

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held in the City of
Albany on September 8, 2014

COMMISSIONER PRESENT:

Audrey Zibelman, Chair

CASE 14-G-0357 - In the Matter of Revising 16 NYCRR Gas Safety Regulations for Consistent Application of More Stringent Federal Gas Safety Standards in 49 CFR.

MEMORANDUM AND RESOLUTION INITIATING PROMULGATION
PROCESS FOR PROPOSED CHANGES TO GAS SAFETY REGULATIONS,
ADOPTING NEGATIVE DECLARATION,
AND NOTICE OF PROPOSED RULEMAKING

(Issued and Effective September 8, 2014)

INTRODUCTION

In this memorandum and resolution, the Commission initiates the process for promulgating revised Gas Safety regulations - 16 NYCRR Part 255 - Safety, Subchapter C, Transmission and Distribution of Gas - to make them at least as stringent as the corollary federal rules - 49 CFR Part 192 - Transportation of Natural and other Gas by Pipeline: Minimum Federal Safety Standards. Public Service Law §§4, 5, 65 and 66 assign to the Commission supervision over all gas companies in the provision of gas service and the authority to ensure that such service is "safe and adequate and in all respects just and reasonable" [Public Service Law §§4, 5(1)(b), and 65(1)]. Pursuant to this statutory mandate, the Commission has adopted gas safety regulations, 16 NYCRR Parts 255-262, which have been amended from time to time to further ensure the safety of New York's gas delivery system.

By this action, the Commission proposes draft regulations for adoption, adopts a negative declaration as to environmental review significance, and also adopts a notice of proposed rulemaking seeking public comments on the proposed draft regulations.

BACKGROUND

In 1994, the federal Natural Gas Pipeline Safety Act (the Act), 49 USC §60101 et. seq., asserted federal safety jurisdiction over intrastate gas pipelines for safety purposes. As such, the United States Department of Transportation (USDOT) adopted regulations that apply federal standards for "gas pipeline facilities" defined as "a pipeline, a right of way, a facility, a building or equipment used in transporting gas or treating gas during transport" [49 USC §60101(a)(3)].¹ The USDOT's regulations adopted under the Act define "pipeline facility" and state "Pipeline facility means new and existing pipelines, rights-of-way, and any equipment, facility, or building used in the transportation of gas or in the treatment of gas during the course of transportation" [49 CFR §192.3].² USDOT also established minimum safety standards that apply to "owners and operators of pipeline facilities" [49 USC §60102(a)(2)(A)], which "shall include a requirement that all individuals who operate and maintain pipeline facilities shall

¹ The Pipeline and Hazardous Materials Safety Authority (PHMSA) audits and enforces the federal safety requirements.

² In accordance with 49 CFR §192.13, wherein USDOT applies gas safety construction and initial testing requirements to pipeline facilities installed after 1971, the new Commission definition and applicable rules would adhere to this federal grandfathering standard.

be qualified to operate and maintain the pipeline facilities" [49 USC §60102 (a)(2)(C)].

Further, and as relevant here, pursuant to 49 USC §60105, the USDOT delegates its oversight and enforcement authority over intrastate gas pipelines to States that have adopted "additional or more stringent safety standards for intrastate pipeline facilities and intrastate pipeline transportation" [49 USC §60104(c)]. The USDOT will certify a State that has adopted the safety standards in 49 USC 60101 et. seq. In acting as agents of the federal gas safety program, a State gas safety program may receive federal funds to carry out enforcement, inspections, and audits of gas services.

MEMORANDUM

The proposed regulatory changes are necessary to ensure the continuity of the Department of Public Service (Department) gas safety inspection and enforcement program and to ensure the continued safety of New York's natural gas system.³ The proposed rules would align the federal definition of gas "service line" in 49 CFR §192.3 and the PSC definition of gas "service line" in 16 NYCRR §255.3(a)(29), which is narrower than 49 CFR §192.3.⁴ The application of the definition of "service line" in Commission rules is, in many though not all respects,

³ See 49 USC §§60105 and 60106 [only state programs with gas safety rules that are at least as stringent as federal standards will be certified].

⁴ In other respects, the definition is broader. For instance if a meter is set at a property line beyond the building with the pipe going back, underground, to the building, that part of the piping would be considered customer piping under the federal definition and not subject to regulation. New York Part 255 regulations in that case assert PSC jurisdiction at least up to the building wall.

less stringent than the federal definition. The Commission is issuing for comment adoption of the revised definition of gas "service line" as stated in 49 CFR §192.3.

