

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 19R-0703GPS

IN THE MATTER OF THE PROPOSED RULES REGULATING PIPELINE OPERATORS
AND GAS PIPELINE SAFETY, 4 CODE OF COLORADO REGULATIONS 723-11.

NOTICE OF PROPOSED RULEMAKING

Mailed Date: December 9, 2019
Adopted Date: November 6, 2019

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I. BY THE COMMISSION

A. Statement

1. The Colorado Public Utilities Commission issues this Notice of Proposed Rulemaking (NOPR) to amend the Rules Regulating Pipeline Operators and Gas Pipeline Safety (Pipeline Safety Rules), moving the Pipeline Safety Rules from their present location within the Gas Utilities and Pipeline Operator Rules at 4 *Code of Colorado Regulations* (CCR), 723-4, to a new, standalone Part 11, 4 CCR, 723-11.

2. This NOPR proposes significant changes to the Pipeline Safety Rules, as described in this Decision and its attachments. Current Pipeline Safety Rules were last updated in 2011.¹ Proposed rules aim to make updates that learn from pipeline safety events in the subsequent years, make technical and substantive improvements, in addition to providing procedural clarity and added transparency. We welcome and commend public commenters that raise concerns to our attention that could affect, and improve upon, public safety. We invite public participation within this proceeding to improve the Pipeline Safety Rules, both substantively and procedurally. We also recognize within these rules that we share the responsibility for pipeline safety oversight with other federal and state agencies, commissions, and regulatory bodies. The rules proposed, therefore, include processes and requests for comment on continued coordination given these multi-jurisdictional interests, information sharing, and enforcement efforts, which are all directed at the singular goal of ongoing improvements in pipeline safety.

3. Funding for the Commission's pipeline safety program is, unfortunately, less robust than the duties required to operate and enforce investigation efforts for the thousands of miles of gas pipeline in Colorado. Therefore, we raise potential fee proposals for stakeholder consideration. The fee proposal includes the potential for payment from certain pipeline operators that – although regulated by the Pipeline Safety Rules pursuant to § 40-2-115, C.R.S. – do not currently contribute financially at the federal or state level to the rules' enforcement or administration. We seek comment on whether this or other funding opportunities should be pursued to ensure the ongoing and necessary operation of pipeline safety operations and enforcement at this Commission.

¹ See Proceeding No. 11R-364GPS.

4. We welcome the submission of alternative proposed rules, including both individual proposals and consensus proposals joined by multiple stakeholders. Participants are encouraged to provide redlines of specific proposed rule changes for comment and consideration. Commenters are also encouraged to identify in comments whether statutory changes, rather than rule revisions, are necessary or could best accomplish the objectives of pipeline safety.

5. The Commission refers this matter to an Administrative Law Judge (ALJ), who will hold a hearing on the proposed rules at the below-stated time and place. In addition to submitting written comments, participants will be able to present comments orally at hearing unless the ALJ deems oral presentations unnecessary. The Commission will consider all comments, whether oral or written.

B. Background

6. The statutory authority for the rules proposed here is found at §§ 24-4-101 *et seq.*, 40-1-103, 40-2-108, 40-2-112, 40-2-115, 40-3-110, 40-4-109, 40-6-108, and 40-7-117, C.R.S.

7. This Commission conducts its Pipeline Safety Program (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.*

8. Sec. 40-2-115(1.5), C.R.S. includes:

The [C]ommission is authorized to adopt such rules as may be necessary to enforce provisions of the ‘Natural Gas Pipeline Safety Act’, 49 U.S.C. sec. 60101 *et seq.*, for the purpose of gas pipeline safety. Such rules shall apply to all public utilities and all municipal

or quasi-municipal corporations transporting natural gas² or providing natural gas service, all operators of master meter systems, as defined in 49 [*Code of Federal Regulations* (CFR)] 191.3, and all operators of pipelines transporting gas in intrastate commerce.

