

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held in the City of
Albany on August 2, 2017

COMMISSIONERS PRESENT:

John B. Rhodes, Chair
Gregg C. Sayre
Diane X. Burman
James S. Alesi

CASE 15-G-0244 - Proceeding on Motion of the Commission to
Develop Implementation Protocols for Complying
with Inspection Requirements Pertaining to Gas
Service Lines Inside Buildings.

ORDER GRANTING IN PART PETITIONS FOR REHEARING,
RECONSIDERATION, AND CLARIFICATION

(Issued and Effective August 3, 2017)

BY THE COMMISSION:

INTRODUCTION

In May 2017, National Fuel Gas Distribution Corporation (NFG), Consolidated Company of New York, Inc. and Orange & Rockland Utilities, Inc. (together, Con Edison/ORU), the Northeast Gas Association (NGA), The Brooklyn Union Gas Company d/b/a National Grid NY, KeySpan Gas East Corporation d/b/a National Grid, Niagara Mohawk Power Corporation d/b/a National Grid (collectively, National Grid), and New York State Electric & Gas/Rochester Gas & Electric (NYSEG/RG&E) filed Petitions for Rehearing, Reconsideration, or Clarification seeking to revise the Commission's Order Establishing Statewide Inspection Schedules and Procedural Requirements (issued April 20, 2017) (April 20 Order).¹ Central Hudson Gas & Electric

¹ Five petitions and two letters in support were filed.

(Central Hudson) and St. Lawrence Gas Co., Inc. (St. Lawrence) filed letters in support of NGA's Petition.² Most of the Petitions seek clarification of the Order's language in two places. NFG requests that the primary remedy for a customer's failure to provide access to premises to complete the safety inspections be service termination rather than a \$100 charge. National Grid, NYSEG/RG&E, and NGA (with its supporters) seek a tolling of the starting date to complete the 15-month and three-year leakage surveys and corrosion inspections (together, safety inspections). Many of the local distribution companies (LDCs) seek clarification that all LDCs, not only Con Edison, may include all inspections performed since April 2015 in their baseline inspection totals; NGA and NYSEG/RG&E ask that LDC performance metrics be revisited given the April 20 Order's tariff change that allows LDCs to charge customers \$100 when they fail or refuse to provide LDCs access to complete the safety inspections; and Con Edison seeks to reconcile the April 20 Order with the Order Approving Electric and Gas Rate Plans (issued January 25, 2017) (Con Edison Rate Order), which adopted the parties' Joint Proposal in Con Edison's last rate case.³

For the reasons stated below, the Petitions are granted in part and denied in part.

Notice of Proposed Rulemaking

In conformance with the State Administrative Procedure Act (SAPA) §202(1), notice of the petitions was published in the State Register on June 14, 2017. The SAPA §202(1)(a) period for

² Included in their petitions, Con Edison/ORU and National Grid state their support for NGA's petition as well.

³ See Case 16-G-0061 - Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of Consolidated Edison Company of New York, Inc. for Gas Service.

submitting comments on the petitions expired on July 31, 2017. No comments were received.

LEGAL AUTHORITY

Public Service Law § 65(1) assigns to the Public Service Commission authority over all gas corporations and requires all gas corporations to "provide such [gas] service, instrumentalities, and facilities as shall be safe and adequate and in all respects just and reasonable." As a state program that has been certified by the Pipeline and Hazardous Materials Safety Administration (PHMSA) to act in PHMSA's stead, the Department of Public Service may establish safety requirements that are at least as, but may be more, stringent than PHMSA's.

Public Service Law § 22 allows, however, that "if the commission shall be of opinion that the original order or any part thereof is in any respect unjust or unwarranted, or should be changed, the commission may abrogate or change the same." More specifically, Commission rules, 16 NYCRR § 3.7(a), allow "Any person interested in an order of the Commission" to "request rehearing within 30 days of service of the order." Petitions for rehearing must be based "only on the grounds that the commission committed an error of law or fact or that new circumstances warrant a different determination."⁴

⁴ 16 NYCRR § 3.7(b); see Foley v. Roche, 68 A. D. 2nd 558 (1st Dept. 1979) ["[R]eargument is not designed to afford the unsuccessful party repeated opportunities to revisit issues already decided . . ."]. Petitions for Clarification ask the Commission, in its discretion, to change the original order.

