

BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND)	DOCKET NO. PG-040984
TRANSPORTATION COMMISSION,)	
)	ORDER NO. 03
Complainant,)	
)	
v.)	APPROVING AND ADOPTING
)	SETTLEMENT AGREEMENT
WEYERHAEUSER COMPANY,)	
)	
Respondent.)	
)	
.....)	

Synopsis: The Commission approves and adopts the proposed Settlement Agreement between the Company and Commission Staff as a full resolution of the issues in this proceeding, and orders Weyerhaeuser to pay \$75,000 in penalties.

1 **PROCEEDINGS:** On May 2, 2005, the Commission, through its Staff, filed a complaint against Weyerhaeuser Company (Weyerhaeuser) alleging nine violations of chapter 480-93 WAC, which among other things, adopts by reference specific provisions of Title 49, Code of Federal Regulations (CFR) Part 192, relating to certain minimum gas pipeline safety requirements. The complaint recommended penalties totaling \$250,000 for the violations.

2 The Parties filed a Settlement Agreement on October 14, 2005, supplemented by Appendix B filed on October 20, 2005. The proposed settlement is uncontested and, if approved, would resolve all issues in this proceeding.

3 **PARTY REPRESENTATIVES.** Melinda J. Davison, Davison Van Cleve, P.C., Portland, Oregon, represents respondent Weyerhaeuser. Chris Swanson,

Assistant Attorney General, Olympia, Washington, represents the Commission's regulatory staff (Commission Staff or Staff).¹

- 4 **COMMISSION DETERMINATION:** The Commission determines that its approval and adoption of the proposed settlement would be in the public interest.

MEMORANDUM

I. Background and Procedural History

- 5 Weyerhaeuser owns the Ostrander Pipeline, a 10-mile natural gas pipeline that serves Weyerhaeuser's Longview, Washington mill. This high-pressure pipeline runs through residential and commercial areas. On November 14, 2004, Staff conducted an inspection of Weyerhaeuser's Operator Qualification Program (OQ Program) at the Longview mill. Following its inspection, Staff issued an Inspection Report alleging that Weyerhaeuser had committed nine violations of 49 CFR Part 192 (subpart N-Qualification of Pipeline Personnel) as adopted by chapter 480-93 WAC.²
- 6 Based on the results of the Inspection Report, the Commission, through its Staff, filed a complaint against Weyerhaeuser on May 2, 2005. The complaint summarized the nine violations in the Inspection Report and recommended penalties totaling \$250,000.

¹ In formal proceedings, such as this case, the Commission's regulatory staff functions as an independent party with the same rights, privileges, and responsibilities as any other party to the proceeding. There is an "*ex parte* wall" separating the Commissioners, the presiding Administrative Law Judge, and the Commissioners' policy and accounting advisors from all parties, including Staff. *RCW 34.05.455*.

² The Inspection Report is attached as Appendix A to the Settlement Agreement.

7 On June 17, 2005, the Commission convened a prehearing conference before Administrative Law Judge Karen Caillé. Among other matters, the ALJ granted a motion to amend the complaint, set a discovery schedule, and adopted the procedural schedule agreed to by the parties. The procedural schedule included time for the parties to engage in a settlement conference prior to the filing of any testimony.

8 On September 8, 2005, the parties met to discuss settlement of the issues raised in the complaint. Administrative Law Judge Ann Rendahl served as mediator for the settlement discussions. As a result of the settlement discussions, the parties filed a Settlement Agreement and Narrative on October 14, 2005, supplemented by Appendix B filed on October 20, 2005.

9 Commission Staff and Weyerhaeuser waived an initial order in this proceeding on October 25, 2005 and October 28, 2005, respectively.

II. Settlement Agreement

10 The proposed Settlement Agreement is a full settlement of all issues presented in this proceeding, executed by all parties in the proceeding. The proposed Settlement Agreement is attached to this Order as Attachment A, and is largely self-explanatory. Generally, the proposed Settlement Agreement addresses each of the violations set forth in the Inspection Report. Under the terms of the proposed Settlement:

- Weyerhaeuser generally concurs with Staff's conclusion that certain aspects of Weyerhaeuser's OQ Program were deficient prior to Staff's investigation;
- Weyerhaeuser agrees to correct all of the alleged violations;

- Weyerhaeuser agrees to pay a penalty of \$75,000 within 15 business days after the effective date of the Settlement Agreement;
- The effective date of the Settlement Agreement will be the date of the Commission's order approving the Agreement.
- Weyerhaeuser agrees to a third-party follow-up audit of its OQ Program for the Longview facility in the fourth quarter of 2006; and
- Weyerhaeuser agrees to submit the follow-up audit report to Staff, accompanied by Weyerhaeuser's comments and a report on the status of any recommendations.

