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1 BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION
2 COMMISSION
3 WASHINGTON UTILITIES AND)
 TRANSPORTATION COMMISSION,)
4)
 Complainant,)
5)
 vs.)
6) DOCKET NO. PG-080097
)
CITY OF ENUMCLAW)
7)
)
 Respondent.)
8 -----

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10 An evidentiary hearing in the above matter
11 was held on July 20, 2009, at 10:05 a.m., at 1300 South
12 Evergreen Park Drive Southwest, Olympia, Washington,
13 before Administrative Law Judge PATRICIA CLARK.

14
15 The parties were present as follows:

16 WASHINGTON UTILITIES AND TRANSPORTATION
17 COMMISSION, by MICHAEL A. FASSIO, Assistant Attorney
18 General, 1400 South Evergreen Park Drive Southwest,
 Post Office Box 40128, Olympia, Washington 98504;
 telephone, (360) 664-1192.

19 CITY OF ENUMCLAW, by MICHAEL J. REYNOLDS,
20 City Attorney, 329 East Main Street, Auburn, Washington
 98002; telephone, (253) 939-4556.

21
22
23
24 Kathryn T. Wilson, CCR
25 Court Reporter

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1 P R O C E E D I N G S

2 JUDGE CLARK: Good morning. It's
3 approximately 10:05 a.m., July 20th, 2009, in the
4 Commission's hearing room in Olympia, Washington. This
5 is the time and the place set for hearing in the matter
6 of Washington Utilities and Transportation Commission,
7 Complainant, versus the City of Enumclaw, Respondent,
8 given Docket PG-080097, Patricia Clark, administrative
9 law judge for the Commission presiding.

10 This matter came before the Commission on
11 February 10th, 2009, when the Commission issued a
12 complaint against the City of Enumclaw for alleged
13 violations of the Commission's statutes and rules
14 governing pipeline construction, maintenance, and
15 safety. The Complaint alleged a minimum of 651
16 violations, which, if proven, could result in eleven
17 million dollars in penalties.

18 On June 25th, 2009, the parties filed a
19 settlement agreement resolving all disputed issues. On
20 July 10th, 2009, the Commission issued a notice
21 scheduling an evidentiary hearing in this matter for
22 this date and time and place. The purpose of this
23 morning's hearing is to obtain additional information
24 on the City's operation of its pipeline and the terms
25 and conditions of the Settlement Agreement.

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1 At this time, I will take appearances on
2 behalf of the parties. Appearing on behalf of the
3 Commission staff?

4 MR. FASSIO: Michael Fassio, assistant
5 attorney general on behalf of Commission staff.

6 JUDGE CLARK: Mr. Fassio having already
7 entered a complete appearance, it's not necessary to do
8 anything other than your name, and appearing on behalf
9 of the City of Enumclaw?

10 MR. REYNOLDS: Michael J. Reynolds on behalf
11 of the City of Enumclaw.

12 JUDGE CLARK: The first question I have is to
13 see if there are any preliminary matters before we
14 impanel the witnesses and swear them in. Do either of
15 the parties have a preliminary matter for me to
16 address?

17 MR. FASSIO: No.

18 MR. REYNOLDS: No.

19 JUDGE CLARK: At this time, I'm going to
20 swear in those individuals who will be serving as
21 witnesses this morning, and we had an off-record
22 discussion this morning that indicated that perhaps a
23 total of six individuals would be available to answer
24 any inquiry, so I'm going to swear in all six
25 individuals as a group, and if there are individuals

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1 who are sworn in who are not seated at a microphone who
2 need to answer a question, any of the witnesses who are
3 impaneled can defer to one of those individuals and we
4 will call them forward to respond to the question.

5 If you have a potential of being a witness
6 this morning, this is an appropriate time for you to
7 rise and raise your right hand, please.

8

9 Whereupon,

10 THE WITNESSES,

11 having been first duly sworn, were called as witnesses
12 herein and were examined and testified as follows:

13

14 JUDGE CLARK: I'm going to turn first to the
15 witnesses who are seated at microphones to state for
16 the record their name and spell their last name. I'll
17 commence with you, Ms. Soiza.

18 MS. SOIZA: My name is Anne Soiza, A-n-n-e,
19 S-o-i-z-a. I'm the director of pipeline safety.

20 JUDGE CLARK: Mr. Lykken?

21 MR. LYKKEN: My name is David Lykken,
22 L-y-k-k-e-n. I'm the chief pipeline safety engineer.

23 JUDGE CLARK: Appearing on behalf of the City
24 of Enumclaw?

25 MR. HAWTHORNE: William Hawthorne,

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1 H-a-w-t-h-o-r-n-e.

2 JUDGE CLARK: Your position?

3 MR. HAWTHORNE: I'm the gas utility manager.

4 JUDGE CLARK: Is there any other identifying
5 information that either counsel would like to provide
6 for these witnesses?

7 MR. FASSIO: No.

8 MR. REYNOLDS: No.

9 JUDGE CLARK: Is there any other additional
10 inquiry you would like to conduct regarding the scope
11 and the testimony any of these individuals would give?

