



CONFEDERATED TRIBES  
of the  
*Umatilla Indian Reservation*

P.O. Box 638  
PENDLETON, OREGON 97801  
Area Code 541 Phone 276-3165 FAX 276-3095

January 6, 2006

Via Regular U.S. Mail and E-Mail to IEED@bia.edu  
Attn: Section 1813 ROW Study  
Office of Indian Energy and Economic Development  
Department of Interior  
1849 C Street, NW  
Mailstop 2749  
Washington, D.C. 20240

*Re: CTUIR Comments About Congressionally Mandated Study of Energy  
Rights-of-Way (ROW) on Tribal Land*

Dear Sir or Madam:

The Confederated Tribes of the Umatilla Indian Reservation (CTUIR) offers our comments on, the process mandated under §1813 of the Energy Policy Act of 2005, Public Law 109-58, which requires the Departments of the Interior and Energy to provide Congress with a study regarding energy rights-of-way on Tribal land. Comments on the preparation of this report were requested in the Federal Register on December 29, 2005 at p.77178. The CTUIR hereby submits these comments and requests direct participation in the scoping meetings and work shops to prepare a report to be submitted to Congress by August 7, 2006.

The CTUIR has a natural gas pipeline that crosses our Reservation. After construction of the pipeline in 1955, and adding a larger pipeline in 1980, the CTUIR and its members had collectively received less than \$1,000 per year for the 40 year period between 1955-1995, when the ROW agreements were negotiated on behalf of the CTUIR by the Bureau of Indian Affairs. The CTUIR took full responsibility for the ROW renewal negotiations in 1995, resulting in a dramatic increase in compensation, and requiring compliance with Tribal laws. The ROW terms negotiated by the CTUIR reflected the value of the pipeline for the 20 year period between 1995-2015, but also included compensation for the unconscionably low payments for the previous 40 years. Four years later, the natural gas pipeline exploded sending flames 500 feet into the air, demonstrating the potential peril posed to the public by such pipelines, and the need for ROW compensation to cover the costs of this threat. Because we do not believe our experience is unique and because we know that other Tribes have similar concerns, we believe our experience must be evaluated and factored into the Report to Congress on energy rights-of-way that cross Indian lands being prepared by the Departments of Interior and Energy.

1. Background on CTUIR.

The CTUIR historically occupied over 6.4 million acres in northeastern Oregon and southeastern Washington. In 1855, the CTUIR executed a treaty with the United States reserving for its exclusive use the Umatilla Indian Reservation (Reservation), located in northeastern Oregon, as a permanent homeland for the Cayuse, Umatilla and Walla Walla Tribes. CTUIR Treaty of 1855, 12 Stat. 945. The Treaty also reserved exclusive hunting and fishing rights on its Reservation and off-Reservation rights to hunt, fish and gather traditional foods and medicines. The Reservation is located where the Oregon Trail crossed the Blue Mountains and drops down to the Columbia Plateau. For this reason, the United States included Article X of the Treaty which authorized the President to establish rights-of-way through the Reservation for roads, highways and railroads that are in the public interest. As a result of this Treaty provision, Interstate 84 and a Union Pacific railroad line cross the Reservation.

2. Natural Gas Pipeline ROW on Umatilla Indian Reservation.

Beginning in 1955, Northwest Pipeline Company rights-of-way sought a similar path over the Blue Mountains through the Reservation. For purposes of the Report to Congress required under §1813, the natural gas pipelines constructed on the Reservation are worthy of close scrutiny.

In 1955, the Northwest Pipeline Company (Northwest) negotiated with the Bureau of Indian Affairs (BIA) for a right-of-way (ROW) through the Reservation for the construction of a 22 inch main line that runs from west to east through the Reservation, and a 6 and 5/8 inch distribution line that runs north to Walla Walla, Washington. The CTUIR and Tribal landowners whose land was burdened by the ROWs were paid less than \$3,200 for the 20 year ROW term from 1955 to 1975.

