BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION, Complainant, v. CASCADE NATURAL GAS CORPORATION, Respondent.	DOCKET PG-230800 COMMISSION STAFF'S RESPONSE TO SAPPHIRE GAS SOLUTIONS, LLC'S MOTION TO DISMISS

TABLE OF CONTENTS

I. INTRODUCTION 1

II. RELIEF REQUESTED 1

III. STATEMENT OF FACTS 1

IV. STATEMENT OF ISSUES 3

V. ARGUMENT 3

A. The Commission should deny the motion to dismiss as Staff's complaint sets out legally sufficient allegations that Cascade Natural Gas, on its own or through its contractor, violated state and federal pipeline safety laws on and before September 22, 2023 3

B. Sapphire Misconstrues Washington Law, Ignoring the Plain Language of WAC 480-93-180 6

1. The plans and procedures for an LNG facility are required to be in a gas pipeline manual under the plain language of WAC 480-93-180(1) 7
2. The legislative purpose underlying the adoption of Washington's gas pipeline laws requires the Commission to read WAC 480-93-180 as applying to the present case 11
3. The LNG facility was part of Cascade's "gas pipeline system" under Washington law 13
4. Sapphire's focus on surplusage is a distortion of the law and the plain language of the rule 15

a. Sapphire's reading of the Washington Supreme Court's decision in *Silverstreak* is wrong 15
b. The intent of WAC 480-93-180(1) is to create a comprehensive manual that encapsulates state and federal requirements 18

C. A Typo in a Cross-Reference Does not Excuse Noncompliance With NFPA 59A 2001 Section 11.4.5.2(c) 20

1. The errors in the NFPA are obvious scrivener's errors and any reasonable operator knows or should know the applicable requirements 22
2. Staff is not alleging that Cascade/Sapphire violated an interpretive letter, Staff is alleging Cascade/Sapphire violated a properly promulgated rule 25
3. Equitable estoppel does not apply to situations where operators failed to adequately understand their own obligations 26

D. The rulemaking history associated with 49 C.F.R. § 193.2019(b) clearly demonstrates that the regulation applies to mobile LNG sites, even if they elect to follow the NFPA 29

E. Continuing Violations are Permitted Under Washington Law, and Appropriate Here to Carry Out the Intent of the Notice Regulation.....31

VI. CONCLUSION.....33

TABLE OF AUTHORITIES

Cases

Ali v. Federal Bureau of Prisons,
552 U.S. 214 (2008) 16

Appalachian Power Co. v. E.P.A.,
249 F.3d 1032 (2001) 21

Applied Indus. Materials Corp. v. Melton,
74 Wash. App. 73, 872 P.2d 87 (1994) 19

Burton v. Lehman,
153 Wash.2d 416, 103 P.3d 1230 (2005) 7

Clark v. Payne,
61 Wash. App. 189, 810 P.2d 931 (1991) 18, 19

Columbia Riverkeeper v. Port of Vancouver USA,
188 Wash.2d 80, 392 P.3d 1025 (2017) 7

Finch v. Matthews,
74 Wash.2d 161, 443 P.2d 833 (1968) 26

Five Corners Family Farmers v. State,
173 Wash.2d 296, 268 P.3d 892 (2011) 8

Harrison v. PPG Industries, Inc.,
446 U.S. 578 (1980) 16

Hoffer v. State,
110 Wn.2d 415, 755 P.2d 781 (1988) 4

In re Detention of Strand,
167 Wash.2d 180, 217 P.3d 1159 (2009) 18, 19

Jametsky v. Olsen,
179 Wash.2d 756, 317 P.3d 1003 (2014) 7, 8

Johnson v. Morris,
87 Wash.2d 922, 557 P.2d 1299 (1976) 22

Kinney v. Cook,
159 Wn.2d 837, 154 P.3d 206 (2007) 4, 20

Kramarevcky v. Dep't of Soc. and Health Services,
122 Wash.2d 738, 863 P.2d 535 (1993) 26, 27

Nissen v. Pierce County,
183 Wn.2d 863, 357 P.3d 45 (2015) 4

Orwick v. City of Seattle,
103 Wn.2d 249, 692 P.2d 793 (1984) 4

Port of Seattle v. Pollution Control Hearings Bd.,
151 Wash.2d 568, 90 P.3d 659 (2004) 21

Sierra Club v. U.S. Dep't of Transp.,
125 F.4th 1170 (D.C. Cir. 2025) 24

Silverstreak, Inc. v. Wash. State Dep't of Labor and Indus.,
159 Wash. 2d 868, 154 P.3d 891 (2007) 16, 21

Spokane Cnty. v. Dep't of Fish & Wildlife,
192 Wash.2d 453, 430 P.3d 655 (2018) 8

State v. Weatherwax,
188 Wash.2d 139, 392 P.3d 1054 (2017) 32

Tenore v. AT&T Wireless Servs.,
136 Wn.2d 322, 962 P.2d 104 (1998) 4, 20

U.S. Nat'l Bank of Oregon v. Indep. Ins. Agents of America, Inc.,
508 U.S. 439 (1993) 21

U.S. v. Coatoam,
245 F.3d 553 (6th Cir. 2001) 21

Wash. Educ. Assoc. v. Wash. State Pub. Disclosure Comm'n,
150 Wash.2d 612, 80 P.3d 608 (2003) 25

Wash. Water Power Co. v. Graybar Elec. Co.,
112 Wash.2d 847, 774 P.2d 1199 (1989) 18, 19

Statutes

49 U.S.C. § 60101(11) 12
49 U.S.C. § 60101(3) 12
49 U.S.C. § 60101(9) 12
49 U.S.C. § 60103(a) 12
49 U.S.C. § 60104(c) 12
49 U.S.C. § 60105(a) 12
RCW 34.05.010(8) 25
RCW 81.04.380 31

RCW 81.88.005 13
RCW 81.88.005(1) 11
RCW 81.88.005(3)(a) 11
RCW 81.88.010(3) 8
RCW 81.88.065(2) 11
RCW 81.88.090 11
RCW 81.88.064(1) 8

Other Authorities

Department of Transportation Research and Special Programs Administration
Liquified Natural Gas Regulations – Miscellaneous Amendments,
62 Fed. Reg. 41,311 (Aug. 1, 1997) 29, 30

Department of Transportation Research and Special Programs Administration
Liquified Natural Gas Regulations – Miscellaneous Amendments,
62 Fed. Reg. 41,312 (Aug. 1, 1997) 30

Hazardous Materials: Liquified Natural Gas by Rail,
85 Fed. Reg. 44,994 (prop. Jul. 9, 2020) (to be codified at 49 C.F.R. pts 172,
173, 174, 179, and 180) 24

Hazardous Materials: Suspension of HMR Amendments Authorizing
Transportation of Liquified Natural Gas by Rail,
88 Fed. Reg. 60,356 (prop. Sept. 1, 2023) (to be codified at 49 C.F.R. pt. 192) 24

National Fire Protection Association, NFPA 59A Standard for the Production,
Storage, and Handling of Liquefied Natural Gas (LNG) (1996) 23

National Fire Protection Association, NFPA 59A Standard for the Production,
Storage, and Handling of Liquefied Natural Gas (LNG) (2001) 23

Pipeline Safety: Liquified Natural Gas Facilities; Clarifying and Updating Safety
Standards, 69 Fed. Reg. 11,330 (prop. Mar. 10, 2004) (to be codified at
49 C.F.R. pt. 193) 22, 23

Sen. Comm. on Env't Quality & Water Res., Bill Report,
E2SHB 2420 at 1 (Feb. 25, 2000) 11

U.S. DEP'T OF TRANSP., PIPELINE AND HAZARDOUS MATERIALS SAFETY ADMIN.,
Interpretation Letter PI-23-0018 (2024) 24

Rules

49 C.F.R. § 190.223(a) 31
49 C.F.R. § 193.2001 12
49 C.F.R. § 193.2013(g)(1) 23

49 C.F.R. § 193.2019(a) 23
49 C.F.R. § 193.2019(b) 29
WAC 480-07-380(1)(a) 3
WAC 480-93-005(12) 8
WAC 480-93-007(1) 8, 14
WAC 480-93-007(3) 8
WAC 480-93-180(1) 10
WAC 480-93-223 31
WAC 480-93-999 14

Treatises

27 *Federal Procedure Pleadings & Motions*, § 62:465 (1984) 4

5 Charles Allen Wright & Arthur R. Miller, *Federal Practice and Procedure*, § 1349, at 541 (1969) 4

I. INTRODUCTION

1 The Commission should deny Sapphire Gas Solutions LLC's (Sapphire) Motion to Dismiss as the motion incorrectly interprets state and federal laws and regulations.