12 MR. FASSIO: No, Your Honor.

13 MR. REYNOLDS: No, Your Honor.

14 JUDGE CLARK: Would someone like to do a
15 brief overview of the Settlement? I have read it. It
16 is not necessary, but I will permit either Mr. Fassio
17 or Mr. Reynolds to do that if you wish.

18 MR. FASSIO: Staff has no opening remarks on
19 the Settlement, but we are here to answer any questions
20 that you have.

21 JUDGE CLARK: Mr. Reynolds?

22 MR. REYNOLDS: We will waive that.

23 JUDGE CLARK: Then we are going to turn
24 directly to the inquiry. The first inquiry I have is
25 when did the City of Enumclaw begin operating its

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1 natural gas pipeline?

2 MR. HAWTHORNE: I would like to defer that
3 question to the City administrator of public works. It
4 was 1957, I believe. I'm not sure the exact date.

5 JUDGE CLARK: Approximately 1957? That's
6 close enough for my purposes. In the Complaint issued
7 by the Commission in February, the Commission notes
8 that Commission staff has conducted the safety
9 inspections of the City's gas plant and related
10 practices commencing in 1993 and that the Commission
11 has issued at least ten notices of probable violations
12 of the Commission's laws and rules. The most recent
13 case was in 2006 in which the parties also reached a
14 settlement, and that settlement notes repeat violations
15 from the docket that was initiated in 2000.

16 The Complaint in this case notes repeat
17 violations from previous dockets, so I would like
18 someone to explain to me why the City will now comply
19 with the Commission's statutes and rules when this
20 appears to have been a problem historically.

21 Mr. Hawthorne?

22 MR. HAWTHORNE: I can't speak for prior to my
23 arrival of the City. Since I have arrived, the City
24 has implemented a new manual and new procedures to
25 change the way in which we operate. As far as

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1 recordkeeping goes, we have a new maintenance program
2 that not only handles time frames on when tasks are
3 due, but it also stores all the documentation and
4 requires opening and closing of work orders in which
5 all that documentation is stored and closed at the time
6 those work orders are completed.

7 The attitude and the environment that we are
8 now creating at the City is more focused on insuring
9 that all records are completed and maintained and
10 audited. It's just a different environment than it was
11 when I first arrived at the City.

12 I couldn't speak to why in 2000 there was
13 repeat violations in 2006 because I just came on board
14 here last year in 2008, but I'm working with the City
15 administrator and public works director and have gotten
16 all the support from the counsel members and Mark and
17 Chris to insure that I get everything I need to make
18 sure that we are doing things properly moving forward.

19 JUDGE CLARK: All right, Mr. Hawthorne, that
20 does lead to a couple of extra questions. You came on
21 board with the City of Enumclaw in 2008?

22 MR. HAWTHORNE: Yes, April of 2008.

23 JUDGE CLARK: So that was prior to the
24 Complaint being issued in this proceeding; correct?

25 MR. HAWTHORNE: No. What was the exact date

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1 of the Complaint?

2 JUDGE CLARK: I believe the Complaint was
3 issued February 10th, 2009.

4 MR. HAWTHORNE: Yes, I was on board prior.

5 JUDGE CLARK: When you came on board with the
6 City, you've noted a difference in the City's
7 practices, recordkeeping, O and M manual, and so are
8 these changes that you implemented in your position?

9 MR. HAWTHORNE: The City hired a
10 subcontractor to write a new O and M manual based on
11 the first -- well, one of the complaints back in 2006.
12 When I came on board in April, the brand-new O and M
13 manual had just been released that month. It hadn't
14 been put into practice yet. It had just been given to
15 the City.

16 When the Staff came in and did the audit, we
17 were still practicing under the old O and M manual. We
18 had just begun the process of bringing in the new O and
19 M, bringing in the new maintenance system, me coming on
20 board learning the gas system, so at the same time that
21 I came on board and started to try to implement the new
22 manual and get everything going, the Staff came in and
23 did an audit, and they didn't audit on past practices
24 and past records so they weren't able to see anything
25 that had been moving forward, and we hadn't had the

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1 procedures in place yet, so there was nothing for them
2 to see on the new manual.

3 After the audit in 2008, we began
4 implementing the new system, and it would have been
5 implemented whether the audit had happened or not. It
6 just happened that everything came the same time there
7 at that period.

8 JUDGE CLARK: What is your background,
9 Mr. Hawthorne?

10 MR. HAWTHORNE: I went to Marine Corps
11 engineer school, and then I went to work for Rolls
12 Royce Energy Services commission and gas plants on
13 transmission systems from 2000 to 2003, and then I was
14 an O and M team leader for Enron Transportation System,
15 and then I was a senior technical specialist for
16 Transwestern Pipeline, and then after that, I was a
17 director of area management for GE for 12 power plants
18 in Illinois, and then I came on board with the City.

19 JUDGE CLARK: So you feel like you have the
20 experience necessary to follow through on the O and M
21 manual that the City obtained from the subcontractor
22 and to follow the Commission's statutes and rules?

23 MR. HAWTHORNE: Absolutely.

24 JUDGE CLARK: I have some specific questions
25 on the Settlement itself. Does everyone have a copy of

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1 the Settlement before you, because what I'm going to
2 try to do to the extent possible is refer you to
3 specific paragraphs in the Settlement itself.

