

DEPARTMENT OF STATE
PUBLIC SERVICE COMMISSION

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

PROPOSED

ORDER

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

ORDER NO. 7458

AND NOW, this 7th day of October, 2008, the Commission having considered the proposed regulations governing gas pipeline safety prepared by the Staff;

IT IS ORDERED THAT:

1. That, pursuant to 76 **Delaware Laws** Ch. 393, 26 **Del.C.** §209(a), and 29 **Del.C.** §§10111 et seq., the Commission promulgates proposed Regulations Governing Safety of Gas Transmission and Distribution Systems ("Regulations").
2. That the Secretary of the Commission shall transmit to the Registrar of Regulations for publication in the Delaware Register the notice and the proposed Regulations attached hereto as Exhibits "A" and "B" respectively.
3. That the Secretary of the Commission shall cause the notice attached hereto as Exhibit "A" to be published in *The News Journal* and *Delaware State News* newspapers on or before Thursday, October 16, 2008.
4. 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.
5. That Francis J. Murphy, Esquire, is designated Staff Counsel for this matter.
6. That the public utilities regulated by the Commission are notified that they may be charged for the cost of this proceeding under 26 **Del.C.** §114.
7. 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 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 76 Delaware Laws Ch. 393.

In order to comply with the new legislation, the Commission is promulgating 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 first section contains definitions of terms used in the regulations, for example, the classification of gas leaks. The second section incorporates by reference the pertinent provisions of Title 49 of the Code of Federal Regulations which contain the minimum federal standards related to matters such as: (1) the design, fabrication, inspection, reporting, and testing of gas transmission and distribution systems; and (2) the drug testing inspection of natural gas pipeline utilities.

Two sections of the new regulations contain requirements for performing gas leak surveys, maintaining gas leak progression maps, and notifying the Commission and the local fire department in the event of gas leaks. One new section addresses Liquefied Natural Gas (LNG) installations, including the adoption of the pertinent standards of Title 49 of the Code of Federal Regulations related to their design, construction, operation, maintenance, protection, and security.

Five sections pertain to Commission procedures which apply to the operators of gas transmission and distribution systems. The five sections include provisions addressing: (1) the delegation of authority to the Commission Staff to carry out the day-to-day oversight of the systems; (2) the informal disposition of probable violations of the regulations; (3) the manner of giving formal notice of probable violations; (4) the response options of operators of the systems when notified of a probable violation; and (5) actions that might be taken by the Commission in the event a violation comes before the Commission for formal resolution.

One of the new sections sets forth the Commission's authority in the event a pipeline facility presents a hazard to life or property. The final provision addresses the Commission's authority to grant waivers from compliance with the federal Gas Pipeline Safety Regulations and the procedures to be followed by the Commission in ruling upon an application by an operator for a waiver.

The Commission has authority to promulgate the regulations pursuant to 26 **Del.C.** § 209(a), 29 **Del.C.** §10111 et seq., and 76 **Delaware Laws** Ch. 393 (2008)(26 **Del.C.** Ch. 8).

The Commission hereby solicits written comments, suggestions, compilations of data, briefs, or other written materials concerning the 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 November 7, 2008.** Persons who wish to participate in the proceedings but who do not wish to file written materials are asked to send a letter informing the Commission of their intention to participate on or before October 30, 2008.

The 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 and will also be available for review on the Commission's website: www.state.de.us/delpsc.

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 or by Text Telephone at (302) 739-4333. Inquiries can also be sent by Internet e-mail to karen.nickerson@state.de.us.

