

REGULATORY IMPACT STATEMENT

16 NYCRR Part 255

Statutory Authority:

Public Service Law (PSL) §§4, 5, 65 and 66 assign to the Public Service Commission (PSC, Commission) jurisdiction, supervision, powers, and duties over all gas corporations in the State and the conveying, transportation, and distribution of gas, which includes “all powers necessary or proper,” to ensure that gas service is “safe and adequate and in all respects just and reasonable.” The PSC has general supervision of all gas corporations (commonly referred to as local distribution companies, or LDCs) operating throughout the State and of all property owned, leased or operated by a gas company in connection with or to facilitate the conveying, transportation, distribution, or furnishing of gas for light, heat or power. See PSL §§4(1), 5(1)(b), 65(1) and 66(1). Pursuant to its statutory mandate to ensure safe and adequate gas service, in 1968 the Commission adopted gas safety regulations, found primarily in 16 NYCRR Part 255 (Part 255), which have been amended from time to time to further ensure the safety of New York’s gas delivery system.

In 1994, the federal Natural Gas Pipeline Safety Act (the Act), 49 USC § 60101 et. seq., included within federal jurisdiction intrastate gas pipelines for safety purposes. The United States Department of Transportation (USDOT), adopted regulations that apply federal safety standards for gas “pipeline facilities,” defined as “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. 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 be qualified to operate and maintain the pipeline facilities.”

49 USC §60102 (a)(2)(C), 49 CFR §§192.801-192.809. The USDOT’s Pipeline and Hazardous Materials Safety Administration (PHMSA), acting through its Office of Pipeline Safety, administers and enforces the federal safety standards.

A State may, however, pursuant to 49 USC § 60105, assume oversight and enforcement authority over intrastate gas pipeline facilities if the State submits a certification to USDOT/PHMSA that the State has adopted each applicable federal standard. 49 USC

§60105(a). A State that has submitted a current certification under §60105(a) may adopt additional or more stringent safety standards for intrastate pipeline facilities only if the standards are compatible with the minimum federal standards. 49 USC §60104(c).

The Commission implements the gas safety program in New York State through Part 255, as well as 16 NYCRR Parts 261 and 262. The Department of Public Service (DPS, Department) makes annual certifications to USDOT/PHMSA that the State has asserted appropriate regulatory jurisdiction and has adopted and is enforcing the applicable federal standards. New York's gas safety regulations are in many respects more stringent than the minimum federal standards, as allowed under the preemption provisions of §60104(c); however, this rulemaking is intended to align with the federal rules those State rules that are less stringent than their federal counterparts. Therefore, the Commission proposes this rule in furtherance of its gas service oversight responsibilities under the PSL and to amend portions of its gas safety regulations in conformance with federal standards while maintaining other State standards that are more stringent under its gas safety program.

Legislative Objectives:

The objective of both the State and federal statutes is to ensure the safe and adequate supply and delivery of natural gas. The proposed amendments to 16 NYCRR Part 255 meets these objectives because the amendments would make existing State gas safety rules more stringent so they are at least as stringent as the federal rules with respect to, for instance, leakage surveys, corrosion inspections, and the pressure testing of pipe before it is placed into service.

Needs and Benefits:

The proposed regulatory changes are necessary to align the Commission's gas safety regulations with the federal regulations to ensure that the Commission may continue to make its annual §60105 certification to USDOT and remain eligible for federal funding to implement New York's gas safety program. Pursuant to 49 USC §60107, the PSC receives federal funding, which pays for up to 80 percent of the Department's costs for carrying out its certified pipeline safety program.

Part 255 establishes gas safety requirements that are in many cases more stringent than the minimum federal safety standards. For example, if a meter is set at a property line beyond

the building with the pipe going back to the building, that part of the piping would be considered customer piping under the federal definition and not subject to regulation. In that case, pursuant to Part 255, PSC, unlike PHMSA, would have jurisdiction at least up to the building wall. Notwithstanding New York's robust program, some provisions in Part 255 are not equivalent to the federal regulations. This rulemaking proposes to amend these provisions to make them equivalent to or at least as stringent as the federal regulations, and to make conforming amendments to other provisions of Part 255.