4 My first inquiry involves Paragraph 12, and
5 in Paragraph 12, the City is to submit a plan within 30
6 days from the date the Settlement is approved by the
7 Commission, and that's a plan that will explain to
8 Staff how the City intends to implement the terms and
9 conditions of the City. I think that probably this
10 question is best posed to Staff, and that is what will
11 happen if that plan is not acceptable to the Staff?
12 Mr. Lykken?

13 MR. LYKKEN: Staff has in fact received a
14 plan from Mr. Hawthorne back in June that I've been
15 reviewing, and to his credit and the City's credit,
16 they have been moving ahead without waiting for the
17 Settlement Agreement to be approved. They have taken a
18 number of actions to correct the issues that we
19 identified in our last year's inspection.

20 I've reviewed the plan. In fact, they are
21 going to meet those dates or exceed those dates that
22 are in the actual Settlement Agreement, and based on
23 our field validation of those corrections they have
24 made, it appears that the plan is very much agreeable
25 to us.

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1 JUDGE CLARK: So we don't need to worry about
2 what repercussions there would be if it did not meet
3 your approval?

4 MR. LYKKEN: Not at this time; that's exactly
5 right.

6 JUDGE CLARK: So I was very comfortable, and
7 then you said, "Not at this time," so if you complete
8 your review and there is a portion of the plan that
9 does not meet your expectations or whatever, what I'm
10 interested in is what happens next, Mr. Lykken?

11 MR. LYKKEN: The plan in essence is complete
12 and we are agreeable to it. There is a number of items
13 that are identified here that they've moved forward on,
14 and have, in fact, stated they've completed it, but it
15 will be based on a visit by pipeline safety staff to
16 validate that those items have in fact been completed.

17 The time lines that they noted here obviously
18 we can't confirm until we see the completed items as
19 far as a field visit validating those particular items,
20 but we will be meeting quarterly with them to make sure
21 they remain on track and that these issues are
22 completed in the time lines that they described.

23 JUDGE CLARK: Thank you. That's the perfect
24 segue into my next question, which is on Paragraph 14,
25 which is regarding the quarterly meetings that the

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1 Commission staff will have with the City, and it's my
2 understanding, according to the Settlement, that the
3 City will meet with Staff to insure that progress is
4 adequate to meet the required time frames for each
5 condition and mediation and that written reports will
6 be filed with the Staff, and my inquiry is whether or
7 not those reports will be filed with the Commission?

8 MR. LYKKEN: We would expect, if that's the
9 Bench's wishes. Otherwise, they would more than likely
10 be referred to the director of pipeline safety.

11 JUDGE CLARK: That's my inquiry is just to
12 understand what the terms and conditions of the
13 Settlement are, and so those reports would be filed
14 with the director?

15 MR. LYKKEN: That's correct.

16 JUDGE CLARK: Again, what are the
17 repercussions if the City is not making appropriate
18 progress according to one of those quarterly reports?

19 MR. LYKKEN: I'll defer that to the director.

20 JUDGE CLARK: Ms. Soiza?

21 MS. SOIZA: We would negotiate with them to
22 determine whether there is reasons for that delay.
23 Let's say on a particular item that it appears that
24 they might not meet their time line on a particular
25 item. Then we would inform them formally in a letter

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1 that we have concerns. I believe that the
2 ramifications of them missing a deadline are
3 significant on most of the violations in terms of the
4 suspended penalty. If we did confirm that they
5 actually did miss the deadline and did not properly
6 file for an extension with the Commission order
7 extension date, then we would move to issue the penalty
8 order, I guess.

9 JUDGE CLARK: There is a provision in the
10 Settlement, and I forget which one. I think it's in
11 the 60's, paragraph 60-something. It's not coming to
12 me right away, but there is an --

13 MS. SOIZA: There is a provision for
14 extension.

15 JUDGE CLARK: Yes. If the City is unable to
16 meet any of the deadline, then it's my understanding
17 that the City is to request an extension of that
18 deadline and that they are to do so at least 30 days
19 prior to that deadline.

20 MS. SOIZA: Right.

21 JUDGE CLARK: What I'm not understanding --

22 MS. SOIZA: Not from me though, from the
23 Commission.

24 JUDGE CLARK: Right. What I'm not
25 understanding is there are various deadlines in here

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1 that allow the City from a year to up to three years, I
2 believe, to complete certain actions, so my
3 understanding of the extension request would be 30 days
4 before the expiration of, say, a three-year deadline,
5 the City would come in and say, We haven't been able to
6 meet this 30 days before the expiration of that -- the
7 35th month, it would come in and request an extension
8 of that deadline from the Commission.

9 Built into this, I see a second set of
10 deadlines, and that is quarterly meetings between the
11 City and the Staff, and during those meetings, Staff is
12 to work with the City and see how they are progressing
13 toward meeting each of these deadlines.

14 What I'm asking is if you meet with them
15 during that quarterly meeting and you determine that
16 they are not making reasonable progress toward
17 achieving the goal in the 36-month deadline, what
18 happens?

