

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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

1 **Synopsis:** *The Commission approves and adopts the Amended Complaint and the Amended Settlement Agreement as reasonable resolutions of the Commission’s complaint against Basin Frozen Foods for violations of pipeline safety rules.*

2 **PROCEEDINGS:** The Washington Utilities and Transportation Commission’s Pipeline Safety Staff (Commission Staff) conducted a Natural Gas Pipeline Inspection and an Anti-Drug and Alcohol Misuse Prevention Program Inspection of Basin Frozen Foods (Basin) on April 15 – 17, 2002. On August 28, 2002, the Commission issued a Complaint alleging that Basin violated Commission gas pipeline safety rules. On November 25, 2002, the Commission Staff and Basin filed a Settlement Agreement that proposed to resolve all issues framed by the Complaint. On February 21, 2003, the Washington Utilities and Transportation Commission (Commission) rejected that settlement (First Agreement).

3 **PARTIES:** John W. Hough, attorney, Olympia, represents respondent Basin Frozen Foods, Inc. Donald T. Trotter, Senior Counsel, Olympia, represents the pipeline safety staff of the Washington Utilities and Transportation Commission.

4 **SETTLEMENT AGREEMENT AND AMENDMENTS:** On March 20, 2003, Commission Staff and Basin filed an Amended Settlement Agreement (Amended Agreement) entered into for the purpose of resolving all issues raised in these dockets. The Amended Agreement was filed in response to the Commission’s

Second Supplemental Order, which rejected a prior proposed agreement and identified specific Commission concerns. The parties intended that filing to address those concerns. On April 7, 2003, Commission Staff filed with the Commission a Motion to Amend Complaint and to Allow Respondent to Confirm Its Acceptance of the Amended Settlement Agreement. The Motion asks the Commission to amend the Complaint in this docket to delete references to “RCW 80.28.212,” and replace those references with “RCW 81.04.387.” In addition the motion asks the Commission to delete references in the complaint to Basin as a “gas company.”

- 5 An April 10, 2003, notice informed Basin of deadlines for answering the amended complaint. The notice permitted Basin to indicate no later than April 25, 2003, whether it wishes to continue as signatory to the Amended Settlement Agreement filed in this docket on March 20, 2003. If Basin did not agree, Commission Staff asked the Commission to set this matter for a prehearing conference. Staff also asked the Commission to hold in abeyance its action on the Amended Settlement until this matter is resolved. On April 25, 2003, Basin informed the Commission that it has no objection to Commission Staff’s Motion to Amend Complaint, and also indicating that Basin desires to remain a signatory to the Amended Settlement Agreement filed March 20, 2003.

I. BACKGROUND

A. Procedural History

- 6 Docket Nos. UG-020230 and UG-020232; involve a Commission complaint against Basin of violations of state pipeline safety regulations resulting from Commission Staff’s inspections of Basin’s natural gas facilities. In Docket No. UG-020230 Commission Staff conducted a Standard Natural Gas Transmission Pipeline Inspection of Basin’s pipeline. In Docket No. UG-020232, Commission Staff conducted an Anti-Drug and Misuse Prevention Program Inspection. Both inspections took place on April 15—17, 2002, and included a review of operations, maintenance, procedures, records, and pipeline facilities.
- 7 The Office of Pipeline Safety, U.S. Department of Transportation, has accepted the Commission’s certification to participate in the federal pipeline safety program. Through this program, the Commission is responsible for inspection and compliance of intrastate natural gas pipelines in the state of Washington

according to federal regulations contained in 49 CFR Parts 191, 192, and 199. See, RCW 80.28.205.

- 8 On August 28, 2002, the Commission, on its own motion, filed a complaint against Basin in Docket Nos. UG-020230 and UG-020232. The complaint alleges that Basin failed to comply with and violated state pipeline safety regulations.
- 9 The Commission convened a prehearing conference in this docket at Olympia, Washington on October 24, 2002, before Administrative Law Judge C. Robert Wallis.¹ The parties filed a Settlement Agreement (First Agreement) on November 25, 2002. A settlement presentation hearing was convened in Olympia, Washington before Chairwoman Marilyn Showalter, Commissioner Richard Hemstad, Commissioner Patrick J. Oshie, and Administrative Law Judge Marjorie Schaer. The Agreement was presented by a panel of witnesses including Kevin Weber, President of Basin; Doug Kilpatrick, Director of the Pipeline Safety Program, policy witness for Commission Staff, and Patricia Johnson, pipeline safety engineer, field inspector for Commission Staff.
- 10 On February 21, 2003, the Commission entered its *Second Supplemental Order; Order Rejecting Settlement Agreement*. Given the seriousness of the alleged violations contained in the complaint, and given that some of these asserted violations were repeat violations and/or involved threats to public safety, the Commission determined that the First Agreement was unsatisfactory because it did not contain any admission of the alleged violations. The parties were allowed to file a new settlement agreement within four weeks, or to seek another prehearing conference.
- 11 The parties filed an Amended Settlement Agreement on March 20, 2003. This Agreement is subject to approval by the Commission and is not effective before such approval. The agreement of the Parties consists of the “Amended Settlement Agreement” and Appendices A, B and C attached collectively to it, and is called the “Amended Agreement” herein.
- 12 Appendix A is a letter from Cascade Natural Gas Company (“Cascade”) regarding its status as the pipeline operator. Appendix B is a copy of the

