

**BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND)	DOCKET NOS. PG-030080
TRANSPORTATION COMMISSION,)	PG-030128
)	
Complainant,)	
)	ORDER NO. 02
v.)	
)	
PUGET SOUND ENERGY, INC.,)	ORDER SUSTAINING COMPLAINT;
)	APPROVING AND ADOPTING
Respondent.)	SETTLEMENT AGREEMENT
.....)	

1 **Synopsis:** *The Commission approves and adopts a joint settlement proposal in which the Company admits 67 violations of Commission rule and agrees to penalties of \$700,000 (\$200,000 of which is suspended). In addition, the Company agrees to undertake substantial remedial steps to prevent recurrence and to upgrade cathodic protection against corrosion of its natural gas pipeline system.*

I. PROCEDURE

2 The Commission served the complaint in this docket on June 29, 2004, citing 80 possible violations of Commission rule involving the Company’s alleged failure to make required inspections or to ensure appropriate protection against corrosion, in violation of Commission rules.

3 The Company answered. The Commission convened a prehearing conference on November 10, 2004, upon due and proper notice to all interested persons at Olympia, Washington before Administrative Law Judge C. Robert Wallis.

4 At the conference, the parties established a schedule that provided for hearing, but

also indicated that they were pursuing settlement discussions. The Commission approved their request that time be provided in the schedule to pursue settlement, before beginning the formal hearing process.

5 Subsequently, the parties continued their settlement discussions. Administrative Law Judge Ann Rendahl assisted the parties at some sessions as settlement judge. The parties reached an agreement in principle, and on January 19, 2005, filed with the Commission a proposed settlement agreement that would resolve all issues between the parties.

6 Pursuant to RCW 34.05.060 and WAC 480-07-740, such an agreement is subject to approval of the Commission. The parties presented the settlement to the Commission during a hearing session on January 27, 2005, before Chairwoman Marilyn Showalter, Commissioner Richard Hemstad, Commissioner Patrick Oshie, and Administrative Law Judge C. Robert Wallis.

7 **Summary:** The Commission in this order approves and adopts the proposed settlement agreement. In so doing, it finds that PSE has violated provisions of Commission rule and imposes penalties of \$700,000 on PSE, of which \$200,000 is suspended subject to PSE's completion of its responsibilities under the terms of this order. In addition, the Commission directs PSE to initiate or complete four tasks to ensure that similar violations do not occur.

II. THE COMPLAINT

8 The Commission complaint alleged the following, based on Staff's review of PSE records:

9 **Monitoring and inspection.** PSE's cathodic protection test site records indicated that six test sites were not tested at a required interval of once each calendar year, not to exceed fifteen months. It also appeared that one cathodically-protected isolated

steel service was not monitored on a ten-year cycle as required, and that PSE's plat review program failed to find it in response to a prior notice of probable non-compliance issued by the Commission in Docket No. UG-011273. These failures appeared to violate 49 CFR § 192.465. Seven violations are alleged.

- 10 **Maintenance and inspection.** PSE was not able to provide documentation that a steel service line with heavy atmospheric corrosion had been surveyed once every three years for atmospheric corrosion, a violation of 49 CFR § 192.481. This also violates 49 CFR § 192.13—PSE's failure to follow its Operating and Maintenance Manual, Section 2600.1800 4.1. One violation was alleged.
- 11 **Maintenance.** PSE's leak records indicated that of nineteen leak repairs made in areas where active corrosion was found, nine pipe sections were not replaced or cathodically protected as required by CFR 49 § 192.457(b). This also violates 49 CFR § 192.13--PSE's failure to follow its Operating and Maintenance Manual, Section 2600.1900 6.4.2. Nine violations were alleged.
- 12 **Maintenance and inspection.** Sixteen valves designated as emergency valves had not been checked and serviced in the required interval of once each fifteen months, but at least once each calendar year, in violation of 49 CFR § 192.747. This is also a violation of 49 CFR § 192.13—PSE's failure to follow its Operating and Maintenance Manual, Section 2600.1200 4.1. Sixteen violations were alleged.
- 13 **Maintenance.** Nine areas of steel-wrapped pipeline did not have adequate levels of cathodic protection, in violation of WAC 480-93-110. One of these steel-wrapped pipelines was not found by PSE's plat review program initiated in response to a previous notice of probable non-compliance. This is also a violation of 49 CFR § 192.13—PSE's failure to follow its Operating and Maintenance Manual, Section 2600.1900 5.1.1. Nine violations were alleged.
- 14 **Maintenance timing.** In areas requiring cathodic protection remedial action, on