In 1975 Northwest renewed their ROW for another 20 year term. Again, the BIA handled the negotiations. The total compensation paid to the CTUIR and Indian landowners was \$15,200 for the 20 year ROW term. In 1980, Northwest expanded its 22 inch main line by adding an additional adjacent 30 inch natural gas pipeline within the same 75 foot right-of-way across the Reservation. The CTUIR and affected landowners were paid \$21,700 for the additional 30 inch pipeline within the ROW. The separate ROW for the 30 inch pipeline was set to expire on the same day as the ROW for the 22 inch pipeline, December 15, 1995.

Accordingly, the CTUIR and its members were paid \$38,100 for the 40 years from 1955 to 1995, for the 22 inch pipeline (1955 to 1995), the 6 and 5/8 inch pipeline (1955 to 1995) and the 30 inch pipeline (1980 to 1995). This total ROW compensation, including damages as a result of construction of the pipelines, totaled less than \$1,000 per year for the CTUIR and all of the affected landowners.

Northwest's ROW on the Reservation includes 9.74 miles for the 22 and 30 inch lines running from east to west, and 2.93 miles for the 6 and 5/8 inch service line running from north to south. Accordingly, there is a total of 12.32 miles of Northwest ROW on the Reservation. The ROWs were granted pursuant to the Act of February 5, 1948. 62 Stat. 17, now codified at 25 U.S.C. §323-328, and pursuant to regulations currently set forth in 25 CFR Part 169.

The 1955, 1975 and 1980 rights-of-way were negotiated on behalf of the CTUIR and its members exclusively by the BIA personnel. The records we have seen show no CTUIR involvement in the negotiation of the ROW terms in those years. The CTUIR did not have legal, realty or natural resources staff to analyze the ROW proposals, nor to develop or analyze the appropriate value of such ROWs in those negotiations. In addition, despite the fact that the 1955, 1975 and 1980 ROW agreements authorized reimbursement for lost agricultural production on the lands burdened by the pipeline construction or operation, no such claims were made by or on behalf of the Tribe or its landowners.

### 3. 1995 ROW Agreement.

All of this changed in 1995 when Northwest approached the BIA Umatilla Agency office personnel for renewal of the natural gas pipeline ROW. BIA Agency Superintendent, Philip Sanchez, referred the Northwest representatives to the CTUIR for negotiation of the ROW renewal. The CTUIR Board of Trustees, the Tribal governing body, directed the needed natural resource, economic development and legal staff to analyze the ROW renewal proposal, and directed that the negotiations seek equitable terms for a new 20 year ROW agreement, as well as overdue compensation for the previous 40 years. As a result, the CTUIR negotiated a new 20 year ROW agreement with Northwest for a total of \$2,657,584, for annual contributions of \$2,000 to the Tribal Scholarship Fund, a Northwest commitment to fully comply with the Tribal Utility Tax Code and with authorization for the CTUIR to submit claims for lost agricultural production on the lands burdened by the rights-of-way dating back to 1955. As a result, the CTUIR and affected landowners were paid a total of \$128,961.19 for a loss of agricultural production for the years 1956 to 1996 in October 1996.

The CTUIR believes that it is important that both the Department of the Interior and the Department of Energy understand the history of the Northwest ROW across the Umatilla Indian Reservation in order to fully understand why recent Tribally conducted ROW renewal agreements may have resulted in increased ROW compensation paid by energy companies. The CTUIR would be the first to acknowledge that the ROW renewal compensation paid by Northwest for the 1995 through 2015 renewal term is high. However, the compensation was not intended to cover that period only, but also to make up for unconscionably low ROW payments for the 40 previous years, and the absence of claims for lost agricultural production. The 1995 ROW agreement was also a way of ensuring that Northwest was made aware of, and required to comply with, applicable CTUIR laws with regard to its operation and maintenance of the pipeline through the Reservation.