¹ Judge Wallis presided because of the temporary unavailability of Judge Schaer, who presided at remaining portions of the hearing.

Violation Report issued to Basin Frozen Foods, Inc. Appendix C contains copies of relevant federal rules that have been adopted by reference by the Commission, and are referred to in the Agreement.

- 13 On April 7, 2003, Commission Staff filed with the Commission a Motion to Amend Complaint and to Allow Respondent to Confirm Its Acceptance of the Amended Settlement Agreement. The Motion asks the Commission to amend the Complaint in this docket to delete references to “RCW 80.28.212,” and replace those references with “RCW 81.04.387.” In addition the motion asks the Commission to delete references in the complaint to Basin as a “gas company.”

B. Factual History

- 14 Basin owns a six-inch natural gas pipeline, approximately 3.8 miles long, with a maximum operating pressure of 250 pounds per square inch gauge (psig). This pipeline, which includes all related pipeline facilities owned by Basin, serves Basin’s potato processing facility located in or near the city of Warden in Grant County, Washington.
- 15 In Docket No. UG-020230, Commission Staff conducted a Standard Natural Gas Transmission Pipeline Inspection of Basin’s pipeline. In Docket No. UG-020232, Staff conducted a Standard Drug and Alcohol Inspection. Both inspections took place on April 15—17, 2002, and included a review of operations, maintenance, procedures, records, and pipeline facilities. As a result of these inspections, Commission Staff issued a Violation Report (Appendix B) listing allegations that Basin violated WAC 480-93-018, WAC 480-93-082, WAC 480-93-120, WAC 480-93-124, WAC 480-93-180, WAC 480-93-184, WAC 480-93-200 and WAC 480-03-010, some sections of which adopt and incorporate Title 49 of the Code of Federal Regulations (“CFR”), Parts 191, 192, and 199. Specific violations of portions of 49 CFR 191, 192, and 199 were asserted.
- 16 On August 28, 2002, the Commission, based on the Violation Report (Appendix B) issued its Complaint in Docket Nos. UG-020230 and UG-020232. The Complaint summarized the asserted violations in the following areas:
- Not establishing an adequate emergency plan;
 - Not establishing the basis for and then maintaining safe pipeline operating pressures;

- Not maintaining a qualified anti-drug and alcohol misuse program;
- Not establishing and maintaining a third-party damage prevention plan; and
- Not having a qualified individual to oversee all aspects of Basin's natural gas transportation operations.

II. TERMS OF SETTLEMENT AGREEMENT

- 17 Basin and Commission Staff filed the First Agreement on November 26, 2002. They filed an Amended Agreement on March 20, 2003.
- 18 The only changes made to the First Agreement are the addition of language in Paragraph 31, in which Basin concurs with the findings of rule violations outlined in Appendix B, and additional language in Paragraph 12 adding provisions relating to protections in place if Cascade Natural Gas ceases to be the operator of Basin's pipeline. Minor edits are also made in ¶¶ 1, 8, 10, 38 and 39 to bring dates and other details current.
- 19 The first item of the proposed settlement references an executed contract between Basin and Cascade under which Cascade agreed to Operate Basin's Pipeline. A letter from Cascade to Basin memorializing the contract is attached as Appendix A to the Amended Agreement. The two parties signed the contract on September 10, 2002. As of September 11, 2002, Cascade took current responsibility for operating and maintaining Basin's pipeline.
- 20 The subsequent items of the Amended Agreement address each of the violations in turn, and reflect Commission Staff's conclusion that Basin is currently in compliance, based on Commission Staff's reviews of either Basin's own documentation and practices, or Cascade's documentation and practices.
- 21 Among other conditions, Basin agrees to pay the Commission penalties totaling \$40,000.00. This amount is due and payable in eleven equal installment payments of \$3,333.33, and one installment payment of \$3,333.34. The payments are to begin May 15, 2003. Payments are due by the 15th of each successive month. Final payment will be made on or before April 15, 2004.