II. RELIEF REQUESTED

2 Commission Staff (Staff) respectfully requests that the Commission deny Sapphire's motion to dismiss.

III. STATEMENT OF FACTS

3 Cascade Natural Gas Corporation (Cascade) is an investor owned utility that provides natural gas service in various areas in Washington.[1] Over the years, Cascade acquired many small gas systems throughout Washington.[2] However, Cascade could not verify the maximum allowable operating pressure (MAOP) of these lines due to missing documentation on pipeline characteristics, testing information, or both.[3] Cascade was ultimately ordered by the Commission in Docket PG-150120 to validate the MAOP for pipelines where this information was missing, including on high pressure pipelines in the Washington towns of Toppenish, Granger, Wapato, and Zillah.[4]

4 For continuity of service while conducting MAOP testing, Cascade, through a contractor, set-up mobile liquified natural gas (LNG) sites to provide pressure and supply to its high pressure pipeline.[5] These sites operated by trucking LNG to the site, storing it onsite, vaporizing it, and ultimately pumping it into Cascade's system.[6] To operate these mobile

[1] *Wash. Utils. & Transp. Comm'n v. Cascade Natural Gas Co.*, Docket PG-230800, Complaint, at 1 ¶ 4 (Mar. 27, 2025) (hereinafter "Staff Complaint").
[2] *Id.* at 2 ¶ 6.
[3] *Id.*
[4] *Id.*
[5] *Id.* at 2 ¶ 7.
[6] *Id.* (note that natural gas is liquified at cryogenic temperatures and in its liquid state when it cannot be transported in its gaseous state, such as for trucking to LNG sites).

LNG sites, Cascade contracted with Sapphire, a "contractor with expertise."[7] Sapphire in turn subcontracted with ATI Trucking and Southern Pines Trucking to transfer the LNG to the site.[8] The site that is the subject of Staff's complaint, the one in Toppenish, began operating on August 14, 2023.[9]

5 On the morning of September 22, 2023, Southern Pines Trucking driver RP delivered LNG to the mobile site.[10] Sapphire employees CM and DB assisted RP with backing the truck into position and then proceeded to unload the LNG while RP stayed in the truck.[11] As outlined in the complaint, a series of events led to RP starting the truck and driving forward prior to completion of the LNG transfer.[12] This caused LNG to be released, form a vapor cloud, and eventually ignite.[13] The fire ultimately caused injuries to RP and killed DB.[14]

6 On March 27, 2025, Administrative Law Judge Connor Thompson found probable cause and issued the complaint that is the subject of this docket against Cascade.[15] The complaint alleged violations of state and federal laws stemming from a release and subsequent ignition of LNG from a mobile LNG site in Toppenish, Washington.[16] Cascade filed its answer to Staff's complaint on April 16, 2025.[17] On April 22, 2025, counsel for Sapphire entered a notice of appearance and submitted a petition to intervene.[18] Sapphire was granted limited intervention by Judge Thompson during the prehearing conference held on

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[7] *Id.* at 3 ¶ 8; *Wash. Utils. & Transp. Comm'n v. Cascade Natural Gas Co.*, Docket PG-230800, Answer, at 4 ¶ 13 (Apr. 16, 2025) (hereinafter "Cascade Answer").
[8] Staff Complaint at 3 ¶ 8.
[9] *Id.* at 3 ¶ 10.
[10] *Id.* at 3 ¶ 11.
[11] *Id.*
[12] *Id.* at 4 ¶ 13-5 ¶ 16.
[13] *Id.* at 5 ¶ 17, 6 ¶ 20.
[14] *Id.* at 6 ¶ 21.
[15] *See generally* Staff Complaint.
[16] *Id.*
[17] Cascade Answer.
[18] *Wash. Utils. & Transp. Comm'n v. Cascade Natural Gas Co.*, Docket PG-230800, Petition to Intervene (Apr. 22, 2025); *Wash. Utils. & Transp. Comm'n v. Cascade Natural Gas Co.*, Docket PG-230800, Notice of Appearance of George Wilkinson & Kevin Moscon (Apr. 22, 2025).

April 25, 2025.[19] This limited intervention and other procedural matters, including the procedural schedule, were memorialized in Order 02 (prehearing conference order), issued on May 9, 2015.[20] On July 1, 2025, Sapphire filed the present motion to dismiss.[21]

IV. STATEMENT OF ISSUES

1. Should the Commission deny Sapphire's motion to dismiss on the basis that Cascade is subject to the requirements of WAC 480-93-180 for its mobile LNG operations?
2. Should the Commission deny Sapphire's motion to dismiss on the basis that Staff's causes of action derive from 49 C.F.R. Part 193 not 49 C.F.R. Part 192 as alleged by Sapphire?
3. Should the Commission deny Sapphire's motion to dismiss the NFPA section 11.4.5.2(c) claim, as the erroneous cross-reference is a scrivener's error that Cascade and Sapphire should have been aware of?
4. Should the Commission deny Sapphire's motion to dismiss the NFPA section 11.4.5.2(c) claim as Staff is not seeking to enforce an interpretive statement?
5. Should the Commission deny Sapphire's motion to dismiss the NFPA section 11.4.5.2(c) claim as Sapphire has not met the requirements for equitable estoppel?
6. Should the Commission deny Sapphire's motion to dismiss as Cascade is required to notify the Commission of use of portable LNG equipment two weeks prior to operation, as required by federal law?
7. Should the Commission deny Sapphire's motion to dismiss as failure to notify is a continuing violation subject to daily penalties?

V. ARGUMENT

A. The Commission should deny the motion to dismiss as Staff's complaint sets out legally sufficient allegations that Cascade Natural Gas, on its own or through its contractor, violated state and federal pipeline safety laws on and before September 22, 2023

7 When ruling on a motion to dismiss, the Commission or its Administrative Law Judges, "consider the standards applicable to a motion made under CR 12(b)(6) and 12(c) of the Washington superior court's civil rules."[22] Under those standards, the Commission

[19] *Wash. Utils. & Transp. Comm'n v. Cascade Natural Gas Co.*, Docket PG-230800, Order 02, at 2 ¶ 8 (May 9, 2025).
[20] *Wash. Utils. & Transp. Comm'n v. Cascade Natural Gas Co.*, Docket PG-230800, Order 02 (May 9, 2025).
[21] *Wash. Utils. & Transp. Comm'n v. Cascade Natural Gas Co.*, Docket PG-230800, Motion to Dismiss (Jul. 1, 2025) (hereinafter "Sapphire Motion to Dismiss").
[22] WAC 480-07-380(1)(a).

should grant a motion to dismiss "'sparingly and with care,'"[23] and "'only in the unusual case in which [the] plaintiff includes allegations that show on the face of the complaint that there is some insuperable bar to relief.'"[24] Accordingly, the Commission should only grant a motion to dismiss where "the plaintiff cannot prove 'any set of facts which would justify recovery.'"[25] This requires the Commission to consider the allegations in the complaint as true and deny the motion if those facts, or other hypothetical facts, would sustain the complaint.[26]

8 Below, this response will address and counter each of Sapphire's arguments as they are laid out in Sapphire's motion to dismiss. All the legal allegations against Cascade are viable under the law and supported by facts. As will be shown, Sapphire's motion fails to adequately understand Washington law and the rulemaking history surrounding the implementation of the federal regulations. Furthermore, it would be inappropriate to dismiss Staff's complaint at this stage as not only has Sapphire failed to demonstrate that the law does not apply to Cascade, but it has failed to show how the facts plead by Staff do not on their face support the complained of violations.

9 Staff sets out ten legally sufficient causes of action in its complaint. Sapphire seeks to dismiss all ten causes of action based on seven flawed theories. Its first theory, that WAC 480-93-180 is not applicable to this case, ignores the plain language of the rule

[23] *Orwick v. City of Seattle*, 103 Wn.2d 249, 254-55, 692 P.2d 793 (1984) (quoting 27 *Federal Procedure Pleadings & Motions* § 62:465 (1984) and citing 5 Charles Allen Wright & Arthur R. Miller, *Federal Practice and Procedure* § 1349, at 541 (1969)).
[24] *Nissen v. Pierce County*, 183 Wn.2d 863, 872, 357 P.3d 45 (2015) (quoting *Hoffer v. State*, 110 Wn.2d 415, 420, 755 P.2d 781 (1988)).
[25] *Kinney v. Cook*, 159 Wn.2d 837, 842, 154 P.3d 206 (2007) (quoting *Tenore v. AT&T Wireless Servs.*, 136 Wn.2d 322, 330, 962 P.2d 104 (1998)).
[26] *Kinney*, 159 Wn.2d at 842.

and the long legislative history associated with implementation of the state's pipeline safety program.

