

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 24R-0078GPS

IN THE MATTER OF THE PROPOSED AMENDMENTS TO THE RULES REGULATING PIPELINE OPERATORS AND GAS PIPELINE SAFETY, 4 CODE OF COLORADO REGULATIONS 723-11 TO IMPLEMENT HOUSE BILL 23-1216 AND SENATE BILL 23-285.

COMMISSION NOTICE OF PROPOSED RULEMAKING

Mailed Date: February 21, 2024
Adopted Date: February 14, 2024

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I. BY THE COMMISSION

A. Statement

1. The Colorado Public Utilities Commission (Commission) issues this Notice of Proposed Rulemaking (NOPR) to amend the rules governing pipeline operators and gas pipeline safety comprising Rules 11001, 11008, 11205, and 11206 of the Commission's Rules Regulating Pipeline

Operators and Gas Pipeline Safety, 4 *Code of Colorado Regulations* (CCR) 723-11 (Gas Pipeline Safety Rules).

2. Through this narrow rulemaking proceeding, the Commission proposes amendments to its rules that implement statutory updates regarding customer-owned service lines with associated new definitions as authorized in House Bill (HB) 23-1216, effective June 7, 2023, and codified as § 40-2-115 (1)(d)(II)(F), (1)(d)(II)(H-I), (1.5), (2), C.R.S. The Commission is also proposing amending its rules to implement the two limited changes affecting the Commission from Senate Bill (SB) 23-285 including removing any reference to underground natural gas storage facilities as authorized in SB 23-285, and codified as § 40-2-115 (1)(d)(C), (1)(f) and (2)(b)-2-115, C.R.S., and to change the acronym from the Colorado Oil and Gas Conservation Commission (COGCC) to the Colorado Energy and Carbon Management Commission (ECMC) codified as §34-60-104.3, C.R.S.. Finally, the Commission is amending its rules to add the recent addition of 49 U.S.C. § 60105 certification and 60106(a) agreement to the Pipeline Safety Program (PSP).

3. These proposed changes are narrowly focused, including to avoid overlap with continued improvements in other areas of the Gas Pipeline Safety Rules through Proceeding No. 22R-0491GPS, and ongoing stakeholder outreach to consider future rulemaking on additional rule updates, including with regard to advanced leak detection technology.¹

4. The proposed rule changes are set forth in legislative (*i.e.*, strikeout and underline) format (Attachment A) and final format (Attachment B).

¹ Rules considered in this proceeding are narrowly focused to aligned specific rule updates with HB23-1216 and SB23-285. Concurrent with efforts to update specific rules in this NOPR, the Commission more thoroughly revised its Gas Pipeline Safety Rules, in Proceeding No. 22R-0491GPS. See Decision No. C24-0058, issued January 29, 2024. In addition, and as indicated in Proceeding No. 22R-0491GPS, Staff of the Colorado Public Utilities Commission continues to conduct ongoing stakeholder outreach to consider potential future rule proposals and process improvements. Broader rule change proposals can, and should, be addressed in Proceeding No. 22R-0491GPS, or considered through ongoing stakeholder discussions and future rulemaking proceedings, as appropriate.

5. Through this NOPR, the Commission solicits comments from interested persons on the amendments proposed in this Decision and its attachments. Interested persons may file written comments including data, views, and arguments into this Proceeding for consideration. The Commission also welcomes submission of alternative proposed rules, including both consensus proposals joined by multiple rulemaking participants and individual proposals. Participants are encouraged to provide redlines of any specific proposed rule changes.

6. The Commission refers this matter to an Administrative Law Judge (ALJ) for a recommended decision. The ALJ will hold a public hearing on the proposed rules at 11:30 a.m. on April 15, 2024.

7. Initial written comments on the proposed rule changes are requested by March 22, 2024. Any person wishing to file comments responding to the initial comments is requested to file such comments by April 5, 2024. These deadlines are set so that the comments and responses may be considered at the public hearing conducted by the ALJ, nonetheless, persons may file written comments into this Proceeding at any time.

