

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND)
TRANSPORTATION COMMISSION,) DOCKET PG-110443
Complainant,)
v.) SETTLEMENT AGREEMENT
CASCADE NATURAL GAS)
CORPORATION,)
Respondent.)
_____)

1 This Settlement Agreement (“Agreement”) is entered into by the parties to this proceeding for the purpose of resolving all issues raised in this docket. This Agreement is subject to approval by the Washington Utilities and Transportation Commission (“Commission”) and it is not effective for any purpose until such approval.

I. PARTIES

2 The parties to this Agreement are Cascade Natural Gas Corporation (“Cascade”) and the Staff of the Commission (“Staff”). Cascade and Staff are referred to individually in this Agreement as “Party” and collectively as “the Parties.” Cascade and Staff are the only parties of record in this docket.

II. BACKGROUND

3 Cascade owns and operates natural gas pipeline facilities serving residences and businesses located in Washington. Between 2008 and 2010, Staff conducted natural gas standard safety inspections of certain of Cascade’s pipeline facilities, as well as an investigation of an over-pressure event on Cascade’s system. Staff’s inspections identified alleged violations of Commission laws and rules.

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- 4 On March 21, 2011, the Commission issued a Complaint in this docket. The Complaint alleged violations of numerous federal and state gas safety rules. Part of the Complaint, Attachment A, itemizes the details of most of the allegations in the Complaint.
- 5 On April 11, 2011, Cascade filed its Answer to the Complaint.
- 6 On May 16, 2011 Commission Administrative Law Judge Adam E. Torem convened a prehearing conference. No person or other entity sought intervention.
- 7 At the prehearing conference, the Parties expressed their intention to engage in settlement discussions. Staff and Cascade subsequently engaged in settlement discussions to negotiate a mutually acceptable resolution of the Complaint. This Agreement is the result of those discussions.
- 8 Cascade has investigated the violations alleged in the Complaint, conducted reviews of its existing documentation, reviewed its policies and procedures and taken corrective action. In particular, the Parties acknowledge Cascade has corrected certain violations and continues to work in good faith to correct others identified in the Complaint, as well as in the inspection dockets listed in the Complaint, to ensure compliance with the gas system safety regulations. In addition, Cascade is making progress to meet the specific requirements outlined in this Agreement.

III. AGREEMENT

- 9 The Parties have reached agreement on the issues raised in this docket and wish to present their agreement for the Commission's consideration and approval. The Parties therefore adopt the following Settlement Agreement, which the Parties enter into voluntarily, to resolve the matters in dispute between them and to expedite the orderly disposition of this proceeding. The Parties agree as follows:

A. Admission of Violations

- 10 To achieve a settlement, Cascade admits to some violations of state and federal rules regarding the inspection, monitoring, and maintenance of its pipeline facilities and its records, as identified in the Complaint, but is not admitting to all of the alleged violations in the Complaint. The Company's Answer admits the conduct that results in such admitted violations. The Parties understand the admissions made by Cascade for purposes of settling this complaint are considered offers to compromise that are not admissible as evidence by third parties in other proceedings or litigation.

B. Monetary Penalty (Not Suspended)

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- 11 Within ten business days of Commission approval of this Agreement, Cascade will pay to the Commission a monetary penalty in the amount of \$425,000. Cascade agrees not to seek recovery of this amount from its Washington ratepayers.

C. Action Plan with Suspended Penalties

- 12 Cascade agrees to take the following actions on the following schedule, which also contains suspended penalties. If Cascade fails to comply with any action in Action Items 1-8 below, Cascade agrees to pay the listed penalty associated with that Action Item, except: Cascade acknowledges that if Staff determines there is noncompliance, Staff will seek an order of the Commission for immediate imposition of suspended penalties. In such event, Cascade reserves the right to maintain that compliance has been met or to request adjustment of the suspended penalties in recognition of substantial compliance by Cascade or delays in compliance caused by acts of Force Majeure or actions of parties beyond the control of Cascade.

13 **Action Items:**

1. “Management of Change” program. Cascade must implement a program to ensure that Cascade properly coordinates changes to its pipeline safety program within the appropriate sections of the company. Cascade needs to track physical, technical, procedural and organizational changes. This program must include changes of components and equipment, changes to pipe repair procedures, changes in other procedures and changes in operating conditions. The management of change form must include at a minimum:

1. Reason for change
2. Authority for approval
3. Analysis of implications
4. Required permits
5. Documentation requirements
6. Communication of change process time limitations
7. Staff qualifications

Cascade will provide this training to employees and third party contractors. Cascade will implement the program by June 30, 2012 - **\$250,000** Suspended penalty, imposed in full if Cascade fails to comply.

2. Improved Maintenance Management system. Cascade has developed a centralized (i.e., consistent among all Districts) system to track and verify that required maintenance activities are performed in a manner that complies with applicable rules.

Cascade has implemented a centralized system called SharePoint. Longer term, Cascade will enhance this system by fully deploying a maintenance management system (currently called GL Essentials) by July 1, 2013.