19 MS. SOIZA: It could escalate to the point of
20 us issuing a letter, but I don't believe that we would
21 take permanent action on that group of violations until
22 the deadline has passed. My expectation is that we
23 would guide, advise Enumclaw to take steps to help meet
24 the deadline, maybe through visits, maybe through more
25 data requests during those quarterly meetings for the

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1 next quarterly meeting, for example, to determine what
2 the actual issues of why we either believe they might
3 not meet the time line or what are the causes of --

4 Let's say that we do conclude that they
5 really aren't going to meet the deadline. We need to
6 figure out why it happened. Was it in their control or
7 out of their control, and we would come forward before
8 the Commission to support or not support an extension
9 of that date formally, and it just depends on the
10 circumstances involved and the progress of the time
11 line and the progress around those particular
12 violations on those deadlines.

13 JUDGE CLARK: From my initial background
14 explaining this, since 1993, the Commission has issued
15 repeated notices of violations. In 16 years, this
16 appears to have been sort of an ongoing problem, and I
17 guess what I'm really seeking is why is this case
18 different? What's happening now, and I got a little
19 bit of that from Mr. Hawthorne, and I appreciate that,
20 about why these progress reports are actually going to
21 make a difference, and one of the things that is
22 disturbing is hearing that maybe these deadlines won't
23 be met, and I'm interested, I guess --

24 It looks like there is a lot of discretion in
25 here about whether the Commission staff would be

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1 seeking implementation of any of the suspended
2 penalties, and I'm trying to figure out when you would
3 be requesting that, how egregious the violation would
4 have to be before you did that.

5 We are going from a situation where the
6 Commission started off with a case requesting 11
7 million dollars in penalties to a case where really the
8 Staff is requesting none and is requesting
9 approximately 1.6 be suspended, so I'm trying to get
10 from here to there, and I really need some help trying
11 to understand what these quarterly meetings are going
12 to do, what violations of the progress in these
13 quarterly meetings are going to do. That's where I'm
14 coming from, but I'm probably inartfully stating my
15 question.

16 MS. SOIZA: I'm probably not understanding,
17 and part of it is because of my recent coming on board
18 with the Commission and not understanding the history
19 and how the process works.

20 My vision of enforcement is that we monitor
21 the entity involved in a settlement agreement tightly
22 so that there is little chance we get surprised by any
23 lack of progress holding them accountable through
24 forcing them to monitor their progress on each and
25 every step of the Settlement Agreement, is, I find, an

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1 important aspect of enforcement. It usually brings
2 about full and complete compliance, usually in my
3 background, early and without any surprises.

4 Having said that, there is a possibility,
5 although it may be remote, that because of something
6 completely out of their control, such as a natural
7 disaster or a permitting issue with State DOT or
8 Ecology or something like that, I can't imagine what it
9 might be, but there might be something completely out
10 of their control that we need to be made aware of as
11 early as possible so that we can guide them and maybe
12 possibly still meet the time lines, but unattended
13 entities sometimes lose track, and I believe that I am
14 unaware that quarterly meetings in the past or regular
15 updates, I don't know if they occurred or not on the
16 past Staff actions that have occurred with Enumclaw,
17 but I am confident that this action, that monitoring in
18 a detailed fashion on each and every step will achieve
19 what we want in the public interest and will help
20 Enumclaw get on board and on the right path
21 permanently, not just to resolve the issues in this
22 particular complaint.

23 JUDGE CLARK: Well, I attempted to pull all
24 of the previous cases that were cited in the Complaint.
25 Some of those cases were not available on the

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1 Commission's system because they are too old, but for
2 the most recent settlement in 051609, it appears in
3 that settlement that there were no penalties that were
4 suspended and there were no quarterly reports required,
5 and so I guess my question is, do you believe the
6 combination of the reporting and the suspended
7 penalties would be a good motivation?

8 MS. SOIZA: I do.

9 JUDGE CLARK: Mr. Hawthorne, do you think
10 that the combination of the quarterly reporting
11 requirements and monitoring as well as the suspended
12 penalties would be a motivation for the City?

13 MR. HAWTHORNE: I look forward to those
14 meetings and working with the Staff so that if we have
15 questions or concerns, we can get them out in the open,
16 and we have predefined dates where I can bring
17 information to them that we've completed a certain
18 violation and we want to get it signed off and move
19 past that one. I think these are going to be great for
20 insuring our success.

21 JUDGE CLARK: Does anyone else have anything
22 they want to add to that? I do have some more specific
23 questions on the terms. The next one is with respect
24 to Paragraph 20 of the Settlement, and in Paragraph 20,
25 the City agrees to replace the 94 unprotected services

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1 of the 141 unprotected services originally identified
2 in the 2008 inspection, and they intend to do that
3 within 24 months, and so my next series of questions
4 are going to be very repetitive because I really want
5 the same information for each of these provisions in
6 the Settlement, and my first question is why will this
7 process take two years?

8 MR. HAWTHORNE: With the amount of work that
9 the Settlement as a whole is going to take, the City
10 feels that two years would be an adequate time for us
11 to be able to complete all that work in-house with our
12 own employees without having to go out and hire
13 contractors and put additional expense on the gas
14 utility. That's my answer.

15 JUDGE CLARK: So it's really looking at the
16 totality of the number of violations that has driven
17 some of the time frames that it will take the City to
18 complete this; is that what you are telling me?

