

**Summary of Written Comments  
Pipeline Fee Methodology Rulemaking to Review  
WAC 480-93-240 and WAC 480-75-240  
For May 20, 2005 Comments  
Docket No. PG-041344**

**Revised: May 23, 2005**

NO.	INTERESTED PERSON	COMMENTS	STAFF RESPONSE
1.	Barry C. Duff Operations Manager Olympic Pipe Line Company	<p>On behalf of the Olympic Pipe Line Company I would like to express general support for the Commission’s effort to improve the methodology established in WAC 480-75-220 to fund the Pipeline Safety program within the Washington Utilities and Transportation Commission. The current method of dividing program costs into an interstate and an intrastate pool based on a fixed percentage of total program costs does not reflect a true ‘fee for service’ model, which we have advocated since the inception of the program. Therefore, we support a new allocation method that relies instead on a combination of factors, including direct service provided to individual companies and the relative size of a company’s operations in Washington State as represented by the total number of miles of pipe located within Washington’s borders.</p> <p>However, in the current draft of the revised rule and in our understanding of the proposed application of that rule, a number of issues remain to be addressed.</p> <p><b><u>1.a. Predictability for Regulated Companies</u></b> Although we support the use of actual effort by the commission staff as the primary basis for allocation of fees, this then should reconcile easily to the established work plan developed by OPS to be carried out by the WUTC. For any given inspection, there should be an acceptable range of billable hours that the commission would charge to the company for whom the inspection is performed. This is analogous to any consulting entity doing work for a private firm. Additionally, the direct hourly rate should be well established. Because the</p>	<p>1.a. The proposed fee methodology is not a direct billing system. It is an allocation method. Companies will not be billed by the hour but rather they will be allocated a portion of the program’s cost based on the company’s percentage of the total program hours that can be attributed directly to a company. For instance, if in a given time period, the program spent 100 hours that could be directly attributed to a particular company, a company which received 10 of those hours would be allocated 10 percent of the portion of fee allocated by effort . Thus while staff could provide a range of hours that a standard inspection would take, it will not be relevant to determining a company’s fee. It will be the variability from that range and other program activities</p>

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		<p>new methodology separates out general agency overhead and charges that overhead to all regulated companies based on linear miles of facilities, the hourly charge should be representative of only the direct cost of the employee inspection time with a minimal additional amount for training or other non-specific activities. This would give the regulated companies general predictability of expenses and ensure confidence in the efficient operation of the program.</p> <p><b><u>1.b. Incident Response</u></b>  Olympic Pipe Line supports the direct billing of companies for inspection activities relating to an incident response. This creates a de facto reward for good performance, since companies without incidents will be charged less than companies with measurable hours attributed to them for incident response. However, it should be recognized that the root cause of an incident may not be the regulated company. In cases of third party damage, every effort should be made to recover the civil penalty from the responsible party. All civil penalties relating to pipeline incidents that are recovered and placed in the Pipeline Safety Account should be credited against the fees charged to the regulated company involved in the third party damage incident. This will encourage private enforcement of the one-call laws and help to offset charges to a company associated with incidents with an identifiable third party instigator.</p> <p><b><u>1.c. Audit of Declared Billable Hours</u></b>  Because the new methodology uses a two year look back, hours of billable work attributed to a company will affect their fees for 24 months. This is a significant departure from the use of linear miles of facility, which are initially reported by the regulated company. Since the new basis for fees does not originate with the regulated company, but rather with the commission, we believe that regulated companies should be given a detailed accounting of the work being attributed to them for the purpose of rate setting and allowed the opportunity to challenge these numbers if their own internal accounting is inconsistent with the numbers presented by the commission.</p>	<p>directly attributed to that company that will make the difference in the company's fees. Furthermore, a feature of the proposed fee methodology is that it would include all effort devoted to a given company, not just inspection time. This means that technical assistance, enforcement, settlement discussions, administrative support related to inspections and other activities that can directly be attributable to one company will be included.</p> <p>1.b. Flowing all of the penalty money directly to a given company in the form of a fee credit raises issues that this rulemaking has not addressed. However, companies which experience third-party damage should not have to pay a higher fee as a result of any pipeline safety program effort spent in investigating such an incident. Thus, it makes sense to hold an operator harmless for any potential fee increase associated with bona fide third-party damage. In the event that a court has found that an</p>