10 The second theory, that 49 C.F.R. § 192 is not applicable, is a red herring, as Staff does not base any of its causes of actions on part 192. This confusion comes from Sapphire's own erroneous interpretation of WAC 480-93-180 which seeks to impermissibly narrow the language of the rule and sidestep the regulatory scheme.

11 The third theory, that the later acquired interpretation from PHMSA of its own regulations violates due process as it seeks to retroactively apply a new rule, ignores the fact the rule is the same as it's always been, and a simple scrivener's error caused an improper cross-reference. Additionally, not permitting an agency to interpret its own rules after the fact would cause an untenable situation where no regulation could be enforced because all interpretations would then be new rules created after the fact.

12 The fourth theory, that Staff seeks to enforce an interpretative statement, is incorrect. Staff does not seek to enforce an interpretative statement, but rather the rule properly promulgated by the Department of Transportation that contains a scrivener's error.

13 The fifth theory, that the Commission is equitably estopped from applying the NFPA section 11.4.5.2(c) requirements to Cascade/Sapphire, fails as Sapphire has not demonstrated that it meets any of the requirements for estoppel.

14 The sixth theory, that the notice requirement does not apply since Sapphire elected to follow the NFPA, ignores the very explicit rulemaking history where the Department of Transportation affirmatively stated the requirement was in addition to those requirements found in the NFPA.

15 The seventh theory, that even if the notice requirement applies it is not a continuing violation, contradicts the regulatory scheme, the explicit language permitting continuing violations under state and federal law, and the logical basis for the deterrent power of penalties.

B. Sapphire Misconstrues Washington Law, Ignoring the Plain Language of WAC 480-93-180

16 The bulk of Sapphire's motion to dismiss requests that the Commission dismiss the third, fourth, fifth, sixth, seventh, ninth, and tenth causes of action (collectively the "Section 180 Claims"), on the theory that WAC 480-93-180 does not apply to Cascade in the present matter. As demonstrated below, this request should be denied.

17 The Commission should deny Sapphire's motion to dismiss the Section 180 Claims as WAC 480-93-180 applies to Cascade's operations on the Toppenish site during the events underlying the allegations in the complaint based on the rule's plain language. Sapphire's argument that LNG facilities are not part of the pipeline, and thus policies and procedures for those facilities need not be incorporated into Cascade's manual, ignores the plan language of WAC 480-93-180 and the larger intent of the legislature in creating the pipeline regulatory scheme in Washington State. Sapphire's argument that LNG facilities are not regulated under 49 C.F.R. Part 192 misses the point of the rule and misreads the complaint. None of the Section 180 Claims are based on 49 C.F.R Part 192, as Sapphire rather confusedly seems to allege; they are instead based on the plain requirements in the Commission rule that Cascade maintain a manual the covers all its state and federal regulatory requirements and incorporates the plans and procedures of its contractors. All the causes of action in the complaint thus stem from violations of the WAC, various provisions under 49 C.F.R Part 193, and the requirements from the

National Fire Protection Association (NFPA) incorporated in the federal rules. Finally, Sapphire's argument for applying the theories ejusdem generis and surplusage to WAC 480-93-180 goes against the intent of the rule and contradicts Washington caselaw dismissing these theories where they would conflict with the purpose of the rule.

1. The plans and procedures for an LNG facility are required to be in a gas pipeline manual under the plain language of WAC 480-93-180(1).

18 The Commission should deny Sapphire's motion to dismiss as Sapphire's argument that WAC 480-93-180 does not apply to LNG facilities ignores the plain language of the rule, the definition of "gas pipeline" under Washington law, and the fact that this was not just an LNG facility, but a mobile LNG facility that was installed for the purpose of continuity of service during maintenance by supplying gas and pressure to a high-pressure pipeline.

19 In Washington, administrative regulations are interpreted using the rules of statutory construction.[27] The main purpose of the inquiry is to discern the intent of the rules, and tribunals "interpret the" rule "in such a way so as to carry out that intent."[28] In this analysis, a tribunal attempts to discern the plain meaning of the rule which is derived from the entire regulatory scheme, as well as any related rules that would shed light on the intent of the agency adopting the rule at issue.[29]

20 If a rule is "susceptible to two or more reasonable interpretations" the rule is ambiguous.[30] When there is an issue of ambiguity, courts turn to the tools of statutory construction including the legislative history, the circumstances surrounding the rule's

[27] *Columbia Riverkeeper v. Port of Vancouver USA*, 188 Wash.2d 80, 90, 392 P.3d 1025 (2017).
[28] *Id.* at 91.
[29] *See Jametsky v. Olsen*, 179 Wash.2d 756, 762, 317 P.3d 1003 (2014).
[30] *Burton v. Lehman*, 153 Wash.2d 416, 423, 103 P.3d 1230 (2005).

enactment, and relevant case law to discern intent.[31] Even where the language of a rule is unambiguous, courts will look to the legislative history nonetheless.[32]

21 The plain language of the rule in question, WAC 480-93-180(1), requires that

> Each gas pipeline company must have and follow a gas pipeline plan and procedure manual (manual) for operation, maintenance, inspection, and emergency response activities that is specific to the gas pipeline company's system. The manual must include plans and procedures for meeting all applicable requirements of 49 C.F.R. §§ 191, 192 *and* chapter 480-93 WAC, *and* any plans or procedures used by a gas pipeline company's associated contractors.

The Commission makes, "each gas pipeline company . . . responsible for the conduct of its contractors regarding compliance with pipeline safety requirements."[33] Commission rules therefore allow gas pipeline companies to employ contractors, but

> If the gas pipeline company's contractor (or any of its subcontractors) engages in conduct that violates commission rules applicable to the gas pipeline company, the gas pipeline company is subject to penalties and all other applicable remedies, as if the gas pipeline company itself engaged in that conduct.[34]

22 Under Washington law, the term "gas pipeline" is expansive, encompassing

> all parts of a pipeline facility through which gas moves in transportation including, *but not limited to*, line pipe, valves, and other appurtenances connected to line pipe, compressor units, metering stations, regulator stations, delivery stations, holders and fabricated assemblies.[35]

Washington's gas pipeline safety rules apply to the "construction, operation, maintenance, and safety of gas facilities used in the gathering, storage, distribution, and transmission of gas" in Washington.[36]

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[31] *Five Corners Family Farmers v. State*, 173 Wash.2d 296, 305-6, 268 P.3d 892 (2011); *Jametsky*, 179 Wash.2d at 762.
[32] *Spokane Cnty. v. Dep't of Fish & Wildlife*, 192 Wash.2d 453, 461, 430 P.3d 655 (2018) (For example, in *Spokane County*, the Court determined that the plain language of the code was unambiguous, but noted that the legislative history supported that conclusion).
[33] RCW 81.88.064(1).
[34] WAC 480-93-007(3).
[35] RCW 81.88.010(3) (emphasis added) and WAC 480-93-005(12) (emphasis added).
[36] WAC 480-93-007(1).

23 WAC 480-93-180 has no ambiguity. As explained above, the rules are designed to apply to all parts of a gas pipeline's system, and the LNG site in question was part of Cascade's system during the course of the incident that is the subject of this complaint, as Sapphire and Cascade were using the LNG site to store and distribute gas during its operation. WAC 480-93-180(1) is meant to require a manual that covers the whole gas pipeline company's system and operations, not arbitrary bits or pieces. It would be absurd if a manual meant to cover all operations, maintenance, inspection, and emergency response on the system did not cover certain operations or parts of the system itself. Such an interpretation is out of step with the intent of the legislature in creating a comprehensive pipeline safety regulatory scheme.

24 The Commission should also dismiss Sapphire's argument that Staff is impermissibly trying to apply Part 192 regulations to the mobile LNG site. Staff is not alleging that Cascade violated regulations in Part 192, Staff is alleging Cascade violated regulations under Part 193, the NFPA, and the WAC. Part 193 regulations (and the NFPA by reference) are all incorporated into the WAC under WAC 480-93-999, and required to be part of a company's manual pursuant to WAC 480-93-180(1). Staff is aware that mobile LNG facilities are subject to regulation under Part 193, not Part 192. However, being regulated under Part 193 does not excuse noncompliance with WAC 480-93-180. Just because mobile LNG sites are regulated separately from Part 192 pipelines does not exclude them from regulation under the WAC or inclusion in a manual under WAC 480-93-180. Inclusion of Part 193 requirements in a company manual is clearly supported by the plain language of WAC 480-93-180 and does not impermissibly apply Part 192 requirements to Part 193 facilities.