9. Collectively, the federal code and state statutes are provided to establish and govern regulations and standards for the safe transportation of hazardous gases by intrastate pipeline in Colorado. The PSP works in direct concert with federal regulation and administrations, as discussed above, and specifically the Pipeline Hazardous Materials Safety Administration (PHMSA), which includes the Office of Pipeline Safety (OPS) that regulates both gas and liquid pipelines. Federal statutes and regulations, 49 *Code of Federal Regulations* (CFR) 190-99, prescribe minimum pipeline safety standards for pipeline transportation of natural gas and hazardous liquids. PHMSA-OPS oversee interstate pipelines. Under the Natural Gas Pipeline Safety Act, PHMSA provides for state oversight of intrastate regulation and enforcement. States are responsible for intrastate pipelines via interagency agreements with PHMSA. Colorado is no exception. The authority provided this Commission in § 40-2-115, C.R.S., enables the Commission, through its PSP, to enter into cooperative agreements with PHMSA such that it is certified to oversee intrastate pipeline transportation, as set out in statute.

10. Current Pipeline Safety Rules were last updated in 2011, primarily revising the existing Pipeline Safety Rules to adopt amended safety rules promulgated by the U.S. Department of Transportation, 49 U.S.C. § 60105, *et seq.*, as of October 1, 2010.³ Nearly a decade later, we propose that technical updates, in addition to rule revisions for clarity and consistency, are appropriate and are included in proposed revisions. However, the primary purpose of this

² The statute defines “transportation of gas” as “gathering, transmission, or distribution of gas by pipeline or its storage as defined in 49 CFR 192.3.” § 40-2-115(2)(a). “Gas” is statutorily defined as “natural gas, flammable gas, or gas which is toxic or corrosive.” § 40-2-115(2)(b).

³ See Proceeding No. 11R-364GPS.

rulemaking is to include in rule revisions, application of more public, clear, and transparent processes concerning the Commission's PSP.

11. Traditionally, and under current Pipeline Safety Rules, the Commission authorized the PSP Chief to act on behalf of the Commission. Current rules appropriately set out verification of intrastate gas pipeline operator compliance, including enforcement and civil penalty authorities. While designation of these duties to the PSP Chief has provided efficiencies and effective regulation in the past, current staff, including the PSP Chief, recognized an ongoing interest and public awareness warranting review of the processes used before this Commission. Consistent with staff suggestions, our rules are aimed at adding transparency and Commissioner engagement throughout the PSP processes, including notices of proposed violations, civil penalty assessments, and reporting, in addition to adding clarity for the public and stakeholders on any Commission actions regarding pipeline safety that are necessary.

12. Throughout the Commission's sunset review process, staff conducted significant outreach to stakeholders regarding PSP processes before this Commission in 2017 and 2018. Considerations were aimed at improvements to reinforce pipeline safety throughout Colorado, and specifically, statutory revisions that could help with efficiencies and clarity. Although PSP staff raised specific issues and recommendations during the sunset review, none of these issues and or recommendations were included in the Sunset Report. We continue to invite stakeholders to raise both rule and statutory considerations as well as statutory recommendations within their comments.

13. Overall, we propose rule revisions that significantly alter and aim to improve upon pipeline safety oversight, both substantively and administratively, at the Commission. The

proposed rules also continue our commitment to added transparency, while maintaining regulatory efficiencies and continued improvement of the pipeline safety practices of the Commission's PSP.

14. We find that referral to an Administrative Law Judge (ALJ) for issuance of a recommended decision is appropriate and that an ALJ is well suited to address complex technical, procedural and policy goals of this Commission related to pipeline safety such that the ALJ can provide recommended rules to this Commission. As discussed below, we describe our objectives in issuing the attached proposed rules for ALJ and stakeholder consideration.