B. Background

8. The statutory authority for the rules proposed here is found at §§ 40-1-103, 40-2-108, 40-2-115, 40-3-110, 40-4-109, 40-6-108, and 40-7-117, C.R.S.

9. This Commission conducts its PSP activities primarily under §§ 40-1-103, 40-2-115, and 40-7-117, C.R.S. In particular, § 40-2-115, C.R.S., provides authority permitting the Commission to enter into cooperative agreements with federal agencies, directs the Commission to coordinate with state and federal agencies, and authorizes the Commission to adopt and create rules to administer and enforce the Natural Gas Pipeline Act found at 49 U.S.C. §§ 60101, *et seq.*

10. HB23-1216 adds new subsections to § 40-2-115, C.R.S., requiring the Commission to promulgate rules to implement measures to promote safety in the distribution of natural gas including location of service regulators, inspection of gas meters and service regulators, establishment of a process for determining whether an owner or operator or a customer has responsibility for the maintenance and repairs of a customer-owned service line, requiring written notice of whether the customer or the owner or operator is responsible for repair and maintenance of customer service lines, and outlining specific circumstances for when a customer may be responsible for maintaining and repairing a customer owned service lines installed on or after August 14, 1995, and before March 1, 2024.

11. The majority of HB23-1216 provides prescriptive language. Specifically, HB23-1216 includes explicit requirements for installation or reinstallation of service regulators by the owner or operator so that any vents associated with the service regulators are at least 12 inches above ground level and located in an area protected from external blockage. Prescriptive language also includes direction regarding visual inspection of gas meters, and written notice to customers for customer-owned service lines installed by owners or operators. Definition updates in Proposed Rule 11205, and updates in Proposed Rule 11206 include these and related explicit requirements updated by HB23-1216. For example, and as required by § 40-2-115 (1.5)(b) proposed rules further require an owner or operator that distributes natural gas to a customer-owned service line installed by the owner or operator on or after March 1, 2024, to provide written notice to the customer within 90 days after installation that, at a minimum, informs the customer whether the customer or the owner or operator is responsible for maintaining and repairing the customer-owned service line.

12. Through changes codified in §40-2-115(1.5)(a), C.R.S., HB23-1216 also requires that the Commission establish a process for determining whether an owner or operator, or a customer has

responsibility for the maintenance and repairs of a customer-owned service line installed on or after August 14, 1995, and before March 1, 2024. Through stakeholder processes following HB23-1216 becoming effective, stakeholders were asked to provide comment on how responsibility should be established, and definitions used in tariffs were reviewed. The majority of the tariff definitions provided by the stakeholders led to the proposed establishment of responsibility included in Proposed Rule 11206(c) that bases the determination on the location of the outlet of the meter.

13. We also propose that this narrow rulemaking remove language and include agency name changes codified in SB 23-285. Among its changes, SB 23-285 also adds new language to § 40-2-115, C.R.S., in addition to provisions throughout other titles and sections. SB 23-285 requires in § 40-2-115(1)(f), C.R.S. that the Commission not adopt any rules that regulate underground natural gas storage facilities. Proposed rules, therefore, remove reference to any potential regulation of underground natural gas storage facilities. Additionally, SB 23-285 changes the name of COGCC to ECMC. This corresponding change is made in Rule 11001(jj) as proposed.

14. Proposed rules are narrow and intended to meet strict statutory timelines provided in HB23-1216 requiring promulgation of rules to establish certain processes and notifications prior to March 1, 2024, and to remove outdated statutory references given updates in SB 23-285 prohibiting Commission rules that regulate underground natural gas storage facilities. While this rulemaking is narrow and focused on these immediate considerations, the Commission will concurrently continue stakeholder outreach and ongoing rulemaking that further updates the Gas Pipeline Safety Rules.

15. Consistent with the discussion below, we propose narrow rule revisions to effectuate changes required in HB 23-1216, specific updates in SB23-285, and minor updates to incorporations by reference regarding limited federal regulations.

C. Proposed Pipeline Safety Rules**1. Section 11001 Definitions**

16. We propose updated definitions intended to parallel statutory updates made in HB 23-1216. Proposed rules therefore include updated statutorily defined terms for reference.