The other gas safety rules the Commission proposes to amend to make them at least as stringent as the federal rules include:

1. Leakage Surveys - the wording of 16 NYCRR §255.723, which addresses the timing and procedures of leakage surveys that local gas distribution companies (LDCs) must perform, is proposed to now apply to inside gas service piping upstream of the meter;
2. Soap testing - it is necessary to eliminate the option in 16 NYCRR §255.507 of soap testing at line pressure for short sections of gas piping before the piping is placed into service;
3. MAOP - 16 NYCRR §255.619 would be amended to eliminate the requirement for operators to throttle their maximum allowable operating pressure (MAOP) at least once every five years in order to maintain that MAOP on cathodically unprotected steel; and
4. Storage exception - 16 NYCRR §255.625 would be amended to eliminate the exemption from odorization of gas in transmission pipelines being transported to storage.

The practical effect of these rule changes would be that only persons who have met Operator Qualification requirements [16 NYCRR §255.604] and who have been drug [16 NYCRR §262.105] and alcohol [16 NYCRR §262.225] tested would be authorized to perform alterations or repairs on inside piping upstream of the meter.

STATE ENVIRONMENTAL QUALITY REVIEW

The Commission is the lead agency regarding the action pursuant to the State Environmental Quality Review Act (SEQRA). The revisions of 16 NYCRR Part 255 that are necessary to make State regulation at least as stringent as the federal

regulations are an unlisted action within the meaning of 6 NYCRR §617.2(ak). The action of promulgating amendments to the gas safety regulations does not include any direct approval for the construction of any facilities. A review of the environmental assessment form (EAF) dated September 5, 2014, prepared regarding the action contemplated, demonstrates that the action under consideration would not result in any significant adverse environmental impacts. Adoption of the proposed rule amendments would have no impact on environmental conditions. Accordingly, it is appropriate to adopt a negative declaration pursuant to SEQRA and consequently no Environmental Impact Statement is necessary.

CONCLUSION

The regulations, as set forth in the accompanying proposed resolution, are proposed for adoption.

RESOLVED:

1. That, pursuant to the State Environmental Quality Review Act, a negative declaration is hereby adopted regarding the proposed action of promulgating amendments to the Gas Safety regulations as described above and the Secretary is directed to issue the attached Notice of Determination of Significance, Negative Declaration, substantially in the form provided.

2. That the process for promulgating revised regulations to align relevant sections of 16 NYCRR Part 255 with 49 CFR Part 192 is hereby initiated and the draft regulations are hereby proposed for adoption in accordance with the attached draft resolution.

3. That the Secretary is directed to issue the attached Notice of Proposed Rulemaking, substantially in the form provided.

4. That the Secretary is directed to transmit to the Department of State a Notice of Proposed Rulemaking for publication in the State Register, in substantial conformance with this resolution.

5. This proceeding is continued.

(SIGNED)

Commissioner

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

CASE 14-G-0357 - In the Matter of Revising 16 NYCRR Gas Safety Regulations for Consistent Application of More Stringent Federal Gas Safety Standards in 49 CFR.

NOTICE OF PROPOSED RULEMAKING

(Issued)

NOTICE is hereby given that the Public Service Commission is considering revised Gas Safety regulations - 16 NYCRR Part 255 - Safety, Subchapter C, Transmission and Distribution of Gas - to make them at least as stringent as the corollary federal rules - 49 CFR Part 192 - Transportation of Natural and other Gas by Pipeline: Minimum Federal Safety Standards. The revisions are necessary to complete New York State's annual certification to the Federal government that New York's gas safety standards are at least as stringent as federal standards. The draft regulations are attached in the Appendix.

Comments shall be filed with the Secretary on or before November 10, 2014. Interested parties are asked to submit their comments electronically by e-filing through the Department's Document and Matter Management System (DMM),⁵ or by e-mail to the Secretary at secretary@dps.ny.gov, on or before the deadline. Parties unable to file electronically may mail or deliver their comments to Hon. Kathleen H. Burgess, Secretary to the New York State Public Service Commission, Three Empire State Plaza, Albany, New York, 12223-1350. All comments submitted to

⁵ Why Register with DMM,
[http://www.dps.ny.gov/DMM Registration.html](http://www.dps.ny.gov/DMM%20Registration.html); How to Register
with DMM, <http://www.dps.ny.gov/e-file/registration.html>

the Secretary will be posted on the Commission's Web site and become part of the official case record.

(SIGNED)

KATHLEEN H. BURGESS
Secretary

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held in the City of
_____ on _____,
by a _____ vote of its five
members present

COMMISSIONERS PRESENT:

CASE 14-G-0357 - In the Matter of Revising 16 NYCRR Gas Safety
Regulations for Consistent Application of More
Stringent Federal Gas Safety Standards in 49
CFR.