C. Proposed Pipeline Safety Rules

1. Complete Revision and New Part 4 CCR 723-11

15. While pipeline safety and pipeline utility regulations at the Commission are authorized separately, the Commission's Pipeline Safety Rules and rules regarding regulated gas utilities are both currently available in the Commission's Gas Utilities and Pipeline Operator Rules at 4 CCR, 723-4. This Commission regulates all public utilities, including "[p]ipeline corporations... supplying the public." *See* Article XXV of the Colorado Constitution, § 40-1-103, C.R.S. Under its Constitutional and statutory authority, the Commission considers Certificates of Public Convenience and Necessity and tariff rates, terms, and conditions required for all jurisdictional utilities. Under § 40-2-115, as discussed above, the Commission is authorized to adopt such rules as may be necessary to enforce and administer the provisions of the Natural Gas Pipeline Safety Act, 49 U.S.C. § 60101.

16. We propose separating the Pipeline Safety Rules into a separate Part 11, 4 CCR 723-11. This separation will help prioritize, differentiate and clarify the Commission's pipeline safety authority. Also, because we find it necessary to propose a complete revision of the Pipeline

Safety Rules to include procedural clarity and public processes, separating the rules into a discrete Part causes efficiencies where we can identify processes or proceedings unique to the PSP.

17. We seek comment on whether additional rule considerations are necessary, and specifically if the proposed, split off rules encompass the entirety of all generally applicable directives that will best ensure the PSP safety goals are financially and operationally sound going forward. For example, while utility regulation and pipeline safety considerations authorized pursuant to § 40-2-115, C.R.S., are separate, commenters are encouraged to identify new or existing rules that may benefit from relating more explicitly to pipeline safety. Commenters may include discussion of tariffed rate considerations⁴ and quality of service⁵ matters that could affect PSP operations and success. Commenters should discuss whether any additional aspect of the Gas Utilities and Pipeline Operator Rules, 4 CCR 723-4, or other practice before this Commission should be codified in the newly proposed Part 11 to address pipeline safety considerations and practices.

18. Rule revisions proposed therefore, include a full version of the newly proposed Pipeline Safety Rules, 4 CCR 723-11 (Attachment B), in addition to proposed deletions from the Gas Utilities and Pipeline Operator Rules at 4 CCR 723-4 (Attachment A), to remove references and sections applicable to only pipeline safety.

2. Publicly Filed Reporting in Electronic Filings

19. For reports filed annually, periodically, or episodically, the proposed rules require either the annual opening of repository proceedings, which is similar to other industry practice or

⁴ For example, commenters may include whether and to what extent pipeline safety integrity adjustments or other mechanisms relate, if at all, or should be acknowledged within these rules.

⁵ The Commission does not currently provide quality of service plan rules. Historically, quality of service plans, decided through separate adjudications, are proposed to maintain – rather than improve upon – quality of service.

the opening of specific proceedings based on the type of filing and operator, as appropriate. *See* Proposed Rules 11100 through 11104.

20. As proposed, all reports would be publicly available in the docketed proceedings. We anticipate that operators subject to the public filings could make appropriate filings or pleadings under the Commission's confidentiality rules, if necessary. We suggest this proposal strikes an appropriate balance between providing publicly accessible information, while at the same time, permitting certain protections if needed under typical Commission practice.

21. Within these considerations, we ask commenters to opine on whether additional reporting or support, including mapping or other reporting considerations, should be provided in addition to, or as encompassed in, reports already provided. Commenters should include whether additional mapping or other methods in reporting are needed to support future identification methods for operator systems such that the Commission can best enforce and administer the provisions of the Natural Gas Pipeline Safety Act, 49 U.S.C. § 60101. We encourage stakeholders to address whether, and to what extent, current and supplemental filings should be publicly available, or if confidential protections are appropriate, in comments.