17. Proposed subsection (i) includes that “Gas” means any natural gas, flammable gas, and any gas that is toxic or corrosive gas, or petroleum gas.²

18. Proposed subsection (aaa) defines “Service line” to mean 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 downstream, or at the connection to customer piping if there is no meter.

19. Proposed subsection (bbb) includes that “Service Regulator” means the device on a service line that controls the pressure of gas delivered from a higher pressure to the pressure provided to the customer. A service regulator may serve one customer or multiple customers through a meter header or manifold.

20. Proposed subsection (fff) includes that “Transportation of gas” means the gathering, transmission, or distribution, of gas by pipeline within the State of Colorado that is not subject to the jurisdiction of the Federal Energy Regulatory Commission under the Natural Gas Act.

² Petroleum gas has been included in the rules and is excluded from the updates added in HB 23-1216. We include petroleum gas as one type of “gas” per the definition to avoid inadvertent concerns with the remainder of the rules, but welcome stakeholder comments and redlines on whether this definition should be amended further in this rulemaking. Similarly, the statute includes “customer-owned service line” and other definitions to include only service of “natural gas.” We welcome comments on any clarifications or updates possible in rules given the statutorily prescriptive definitions.

21. The agency “COGCC” is changed to “ECMC” in the definition of “pipeline” or “pipeline system, item (ll).

22. 49 U.S.C. §§ 60105 and 60106(a) are added to the definition in item (pp) “Pipeline safety program” and in item (uu) “Program certification obligations ang agreements”.

2. Section 11008 Incorporation by Reference

23. The rules are also updated to reflect recent changes in federal law and for general clarity. The most recent changes in 49 CFR 191 occurred on May 24, 2023 to clarify reporting requirements; in 49 CFR 192 on August 1, 2023 to clarify the regulation of gathering lines and valves; and 49 CFR Parts 40 and 199 on May 2, 2023 to clarify regulations for drug and alcohol testing programs.

3. Section 11205 Customer-Owned Service Lines - Definitions

24. We propose the addition of new Rule 11205 to provide definitions specific to Section 11200 Customer Owned Service Lines. The definitions are as follows:

- (a) “Customer-owned service line” means the portion of the service line that extends downstream from the gas meter to the customer’s primary residential or commercial structure that is serviced with natural gas. We request stakeholder comment and proposals regarding whether a graphic of a meter should also be included to demonstrate this definition. Commenters are encouraged to provide redline rule revisions to any of the proposed rules, including any proposed schematic drawing that might be useful in clarifying the proposed rule.
- (b) “Distribution system” means the piping and associated facilities used to deliver natural gas to customers and does not include the facilities that an owner or operator owns that are classified as production, storage, gathering, or transmission facilities.
- (c) “Gas meter” means the meter that measures the transfer of gas from an owner or operator of a customer-owned service line to a customer.
- (d) “Main line” means the portion of a distribution system that serves, or is designed to serve, as a common source of gas supply for more than one service line.
- (e) “Owner or Operator” means an owner or operator of a distribution system or an investor-owned natural gas utility.

(f) “Qualified” has the meaning set forth in 49 CFR 192.803.

4. Section 11206 Customer-Owned Service Lines

25. We propose the addition of new Rule 11206 to outline the rules regarding customer-owned service lines.

26. Proposed Rule 11206(a) states that service regulators must be installed or reinstalled so that any vents associated with the service regulators are at least twelve inches above ground level and located in an area that is protected from external blockage. Changes proposed aim to align with updated language in § 40-2-115(1)(d)(II)(H), C.R.S.

27. Proposed Rule 11206(b) requires visual inspection of gas meters and service regulators by a qualified individual no less frequently than every five calendar years with intervals not to exceed sixty-three months and to record documentation of each inspection. Rule 11206(b) also requires owners or operators of gas meters to retain the documentation of the gas meter or service regulator for the lifetime of the meter or regulator. Changes proposed aim to align with updated language in § 40-2-115(1)(d)(II)(I), C.R.S.