19 MR. HAWTHORNE: Yes, ma'am.

20 JUDGE CLARK: How many individuals on City
21 staff will be available to dedicate to completing the
22 work that's necessary to comply to the terms and
23 conditions of the Settlement without hiring outside
24 consultants?

25 MR. HAWTHORNE: Five.

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1 JUDGE CLARK: Are all of these individuals
2 basically trained already, or will training need to be
3 performed before they are able to complete some of
4 this work?

5 MR. HAWTHORNE: Four out of the five have a
6 minimum of six years. We have one new individual who
7 has been with the City a year who is still qualifying
8 on some of the tasks to be completed.

9 JUDGE CLARK: Do you know how much it will
10 cost the City to comply with the provision, Paragraph
11 20 of the Settlement, approximately?

12 MR. HAWTHORNE: I couldn't answer that right
13 now, ma'am; sorry.

14 JUDGE CLARK: That's all right. Is there
15 another witness from the City would can address how
16 much compliance with these conditions is going to cost
17 the City?

18 MR. HAWTHORNE: With the whole settlement or
19 just this particular task?

20 JUDGE CLARK: I'm take what I can get. I was
21 interested in how much it would cost for each
22 paragraph, but if I'm able to get that and you do have
23 an estimate of how much it will take to comply with all
24 of the terms and conditions, Mr. Hawthorne, I will take
25 that.

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1 MR. HAWTHORNE: I can tell you if we were
2 contracting this out this first item, it would cost
3 around \$240,000. That's why we chose to do the work
4 in-house. It's going to be a lot less than that
5 because we are already paying our employees and they
6 are on staff anyhow, and the amount of material isn't
7 that high, so I would guess close to \$50,000 would be
8 my answer.

9 JUDGE CLARK: So if you are going to use
10 exclusively in-house employees to work on this, do you
11 think that working on compliance with these conditions
12 will somehow detract from other duties that they were
13 supposed to be performing?

14 MR. HAWTHORNE: No, ma'am. Our primary
15 number-one goal is compliance with our owner manual
16 right now as far as the tasks that need to be done to
17 keep us in compliance with leak surveys and atmospheric
18 corrosion; that's number one.

19 With the amount of employees we have and the
20 amount of work we need to do to stay in compliance with
21 our normal tasks, we can usually grab two to three
22 weeks per month for noncompliant work related to the
23 Settlement Agreement.

24 JUDGE CLARK: And I think you've probably
25 answered my question with respect to Paragraph 21 where

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1 I was going to ask you why that was going to take three
2 years, but now I understand that it is taking a look at
3 the work required by the Settlement in totality that's
4 going to do this.

5 MR. HAWTHORNE: Yes, ma'am.

6 JUDGE CLARK: But I am interested in knowing
7 how much it will cost for the City to apply the
8 cathodic protection that is noted in Paragraph 21.

9 MR. HAWTHORNE: Ma'am, in Paragraph 21, that
10 cathodic protection has already been applied. The
11 Staff would like us to go back and replace those
12 services that have already been repaired.

13 The City had an agreement with Staff back in
14 1995 or '96 that the City would repair or replace all
15 of its unprotected services that it had at the time,
16 which was over 300. They were supposed to have all
17 those completed by 2005. In that agreement, the City
18 was allowed to repair those unprotected services, so in
19 2008 when Staff did the audit and brought to my
20 attention that we had missed that deadline, I had sent
21 crews out and started repairing or replacing these
22 unprotected services.

23 Between the time of the audit and working on
24 the Settlement Agreement with Staff, the City had
25 bonded or repaired, applied CP to 47 of these services,

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1 and now the Staff would like us to go back and replace
2 those because they were unprotected for up to 30 years,
3 so the City has agreed we will go out and replace
4 those, so there is no cost of adding CP to those. They
5 will be inserted with plastic so the steel will no
6 longer be there.

7 JUDGE CLARK: So what you are essentially
8 saying is that this work has already been completed so
9 you don't have any kind of cost estimate for that.
10 That's sort of historical at this juncture.

11 MR. HAWTHORNE: That was a long answer to
12 your question, ma'am.

13 JUDGE CLARK: But it was a helpful answer.
14 The next one is with respect to Paragraph 23, and
15 perhaps this is work that has already also been
16 completed because it refers to the 47 services that
17 were addressed in the previous Paragraphs 21 and 22.
18 Let me just shortcut this. Has this work been
19 complete, Mr. Hawthorne?

20 MR. HAWTHORNE: The City has designed a
21 procedure for this, and as part of the Settlement, we
22 have to get with Staff and get their approval on the
23 procedure before we can go out and do these.

24 JUDGE CLARK: So this work has not yet been
25 completed.

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1 MR. HAWTHORNE: No, ma'am. A portion of it
2 has, just writing the procedure part.

3 JUDGE CLARK: That's already been submitted
4 to Staff.

5 MR. HAWTHORNE: I don't believe that
6 particular procedure has been. I was waiting on the
7 actual Settlement to be signed and agreed to before I
8 would submit that procedure to Mr. Lykken. Depending
9 on what we find during that survey, we may just decide
10 to forego that whole process and decide to just replace
11 them all within the 24 months anyway and not worry
12 about the ACDG survey.

