**PENNSYLVANIA**

**PUBLIC UTILITY COMMISSION**

**Harrisburg, PA 17105-3265**

Public Meeting held August 5, 2021

Commissioners Present:

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| Gladys Brown Dutrieuille, Chairman |
| David W. Sweet, Vice Chairman |
| John F. Coleman, Jr. |
| Ralph V. Yanora  |

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| Request for Comments on Implementation of Potential Amendments to 52 Pa. Code § 59.34 Relating to Leakage Surveys of Customer-Owned Service Lines | Docket No. L-2020-3019417 |

**TENTATIVE IMPLEMENTATION ORDER**

**BY THE COMMISSION:**

In accordance with Sections 501 and 1501 of the Public Utility Code, 66 Pa.C.S. §§ 501 and 1501, the Pennsylvania Public Utility Commission (Commission) issues this Tentative Implementation Order to request comments on potential implementation of amendments to 52 Pa. Code § 59.34 relating to leakage surveys of customer-owned service lines, to make Section 59.34 consistent with Part 192.13(c) of the Code of Federal Regulations (CFR), 49 C.F.R. § 192.13(c). Section 192.13(c) of the CFR requires a pipeline operator to maintain, modify as appropriate, and follow the plans, procedures, and programs that the operator is required to establish under Part 192 of the CFR relating to the transportation of natural gas or other gas by pipeline. Part 192 of the CFR establishes minimum safety standards for pipelines. Those standards include a requirement that each segment of pipeline that becomes unsafe must be replaced, repaired, or removed from service. 49 C.F.R. § 192.703(b).

Pursuant to 49 C.F.R. § 192.3, a service line ends at the outlet of the customer meter or customer’s piping, whichever is farther downstream. This makes the pipeline operator responsible for compliance with federal pipeline safety regulations between the main and the outlet of the meter or customer’s piping, whichever is farther downstream. It appears that Section 59.34 of the Commission regulations is inconsistent with the federal regulation as our regulation requires the pipeline operator to make the customer that owns the service line repair or renew the pipe if a leak is found in the service line located between the main and the meter. It is essential that the Commission regulations and the federal regulations are consistent regarding the extent of a pipeline operator’s responsibility for pipeline safety. Therefore, the Commission proposes to amend 52 Pa. Code § 59.34 to accurately and consistently define the extent of a pipeline operator’s responsibility in compliance with the CFR. Before proceeding to do so, however, by this Tentative Implementation Order, the Commission seeks comments from all interested parties on how the Commission should implement these potential amendments to the regulations and effectively accomplish the goals of the Commission.

**Background**

On January 28, 2019, as part of its evaluation of the Commission’s 2017 pipeline safety program activities, the Director of State Programs, Office of Pipeline Safety[[1]](#footnote-1) at the United States Department of Transportation, Pipeline and Hazardous Materials Safety Administration (PHMSA), notified the Commission of a potential conflict between the federal regulations and the Commission’s regulations at 52 Pa. Code § 59.34 (relating to leakage surveys of customer‑owned service lines). On November 1, 2019, the Director of State Programs at PHMSA provided specific details to the Commission on the potential conflict between the federal regulations and the Commission’s regulations at 52 Pa. Code § 59.34.

As explained in greater detail below, PHMSA’s concern is that Section 59.34(c) of the Commission’s regulations conflicts with PHMSA Transportation of Natural and Other Gas by Pipeline: Minimum Federal Safety Standards, 49 C.F.R. § 192.723(b)(2) (relating to Distribution systems: Leak repair), because our regulation requires the pipeline operator to make the customer that owns the service line repair or renew the pipe if a leak is found in the service line located between the main and the meter. In contrast, PHMSA regulations at 49 C.F.R. § 192.13(c) requires “[e]ach operator [to] maintain, modify as appropriate, and follow the plans, procedures, and programs that it is required to establish under [Part 192].”[[2]](#footnote-2) Furthermore, Section 192.703(b), requires “[e]ach segment of pipeline that becomes unsafe must be replaced, repaired, or removed from service.” *See* 49 C.F.R. § 192.703(b).