Significantly, the definition of "service line" in paragraph 255.3(a)(29) is proposed to be amended to align with the federal definition of gas "service line" in 49 CFR §192.3. The application of the definition of "service line" in the Commission's rules is, in some respects, less stringent than the federal definition. The proposed amendment to 16 NYCRR §255.3(a)(29) is intended to make the Commission's "service line" definition and, consequently, the operation and maintenance requirements applicable to service lines, at least as stringent in all respects as the federal rules.

Inasmuch as the definition of "service line" is proposed to be revised, the language that applies the requirement of leakage surveys to "service lines" in 16 NYCRR §255.723 would also need to be changed. Currently, leakage surveys apply to gas piping "up to the building wall;" if the definition of service line extends to the customer meter or to a customer's piping, whichever is further downstream, this leakage survey language must be deleted.

Proposed changes to three other sections of the gas safety rules are also being proposed: 16 NYCRR §255.507, to eliminate the option for soap testing small sections of pipe before placing it into service; 16 NYCRR §255.619, to eliminate the operators' option to throttle gas pressure in delivery lines once every five years to maintain their current Maximum Allowable Operating Pressure (MAOP); and 16 NYCRR §255.625, to remove the odorization exception for gas being transported to storage, with the limitation that those pipes that transmitted gas to storage before 1975 may continue to do so without odorization. As a practical matter, this change would not apply to any intrastate pipelines.

All of these proposed amendments are discussed more fully below.

Definition of Service Line – 16 NYCRR § 255.3(a)(29)

The current Commission definition of "service line" must be amended to make it as comprehensive as the current federal definition. The proposed definition of service line is not intended to reduce Commission jurisdiction over service lines. It is intended to extend

Commission jurisdiction, and, therefore, utility responsibility, over “service lines” to the same extent as the federal rules.

The federal definition of “service line” with which the Commission proposes to align its regulations, states:

Service line means a distribution line that transports gas from a common source of supply to an individual customer, to two adjacent or adjoining residential or small commercial customers, or to multiple residential or small commercial customers served through a meter header or manifold. A service line ends at the outlet of the customer meter or at the connection to a customer's piping, whichever is further upstream, or at the connection to customer piping if there is no meter. 49 CFR § 192.3.

Currently, under the definition of service line in section 255.3(1)(29), PSC jurisdiction over gas “service lines,” while covering gas pipe from an outside meter to a building wall, nonetheless ends at the first accessible fitting if the meter is located inside the building. For inside meters, federal jurisdiction continues into the premises up to the inside meter. If the meter is outside or if there is no meter, federal jurisdiction extends to the connection to a customer’s piping. In some instances, therefore, the Commission’s jurisdiction does not extend as far into a building as federal jurisdiction which has left to PHMSA the job of enforcing operation and maintenance safety requirements that apply to the inside service lines beyond the first accessible fitting and upstream of the gas meter.

PHMSA will no longer accept the Department’s 49 USC §60105 certification that New York has fully adopted the applicable federal standards unless the Commission’s definition of service line and other gas safety rules proposed to be amended conform to or exceed the federal standards. Once the Commission rules are as stringent as the federal rules, the Department would be able to fully enforce the operation and maintenance requirements for inside piping and other federal safety requirements.

Therefore, the proposed new definition of gas service line for which the Commission seeks comment states:

(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 outlet of the customer meter or at the connection to a customer's piping, whichever is further downstream ~~first accessible fitting inside a wall of the customer's building~~ 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.

In accordance with 49 CFR §192.13, the USDOT has grandfathered into Part 192 existing construction and initial testing of pipeline facilities installed as of 1971. To be consistent with the federal rules, the PSC's new rules would also grandfather the construction and initial testing of inside pipeline facilities installed as of 1971. That being said, the grandfathered piping would have to meet certain code requirements, including, for instance, the establishment of the pipe's maximum allowable operating pressure.

