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INDEPENDENT REGULATORY REVIEW COMMISSION

333 MARKET STREET, 14TH FLOOR, HARRISBURG, PA 17101

April 6, 2016

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Keystone Building, 400 North Street
2nd Floor, North Wing
Harrisburg, PA 17120

Re: Regulation #57-311 (IRRC #3131) (L-2015-2498111)
Pennsylvania Public Utility Commission
Steam Heat Distribution System Safety Regulations

Dear Secretary Chiavetta:

Enclosed are the Commission's comments for consideration when you prepare the final version of this regulation. These comments are not a formal approval or disapproval of the regulation. However, they specify the regulatory review criteria that have not been met.

The comments will be available on our website at www.irrc.state.pa.us. If you would like to discuss them, please contact me.

Very truly yours,

David Sumner
Executive Director
sfh
Enclosure

cc: Honorable Robert M. Tomlinson, Majority Chairman, Senate Consumer Protection and Professional Licensure Committee
Honorable Lisa M. Boscola, Minority Chairman, Senate Consumer Protection and Professional Licensure Committee
Honorable Robert W. Godshall, Majority Chairman, House Consumer Affairs Committee
Honorable Peter J. Daley, II, Minority Chairman, House Consumer Affairs Committee
Amy Elliott, Esq., Office of Attorney General

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Comments of the Independent Regulatory Review Commission



Pennsylvania Public Utility Commission Regulation #57-311 (IRRC #3131)

Steam Heat Distribution System Safety Regulations

April 6, 2016

We submit for your consideration the following comments on the proposed rulemaking published in the February 6, 2016 *Pennsylvania Bulletin*. Our comments are based on criteria in Section 5.2 of the Regulatory Review Act (71 P.S. § 745.5b). Section 5.1(a) of the Regulatory Review Act (71 P.S. § 745.5a(a)) directs the Pennsylvania Public Utility Commission (PUC) to respond to all comments received from us or any other source.

1. Section 61.1. Definitions. – Clarity.

Service line, service line of the customer and termination point

The definitions of the terms “service line” and “service line of the customer” include a description of a termination point, but use different language to describe the same point. For clarity, we recommend adding a definition of “termination point” and using that term in the definitions of “service line” and “service line of the customer.”

Consistent use of terms

Existing Section 61.1 defines the term “public utility.” However, the following terms are used in the proposed regulation: “steam public utility,” “steam utility,” “utility,” “steam facility,” “facility,” “steam distribution system” and “steam distribution utility.” The regulation lacks clarity because these terms are not defined and appear to be used interchangeably. The PUC should define one term and use that term consistently throughout the regulation.

2. Section 61.41. Purpose and policy. – Clarity.

Subsection (d)(2) explains the safety requirements do not apply to the piping downstream of “the customer’s property line.” Based on the definitions in Section 61.1, the termination point may be the property line or a point provided by contract. If the PUC adds a definition of “termination point” that term should be used. Otherwise, the language of this subsection should be amended to include the possibility that the point is described in contract.

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3. Section 61.42. Safety and compliance with standard code. – Reasonableness; Implementation procedures; Statutory authority.

Subsection (a) Responsibility

This subsection begins with the phrase “A steam utility **shall use at all times every reasonable effort** to properly warn and protect the public from danger . . .” Emphasis added. The word “every” might imply an obligation beyond a reasonable standard. While we fully agree with protection of persons from danger, it is not clear what additional standard is set by requiring “every” reasonable effort. For example, subsequent Paragraph (b) requires compliance with the standards established by the American Society of Mechanical Engineers (ASME). Does the language of Subsection (a) requiring “every reasonable effort” contemplate something beyond the ASME? The word “every” should be deleted unless the PUC can explain the need for it and clarify its meaning within the language of the overall regulation.

Subsection (b) Standard code

This subsection requires steam distribution pipeline facilities installed after the effective date of adoption of the proposed rulemaking to be designed, constructed, tested, operated and maintained in accordance with the most updated and applicable standards of ASME. We have two concerns. First, this section does not explain what standards apply to existing facilities. For example, would it be proper to maintain a facility designed and constructed in accordance with the standards in place at the time of construction? However, it might not be proper to use updated test and maintenance standards on that same facility using future updated standards. The regulation should include an explanation of what standards will be applied to existing utility facilities.

