BEFORE THE
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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

I. INTRODUCTION

1 Cascade Natural Gas Corporation ("Cascade" or the "Company") submits this response in support of the motion to dismiss filed by Sapphire Gas Solutions LLC ("Sapphire").

2 Cascade supports Sapphire's motion to dismiss the ten causes of action brought by the Washington Utilities and Transportation ("Commission") in its Complaint filed in Docket PG-230800. Cascade hired Sapphire as its contractor with knowledge and expertise in the use of mobile liquefied natural gas ("LNG") to supply gas to Cascade's customers during validation of maximum allowable operating pressure ("MAOP"). As such, Cascade appreciates Sapphire's interpretation of federal laws and regulations pertaining to mobile and temporary LNG used for gas supply.

3 Cascade respectfully requests the Commission grant Sapphire's motion and dismiss the Complaint.

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II. FACTUAL BACKGROUND

4 The events that gave rise to this Complaint occurred on September 22, 2023 in Toppenish, Washington, and involved employees of Cascade's consultant and contractor, Sapphire, as well as Sapphire's contractor, Southern Pines Trucking ("Southern Pines"). On that day, an accident at Sapphire's mobile LNG system resulted in a fire that caused injuries and a fatality.[1]

5 Cascade retained Sapphire as a consultant and a contractor for the temporary use of mobile LNG. Cascade does not regularly operate mobile LNG systems.[2] Sapphire was providing LNG for gas supply during Cascade's required validation of MAOP of its gas pipeline.[3]

6 Under its obligations as Cascade's consultant and contractor, Sapphire provided mobile LNG to a site in Toppenish, Washington. Sapphire's subcontractors, including Southern Pines, transported LNG to the site.[4] The LNG equipment at Toppenish was in-service and operational starting around August 14, 2023.[5]

7 The LNG facility was used to supply gas to Cascade's distribution system for ultimate provision to customers during a period of service interruption.[6] As such, the mobile LNG is regulated separately as gas supply under 49 C.F.R. § 193 and is not a part of Cascade's gas pipeline infrastructure. As Sapphire notes, the mobile temporary LNG facility was "separately regulated and separately operated" from Cascade's gas pipeline system.[7]

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[1] Complaint at ¶¶ 2, 8.
[2] Cascade's Answer at ¶ 108.
[3] Complaint at ¶¶ 6-8.
[4] Complaint at ¶ 9.
[5] Complaint at ¶10.
[6] Complaint at ¶ 6-8.
[7] Sapphire's Motion to Dismiss at 6.

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III. ARGUMENT

A. All causes of action relying on WAC 480-93-180 must be dismissed because they are inapplicable to the mobile temporary LNG facility operated by Sapphire.

8 The seven causes of action based on WAC 480-93-180 (claims 3, 4, 5, 6, 7, 9, and 10) are not applicable because Sapphire's mobile LNG facility was providing gas supply and was not a part of Cascade's gas pipeline system. Mobile temporary LNG facilities are governed by 49 C.F.R. § 193, while WAC 480-93-180 incorporates only the requirements of 49 C.F.R. §§ 191 and 192 relating to gas pipelines.

9 Federal regulations distinguish between gas pipelines and LNG facilities that supply gas to pipelines. A mobile LNG supply is not part of the operation of a gas pipeline and is not subject to gas pipeline regulations. Cascade concurs with Sapphire's interpretation: WAC 480-93-180 explicitly references the requirements of 49 C.F.R. §§ 191 and 192, without referencing the requirements of § 193, which governs facilities like the facility in Toppenish. Thus, the requirements of WAC 480-93-180 do not apply.

10 Because the requirements of 49 C.F.R. §§ 191 and 192 do not apply to the operation of the mobile LNG facility, Cascade cannot be penalized for failing to include Sapphire's plans and procedures relating to gas supply via mobile LNG in its manual, or for failing to follow plans and procedures that are not incorporated into WAC 480-93-180(1).[8] Cascade does not incorporate the policies and procedures of other gas suppliers into its operating procedures.

11 While WAC 480-93-999 adopts the requirements of Part 193 by reference, the inclusion of Part 193 in a broad and general list of incorporated requirements under WAC 480-93-999 does not imply its inclusion into the text of WAC 480-93-180, which explicitly includes Parts 191 and 192 without mention of Part 193.

[8] Causes of action 3, 4, 5, 6, 7, 9, and 10.

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12 Cascade also agrees with Sapphire that the text of WAC 480-93-180, which requires the gas pipeline plan and procedure manual to include "any plans or procedures used by a gas pipeline company's associated contractors," implicitly means any contractors associated with the "operation, maintenance, inspection, and emergency response activities" required for the "gas pipeline company's system." WAC 480-93-180(1). This does not necessarily include every contractor hired by Cascade and does not include contractors supplying gas to Cascade's distribution system. For example, if Cascade were required to file a gas pipeline manual that also included agreements with contractors for vegetation management, traffic control, or resurfacing/concrete contracts, this would be burdensome and clearly unintended by the regulation. Through its references, WAC 480-93-180(1) clearly seeks to include information relevant to meeting the requirements of 49 C.F.R. §§ 191 and 192, which does not include gas supply through the use of mobile LNG.

