Rob McKenna
ATTORNEY GENERAL OF WASHINGTON
800 Fifth Avenue #2000 • Seattle WA 98104-3188

September 14, 2012

VIA ELECTRONIC FILING & ABC/LMI

David Danner
Executive Director and Secretary
Washington Utilities and Transportation Commission
1300 S. Evergreen Pk. Dr. S.W.
P. O. Box 47250
Olympia, WA 98504-7250

RE: *Commission Investigation in the Need to Enhance the Safety of Natural Gas Distribution Systems,* Docket No. UG-120715
Public Counsel's Second Comments

Dear Mr. Danner:

Enclosed please find Public Counsel's Second Comments in response to the Commission's Notice of Opportunity to Comment dated August 24, 2012.

Thank you for your consideration.

Sincerely,

Simon J. ffitch
Senior Assistant Attorney General
Public Counsel Division
(206) 389-2055

Enclosure

BEFORE THE WASHINGTON STATE UTILITIES AND TRANSPORTATION COMMISSION

Commission Investigation Into the Need to Enhance the Safety of Natural Gas Distribution Systems	DOCKET NO. UG-120715

SECOND COMMENTS OF PUBLIC COUNSEL

SEPTEMBER 14, 2012

I. INTRODUCTION

1. Public Counsel files these comments in response to the Commission's Notice of Opportunity to Comment on Proposed Interim Cost Recovery Mechanisms (Notice), dated August 24, 2012. Public Counsel previously filed comments in this docket on June 8, 2012, and incorporates those comments herein by this reference.[1]

I. COMMENTS

A. Consideration of Interim Cost Recovery is Premature.

2. The CR-101 for this docket stated:

> The [Commission] commences this inquiry to examine whether companies subject to the Commission jurisdiction should do more to enhance the safety of their natural gas distribution systems, and, if so, to develop appropriate requirements or incentive to accomplish that goal.[2]

3. Thus, the CR-101 tied the need for the development of requirements or incentives specifically to the examination of whether more should be done to improve safety of natural gas distribution systems. As a practical matter, this is at least a two-step process, the first step being

[1] Comments of Public Counsel, June 8, 2012 (Comments or June 8 Comments).
[2] CR 101, p. 1.

ATTORNEY GENERAL OF WASHINGTON
Public Counsel
800 5th Ave., Suite 2000
Seattle, WA 98104-3188
(206) 464-7744

the examination of the threshold question: is there a problem we need to solve, and if so, what is it?[3]

4. Proposed cost recovery mechanisms are under consideration without any persuasive evidence in the record that indicates a need for such mechanisms. In two workshops and one round of written comments, the natural gas distribution companies have told the Commission, in summary, that they understand the nature and extent of the risks in their systems, that they are managing those risks, and replacing pipe on a schedule necessary to address the risk. They affirm that their systems are safe in compliance with state and federal regulations, and that DIMP plans are in place. They are aware of the higher risk posed by older polyethylene pipe and are addressing that appropriately. They state that if offered additional financial incentives or cost-recovery mechanisms, they would (naturally) not object, but don't have specific requests or proposals in that regard. Companies commented on various mechanisms, but there was no consensus in the industry that the absence of interim cost-recovery mechanisms was a threat to public safety.

5. Avista's comments in one of the workshops were particularly informative. Avista stated that it does not have a backlog of unaddressed leaks in its system and that it is comfortable with its schedule for assessing risk and replacing pipe, including higher risk plastic pipe. Importantly, Avista went on to say that its pipeline replacement practices are determined by engineering and safety needs, not by cost-recovery concerns, and that even if a new cost-recovery mechanism were adopted, it would not necessarily change its pipeline replacement practices.

---

[3] In the June 8 Comments, Public Counsel recommended a version of the multi-step analysis, as follows: (1) investigate whether there is a problem with existing pipeline 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 a separate issue. Comments of Public Counsel, ¶ 3.

ATTORNEY GENERAL OF WASHINGTON
Public Counsel
800 5th Ave., Suite 2000
Seattle, WA 98104-3188
(206) 464-7744

6. Further underlining that consideration of these proposed mechanisms is premature, the companies will be filing pipeline replacement plans simultaneously with the date for comments on cost recovery. The Commission has asked for a considerable amount of detail in the plans.[4] At this time, we do not know the scope or scale of what the companies will file, or whether a need for additional action will be demonstrated, or even requested, by companies. As noted, the workshops and written comments to date have not seen an expression of strong need or interest from industry participants.[5]

7. As the Commission's decision in the PSE PIP order discusses, the evaluation of a mechanism without a defined program or plan is problematic. The Commission stated:

> We cannot approve an auxiliary cost recovery mechanism for infrastructure investment without a reasonable means of identifying the investment it intends to recover. In other words, neither the PIP, nor the evidence produced in support of it, defines with any precision the scope of the pipeline problems it was attempting to resolve.[6]

Furthermore, the Commission expressed apprehension that there was:

> no assurance that the result would be pipeline replacement above and beyond what PSE normally would undertake pursuant to existing ratemaking standards. Without such assurance, the PIP poses an unacceptable risk of doing nothing more than inappropriately shifting costs, and risks, from the shareholder to the ratepayers.[7]

