

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held in the City of
Albany on March 25, 2015

COMMISSIONERS PRESENT:

Audrey Zibelman, Chair
Patricia L. Acampora
Gregg C. Sayre
Diane X. Burman

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
ADOPTING GAS SAFETY REGULATION AMENDMENTS

(Issued and Effective April 2, 2015)

BY THE COMMISSION:

INTRODUCTION

By Notice of Proposed Rulemaking, published in the New York State Register on September 24, 2014 (SAPA14-G-0357SP1), the Public Service Commission (PSC, Commission) issued for comment proposed revisions to its gas safety regulations, found in 16 NYCRR Part 255. The revisions adopted today pertain to five parts of the regulations - 16 NYCRR 255.3(a)(29)(definition of gas "service line"); 16 NYCRR §255.723 (applies leakage survey requirements to expanded area affected by new definition of "service line");¹ 16 NYCRR §255.507 (eliminates the option of solely soap testing small sections of gas pipe before placing pipe into service); 16 NYCRR §255.619 (eliminates operators' option to throttle gas pressure in delivery lines once every five years to maintain their current Maximum Allowable Operating

¹ While no amendments are being made to atmospheric corrosion inspection rules (16 NYCRR §255.481), such rules will now apply to inside gas piping.

Pressure (MAOP)); and 16 NYCRR §255.625 (removes the odorization exception for gas being transported to storage).

The purpose of the revisions is to mirror the language of the Commission's gas safety regulations with their corollary federal regulations. In particular, one new rule extends the Commission's jurisdiction over gas piping inside buildings up to the customer meter (or to the customer piping if there is no meter) and to the same extent as the federal rules.

We adopt the proposed revisions to Part 255 as initially proposed with one minor modification to the MAOP change and one clarification with respect to soap testing, as described below. Two technical amendments have been added to this rulemaking to remove reference to deleted sub-section (f) in 16 NYCRR §255.507. These technical changes will avoid confusion and are included in the adopted Express Terms. Other than these minor changes, the draft Express Terms published for comment on September 24, 2014 are adopted without any further language changes.

Local distribution companies (LDCs) shall come into compliance immediately with all the newly adopted rules except the new definition of service line for which implementation requirements are stayed pending further Commission action. In coming into technical compliance with the federal gas service line definition, the Commission will develop a State implementation framework that is reasonable and considers the practical application of, primarily, leakage survey and corrosion inspection requirements. Therefore, the Commission will commence a proceeding to continue to work with stakeholders to implement survey and inspection requirements in a reasonable manner that maintains safety standards, which will be brought before the Commission at a later date.

When the Commission issued the proposed rules for comment in September 2014, it appeared that the change in the gas service line definition would also impact licensed plumbers. Pursuant to a highly regulated scheme, the City of New York, for instance, licenses, oversees, and inspects plumbers, who have traditionally worked on the gas pipe that is now within Commission jurisdiction. Specifically, we anticipated that plumbers statewide would need to receive additional training from the LDCs to become Operator Qualified and be drug and alcohol tested just as utility workers are tested to perform repairs and replacements of gas piping. The stakeholder outreach process, however, revealed that plumbers work only on "de-energized" pipe. As explained in more detail below, licensed plumbers who work on de-energized pipe do not perform "covered tasks" within the meaning of the gas safety rules and, therefore, will not have to be Operator Qualified to perform such work.

BACKGROUND

This proceeding was commenced when it became apparent that continued Department of Public Service (DPS, Department) enforcement of gas safety requirements, as the state agents of PHMSA, was contingent upon the Commission's rules being, in all respects, mirrored the language the federal rules. Primarily, the federal Pipeline and Hazardous Materials Administration (PHMSA) made clear that to maintain our state certification, technical compliance with the federal definition of gas service - which extends state jurisdiction from the first accessible fitting at a building wall to the gas meter no matter its location in a building - was necessary. Changing the definition of gas service line from the outermost location of the building to where the meter is located requires that utilities take on

expanded responsibilities in performing leakage surveys and corrosion inspections up to the meter, which in the case of the City of New York, could be located in individual apartments in New York City high rises.

In addition to reviewing the written comments submitted, Department of Public Service Staff (DPS, Staff) held two stakeholder meetings to facilitate outreach and education with LDCs and plumber representatives.² The stakeholder meetings were held on October 21, 2014 in New York City and on October 28, 2014 in Albany, New York. DPS Staff then met again with the New York City LDCs and sought additional information, explanation, and specifications on the impact a new service line definition would have on utility operations, costs, and the preservation of gas safety in New York City. Similarly, in a separate meeting, licensed plumbers provided curriculums of their coursework on performing repairs and replacement of gas piping. The result of this process and the information gleaned therefrom provides the basis for our interpretation of the requirements and plan for further action as described herein.

COMMENTS

The period for the receipt of public comments pursuant to the State Administrative Procedure Act (SAPA) expired on November 10, 2014. Twenty-one sets of written comments were filed with the Secretary. They include comments from local distribution companies KeySpan Gas East Corp. d/b/a National Grid, Niagara Mohawk Power Corporation, the Brooklyn Union Gas Company d/b/a National Grid NY (together, National Grid), Consolidated Edison Company of New York, Inc. (Con Edison), Central Hudson Gas & Electric Corporation (CHG&E), New York

² A representative of the City of New York Department of Buildings attended as well.