These CTUIR concerns about its sovereignty, the health and safety of Reservation residents and the need to protect the Reservation homeland, came into sharp focus when the Northwest natural gas pipeline exploded in 1999, posing a serious health threat to the Tribe, its members and the Reservation. The Northwest natural gas pipeline crosses the Reservation by running adjacent to and through Tribal housing projects, the Tribal governmental compound and the Nixyaawii Community School, a Tribally operated high school. The CTUIR has justified and appropriate concerns about public health and safety in connection with the operation and maintenance of the natural gas pipeline.

The 22 inch pipeline and the 6 and 5/8 inch service line both exploded in the middle of the Reservation on January 2, 1999 in an area very close to Tribal residential housing projects and the Tribal governmental compound. The explosion sent flames up to 500 feet in the air and caused a loss of electrical power to thousands of residents in the area. Tribal police, fire and emergency response personnel responded to the blast and assisted in the response to the explosion, the containment of its damage and the investigation of its cause. A copy of the front page newspaper of the local East Oregonian newspaper, based in Pendleton, Oregon, dated January 4, 1999, is attached to demonstrate the size of the explosion and its impact.

The CTUIR is interested in participating in the dialogue initiated by the Department of the Interior and Energy leading to the development of the report to be submitted to Congress in August on rights-of-way compensation for energy pipeline facilities that cross Tribal lands. We believe that our experience with the Northwest ROW for its natural gas pipelines crossing the Reservation provides us, and the federal government, with an insightful perspective on the development of such rights-of-way across Indian Country, of the compensation for such ROWs, and how some Tribal governments have been able to negotiate for fair ROW agreements going forward, but also for unconscionably low rights-of-way compensation paid for in the past.

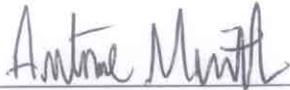
Department of Interior  
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Page 5 of 5

Specifically, we believe the CTUIR experience would be helpful in addressing the historic rates of ROW compensation in Indian Country, in developing appropriate standards for fair ROW compensation and an assessment of tribal self-determination and sovereignty implicated by such ROW agreements. And, to the extent that the Department's report to Congress may lead to legislation setting forth rules and parameters within which ROW negotiations between Tribes and energy pipeline companies may proceed, we have a vested interest in the development of such laws and regulations. For these reasons, we request to be participants in the scoping of the issue, the development of the report to Congress and any legislation that may result. Thank you for your consideration of our comments.

Feel free to contact me or either the Tribal Executive Director Don Sampson (at 541-966-2050) or Tribal Attorney, Dan Hester (at 303-673-9600) if you have any questions regarding these comments.

Sincerely,

CONFEDERATED TRIBES OF THE  
UMATILLA INDIAN RESERVATION

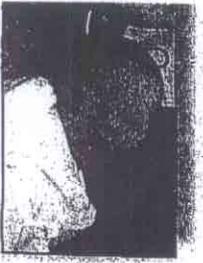


Antone C. Minthorn, Chairman  
Board of Trustees

ACM:DH:

Enclosure: January 4, 1999 Eastern Oregonian Article

cc: Jerry Lauer, Interim Superintendent, Umatilla Agency, Bureau of Indian Affairs  
Stan Speaks, Portland Regional Director, Bureau of Indian Affairs



■ Greeting the new year.  
— AREA, Page 3A



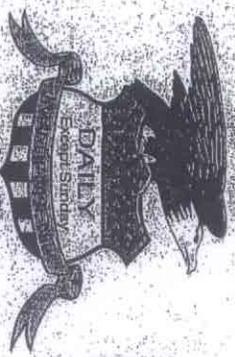
■ A last-second win for the 49ers.  
— SPORTS, Page 1B

