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November 1, 2021

VIA ELECTRONIC FILING

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

Re: *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

Dear Secretary Chiavetta:

Enclosed are the Comments of Columbia Gas of Pennsylvania, Inc. to the Tentative Implementation Order issued in the above matter.

Please contact me at the above phone number should you have any questions.

Very truly yours,

A handwritten signature in blue ink that reads "Theodore J. Gallagher". The signature is fluid and cursive, with the first and last names being the most prominent.

Theodore J. Gallagher

enclosures

cc Robert Horensky, Gas Safety, I & E rhorensky@pa.gov
Adam D. Young, Law Bureau, adyoung@pa.gov
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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**COMMENTS OF
COLUMBIA GAS OF PENNSYLVANIA, INC.
TO TENTATIVE IMPLEMENTATION ORDER**

I. INTRODUCTION

Columbia Gas of Pennsylvania, Inc. (“Columbia” or “the Company”), by and through its counsel, hereby submits its Comments to the Commission’s Tentative Implementation Order (“Order”) regarding the potential implementation of amendments to the Commission’s regulation at 52 Pa. Code § 59.34 relating to leakage surveys of customer-owned service lines (“COSL”), which was published in the *Pennsylvania Bulletin* on August 21, 2021.¹ The Commission seeks comments on those potential amendments “to make Section 59.34 consistent with Part 192.13(c) of the Code of Federal Regulations”² as a result of a notification from the United States Department of Transportation, Pipeline and Hazardous Materials Safety Administration (“PHMSA”) regarding a potential conflict between those regulations.³

Columbia appreciates the opportunity to weigh in on the proposals that the Commission discussed in the Order. At the outset, and as will be discussed in further

¹ Per Ordering Paragraph 3 of the Order, the Commission directed that written comments would be due within forty (40) day of publication of the Order in the *Pennsylvania Bulletin*. By a Secretarial Letter issued on September 24, 2021, the Commission extended the due date for comments from September 30, 2021 to November 1, 2021.

² Order at p. 1.

³ Order at p. 2.

detail below, Columbia disagrees with the underlying premise of the Order that there is a potential conflict between Part 192 and Section 59.34 of the Commission's regulations. As such, the proposed changes to Section 59.34 are unnecessary. Instead, the current language of Section 59.34 is written in such a way that it enables natural gas utilities to comply with *both* CFR Part 192 and Section 1510 of the Pennsylvania Public Utility Code.⁴ However, the proposed amendments, if adopted, would conflict with, and violate, Section 1510.

In addition to the comments provided herein, Columbia commends to the Commission's attention and consideration the comments submitted by the Energy Association of Pennsylvania in this matter.

II. COMMENTS

A. Section 59.34 of the Commission's Regulations does not conflict with 49 C.F.R. Part 192; 49 C.F.R. Part 192 acknowledges that there are situations where customers own and maintain service lines

In its Order, the Commission notes that:

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]."[] 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).⁵

⁴ 66 Pa.C.S. § 1510.

⁵ Order at p. 3.

With respect to COSLs, Section 59.34(a) of the Commission’s regulations requires a public utility to “establish and execute a plan by which it will periodically survey each customer-owned service line for leakage” and that such “plan shall conform with or exceed the standards established in 49 CFR 192.723 (relating to distribution systems; leakages and procedures)[.]”⁶ While 49 CFR 192.723 establishes protocols and intervals for leakage surveys, Section 59.34(a) of the Commission’s regulations requires Pennsylvania utilities to include COSLs in such surveys. Thus, there is no inherent or even implied conflict between Section 59.34(a) and 49 CFR Section 192.723.

Regarding Section 59.34(c) of the Commission’s regulations, if the survey of a COSL reveals leakage, “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.”⁷ The regulation is consistent with Section 1510 of the Pennsylvania Public Utility Code, which mandates that “Maintenance of service lines shall be the responsibility of the owner of the service line.”⁸ As described in the Order, PHMSA’s concern is that an operator’s responsibility to “maintain, modify as appropriate, and follow the plans, procedures, and programs that it is required to establish under [Part 192]”⁹ and the requirement in 49 CFR Section 192.703(b) that “each pipeline that becomes unsafe must be replaced, repaired, or removed from service”¹⁰ conflict with the Commission’s regulations because Federal regulations “make the *operator* responsible for compliance with the Federal

⁶ 53 Pa. Code § 59.34(a).