State Electric & Gas Corporation, Rochester Gas and Electric Corporation (NYSEG/RG&E), National Fuel Gas Distribution Corporation (NFG) (collectively, the LDCs), the Plumbing Foundation of the City of New York, Inc. (Plumbing Foundation), Plumbing Contractors Association of Long Island, Inc. (Plumbing Contractors), Hudson Valley Mechanical Contractors Association, Inc. (Hudson Valley Mechanical), Independent Master Plumbers of Westchester (Independent Plumbers), Master Plumbers Council of the City of New York, Inc. (MPC), the New York State Plumbing, Heating and Cooling Contractors (collectively, plumber representatives), State Senators Jeffrey Klein and Michael Ranzenhofer, New York City Council Member Ritchie Torres, the New York City Department of Buildings (NYCDOB), Praxair, Inc. (Praxair), the Bronx Assembly Delegation, and the Northeast Gas Association (NGA).³

Changes Other Than Service Line Definition

The comments of NGA, National Grid, Con Edison, NYSEG/RG&E, Central Hudson, and NFG addressed similar issues. The LDCs submitted only minor comments with respect to the proposed changes that do not pertain to the new "service line" definition. For instance, with respect to §255.507 - eliminating the option for soap testing small sections of pipe before placing it into service - the LDCs asked for clarification that soap testing be allowed to continue for tie-ins of fittings and joints, which mirrors the federal rules.⁴ Con Edison states that soap testing is "an effective tool to

³ NGA is a regional trade association that represents natural gas distribution companies; it submitted comments and a White Paper on the new service line definition. In most respects, National Grid, Con Edison, CHG&E and NFG reiterate NGA's comments.

⁴ NYSEG/RG&E at 4; Con Edison at 13-14; National Grid at 18.

verify the soundness of joints and fittings" and National Grid states that "[a]bsent the ability to continue to soap test tie-in joints, New York operators would not have a practical alternative to safely and efficiently test fittings and joints when replacing pipes . . ."5

The LDCs also agreed that the change to 16 NYCRR §255.619 - whereby operators would no longer be allowed to throttle the gas pressure in their delivery lines once every five years as a way to maintain their current Maximum Allowable Operating Pressure (MAOP) - was reasonable. National Grid and Con Edison ask that operators "be permitted to rely on tests that have validated the MAOP of particular facilities within the past ten years" or, said another way, that the rule change "does not preclude a gas utility from retaining the highest documented operating pressure (at or below the MAOP) observed during the most recent two five-year cycles or ten-year period."6 CHG&E asks that the highest documented pressure during any of the five year cycles prior to this rulemaking be used, with a preference given to the two most recent cycles.7

Neither National Grid nor Con Edison commented on the change to 16 NYCRR §255.625, which removes the odorization exception for gas being transported to storage. CHG&E supported this change.8

Service Line Definition

The LDCs, NGA, and plumber representatives had far more comments on the change of the definition of gas "service line." Further, given the existence of what National Grid and

5 Con Edison at 13-14; National Grid at 3.

6 National Grid at 19; Con Edison at 4.

7 CHG&E at 7.

8 CHG&E at 6.

Con Edison (and NGA on their behalf) say are hundreds of thousands of meters located on individual floors and in individual apartments in New York City high rises, National Grid and Con Edison had much more to say than the upstate LDCs - NFG, CHG&E & NYSEG/RG&E - on the new service line definition. NGA states that the new definition will impact decisions about where meters should be placed, expressing concern that moving gas meters outside buildings in some areas of New York City, while making compliance easier, would create unsafe conditions.⁹ NYSEG/RG&E, whose service territories do not include New York City, note that where possible, they will continue to move existing meters to the outside of buildings to make access to the meter to perform leakage surveys and corrosion inspections as easy as possible.¹⁰ NGA points out an irrationality in the new service line definition in that it allows local municipal codes to govern safety inside the building when the meter is outside of a building or there is no meter at all, but not when the meter happens to be beyond the point of entry to a building.¹¹

NYCDOB proposes a strict adoption of 49 CFR Part 192's gas service line definition.¹² NYCDOB seeks clarification of the condition(s) when "the connection to a customer's piping would be further downstream than the outlet of the customer meter, when the meter is located within the building." NYCDOB suggests the federal language is clearer than the proposed language herein because the federal definition makes no mention of "meters inside of buildings."¹³ NYCDOB suggests the federal

⁹ NGA at 10.

¹⁰ NYSEG/RG&E at 3.

¹¹ NGA White Paper at 10.

¹² NYCDOB at 2.

¹³ NYCDOB at 1-2.

definition be adopted unless conditions exist in which the connection to customer piping occurs further downstream of the meter.

Leakage Surveys and Corrosion Inspections

All the LDCs agree with NGA that three years will be needed for LDCs to come into full compliance with the requirements associated with expanded Commission jurisdiction over service lines, including the completion of baseline leakage surveys and corrosion inspections.¹⁴ During a three year start-up period, National Grid and Con Edison state they would need to locate and train new workers to perform the leakage surveys and corrosion inspections inside buildings. National Grid and Con Edison would also use the three years, with NGA's assistance, to complete "statistically valid" engineering studies of room sets (meters inside individual apartments).¹⁵ In these NGA studies, National Grid and Con Edison expect to collect information showing that minimal corrosion and leakage on inside piping and meter sets occurs. They would rely on this information in an application to the Commission seeking only to perform leakage surveys and corrosion inspections on inside piping (1) in situations where access is granted by the apartment resident and (2) when operators are on the premises to perform other routine work. For instance, NGA believes that corrosion inspections are not needed as often on inside gas piping because "indoor facilities are less susceptible to atmospheric corrosion, [and] they have not historically created safety issues."¹⁶ National Grid cites a Gas Technology Institute

¹⁴ National Grid at 2, 9-10, 20; NGA at 3-11; Con Ed at 8-9; NYSEG/RG&E at 1; CHG&E at 2; and NFG at 1.