28. Proposed Rule 11206(c) outlines the process for determining whether an owner or operator or a customer has responsibility for the maintenance and repairs of a customer-owned service line installed on or after August 14, 1995, and before March 1, 2024. The proposed rules base the definition for determining responsibility for maintenance and repairs of a customer-owned service line on the location of the outlet of the meter. This is based on long-standing stakeholder tariff inclusions.

29. Proposed Rule 11206(d) states that an owner or operator that distributed natural gas to a customer-owned service line installed by the owner or operator on or after March 1, 2024 shall provide written notice to the customer within ninety days after installation and requires that the notification, at a minimum, informs the customer whether the customer or the owner or operator is responsible for

maintaining and repairing the customer-owned service line with requirements of how notice is to be obtained and provided. Changes proposed aim to align with updated language in §§ 40-2-115(1.5)(b) and (c), C.R.S.

30. Proposed Rule 11206(e) defines the point of demarcation between the owner or operator maintenance and repair responsibility and the customer-owned service line that is the responsibility of the customer.

31. Proposed Rule 11026(f) states that an owner or operator is responsible for all maintenance and repairs of the portion of a service line that is upstream from the gas meter, in parallel with language updated in § 40-2-115(1.5)(d), C.R.S.

32. Proposed Rule 11026(g) requires the Commission's gas pipeline safety rules pursuant to this section must permit any activity that is within the best practices and standards for the industry given continuous improvement and changes to technology, in parallel with language updated in § 40-2-115(1.5)(d), C.R.S.

D. Conclusion

33. The Commission refers this matter to an ALJ for a recommended decision. The ALJ will hold a hearing on the proposed rules at the below-stated time and place. In addition to submitting written comments, participants will have opportunity to present comments orally at the hearing, unless the ALJ deems oral presentations unnecessary. The Commission will consider all comments submitted in this Proceeding, whether oral or written.

34. The Commission invites comments from interested persons on these proposed revisions to the Pipeline Safety Rules. The Commission prefers and encourages that comments be filed in this Proceeding through the Commission's Electronic Filings (E-Filings) System at:

<https://www.dora.state.co.us/pls/efi/EFI.homepage>

35. The Gas Pipeline Safety Rules are provided in legislative (*i.e.*, strikeout/underline) format (Attachment A), and clean formatting as well (Attachment B). The attachments are available through the Commission's E-Filings System at:

https://www.dora.state.co.us/pls/efi/EFI.Show_Docket?p_session_id=&p_docket_id=24R-0078GPS

36. Written comments, including redlines to the proposed rules, may be provided at any time. However, initial comments are requested by March 22, 2024, with responsive comments requested on or before April 5, 2024.

37. The Commission refers this Proceeding to an Administrative Law Judge, who will hold a hearing on the proposed rules at the stated time and place. Interested persons may provide oral comments at the public hearing unless the ALJ deems oral presentations necessary.

II. ORDER

A. The Commission Orders That:

1. This Notice of Proposed Rulemaking (including Attachment A and Attachment B) shall be filed with the Colorado Secretary of State for publication in the March 10, 2024, edition of The Colorado Register.

2. This matter is referred to an Administrative Law Judge for the issuance of a recommended decision.

3. Interested persons may file written comments in this matter. The Commission requests that initial pre-filed comments be submitted no later than March 22, 2024, and any pre-filed comments responsive to the initial comments be submitted no later than April 5, 2024. The Commission will consider all submissions, whether oral or written. The Commission prefers that comments be filed using its E-Filing System at <https://www.dora.state.co.us/pls/efi/EFI.homepage>.

4. A remote hearing on the proposed rules and related matters shall be held as follows:

DATE: April 15, 2024

TIME: 11:30 a.m.

PLACE: By video conference using Zoom at a link provided in the calendar of events posted on the Commission's website: colorado.gov/dora/puccalendar

5. At the time set for hearing in this matter, interested persons may submit written comments and may present these orally unless the Administrative Law Judge deems oral comments unnecessary.

6. This Decision is effective upon its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
February 14, 2024.**

(S E A L)



ATTEST: A TRUE COPY

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

ERIC BLANK

MEGAN M. GILMAN

TOM PLANT

Commissioners

Rebecca E. White

Rebecca E. White,
Director