8. We urge the Commission to continue to adhere to this approach. Consistent with these statements, detailed consideration and comment regarding proposed rate mechanisms should be

---

[4] Public Counsel again recommends that the Commission require each company to provide detailed historical data regarding enforcement activity against it, accident history, and history and status of cost-recovery for past pipeline replacement. This information is necessary for a full assessment of need for further action. *See* Comments, ¶ 7.
[5] PSE has expressed interest. However, PSE's had the opportunity to present and demonstrate the need for a "pipeline integrity program" accelerated cost recovery program, and was unsuccessful.
[6] *Washington Utilities & Transportation Commission v. Puget Sound Energy, Inc.*, Docket UG-110723, Order 07, ¶ 33.
[7] *Id.*, ¶ 34.

ATTORNEY GENERAL OF WASHINGTON
Public Counsel
800 5th Ave., Suite 2000
Seattle, WA 98104-3188
(206) 464-7744

postponed until after the companies have filed specific pipeline replacement plans, and then only if a problem is identified. Among other things, the current approach may create a situation in which a company might choose to develop a replacement plan in a manner that is designed to maximize a proposed recovery mechanism, rather than as a prudent and necessary response to specific safety concerns.

B. Response to Interim Cost Recovery Proposals.

Capital Cost Deferral and Recovery Mechanism (CCDR)

9. While this approach certainly seems on its face to be preferable to an accelerated recovery tracker such as the PSE PIP, there still must be a threshold showing that there is a problem to be solved. That has not yet been occurred. As noted, it is difficult to assess the reasonableness of this type of mechanism without the ability to apply it to a specific company replacement plan. Considering that in order to institute such a mechanism a company would need to be in a situation that was posing extraordinary financial circumstances, the amount to be deferred and recovered could be considerable, and it may impact the design of the mechanism. However, at this time, we have no data that would allow us to gauge or estimate what type of impact this might have on any specific company or its ratepayers.

Interim Pipeline Replacement Cost Recovery Mechanism (IPL-CRM)

10. Public Counsel believes it is inappropriate to borrow this model from Oregon in truncated form, without including one of the most important components of the mechanism: the multi-year rate case stay-out provision. The mechanism was needed in large part because the settlement included a multi-year stay out that would have made cost recovery for pipeline problematic. Moreover, the Northwest Natural mechanism was developed through a settlement, and catered to

ATTORNEY GENERAL OF WASHINGTON
Public Counsel
800 5th Ave., Suite 2000
Seattle, WA 98104-3188
(206) 464-7744

the specific circumstances of Northwest Natural's Integrity Management Programs. Taken out of its context, its not a good fit for Washington.

11. Any discussion of interim or accelerated recovery should also include a discussion of impact on the companies' rate of return. Because these mechanisms shift risk from shareholders to ratepayers, there should be an adjustment to account for that. Moreover, before a mechanism is allowed to be applied to any company, it should first have to have its rate of return updated to reflect current market conditions. With automatic recovery of pipeline expenses, and an inflated ROR, there is a higher likelihood that companies could be earning in excess of authorized levels.

12. Approval of interim cost recovery mechanisms may also raise legal issues, including whether the mechanism constitutes improper single-issue rate making, particularly in the absence of any showing of extraordinary circumstances. If a company is facing safety problems, the Commission should then examine whether there are extraordinary financial circumstances that would warrant separate treatment special rate treatment.

13. Finally, it is also worth noting that, at least for PSE and Avista, there has effectively been no "interim" period between rate cases in the last decade. Why there is a need for an "interim" recovery mechanism in these circumstances is unclear.

C. The Enforcement Model As An Alternative.

14. By discussing or approving a mechanism prior to review of a plan and determination that there is a specific safety concern that needs to be resolved, there is a substantial risk that accelerated recovery mechanisms could be adopted without achieving accelerated replacement of unsafe pipeline. This was a major concern with the PSE PIP proposal. Before seriously considering interim recovery mechanisms, the Commission should first review the replacement

plans, which will be filed by the companies on September 28, 2012. The default assumption should be that safety can and should be improved within the existing regulatory structure. If necessary, the Commission could adopt by order programs akin to PSE's bare steel and wrapped steel services programs, based on a plan developed by Commission pipeline safety staff and the company. The Commission has the ability and the authority to order the companies to address any legitimate safety concerns as necessary. The Companies would then have the burden to explain how these plans would impose extraordinary financial circumstances that would warrant a divergence from traditional ratemaking practice. Imposing a specific enforcement plan to resolve the identified problem would also allow for ongoing Commission safety staff review and imposition of an end date.

III. CONCLUSION

15. Public Counsel recommends the Commission defer further consideration of cost-recovery mechanisms until it has reached a determination that there is a specific problem to be addressed, based on the information presented by the companies, and until plans have been developed to address those problems. If the industry filings received in this round do not demonstrate any stronger interest or need than has appeared to date, Public Counsel recommends that the rulemaking be closed.

ATTORNEY GENERAL OF WASHINGTON
Public Counsel
800 5th Ave., Suite 2000
Seattle, WA 98104-3188
(206) 464-7744