**JAN. 4, 1999**

■ 124th year, No. 56  
■ 2 Sections, 16 Pages

**MONDAY**

**EAST**



**OREGONIAN**

SEVEN MILE CANYON, CALIFORNIA, 1974

EXCERPTS

# Explosion, fire over pipeline



Heat from Saturday's fire turned the ground around the site to glass such as this sample in the photo at left. Staff photo by Don Crosswell

... reported in blast  
... the Indian Reservation

... eventually give out. In 1981, a backhoe operator punctured the 6-inch line close to where the explosion took place, but Katz...  
... Saturday



# Explosion, fire sever pipeline

## No injuries reported in blast on Umatilla Indian Reservation

By RICHARD HENSLEY  
of the East Oregonian

MISSION — An underground pipeline exploded Saturday morning at the base of the Blue Mountains, sending flames up to 500 feet in the air and shutting off natural gas to about 10,000 customers.

Twenty-foot sections of 22-inch and 6-inch pipelines exploded at 9:22 a.m. on Burke Road about a mile from Cayuse Road. A 30-inch line near the two smaller lines was not damaged in the explosion. A couple of houses within several thousand yards of the blast and fire were not damaged and no injuries were reported. The cause of the accident is under investigation.

**Inside**  
A resident gets a close-up look at the fire. More photos and story on Page 8A.

to the Meacham area. Residents in Mission, Milton-Freewater, Weston, Athena, Adams and Walla Walla were without natural gas Saturday night, when temperatures dropped below freezing. Gas service was restored to Cascade Natural Gas by about 5:30 a.m. Sunday.

David Katz, an engineer with Williams Gas Pipeline in Salt Lake City, the company that owns the pipelines and supplies Cascade with natural gas in this area, said he didn't know what caused the pipeline failure and explosion. But he said similar instances have been attributed to weaknesses in pipelines that

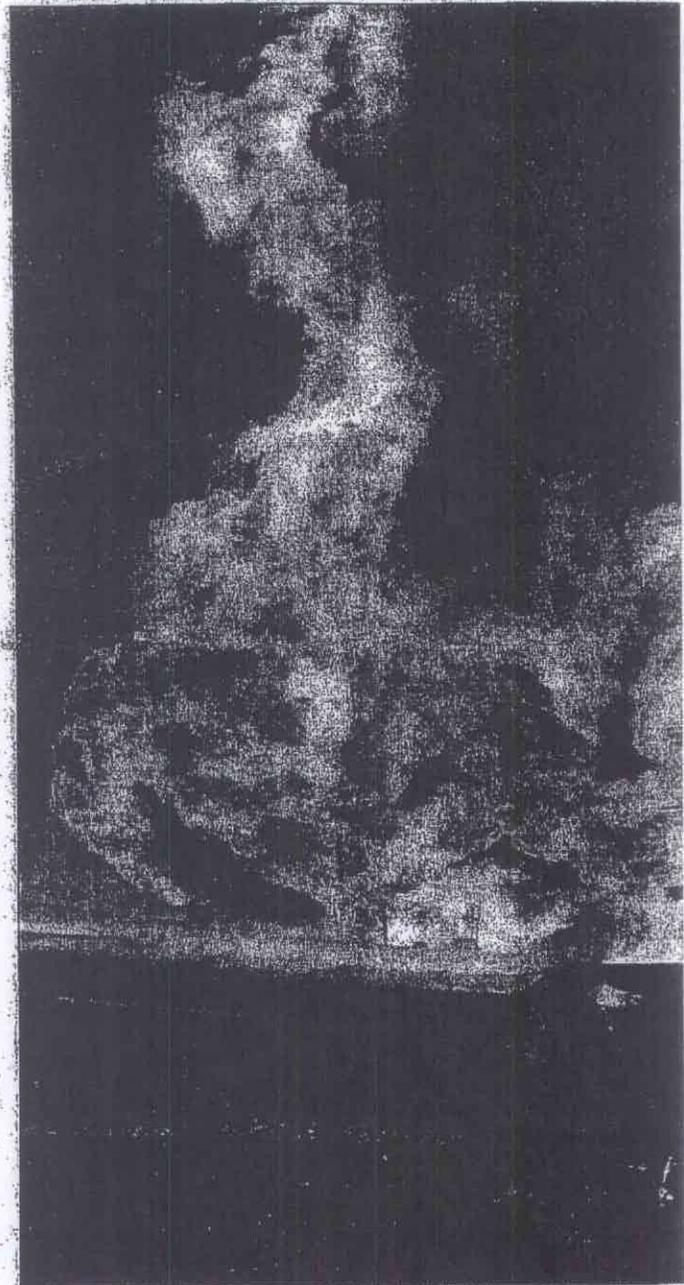
eventually give out. In 1981, a backhoe operator punctured the 6-inch line close to where the explosion took place, but Katz said Saturday's accident did not involve the repaired section.

