EXHIBIT A

BEFORE THE
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION **Complainant** **v.** **CASCADE NATURAL GAS CORPORATION,** **Respondent**	**DOCKET PG-230800** **INTERVENOR SAPPHIRE GAS SOLUTIONS LLC'S REPLY TO COMMISSION STAFF'S REPLY**

I. INTRODUCTION

1 Sapphire Gas Solutions LLC ("Sapphire") submits this Reply in support of its Motion to Dismiss addressing the outrageous new allegations and legal errors in Staff's Reply to Cascade's Response to the Motion to Dismiss ("Reply"). The Reply makes outrageous and unsupported new allegations regarding Sapphire in an apparent attempt to obscure the legal defects in the causes of action, continues to impermissibly broaden the applicable regulatory framework beyond its plain language, and fails to overcome the legal deficiencies identified in the Motion to Dismiss.

2 Staff seeks to reinvent the plain language of Commission's pipeline regulatory requirements, including the federal Pipeline and Hazardous Materials Safety Administration ("PHMSA") requirements adopted by the Commission, but this method of regulating does not adequately inform those subject to the regulations of their obligations.[1] Fundamentally, mobile temporary LNG facilities are regulated under a set of rules that is distinct from gas pipelines. For the reasons set forth below, the Commission should grant the Motion to Dismiss.

[1] *See* RCW 34.05.220(5).

II. ARGUMENT

A. Section 11.4.5.2(c) is not an applicable requirement for mobile temporary LNG facilities (compelling dismissal of Causes of Action 2 and 8)

3 Staff's Reply amps up its unfounded rhetoric regarding the interpretation of the plain and unambiguous language or the standard applicable to mobile temporary LNG facilities. The applicable part of NFPA-59A-2001 provides a clear and unambiguous list of the provisions of NFPA-59A-2001 that apply to mobile temporary LNG facilities. It is beyond question that section 11.4.5.2(c) is not one of the NFPA-59A-2001 provisions that was incorporated by reference.

4 Both the second and eight causes of action are predicated on section 11.4.5.2(c). Ignoring the list of incorporated sections of NFPA-59A-2001, Staff alleges that rather than reviewing and following the list of incorporated sections, Sapphire should have gone back to obsolete, prior version and figured out that the applicable 2001 version of NFPA-59A erroneously did not incorporate 11.4.5.2(c).

5 The regulated community is simply not required to review the history of a regulation to look for potential discrepancies, particularly when there is nothing unclear or preposterous about what the regulation says on its face. Regulators have the responsibility to make sure its rules and regulations are clearly written.[2] With section 11.4.5.2(c), Staff sought an interpretation from PHMSA regarding the potential applicability of 11.4.5.2(c) after the incident and told a reporter that they would have to wait for PHMSA's interpretation before proceeding to enforcement. Staff was quoted as saying they did not know what the NFPA

[2] RCW 34.05.220(5). The Washington Administrative Procedure Act requires, as practicable, that all rules "be clearly and simply stated, so that it can be understood by those required to comply."

standard required, "Is it a typo or does it mean what it says?"[3] A reporter further characterized the interview with Staff by saying, that he was "unsure whether he can charge any of those involved with a violation for failure to immobilize the truck" because he need an interpretation from PHMSA.[4] Plainly, when adding an additional section to the incorporation list, the Commission is not merely applying its longstanding interpretation when alleging causes of action two and eight.

6 The issue is not what Sapphire did or did not do but rather the issue is that the enforcement action is unsupported by the rules. As Staff has alleged, Sapphire's operating procedures require the use of wheel chocks.[5] Regardless of whether use of wheel chocks is good practice, or would have made any difference in this incident, the Commission is limited to enforcing its rules as written. The motion to dismiss seeks dismissal of the second and eighth causes of action because both are based on section 11.4.5.2(c) which addresses wheel chocks and which was not incorporated into the requirements for mobile temporary LNG operations by the NFPA-59A-2001 standard that was adopted by PHMSA and, in turn, the Commission.

7 ~~The Response also pointed to *Appalachian Power* in support of its theory that regulated entities are subject to regulations that do not exist at the time of enforcement.[6] The court's decision related to whether the EPA had the power promulgate new rules in light of an obvious error in a statute, not to retroactively enforce new obligations created by adding words~~

[3] Ariel Wittenberg, *Typo Derails Probe of Fatal LNG Accident*, E&E NEWS (June 6, 2024), https://www.eenews.net/articles/typo-derails-probe-of-fatal-lng-accident/.
[4] *Id.*
[5] Staff's Reply, at 4 ¶ 11.
[6] *Appalachian Power Co. v. E.P.A.*, 249 F.3d 1032 (2001).

in a rule after an incident. *Appalachian Power* is inapplicable to the issues before the Commission.

8 Moreover, the enforcement position is not even a question of interpretation. The second and eighth causes of action rely on Staff adding to the mobile temporary LNG requirements a provision that is simply not part of the regulation. For the reasons outlined in Sapphire's motion to dismiss, that approach is an impermissible basis for enforcement.[7]

B. WAC 480-93-180(1) does not apply to mobile temporary LNG facilities

9 The Reply argues that Cascade's position would require additional language be read into WAC 480-93-180(1), or else it would include "every contractor hired by Cascade . . .."[8] Nothing could be further from the truth. Such a reading ignores the first sentence of WAC 480-93-180(1):

> Each gas pipeline company must have and follow a gas pipeline plan and procedure manual (manual) for operation, maintenance, inspection, and emergency response activities that is specific to the gas pipeline company's system.

