

DEPARTMENT OF STATE
PUBLIC SERVICE COMMISSION

Statutory Authority: 26 Delaware Code, Section 209(a) (26 **Del.C.** §209(a))

PROPOSED

PUBLIC NOTICE

IN THE MATTER OF THE ADOPTION OF RULES TO	
ESTABLISH AN INTRASTATE GAS PIPELINE SAFETY	
COMPLIANCE PROGRAM PURSUANT TO	PSC REGULATION DOCKET NO. 61
26 DEL.C. CH. 8, SUBCHAPTER II	
(OPENED OCTOBER 7, 2008)	

ORDER NO. 7559

AND NOW, this 5th day of May, 2009, the Commission determines and orders the following:

1. On October 7, 2008, the Commission entered PSC Order No. 7458, which promulgated proposed Regulations Governing Safety of Gas Transmission and Distribution Systems (the "Proposed Regulations"). The Commission promulgated the Proposed Regulations as a result of the enactment of 26 **Del.C.** § 821 (authorizing the Commission to make and enforce rules required by the Natural Gas Pipeline Safety Act of 1968, as amended (49 U.S.C. Chapter 601)). See also 26 **Del.C.** § 209(a).

2. As required by the Administrative Procedures Act, the Proposed Regulations were published in the *Delaware Register*. A notice regarding the Proposed Regulations was also published in *The News Journal* and the *Delaware State News* newspapers and delivered to each public utility owning or operating any gas transmission or distribution systems in Delaware.

3. Following the promulgation and publication of the Proposed Regulations, Commission Staff has been working with various parties on revisions to the Proposed Regulations. Attached hereto as "Exhibit B" is a revised set of Proposed Regulations produced as a result of these discussions. Based upon the recommendation of Staff, the Commission determines that the revised Proposed Regulations shall be considered as a new proposal subject to the notice requirements of 29 *Del.C.* § 10118(c) and all other requirements of subchapter II of Chapter 101 of Title 29. See 29 **Del.C.** § 10118(c).

Now, Therefore, it is Hereby Ordered by the Affirmative Vote of Not Fewer than Three Commissioners:

1. That, pursuant to 26 **Del.C.** §§ 209(a) and 821, and 29 **Del.C.** §§ 10111 *et seq.*, the Commission promulgates revised Regulations Governing Safety of Gas Transmission and Distribution Systems ("Revised Proposed Regulations").

2. That the Secretary of the Commission shall transmit to the Registrar of Regulations for publication in the *Delaware Register* the Revised Proposed Regulations and the notices attached hereto as Exhibits "A" and "B" respectively.

3. That the Secretary shall cause the notice attached hereto as Exhibit "A" to be sent by U.S. mail to all utilities which own and/or operate any gas transmission or distribution system in Delaware and all persons who have made timely written requests for advance notice of the Commission's regulation-making proceedings.

4. That the Commission reserves the jurisdiction and authority to enter such further Orders in this matter as may be deemed necessary or proper.

BY ORDER OF THE COMMISSION:

Arnetta McRae, Chair

Joann T. Conaway, Commissioner
Jaymes B. Lester, Commissioner
Dallas Winslow, Commissioner
Jeffrey J. Clark, Commissioner

ATTEST:

Karen J. Nickerson, Secretary

NOTICE OF COMMENT PERIOD ON PROPOSED REVISED REGULATIONS CONCERNING GAS PIPELINE SAFETY AND GAS TRANSMISSION AND DISTRIBUTION SYSTEMS, INCLUDING THE COMMISSION'S JURISDICTION TO MAKE AND ENFORCE RULES REQUIRED BY THE FEDERAL GAS PIPELINE SAFETY ACT OF 1968, AS AMENDED

The Delaware General Assembly has enacted legislation granting the Delaware Public Service Commission ("Commission") the authority to make and enforce rules required by the federal Gas Pipeline Safety Act of 1968, as amended (49 U.S.C. Chapter 601), to qualify for federal certification of a state pipeline safety compliance program relating to the regulation of intrastate gas pipeline transportation. The new legislation is found at 26 **Del.C.** § 821.

In order to comply with the new legislation, on or about October 7, 2008, the Commission promulgated regulations, containing twelve sections, intended to govern the safety of the gas transmission and distribution systems, which are subject to the Commission's jurisdiction (the "Proposed Regulations"). The Proposed Regulations and a notice regarding the Proposed Regulations were published in the Delaware Register of Regulations, Vol. 12, Issue 5, pp. 655-60 (11/1/08).