Second, the last sentence of this subsection states the PUC has the “discretion to determine whether a redesign, repair, modification or replacement of a facility constitutes a new facility subject to these regulations.” How can a utility comply with this sentence? Will a utility receive notice of this determination by the PUC prior to expending resources on design and construction? The PUC should explain how this sentence will be reasonably implemented.

Subsection (c) Statutory compliance

This subsection requires a steam utility to comply with section 1-11 of the act of December 10, 1974 (73 P.S. §§ 176-186), known as the “Underground Utility Line Protection Act,” and “Pennsylvania One Call” (PA One Call). House Bill 445, which would transfer enforcement authority to the PUC, is pending in the state legislature. We believe that adding subsection (c) is premature and should be deleted pending passage of the legislation into law and establishment of any memoranda of understanding between agencies to implement the legislation as it may pertain to the scope of this regulation.

Subsection (e) Records

The first sentence of this subsection is vague by requiring “adequate records as required for compliance with this subsection.” The view of what are “adequate records for compliance” could vary. We recommend that the PUC review and amend this requirement to clearly state what records are required.

4. Section 61.43. Notification of major construction. – Reasonableness.

This section addresses notification of proposed construction, including an estimated completion date. However, Paragraph (9) also requires “Notification to the Commission of the completion date.” If the PUC intends for a separate notification to be required, the regulation should clearly state so.

5. Section 61.44. Operating and maintenance plan. – Clarity.

There are two concerns with Subsection (a) which requires steam utilities to establish an operations and maintenance plan that complies with the new safety requirements and requires revisions to a plan to be submitted at least 30 days prior to the effective date of the plan. First, Veolia Energy Philadelphia, Inc. (VEPI) requests the PUC specify an exact date by which the plan is required to be in place. We agree that a due date should be added to the regulation.

Second, VEPI seeks clarification on whether “the plan” in the last sentence of Subsection (a) refers to the original plan, or if it is referring to subsequently revised plans? We agree. The PUC should clarify whether it is referring to the original plan or the revision.

6. Section 61.45. Security planning and emergency contact list. – Clarity.

Subsection (c) requires a steam utility to file with the PUC’s Secretary, the Gas Safety Division and all municipalities a list of responsible officials who may be contacted in the event of an emergency. However, revisions to this list are to be reported only to the Gas Safety Division and affected municipalities, but not the PUC’s Secretary. We question the need to require reporting to both the Secretary and the Gas Safety Division under issue 14 in these comments. However, if the PUC retains the dual reporting requirements, shouldn’t the Commission’s Secretary also receive the revisions?

7. Section 61.46. Customer education and information program. – Reasonableness; Clarity.

Subsection (b) states “The program and the media used must be as comprehensive as necessary to reach all customers.” This requirement is vague. How can a steam utility comply with it? It should be replaced with a specific standard.

8. Section 61.47. Employee training. – Clarity; Reasonableness.

There are three concerns with Subsection (a). First, it requires an employee involved in the operation, maintenance or testing of steam pipelines and related facilities to satisfactorily complete training at all progression levels to ensure effective and safe implementation of the procedures required under the chapter. It further states that every employee and supervisor must receive annual training. Since the regulation does not specify what training is required, Subsection (a) is vague regarding the training and progression levels. The regulation should specify what training is acceptable to the PUC and what constitutes satisfactory completion of the training.

Second, in what subjects must employees and supervisors receive annual training?

Finally, is it reasonable and appropriate for all employees in the operations, maintenance and testing to receive training at all progression levels?

9. Section 61.48 Periodic inspections. – Reasonableness.

Subsection (a) requires steam traps and trap piping assemblies to be inspected for general condition and proper operation at least three times each calendar year. NRG commented that three inspections per year are unnecessary because multiple inspections are often conducted for efficiency reasons and believe that one mandated safety inspection per year would be sufficient. The PUC should explain why three inspections per year are needed.

10. Section 61.49. Records. – Need; Reasonableness

The last sentence of this section states, “Records and copies shall be kept on file at the steam utility’s offices in this Commonwealth . . .” We have two concerns. First, it is not clear what the phrase “and copies” requires. Is the utility required to keep an extra copy of its records? The regulation should explain what copies are intended to be kept.

Second, to comply, a steam utility would be required to have offices in this Commonwealth. Is it necessary for this recordkeeping provision to require offices in Pennsylvania? If so, the PUC should explain the need for offices in this Commonwealth. If not, given that many records are kept electronically and could be kept in a central corporate location outside Pennsylvania, the phrase “in this Commonwealth” should be deleted.