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		<p><b><u>1.d. Use of Calendar Year</u></b>  Under both the current methodology and the proposed new methodology, the annual billing cycle begins on July 1<sup>st</sup> and lasts for 12 months. We would recommend that timekeeping be based on the calendar year, which would give sufficient time for compilation and for review by the regulated companies before the first invoices are sent that would be based on this information. For example, for the fiscal year beginning July 1<sup>st</sup>, 2006 the allocation of fees to regulated companies would be based on staff efforts from January 1<sup>st</sup>, 2005 through December 31<sup>st</sup>, 2005. This provides commission staff 6 months to tabulate the records, communicate the results to the regulated companies and respond to any comments by the regulated companies.</p> <p>To summarize, the Olympic Pipe Line Company is supportive of the commission's proposed changes to this rule, and we are hopeful that our suggestions will be received in the positive and constructive spirit with which they are offered. As always our goals are simply stated - no accidents, no harm to people, and no damage to the environment. It is our sincere desire to maintain a state based pipeline safety program of the highest quality, operating efficiently and providing incentives for private companies to exceed the minimum standards set by the regulating bodies.</p>	<p>incident involved third-party damage sufficient to issue civil penalties, the proposed rule makes it clear that no hours associated with that event will be attributed to the company that experienced the damage for fee-making purposes. Since this would mean all companies would have to cover the fee that would have been attributed to those hours, the penalty dollars will be treated in the same manner as the federal base grants and used to reduce fees paid by all operators.</p> <p>1.c. The pipeline safety program will provide companies an accounting of hours directly assigned to them.</p> <p>1.d. Staff agrees and the rule has been changed.</p>

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2.	Holly Robinson Environmental Compliance Manager Tidewater Terminal Company	<p>Although we do not fundamentally disagree with trying to make a connection between the fees charged and the costs incurred by the commission, we do feel that if pipeline fee calculations are going to be based almost exclusively on the amount of time spent; the rule should also incorporate a clear path that regulated entities can take to reduce these fees. The commission has some discretion in deciding the frequency of standard inspections. A clear explanation of what those decisions are based on can aid companies in making decisions that can both reduce their fees, while helping prevent pollution and reduce risk to the public.</p> <p>Examples of things companies could do to earn the benefit of reduced inspections, and therefore reduced fees, could include: demonstration of consistent compliance during past inspections, installation of prevention devices that go beyond those required by the existing regulations, conducting documented testing and inspections beyond that which is required by rule.</p> <p>Tidewater conducts annual hydro-testing of our line; we have agreed to conduct smart pigging on a five (5) year schedule. These are examples of the types of steps we have taken as a company, at significant cost, to reduce the risks to public safety and the environment associated with our pipeline operations.</p> <p>In addition, we also feel that phasing in the rule change, by capping the percent increase per year will help prevent placing undue burden on smaller pipeline companies.</p>	<p>The pipeline safety program is currently developing an inspection scheduling tool based on risk which, when completed, will clearly identify actions that can lead toward a lower inspection priority. Staff believes, at this time, that a rule will not be needed to implement this scheduling tool.</p> <p>Staff considered a cap as a way of reducing the impact of a significant change in fees. However, any cap system threatens the equity of the fee methodology. The transition should be eased by the one-year delay in the implementation of the rule and, if the budget allows, a reduction next year in the total amount of billed fees.</p>

