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Ms. Carole J. Washburn
Secretary
Washington Utilities & Transportation Commission
1300 South Evergreen Park Drive SW
P.O. Box 47250
Olympia, Washington 98504-7250

VIA ELECTRONIC FILING TO Records@wutc.wa.gov

Re: Pipeline Fee Methodology Rulemaking to Review WAC 480-93-240 and WAC 480-75-240, Docket No. P-041344

Dear Ms. Washburn:

In response to the Commission's February 18, 2005 Notice of Opportunity to File Written Comments and Notice of Opportunity to Make Oral Comments on Draft Rule Proposal in the above-captioned proceeding, the Northwest Industrial Gas Users (NWIGU) submits these written comments in response to the draft proposed rules proposed by Commission Staff and requests the opportunity to make additional oral comments at the March 31, 2005 open meeting. NWIGU participated in all phases of these discussions to date with previous written comments and active participation in all workshops conducted by the Commission Staff and Staff's consultant, Mr. Stephen Miller of Miller & Miller, P.S.

I. Overview of Comments

Fundamentally NWIGU is concerned that the Commission Staff has proposed a rule change that is not a justified improvement over the current methodology. The end result of the Staff's proposed rule change is an increase of 80% to 200%, with but one exception, for the annual fee assessments for smaller intrastate facilities. While NWIGU appreciates the Staff's incorporation of a 25% stop loss mechanism in mitigation of the annual fee increases that would take place from now to 2009 under the proposal, the Staff and Commission should not proceed without looking at this end result, which NWIGU submits is unjustified at this time. This is a significant shifting of costs from large interstate and intrastate regulated entities to smaller intrastate facilities. This shift is predicated upon the use of 2003-2004 average hours incurred that have been assigned to companies but it is important to note that these were not assigned based on an actual comprehensive and contemporaneous study of time use or from a historically complete allocation of time data. Instead the data consists of that which was recorded at the time (when allocation did not have this purpose) coupled with a review done in the process of this rulemaking with reassessment for allocation now. NWIGU is not at all questioning the good faith attempt by the Staff or its consultant at such reassessment. The result, however, is not a justified basis for such fee increases as are proposed with the draft rule.

The Staff and Commission should instead continue with the current methodology for fee use with direct billing for construction and incidents. Any shift to greater actual time allocation should be done based upon a comprehensive time study over a reasonable cycle of inspection activity. In other words, the Staff should keep actual complete contemporaneous time for all of its efforts for the next two-year cycle and then move forward with a rulemaking change if one is justified. It is not sufficient to reallocate costs in such a significant way and simply update the data over time by incorporating a rolling two-year average of actual timekeeping as Staff suggests.

II. Background Information

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 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. NWIGU submits that a review is appropriate of current methodology but that the review should conclude that no change is merited at this time. As noted by the 2003 Joint Legislative Audit & Review Committee, "[t]he implementing rules the

WUTC adopted in June 2001 were closely congruent with this statutory language [referring to the application of RCW 80.24.060]" See JLARC, http://jlarc.leg.wa.gov/Reports/03-5.pdf at p. 30.

Under the current methodology, each company's fee includes the average cost of conducting the standard inspections that are planned for that company over the year for which the fee is being collected. Under RCW 80.24,060, the Commission's rules must provide for this "direct assignment of average costs associated with annual standard inspections." By statute, the fee methodology established by the Commission must include "direct assignment" of these anticipated standard inspection costs (which may change over time as requirements and industry best engineering practices change).

The governing statutory language also requires a "uniform and equitable means of estimating and allocating costs of other duties relating to inspecting pipelines for safety that are not directly assignable, including but not limited to design review and construction inspections, specialized inspections, incident investigations, geographic mapping system design and maintenance, and administrative support." These activities are not directly assignable in advance but this does not mean that some of these activities cannot be attributed via an appropriate estimate or actual attribution to a specific company for fee making purposes if the method is uniform and equitable (like incident investigations and construction activity supported by timekeeping) or to a specific industry group with adequate timekeeping justifications.

III. Recommendations

a. Current Methodology Retention

NWIGU recommends that the Staff and Commission continue retention of the current methodology and make only one change at this time to incorporate the prospective application of direct bills for incident and construction activities. Under current methodology about 60% of current fees are allocated by pipeline miles and about 40% are recovered through federal pipeline safety awards. The use of mileage as an allocation base is an objective fair measure for cost allocation and is vastly preferable over subjective and partial timekeeping being used for significant cost shifts.

Within the Staff's proposal, NWIGU supports the use of pipeline miles as the best method for assigning non-directly assignable costs because it correlates to the WUTC's efforts and is a fair, objective measure for such allocation. This is reflected in Staff's proposal for the general overhead costs, but with an incredible shift of costs based on average hours from Staff's time reassessment rather than use of direct assignment through standard inspection days. This is the core of the issue in this rule change because any analysis of fees and hours correlation is based upon historical data that was not kept for this purpose.

The data is inherently flawed despite good faith efforts at reassessment during this process. Rather than tweaking the limited data that does exist, the Staff and Commission should instead keep the current method in place and do an actual time use study for the next 24 months on all time (not just standard inspections) and then revisit fee allocation methods. The only change that should be made at this time is to provide for incident and construction activity direct billing.

b. Direct Charges for Incident and Construction Activities

In addition to directly assigning average costs of planned standard inspections, the program has charged companies for significant incident activities in the past. NWIGU recommends that this practice be continued with express incorporation into the rule for the charging of such activities. These additional charges should not increase the total amount of fees collected by the program but rather reduce the fees for others. That is, after a year when the program expends time for a company because of incidents and construction activities, NWIGU recommends that the program attempt to 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).

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 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 expends time than 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. This is part of the consultant's recommendations to the Staff as well.

c. If the Current Proposal Moves Forward at This Time, Any Increases Should be Capped at a Lower Threshold Per Year.

If the Staff and Commission decide to alter the current methodology to incorporate the new cost allocations suggested by Staff at this time (which is not the outcome that NWIGU believes is justified), it should change the stop loss cap to 10% from the 25% proposed, moving to the new basis in ten years rather than four (i.e., 2015). New time allocations can then be absorbed over time, but without such level of impact based on incomplete 2003-2004 data.

Drawing out the time frame and creating a lower threshold for annual increases would minimize the distortion arising from incomplete data from 2003 and 2004. In supporting a cap to mitigate cost increases on a year-to-year basis, NWIGU would also recommend that any cap exclude direct billings for excessive incidents or construction activities.

IV. Conclusion

NWIGU would like to reserve the opportunity for further comment at the March 31, 2005 open meeting and to respond to the comments of others at that time. NWIGU appreciates the thorough review that the agency has undertaken and would only note that the effort supports retention of the current structure retention as being the optimal solution for the time being with appropriate direct billing for incident and construction activities as they occur.

Very truly yours,

Edward A Finklea

Edward A. Finklea
On behalf of the Northwest Industrial Gas Users