⁷ 53 Pa. Code § 59.34(c).

⁸ 66 Pa.C.S. § 1510.

⁹ Order at p. 3.

¹⁰ Order at pp. 3, 6.

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.”¹¹

Respectfully, Columbia does not share PHMSA’s concern. Rather than creating a conflict with Part 192, Section 59.34 of the Commission’s regulations has established a regulatory requirement regarding COSLs that enables a Pennsylvania utility to comply with its obligations under Part 192 without undertaking the maintenance of COSLs in violation of Pennsylvania Public Utility Code Section 1510. That is, the directive under Section 59.34(c) that the utility shall require the customer to repair or renew the line, and may shut off gas service until repair or renewal has been effected satisfies the requirement in in 49 CFR Section 192.703(b) that each pipeline that becomes unsafe must be replaced, repaired, or removed from service. Moreover, requiring the customer to undertake the repair or renewal is an example of, rather than a deviation from, an operator exercising responsibility for compliance with the Federal pipeline safety regulations between the main and the outlet of the meter.

In compliance with both 49 CFR Section 192.723 and Section 59.34(a) of the Commission’s regulations, Columbia conducts periodic leakage surveys within the intervals established in Section 192.723¹² and it includes COSLs in those surveys. In compliance with both 49 CFR Section 192.703 and Section 59.34(c) of the Commission’s regulations, when Columbia discovers leakage on a COSL, Columbia ensures that the service line is replaced, repaired, or taken out of service. To that end, Columbia notifies the customer of the leakage and instructs them to have repair or replacement of the COSL completed by an Operator Qualified (“OQ”) plumber. Depending on the

¹¹ Order at p. 6.

¹² In fact, per testimony in Columbia’s base rate cases since 2008, Columbia performs leak surveys more frequently than required under Federal pipeline safety regulations.

classification of the leakage, Columbia will shut off service until repair or replacement has been completed (hazardous leakage), or it will advise the customer that they have ten days to repair or replace the COSL (non-hazardous leakage). For leakage that is classified as non-hazardous, if the customer does not remedy the leakage within ten days, Columbia will shut off service to the premises.

Similarly, Columbia does not see a conflict between Section 59.34(c) of the Commission's regulations and 49 CFR Section 192.13(c).¹³ Section 192.13(c) requires Columbia, as an operator, to "maintain, modify as appropriate, and follow the plans, procedures, and programs that it is required to establish under Part 192."¹⁴ There is nothing in Section 192.13(c), or any other section of Part 192, that requires an operator to perform or pay for the actual work that is necessary for compliance. Nor does Part 192 require an operator to own service lines.

In fact, 49 CFR Section 192.16 contemplates that there will be instances where customers own *and maintain* a portion of the service line, in that it requires an operator of service lines to provide various notices to customers when the operator does not maintain the service line. The Order is silent as to Section 192.16, and Columbia respectfully submits that it must be taken into consideration in this matter since it demonstrates consistency, rather than conflict, between Part 192 and Section 59.34 of the Commission's regulations. 49 CFR Section 192.16 provides, in pertinent part, as follows:

(a) This section applies to each operator of a service line who does not maintain the customer's buried piping up to entry of the first building downstream, or, if the customer's buried piping does not enter a building,

¹³ Order at p. 6.

¹⁴ 49 C.F.R. § 192.13(c)

up to the principal gas utilization equipment or the first fence (or wall) that surrounds that equipment. For the purpose of this section, “customer's buried piping” does not include branch lines that serve yard lanterns, pool heaters, or other types of secondary equipment. Also, “maintain” means monitor for corrosion according to § 192.465 if the customer's buried piping is metallic, survey for leaks according to §192.723, and if an unsafe condition is found, shut off the flow of gas, advise the customer of the need to repair the unsafe condition, or repair the unsafe condition.

(b) Each operator shall notify each customer once in writing of the following information:

(1) The operator does not maintain the customer's buried piping.

(2) If the customer's buried piping is not maintained, it may be subject to the potential hazards of corrosion and leakage.¹⁵

Therefore, rather than conflicts between Section 59.34 of the Commission’s regulations conflicts with provisions of 49 CFR Part 192, Columbia submits that Section 59.34 is wholly consistent with Part 192, since the latter specifically acknowledges that there are instances where customers are responsible for maintaining service lines and where the operator does not maintain customer-owned piping.