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3.	Karl R. Karzmar Director, Regulatory Relations Puget Sound Energy	<p>PSE believes that the proposed rules represent a fair compromise of the divergent opinions expressed by the parties that have commented in this proceeding. However, as mentioned in earlier comments, PSE continues to believe that all costs should be allocated based on effort rather than allocating a portion of costs based on a company’s miles of pipeline.</p> <p>PSE offers the following specific comments in regards to WAC 480-75-240(2)(b)(ii): the use of the words “directly assigned” may be misinterpreted. Therefore, PSE offers the following suggested wording: “After deducting the commission’s annual overhead charge, the remainder of the commission’s annual pipeline safety program allotment will be allocated among companies in proportion to each company’s share of the <u>total</u> program staff hours that are directly <u>attributable</u> (as reflected in the <u>program’s timekeeping system</u>) to particular companies. The commission will determine each company’s share by dividing the total hours directly <u>attributable</u> to the company during the two preceding fiscal years (as reflected in the program’s timekeeping system) by the total of directly <u>attributable</u> hours for all companies over the same period.” (Inserted words are underlined). There are also other sections where “attributable” might replace “assigned”.</p>	Staff agrees with the use of attributable instead of assignable and has made that change.
4.	Edward A. Finklea Northwest Industrial Gas Users (NWIGU)	<p><b>I. Background Information</b></p> <p>NWIGU is a non-profit association comprised of thirty-two industrial users of natural gas with major facilities in the states of Washington, Oregon and Idaho. Some NWIGU members own gas facilities that directly connect their plants in Washington to the Williams’ Northwest interstate pipeline. These operators’ intrastate gas pipelines are accordingly subject to safety regulation by the WUTC, and these direct connect customers pay a direct share of Pipeline Safety Program fees under RCW 80.24.060. NWIGU members also pay for interstate pipeline</p>	

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		<p>company assessments on TransCanada’s Gas Transmission Northwest and Williams Northwest Pipeline indirectly to the extent the charges are incorporated into the interstate pipeline rates, and industrial customers pay for local distribution companies’ assessments indirectly to the extent the utilities’ Pipeline Safety Program costs are included in their respective rates for those that take service behind the utilities. The overarching concern for NWIGU is that any new methodology be a justified improvement over the current.</p> <p><b>II. Comments</b></p> <p>NWIGU appreciates the WUTC’s initial decision to delay implementation of the new method for one year. NWIGU remains concerned with two aspects of the change, however. First, some provision should be made for charging entities directly for incident response, rather than spreading incident response within direct time allocations without express distinction for recovery of the time expanded on significant incidents. Second, a 25% cap should be imposed on the amount of increase any one operator can realize in safety fees in one year as the WUTC transitions from the current method to the new method.</p> <p><b>A. Direct Charges for Incident and Construction Activities.</b></p> <p>In addition to directly assigning average costs of planned standard inspections, the program has charged companies for significant incident activities in the past. NWIGU supports the Commission’s policy of charging operators for unexpected incident and construction-related activities that occurred over the previous year in a direct billing. NWIGU recommends that this practice be continued with express incorporation into the rule for the charging of such activities. These additional charges should not be increase the total amount of fees collected by the program but rather reduce the fees for others in the next year, as the total fees should be offset by the direct billings. That is, after a year when the program</p>	<p>IIA. The proposed fee accomplishes this task in a far more uniform manner. By tracking all hours directly attributable to each company, the proposed fee methodology accounts for incident and construction activities as well as specialized inspections and other inspection follow-up activities, complaint filings, settlement</p>

