Agenda Date: April 13, 2005
Item Number: Item C1

Docket: P-041344
Rulemaking – Annual Pipeline Safety Fee Methodology
WAC 480-93-240 Natural Gas Pipeline Safety Fee
WAC 480-75-240 Hazardous Liquid Pipeline Safety Fee

Staff: Tim Sweeney - Team Lead
Alan Rathbun – Pipeline Safety Director
Sondra Walsh – Senior Policy Strategist
Jonathan Thompson – Assistant Attorney General
Karen Caille' – Administrative Law Judge

Recommendation:

Direct the Secretary to file a Notice of Proposed Rulemaking (CR-102) with the Office of the Code Reviser in Docket No. P-041344 proposing amendments to WAC 480-93-240 and WAC 480-75-240. These amendments change the current pipeline safety fee methodology.

Discussion:

In 2001, the Legislature passed the Pipeline Safety Funding bill that was codified into RCW 80.24.060 and RCW 81.24.090. These statutes require the Commission to adopt, by rule, a methodology for assessing fees to hazardous liquid and natural gas companies. The Commission adopted rules in 2001, and the current methodology has been in practice since that time. In 2003, the Joint Legislative Audit Review Committee (JLARC) reviewed the Commission's fee calculations and recommended modifications, not in the methodology, but in the calculation of direct costs of inspection activities. Given greater experience in the new inspection program, the Commission made adjustments in the 2003-2004 fees to more accurately reflect actual costs.

Some companies, however, continue to express concern that too much of the Commission's costs are still allocated on a per mile basis. Only the more routine "standard inspections" are directly assigned on an actual cost basis. Further, concern has been raised that the Commission's practice of adjusting fees when extraordinary activities cause the amount of actual inspection time to differ greatly from projections is inconsistent with the fee methodology in rule and raises additional equity issues.

On August 11, 2004, the Commission filed a Preproposal Statement of Inquiry (CR-101) with the Code Reviser's Office. As part of the review of its fee methodology, the

Commission retained a consultant with Miller & Miller, P.S. to review the pipeline safety program's fee rules, its cost and time accounting systems, and to devise recommendations for alternative fee methodologies. The Commission provided the consultant with cost and timekeeping data for fiscal years 2003 and 2004.

In a stakeholder workshop convened on November 16, 2004, the consultant presented a wide range of alternatives (15 new options and the current option). These options included pooling fees by industry groups, and assigning fees using the agency's cost data, the program's timekeeping system, and linear pipeline miles. Other concepts included a base charge for all companies and the use of a stop-loss mechanism which would redistribute fees in excess of a certain level .

Discussion at that workshop and written comments by stakeholders following the workshop made it clear that no single alternative was satisfactory to all fee payers. Of the six stakeholders who submitted written comments after this workshop, three expressed a desire to keep the current rule—though two of those recommended changes. The other three expressed a desire to change the methodology.

In the second workshop, held January 11, 2005, the consultant presented his recommendation for a new fee methodology. He recommended a methodology that allocated a majority of the program's cost based on the program hours incurred by each operator, averaged over the preceding two fiscal years. The remainder of the program's costs would be allocated based on pipeline miles. The consultant's initial recommendation established two industry pools: natural gas and hazardous liquid operators. This option was abandoned after further review found that the agency's cost accounting system could not separate out direct costs for these two industry groups. Feedback during and after the second workshop was supportive, though not universal, for basing the program's fee on the relative effort expended on each operator.

On February 18, 2005, staff shared with stakeholders draft rules based on a variation of the consultant's recommended methodology. The draft rules, considered at that time would assign fees according to the following methodology:

1. The program's annual allotment is reduced by the expected federal base grant.
2. Adjustments for the difference between last year's projected base grant and the amount of base grant received.
3. The agency's overhead charge would be allocated to all operators based on their relative number of pipeline miles.

4. The remainder of the program's costs would be allocated to operators based on the relative pipeline program effort expended directly on operators, using a two-year average of each operator's directly assigned hours.
5. A stop-loss mechanism would be applied that limits the net change in fees (not counting any increase related to an increase in the program's appropriation) to 25 percent.

Representatives from BP Olympic Pipe Line, Cascade Natural Gas, Chevron Texaco Pipeline, McChord Pipeline, Northwest Industrial Gas Users, Northwest Natural Gas, Puget Sound Energy, Tidewater Barge Lines, and Williams Northwest were present either by phone or in person at one of the two workshops. All regulated operators were invited to participate. Parties were encouraged to submit written comments on three separate occasions. A discussion of specific issues raised during the course of this rulemaking proceeding follows.

