

RULES AND REGULATIONS

Title 52—PUBLIC UTILITIES

PENNSYLVANIA PUBLIC UTILITY COMMISSION

[52 PA. CODE CH. 59]

[L-2008-2034622]

Liquid Fuels Pipeline Regulations

The Pennsylvania Public Utility Commission (Commission), on March 1, 2012, adopted a final rulemaking order which sets forth new language for regulation of liquid fuels and hazardous materials pipelines by incorporating 49 CFR Part 195 (relating to transportation of hazardous liquids by pipeline).

Executive Summary

The Commission is amending its existing regulations at 52 Pa. Code § 59.33 to include new language for the regulation of liquid fuels and hazardous materials pipelines by incorporating Chapter 195 of the *Code of Federal Regulations*. Section 102 of the Public Utility Code, 66 Pa.C.S. § 102, defines a public utility as “Any person or corporations now or hereafter owning or operating in the Commonwealth equipment or facilities for . . . (v) Transporting or conveying natural or artificial gas, crude oil, gasoline, or petroleum products, materials for refrigeration, or oxygen or nitrogen, or other fluid substance, by pipeline or conduit, for the public for compensation.” Id. § 102(1)(v).

The Public Utility Commission has jurisdiction over petroleum and oil pipeline utilities, and, pursuant to Section 102(1)(v), the Commission also has jurisdiction over hazardous materials and liquid fuels transported via pipeline or conduit for the public for compensation. Yet, the Commission currently has no specific regulations in place to effectively address enforcement and safety issues. Therefore, we are amending our regulations to include regulations addressing transportation of hazardous materials and liquid fuels by pipeline or conduit as consistent with 49 C.F.R. § 195, et seq., and in accordance with the Pipeline Safety Grant Program Payment Agreement entered into with the Department of Transportation.

Public Meeting held
March 1, 2012

Commissioners Present: Robert F. Powelson, Chairperson; John F. Coleman, Jr., Vice Chairperson; Wayne E. Gardner; James H. Cawley; Pamela A. Witmer

Liquid Fuels Pipeline Regulations;
Doc. No. L-2008-2034622

Final Rulemaking Order

By the Commission:

By Order entered July 16, 2010, at the above-captioned docket, this Commission issued a proposed rulemaking to amend its existing regulations at 52 Pa. Code § 59.33 to include new language for the regulation of liquid fuels and hazardous materials pipelines by incorporating Chapter 195 of the *Code of Federal Regulations*. The proposed rulemaking and the notice requesting comments from interested parties were published February 26, 2011 in the *Pennsylvania Bulletin*, at 41 Pa.B. 1020. The Commission received comments from the Independent Regulatory Review Commission (IRRC). This order addresses the

comments received and sets forth a final rulemaking amending our regulations at 52 Pa. Code § 59.33.

A. Background and Procedural History

Section 102 of the Public Utility Code, 66 Pa.C.S. § 102, defines a public utility as “Any person or corporations now or hereafter owning or operating in the Commonwealth equipment or facilities for . . . (v) Transporting or conveying natural or artificial gas, crude oil, gasoline, or petroleum products, materials for refrigeration, or oxygen or nitrogen, or other fluid substance, by pipeline or conduit, for the public for compensation.” Id. § 102(1)(v).

Currently, Pennsylvania exercises jurisdiction over petroleum and oil pipeline utilities including utilities such as Laurel Pipe Line Co., Sunoco Pipeline, and Conoco Philips Pipe Line Co. Pursuant to Section 102(1)(v), the Commission also has jurisdiction over hazardous materials and liquid fuels transported via pipeline or conduit for the public for compensation, yet currently has no specific regulations in place to effectively address enforcement and safety issues. Therefore, we are proposing to amend our regulations to include regulations addressing transportation of hazardous materials and liquid fuels by pipeline or conduit as consistent with 49 C.F.R. § 195, et seq., and in accordance with the Pipeline Safety Grant Program Payment Agreement entered into with the Department of Transportation.

B. Comments

Based on criteria in Section 5.2 of the Regulatory Review Act, 71 P.S. § 745.5(b), IRRC filed comments to our proposed rulemaking raising three issues. First, IRRC asks what “hazardous liquid public utilities” are, and requests that the term be defined in the final-form regulation.

