

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

Commission Investigation Into the
Need to Enhance the Safety of Natural
Gas Distribution Systems

DOCKET NO. UG-120715

COMMENTS OF PUBLIC COUNSEL

JUNE 8, 2012

I. INTRODUCTION

1. Public Counsel files these comments in response to the Commission's Notice of Opportunity to File Written Comments (Notice), dated May 18, 2012. As an advocate for Washington's natural gas customers, Public Counsel strongly supports company implementation of prudent pipeline safety programs, vigorous Commission enforcement of safety rules, and fair recovery of costs for pipeline safety.
2. Public Counsel was an active party in the adjudicative docket which gave rise to this rulemaking, the PSE Pipeline Integrity Program (PIP) accelerated recovery proposal.¹ Based on participation in that docket, Public Counsel believes that the best approach to pipeline safety concerns is a three step process: (1) investigate whether there is a problem with existing pipeline

¹ *Washington Utilities and Transportation Commission v. Puget Sound Energy, Inc.*, Docket No. UG-110723. Along with Commission Staff, and Northwest Industrial Gas Users (NWIGU), Public Counsel conducted an extensive analysis of PSE's proposal and of its gas pipeline safety program. All parties raised concerns about the lack of demonstrated need for the program, and about the propriety of the surcharge proposed as an accelerated cost recovery mechanism. The Commission agreed with many of the concerns raised and ultimately rejected the PSE proposal. Order 07.

safety for a particular company; (2) if a problem is found, determine the type of program that should be implemented to address it; and (3) consider cost-recovery as separate issue.²

3. This proceeding takes a similar multi-part approach. The purpose of this preliminary rulemaking inquiry, as stated by the Commission, is first to investigate “whether companies subject to the Commission’s jurisdiction should do more to enhance the safety of their natural gas distribution systems[.]”³ If a problem is identified, the next steps could “develop appropriate requirements or incentives to accomplish that goal.”⁴

4. At this stage of the proceeding, non-company parties’ ability to comment on the issues raised in the Notice is limited. Until regulated natural gas utilities respond to the inquiries about their own pipeline replacement programs (Section I of the Notice), and discuss or propose any preferred interim cost recovery mechanisms (Section II of the Notice), it is not possible for Public Counsel or other parties to comment in detail. Therefore, at this time, Public Counsel, submits initial comments of a general nature, but respectfully requests that the Commission allow parties additional opportunity to comment once companies respond to the Notice.

II. COMMENTS

A. Pipeline Replacement Programs (Section I of the Commission Notice).

5. In addressing the questions raised in this docket, parties should remain cognizant that under the existing regulatory and operational framework in Washington, pipeline replacement and safety are basic responsibilities of all regulated natural gas utility companies in the state.

² *Id.*, Initial Brief of Public Counsel, ¶ 102. This was essentially the Public Counsel recommendation in the PSE docket.

³ Notice of Opportunity to File Written Comments, May 18, 2012, p. 1. Questions under Section I of the Notice are related to this point.

⁴*Id.* Questions under Section II of the Notice are related to this point.

Customers rightly expect and, indeed, demand that Washington’s natural gas pipeline system is safe, and are willing to have the costs associated with the prudent maintenance of a safe system included in rates. Moreover, it is legally required that customers’ rates are sufficient for that purpose.

6. Pipeline safety is heavily regulated under extensive state and federal safety requirements. As mentioned in the Commission’s order in the PSE PIP docket, pipeline safety is subject to the oversight of the Commission and its pipeline safety staff, and has long been a Commission priority.⁵ In 2003, under authority delegated by the United States Department of Transportation, Pipeline and Hazardous Materials Safety Administration (PHMSA), the UTC pipeline safety program became the lead inspector for all interstate pipeline inspections and incidents within the state of Washington. Commission pipeline safety staff conducts inspections, audits records and ensures training is current. The Commission works with companies to identify and correct violations, and, where necessary, to pursue enforcement.