Basing fees on effort or timekeeping data

All pipeline safety staff enter their time into the program's electronic timekeeping system which is capable of tracking, among other things, the hours devoted to an operator. These timekeeping entries have been used for the last four years to demonstrate the program's compliance with the yearly Federal program certification. The consultant recommended using this timekeeping system as a means for determining relative effort expended on the operators and for allocating a portion of the program's fees.

After reviewing the data through the course of two workshops, staff decided that it could improve the data set by going back through all timekeeping records for the 2003 and 2004 period and checking two additional data entry fields (one containing docket numbers and another containing activity descriptions.) Staff hours logged to a company-specific docket number or that indicated company-specific activity were included as directly assignable hours for those respective companies. This process added another 1,700 directly-assignable hours for the 2003 and 2004 period. This exercise captured time and effort that was not strictly related to conducting inspections. Generally, it included enforcement-related activities. Staff will make improvements to the timekeeping system if this new methodology is adopted. All timekeeping entries that are specific to an operator will have an entry field, making it possible to more easily monitor company-specific hours in the future.

Two-year average for establishing relative effort

Staff supports using a two-year average for determining relative effort. A two-year average smooths out the effect of inspection schedules which often follow a two-year schedule. A two-year average also softens the impact of incidents that result in a large expenditure of staff time on a particular company without spreading those costs out over a long period. In the workshops, operators expressed support for making it possible to identify and track costs associated with incidents. The proposed methodology would track all directly-assignable hours, making it easier to determine the approximate effect of an incident on an operator's fees.

Overhead costs based on pipeline miles

This proposed fee methodology would allocate a significantly smaller amount of the total fees to pipeline miles than the current fee methodology. Most stakeholders believe it is fair and equitable to base the fee on the program's effort for each operator. However, Staff recommends that a portion of the fee continue to be based on pipeline miles. In part, this represents a compromise between those stakeholders who would like all of the fee based on effort and those who would like it based on pipeline miles. Because local distribution companies have the greatest number of pipeline miles, this portion of the fee would fall hardest on them. However, if the fee were solely based on effort, those companies already experiencing the greatest increase in their fees would see even higher increases.

Staff believes that use of pipeline miles is a fair and equitable way to distribute fixed costs of the program because pipeline miles represent the potential demand for agency services. The agency overhead charge to the program includes support for the agency's fixed costs including human resources, records management, accounting and administrative law services.

Inspection frequency

By moving to a fee system based on relative effort, operators will have a financial incentive to perform well on their inspections and thus reduce the need for follow-up activities and future inspections. The pipeline safety program is moving to a more risk-based approach toward inspection scheduling. While not contained within this rulemaking, this inspection scheduling philosophy will recognize operators with good inspection records who in turn should expect to see their directly-assignable hours decline in the future.

Direct Billing For Incidents

Last year when setting the pipeline fee, the Commission assigned charges to two companies who experienced extraordinary incidents and construction inspection activities. These charges were in addition to charges for standard inspections. The revenue associated with these extraordinary charges reduced the amount of total fees and thus reduced the fees that other operators had to pay.

As part of reviewing the fee methodology, stakeholders expressed broad support for retaining some form of direct billing for incidents. By basing a major portion of the fee on the relative effort expended on each company, the proposed fee captures the intent of direct billing without the complications associated with having to distinguish which incident and construction related activities should be directly billed. Under the proposed methodology, all directly assignable hours would be used to determine a company's fee.

Stop-Loss Mechanism

An earlier draft of the proposal contained a "stop-loss mechanism" which was designed to transition operators to the new fee methodology. The stop loss mechanism, as initially considered by staff and stakeholders, would cap fee increases to 25 percent annually. The mechanism would then spread the remaining fee revenue over those operators whose fees either decreased or increased by less than 25 percent. The current draft rule does not include this mechanism. Instead, staff recommends that the Commission consider adopting the rule with an effective date that would apply the new methodology for the first time to the 2007 fiscal year fees (for the period commencing July 1, 2006). This would mean the current rule would stay in effect for one more fee year and provide companies with a year to adjust to the change in the fee methodology.

Conclusion:

Direct the Secretary to file a Notice of Proposed Rulemaking (CR-102) with the Office of the Code Reviser in Docket No. P-041344 proposing amendments to WAC 480-93-240 and WAC 480-75-240, relating to annual pipeline safety fee methodology.

Attachments