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November 21, 2003

VIA ELECTRONIC MAIL

Carole J. Washburn, Executive Secretary
Washington Utilities and Transportation Commission
1300 S Evergreen Park Drive SW
PO Box 47250
Olympia, WA 98504-7250

Re: NWIGU Comments on Draft Master Meter Rules
Docket No. UG-011073
(Gas Companies-Safety Rulemaking, Chapter 480-93 WAC)

Dear Ms. Washburn:

In response to the Washington Utilities and Transportation Commission's ("WUTC's" or "Commission's") Notice of Opportunity to File Written Comments on Staff's posted draft master meter rule revision dated November 7, 2003, the Northwest Industrial Gas Users ("NWIGU") submit the following comments. NWIGU also adopts by reference the previous joint comments it filed with the Weyerhaeuser Company on the master meter issue in this docket on March 11, 2003.

I. In draft WAC 480-93-005, strike subsection (b) in its entirety. If codified, this broadly worded and ambiguous draft language would inappropriately regulate entities beyond the Commission's safety jurisdiction. The only appropriate regulation of natural gas piping facilities located beyond the distributor's meter that exist today or should

apply upon conclusion of this rulemaking are those operating a legitimate “master meter system,” as defined in draft WAC 480-93-005(a).

As described below, draft WAC 480-93-005(b) should be stricken because:

- A. Draft WAC 480-93-005(b) goes far beyond the scope of the current master meter regulation, and the Commission’s safety jurisdiction. The WUTC’s safety jurisdiction ends when the transportation of gas ceases. The transportation of gas ends when the distributor delivers gas to the customer at the meter;¹
- B. Interpreting “transporting” natural gas so as to extend the jurisdiction of the WUTC after the distributor has delivered the gas would have untenable consequences. Such a reading would logically require the WUTC to regulate gas piping in residential backyards that lead to hot tubs or swimming pools. It is clear that this was never the intent of the statute;
- C. For over 40 years since the passage of RCW 80-28-210, there has been no disagreement that the WUTC’s safety jurisdiction ends when the gas is delivered at the meter, providing further strong evidence that a more expansive interpretation of the Commission’s jurisdiction was not the intent of the statute;
- D. Regulating any gas consuming facilities located behind the distributors’ meter as contemplated by draft WAC 480-93-005(b), is inconsistent with the federal pipeline safety laws;
- E. The codification of the proposed WAC 480-93-005(b) would be inconsistent with the Commission’s own interpretation of its jurisdiction in the past and outside the scope of the WUTC’s jurisdiction. The Commission Staff has in the past recognized that safety audits of industrial customers that own gas piping downstream of the meter are unnecessary. If the Commission had viewed piping beyond the distributors’ meter at customer sites to constitute “transporting” gas, the WUTC could not have simply decided to ignore safety regulation of piping located on industrial sites; and
- F. Customer-owned, behind the meter natural gas piping is already regulated by the Washington State Building Code Council. It would be inefficient and potentially confusing for dual regulation of gas piping behind the distributors’ meter.

¹ The exception to this rule is where the customer is operating a legitimate master meter, such as a mobile home park, where the gas is then transported to other customers.

1. The Commission’s Safety Jurisdiction Ends When The Gas Is Delivered To The Customer By The Distributor At The Meter.

Draft WAC 480-93-005(b) goes far beyond the scope of Washington’s current master meter regulation, and the Commission’s safety jurisdiction. The current definition of a master meter system, is

“a pipeline system for distributing gas to more than one building within, but not limited to, a definable area, such as a mobile home park, housing project, or apartment complex, where the operator purchases metered gas from an outside source for distribution to ultimate consumers other than the system operator's immediate family through a gas distribution pipeline system.” WAC 480-93-005(13).

On November 7, 2003, Commission Staff recommended the following change to the definition of a master meter system under WAC 480-93-005:

“Master Meter System” means

(a) An underground pipeline system for distributing gas within, but not limited to, a definable area, such as a mobile home park, housing project, or apartment complex, where the operator purchases metered gas from an outside source for resale through a gas distribution pipeline system, and the gas distribution pipeline system supplies the ultimate consumer who either purchases the gas directly through a meter or by other means, such as rents; or

(b) An underground pipeline system for distributing gas to more than one building not intended for resale or distribution to non-public entities but not limited to a definable area, such as a private housing project, private schools, churches, private hospitals. For purposes of this subsection, municipal systems are included. WAC 480-93-005

While subsection (a) described above is similar to the previous definition of a master meter system in Washington, and consistent with the federal pipeline safety laws, subsection (b) goes far beyond the Commission’s statutory authority, and should not be adopted as part of this rulemaking.