The impetus for the Tentative Implementation Order, and for the proposed amendments to 52 Pa. Code § 59.34 therein, is a concern about a *potential* conflict between federal regulations and Section 59.34.¹⁶ As discussed above, Columbia submits that there is no such conflict. In fact, 49 CFR Section 192.16 is inconsistent with the conclusion that “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

¹⁵ 49 C.F.R. § 192.16 (emphasis added).

¹⁶ Order at p. 2.

Commission's regulations."¹⁷ Accordingly, Columbia respectfully requests that the Commission not proceed further toward the regulatory revisions described in the Order since those revisions are unnecessary.

B. The Commission Cannot Legally Implement its Proposed Revision of 52 Pa. Code § 59.34(c) and its Proposed Addition of 52 Pa Code § 59.34(d)

In the Order, the Commission proposes to amend Section 59.34(c) of its regulations "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 wall of the property if there is no meter present)."¹⁸ Further, the Commission proposes to add a new Section 59.34 "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 to allow the public utility to bill the customer for such activities.¹⁹ As discussed below, both of these proposed changes to Section 59.34 are prohibited by the Pennsylvania Public Utility Code.

As noted above, 49 CFR Section 192.16 acknowledges that there are instances where customers are required to maintain service lines. Consistent with that Federal regulation, the definitional section of the Pennsylvania Public Utility Code recognizes a distinction between a "Customer's service line"²⁰ and a "Service line."²¹ Enacted in

¹⁷ Order at p. 6.

¹⁸ Order at 9.

¹⁹ *Id.*

²⁰ Defined as "The 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." 66 Pa.C.S. § 102.

²¹ Defined as "The 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 the meter." 66 Pa.C.S. § 102.

1984, Section 1510 of the Pennsylvania Public Utility Code provides that “Maintenance of service lines shall be the responsibility of the owner of the service line.”²²

It is axiomatic that the Commission may not implement regulations that are not authorized by, or conflict with, with statutory law. Since the Order’s proposed amendment to Section 59.34(c) and proposed addition of new Section 59.34(d) would put the responsibility for maintenance of COSLs squarely upon the public utility, they would directly conflict with the statutory requirement that maintenance of service lines shall be the responsibility of the owner of the service line. Consequently, Columbia respectfully submits that the Public Utility Code prohibits the Commission from implementing its proposed amendment to Section 59.34(c) and its proposed new Section 59.34(d).

Columbia wishes to note that the distinction between COSLs and company owned service lines has presented operational challenges over the years. Columbia, which is made up of companies that it acquired in the twentieth century, provides service to twenty-six counties in the Commonwealth. When they were acquired, some of the companies that make up Columbia’s service territory owned the service line from the main up to the meter. For other of the acquired companies, customers owned the service line between the main and the meter. Consequently, whether a customer or the Company is responsible for maintenance of the service line beyond the main is not uniform across Columbia’s service territory. Section 1510 of the Public Utility Code prevents Columbia from attempting to unify service line protocols across its system since it provides that

²² 66 Pa.C.S. § 1510.

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 appurtenance had been installed on or before the effective date of this section.²³

In addition to the lack of operational uniformity that Section 1510 has occasioned, Columbia submits that the statute has presented customer relations issues over the years. Customers who are informed of leakage on their COSL and that they must have the service line repaired or replaced by a qualified plumber are often confused and angered. It is not uncommon for such a customer to reach out to their legislative representative who, in turn, will contact Columbia. It is also not uncommon that the legislator is unaware that Columbia's hands are tied until the Company explains what Section 1510 is and what its requirements are. All of this customer and legislator contact takes up time and resources of Columbia personnel, which would not be necessary but for the existence of Section 1510.

Thus, while Columbia takes the position that Section 59.34 of the Commission's regulations does not conflict with Federal pipeline safety regulations, the Company would not be opposed to changes that would make the maintenance of service lines uniform across its service territory. However, there must be legislative changes before the Commission would be able to proceed with the amendment to Section 59.34(c) and the addition of Section 59.34(d) that are proposed in the Order.