Typically, natural gas pressurized to 700-800 pounds-per-square-inch runs through the 22- and 30-inch pipelines, he added.

"The outside of the pipe looks as new as when we put it in," Katz said of the condition of the pipeline. The clamp that was used to repair the 1981 leak still was in good condition. Chris Scott of Paseo, the senior control technician for Williams, said work crews will make more permanent repairs to the 1981 puncture site while fixing the pipeline damaged in the Saturday blast.

Tribal firefighters responded within minutes of the explosion and subsequent fire. Due to the pressurized gas pipes, which sent flames high into the sky, and because of the intense heat, firefighters could only stand by and check a house owned by Lonnie Alexander for fire danger until gas line crews shut off valves and emptied the lines. One valve was at Deadman Pass and the other was in Mission. Flames died down by late afternoon, Scott said, and his crew went to work excavating the site. The initial blast created a large crater and tossed pieces of broken pipeline hundreds of feet.

Umatilla Electric Cooperative employees shut off electricity on the power poles near the blaze Saturday and began replacing the ruined poles Sunday morning. MiTrac Construction from La Grande is the contractor on the site. Pipeline repairs should be complete by today, Scott said.



A fireball shoots skyward at the site of a gas pipeline break about a mile south of Cayuse Saturday. There were no injuries.

## AREA

# Towering inferno

■ Nearby resident rattled by blast from explosion

By RICHARD HENSLEY  
of the East Oregonian

Residents for miles could hear the explosion that rumbled across the countryside Saturday morning. But no one had a better vantage point than Lonnie Alexander.

At about 9:22 a.m., immediately after the massive blast rattled Alexander's house, located about 2,000 feet from where the natural gas pipeline exploded, she knew something was dreadfully wrong but didn't know just what. Alexander lives on the Umatilla Indian Reservation about a mile south of Cayuse.

She looked out the window but couldn't see anything. Then she went out the door and looked up the road. What she saw was an inferno with flames shooting almost 500 feet in the air.

"I thought it was a plane crash," Alexander said. "I immediately felt the intense heat and the noise was just tremendous." The pressurized gas feeding the flames gave off a sound like a jet engine, even from far away.

Alexander called 911 and then tried to make another call, but the line went dead. She evacuated her house.

Minutes after the emergency call came in about the explosion, Fire Chief Ken Gray of the Confederated Tribes of the Umatilla Indian Reservation Fire Department was heading for the scene. He watched the towering orange flames boiling skyward, jetting two streams of fire at 45-degree angles.

Still several miles from the blaze, Gray thought his luck had run out.

"When I was driving to the scene, it sounded like I had a flat tire," Gray said.

On further inspection, however, Gray learned that the sound was coming from pressurized lines spewing natural gas at the scene of the blast.

Gray said that once it was figured out a gas line had exploded and that there were no injuries, the best news was that the gas was on fire.

"We were so fortunate it was on fire," Gray said of the

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The response was great. They were highly professional and helpful.



Chris Scott

— Senior control technician for Williams Gas Pipeline, speaking of the response by firefighters and law enforcement.

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gas leak. "If it's on fire, it's under control."