11 According to the Settlement Agreement, Weyerhaeuser hired an outside consultant to audit its OQ Program, made revisions to the OQ Program, shared those revisions with Commission Staff, and incorporated Staff's refinements in its revised OQ Program. Weyerhaeuser has adopted the revised OQ Program for the Longview facility, and it meets the Commission's legal requirements.³ Weyerhaeuser's final OQ Program is included in the Settlement Agreement as Appendix B.⁴

III. Discussion and Decision

12 The matter before us requires the Commission to determine whether the proposed Settlement Agreement is lawful; the settlement terms are supported by an appropriate record; and the result is consistent with the public interest. WAC 480-07-750. We resolve these questions by reviewing the Settlement Agreement, the Narrative supporting the Settlement Agreement, and the record in this proceeding.

³ *Settlement Agreement*, Paragraph 10.

⁴ *Id.*, Paragraph 11.

- 13 The record establishes that Weyerhaeuser's current OQ Program, included as Appendix B to the Settlement Agreement, addresses all of the items in the Inspection Report, and complies with the Commission's regulations in chapter 480-93 WAC, including 49 CFR Part 192, Subpart N, that is incorporated by reference in chapter 480-93 WAC. WAC 480-93-999.
- 14 The record shows Weyerhaeuser's willingness to work cooperatively with Commission Staff, and move immediately forward to bring Weyerhaeuser's OQ Program into full compliance with the applicable regulations. Moreover, Weyerhaeuser's agreement to a third-party follow-up audit of the OQ Program in the fourth quarter 2006, with submission of the follow-up audit report to Staff, demonstrates Weyerhaeuser's commitment to continuous improvement of the OQ Program.
- 15 Based on the record before us, we find that the issues raised in this complaint are adequately addressed and resolved by the Settlement Agreement. Under the circumstances, we are satisfied that the proposed Settlement Agreement is fair and in the public interest, and should be approved and adopted as a full resolution of the issues pending in Docket No. PG-040984.

FINDINGS OF FACT

- 16 Having discussed above all matters material to our decision, and having stated general findings, the Commission now makes the following summary findings of fact. Those portions of the preceding discussion that include findings pertaining to the Commission's ultimate decisions are incorporated by this reference.
- 17 (1) The Washington Utilities and Transportation Commission is an agency of the State of Washington, vested by statute with authority to regulate corporations transporting natural gas by pipeline in Washington state

insofar as the construction and operation of such facilities shall affect matters of public safety. *RCW 80.28.210, Chapter 480-93 WAC.*

- 18 (2) Weyerhaeuser Company is a Washington corporation, subject to regulation by the Commission concerning the Ostrander natural gas pipeline in Cowlitz County and Longview, WA. *Chapters 80.04 and 80.28 RCW, Chapter 480-93 WAC.*
- 19 (3) On May 2, 2005, the Commission, through its Staff, filed a complaint against Weyerhaeuser alleging nine violations of chapter 480-93 WAC, which adopts by reference specific provisions of 49 CFR Part 192, relating to certain minimum gas pipeline safety requirements. The complaint recommended penalties totaling \$250,000 for the violations.
- 20 (4) On October 14, 2005, Commission Staff and Weyerhaeuser filed a Settlement Agreement that if Approved would resolve all the issues in this docket.
- 21 (5) The Commission finds that its approval and adoption of the Settlement Agreement would be in the public interest.

CONCLUSIONS OF LAW

- 22 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 Commission's ultimate decisions are incorporated by this reference.

- 23 (1) The Washington Utilities and Transportation Commission has jurisdiction
over the subject matter of, and Parties to, this proceeding. *Title 80 RCW.*
- 24 (2) The Settlement Agreement filed by the Parties to this proceeding on
October 14, 2005, and supplemented by Appendix B filed on October 20,
2005, if approved, would result in a fair resolution of issues in this
proceeding.
- 25 (3) The Settlement Agreement, including Appendices A and B, attached to
this Order as Attachment 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 presented. *WAC 480-
07-730 through 750.*
- 26 (4) The Commission should retain jurisdiction to effectuate the terms of this
Order. *Title 80 RCW.*

ORDER

THE COMMISSION ORDERS THAT:

- 27 (1) The Settlement Agreement filed by Commission Staff and Weyerhaeuser
on October 14, 2005, including Appendices A and B, attached to this Order
as Attachment A, and incorporated by reference as if set forth in full in the
body of this Order, is approved and adopted.
- 28 (2) The Settlement Agreement is effective on the date that the order is
entered.
- 29 (3) Weyerhaeuser Corporation must pay a cash penalty of \$75,000 within 15
business days of the entry of this Order.

30 (4) The Commission retains jurisdiction to effectuate the terms of this Order.

Dated at Olympia, Washington, and effective this 21st day of November, 2005.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

MARK H. SIDRAN, Chairman

PATRICK J. OSHIE, Commissioner

PHILIP B. JONES, Commissioner

NOTICE TO PARTIES: This is a final order of the Commission. In addition to judicial review, administrative relief may be available through a petition for reconsideration, filed within 10 days of the service of this order pursuant to RCW 34.05.470 and WAC 480-07-850, or a petition for rehearing pursuant to RCW 80.04.200 or RCW 81.04.200 and WAC 480-07-870.