

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,

Complainant,

v.

CASCADE NATURAL GAS
CORPORATION,

Respondent.

DOCKET PG-150120

STAFF’S REPLY TO CASCADE
NATURAL GAS’ RESPONSE TO
STAFF’S MOTION TO IMPOSE
SUSPENDED PENALTIES

I. INTRODUCTION

1 Staff filed a motion to impose suspended penalties in this docket after investigation revealed that Cascade failed to properly conduct leak surveys over the MTVL1-1 segment of the Anacortes pipeline. Cascade subsequently responded to that motion, and requested that the Commission not impose any penalties. The Commission should reject Cascade’s argument against the imposition of the suspended penalty as it focuses on facts not relevant to the true issue at bar, the failure to conduct leak surveys over the pipeline, and misconstrues a prior Commission order.

II. ARGUMENT

A. No Commission Order in This Proceeding Assigns Penalty Amounts to Specific Settlement Terms

2 There have been three settlement agreements in this docket. The first Settlement Agreement (hereinafter Agreement One) was approved by the Commission on February 12, 2015, in Order 01, and contained no penalty provisions.¹ Staff subsequently filed a

¹ *In the Matter of the Investigation of the Gas Pipeline System of Cascade Natural Gas Corporation*, Docket PG-150120, Order 01 (Feb. 12, 2015); *In the Matter of the Investigation of the Gas Pipeline System of Cascade*

complaint in this docket when Cascade violated Agreement One as approved by the Commission in Order 01.² That complaint was subsequently resolved in a second settlement agreement (hereinafter Agreement Two), approved by the Commission in Order 03.³ In Order 03 the Commission expressly rejected the notion that the penalty be parsed out among a few compliance items and stated:

Instead, the suspended penalty should apply to all of the compliance provisions, and the Commission should use its discretion, based upon the severity of any noncompliance, to set the penalty amount, up to and including the full \$1.5 million suspended penalty. We condition our approval of the settlement on the Commission's ability to reimpose any portion of suspended penalties for failure to comply with any provision of the settlement.⁴

The Commission subsequently stated in its order that at “its discretion, the Commission may impose any of the suspended \$1.5 million suspended penalty for violations of *any* of the compliance items listed in the Settlement or in this Order.”⁵ In a response to the parties’ joint motion for clarification, the Commission clarified that it retains discretion to “impose any of the suspended penalty as described” in Order 03, but stated suspended or additional penalties do not apply to voluntary aspects of term 8 involving API 1173.⁶ The leak surveys are term 3 of Agreement Two, and the Commission thus retains discretion to impose the suspended penalty for failure to comply with the leak survey terms.⁷ Agreement Two, as approved by Order 03, was subsequently amended, creating the third and final settlement

Natural Gas Corporation, Docket PG-150120, Order 01, Exhibit A (Feb. 12, 2015).

² *Wash. Utils & Transp. Comm’n v. Cascade Natural Gas Corporation*, Docket PG-150120, Order 02, at 1 ¶ 1 (Sept. 2, 2016).

³ *Wash. Utils & Transp. Comm’n v. Cascade Natural Gas Corporation*, Docket PG-150120, Order 03 (Mar. 20, 2017).

⁴ *Id.* at 16 ¶ 42.

⁵ *Id.* at 20 ¶ 69 (emphasis added).

⁶ *Wash. Utils & Transp. Comm’n v. Cascade Natural Gas Corporation*, Docket PG-150120, Order 04, at 2 ¶ 6, 3 ¶ 7 (Mar. 30, 2017).

⁷ *Wash. Utils & Transp. Comm’n v. Cascade Natural Gas Corporation*, Docket PG-150120, Order 03, Appendix A at 5 (Mar. 20, 2017).

agreement in this proceeding (hereinafter Agreement Three). The Commission approved Agreement Three in Order 05.⁸ In its approval, reducing the suspended penalty by \$500,000, it stated:

Consistent with our decision in Order 03, we do not believe this amount should be associated with or tied to compliance of the condition that CNGC submit to a third-party audit to determine the Company's baseline variance from the standards set forth in API Recommended Practice 1173. Further, the remaining \$1 million suspended penalty should serve as a strong incentive for fulfillment of the provisions in the Amended Agreement. The remaining suspended penalty shall remain in effect until CNGC has completed all of its obligations under the agreement, and the entirety of the remaining suspended penalty shall apply to all of the conditions. We will not parse out any of the suspended penalty for individual commitments within the Amended Agreement.⁹

The Commission ordered that the remaining \$1 million suspended penalty "shall apply in its entirety to all of the conditions within the agreement."¹⁰ The leak survey term was preserved in Agreement Three.¹¹

3 Cascade's discussion of any agreement assigning specific dollar values to specific terms is not relevant, as the Commission repeatedly rejected such action, and only goes to confuse the issues in this case. The Commission expressly stated in the two most recent orders in this docket approving settlement agreements that the suspended penalty applies to all provisions and is not to be parsed out. Cascade's discussion of provisions of the agreement that the Commission soundly rejected is confusing and unnecessary, as argument based on rejected premises provide no help in analyzing whether the Commission should impose a penalty here. Additionally, Cascade's reference to the parties' contemplations

⁸ *Wash. Utils & Transp. Comm'n v. Cascade Natural Gas Corporation*, Docket PG-150120, Order 05 (Jun. 13, 2018).