fourteen occasions, PSE exceeded the 90-day maximum time to complete remedial action, in violation of WAC 480-93-110. This also violates 49 CFR § 192.13—PSE's failure to follow its Operating and Maintenance Manual, Section 2600.1900 5.1.1. Fourteen violations were alleged.

15 **Inspection.** Leak surveys of six pipeline casings that were electrically shorted to the pipeline were not conducted at the required maximum 90-day timeframe, in violation of WAC 480-93-115. This is also a violation of 49 CFR § 192.13—PSE's failure to follow its Operating and Maintenance Manual, Section 2600.1900 5.1.3. Six violations were alleged.

16 **Maintenance.** Twelve combustible gas indicators were not calibrated at the required frequency, in violation of WAC 480-93-188(2). This is also a violation of 49 CFR § 192.13—PSE's failure to follow its Operating and Maintenance Manual, Section 2450.1600. Twelve violations were alleged.

17 **Maintenance.** Six leaks were not re-evaluated or repaired by the required dates, in violation of WAC 480-93-18601. This is also a violation of 49 CFR § 192.13—PSE's failure to follow its Operation and Maintenance Manual, Sections 2625.1300 4, 2625.1300 4.2.1, and 2625.1300 4.2.3.1. Six violations were alleged.

18 Based on these allegations, the complaint alleged a total of 80 violations, before considering violations that occurred on each day of a continuing violation. RCW 80.28.212 states (in pertinent part) that any gas company that violates any regulation issued under authority of RCW 80.28.210 shall be subject to a civil penalty to be directly assessed by the Commission. The complaint alleged that, after considering each day of continuing violations, the total potential penalty for the alleged violations exceeds the maximum amount of \$4,500,000 allowable under WAC 480-93-223.

19 The complaint also noted that the Commission may compromise any civil penalty issued for violations of RCW 80.28.210, and by reference therein, for violations of any

Commission regulation issued thereunder. *RCW 80.28.212*. The complaint notes Commission Staff's recommendation of penalties totaling \$1,320,000, noting that the Commission is not bound by that recommendation and that it might impose penalties in the maximum amount permitted by law, or any other lesser amount permitted by law. The complaint also stated that the Commission might also order PSE to make repairs, improvements or other changes as the Commission might deem appropriate, citing *RCW 80.28.040* and *RCW 80.28.130*.

III. THE PROPOSED SETTLEMENT AGREEMENT

20 **The Settlement Process.** The parties asked that time be set aside at the outset of the procedural schedule for continuing pursuit of settlement negotiations. The parties did discuss settlement, and at the parties' request the Commission appointed Administrative Law Judge Ann Rendahl as settlement judge.

21 The parties then advised the Commission that they had reached agreement in principle, and asked that a hearing be scheduled for presentation of the settlement pursuant to WAC 480-07-740. That hearing was convened on January 27, 2005. At the hearing, the proposed settlement agreement and a narrative regarding the agreement, both sponsored jointly by the parties, were received in evidence. The attorneys provided context for the hearing and an outline of the settlement, and the parties presented five witnesses who responded to questions from the bench: Jim Hogan, Duane Henderson, and Sue McLain on behalf of PSE, and Alan Rathbun and David D. Lykken on behalf of Commission Staff.

