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1                   BEFORE THE WASHINGTON UTILITIES AND  
2                   TRANSPORTATION COMMISSION  
3 WASHINGTON UTILITIES AND,        ) Docket No. UG-020230  
4 TRANSPORTATION COMMISSION,    ) Docket No. UG-020232  
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9                   A hearing in the above matter was held on  
10 January 9, 2003, from 9:40 a.m to 11:30 a.m., at 1300  
11 South Evergreen Park Drive Southwest, Room 206, Olympia,  
12 Washington, before Administrative Law Judge MARJORIE  
13 SCHAER and Chairwoman MARILYN SHOWALTER and Commissioner  
14 RICHARD HEMSTAD and Commissioner PATRICK J. OSHIE.

15                   The parties were present as follows:  
16                   THE COMMISSION, by DONALD T. TROTTER, Senior  
17 Assistant Attorney General, 1400 South Evergreen Park  
18 Drive Southwest, Olympia, Washington 98504-0128,  
19 Telephone (360) 664-1189, Facsimile (360) 586-5522,  
20 E-Mail dtrotter@wutc.wa.gov.

21                   BASIN FROZEN FOODS, INC., by KEVIN WEBER,  
22 President, P.O. Box 747, Warden, Washington 98857,  
23 Telephone (509) 349-2210, Facsimile ((509) 349-2375,  
24 E-Mail kevin@bffinc.com.

25 Joan E. Kinn, CCR, RPR  
Court Reporter

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1 P R O C E E D I N G S

2 JUDGE SCHAER: We are here this morning for a  
3 settlement presentation hearing in Dockets Number  
4 UG-020230 and UG-020232, which are a complaint brought  
5 by the Commission Staff of the Washington Utilities and  
6 Transportation Commission against Basin Frozen Foods.  
7 Our purpose today is to allow witnesses from both  
8 parties to answer any questions that the Commissioners  
9 may have regarding the proposed settlement.

10 I am Marjorie Schaer. I'm the Administrative  
11 Law Judge assigned to this proceeding. Presiding today  
12 sitting to my right are Chairwoman Showalter,  
13 Commissioner Hemstad, and Commissioner Oshie.

14 I would like to start by taking brief  
15 appearances, please. You had both appeared before, so I  
16 will just need your name and the name of your company,  
17 please.

18 MR. TROTTER: For Commission Staff, my name  
19 is Donald T. Trotter, Assistant Attorney General.

20 JUDGE SCHAER: Mr. Weber.

21 MR. WEBER: For Basin Frozen Foods, Kevin  
22 Weber, Basin Frozen Foods.

23 JUDGE SCHAER: Thank you.

24 Before we call the panel, are there any  
25 preliminary matters that we need to deal with this

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1 morning?

2 MR. TROTTER: The only one, Your Honor, we  
3 distributed as Exhibit 1 a copy of the settlement  
4 agreement. The one we circulated to you is identical to  
5 the one that was filed with the exception in Paragraph  
6 31, the date of February 1, 2003, has been changed to  
7 February 1, 2004, consistent with the correspondence  
8 that we filed after the agreement was filed. It's just  
9 a typographical error, and it's been corrected, and both  
10 parties agreed to it.

11 JUDGE SCHAER: Thank you.

12 MR. TROTTER: So we would ask that that  
13 exhibit so corrected would be marked for identification.

14 JUDGE SCHAER: I'm going to mark the  
15 settlement agreement as Exhibit 1 for identification.

16 MR. TROTTER: In addition, Your Honor, we  
17 have copies of the memorandum that Staff filed  
18 supporting the settlement. In past hearings of this  
19 type, those have been marked. In other hearings, they  
20 haven't been. We have no preference. If the Bench  
21 would like it marked if it wants to examine on it,  
22 that's fine, we have them here. If not, I'm not  
23 proposing that, but if the Bench would like it, I have  
24 copies of it.

25 (Discussion on the Bench.)

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1                   JUDGE SCHAER:  Why don't we go ahead and have  
2  you distribute that also, Mr. Trotter, thank you.

3                   So I'm going to mark as Exhibit 2 for  
4  identification a memorandum on behalf of Commission  
5  Staff explaining the settlement agreement.

6                   Now is it your intention to offer these by  
7  stipulation of the parties or offer them through the  
8  panel, or how did you wish to proceed?

9                   MR. TROTTER:  We will offer them right now.  
10 I will just move for the admission of Exhibits 1 and 2,  
11 and we'll hear if Mr. Weber has any objection.

12                  JUDGE SCHAER:  Do you have any objection to  
13 that, Mr. Weber?

14                  MR. WEBER:  No, I don't.

15                  JUDGE SCHAER:  Okay, then Exhibits 1 and 2  
16 are admitted.

17                  And I have checked with the parties  
18 informally before we went on the record, but let me ask  
19 again if there's any kind of a preliminary statement  
20 that any of you would like to make.

21                  MR. TROTTER:  I have none, Your Honor.

22                  MR. WEBER:  I have none either.

23                  JUDGE SCHAER:  Okay.  Then would you please  
24 call your witnesses.

25                  MR. TROTTER:  Thank you, Your Honor.  I think

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1 we discussed off the record a panel. We would propose a  
2 panel if that's acceptable to the Bench. And for  
3 Commission Staff we have Patricia Johnson, if you could  
4 come sit up at this table, along with Mr. Doug  
5 Kilpatrick.

6 JUDGE SCHAER: And, Mr. Weber, are you  
7 testifying on behalf of your company, or do you wish to  
8 call any other person to join you on the panel?

9 MR. WEBER: I will testify, but I've got  
10 Keith Meissner with Cascade Natural Gas here, so if  
11 there's any questions that I may not have the answer,  
12 Keith may have the answer.

13 JUDGE SCHAER: Okay. I won't have you call  
14 him as a witness at this time then, but I will check  
15 later to see if there's any questions from the Bench  
16 that would be addressed perhaps better to him.

17 MR. WEBER: Okay.

18 JUDGE SCHAER: We will have you asked, and if  
19 you need to refer something, then you need to let us  
20 know that.

21 MR. WEBER: Okay.

22 JUDGE SCHAER: Okay, would you please raise  
23 your right hands.

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1 Whereupon,

2 DOUG KILPATRICK, PATRICIA JOHNSON,

3 AND KEVIN WEBER

4 having been first duly sworn, were called as witnesses

5 herein and were examined and testified as follows:

6

7 JUDGE SCHAER: Thank you.

8 Go ahead, Mr. Trotter.

9 MR. TROTTER: Thanks.

10 Just for the two Commission Staff people, I  
11 would just like to ask them to identify themselves for  
12 the record and state what their position is, and then  
13 I'll just identify what I perceive to be the scope of  
14 their knowledge and assistance to the Commission today.

15 So, Ms. Johnson, please state your name.

16 MS. JOHNSON: Patricia Johnson, I'm a  
17 pipeline safety engineer, Pipeline Safety Division.

18 MR. TROTTER: And you're employed by the  
19 Commission?

20 MS. JOHNSON: The Washington Utilities and  
21 Transportation Commission.

22 CHAIRWOMAN SHOWALTER: I think you're going  
23 to need to get closer to the microphone so that other  
24 people can hear you.

25 JUDGE SCHAER: In fact, it might be a good



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1 idea, Mr. Kilpatrick, if you could obtain the other  
2 microphone and you could each have one, because there  
3 are people who listen in on the bridge to hearings, and  
4 they won't be able to hear us unless we speak directly  
5 into the microphones.

6 MR. TROTTER: And, Ms. Johnson, were you the  
7 inspector for the Commission Staff that was primarily  
8 responsible for the inspection of Basin Frozen Foods'  
9 pipeline facility?

10 MS. JOHNSON: Yes, I was.

11 MR. TROTTER: Mr. Kilpatrick, could you state  
12 your name.

13 MR. KILPATRICK: My name is Doug Kilpatrick.  
14 I'm the Director of the Pipeline Safety Program of the  
15 Washington Utilities and Transportation Commission.

16 MR. TROTTER: Your Honor, Ms. Johnson is  
17 available, she can answer questions about the inspection  
18 and the violation report and so on. Mr. Kilpatrick is  
19 also familiar with that inspection, but he's primarily  
20 here as a person to answer some policy questions from  
21 the Pipeline Safety Section since he has overall  
22 responsibility.

23 And Mr. Weber I believe is the President of  
24 Basin Frozen Foods. I'm not sponsoring him, but perhaps  
25 he should identify himself and identify his position.

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1 MR. WEBER: That's right, President of Basin  
2 Frozen Foods.

3 JUDGE SCHAER: Mr. Weber, you're also going  
4 to need to pull your microphone up quite close.

5 You are the President of Basin Frozen Foods,  
6 and could you give us a brief summary of what your  
7 duties are at Basin.

8 MR. WEBER: Well, I'm owner and President of  
9 Basin Frozen Foods, so, you know, I basically run the  
10 company.

11 JUDGE SCHAER: So you're an on-site manager  
12 or --

13 MR. WEBER: That's right.

14 JUDGE SCHAER: -- active in the day-to-day  
15 activities of --

16 MR. WEBER: Right.

17 JUDGE SCHAER: Okay.

18 MR. TROTTER: And, Your Honor, if any legal  
19 questions come up, I would be happy to respond to them.

20 JUDGE SCHAER: Thank you, Mr. Trotter.

21 Commissioners, do you have questions?

22 CHAIRWOMAN SHOWALTER: I have some, and I  
23 think maybe I would like to start with Ms. Johnson.  
24 Can, without getting into too much detail, can you give  
25 me a thumbnail sketch of the nature of the alleged

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1 violations that are in the complaint in front of us.  
2 That is, am I first correct that there originally were  
3 26 violations alleged in the docket in front of us?

4 MS. JOHNSON: That's correct.

5 CHAIRWOMAN SHOWALTER: And can you tell me  
6 the nature of those allegations?

7 MS. JOHNSON: We categorized them. There  
8 were emergency plan procedures. They were not in their  
9 manual. They didn't have procedures.