The practical impact of the proposed amendment to the Commission's definition of gas "service line" in Section 255.3 would be that (1) LDCs would be obligated to inspect and maintain gas piping into a building up to the gas meter (2) individuals who currently may perform alterations or repairs on inside piping upstream of a meter would be prohibited from doing so unless they are trained by local gas distribution companies (LDCs) in all aspects of Operator Qualifications (16 NYCRR §255.604); and (3) LDCs would need to drug (16 NYCRR §262.105) and alcohol (16 NYCRR §262.225) test all persons installing, altering, or repairing inside gas piping upstream of the meter.

Like an LDC's own employees and regularly hired contractors, other professionals who perform alterations and repairs on inside gas piping would be subject to the same Operator Qualification training and testing. Once trained, other professionals would be able to contract with the LDCs to perform the same work as they have in the past but as Operator Qualified professionals. The change is needed because it is a federal requirement that all persons who perform work on inside piping be Operator Qualified and drug and alcohol tested. See 16 NYCRR §§255.604, 262.105, and 262.225.

In some municipalities, building codes would conflict with the proposed Commission rules to the extent that a local law allows persons who are not (1) certified by the LDC's Operator Qualification training and (2) required to be drug and alcohol tested to perform work on inside gas piping upstream of a meter. With an expansion of the State's definition of "service line" to include inside gas piping that is upstream of a meter, including gas piping inside buildings in which a meter is housed, these municipal codes would need to be revised. See Albany Area Builders Association et al. v. Town of Guilderland, 74 N.Y. 2d 372 (1989) [wherein the court held that "[s]o long as local legislation is not inconsistent with the New York Constitution or any general law [which, by definition includes State statutes], localities may adopt local laws both with respect to their 'property, affairs or government'"]; see also Municipal Home Rule Law §§2(5), (10).

Leakage Surveys - 16 NYCRR 255.723

The amendments to the leakage survey requirements in paragraphs 255.723(b)(1) and (2) are proposed to make a conforming change due to the change in definition of “service line” and to more closely follow the language in 49 CFR §192.723(b)(1) in relation to leakage surveys. The Commission’s adoption of the proposed definition of “service line” would impact directly the requirements and procedures associated with leakage surveys and corrosion inspections. For instance, the wording of Section 255.723, which addresses the timing and procedures for leakage surveys that LDCs must perform, would now apply to inside gas service piping upstream of the meter. Because the current language refers specifically to service lines “up to the building wall,” this rulemaking proposes to delete this language to reflect the proposed expanded definition of “service line” Further, with the proposed definition of service lines, leak detector equipment must be used to perform leakage surveys. This is because, pursuant to §255.3, a leakage survey means a “systematic survey made for the purpose of locating leaks in a gas piping system using an approved instrument which continuously analyzes atmospheric samples near ground level and is capable of detecting the presence of gas in parts per million in air,” or, more simply, “leakage detector equipment.”

The proposed revisions to 16 NYCRR §255.723 for which the Commission seeks comment are as follows:

255.723 - Distribution systems: Leakage surveys and procedures

(b) The type and scope of the leakage control program must be determined by the nature of the operations and the local conditions, but it must meet the following minimum requirements.

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 providing an opportunity for finding gas leaks where it would be reasonable to expect a gas leak to be found.

The proposed definition of “service line” would also result in the requirement that LDCs implement corrosion inspection programs for inside gas piping upstream of the gas meter. See, e.g., 16 NYCRR §255.451 (scope), 255.453 (procedures required), 255.479 (installation/construction), 255.491 (record-keeping), 255.487 (immediate repairs), and §255.481

(monitoring). While the corrosion sections are not proposed to be amended, the expanded definition of service lines over which LDCs would now have responsibility requires that corrosion procedures would apply. Both leakage surveys and corrosion inspections of inside gas services are intended to provide regular safety monitoring of the gas delivery system.

During the public comment period on the proposed rule amendments, the Commission seeks comments on the impacts that the application of leakage surveys and corrosion inspections/procedures will have on costs and maintenance to inside gas services upstream of the meter.

Soap Testing - 16 NYCRR §255.507(f)

The Commission proposes to eliminate the option of soap testing at line pressure for short sections of gas piping before the piping is placed into service. Soap testing at line pressure is a less stringent testing method than pressure testing, as required by 49 CFR §192, and is not compliant with the federal rules, which specifically describes the pressure testing requirements. See 49 CFR 192.509. Therefore, §255.507(f) is proposed to be repealed.