⁹ *Id.* at 7 ¶ 14.

¹⁰ *Id.* at 10 ¶ 37.

¹¹ *Wash. Utils & Transp. Comm'n v. Cascade Natural Gas Corporation*, Docket PG-150120, Order 05, Appendix A at 7 (Jun. 13, 2018).

regarding submitting Agreement Three¹² seem to come close to discussing settlement conversations contrary to the spirit of the Commission's rules.^{13,14}

4 There is no provision in any order in this docket that requires the Commission limit its imposition of a suspended penalty to a specific portion of the penalty for a specific violation of the settlement agreement. The Commission should disregard any argument that claims the Commission is required to cabin imposing a penalty to a specific amount of the available suspended penalties.

B. Staff Wishes to Correct the Record That Cascade did Inform it of the Possibility of a Leak Prior to the Leak's Discovery; However, That Fact Has no Bearing on the Fact That Leak Surveys Were Not Conducted as Required

5 In its response, Cascade asserts that it did alert Staff to the possibility of the leak in meetings prior to discovery of the leak on March 22, 2024.¹⁵ Upon further review of Staff records from the time period in question, it does appear that Cascade informed Staff that the pressure test failure was possible due to a leak. For that reason, Staff is filing a corrected declaration along with this reply. Staff additionally wishes to strike references to that misstated fact from its motion.¹⁶ However, that factual inaccuracy is not pertinent to the motion at bar, as whether or not the Commission was notified at a specific time does not impact whether or not leak surveys were conducted over the line according to the settlement agreement.

¹² *Wash. Utils & Transp. Comm 'n v. Cascade Natural Gas Corporation*, Docket PG-150120, Cascade's Response to Staff's Motion to Impose Suspended Penalties, at 3 ¶ 7 (Feb. 6, 2025) (hereinafter "Cascade's Response").

¹³ WAC 480-07-700(6)(b).

¹⁴ WAC 480-070700(6)(a).

¹⁵ Cascade's Response at 5 ¶ 12.

¹⁶ Striking "Staff had not received any information prior to this notification" from 4 ¶ 6.

6

Commission rules require that leak surveys take place “over” lines.¹⁷ It is not possible to conduct the leak survey over a line, when one is surveying 100-200 feet away from the line. Cascade admits in its response that “the survey was not conducted over the actual line for this segment”¹⁸ even though the MTVL1-1 segment of the Anacortes line was subject to the agreement.¹⁹ The plain truth is that because Cascade’s mapping was so inaccurate the line was never leak surveyed. Cascade’s focus on when Staff was informed about the failed pressure test is irrelevant and the Commission should reject any argument based on it.

7

The reality is that the failure to conduct leak surveys over this line is quite serious. As previously laid out in Staff’s Motion to Impose Penalties, the area surrounding this leak is an environmentally sensitive marshland next to a slough that feeds into the Puget Sound. Additionally, while it is rural in location, it is across the slough from Swinomish tribal land and right next to a major state route (State Route 20). Leak surveys are intended to catch problems before they become disasters. Failure to properly survey a line increases the possibility of a significant accident occurring, one that can cause harm to human health and life, and sensitive habitats. Even if the lack of leak surveying was “unintentional[,]”²⁰ unintentional actions have consequences, and though this leak was luckily small, it is a stark reminder to how important pipeline safety is and the importance of being able to promptly address leaks or know where pipelines are in the event of an emergency.

¹⁷ WAC 480-93-188(1)(a).

¹⁸ Cascade’s Response at 11 ¶ 26.

¹⁹ Cascade’s Response at 10 ¶ 22. Witness Privratsky indicates that the line may not have required surveying. *Wash. Utils & Transp. Comm’n v. Cascade Natural Gas Corporation*, Docket PG-150120, Declaration of Ryan Privratsky, at 5 ¶ 31 (Feb. 6, 2025). However, as noted above, Cascade acknowledges that the line did require surveying and was subject to Agreement Three. Cascade’s Response at 10 ¶ 22.

²⁰ Cascade’s Response at 11 ¶ 24.

VI. CONCLUSION

8 Staff requests that the Commission reject the arguments that Cascade offers in its response, as its arguments improperly portray Commission orders in this proceeding and focus on facts not actually determinative of the issue at bar.

DATED this 13th day of February, 2025.

Respectfully submitted,

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