PROPOSED RESOLUTION

Statutory Authority
Public Service Law §§4, 5, 65 and 66

RESOLVED:

1. That the provisions of Section 202(1) of the State
Administrative Procedure Act and Section 101-a(2) of the
Executive Law having been complied with, the official
Compilation of Codes, Rules and Regulations of the State of New
York, Title 16, Public Service, is amended, effective upon
publication of a Notice of Adoption in the State Register, by
the amendment of Subchapter C, Part 255 as set forth in the
Appendix attached hereto (New Material Underlined; Deletions are
Bracketed):

TITLE 16. DEPARTMENT OF PUBLIC SERVICE
CHAPTER IV. GAS UTILITIES

PART 255. Safety, Subchapter C, Transmission
and Distribution of Gas
(Statutory authority: Public Service Law §§4, 5, 65 and 66)

Paragraph 29 of subdivision (a) of section 255.3 is amended to read as follows:

(29) Service line means the piping, including associated metering and pressure reducing appurtenances, that transports gas below grade from a main or transmission line to the [first accessible fitting inside a wall of the customer's building] outlet of the customer meter or at the connection to a customer's piping, whichever is further downstream where a meter is located within the building; if a meter is located outside the building, the service line will be deemed to terminate at the outside of the building foundation wall.

Subdivision (f) of Section 255.507 is repealed and subdivision (g) is relettered subdivision (f).

Paragraph (3) of subdivision (a) of Section 255.619 is amended to read as follows:

(3) the highest actual operating pressure to which the segment was subjected during the 5 years preceding July 1, 1970, [or during any successive five year period thereafter,] unless the segment was tested in accordance with sections 255.505 or 255.507 during the five year period or the segment was upgraded in accordance with sections 255.555 or 255.557 of this Part. The maximum allowable operating pressure must not exceed the maximum allowable operating pressure on the effective date of the rule if the maximum allowable operating pressure is determined using the method prescribed in §255.507(b)(3).

Subdivision (e) of section 255.619 is repealed.

- (a) Subdivision (a) of section 255.625 is amended to read as follows: All gas transported in transmission lines, and distribution mains operating at 125 PSIG (862 kPa) or more, except gas in route to storage fields via a transmission line that transported gas without an odorant from that line before May 5, 1975, is to be adequately odorized in compliance with subdivision (c) of this section so as to render it readily detectable by the public and employees of the operator at all gas concentrations of one fifth of the lower explosive limit and above.

Paragraphs (1) and (2) of subdivision (b) of section 255.723 are amended to read as follow:

(1) A leakage survey with leak detector equipment shall be conducted at intervals not exceeding 15 months, but at least once each calendar year, in business districts within the operator's gas franchise area including tests of the atmosphere of [accessible] gas, electric, telephone, sewer, and water system manholes, at cracks in pavement, at the curblines, in the sidewalk [including the service line area up to the building wall], and at other locations [where it would be reasonable to expect a gas leak to be found] providing an opportunity for finding gas leaks.

(2) Leakage surveys of the distribution system outside of business districts[, including the service line area up to the building wall,] must be made as frequently as necessary, but at least once every 5 calendar years at intervals not exceeding 63 months.

All other sections of Part 255 remain unchanged.

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NOTICE OF DETERMINATION
OF SIGNIFICANCE
NEGATIVE DECLARATION

(Issued)

NOTICE is hereby given that the Public Service Commission as lead agency has determined that the proposed action, adoption of revised Gas Safety regulations - 16 NYCRR Part 255 - Safety, Subchapter C, Transmission and Distribution of Gas - to make them at least as stringent as the corollary federal rules - 49 CFR Part 192 - Transportation of Natural and other Gas by Pipeline: Minimum Federal Safety Standards, would not have a significant adverse environmental impact and an Environmental Impact Statement will not be prepared. This determination is made pursuant to Part 617 of the implementing regulations pertaining to the State Environmental Quality Review Act, Article 8 of the Environmental Conservation Law. The action contemplated is an unlisted action as defined in 6 NYCRR, Section 617.2.

A review of the environmental assessment form (EAF), dated September 5, 2014, prepared regarding the action contemplated, demonstrates that the action under consideration would not result in any significant adverse environmental impacts, does not include any direct approval for the siting or construction of any facilities, and would have no impact on environmental conditions.

APPENDIX

The address of the Public Service Commission, the lead agency for purposes of environmental quality review of this action, is 3 Empire State Plaza, Albany, New York 12223-1350. For further information contact Vance A. Barr at (518) 402-4873 (vance.barr@dps.ny.gov) or write to the above address.

(SIGNED)

KATHLEEN H. BURGESS
Secretary