

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

1 This Settlement Agreement (“Agreement”) is entered into by the parties to this proceeding for the purpose of resolving all issues raised in this docket. This Agreement is subject to approval by the Washington Utilities and Transportation Commission (“Commission”) and it is not effective for any purpose until such approval.

I. PARTIES

2 The parties to this Agreement are the City of Enumclaw (“Enumclaw” or “the City”) and the Staff of the Commission (“Staff”). Enumclaw and Staff are referred to individually in this Agreement as “Party,” and collectively as “the Parties.” Enumclaw and Staff are the only parties of record in this docket.

II. BACKGROUND

3 Commencing in June 2008, in this docket, Staff conducted a natural gas standard safety inspection of Enumclaw’s pipeline facilities (“2008 Inspection”). Enumclaw owns and operates a natural gas pipeline facility serving residences and businesses located within the City limits and certain parts of unincorporated King County. Staff’s 2008 Inspection identified probable violations of Commission rules and federal statutes. Staff held an exit interview discussing the results of the inspection with Enumclaw at its conclusion on October 15, 2008, and documented its findings in detail in a Final 2008 Probable Violation Staff Report, dated January 22, 2009 (“Probable Violation Report”).

4 Following the 2008 Inspection, on February 10, 2009, the Commission issued a Complaint and Notice of Prehearing Conference in this docket. The Complaint alleged violations of 18 federal and state gas safety rules. Part of the Complaint, Attachment 1, was the Probable Violation Report.

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- 5 On March 11, 2009, Commission Administrative Law Judge Patricia Clark convened a prehearing conference to set a schedule for hearing. There were no intervenors. At the prehearing conference, the Parties expressed their intention to engage in settlement discussions, and requested the services of a mediator in that effort. A settlement conference on April 30, 2009, was scheduled. A settlement judge was retained.
- 6 Staff and Enumclaw subsequently engaged in settlement discussions, which included the settlement conference on April 30, 2009, to negotiate a mutually acceptable resolution. This Agreement is the result of those discussions.
- 7 On May 4, 2009, the Parties filed a letter in this docket informing the Commission that they had reached a settlement, and requesting that the procedural schedule be suspended. The Commission granted the request.
- 8 In the time that has transpired since the 2008 Inspection, Enumclaw has responded by investigating, conducting reviews of existing documentation, reviewing its policies and procedures and taking corrective action. The Parties acknowledge that Enumclaw has corrected certain violations and continues to work to correct others identified in the 2008 Inspection, in a good faith effort to ensure compliance with the gas system safety regulations. In addition, Enumclaw is already making progress to meet the specific requirements outlined in this Agreement.

III. AGREEMENT

- 9 The Parties have reached agreement on the issues raised in this docket and wish to present their agreement for the Commission's consideration and approval. The Parties therefore adopt the following Settlement Agreement, which the Parties enter into voluntarily, to resolve the matters in dispute between them and to expedite the orderly disposition of this proceeding. The following is divided into two parts: General Conditions (Part A), and Specific Conditions (Part B). Specific Conditions are further subdivided into numbered and labeled Sections. The Parties agree as follows:

A. General Conditions

- 10 **Admission.** To achieve a settlement, Enumclaw concurs that there were violations of state and federal rules regarding the inspection, monitoring, and maintenance of its pipeline facilities and its records, as listed in Exhibit 1, attached.
- 11 **Penalties.** Enumclaw agrees to suspended penalties as set forth in this section. Enumclaw agrees to pay the amounts as specified below, if it fails to comply with the terms of the Agreement. Further, Enumclaw acknowledges that if Staff determines there is noncompliance, Staff will seek an order of the Commission for immediate imposition of suspended penalties, as follows:

- \$1,000,000 suspended penalty, imposed in full upon failure to comply with section B-1 of this Agreement.