Section 195.2 of the *Code of Federal Regulations*, 49 CFR § 195.2, defines the term “hazardous liquid” as “petroleum, petroleum products, or anhydrous ammonia.” Section 102 of the Public Utility Code, 66 Pa.C.S. § 102, defines a public utility as, among other things, “Any person or corporation now or hereafter owning or operating in this Commonwealth equipment or facilities for transporting or conveying . . . crude oil, gasoline, or petroleum products . . . by pipeline or conduit, for the public for compensation.” We agree with IRRC that a definition of “hazardous liquid public utility” should be included in the final-form regulation, and will add a definition incorporating language from both § 195.2 of the CFR, and § 102 of the Public Utility Code.

The second issue raised by IRRC is that proposed subsection (b) references “future federal amendments to 49 CFR Parts 190—195, 198 and 199. . . .” IRRC points out that Section 1.6 of the *Pa. Code & Bulletin Style Manual* provides, “If an agency wishes to incorporate subsequent amendments [of a code or regulation] the agency must explicitly do so by amendment of its existing rules. . . .” IRRC suggests that the final-form rulemaking either delete the new language pertaining to future federal amendments or provide a justification for retaining it.

There are two reasons why the Commission must incorporate future federal amendments to the enumerated provisions of the CFR. First, the existing regulation at 52 Pa. Code § 59.33 already incorporates all future federal

amendments to the provisions of the CFR listed, namely Parts 191—193, and 199. The final-form rulemaking adds only Part 195 to that list. The final-form rulemaking language will be as follows:

The minimum safety standards for all [**gas transmission and distribution facilities**] **natural gas and hazardous liquid public utilities** in this Commonwealth shall be those issued under the pipeline safety laws as found in 49 U.S.C.A. §§ 60101—60503 and as implemented at 49 CFR Parts [**191—193**], [**190—195, 198**] 191—193, 195 and 199, including all subsequent amendments thereto [**future**]. **Future** Federal amendments to 49 CFR Parts [**191—193**], [**190—195, 198**] 191—193, 195 and 199, as amended or modified by the Federal government, shall have the effect of amending or modifying the Commission's regulations with regard to the minimum safety standards for all [**gas transmission and distribution facilities**] **natural gas and hazardous liquid public utilities**. The amendment or modification shall take effect 60 days after the effective date of the Federal amendment or modification, unless the Commission publishes a notice in the *Pennsylvania Bulletin* stating that the amendment or modification may not take effect.

Therefore, we are adding no new language to § 59.33 regarding future federal amendments.

The second, and more important, reason relates to maintaining federal funding for our natural gas pipeline safety program. In particular, it is imperative we maintain the current language regarding future federal amendments, so that the Commission can adequately participate in the Hazardous Liquid Pipeline Safety Grant Program. Section 511.1 of the Public Utility Code, 66 Pa.C.S. § 511.1, authorizes the Commission to apply for and use federal funds pursuant to the National Energy Act, which is composed of, among other Acts, any future Federal legislation providing special funds for gas safety programs. The U.S. Department of Transportation's ("DOT") Pipeline and Hazardous Materials Safety Administration's ("PHMSA") Hazardous Liquid Pipeline Safety Grant Program supports efforts to develop and maintain state natural gas, liquefied natural gas, and hazardous liquid pipeline safety programs.¹ The objective of the Pipeline Safety Grant Program is to develop and maintain state natural gas, liquefied natural gas, and hazardous liquid pipeline safety programs.

The Pipeline Safety Grant Program is a 100% performance-based program with the performance criteria of 100 points. Eligible programs will cover such areas as inspection and testing of gas pipelines as well as related travel, training, and research. Funds must be expended for personnel, equipment, and activities reasonably required for the pipeline safety program. DOT provides federal matching funds, up to 50 percent to any state agency with a certificate under Section 60105 of Title 49, *United States Code*, an agreement under Section 60106 of Title 49, *United States Code*, or to any state acting as a DOT agent on interstate pipelines.

Funding to the states is allocated by a method designed to reflect the degree to which a state has met specific

levels of performance, based on information provided in certification packages and the results of DOT's Regional Office program evaluation. The allocation is determined by assigning point values to the states for having achieved certain levels of program participation, dividing this point score by the sum of the states' point scores, and multiplying this ratio by the amount available for the distribution. PHMSA distributes the remaining funds according to certain criteria designed to seek improvements in various state programs.