13 Since Cascade had no obligation under WAC 480-93-180(1) to include Sapphire's plans and procedures with its gas pipeline plan and procedure manual, these causes of action must be dismissed.

14 Finally, even if the Commission finds that Cascade should have incorporated Sapphire's plans and procedures with its manual,[9] the provisions of WAC 480-93-180(2) still fail to support the Complaint. Under the regulations, the manual describing the operations of the gas pipeline system must be "filed with the commission forty-five days prior to the operation of any gas pipeline" and thereafter, "[e]ach gas pipeline company must file revisions to the manual with the commission annually." WAC 480-93-180(2). This provision does not require gas pipeline companies to file an updated manual every time a new service or source of gas is added to the

[9] *See* Sixth cause of action.

existing, operating pipeline. Notably, Staff does not allege that Cascade failed to file revisions to its manual annually.

15 Thus, the Sixth Cause of Action, which penalizes Cascade for failing to update its manual prior to the required annual update, should be dismissed.

B. Both causes of action relying on Section 11.4.5.2(c) of NFPA-59A-2001 must be dismissed because that regulation is not applicable.

16 Cascade joins with Sapphire in its argument that PHMSA's after-the-fact inclusion of Section 11.4.5.2(c) into Section 2.3.4 of NFPA-59A-2001 violates the requirements of fairness and due process. Both the Second and Eighth Cause of Action, which rely on the applicability of Section 11.4.5.2(c) must be dismissed.

17 Section 2.3.4 of NFPA-59A-2001 defines exactly what requirements must be followed for "[t]he temporary use of LNG portable equipment […] for service maintenance during gas systems repair[.]" Those requirements list both Section 11.4.5(b) and 11.4.5.2(b), but they do not reference Section 11.4.5.2(c).

18 Section 11.4.5.2(c) was not known to be a requirement incorporated by Section 2.3.4. PHMSA's 2024 Interpretation Document,[10] which stated that *both* of the Section 11.4.5 references in Section 2.3.4 should be understood to be typos, did not give Cascade or Sapphire fair notice of the applicability of these regulations. There is nothing present in Section 2.3.4 to suggest that Section 11.4.5.2(c) was required for mobile LNG facilities.

19 Section 11.4.5.2(b) *and* (c) appear under the section heading "**11.4 – Marine Shipping and Receiving**." These are requirements that are *not* clearly applicable to LNG facilities that are not connected to marine terminals or ships, except for their adoption through Section 2.3.4.

[10] PHMSA, Interpretation Response #PI-23-0018 (Mar. 27, 2024).

20 As Sapphire rightfully notes, Washington law does not allow regulations to be enforced retroactively without fair notice. Cascade joins with Sapphire's arguments that the PHMSA is an interpretative statement that cannot be enforced without formal administrative rulemaking and that a claim on this basis must be dismissed because of equitable estoppel. *Silverstreak Inc. v. Wash. Dep't of Lab. & Indus*., 159 Wash. 2d 868, 887 (2007).

21 Because the applicability of Section 11.4.5.2(c) was only established in an after-the-fact interpretative document, the causes of action based on that regulation must be dismissed.

C. The first cause of action must be dismissed or limited to a single, noncontinuing violation.

22 Cascade joins with Sapphire's argument that the first cause of action must be dismissed because neither party was required to give notice to the Commission of the installation of LNG equipment.

23 49 C.F.R. § 193.2019(b) requires notice to be given to the State agency with jurisdiction over pipeline safety for the installation of portable LNG equipment. But 49 C.F.R. § 193.2019(a) states that mobile and temporary facilities "need not meet the requirements of this part" if the facilities were in compliance with the applicable sections of NFPA-59A-2001.

24 In the alternative, Cascade also agrees with Sapphire's interpretation that the notice requirement of 49 C.F.R. § 193.2019(b) triggers a single violation that is required by the "installation" of portable LNG equipment. The Complaint alleges that the ongoing operation of the LNG facility constituted 54 distinct and separate violations, but the installation of the LNG equipment occurred one time, and if the notice requirement was applicable, it was violated one time when Cascade and Sapphire did not inform the Commission of its installation two weeks prior. The imposition of a penalty for 54 independent violations is not supported by the statute.

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IV. CONCLUSION

25 For these reasons, Cascade supports Sapphire's motion and requests that the Commission dismiss the ten causes of action listed in the Complaint.

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Respectfully Submitted,

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