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		<p>expends time because of incidents and construction activities, NWIGU recommends that the program recoup those costs directly from the company in the next year's fees (recognizing that this would reduce the fees of the other companies for that next year). As long as the application is done in a uniform manner for all operators, the allocation of costs should be supported under the statute as an appropriate direct billing. We noted in previous comments that this is part of the consultant's recommendations to the Staff. We ask that the Commission include this change in the final rule.</p> <p><b>B. In addition to the one-year delay in implementation, in the first two years of the new program increases should be capped so that no entity receives more than a 25% increase in fees in any given year apart from fees stemming from an incident.</b></p> <p>NWIGU appreciates the Commission's preliminary decision to delay implementation of the fee change for one year. NWIGU has consistently raised two concerns regarding immediate implementation. First, the time entry data being used to establish initial allocations was not originally collected in order to form the basis of allocating cost responsibility for the pipeline safety program. Second, as the Commission moves toward a new method, some customers will experience extremely high percentage increases in the fees that will be assessed.</p> <p>The one-year delay is a responsible step toward mitigating the impacts of the change in fee methodology. We recommend one additional change to ease the transition and build greater equity into the new system. No operator in the first two years after the change is initiated should realize more than a 25% increase in its fees in any one year. The difference between what the operator would have been assessed but for the cap should be collected from all other operators. A 25% stop loss cap is appropriate for two reasons. While NWIGU has never questioned the accuracy of the time data collected, we have also noted that the data from the past was never collected for the purpose of establishing fee responsibility. By</p>	<p>negotiations, etc. NWIGU has argued that work related to incident work be separated out for purposes of transparency. Since incidents are assigned docket numbers, it is relatively easy to determine hours related to a specific incident.</p> <p>IIB. Through estimates, staff has been able to determine which companies will likely experience substantial fee increases as a result of a change to the new fee methodology. The one-year delay provides these companies with fair notice that fees will change. Furthermore, by using calendar years instead of fiscal years, the one-year delay will allow for an 18-month rolling forward of the time data from what was used in the estimate. This will mean that 75 percent of the data by which the original estimates were based will be new data.</p> <p>A stop loss measure requires that other companies pay more so that some companies pay less. The goal of the new fee methodology</p>

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		<p>imposing a 25% cap on the amount of increase in fees for any single operator, the impact of any inaccurate data will be eased through the cap. Furthermore, consistent with principles of rate shock, a 25% cap will mitigate the impact of the methodological change on any one operator. In supporting a cap to mitigate cost increases on a year-to-year basis for two years, NWIGU would also recommend that any cap exclude direct billings for excessive incidents or construction activities.</p> <p><b>III. Conclusion</b></p> <p>NWIGU appreciates the thorough review that the agency has undertaken and the careful consideration given to our comments.</p>	<p>is to achieve greater fairness. Another way to cushion the blow of the fee methodology change is to ensure that the total fee amount is the minimum necessary to run the program. If the full appropriation amount is not needed when setting the 2007 fees, the proposed rules will allow the commission to set a fee amount that is less than the full appropriation.</p>
5.	By Del Draper William Northwest Pipeline	<p>Williams Northwest Pipeline (“Williams) is an interstate natural gas pipeline with facilities in the state of Washington. Williams applauds the WUTC’s review of the Pipeline Safety Fee Methodology and supports the proposed move to a system where the fees charged to the participants reflect the workload each participant generates for the WUTC.</p> <p>The current fee system is both grossly inequitable and shifts costs from one group of participants to another. Interstate pipeline companies shoulder a disproportionate share of the costs of the current program. Williams believes that because the current fee system is extremely inequitable, the WUTC should immediately adopt the new fee methodology before it collects fees for the upcoming fiscal year beginning July 1, 2006.</p> <p>Staff has made two proposals to lessen a perceived blow to some participants that will see their fees increase under the new system. First, staff proposed a stop loss mechanism. This proposal merely perpetuates the cost shifting from one group to</p>	<p>While staff believes its proposed fee methodology is more equitable and easier to understand, it does not believe the current fee system is inequitable. On the contrary, the consultant hired to review fee proposals determined that the current fee system, along with a wide variety of other options, met the criteria of state law in terms of being uniform and equitable.</p> <p>The stop loss mechanism is no longer part of the proposed fee methodology. However, it is not practical to apply this proposed fee</p>