¹⁵ National Grid at 15.

¹⁶ NGA at 3-4.

(GTI) Analysis, which makes it "clear [that] mean indoor corrosion rates are 100 to 1,000 times lower than outdoor rates."¹⁷ Similarly, NGA cites the same GTI analysis to show that "meter and regulator piping accounted for only 2% of the leaks."¹⁸ NGA, National Grid, and Con Edison also believe their and GTI's studies would justify longer intervals between when follow-up leakage surveys and corrosion inspections would need to occur (relative to existing timeframes). National Grid states longer intervals between future leakage survey and corrosion inspection are also necessary because National Grid will be required to leakage survey "over 921,000 inside services" (10,000 of which are meters inside individual apartments) in New York City.¹⁹ Con Edison states it has in its service territory about "800,000 inside building sets, located in more readily accessible building areas (e.g., basements), and over 200,000 inside meter sets in apartments" for which Con Edison will have to perform leakage surveys and corrosion inspections. Given the estimated number of newly state-jurisdictional services in New York City, National Grid states performing leakage surveys and corrosion inspections for inside facilities within the currently required timeframes "is not possible."²⁰ Con Edison points to precedent by which the Commission, pursuant to 49 CFR 192.1013, could reasonably allow the utilities to perform leakage surveys "over a nine-year cycle (with a three-year look-back)."²¹ Con Edison seeks relief from inspection deadlines to the extent that "where actionable levels

¹⁷ National Grid at 16; NGA at 20. The Gas Technology Institute is an independent technology research and development organization.

¹⁸ NGA at 20.

¹⁹ National Grid at 9.

²⁰ National Grid at 15.

²¹ Con Edison at 5.

of atmospheric corrosion are found, [such that] the maximum time to the next inspection and survey will be no more than during the 12th calendar year following the initial inspection and appropriate repairs; and where atmospheric corrosion is no more than a light oxidation, the maximum time to the next inspection and survey will be no more than during the 21st calendar year following the initial inspection."²²

Central Hudson comments that achieving 100% coverage of interior piping between the point of gas service entry and the meter outlet will be impractical in a number of its service locations due to concealed piping.²³ National Grid asks that utilities be "required only to inspect visually accessible piping using a combustible gas indicator or other approved equivalent device."²⁴ NYSEG/RG&E indicate that accessing inside piping to complete leakage surveys and corrosion inspections will be a challenge and recommend that the PSC address "customer access situations" in the regulations. NYSEG/RG&E also recommend that the Commission institute a customer surcharge, such as one that is presently allowed for meter readings, when a customer denies access to the inside meter.²⁵

National Grid estimates the cost of developing and implementing leakage survey and corrosion inspection programs to be \$50 million over three years and \$14 million each year thereafter.²⁶ Con Edison estimates that the cost to perform leakage surveys and corrosion inspections, combined, on accessible inside gas services at the rate required in current regulations to be \$55 million annually. If Con Edison is

²² Con Edison at 5.

²³ CHG&E at 11.

²⁴ National Grid at 16.

²⁵ NYSEG/RG&E at 3.

²⁶ National Grid at 10.

allowed 9-year intervals for leakage surveys, the Company states the annual cost for the programs would be \$11 million.²⁷

NYSEG/RG&E note that they too will incur significant expenses to conduct leakage surveys and corrosion inspections.

Specifically, NYSEG estimates additional costs of \$906,080 and RG&E estimates additional costs of \$1,466,203 in order to complete the new leakage survey requirements on inside meter sets, which includes the cost to track and monitor leaks found after such inspections. NYSEG estimates additional costs of \$37,530 and RG&E estimates additional costs of \$60,730 to comply with the new atmospheric corrosion inspections of inside meter sets.²⁸

Operator Qualification Of Plumbers

Rather than requiring licensed plumbers be Operator Qualified so they can perform repairs and replacements of inside gas piping, National Grid and Con Edison ask that the current training that licensed plumbers receive be considered adequate to allow plumbers to work on "de-energized" gas piping.²⁹

National Grid states that, under the "definition of a 'covered employee, employee or individual to be tested' as set forth in the Commission's regulations," the requirements associated with Operator Qualifications do not apply to plumbers because the pipe they work on is de-energized.³⁰ This is particularly reasonable, according to National Grid, because "subsequent safety inspections [are performed] by operator-qualified utility personnel prior to re-energizing the pipe and restoring

²⁷ Con Edison at 11.

²⁸ NYSEG/RG&E at 3.

²⁹ Con Edison at 12. Gas piping that has been de-energized has been disconnected by valve or physical disconnection to the gas supply and has been purged of gas.

