

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION
COMMISSION

WASHINGTON UTILITIES AND)	
TRANSPORTATION COMMISSION,)	DOCKET NOS. UG-020230
)	UG-020232
Complainant,)	
)	
vs.)	SETTLEMENT AGREEMENT
)	
BASIN FROZEN FOODS, INC.)	
)	
Respondent.)	
.....)	

1 This Agreement is entered into for the purpose of resolving all issues raised in these dockets. This Agreement is subject to approval by the Washington Utilities and Transportation Commission (“Commission”), and is not effective before such approval. The documents constituting the agreement of the Parties are this “Settlement Agreement” and Appendices A, B and C attached hereto, collectively called the “Agreement” herein.

2 Appendix A is a letter from Cascade Natural Gas Company (“Cascade”) regarding its status as the pipeline operator. Appendix B is a copy of the Violation Report issued to Basin Frozen Foods, Inc. Appendix C contains copies of relevant federal rules that have been adopted by reference by the Commission, and are referred to in this Agreement.

I. PARTIES

3 The Parties to this Agreement are Basin Frozen Foods, Inc. (“Basin”), and
the Staff of the Commission (“Staff” or “Commission Staff”) (individually, a
“Party;” collectively, “the Parties”).

II. BACKGROUND

4 Basin owns a six-inch (6”) natural gas pipeline, approximately 3.8 miles
long, with a maximum operating pressure of 250 pounds per square inch gauge
(psig). This pipeline, which includes all related pipeline facilities owned by
Basin, is called “Basin’s pipeline” herein. Basin’s pipeline serves Basin’s potato
processing facility located in or near the city of Warden, in Grant County,
Washington.

5 In Docket No. UG-020230, Staff conducted a Standard Natural Gas
Transmission Pipeline Inspection of Basin’s pipeline. In Docket No. UG-020232,
Staff conducted a Standard Drug and Alcohol Inspection. Both inspections took
place on April 15-17, 2002, and included a review of operations, maintenance,
procedures, records, and pipeline facilities. As a result of these inspections, Staff
issued a Violation Report (Appendix B) listing allegations that Basin violated
WAC 480-93-018, WAC 480-93-082, WAC 480-93-120, WAC 480-93-124, WAC 480-
93-180, WAC 480-93-184, WAC 480-93-200 and WAC 480-03-010, some sections of
which adopt and incorporates Title 49 of the Code of Federal Regulations
(“CFR”), Parts 191, 192, and 199. Specific violations of portions of 49 CFR 191,
192, and 199 were alleged. This action was taken in Docket Nos. UG-020230 and
UG-020232.

6 On August 28, 2002, the Commission, based on the Violation Report
(Appendix B), issued its Complaint in Docket Nos. UG-020230 and UG-020232.
The Complaint summarized the violations in the following areas:

- a. Not establishing an adequate emergency plan;
- b. Not establishing the basis for and then maintaining safe
pipeline operating pressures;

- c. Not maintaining a qualified anti-drug and alcohol misuse program;
- d. Not establishing and maintaining a third-party damage prevention plan; and
- e. Not having a qualified individual to oversee all aspects of Basin's natural gas transportation operations.

7 A prehearing conference was held on October 24, 2002. The only two parties to appear in these dockets are Basin and the Commission.

8 Since issuing its Violation Report (Appendix B), Staff has been discussing with Basin ways to resolve the issues now presented in these dockets, in a manner that assures present and future compliance with applicable Commission laws and rules. Both Parties share the goal that Basin's pipeline be operated in compliance with Commission laws and rules related to the safe operation of Basin's pipeline.

III. AGREEMENT

9 The Parties have reached agreement on how to resolve the issues raised in these dockets and wish to present their agreement for the Commission's consideration and approval. The Parties voluntarily enter this Agreement without hearing or adjudication of any issues of fact or law to resolve the matters in dispute between them in what each Party believes is an appropriate manner, and to avoid the expense, time and uncertainty of litigation.

10 This Agreement outlines the elements of Agreement, and the sections of the Violation Report (Appendix B) each aspect of the Agreement addresses. The most relevant sections of the CFR described herein are included in Appendix C to this Agreement.

New Operator

11 From as late as November 25, 2002 forward, Basin's pipeline will be operated by Cascade Natural Gas Company. Appendix A to this Agreement is a letter from Cascade indicating Cascade's understanding that it is the operator of Basin's pipeline. Basin remains the pipeline owner.

12 As operator, Cascade will be responsible for operating and maintaining Basin's pipeline in full compliance with all Commission laws and rules. If Cascade ceases to operate Basin's pipeline, or if for any other reason Basin does not have a qualified operator to operate the pipeline, Basin will shut off its pipeline until it has a qualified operator to operate the pipeline. Basin will immediately notify the Commission if Cascade ceases to be the operator of Basin's pipeline, or within two working days of receiving any notice by Cascade that Cascade will cease to be the operator.

