

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

WASHINGTON UTILITIES AND)	
TRANSPORTATION COMMISSION,)	
)	DOCKET NO. PG-030438
Complainant,)	
)	
v.)	ORDER NO. 01
)	
CASCADE NATURAL GAS)	
CORPORATION,)	APPROVING AND ADOPTING
)	SETTLEMENT AGREEMENT
Respondent.)	
.....)	

Synopsis: The Commission approves and adopts a settlement agreement that resolves the agency’s Complaint against Cascade Natural Gas Corporation for violations of Chapter 480-93 WAC Gas Companies—Safety. The terms of the settlement provide for full remediation, continued compliance monitoring and reporting by Cascade and agency Staff, and payment by Cascade of a penalty of \$75,000.

1 **PROCEEDINGS:** On December 1, 2004, the Commission entered a Complaint against Cascade Natural Gas Corporation (Cascade) in the above matter. The Complaint alleges that Cascade violated various provisions of Chapter 480-93 WAC and Title 49, Code of Federal Regulations (C.F.R.), Part 192, which the Commission has adopted by reference. Cascade filed requests on December 23, 2004, January 20, 2005, and February 22, 2005, for 30-day extensions to file its answer to the Complaint due to the progress of settlement negotiations. The Commission granted each request. On February 24, 2005, Commission Staff filed

a proposed Settlement Agreement, on behalf of Cascade and Staff, that would resolve all contested issues in this proceeding.¹

2 The parties presented the proposed Settlement Agreement to the Commission at a hearing on March 25, 2005. The Commission received testimony and exhibits in support of the settlement and inquired of the parties regarding the provisions of the Settlement Agreement.

3 **PARTY REPRESENTATIVES:** Joseph B. Genster, Hillis Clark Martin & Peterson, Seattle, Washington, represents Cascade. Shannon E. Smith, Assistant Attorney General, Olympia, Washington, represents the Commission's regulatory staff (Commission Staff or Staff).

4 **COMMISSION DECISION:** The Commission determines that it is in the public interest for the agency to approve and adopt the proposed Settlement Agreement as a full resolution of the Complaint. The terms of the settlement promote public safety by requiring full compliance by Cascade with existing safety regulations, providing for continued monitoring and reporting related to Cascade's compliance, and requiring Cascade to pay a penalty commensurate with the nature and severity of its violations, which are conceded by the Company to have occurred as set forth in the Complaint.

¹ In formal proceedings, such as this case, the Commission's regulatory staff functions as an independent party with the same rights, privileges, and responsibilities as any other party to the proceeding. There is an "*ex parte* wall" separating the Commissioners, the presiding ALJ, and the Commissioners' policy and accounting advisors from all parties, including Staff. RCW 34.05.455.

MEMORANDUM

I. Background and Procedural History

- 5 Cascade is a “gas company” and a “public service company” as those terms are defined in RCW 80.04 and 80.28. Cascade owns and operates natural gas distribution facilities through which it furnishes natural gas to customers in Washington for compensation. The Company is subject to and required to comply with the Commission’s safety rules applicable to natural gas pipelines.
- 6 During 2003 and 2004, the Commission conducted standard pipeline safety inspections of Cascade’s facilities and operations in the Bellingham and Mount Vernon districts. Staff reviewed the Company’s procedures and records, and inspected its facilities. Staff determined that Cascade had committed numerous apparent violations of WAC 480-93 and, accordingly, recommended that the Commission issue a complaint against the Company. On December 1, 2004, the Commission entered a Complaint alleging that Cascade violated various provisions of Chapter 480-93 WAC and 49 C.F.R., Part 192, which is adopted by reference in the Commission’s rules.
- 7 A total of thirty-five violations are alleged in the Complaint, before consideration of each day as a continuing violation. After considering each day as a continuing violation, the total violations number 229. The maximum potential penalty for this series of violations is \$1,800,000, pursuant to WAC 480-93-223. Staff, considering the nature and severity of the violations, and Cascade’s cooperative response to Staff’s report of the violations, recommended that the Commission impose penalties totaling \$120,000.
- 8 Cascade filed requests on December 23, 2004, January 20, 2005, and February 22, 2005, for 30-day extensions to file its answer to the Complaint due to the progress of settlement negotiations. The Commission granted each request. On February

24, 2005, Commission Staff filed a proposed Settlement Agreement, on behalf of Cascade and Staff. The proposed settlement, if approved, would resolve all contested issues in this proceeding.

II. Settlement Agreement

9 The parties' Settlement Agreement states that Cascade has cured the specific violations alleged in the Complaint.² Cascade has agreed, as part of the settlement, to analyze all parts of its extensive system, determine whether any problems exist, and to correct any problems discovered. The Company submitted an "Action Plan" to the Commission Staff on February 1, 2005, to implement this commitment.³

10 The Settlement Agreement states that Cascade accepts the allegations stated in the Complaint. In addition to curing the alleged violations, the Company agrees to a penalty of \$75,000, and agrees to conduct quarterly audits of required maintenance tasks to assure continuing compliance. The results of the audits will be provided to the Commission for review. Staff also is continuing to conduct safety inspections of Cascade's facilities and the Settlement Agreement expressly recognizes Staff's ongoing responsibility and ability to conduct such inspections and cite Cascade for any violations found.

11 The Settlement Agreement expressly acknowledges that other entities are not barred or limited with respect to their rights to pursue legal claims against the Company. The Settlement Agreement does not limit Cascade's ability to assert defenses to any such claims.

² Settlement Agreement, ¶ 13.

³ The action plan is attached to the parties' Settlement Agreement as Appendix A.

III. Discussion and Decision

- 12 In general, the violations alleged in the Complaint relate to inadequate procedures and inadequate operation and maintenance of Cascade's pipeline facilities. Specifically, it is alleged that Cascade violated applicable rules by failing to conduct pipeline facility maintenance within required time intervals, failing to respond and correct pipeline system over-pressure indications, failing to calibrate gas detection equipment on a pre-determined schedule, and failing to properly test and qualify polyethylene pipeline joiners due to inadequate procedures.⁴ Staff believes the allegations relating to the over-pressure conditions are the most serious.⁵
- 13 Cascade acted quickly to cure the violations found by Staff. In addition, Cascade agreed to analyze its entire system to identify and correct any similar problems that might exist. Cascade promptly developed and agreed to implement an Action Plan to address on a systemwide basis the concerns raised by Staff's investigation.
- 14 Cascade's Action Plan is a comprehensive response to the violations and includes numerous elements that Cascade initiated and completed after the initial audit findings by Staff and prior to any knowledge of the Complaint. The Action Plan employs several methods to assure compliance, including changes to the testing procedure and maintenance schedule, enhanced record keeping, the addition of a safety specialist to its staff, and increased monitoring of its safety procedures.⁶
- 15 With respect to over pressuring of its system, Cascade has revised its operating procedures for responding to over-pressure conditions, conducted training for management and field personnel, conducted a company-wide review of

⁴ Exhibit No. 2 at ¶ 6 (citing Complaint, ¶¶ 11-17).

⁵ *Id.*

⁶ *Id.* at ¶ 10.

documentation and records related to the maximum allowable operating pressures of its systems, and implemented a calibration schedule for pressure recorders.⁷

- 16 The audits and Action Plan that Cascade agrees to implement reflect an effort by the Company to address problems on a company-wide basis that Staff found on a more limited geographic basis in its investigations. The Action Plan will substantially enhance the safety of Cascade's system and improve the Company's overall pipeline safety efforts. In addition, Cascade agrees to pay a substantial monetary penalty, \$75,000. Although the maximum possible penalty in this case is much greater, largely due to each day of violation constituting a separate offense, many of the violations relate to failing to perform required inspections or maintenance for several days or weeks beyond the required date. In mitigation, Cascade's cooperative behavior, including its prompt and positive response to the concerns Staff raised, and the Company's firm commitment to full compliance on a systemwide basis in the future support the level of the penalty agreed to for purposes of settlement.
- 17 Viewed as a whole, the Settlement Agreement represents a fair and just resolution of the issues identified in the Complaint.

FINDINGS OF FACT

- 18 Having discussed above all matters material to our decision, and having stated general findings and conclusions, the Commission now makes the following summary findings of fact. Those portions of the preceding discussion that include findings pertaining to the ultimate decisions of the Commission are incorporated by this reference.

⁷ *Id.* at ¶ 11; *See* Exhibit No. 1 (Settlement Agreement), Appendix A, at 4-5.

- 19 (1) The Washington Utilities and Transportation Commission is an agency of the State of Washington, vested by statute with authority to regulate rates, rules, regulations, practices, and accounts of public service companies, including gas companies.
- 20 (2) Cascade Natural Gas Corporation is a “gas company” and a “public service company” as those terms are defined in RCW 80.04 and 80.28.
- 21 (3) Cascade acknowledges the violations cited in the Complaint. Cascade’s participation in the Settlement Agreement is an effective means to address the violations, demonstrate appropriate corrective action, and to avoid future occurrences.

CONCLUSIONS OF LAW

22 Having discussed above in detail all matters material to our decision, and having stated general findings and conclusions, the Commission now makes the following summary conclusions of law. Those portions of the preceding detailed discussion that state conclusions pertaining to the ultimate decisions of the Commission are incorporated by this reference.

- 23 (1) The Commission has jurisdiction over Cascade as a gas company subject to regulation by the Commission under Chapter 80 RCW. The Commission has jurisdiction over the subject matter of the Complaint pursuant to the provisions of RCW 80.01, RCW 80.04, RCW 80.28, and chapter 480-93 WAC.
- 24 (2) The Commission concludes as a matter of law that it should approve and adopt the parties’ Settlement Agreement as a full resolution of the issues pending in this proceeding. Commission approval and adoption of the Settlement Agreement is in the public interest.

ORDER

THE COMMISSION ORDERS THAT:

- (1) The Settlement Stipulation filed by the parties on February 24, 2005, which is appended to this Order as "Attachment A" and incorporated by reference as if set forth in full in the body of this Order, is approved and adopted as a full and final resolution of the Complaint that is the subject of this proceeding.
- (2) The Commission retains jurisdiction to enforce the terms of this Order.

DATED at Olympia, Washington, and effective this 5th day of April 2005.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

MARK H. SIDRAN, Chairman

PATRICK J. OSHIE, Commissioner

PHILIP B. JONES, Commissioner

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

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ATTACHMENT A