

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION  
COMMISSION

WASHINGTON UTILITIES AND	)	
TRANSPORTATION COMMISSION,	)	DOCKET NOS. UG-020230
	)	UG-020232
Complainant,	)	
	)	
vs.	)	MOTION TO AMEND
	)	COMPLAINT AND TO ALLOW
BASIN FROZEN FOODS, INC.	)	RESPONDENT TO CONFIRM ITS
	)	ACCEPTANCE OF THE
Respondent.	)	AMENDED SETTLEMENT
.....	)	AGREEMENT

1           **Party.** This Motion is filed on behalf of the Staff of the Washington  
Utilities and Transportation Commission.

2           **Statutes and Rules Applicable.** Statutes and rules involved are RCW  
80.28.210, RCW 80.28.212, WAC 480-09-420 and WAC 480-09-425.

3           **Relief Sought.** The Commission should amend the Complaint to delete  
references to RCW 80.28.212, and replace those references with RCW 81.04.387.  
In addition, references in the complaint to Basin as a “gas company” should be  
deleted.

4 Basin should be asked by the Commission to indicate by the deadline for  
responding to this motion to amend whether or not Basin wishes to continue as  
signatory to the Amended Settlement Agreement as filed, as a consequence of  
the need to amend the Complaint.

5 The Commission should hold in abeyance its action on the Amended  
Settlement Agreement until this matter is resolved.

6 **Discussion.** After the Amended Settlement in this docket was filed, the  
undersigned noticed that the penalty provision recited in the Complaint referred  
to RCW 80.28.212. *Complaint ¶¶ 4, 10 and 14.*

7 The penalty provided for in RCW 80.28.212 applies to violations “by any  
gas company” of rules adopted under RCW 80.28.210.

8 “Gas company” is defined broadly in RCW 80.04.010, but the court has  
construed similar definitions of other entities in that section to be limited to  
public service companies, *i.e.*, those firms that hold themselves out to serve the  
public. *E.g., West Valley Land Co. v. Nob Hill Water Assoc.*, 107 Wn.2d 359, 364, 729  
P.2d 42 (1986) and *Inland Empire Rural Electrification, Inc. v. Department of Public  
Service*, 199 Wash. 527, 537, 92 P.2d 258 (1939).

9 Because Basin Frozen Foods Inc. (Basin) owns the pipe line lateral that  
serves only its own potato processing plant, Basin is probably not a “gas

company” for purposes of RCW 80.28.212, as the court has defined that term.

For this reason, the statutory basis for penalty cited in the Complaint may not be accurate.

10 Penalties against an entity such as Basin would still be available under RCW 80.04.387, but that section was not cited in the Complaint. From Staff’s perspective, this amendment, if accepted, would not alter Staff’s view that the Amended Settlement Agreement is appropriate.

11 Accordingly, Staff hereby moves to amend the Complaint to delete the references to RCW 80.28.212, and to replace those references with RCW 81.04.387. In addition, references to Basin as a “gas company” should be deleted.

12 On March 28, 2003, we began contacting Mr. Kevin Weber, President of Basin, regarding this issue, in an effort to resolve it without the need for this motion. We have had several communications with him since that date, as recently as this afternoon. Mr. Weber was Basin’s representative at hearing, and he signed the Amended Settlement Agreement on Basin’s behalf.

13 Mr. Weber has had other business that has kept him occupied, and he has not been able to respond on the merits of this issue.

14 Accordingly, in addition to allowing Basin an opportunity to respond to the motion to amend, Staff requests that Basin be asked by the Commission to

also indicate by the same deadline whether or not Basin wishes to continue as signatory to the Amended Settlement Agreement as filed. If Basin does not wish to do so, the Commission should set a prehearing conference to schedule hearing in this case.

15           **Conclusions.** For the reasons stated above, the Commission Staff respectfully requests the Commission grant the relief sought, as described in paragraphs 3-5 above.

RESPECTFULLY SUBMITTED this 7th day of April, 2003.

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