7. As a part of the existing state and federal regulations, natural gas companies operating in Washington provide various reports and information to both federal and state regulators that should be included with and form the basis of the responses to Section I of the Notice. This would include a company’s Distribution Integrity Management Plan (DIMP), as well as any recent pipeline safety reports filed with the Commission (annual surveillance or other). Where appropriate, company responses should reference and cite the relevant data included in these reports, so that the company need not “reinvent the wheel” in response to the Notice.

⁵ PSE PIP Order 07, ¶7.

Additionally, in furtherance of providing a factual framework for the issues under review in this docket, Public Counsel believes it would be useful for companies to provide the following:

- Historical data listing all pipeline enforcement actions taken against the company by state or federal authorities, including docket number, penalties if any, basis of violation, type of pipe, remedial action required (e.g. pipeline replacement), and status of completion/compliance.
- Information regarding any natural gas pipeline accidents that have occurred in the company's system.
- History and status of cost recovery for current and past pipeline replacement efforts, including those undertaken pursuant to settlements or Commission enforcement actions.

This information, as well as the DIMP and annual safety reports are necessary for the determination of the answer to the Commission's first question in the Notice, whether companies should do more to enhance the safety of their systems. If the company responses identify a problem, then the investigation should proceed to develop a program tailored to resolve the safety issue.

B. Interim Cost Recovery Mechanisms (Section II of the Commission Notice).

8. As noted above, the evaluation of safety programs, and the need for changes or improvements, is separate and distinct from the question of cost recovery. Rather, the question of what should be done, if anything, to improve pipeline safety is a factual question that is essentially engineering-based. Safety can be improved in a measurable way, without modifying

cost recovery methods, through means such as increased leak surveys, different replacement protocols, as well as modified risk models and mitigation matrices.

9. For many years, Washington natural gas companies have undertaken a wide variety of safety improvements to their systems, both voluntarily and in response to Commission enforcement directives, while recovering the cost of the safety improvements from customers in general rates, pursuant to the existing statutory and regulatory framework. Under these procedures, the Commission, its Staff, Public Counsel and other intervenors have the opportunity in general rate cases to review pipeline expenditures to ensure they are prudent.
10. Given that pipeline safety is not dependent upon any particular form of cost recovery, any discussion or proposal of an interim cost recovery mechanism should precisely address the scope of a company's pipeline problems and concerns, as identified and detailed in response to the questions in Section I of the notice. If no evidence of problems or challenges is provided in response to Section I, further consideration of alternative cost recovery is unwarranted, as it is unclear what problem this type of proposed solution would seek to resolve. If a company does propose any specific cost recovery mechanism, it should indicate why the mechanism's design is relevant for the particular circumstances identified in Section I, and what specific safety improvements would be achieved.
11. Additionally, a company would need to demonstrate that extraordinary circumstances are present in order to justify a change from existing cost recovery methods. A company proposing recovery through any means other than general rates has the burden to establish why the existing method is no longer feasible, particularly if that company files frequent general rate cases.

12. Any proposal for, or discussion of, alternative cost recovery should address and weigh the practical and legal problems raised by such mechanisms, including those discussed in the PSE PIP decision.⁶ Some of the “process” questions raised in the Notice highlight the fact that it is unlikely that an interim recovery mechanism could be implemented simply or without consequence. This is why it is important that any deviation from traditional ratemaking practices only be done in response to extraordinary circumstances and with extreme care. At this time, there is no indication that standard cost recovery methods are inadequate for maintaining a safe system.

III. CONCLUSION

13. Public Counsel looks forward to continuing participation in this important rulemaking. This docket provides a valuable opportunity to identify whether there are specific unaddressed safety problems in the natural gas pipeline systems of Washington's regulated companies, and if so, to develop action plans to remedy the issues. The Commission will need to conduct a careful review of that any alternative cost recovery proposals that may arise out of this investigation, in order to ensure they are necessary, fair to customers and consistent with ratemaking principles. Public Counsel will be in attendance at the workshops and, as noted above, requests the opportunity to comment further on the issues once regulated companies have provided detailed information and proposals in response to the Commission's notice.

⁶ See, PSE PIP Order 07, ¶¶ 33-42.