Spewing gas lines without fire would have put the entire area in a potentially deadly situation; a spark could have touched off a raging fire putting many more people in danger.

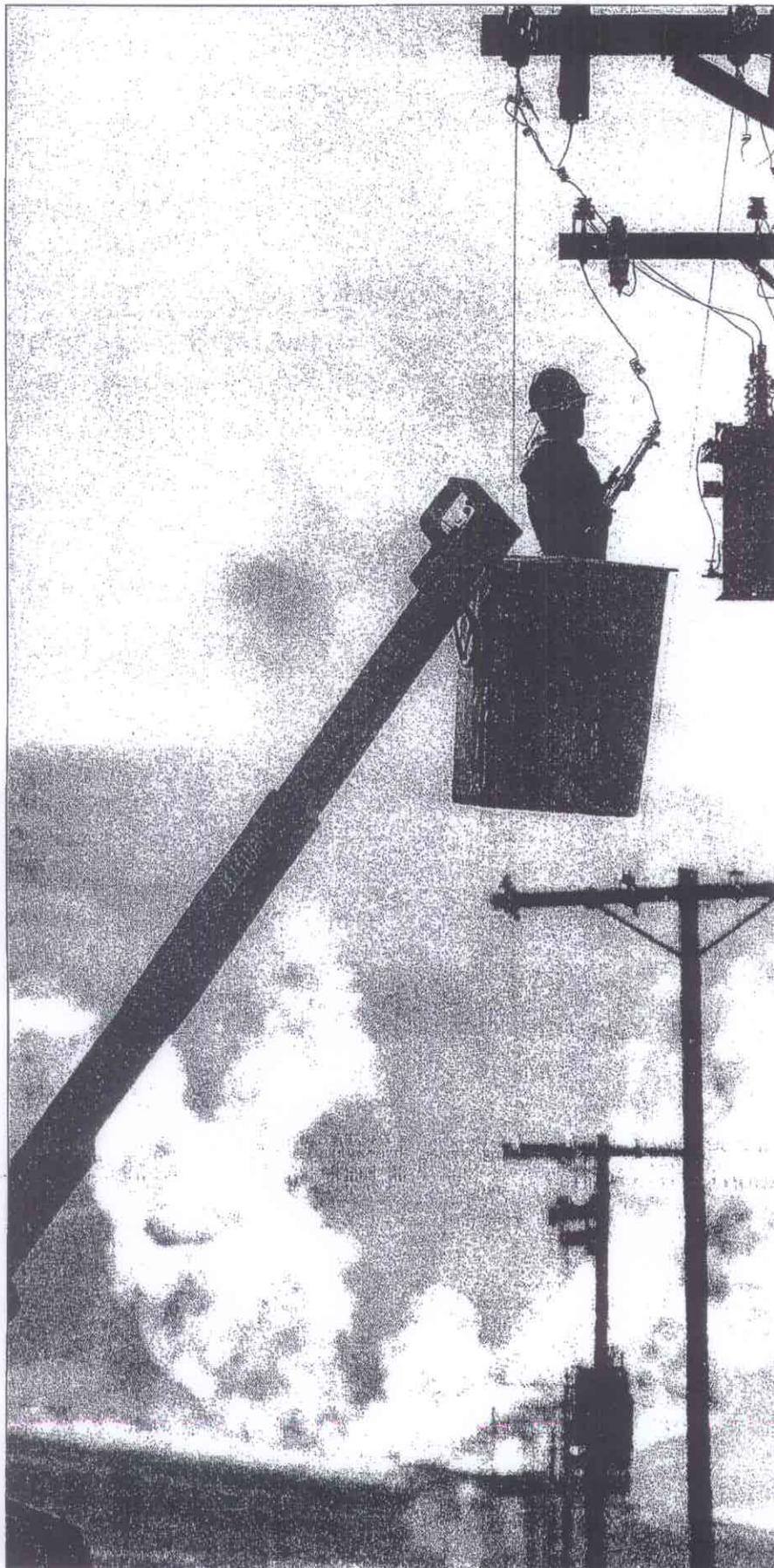
After assessing the situation, Gray determined that tribal firefighters could handle the situation without help from other fire departments. There was a problem, however. The explosion took out electrical lines as well as repeater lines allowing communication. Gray said his department, along with law enforcement, used other means to get the word out.