22 **Elements of the Settlement.** The proposal contains several elements.

23 (1) **Admission of responsibility and acknowledgment of cure.** PSE admits that 67 of the 80 violations alleged in the complaint actually did occur, and the parties agree that 13 of the alleged violations did not occur. The parties also agree that each of the 67 specific cited violations has been cured. The

Commission notes that none of the violations appear to have been intentional.

24 (2) **Remedial programs.** PSE agrees to implement (or in one case, continue) four programs: SAP Process Improvements Program; Isolated Facilities Program; Critical Bond Program; and Bare Steel Replacement Program.

25 **(a) Software improvement.** PSE acknowledges that its current software is insufficient to provide adequate tracking and notice of monitoring responsibilities. It agrees to upgrade its scheduling software (through the “SAP Process Improvements Program”) to provide those capabilities, estimating that doing so will require 3600 hours of developer time.

26 **(b) Isolated Facilities Program.** This program will identify short segments of cathodically protected steel pipe (and means to identify other segments as it is installed) to ensure that maintenance and inspection occur as required.

27 **(c) Critical Bond Program.** This program will identify non-continuous sections of metallic pipe within cathodic protection systems and establish test sites for monitoring them. This includes all coated steel main and bare steel main that is currently under cathodic protection.

28 **(d) Bare Steel Replacement Program.** PSE operates a considerable amount of bare, non-cathodically protected steel pipe in its system. Under this program, PSE commits to locate and replace that pipe, with its program to be completed no later than 2014.

29 (3) **Forbearance.** While the remedial programs are being implemented, Commission Staff agrees to forbear recommending penalties to the Commission if it discovers similar violations, with certain exceptions. Most significantly, the provision would not apply if an incident relating to the pipe affected by a violation caused an injury requiring hospitalization or damage

valued at more than \$50,000. Neither would there be forbearance if the violation occurred after completion of the remedial program associated with the event with regard to the affected pipe.

- 30 (4) **Level of penalties.** The parties agree as to the level of penalties: PSE agrees to the imposition of penalties totaling \$700,000. It will pay \$500,000 to the Commission within ten days after the date of this order. The remaining \$200,000 will be suspended so long as PSE remains in substantial compliance with the terms of this order.
- 31 (5) **Complete resolution.** The parties agree that acceptance of the settlement proposal will resolve all of the issues in the proceeding, subject to completion of all requirements in the order.

IV. COMMISSION DISCUSSION AND DECISION

32 The Commission finds that the proposed settlement agreement is consistent with the public interest and with the legal and policy principles applicable to the circumstances that the agreement addresses. The Commission in this order adopts the proposed settlement agreement as its resolution of the matters at issue in this docket.

33 The proposed resolution meets pertinent important elements of law and policy. First, it acknowledges that violations asserted in the complaint did in fact occur. This ensures that violations are called to task and that penalties are properly applied.

34 Second, the Settlement Agreement calls for penalties in a significant amount—in this instance, the highest penalty that the Commission has ever assessed for pipeline safety violations and one of the highest it has ever assessed for any violations. The level of the penalty recognizes the significance of these particular violations. No pipe was found to be defective in the audit leading to the violations, and this audit was

conducted entirely of the books and records of the Company regarding its performance of inspection and maintenance. Yet it is central to the prevention of defects that inspections and maintenance be regularly conducted and that records of those activities be accurately recorded and preserved. The penalties are of an amount, and imposed in a way, to provide true incentives to compliance and to the level of safety to which both the Commission and the Company agree are essential.

35 Finally, the remediation programs focus on the prevention of unsafe conditions. Compliance will require substantial effort and expense but it will enable the Company to conduct and monitor its inspection and maintenance activities in an accurate and timely way, and it will ensure that certain unsafe conditions will receive required protection or will be removed.

36 **Conclusion.** The Commission commends the parties on their resolution of the matters at issue, and adopts the settlement proposal as its decision to resolve the issues raised in this complaint.

V. FINDINGS OF FACT

37 (1) The Washington Utilities and Transportation Commission is an agency of the State of Washington vested with the authority to regulate the safety of facilities transporting natural gas within the state of Washington.

38 (2) Puget Sound Energy (PSE) is a natural gas utility that operates facilities for the transportation of natural gas to customers in the state of Washington.

39 (3) PSE failed to inspect or do required maintenance on its facilities in 67 separate instances as specified in the Settlement Agreement and the Narrative, Exhibits 1 and 2 in this proceeding.

- 40 (4) Penalties totaling \$700,000, with \$200,000 suspended during substantial compliance by PSE with the terms of this order, provide appropriate incentives to avoid violations of the sort that are identified in this proceeding.
- 41 (5) Remedial activities as identified in the four remedial programs to which PSE is committed, as specified in this order, will ensure compliance with monitoring, inspection, and maintenance requirements and will improve the safety of PSE's natural gas pipeline facilities. The remediation activities will allow the tracking of monitoring, inspection, and maintenance throughout PSE's system.
- 42 (6) Forbearance, in which the Commission Staff will not request penalties for violations of the sort identified in the complaint, subject to the exceptions specified in this order, and in the context of this proceeding will better allow PSE and Commission Staff to focus on remediation. This order does not foreclose the Commission from complaining or pursuing penalties for alleged violations.

VI. CONCLUSIONS OF LAW

- 43 Based on the above finding of fact, the Commission makes and enters the following conclusions of law:
- 44 (1) The Commission has jurisdiction over the subject matter of this proceeding and the parties to the proceeding.
- 45 (2) Puget Sound Energy (PSE) committed 67 violations of Commission rules relating to monitoring, inspection, and maintenance of its pipeline facilities for the transportation of natural gas in the state of Washington.
- 46 (3) The settlement proposal (Exhibit 1) reflects a resolution of the issues in this

docket that is in the public interest and that is consistent with applicable law and policy.

47 (4) The Commission should in this order adopt the settlement proposal as its own resolution of the issues in the proceeding.

48 (5) Based on the above findings of fact and conclusions of law, the Commission makes and enters the following Order:

VII. ORDER

49 The Commission adopts the parties' proposed settlement agreement (Exhibit 1, attached to this Order as Appendix A) as its own resolution of the issues in this proceeding. In so doing, the Commission orders as follows:

- (1) Puget Sound Energy must pay penalties in the amount of \$700,000, with \$200,000 thereof being suspended during PSE's substantial compliance with the terms of this Order.
- (2) PSE will initiate or continue four remedial programs that are designed to ensure the prevention of violations in monitoring, inspection, and maintenance of the sort identified in the complaint in this docket, and to reduce or eliminate the possibility of danger from corrosion of bare steel pipes.
- (3) Commission Staff will forbear recommending penalties for violations of the sort identified in the complaint, while PSE is implementing the four remedial programs described herein, subject to the conditions described in the settlement agreement, unless an incident related to the pipe associated with the violation causes injury or damages as described in the Settlement Agreement.

- (4) The Commission retains jurisdiction over this proceeding to effectuate the terms of this order.

DATED at Olympia, Washington, and effective this 31st day of January, 2005.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

MARILYN SHOWALTER, Chairwoman

RICHARD HEMSTAD, Commissioner

PATRICK J. OSHIE, Commissioner

NOTICE TO PARTIES: This is a final order of the Commission. In addition to judicial review, administrative relief may be available through a petition for reconsideration, filed within 10 days of the service of this order pursuant to RCW 34.05.470 and WAC 480-07-850, or a petition for rehearing pursuant to RCW 80.04.200 or RCW 81.04.200 and WAC 480-07-870.

[Service Date January 31, 2005]

APPENDIX A