3. **Small Operators**

22. Proposed Rule 11203 includes requirements specific to Small Operator Systems. "Small operator" is defined under Proposed Rule 11101(fff) to mean "any gas distribution system operator that operates less than 1000 natural gas distribution services in the state of Colorado." Specifically, Proposed Rule 11203 provides the PSP's regulatory approach to small operator systems based on system size and the possible existence of cross-jurisdictional inspections and oversight of the system (*e.g.*, local plumbing or fire authority, CDLE Oil and Public Safety Division, etc.).

23. We invite participant comment and redlines, particularly from small operator stakeholders regarding the proposed approach, its clarity in rule, and any recommended improvements for efficient and effective regulation of this operator group.

4. Proceedings for All Potential Violation Notices and Actions

24. Proposed Rules 11500 through 11507 include requirements for all PSP actions, including each Notice of Proposed Violation (NPV) and Notice of Action (NOA) to be filed publicly in an individual proceeding. Procedures proposed in the draft rules follow similar processes to a transportation Civil Penalty Assessment Notice proceeding. The Commission and public will have notice and access to all filings, their resolution, including any settlements reached, and clear paths for Commission decisions, if any are necessary.

25. The proposed rules provide the Commission adjudication process, response, and cure requirements through these proposed public proceedings. For example, if the event NPVs or NOAs are not resolved within the timeframe set out in the proposed rules, further response and hearing processes, consistent with complaint and civil penalty proceedings in other industries, are proposed in the draft rules.

26. Pleadings and decisions would be publicly accessible through the Commission's E-Filings System. This includes public information on any resulting civil penalties or other resolution to ensure safety and compliance with the Pipeline Safety Rules and incorporated federal standards.

27. A more public process can allow better information to the public, and more timely engagement from the Commissioners, if needed. As contemplated, the processes would keep the PSP Chief and his supporting investigators as staff that would file public pleadings as well within

the proceedings. To the extent the Chief and an operator reach resolution on an NPV or NOA, the resolution would be public and reviewable by this Commission.

5. Civil Penalty Calculation Assessments

28. Proposed Rule 11501 provides a methodology for civil penalty calculations that will be included in any NPV or complaint action, as appropriate. The formulae for these calculations is proposed in rule; however, we welcome comment on whether it should be included differently. For example, calculations can be included in table format per potential violation, or the calculation itself could be identified in the NPV.

29. The intent of inclusion is to provide clarity to both operators and the public on the methodology for these calculations, consistent with our interest in making the Commission's processes on PSP more transparent. Stakeholders are encouraged to provide revisions to the calculation substantively, but also discuss whether the calculation itself should be provided through rule or some other means, for example, on the Commission's website.

6. Public Filings for Stakeholder Inquiries and Waiver Requests

30. Along these same lines of added transparency and publicly accessible filings, we also propose adding filing requirements for requests for declaratory orders or interpretations of the Commission's rules. Because federal law may be implicated, the rules further provide processes to include federal oversight or interpretation requests, if necessary. Previously it was unclear in many instances whether the PSP Chief, this Commission, or PHMSA made final interpretations of the applicable rules and standards. *See Proposed Rule 11010.*

31. In addition, the proposed rules provide instruction on public request processes for waivers of the Commission rules, if necessary, and outline processes for expedited emergency

requests. Waivers and emergency requests each include public filings as proposed. *See* Proposed Rules 11011 and 11012.

32. The rules identify standard Commission practices when possible to avoid duplication with the Commission's Rules of Practice and Procedure, 4 CCR 723-1.⁶ Particularly because stakeholders for PSP have not had significant public processes imposed, we request comment on filing practices that should apply. Our proposed rules aim to include updates with explicit instruction where practices differ from the general procedure rules. We encourage participants to consider whether general Commission processes are sufficient, or if there should be explicit guidelines for PSP practices within the Pipeline Safety Rules.

7. **Guidelines for Website Publication from Staff**

33. Under current practice, the PSP Chief provides technical guidance to stakeholders where rule interpretation at the state or federal level is not required. We do not intend for these rules to unnecessarily impede useful guidance and assistance when appropriate. We further find value in the flexibility for staff to identify frequently asked questions regarding procedural or technical questions to curb unnecessary filings, particularly as stakeholders learn more about public processes at the Commission.

