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1 BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION
2 COMMISSION
3 WASHINGTON UTILITIES AND)
TRANSPORTATION COMMISSION,)
4)
Complainant,)
5)
vs.) DOCKET NO. PG-030438
6) Volume I
CASCADE NATURAL GAS) Pages 1 - 18
7 CORPORATION,)
8)
Respondent.)

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10 A settlement conference in the above matter
11 was held on March 25, 2005, at 2:35 p.m., at 1300 South
12 Evergreen Park Drive Southwest, Olympia, Washington,
13 before Administrative Law Judge DENNIS MOSS, Chairman
14 MARK SIDRAN, Commissioner PATRICK OSHIE.

15

16 The parties were present as follows:

17 WASHINGTON UTILITIES AND TRANSPORTATION
COMMISSION, by SHANNON E. SMITH, Assistant Attorney
18 General, 1400 South Evergreen Park Drive Southwest,
Post Office Box 40128, Olympia, Washington 98504;
19 telephone, (360) 664-1192.

20 CASCADE NATURAL GAS CORPORATION, by JOSEPH B.
GENSTER, Attorney at Law, Hillis, Clark, Martin &
21 Peterson, 1221 Second Avenue, Suite 5000, Seattle,
Washington 98101; telephone, (206) 623-1745.

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24 Kathryn T. Wilson, CCR

25 Court Reporter

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INDEX OF EXHIBITS

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EXHIBIT:

MARKED:

OFFERED:

ADMITTED:

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

2 JUDGE MOSS: Good afternoon, everyone. I'm
3 Dennis Moss. I'm an administrative law judge at the
4 Washington Utilities and Transportation Commission.
5 I'll be assisting the Commissioners this afternoon as
6 they preside in this matter. Commissioner Jones could
7 not be here due to a prior conflict, but Chairman
8 Sidran is here with Pat Oshie presiding today.

9 We are convened in the matter styled
10 Washington Utilities and Transportation Commission
11 against Cascade Natural Gas Corporation, Docket Number
12 PG-030438. We are convened this afternoon for the
13 purpose of a settlement hearing, and we will shortly
14 receive the settlement into the record and move on with
15 our process, but the first order of business will be to
16 take appearances by counsel, so I'll start with the
17 Company, and please enter the long form of appearance
18 including your name, your client, your business
19 address, telephone, fax, and e-mail.

20 MR. GENSTER: On behalf of Cascade Natural
21 Gas Corporation, I'm Joe Genster. I'm with the law
22 firm Hillis, Clark, Martin, and Peterson in Seattle,
23 Washington. Our address is 1221 Second Avenue,
24 Seattle, Washington, 98101. My e-mail is jbg@hcmp.com,
25 (206) 623-1745. The fax number is (206) 623-6779.

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1 JUDGE MOSS: Ms. Smith?

2 MS. SMITH: Thank you, Judge Wallis. I'm
3 Shannon Smith, assistant attorney general on behalf of
4 Commission staff. My address is 1400 South Evergreen
5 Park Drive Southwest, PO Box 40128, Olympia,
6 Washington, 98504-0128. My direct telephone number is
7 area code (360) 664-1192. I think my fax number is
8 (360) 586-5522, and my e-mail address for sure is
9 ssmith@wutc.wa.gov.

10 JUDGE MOSS: I believe that completes our
11 appearances, but I will ask since the conference bridge
12 is on if there are any other counsel that wish to enter
13 an appearance in today's proceeding? Hearing nothing,
14 I will assume there are none.

15 With that, I have previously discussed with
16 Ms. Smith off the record that we would want to make the
17 proposed settlement agreement an exhibit of record, and
18 I will mark that as Exhibit No. 1. There was
19 previously filed a narrative statement in support of
20 the settlement agreement on behalf of the parties, and
21 I will also receive that into the record as Exhibit
22 No. 2, and since these are consensual in nature, I will
23 assume there are no objections, and they will be
24 received as marked. I also understand there will not
25 be any other paper exhibits. At least, we don't

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1 anticipate any at this time.

2 With that then, we can talk a little bit
3 about our process, how we are going to proceed, get our
4 witnesses introduced and sworn. I did raise off the
5 record whether the parties would want to expedite the
6 transcript; the reason being that Commissioner Jones
7 can't be present and will need to review that prior to
8 decision, so in terms of the timing of the decision in
9 this proceeding, that will be a factor. Do you want to
10 expedite the transcript?

11 MR. GENSTER: Certainly.

12 JUDGE MOSS: I think it would be appropriate
13 to expedite it until a week from today, which I have
14 checked with the court reporter is doable, and that's
15 about half the normal two-week period. Is that
16 appropriate?