13 JUDGE CLARK: If you replace them all, what
14 will that cost?

15 MR. HAWTHORNE: The plan is to replace them
16 all within the three-year window anyway. It would
17 still be around that same cost.

18 JUDGE CLARK: This would not be an additional
19 cost to the City?

20 MR. HAWTHORNE: No. These are part of the
21 replacement plan. If we perform this survey, it would
22 allow us to do these from the 24-month window to the
23 36-month window and not worry about doing them all in
24 the 24 -- it would actually buy us more time if we
25 needed it.

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1 JUDGE CLARK: About another year.

2 MR. HAWTHORNE: Yes, ma'am, but based on our
3 current projections and the way we are moving forward,
4 we are going to be done with them all before the 24
5 months.

6 JUDGE CLARK: I think you've already answered
7 my question with respect to Paragraph 29. Maybe not.
8 My understanding is that the City went ahead and
9 revised it's O and M manual prior to the Complaint
10 being filed in this particular proceeding, and does
11 this Paragraph 29 require additional revisions to that
12 O and M manual, or have those revisions already been
13 made?

14 MR. HAWTHORNE: The City has made those
15 revisions, and we have designated farm tap reg stations
16 that used to be just farm taps. We have redesignated
17 those as district reg stations, identified emergency
18 valves, but we still would like to sit down with the
19 Staff and review that with them during our quarterly
20 meeting and get their approval, and then at that time,
21 we would ask that this particular task be closed. So
22 we feel it's done. We just need to meet with Staff and
23 get their approval.

24 JUDGE CLARK: Paragraph 31, which indicates
25 within 12 months of the Commission approval of the

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1 Settlement, Enumclaw will identify every known casing
2 installed on its gas system, and then within the same
3 time period -- I'm assuming it's the same time
4 period -- Enumclaw is going to remove and replace any
5 casings identified as being constructed of coated steel
6 or plastic materials, and I guess my first question is,
7 do you have any idea how many of those casings we are
8 looking at?

9 MR. HAWTHORNE: We don't have any casings in
10 our system that are designed of anything other than
11 bare steel.

12 JUDGE CLARK: Maybe this question is more
13 appropriately put to Staff. What is the risk to the
14 public of having casings that do not comply with the
15 Commission's statutes and rules?

16 MR. LYKKEN: The risk is that if you have a
17 casing that is coated or is plastic, it prevents the
18 cathodic protect for the actual carrier pipe inside the
19 casing. You create an insulator, so the cathodic
20 protection is not able to work; thereby, the pipe
21 progressively corrodes.

22 At the time of the inspection, we weren't
23 clear that they were sure what they had in the ground,
24 and since then, they have evaluated their system, and
25 according to Mr. Hawthorne here, they didn't identify

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1 any particular casings that were of that issue
2 apparently.

3 JUDGE CLARK: So you are satisfied that there
4 are no coated or plastic casings?

5 MR. LYKKEN: Until we have an agreement here,
6 Staff has not done any validation in the field records
7 reviewed or otherwise to either acknowledge that this
8 is true or not.

9 JUDGE CLARK: So if the Commission approves
10 the Settlement, how soon will Staff be going out to do
11 that field validation?

12 MR. LYKKEN: We will be scheduling a time
13 with the City as soon as possible, and it won't be
14 particularly with this issue but a number of them where
15 the City has indicated they have completed it, so we
16 will go through those items first and foremost to get
17 some kind of closure on those items.

18 JUDGE CLARK: Have you identified any
19 particular areas of the Settlement where you believe
20 there is risk to the public if there is not compliance?

21 MR. LYKKEN: Well, I wouldn't categorize any
22 of these as all being of equal priority. Our main
23 objective is to get the unprotected services replaced
24 as noted in Paragraphs 20 and 21. That was our main
25 objective.

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1 I will note that even though they have up to
2 36 months to complete these, they are compelled to do a
3 leak survey twice annually until those services get
4 replaced, so there is a mechanism in there to monitor
5 these services in case they do leak in the interim
6 before they are replaced. I would say that's our high
7 priority item that we want to see done as quickly as
8 possible.

9 As Mr. Hawthorne has pointed out, they have
10 taken a number of actions on a number of these issues
11 already and are progressing quite well, from my
12 understanding, and we expect that they will meet these
13 time lines over and above what we've established here.

14 JUDGE CLARK: So if I turn back to
15 Paragraph 11 of the Settlement, would I be correct in
16 assuming that the different suspended penalties that
17 are associated with various provisions of the
18 Settlement itself would reflect the Commission staff's
19 priority, for lack of a better word, Ms. Soiza?

20 MS. SOIZA: Yes.

21 JUDGE CLARK: I think rather than going
22 through the rest of these individually, just kind of
23 what I have, maybe I'll just take these generally and
24 ask first the City if there is other work that is
25 required by the Settlement that you have already

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1 undertaken and are working on completing before this
2 settlement is even approved?