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		<p>another. Since the aim of the new methodology is to align the fees charged to the participants with the workload each participant generates for the WUTC, the new methodology should be adopted without the stop loss mechanism. The goal of the new system is worthy: it attempts to place the costs where they rightfully belong. The WUTC should move to this system without perpetuating the current cost shifting with a stop loss mechanism.</p> <p>Second, staff proposed delaying the implementation of the new methodology for a year to give those whose fees increase time to adjust to the higher fees. Just as with the stop loss mechanism, this proposal should be rejected and the new fee system adopted without this transitional one-year delay. Since the goal is to get all participants paying their rightfully owed share of the costs of the program based on the workload they generate, there is no need to delay. Get all participants paying their rightfully owed share. To delay for a year is to permit improper cost shifting for another year.</p> <p><i>(More detailed explanation of concerns with current method not included in this summary.)</i></p> <p>This cost shifting in the Pipeline Safety Program should end now. The WUTC should adopt the proposed fee methodology for the fiscal year beginning July 1, 2005. It should not attempt to soften the blow those whose fees will go up by delaying the implementation for a year. The goal of the new methodology is to align the fees charged to each participant with the work that each participant generates for the WUTC. This is only fair and ends the existing cost shifting. Move there now, not a year from now.</p> <p><b><u>The Previously Paid Direct Charges to Williams and the Petition.</u></b></p> <p>Williams paid the WUTC a fee for fiscal year 2004 of \$204,000. During that year Williams suffered to two incidents on its 26 inch diameter line and undertook a</p>	<p>methodology this year. First, it would not be adopted until the fee bills had been issued. Second, waiting until next year means we can shift to a calendar year for defining the effort time period. Finally, waiting until 2007 fees allows for all companies to understand and adjust to the new fee system before it goes into place.</p> <p>The proposed fee methodology will not use interstate/intrastate pools.</p> <p>The petition referred to by Williams has a proposed resolution that would allow for Williams to receive the full refund it requested in its petition. (P-040865). If accepted, this will settle the petition. Any hours that Williams has already paid for through the current methodology will be removed from any future fee determination.</p>

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		<p>massive inspection, testing and repair program of the line. This resulted in higher than normal activity for the WUTC and resulting in a direct bill to Williams of \$219,050 as part of its fee for fiscal year 2005 of \$413,884.</p> <p>As the WUTC now moves to fees based primarily on the hours spent for each participant, and looks back two years to determine the hours that are the basis of the new charge, it needs to be careful that it does not double bill Williams for the hours that were directly paid for above and beyond the regular charge in prior years. Staff has proposed refunding or crediting to Williams the \$219,050 previously directly billed as the WUTC shifts to the new fee system. This amount will obviously change depending on whether the new system is implemented for the fee due on July 1, 2005 or implemented for the fee due July 1, 2006. In conversations with Staff, they appear to be fully aware of the need to not double bill for the hours already paid as the WUTC moves to a new system based on hours.</p> <p>Williams also filed a petition protesting a portion of the fee calculation for 2005. Staff has proposed settlement of this petition in conjunction with moving to the new fee system. Delaying the new system for one more year may impact this settlement, but that impact is not known.</p> <p><b><u>Summary</u></b></p> <p>Williams strongly supports the WUTC's decision to review of the Pipeline Safety Fee Methodology and consider alternatives. Overall, Williams supports the new proposed system. It more closely aligns the fees charged to each participant with the work that each participant generates for the WUTC. This will end the egregious cost shifting from intrastate pipelines to interstate pipelines that occurs under the existing fee methodology.</p> <p>Williams continues to believe that there should be some credit for the fees the</p>	

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		<p>participants pay to OPS to have their facilities inspected. Despite the fact that the WUTC did not make any changes to the program to account for the double fees charged to some participants for the same work, Williams supports the move to a system where the fees charged to the participants by the WUTC reflect the workload each participant generates for the WUTC.</p>	