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- \$500,000 suspended penalty, imposed in full upon failure to comply with section B-2 of this Agreement.
- \$50,000 suspended penalty, imposed in full upon failure to comply with section B-3 of this Agreement.
- \$75,000 suspended penalty, imposed in full upon failure to comply with section B-4 of this Agreement.
- \$150,000 suspended penalty, imposed in full upon failure to comply with section B-5 of this Agreement.
- \$50,000 suspended penalty, imposed in full upon failure to comply with section B-7 of this Agreement.
- \$50,000 suspended penalty, imposed in full upon failure to comply with section B-8 of this Agreement.
- \$25,000 suspended penalty, Imposed in full upon failure to comply with section B-9 of this Agreement.
- \$25,000 suspended penalty, imposed in full upon failure to comply with section B-10 of this Agreement.
- \$25,000 suspended penalty, imposed in full upon failure to comply with section B-12 of this Agreement.
- \$25,000 suspended penalty, imposed in full upon failure to comply with section B-13 of this Agreement.

12 Enumclaw agrees that within 30 calendar days of the date this Agreement is approved by the Commission, Enumclaw will develop and submit to Staff, a plan to complete all conditions or remediation set forth in this Agreement in the required timeframes. Once Staff reviews and accepts the plan, Enumclaw will immediately implement the plan.

13 Enumclaw agrees that, in order to have accurate records going forward, all conditions or remediation set forth in this Agreement will start from and be based on existing documentation. Enumclaw agrees that if there is no existing documentation, the only manner to proceed is to start by confirming what exists by excavation or other means to accurately determine the condition of Enumclaw's system and documentation. Enumclaw will follow all regulations on documentation from the date of this Agreement forward. Staff will review existing documentation and all records created to determine the adequacy of the method(s) used.

14 **Monitoring Compliance.** The Parties agree to quarterly meetings to ensure that the condition/remediation progress is adequate to meet the required timeframes for every condition or remediation. In conjunction, Enumclaw agrees to provide Staff with quarterly written progress reports of its compliance with the Agreement. Quarterly meetings will start three months following Commission approval of this Agreement. Meetings will be calendared by Commission Staff.

15 Staff intends to continually monitor Enumclaw's fulfillment of the conditions in this Agreement. Staff will acknowledge compliance with completed sections by issuing written correspondence noting details of the abatement. After Staff issues the correspondence

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noting completed sections, any suspended penalty for each section shall become void. After all timeframes set forth in this Agreement have passed, if necessary, Staff may conduct a special final compliance audit of this Agreement to resolve any remaining sections.

- 16 Enumclaw agrees to notify Staff in writing if it believes that circumstances exist that prevent it from completing any agreed-upon condition by the required deadline, at least 30 days in advance of the deadline. Enumclaw may petition the Commission to amend the Agreement to reflect a mutually agreed-upon revised deadline for completing the condition. Any amendment to the Agreement filed by either Party must be approved by the Commission in advance, and will not be effective until the Commission approves it.
- 17 Staff acknowledges that Enumclaw must apply for and receive permit approvals from regulatory agencies other than the Commission in order to comply with certain conditions in this Agreement. Therefore, Staff further acknowledges that Enumclaw's ability to comply with the timeframes set forth in this Agreement could be impacted by such agencies.
- 18 Enumclaw's Operations and Maintenance Manual (herein after referred to as "O & M Manual") procedures shall be updated to comply with state and federal regulations. The manual will include operation, maintenance, inspection, and emergency response activities that is specific to Enumclaw's gas pipeline system.
- 19 **Training and Implementation of O & M Manual Revisions.** Enumclaw agrees to provide employee training for every O & M Manual revision or update it makes, prior to the revision or update being implemented, including any revisions made pursuant to this Agreement. The training will be technical training on the implementation of the O & M policies and procedures. Every revision will have an implementation date. The Parties agree that the revision will not be considered implemented until this training on the revision has been completed. Enumclaw will document all such training.