Following publication of the Proposed Regulations, the Commission Staff and certain interested parties have made various substantive revisions to the Proposed Regulations. Accordingly, the Commission entered PSC Order No. 7559, requiring that the revised Proposed Regulations be re-published for public comment. The Commission hereby solicits written comments, suggestions, compilations of data, briefs, or other written materials concerning the revised Proposed Regulations. Ten (10) copies of such materials shall be filed with the Commission at its office located at 861 Silver Lake Boulevard, Cannon Building, Suite 100, Dover, Delaware, 19904. **All such materials shall be filed with the Commission on or before June 30, 2009.**

The revised Proposed Regulations and the materials submitted in connection therewith will be available for public inspection and copying at the Commission's Dover office during normal business hours. The fee for copying is \$0.25 per page. The regulations may also be reviewed, by appointment, at the office of the Division of the Public Advocate located at the Carvel State Office Building, 4th Floor, 820 North French Street, Wilmington, Delaware 19801.

Any individual with disabilities who wishes to participate in these proceedings should contact the Commission to discuss any auxiliary aids or services needed to facilitate such review or participation. Such contact may be in person, by writing, by telephone, or otherwise. The Commission's toll-free telephone number (in Delaware) is (800) 282-8574. Any person with questions may also contact the Commission Staff at (302) 736-7500 (Text Telephone also). Inquiries can also be sent by Internet e-mail to karen.nickerson@state.de.us.

8000 Rules to Establish an Intrastate Gas Pipeline Safety Compliance Program

(Opened October 7, 2008)

1.0 Definitions

Unless otherwise defined herein, all capitalized terms and phrases shall have the meanings given those terms and phrases in applicable sections of Chapter 601 of Title 49 of the United States Code and the Code of Federal Regulations, Title 49, Parts 190, 191, 192, 193, 198 and 199, as may be amended and revised (collectively the "Federal Regulations").

"Commission" means the Delaware Public Service Commission.

“Corrective Action Orders” refers to those orders referenced in 49 U.S.C. § 60112(d).

“Federal Regulations” shall have the meaning ascribed above.

“Gas Leakage Survey” means a survey of gas facilities as defined in Sections 192.706 and 192.723 of the Federal Regulations.

“Leak Classification and Action Criteria” means a procedure by which leakage indication of gas can be graded and controlled.

“Operator” means an “underground pipeline facility operator”, as defined in 26 Del. C. § 802(11). Notwithstanding the foregoing, “Operator” shall not include any operator of a Pipeline facility that transports hazardous liquid or only petroleum gas or petroleum gas/air mixtures to – (i) fewer than ten (10) customers, if no portion of the facility is located in a public place, or (ii) a single customer, if the facility is located entirely on the customer’s premises (no matter if a portion of the facility is located in a public place).

“Regulated Facilities” shall include both Pipeline facilities and any LNG facility.

“Regulations” shall refer to the regulations set forth herein.

“Staff” shall mean the staff of the Commission.

2.0 Regulations

- 2.1 The minimum standards governing the design, construction, fabrication, installation, inspection, reporting, testing, operation, maintenance, protection, and the safety aspects of operation and maintenance of Regulated Facilities shall be those standards set forth in Parts 191, 192 and 193 of the Federal Regulations, as applicable.
- 2.2 The minimum standards governing the drug and alcohol testing required of operators of Regulated Facilities shall be those standards set forth in Part 199 of the Federal Regulations.
- 2.3 The conversion of Liquefied Natural Gas to a gaseous state and subsequent injection into a Pipeline facility shall be done in a manner which does not reduce the level of odorization within the system to below that required by Part 192 of the Federal Regulations.
- 2.4 All Operators shall conduct Gas Leak Surveys in accordance with and at such intervals as are provided under the Federal Regulations.
- 2.5 Each Operator conducting Gas Leak Surveys shall, for a minimum of seven (7) years, maintain records of leaks detected during the Surveys. Such records shall be available for inspection by the Staff, subject to the provisions of 26 Del. C. § 213, to the extent applicable
- 2.6 Each Operator shall identify a Leak Classification and Action Criteria applicable to the Pipeline facilities it operates in Delaware, which classification and criteria shall be consistent with the Federal Regulations. Each Operator shall institute and maintain on a continuing basis, records that identify any leaks discovered on the Pipeline facilities it operates, which records shall include, at a minimum, the location, date of discovery, classification under the Operator’s Leak Classification and Action Criteria, and the steps taken in response to such leaks.
- 2.7 Cast-iron pipe in sizes 4-inch and smaller shall not be installed in Pipeline facilities beginning thirty (30) days after approval of these Regulations. This requirement shall not be construed to require replacement of any such pipe installed prior to such time.
- 2.8 Notwithstanding anything contained in these Regulations to the contrary, the Commission shall have no authority to enforce any of these Regulations as they pertain to interstate Pipeline facilities.

3.0 Delegation of Authority

With respect to the enforcement of these Regulations, the Commission and Staff shall have the authority to investigate the methods and practices of Operators; to require that Operators maintain and file reports, records and other information; to enter upon and to inspect the property, buildings, plants and offices of Operators; to inspect books, records, papers and documents of Operators; and to enforce these Regulations as provided herein.

4.0 Informal Disposition of Potential Violation

When an evaluation of an Operator's records or Regulated Facilities indicate that the Operator is or may be violating these Regulations, Staff shall provide the Operator with prompt notice of the potential violation, at which point Staff may informally discuss the potential violation with the Operator. Any documentation or physical evidence necessary to support an allegation of non-compliance may be obtained during the inspection. Timely corrective action may be taken by the Operator of the facilities where a potential violation exists, thus correcting the potential violation without further action.

5.0 Written Formal Notice of Potential Violation

After evidence of a potential violation is collected and a violation report written, notice and opportunity to respond will be afforded the Operator by a letter from Staff providing the Operator with copies of all relevant documentation, including the written violation reports, notifying the Operator of the results of the on-site evaluation and specifically citing the provision of the applicable Regulation(s) the Operator is alleged to be violating. The operator must respond in writing within thirty (30) days from receipt of such violation notice, unless the Operator and Staff otherwise agree.

6.0 Response Options Open to Operators

6.1 The Operator, in responding to the violation notice, may:

- 6.1.1 Submit a written plan to Staff specifying actions that the Operator will take to correct the violation, a schedule for completion of each action step, and a final date of completion. If Staff accepts the corrective plan submitted by the Operator, the violation shall be deemed resolved.
- 6.1.2 Request an informal conference with Staff. Upon request for an informal conference, Staff will establish a date, time, and location for the conference. During the conference, Staff will review the violation report with the Operator to identify corrective actions in an effort to reach a mutually acceptable resolution of the alleged violation. If this effort fails, Staff may refer the alleged violation to the Commission for formal action.

7.0 Commission Action

7.1 If the violation is referred to the Commission for formal resolution, the Commission may, pursuant to procedures established under rules and regulations, take action available under applicable law, including, but not limited to, the following:

- 7.1.1 The Commission may seek injunctive relief in a court of competent jurisdiction;
- 7.1.2 The Commission, as the agent of the Administrator as set forth in the Federal Regulations, may issue the civil penalties set forth in 49 U.S.C. § 60122(a) and subpart B of Part 190 of the Federal Regulations; and
- 7.1.3 The Commission may order an Operator to take corrective action.

8.0 Corrective Action Orders

8.1 If the Commission finds that a Regulated Facility is hazardous (a "Hazardous Facility") to life or property, the Commission may issue a Corrective Action Order requiring the Operator to take immediate corrective action, which may include:

- 8.1.1 Suspended or restricted use of the Hazardous Facility;
- 8.1.2 Physical inspection;
- 8.1.3 Testing;
- 8.1.4 Repair;
- 8.1.5 Replacement; or
- 8.1.6 Other appropriate action.

8.2 The Commission shall give the Operator written notice and an opportunity for a hearing before issuance of a Corrective Action Order unless the Commission or its Staff determines there is a serious and imminent threat to life, property, or the environment, in which case, the Commission or its designated hearing examiner may issue an emergency Corrective Action Order. If the Corrective

Action Order is issued without a prior hearing, the Commission shall give the Operator written notice and an opportunity for a hearing before the Commission or its designated hearing examiner as soon as possible after the issuance of the Corrective Action Order.

9.0 Exceptions

The Operator may take exceptions from the decision of the hearing examiner as provided by Delaware law or the Rules of Practice of the Commission. After receipt of the exceptions, the Commission or Staff may investigate further and hold a public hearing on the matter within a reasonable time.

10.0 Granting of Federal Regulation Waivers

- 10.1 Upon application by an Operator, the Commission may grant a waiver from compliance with the Federal Regulations, subject to review by the Office of Pipeline Safety Regulation of the United States Department of Transportation.
- 10.2 Waivers may be granted for particular circumstances where it is inappropriate for an Operator to follow a regulation of general applicability.
- 10.3 Before granting a waiver, the Commission must give notice and opportunity for written comments and a public hearing, unless the Commission finds that notice is impracticable, unnecessary, not in the public interest, or that an emergency exists.
- 10.4 If the Commission finds a requested waiver is consistent with gas pipeline safety and is otherwise justified, the waiver may be issued under appropriate terms and conditions with a statement of the reasons for granting the waiver.
- 10.5 If the Commission finds a requested waiver is inconsistent with gas pipeline safety or is otherwise unjustified, the request must be denied, and the applicant notified of the reasons for denial.
- 10.6 The Commission must give the Office of Pipeline Safety Regulation of the United States Department of Transportation written notice of each waiver at least sixty (60) days before it becomes effective. Each notice of waiver must provide the following information:
 - 10.6.1 The name, address, and telephone number of the applicant;
 - 10.6.2 The safety standards involved;
 - 10.6.3 A description of the Regulated Facilities involved; and
 - 10.6.4 The justification for the waiver, including the reasons why the standards are not appropriate and why the waiver is consistent with gas pipeline safety.