3 MR. HAWTHORNE: Yes, ma'am.

4 JUDGE CLARK: As specific as you can possibly
5 be would be very helpful.

6 MR. HAWTHORNE: How much time do we have? I
7 could spend all day here.

8 JUDGE CLARK: I've got all day. Actually,
9 I've got all week. I'm sure you didn't want to hear
10 that.

11 MR. HAWTHORNE: Specifically to Paragraph
12 No. 34, all the piping on some of our reg stations and
13 district reg stations, we have pressure tested to
14 establish a 60-pound MALP. The City has completed all
15 but one of those reg stations. They have all been
16 pressure tested. The MALP has been established.

17 Paragraph No. 27, the City of Enumclaw has
18 established their new procedure for cathodic protection
19 deficiencies to insure that they get completed within
20 90 days. We have insured that the new form and the
21 paperwork is being filled out properly, and when we sit
22 down with Staff, we will review that with them.

23 Paragraph No. 29, the City has redesignated
24 district reg stations having two or more services as
25 district reg stations instead of farm taps, as it used

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1 to be. Item 35, the City has completed that list of
2 forms to provide to the Staff, and we will provide that
3 to them in our first quarterly meeting.

4 No. 7, Paragraph 36, but the whole section
5 there updating records, the City has designed a new
6 procedure and is implementing that procedure to insure
7 that all construction gets into our mapping system and
8 available to all personnel within 30 days of the
9 construction happening, which more than exceeds the
10 six-month window that's required by the WAC.

11 Item 40 for Section 8 under gas leak surveys,
12 the City is in the process of updating maps but has
13 insured that when we go out and perform leak surveys in
14 specific areas, the maps are up to date. The City has
15 also designated a significant amount of funds to new
16 equipment, remote methane leak detectors that use laser
17 technology that allow you to scan a large amount of
18 area a lot faster than using CGI's, which just have a
19 vacuum pump on them which you have to be focused on a
20 specific area. We have new equipment, new technology
21 which allows you to scan a quite large area.

22 JUDGE CLARK: Let me interrupt you. Can you
23 tell me a little bit about when the City purchased this
24 new equipment?

25 MR. HAWTHORNE: Two or three weeks ago.

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1 JUDGE CLARK: Go ahead.

2 MR. HAWTHORNE: Item 9, Paragraph 43,
3 pressure test documentation, the City has modified the
4 documentation to include all the requirements under 170
5 "A" through "H". We are using that record and that
6 procedure, but we will get approval or let the Staff
7 review it and see if they would like any changes to it
8 when we meet.

9 Paragraph 45, gas leak records, the City has
10 modified their forms to insure that everything in here
11 is contained within the form. Item 48, Paragraph 48,
12 the City is 100 percent complete with its atmospheric
13 corrosion inspections. We are working on our book
14 number one now that allows us to move through another
15 1600 inspections, but when we meet with Staff, we will
16 go through and insure that they feel comfortable that
17 we have addressed everything within our system over the
18 past three years, that we are in 100 percent
19 compliance.

20 JUDGE CLARK: Let me interrupt you here,
21 because the next paragraph, Paragraph 49, is when that
22 indicates that if you find any deficiencies that you
23 will remediate those in accordance with the time frames
24 established under your revised procedures, and I'm
25 assuming this is included in your O and M manual?

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1 MR. HAWTHORNE: Yes, ma'am.

2 JUDGE CLARK: The time frames in the O and M
3 manual were designed, I'm presuming, to comply with all
4 state and federal rules and statutes?

5 MR. HAWTHORNE: Yes, ma'am.

6 JUDGE CLARK: Go on.

7 MR. HAWTHORNE: Paragraph 50, the City has
8 written new procedures or improved existing procedures
9 to insure, I feel, that we have met everything within
10 Probable Violation No. 1 in the 2008 Probable Violation
11 report, but again, we will have to meet with Staff and
12 get their approval. I do anticipate when we go over
13 these procedures with Staff them giving recommendations
14 and us making some changes to fine-tune things to meet
15 their approval.

16 Paragraph 55 is complete. Paragraph 56 is
17 complete, and Paragraph 57, again, is something the
18 City agrees to, but we will wait until the virtual dirt
19 program is available.

20 JUDGE CLARK: Those are just paperwork
21 revisions; is that correct, Mr. Hawthorne?

22 MR. HAWTHORNE: Yes, ma'am. Paragraph 58 is
23 complete. Paragraph 59 is complete, but that's one
24 that I'm sure the Staff will spend quite a bit of time
25 reviewing, and so we will sit down with them and make

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1 sure it's adequate. Paragraph 60 is complete, and then
2 the rest is just general provisions within the
3 Agreement.

4 JUDGE CLARK: All right.

5 MR. HAWTHORNE: If I may, I think you can
6 tell the City has taken this very serious, and we are
7 working diligently to get all these things 100 percent
8 complete, but we want to work with the Staff to make
9 sure that we don't have repeat violations again in the
10 future.

11 It's very important that we sit down with
12 them and whatever we decide to do that it's a joint
13 venture almost to make, because since they are our
14 inspectors and auditors and they will be out reviewing
15 this with us that we do things that meet their
16 approval, and so we are going to be working with them
17 diligently to make sure this is all 100 percent
18 complete and done right the first time, but as you can
19 tell, the City has completed, I would say, close to 70
20 percent of the work in this agreement.