B. Specific Conditions

1. Unprotected Services

- 20 Within 24 months of the date the Commission approves this Agreement, Enumclaw will replace the 94 remaining unprotected services of the 141 unprotected services originally identified in the 2008 Inspection that are listed in the Probable Violation Report on pages 10-12.
- 21 Within 36 months of the date the Commission approves this Agreement, Enumclaw will replace the 47 services (of the 141 unprotected services originally identified in the 2008 Inspection) that Enumclaw repaired by applying cathodic protection after the 2008 Inspection.
- 22 Within three months of the date the Commission approves this Agreement, Enumclaw will develop a written program to assess the condition of the protective coating on the 47

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services identified in paragraph 21, above. This effort will be undertaken in a collaborative effort with Staff.

- 23 Within 12 months of the date the Commission approves this Agreement, Enumclaw will execute and complete the protective coating assessment of the 47 services addressed in paragraphs 21-22, above. Enumclaw will notify Staff prior to performing any protective coating assessment. Services identified as having coating defects will be categorized as a top priority for immediate replacement.
- 24 Enumclaw will conduct leak survey twice-annually of each of the services identified in paragraphs 20-21, above, until they are replaced.
- 25 Within 12 months of the date the Commission approves this Agreement, Enumclaw agrees to conduct a cathodic protection survey as described in Enumclaw's O & M Manual, 2-O Sec 5. Enumclaw will replace all services identified as not meeting 49 CFR 192 Appendix D criteria, if unable to demonstrate through historical documentation that cathodic protection had been previously applied.
- 26 Within six months of the date the Commission approves this Agreement, Enumclaw will: (a) develop a method to document and record the location of insulated fittings where a cathodic protection test point or bond have been installed; and (b) write an appropriate procedure and include it in the O & M Manual. Staff must review and approve this O & M procedure prior to implementation.

2. Ninety Day Remediation

- 27 Starting immediately, Enumclaw will complete remedial action within 90 days to correct any cathodic protection deficiencies known, indicated by any test, survey or inspection, in accordance with WAC 480-93-110(2), except with respect to the services specifically identified in paragraphs 20-21, above. Staff acknowledges that Enumclaw has provided documentation demonstrating that this requirement is being met.
- 28 Starting immediately, Enumclaw will document all cathodic protection remedial action on the appropriate form(s). Enumclaw understands that remediation may require the use of several O & M procedures, and will complete all associated documentation.

3. Inspection of Pressure Limiting and Regulating Stations

- 29 Within 12 months of the date the Commission approves this Agreement, Enumclaw will revise and maintain its O & M Manual to designate regulators servicing mains with two or more services (excluding branch services) as regulating stations requiring maintenance under 49 CFR § 192.739. Enumclaw will either: (a) implement the above; or (b) provide a plan to implement other state and federal rules and statutes applicable to the design and maintenance of regulating stations, including the installation of distribution line valves as required by 49 CFR § 192.181. The plan will have reasonable timelines for completion agreeable to Staff.

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30 Enumclaw agrees to complete an Enumclaw Station Inspection Report form during annual inspections as required by 49 CFR 192.739, at least once annually at intervals not exceeding 15 months.

4. Casings

31 Within 12 months of the date the Commission approves this Agreement, Enumclaw will identify every known casing installed on its gas system. Casings will be added to Enumclaw's MAPCON maintenance system for annual inspection for electrical isolation. Enumclaw has reviewed construction records and performed direct assessments to substantiate past construction practices of installing bare steel casings.

32 Within 12 months of the date the Commission approves this Agreement, Enumclaw shall remove or replace any casings identified as being constructed of coated steel or plastic materials. Enumclaw will evaluate the steel line pipe inserted inside the coated steel or plastic casing to assess its condition and document the results of the evaluation. With the exception of immediate threats identified affecting pipeline integrity, any remaining deficiencies noted shall be repaired within 90 days of discovery.

33 Within 18 months of the date the Commission approves this Agreement, Enumclaw will update all maps with correct casing information as required by WAC 480-93-018 (5), which states: "Each gas pipeline company must update its records within six months of when it completes any construction activity and make such records available to appropriate company operations personnel."