13 This addresses Item 21 in the Violation Report (Appendix B).

O&M Manual

14 Basin agrees that Cascade has an Operations and Maintenance (O&M) Manual applicable to operating Basin's pipeline, and the O&M Manual complies with 49 CFR 192.605. In Docket No. UG-020706, the 2002 standard inspection of one of Cascade's facilities was conducted. The 2002 standard inspection included review of Cascade's O&M manual and Staff determined that Cascade's O&M manual includes qualified individuals. These individuals will oversee all aspects of Basin's pipeline.

15 In addition to all of the requirements for an O&M manual, Cascade's manual includes specific information for operating Basin's pipeline. Some of those items are identifying the designated blow down valves and including their relief calculations, providing a means of receiving and recording notification of planned excavation activities, welding procedures, welders qualification, numbering emergency operating valves, a description of Basin's warning and marker signs, public education requirements, and Investigation of failures. Staff has reviewed Cascade's O&M manual pertinent to Basin's pipeline requirement items. Based on that review, Staff believes Basin complies with 49 CFR 192.605.

16 This addresses Items 1, 5, 6, 7, 9, 10, 14, 15, 21, 22, 24, and 25 in the Violation Report (Appendix B).

Emergency Plan

17 Basin agrees that Cascade has an emergency plan in effect that includes written procedures to minimize the hazards resulting from a gas pipeline emergency regarding Basin's pipeline. This plan includes all parts of 49 CFR 192.615 applicable to operation of Basin's pipeline. Staff has reviewed the emergency plan. Based on that review, Staff believes the emergency plan complies with 49 CFR 192.615.

18 This addresses Item 13 in the Violation Report (Appendix B).

Pipeline Design Specifications and As-Built Records

19 Basin now has in its possession, in one place, and available for convenient review upon request, the comprehensive written design specifications for Basin's pipeline, including the material list and drawings. These specifications are necessary to determine a safe pipeline operating pressure. Staff has reviewed the records. Based on that review, Staff believes Basin is in compliance with 49 CFR 192.303.

20 Basin now also has in its possession, in one place, and available for convenient review upon request, all "as-built records" indicating the current construction detail of the Basin pipeline in accordance with Basin's 2001 Operations and Maintenance Manual and with 49 CFR 192.13. The as-built records are necessary to determine a safe pipeline operating pressure. The as-built records are used to determine the weakest component of the pipeline. The weakest component information is used in calculations that determine the Maximum Allowable Operating Pressure (MAOP) of Basin's pipeline. Staff has reviewed such records. Based on that review, Staff believes Basin is in compliance with 49 CFR 192.13.

21 This addresses Items 2, 3, 4, 8, 16, and 20 in the Violation Report (Appendix B).

Anti-Drug Program and Alcohol Misuse Prevention Plan

22 Basin agrees that Cascade has in effect an Anti-Drug Program and Alcohol Misuse Prevention Plan applicable to operation of Basin's pipeline and the Anti-Drug Program and The Alcohol Misuse Prevention Plan complies with 49 CFR

Part 199. Cascade's drug and alcohol plan was inspected by Commission Staff in November of 2000 under Docket No. UG-001704 and was found to be adequate. Staff conducted a review of Cascade's drug and alcohol plan in November of 2002 and confirmed the plan, as applicable to operation of Basin's pipeline, is consistent with existing requirements.

23 This addresses Item 19 in the Violation Report (Appendix B).

Damage Prevention Plan

24 Basin agrees that Cascade has established a written plan to prevent damage to Basin's pipeline by excavation activities, in accordance with 49 CFR 192.614. Staff has reviewed such records. Based on that review, Staff believes the plan complies with 49 CFR 192.614.

25 This addresses Item 12 in the Violation Report (Appendix B).

Surveillance Plan

26 Basin agrees that Cascade has in effect a continuing surveillance plan that includes procedures for continuing surveillance of Basin's facilities to determine and take appropriate action concerning changes in class location, failures, leakage history, corrosion, substantial changes in cathodic protection requirements and other unusual operating and maintenance conditions. The written procedures for and documentation of continuing surveillance includes all parts of 49 CFR 192.613 applicable to operation of Basin's pipeline. Staff has reviewed the plan. Based on that review, Staff believes the emergency plan complies with 49 CFR 192.613.

27 Basin agrees that Cascade has in effect Patrolling procedures applicable to operating Basin's pipeline, and the Patrolling procedure complies with 49 CFR 192.705. Staff has reviewed Cascade's Patrolling procedures. Based on that review, Staff believes the patrolling procedures comply with 49 CFR 192.705.