25 Additionally, Sapphire misconstrues the use of "applicable" in the rule. This term is not meant to limit the regulations for which a company must have plans and procedures. Rather, the term is signaling that for any regulated operation a company has, it must have plans and procedures to cover those operations. For instance, a gas company that does not use LNG need not have plans and procedures covering LNG facilities, since those regulations are not *applicable* to that company's operations.

26 Nor is there any ambiguity as to whether WAC 480-93-180(1) covers Sapphire's operations. The plan required by the rule is meant to include "any plans and procedures used by a gas pipeline company's associated contractors."[37] Sapphire is, admittedly, Cascade's contractor.[38] Both chapter 81.88 RCW and chapter 480-93 WAC contemplate the issue of contractors and clearly state the company maintains responsibility for them. Indeed, the inclusion of the requirement to incorporate contractor plans and procedures into the company manual further evidences that the manual is supposed to be comprehensive and covering every part of the system, even those parts which require expertise outside of the company's knowledge. The rule does not exempt certain contractors or limit which contractors this requirement applies to, it covers "associated contractors" which is what Sapphire is.

27 The plain language of WAC 480-93-180(1) requires that the manual be expansive and encompass the entire system. It is supposed to be the one-stop shop for any possible procedure an employee or contractor may come across. This manual is supposed to instruct the user on plans and procedures concerning operations, maintenance, inspection, and emergency response. This last requirement being the most relevant issue at bar given

[37] WAC 480-93-180(1).
[38] Cascade Answer, at 4 ¶ 13 (Apr. 16, 2025) (admitting that Cascade "hired Sapphire as a consultant/contractor with expertise working with LNG, to provide LNG to Cascade's system[.]").

that so many of the plans and procedures Cascade was supposed to incorporate into its manual were not followed. Just as Cascade cannot contract away is obligations under the pipeline safety laws, it cannot delegate away its requirements to maintain a comprehensive manual.

2. The legislative purpose underlying the adoption of Washington's gas pipeline laws requires the Commission to read WAC 480-93-180 as applying to the present case.

28 Sapphire's arguments about the applicability of WAC 480-93-180 ignore the legislative history and purpose of chapter 81.88 RCW, which evidence an intent for comprehensive regulation of pipelines to ensure their safe operations.

29 The Legislature enacted chapter 81.88 RCW in the wake of the 1999 Olympic Pipeline explosion that left two children and one adult dead in Bellingham, Washington.[39] In doing so, the Legislature intended the state to adopt "standards that are equal to, or more stringent than, those adopted by the federal government, so long as they do not impermissibly interfere with interstate commerce."[40] As part of this legislation, the Commission was required to "develop and administer a comprehensive program of gas pipeline safety[.]"[41] The Commission was granted rulemaking authority to adopt rules that carry out the purpose of the chapter, so long as they are "compatible with minimum federal requirements."[42] Under chapter 81.88 RCW, the Commission must maintain a federal certification for the state's pipeline safety program.[43]

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[39] Sen. Comm. on Env't Quality & Water Res., Bill Report, E2SHB 2420 at 1 (Feb. 25, 2000); S. B. Rep. on S.B. 2420, 56th Leg., Reg. Sess. (Wash. 2000).
[40] RCW 81.88.005(1).
[41] RCW 81.88.065(2).
[42] RCW 81.88.065(2).
[43] RCW 81.88.090. To demonstrate the legislature intent further, it even included a provision in the statute that requested the governor of the state to seek amendments to federal pipeline safety laws to expand states' abilities to "adopt and enforce standards equal or more stringent than federal standards." RCW 81.88.005(3)(a).

30 The Commission is certified pursuant to 49 U.S.C. § 601, *et seq.* (hereinafter Chapter 601) to regulate and enforce federal pipeline safety requirements for intrastate pipelines, and has entered into an agreement with the Department of Transportation to "participate in the oversight of interstate pipeline transportation."[44] Under federal law, a state with a current certificate under section 60105(a) of Chapter 601 "may adopt additional or more stringent safety standards for intrastate pipeline facilities and intrastate pipeline transportation" so long as those standards are compatible with federal requirements.[45] Under federal law "'gas pipeline facility' includes a pipeline, a right of way, a facility, a building, or equipment used in transporting gas or treating gas during its transportation[.]"[46] "'Intrastate gas pipeline facility' means a gas pipeline facility and transportation of gas within a State not subject to the jurisdiction of the [Federal Energy Regulatory Commission] under the Natural Gas Act (15 U.S.C. 717 *et seq.*)[.]"[47] Chapter 601 covers liquified natural gas facilities,[48] and the Secretary of Transportation adopted 49 C.F.R. Part 193 to govern LNG facilities under the authority granted by 49 U.S.C. § 60103(a).[49]

31 Washington's certification allows it to adopt standards for intrastate systems that exceed federal requirements, and its definition of gas pipeline, is, as noted above, expansive. The Legislature enacted chapter 81.88 RCW to create a broad reaching pipeline safety program that allows Washington to regulate all pipelines and associated

[44] States are permitted to regulate and enforce standards for intrastate pipelines pursuant to certification under 49 U.S.C. § 60105(a) and participate in the regulatory oversight of interstate pipelines pursuant to agreements under 49 U.S.C. § 60106(b). For the latter, enforcement authority remains with the federal Department of Transportation.
[45] 49 U.S.C. § 60104(c).
[46] 49 U.S.C. § 60101(3).
[47] 49 U.S.C. § 60101(9).
[48] *See e.g.* 49 U.S.C. § 60103(a); 49 U.S.C. § 60101(11)-(14).
[49] 49 C.F.R. § 193.2001.

facilities in the state to the maximum extent of the law.[50] The resulting Commission regulations must thus be interpretated with this broad reaching mandate in mind.

32 Applying this legislative scope, and thus the broad rulemaking intent, the Commission meant WAC 480-93-180's requirements to apply to all actions on a gas company's pipelines, including mobile LNG tied into a high-pressure line to preserve service during pressure testing (the operation Sapphire was contracted by Cascade to run at the Toppenish site).

3. The LNG facility was part of Cascade's "gas pipeline system" under Washington law.

33 Sapphire's argument that WAC 480-93-180 does not apply to LNG facilities because these facilities are not part of the gas pipeline company's system ignores the definition of "gas pipeline" under Washington law and that this was a mobile LNG facility set-up for the express purpose of supplying gas and pressure to the high-pressure pipeline while other parts of the pipeline were offline for pressure testing. It does not matter if the mobile LNG facility itself was regulated under part 192 or 193, it was necessarily part of the system and thus plans and procedures for operating the site needed to be included in the manual. Under the plain language of the Commission's rules, mobile LNG facilities are part of a gas company's gas pipeline system. As such, the Commission should deny the motion to dismiss.

34 LNG facilities, specifically the one that is the subject of Staff's complaint, are part of the pipeline. Sapphire cites no authority that supports otherwise.[51] The facility in this case was set up as a temporary site to supply Cascade's high-pressure distribution pipeline with gas to maintain service while parts of the line were taken offline for

[50] RCW 81.88.005.
[51] Sapphire Motion to Dismiss, at 6 ¶ 6.

pressure testing as required by the MAOP settlement in Docket PG-150120. Additionally, the gas entering the line was also being odorized at this site. In this context, the mobile LNG site fits quite squarely in the state's broad definition of "gas pipeline" as it served as a delivery station at which LNG was delivered, temporarily stored, vaporized, odorized, and then pumped into the main, part-192-regulated pipeline.[52] Including the LNG facility as part of the gas pipeline system does not create ambiguity in the application of WAC 480-93-180, it ensures completeness in application of the rule.

35 Sapphire is correct that the Commission adopted the federal regulations concerning pipeline facilities, specifically parts 191 through 193 (amongst others);[53] however, the Commission's regulation goes beyond what is just in those sections, and the chapter 480-93 WAC applies more broadly than 191, 192, and 193 do individually. As demonstrated by the legislative intent and the broad definitions in the rules themselves, chapter 480-93 WAC is meant to encompass the broad world of pipeline regulation and incorporate multiple sections of the code of federal regulations. If the Commission truly only wanted to adopt the regulations as promulgated in the code of federal regulations, all it would need is WAC 480-93-999, the section that adopts by reference a cornucopia of federal regulations and third-party standards. However, the Commission went beyond just the floor of what it needed to adopt, and chose to promulgate more rules that all gas pipelines, as defined in the rules and statute, are subject to.

