

WSR 23-15-057
EMERGENCY RULES
UTILITIES AND TRANSPORTATION
COMMISSION

[Filed July 14, 2023, 10:23 a.m., effective July 14, 2023, 10:23 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The Washington utilities and transportation commission's (commission) rules, specifically WAC 480-93-240, conflict with the statutes prescribing the method of calculation of pipeline safety fees. The rule requires the commission to offset pipeline safety fees by the total amount of penalties collected under RCW 19.122.055 (erroneously referenced as RCW 19.122.050), but RCW 19.122.170 directs the commission to spend those penalty funds on education, not to fund the pipeline safety program. The resulting offset would thus leave the pipeline safety program fund underfunded. Through this emergency rule making, to be followed by a permanent rule making, the commission permanently amends WAC 480-93-240 to remove the offset provision to allow the commission to accurately calculate and invoice pipeline safety program fees.

Citation of Rules Affected by this Order: Amending WAC 480-93-240.

Statutory Authority for Adoption: RCW 80.01.040, 81.01.010, 81.04.160, and 80.24.020.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: The pipeline safety program provides for essential services that are necessary for the preservation of the public safety. Pipeline safety fees must be billed to the pipeline operators by August 1, 2023. Because the permanent rule-making notice and opportunity to comment time requirements would not allow the rule to be effective in time for the billing cycle, the commission finds that removing the offset provision immediately through an emergency rule making, to be followed by a permanent rule making, is in the public interest. This will allow the commission to ensure that the pipeline safety program fund is sufficiently funded for 2024.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 1, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: July 14, 2023.

Amanda Maxwell
Executive Director and Secretary

OTS-4768.1

AMENDATORY SECTION (Amending WSR 08-12-046, filed 5/30/08, effective 6/30/08)

WAC 480-93-240 Annual pipeline safety fee methodology. (1) This rule sets forth the commission's fee methodology for the annual regulatory fee paid by a gas pipeline company as that term is defined in RCW 81.88.010. For the purposes of this section, a gas pipeline company is called "company" or "companies" and the "commission's pipeline safety program" means the pipeline safety program that includes each company.

(2) Each company will pay an annual pipeline safety fee as established in the methodology set forth in subsection (3) of this section.

(3) The fee will be set by general order of the commission entered before September 1 of each year and will be collected in four equal installments payable on the first day of each quarter as listed below:

- 1st quarter fee installment due September 1;
- 2nd quarter fee installment due December 1;
- 3rd quarter fee installment due March 1;
- 4th quarter fee installment due June 1.

(a) The total of pipeline safety fees will be calculated to recover no more than the costs of the legislatively authorized workload represented by current appropriations for the commission's pipeline safety program, less the amount received in total base grants through the Federal Department of Transportation (~~and less any amount received from penalties collected under RCW 19.122.050~~). Federal grants, other than the federal base grant, received by the commission for additional activities not included or anticipated in the legislatively directed workload will not be credited against company pipeline safety fees, nor will the work supported by grants be considered a cost for purposes of calculating such fees. To the extent that the actual base grant proceeds are different than the amount credited, the difference will be applied in the following year.

(b) Total pipeline safety fees as determined in (a) of this subsection will be calculated in two parts:

(i) The commission's annual overhead charge to the pipeline safety program will be allocated among companies according to each gas pipeline company's share of the total of all pipeline miles within Washington as reported by companies in their annual reports to the commission.

(ii) After deducting the commission's annual overhead charge, the remainder of the total pipeline safety fee commission's annual pipeline safety program allotment will be allocated among companies in proportion to each company's share of the program staff hours that are directly attributable to particular companies. The commission will determine each company's share by dividing the total hours directly attributable to the company during the two preceding calendar years (as reflected in the program's timekeeping system) by the total of directly attributable hours for all companies over the same period.

(iii) For fee setting purposes, any program hours related to a commission investigation of an incident attributed to third-party damage that results in penalties collected under RCW 19.122.055 will not be directly attributed to the owner of the damaged gas pipeline.

(c) The commission general order setting fees pursuant to this rule will detail the specific calculation of each company's pipeline safety fee including the allocations set forth in (b) of this subsection.

(4) By August 1 of each year the commission staff will mail an invoice to each company.

(5) All funds received by the commission for the pipeline safety program will be deposited to the pipeline safety account. For each gas pipeline company subject to RCW 80.24.010, their portion of the company's total regulatory fee applicable to pipeline safety will be transferred from the public service revolving fund to the pipeline safety account.

(6) Any company wishing to contest the amount of the fee imposed under this section must pay the fee when due and, within 6 months after the due date of the fee, file a petition in writing with the commission requesting a refund. The petition must state the name of the petitioner; the date and the amount paid, including a copy of any receipt, if available; the amount of the fee that is contested; all reasons why the commission may not impose the fee in that amount; and a calculation and explanation of the fee amount the petitioner contends is appropriate, if any. The commission may grant the petition administratively or may set the petition for adjudication or for brief adjudication.

[Statutory Authority: RCW 80.01.040, 80.04.060 and 81.88.040. WSR 08-12-046 (Docket PG-070975, General Order R-549), § 480-93-240, filed 5/30/08, effective 6/30/08. Statutory Authority: RCW 80.01.040, 80.04.160, 81.04.160, 80.24.060, and 81.24.090. WSR 05-17-017 (Docket No. P-041344, General Order No. R-523), § 480-93-240, filed 8/4/05, effective 7/1/06. Statutory Authority: RCW 80.01.040, 80.04.160, 81.04.160 and 2001 c 238 § 2. WSR 02-03-016 (Docket No. UG-010522, General Order No. R-497), § 480-93-240, filed 1/4/02, effective 2/4/02.]