34. We request stakeholder input on whether to permit certain direction from the PSP Chief through the Commission's website or other means that can be updated as needed. Commenters should include whether a rule permitting and identifying specific areas for the PSP Chief to oversee and provide direct guidance on is necessary.

⁶ The Commission is revising its Rules of Practice and Procedure, 4 CCR 723-1, in ongoing Proceeding No. 19R-0483ALL. A final decision has not issued as of the date of this NOPR. Practices implicated in the proposed Pipeline Safety Rules, including waiver requests, complaint proceedings, and requests for declaratory orders, were not substantively revised in the proposed Rules of Practice and Procedure. Stakeholders are encouraged to review current rules, and potential revisions being considered in Proceeding No. 19R-0483ALL.

8. Technical Updates and Federal Coordination

35. In addition to the significant procedural proposals, the rules are also updated for better technical accuracy, recent changes in federal law, and for general clarity. We also emphasize that these rules “enforce and administer, in cooperation with the United States Department of Transportation, the provisions of the ‘Natural Gas Pipeline Safety Act’, 49 USC sec. 60101, *et seq.*...” This explicit relationship with federal law is unique to the PSP section, and the proposed rules aim to reflect processes and coordination efforts, as needed, for federal oversight and engagement. For example, certain declaratory order requests may also need to be provided to the Commission’s federal counterparts. These rules include processes to maintain and enable this coordination, and ensure stakeholder expectation that federal engagement is needed in some circumstances. *See, e.g.*, Proposed Rules 11010(b)(I) and (III).

36. Stakeholders should review the proposed technical updates and processes to comment on proposed revisions, clarity, or efficiencies.

9. Colorado Hazardous Gas Pipeline Operator Fee

37. Notably, PSP funding is currently provided by the fixed utility fund, authorized by § 40-2-112, C.R.S., and paid by public utilities, with certain reimbursements from PHMSA. Section 40-2-115 provides authority for pipeline safety over “public utilities and all municipal or quasi-municipal corporations transporting natural gas or providing natural gas services, all operators of master meter systems... and all operators of pipelines transporting gas in intrastate commerce.” Pursuant to § 40-2-115, the PSP enforces gas pipeline intrastate rules per 49 U.S.C. § 60101, *et seq.*, that includes over 240 code requirements, necessitating timely and thorough investigations from the Commission’s PSP. Tens of thousands of miles of intrastate pipeline are used in Colorado for the transmission of hazardous gas. Currently there are approximately 70

intrastate gas pipeline operators. In short, the authority granted in § 40-2-115, provides for the Commission to oversee more entities than the “public utilities” subject to the fixed utility fee fund provided for in § 40-2-112.

38. For stakeholder discussion, we propose a means to capture contributions from operators that do not currently pay into the Commission’s fixed utility fund or otherwise provide funding the PHMSA that helps ensure the PSP team can carry out its statutorily required functions. Specifically, we request comment on developing a Colorado Hazardous Gas Pipeline Operator Fee (CHGPOF) that would explicitly fund PSP operations through an assessment on pipeline operators. We propose a fee assessment on Gas Distribution Pipeline operators, per service as submitted on the operator’s PHMSA or PSP annual report. In addition, the proposed CHGPOF would be applicable to Gas Gathering Operators per mile of pipeline as submitted on the operator’s PHMSA or PSP annual report.

39. Annual reporting is proposed to be publicly available in the proposed rules and could be used annually to calculate the fee assessment, which is not dissimilar to other industry type assessments used to fund Commission operations and administration. The proposed CHGPOF purposefully excludes Transmission Pipeline Operators, which are also subject to the Pipeline Safety Rules, given that these operators pay into a federal pipeline operator fee that is used, in part, to reimburse state pipeline safety program operating costs.

40. We welcome stakeholder comment and consideration regarding updates to Commission rules or authorizing statutes that could more appropriately fund enforcement and

administration of the provisions of 49 U.S.C. Sec. 60101, *et seq.*, including without limitation, PSP investigations of tens of thousands of transmission pipelines⁷ and over 70 operators.

41. We raise this consideration for discussion regarding the financial solvency of administering PSP and enforcing gas pipeline intrastate rules per 49 U.S.C. § 60101, *et seq.* Through this NOPR, we welcome discussion for necessary funding mechanisms to insure operations and investigations, in addition to any resulting safety improvements needed by operators. Stakeholders may include in comments whether a fee proposal, or any other rule adoption, could best accomplish this important safety oversight and if statutory revisions are necessary.

10. Coordination and Comment from Related Agencies

42. Authority over distinct aspects of pipeline regulations are also provided to other state agencies and commissions; *i.e.*, excavation damage regulations prescribed in § 9-1.5-101, *et seq.*, the Colorado Oil and Gas Conservation Commission (COGCC) under § 34-60-103, *et seq.*, and environmental regulations, including those considered by the Colorado Department of Public Health and Environment (CDPHE). While not an exhaustive list of regulatory authorities applicable to pipelines in Colorado, we note and appreciate that other entities in our state oversee important aspects of pipeline safety regulation.

43. The Commission's own authority over pipeline safety includes explicit directives to work with both federal and state authorities regarding communications, conferral, and joint hearings as necessary, particularly with regard to safety laws. § 40-2-115. We welcome

⁷ As of 2018, collectively, transmission, gathering, and distribution main mileage in Colorado includes approximately 50,000 miles.

collaboration and input, including any updates to the Commission's process that could better ensure cooperation between agency resources, jurisdiction, or information.

44. Through this rulemaking we invite comments from other agencies and Commissions, in particular the COGCC, regarding collaborations and efficiencies that could benefit pipeline safety overall and be included within proposed rules as appropriate.

D. Conclusion

45. 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>.

46. We have included the Gas Utilities and Pipeline Operator Rules at 4 CCR 723-4 in legislative (*i.e.*, ~~strikeout/underline~~) format to remove pertinent rules (Attachment A). A full final format version of the newly proposed Pipeline Safety Rules is attached (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=19R-0703GPS

47. Written comments, including redlines to the proposed rules, are requested by January 17, 2020, with responsive comments requested on or before January 31, 2020.

48. This Commission refers this Proceeding to an ALJ, who will 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 unnecessary.

II. ORDER

A. The Commission Orders That:

1. This Notice of Proposed Rulemaking shall be filed with the Colorado Secretary of State for publication in the December 25, 2019, edition of *The Colorado Register*.

2. The Commission invites comments from interested persons on the proposed amendments to the rules governing Community Solar Gardens within the Commission’s Rules Regulating Electric Utilities, 4 *Code of Colorado Regulations* 723-3, as described in this Decision and its attachments. The Commission will consider all comments, whether oral or written.

3. Comments from interested persons on the proposed amendments to the Rules are requested by January 17, 2020 and reply comments are requested no later than January 31, 2020.

4. The hearing on the proposed rules and related matters shall be held before an Administrative Law Judge (ALJ) as follows:

DATE: February 10, 2020

TIME: 9:00 a.m.

LOCATION: Commission Hearing Room
Suite 250
1560 Broadway
Denver, Colorado

5. The ALJ may set additional hearings, if necessary.

6. At the time set for hearing, interested persons may submit written comments and may present these orally unless the ALJ deems oral comments unnecessary.

7. This Decision is effective upon its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
November 6, 2019.**

(S E A L)



ATTEST: A TRUE COPY

A handwritten signature in cursive script that reads "Doug Dean".

Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

JEFFREY P. ACKERMANN

FRANCES A. KONCILJA

JOHN GAVAN

Commissioners