10 WAC 480-93-180(1) limits what needs to be in the gas pipeline company's manual to the operation, maintenance, inspection, and emergency response activities specific to the gas pipeline company's system. Here, as has been explained in the motion to dismiss, Sapphire's mobile temporary LNG facility is not part of the gas pipeline company's system. It

[7] Sapphire's Motion to Dismiss, 10-16.
[8] Staff's Reply, at 3 ¶ 7.

is separately regulated from gas pipeline facilities. The LNG regulations at part 193 set the operation, maintenance, inspection, and emergency response procedure requirements for Sapphire's mobile temporary LNG facility. The operating requirements for Sapphire under part 193 are not the same as the gas pipeline operation, maintenance, inspection, and emergency response procedures sent out in the WAC and part 192 for gas pipelines.

11 ~~Staff alleges that the "plain language of the Commission's rules" state that mobile temporary LNG facilities are part of the pipeline system, but provides no support for support for the conclusion.[9] In fact, there are fundamental differences between a pipeline system, which transports natural gas, and a mobile temporary LNG facility, which is not a pipeline system and does not transport natural gas.~~

12 The reply states that the mobile temporary LNG facility is part of a pipeline system because it "was being used for operation and maintenance" of the natural gas pipeline.[10] However, LNG—which is a liquified gas—is not subject to the gas pipeline regulations. And LNG that is vaporized and supplied to a gas pipeline is subject to different Commission rules. ~~The Response claims that a mobile temporary LNG facility is part of a gas pipeline system and subject to the gas pipeline safety rules covering construction, maintenance, and safety.[11] That is incorrect. The Commission has separate rules for LNG facility design, construction and operation.[12] The Response seeks to apply a gas pipeline requirement, operating procedures, to~~

[9] ~~Staff's Response, at 13 ¶ 33.~~
[10] Staff's Reply, at 1 ¶ 2.
[11] ~~Staff's Response, at 14-15 ¶ 36.~~
[12] ~~WAC 480-93-999(1) (adopting 40 CFR part 193, which has construction, maintenance, safety, design, siting, operation, and other rules for fix and mobile temporary LNG facilities).~~

~~an LNG facility without reconciling that the Commission's procedural requirements for mobile temporary LNG facilities connected to regulated pipelines are completely different.~~

13 The Reply focuses on Sapphire's characterization as a "contractor."[13] This is a diversion. The manual incorporation rules apply to gas pipeline contractors who work on the pipeline. Sapphire is not a gas pipeline contractor. Fundamentally, mobile temporary LNG facilities provide a product and service that is most closely aligned other upstream gas *suppliers*. Trying to squeeze Sapphire into the pipeline contractor role, the Reply summarily concludes that the term "gas pipeline" also includes anything "supplying gas and pressure to the part 192 pipeline."[14] Neither the Reply ~~nor the Response~~ provide any support for this proposition, which would create new obligations for Washington gas pipeline companies to incorporate in their manuals all plans and procedures used by all upstream gas suppliers and sources.

***C.* ~~Silverstreak *requires that courts use*~~ ejusdem generis ~~*to interpret 480-93-180*~~

14 ~~Staff's Response made false allegations regarding Sapphire's use of *Silverstreak* in the interpretation of section 480-93-180 in the Motion to Dismiss. The Response incorrectly alleged that Sapphire relied upon a court of appeals opinion in *Silverstreak* that was subsequently reversed by the Washington Supreme Court. In truth, the Motion to Dismiss did not cite, or refer to, the court of appeals' opinion. Sapphire's argument cited, relied on, and is supported by, the Washington Supreme Court's opinion in *Silverstreak*.~~[15]

[13] Staff's Reply, at 3 ¶¶ 7-8.
[14] Staff's Reply, at 1 ¶ 2; and Staff's Response, at 15 ¶ 36.
[15] ~~*Silverstreak, Inc. v. Washington State Dep't of Lab. & Indus.*, 159 Wash. 2d 868 (2007).~~

D. Installation is a singular event on a single day and any associated violation is not a continuing violation

15 RCW 81.88 RCW and federal regulations both allow continuing penalties for violations of the pipeline safety rules, but it is not the practice under either set of rules to issue continuing violations and penalties for obligations that occur once and do not continue over multiple days.

16 Significantly, the Complaint seeks to change what is required under the notification provision in an apparent attempt to make a one-time event appear to be continuing. The part 193 reporting obligation occurs on "installation" while the Complaint alleges continuing penalties based on "the location and use of portable LNG equipment."[16] But "location and use" are not operative actions under the rule. Installation is not use and is not location. As the Response states, violations are separate and distinct offense for "every day's continuance thereof."[17] The Complaint recognized the need to change the operative prohibition to attempt to create a continuing violation but the part 193 notice provision does not apply to "use" of a mobile temporary LNG facility and installation is a one-time event that cannot be treated as continuing under the applicable rules.

III. CONCLUSION

17 The Commission must grant the Motion to Dismiss for the reasons set forth above, and as further demonstrated in Sapphire's Motion to Dismiss. The Response fails to adequately address the fundamental deficiencies in the Complaint and offers no valid basis for the claims to proceed.

[16] Complaint, at 14 ¶ 90.
[17] Staff's Response, at 31 ¶ 72 (quoting RCW 81.04.380).

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Respectfully submitted,
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