5. Capacity and Design Requirements

34 Enumclaw's MAOPs (Maximum Allowable Operating Pressures) on piping installed prior to 1978 were established by waiver, by Commission order in docket UG-960732. Within 24 months of the date the Commission approves this Agreement, Enumclaw will either: (a) conduct a pressure test of each service or main installed downstream of a farm tap regulator to increase the MAOP; or (b) replace existing pressure limiting devices (fracture discs) with those which meet capacity requirements in accordance with 49 CFR § 192.201, as referenced through 49 CFR § 192.619(b) and 49 CFR § 192.195(a). Alternatively, records of pressure tests performed prior to 2008 indicating test pressure, duration, persons performing test, and date, shall be accepted in lieu of performing the pressure tests or replacing the pressure limiting devices. Enumclaw will complete a review of farm tap regulating stations requiring the test to establish a 60 psig (pounds per square inch gage) MAOP. Enumclaw will provide the Commission with any project plans to eliminate these facilities in lieu of performing modifications or tests.

6. Records to Demonstrate Compliance

35 Within 12 months of the date the Commission approves this Agreement, Enumclaw will
maintain a list of forms and databases, including examples where applicable, that specify
what records Enumclaw maintains. Enumclaw agrees to make this list available to the
Commission upon request, in accordance with WAC 480-93-018 (3). Enumclaw has
purchased and begun the process of implementing a new maintenance management and
document storage system.

7. Updating Records

36 Starting immediately, in accordance with 480-93-018(5), Enumclaw agrees to update its
records within six months of when it completes any construction activity and ensure records
are available to appropriate personnel.

37 Starting immediately, when Enumclaw locates, exposes, or knows of exposed gas facilities,
Enumclaw will take appropriate measurements and update its maps accordingly.

38 Starting immediately, Enumclaw will conduct gas leak surveys with updated maps. Gas
Leak Survey maps will note the revision dates on each map.

39 Within 90 days of the date the Commission approves this Agreement, Enumclaw will
correct the missing map information noted in Probable Violation 15 of the Probable
Violation Report in this docket.

8. Gas Leak Surveys

40 Starting immediately, Enumclaw agrees to conduct leak surveys over all mains and services,
as required by WAC 480-93-188(1).

41 Within three months of the date the Commission approves this Agreement, Enumclaw
agrees to revise its O & M Manual to include a procedure to leak survey facilities located in
areas with accessibility issues. Staff acknowledges Enumclaw has completed a procedure for
locations with accessibility issues.

42 Within six months of the date the Commission approves this Agreement, Enumclaw will
write detailed procedures for conducting self-audits and include the procedures in the O &
M Manual. These procedures will include any method(s) Enumclaw will use to evaluate the
information.

9. Pressure Test Documentation

43 Within three months of the date the Commission approves this Agreement, Enumclaw's
construction forms used for documenting pressure tests will include at a minimum the
information required in WAC 480-93-170(7)(a)-(h).

10. Corrosion Control Records

44 Within four months of the date the Commission approves this Agreement, Enumclaw will update records or maps showing the locations of all cathodically protected piping, cathodic protection facilities, galvanic anodes, and neighboring structures bonded to the cathodic protection system, in accordance with 49 CFR § 192.491.

11. Gas Leak Evaluation and Records

45 Enumclaw agrees that, starting immediately, its Gas Leak Records will, at a minimum, contain the requirements of WAC 480-93-187(1)-(13). Enumclaw has demonstrated to Staff a new form containing the items listed in WAC 480-93-187(1)-(13) has been prepared and is being used.

46 Enumclaw agrees that, starting immediately, its Gas Leak and Repair forms will contain adequate space to accommodate a drawing of the leak site that accurately describes in sufficient detail, the magnitude and location of a leak. Staff acknowledges Enumclaw has demonstrated that its new Gas Leak and Repair form now has adequate space to accurately describe in detail the magnitude and location of a leak, and has provided training on the use of the revised form.