28 This addresses Items 11 and 17 in the Violation Report (Appendix B).

Other Issues

29 Basin has provided Commission Staff with documentation that a public education plan has been established; that the bridge crossing warning sign at the bridge on "U" Road has been replaced; that there is a warning sign on the Williams Pipeline and Basin pipeline regulator station; that the missing pipeline markers along Basin's pipeline have been replaced; that documentation has been provided that indicates that regulators on Basin's pipeline facilities inside the Williams gate station have the ability to limit pressure on the pipeline; and that the appropriate information has been filed with Grant County and Warden police, fire and emergency response centers.

30 This addresses Items 18, 22, 23 and 26 in the Violation Report (Appendix B).

Sanctions

31 Basin will pay to the Commission penalties totaling forty thousand dollars (\$40,000.00). This amount shall be due and payable on eleven equal installment payments of \$3,333.33, and one installment payment of \$3,333.34. The payments will begin March 1, 2003. Payments are due by the 15th of each successive month. Final payment will be made on or before February 1, 2004. Payments shall be made by check sent to the Commission offices in Olympia, Washington. If Basin is untimely in its payments, or if full payment is not made by Basin by February 1, 2004, this Agreement will be terminated and the matter will be set for hearing. If the Agreement is terminated due to Basin's non-payment or untimely payment, Basin will be give a credit for the amount it paid as an offset for any monetary sanction the Commission may issue after hearing, but in no event would any sums paid by Basin be returned to Basin.

IV. GENERAL PROVISIONS

Nature of the Agreement.

32 The Parties agree that this Agreement is an appropriate settlement of all contested issues between them in this proceeding. The Parties understand that

this Agreement is subject to Commission approval and it is not effective unless and until it is approved by the Commission.

33 Nothing in this Agreement is intended to limit or bar any other entity from pursuing legal claims, or to limit or bar Basin's ability to assert defenses to such claims.

34 Nothing in this Agreement limits or bars the Commission from pursuing penalties for violations of Commission statutes and rules unrelated to the subject matter of this Agreement. Nothing in this Agreement limits or bars the Commission from pursuing penalties for violations of Commission statutes and rules that are related to the subject matter of this Agreement, but which violations occurred after the date this Agreement was executed.

35 The Parties have entered into this Agreement to avoid further expense, inconvenience, uncertainty, and delay. The Parties recognize that this Agreement represents a compromise of the Parties' positions. As such, conduct, statements, and documents disclosed during negotiations of this Agreement shall not be admissible as evidence in this or any other proceeding, except in any proceeding to enforce the terms of this Agreement or any Commission Order fully adopting those terms. This Agreement shall not be construed against either Party because it was a drafter of this Agreement.

Integrated Terms of Settlement

36 The Parties have negotiated this Agreement as an integrated document to be filed with the Commission only upon execution. Once the Agreement is executed, the Parties agree to support the Agreement in its entirety. This Agreement supersedes all prior oral and written agreements on issues addressed herein, if any.

Manner of Execution

37 This Agreement is considered executed when all Parties sign the Agreement. A designated and authorized representative may sign the Agreement on a Party's behalf. The Parties may execute this Agreement in counterparts. If the Agreement is executed in counterparts, all counterparts shall

constitute one agreement. An Agreement signed in counterpart and sent by facsimile is as effective as an original document. Each Party shall indicate the date of its signature on the Agreement. The date of execution of the Agreement will be the latest date indicated on the signatures.

Procedure

38 Once it is executed, the Parties agree to cooperate in promptly filing this Agreement with the Commission for approval. The Parties agree to support approval of this Agreement in proceedings before the Commission, through oral testimony and/or briefing. The Parties understand the Commission has set December 12, 2002 as the date for hearing on any proposed settlement. (See First Supplemental Order; Prehearing Conference Order (October 29, 2002) in Docket Nos. UG-020230 and UG-020232).

39 At a hearing on the Agreement, each Party shall make available a witness or witnesses to answer questions and to support the Agreement. Any Party may elect to file, on or before 5 calendar days of the hearing on the Agreement, a memorandum with the Commission explaining the Settlement. The Parties understand that such a memorandum may contain the perspectives of the filing Party which may or not be the perspectives of the other Party. The Parties will cooperate in good faith to comply with any other procedures the Commission may employ in its evaluation of the proposed Agreement.

40 In the event that the Commission rejects all or any portion of this Agreement, each Party reserves the right to withdraw from this Agreement by written notice to the other Party and the Commission. Written notice must be served within 10 business days of the date of the Commission order rejecting all or any portion of this Agreement. In such event, neither Party will be bound or prejudiced by the terms of this Agreement. The Parties will jointly request a prehearing conference for purposes of establishing a procedural schedule to complete the case.

No precedent

41 No Party shall be deemed to have agreed that this Agreement is precedent for resolving any issues in any other proceeding, other than a proceeding for enforcement of this Agreement.

For Commission Staff:

For Basin Frozen Foods, Inc.

Donald T. Trotter
Assistant Attorney General

Kevin Weber
President

Date signed:

Date signed: