

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION		)	
		)	
WASHINGTON UTILITIES AND		)	DOCKET PG-080097
TRANSPORTATION COMMISSION,		)	
		)	
Complainant,		)	
		)	NARRATIVE SUPPORTING
v.		)	SETTLEMENT AGREEMENT
		)	
CITY OF ENUMCLAW,		)	
		)	
Respondent.		)	
		)	
_____		)	

**I. INTRODUCTION**

1 This Narrative Supporting Settlement Agreement (“Narrative”) is filed pursuant to WAC 480-07-740(2)(a), as documentation supporting the Settlement Agreement (“Agreement”), which has been filed concurrently. The Agreement resolves all contested issues in the proceeding.<sup>1</sup> The Agreement is subject to Commission approval.<sup>2</sup> The Agreement is effective on the date of the Commission order adopting and approving it.<sup>3</sup> Part V below contains the Parties’ separate statements in support of the Agreement. This Narrative summarizes the Agreement. It is not intended to modify any terms of the Agreement.

2 The Parties do not intend to file documentation supporting the Agreement, with the exception of the Agreement itself, this Narrative, and the attachment to this Narrative. If the

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<sup>1</sup>Agreement ¶ 61.  
<sup>2</sup>Agreement ¶ 61.  
<sup>3</sup>Agreement ¶ 62.

Commission requires supporting documents beyond the Agreement, Narrative, and the other documents on file in this docket, the Parties will provide documentation as needed.

3           In keeping with WAC 480-07-740(2)(b), the Parties are prepared to present one or more witnesses each to testify in support of the proposal and answer questions concerning the details of the Settlement Agreement, should such testimony be required. In addition, counsel for both Parties are available to respond to any questions that the Commission may have regarding the proposed settlement.

## II. PARTIES

4           The signatories are the two parties to this docket: the City of Enumclaw (“Enumclaw” or “the City”) and the Staff of the Washington Utilities and Transportation Commission (“Staff”) (collectively, “the Parties”).<sup>4</sup> Consequently, the Agreement represents a “full settlement” pursuant to WAC 480-07-730(1).

## III. SCOPE OF THE UNDERLYING DISPUTE

5           This docket involves a Commission Complaint entered on February 10, 2009, which alleged numerous violations of 18 Commission rules arising out of a standard natural gas inspection by Staff of the City’s pipeline system, policies and procedures in 2008 (“2008 Inspection”), based on a finding of probable cause.

6           The 2008 Inspection began in June 2008, and concluded with an exit interview in October, 2008. Staff’s findings were documented in a Final 2008 Probable Violation Staff Report in this docket (“Probable Violation Report”), which is attached. The 2008 inspection was the first standard inspection of Enumclaw since 2005, in docket UG-051609. That

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<sup>4</sup>Agreement ¶ 2.

inspection ultimately resulted in Commission approval of a Stipulated Agreement to Close Docket on December 13, 2006. The 2009 Complaint alleged 651 violations of 18 Commission rules. At a prehearing conference on March 11, 2009, the Parties set a procedural schedule, and expressed their mutual desire to negotiate a settlement in the matter. The Parties requested the assistance of a mediator to conduct a formal settlement conference, and, in the meantime, engaged in productive settlement discussions. On April 30, 2009, the Parties convened a settlement conference, and subsequently agreed to a resolution of issues raised by the Complaint in this docket.

#### **IV. SUMMARY OF PROPOSED SETTLEMENT**

7           The settlement resolves all issues in dispute. The Agreement is divided into General Conditions and Specific Conditions. The summary that follows here summarizes the principal aspects of the Agreement, but is not inclusive of all specific terms, and is not intended to modify any of its terms. The summary includes statutes and references to the docket that are related to the settlement provisions that follow.

8           The Parties share a mutual interest in this docket: to assure that Enumclaw has in place measures sufficient to ensure its gas system is safe, operable, and in compliance with State and federal laws and rules.

9           To achieve a settlement, Enumclaw concurs that there were violations of state and federal laws and rules regarding the inspection, monitoring, and maintenance of its pipeline facilities and its records.<sup>5</sup> Enumclaw agrees to penalties for those violations, which are to be suspended. In total, the suspended penalties are \$1,975,000, imposed and payable, in the manner specified in the Agreement, in the event that Enumclaw fails to comply with specific

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<sup>5</sup>Agreement ¶ 10, and Exhibit 1 to Agreement.

terms of the Agreement.<sup>6</sup> Most of the conditions (in Part B of the Agreement) are subject to imposition of a portion of suspended penalties in the event of noncompliance.

10 Compliance will be monitored by Staff.<sup>7</sup> It will be a joint effort: the Parties will meet quarterly; Enumclaw will share documentation with Staff regarding its progress towards compliance; and Staff, once compliance has been determined, will acknowledge compliance with written correspondence. If necessary, to resolve any remaining issues after all timeframes have passed, Staff may conduct a final compliance audit.<sup>8</sup>

11 The Parties have agreed to specific conditions (in 15 sections in Part B of the Agreement), which are both corrective in nature (to address specific issues raised in this docket), and intended to ensure Enumclaw's compliance with Commission rules. Specific conditions are either to be implemented immediately, or within certain, agreed timeframes.

12 Commission rules require Enumclaw to have and follow a written gas pipeline plan and procedure manual that conforms to applicable gas safety laws and rules and is specific to Enumclaw's system.<sup>9</sup> Enumclaw has such a manual ("O & M Manual").

13 Enumclaw has committed to review and update its O & M Manual to comply with state and federal regulations, including Enumclaw-specific procedures.<sup>10</sup> Enumclaw will provide technical training to employees for every revision or update it makes prior to implementing the revisions.<sup>11</sup> Enumclaw will write detailed procedures in its O & M

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<sup>6</sup>Agreement ¶ 11.

<sup>7</sup>Agreement ¶¶ 14-15.

<sup>8</sup>Agreement ¶ 15.

<sup>9</sup>WAC 480-93-180; *See also* WAC 480-93-999, *adopting* 49 C.F.R. § 192.13; *See also* Complaint ¶¶ 18, 43.

<sup>10</sup>Agreement ¶¶ 18-19 and 51.

<sup>11</sup>Agreement ¶ 19.

Manual for five O & M items listed in the Probable Violation Report.<sup>12</sup> Further, Enumclaw will review and revise its manual to include various other appropriate procedures.<sup>13</sup>

14 Enumclaw also agrees to develop a gas safety Quality Assurance (“QA”) and Quality Control (“QC”) program for both Enumclaw employees that perform gas safety-related activities and third-party contractors.<sup>14</sup>

15 Staff identified, during the 2008 inspection, 141 unprotected services that were never repaired or replaced (out of a total of approximately 350 unprotected services to have been abated by 12-1-05 as identified in a 1995 inspection, Docket UG-951343). “Unprotected services” are non-cathodically-protected services. In this Agreement, Enumclaw agrees to replace 94 remaining unprotected services (of the 141 identified) within 24 months, and to replace 47 services (of the 141 identified) that have been recently repaired, within 36 months. In a collaborative effort with Staff, Enumclaw will develop a program to assess the condition of the protective coating on the 47 services within three months. Until the services are replaced, Enumclaw will conduct a leak survey twice-annually on them; those found with coating defects will be set for immediate replacement.<sup>15</sup> In addition, Enumclaw will conduct a cathodic protection survey and replace services not meeting cathodic protection criteria (in 49 C.F.R. 192 Appendix D) when unable to demonstrate through documentation that cathodic protection had been previously applied.<sup>16</sup>

16 Commission rules require gas pipeline companies to complete remedial action within 90 days to correct cathodic protection deficiencies indicated by test or inspection, and be

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<sup>12</sup> Agreement ¶ 50, and Probable Violation Report, page 1.

<sup>13</sup> Agreement, e.g., ¶¶ 26, 29, 42, 50, 52, 55, 56, 58, 60.

<sup>14</sup> Agreement ¶ 54.

<sup>15</sup> Agreement ¶¶ 20-24.

<sup>16</sup> Agreement ¶ 25.

able to provide documentation demonstrating timely remediation.<sup>17</sup> Enumclaw has committed to completing remedial action in accordance with the rule, and has provided documentation to Staff demonstrating that this requirement is being met.<sup>18</sup> Enumclaw has also agreed to document all cathodic protection remedial action on the appropriate forms.<sup>19</sup>

17 Commission rules require gas companies to inspect and test pressure regulating stations.<sup>20</sup> Enumclaw agrees to revise and maintain its O & M Manual to designate certain regulators as those requiring maintenance under 49 C.F.R. § 192.739(a). Enumclaw will implement this, or provide a plan to implement other rules and statutes applicable to the design and maintenance of regulating stations, including the installation of distribution line valves as required by 49 C.F.R. § 192.181.<sup>21</sup>

18 Commission rules require gas pipeline companies to conduct inspections for electrical isolation between casings and pipelines, and to determine whether the pipeline has adequate levels of cathodic protection at the casing to pipeline interface.<sup>22</sup> Enumclaw has agreed to take specific actions with respect to casings, including: identifying casings installed on its gas system, including them for annual inspection, and evaluating and replacing certain casings.<sup>23</sup>

19 Enumclaw agrees, among other things, to conduct pressure tests of certain services to increase their maximum allowable operating pressure (“MAOP”), or replace existing

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<sup>17</sup>WAC 480-93-110(2). *See also* Complaint ¶ 25.

<sup>18</sup> Agreement ¶ 27.

<sup>19</sup> Agreement ¶¶ 27-28.

<sup>20</sup>WAC 480-93-999, *adopting* 49 C.F.R. § 192.739(a). *See also* Complaint ¶ 90.

<sup>21</sup> Agreement ¶ 29.

<sup>22</sup>WAC 480-93-110(5). *See also* Complaint ¶ 32.

<sup>23</sup> Agreement ¶¶ 31-33.

pressure limiting devices to meet capacity requirements, in accordance with 49 C.F.R. § 192.201(a).<sup>24</sup>

20 Commission rules require a gas pipeline company to maintain records sufficient to demonstrate compliance with all requirements of 49 C.F.R. Parts 191, 192, and WAC 480-93.<sup>25</sup> Enumclaw agrees to maintain a list of forms and databases that specify its records, and provide that to the Commission on request. Enumclaw has also purchased and begun a process of implementing a new maintenance management and document storage system.<sup>26</sup>

21 Commission rules require that a gas pipeline company update records within six months of when it completes construction activity, and make such records available to appropriate personnel.<sup>27</sup> Enumclaw has committed to comply with this rule and to take specific steps to: update its maps, conduct leak surveys with updated maps, and correct missing map information identified in the 2008 Probable Violation Report.<sup>28</sup>

22 Commission rules set forth requirements for conducting gas leak surveys, and also require gas pipeline companies to perform self-audits of leak detection and recordkeeping programs.<sup>29</sup> Enumclaw agrees to conduct leak surveys over all mains and services in compliance with the rules, and to write leak survey and self-audit procedures into its O & M Manual.<sup>30</sup>

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<sup>24</sup> Agreement ¶ 34; *See also* Complaint ¶ 22.

<sup>25</sup> WAC 480-93-018(1); *See also* Complaint ¶ 76.

<sup>26</sup> Agreement ¶ 35.

<sup>27</sup> WAC 480-93-018(5); *See also* Complaint ¶¶ 85-86.

<sup>28</sup> Agreement ¶ 36-39; *See also* Probable Violation Report pages 19-22.

<sup>29</sup> WAC 480-93-188(1) and WAC 480-93-188(6); *See also* Complaint ¶¶ 50 and 54.

<sup>30</sup> Agreement ¶¶ 40-42.

23 Commission rules require gas pipeline companies to keep records of pressure tests, and document certain information, as set forth in WAC 480-93-170(7).<sup>31</sup> Enumclaw has agreed that its forms used for documenting pressure tests will include, at a minimum, the information required by this rule.<sup>32</sup>

24 Commission rules require the City to maintain records or maps to show the location of cathodically protected piping.<sup>33</sup> Enumclaw agrees to update its records or maps in accordance with 49 C.F.R. § 192.491.<sup>34</sup>

25 Commission rules require gas pipeline companies to prepare and maintain accurate gas leak records, and also to establish a procedure to properly evaluate gas leaks and their location.<sup>35</sup> Enumclaw has already taken certain steps with respect to its gas leak reports and forms to ensure compliance.<sup>36</sup>

26 Commission rules require Enumclaw to inspect its pipeline for atmospheric corrosion, at least once every three calendar years, with intervals not to exceed 39 months between inspections.<sup>37</sup> Enumclaw has begun its next three-year corrosion inspection as of January 1, 2009, and agrees to provide documentation demonstrating that it has completed a 100 percent atmospheric corrosion inspection of its system for the period ending December 31, 2008.<sup>38</sup> Enumclaw also agrees to review and update its Atmospheric Corrosion Program within three months.<sup>39</sup>

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<sup>31</sup> See also Complaint ¶ 70.

<sup>32</sup> Agreement ¶ 43.

<sup>33</sup> WAC 480-93-999, adopting 49 C.F.R. § 192.491(a). See also Complaint ¶ 57.

<sup>34</sup> Agreement ¶ 44.

<sup>35</sup> WAC 480-93-187, WAC 480-93-186(2); See also Complaint ¶¶ 60 and 63.

<sup>36</sup> Agreement ¶¶ 45-47.

<sup>37</sup> WAC 480-93-999, adopting 49 C.F.R. § 192.481(a); See also Complaint ¶¶ 38-39.

<sup>38</sup> Agreement ¶¶ 48-49.

<sup>39</sup> Agreement ¶ 53.



27           A gas pipeline company is required to file certain reports with the Commission, including a “Damage Prevention Statistics Report.”<sup>40</sup> Enumclaw has revised the definition of “damage” in its O & M Manual and included in its O & M Manual, guidelines for filling out reports, and has agreed to join and participate in a web portal for the collection and reporting of underground damage information when it becomes operational (the State of Washington’s Virtual DIRT).<sup>41</sup>

28           Commission rules require that a gas pipeline company take a cathodic protection test reading each time an employee exposes a cathodically protected facility and removes the protective coating.<sup>42</sup> Enumclaw agrees to review its O & M Manual accordingly to ensure there is sufficiently detailed, Enumclaw-specific procedures to address these circumstances.<sup>43</sup> Enumclaw also has completed a review of its Operator Qualification (“OQ”) Program following the 2008 inspection to ensure qualifications criteria are adequate.<sup>44</sup>

**V. PARTIES’ SEPARATE STATEMENTS IN SUPPORT OF THE AGREEMENT**

**A. Staff’s Statement in Support of the Agreement**

29           As stated in the Settlement Agreement, the settlement represents a compromise of the positions of the two Parties. It is in the Parties’ best interest to avoid the expense, inconvenience, uncertainty, and delay necessitated by ongoing litigation. It is in the public interest that the Agreement includes Enumclaw’s admission that it violated the state and

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<sup>40</sup>WAC 480-93-200(7). *See also* Complaint ¶ 67.

<sup>41</sup>Agreement ¶¶ 55-57.

<sup>42</sup>WAC 480-93-110(8). *See also* Complaint ¶ 35.

<sup>43</sup>Agreement ¶ 58.

<sup>44</sup>Agreement ¶ 59.

federal rules listed in Exhibit 1 regarding the inspection, monitoring, and maintenance of its pipeline facilities and records and the City's commitment to take specific measures, as quickly as possible, to ensure compliance with applicable minimum Commission pipeline safety rules and statutes and ensure a safe and operable system.

30 Just as the Complaint raises serious allegations, the Agreement is a serious response to the Complaint. It is in the public interest that the Agreement includes significant penalties for violations, but suspends penalties on condition of compliance. Staff believes that the penalties recognize the seriousness of the violations and send an appropriate regulatory message. Suspension is appropriate in light of the detailed commitments Enumclaw has agreed to undertake, and the goals of the Commission's pipeline safety program. Suspension is an additional incentive for compliance, adds accountability, and is a further means for Commission enforcement of the Agreement. A substantial portion of the suspended penalties is tied to compliance with two sections highly related to public safety: Section B-1, replacement of unprotected and recently repaired unprotected services (\$1,000,000), and Section B-2, 90-day remedial action (\$500,000). In addition, suspension rather than immediate imposition will better position the City to devote available funds to safety compliance. Staff is encouraged by the City's latest efforts to achieve compliance and its cooperation thus far in undertaking specific measures.

31 Most importantly, Enumclaw has agreed to significant and specific measures that are designed to ensure, as quickly as possible, that Enumclaw's system is safe, operable, and in compliance with Commission rules, at a minimum. Also, as the Summary above shows, the specific conditions are intended to address compliance with specific rules, and violations

identified during the 2008 inspection and the Complaint in this docket. In essence, Enumclaw has committed to comply with pipeline safety rules, and the measures are consistent with those rules.

32 Enumclaw's commitment to replace its services is critical. Public safety requires that all the services that were unprotected be replaced. These services, some decades old, were installed in the ground in a potentially corrosive atmosphere. Although the City conducted recent repairs to 47 services since the inspection results were known (providing a post-installation fix in the form of cathodic protection may slow down the progress of corrosion), the services remain installed in a potentially corrosive environment. Staff believes the only safe remedy is replacement of the 141 services.

33 The maintenance of adequate, complete, and pipeline-specific procedures that comply with Commission rules is essential to the safe operation of a gas pipeline system. Staff's concerns in this docket with respect to this issue are addressed by Enumclaw's commitments to: review its O & M manual (this is consistent with 49 C.F.R. § 192.605(a)); make specific revisions; and implement revisions after appropriate training. The revised procedures, once implemented and used by gas safety personnel, are appropriate, and are intended to provide the framework to maintain and operate a safe gas system. In addition, the development of a Quality Control/Quality Assurance ("QC/QA") plan for all employees performing gas safety related activities will help ensure that the City's construction, operations, and maintenance standards are consistently implemented in the field.