36 As previously mentioned, chapter 480-93 WAC applies to the "construction, maintenance, and safety of gas facilities used in the gathering, storage, distribution and transmission of gas" in Washington.[54] In this case, the mobile LNG site was being used

[52] Staff Complaint, at 2 ¶ 7.
[53] WAC 480-93-999.
[54] WAC 480-93-007(1).

for the storage and distribution of gas. Gas was being delivered in a liquified form to this facility, stored on site, and then vaporized, and pumped into the high-pressure pipeline. Additionally, the use of this site was for maintenance and safety as Cascade was required to perform MAOP testing on the high-pressure line in question and employed a mobile LNG site to maintain service during testing. The procedures for operating the Toppenish mobile LNG facility are necessarily specific to Cascade's pipeline since this site was the source of gas supply and pressure to the 192-pipeline itself.

37 Federal law does prescribe different rules for certain pipelines under 192 and LNG sites under 193, and the Commission adopted those regulations by reference in WAC 480-93-999. However, for all intrastate pipeline facilities in the state, the Commission adopted additional regulations as seen throughout the rest of chapter 480-93 WAC. Sapphire is entirely incorrect that only bits and pieces of chapter 480-93 WAC apply in this case; the whole chapter does.

4. Sapphire's focus on surplusage is a distortion of the law and the plain language of the rule.

38 Sapphire's argument that part 193 and other requirements applicable to the mobile LNG facility are excluded from WAC 480-93-180 under the theories of ejusdem generis and surplusage is contrary to case law on tools of interpretation that prioritize intent over the strict language of the rule.

a. Sapphire's reading of the Washington Supreme Court's decision in *Silverstreak* is wrong.

39 In its motion to dismiss, Sapphire focuses on *Silverstreak, Inc. v. Washington State Department of Labor and Industries*.[55] Drawing on the Court of Appeal's

[55] Sapphire Motion to Dismiss, at 8 ¶ 9.

explanation of the canon of ejusdem generis (specific terms limit general ones when used in sequence) in *Silverstreak,* Sapphire claims that the use of specific terms in WAC 480-93-180 limits the broader general requirements contained in that rule. But the Supreme Court reversed the Court of Appeals on the application of the canon in cases like this, holding that "[t]he Court of Appeals' use of the rule in this case does not, in our view, advance the intent of the legislature" in passing the statute at issue in that case.[56] Indeed, the Supreme Court in that matter went on to discuss how it "previously ruled ejusdem generis inapplicable" to situations where general words were intended to include more than the included specific descriptive words.[57]

40 The United States Supreme Court has taken a similar approach. In *Harrison v. PPG Industries, Inc.*, the Court rejected the notion that ejusdem generis must apply when a broad interpretation causes specific language to be unnecessary.[58] The same was similarly applied in the Court's decision in *Ali v. Federal Bureau of Prisons*.[59] In that case, the Court reasoned that "Congress may have simply intended to remove any doubt" that a specific type of personnel fell under the category of "law enforcement officer."[60] The Court supported its holding by referencing its decision in *Fort Stewart Schools v. FLRA* where is noted that "technically unnecessary examples may have been inserted out of an abundance of caution."[61]

41 Sapphire, in its motion, requests the Commission inappropriately apply ejusdem generis, which is exactly what the Washington Supreme Court reversed the Court of

[56] *Silverstreak, Inc. v. Wash. State Dep't of Labor and Indus*., 159 Wash. 2d 868, 883, 154 P.3d 891 (2007).
[57] *Id.* at 884.
[58] *Harrison v. PPG Industries, Inc.*, 446 U.S. 578, 589 (1980).
[59] *Ali v. Federal Bureau of Prisons*, 552 U.S. 214 (2008).
[60] *Id.* at 226.
[61] *Id.* (citing 495 U.S. 641, 646 (1990)) (internal quotations omitted).

Appeals for doing in *Silverstreak*. Sapphire tries to argue WAC 480-93-180(3)'s use of "examples" to demonstrate the requirement that the manual be "written in detail sufficient for a person with adequate training to perform the tasks described" should in fact limit the content of the manual itself. Such an argument is counter to Washington caselaw as the Supreme Court has stated that such an interpretation is improper. The requirement is that the manual be written in sufficient detail, and provides examples of actions that should have "step-by-step" instructions. The rule itself even uses "for example" in an effort to illustrate the Commission's requirements, and the level of detail it expects regulated companies to provide.

42 Sapphire goes on to make the argument that the rule does not require inclusion of "plans or procedures for equipment or contractors that are unrelated to the operation and maintenance of a pipeline."[62] Sapphire's argument begins from an incorrect starting point: the LNG site was absolutely related to the operation and maintenance of the pipeline in this case as it (a) supplied the gas to the line, (b) supplied the pressure to the line, and (c) was being operated so the line could undergo required maintenance-related pressure testing. Sapphire's argument that plans and procedures for a mobile LNG site that is connected to a high-pressure pipeline is not a "relevant item[] . . .specific to the pipeline"[63] lacks legs, as the accident caused an interruption in service due to the loss of pressure and supply of gas to the pipeline, in addition to causing human injury and death. Operators must have manuals sufficient to cover all their operations and maintenance activities. Plans and procedures should not be excluded over concerns of manual length.[64]

[62] Sapphire Motion to Dismiss, at 8 ¶ 9.
[63] *Id.*
[64] Sapphire makes the argument at 8 ¶ 9 of its motion that requiring inclusion of mobile LNG policies and procedures would lead to the absurd result of a "boundless manual that is needlessly extensive." Manuals

b. The intent of WAC 480-93-180(1) is to create a comprehensive manual that encapsulates state and federal requirements.

43 Sapphire further claims that that WAC 480-93-180 should be limited by the presumption against surplusage. The Commission should reject that argument because it ignores the intent of the legislature in creating a comprehensive pipeline safety program and the Commission rules in ensuring that policies and procedures cover the entire pipeline system and all operations.

44 Tribunals should avoid interpretations that produce absurd results, and the "spirit or purpose of an enactment should prevail over the express but inept wording."[65] Washington courts have long held that "surplusage in a statute may be ignored in order to subserve legislative intent."[66] While generally "no part of a statute should be deemed inoperative or superfluous" courts in Washington do so when "the result of obvious mistake or error."[67] For example, in *Washington Water Power*, the Court ignored the phrase "under Title 62A RCW" because it only caused confusion, and that the phrase was "mere surplusage, perhaps unintentionally carried over as a stylistic parallel."[68] While courts do not "casually choose to neglect" language propounded in rules or a statute, they do so when the understanding of a statute or rule requires them to do so.[69]

45 While Sapphire is correct that parts 191 and 192 are incorporated into WAC 480-93-999, an interpretation that concludes the manual need only cover the requirements of part 191, 192, and two other provisions of the WAC leaves out substantial regulatory

need to be complete and thorough. "Needless" is an inappropriate characterization given the manual is intended to prevent injuries and fatalities like those that occurred in this case.

[65] *Clark v. Payne*, 61 Wash. App. 189, 193-4, 810 P.2d 931 (1991).
[66] *Wash. Water Power Co. v. Graybar Elec. Co.*, 112 Wash.2d 847, 859, 774 P.2d 1199 (1989).
[67] *In re Detention of Strand*, 167 Wash.2d 180, 189, 217 P.3d 1159 (2009).
[68] *Wash. Water Power Co.*, 112 Wash.2d at 859.
[69] *Id.*

requirements (basically every other federal requirement and third-party guideline the Commission incorporated into WAC 480-93-999). Such an interpretation is the sort of absurd result that Washington courts have repeatedly held should be avoided.[70] While possibly poor phrasing, the intent is clear that the reference to WAC 480-93 in WAC 480-93-180(1) was meant to be a catch-all for every regulatory requirement that a gas pipeline company would need to meet in the course of its operations. Reading the rule to conclude that the mention of parts 191 and 192 limits the applicability of "and WAC 480-93" violates the spirit of the Commission's regulation, and would have the effect of making the larger regulatory purpose inoperative. Moreover, Sapphire's argument seeks to add an exclusion where there isn't one because its argument essentially calls for the insertion of language the Commission did not include (e.g. "except WAC 480-93-999" after "191, 192 and chapter 480-93 WAC").