The criteria used by PHMSA is the extent of intrastate jurisdiction, inspector qualifications, recommended number of inspection person-days, state adoption of applicable Federal regulations, and other relevant criteria. New state programs, such as Pennsylvania's, are automatically funded at a minimum score of 90 for the first three years (assuming the state is making satisfactory progress in meeting certification requirements), thereby providing an adequate cushion for these state programs to get established.

Therefore, it is imperative that we retain the language incorporating future federal amendments so that we may keep step with any changes in the federal regulations. Doing so ensures that we will receive the funding necessary for the Commission to carry out the requirements of the Pipeline Safety Grant Program. It is in participation of this program that we are modifying our existing regulation to add Chapter 195, as an applicable federal regulation, in order to meet the requirements for federal funding. And, likewise, staying consistent with future federal amendments to these CFR provisions in a timely manner ensures we will continue to meet these necessary requirements.

Finally, IRRC raises the issue that the existing subsection references 49 CFR Parts 191—193, and 199, while the proposed regulation replaces these references with 49 CFR parts 190—195, 198, and 199. IRRC states that it is unclear why these changes have been made, and asks for further clarification. The final-form rulemaking will differ from the proposed rulemaking in that we intend to modify 52 Pa. Code § 59.33 so that only 49 CFR Part 195 is added to the current regulation.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on February 10, 2011, the Commission submitted a copy of the proposed rulemaking, published at 41 Pa.B. 1020 (February 26, 2011), to IRRC and the Chairpersons of the House Committee on Consumer Affairs and the Senate Committee on Consumer Protection and Professional Licensure for review and comment.

Under section 5(c) of the Regulatory Review Act, IRRC and the House and Senate Committees were provided with copies of the comments received during the public comment period, as well as other documents when requested. In preparing the final-form rulemaking, the Commission has considered all comments from IRRC, the House and Senate Committees and the public.

Under section 5.1(j.2) of the Regulatory Review Act (71 P.S. § 745.5a(j.2)), on July 18, 2012, the final-form rulemaking was deemed approved by the House and Senate Committees. Under section 5.1(e) of the Regulatory Review Act, IRRC met on July 19, 2012, and approved the final-form rulemaking.

¹ Authorized by the Natural Gas Pipeline Safety Act of 1968, Public Law 90-481, 49 U.S.C. 1971, as amended; Public Law 92-401, 86 Stat. 616; Public Law 93-403, 88 Stat. 802; Public Law 94-477, 90 Stat. 2073; Pipeline Safety Act of 1979, Title I and Title II, Public Law 96-129, 93 Stat. 989; Pipeline Safety Reauthorization Act of 1988, Public Law 100-561; Pipeline Safety Act of 1992, Public Law 102-508; 49 U.S.C. 601; Public Law 103-272; Accountable Pipeline Safety and Partnership Act of 1996, Public Law 104-304.

Conclusion

Since the Gas Service Regulations at 52 Pa. Code § 59 and the Federal Code Regulations on the Transportation of Hazardous Liquids by Pipeline at 49 CFR § 195 are already used in the regulation of natural gas and hazardous liquid pipelines respectively, we propose to amend 52 Pa. Code § 59.33 to include hazardous liquid pipelines, and specifically reference 49 CFR § 195 and future amendments thereto.

Accordingly, under sections 501 and 1501 of the Public Utility Code (66 Pa.C.S. §§ 501 and 1501); sections 201 and 202 of the act of July 31, 1968 (P. L. 769 No. 240) (45 P. S. §§ 1201 and 1202) and the regulations promulgated thereunder, 1 Pa. Code §§ 7.1, 7.2 and 7.5; section 204(b) of the Commonwealth Attorneys Act (71 P. S. § 732.204(b)); section 745.5 of the Regulatory Review Act (71 P. S. § 745.5); and section 612 of The Administrative Code of 1929 (71 P. S. § 232), and the regulations promulgated thereunder at 4 Pa. Code §§ 7.231—7.235, we find that the regulation as set forth in Annex A should be approved; *Therefore,*

It Is Ordered That:

1. The regulations of the Commission, 52 Pa. Code Chapter 59, are amended by amending § 59.33 to read as set forth in Annex A.

2. The Secretary shall serve a copy of this order and Annex A on all jurisdictional natural gas distribution companies, the Office of Consumer Advocate, the Office of Small Business Advocate and all other parties that filed comments at Docket No. L-2008-2069114.