DISCUSSION

Clarifying Order Language

National Fuel, NGA and supporting LDCs, and NYSEG/RG&E point out two language errors in the April 20 Order.⁵ In both instances, the April 20 Order's narrative incorrectly described the law's requirements. First, on page four, the last sentence of the first paragraph describes that, when a gas meter is outside, the gas service line under Commission jurisdiction "extends to the first fitting inside the premises." The actual regulation, as quoted in footnote two of the Order, states that "if a meter is located outside the building, the service line will be deemed to terminate at the outside of the building foundation wall."⁶ Therefore, the petitions are granted and the last sentence on page four should read: "When a meter is set outside a building, jurisdiction extends to the outside building wall." The April 20 Order is amended accordingly.

Similarly, the substance of Ordering Clause One mandates that all LDCs "shall complete baseline natural gas leakage surveys of each gas service line in business districts within 15 months of the date of this Order and atmospheric corrosion inspections within three years of the date of this Order." In the body of the Order, however, on page 37, the narrative reads, "baseline leakage surveys and atmospheric corrosion inspections shall be completed within 15 months (business districts) and three years (non-business districts) of

⁵ National Fuel at 2-3; NYSEG/RG&E at 1; NGA at 2-3.

⁶ April 20 Order at 2, fn. 2.

the date of this Order.”⁷ Ordering Clause One is correct and the last sentence in the body of the April 20 Order is amended to state “baseline leakage surveys in business districts shall be completed within 15 months and atmospheric corrosion inspections within three years of the date of this Order.”⁸

Previously Completed Inspections

The April 20 Order granted Con Edison’s request that all of its inside leakage surveys and corrosion inspections completed since commencement of the gas service line proceeding be counted towards Con Edison’s baseline inspection requirement.⁹ National Fuel, NGA and supporting LDCs, National Grid, and NYSEG/RG&E ask in their petitions that the April 20 Order be clarified to state that all LDCs’ previously completed leakage surveys and corrosion inspections completed since the commencement of this proceeding may be counted towards their baseline total safety inspection requirements. This request is granted. All inside leakage surveys and corrosion inspections completed by all LDCs since June 6, 2015, the date of the Notice of Technical Conference and Initiating Proceeding, if they were completed in a manner consistent with the April 20 Order (e.g.,

⁷ This Order and the April 20 Order do not change the requirement that atmospheric corrosion inspections and inside leakage surveys outside of business districts shall be completed on the same three-year schedule. Unless the operator employs leakage history to determine areas of active corrosion (See § 255.723(b)(3), inside portions of the leakage surveys outside of business districts could default to the 5 year (not to exceed 63 months) intervals outlined in § 255.723(b)(2).

⁸ Ordering Clause Two states the requirements for non-business districts, by which both leakage surveys and corrosion inspections must be completed within three years.

⁹ April 20 Order at 12, fn. 19.

inspection of each meter set) may count towards the total baseline inspection requirement.¹⁰

Tolling of Commencement Date

The April 20 Order required that baseline inspections commence immediately, by the date of the Order. NGA (and supporting LDCs), National Grid, and NYSEG/RG&E support tolling the start period for inspections to December 31, 2017.¹¹ This would, in effect, extend by six months the time within which all baseline inspections must be completed.

To remain compliant with the Department's federal certification requirements and to ensure that LDCs maintain their vital focus on completing leakage surveys and corrosion inspections in 2017, a full six-month extension to commence inspections is not possible.¹² The LDCs have known these requirements would be forthcoming since early 2015 and have already begun the new inspections due to their participation in the Gas Technology Institute Study referenced in the April 20 Order. As such, the LDCs have had sufficient time to implement the processes necessary to complete the new inspections within three years.¹³

¹⁰ That being said, the completion of each inspection restarts the "clock," meaning that each re-inspection must be completed within 3 years from the date of each baseline inspection unless relief is sought and granted under 16 NYCRR § 255.1013.

¹¹ National Grid at 4; NGA at 4-5; NYSEG/RG&E at 2.

