



March 23, 2020

Hon. Michelle L. Phillips
Secretary
New York State Public Service Commission
Three Empire State Plaza
Albany, NY 12223-1350

RE: CASE No. 20-G-0140, Investigation of Gas Corporation's Response to COVID-19

Via Email

Dear Secretary Phillips:

New York State Pipeline System Operators are working collaboratively through The Northeast Gas Association's¹ (NGA's) New York Advisory Committee to maximize safety assurance during the Coronavirus (COVID-19) outbreak. Members remain focused on system safety and reliability with a special emphasis on protecting our employees and the public from the virus. NGA respectfully submits the following implementation considerations, on behalf of its New York pipeline operators, in anticipation of New York State adopting the March 20, 2020 PHMSA Notice of Stay of Enforcement and Notice of Enforcement Discretion to Operators Affected by the COVID-19 outbreak.

For the purposes of this filing, the LDCs are:

- Central Hudson Gas and Electric Corp.
- Consolidated Edison Company of New York, Inc.
- Corning Natural Gas Corp.
- Hamilton Municipal Gas
- Liberty Utilities
- National Fuel Gas Distribution Corp.
- National Grid²
- New York State Electric and Gas Corp.

¹ NGA is a regional trade association that focuses on education and training, technology research and development, operations, planning, and increasing public awareness of natural gas in the Northeast U.S. NGA represents natural gas distribution companies, transmission companies, liquefied and compressed natural gas suppliers, and associate member companies. Its member companies provide natural gas service to over 13 million customers in 9 states (CT, ME, MA, NH, NJ, NY, PA, RI, VT).

² National Grid companies include KeySpan Gas East Corporation, Niagara Mohawk Power Corporation, and The Brooklyn Union Gas Company.

- Orange and Rockland Utilities, Inc.
- Rochester Gas and Electric Corp.
- Valley Energy Inc.

In light of the March 7th Declaration of a State of Emergency by Governor Andrew M. Cuomo, and the March 13th President's Declaration of a National Emergency relating to COVID-19 outbreak, the U.S. Department of Transportation's Pipeline and Hazardous Materials Safety Administration (PHMSA), Office of Pipeline Safety, recognizes that gas pipeline operators, underground natural gas storage and liquefied natural gas operators impacted by recent events may be faced with resource constraints due to COVID-19. Limited personnel resources and the ongoing need to meet operational and maintenance needs may necessitate actions by personnel that may not fully meet federal operator qualification (OQ), control room management (CRM), and employment drug testing requirements. Further, these potential resource constraints may prohibit or inhibit conformance with company specific procedures and/or O&M Plans and may require operators to adjust these programs commensurate with resource or other operating constraints resulting from the State of Emergency.

NGA on behalf of its members and in anticipation of New York State adopting enforcement discretion recommendations including a Stay of Enforcement, is providing the Department of Public Service (DPS) perspectives on the practical application of these regulatory relief tools. NGA understands that these tools only apply to situations where operators can demonstrate that they may not be able to meet regulatory requirements due to resource or other operating constraints, resulting from the COVID-19 State of Emergency, that preclude or inhibit regular business practices. Some programs may need to be temporarily scaled back or suspended while other safety related programs, such as Operator Qualification and D&A Monitoring, may require safety-focused alternatives that provide an equivalent level of intended protections. The purpose of this summary is to provide a basis for discussion with DPS (and other State Agencies) about application of a Stay of Enforcement that would allow Operators and Regulators to meet our shared goals of maintaining a safe and reliable gas system throughout this event.

Stay of Enforcement Considerations

1. Operator-Regulator Continuous Communication & Voluntary Disclosure of COVID-19 Compliance Impacts

Operators recognize that maintaining safety and compliance with regulatory requirements during this unprecedented event depends on open communication with Department of Public Service Staff (DPS Staff). If a Company can reasonably demonstrate pandemic-related workforce or other impacts that may impede or prevent required work, or that may require an Operator to develop an alternative method of compliance or depart from its existing O&M Plan procedures or work methods, the Operator will document and promptly voluntarily disclose them to DPS Staff. Operators are requesting DPS Staff to exercise enforcement discretion as recommended by the PHMSA Notice, including consideration of suspending associated negative revenue adjustments or other penalties in the face of exigent circumstances. Operators believe that exercising enforcement discretion will provide the flexibility to maintain normal operations while ensuring public safety and protection of the environment.

2. Mandated and Other Work that Requires Access to Residential Premises and/or Buildings of Public Assembly

Operators will consider postponing any work that requires entering a premise and potentially coming into contact with occupants, other than emergency response activities such as responding to an odor call, low pressure complaints, or a potential gas leak, in order to comply with mandated social distancing requirements and protect public and employee safety.

