initiating these discussions and conducting them in the same collaborative manner that it has experienced previously in this proceeding.

⁴¹ Enforcement Policy at ¶¶ 15-21.

⁴² Motion at ¶ 10.

⁴³ Privratsky Decl. at ¶ 12.

IV. CONCLUSION

27 For the reasons set forth above, Cascade respectfully requests that the Commission deny Staff's Motion to Impose Suspended Penalties.

DATED: February 6, 2025

Respectfully Submitted,

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