3. The Secretary shall certify this order and Annex A and deposit them with the Legislative Bureau for publication in the *Pennsylvania Bulletin*.

4. The Secretary shall submit this order and Annex A to the Office of Attorney General for approval as to legality.

5. The Secretary shall submit this order and Annex A to the Governor’s Budget Office for review of fiscal impact.

6. The Secretary shall submit this order and Annex A for review by the designated standing committees of both houses of the General Assembly, and for review and approval by the Independent Regulatory Review Commission.

7. The final regulations become effective upon publication in the *Pennsylvania Bulletin*.

8. The contact person for this final-form rulemaking is Adam D. Young, Assistant Counsel, Law Bureau, (717) 772-8582. Alternate formats of this document are available to persons with disabilities and may be obtained by contacting Sherri DelBiondo, Regulatory Coordinator, Law Bureau, (717) 772-4579.

ROSEMARY CHIAVETTA,
Secretary

(Editor’s Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 42 Pa.B. 4992 (August 4, 2012).)

Fiscal Note: Fiscal Note 57-281 remains valid for the final adoption of the subject regulation.

Annex A

**TITLE 52. PUBLIC UTILITIES
PART I. PUBLIC UTILITY COMMISSION
Subpart C. FIXED SERVICE UTILITIES
CHAPTER 59. GAS SERVICE
SERVICE AND FACILITIES**

§ 59.33. Safety.

(a) *Responsibility.* Each public utility shall at all times use every reasonable effort to properly warn and protect the public from danger, and shall exercise reasonable care to reduce the hazards to which employees, customers and others may be subjected to by reason of its equipment and facilities.

(b) *Safety code.* The minimum safety standards for all natural gas and hazardous liquid public utilities in this Commonwealth shall be those issued under the pipeline safety laws as found in 49 U.S.C.A. §§ 60101—60503 and as implemented at 49 CFR Parts 191—193, 195 and 199, including all subsequent amendments thereto. Future Federal amendments to 49 CFR Parts 191—193, 195 and 199, as amended or modified by the Federal government, shall have the effect of amending or modifying the Commission’s regulations with regard to the minimum safety standards for all natural gas and hazardous liquid public utilities. The amendment or modification shall take effect 60 days after the effective date of the Federal amendment or modification, unless the Commission publishes a notice in the *Pennsylvania Bulletin* stating that the amendment or modification may not take effect.

(c) *Definition.* For the purposes of this section, “hazardous liquid public utility” means a person or corporation now or hereafter owning or operating in this Commonwealth equipment or facilities for transporting or conveying crude oil, gasoline, petroleum or petroleum products, by pipeline or conduit, for the public for compensation.

(d) *Enforcement.* Each public utility shall be subject to inspections as may be necessary to assure compliance with this section. The facilities, books and records of each public utility shall be accessible to the Commission and its staff for the inspections. Each public utility shall provide the Commission or its staff the reports, supplemental data and information as it shall from time to time request in the administration and enforcement of this section.

(e) *Records.* Each public utility shall keep adequate records as required for compliance with the code in subsection (b). The records shall be accessible to the Commission and its staff.

[Pa.B. Doc. No. 12-1857. Filed for public inspection September 21, 2012, 9:00 a.m.]

**PENNSYLVANIA PUBLIC UTILITY COMMISSION
[52 PA. CODE CH. 67]**

Corrective Amendment to 52 Pa. Code § 67.1(d)

The Pennsylvania Public Utility Commission has discovered a discrepancy between the agency text of 52 Pa. Code § 67.1 (relating to general provisions), as deposited with the Legislative Reference Bureau, and the official text published at 42 Pa.B. 9 (January 7, 2012) and as currently appearing in the *Pennsylvania Code*. Subsection (d) was printed incorrectly.

Therefore, under 45 Pa.C.S. § 901: The Pennsylvania Public Utility Commission has deposited with the Legislative Reference Bureau a corrective amendment to 52 Pa. Code § 67.1(d). The corrective amendment to 52 Pa. Code § 67.1(d) is effective as of January 7, 2012, the effective date of adoption of the final-form rulemaking amending this section.

The correct version of 52 Pa. Code § 67.1 appears in Annex A.

Annex A

TITLE 52. PUBLIC UTILITIES

PART I. PUBLIC UTILITY COMMISSION

Subpart C. FIXED SERVICE UTILITIES

CHAPTER 67. SERVICE OUTAGES

§ 67.1. General provisions.