3. Other Risk-Prioritized Mandated Work Which May be Impacted by the COVID-19 Pandemic Event and Current State of Emergency

Highlighted below are examples of date driven mandated work inspection activities that may be delayed or postponed based on Operator specific business continuation plans. This list is not intended to be all-inclusive as impacts may vary by company. The list below is in a risk-prioritized ascending order.

- §255.744 - Service Regulators and Vents: Inspection (b)(c)
- §255.465 - External corrosion control: Monitoring
- §255.481 - Atmospheric corrosion control: Monitoring
- §255.483 - Remedial Measures: General
- §255.726 - Inactive Service Lines(b)(1)(2)
- §255.727 - Abandonment or Inactivation of Facilities
- §261.59 - Warning tag: Class B condition
- §261.63 - Warning tag: Action and follow-up
- §255.721 - Distribution systems: Patrolling
- §255.817 - Leaks: Type 3 classification
- §255.813 - Leaks: Type 2A classification
- §255.815 - Leaks: Type 2 classification
- §255.819 - Leaks: Follow-up inspection
- §255.747 - Valve maintenance: Distribution systems
- §255.723 - Distribution systems: Leakage surveys and procedures
- §255.745 - Valve maintenance: transmission lines.
- §255.705 - Transmission Lines: Patrolling
- §255.706 - Transmission Lines: Leakage Surveys.

NOTE: The above list is prepared out of an abundance of caution in the event O&M Plan mandated work is affected during the State of Emergency. Operators will use all reasonable efforts to complete mandated work unless faced with limited resources or other impacts (availability of materials, contractors (if required), equipment availability, permits etc.) as a result of the State of Emergency. In cases where mandated work is postponed or where anticipated delays in conducting work resulting in impacts to meeting compliance related completion schedules, Operators will document company specific issues and communicate with DPS Staff. Operators are requesting that a reasonable timeframe be established to reschedule completion of delayed or postponed mandated work as part of their business restoration plan.

4. Protection of Underground Facilities

Operators may require additional flexibility to conform with published plans and procedures for facility marking requirements required in 16 NYCRR Part 753 - Protection of Underground Facilities. Operators will use all reasonable efforts to complete mark-outs within required timeframes unless faced with limited resources or other impacts (availability of contractors, etc.) as a result of the State of Emergency. In cases where mark-outs are postponed or where anticipated delays in conducting work result in impacts to meeting compliance related completion schedules, Operators will document any company specific issues and communicate with DPS. Operators are requesting that a reasonable timeframe be established to reschedule completion of delayed or postponed work as part of their business restoration plan.

5. Control Room Management (CRM)

As recognized in the PHMSA Stay of Enforcement, Operators may require additional flexibility in meeting requirements in §255.631– Control Room Management. PHMSA has advised operators affected by the State of Emergency that they do not intend to take any enforcement action with CRM requirements. Operators are requesting similar enforcement relief, more specifically, conformance flexibility with published CRM plans and procedures - including staffing and training requirements - to address social distancing and infection control practices to ensure control room operation safety and system reliability. Operators will document and promptly communicate any deviations in the Plan to address the current State of Emergency. Operators are requesting a reasonable timeframe to reestablish conformance with Control Room Management practices that may have been adjusted as part of their business restoration plan.

6. Conformance with O&M Plans and Procedures and General Provisions

Operators may require additional flexibility in meeting other published requirements in filed O&M Plans and Procedures referenced in §255.605 – Procedure Manual for Operations, Maintenance and Emergencies as well as §255.603 - General Provisions. Operators will use all reasonable efforts to conform with company approved and filed procedures unless faced with limited resources or other impacts (availability of materials, contractors (if required), equipment availability, permits, etc.) that may require procedure adjustments as a result of the State of Emergency. Operators will document any company specific issues and communicate with DPS Staff.

7. Rate Case Performance Metrics

Operators may require flexibility in meeting certain rate case performance metric targets, provided they can reasonably demonstrate the State of Emergency inhibited performance.

8. Audit & Data Request Responses

Although not a specific regulatory requirement, LDCs may need additional time responding to data requests and audit letters received from Staff. Typically, Staff requests a response within 30 days of the letter or data request; however, some requests require a response in as little as 10 days.

This may be difficult to achieve as LDCs deal with pandemic planning and response. Additionally, as it relates to record requests, data/records sharing should be limited to electronic means in order to minimize person-to-person interactions. The current process related to confidential materials (*i.e.*, filing with the Records Access Officer) would continue. For such records that are not available electronically (for example, Leak Survey maps), Staff should consider temporarily suspending the review of those records.

9. Existing Orders, Compliance Agreements or Other Company Specific Enforcement Actions

Operators may require temporary relief from date-driven completion of company-specific compliance agreements, Orders or enforcement actions. Operators will work with DPS Staff to consider temporary suspension of these mandates and agreements, pending the resumption of normal business functions.

