

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

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| WASHINGTON UTILITIES AND |) | DOCKET PG-110443 |
| TRANSPORTATION COMMISSION, |) | |
| |) | |
| Complainant, |) | ORDER 02 |
| |) | |
| v. |) | |
| |) | FINAL ORDER ACCEPTING |
| CASCADE NATURAL GAS |) | SETTLEMENT AGREEMENT |
| CORPORATION, |) | |
| |) | |
| Respondent. |) | |
| |) | |

***SYNOPSIS.** The Commission approves and adopts the full Settlement Agreement proposed by the parties. Pursuant to that Agreement, the Commission imposes a penalty of \$425,000 on Cascade for its failures to maintain its gas pipeline system in a safe condition and requires Cascade to undertake a multi-pronged action plan to cure identified violations of Commission rules, improve the integrity of the company’s recordkeeping, update Cascade’s pipeline maps, and upgrade its Plan and Procedures Manual. The Commission re-emphasizes the responsibility of regulated utilities to ensure adequate safeguards are in place to protect the public.*

SUMMARY

1 NATURE OF PROCEEDING. Docket PG-110443 involves a formal Complaint brought by the Washington Utilities and Transportation Commission (Commission) Staff on March 21, 2011, alleging that Cascade Natural Gas Corporation (Cascade or Company) failed to maintain its gas pipeline system in a safe condition. The Complaint alleges eleven separate causes of action with 364 individual violations of Commission gas safety rules in several of the districts where Cascade operates. The allegations arise from a Commission investigation of an overpressure event and several other standard inspections conducted by the Commission of Cascade’s gas facilities, records and practices in five districts in which Cascade operates in this state. The Complaint seeks to have the Commission order Cascade to cure each alleged violation, provide proof of doing so, implement specific compliance and

safety measures, and assess a monetary penalty consistent with RCW 81.88.040(2) and WAC 480-93-223.

2 **APPEARANCES.** Donald T. Trotter, Assistant Attorney General, Olympia, Washington, represents the Commission's regulatory staff (Commission Staff or Staff).¹ Sheree Strom Carson and Donna L. Barnett, Perkins Coie, Bellevue, Washington, represent Cascade.

3 **COMMISSION DECISION.** We find reasonable the terms of the parties' Settlement Agreement (Settlement or Agreement) in which Cascade admits to certain alleged violations of Commission rules regarding pipeline incident reporting, leak surveys, monitoring, and recordkeeping. We find it reasonable to impose a financial penalty of \$425,000 on Cascade and to establish additional suspended penalties as further incentive toward Cascade's commitment to improve its safety programs.

4 The Settlement terms satisfactorily resolve all issues raised in the Complaint. We conclude it is in the public interest to approve and adopt the Settlement as filed and without condition.

MEMORANDUM

I. Background and Procedural History

5 On December 2, 2009, Cascade received an emergency phone call from the fire department notifying the company of a leak at one of its regulator stations located in Sedro Wooley, Washington.² Cascade responded, discovered an overpressure situation in its distribution pipe, and took prompt action to remedy the situation. The Complaint, however, alleges that Cascade failed to timely notify the Commission of the incident and that the company's repairs were not accomplished in a manner designed to prevent accumulation of water, ice, or snow, which could have led to

¹ In formal proceedings, such as, this, the Commission's regulatory staff participates like any other party, while the Commissioners make the decision. To assure fairness, the Commissioners, the presiding administrative law judge, and the Commissioners' policy and accounting advisors do not discuss the merits of this proceeding with the regulatory staff, or any other party, without giving notice and opportunity for all parties to participate. *See* RCW 34.05.455.

² Complaint ¶¶ 14-21; *see* Answer ¶¶ 17-24.

future hazards. Commission Staff concluded that Cascade violated Commission rules and also did not include required investigatory procedures in its policy and procedures manual.³

6 In addition to investigating the overpressure incident, Commission Staff conducted standard inspections of Cascade's gas facilities, records and practices in the company's five operating districts in Washington state: Wenatchee/Moses Lake, Aberdeen, Kitsap, Whatcom, and Tri-Cities.⁴ Commission Staff concluded as a result of its investigations that Cascade failed to: timely inspect or monitor certain sections of pipeline for corrosion control; properly maintain corrosion control inspection records; properly conduct gas leak surveys and document remedial actions; and maintain updated maps and complete safety records for its gas pipeline system.