(a) Electric, gas, water and telephone utilities holding certificates of public convenience under 66 Pa.C.S. §§ 1101 and 1102 (relating to organization of public utilities; and beginning of service and enumeration of acts requiring certificate) shall adopt the following steps to notify the Commission with regard to unscheduled service interruptions.

(b) All electric, gas, water and telephone utilities shall notify the Commission when 2,500 or 5.0%, whichever is less, of their total customers have an unscheduled service interruption in a single event for 6 or more projected consecutive hours. A service outage report shall be filed with the Commission within 10 working days after the total restoration of service. Where storm conditions cause multiple reportable interruptions as defined by this section, a single composite service outage report shall be filed for the event. Each report must contain the following information:

(1) The approximate number of customers interrupted during the event.

(2) The approximate number of trouble cases for each county affected during the event. Trouble cases are non-outage cases such as primary and secondary line-down calls and emergency calls.

(3) The approximate number of outage cases for each county affected during the event.

(4) The number of outage cases exceeding 6 or more hours in duration.

(5) A listing of each outage case exceeding 6 or more hours in duration, including the following:

(i) Approximate geographic location (county, city, municipality or township).

(ii) Total number of customers affected.

(iii) Duration of the outage.

(iv) Initial date and time of the outage.

(v) Restoration time and date.

(6) The reason for the interruption.

(7) The projected time for service restoration of the event.

(8) A listing of the number of utility workers assigned specifically to the repair work by general function, that is linemen, troublemen, tree crew, and the like.

(9) A listing of the number of contract workers assigned specifically to the repair work by company and by general function, that is linemen, troublemen, tree crew, and the like.

(10) A listing of the number of workers received as mutual aid by company and by general function, that is linemen, troublemen, tree crew, and the like.

(11) The date and time of the first information of a service interruption.

(12) The date and time that repair crews were assembled.

(13) The actual time that service was restored to the last affected customer.

(14) A general description of the physical damage sustained by the utility facilities as a result of the event. The description must include facilities replaced due to damage and a listing of the number of poles, transformers, spans of wire, pipes or valves replaced.

(15) For weather-related events, the utility's weather reports, outlooks or scenarios for the day before and the day of the interruption event.

(16) For all interruption events that caused outages to more than 10% of customers in the utility's service territory, and to the best of the utility's ability to access historical data, the historical ranking of the event in terms of the number and duration of outages and examples of two comparable events, including the number and duration of outages for those comparable events.

(c) In addition to the requirements of subsection (b), the utility shall notify the Commission by telephone within 1 hour after preliminary assessment of conditions reasonably indicates that the criteria listed in subsection (b) may be applicable. Subsection (b)(1), (3), (6) and (7) shall be used as guidelines for the telephone report. The Commission will maintain telephone lines for this purpose and will notify each utility of the numbers to be called. Blank outage reporting forms are available for download on the Commission's web site.

(d) The Commission will implement a plan to govern its internal operations in receiving notification of service interruptions, in investigating such interruptions, and in assisting the customers of the utility, the utility and Commonwealth agencies in restoring service.

(e) All electric, gas, water and telephone utilities shall list in the local telephone directories of their service areas, and on their web sites, a telephone number to be used during normal operating hours and an emergency telephone number to be used 24 hours in emergency service situations.

(f) As defined in subsection (b), the service outage report must contain the required information except for the following utilities:

(1) Gas utilities are not required to submit the information under subsection (b)(2), (5), (14), (15) and (16).

(2) Water utilities are not required to submit the information under subsection (b)(2), (15) and (16).

(3) Telephone utilities are not required to submit the information under subsection (b)(2), (4), (5), (8), (9), (10), (12), (14), (15) and (16). Alternatively, in lieu of the service outage report required under subsection (b), telephone utilities may file a comparable outage report required by the Federal Communications Commission as long as the comparable report, at a minimum, contains the following information:

- (i) The name of the reporting entity.
- (ii) The reason for the interruption.
- (iii) The date and time of the first information of a service interruption.
- (iv) The approximate number of customers interrupted.
- (v) The geographic area affected by the interruption.
- (vi) The actual time that service was restored to the last affected customer.
- (g) The reporting under this chapter is not limited to the requirements in this section and does not limit requests for additional information.

[Pa.B. Doc. No. 12-1858. Filed for public inspection September 21, 2012, 9:00 a.m.]