10. Operator Qualification and Drug & Alcohol Testing Programs

PHMSA has recognized that conformance with Operator Qualification (“OQ”) requirements could pose a significant challenge for Operators, particularly requalification testing within published Plan requirements. PHMSA has advised operators affected by the State of Emergency that they do not intend to take any enforcement action regarding OQ and will consider exercising enforcement discretion regarding conformance with OQ regulatory requirements. As Staff is aware, Prometric and NGA have temporarily suspended OQ testing services as a result of the potential COVID-19 exposure during the testing process. Alternatives to written exams for requalification are not feasible without compromising the extraordinary work recently completed to ensure test security and overall integrity of the program. Our primary focus is on safety: the safety of our members’ employees, our customers, and the general public, protecting one another from virus exposure while ensuring gas system safety and reliability.

Operators are currently evaluating their company specific OQ Plans and will make adjustments to their Plans, addressing additional flexibility (if needed) regarding OQ testing and requalification grace periods. Operators are proposing that the grace period be extended for the duration of the declared State of Emergency and for a reasonable time thereafter to requalify personnel. Once the State of Emergency is rescinded and the requalification process can safely be resumed, Operators will assess the impact to the qualification of personnel and the anticipated timeframe to requalify personnel, and will communicate this promptly to DPS.

In cases where OQ requalification testing is delayed, resulting in impacts to meeting compliance related completion schedules, Operators will adequately document any such issues and communicate promptly with DPS Staff. Operators are requesting a reasonable timeframe be established to reschedule completion of delayed or postponed mandated work as part of their business restoration plan.

In addition, Operators are proposing adjusting OQ Plans to specifically address requalification of technicians performing plastic fusion. Pipe joining practical evaluations for compliance with 255.285(d) and Operator Qualification requirements are typically done in a shop setting. Many operators have suspended these practical evaluations and NGA has suspended performance

evaluation delivery services due to CDC and government recommendations regarding social distancing, in an effort to help mitigate the spread of the COVID-19 virus and ensure the health and safety of the workforce and their families.

16 CRR-NY 255.285(d) specifies that "A person must be requalified under an applicable procedure once each calendar year at intervals not exceeding 15 months, or after any production joint is found unacceptable by testing under section 255.507 or 255.511 of this Part, by inspection by other than the joiner, or a combination of both." Highlighted below are alternatives which Operators are proposing to ensure the intent of OQ regulatory requirements are achieved for plastic fusion:

- Utilize the existing OQ "Grace Period" as stipulated in a Company Specific Written Plan, NGA OQ Written Plan and/or Company Specific Amendment to the OQ Written Plan. The grace period extends the qualification period for individuals who are already qualified on a task. With respect to plastic pipe joining tasks, the OQ grace period suspends the requirement to complete the OQ Written Evaluations through the duration of the grace period.
- Utilize the "... once each calendar year not exceeding 15 months" provision of 255.285(d), which essentially provides for a 3 month extension of the annual plastic pipe joining practical evaluations.
- Develop alternative means to continue practical evaluations, including destructive testing, as required under 255.285. Alternatives include conducting plastic pipe joining practical evaluations on job sites or in other appropriate outdoor locations, so that gatherings of people are minimized, and social distancing recommendations may be followed. Destructive testing may be performed at the site where the evaluation takes place or at a location other than where the evaluation takes place.
- Suspend new employee training and qualification in plastic pipe joining until normal business operations are resumed.

The proposed strategies and alternatives allow for maintaining the intent of ensuring a qualified and competent workforce while protecting the health and safety of personnel (both the technicians and evaluators).

Regarding Drug & Alcohol ("D&A") testing programs, Operators are seeking flexibility in meeting D&A Plan requirements for random testing compliance. Random testing schedules may need to be adjusted during the State of Emergency to address social distancing mandates and/or the availability of contract laboratories and laboratory personnel that have been redeployed for COVID-19 associated testing. Operators that are unable to conform with the requirements of their Plan will document the reasons why specific Plan requirements cannot be met, how the non-conformance is related to COVID-19, and provide alternative measures being taken to meet the intent of the Plan.

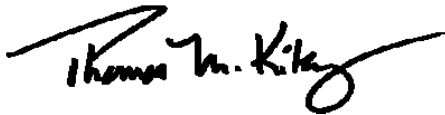
11. Business Restoration – Ramp-up Period & Plan

Operators will work with DPS Staff to resume normal business activities when the State-Wide or jurisdictional declared State of Emergency is lifted. These plans will include anticipated dates when any delayed or suspended work will re-commence and/or be completed.

Conclusion

The LDCs and NGA appreciate the opportunity to provide the above information and the requests for regulatory relief consideration during this extraordinary period. LDCs may file additional comments in addition to the collaborative comments provided in this document. Please contact us if you have any questions.

Respectfully submitted,



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