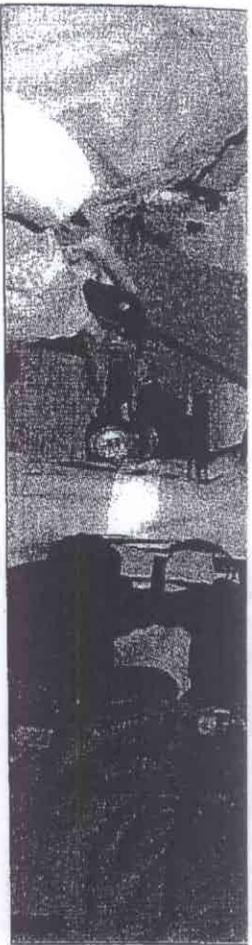
Although the fire department was on the scene and ready to go, there was little that could be done until pipeline valves were shut off in Meacham and Mission. In the meantime, firefighters kept a close watch on Alexander's house, which sat below the blaze on the same road. The house survived the flames and intense heat.

By afternoon, flames had died and the fire department could move onto the scene.

Chris Scott, senior control technician for Williams Gas Pipeline, gave high praise to the fire department.

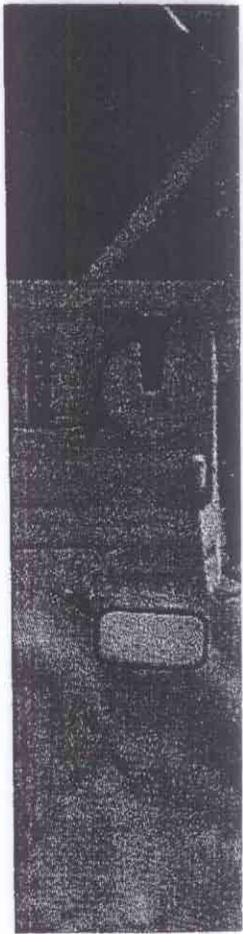
"The response was great," Scott said of firefighters and law enforcement. "They were highly professional and helpful."