The WUTC's safety jurisdiction is triggered by the "transporting" of natural gas.² The jurisdictional question thus posed by the draft master meter provision and the statute is: If the gas is not being resold or remetered to another consumer after delivery, does the transportation of gas cease once it is delivered to the customer through the distributor or the customer's meter? NWIGU contends that transportation ends when the gas is delivered through the distributor's or customer's meter. Only when the gas is resold or remetered, as it is under a traditional master meter system, does the Commission's jurisdiction extend behind the meter.

The Commission has authority for the gas safety program in Washington under RCW 80.28.210. RCW 80.28.210 provides:

Every person or corporation transporting natural gas by pipeline, or having for one or more of its principal purposes the construction, maintenance or operation of pipelines for transporting natural gas, in this state, even though such person or corporation not be a public service company under chapter 80.28, and even though such person or corporation does not deliver, sell or furnish any such gas to any person or corporation within this state, shall be subject to regulation by the utilities and transportation commission insofar as the construction and operation of such facilities shall affect matters of public safety, and every such company shall construct and maintain such facilities as will be safe and efficient. (Emphasis added)

As apparent from RCW 80.28.210, the Commission's safety jurisdiction ends when the transportation of gas ceases. The transportation of gas ceases when the gas is delivered to the customer by the distributor at the meter, unless the customer is operating a master meter system as defined in draft WAC 480-93-005(a), where the gas is then re-distributed to other customers. However, draft regulation WAC 480-93-005(b) goes far beyond

² See RCW 80.28.210

regulating legitimate master meter systems, such as a mobile home park, and in doing so, the regulation goes outside the bounds of the Commission's jurisdiction under RCW 80.28.210. Once transportation ceases, the WUTC's jurisdiction ends. This bright line approach to the WUTC's gas safety rules is consistent with the federal gas safety rules and the Washington State Building Code Council which regulates customer-owned behind the meter piping. NWIGU's jurisdictional bright line interpretation is also consistent with this Commission's previous interpretation of the scope of its safety jurisdiction.

2. NWIGU's Interpretation of The Scope of The Commission's Jurisdiction Is Consistent With Long- Standing Commission Policy.

NWIGU's interpretation of the scope of the WUTC's jurisdiction under RCW 80.28.210 is consistent with the Commission's own interpretation of its jurisdiction in the past. A letter sent on June 13, 1995 addressed to Ms. Deborah J. Martin, then Manager of Gas Engineering at the Washington Water Power Company from Steve McLellan, the Secretary to the Commission in 1995 stated:

It is also the Commission Staff's position that master meter audits of certain industrial customers are not necessary. This would be in cases where an industrial customer controls access to the area served by the gas (e.g., a chain link fence) and members of the general public are not allowed access. The intent is, as with prior enforcement activities, to ensure that public safety is not compromised. The Commission has focused its regulatory resources in the past on residential and commercial applications rather than industrial, because in our experience industrial operators have tended to be more familiar with the hazards of natural gas pipelines and more capable of maintenance and other means of preventing problems. We plan no change in this approach at present.

If the Commission had viewed piping beyond the distributor's meter at customer sites to constitute "transporting" gas, the WUTC could not have simply decided to ignore safety regulation of piping located on industrial sites as demonstrated by the 1995 letter.

Nothing has changed since 1995 in either Washington or federal law to require the WUTC to reinterpret its jurisdiction under RCW 80.28.210 to extend downstream of the meter. The Commission rightly concluded in 1995 that it does not regulate customer-owned piping and should confirm again in this docket that it is not so required or authorized.

3. The Term "Transporting" Natural Gas, Using The Proper Technical Context, Is Unambiguous, And Does Not Support Extending The Commission's Jurisdiction To Piping Behind the Meter.