47 Immediately, Enumclaw will amend its Gas Leak and Repair form to ensure the form notes the 30 day follow-up requirement, in accordance with WAC 480-93-186(3). Staff acknowledges this item has been completed.

12. Atmospheric Corrosion Inspection

48 Within three months of date the Commission approves this Agreement, Enumclaw will provide documentation to Staff demonstrating that it has met the 36-month requirement for conducting a 100% atmospheric corrosion inspection of its system for the period ending December 31, 2008. As of January 1, 2009, Enumclaw has begun its next 3-year atmospheric corrosion inspection.

49 Enumclaw will remediate deficiencies noted during its inspection in accordance with the timeframes established under Enumclaw's revised procedures and, at a minimum, in compliance with applicable state and federal rules.

13. Plans and Procedures

50 Within six months of the date the Commission approves this Agreement, Enumclaw will write detailed procedures for every O & M item listed in Probable Violation 1 in the 2008 Probable Violation Report in this docket. These procedures will include Enumclaw-specific procedures and Enumclaw's practices.

- 51 Within 12 months of the date the Commission approves this Agreement, Enumclaw agrees to review the entire O & M Manual to ensure it includes detailed Enumclaw-specific procedures in accordance with WAC 480-93-180.
- 52 Within six months of the date the Commission approves this Agreement, Enumclaw will ensure the O & M Manual includes a detailed procedure for crews to communicate to management, abnormal operating conditions and/or unrelated work they find while performing other duties. For example, if an employee is conducting a leak survey inspection and notices atmospheric corrosion on a riser, the employee would fill out a form (work order) and turn it in; it would be reviewed, remediation scheduled when appropriate, completed and documented.
- 53 Within three months of the date the Commission approves this Agreement, Enumclaw will review and update its Atmospheric Corrosion Program. The program will be detailed and include Enumclaw-specific procedures and processes, i.e., accessibility issues. Enumclaw will provide training and implement the new updates.
- 54 Within six months of the date the Commission approves this Agreement, Enumclaw agrees to develop a gas safety Quality Control/Quality Assurance (“QC/QA”) plan for all employees performing gas safety-related activities; the QC/QA plans will govern not only Enumclaw employees but also employees of third party contractors.

14. Damage Prevention Statistics Report

- 55 Enumclaw will revise its O & M Manual to include the definition of “damage” set forth in RCW 19.122.020. Enumclaw will provide and document training and implement the new definition. Staff acknowledges that this item has been completed.
- 56 Enumclaw will establish and include in the O & M Manual, guidelines for filling out all Commission and federal reports. Staff acknowledges that this item has been completed.
- 57 Enumclaw will join and participate in the State of Washington’s Virtual DIRT (Damage Information Reporting Tool) portal when it becomes operational. DIRT is a web application for the collection and reporting of underground damage information.

15. Exposed Pipe Cathodic Protection Reads

- 58 Within three months of the date the Commission approves this Agreement, Enumclaw will review its O & M Manual to ensure there is sufficient detail and Enumclaw-specific procedures addressing the measuring of cathodic protection levels anytime a pipeline facility is exposed and the protective coating removed, in accordance with WAC 480-93-110(8). Enumclaw will maintain a record of each test reading.
- 59 Within six months of the date the Commission approves this Agreement, Enumclaw will review its current Operator Qualification (“OQ”) program to ensure qualifications criteria are adequate. If any change in the O & M Manual affects the OQ plan, the OQ plan will be

updated and employees and contractors reevaluated and recertified. Staff acknowledges Enumclaw performed the review of the OQ program after the 2008 inspection.

16. Foreign Leaks

- 60 Within six months of the date the Commission approves this Agreement, Enumclaw will revise its O & M Manual to include a procedure for handling foreign leaks, including documentation.