³⁰ National Grid at 13.

service.”³¹ NGA further maintains that the training requirements with which licensed plumbers must comply are equal to or more stringent than the requirements in 49 CFR Part 192. Specifically, plumbers must complete 10,000 hours of apprenticeship training with 50 hours dedicated to gas piping.³²

If the Commission does not agree that licensed plumbers may perform repairs on “de-energized” gas pipes, NGA estimates the cost would be “\$200 per day” of lost pay per 28,000 plumbers to participate in two days of Operator Qualification programming and testing, for a total of \$11.2 million in losses in the aggregate per year. If one assumes that “two days of lost productivity costs employers \$100 per hour, [it] results in” an estimated lost value of \$44.8 million.³³

Plumber representatives ask that the Commission eliminate the mandate of requiring licensed plumbers to contract with their local utility, obtain utility operator qualifications, and meet drug and alcohol testing requirements. Instead, the plumber and legislative representatives urge the Commission not to supplant existing municipal regulatory and oversight systems, citing, among others, New York City’s Building Code, which imposes extensive qualification requirements on licensed plumbers.³⁴ Plumber representatives say that the proposal would duplicate the regulatory process already in place and impose burdensome licensing and qualification

³¹ Id; NGA at 17.

³² NGA at 12.

³³ NGA at 14.

³⁴ Master Plumber’s Council of the City of New York, Inc. (MPC) at 8-9; Plumbing Foundation of the City of New York, Inc. (NYC Plumbing Foundation) at 5; Hudson Valley Mechanical Contractors Association (HVMCA) at 1; Independent Master Plumbers of Westchester (IMPW) at 1.

requirements on licensed plumbers who undergo years of training and many of whom perform work in multiple LDC service territories.³⁵

Plumber representative MPC notes that the expense of having to apply and contract with each utility and to satisfy additional training requirements to secure Operator Qualification, would also increase the cost of business for licensed plumbers. Specifically, the plumber representatives believe that the qualification program would cost thousands of dollars per plumber, involving days of instruction, which would be particularly burdensome because they are smaller businesses.³⁶ Moreover, MPC states that there would likely be an enormous cost to each utility to administer the contract and operator qualification process.³⁷

The Bronx Assembly delegation, State Senator Jeffrey Klein, State Senator Michael Ranzenhofer, and New York City Council member, Ritchie Torres, express concern about potential costs related to additional training and licensing to be incurred by licensed plumbers in order to comply with the new rule. Legislators support the comments filed by NGA and noted concerns with the additional utility costs of \$55 million and the potential effects on licensed plumbers. The legislators claim that current municipal training programs for licensed plumbers contain stricter licensing requirements than the Commission's Operator Qualification rules. Additionally, the legislators ask that the Commission consider adopting an exception to the proposed rule's Operator Qualification

³⁵ New York State Association Plumbing-Heating-Cooling Contractors, Inc. (APHCC) at 1; Independent Master Plumbers of Westchester at 1; Plumbing Foundation of the City of New York at 4; MPC at 2, 5-6.

³⁶ MPC at 6; NYC Plumbing Foundation at 3-4; HVMCA at 1

³⁷ MPC at 6.

requirements based on the existing, stringent, municipal licensing programs for plumbers and to find that such programs are Part 255 compliant.

Drug and Alcohol Testing

With respect to the drug and alcohol testing requirements, NGA and National Grid state that, like the Operator Qualification requirements, if licensed plumbers work on de-energized gas pipes, they will not be performing a "covered task;" therefore, the drug and alcohol testing required by safety regulations would not apply to them.³⁸ Moreover, NGA states that if drug and alcohol testing were required for the 28,000 plumbers in New York City who now perform work on inside piping, it would cost \$1.26 million to get the program off the ground and \$1.5 million a year to administer.³⁹ Central Hudson recommends that the Operator Qualification requirements, including drug and alcohol testing, can be reasonably read as applying only to utility employees, contractors, and contractor employees.⁴⁰

Prior NTSB Support for a Limited Service Line Definition

NGA cites historical records following a 1974 gas incident in New York City, in which the National Transportation Safety Board (NTSB) recognized "the impracticality of applying the service line requirements to gas piping in places like New York City, where utilities have little or no control over accessing those facilities." NGA quotes the NTSB:

The Federal regulation requiring pipeline operators to be

³⁸ NGA at 14; National Grid at 18.

³⁹ Id.

⁴⁰ CHG&E at 23.

responsible for the operation and maintenance of gas piping inside buildings over which they have no control is unrealistic and impractical.

NTSB Recommendation (to OPSO I DOT):
Amend 49 CFR 192 to define more realistically an operator's responsibility for gas piping inside buildings. (Recommendation P-76-10) (Class II, Priority Follow-up).⁴¹

New York's Stricter Gas Safety Requirements

Finally, NGA, Con Edison, and CHG&E provide lists of New York gas safety rules that are more stringent than the federal rules and those not contained at all in the federal rules. NGA and CHG&E quote the "Compendium of State Pipeline Safety Requirements & Initiatives Providing Increased Public Safety Levels Compared to Code of Federal Regulations," published by the National Association of Pipeline Representatives. NGA's list of more stringent New York State rules includes:

regular reporting of service interruptions; submittal to and acceptance by the [Commission] of O&M [operations and maintenance] response plans; reporting of times to respond to emergency odor calls; service pressure test requirements; pressure and pressure variability limits on low pressure services; requirements for pressure regulating and gas cleaning in service lines; periodic inspections of regulator vent lines; enhanced odorization of gas in distribution and service lines such that gas is readily detectable by a person with an average sense of smell at half the concentration of gas prescribed by Federal regulation (readily detectable at 10% of the lower explosive limit("LEL") in New York, vs. 20% LEL in Part 192); timeframes for correction of deficiencies.⁴²

Con Edison's list includes:

1. Performance measures designed to
 - a. expedite response to gas odor calls;
 - b. expedite addressing gas leaks; and
 - c. minimize contractor damage to gas facilities.