¹² On June 15, 2017, the Department received notice of a leak on a meter set inside a Manhattan apartment. The LDCs have routinely claimed that meter sets are the least likely to leak and yet, since issuing the April 20 Order, we have found one; the need to commence the leakage surveys and corrosion inspection immediately is apparent.

¹³ For its part, NYSEG/RG&E have had ample time to seek "Staff consultation, review, and feedback" of their plans. NYSEG/RG&E at 2.

However, to acknowledge that the LDCs have already begun compliance and are working diligently to complete the inspection requirements, the Commission will treat all leakage surveys completed within business districts performed up to December 31, 2017 as 2018-required leakage surveys and corrosion inspections. In this way, the time limit within which leakage surveys in business districts that would have to be completed by December 31, 2017 are extended to 2018.¹⁴

Adjustments to Customer Metrics

Most LDCs are operating under rate plans that measure company performance in, for instance, gas safety, outage repair, and customer complaints. NGA and its supporting LDCs and NYSEG/RG&E are concerned that customer complaints will increase if LDCs charge customers \$100 for failing to allow the LDC access to perform the safety inspections. The LDCs seek reconsideration of the April 20 Order's determination that any change to performance metrics should be made within the context of rate cases and not in this gas service line proceeding. The April 20 Order rejected the LDCs' earlier request to reopen existing performance metrics by stating, "Any adjustments to consumer complaint metrics on this issue should be addressed in either rate cases or in LDC responses to such metric tallies when they are applied."¹⁵

The request to reconsider our decision is denied. First, many consumer safeguards are in place that can avoid altogether the \$100 charge ever being added to a customer's bill. They include the requirements that customers be informed beforehand about the charge - with notices in bill inserts and

¹⁴ The Commission will consider petitions to extend the time for completing inspections of inside meter sets if submitted with sufficient engineering analysis and risk assessment.

¹⁵ April 20 Order at 34, fn. 87.

on web pages - and that the \$100 can only be charged after the customer misses two appointments or the customer refuses access.¹⁶

Second, it is highly unlikely that this charge will be the cause of any LDC missing its service quality metrics. No LDC's target is zero complaints. Moreover, the "headroom" allowed between the number of complaints that are acceptable and the number that prompts penalties is appreciable, so it is unlikely any impact on metrics due to the new (possible) charge will ever materialize. Finally, as the April 20 Order stated, rate cases are the best place to amend performance metrics, including the request to apply exceptions for complaints stemming from the \$100 charge.

Termination as Remedy for
Failure to Allow Access

National Fuel seeks rehearing on the determination that LDCs may not terminate gas service due to a failure to provide access.¹⁷ Instead, the April 20 Order requires that customers first be billed the \$100 charge and, if that charge goes unpaid, LDCs may commence the service termination process following the requirements of the Home Energy Fair Practices Act (HEFPA). If the customer pays the \$100 and still does not allow access, LDCs may then terminate service. National Fuel states its belief that imposing a \$100 charge is "unwise" and that the \$100 charge is not permitted by Commission regulations. National Fuel worries that the charge will "have great detrimental effect on [the Company's] low income customers" who already have trouble paying their bills. National Fuel believes

¹⁶ April 20 Order at 34.

¹⁷ National Fuel clarifies that it did not support the \$100 charge the April 20 Order ultimately adopted and supported only service termination as the remedy for failing to allow access to complete safety inspections. NFG at 4.

HEFPA is "complicated and rigid," and by making service termination for failure to pay the \$100 charge subject to HEFPA's procedures, the Commission minimizes the importance of the safety concerns associated with these inspections.¹⁸

As the April 20 Order states, Public Service Law § 65(9) allows utilities to charge \$100 for the "offense" of hindering access to premises. Therefore, authority exists to impose the charge. As for the claim that the importance of these inspections is understated with the \$100 charge rather than service termination, adding a new \$100 charge to tariffs when a customer does not provide access allowing the LDC to complete the safety inspections, in addition to all the public education notices the Commission expects to see, emphasizes the importance of the inspections.

