

WSR 23-17-163
EXPEDITED RULES
UTILITIES AND TRANSPORTATION
COMMISSION

[Filed August 23, 2023, 10:03 a.m.]

Title of Rule and Other Identifying Information: Expedited amendment of WAC 480-93-240 and 480-75-240.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Rule making to permanently amend WAC 480-93-240, amended by emergency rule making under WSR 23-15-057, effective July 14, 2023, and WAC 480-75-240. The proposed amendment would allow the commission to continue to fund the pipeline safety program through accurate calculation of pipeline safety program fees without an offset in conflict with the relevant statutory authority. The commission filed a previous CR-105 proposing expedited amendment to WAC 480-93-240 only, published at WSR 23-25-059. This CR-105 amends and replaces WSR 23-25-059.

Reasons Supporting Proposal: Prior to emergency amendment, WAC 480-93-240 conflicted with statutes prescribing the method of calculation of pipeline safety fees, resulting in underfunding of the pipeline safety fee program. The rule required the commission to offset pipeline safety fees by the total amount of penalties collected under RCW 19.122.055, but RCW 19.122.170 directs the commission to spend those penalty funds on education, not to fund the pipeline safety program. WAC 480-75-240 still contains the conflicting provision. This rule making will allow the commission to amend both rules and correctly calculate pipeline safety program fees.

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

Statute Being Implemented: Chapter 19.122 RCW.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Washington utilities and transportation commission, governmental.

Name of Agency Personnel Responsible for Drafting: Gregory J. Kopta, 621 Woodland Square Loop S.E., Lacey, WA 98503, 360-664-1355; Implementation and Enforcement: Amanda Maxwell, 621 Woodland Square Loop S.E., Lacey, WA 98503, 360-664-1115.

This notice meets the following criteria to use the expedited adoption process for these rules:

Relates only to internal governmental operations that are not subject to violation by a person.

Corrects typographical errors, makes address or name changes, or clarifies language of a rule without changing its effect.

Content is explicitly and specifically dictated by statute.

Explanation of the Reason the Agency Believes the Expedited Rule-Making Process is Appropriate: The amended rule relates purely to the commission's internal calculations of regulatory fees and is prescribed by statute. While the calculation will affect companies' financial liabilities for fees, it is consistent with the statutory requirements and comports with commission practice. Further, the pipeline safety program provides for essential services that are necessary for the preservation of the public safety and therefore ensuring adequate funding is necessary.

NOTICE

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO Amanda Maxwell, Washington Utility and Transportation Commission, P.O. Box 47250, Olympia, WA 98504-7250, phone 360-664-1160, email records@utc.wa.gov, AND RECEIVED BY October 23, 2023.

August 23, 2023

Amanda Maxwell

Executive Director and Secretary

OTS-4859.1

AMENDATORY SECTION (Amending WSR 08-12-045, filed 5/30/08, effective 6/30/08)

WAC 480-75-240 Annual pipeline safety fee methodology. (1) This rule sets forth the commission's regulatory fee methodology for hazardous liquid pipelines as that term is defined in RCW 81.88.010, and gas pipelines, as that term is defined in RCW 81.88.010. For purposes of this section, these pipelines are called "company" or "companies" and the "commission's pipeline safety program" means the pipeline safety program that includes each program.

(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 pipeline company safety fees, nor will the work supported by grants be considered a cost for purposes of calculating 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 compa-

ny'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 fees will be allocated among companies in proportion to each company's share of the commission pipeline safety 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 each 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 found to be 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 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 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 81.24.010, its 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 six months after the due date of the fee, file a written petition with the commission requesting a refund. The petition shall 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 should 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.

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.