10 CHAIRWOMAN SHOWALTER: You're going to have  
11 to get closer to the mike so we can really hear you.

12 MS. JOHNSON: There were emergency plan  
13 regulations and codes that they -- that were not in  
14 their manual, they did not have procedures for. There  
15 were damage prevention regulations that here again there  
16 was no documentation of, there had been no procedures,  
17 adequate procedures for. There were a number of  
18 procedural items in their manual and then the lack of  
19 documentation. In a thumbnail sketch, that was probably  
20 it. Another, excuse me, another item was the antidrug  
21 and alcohol program, they did not have that.

22 CHAIRWOMAN SHOWALTER: That is there was no  
23 program or there was not documentation of the program or  
24 both?

25 MS. JOHNSON: Basin Frozen Foods does

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1 pre-employment drug and alcohol testing, random testing.  
2 Part 199 requires a program for that, and that program  
3 did not exist.

4 CHAIRWOMAN SHOWALTER: And when you spoke of  
5 lack of documentation as an alleged violation, lack of  
6 documentation of what?

7 MS. JOHNSON: Oh, there were a number of  
8 items that did not have documentation, and that's what  
9 proves that they have done their -- the different method  
10 requirements, for example, the odorization. I need to  
11 look at my violations here.

12 They did not have documentation of the  
13 as-built drawings of what material was used in the list,  
14 the specifications of the pipeline.

15 CHAIRWOMAN SHOWALTER: What material is used  
16 in the pipeline itself?

17 MS. JOHNSON: In the pipeline itself. That  
18 leads to another violation that we can not determine the  
19 maximum allowable operating pressure without knowing the  
20 types of pipe and the different equipment used.

21 There was another item, the regulation states  
22 that pipelines, transmission pipelines, have to be  
23 PIG-able, that an internal inspection device has to be  
24 able to go through that, and there was no documentation  
25 that that had been done.

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1                   CHAIRWOMAN SHOWALTER: That is that the  
2 pipeline can be internally -- there's no documentation,  
3 the allegation was that there was no documentation that  
4 the pipeline could be internally inspected?

5                   MS. JOHNSON: That's true, correct.

6                   There was welding documentation,  
7 qualifications, procedures that were lacking, that were  
8 not there. There were certain requirements in their  
9 manual that are required for transmission companies,  
10 abnormal operating procedures, continuing surveillance  
11 procedures, and those were not in their manual. The  
12 damage prevention program we have already mentioned.  
13 They were a member of the one-call system, but they did  
14 not have documentation that a number of the locates had  
15 been done.

16                   CHAIRWOMAN SHOWALTER: A number of the what?

17                   MS. JOHNSON: A number of the locates. When  
18 there was excavation in the area and the one-call  
19 service had been notified, they did not have  
20 documentation at the time of the inspection that those  
21 locates had been done.

22                   CHAIRWOMAN SHOWALTER: Meaning there wasn't  
23 documentation that they had gone out and located where  
24 the pipeline is under the ground?

25                   MS. JOHNSON: Correct, physically marked the

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1 ground.

2 CHAIRWOMAN SHOWALTER: Before somebody else  
3 started digging; is that essentially it?

4 MS. JOHNSON: That's correct.

5 CHAIRWOMAN SHOWALTER: Okay.

6 MS. JOHNSON: The emergency plans we have  
7 already mentioned. Public education, that's another  
8 specific transmission pipeline requirement. Property  
9 owners along that pipeline need to be notified once a  
10 year of natural gas, that the gas is there and what to  
11 do if there were any problems or concerns. There was  
12 not a procedure for that, and that had not been done.  
13 There was no documentation for it. Patrolling is a  
14 requirement, and there was no documentation for that.  
15 The drug and alcohol we have also mentioned too, there  
16 was no procedures, no documentation for that. And then  
17 there was no documentation of the maps and records for  
18 the materials list, the as-built drawings on the maps.

19 CHAIRWOMAN SHOWALTER: All right. And were  
20 these two dockets that are in front of us today the  
21 first dockets regarding safety violations of this  
22 company?

23 MS. JOHNSON: No, they were not.

24 CHAIRWOMAN SHOWALTER: And what, can you give  
25 me again a thumbnail sketch, and the previous one was

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1 very good, of any prior investigations or dockets on  
2 this company.

3 MS. JOHNSON: In 2001 I also did that  
4 inspection. There were numerous violations on that one.  
5 There was a letter of intent that had come from Basin  
6 and had stated the day they would be in compliance.  
7 There were situations that came up, and that did not  
8 happen. There was a complaint brought before the  
9 Commission, I'm not sure of that docket number, and the  
10 Commission issued an order of compliance.

11 CHAIRWOMAN SHOWALTER: Would that have been  
12 UG-010499?

13 MS. JOHNSON: 499, that --

14 CHAIRWOMAN SHOWALTER: October 24th, 2001?

15 MS. JOHNSON: Yes.

16 CHAIRWOMAN SHOWALTER: Am I correct that it  
17 identified 22 violations?

18 MS. JOHNSON: Yes.

19 CHAIRWOMAN SHOWALTER: Can you tell me of  
20 those, of the 26 alleged violations in the dockets in  
21 front of us, how many of them were the same as or the  
22 same kind as the prior 22 violations in the earlier  
23 docket? In other words, how many were what you might  
24 call repeat alleged violations?

25 MS. JOHNSON: Repeat violations, I can --

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1 they're marked in here.

2 Ten if I have counted correctly.

3 CHAIRWOMAN SHOWALTER: All right. And of the  
4 ten, can you give me again just a thumbnail sketch of  
5 the nature of those ten repeat allegations, alleged  
6 violations?

7 MS. JOHNSON: Yes, I can. There was a  
8 welding we had mentioned earlier, and that was a repeat  
9 violation, the welding standards, which reference to the  
10 welding standard was used in their manual. They were  
11 not using a current standard.

12 CHAIRWOMAN SHOWALTER: In that instance, is  
13 the current standard more stringent than the earlier  
14 standard?

15 MS. JOHNSON: I'm not real sure what the  
16 difference between the two standards are. It was not in  
17 accordance with the right standard.

18 CHAIRWOMAN SHOWALTER: All right.

19 MS. JOHNSON: The welding standards were also  
20 in question. They were not the same. Basin did not  
21 have start up and shut down procedures in their manual.  
22 They did not have the abnormal operations in the manual.  
23 They did not have continuing surveillance in the manual,  
24 procedures for it or documentation for any of this that  
25 they had done. The emergency plans, they did not have a



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1 natural gas person who was in charge of their emergency  
2 plans at Basin Frozen Foods, and they had not  
3 established and maintained liaisons with the appropriate  
4 fire, police, county information. Patrolling the  
5 pipeline, they did not have procedures for that or  
6 documentation that that had been done. There were  
7 missing pipeline warning signs and markers as a repeat  
8 violation. And that is -- are the repeat violations.

9 CHAIRWOMAN SHOWALTER: Okay. And then in  
10 terms of these repeat violations, I'm trying to  
11 understand whether some of them are simply the earlier  
12 violation that had not yet been fixed, though it's still  
13 a violation, versus a distinct occurrence at a prior  
14 time and then another occurrence at a later time. For  
15 example, if you welded a pipe at an earlier time and  
16 then you welded another pipe at a later time, that might  
17 be two events. On the other hand, it could be that, you  
18 know, if you didn't have a pipeline warning sign at an  
19 earlier time and you still didn't have it at a later  
20 time, that's in essence the same event not yet cured.  
21 Can you give me any indication of whether these repeat  
22 violations are essentially ones that had occurred  
23 earlier and were still occurring throughout and  
24 therefore they were repeat versus distinct incidents?

25 MS. JOHNSON: For that, the first docket, we

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1 had gone down and done a follow-up inspection, and all  
2 of those violations were cleared. We saw the warning  
3 signs, the marker signs, the proper welding information.  
4 We had seen documentation for everything, so that had  
5 been cleared. In the 2002 inspection, that previous  
6 information at the time of the inspection was not  
7 available, and the documentation and information for the  
8 2002 inspection had not been there. I believe in answer  
9 to your question, like the warning sign was missing  
10 again, so that is a second similar situation. However,  
11 for the odorometer reads, for example, those had -- that  
12 -- they had been done, Cascade had done them for Basin,  
13 but Basin did not have records that it had been done.  
14 They didn't have any documentation, and they were not  
15 aware that it had been done. So it's a combination for  
16 the 2002 violations.

17 CHAIRWOMAN SHOWALTER: All right. Well, then  
18 can you also explain if there, in fact, is a defect in a  
19 welding operation and something actually leaks and  
20 causes one of these emergencies, what is the potential  
21 damage if there's a person around that can -- basically  
22 can natural gas pipelines blow up?

23 MS. JOHNSON: That is correct, they can.

24 CHAIRWOMAN SHOWALTER: And is that what  
25 prompts all the plans for fire and emergency personnel?

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1 MS. JOHNSON: Correct, the public safety, the  
2 personnel safety. That's always a potential.

3 CHAIRWOMAN SHOWALTER: Have we had such  
4 incidents in our state of natural gas pipeline  
5 explosions?

6 MS. JOHNSON: I'm not sure if natural -- if  
7 we have had any deaths from --

8 CHAIRWOMAN SHOWALTER: I didn't mean deaths,  
9 I just meant explosions.

10 MS. JOHNSON: We have had explosions in  
11 Washington state, yes.

12 CHAIRWOMAN SHOWALTER: And have we had leaks  
13 without explosions?

14 MS. JOHNSON: Definitely, numerous leaks  
15 without explosions.

16 CHAIRWOMAN SHOWALTER: I think my central  
17 question for the panel, Mr. Kilpatrick, you may be the  
18 appropriate person, but it seems evident that this  
19 pipeline operator was on notice of the kinds of things  
20 that were required to be done of a pipeline operator.  
21 That is, the docket in front of us is not the first time  
22 that the operator has been in apparent violation. I use  
23 those words carefully because I realize we have not had  
24 a fact finding here. So the question, the central  
25 question I have is, why is it just in the Staff's view

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1 that we should approve of a settlement with no finding  
2 of a violation?