11. Section 61.50. Welding; qualification and nondestructive testing. – Economic impact; Reasonableness; Protection of the public.

Both NRG and VEPI commented on this section. NRG states that it does random testing of welds and believes it is unsafe to do hydro tests in the field because of the potential for flash steam and water hammer. VEPI seeks clarification of whether air testing can be done. Additionally, VEPI suggests performing X-rays to determine the strength of field welds because it is safer than pressure testing and less intrusive to the distribution system. We have two recommendations. First, the PUC should review these comments and clarify the regulation to

clearly state what types of testing are acceptable. Second, we recommend that the PUC explain why the testing required by the regulation is the best alternative.

12. Section 61.51. Steam leaks and emergency reports. – Clarity.

Subsection (b)

This subsection requires non-emergency leaks to be re-examined within 6 months from the date of discovery and repaired within a reasonable time. At the same time, Section 61.44 (4) states that steam utilities must have an operating and maintenance plan that includes procedures to correct, within specified time frames, deficiencies found during inspections, evaluations, and tests required under the chapter. Are these two different standards for one type of leak? The PUC should review and reconcile these provisions.

Subsection (f)

There are two concerns. First, it requires a steam utility to have available, on or before the 16th day of each month, a summary analysis of its performance in responding to reports of steam leaks and emergencies. NRG asked for the date of the 16th to be moved to the end of the month to coincide with its normal operations. The PUC should consider using the end of the month.

Second, this subsection requires a “summary analysis.” What constitutes a summary analysis? The regulation should specify what information is required.

13. Section 61.53. Asbestos control. – Reasonableness; Implementation; Statutory Authority.

In the Preamble, the PUC requests public comment as to whether the proposed language best serves the public interest. Under this section, a steam utility must have procedures to safely manage and abate asbestos materials from accessible manholes, vaults and other areas that contain steam facilities. It also requires a steam utility to have a program to maintain, in safe condition, asbestos materials on exposed piping and fittings in the steam distribution system and eliminate asbestos materials to the extent practicable and feasible.

As the PUC observes, the public health threat of asbestos is well-known and well-documented. Asbestos is already regulated by several other entities including:

- The Pennsylvania Department of Labor and Industry lists asbestos as a hazardous substance under 34 Pa. Code Chapter 323 and, therefore, regulates asbestos;
- The Pennsylvania Department of Environmental Protection regulates asbestos including asbestos disposal at 25 Pa. Code Section 273.414;
- The Environmental Protection Agency; and
- The Occupational Safety and Health Administration.

While we agree that asbestos must be carefully handled, controlled and disposed, we question what the PUC regulation of asbestos adds and whether it may possibly conflict with or duplicate existing regulations. Therefore, we ask the PUC to explain its authority to regulate asbestos, how exercising that authority enhances the safety already in place to regulate asbestos, what expertise the PUC has to offer in the regulation of asbestos that other entities do not have and how exercising its authority will not conflict with the multiple state and federal authorities that already regulate asbestos.

14. Reports and Notices. – Need; Reasonableness.

Need for two notices or reports

Sections 61.43, 61.44(a), 61.45(c) and 61.46(c) require steam heat utilities to file or notify both the Secretary of the PUC and the Gas Safety Division. For example, Section 61.43 requires that “A steam utility shall notify the Commission and the Gas Safety Division of proposed major construction” Why are two notices necessary of proposed major construction and what does the PUC do with each notice? In each instance, the PUC should justify the need and reasonableness of requiring the utility to make two filings or notices of the same information. Additionally, the PUC should revise the response to Regulatory Analysis Form Question 19 to reflect the reporting requirements imposed by the regulation.

Record retention

Section 61.51(f) requires a steam utility to have available a summary analysis of its performance in responding to reports of steam leaks and emergencies. The length of time that a steam utility is required to keep records under this section is not stated. Section 61.12 (relating to interruptions of service) requires records to be preserved for a period of 6 years. Section 61.49 (relating to records) requires steam utilities to maintain records documenting inspections, maintenance, tests and all other matters required under the chapter to be kept for at least 3 years. Why does the time period for record retention vary between sections? The PUC should clarify the recordkeeping retention requirements throughout the regulation.