III. DISCUSSION AND DECISION

- 22 Basin's concurrence with the facts alleged the Commission Staff report provides the basis for the Commission to find, and it does find, that Basin violated various rules as set forth in the Commission complaint.
- 23 In reviewing proposed settlement of a complaint, the Commission will evaluate whether the proposal is proportional to the gravity of the apparent violations, and whether it is fair, and whether the proposal sends appropriate signals to the asserted violator and to the broader community. It is appropriate to consider many factors. These include the seriousness of the violation(s); the circumstances of the violation, including whether the violation is intentional; the cooperation of the respondent and its willingness and achievements in correcting violations; the frequency of violations, and cooperation in investigations; whether or not the violation has been corrected; and the possibility of recurrence.
- 24 In the First Agreement, there was no admission of a violation, so the Commission was put in the awkward position of evaluating the appropriateness of a significant penalty amount (and other conditions) when there was no underlying foundation for imposing the significant penalty.
- 25 With our finding of violations, the Settlement is reasonable, and our adoption of it will serve the public interest in safe pipelines. The penalty of \$40,000 and the other conditions of the settlement, are fair and send appropriate messages to the broader community.
- 26 The Commission will adopt the Amended Agreement as proposed by the parties.

IV. FINDINGS OF FACT

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

- 28 (1) The Washington Utilities and Transportation Commission is an agency of the State of Washington, vested by statute with authority to regulate natural gas pipeline safety under Chapter 80.28 RCW.
- 29 (2) The Office of Pipeline Safety, U.S. Department of Transportation, has accepted the Commission's certification to participate in the federal pipeline safety program. Through this program, the Commission is responsible for inspection and compliance of intrastate natural gas pipelines in the state of Washington according to federal regulations contained in 49 CFR Parts 191, 192, and 199.
- 30 (3) Respondent Basin is an owner of a natural gas transmission intrastate pipeline subject to regulation by the Commission pursuant to RCW 80.28.210. Up to the time of entering a contract with Cascade Natural Gas on September 10, 2002, Basin was a natural gas pipeline operator.
- 31 (4) On August 28, 2002, the Commission initiated a complaint against Basin alleging violations.
- 32 (5) Commission Staff and Basin filed a proposed Amended Settlement Agreement on March 20, 2003.
- 33 (6) Basin committed the violations as set forth in the complaint.
- 34 (7) Adoption of the Amended Settlement Agreement would serve the public interest.

V. CONCLUSIONS OF LAW

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

- 36 (1) The Washington Utilities and Transportation Commission is an agency of the State of Washington, and has jurisdiction over the subject matter of, and parties to this proceeding. *Title 80 RCW.*
- 37 (2) Basin is subject to the Commission's safety rules applicable to natural gas pipelines. *RCW 80.28.210.*
- 38 (3) The Commission is responsible for inspection and compliance of intrastate natural gas pipelines in the state of Washington according to federal regulations contained in 49 CFR Parts 191, 192, and 199.
- 39 (4) Basin violated Commission pipeline safety rules contained in WAC 480-93-018, WAC 480-93-082, WAC 480-93-120, WAC 480-93-124, WAC 480-93-180, WAC 480-93-184, WAC 480-93-200 and WAC 480-93-010, some sections of which adopt and incorporate Title 49 of the Code of Federal Regulations ("CFR"), Parts 191, 192, and 199. Basin violated portions of 49 CFR 191, 192, and 199.
- 40 (5) The Amended Settlement agreement filed by the Commission Staff and Basin on March 20, 2003, which is attached to this *Third Supplemental Order* as Appendix A and incorporated by reference as if set forth in full in the body of this order, should be approved and adopted by the Commission as a reasonable resolution of the issues raised by the Commission Staff's inspections of Basin's pipeline facilities. *WAC 480-09-465; WAC 480-09-466.*
- 41 (6) The Commission should retain jurisdiction over the subject matters and the parties to this proceeding to effectuate the terms of this order. *Title 80 RCW.*
- 42 (7) The proposed settlement should be approved.

VI. ORDER

- 43 (1) THE COMMISSION ORDERS That the Amended Settlement Agreement filed by the parties on March 20, 2003, is approved and adopted.

- 44 (2) THE COMMISSION Grants Commission Staff's Motion to Amend the Complaint.
- 45 (3) THE COMMISSION Grants Respondent's Affirmation of its acceptance of the amended settlement.
- 46 (4) THE COMMISSION FURTHER ORDERS That it retains jurisdiction over the subject matter and the parties to effectuate the provisions of this *Third Supplemental Order*.

Dated at Olympia, Washington, and effective this 14th day of May, 2003.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

MARILYN SHOWALTER, Chairwoman

RICHARD HEMSTAD, Commissioner

PATRICK J. OSHIE, Commissioner