3 MR. KILPATRICK: As you stated, Staff has had  
4 numerous occasions over the past couple of years to work  
5 with Basin Frozen Foods and their contractors on  
6 attempting to reach compliance with Federal and State  
7 Pipeline Safety Codes. As Ms. Johnson indicated, we had  
8 an issue about a year ago where there were numerous  
9 violations that the company then worked to provide  
10 documentation for and make corrections to to bring  
11 everything into compliance.

12 In the 2002 time frame when Ms. Johnson went  
13 back to Basin Frozen Foods to do the next regular annual  
14 inspection, standard inspection of Basin's pipeline  
15 operations, much of the material that was available the  
16 year prior was unavailable, and our inspectors can only  
17 proceed in terms of what information is presented to  
18 them. So the findings that were made in the 2002  
19 inspection were based on materials that were either  
20 provided or unavailable and led to a number of the  
21 issues before us, and that's why we brought the  
22 complaint before the Commission and pursued the path  
23 that we have.

24 In terms of developing a settlement with  
25 Mr. Weber and his company over the current violations,

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1 alleged violations in the 2002, resulting from the 2002  
2 inspection, we took into account the fact that Mr. Weber  
3 went forward with working with Cascade Natural Gas  
4 Company to put in place a contract that would provide  
5 for Cascade assuming the responsibility of operations  
6 and maintenance of Basin's natural gas pipeline. We  
7 believe that this was a significant factor that was  
8 absent in the prior time frame in terms of a operations  
9 requirement and an operator who would maintain records,  
10 who would do periodic patrols, who would take care of  
11 public notification, these kinds of things. And we  
12 believe that because of the -- because of the  
13 relationship that Mr. Weber now has with Cascade Natural  
14 Gas and the contract and the provisions that are in  
15 there, we believe this significantly minimizes the  
16 probability of future reoccurrence of these missing  
17 elements that Ms. Johnson discovered in her 2002  
18 inspection. And so the -- we believe that was a very,  
19 very important factor in terms of why we should reach a  
20 settlement with Basin over the issues that we raised and  
21 had the Commission issue in its complaint.

22 CHAIRWOMAN SHOWALTER: Isn't it the case that  
23 Basin Foods had already agreed to contract with Cascade  
24 before the inspection that produced these violations?

25 MR. KILPATRICK: Mr. Weber had a, and I would

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1 let him answer on his own behalf on that, but my  
2 understanding was that Mr. Weber did have a relationship  
3 with Cascade Natural Gas; however, the significant piece  
4 involved from Staff's standpoint was an acceptance of  
5 responsibility to be the operator of this natural gas  
6 pipeline. Cascade as we understand it through their  
7 current contract with Basin has assumed that  
8 responsibility as operator, and operators are the  
9 responsible party who is required to do things like  
10 maintain records, do periodic patrols, essentially all  
11 of these actions that are required under the Pipeline  
12 Safety Code. And so we believe there was a distinct  
13 difference between the prior arrangement that Mr. Weber  
14 had with Cascade and the current arrangement. In our  
15 view, the prior arrangement was one more of a contractor  
16 who was waiting for instruction from a facility owner,  
17 who would do whatever activities were requested of it as  
18 its contractor and do the appropriate work, but we  
19 believe that the prior arrangement left Mr. Weber as the  
20 operator who was responsible for deciding when and where  
21 things needed to be taken care of.

22 CHAIRWOMAN SHOWALTER: All right. But am I  
23 right that Cascade took over the pipeline operations in  
24 September of 2002; is that correct?

25 I will ask Mr. Weber that question; is that

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1 correct?

2 MR. WEBER: That's correct.

3 CHAIRWOMAN SHOWALTER: All right. So  
4 starting September 2002, we have a different  
5 arrangement. Am I right there?

6 MR. KILPATRICK: I guess so.

7 CHAIRWOMAN SHOWALTER: Okay, Mr. Weber is  
8 nodding his head yes.

9 MR. WEBER: Right.

10 CHAIRWOMAN SHOWALTER: So aren't we really  
11 talking about Basin Foods being the operator up until  
12 September 11th, 2002, and prior to that date as the  
13 operator having what I would characterize as a series of  
14 two sets of violations, one with 22 violations, one with  
15 26, and with 11 repeats. And a new era starts September  
16 of 2002, but we're talking about this operator prior to  
17 that.

18 MR. KILPATRICK: Yes, Staff would agree.  
19 That was our conclusion was that Mr. Weber was the  
20 operator of the facility prior to the current  
21 arrangement.

22 CHAIRWOMAN SHOWALTER: I don't want to  
23 oversimplify your rationale, so correct me if I'm wrong.  
24 It sounds to me as if you're saying because there is  
25 going to be or as of September 2002 has been a new

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1 operator, that obviates the need or excuses the need to  
2 proceed with a finding of violation. Is that -- that is  
3 it doesn't really matter if there was a violation or not  
4 or if we find one, if the Commission finds one or not,  
5 because in the future this operator is no longer to be  
6 operating the pipeline. Is that more or less what  
7 you're saying?

8 MR. KILPATRICK: That's essentially correct,  
9 yes. What we're saying is that because Basin or because  
10 Cascade Natural Gas is a known operator with, you know,  
11 qualifications and engineering staff and maintenance  
12 staff and on all of the requirements that it takes on as  
13 its own local distribution company, it provides and  
14 brings those resources to Basin Frozen Foods. It is the  
15 operator and assumes all of those responsibilities that  
16 include things like record keeping and notification and  
17 program maintenance such as the drug and alcohol  
18 program, those kinds of things.

19 CHAIRWOMAN SHOWALTER: But why is the future  
20 behavior or conduct or compliance of a pipeline, let's  
21 assume that Cascade knows what it's doing and is going  
22 to do everything right in the future, why is that  
23 promise of a fully compliant future, and it's just a  
24 promise, determinative of whether this pipeline operator  
25 over its period of being an operator should be excused



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1 from admitting a violation or proceeding to a fact  
2 finding to determine if there was a violation?

3 MR. KILPATRICK: I don't know if I have a  
4 full answer to your question, but let me share with you  
5 the Staff's thinking in terms of establishing this  
6 settlement agreement. We evaluated and looked at a  
7 number of factors that the Commission has articulated in  
8 the past as being important to consideration of  
9 settlement, significantly deterrents. There was a, in  
10 this case as I said, a significant factor that would  
11 provide deterrence for future misbehavior, if you will,  
12 was this new relationship with Basin and Cascade in  
13 terms of Basin engaging this professional firm to take  
14 over all operations and maintenance activities,  
15 including the record keeping and reporting. We looked  
16 at --

17 CHAIRWOMAN SHOWALTER: Meaning for this  
18 specific company, they are not likely to reoffend  
19 because they aren't going to be a pipeline operator?

20 MR. KILPATRICK: Yes, exactly.

21 In terms of rehabilitation, we see this as  
22 same -- as really the same as deterrence. We have that  
23 Mr. Weber has, if you will, rehabilitated his position  
24 in terms of likelihood to, you know, have violations in  
25 the future because he has put a contract in place that

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1 has -- will have Cascade do a number of things. And we  
2 included some provisions.

3 Ms. Johnson talked about absence of  
4 procedures within an operations and maintenance plan,  
5 which is a requirement of the Federal Code. Before we  
6 finalized the settlement agreement with Basin, Cascade  
7 developed specific operation and maintenance procedures  
8 and a manual that would cover Basin's operations  
9 specifically. They created the information that  
10 Ms. Johnson referred to that was missing with regard to  
11 the as-built condition report, what exactly was put in  
12 the ground at the time the pipeline was constructed, is  
13 it PIG-able, is it constructed such that you can use  
14 in-line inspection tool. Cascade collected and produced  
15 all of those bits of information.

16 In terms of general deterrence, we believe  
17 that this action by the Commission if you were to accept  
18 this settlement agreement the way it has been crafted  
19 provides a notice to other operators that the Commission  
20 and the Commission's Pipeline Safety Program is serious  
21 about safety and compliance with the State and Federal  
22 Codes.

23 CHAIRWOMAN SHOWALTER: Well, I would like to  
24 stop on that. Why? In other words, why isn't the  
25 message, as long as after you get caught or have

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1 violated the second time around you make things good for  
2 the future, you will be okay. You can get away without  
3 ever having been found to be in violation of our rules  
4 so long as either you pass off the job to somebody else,  
5 or maybe you do demonstrate that things are going to be  
6 okay in the future. But why is that general deterrence?  
7 Because how does that send a message to all of the  
8 people, the pipeline operators who aren't violating, why  
9 should they continue to obey our rules if to violate  
10 them they need only make good for future?

11 MR. KILPATRICK: Well, to start with I would  
12 say that I believe that our current methodology and our  
13 current thinking about enforcement from the Pipeline  
14 Safety Staff aspect is a significant change from what I  
15 understand the Commission's policy has been or the Staff  
16 approach has been in past years. For the most part as I  
17 understand, when the Commission's Pipeline Safety  
18 Program, and again I will say that my experience in  
19 Pipeline Safety Program began in 2001 so I don't have a  
20 vast amount of time in this aspect of the Commission's  
21 jurisdiction, but my understanding generally is that in  
22 past years Commission Staff and companies have worked in  
23 a informal manner to take care of alleged violations.  
24 If there were problems that were seen by the Pipeline  
25 Safety Staff, some letters and assurances perhaps were

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1 exchanged somewhat on an informal basis. I believe that  
2 this action that we're involved with today here in the  
3 Commission's hearing room before the Commissioners is in  
4 itself a significant difference in terms of how the  
5 companies are going to view the Commission's Pipeline  
6 Safety Program and our enforcement actions.

7 CHAIRWOMAN SHOWALTER: Do you agree that if  
8 we accept this settlement agreement, there have been 48  
9 allegations of violations of our Pipeline Safety Rules  
10 and officially none of them happened, none? You're  
11 talking as if they have happened, but officially there  
12 has been no finding if we accept this that there has  
13 been any violation.