34 A gas pipeline company's maintenance of complete and updated records is a foundation for pipeline safety. These records are relied upon by operators and inspectors.

Records must be sufficient to demonstrate compliance with commission rules, and they must be updated when there is construction activity.<sup>45</sup> As detailed above, the Agreement contains a number of specific commitments by the City to maintain and use updated, accurate, and complete records. These commitments, which reflect current pipeline safety rules, are designed to ensure that the kinds of violations identified in this docket will not occur in the future.

35           In summary, the Agreement represents Enumclaw's detailed commitment to compliance, which is reinforced by accountability, and contains significant penalties for failure to comply. It is in the public interest and the interest of the Commission to adopt and approve the Settlement Agreement in its entirety. Commission Staff respectfully requests that the Commission do so.

**B.     Enumclaw's Statement in Support of the Agreement**

36           Enumclaw recognizes the Commission's important responsibilities in auditing and enforcing pipeline safety with respect to the organizations it regulates. Enumclaw's natural gas distribution system is safe. Enumclaw is committed to maintaining a safe and reliable gas system; accordingly, Enumclaw consistently looks for ways to further improve and enhance the safety of its gas system. Enumclaw believes this Settlement Agreement will further enhance the safety and peace of mind of its gas customers and citizens within its gas service area and represents an appropriate resolution of the Complaint.

37           Since the time Staff notified Enumclaw of the alleged violations, Enumclaw has cooperated with Staff and responded by investigating, conducting reviews of existing

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<sup>45</sup> See generally WAC 480-93-018.

documentation, reviewing its policies and procedures and has already taken corrective action addressing many of the items raised by Staff.

38 Enumclaw has been engaged in a multi-year effort to upgrade the quality of its operations and the safety of its natural gas system. It has enhanced its management and increased the depth of experience in the organization, added additional personnel and restricted personnel to gas utility work exclusively. A system to improve documentation has been developed to memorialize work performed. A new maintenance management and document storage system has been acquired.

39 A primary focus of the Agreement addresses the replacement of the remaining steel services, which have not been cathodically protected since their installation, or lack adequate documentation of such protection. The services in question all have protective coatings as the first line of defense against corrosion. The federal safety regulation regarding services recognizes exceptions to the requirement for cathodic protection in the event no active corrosion is found. No active corrosion has been found on any of the approximately 260 coated steel services without cathodic protection that have been repaired or replaced since the 1995 WUTC audit. Enumclaw has conducted and will continue to conduct twice yearly leak surveys of the remaining coated steel services that are not cathodically protected until all the services have been replaced. Despite the absence of active corrosion or leaks, Enumclaw has agreed to replace all services that have not been cathodically protected since their installation.

40 While the list of corrective measures called for in the Agreement is significant, work has been underway since Staff completed the initial portion of the June 2008, Standard

Inspection and much progress has already been made, both prior to the filing of the Complaint and with even greater emphasis since February 10, 2009. The safety of the gas customers and the community has been paramount in developing the process and sequence for implementing the corrective measures. Gas leak surveys and cathodic protection surveys will be conducted repeatedly throughout the service line replacement period established in the Agreement and any detected leaks or cathodic protection deficiencies will result in the affected service moving to the top of the priority list for replacement.

41 Enumclaw believes the Agreement sets forth appropriate and well coordinated steps to ensure the level of safety is enhanced. Enumclaw is committed to the timely completion of the required items and recognizes the significance of the suspended penalties it will face if compliance is not achieved. Enumclaw believes the Agreement is fair, contains reasonable conditions and timelines, and represents a compromise of each Party's position. It is in the best interest of the parties, the citizens of Enumclaw and the State of Washington that the Agreement be approved.

## **VI. LEGAL POINTS THAT BEAR ON PROPOSED SETTLEMENT**

42 In WAC 480-07-700, the Commission expresses its support for parties' informal efforts to resolve disputes without the need for contested hearings when doing so is lawful and consistent with the public interest. The Parties have resolved all of the issues in dispute between them, and their resolution complies with Commission rules and, as explained above, is consistent with the public interest.

**VII. CONCLUSION**

43 Because the Parties have negotiated a compromise of all of the issues in this dispute, and because the settlement is in the public interest, both Parties request that the Commission approve the attached Settlement Agreement.

WASHINGTON UTILITIES AND  
TRANSPORTATION COMMISSION

CITY OF ENUMCLAW

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Dated: \_\_\_\_\_, 2009

Dated: \_\_\_\_\_, 2009

Approved as to form:

\_\_\_\_\_  
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Counsel for City of Enumclaw

Dated: \_\_\_\_\_, 2009