National Fuel's complaint that the charge will hurt low income customers is exaggerated because the April 20 Order put safeguards in place to avoid the charge altogether. That is, the April 20 Order only allows the charge after the LDCs provide notice to customers and only after at least two cancelled appointments or one refusal to allow access. The charge is simply one more tool to encourage customers to assist the LDCs in performing the necessary safety inspections. The primary problem with allowing disconnection of gas service as a remedy for failing to provide access, however, is that doing so would require an entirely new set of procedures to implement the entirely new remedy. Moreover, to protect customers, such procedures would likely mirror HEFPA's procedures.

Finally, National Fuel's assessment that it is "far-fetched" that someone will deny access to their premises and pay the \$100 is short-sighted and naive. A customer who is stealing

¹⁸ National Fuel at 5.

gas service or otherwise using gas in an unlawful manner is likely to forestall discovery for as long as possible, including trying to prohibit any inspection. For these reasons, NFG's request that service termination be a remedy for failing to provide access to complete the leakage surveys and corrosion inspection is denied.

Reconciling Con Edison
Rate Order and April 20 Order

Con Edison seeks clarification about the rate treatment of its incremental costs associated with the implementation of the new gas service line definition.¹⁹ Con Edison seeks this clarification because the Joint Proposal in the last Con Edison Rate Order stated, "To the extent that cost recovery is not addressed in Case 14-G-0357 and/or Case 15-G-0244 and over the term of the Gas Rate Plan the Company incurs incremental costs associated with complying with the amended definition (e.g., for inspection, repair, outreach/communications), the Company will defer these costs on its book of account for future recovery from customers."²⁰ The April 20 Order did address the rate treatment, however, stating that "[r]ate recovery for these O&M expenses . . . shall be considered in future rate proceedings," and, if the costs become unexpectedly burdensome, any deferrals must meet the three-prong test for deferral petitions.²¹ While recognizing that "Con Edison's Joint Proposal also identified this as a possible cost in the future," it refers to the costs "as the possible subject

¹⁹ Con Edison at 3.

²⁰ Case 16-G-0061 - Proceeding on Motion of the Commission as to the Rates, Charges, Rules, and Regulations of Consolidated Edison Company of New York, Inc., Order Approving Electric Rates and Gas Rate Plans (issued January 25, 2017), Joint Proposal at 48-49.

²¹ April 20 Order at 35, 37.

of a Con Edison deferral petition for incremental costs associated with complying with the amended gas service line definition.”²² As such, the April 20 Order can be read as requiring Con Edison to file a deferral petition that meets the three-prong test for the safety inspection costs. Con Edison seeks to reconcile these two orders to state Con Edison is not required to file a deferral petition or meet the three-prong test.²³

As written, the April 20 Order points to Con Edison’s rate plan, which attempted to resolve the accounting of these O&M costs, stating that a Con Edison deferral petition that meets the traditional three-pronged test may be necessary. At best, the two determinations are confusing; at worst, they each attempt to resolve Con Edison’s rate treatment of gas service line inspections in different ways.

Con Edison’s petition for clarification is granted to the extent described below. Con Edison shall create a separate deferral account to record Con Edison incremental costs incurred to comply with the new requirements associated with the new gas service line definition so that Staff in Con Edison’s next rate case may audit those costs for reasonableness. Con Edison shall continue to maintain a separate tracking of annual costs associated with performing inside leakage surveys and corrosion inspections so that the likely future decrease in these expenses may be easily identified. By year four of the inside leakage surveys and corrosion inspection cycles, the decrease in costs should be significant. In this way, Con Edison need not file a petition to meet the three-pronged test for deferral of these

²² April 20 Order at 36.

²³ Con Edison at 3.

costs while Staff maintains opportunities to audit Con Edison's costs.

That said, the safety inspection costs should be higher in the next three years than in future years. They will no doubt be reduced substantially once the New York City legislation requiring building owners to complete the inspections becomes effective, if a petition is submitted justifying longer intervals between the required inspections, or if permanently installed methane detectors supplant leakage surveys.