3. Quality Assurance/Quality Control (QA/QC) program. Cascade must implement a program to ensure that each District in which Cascade operates is complying with company pipeline safety procedures. This program should include internal audits, and audit findings and recommendations should receive full support of management and be addressed and/or carried out. Cascade must document the QA/QC program including:

1. Defined responsibilities and authorities;
2. Regular District reviews of compliance status with pipeline safety rules, company procedures, leak history and repair, pressure control performance, accident/incident history, mapping updates, third party damage, compliance with manual revisions and management of change process;
3. Corrective actions identified;
4. Corrective actions carried out;
5. Resources to carry out needed action; and
6. Regular assessments.

Cascade will implement a QA/QC program by June 30, 2012 - **\$500,000** suspended penalty, imposed in full if Cascade fails to comply.

4. Remedy violations identified in Commission inspection letters in the dockets listed in the Complaint. Staff will work with the company to address items that are disputed or require clarification. Staff and Company recognize some time-related violations cannot be remedied. Moreover, if there are disagreements regarding whether specific conduct occurred as alleged, or whether the conduct constitutes a violation, or whether a violation has been adequately remedied, the Parties agree to cooperate in resolving the dispute efficiently, including seeking the assistance of the ALJ assigned to this matter.

Cascade will remedy the violations by June 30, 2012 - **\$300,000** suspended penalty, imposed in full if Cascade fails to comply.

5. Mapping Updates. Cascade must update its pipeline maps, and have a process in place for updating maps on an ongoing basis. Cascade is also implementing the GIS, GL Essentials, and integrated procedures, which will allow Cascade to more accurately update its maps. The implementations of these systems, combined with the fact that the mapping has been updated at varying degrees throughout the company, result in the need for extra time to allow for continuity of mapping through the company.

Cascade has begun the process to update its maps. Cascade will have 50 percent of its maps updated by December 31, 2011, and all of its maps updated by December 31, 2012. - **\$100,000** suspended penalty, imposed in full if Cascade fails to comply.

6. O&M Manual Revisions. Cascade must develop and carry out a process to ensure that updates and revisions to its Manual are distributed and understood by District personnel. Cascade must ensure that appropriate personnel are promptly briefed or trained on such

revisions. Whatever training format is used, Cascade will provide a means for meaningful interaction (including question/answer sessions) for employees trained.

Cascade agrees to begin to carry out this process by June 30, 2012 - **\$300,000** suspended penalty, imposed in full if Cascade fails to comply.

7. Leak Characterization Review. Cascade must review and modify as necessary its leak classification procedures to ensure that below-ground leaks are properly evaluated, including accurate assessment of plume spread, gas concentrations, pipe location, impacts to adjacent structures, impacts from underground conduits and proper leak grading. The Parties understand that although this item refers specifically to below-ground leaks, nothing in this Agreement affects the Company's duty to comply with procedures applicable to above-ground leaks.

Cascade has this review and process modification in place, and continues to evaluate this area for improvements.

8. Review of Pressure control processes. Cascade must review its pressure control layout, design and set points for all gate and district regulating stations. Cascade must develop cold weather operating procedures, and as necessary, revise its procedures and processes to improve the reliability of pressure control equipment. Cascade's review evaluation should include consideration of procedures to limit debris which impacts regulator performance, impacts on pressure control equipment due to icing, evaluation of equipment set points and station piping layout. Cascade must review the pressure control layout, design and set points for all gate and district regulator stations.

Cascade agrees to comply with this provision by June 30, 2012 - **\$350,000** suspended penalty, imposed in full if Cascade fails to comply.

D. Compliance Plan

- 14 Cascade agrees that within 60 calendar days of the date this agreement is approved by the Commission, Cascade will develop and submit to Commission Staff a detailed plan to complete all conditions or remediation set forth in this Agreement in the required timeframes. During the following 30 calendar days, Staff will review the plan and work with Cascade to achieve an acceptable plan by the end of that 30-day period. Once Staff reviews and accepts the plan, Cascade will immediately begin to implement the plan.
- 15 The Parties agree to meet quarterly to ensure that the condition/remediation progress is adequate to meet the required timeframes for every condition or remediation. In conjunction, Cascade agrees to provide Staff with quarterly written progress reports of its compliance with the Agreement. The written progress reports will be formatted in a report card style containing each of the nine items. These items will be broken down with specific tasks for the quarterly meetings for both parties to recognize progress or lack thereof in each area, with a signature and date recognition by both parties. If the Parties cannot reach

agreement on whether (1) violations occurred, (2) conditions have been adequately remediated or (3) compliance has been achieved, the Parties agree to cooperate in resolving the dispute efficiently, including seeking the assistance of the ALJ assigned to this matter. Quarterly meetings will start three months following Commission approval of this Agreement. Meetings will be calendared by Commission Staff, in cooperation with Cascade.