The language of RCW 80.28.210, coupled with the common usage of these terms in the natural gas industry,³ does not support extending WUTC safety jurisdiction beyond the meter, unless the customer then distributes gas to other customers. Thus, there is no jurisdictional basis for imposing safety regulations traditionally applied to intrastate natural gas pipeline operators, *i.e.*, LDCs and direct connect intrastate pipelines, on those that merely own or operate customer owned piping downstream of the meter. The term

³ In the natural gas industry, "transport" is synonymous with the "transmission" of gas and is considered a separate stage in natural gas service, different from distribution or end use. For example, the Natural Gas Information and Educational Resources website contains a link which describes the natural gas industry from exploration to end use. See www.naturalgas.org. The website refers to the "transport" and "transmission" of gas interchangeably. The website identifies seven separate stages in the provision of natural gas including: exploration, extraction, production, transport, storage, distribution and end use. The "transport" section discusses the "transmission of gas," noting that "after raw gas from the wellhead is processed, it is moved into a pipeline system for transportation to an area where it will be sold. A pipeline company is a totally separate company from a producer or a distributor...." The site defines "distribution" as the "delivery of natural gas from an interstate pipeline to local customer" as performed by LDCs. Thus, industry terms do not support a reading that the transportation of gas extends behind the meter.

“transporting” natural gas, using the proper technical context, is unambiguous.

Transportation ends when a distributor delivers the gas to the ultimate consumer.

Principles of statutory construction instruct a court to avoid a literal reading if it would result in unlikely, absurd or strained consequences. *State v. Elgin*, 118 Wash. 2d 551; 555 825 P.2d 314 (1992). Interpreting “transporting” natural gas so as to extend the jurisdiction of the WUTC after the distributor has delivered the gas, would result in unlikely, absurd and strained consequences. Such a reading would logically require the WUTC to regulate gas piping in residential backyards that lead to hot tubs or swimming pools. There is no indication that the legislature ever intended the statute to reach piping in a residential backyard or between buildings at an industrial facility.

4. The Current Washington Master Meter Regulation And The Federal Master Meter Definition Do Not Include Gas Piping At Industrial Facilities.

As provided in the current WAC, to be a master meter system, the owner must engage in further “distribution to ultimate consumers other than the system operator’s immediate family through a gas distribution pipeline system.” WAC 480-93-005(13). Thus, the current master meter provisions do not apply to industrial customers that simply have gas piping that connect buildings on an industrial site. As part of this rulemaking, NWIGU urges the Commission to strike draft section 480-93-005(b), and clarify that industrial facilities with piping to multiple buildings are not master meter systems so long as the customer is not remetering the gas and distributing it to other entities unrelated to the customer.

The current federal master meter definition as articulated in 49 CFR 191.3 (3) is:

Master Meter System means a pipeline system for distributing gas within, but not limited to, a definable area, such as a mobile home park, housing project, or apartment complex, where the operator purchases metered gas from an outside source for resale through a gas distribution pipeline system. The gas distribution pipeline system supplies the ultimate consumer who either purchases the gas directly through a meter or by other means, such as by rents;

Federal safety regulation is an extrinsic aid that the Commission may use to provide contextual clues as to the proper scope of RCW 80.28.210. The Office of Pipeline Safety's regulations clarify that there is no safety jurisdiction under 49 USC § 60102 over customer-owned piping downstream of the meter. Since the federal rules are clear that it has no jurisdiction behind the meter, a state regulatory agency that attempts to extend jurisdiction beyond the meter would be promulgating rules that are incompatible with federal regulation.⁴

The current definition of a master meter system in the WAC is consistent with the federal version. Federal regulators have made no attempt to regulate industrial facilities as master meter facilities. It is not clear from the draft language if the WUTC Staff seeks to regulate industrial facilities as master meter systems. What is clear is that the draft Washington master meter regulation goes far beyond the previous Washington regulation, and beyond the federal master meter regulation. Furthermore, this broadly worded statute is ambiguous. As drafted, WAC 480-93-005(b) could be interpreted as including industrial facilities in the definition of master meter, not to mention hot tubs and swimming pools in residential backyards. NWIGU seeks clarification of the intent behind this regulation, as the scope is not readily apparent.

⁴ For a complete discussion of federal safety regulations, please refer to NWIGU's joint comments with the Weyerhaeuser Company filed in this docket on March, 11, 2003.

CONCLUSION

NWIGU urges the Commission to Strike draft WAC 480-93-005(b) in its entirety, for the reasons described above and in NWIGU's previous joint master meter comments submitted with the Weyerhaeuser Company in this docket on March 11, 2003. NWIGU appreciates the opportunity to participate in this rulemaking, and will attend the December 9, 2003 workshop, and reserves the right to make additional comments as may be appropriate at the workshop(s) and in further comments. NWIGU would also appreciate the opportunity to respond to the views expressed by other parties. If you have any questions about these comments, please feel free to contact me or NWIGU's executive director, Paula Pyron at 503-636-2580.

Very truly yours,

/s/ Edward A. Finklea
Edward Finklea
Chad Stokes

Counsel for the Northwest Industrial Gas Users