14 MR. KILPATRICK: From our Staff inspection  
15 perspective, when we send an inspector out and they  
16 evaluate the records of a company's operations and its  
17 performance and they come up with essentially zeroes, if  
18 you will, in areas where there's supposed to be a record  
19 for a time period and there is no record, in our mind  
20 that is a violation.

21 Now from a strict legal standpoint, I guess I  
22 would have to ask Mr. Trotter if he has any comment on  
23 that or can help me.

24 CHAIRWOMAN SHOWALTER: Well, either one of  
25 you can answer, but wouldn't you say that a settlement

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1 agreement of alleged violations approved by this  
2 Commission that either expressly or implicitly finds no  
3 violation means that officially there has been no  
4 violation?

5 MR. TROTTER: If I may respond, Donald T.  
6 Trotter. The question is a bit circular, because in  
7 order for -- you could argue that in order for a  
8 violation to occur, there has to be a finding of a  
9 violation. And so then under that reasoning, absent a  
10 finding, there is no violation. I think what  
11 Mr. Kilpatrick is saying is that from the Staff's point  
12 of view, when they go out and find the facts in the  
13 field and allege that a violation occurred, in their  
14 mind that is a violation that has occurred in the sense  
15 that the conduct did not match the rule. So under that  
16 sort of way of thinking, there is a violation. But you  
17 are -- this agreement does call for a \$40,000 payment,  
18 which accounts, I think in Staff's mind, accounts for  
19 the past conduct.

20 But you are technically correct, there is no,  
21 in this agreement, no explicit finding of a violation.  
22 I personally don't think that means that the conduct did  
23 not occur. The conduct did occur, but there's no  
24 finding that the conduct, a legal conclusion of law,  
25 that the conduct occurred and amounted to a violation.

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1 So I guess it depends on the perspective, but I think to  
2 say that the conduct didn't happen I think is maybe too  
3 broad. But certainly if you do use the logic that in  
4 order for a violation to occur there has to be a  
5 finding, then the violation did not occur under that  
6 analysis.

7 CHAIRWOMAN SHOWALTER: Well, pipelines and  
8 people conduct themselves in the real world and did in  
9 the past in some manner, and the Staff made an  
10 allegation and the Commission made an allegation that  
11 that conduct was a violation. But a settlement  
12 determines in essence not that there was no violation,  
13 but it proceeds to resolve the allegation without a  
14 finding that there is a violation. So, for example,  
15 supposing one of these pipelines five years from now  
16 blows up and damages something, and maybe the cause is  
17 determined to be a weld. If an investigation looks back  
18 and says, was that due to a violation, it's going to  
19 have to legally conclude -- well, I want to use my words  
20 carefully here -- it will conclude that -- it can not  
21 conclude as a matter of law that there was a violation,  
22 because we as the legal fact finding body made the  
23 allegation but did not find one.

24 MR. TROTTER: Well, I'm assuming that if in  
25 the future, if there is a future incident and it is

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1 found that the weld was defective, you could find the  
2 violation then.

3 CHAIRWOMAN SHOWALTER: Even if it's the same  
4 allegation as the ones we are resolving today that were  
5 alleged?

6 MR. TROTTER: I would assume that a defective  
7 weld is a violation of the rules on an ongoing basis,  
8 and this does not -- this agreement deals nothing with  
9 the future condition of this line. The Staff's  
10 viewpoint based on this is that the company is currently  
11 in compliance, but if that turns out to be mistaken and  
12 tomorrow there is a defective -- there is a preexisting  
13 condition that is a continuing violation, that would be  
14 a violation today, that can be alleged, found, and  
15 sanctioned in the future.

16 I might also add, and this may be better from  
17 the panel, but it's my understanding that in some  
18 respects and perhaps not all, some of the lack of  
19 documentation problems were later found, the  
20 documentation was later found. I don't think that's  
21 true in every single instance, but in many documentation  
22 was later produced. It doesn't excuse the fact that  
23 when they were at the audit it was not produced, but I  
24 think that was a mitigating factor that was considered  
25 by Staff. But they can confirm that or not.

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1                   CHAIRWOMAN SHOWALTER: I would like to  
2 explore the relationship of a fine or a penalty or a  
3 payment in the amount of \$40,000 without a violation.  
4 What's the thinking there? That's a fairly significant  
5 amount to a company this size. At the same time,  
6 there's no finding of a violation, so do you consider  
7 these to be trade offs for one another?

8                   MR. TROTTER: Just for clarification, you  
9 mean does the Staff consider the \$40,000 as a trade off  
10 for not finding a violation?

11                   CHAIRWOMAN SHOWALTER: Yes. I find a payment  
12 of \$40,000 fairly significant given that there is no  
13 finding of a violation.

14                   MR. TROTTER: Perhaps I can answer that.  
15 That was never a consideration that I am familiar with.  
16 This was, \$40,000 was, in my view, was a compromise of  
17 the claims alleged in the complaint and no more, no  
18 less. But I don't believe there was ever any interest  
19 in the trade off of the type that you have described.

20                   CHAIRWOMAN SHOWALTER: Why wouldn't the  
21 natural progression be first there's a finding of a  
22 violation, then depending on the violation and the  
23 finding, the next step is a fine of whatever amount,  
24 might be \$5,000, might be \$40,000, but how do you skip  
25 over or why should we skip over the essential fact of



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1 whether there has or hasn't been a violation of our  
2 rules? Why are we jumping to a payment?

3 MR. TROTTER: Well, that's essentially I  
4 think a simple answer is because I think you can.  
5 Whether you ought to based on your view of how you  
6 administer the public service laws is a separate  
7 question.

8 CHAIRWOMAN SHOWALTER: That is my question,  
9 why should we?

10 MR. TROTTER: Okay, and Mr. Kilpatrick has  
11 attempted to articulate that. I think from our  
12 perspective, from a legal perspective, it is a  
13 compromise of a claim, and if the Commission as a matter  
14 of policy indicates that there needs to be findings of  
15 violations first before we compromise claims and  
16 complaints, then it can announce that policy, and I  
17 can assure you the Staff would adhere to it.

18 CHAIRWOMAN SHOWALTER: I don't mean that, I  
19 wouldn't be suggesting that's the alternative as some  
20 kind of generic matter, that in any given case -- well,  
21 I think a more natural progression is you might have a  
22 finding of a violation with no fine, or you might have a  
23 finding of a violation with a smaller fine, but that it  
24 would be is that -- I'm having a hard time understanding  
25 the rationale for having a hefty violation with no,

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1 excuse me, a hefty fine or payment amount I will call it  
2 without a finding of violation.

3 MR. TROTTER: I can give you maybe my  
4 personal perspective on that, and this may be shared  
5 only by me. But to me, a finding of violation is a very  
6 significant thing. It may have consequences for  
7 radically increased insurance premiums, other sorts of  
8 economic consequences to a firm, so they have an  
9 interest in -- I don't know if that's this firm, but I  
10 think in general that's a very serious matter that has  
11 consequences beyond this hearing room or even a Pipeline  
12 Safety Program. That has economic consequences to the  
13 firms, so that's why you see in many areas of the law  
14 agreements to settle matters without findings of fault.  
15 This is another one of those. So I think it's rational  
16 to approach it that way.

17 I think the -- this is a, in my personal  
18 view, a significant sum of money, as you noted, for a  
19 small company with a four mile pipeline, and I think it  
20 was based on the nature of the violations, the fact that  
21 the documents weren't there. He has a story to tell  
22 about that I'm sure, but they weren't there and -- but  
23 as Mr. Kilpatrick has explained. At the same token,  
24 this company did take affirmative action to solve its  
25 problems and hire what we believe is a competent

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1 operator and brought itself into compliance. That's the  
2 key, another key factor that has been mentioned is the  
3 company is now in compliance, has done all the things to  
4 cure the violations. And it was my sense that the Staff  
5 was not interested in settling anything unless that  
6 condition occurred.

7           So I guess if you look at the agreement as a  
8 whole in context as Mr. Kilpatrick has described, that's  
9 the kind of the rationale. But that there was never a  
10 sense from my perspective that, oh, well, let's make the  
11 penalty this amount because we're not going to have a  
12 finding of violation. That was not thought about or  
13 discussed at all. But rather we looked at it as a  
14 compromise of a claim and a way to get this situation  
15 resolved in a way that satisfied considerations that  
16 Staff applied to it subject to your review and approval.

17           CHAIRWOMAN SHOWALTER: If you are an  
18 insurance company or someone who has been damaged later  
19 by something, why -- shouldn't the outside world be  
20 entitled to be aware if there are real violations? I  
21 don't mean every single one every single time, but don't  
22 we need to do our job for Pipeline Safety in general,  
23 and to some extent you let the chips fall where they  
24 may. If you start trying to protect against the  
25 insurance increases and things like that, then aren't we

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1 really fundamentally hiding information that other  
2 industries may find relevant? And I would commend  
3 anyone to read the New York Times today on a pipeline  
4 manufacturer, just as an aside.

5 MR. TROTTER: I raised the insurance issue  
6 just as my own personal thoughts. I don't ascribe that  
7 to this company. Certainly this agreement has the  
8 violation report, and it's a public document, and you  
9 can go on line and find it, so I don't think there's  
10 anything being hidden in that respect.

11 CHAIRWOMAN SHOWALTER: But there is for  
12 reporting for a company who may have to be getting  
13 insurance. I mean take this company, I mean it's not in  
14 this business anymore, but might it not matter to  
15 someone either lending money, insuring this company,  
16 somehow otherwise engaged, that this company, we had  
17 found it had violated our rules?

18 MR. TROTTER: And I don't know the answer to  
19 that question, but I don't think there was ever any  
20 desire from -- this wasn't a concern articulated by this  
21 company, but I'm just saying in general there are  
22 collateral impacts beyond Commission regulation with  
23 respect to findings of violations, and I'm assuming that  
24 companies that wish to settle and prove compliance and  
25 take steps to assure future compliance take that into

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1 account. I think that's all I'm saying, and I don't  
2 know what that list contains, but that might be one of  
3 them.

4 CHAIRWOMAN SHOWALTER: Okay. I just want to  
5 be clear on did Basin Foods ever have a drug and alcohol  
6 testing program up to September of 2002, Ms. Johnson?

7 MS. JOHNSON: Basin Frozen Foods had an  
8 in-house policy of doing pre-drug testing and random  
9 drug testing. As far as having a drug and alcohol  
10 program that resembled the regulation, they have never  
11 had that, and their in-house policy was not intended to  
12 cover that.

13 CHAIRWOMAN SHOWALTER: So when Mr. Trotter is  
14 mentioning they have brought themselves into compliance,  
15 that is by handing the job off to somebody else as  
16 opposed to themselves having complied with these various  
17 provisions?

18 MR. KILPATRICK: I would say that's correct,  
19 yes. That is, that contractual relationship that they  
20 now have with Cascade Natural Gas and the fact that  
21 Cascade has taken on that responsibility of operator of  
22 the pipeline and assumes all of those requirements under  
23 the Federal and State Code.

24 CHAIRWOMAN SHOWALTER: Okay. You had talked  
25 about specific deterrence and rehabilitation and general

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1     deterrence, and I think we got off on a long discussion;  
2     did you want to continue there?

3                   MR. KILPATRICK:  I just had a couple of other  
4     brief points to mention.  And again, that the Commission  
5     has articulated a number of factors in terms of finally  
6     reaching settlement, conservation of resources, time and  
7     money is one of those.  We believed that since Basin had  
8     indicated early on to us its willingness to work with  
9     Staff and Cascade Natural Gas to correct all of these  
10    violations, to produce a operation and maintenance plan  
11    that was in conformance with the federal standards, to  
12    have Cascade be the operator who was required to have  
13    the drug and alcohol program and those kinds of things,  
14    Mr. Weber indicated willingness to do that early on, and  
15    it appeared to us that a settlement that would make sure  
16    that those pieces were in place at the time that we  
17    signed the settlement was the most expedient and  
18    efficient way to reach compliance as opposed to, for  
19    example, taking the matter to hearing with testimony and  
20    exhibits and that kind of thing.

21                   CHAIRWOMAN SHOWALTER:  Are you saying that  
22    you think that if you had not reached this settlement  
23    that the case would have gone to hearing and that would  
24    have delayed compliance by Basin Foods?

25                   MR. KILPATRICK:  Most certainly.  That was

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1 our assumption was that if we were not able to reach  
2 settlement, the Staff was prepared to begin to develop  
3 testimony and exhibits in support of a hearing before  
4 this Commission, and we didn't believe that compliance  
5 would be achieved until whatever the final outcome of  
6 that series of hearings might have been, which could  
7 have taken many months.

8 CHAIRWOMAN SHOWALTER: So you think Mr. Weber  
9 would have had incentive not to comply and bring himself  
10 around prior to a contested hearing on these violations  
11 if there was a contested hearing?

12 MR. KILPATRICK: I believe that the  
13 assurances that we know that all of the factors required  
14 by the state and Federal Code are in place would not  
15 have been there if we had gone to hearing. We would  
16 have not been interested in working or conversing  
17 necessarily with Mr. Weber about whether or not all of  
18 those elements had been completed and were in place, as  
19 we were in terms of assuring that those pieces were in  
20 place at the time that we signed the agreement.

21 CHAIRWOMAN SHOWALTER: Why wouldn't you be  
22 interested? If you had -- if you got 26 violations  
23 alleged against someone and you think you're prepared to  
24 go to hearing, wouldn't you nevertheless, shouldn't you  
25 nevertheless be very interested in curing them just as

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1 soon as possible, and wouldn't the company itself have a  
2 very strong motive to cure them as soon as possible  
3 regardless of whether there is a contested hearing or  
4 not but I would say maybe especially if there is a  
5 contested hearing?

6 MR. KILPATRICK: Well, I don't know what  
7 exactly Mr. Weber's motivation would have been on that  
8 regard, but I know that from Staff's standpoint, we were  
9 prepared to take the path of hearing very seriously, and  
10 we were going to apply our resources to developing our  
11 evidence that would be brought before the Commission in  
12 a hearing.

13 CHAIRWOMAN SHOWALTER: That's assuming that  
14 Basin was going to mount a defense?

15 MR. KILPATRICK: Correct.

16 CHAIRWOMAN SHOWALTER: And you believed that  
17 that would be likely the case?

18 MR. KILPATRICK: Well, that was our -- that  
19 was our alternative. If we did not reach settlement,  
20 our alternative was that we were going to move forward  
21 with developing our testimony and evidence for the  
22 Commission, and we were going to focus all of our  
23 resources on doing that. Now that's not to say we  
24 weren't going to answer the phone if Mr. Weber were to  
25 call and make an offer, but we were certainly not going



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1 to spend an inordinate amount of time continuing to try  
2 and pursue settlement, because we knew that we had a  
3 series of deadlines, dates where we were going to have  
4 to have our information prepared, and that's where we  
5 were going to focus our energies.

6 CHAIRWOMAN SHOWALTER: I have no further  
7 questions, thank you.

8 COMMISSIONER OSHIE: I would like to follow  
9 up just on that last issue, Mr. Kilpatrick, because it's  
10 my understanding and in a general way at least that the  
11 alleged violations have been cured, if you will, and  
12 resolved by the fact that Cascade Natural Gas will  
13 become the operator of the pipeline. And that agreement  
14 was signed on September 10th of 2002 to go into effect  
15 on September 11th. Now the settlement agreement wasn't  
16 reached until November 25th, so I'm trying to reconcile  
17 the dates with your comment that the compliance of the  
18 company was hanging in balance while the settlement was  
19 reached.

20 MR. KILPATRICK: Yeah, excuse me for not  
21 being clear about that. There were some documents that  
22 needed to be created prior to Basin coming into full  
23 compliance. There was a operations and maintenance  
24 manual that needed to be created that talked about the  
25 operation of this specific pipeline. Mr. Keith Meissner

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1 from Cascade worked on producing several documents,  
2 including this operations and maintenance manual,  
3 starting after the September 11th date, and those -- all  
4 of those pieces were made available to Staff prior than  
5 to us signing the agreement. There were a couple of  
6 other pieces as well in terms of proof from Mr. Weber  
7 that, for example, the pipeline marker had been  
8 replaced. We were provided evidence that he had taken  
9 care of that. And so the other thing that was of  
10 significant value in our mind was the development of the  
11 as-built condition report, the collection of all of the  
12 information about the materials, the procedures, and the  
13 facilities that were put in place at the time this  
14 pipeline was originally constructed.

15 COMMISSIONER OSHIE: Thank you.

16 COMMISSIONER HEMSTAD: Well, this is really a  
17 question to Mr. Weber. It's quite obvious that the  
18 Chair has concerns about the conduct of the company in  
19 view of the fact that this is the second time around.  
20 I'm also interested to hear that at least some of the  
21 issues were later resolved by the documentation not  
22 available originally was later provided. You can decide  
23 as to whether you want to answer this or not, but are  
24 you prepared to acknowledge that there were, in fact,  
25 violations of a certain number of these or the

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1 allegations of violations are true?

2 MR. WEBER: Well, it's true that we did not  
3 have the documentation when they came, you know, to look  
4 at it. I believe that we had most of the documentation,  
5 we just didn't have it available at the inspection.

6 And I would like to take a few minutes  
7 whenever it's appropriate to walk through from the  
8 beginning to this point on how we ended up with the  
9 pipeline just to let you all know how we ended up with  
10 the pipeline.

11 COMMISSIONER HEMSTAD: How you ended up with  
12 the pipeline?

13 MR. WEBER: Yeah, if now would be the  
14 appropriate time, I will start from the beginning and  
15 explain that.

16 COMMISSIONER HEMSTAD: This is your best  
17 opportunity to describe to us whether we should or  
18 should not accept the settlement, so you better proceed.

19 MR. WEBER: Okay. Well, to start with, when  
20 we got ready to built the plant, I went to Avista  
21 Utilities, told them that we were building this potato  
22 processing plant, we're going to need gas. They says,  
23 no problem, they had gas coming right into Warden, and  
24 that wouldn't be a problem.

25 And so I was putting water lines in and

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1 whatnot, and they decided that that was a good  
2 opportunity to put in their gas pipeline, which was a  
3 low pressure system from their regulator station. They  
4 put it in the same ditch I had open, got it off the road  
5 and part way to the plant there, and then they come back  
6 to me 30 days later, the plant wasn't going to be done  
7 for 18 months from when I started the water project so  
8 we had time, they come back to me a month or so later  
9 and says, well, we decided that low pressure is not  
10 enough gas, we're going to need high pressure. They  
11 said, don't worry about it, we've got high pressure gas  
12 coming right along the road there. So they proceeded,  
13 and this would be Avista, to put a high pressure four  
14 inch pipeline from my plant up to where their main line  
15 came in.

16 Well, a month or so goes by, and they come  
17 back and say they have another problem. I says, well,  
18 what's that. They says, we don't have enough gas coming  
19 into Warden. I says, so now what do we do. They says,  
20 well, the original deal was they didn't have enough gas  
21 on the Northwest pipeline. They says, well, don't  
22 worry, we'll see if we can buy some capacity from  
23 Cascade. Another month or so goes by, they come back  
24 and says, well, you know, that's not going to work, they  
25 won't sell us any capacity, they may sell you some

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1 capacity. And so I worked a deal with Cascade, they  
2 were going to sell me some capacity, bring it on  
3 Avista's pipeline. So I got back with Avista, told them  
4 okay, that's fine, we've got the gas situation worked  
5 out so everything is fine.

6           So they come back again and they says, well,  
7 our pipeline coming from the Northwest pipeline into  
8 Warden is not big enough. I says, so now what. They  
9 says, well, I guess you have to put your own in, or you  
10 can put one in and, you know, pay for it and we'll own  
11 it, but they were going to charge me the regular  
12 tariffs. And I says, well, if I've got to put the  
13 pipeline in, I'd just as well own it and not pay that  
14 price.

15           And I went to Cascade at that time and told  
16 them that I was going to have to put this pipeline in,  
17 but I didn't want anything to do with running it. I  
18 says, you know, I will own it, but I want something with  
19 Cascade so that they maintain this thing for me. And  
20 they says, you know, they don't have a problem with  
21 that, they helped do the engineering, helped me find the  
22 people to put it in, I paid for it.

23           Then the Commission told us, well, Cascade  
24 can not operate that line in Avista's jurisdiction. And  
25 so they says, well, they can have a maintenance

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1 agreement. So I says, well, you know, a pipeline, I  
2 figured what's the difference, a maintenance agreement,  
3 that's about all that's done on a pipeline that I knew  
4 about, so I had a maintenance agreement with Cascade.  
5 But I could not have the operation agreement with  
6 Cascade, because they said they couldn't have the  
7 operations agreement in Avista's territory. And I guess  
8 I didn't know enough about the pipeline procedures  
9 there. I thought the maintenance covered basically  
10 everything that went on.

11 Well, the first inspection we had Cascade  
12 present for the inspection, and we got by that. You  
13 know, we had to gather some pieces of paper that we  
14 didn't have there, but we got everything satisfactory.  
15 The next year when they come back, Cascade's in the  
16 middle of their own audit, we says, well, Cascade can't  
17 be here, we would like them to be here for this audit.  
18 They says, well, you know, we have to do the audit now,  
19 we can't wait for Cascade to be available. So we went  
20 through the second audit without Cascade being present  
21 even though they were the -- they had the maintenance  
22 agreement on it, and they had a lot of the paperwork  
23 that we needed to have. And so that was -- I think a  
24 lot of our problem there is that we didn't have Keith  
25 there during our inspection so we could have found the

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1 right pieces of paper along with the guy that had been  
2 through the inspection the year before was no longer  
3 with Basin Frozen Foods, so we had a new guy that had  
4 the files, but he wasn't familiar with it.

5           And, you know, so I would just like to say  
6 that our intention was never to operate a pipeline, and  
7 we, you know, we didn't want to put the pipeline in to  
8 start with. We basically starting building the plant  
9 and found out that Avista didn't have the capability to  
10 supply us with gas. And, you know, you're right about,  
11 yeah, we're a small company, we have started up, we have  
12 been struggling. That's why I told Mr. Kilpatrick, I  
13 says, you know, I can't afford a \$40,000 fine, so that's  
14 how we come about a monthly payment, because I says, I  
15 can't -- I can't afford to do that, so we had come up  
16 with this monthly payment program to try and ease the  
17 burdon on Basin Frozen Foods.

18           CHAIRWOMAN SHOWALTER: From your point of  
19 view, are you more concerned about the money that you  
20 need to pay, the \$40,000, or of weighting admitting a  
21 violation?

22           MR. WEBER: Well, I don't think that we have  
23 the violations necessarily out there. I think we had  
24 the piece of paper. We had a violation in the fact that  
25 we did not have the piece of paper readily available.

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1 You know, the money is, you know, a separate issue. You  
2 know, the economy has been a little tough, and we have  
3 been struggling just like the rest of it. Our bank has  
4 downsized, now we're out looking for a new bank, and I  
5 sent Mr. Kilpatrick all the paperwork showing that  
6 aspect as well. You know, our bank said, hey, they  
7 can't loan that much money any more.

8 But our intention all along has been to make  
9 sure that pipeline is in compliance. It's never, you  
10 know, been our intention to try and do it any cheaper  
11 than the next guy, and that's why we, you know, wanted  
12 from day one an agreement with Cascade to, you know,  
13 maintain it. And I thought the maintenance and  
14 operation was basically the same step. I mean we're  
15 never out there turning any valves. I mean if there's  
16 any valves to be turned, Cascade's been the one to do  
17 that from day one.

18 CHAIRWOMAN SHOWALTER: I have one question  
19 for Mr. Trotter. In your memo, you said:

20 The payment amount is in line with other  
21 results reached in similar Commission  
22 cases, taking into account the size of  
23 the pipeline and the range of compliance  
24 issues presented.

25 Was our case in Puget one of those cases



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1 you're referring to?

2 MR. TROTTER: That language was approved by  
3 Mr. Kilpatrick, and he was the one that --

4 CHAIRWOMAN SHOWALTER: All right, I will ask  
5 Mr. Kilpatrick.

6 MR. TROTTER: But I do know, as you have  
7 observed earlier, this is a small company with a four  
8 mile line as opposed to a multibillion dollar company  
9 with hundreds of miles of lines, and that was certainly  
10 a factor that was considered. But if Mr. Kilpatrick has  
11 more to add on that, I would certainly invite him.

12 MR. KILPATRICK: Yes, that's correct. We did  
13 look at other issues that had been before the Commission  
14 and the Pipeline Safety Staff in recent months and  
15 years, and the Puget decision was one of those that we  
16 considered as well.

17 CHAIRWOMAN SHOWALTER: So in that case there  
18 was no finding of a violation and a \$50,000 fine for  
19 some four years of negligence. So you're saying this  
20 fits underneath that in essence --

21 MR. KILPATRICK: I would say more --

22 CHAIRWOMAN SHOWALTER: -- because it's a  
23 smaller company and fewer violations, alleged  
24 violations?

25 MR. KILPATRICK: Well, I think this is a

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1 smaller company, but there were a great deal more  
2 alleged violations in the case of Mr. Weber than -- the  
3 issue in the Puget case was a single issue having to do  
4 with their drug and alcohol program. Yes, it was over a  
5 period of time, but it was, in terms of noncompliance,  
6 it was more or less a single issue revolving around that  
7 aspect of their program.

8 CHAIRWOMAN SHOWALTER: Okay.

9 COMMISSIONER OSHIE: Mr. Kilpatrick, I think  
10 we have talked around it a little bit, but perhaps you  
11 can very briefly state why Staff believes that the  
12 penalty is just and reasonable under the circumstances.

13 MR. KILPATRICK: Yes, thank you. We believe  
14 that the information that was provided to Staff, both  
15 about the nature of the violations or noncompliance  
16 issues, the size of the pipeline, the size of Basin as a  
17 company, all together were considered and brought to a  
18 conclusion that this was a fair and just settlement  
19 amount. Mr. Weber, as he said, did provide us with  
20 information about his company's financial records. We  
21 reviewed those and were unable to come to distinct  
22 conclusions about his company, but we did also talk to  
23 his comptroller, who told us that the company has in  
24 2002 worked on developing supply contracts with some  
25 companies where Basin will be the supplier of the

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1 product that they produce and that those we understood  
2 were to begin sometime in 2003. That led us to this  
3 conclusion that a payment schedule over the 2003 time  
4 frame was fair and just and would match up somewhat with  
5 the company's own stated opportunities for enhanced  
6 revenue.

7 COMMISSIONER OSHIE: There's been quite a bit  
8 of discussion this morning about, in response to the  
9 Chair's questions, about the finding of a violation as a  
10 requirement in the settlement, and I guess my, you know,  
11 with -- given the discussion that's already occurred, we  
12 don't have to repeat that, but are there circumstances  
13 in which Staff would believe that a finding of a  
14 violation in settlement of a complaint would be  
15 appropriate?

16 MR. KILPATRICK: I think in terms of what  
17 Staff -- has been in our mind, my mind and our -- my  
18 staff's mind when we have talked about this issue of  
19 violations and enforcement and settlement, our interest  
20 is the ultimate outcome, it's compliance, it's having  
21 all of the required pieces in place. Whether or not a  
22 company admits it violated provisions of the law is  
23 secondary in terms of our -- the outcome that we're  
24 trying to achieve is to see that the proper pieces of  
25 records, of procedures, of, you know, installation and

0066

1 operations, ideas that all of those are in place.

2 As inspectors, what we are looking at is the  
3 regulation that specifies a certain activity or record  
4 must be in place by the company. If that's there, then,  
5 you know, we are -- we feel that we have done our job.  
6 If we have reached that complies through a settlement  
7 where a company has taken actions to get everything in  
8 place and also is providing some evidence to us that the  
9 outcome in the future is going to remain the same, that  
10 is the next time we come and do an inspection that we  
11 will find that all of the correct factors are in place  
12 again, we think there's a strong likelihood of that, I  
13 think we have achieved our end.

14 CHAIRWOMAN SHOWALTER: Do you agree you  
15 didn't achieve it the first time around because the  
16 second time happened?

17 MR. KILPATRICK: In this instance I agree we  
18 didn't achieve it the first time. When we came to do  
19 the second inspection, we find similar violations from  
20 what we found before. We didn't achieve our end the  
21 first time, and so we have taken the step of bringing  
22 the complaint request to the Commission and moving  
23 forward in a formal hearing or settlement standpoint,  
24 and that has brought us now to what we believe is  
25 compliance. All of the pieces are in place.

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1                   COMMISSIONER OSHIE: I have a housekeeping  
2 question, and that's on the settlement agreement, page  
3 6, and it's in Paragraph 26, it's the use of the word  
4 emergency in the last sentence. The paragraph heading  
5 is the surveillance plan, and perhaps you can clarify  
6 whether the last sentence should be reworded to state  
7 that:

8                   Based on that review, Staff believes the  
9 surveillance plan compliance with 49 CFR  
10 192.613.

11                   MR. KILPATRICK: I believe you're correct,  
12 but I would have to check that and make sure of the  
13 language. I don't have the Federal Code that is cited  
14 there before me right now.

15                   MR. TROTTER: If I might just comment, there  
16 are some code sections in Appendix C that might help you  
17 if you want to take a short moment, with the Bench's  
18 permission.

19                   JUDGE SCHAER: Go ahead.

20                   MR. TROTTER: It's under violation, we're off  
21 the record, it's under violation --

22                   JUDGE SCHAER: I did not take us off the  
23 record, Mr. Trotter.

24                   MR. TROTTER: I will just note for the record  
25 that in Appendix C to the settlement agreement, I

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1 believe it's under the violation 11(a), the Appendix is  
2 not numbered, but there is 192.613.

3 MR. KILPATRICK: Ms. Johnson did have the  
4 code cite with her here, 49 CFR Part 192.613 is entitled  
5 continuing surveillance, and so I believe Commissioner  
6 Oshie's question is correct, I think that last sentence  
7 should be modified to say that Staff believes the  
8 continuing surveillance plan complies with the provision  
9 of the code.

10 JUDGE SCHAER: Would the parties like to have  
11 Exhibit 1 modified to make that change?

12 MR. TROTTER: Yes, Your Honor.

13 MR. WEBER: Yes.

14 JUDGE SCHAER: On page 6 of the settlement  
15 agreement, the last sentence of Paragraph 26, we will  
16 strike the word emergency and replace it with the word  
17 surveillance.

18 COMMISSIONER HEMSTAD: Mr. Weber, I have just  
19 one general question. What is the scope of your  
20 operations of Basin Foods?

21 MR. WEBER: It's a french fry plant and hash  
22 brown plant, so we produce french fries and hash browns.  
23 They're frozen.

24 COMMISSIONER HEMSTAD: And how many people do  
25 you employ?

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1                   MR. WEBER: We employ between 200 and 225  
2 depending on what we're doing there.

3                   COMMISSIONER HEMSTAD: That's an average  
4 full-time employee?

5                   MR. WEBER: Full-time.

6                   COMMISSIONER HEMSTAD: And where are your  
7 headquarters?

8                   MR. WEBER: In Warden, Washington right  
9 there, which I might add, on this pipeline we're  
10 discussing, it's all out through the rural area. I mean  
11 it doesn't go through town or anything. It's just along  
12 a country road, and that's why some of the signs will be  
13 missing from time to time where the farm equipment, you  
14 know, has knocked them over and whatnot. That's how  
15 some of those signs end up missing.

16                   CHAIRWOMAN SHOWALTER: I take it the pipeline  
17 hooks up to your plant with 225 employees?

18                   MR. WEBER: That's right.

19                   JUDGE SCHAEER: I would like to ask just a  
20 couple of questions. I believe either you,  
21 Mr. Kilpatrick, or you, Mr. Weber, will be able to  
22 answer them. We have talked about the inspection that  
23 took place in 1991, but in doing your work with this  
24 company, have you reviewed Docket UG-001119, which was a  
25 proceeding in which Cascade Natural Gas was granted

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1 authority under its certificate to serve Basin Frozen  
2 Foods?

3 COMMISSIONER HEMSTAD: I believe you said  
4 1991, did you mean 2001?

5 JUDGE SCHAER: Thank you, yes, I did.

6 Did anyone review that before making the  
7 plans for what happened following that time?

8 MR. KILPATRICK: Yes, we did, Staff -- the  
9 Pipeline Safety Staff was involved at the time that  
10 Cascade sought a certificate of convenience and public  
11 necessity from this Commission for a small strip of  
12 service territory that was intended to provide their  
13 ability to serve Mr. Weber and his facility, and so we  
14 were familiar with that, and that was considered in  
15 preparation for the inspection that was done in 2001 and  
16 2002.

17 JUDGE SCHAER: And my understanding from  
18 reading the order, which is public record, is that  
19 Cascade was allowed to provide the services that were in  
20 their Tariff 700?

21 MR. KILPATRICK: Yes, that's correct, that  
22 was our understanding.

23 JUDGE SCHAER: Okay. The contract between  
24 Basin and Cascade is not before the Commission right  
25 now; is that correct?



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1 MR. KILPATRICK: That's correct.

2 JUDGE SCHAER: A couple of more just  
3 foundation questions. Is it correct that in that  
4 proceeding there was a letter or affidavit filed by  
5 Mr. Weber indicating his intention to sign a contract  
6 with Cascade at that time?

7 MR. KILPATRICK: I'm not aware of that.

8 JUDGE SCHAER: Mr. Weber, are you aware of  
9 that?

10 MR. WEBER: I think there was something in  
11 there, but I, you know, don't recall exactly what it was  
12 at this time.

13 JUDGE SCHAER: Okay. In looking at -- do you  
14 have a copy available to you of Cascade's Tariff 700?

15 MR. KILPATRICK: I don't have it before me,  
16 no.

17 JUDGE SCHAER: Okay. What provisions, if  
18 any, are there in the Cascade contract for notifying the  
19 Commission if that contract is going to be ending?

20 MR. KILPATRICK: I don't recall the  
21 provisions specifically. We could --

22 JUDGE SCHAER: It looks like perhaps your  
23 co-panel member can find that, or Mr. Trotter may know.

24 MR. TROTTER: I would just bring to your  
25 attention, Your Honor, there is a provision in the

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1 settlement agreement that deals with that, Paragraph 12  
2 on page 4. Basin is required to give the Commission two  
3 days, two working days' notice if it's notified by  
4 Cascade that it will cease to be the operator, which I  
5 assume means the contract is terminated, the same thing.

6 JUDGE SCHAER: But what --

7 MR. TROTTER: I am not able to answer based  
8 on the contract between Mr. Weber and Cascade.

9 JUDGE SCHAER: Is there anything in here that  
10 requires notification to be given to the Commission if  
11 Basin cancels the contract?

12 MR. TROTTER: The language of the agreement  
13 is that if Cascade ceases to be the operator.

14 JUDGE SCHAER: Okay.

15 MR. TROTTER: So that would cover both  
16 situations, whoever terminates the contract.

17 JUDGE SCHAER: My concern is that the  
18 notification -- oh, I understand, so you're saying that  
19 if Cascade ceases for any reason, that it is no longer  
20 the operator, it will trigger the notice requirement; is  
21 that correct?

22 MR. TROTTER: That is correct.

23 JUDGE SCHAER: Had you found the information?

24 MR. KILPATRICK: I have a copy of a letter  
25 dated November 20th, 2002, from Keith Meissner of

0073

1 Cascade Natural Gas to Mr. Weber, and there is a  
2 sentence in here in the last paragraph that says:

3           If this contract is ever terminated,  
4           Basin Frozen Foods should seek another  
5           qualified operator for this pipeline.  
6           Otherwise, Basin Frozen Foods will  
7           become responsible for operating and  
8           maintaining the pipeline to the minimum  
9           requirements of 49 CFR 192 and 199 as  
10          well as WAC 480-93.

11           JUDGE SCHAER: And looking at the notice  
12 Mr. Trotter referred to in Paragraph 12 of the  
13 settlement agreement, is Staff going to be able to  
14 respond with two days' notice in order to supervise or  
15 in some way check out the new operations and make sure  
16 they're in compliance?

17           MR. KILPATRICK: I don't know that I have an  
18 answer specifically to that question. We considered  
19 that as we were drafting this and tried to assure  
20 ourselves that we would have an opportunity for notice  
21 if Cascade ceased to be the operator and Mr. Weber were  
22 to pursue a different operator. I think our belief at  
23 the time was that we would take whatever action  
24 necessary and whatever we could to work with Mr. Weber  
25 to identify that any subsequent contract that he put in

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1 place with another firm perhaps to be his operator or  
2 the operator of the pipeline would be qualified to do  
3 so.

4 MR. TROTTER: I will just note, Your Honor,  
5 that Paragraph 12 also requires that if there is no  
6 qualified operator, Basin will shut off its pipeline  
7 until it has one.

8 JUDGE SCHAEER: Thank you, Mr. Trotter, I had  
9 read that portion.

10 How serious or dangerous is a failure of a  
11 250 PSI pipeline?

12 MR. KILPATRICK: I'm not sure if I can give  
13 you an answer. I can indicate that it is serious. I  
14 can't give you any figures about exactly what would  
15 happen. That would all, of course, be all hypothetical.  
16 But compressed gases contained in a pipeline, no matter  
17 whether the gases are flammable or not, have a somewhat  
18 of an explosive potential as if the facility that is  
19 containing those compressed gases were to rupture, the  
20 gases would expand explosively. There would be a  
21 throwing of dirt, debris, and perhaps pieces of the  
22 facility into the air. Then since a natural gas  
23 pipeline, of course, contains a flammable gas, if that  
24 were to ignite, then you would have additional potential  
25 damage from flame itself.

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1                   JUDGE SCHAER: Okay. How serious are the  
2 violations in this complaint by Staff's judgment? Is  
3 this simply a matter of documentation, or are some of  
4 these concerns dealing with not having a program in  
5 place at all?

6                   CHAIRWOMAN SHOWALTER: I think we should  
7 correct, it's alleged violations.

8                   JUDGE SCHAER: Thank you.

9                   MR. KILPATRICK: When we began to develop our  
10 position on this and develop the way that we would like  
11 to see resolution, we separated the code violations into  
12 those kinds of alleged violations that were records  
13 keeping and program development kinds of activities from  
14 things that were more in our mind serious because they  
15 potentially could affect the public or the workers at  
16 the plant.

17                   One of the significant pieces there was the  
18 absence of appropriate information to be able to  
19 determine exactly what was in the ground, the as-built  
20 condition of the pipeline. Without the records for  
21 that, there was no way to definitively determine what  
22 was the maximum allowable operating safe pressure of  
23 this pipeline. That kind of a determination is a  
24 engineering calculation that's done based on the  
25 strength and capabilities of the various components of

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1 the pipeline. Without a listing of exactly what those  
2 components were, there is no way to make that  
3 determination. So we thought this was very serious.  
4 There was the potential that this pipeline could be  
5 being operated above its engineering determined maximum  
6 allowable operating pressure. Now that, as it's turned  
7 out once we have been provided that information and that  
8 kind of calculation has been done, that was not the  
9 case, but we had no evidence to say one way or another  
10 exactly what the situation was until that documentation  
11 was provided. That was one of the major things that we  
12 thought was very serious here.

13 JUDGE SCHAEER: Were there others?

14 MR. KILPATRICK: Generally speaking, the  
15 issues that we thought were critical or very serious  
16 were those ones that could affect the general public,  
17 and so those aspects like notification and signage and  
18 those kinds of things where the pipeline was on public  
19 property or third party property, we believed that those  
20 were very serious. Those are the protections that  
21 companies are required to take or put in place to  
22 protect the safety of the general public. And with  
23 those are absent, we believe those are very serious.

24 CHAIRWOMAN SHOWALTER: As a follow-up to your  
25 answer and on the question of spending resources,

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1 doesn't it take the resources of the Commission to track  
2 down whether or not there really is in the ground or  
3 isn't in the ground sufficiently a pipeline with  
4 sufficient integrity, and isn't that why having the  
5 adequate records is important to save those kinds of  
6 resources from having to be spent?

7           MR. KILPATRICK: Absolutely, I would agree.  
8 The resources in that case if the records were not  
9 available would be not only our own, the Commission's  
10 resources, but they would be the resources perhaps of  
11 Basin Frozen Foods, who may have to re-excavate and  
12 expose that pipe so that you could physically look at  
13 what was there.

14           CHAIRWOMAN SHOWALTER: So getting back to  
15 your philosophy that fundamentally as long as you make  
16 it right in the future that's what you're looking for,  
17 isn't that the wrong message to send other pipeline  
18 operators? Shouldn't we be sending the message, you  
19 need to have your records in place so that we can come  
20 and we can inspect and we can determine then and there,  
21 right there, that things are okay. Otherwise, all of us  
22 have to go spend a bunch of time to determine that  
23 either things are okay or that they aren't okay. And  
24 that it's not all right to have records missing and have  
25 to do this because -- and it's not all right simply to

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1 make sure in the end the future is going to be taken  
2 care of, because that process takes time if these rules  
3 are not followed, because the rules are there in order  
4 to be able to ensure efficiently that everything is ship  
5 shape.

6 MR. KILPATRICK: Well, I guess I would agree  
7 in part. You know, our -- the inspection that  
8 Ms. Johnson did at a point in time was based on the  
9 information that was provided and made available by  
10 Basin Frozen Foods. We raised the issue of records with  
11 them. There were some of those records that were  
12 eventually shown to have been in place but not available  
13 at the time. Our intention is yes, that a company is  
14 required to retain records, to have those available, to  
15 make sure that we can ascertain and ensure that all of  
16 the Pipeline Safety Code requirements are being met, and  
17 I think that is why -- that is part of the reason that  
18 we brought this issue before the Commission as a request  
19 for a complaint and this process was that just because  
20 Mr. Weber was able to provide those records eventually,  
21 it wasn't adequate to not have them in the first place.  
22 You know, it's, as you say, you need to not only ensure  
23 that you can show compliance to the future but that  
24 you're complying all the time.

25 COMMISSIONER HEMSTAD: The contract with



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1 Cascade is not in the record. From your earlier  
2 remarks, is it fair to conclude you have reviewed that  
3 and you are confident that that contractual arrangement  
4 with an experienced operator now on a going forward  
5 basis should assure that, reasonably assure that  
6 compliance will occur?

7 MR. KILPATRICK: Yes, we have reviewed the  
8 contract that was put in place between Basin and  
9 Cascade, and one of the other significant pieces in that  
10 is the indication to Basin by Cascade that they have --  
11 they are taking on the role of operator of this  
12 facility. In the past, we believe there has been that  
13 -- that piece has been missing, that acknowledgment and  
14 acceptance of responsibility for the ongoing maintenance  
15 of records, the ongoing activities that are required.

16 COMMISSIONER HEMSTAD: What does operator  
17 entail? Is that on site personnel on a regular basis,  
18 or what is required for this relatively small pipeline?

19 MR. KILPATRICK: What is required includes  
20 records maintenance that the pipeline was built  
21 originally to the proper minimum specifications, that  
22 any activities on a going forward basis on the pipeline  
23 are done by staff who are qualified to do those tasks,  
24 that the firm who is doing that operation and  
25 maintenance has in place the antidrug and alcohol misuse

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1 prevention program that's required by code, all of those  
2 aspects.

3 COMMISSIONER HEMSTAD: All right, take that  
4 example, I'm trying to grasp the scope of this to have  
5 an antidrug and continual surveillance program, of whom  
6 and whose employees?

7 MR. KILPATRICK: It's of the employees that  
8 may be doing operations or maintenance activities on the  
9 pipeline.

10 COMMISSIONER HEMSTAD: And those would be  
11 Cascade employees?

12 MR. KILPATRICK: Those would be Cascade  
13 employees in this case, yes.

14 COMMISSIONER HEMSTAD: Just so I understand,  
15 on the issue of the records as built in the ground, I  
16 understand the problems of they don't exist, but in this  
17 case what, they were later provided?

18 MR. KILPATRICK: Yes, since Cascade was  
19 involved in the original construction, they were able to  
20 pull together both the purchasing invoices and the  
21 construction records to be able to produce what we call  
22 an as-built condition report.

23 JUDGE SCHAEER: I have just a couple more  
24 questions about the Cascade contract. Has anyone on the  
25 panel personally reviewed that contract?

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1 MR. KILPATRICK: Yes, Ms. Johnson did.

2 JUDGE SCHAER: Ms. Johnson, do you know if  
3 the contract indicates in any way that the contract is  
4 one where Cascade is going to provide the services  
5 outlined in its Tariff Schedule 700?

6 Or, Mr. Weber, do you know that?

7 MR. WEBER: I'm not familiar with, you know,  
8 what the -- or that familiar with it to recall if it was  
9 Schedule 700.

10 MS. JOHNSON: I don't believe the contract  
11 mentions Schedule 700, but it listed the activities in  
12 Schedule 700. We have a copy of the contract in our  
13 office, I could bring one up.

14 JUDGE SCHAER: Again, I was reviewing the  
15 Commission's order in Docket UG-001119, and if I read it  
16 correctly, that order reflects an agreement by Cascade  
17 to limit itself to providing services outlined in its  
18 Tariff Schedule 700 in this service territory. Did you  
19 review that before you did your 2001 or 2002 audits,  
20 Mr. Kilpatrick?

21 MR. KILPATRICK: Yes. As I indicated  
22 previously, Staff was familiar with that docket and took  
23 a look at the results of that docket prior to doing  
24 those inspections.

25 JUDGE SCHAER: As a hypothetical, if Cascade

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1 were providing service under this contract under its  
2 Tariff Schedule 700, would that be a contract the  
3 Commission would have to approve?

4 MR. KILPATRICK: I'm sorry, I don't know the  
5 answer to that.

6 JUDGE SCHAER: Okay.

7 Mr. Trotter, do you know off the top of your  
8 head?

9 MR. TROTTER: One, I'm not sure the  
10 assumption is correct, I would have to investigate that.  
11 But assuming it is correct, I would also have to review  
12 the tariff and the statutes to answer that.

13 JUDGE SCHAER: Okay.

14 MR. TROTTER: I don't have an answer for you  
15 now. If you want an answer, we can provide it at a date  
16 certain if you need it.

17 JUDGE SCHAER: Well, I think I did ask this  
18 as a hypothetical, if that were the case, but I am  
19 curious about whether contracts with companies are going  
20 to be reviewed here and whether that would provide  
21 another means for the Commission to review and determine  
22 whether those were in the public interest?

23 MR. TROTTER: Well, I can tell you it's my  
24 understanding this particular contract was not brought  
25 to the Commission for approval, and so that begs the

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1 question whether it should have been. And I don't know  
2 the answer to that question, and I don't know whether  
3 it's a contract under Tariff 700. It's my general  
4 understanding, have to investigate further, that  
5 Mr. Weber paid for and owns the pipeline, so it's -- and  
6 so I am not -- it's not clear to me that this is  
7 activity, regardless of the local distribution area  
8 extension granted Cascade, whether this is an operation  
9 under that certificate or not.

10 JUDGE SCHAER: That's not clear to me either,  
11 that's what I'm trying to find out.

12 MR. TROTTER: Right. And so my sense is that  
13 it's not and that this is simply a non-tariff type  
14 maintenance of a pipeline of a private entity as opposed  
15 to a customer of natural gas. That's my sense at this  
16 moment, but I haven't investigated it thoroughly.

17 CHAIRWOMAN SHOWALTER: But on a going forward  
18 basis with respect to that pipeline, who is the  
19 regulated entity?

20 MR. TROTTER: Well, I think technically they  
21 both are, because our statute, for example, talks about  
22 entities that own or operate. But in terms of the  
23 pipeline's -- so you would have some jurisdiction over  
24 Basin Frozen Foods in that regard, but in terms of the  
25 Pipeline Safety Rules, I think it refers to operators.

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1 So if, for example, Cascade fails to maintain a  
2 surveillance plan or some other document that's required  
3 to be maintained, I think they would be in violation.  
4 It's possible that the owner could be too for failure --  
5 there may be some duty that the owner needs to assure  
6 that the operator is in compliance. I haven't  
7 researched that, but Cascade I think primarily would be  
8 the entity that would be the respondent in the complaint  
9 if that should occur.

10 JUDGE SCHAER: Anything further?

11 Okay, thank you for your testimony.

12 Is there anything further to come before the  
13 Commission at this time?

14 MR. TROTTER: The only thing I have, Your  
15 Honor, is if you are interested in definitive answers to  
16 your questions regarding how Schedule 700 fits and  
17 whether this contract needs to be filed for Commission  
18 approval, if you want to set up a manner in which to  
19 resolve that, that's fine. We would endeavor to work  
20 with Basin and Cascade to try to figure that out if  
21 that's important to the Commission.

22 JUDGE SCHAER: I think, Mr. Trotter, if there  
23 is anything we determine should be provided that a  
24 letter will be sent to the parties indicating that.

25 Is there anything further this morning at

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1 this hearing?

2 Thank you all for attending, we're adjourned.

3 (Hearing adjourned at 11:30 a.m.)

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