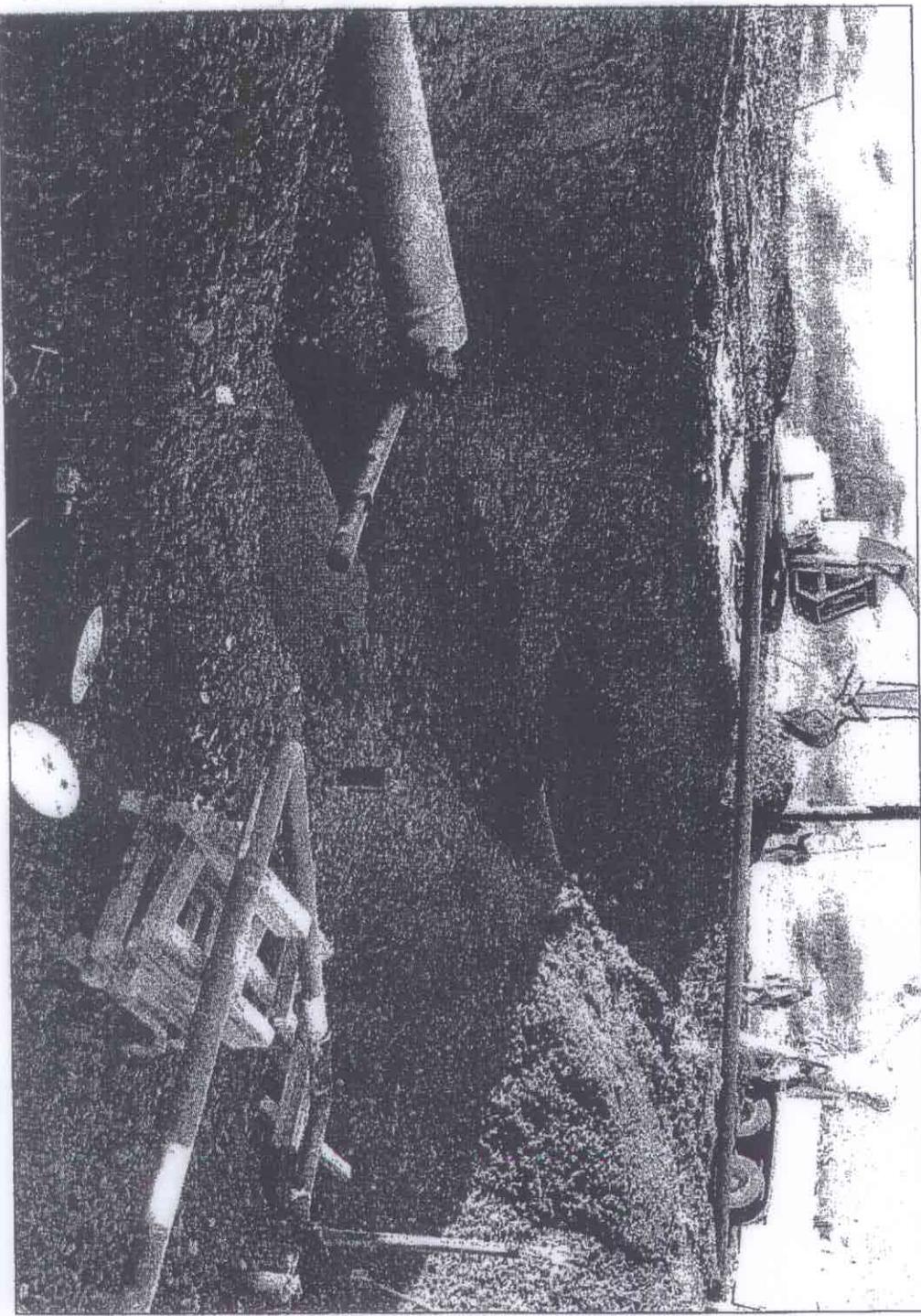


Staff photo by Don Cresswell

**Fire Captain Rob Burnside, center, of the Tribal Fire Department, explains to Chief Ken Gray, right, what he and Assistant Chief Mike Niord saw when they returned from near the fire.**



**A lineman for Umatilla Electric Cooperative shuts off power to line blast knocked out several poles and the heat scorched others close.**



Staff photo by Don Cresswell

**The explosion sent twisted sections of the gasline flying hundreds of feet. The crater that was left after the blast exposed the intersection of the six-inch, 22-inch and 30-inch lines. When the 22-inch line exploded, it took out the six-inch line as well. The 30-inch line was left intact.**

## Outage

**Continued from 1A**  
Milton-Freewater's nursing home — one nurse on duty said the gas outage had not affected them much. The facilities' main heat source is electric, she said. The only thing they lost was the hot water — "we were not able to give showers today" — and the clothes dryers.

Across town at the Fountain Restaurant, waitress Colette Huffman had a different story.

"This morning was very stressful, honey," she said.

Though many restaurants in Milton-Freewater were closed Sunday, the Fountain kept its doors open, making do with what it had — and business was booming.

"The most stress was on the kitchen crew," Huffman said. The kitchen had to fill orders with three-quarters of the kitchen equipment down. Cooks used one small electric grill, the deep-fryer was out and water had to be heated in a pot for washing the dishes.

"Our customers were great — they understood the problem," Huffman said.