21 JUDGE CLARK: I guess my next question is for
22 the Staff. In terms of scheduling these quarterly
23 meetings and reports, is it Staff's intention to go
24 ahead and schedule these after the Settlement is
25 approved, sort of commencing with the date the

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1 Settlement is approved, or have you already established
2 deadlines for meeting with the City?

3 MR. LYKKEN: We have not scheduled any
4 meetings at this time, but we would anticipate doing
5 that in anticipation the Settlement is approved, so we
6 will progress with scheduling those meetings.

7 JUDGE CLARK: I guess really the final
8 inquiry I have is under the worst-case scenario and the
9 City doesn't comply, if you can kind of walk me through
10 the process in the Settlement explaining how these
11 suspended penalties, how Staff would go about seeking
12 the suspended penalties.

13 MS. SOIZA: I'll attempt that, and Dave can
14 help me if I'm wrong on the process. If we get to the
15 point where a deadline is missed and there is a penalty
16 assigned with that group of steps, we anticipate
17 filing -- I'm not sure what it's called. Would it be a
18 complaint? I'm looking at my attorney here.

19 MR. FASSIO: Just referring to Paragraph 11,
20 the clause states that if Staff determines there is
21 noncompliance, Staff will seek an order of the
22 Commission for immediate imposition of suspended
23 penalties, and so I think, and you can discuss this,
24 but I believe the mechanism would be that for suspended
25 penalties to be imposed, there would need to be an

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1 order of the Commission, and Staff would probably
2 petition the Commission to impose those penalties for
3 noncompliance.

4 MS. SOIZA: And we would present evidence.

5 MR. FASSIO: So that would go to the
6 Commission and the City would have an opportunity to
7 due process at this point.

8 JUDGE CLARK: Maybe my question is really
9 more a legal question and I should be asking this of
10 Mr. Fassio or Mr. Reynolds, but I read Paragraph 11, so
11 I guess what is unclear to me is whether or not that
12 process would take place within the context of this
13 docket where you would petition for the imposition of
14 some of the penalties that were suspended in this
15 matter or whether Staff would foresee initiating a new
16 complaint against the City?

17 MR. FASSIO: I think, and this is only
18 hypothetical, but it could probably be done within the
19 context of this docket, because the suspended penalties
20 would be tied to compliance with this agreement. So it
21 would be in a sense enforcement of the Commission's
22 order with the suspended penalties being a piece of
23 that enforcement.

24 JUDGE CLARK: So it would probably be
25 something in the form of a motion filed in this docket?

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1 MR. FASSIO: That's correct.

2 JUDGE CLARK: That would give the City the
3 opportunity to respond and contest any allegation that
4 the Staff made that the City was not in compliance.

5 MR. FASSIO: That's correct, and I wanted to
6 address, you asked a question earlier of Staff in terms
7 of some of the written correspondence that would be
8 filed with the Commission or just filed with Staff, and
9 that settlement agreement doesn't address this
10 specifically, but to the extent that there are formal
11 filings of either party, written correspondence, I
12 believe that could be filed simultaneously in the
13 docket itself. We are not opposed to that. It was
14 just not addressed in the Settlement.

15 JUDGE CLARK: I understand that. I was just
16 trying to understand the process that the settlement
17 had come up with.

18 MR. FASSIO: So the Commission could be kept
19 apprised with the formal correspondence back and forth
20 by putting that into the record as well.

21 JUDGE CLARK: Mr. Reynolds, would the City be
22 opposed to filing this correspondence in the docket
23 rather than simply with the director of pipeline
24 safety?

25 MR. REYNOLDS: It's whatever the director

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1 requests, we would comply with that. Also in answer to
2 Your Honor's further question, the analogy procedurally
3 on the enforcement action, I would analogize it to a
4 standard show-cause hearing in other proceedings.

5 JUDGE CLARK: Okay. I think that responds to
6 all the inquiry that I have. I do appreciate very much
7 everyone's participation this morning regarding all of
8 the questions and your patience and my
9 inartfully-phrased questions sometimes.

10 Is there any other information from any of
11 the individuals who have appeared as witnesses or from
12 counsel regarding information you would like the
13 Commission to consider in making a determination
14 whether to accept, reject, or modify the Settlement?

15 MR. FASSIO: Just one question, Your Honor.
16 The Settlement, the narrative, and the documents
17 supporting that, are those also part of the record? Do
18 we need to enter those specifically?

19 JUDGE CLARK: No. Those documents were
20 already filed in this proceeding, and ordinarily, we do
21 not separately identify those, but all of the
22 documentation that was filed with the Settlement is
23 already in the file in this case.

24 MR. FASSIO: I don't have any further
25 thoughts.

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1 JUDGE CLARK: Mr. Reynolds?

2 MR. REYNOLDS: The closing comment, Your
3 Honor, is that we wish to express our appreciation to
4 Staff for their cooperation in working together with
5 them to again enhance safety.

6 MR. FASSIO: I would add to Mr. Reynolds that
7 the Staff appreciates the City's willingness to work
8 with us towards this agreement, and we recommend its
9 approval.

10 JUDGE CLARK: Anything further? Hearing
11 nothing, we are adjourned.

12 (Evidentiary hearing adjourned at 11:03 a.m.)

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