²³ *Id.*

C. Comments to Monetary Issues in the Order

1. Cost Recovery

The Commission seeks commentary regarding utility cost recovery from customers for COSL repairs and maintenance “in a manner that will balance the interests of the customer and the utility.”²⁴ As discussed above, Section 1510 of the Pennsylvania Public Utility Code mandates that maintenance of service lines shall be the responsibility of the owner of the service and, therefore, prohibits utility repair and maintenance of COSLs in the Commonwealth. Consequently, Columbia respectfully submits that consideration of cost recovery issues for COSL repair and maintenance upstream are matters that should be held in abeyance until such time as Pennsylvania statutory law is amended to permit utilities to repair and maintain COSLs.

With respect to the suggestion in the Order that utilities could be permitted to establish repayment plans, with interest, Columbia notes that its billing system is not currently capable of generating such bills. Columbia has not undertaken a specific cost analysis to determine how much it would cost to program its system to bill for COSL in the manner suggested in the Order. However, based upon its experience with programming cost for other billing system revisions, Columbia estimates that it would cost at least \$250,000 to do so. Columbia submits that this cost would be difficult to justify, particularly when there is not support for a finding that utility adherence to Section 53.54 of the Commission’s regulations poses a safety problem.

Moreover, the Order makes no distinction between service lines that are owned by ratepayers and service lines that are owned by non-ratepayer landlords. Columbia’s billing system is not able to issue bills to individuals who are not ratepayers. Therefore,

²⁴ Order at p. 10.

billing landlords for COSL maintenance or repair would involve either programming the Company's billing system or manual tracking, billing, and collecting for such accounts. Either way, billing non-ratepayer landlords would be costly.

Further, Columbia submits that implementing installment billing, with interest, may subject the Company to laws and regulations that are beyond the purview of this Commission. Columbia does not wish to become subject to laws or regulations that govern installment loans. Therefore, the issues of the maximum payment period and the interest rate to be applied are moot, from Columbia's perspective.

Columbia submits that, in the event utility maintenance and repair of COSLs can be legally implemented at some future time, the matter of cost recovery should be considered on a utility-by-utility basis. The manner of cost recovery that is best suited for Columbia may not be suitable to Peoples Natural Gas Company LLC and Peoples Gas Company LLC.²⁵

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

As discussed above, if utilities become required to incur costs for maintenance or replacement of COSLs, cost recovery should be considered on a utility-by-utility basis. With that said, Columbia submits that cost recovery through the Distribution System Improvement Charge should be one of the available options to an impacted utility.

3. Terminations for non-payment or refusal to provide access

Should utility repair and maintenance of COSLs be implemented, there will be situations where the utility will need to the landlord for the services performed, rather

²⁵ Columbia, Peoples Natural Gas Company LLC, and Peoples Gas Company LLC are the only utility companies that would be impacted by the proposed revisions to 59 Pa. Code § 59.34.

than the customer. In those instances where the utility's customer is not the property owner, service termination would not be proper in the event of non-payment. Rather, the utility would need to avail itself of collection action outside the purview of the Commission. Columbia submits that this would leave the impacted utility at risk for non-recovery, or partial recovery, as it pursues delinquent payments for COSL maintenance and repair. The impacted utility would also be likely to incur fees associated with pursuing its legal remedies for such recovery. In the event that a utility incurs such costs, the utility should be able to include such items in its cost of service in base rate proceedings and recover those costs in its rates.

As discussed above, Columbia would need to incur costly programming in order to bill for installments, with interest, for the cost of COSL maintenance or repair. Currently, Columbia is capable of including non-utility service items as a separate line item on its bills under a Miscellaneous Revenue Account ("MRA"²⁶). However, service termination is not permitted for MRA items, since they are not utility service. Columbia is concerned that termination for non-payment of COSL repair or maintenance billings may present legal issues, since it may be argued that COSL repair or maintenance by the utility is not a service that is "necessary for the physical delivery of residential public utility service"²⁷ and, therefore, does not qualify as a basic service under the Commission's regulations. If so, termination for non-payment of COSL repair or maintenance would not be an available remedy, since termination for non-payment of nonbasic services is prohibited under the Commission's regulations.

²⁶ Programming for MRA billings does not currently provide for the billing of interests charges.