8001 Rules to Establish an Intrastate Gas Pipeline Safety Compliance Program
(Opened October 7, 2008)

1.0 Definitions

- 1.1 As used in this Chapter, the following words and phrases shall have the following meanings:
- "Business Area"** means an area where the entire expanse of street and sidewalk from building wall to building wall is paved.
- "Class A Leak"** means a leak where a small amount of gas is detected, presenting no apparent hazard.
- "Class B Leak"** means a leak where a greater amount of gas is detected, presenting a limited potential hazard.
- "Class C Leak"** means a leak where either a large amount of gas is detected, or a small leak is detected immediately adjacent to a building wall, or a leak of any size is detected that is considered to create a hazardous or potentially hazardous condition which could involve loss of life, injury, or property damage.
- "Commercial Building"** means a building devoted primarily to providing the general public with goods or services, or a multi-apartment building containing four or more apartments.
- "Leak Progression Map"** means a map of the transmission and distribution system of the utility, drawn to a suitable scale, upon which there is indicated in a suitable code the leaks found to exist in the system.
- "Leakage Survey"** means a survey of gas facilities employing, singly or in combination, a survey by mobile flame ionization unit, a survey employing a combustible gas detector to test the atmosphere in available openings and bar holes, or some other effective procedure for locating leaks in gas systems that has been approved by a duly authorized Federal or State agency for said purpose.
- "Patrol Type Leakage Survey"** means a leakage survey by mobile flame ionization unit conducted at a speed in the range of 600 to 1,500 feet per minute (5-15 miles per hour) such that leaks of major proportions will be detected.
- "Public Building"** means a building devoted primarily to the conduct of federal, state, county, district, or municipal government business including but not limited to a city hall, post office, public school, or fire station.

2.0 Code

- 2.1 The minimum standards governing the design, fabrication, installation, inspection, reporting, testing, and the safety aspects of operation and maintenance of gas transmission and distribution systems, including gas pipelines, gas compressor stations, gas metering and regulating stations, gas mains, and service lines up to the outlet of the customer's meter set assembly, shall be the provisions of Parts 191 and 192 of Title 49 of the Code of Federal Regulations, including all amendments and revisions thereto.
- 2.2 The minimum standards governing the drug testing inspection of natural gas pipeline utilities shall be the provisions of Title 49 of the Code of Federal Regulations, Part 199, which incorporates Part 40 of Title 49 by reference. Part 199 shall apply only to the natural gas pipeline utilities within the State of Delaware subject to inspection by the Delaware Public Service Commission.

3.0 Surveys

- 3.1 All Gas utilities subject to the safety jurisdiction of the Public Service Commission under 26 Delaware Code, Ch. 8 shall conduct an annual leakage survey of:
- 3.1.1 All transmission and distribution mains;
- 3.1.2 All services in business areas and services to public buildings, schools, churches, hospitals, and nursing homes;

- 3.1.3 All public and commercial buildings having a gas service pipe or having an active gas main in an adjacent street; and
- 3.1.4 Any other location designated by the Commission Staff.
- 3.2 All gas utilities shall conduct a leakage survey, at least once every five years, of all gas services connected to its system not covered in paragraph A above.
- 3.3 In addition to the above, all gas utilities serving natural gas shall conduct a patrol type leakage survey of all cast-iron mains twice annually:
 - 3.3.1 In mid-winter; and.
 - 3.3.2 Following frost-out in spring.
- 3.4 Each gas utility shall notify the Public Service Commission of the results of each survey required in this section, within 30 days of the completion of such survey.

4.0 Miscellaneous Provisions

- 4.1 Each gas utility shall institute and maintain on a continuing basis leak progression maps of its service area.
- 4.2 Cast-iron pipe in sizes 4-inch and smaller shall not be installed in gas distribution systems in Delaware.
- 4.3 Each gas utility shall immediately notify the Commission and the fire department of the community involved of each Class B or Class C leak found to exist in its pipeline system.

5.0 Liquefied Natural Gas (LNG) Installations

- 5.1 Each gas utility having or proposing to have installations for liquefying, storing, or regasifying LNG shall file with the Public Service Commission for its approval a plan for detection of gas leaks in these installations.
- 5.2 Odorization - All gas that is returned to the gaseous state from LNG shall have odorant added prior to its introduction into the distribution system such that the overall level of odorizations in the distribution system shall not be diminished by the addition of regasified LNG.
- 5.3 The minimum standards governing the design, construction, operation, maintenance, protection, and security of LNG facilities in Delaware shall be the provisions of Part 193 of Title 49 of the Code of Federal Regulations, including all revisions and amendments thereto.

6.0 Delegation of Authority

The Commission delegates to the Commission Staff the authority to investigate all methods and practices of pipeline utilities; to require the maintenance and filing of reports, records and other information; to enter upon and to inspect the property, buildings, plants and offices of pipeline utilities; and to inspect books, records, papers and documents relevant to the enforcement of the safety standards.

7.0 Informal Disposition of Probable Violation

When an evaluation of an operator's records or facilities indicates that the operator is apparently violating these regulations, the Commission Staff will informally discuss the probable violation with the operator before concluding the inspection. Any documentation or physical evidence necessary to support a future allegation of non-compliance may be obtained during the inspection. On-site corrective action may be taken by the operator of the facilities where the probable violation exists, thus correcting the violation without further action.

8.0 Written Formal Notice of Probable Violation

After evidence of a probable violation is collected and the violation report written, notice and opportunity to respond will be afforded the operator by a letter from the Commission Staff notifying the operator of the results of the on-site evaluation and specifically citing the provision of the applicable

regulation(s) the operator is apparently violating. A written response from the operator must be filed with the Commission within 10 days of the date the operator receives the violation notice.

9.0 Response Options Open to Operator

9.1 The operator, in responding to the violation notice, may:

9.1.1 Submit a written plan specifying actions that the operator will take to correct the violation, a schedule for completion of each action step, and a final date of compliance. If the Commission Staff accepts the corrective plan submitted by the operator, the violation is resolved.

9.1.2 Request an informal conference with the Commission Staff. Upon request for an informal conference, the Executive Director of the Commission, or the Executive Director's designee, 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 and reach a mutually acceptable resolution of the violation. If this effort fails, the Executive Director of the Commission may refer the violation to the Commission for formal action.

10.0 Commission Action

10.1 If the Executive Director of the Commission refers the violation to the Commission for formal resolution, the Commission may take such action as it deems appropriate, including the following:

10.1.1 The Commission may seek injunctive relief in the Delaware Court of Chancery;

10.1.2 The Commission may issue an Order and schedule a hearing requiring the operator to show cause why the operator should not be subject to the penalties provided by law for the violation; and

10.1.3 The Commission may, after investigation and a public hearing, order an operator to take corrective action.

11.0 Hazardous Facility Orders

11.1 If the Commission finds a pipeline facility is hazardous to life or property, the Commission may issue an Order requiring the operator to take immediate corrective action, which may include:

11.1.1 Suspended or restricted use of the facility;

11.1.2 Physical inspection;

11.1.3 Testing;

11.1.4 Repair;

11.1.5 Replacement; or

11.1.6 Other action.

11.2 The Commission shall give the operator written notice and an opportunity for a hearing before issuance of a hazardous facility Order unless the Commission or its Staff determines there is a serious and imminent threat to life or property, in which case, the Commission or its designated hearing examiner, may issue an emergency Order. If the 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 after the emergency Order is issued as possible.

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

12.0 Granting of Federal Regulation Waivers

12.1 Upon application by an operator, the Commission may grant a waiver from compliance with the federal Gas Pipeline Safety Regulations for intrastate pipeline transportation, subject to review by the Office of Pipeline Safety Regulation of the United States Department of Transportation.

- 12.2 Waivers may be granted for particular circumstances where it is inappropriate for an operator to follow a regulation of general applicability.
- 12.3 Before granting a waiver, the Commission must give notice and opportunity for written comments and hearing, unless the Commission finds that notice is impracticable, unnecessary, or not in the public interest.
- 12.4 If the Commission finds a requested waiver is consistent with gas pipeline safety and is otherwise justified, the waiver must be issued under appropriate terms and conditions with a statement of reasons for granting the waiver.
- 12.5 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.
- 12.6 The Commission must give the Office of Pipeline Safety Regulation of the United States Department of Transportation written notice of each waiver at least 60 days before it becomes effective. Each notice of waiver must provide the following information:
 - 12.6.1 The name, address, and telephone number of the applicant;
 - 12.6.2 The safety standards involved;
 - 12.6.3 A description of the pipeline facilities involved; and
 - 12.6.4 The justification for the waiver, including the reasons why the standards are not appropriate and why the waiver is consistent with gas pipeline safety.

12 DE Reg. 655 (11/01/08) (Prop.)