Con Edison's situation is instructive for all LDCs with respect to how these costs should be tracked. Since the estimate of these costs has ranged from \$11 million to \$50 million, all LDCs shall track any incremental inside leakage survey and corrosion inspection costs incurred due to the amendment of the gas service line definition, for pipe that is between the building wall and the inside meter. This allows, in the short term, that incremental costs will be recognized as new and attributable to the safety inspections in upcoming rate cases. Such tracking shall be maintained until the costs normalize and reach a stable, annual cost. The separate tracking also allows the Department of Public Service (DPS) scrutiny that will help to ensure the LDCs are keeping these costs to a minimum.

CONCLUSION

The April 20 Order's primary purpose was to require that baseline leakage surveys and corrosion inspections of the inside portion of individual gas service lines begin immediately. That directive in no way diminishes or overrides the existing and specific regulatory requirements that future inspections shall occur on the schedule stated in 16 NYCRR Part 255 unless and until longer intervals are separately approved

and ordered in a future Commission determination based on engineering and risk analysis performed by each LDC.

The Commission orders:

1. The Order Establishing Statewide Inspection Schedules and Procedural Requirements is amended by changing the last sentence of the first paragraph on page 4 to state, "When a meter is set outside a building, jurisdiction extends to the outside building wall."

2. The Order Establishing Statewide Inspection Schedules and Procedural Requirements is amended and the last sentence of the Order narrative on page 37 shall state, "baseline inside leakage surveys in business districts shall be completed within 15 months and atmospheric corrosion inspections with three years of the date of this Order."

3. All inside leakage surveys and corrosion inspections completed by New York State Electric & Gas Corporation, Central Hudson Gas and Electric Corporation, National Fuel Gas Distribution Corporation, Orange and Rockland Utilities, Inc., Rochester and Gas Electric Corporation, Brooklyn Union Gas Company d/b/a National Grid NY, KeySpan Gas East Corporation d/b/a National Grid, Niagara Mohawk Power Corporation d/b/a National Grid, Corning Natural Gas Corporation, St. Lawrence Gas Company, Inc., Valley Energy, Inc., Bath Electric, Gas Water Systems, Fillmore Gas Company, Reserve Gas Company, Woodhull Municipal Gas Company, Chautauqua Utilities, Inc., N.E.A. Cross of New York, Inc., and the Village of Hamilton Municipal Utilities Commission since June 6, 2015, as long as they were completed in a manner consistent with the Order Establishing Statewide Inspection Schedules and Procedural Requirements may be counted towards the total baseline inspection requirement.

4. The request that the required commencement date to begin the inside leakage surveys and corrosion inspections be tolled for six months is denied.

5. Inside leakage surveys and corrosion inspections completed before December 31, 2017, shall be counted towards the leakage surveys and corrosion inspections due to be completed in 2018 as specified in this Order.

6. National Fuel Gas Distribution Corporation's request to allow local distribution companies to terminate service based solely on a customer's failure to provide access to a premise to perform the gas safety inspections is denied.

7. Consolidated Edison Company of New York's request to reconcile the Order Establishing Statewide Inspection Schedules and Procedural Requirements and the Order Approving Electric and Gas Rate Plans with respect to the accounting mechanism to be used for costs incurred to perform the inside leakage surveys and corrosion inspections is granted as described in the body of this Order.

8. New York State Electric & Gas Corporation, Central Hudson Gas and Electric Corporation, National Fuel Gas Distribution Corporation, Orange and Rockland Utilities, Inc., Rochester and Gas Electric Corporation, Brooklyn Union Gas Company d/b/a National Grid NY, KeySpan Gas East Corporation d/b/a National Grid, Niagara Mohawk Power Corporation d/b/a National Grid, Corning Natural Gas Corporation, St. Lawrence Gas Company, Inc., Valley Energy, Inc., Bath Electric, Gas Water Systems, Fillmore Gas Company, Reserve Gas Company, Woodhull Municipal Gas Company, Chautauqua Utilities, Inc., N.E.A. Cross of New York, Inc., and the Village of Hamilton Municipal Utilities Commission shall track new incremental costs associated with completing inside leakage surveys and corrosion inspections incurred due to the amendment of the gas service

line definition, i.e., for pipe that is between the building wall and the meter, until such costs normalize.

9. This proceeding is continued.

By the Commission,

(SIGNED)

KATHLEEN H. BURGESS
Secretary