⁴¹ NGA White Paper at 16.

⁴² NGA White Paper at 16-17.

2. Programs designed to accelerate replacement of un-protected steel and cast iron pipe.
3. Distribution operator responsibility of service lines up to the building wall where the meter is set upstream of the building wall.
4. Gas odorant requirements at twice the federally prescribed level.
5. Service pressure test requirements.
6. Pressure and pressure variability limits on low pressure services.
7. Requirements for pressure regulating and gas cleaning in service lines.
8. Periodic inspections of regulator vent lines.
9. Requirements for approval by the local authority having jurisdiction (e.g., New York City Department of Buildings) before new or replacement piping is energized with gas; and requirements for plumbers to pressure test gas piping in buildings to a minimum of 3 psig for 30 minutes.
10. Leakage surveys of services in non-business districts performed at three-year intervals vs. the five-year federal requirement.
11. Annual leakage checks of curb valves for Buildings of Public Assembly.
12. Five-year inspections, including leakage check and atmospheric corrosion inspection, of gas services passing through vaulted areas in New York City.
13. Meter replacement programs that provide an opportunity to inspect the condition of exposed gas piping before and after gas meters.
14. 20 year inspections of service regulators supplying multiple meters.
15. Providing to plumbers the Company's "A Customer's Guide to Natural Gas Service Installation" ("Yellow"

book), which details Company safety requirements, including drawings for gas piping between the head of service and gas meter outlet above those detailed in fuel gas codes.

16. Integrity test of new piping performed by the Company.

17. Isolation, or turn-off, and tagging of causes of inside leaks on customer owned pipes or equipment that cannot be gassed in (turned on) until repairs or replacement are completed by licensed plumbers and confirmed by a city certificate and then further inspected by Company inspectors to examine adherence to the Company's Yellow book and required to pass an integrity test by a Company operator-qualified mechanic before gas is reintroduced.

18. Commission regulations establishing various distribution operator requirements with respect to Piping Beyond the Meter (i.e., 16 NYCRR Part 261).⁴³

DISCUSSION

Pursuant to Public Service Law (PSL) §§4, 5, 65 and 66, the Commission has jurisdiction, supervision, powers, and duties over all gas corporations in the State, including "all powers necessary or proper," to ensure that gas service is "safe and adequate and in all respects just and reasonable." As such, the Commission proposed five changes to its existing gas safety rules to mirror the language in the Commission's gas safety rules with the federal rules.

In 1994 when the federal Natural Gas Pipeline Safety Act (the Act), 49 USC §60101 *et. seq.*, was enacted, Congress extended federal jurisdiction over intrastate gas pipelines for safety purposes if no state program exists. Pursuant to 49 USC §60105, the U.S. Department of Transportation "may not prescribe or enforce safety standards and practices for an intrastate

⁴³ Con Edison at 7-8; CHG&E offers a similar list in its comments at 25.

pipeline facility . . . to the extent that safety standards and practices are regulated by a state authority." A state, therefore, must certify to U.S. Department of Transportation (USDOT) and the Pipeline and Hazardous Materials Safety Administration (PHMSA) that, *inter alia*:

[T]he State authority--

(1) has regulatory jurisdiction over the standards and practices to which the certification applies;

(2) has adopted, by the date of certification, each applicable standard prescribed under this chapter . . .

49 USC §60105(a). A State that has submitted a certification pursuant to §60105(a) may adopt additional or more stringent safety standards for intrastate pipeline facilities if the standards are compatible with the minimum federal standards. The LDCs are correct that New York's gas safety rules are, in many respects, more stringent than the federal rules. Most notably, New York's required odorization levels are twice the federal level; New York has performance measures in place designed to expedite LDC response to gas odor calls and repair of gas leaks (the federal rules have no such performance metrics); New York requires leakage surveys in business districts every three years as compared to the federal requirement of every five years; and in New York City, in addition to the LDC's inspection, municipal authorities inspect all gas pipe repairs and replacements before the pipe is placed into service. Technical compliance with the federal service line definition, therefore, further extends New York's already extensive safety oversight.

The purpose of this rulemaking is to close those gaps in New York's regulations that do not mirror with the federal rules. Therefore, the Commission adopts the new rule changes as described in the attached Resolution and provides in this Memorandum the Commission's interpretation of and plan for

implementing the requirements associated with those changes, primarily with respect to gas service lines.

Service Line Definition - 16 NYCRR §255.3(29)

The primary revision to the gas safety rules in this proceeding is the expansion of the State's definition of gas "service line." Until now, the Commission has asserted jurisdiction over service lines with inside meter sets to the point of the first accessible fitting inside a building, not necessarily to the meter.⁴⁴ If a gas meter is installed on the outside of a building, the Commission's jurisdiction has extended to the building wall, which is further than USDOT jurisdiction, which ends at the meter even if it is located as far away as the curb or property line.⁴⁵ If, on the other hand, the gas meter is situated beyond the first accessible fitting inside a building, federal jurisdiction has extended further into a building than New York's jurisdiction. If no meter exists, a circumstance that is virtually non-existent in New York, USDOT's rules state that the service line ends at the connection to the customer's piping.⁴⁶ The definition we adopt today extends the Commission's jurisdiction to inside gas piping up to an inside meter, even if the gas meter is installed on

⁴⁴ Even though New York's definition has not applied to service lines as far into buildings when meters are inside, PHMSA has been the regulating authority of that piping.

⁴⁵ This is the primary reason the new definition will not, as NYCDOB suggests, be the verbatim federal definition - because in this respect, New York is more stringent than the federal rule.

⁴⁶ USDOT's rules are unclear about the point at which "customer piping" begins. While 49 CFR Part 192 is unclear, in a number of PHMSA interpretation letters, PHMSA states its regulations apply "up to where the customer meter would normally be - i.e. at the building wall." See PHMSA Service Line Interpretation Letters (Service Line) Nos. 1, 5, 9, 10, and 11.

individual floors of a high-rise building, or up to customer piping if there is no meter.⁴⁷

Leakage Surveys and Corrosion Inspections

The Commission has not until now asserted jurisdiction over inside gas piping to the same extent as USDOT because federal agencies historically have recognized the unique local circumstances and practical challenges associated with application of the federal service line definition in large municipalities. In New York City, for instance, numerous older high rise buildings include gas meters installed on upper floors, oftentimes in individual units. As reflected in NGA's comments, the NTSB has specifically taken the position that accessing customer meters located on high floors in urban areas, coupled with older building infrastructure, has rendered application of a broader service line definition impractical.

At the same time, since federal adoption of its current service line definition in 1974, much has been learned about performing leakage surveys and corrosion inspections. For instance, pilot programs are progressing to establish technical requirements for methane detectors to enable their large scale use. The accelerated studies could allow for methane detectors' permanent installation in buildings to meet ongoing leakage survey requirements. Similarly, PHMSA has recognized that corrosion inspections need only be performed on exposed inside pipe, not on gas pipe located within walls.⁴⁸ Gas piping inside walls is far less susceptible to corrosion and such inspections would be impossible to perform without damaging structures. Performing corrosion inspections of only gas piping in basements

⁴⁷ The construction and initial service inspections of pipe installed as of 1971, as with the federal rules, are grandfathered.

⁴⁸ See PHMSA Waiver 192.481.1

is also a consistent and rational application of corrosion inspection requirements. To further support and identify the long-term application of leakage survey and corrosion inspection requirements, the NGA, National Grid, and Con Edison are encouraged to complete the corrosion study recommended in their comments.

The LDCs seek three years to come into compliance with the leakage survey and corrosion inspection requirements. Establishing a schedule for compliance at this time, however, is not necessary. This is because existing Commission rules require that leakage surveys be performed once every 15 months in business districts (and every five years outside of business districts). Similarly, initial corrosion inspections need not be completed until 2018. Therefore, no LDC will be out of compliance with either the leakage survey or corrosion inspection requirements upon issuance of this Memorandum and Resolution and the filing of the Notice of Adoption in the State Register.

It is reasonable that it could take three years, as the LDCs claim, to come into compliance with all the requirements associated with the new definition of gas service line. The purpose of the new proceeding, therefore, will be, among other things, to establish a schedule of compliance given that existing requirements warrant further deliberation. Moreover, the LDCs' and NGA's comments are consistent in asserting that utilities' costs will increase due to the leakage survey and corrosion inspection requirements. The implementation proceeding, therefore, will also consider the

costs associated with the new survey and inspection requirements.⁴⁹

The extent to which three full years is necessary to come into compliance will be reviewed within the parameters of the upcoming Commission proceeding to develop an implementation framework and compliance schedule through New York's Distribution Integrity Management Program (DIMP). Alternatives, such as adoption of procedures allowing LDCs to use, for instance, methane detectors to fulfill their leakage survey obligations or limiting corrosion inspections to only exposed basement piping will be considered at that time. These, as well as the possibility of using routine visits to apartments where the resident has granted access to check meter sets or even read meters, will become part of specific operating procedures where necessary.

Requirement of Operator Qualifications

Another anticipated impact of an expanded state definition of service lines has been the concern that only those workers who are Operator Qualified consistent with 16 NYCRR §§255.3(39) and 255.604 be allowed to perform repairs or

⁴⁹ The costs to secure access services up to meters is one reason that the Commission's rules require that, in any circumstance where it is reasonable and safe to do so, that gas meters be installed outside at the building wall since outside meters allow utilities unencumbered access to service lines for inspections, leakage surveys, and corrosion inspections. See 16 NYCRR §255.353(b), "Each service regulator on new and replacement service lines, except for replacements by insertion, must be installed outside of the building, unless it is impractical or unsafe. Where the service regulator must be installed within the building, it is to be located as near as practical to the point of service line entrance. For service line replacements where the service regulator must remain inside, the regulator shall be tested and inspected in accordance with subdivisions 255.744(d) and (e)."

replacements of service lines. Pursuant to strict and comprehensive New York City building and code requirements, for instance, licensed plumbers have traditionally worked on the inside gas piping that is now within Commission jurisdiction. The plumber representatives assert that new Commission-imposed training requirements interferes with existing New York City Code regulations, which allow licensed plumbers to perform repairs and replacements on inside piping under specific licensing and inspection parameters, and which are subjected to NYCDOB safety inspections.

In issuing the proposed regulation language for comment, the Commission sought information on the extent to which plumbers, who are licensed by municipalities and trained extensively in gas piping, would have to come into compliance with the Operator Qualification testing and training in Commission rules to continue to perform the work they have conducted for at least the last 40 years. The comment process revealed the intricate and well-established procedures that the City of New York Department of Buildings, the LDCs that operate in New York City, and the plumber representatives have put in place to protect the safety of the public by ensuring the integrity of gas services inside buildings. Evidence of the procedures' success is bolstered by the minimal number of gas incidents related to the work plumbers have performed on these inside gas services in New York City.

Upon Staff's request, plumber representatives submitted the actual curriculum of the thorough training they receive on performing work on gas piping. As NGA, National Grid, Con Edison, and plumber representatives describe it, pursuant to the New York City Administrative Code, licensed plumbers must complete 10,000 hours of apprenticeship training, 50 hours of which includes work on gas piping. Moreover, under

the procedures currently in place (1) Operator Qualified utilities workers shut off gas service before a plumber commences work; (2) licensed plumbers then perform work on "de-energized gas service," inspect the work, and sign affidavits of the testing they performed; and (3) the utility returns to inspect, pressure-test, and reinstate gas service.

Application of Regulations

Upon a fair reading of our safety rules, licensed plumbers would not be required to be Operator Qualified to repair or replace de-energized gas services. That is, 16 NYCRR §255.604 establishes the Operator Qualification requirements for persons "performing covered tasks on a pipeline facility." A covered task is defined by 16 NYCRR §255.3(40), which states,

Covered tasks are activities, identified by the operator, that a) are performed on a pipeline facility, (b) are operations and maintenance tasks, (c) are performed as a requirement of this part and (d) affect the operation or integrity of the pipeline.

The performance of repairs or replacements on de-energized gas service do not meet all of these criteria and, therefore, would not be considered a covered task under 16 NYCRR Part 255. Moreover, given the extensive training required of licensed plumbers, the procedures by which licensed plumbers do not work on energized gas service, and because such work is inspected by Operator Qualified operators, plumbers do not need to be Operator Qualified as long as they work on de-energized pipe. Therefore, we require that only Operator Qualified personnel can perform operation and maintenance work on energized pipe.

If, however, plumbers intend to work on energized gas piping, they will need to be Operator Qualified consistent with Commission training and testing regulations. It may be that municipal licensing requirements like those in New York City

includes training that is consistent with LDC Operator Qualification requirements, which may provide a basis for flexibility, allowing workers to shut off gas before repair or replacement work begins.⁵⁰ Plumber representatives who believe this to be the case or who otherwise are interested in contributing to the implementation framework of gas service line protocols are invited to participate in that proceeding. For example, given the existing New York City protocols that have kept to an absolute minimum problems with inside gas services up to the gas meter and our interpretation of the Operator Qualification requirements, licensed plumbers need not be Operator Qualified to perform work on inside gas piping up to the meter as long as they work only on de-energized gas piping.

During the stakeholder discussions, plumber representatives asked for clarification of the definition of "new construction," to which the Operator Qualification requirement does not apply. Specifically, it was asked whether new gas service installed in an existing building is considered "new construction." Given that construction of a pipeline facility is not a covered task and we interpret our rules to allow New York City licensed plumbers to perform work on de-energized gas services upstream of the gas meter, the distinction is moot.

⁵⁰ For instance, plumber representatives state that currently a plumber may shut off gas service to a building with three or fewer units. If licensed plumber training is not as comprehensive as Operator Qualified training in this regard, LDCs will have to shut off services before a plumber can begin work.

Drug Testing

New York's gas safety rules also require that persons who work on gas service lines be randomly and routinely drug tested.⁵¹ Commission rule, 16 NYCRR §262.1(a) states:

This part requires operators of pipeline facilities subject to part 192, 193 or 195 of Title 49 of the Code of Federal Regulations (49 CFR) to test employees for the presence of prohibited drugs and provide an employee assistance program . . .

262.3 . . . (c) Covered employee, employee, or individual to be tested means a person who performs a covered function, including persons employed by the operator, contractors engaged by the operator, and persons employed by such contractors.

(d) Covered function means an operation, maintenance, or emergency-response function that is performed on a pipeline or LNG facility and the function is regulated by 49 CFR part 192, 193, or 195.

Similar to the Operator Qualification requirements that apply to covered tasks, plumbers who work on gas piping that has been de-energized by an Operator Qualified person and a plumber who performs repair and replacement on only de-energized gas piping does not perform an operation and maintenance task within the meaning of Commission regulations. Therefore, licensed plumbers do not fall within this Commission regulation.

Leakage Surveys - 16 NYCRR §255.723

The amendments as proposed to 16 NYCRR §§255.723(b)(1) and (2) are adopted as proposed. The change does no more than conform the language to the new definition of service line, a change that received no opposition.

⁵¹ Alcohol testing is only required of a "covered employee" if the "covered function" the employee performed was involved in an accident or when reasonable suspicion exists that the person is under the influence of alcohol while on the job.

Soap Testing - 16 NYCRR §255.507(f)

The Commission is eliminating the option of solely 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, which is required by 49 CFR §192.509. Therefore, we are repealing §255.507(f).

The LDCs are in agreement that the soap testing prohibition should not apply to "tie-ins" of fittings and joints. PHMSA allows that "each joint used to tie in a test segment of pipeline is excepted from the specific test requirements of this sub part...", referring to its soap test prohibition. Indeed, 16 NYCRR §255.503(d) similarly states that "[e]ach weld used to tie-in a test segment of pipeline is excepted from the test requirements of this Part." It has come to our attention that the term "weld" in 16 NYCRR §255.503(d) should be read to include the term "joint" because, while the term "weld" is specific to steel gas piping, the term "joint" would apply to plastic service connections as well. Therefore, in the context of 16 NYCRR §255.503(d), "weld" is read to also mean "joint."

Moreover, since §255.507(c) and §255.507(d) reference 16 NYCRR §255.507(f), soap testing, which we repeal by this Memorandum and Resolution, the reference to (f) in each of those sub-sections is deleted. The changes are specified in the attached Resolution.

In sum, we clarify that soap testing alone may not be used to test short sections of gas piping before the piping is placed into service but, when no alternatives exist, soap testing may be used to test tie-ins of joints that are part of such piping.

Maximum Allowable Operating Pressure (MAOP) - 16 NYCRR §255.619

The Commission is adopting a change to the requirement pertaining to the MAOP of pipelines. The old rule allowed operators the option of throttling their MAOP at least once every five years in order to maintain the MAOP on cathodically unprotected steel piping. Throttling every five years, however, is unnecessary and raises safety concerns. It became apparent during the NTSB investigation into the gas incident in San Bruno, California, that a gas company throttling every five years raises the likelihood of gas incidents.⁵²

The proposed amendment to 16 NYCRR §255.619 suggested that the LDCs use the date of this rule adoption as the date at which their MAOP would be established. However, since PHMSA publicized the harmful impact that throttling has on gas facilities in August 2011, the LDCs have voluntarily not throttled their delivery systems to their MAOP. For this reason, we are adopting language in §255.619 that allows operators to set their MAOP that was established as of August 30, 2011 as the MAOP operators may continue to use going forward.

Odorization - 16 NYCRR §255.625

Finally, we adopt as proposed the rule amendment that eliminates an exception from the odorization requirement and requires that gas en route to storage be odorized. Consistent with the federal rule, 49 CFR §192.625(b)(2), the rule change, as a practical matter, does not affect State distribution lines that deliver to end-use customers.

⁵² National Transportation Safety Board (NTSB) Final Report, NTSB/PAR 11-01, PB2011-916501, adopted August 30, 2011.

CONCLUSION

The views of all the stakeholders have been taken into account in developing the attached regulations. Overall, our concern has been the continued safety of New Yorkers. The accompanying resolution and the resulting regulations, as set forth in the accompanying resolution, are adopted.

By the Commission,

(SIGNED)

KATHLEEN H. BURGESS
Secretary

ATTACHMENT A
Resolution

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held in the City of
Albany on March 25, 2015

COMMISSIONERS PRESENT:

Audrey Zibelman, Chair
Patricia L. Acampora
Gregg C. Sayre
Diane X. Burman

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.

RESOLUTION BY THE COMMISSION

(Issued and Effective April 2, 2015)

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

RESOLVED:

1. That the provisions of §202(1) of the State
Administrative Procedure Act and §101-a(2) of the Executive Law
have been complied with.

2. 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 or repeal of certain
sections of Part 255 as set forth in the Appendix attached
hereto.

3. That the Secretary to the Commission is directed to file a copy of this resolution with the Secretary of State.

By the Commission,

(SIGNED)

KATHLEEN H. BURGESS
Secretary

255.3 - Definitions

(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 [first accessible fitting inside a wall of the customer's building] the 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.

255.507 - Test requirements for pipelines to operate at less than 125 PSIG (862 kPa).

(c) [Except as provided in subdivision (f) of this section,] [t] The test medium shall be water, inert gas or air.

(d) Except as provided in subdivisions (f) [and (g)] of this section, the test must be conducted by maintaining the pressure at or above the test pressure for at least one hour after stabilization.

[(f) For tests on short sections (100 feet (30.5 meters) or less) of pipe, and tie-in sections, where all joints, uncoated portions of longitudinal seams, and/or fittings are exposed, a soap test is acceptable at line pressure. For short sections of plastic pipe, the entire pipe length must be soap tested. Gas may be used as the test medium at the maximum pressure available in the distribution system at the time of the test.]

[(g)] (f) For plastic insertions of less than 1500 feet (457.2 meters) length, the test duration may be 30 minutes prior to insertion followed by a 30 minute test after insertion and an inspection of all visible portions of the pipe for damage.

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 August 30, 2011 if the MAOP is determined using this method.

[(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.]

255.625 - Odorization of gas

- (a) 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 line 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.

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.
- (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 manholes] gas, electric, telephone, sewer, and water system manholes, at cracks in pavement, at the curblineline, 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.

- (3) If the operator employs leakage history to determine areas of active corrosion, the leakage survey frequency shall be at least once every 3 calendar years at intervals not exceeding 39 months on mains and service lines.