46 Sapphire's reliance on *Applied Indus. Materials Corp. v. Melton* is misplaced. The Court of Appeals in that case declined to read a statute in the context of a prior holding as the Legislature's adherence to a prior version of the statute in its amendments "was a conscious departure from the reasoning" in the prior holding.[71] Those facts are distinctly different from the present situation: no court or tribunal has previously held the rule to mean one thing, and the Commission has since amended the rule to depart from that reading.

47 WAC 480-93-180(1) is intended to require gas pipeline companies incorporate plans and procedures that cover all state and federal regulatory requirements. Any other interpretation would lead to an absurd result that contradicts the intent of the legislature

[70] *See, e.g., Wash. Water Power Co*, 112 Wash.2d at 859; *Clark*, 61 Wash. App. at 193-4; and *In re Detention of Strand*, 167 Wash.2d 180, 189, 217 P.3d 1159 (2009).
[71] *Applied Indus. Materials Corp. v. Melton*, 74 Wash. App. 73, 79-80, 872 P.2d 87 (1994).

in designing a comprehensive pipeline safety regulatory scheme. Such a reading would also be out of step with the Commission's purpose in upholding its federal certification, because it would mean that companies need not include in their manuals procedures for addressing all federal requirements, just those in parts 191 and 192 (WAC 480-93-999 incorporates numerous other federal requirements beyond 191 and 192).

48 The Commission should deny Sapphire's motion to dismiss the Section 180 Claims. Sapphire's arguments about the applicability of WAC 480-93-180 are unsupported, ignore the intent of the Legislature in promulgating state pipeline safety statutes, the intent of the Commission in promulgating its rules, and caselaw regarding statutory interpretation. Sapphire has failed to show how the complaint does not allege facts, when taken as true, sustain the complaint.[72]

C. A Typo in a Cross-Reference Does not Excuse Noncompliance With NFPA 59A 2001 Section 11.4.5.2(c)

49 Sapphire argues that the Pipeline and Hazardous Materials Safety Administration's (PHMSA) interpretation letter of PHMSA's own regulation creates a later-created regulation that Staff is attempting to apply retroactively, that the letter is an interpretive statement and not enforceable, and that equitable estoppel requires dismissal. These are all incorrect arguments the Commission should ignore. The letter merely confirms a scrivener's error, which courts have historically corrected and enforced, and Staff is not seeking to enforce the letter but rather the rule. Additionally, this situation is similar to how the Washington Supreme Court applies its decisions to interpretations of statutes.

[72] *Kinney*, 159 Wn.2d at 842 (quoting *Tenore v. AT&T Wireless Servs.*, 136 Wn.2d 322, 330, 962 P.2d 104 (1998)).

50 It is a long-held practice that courts may disregard scrivener's errors to "render the true meaning of [a] statute."[73] The same is applied when Congress clearly "made a simple drafting error . . .when it forgot to change all cross-references[.]"[74] For example, in *Appalachian Power Co. v. E.P.A.*, the court corrected a cross-reference error in the Clean Air Act when the Amendments of 1990 caused a renumbering of sections, including the mislabeling of § 110(a)(2)(E)(i) to § 110(a)(2)(E)(ii).[75] While the Court noted it is not the job of the judiciary to "correct" statutory text so it better serves the statute, it may do so when the error "clearly do[es] not reflect the intent of Congress."[76] The Court reasoned that "[a]lthough the cross-references as written 'point[] in one direction, all other evidence from the statute points the other way[.]"[77]

51 Additionally, in Washington State, courts lend deference to an agency's interpretation of its own regulations.[78] In *Port of Seattle* the Court found it must give weight to the Department of Ecology's interpretation of relevant water quality laws, including the federal Clean Water Act, over the Pollution Control Hearings Board's interpretation, because the "legislature entrusted Ecology with administration of water quality standards."[79] Indeed, the Washington Supreme Court gives "great deference to an agency's interpretation of its own properly promulgated regulations" absent those regulations exceeding statutory authority or legislative intent.[80]

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[73] *U.S. Nat'l Bank of Oregon v. Indep. Ins. Agents of America, Inc.*, 508 U.S. 439, 462 (1993) (quoting *Hammock v. Loan and Trust Co.*, 105 U.S. 77, 84-5 (1882) (internal quotations omitted).
[74] *U.S. v. Coatoam*, 245 F.3d 553, 558 (6th Cir. 2001).
[75] *Appalachian Power Co. v. E.P.A.*, 249 F.3d 1032, 1040 (2001).
[76] *Id.* at 1041.
[77] *Id.* (quoting *U.S. Nat'l Bank of Oregon*, 508 U.S. at 455).
[78] *Port of Seattle v. Pollution Control Hearings Bd.*, 151 Wash.2d 568, 593, 90 P.3d 659 (2004).
[79] *Id.* at 593-4.
[80] *Silverstreak*, 159 Wash. 2d at 884-5.

52 The court has also long held that "once a statute has been construed by the highest court of the State, that construction operates as if it were originally written into it."[81] The court is not applying a retroactive effect but rather once a statute has been construed, that construction applies since the date of the statute's enactment.[82]

53 In this case, the cross-reference errors in the NFPA are scrivener's errors, and caselaw supports reading the intended cross-reference section and giving deference to PHMSA's interpretation of its own properly promulgated regulation.

1. The errors in the NFPA are obvious scrivener's errors and any reasonable operator knows or should know the applicable requirements.

54 Sapphire first claims that application of section 11.4.5.2(c) violates notions of fairness and due process because it is a "post hoc" interpretation. Sapphire is incorrect because this is not an interpretation of vague or confusing language, it is the correction of a typo in a cross-reference for a requirement that did not change between versions.

55 A close look at the applicable regulation, referenced material, and rulemaking history, clearly shows that the cross-reference to section 11.4.5.2(b), instead of the correct section, 11.4.5.2(c), was clearly an erroneous drafting error. In 2004, the Department of Transportation updated its regulations to incorporate the 2001 version of the National Fire Protection Association (NFPA) standard 59A, rather than the 1996 version.[83] The main purpose of this update was to include updates found in the 2001 edition concerning facility siting, design, and construction, with most commenters

[81] *Johnson v. Morris*, 87 Wash.2d 922, 927-8, 557 P.2d 1299 (1976).
[82] *Id.* (while *Johnson* concerned a Supreme Court interpretation of a statute, specifically a criminal law age-related statute and its impacts on another statute, the analysis is relevant here as it concerns interpretation of laws that already exist, not laws created after the fact.).
[83] Pipeline Safety: Liquified Natural Gas Facilities; Clarifying and Updating Safety Standards, 69 Fed. Reg. 11,330 (proposed on March 10, 2004) (to be codified at 49 C.F.R. pt 193).

remarking on the retroactive nature of the fire protection provisions.[84] In fact, the sections relevant to this complaint are identical in the NFPA's 1996 and 2001 versions, absent a spelling error and renumbered sections. The 1996 version provides:

> Unless required for transfer operations, truck vehicle engines shall be shut off. Brakes shall be set and wheels chocked prior to connecting for unloading or loading. The engine shall not be started until the truck vehicle has been disconnected and any released vapors have dissipated.[85]

The 2001 version illustrates the exact same language, with one spelling error:

> Unless required for transfer operations, truck vehicle engines shall be shut off. Brakes shall be set and wheels checked prior to connecting for unloading or loading. The engine shall not be started until the truck vehicle has been disconnected and any released vapors have dissipated.[86]

The only differences between these two sections are that they were renumbered (section 8-7.2.3 in 1996 became section 11.4.5.2(c) in 2001) and the 2001 version contains a spelling error ("checked" vs "chocked"). The federal regulation itself, 49 C.F.R. § 193.2019, requires mobile LNG sites meet the applicable requirements of NFPA 59A, section 2.3.4.[87] Section 2.3.4 did not substantively change between the 1996 and 2001 versions, the only changes were incorporating the renumbered cross-references.[88]

56 This is a scrivener's error akin to the cross-reference error in *Appalachian Power*. Just as in that case, amendments made to the 2001 edition, the impacts of which were a renumbering of the sections, resulted in a section being misnumbered in a cross reference. None of the requirements in this section changed, the only thing that changed