17 MR. GENSTER: That would be appropriate. If
18 you want it any earlier, we would be happy to expedite
19 it in that fashion also.

20 JUDGE MOSS: I think that's going to work
21 best. That will settle that issue. I wanted to ask,
22 do counsel wish to have opening statements?

23 MS. SMITH: Your Honor, I did not have an
24 opening statement, per se, but I have a few
25 introductory remarks.

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1 JUDGE MOSS: All right, and Mr. Genster?

2 MR. GENSTER: Similarly.

3 JUDGE MOSS: Before we do that, let's go
4 ahead and get our witnesses introduced, and after
5 you've been introduced into the record, I will swear
6 you all in and then have openings and move directly to
7 the panel. So why don't we start with Cascade's
8 witnesses.

9 MR. GENSTER: In terms of testimony, we do
10 not intend to have any lengthy testimony. These
11 gentlemen are here to answer questions. One of them
12 would like to make a brief statement.

13 JUDGE MOSS: We can do that. Let's find out
14 who they are.

15 MR. GENSTER: Present are Will Odell, the
16 chief operating officer of Cascade Natural Gas; Dan
17 Meredith, the senior director of safety and
18 engineering.

19 Also present but not testifying are Brian
20 Matsuyama, who is the chief executive officer and vice
21 chairman; John Stoltz, senior vice president of
22 regulatory gas supply; Keith Messner, senior pipeline
23 safety engineer, and Sam Hicks, pipeline safety
24 specialist.

25 JUDGE MOSS: Welcome to all of you.

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1 Ms. Smith?

2 MS. SMITH: Commission staff has before you,
3 and similar to Mr. Genster's comment on behalf of CNG,
4 staff witnesses haven't prepared any testimony today
5 but are here to answer any questions that the Bench may
6 have with respect to the settlement agreement.

7 Staff's witnesses are Alan Rathbun, who is
8 the director of the pipeline safety unit, and Scott
9 Rukke, who is one of the technical experts, and in
10 terms of answering questions, Mr. Rathbun will field
11 any policy-related questions and Mr. Rukke would field
12 any technical questions.

13 JUDGE MOSS: I will ask the witnesses to
14 please rise and raise your right hands.

15 (Witnesses sworn.)

16 JUDGE MOSS: With that, I understand one of
17 our witnesses wishes to make a brief opening statement.
18 Should counsel's statement precede that?

19 MR. GENSTER: My brief statement can precede
20 that.

21 JUDGE MOSS: Go ahead.

22 MR. GENSTER: This is a funny case because it
23 is one in which I as a lawyer have had less to do with
24 the resolution of the matter than ever in my life
25 before. Before and since the complaint has been filed,

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1 Cascade Natural Gas has worked diligently with the
2 Staff to resolve this matter in a way that serves the
3 public interest. They believe they have done so and
4 will ask you to approve their settlement.

5 JUDGE MOSS: Ms. Smith?

6 MS. SMITH: I just have a few words, Your
7 Honor. I would echo Mr. Genster's comment that as a
8 lawyer, I have had very little need to step in and
9 assist the Commission staff in its negotiations with
10 the Company. We believe that these negotiations have
11 gone very smoothly between Staff and the Company, and
12 we believe that the efforts on both sides have shown
13 good-faith negotiations really working together to try
14 to resolve the issue.

15 This is an uncontested settlement. There are
16 no opposing parties, and the settlement agreement
17 before you and the settlement narrative we think
18 reflect the good efforts made by Staff and the Company
19 to resolve the issues, and we too believe the
20 settlement is in the public interest, and we recommend
21 that you approve it.

22 JUDGE MOSS: Thank you very much. Let's have
23 our witness statement; Mr. Odell?

24 MR. ODELL: On behalf of Cascade Natural Gas
25 Corporation, I'm here to express our commitment to this

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1 settlement agreement and our commitment to providing
2 safe and reliable natural gas service to the residents
3 of Washington State. We consider safety to be our top
4 priority. We have taken action and are continuing to
5 take action to address the remedy of all of the issues
6 raised in the WUTC complaint.

7 After audits in the Bellingham and Mt. Vernon
8 districts were completed in 2004, Commission staff
9 provided written notice of the deficiencies ultimately
10 noted in the complaint. We immediately reviewed our
11 operations to identify remedial action and improvements
12 necessary to address the noted concerns. We were
13 engaged in that process when the complaint was filed.

14 We recognize that Staff has an important
15 enforcement obligation and have attempted to work with
16 them in a diligent effort to address all of their
17 concerns. We appreciate the collaborative settlement
18 process which allows us to openly discuss these
19 important issues in order to find the best solutions.

20 We will continue to identify and implement
21 improvements throughout our operation and are committed
22 to the action plan that's included in the settlement.
23 We thank you for your consideration of this settlement
24 agreement and request your approval.

25 JUDGE MOSS: Thank you, Mr. Odell. Any other

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1 witness statements? Apparently there are not, so I
2 believe we can turn to questions from the Bench.

3 CHAIRMAN SIDRAN: Good afternoon. First, I
4 would like to commend the parties for having reached a
5 settlement. It's, I think, a positive reflection on
6 Cascade Natural Gas. From my review of the record
7 before us, the Company was forthcoming both in taking
8 responsibility for the alleged violations and also for
9 working with the Commission staff to reach a
10 settlement.

11 Since I'm new to the Commission, I have a
12 couple of questions that I would call generic as
13 opposed to focused, perhaps, on Cascade as well as a
14 question that does relate to Cascade in particular, and
15 I don't know whether these should be answered by Staff
16 or Counsel, so you can help guide me through this.

17 I notice in the documents, the narrative,
18 reference to prior complaints related to Cascade, and
19 there is a passing reference to prior dockets that
20 involve some unspecified violations, and I'm curious to
21 know a little more about the prior history. Is there
22 some history, or am I misinformed?

23 MR. RUKKE: There was some prior history. I
24 believe out of the seven noncompliances noted in this
25 inspection, there were four repeats out of those seven,

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1 but those have been addressed earlier and remedied. We
2 had a little bit of a policy change. Back when we did
3 the prior inspections, we focused mainly on the
4 individual area we were inspecting, and now when we do
5 an inspection, we focus on the individual area, but
6 when we find noncompliances, we ask the company to do a
7 company-wide survey to insure there is not similar
8 violations in other areas. I would say that the
9 previous repeat violations were addressed and taken
10 care of.

11 CHAIRMAN SIDRAN: So I take it that Staff is
12 satisfied in terms of the Company's, shall we say,
13 prior record of performance and response in the context
14 of these prior violations?

15 MR. RUKKE: Yes. Cascade has always been
16 very aggressive in remediating any noncompliances, very
17 good to work with.

18 CHAIRMAN SIDRAN: The other question I had
19 was some understanding of how the Staff in particular
20 arrives at what it thinks is the fair penalty. I
21 notice, I think, in the original complaint, the
22 \$120,000 figure, I noticed the proposed settlement is
23 \$75,000.

24 What I'm particularly interested in is having
25 some context of understanding whether the Staff has any

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1 standards or how it arrives at being, shall we say,
2 consistent and fair when addressing violations by
3 companies so that similarly situated cases are dealt
4 with in a similar fashion when it comes to deciding
5 what the penalty would be. Maybe you can help me
6 understand how you arrive at the number.

7 MR. RATHBUN: We do look at this in the sense
8 of a matrices. When we look at alleged violations of
9 rules, either our own rules or the Code of Federal
10 Regulations, we look upon it in the sense the way the
11 authorizing statute looks at it from the standpoint of
12 penalty.

13 The authorizing statute in this particular
14 case, RCW 80.28.212, talks about penalties that the
15 Commission can assess or consider in settlement and
16 basically in three elements: One is severity of the
17 particular violation. Two is kind of the size of the
18 company being the respondent, and third being the good
19 faith of the company in addressing the concerns when
20 raised.

21 We do consider all three of those. I think
22 the issue of severity is one that we look at. What I
23 would call the so-what violation when we are looking at
24 a penalty is, so what is the public safety
25 ramifications of this violation continuing and not

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1 being addressed, and that that is a considerable
2 consideration in the request.

3 I will say that it is a judgment call. It's
4 a judgment issue based on our expertise and our
5 knowledge of the types of operating systems, and good
6 faith certainly plays a role in assessing that penalty;
7 in other words, the way we judge it from the standpoint
8 of responsiveness to requests for remediation of the
9 issues involved. I think those are two of the biggest
10 concerns, but we do attempt to document that internally
11 so we can assess these issues fairly and equitably from
12 case to case.

13 CHAIRMAN SIDRAN: Just to follow up about
14 history, perhaps it's encompassed in the statutory
15 elements in relationship to the good-faith response,
16 but how do you weigh, or do you weigh, prior records,
17 so to speak?

18 MR. RATHBUN: I would say that it does fall
19 into the prior history. Again, we will look at
20 documentation of a company's performance over time, and
21 in large part, the concept of bringing a complaint is
22 one of trying to go through technical assistance first
23 and going through process. So we will look at prior
24 history in making those threshold determinations, first
25 to bring to the Commission the concept of bringing a

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1 complaint but then addressing it from the standpoint of
2 individual penalties on particular citations.

3 CHAIRMAN SIDRAN: I guess lastly, is there a
4 comparable case to this that you can recall that might
5 serve as a benchmark, so to speak?

6 MR. RATHBUN: With my 18 months of experience
7 in this program, it's probably difficult for me to come
8 up with a history. I can ask Scott. I don't want to
9 put him on the spot, but perhaps Steve King, who is my
10 supervisor who has more history here than I, might wish
11 to address that.

12 JUDGE MOSS: If so, we will need to swear you
13 in, Mr. King.

14 (Witness sworn.)

15 MR. KING: Recognizing that I didn't study up
16 before the hearing, I would say that the settlement we
17 had with Avista Corporation in early 2003 is
18 comparable. In that one, I believe, it was the first
19 time the Staff proposed that a piece of the settlement
20 would be company-wide, that the company, it would be
21 incumbent on them to look throughout their company, not
22 just within the scope of the inspection, to make
23 corrections.

24 CHAIRMAN SIDRAN: Do you recall anything
25 about the financial penalty in that case?

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1 MR. KING: I believe it was \$50,000.

2 CHAIRMAN SIDRAN: Thank you. That's all I
3 have.

4 JUDGE MOSS: For the record, that's Mr. Steve
5 King testifying.

6 COMMISSIONER OSHIE: I have questions for,
7 actually, either Staff, and the Company probably should
8 answer at least question number one, and that I'm
9 referring to what's been marked Appendix A to Exhibit
10 No. 1, and although I don't see, I guess it's Page 205.

11 Before I ask the question, maybe I should
12 clarify from the attorneys. It's my understanding that
13 Appendix A is made part of this agreement, and it's
14 made part of the settlement agreement.

15 MS. SMITH: That's correct.

16 COMMISSIONER OSHIE: So then on Page 2 of 5
17 of Appendix A, the last sentence, I believe it's under
18 the heading "Violation No. 3," so it's the third
19 paragraph from the top of the page going down, there is
20 a sentence. The final sentence is, "Staff can require
21 an additional one-year extension if warranted by our
22 performance," and I would like some clarification from
23 the parties what they mean by that. What kind of
24 performance would warrant extending the quarterly audit
25 requirements for another period of a year?

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1 MR. RUKKE: What our intent was on that is if
2 during these quarterly audits they are finding issues
3 continually coming up that would lead to noncompliance
4 if they weren't corrected that we would continue to ask
5 for the quarterly audits to be conducted and provided
6 to us.

7 COMMISSIONER OSHIE: This isn't intended to
8 put you on the spot, Mr. Rukke, but is one event, would
9 that be in Staff's mind sufficient to require one more
10 year of auditing and reporting, or would it be three
11 events or five?

12 MR. RUKKE: I think we would weigh the
13 significance of the event, depending on what it was.
14 If it was safety related, we would have to take it on a
15 case-by-case basis.

16 COMMISSIONER OSHIE: Does the Company have an
17 opinion as to what it agreed to in the settlement
18 agreement?

19 MR. ODELL: I think we would obviously defer
20 to the opinion of Scott and Alan on that. Our goal
21 certainly is to achieve the zero noncompliance, and
22 that's kind of the bar we've set for ourselves.

23 COMMISSIONER OSHIE: One other question, and
24 this is also in the Appendix A. I'm on Page 4 of 5.
25 I'm on the first paragraph on Page 4, and again, it's

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1 the final sentence: "Cascade will review the
2 operations of all pressure recording devices and remove
3 or replace unreliable devices within one year of the
4 final order on this complaint."

5 The preceding sentence makes reference to
6 devices that are not operating properly. Can we be
7 assured that the public safety is being protected if
8 devices that are not operating reliably are in
9 operation for up to a year after the issuance of an
10 order?

11 MR. RUKKE: The actual issue with these
12 devices was on a weekly basis. These are pressure
13 recording charts that are checked on a weekly basis, so
14 the longest they are going inoperable would be a week,
15 and they would be fixed during that time.

16 They have some older devices that appear to
17 be failing several times per year but no longer than a
18 week at a time, so Staff did not believe that public
19 safety would be impacted.

20 COMMISSIONER OSHIE: I have no further
21 questions.

22 JUDGE MOSS: Anything further from counsel?
23 Any closing?

24 MR. ODELL: I guess I have just one closing
25 remark. I would like to thank the Chairman and the

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1 Commissioners for their time and appreciate it on the
2 settlement hearing.

3 JUDGE MOSS: Thank you all very much for
4 appearing today and testifying for the benefit of the
5 record and the Commissioners as they make their
6 decision regarding the proposed settlement, and with
7 that, our proceedings will come to a close for the day.
8 We will be off the record.

9 (Settlement conference concluded at 3:00 p.m.)

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