Maximum Allowable Operating Pressure - 16 NYCRR §255.619

Part of the regulatory requirement pertaining to maintaining MAOP of pipelines is proposed to be changed because it is unnecessary and creates incentives for LDCs to operate pipelines at high pressures, which is unnecessary and raises safety concerns. The proposed amendments to Section 255.619 would eliminate the option for operators to throttle their MAOP at least once every five years in order to maintain the MAOP on cathodically unprotected steel. This would make the MAOP provisions of Part 255 more stringent than the federal standards in 49 CFR Part 192.619(a)(3), which the Department believes is the safer approach. The new §255.619 would read:

255.619 - Maximum allowable operating pressure: Steel or plastic pipelines

(a) Except as provided in subdivision (c) of this section, no person may operate a segment of steel or plastic pipeline at a pressure that exceeds the lowest of the following:

(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. The MAOP must not exceed the MAOP on the effective date of these rules if the MAOP is determined using the method prescribed in §255.507(b)(3).

~~(e) Notwithstanding the limitation of paragraph 255.619(a)(3), an operator may maintain a previously established maximum allowable operating pressure for a pipeline not cathodically protected by bringing the pressure up to the previously determined maximum allowable operating pressure at least once every five years, conducting a leakage survey at that pressure and repairing all leaks found in accordance with this Part.~~

The purpose of this proposed change is to make sure operators discontinue the cycling of their systems once every five years at their MAOP and that they, instead, simply default to their current MAOP and remain there. The practice of cycling gas delivery systems, or throttling their MAOP, is not only unnecessary but invites the possibility of further safety incidents due to added stress on the infrastructure. Therefore, the proposed language would require that each pipeline's MAOP in place as of the date the proposed rule adoption is the same MAOP operators would continue to use going forward, without cycling every five years.

Odorization - 16 NYCRR §255.625

Gas odorization is necessary to ensure that natural gas leaks are detectable to the average person and, therefore, that such leaks can be reported to prevent a gas incident. The current State regulations in Section 255.625 except from the odorization requirement gas that is in transmission pipelines being transported to storage. The proposed amendment would eliminate this exception (except for transmission operators not required to odorize before 1975) and would therefore require that transmission of gas in route to storage must be odorized. The limited exception for these operators is proposed to remain, consistent with the federal rules. 49 CFR 192.625(b)(2). As a practical matter, this would not result in any changes affecting State distribution lines that deliver to end-use customers.

Therefore, the Commission proposes that 16 NYCRR §255.625 be revised as follows:

255.625 - Odorization of gas

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 pipeline that transported gas without an odorant from that line before May 5, 1975, is to be adequately

odorized in compliance with subdivision 255.625(c) 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.

COSTS: Costs to Private Regulated Parties:

As described more fully in the Rural Flexibility Analysis, regulated LDC operation and maintenance costs associated with the proposed new requirements, particularly the Operator Qualification of persons altering or repairing inside piping upstream of the meter, would increase. The primary driver of new costs associated with this rule change would be the additional leakage surveys and corrosion inspections that would have to be performed on the newly regulated inside gas piping. The possibility of waivers of the specific survey and inspection requirements may reduce those costs.

Other costs would be to operator qualify and drug and alcohol test other professionals, such as plumbers, who perform work on inside piping upstream of the meter and who have never received such training or testing. These are necessary costs that would improve the safety of gas delivery systems. The additional costs could be recovered through construction costs, union dues, or through ratepayer expenses. Other proposed regulatory changes would reduce LDC costs such as the elimination of the five-year MAOP cycling option.

The Commission seeks comments on the estimated costs associated with training, testing, inspections, or other operational changes resulting from these proposed rule amendments. It is important to note that although the proposed changes to strengthen gas safety standards would result in new utility costs, only the actual, reasonable costs as determined through utility rate cases before the Commission would be recoverable.