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[84] *Id.*
[85] National Fire Protection Association, NFPA 59A Standard for the Production, Storage, and Handling of Liquefied Natural Gas (LNG) at 59A-27, 8-7.2.3 (1996).
[86] 49 C.F.R. § 193.2013(g)(1) incorporating by reference: National Fire Protection Association, NFPA 59A Standard for the Production, Storage, and Handling of Liquefied Natural Gas (LNG) at 59A-37, 11.4.5.2(c) (2001).
[87] 49 C.F.R. § 193.2019(a).
[88] *Id.* (stating that mobile LNG used for peakshaving or service maintenance during system repair or alteration, or other short term application need not meet the requirements of part 193 if it complies with applicable sections of NFPA-59A-2001).

were the cross references. To interpret otherwise would lead to an absurd result, especially because the erroneously referenced section concerns rail operations and LNG is not permitted to be transferred via rail.[89] It is clear there were several scrivener's errors made during the update to the 2001 edition. For example, section 2.3.4 erroneously references 11.4.5(b) which does not exist at all; it was meant to reference 11.4.5.1(b). Here, a plain reading of the NFPA would lead to an absurd result, especially when the agency that promulgated this regulation has already spoken on the issue, stating that this was a typographical (scrivener's) error.[90] The erroneous cross-reference does not demonstrate the Department of Transportation's intent when it incorporated the updated NFPA 59A 2001, and the Commission should not read the scrivener's error literally. Nothing in section 2.3.4 changed, as such it would be counter to the Department of Transportation's intent to conclude that the cross reference that speaks to a new provision (when the identical old provision is immediately below it) was the section that was meant to be referenced.

57 Additionally, finding that an agency's interpretation of its own regulation is similar to retroactively applying a new rule would make enforcement of any rule incredibly difficult as it would require all interpretations be made in advance of the

[89] In 2020, PHMSA attempted to issue a rule that would permit bulk transportation of LNG in rail tank cars. Hazardous Materials: Liquified Natural Gas by Rail, 85 Fed. Reg. 44,994 (proposed on Jul. 9, 2020) (to be codified at 49 C.F.R. pts 172, 173, 174, 179, and 180). The rule was subsequently challenged by a number of states, including Washington. *Sierra Club v. U.S. Dep't of Transp.*, 125 F.4th 1170, 1175 (D.C. Cir. 2025). Due to legal challenges and change of administration, "rail transport of LNG under the Rule has never occurred." *Id.* at 1179. PHMSA suspended the rule in 2023. Hazardous Materials: Suspension of HMR Amendments Authorizing Transportation of Liquified Natural Gas by Rail, 88 Fed. Reg. 60,356 (proposed Sept. 1, 2023) (to be codified at 49 C.F.R. pt. 192). In 2025, the Court of Appeals for the D.C. Circuit found the 2020 PHMSA rule to be arbitrary and capricious on the basis of PHMSA not adequately considering the safety risks and failing to prepare an environmental impact statement. *Sierra Club*, 125 F.4th at 1175. The rule was vacated, and the matter remanded for further proceedings. *Id.*

[90] U.S. DEP'T OF TRANSP., PIPELINE AND HAZARDOUS MATERIALS SAFETY ADMIN., Interpretation Letter PI-23-0018 (2024).

violations and the agency's interpretating them to see the future to know which interpretations need to be made in advance of the violations occurring.

2. Staff is not alleging that Cascade/Sapphire violated an interpretive letter, Staff is alleging Cascade/Sapphire violated a properly promulgated rule.

58 Sapphire alleges that Staff impermissibly alleges that Cascade violated an interpretive statement. The Commission should dismiss this argument as Staff does not assert that Cascade violated the interpretive statement, but rather that Cascade violated the PHMSA rule. The reference to the letter is to correct a typo in the materials included in the rule.

59 Sapphire relies on *Washington Education Association v. Washington State Public Disclosure Commission*, in which the Supreme Court upheld the guidelines propounded by the State Public Disclosure Commission (PDC) finding them to be advisory aids in interpreting the laws concerning use of public facilities in campaigns.[91] Under Washington law, interpretive statements are a "written expression of the opinion of an agency . . . as to the meaning of a statute or other provision of law, of a court decision, or of an agency order."[92] However, a "person cannot violate an interpretive statement" since it is not a promulgated rule.[93]

60 Sapphire's reliance on this case is flawed and the Commission should ignore it as Staff is not alleging that Cascade/Sapphire violated the PHMSA letter, Staff is alleging that Cascade (through Sapphire) violated the properly promulgated rule, which contains a typo. Staff's cause of action draws its basis from the NFPA. The reference to the PHMSA

[91] *Wash. Educ. Assoc. v. Wash. State Pub. Disclosure Comm'n*, 150 Wash.2d 612, 622, 80 P.3d 608 (2003).
[92] RCW 34.05.010(8).
[93] *Wash. Educ. Assoc.*, 150 Wash.2d at 619.

letter is to provide clarity and demonstrate the agency's interpretation of its own properly promulgated rule.

61 Sapphire's argument misses this nuance and seeks to overgeneralize. The Commission should deny Sapphire's motion to dismiss the second and eighth causes of action.

3. Equitable estoppel does not apply to situations where operators failed to adequately understand their own obligations.

62 Sapphire argues that the Commission should dismiss the second and eighth causes of action based on equitable estoppel. The Commission should reject this argument as no inconsistent statements were made, Sapphire failed to do its own due diligence, there is nothing manifestly unjust about applying the proper law to Cascade, and estoppel would hinder government functions.

63 There are three components for equitable estoppel: (1) a party's own admission, statement, or act that is inconsistent with its later claim, (2) another party relied on this first party's admission, statement, or act, and (3) injury would result to the relying party, if the first party is permitted to repudiate the prior admission, statement, or act.[94] To establish an injury, "a party must establish that he or she justifiably relied to his or her detriment on the words or conduct of another."[95] It is generally disfavored to apply equitable estoppel to the government:

> As a general rule the doctrine of estoppel will not be applied against the public, the United States government, or the state governments, where the application of that doctrine would encroach upon the sovereignty of the government and interfere with the proper discharge of governmental duties, and with the functioning of the government, or curtail the exercise of its police power; or where the application of the doctrine would frustrate the purpose of the laws of the United States or thwart its public policy[.][96]

[94] *Kramarevcky v. Dep't of Soc. and Health Services*, 122 Wash.2d 738, 743, 863 P.2d 535 (1993).
[95] *Id.* at 737.
[96] *Finch v. Matthews*, 74 Wash.2d 161, 169-70, 443 P.2d 833 (1968) (internal citations omitted).

In such cases where a party is seeking equitable estoppel against the government, that part must show that (1) estoppel is necessary to prevent manifest injustice, and (2) exercise of government functions are not impaired as a result.[97]

64 First, PHMSA did not promulgate a regulation that rescinded the obligation to follow the requirements laid out in NFPA section 11.4.5.2(c). The only action it took was to update the version of the NFPA used to add updated requirements found in other sections. The section referencing section 11.4.5.2(c), as noted above, did not change during the course of this update other than for sections to be renumbered. Second, Sapphire's reliance on what is obviously a misprint, in conducting its operations, is the fault of Sapphire. Additionally, it appears Sapphire was at least partially aware of the requirements in section 11.4.5.2(c), since it had a procedure in place for chocking wheels that was not followed on September 22, 2023.[98] Third, Sapphire cannot reasonably assert that it justifiably relied on a typo, when the typo is quite obvious to see and the language of the regulation was the exact same between the versions. Fourth, there is nothing manifestly unjust about applying a regulation, especially when courts are settled on how typos in cross references are dealt with. Fifth, government function would be impaired as this would set a precedent at the Commission that any typo excuses noncompliance with the law. Laws are written by people, and human error happens; excusing noncompliance by rotely applying typos is a slippery slope that should be avoided.

65 Sapphire's arguments are flawed and indeed beg the question of why it was not aware of this regulation since it advertised itself to customers as an expert[99] in mobile

[97] *Kramarevcky*, 122 Wash.2d at 743.
[98] Staff Complaint, at 12 ¶ 79.
[99] Cascade Answer, at 4 ¶ 13.

LNG work. The errors in the NFPA are so obvious that Sapphire should have noticed the discrepancy. The PHMSA interpretation letter is not a change to the unambiguous language, it is the correction of a mis-typed cross reference. As noted above, the language in all the sections subject to this discussion did not substantively change between the 1996 and 2001 versions, with the exception of one obvious spelling error. To say that application of the proper section violates "fundamental notions of fairness and due process"[100] is incorrect, because in reality, Sapphire should have known better. Sapphire's argument regarding PHMSA's use of the 2001 edition for the past twenty years is confusing, as Staff is not arguing that a different version should be applied in the present case. Staff is very aware that the 2001 version is the version applicable to regulation of part 193 activities, and it is not arguing otherwise. Cascade, Sapphire, and indeed any entity subject to requirements of part 193 and the NFPA cannot argue they did not have fair notice of a requirement that did not change. Staff is not making an argument for retroactive compliance of a regulation. Staff is merely making an argument for application of the intent of the regulation, rather than rotely following a typo.