²⁷ 52 Pa. Code § 56.2

Regarding whether a utility may terminate service if a customer does not provide access to make repairs, under Columbia's current tariff, the Company is permitted to terminate service without notice in the event that a customer does not provide reasonable access for the Company to determine if gas is being carried, distributed, and burned in a proper and safe manner.²⁸ If the Commission were to implement utility repair of COSLs, Columbia submits that this Tariff rule would govern in the event that a customer were to refuse access to make such repairs.

4. Capitalization of Costs

Columbia submits that if it is required to repair and replace COSLs, then it should be able to capitalize the costs in its rate base as if Columbia owned the facilities. Cost recovery on this basis would avoid the pitfalls discussed above regarding installment billing to the customer.

5. Potential Tariff Language Regarding Billing, Collection, and Rates

Since the threshold determination is yet to be made as to whether there is a conflict between Federal pipeline safety regulations and Section 59.34 of the Commission's regulations, and not just a *potential* conflict, Columbia submits that it is premature at this time to address the issues of billing, collection, and rates. If the Commission determines that there is a conflict that must be resolved, Columbia suggests that proceeding further with proposed amendments to the Commission's regulations would require the issuance of a Notice of Proposed Rulemaking ("NOPR"). It would be appropriate to consider the issues of billing, collection, and rates in that proceeding.

²⁸ Columbia Gas of Pennsylvania, Inc. – Tariff Gas – Pa. P.U.C. No. 9, Section 11.5.

Also, with particular focus on the Commission’s inquiry about whether uniform NGDC tariff language should be established for cost recovery mechanisms, it is noteworthy that only the Peoples companies and Columbia are impacted by laws and regulations that address COSL maintenance and repair. With that in mind, Columbia would suggest that uniform tariff language would probably not be necessary or advisable.

D. Comments to Customer-Service Issues in the Order

1. Utility Communications with Customers

Columbia agrees with the Commission 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.”²⁹ However, given Columbia’s position that there is no conflict between Federal pipeline safety regulations and Section 59.34 of the Commission’s regulations, Columbia respectfully submits that it is premature to address how best to deal with customer communication issues at this juncture. If the Commission proceeds further with this matter, these items should be taken up in the context of a NOPR.

2. Gas Meter and Property Access Issues

The Commission seeks commentary as to utility access to provide repair and maintenance of COSLs and, specifically, utility “authority to access customer property, as well as scheduling to accommodate the utility and the customer.”³⁰ Columbia’s current tariff provides authority for the Company to access customer property and to terminate service without notice for a customer’s refusal to provide reasonable access to

²⁹ Order at p. 12

³⁰ *Id.*

property and to its equipment on customer property.³¹ Regarding scheduling to accommodate the utility and the customer, if the Commission's regulations are revised as proposed in the Order, the Company's Tariff could be revised to address that issue.

III. CONCLUSION

Columbia appreciates the opportunity to comment on the issues presented in the Commission's Tentative Implementation Order and the proposed changes to the Commission's regulations discussed therein. The proposed changes find their genesis in concerns expressed by the Federal Pipeline and Hazardous Materials Safety Administration regarding potential conflicts between Federal pipeline safety regulations under 49 CFR, Part 192 and this Commission's regulations at 52 Pa. Code § 59.34, relating to leakage surveys of customer-owned service lines. As discussed above, Columbia does not share the view that Section 59.34 of the Commission's regulations conflicts with Federal pipeline safety regulations. In fact, Federal pipeline safety regulations recognize and address situations where operators do not maintain customer-owned piping. Section 59.34 of the Commission's regulations, therefore, is wholly consistent with Part 192.

Moreover, the proposed revisions to Section 59.34 of the Commission's regulations conflict with Section 1510 of the Pennsylvania Public Utility Code, which requires that service line maintenance shall be the responsibility of the owner of the service line.

Given the consistency between 52 Pa. Code § 59.34 and 49 CFR, Part 192, and the legal obstacles to the creation of regulations that conflict with Pennsylvania statutory

³¹ Columbia Gas of Pennsylvania, Inc. – Tariff Gas – Pa. P.U.C. No. 9, Section 11.5.

law, Columbia respectfully requests that the Commission forego the regulatory changes that are proposed in the Tentative Implementation Order and issue an Order terminating this proceeding.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Theodore J. Gallagher", is written over a horizontal line.

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Date: November 1, 2021

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