7 On March 21, 2011, Staff filed a formal Complaint against Cascade alleging 364 violations of the Commission's gas pipeline safety rules, as set out in WAC 480-90 and WAC 480-93. Commission Staff asserted that Cascade had an overall lack of compliance, accountability, quality control, and interest in and attention to details of compliance with gas pipeline safety laws and rules.⁵

8 On April 11, 2011, Cascade filed an Answer to the Complaint. Cascade admitted that certain violations occurred, but did not admit all allegations.

9 Following a prehearing conference on May 16, 2011, Commission Staff and Cascade entered settlement negotiations.

10 On July 13, 2011, the parties filed with the Commission a Settlement Agreement and a Narrative Supporting Settlement Agreement.

³ Complaint ¶¶ 14-21.

⁴ Commission Staff's investigations for each district were assigned separate docket numbers: PG-100043 (Wenatchee/Moses Lake); PG-080108 (Aberdeen); PG-090003 (Kitsap); PG-090002 (Whatcom); and PG-080109 (Tri-Cities). *See* Complaint ¶ 12.

⁵ Complaint ¶ 13.

II. Proposed Settlement

- 11 Cascade and Staff have entered into a full Settlement Agreement resolving all issues in the Complaint. The Settlement addresses Cascade's responsibility for inspecting, monitoring, and maintaining its pipeline facilities and associated records. The Settlement would impose a significant monetary penalty and also seeks approval of a Company action plan implementing remedial measures to prevent any recurrence.
- 12 Cascade admits to deficiencies in its compliance with pipeline safety rules, although it continues to disagree with some portion of Commission Staff's allegations and interpretations of Commission rules.⁶ Nevertheless, in recognition of the nature and scope of the issues raised in the Complaint, Cascade agrees to pay a monetary penalty to the Commission in the amount of \$425,000 and agrees not to seek recovery of this penalty through rates.⁷
- 13 Cascade agrees to develop an "action plan" with suspended penalties stipulated to ensure timely achievement of each individual action item.⁸ Cascade's action plan comprises a total of eight items for improvement, further summarized as follows:
- A. *"Management of Change" Program* – Cascade is required to implement a program to ensure proper coordination of changes to its pipeline safety program within all relevant sections of the company. The company will develop a form to track important details regarding such changes and will train its employees and contractors in use of the form. The deadline to have this new program in place is June 30, 2012, subject to a suspended penalty of \$250,000.
 - B. *Improved Maintenance Management System* – Cascade has developed and already implemented a centralized maintenance tracking and verification system known as SharePoint. Cascade will enhance this system by deploying an upgraded version (currently called GL Essentials). The deadline to have

⁶ Settlement ¶ 10; see Narrative ¶ 18.

⁷ Settlement ¶ 11; see Narrative ¶¶ 14, 19.

⁸ Settlement ¶ 12. Each individual obligation is set out in Settlement ¶ 13.

the enhanced system in place is July 1, 2013; there is no suspended penalty associated with this obligation.

- C. *Quality Assurance / Quality Control (QA/QC) Program* – Cascade will implement a QA/QC program to ensure all operating districts comply with company pipeline safety procedures. The QA/QC program will include internal audits and full documentation of corrective actions. The deadline to have the QA/QC program in place is June 30, 2012, subject to a suspended penalty of \$500,000.
- D. *Remedial Action concerning Commission Inspection Letters* – Cascade will work with Commission Staff to address outstanding items addressed in the Complaint, including some that are in dispute or require clarification. The deadline to have all disputed allegations remedied or otherwise resolved is June 30, 2012, subject to a suspended penalty of \$300,000.
- E. *Mapping Updates* – Cascade will update its pipeline maps, adopt a process to ensure ongoing updates, and implement new technologies and procedures to improve the accuracy of its maps. The initial deadline to implement this new program is December 31, 2011, by which time 50 percent of Cascade’s maps must be updated. All of Cascades maps must be updated no later than December 31, 2012, subject to a suspended penalty of \$100,000.
- F. *Operations & Maintenance (O&M) Manual Revisions* – Cascade will update and revise its O&M Manual and also ensure revisions are distributed to district personnel, accompanied by appropriate briefings or trainings. The deadline to update the Manual and initiate the required training is June 30, 2012, subject to a suspended penalty of \$300,000.
- G. *Leak Characterization Review* – Cascade has already accomplished a review and process modification to ensure its leak classification procedures properly evaluate below-ground leaks. The Company will continue to evaluate this area for additional improvements.

H. *Review of Pressure Control Processes* – Cascade will review its pressure control layout, design and set points for all gate and district regulating stations. Cascade will also develop cold weather operating procedures and seek out system modifications that improve the reliability of its pressure control equipment. The deadline to complete this pressure control process review is June 30, 2012, subject to a suspended penalty of \$350,000.

- 14 Cascade will develop and submit to Commission Staff a detailed compliance plan to implement all aspects of the above-noted action plan and all other required terms of the Settlement Agreement within 60 days of Commission approval of the Settlement Agreement. In turn, Commission Staff agrees to promptly review Cascade’s compliance plan and work with the Company to ensure the plan is acceptable. Commission Staff’s review will take no longer than 30 days. As soon as Commission Staff deems the Company’s compliance plan acceptable, Cascade will immediately implement the compliance plan.⁹
- 15 Cascade will continue its commitment to a dialogue with Commission Staff regarding pipeline safety compliance issues. As part of the Agreement, Commission Staff and Cascade agree to hold quarterly meetings to monitor the company’s compliance plan. Further, Cascade agrees to submit quarterly written progress “report cards” to Commission Staff that will facilitate tracking each element of the Agreement.¹⁰
- 16 Finally, in consideration of the monetary penalty and other commitments made by Cascade in the Settlement Agreement, Staff agrees to forbear from potential future enforcement actions based on information gathered from compliance measures taken in this case. However, Cascade and Staff agree that the forbearance language included in the Settlement Agreement does not preclude enforcement action if a violation leads to death, personal injury, or property damage.¹¹

⁹ Settlement ¶ 14.

¹⁰ Settlement ¶ 15; *see* Narrative ¶ 17.

¹¹ Settlement ¶¶ 18-19; Narrative ¶ 11.

III. Discussion and Decision

17 The Commission may accept a proposed settlement, with or without conditions, or may reject it.¹² In reviewing a settlement, we must “determine whether a proposed settlement meets all pertinent legal and policy standards.”¹³ Specifically, we may approve settlements “when doing so is lawful, when the settlement terms are supported by an appropriate record, and when the result is consistent with the public interest in light of all the information available to the Commission.”¹⁴ The Commission has described this standard as “a three-part inquiry”:

(1) We ask whether any aspect of the proposal is contrary to law; (2) We ask whether any aspect of the proposal offends public policy; and (3) We ask if the evidence supports the proposed elements of the Settlement Agreement as a reasonable resolution of the issue(s) at hand.¹⁵

Having reviewed the Settlement Agreement and accompanying Narrative, we find that the Settlement Agreement satisfies these criteria for the reasons discussed below.

18 As reflected by state and federal regulations, comprehensive, accurate, and reliable recordkeeping is the linchpin of gas pipeline safety. In this industry, incomplete or inaccurate records present a substantial risk to public safety. The Commission’s ability to evaluate or monitor corrective actions is necessarily compromised by faulty recordkeeping. Companies must diligently maintain the integrity of leak and safety-related records or face serious consequences. The magnitude of the penalty being assessed against Cascade indicates the seriousness with which the Commission views violations of gas pipeline safety rules, and recordkeeping rules in particular.

19 It is apparent to us that Cascade understands its responsibility to ensure compliance with Commission rules and maintain accountability to the public for a reliable and safe gas pipeline system. Cascade took corrective action, cooperated with

¹² WAC 480-07-750(2).

¹³ WAC 480-07-740.

¹⁴ WAC 480-07-750(1).

¹⁵ *Washington Utilities and Transportation Commission v. PacifiCorp d/b/a Pacific Power & Light Co.*, Docket UE-032065, Order 06 at 26, ¶ 59 (October 2004) (*WUTC v. PacifiCorp*).

Commission Staff, and admitted responsibility for many of the alleged violations. For those items still in dispute, Cascade has agreed to an ongoing dialogue with Commission Staff that will result in a mutually agreeable solution.

- 20 We find the forbearance provision of the Settlement Agreement reasonable and in the public interest. We recognize that as further compliance efforts proceed, it is possible that additional recordkeeping violations of the type alleged in the Complaint might be discovered. Under the terms of the Settlement Agreement, Cascade’s willingness to work with Staff to improve the Company’s regulatory compliance programs and procedures outweighs the potential harm to the public if similar violations from the past are discovered during the compliance process. Further, the Settlement Agreement expressly allows for additional enforcement action if other investigative efforts discover a violation that was intentional or the cause of a death, personal injury, or property damage.¹⁶
- 21 Settlements “are by nature compromises of more extreme positions that are supported by evidence and advocacy.”¹⁷ We find the overall result in this Settlement Agreement to be reasonable, in the public interest, and lawful. The Settlement Agreement fully resolves the allegations made in the Complaint, conserving valuable party and Commission resources that would otherwise be devoted to litigation. After implementing the action plan mandated by the Settlement Agreement, Cascade will be in a better position to ensure its own internal compliance with gas safety practices and recordkeeping, better protecting the public in the process.
- 22 In sum, after reviewing the Complaint, the Company’s Answer, and the parties’ proposed Settlement Agreement, we find the Settlement Agreement to be in the public interest. Therefore, we approve the Settlement Agreement as filed and without condition.

¹⁶ Settlement, ¶ 19; Narrative, ¶ 11.

¹⁷ *WUTC v. PacifiCorp* ¶ 61.

FINDINGS OF FACT

- 23 Having discussed above in detail the evidence received in this proceeding concerning all material matters, and having stated findings and conclusions upon issues in dispute among the parties and the reasons therefore, the Commission now makes and enters the following summary findings of fact, incorporating by reference pertinent portions of the preceding detailed findings:
- 24 (1) The Washington Utilities and Transportation Commission is an agency of the State of Washington, vested by statute with authority to regulate rates, rules, regulations, practices, and accounts of public service companies, including gas companies.
- 25 (2) Cascade Natural Gas Corporation is a “public service company” and a “gas company,” as those terms are defined in RCW 80.04.010, and as those terms otherwise are used in Title 80 RCW. Cascade is engaged in Washington in the business of supplying utility services and natural gas to the public for compensation.
- 26 (3) On March 21, 2011, Commission Staff filed a formal Complaint against Cascade in Docket PG-110443 asserting that Cascade violated Commission rules on at least 364 occasions.
- 27 (4) On July 13, 2011, the parties filed a full Settlement Agreement that, if approved, would resolve all issues in the Complaint.
- 28 (5) A penalty of \$425,000 is an appropriate sanction for the violations and will help deter similar future violations.
- 29 (6) Execution of the action plan as specified in the Settlement Agreement and this Order, to include suspended penalties that ensure timely implementation of each task, will promote compliance with gas safety recordkeeping rules. These program and process improvements will improve the safety of Cascade’s natural gas pipeline facilities.

- 30 (7) In the context of this proceeding, forbearance, in which the Commission Staff will not request penalties for violations similar to those in the Complaint, subject to the exceptions specified in the Settlement Agreement and discussed in this Order, will better allow Cascade and Staff to focus on future compliance.

CONCLUSIONS OF LAW

- 31 Having discussed above all matters material to this decision, and having stated detailed findings, conclusions, and the reasons therefore, the Commission now makes the following summary conclusions of law incorporating by reference pertinent portions of the preceding detailed conclusions:
- 32 (1) The Washington Utilities and Transportation Commission has jurisdiction over the subject matter of, and parties to, this proceeding.
- 33 (2) Cascade committed violations of Commission rules relating to incident reporting, monitoring, and recordkeeping for its pipeline facilities for the transportation of natural gas in the state of Washington.
- 34 (3) The Settlement Agreement filed by the parties on July 13, 2011, holds Cascade accountable for the violations alleged in the Complaint.
- 35 (4) Approval and adoption of the Settlement Agreement, attached as an appendix to this Order and incorporated by this reference, is in the public interest, is a reasonable resolution of the disputed issues, and is lawful.
- 36 (5) The Commission should retain jurisdiction to effectuate the terms of this Order.

ORDER

THE COMMISSION ORDERS:

- 37 (1) The Settlement Agreement filed by the Parties on July 13, 2011, which is attached as an appendix to this Order and incorporated by reference, is approved and adopted without condition.
- 38 (2) Cascade Natural Gas Corporation must pay a penalty in the amount of \$425,000 within ten (10) business days of the date of this Order and shall not seek recovery of this penalty through rates.
- 39 (3) Cascade will timely adhere to its commitments to improve various company programs as set out in the Settlement Agreement. Failure to do so shall trigger additional suspended penalties as set out in the Settlement Agreement.
- 40 (4) Commission Staff will forbear from recommending penalties for violations of the type identified in the Complaint that are discovered during the compliance process.
- 41 (5) Commission Staff shall not be precluded from recommending enforcement action for any intentional violations or any violations that result in death, personal injury or property damage.

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- 42 (6) The Commission retains jurisdiction to effect the terms of this Order.

Dated at Olympia, Washington, and effective August 3, 2011.

WASHINGTON STATE UTILITIES AND TRANSPORTATION COMMISSION

JEFFREY D. GOLTZ, Chairman

PATRICK J. OSHIE, Commissioner

PHILIP B. JONES, 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.

Appendix