The Pennsylvania Public Utility Code (Code) defines “service line” as “[t]he pipe and appurtenances of the gas utility which connect any main with either the point of connection of a customer’s service line or the meter of the public utility if the utility owns all the pipe and appurtenances between its main and meter.” 66 Pa.C.S. § 102 (relating to definitions). The Code further defines a “customer’s service line” as “[t]he pipe and appurtenances owned by the customer extending from the service connection of the gas utility to the inlet of the meter serving the customer.” *Id*. The Commission’s regulations at Chapter 59 further define a “service line” as “[a] distribution line that transports gas from a common source of supply to a customer meter or the connection to a customer’s piping, whichever is further downstream, or the connection to a customer’s piping if there is no customer meter.” 52 Pa. Code § 59.1 (relating to definitions). In comparison to a customer’s service line, Section 59.1 defines a “public utility service line” as:

The pipe and appurtenances of the public utility which connect any main with either the point of connection of a service line of the customer if the line is provided by the customer in accordance with the rules and regulations of the public utility, or the meter of the public utility if the utility owns all the pipe and appurtenances between its main and meter.

*Id*.

Regardless of the ownership of the service line, Section 1510 of the Code provides that maintenance of the service line is the responsibility of the owner of the line, stating in pertinent part:

When connecting the premises of the customer with the gas utility distribution mains, the public utility shall furnish, install and maintain the service line or connection according to the rules and regulations of the filed tariff. A public utility shall not be authorized or required to acquire or assume ownership of any customer’s service line. A public utility shall not be authorized or required to acquire or assume ownership of any pipe or appurtenances installed after the effective date of this section between its main and the meter unless the utility would have been authorized or required to do so according to the rules and regulations of its filed tariff if the pipe or appurtenances had been installed on or before the effective date of this section. **Maintenance of service lines shall be the responsibility of the owner of the service line.**

66 Pa.C.S. § 1510 (emphasis added).

Finally, within the context of Section 1510 of the Public Utility Code, Section 59.34 of the Commission’s regulations provides:

(a) *Plan*. A public utility shall establish and execute a plan by which it will periodically survey each customer-owned service line for leakage. The plan shall conform with or exceed the standards established in 49 CFR 192.723 (relating to distribution systems; leakages and procedures) as of May 1, 1986 and subsequent amendments thereto which have been ratified by the Commission under § 59.33 (relating to safety). The public utility shall file with the Commission a copy of the plan required by this subsection including statements of the type of survey it will use and of the frequency of the survey. As used in this section, the term “customer-owned service line” includes that piping serving a residential or commercial customer which is between the main, pipeline or other source of supply and whichever is the more remote of either the meter set assembly, or the wall of the residence or commercial building if the customer owns part of the piping.

(b) *Access to customer premises*. If the leakage survey prescribed by subsection (a) requires access to the premises of a customer and the customer refuses access, **or if the public utility requires a customer to inform it of the location of a service line and he fails to provide the information**, the public utility may shut off gas service until access is permitted **or the information is provided**. If subsection (a) requires a leakage survey to a meter set assembly inside the wall of a residence or commercial building, and the public utility cannot gain access to the building because of absence of the occupants, the public utility shall leave a notice at the premises, instructing the customer to designate to the public utility a day and time during normal working hours when access may be had. The public utility may defer the leakage survey to the day and time so designated.

(c) *Procedure after survey*. Upon completion of a survey of a customer-owned service line, the public utility shall make a record showing the date and method of the survey, and the result found. If the result shows that a leak exists in the service line, **the public utility shall require the customer to repair or renew the line, and may shut off gas service until repair or renewal has been effected.** The public utility shall retain the record of the two most recent surveys made under this section.

52 Pa. Code § 59.34 (emphasis added).

**PHMSA’s Concerns**

As indicated above, Mr. Zach Barrett, Director of State Programs in PHMSA’s Office of Pipeline Safety, informed the Chairperson of the Commission of a potential conflict between the federal regulations and the Commission’s regulations at 52 Pa. Code § 59.34. Section 59.34(a) requires, in part, a leakage survey for customer-owned service lines located between the main and the meter. While this leak survey requirement in Section 59.34 is redundant, as a leak survey is already required for all pipe located between the main and the meter under 49 C.F.R. § 192.723(b)(2), Mr. Barrett’s concern is that Section 59.34(c) of the Commission’s regulations requires the pipeline operator to make the *customer* repair or renew the pipe if a leak is found on the pipe located between the main and the meter for customer‑owned service lines. PHMSA notes that Section 59.34(c) conflicts with 49 C.F.R. § 192.13(c) which requires the pipeline operator to maintain, modify as appropriate, and follow the plans, procedures, and programs that it is required to established under Part 192. As stated above, Section 192.703(b) of the CFR requires each segment of pipeline that becomes unsafe must be replaced, repaired, or removed from service. Pursuant to Section 192.3 of the CFR, a service line ends at the outlet of the customer meter or customer’s piping, whichever is farther downstream. Federal regulations, therefore, make the *operator* responsible for compliance with the Federal pipeline safety regulations between the main and the outlet of the meter, and not the customer as contemplated in Section 59.34 of the Commission’s regulations.

Moreover, PHMSA also took issue with 52 Pa. Code § 59.34(b), which requires the customer to provide the location of the service line, stating “if the public utility requires a customer to inform it of the location of a service line. . . the public utility may shut off gas service until access is permitted or the information is provided.” This provision implies that the pipeline operator does not know the location of the pipe upstream of the meter because the regulation requires the customer to inform the pipeline operator of the service line location. According to PHMSA, this statement ignores the fact that under the CFR the service line between the main and the meter is the pipeline operator’s responsibility, not the customer’s, to design, construct operate, and maintain in accordance with the pipeline safety regulations, pursuant to 49 C.F.R. § 192.1, *et. seq*.

PHMSA emphasized that it does not have a role in determining who is responsible for the payment of repairs to the customer-owned pipe. PHMSA agrees that there can be customer-owned pipe upstream of the meter; however, under the CFR the operator of the pipe is responsible for the design, construction, operation, and maintenance of the pipe, regardless of who owns it.

In sum, the requirement under Section 59.34 of the Commission’s regulations to conduct a special leak survey from the outlet of the meter to the building wall is more stringent, and imposes an additional safety requirement, than what is required by the Federal pipeline safety regulations. According to PHMSA, the language in the Commission’s regulation, however, is confusing when applied upstream of the meter, as it implies a leakage survey would not be required without Section 59.34, and further, implies that certain Chapter 49 Part 192 requirements would not apply to the pipe between the main and the meter. As a result, Section 59.34 gives the impression, albeit unintended, that the customer, and not the operator, is responsible for pipeline safety on part of the pipe between the main and the meter that is service line owned by the customer. PHMSA asserts that while the Commission has generally adopted the federal pipeline safety regulations under 52 Pa. Code § 59.33(b), the specific conflicts that it has identified between Part 192 of the CFR and 52 Pa. Code § 59.34 of the Commission’s regulations must be resolved.

**Discussion**

Section 1510 and the definitions of “service line” and “customer’s service line” found in Section 102 of the Code, make clear that in Pennsylvania either the utility or a customer may own a service line upstream of the meter (or the connection to a customer’s piping at the wall if there is no customer meter). Section 1510, however, provides that it is the “responsibility of the owner of the service line” to maintain the line. Until now, the Commission has interpreted “responsibility of the owner of the service line” in Section 1510 of the Code, as implemented in Section 59.34 of the Commission’s regulations, as requiring the customer to make the repairs to the customer owned portion of the service line upstream of the meter if a public utility leak survey detects a leak on that portion of the line. To be consistent with 49 C.F.R. § 192.13(c) and 49 C.F.R. § 192.703(b), however, the Commission now proposes that the Section 1510 requirement for a customer to maintain its customer-owned service line can be satisfied by allowing the public utility to bill the customer pursuant to the utility’s tariff for any costs it incurs in making the repair or replacement.

 Therefore, to address the issues raised by Mr. Barrett, the Director of State Programs at PHMSA, and to ensure that the public utility can furnish and maintain adequate, efficient, safe, and reasonable service and facilities in the provision of natural gas service, the Commission proposes to revise its regulations to clarify that it is the responsibility of a public utility to design, construct, operate, and maintain a customer’s service line upstream of the inlet of the meter serving the customer (or the connection to a customer’s piping at the wall if there is no customer meter). To conform with Section 1510 of the Code, 66 Pa.C.S. § 1510, and its prohibition against requiring the public utility to acquire or assume ownership of any customer’s service line, the Commission proposes that the utility shall require a customer to pay the public utility for all reasonable costs incurred by the public utility to repair and maintain the customer’s service line upstream of the meter (or the connection to a customer’s piping at the wall if there is no customer meter).

1. **Proposed Changes to Section 59.34**

Specifically, the Commission is considering the following actions, and is seeking comments from all interested parties on these issues, prior to the Commission issuing a Notice of Proposed Rulemaking (NOPR) to revise its regulations. The Commission believes that seeking comments *prior* to issuing the NOPR will allow the Commission to craft the most effective NOPR and streamline the NOPR process.

1. **Amend Section 59.34(b) – Access to Customer Premises**

 Consistent with the discussion above, the Commission proposes deletions in Section 59.34(b) to reflect that the public utility must include the location of all customer-owned service lines upstream of the meter in its records of its natural gas system. The Commission proposes to delete conflicting language in Section 59.34(b) to make it clear that the public utility must maintain information on such service lines.

1. **Amend Section 59.34(c) – Procedure After Survey**

 Consistent with the discussion above, the Commission proposes revisions to Section 59.34(c) to require that the public utility (either directly or through qualified subcontractors) perform repairs or renewals of customer-owned service lines upstream of the meter (or the wall of the property if there is no meter present). The customer would be responsible for repairs or renewals downstream of the meter (or wall if no meter), and the public utility could shut off gas service until such downstream repairs are made to ensure safe and reliable gas service.

1. **Add Section 59.34(d) – Maintenance of Customer’s Service Lines**

 The Commission proposes to add Section 59.34(d) to clarify that the public utility would be responsible for the design, construction, operation, and maintenance of a customer’s service line upstream of the inlet of the meter (or wall if no meter) serving the customer, and that the public utility may bill the customer for all costs for the design, construction, operation, and maintenance of a customer’s service line upstream of the inlet of the meter (or wall if no meter) serving the customer, in accordance with its tariff.

**Request For Comments**

 As indicated above, the Commission seeks comments from all interested parties to issues related to implementation of the proposed amendments of 52 Pa. Code § 59.34 relating to leakage surveys of customer-owned service lines prior to the Commission issuing a NOPR to revise its regulations. In addition to comments regarding any issues that interested parties may wish to raise, the Commission has identified some specific issues for which it desires comments. These issues will have to be addressed in any rulemaking to amend Section 59.34 of the Commission’s regulations, and the Commission believes that receiving comments at this stage will enable the Commission to more effectively craft the proposed amendments to Section 59.34.

 Generally, the Commission perceives two broad categories of issues: first, monetary issues, and second, customer-service issues.

**I. Monetary Issues**

1. **Cost Recovery**

 The Commission seeks comments on how best to implement utility cost recovery from customers for repairs and maintenance of customer-owned services lines upstream of the meter in a manner that will balance the interests of the customer and the utility. Given the potentially high costs for repair work, customers may need time to pay the costs so as to not unduly burden customers with large, unexpected costs. However, utilities will require timely payment of their costs to enable them to carry out repairs expeditiously. Should the Commission allowing the utilities to establish repayment plans, with interest, for customers to pay the cost of repairs to their service lines? What is the maximum repayment period that should be allowed? What interest rate should be applied? The Commission seeks comments responding to these questions.

1. **Can a Natural Gas Distribution Company include the costs in the Distribution System Improvement Charge**

Pursuant to Sections 1350-1360 of the Public Utility Code (66 Pa.C.S. §§ 1350-1360), natural gas distribution companies (NGDCs) have an additional mechanism to recover costs related to the repair, improvement, and replacement of eligible property.The Commission seeks comments on whether repairs and maintenance of a customer‑owned service line upstream of the meter may be includable in an NGDC’s distribution system improvement charge (DSIC). Specifically, Section 1351(2)(iii) defines “eligible property” for NGDCs as including “gas service lines.” The Commission seeks comments as to what extent such costs could be recovered through the DSIC, as opposed to billing the specific customer owning the service line for all costs associated with the repair and maintenance of such lines. Should the customer who owns the service line be required to make a minimum payment, with the remainder being recovered through DISC?

1. **Terminations for non-payment or refusal to provide access**

 The Commission seeks comments as to when a utility may terminate service for customers who do not pay for the costs incurred by the utility for the repair and maintenance of customer‑owned service lines upstream of the meter. Given that the utility may allow a payment plan, issues related to termination for failure to maintain the payment plan should also be addressed. The Commission also seeks comments on when a utility may terminate service if a customer does not provide the utility access to make repairs and what notices are to be given prior to service termination.

1. **Capitalization of Costs**

 The Commission seeks comments as to whether costs related to utility repair and maintenance of customer-owned service lines upstream of the meter should be capitalized in an NGDC’s rate base, as opposed to charging the customer owning the line. To do so, must the utility take ownership of the service line? If so, how is the purchase price to be determined? Must the utility apply for a certificate of public convenience for the service line before including it in rate base? How is the undepreciated book value to be determined? Should the utility include such costs under operations and maintenance in a future rate case?

1. **Potential Tariff Language Regarding Billing, Collection, and Rates**

 The Commission seeks comments on whether uniform NGDC tariff language should be established for any of the above cost recovery methods? Should the uniform tariff language be codified in the regulations or established through a policy statement or order?

**II. Customer-Service Issues**

1. **Utility Communications with Customers**

 The Commission has identified that communication with customers regarding notice, cost estimates, billing, work scheduling, and the like will be a significant issue to address as part of this initiative. Therefore, the Commission seeks comments on how best to address these issues to ensure customers are provided clear and timely communications regarding their options prior to the utility completing the work. Communications will need to include an explanation of why the utility is repairing or maintaining any customer-owned service lines, as well as customer payment and service termination provisions.

1. **Gas Meter and Property Access Issues**

 The Commission seeks comments as to utility access issues to provide utility repair and maintenance of customer-owned service lines upstream of the meter. Specifically, issues related to authority to access customer property, as well as scheduling to accommodate the utility and customer, will need to be addressed.

**Conclusion**

 The Commission stresses that it seeks comments from interested parties for issues beyond this list, as the issues that interested parties may raise that the Commission has not considered will be particularly useful in effectively drafting the NOPR. The Commission believes it will benefit greatly from input from interested parties at this stage, rather than in later stages of the NOPR. Accordingly, under sections 501 and 1501 of the Public Utility Code, 66 Pa.C.S. §§ 501 and 1501, the Commission is seeking comments from all interested parties to issues related to implementation of potential amendments of 52 Pa. Code § 59.34 relating to leakage surveys of customer-owned service lines prior to the Commission issuing a NOPR to revise its regulations; **THEREFORE**,

**IT IS ORDERED:**

1. That the Commission hereby seeks comments related to how Natural Gas Distribution Companies should implement potential amendments to 52 Pa. Code § 59.34 relating to leakage surveys of customer-owned service lines.

2. That a copy of this Tentative Implementation Order shall be published in the *Pennsylvania Bulletin* and posted on the Commission’s website at [www.puc.state.pa.us](http://www.puc.state.pa.us).

3. That written comments at Docket No. L‑2020-3019417 be submitted to the Pennsylvania Public Utility Commission within forty (40) days of the publication of this Tentative Implementation Order in the *Pennsylvania Bulletin*. Comments should be eFiled through the Commission’s eFiling System per the Commission’s Emergency Order dated March 20, 2020, at Docket No. M‑2020‑3019262. You may set up a free eFiling account with the Commission at https://efiling.puc.pa.gov/ if you do not have one. Filing instructions may be found on the Commission’s website at <http://www.puc.pa.gov/filing_resources.aspx>. Public documents filed relative to this proceeding will be available for inspection by searching under the docket number for this proceeding on the Commission’s website at <https://www.puc.pa.gov/search/document-search/>.

4. That the Secretary shall serve an electronic copy of this Order on: The Office of Consumer Advocate; The Office of Small Business Advocate; all jurisdictional natural gas distribution companies; and all city natural gas distribution operations.

5. That the contact person regarding policy and technical issues for this proceeding is Robert Horensky, Gas Safety, Bureau of Investigation and Enforcement, 717-787-1063 or rhorensky@pa.gov. The contact persons regarding legal issues for this proposed rulemaking are Adam D. Young, Assistant Counsel, Law Bureau, 717‑787‑4700 or adyoung@pa.gov, and Steven K. Bainbridge, Assistant Counsel, Law Bureau, 717-783-6165 or sbainbridg@pa.gov. Courtesy copies in Word or Word-compatible format of any filed comments should be provided to the named contact persons.

**BY THE COMMISSION**

Rosemary Chiavetta,

Secretary

(SEAL)

ORDER ADOPTED: August 5, 2021

ORDER ENTERED: August 5, 2021

1. Mr. Zach Barrett is the Director of State Programs in PHMSA’s Office of Pipeline Safety. [↑](#footnote-ref-1)
2. Operator is defined as “a person who engages in the transportation of gas.” See 49 C.F.R. § 192.3 (relating to definitions). [↑](#footnote-ref-2)