66 The Commission should deny Sapphire's motion to dismiss the second and eighth causes of action, as the NFPA provision at issue clearly applies, and would not result in unfairness or a violation of due process. This is a simple scrivener's error and caselaw demonstrates that courts are decided on how to deal with such typos.

[100] Sapphire Motion to Dismiss, at 11 ¶ 15.

D. The rulemaking history associated with 49 C.F.R. § 193.2019(b) clearly demonstrates that the regulation applies to mobile LNG sites, even if they elect to follow the NFPA.

67 Sapphire's argument that the notice requirement[101] under 49 C.F.R. § 193.2019(b) is waived if an entity elects to follow the NFPA is incorrect as it clearly ignores the agency's intent in implementing the regulation. The Department of Transportation clearly intended the notice requirement to be followed in addition to the NFPA when it restructured part 193 regulations as applied to mobile LNG. Applying the rules of statutory construction,[102] the Department of Transportation's intent is clear.

68 In the adoption of the part 193 regulations, specifically those in section 193.2019, the Department of Transportation discussed the exact notice issue at bar.[103] The Department noted that the NFPA did not include the requirement that the operator give the State agency having jurisdiction two weeks' notice because "it was beyond the NFPA's scope"; however, "RSPA[104] is adding that requirement in this direct final rule."[105] In its discussion on implementing the final rule, the RSPA stated:

> The safety guidelines and the restrictions for LNG mobile facilities in applicable sections of NFPA 59A (1996 edition) provide an adequate level of assurance of public safety. The safety guidelines are identically to those required as conditions for waiver except for the requirement shows as follows: 'the State agency having jurisdiction over pipeline safety in the State in which the portable LNG equipment is to be located must be provided with a location description for the installation at least 2 weeks in advance, including to the extent practical, the details of siting, leakage containment or control, firefighting equipment, and methods employed to restrict public access, except that in the case of emergency where such notice is not possible, as much advance notice as possible must be provided.' Because

[101] This argument targets Staff's first cause of action in its complaint where Staff alleges that Cascade failed to notify the Commission of the use of portable LNG equipment as required under 49 C.F.R. § 193.2019(b).
[102] *See supra* section (B)(1).
[103] Department of Transportation Research and Special Programs Administration Liquified Natural Gas Regulations – Miscellaneous Amendments, 62 Fed. Reg. 41,311 (Aug. 1, 1997).
[104] RSPA stands for Research and Special Programs Administration which is part of the Department of Transportation.
[105] Department of Transportation Research and Special Programs Administration Liquified Natural Gas Regulations – Miscellaneous Amendments, 62 Fed. Reg. 41,311 (Aug. 1, 1997).

> RPSA has determined that all 16 alternative requirements have now been addressed and for the other reasons stated above, we do not see any necessity for issuing a proposed rule. Therefore, RSPA is incorporating by reference NFPA 59A for mobile and temporary LNG facilities in this direct final rule. Operators will no longer need a waiver from Part 193 requirements for mobile facilities if they comply with the applicable sections of NFPA 59A *and the requirement stated above*.[106]

The reformation of part 193 and creation of section 193.2019 was intended to reduce workload by creating an alternative for mobile facilities so they would not have to seek waiver from part 193 requirements that were not feasible for mobile facilities.[107] However, the rulemaking history is clear that the notice requirement was meant to be preserved.

69 The basic rules of statutory construction illustrate that the Department of Transportation intended for the notice requirement to apply to mobile LNG facilities, even if those facilities were opting to follow the NFPA. Sapphire's superficial review of the regulation fails to take into consideration the intent of the Department of Transportation. A mobile LNG facility is required to follow all of section 193.2019, which includes the requirement to follow the NFPA (subsection a) and the requirement to notify the state (subsection b). Section 193.2019 is quite literally titled "Mobile and temporary LNG facilities"; it would be an erroneous conclusion for a mobile LNG facility to not have to follow the entire subsection under which it is regulated. The only reasonable interpretation of "part" in "need not meet the requirements of this part" is part 193 requirements outside of section 193.2019.

[106] Department of Transportation Research and Special Programs Administration Liquified Natural Gas Regulations – Miscellaneous Amendments, 62 Fed. Reg. 41,312 (Aug. 1, 1997) (emphasis added).
[107] Department of Transportation Research and Special Programs Administration Liquified Natural Gas Regulations – Miscellaneous Amendments, 62 Fed. Reg. 41,311 (Aug. 1, 1997).

70 The Commission should deny Sapphire's motion to dismiss the first cause of action since it is evident that operators of mobile LNG facilities are required to notify the state entity with jurisdiction prior to operation.

E. Continuing Violations are Permitted Under Washington Law, and Appropriate Here to Carry Out the Intent of the Notice Regulation

71 Sapphire argues in the alternative that if the notice provision under 49 C.F.R. § 193.2019(b) does apply, it does not support continuing violations. Washington state and federal laws contradict this position as both explicitly allow for continuing violations. Additionally, the penalty structure and proper deterrence would not function properly if the notice statute were not subject to continuing violations.

72 Under Washington law "[e]very violation of any such order, direction or requirement of this title shall be a separate and distinct offense, and in case of a continuing violation every day's continuance thereof shall be and be deemed to be a separate and distinct offense.[108] Additionally, a gas company that violates a pipeline safety regulation, Commission order, a rule adopted by reference, or a provision of chapter 81.88 RCW is "subject to a civil penalty not to exceed the amounts in 49 C.F.R. § 190.223."[109] Under the federal regulations, any person who violates the federal pipeline laws is "subject to an administrative civil penalty not to exceed $272,926 for each violation for each day the violation continues, with a maximum administrative civil penalty not to exceed $2,729,245 for any related series of violations."[110] The courts

[108] RCW 81.04.380.
[109] WAC 480-93-223.
[110] 49 C.F.R. § 190.223(a) (note that these are the updated amounts for the current penalties, the penalties plead in this case are based on the amounts that were in the regulations at the time of Cascade's violations, September 2023).

interpret statutes on the presumption that the "legislature did not intend absurd results" and avoid such results where possible.[111]

73 Failure to provide notice is a violation that continues until notice is provided. Under the theory that it is a one-time violation would result in distorted outcomes because an entity could notify the state one day late, five days late, or never (as was the case here and at several of the sites that Cascade operated) and the penalty would be the same. This would be an absurd outcome because there would be no deterrent for companies to promptly notify the Commission if they are late. Sapphire's argument of when notice is triggered is irrelevant, because here, notice was never provided. If notice is never provided, the violation continues until notice is provided. Additionally, both state law and the federal regulations plainly provide for penalties for continuing violations, such as in this case. In fact, the state title that contains chapter 81.88 RCW (the chapter that provides the regulatory authority for gas and hazardous liquid pipelines) expressly states that each day a violation occurs, it is a separate and distinct violation. Hypothetically, if Cascade had notified the Commission, and assuming it was only three days late, those three days count as three different violations. Just because Cascade had hypothetically failed to tell the Commission two weeks in advance, that does not mean it was not violating the law one week and six days in advance or one week and five days in advance.

74 The Commission should deny Sapphire's motion to dismiss, and its request to limit the violations under the first cause of action to one violation. State and federal law allow for continuing violations, and a continuing violation is necessary to appropriately

[111] *State v. Weatherwax*, 188 Wash.2d 139, 148, 392 P.3d 1054 (2017).

deter companies from delaying notifying the Commission when they are conducting potential hazardous operations on pipelines.

VI. CONCLUSION

75 Sapphire's motion to dismiss should be denied. It does not meet the threshold required for dismissal as a matter of law and it has failed to demonstrate that any of the statutory and regulatory provisions challenged do not apply to Cascade. State and federal laws and regulations and legislative history demonstrate the intent of application of these laws and clearly demonstrate they apply to the present matter. Sapphire's motion lacks in authority to support its claims and relies on shaky, at best, interpretations of the law. Thus, Staff respectfully requests that the Commission deny Sapphire's motion to dismiss.

DATED this 10th day of July 2025.

Respectfully submitted,

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