- 16 Staff intends to monitor Cascade's fulfillment of the conditions in this Agreement. After all timeframes set forth in this Agreement have passed, if necessary, Staff may conduct a special final compliance audit of this Agreement to resolve any remaining Action Items. Staff will acknowledge compliance with completed Action Items of their Agreement by letter to Cascade. After Staff issues a letter indicating Cascade has fulfilled a section of this Agreement, the suspended penalty for that section shall become void.
- 17 Cascade agrees to notify Staff in writing (at least 30 days in advance of the deadline) if it believes that circumstances exist that prevent it from completing any condition by the required deadline. Cascade may petition the Commission to amend the Agreement to reflect a revised deadline for completing the condition. Any amendment to this Agreement filed by either Party is not effective until the Commission approves it.
- 18 **Forbearance.** In consideration of the monetary penalty and the other commitments Cascade makes in this Agreement to improve its practices, the Parties agree that forbearance as described herein as to possible future enforcement activity is justified.
- 19 The Parties understand that in the context of implementing this Agreement and as the result of audits that are currently underway or pending, Staff or others may discover or may have discovered violations of gas safety rules of the type alleged in the Complaint. For each such violation that is discovered, Cascade will document the violation and correct the deficiency to the extent possible. However, Staff does not intend to utilize information gathered from Cascade's compliance actions to generate new enforcement actions and will not recommend the Commission take additional enforcement action unless the acts are significantly more widespread or different than the conduct alleged in the Complaint. Nothing in this Agreement affects the ability of the Staff to recommend penalties or other remedy for any intentional violation of any statute, rule or provision in Cascade's gas safety standards manual, nor any violation of any statute, rule or provision in Cascade's gas safety standards manual that leads to personal injury, death, or property damage. Cascade may contest any such enforcement action based on such a violation or violations, but Cascade will not use anything in this Agreement as limiting any such enforcement action.

IV. GENERAL PROVISIONS

- 20 **Settlement of all issues.** The Parties agree that this Agreement is a settlement of all contested issues between them in this proceeding. The Parties understand that this Agreement is not binding unless and until it is approved by the Commission.

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- 21 **Effective date.** This Agreement is effective on the date the Commission enters its order approving this Agreement in its entirety, except the provision of this Agreement entitled “Cooperation in processing this Agreement before the Commission” is effective on the latest date of signature on this Agreement. If the Commission’s order does not approve this Agreement in its entirety, this Agreement is not effective, except the provision of this Agreement entitled “Procedures in the event the Commission rejects this Agreement or any portion thereof” shall then apply.
- 22 **More stringent requirement applies.** The Parties understand that, for as long as this Agreement is effective, if an applicable provision of law imposes upon Cascade a requirement more stringent than a requirement in this Agreement, the more stringent requirement applies.
- 23 **Cooperation in processing this Agreement before the Commission.** The Parties agree to cooperate in submitting this Agreement promptly to the Commission for acceptance. The Parties agree to support adoption of this Agreement in proceedings before the Commission, if any, through whatever procedures the Commission may require, including testimony, exhibits, and briefing.
- 24 **Publicity.** Each Party retains the right to provide information to the public about this Agreement, after this Agreement is filed with the Commission. Cascade and Staff each agree to provide the other Party a copy of each news release or similar communication (hereafter “public communication”) that the Party intends to make regarding this Agreement, two business days in advance of publication. The Party receiving such public communication may review the public communication and make a reasonable request to the issuing Party to change the text of such public communication. Notwithstanding anything else in this paragraph, the Parties agree that each such public communication shall include a statement to the effect that this Agreement is subject to Commission approval and the Staff’s signing of this Agreement and/or Staff’s recommendation that the Commission approve this Agreement is not binding on the Commission itself.
- 25 **Claims by or against other entities.** Nothing in this Agreement shall limit or bar Cascade’s ability to pursue legal remedies against any other entity. Nothing in this Agreement shall limit or bar any other entity from pursuing legal remedies against Cascade, and nothing in this Agreement shall limit or bar Cascade’s ability to assert defenses to such claims.
- 26 **Admissibility of negotiations; construction of this Agreement.** 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.

- 27 **Integrated Agreement.** The Parties have negotiated this Agreement as an integrated document. This Agreement supersedes all prior oral and written agreements on issues addressed herein, if any. Accordingly, the Parties recommend the Commission adopt this Agreement in its entirety.

- 28 **Manner of execution.** The Parties may execute this Agreement in counterparts and as executed shall constitute one agreement. Copies of signature pages sent by facsimile are as effective as original documents.

- 29 **Compliance with this Agreement.** The Parties shall take all actions necessary as appropriate to efficiently carry out this Agreement, once it is approved. Cascade understands that Cascade’s lack of compliance with this Agreement once it is approved by the Commission can subject Cascade to enforcement action by the Commission, and possible penalties and/or other remedies.

- 30 **Procedures in the event the Commission rejects this Agreement or any portion thereof.** In the event 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. This written notice must be served within 10 calendar days of the Commission order rejecting part or all of this Agreement. In such event, neither Party will be bound or prejudiced by the terms of this Agreement, and either Party shall be entitled to seek reconsideration of the order. The Parties will also jointly request that the Commission reconvene a pre-hearing conference to establish a procedural schedule to complete this docket.

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION

CASCADE NATURAL GAS
CORPORATION

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Date signed:

Date signed:

