

Decision No. C03-0528

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 03R-077G

IN THE MATTER OF PROPOSED RULES RELATING TO THE GAS PIPELINE SAFETY PROGRAM, 4 CCR 723-11, PART III-VI.

DECISION ADOPTING RULES

Mailed Date: May 16, 2003

Adopted Date: May 2, 2003

I. BY THE COMMISSION

A. Statement

1. This matter comes before the Commission for consideration of amendments to the Rules Relating to the Gas Pipeline Safety Program, 4 CCR 723-11, Part III-VI (Pipeline Safety Rules). We issued the Notice of Proposed Rulemaking in this case on March 5, 2003. *See* Decision No. C03-240 (Mailed Date of March 5, 2003). That Notice set a hearing to accept public comment on the proposed rules for May 1, 2003. No persons appeared at the scheduled hearing to submit oral or written comments on the proposed rules. Now being duly advised in the premises, we adopt, subject to applications for rehearing, reargument, or reconsideration, the amended rules appended to this decision as Attachment A.

B. Discussion

2. The Pipeline Safety Rules, in part, establish state safety standards for natural gas facilities in accordance with the requirements of the United States Department of Transportation. The Commission's Pipeline Safety Rules, in many instances, adopt the federal standards by specifically incorporating those standards into the rules by reference. In Decision No. C02-1315 (Mailed Date of December 11, 2002) we adopted emergency amendments to the Pipeline Safety

Rules to incorporate by reference federal standards appearing in the October 1, 2002 edition of the Code of Federal Regulations. This decision makes the emergency amendments permanent. The Pipeline Safety Rules, as amended here, also make clear that the incorporation by reference does not include federal standards adopted after October 1, 2002.

II. **ORDER**

A. **The Commission Orders That:**

1. The rules appended to this decision as Attachment A are adopted. This order adopting the attached rules shall become final 20 days following the mailed date of this decision in the absence of the filing of any applications for rehearing, reargument, or reconsideration. In the event any application for rehearing, reargument, or reconsideration to this decision is timely filed, this order of adoption shall become final upon a Commission ruling on any such application, in the absence of further order of the Commission.

2. Within twenty days of final Commission action on the attached rules, the adopted rules shall be filed with the Secretary of State for publication in the next issue of the Colorado Register along with the opinion of the Attorney General regarding the legality of the Rules.

3. The twenty-day period provided for in § 40-6-114, C.R.S., within which to file applications for rehearing, reargument, or reconsideration begins on the first day following the Mailed Date of this decision.

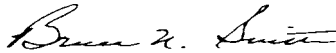
4. This Order is effective immediately upon its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
MAY 2, 2003.**

(SEAL)



ATTEST: A TRUE COPY



Bruce N. Smith
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

GREGORY E. SOPKIN

POLLY PAGE

JIM DYER

Commissioners

(4 CCR 723-11) PART III. RULES GOVERNING SAFETY STANDARDS FOR LIQUEFIED NATURAL GAS FACILITIES (REFERENCE 49 CFR 193)

BASIS, PURPOSE, AND STATUTORY AUTHORITY.

These rules prescribe safety standards for liquefied natural gas (LNG) facilities utilized by the Pipeline Safety Group, Safety and Enforcement Section of the Colorado Public Utilities Commission ("Commission"). The gas facilities are used in the transportation of gas by pipeline that is subject to 49 U.S.C. §§60101 et seq. and 49 C.F.R. Part 192, Transportation of Natural and other Gas by Pipeline: Minimum Federal Safety Standards (liquefied natural gas facilities). The Commission has authority under § 40-2-115, C.R.S., to enter into cooperative agreements with any agency of the United States government and to adopt rules and regulations to administer and enforce the safety laws and regulations of the United States under 49 U.S.C. §§ 60101, et seq. The Commission has authority under § 40-2-108, C.R.S., to adopt rules and regulations as are necessary for the proper administration and enforcement of Title 40, C.R.S.

RULE (4 CCR) 723-11-29. STANDARDS FOR LIQUIFIED NATURAL GAS FACILITIES.

The Commission adopts herein the federal safety standards for liquefied natural gas facilities used in the transportation of gas by pipeline, that are subject to 49 U.S.C. §§ 60101, et seq., which standards are adopted in the Code of Federal Regulations, Part 193, Title 49(~~October 1, 1998~~October 1, 2002). This Rule does not include later amendments to, or editions of, 49 C.F.R. Part 193, after~~October 1, 1998~~October 1, 2002. The title and address of the person employed by the Colorado Public Utilities Commission from whom

information regarding how the incorporated material may be obtained or examined is:

Chief, Gas Pipeline Safety Section
Colorado Public Utilities Commission
1580 Logan Street, OL-2
Denver, CO 80203

RULE (4 CCR) 723-11-30. HOW MATERIAL INCORPORATED BY REFERENCE MAY BE OBTAINED.

The incorporated material may be examined at the offices of the Commission, 1580 Logan Street, OL-2, Denver, Colorado 80203 between the hours of 8:00 a.m. and 5:00 p.m., Mondays through Fridays, except when such days are State holidays. The incorporated material also may be examined at any state publications depository library.

RULE (4 CCR) 723-11-31. CONFLICT.

In the event of a conflict between the provisions of 49 C.F.R. Part 193, and 4 CCR 723-11 regarding the administrative, enforcement, and reporting requirements, the latter shall apply.

RULE (4 CCR) 723-11-32. WAIVER.

Waivers of these rules may be granted by the Commission in accordance with 49 U.S.C. § 60118 and 49 C.F.R. Part 193.

**(4 CCR 723-11) PART IV. STANDARDS FOR TRANSPORTATION OF
NATURAL AND OTHER GAS BY PIPELINE (REFERENCE 49 CFR 192)**

BASIS, PURPOSE AND STATUTORY AUTHORITY.

The basis and purpose of these rules is to adopt by reference the minimum safety standards for pipeline transportation and for pipeline facilities of the United States Department of Transportation that are authorized by 49 U.S.C. §§ 60101 *et seq.* and that are set forth in Part 192, 49 C.F.R.-- Transportation of Natural and other Gas by Pipeline (~~October 1, 1998~~ October 1, 2002). The Commission has authority under § 40-2-115(1.5), C.R.S., to adopt such rules as may be necessary to enforce and administer gas pipeline safety in cooperation with the United States Department of Transportation. The Commission has general authority under § 40-2-108, C.R.S., to promulgate such rules as are necessary for the proper administration and enforcement of Title 40, C.R.S.

RULE (4 CCR) 723-11-33. MINIMUM SAFETY STANDARDS.

The Commission hereby adopts by reference the minimum safety standards of the United States Department of Transportation that are set forth in 49 C.F.R. Part 192 (~~October 1, 1998~~ October 1, 2002). This Rule does not include later amendments to, or editions of, 49 C.F.R. Part 192, after ~~October 1, 1998~~ October 1, 2002.

**RULE 4 (CCR) 723-11-34. HOW MATERIAL INCORPORATED BY
REFERENCE MAY BE OBTAINED.**

723-11-34.1 The title and address of the person employed by the Colorado Public Utilities Commission from whom

information concerning how the material incorporated by reference may be obtained or examined is:

Chief, Gas Pipeline Safety Section
Colorado Public Utilities Commission
1580 Logan Street, OL-2
Denver, Colorado 80203

723-11-34.2 The material incorporated by reference may be examined at the offices of the Commission, 1580 Logan Street, OL-2, Denver, Colorado 80203, between the hours of 8:00 a.m. and 5:00 p.m., Mondays through Fridays, except when such days are state holidays.

723-11-34.3 The material incorporated by reference may be examined also at any state publications depository library.

RULE 4 (CCR) 723-11-35. CONFLICT.

In the event of a conflict between the provisions of 49 C.F.R. Part 192 and this rule, this rule shall govern.

RULE 4 (CCR) 723-11-36. WAIVER.

Waivers of this rule may be granted by the Commission in accordance with 49 U.S.C. § 60118 and 49 C.F.R. Part 192.

**(4 CCR 723-11) PART V. RULES GOVERNING DRUG AND ALCOHOL
TESTING (REFERENCE 49 CFR 40 & 199)**

BASIS, PURPOSE AND STATUTORY AUTHORITY.

The basis and purpose of these rules is to adopt by reference the drug and alcohol testing program of the United States Department of Transportation that is set forth in 49 C.F.R. Parts 40 and 199 (~~October 1, 1998~~ October 1, 2002). The Commission has authority under § 40-2-115(1.5), C.R.S., to adopt such rules as may be necessary to enforce and administer gas pipeline safety in cooperation with the United States Department of Transportation. The Commission has general authority under § 40-2-108, C.R.S., to promulgate such rules as are necessary for the proper administration and enforcement of Title 40, C.R.S.

RULE 4 (CCR) 723-11-37. DRUG AND ALCOHOL TESTING.

The Commission hereby adopts by reference the drug and alcohol testing program of the United States Department of Transportation set forth in 49 C.F.R. Parts 40 and 199 (~~October 1, 1998~~ October 1, 2002). This Rule does not include later amendments to, or editions of, 49 C.F.R. Parts 40 and 199, after ~~October 1, 1998~~ October 1, 2002.

**RULE 4 (CCR) 723-11-38. HOW MATERIAL INCORPORATED BY
REFERENCE MAY BE OBTAINED.**

723-11-38.1 The title and address of the person employed by the Colorado Public Utilities Commission from whom information concerning how the material incorporated by reference may be obtained or examined is:

Chief, Gas Pipeline Safety Section
Colorado Public Utilities Commission
1580 Logan Street, OL-2
Denver, Colorado 80203

723-11-38.2 The material incorporated by reference may be examined at the offices of the Commission, 1580 Logan Street, OL-2, Denver, Colorado 80203, between the hours of 8:00 a.m. and 5:00 p.m., Mondays through Fridays, except when such days are state holidays.

723-11-38.3 The material incorporated by reference may be examined also at any state publications depository library.

RULE 4 (CCR) 723-11-39. CONFLICT.

In the event of a conflict between the provisions of Parts 40 and 199, 49 C.F.R. and this rule, this rule shall govern.

RULE 4 (CCR) 723-11-40. WAIVER.

Waivers of this rule may be granted by the Commission in accordance with 49 U.S.C. § 60118, and 49 C.F.R. Parts 40 and 199.

**(4 CCR 723-11) PART VI. THIRD PARTY DAMAGE STATISTICS:
ANNUAL REPORT.**

BASIS, PURPOSE, AND STATUTORY AUTHORITY.

The basis and purpose of these rules is to adopt the reporting requirements of the damage prevention program of the United States Department of Transportation that is set forth in 49 C.F.R. Part 192 (~~October 1, 1998~~ October 1, 2002). The Commission has authority under § 40-2-115(1.5), C.R.S., to adopt such rules as may be necessary to enforce and administer gas pipeline safety in cooperation with the United States Department of Transportation. The Commission has general authority under § 40-2-108, C.R.S., to promulgate such rules as are necessary for the proper administration and enforcement of Title 40 C.R.S.

RULE (4 CCR) 723-11-41. DEFINITIONS.

723-11-41.1 "Excavation activity" means any operation in which earth is moved or removed by means of any tools, equipment, or explosives and includes auguring, boring, backfilling, ditching, drilling, grading, plowing-in, pulling-in, ripping, scraping, trenching, and tunneling.

723-11-41.2 "Emergency repair" applies to ruptures and leakage of pipelines, explosions, fires, and similar instances where immediate action is necessary to prevent loss of life or significant property damage and advance notice of proposed excavation is impracticable under the circumstances.

723-11-41.3 "Damage" includes the penetration or destruction of any protective coating, housing, or protective device of an underground facility, the partial or complete severance, denting or puncturing of an underground facility, or the rendering of any underground facility inaccessible.

723-11-41.4 "Damage prevention program" means the operator's or owner's written program to prevent damage to a gas pipeline by excavation as defined under 49 C.F.R. § 192.614.

723-11-41.5 "Operator" or "Owner" means any person, including public utilities, municipal corporations, political subdivisions, or other persons having the right to bury underground natural gas pipeline facilities.

723-11-41.6 "Chief" means the head of the Safety and Enforcement Section of the Public Utilities Commission of the State of Colorado.

RULE (4 CCR) 723-11-42. REPORTING REQUIREMENTS.

723-11-42.1 All owners or operators of pipeline facilities over which the Commission has authority shall document and report pipeline facility damage statistics with the Annual Reports required under Rule 5. A Master Meter Operator need not submit a report on third party damages.

These records shall, at a minimum, contain the following:

723-11-42.1.1 Name of excavation company causing damage to the operator's system;

723-11-42.1.2 Location by county, or locate area as defined by the Utility Notification Center of Colorado("UNCC"), of damaged pipeline;

723-11-42.1.3 Date of locate request and Utility Notification Center ticket number;

723-11-42.1.4 Date of locate by facility owner or operator;

723-11-42.1.5 Date of relocate, if applicable;

723-11-42.1.6 Date damage occurred;

723-11-42.1.7 Damage due to locator error or excavator error;

723-11-42.1.8 Reason for excavation activity (routine or emergency repair), if known;

723-11-42.1.9 Cost to owner or operator due to third party damages;

723-11-42.1.10 Any deaths or injuries resulting from third party damages;

723-11-42.1.11 Total number of monthly locate requests, by county, or locate area as defined by the UNCC.

723-11-42.1.12 Total number of actual monthly locates by county, or locate area as defined by the UNCC.

723-11-42.1.13 Total number of monthly mislocates resulting in damage by county, or locate area as defined by the UNCC.

723-11-42.1.14 Total number of monthly gas pipeline damages to service lines by county, or locate area as defined by the UNCC.

723-11-42.1.15 Total number of monthly gas pipeline damages to mains by county, or locate area as defined by the UNCC.

723-11-42.1.16 Total number of monthly gas pipeline damages to transmission lines by county, or locate area as defined by the UNCC.

723-11-42.1.17 Type of equipment involved in facility damage(track hoe, backhoe, bore rig, etc.).

RULE (4 CCR) 723-11-43. WAIVER.

Waivers of Part VI of these rules may be granted by the Chief if not contrary to law and if compliance is found to be impossible, impractical, or unreasonable.