Costs to Local Government:

Inspections, training, and testing of inside gas piping upstream of the meter would fall solely under the jurisdiction of State and federal regulators; LDCs would carry out such actions. As such, local governments would likely see a decrease in costs associated with building inspections of such gas services. Some municipal codes would have to be amended to reflect a consistent application with the proposed rule, the costs for which are likely embedded in legislative budgets. As described in more detail in the attached Rural Flexibility Analysis, for municipalities that own and operate gas corporations, costs associated with additional testing and

training, the storage of pre-tested pipes and the added time required for pressure (as opposed to soap) testing may increase slightly.

Costs to the Public Service Commission or the Department of Public Service:

Additional State gas safety inspections may be required to audit the operation and maintenance programs associated with inside piping upstream of the meter; those costs would become part of the ongoing responsibilities of the Department in administering and enforcing the Gas Safety program. One result of the regulations, however, is that the costs to administer the Department of Public Service Gas Safety program would continue to be provided by the USDOT. Therefore, no additional costs to the Department of Public Service are expected.

Costs to Other State Agencies:

There are no known or identifiable costs to other State agencies or offices of State government.

Local Government Mandates:

The proposed revisions require amendment of any municipal codes that do not require (1) professionals who work on inside gas piping upstream of the gas meter to be Operator Qualified and (2) that such professionals be drug and alcohol tested.

Paperwork:

Professionals who now perform alterations or repairs on inside gas piping upstream of the meter and LDCs that train, test, and hire them would be required to retain certification of successful Operator Qualification training and testing and proof of alcohol and drug testing. LDCs would also have to retain records of completed leakage surveys and corrosion inspections.

Duplication:

The purpose of the new regulations is to align them with federal gas safety regulations. There are no relevant State regulations that duplicate, overlap, or conflict with the proposed revisions.

Alternatives:

The Possibility of Receiving Waivers

Part 255 allows for waivers of gas safety requirements as long as the proposed alternative creates a level of safety that is equal to or greater than the current rule. The Commission's standard when authorizing a waiver is whether a "full and comprehensive justification for such requested waiver or deviation, together with a proposed alternate rule to be considered" is presented. 16 NYCRR §255.13(a).

If the Commission were to grant a waiver of the proposed rules, the Commission's waiver would be subject to PHMSA's review. Requests for waivers may apply the standard established by Congress when it asserted jurisdiction over intrastate gas pipelines in the Act. For instance, the Act requires that a federal rule be: "practicable" and that the rule considers: the appropriateness of the standard for the particular type of pipeline transportation or facility; the reasonableness of the proposed standard; and the reasonably identifiable estimated costs expected to result from implementation or compliance with the proposed standard. See 49 USC §60102(b).

With these standards in mind, the Commission would entertain justification for waivers or deviations of the proposed rules if a showing were made that the application of operation and maintenance requirements, particularly the schedule of leakage surveys and corrosion inspections, would be impractical, costly, inappropriate, or unreasonable. At the same time, a waiver request would have to include a proposed alternative that would provide at least the same level of safety as the rule being waived.

Therefore, during the public comment period on the proposed rule amendments, the Commission seeks comments on alternative operation and maintenance procedures that would justify Commission waivers on a case-by case basis of the operation and maintenance requirements for inside piping upstream of a meter. In addition to providing concrete evidence of buildings that might require a waiver, proposed alternatives would need to create a level of safety that is equal to or greater than the applicable safety procedures.

Federal Standards:

The proposed revisions are intended to implement regulations that are at least as stringent as similar standards of the Federal government, 49 CFR Part 192.

Compliance Schedule:

The proposed revisions would be effective upon publication of a Notice of Adoption in the New York State Register. Affected entities would have 90 days after the rules go into effect to comply with them. If a person chooses to seek a waiver of any requirements in the proposed rules, as discussed herein, such waiver request must be filed within 30 days of rule adoption. Compliance with the new regulations would need to be certified in 2015 gas safety audits of utility gas safety programs and practices with these time frames in mind.

The Commission also seeks comments on whether a phased implementation of the rules is possible or necessary while also being protective of public safety, and on the extent to which LDCs are currently complying with the federal rules discussed herein.

Contact Person:

Kevin Speicher
New York State Department of Public Service
Chief, Safety Section
Office of Electricity, Gas and Water
3 Empire State Plaza
Albany, New York 12223
(315) 428-5154
kevin.speicher@dps.ny.gov