IV. GENERAL PROVISIONS

- 61 **Settlement of all issues.** The Parties agree that this Agreement is a settlement of all contested issues between them in this proceeding. The Parties understand that this Agreement is not binding unless and until accepted by the Commission.
- 62 **Effective date.** This Agreement is effective on the date the Commission enters its order approving this Agreement in its entirety, except the provision of this Agreement entitled “Cooperation in processing this Agreement before the Commission” is effective on the latest date of signature on this Agreement. If the Commission’s order does not approve this Agreement in its entirety, this Agreement is not effective, except the provision of this Agreement entitled “Procedures in the event the Commission rejects this Agreement or any portion thereof” shall then apply.
- 63 **Cooperation in processing this Agreement before the Commission.** The Parties agree to cooperate in submitting this Agreement promptly to the Commission for acceptance. The Parties agree to support adoption of this Agreement in proceedings before the Commission, if any, through whatever procedures the Commission may require, including testimony, exhibits, and briefing. Each Party agrees that none of its agents, employees, consultants, or attorneys will engage in advocacy contrary to the Commission’s adoption of this Agreement.
- 64 **Publicity.** Each Party retains the right to provide information to the public about this Agreement, after this Agreement is filed with the Commission. Enumclaw and Staff each agree to provide the other Party a copy of each press release or similar communication (hereafter “public communication”) that the Party intends to make regarding this Agreement, two business days in advance of publication. The Party receiving such public communication may review the public communication and make a reasonable request to the issuing Party to change the text of such public communication. Notwithstanding anything else in this paragraph, the Parties agree that each such public communication shall include a statement to the effect that this Agreement is subject to Commission approval and the Staff’s signing of this Agreement and/or Staff’s recommendation that the Commission approve this Agreement is not binding on the Commission itself.

- 65 **Claims by or against other entities.** Nothing in this Agreement shall limit or bar Enumclaw's ability to pursue legal remedies against any other entity. Nothing in this Agreement shall or bar any other entity from pursuing legal remedies against Enumclaw, or Enumclaw's ability to assert defenses to such claims.
- 66 **Admissibility of negotiations; construction of this Agreement.** The Parties have entered into this Agreement to avoid further expense, inconvenience, uncertainty, and delay. The Parties recognize that this Agreement represents a compromise of the Parties' positions. As such, conduct, statements, and documents disclosed during negotiations of this Agreement shall not be admissible as evidence in this or any other proceeding, except in any proceeding to enforce the terms of this Agreement or any Commission order fully adopting those terms. This Agreement shall not be construed against either Party because it was a drafter of this Agreement.
- 67 **Integrated Agreement.** The Parties have negotiated this Agreement as an integrated document. This Agreement supersedes all prior oral and written agreements on issues addressed herein, if any. Accordingly, the Parties recommend that the Commission adopt this Agreement in its entirety.
- 68 **Manner of execution.** The Parties may execute this Agreement in counterparts and as executed shall constitute one agreement. Copies sent by facsimile are as effective as original documents.
- 69 **Compliance with this Agreement.** The Parties shall take all actions necessary as appropriate to efficiently carry out this Agreement, once it is approved. Enumclaw understands that lack of compliance with this Agreement once it is approved by the Commission can subject Enumclaw to enforcement action by the Commission, and possible penalties and/or other remedies.
- 70 **Procedures in the event the Commission rejects this Agreement or any portion thereof.** In the event the Commission rejects all or any portion of this Agreement, each Party reserves the right to withdraw from this Agreement by written notice to the other Party and the Commission. This written notice must be served within 10 calendar days of the Commission order rejecting part or all of this Agreement. In such event, neither Party will be bound or prejudiced by the terms of this Agreement, and either Party shall be entitled to seek reconsideration of the order. The Parties will also jointly request that the Commission reconvene a pre-hearing conference to establish a procedural schedule to complete this docket.

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION

CITY OF ENUMCLAW

ROBERT M. MCKENNA
Attorney General

SETTLEMENT AGREEMENT

MICHAEL A. FASSIO
Assistant Attorney General
Counsel for Commission Staff

Date signed:

JOHN G. WISE
Mayor

Date signed:

Approved as to form:

MICHAEL J. REYNOLDS
City Attorney
Counsel for City of Enumclaw

Date signed: