



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
P.O. BOX 3265, HARRISBURG, PA 17105-3265

IN REPLY PLEASE
REFER TO OUR FILE

2775

September 23, 2009

Via 1st Class Mail and Email

Jack Davenport
Bureau of Occupational and Industrial Safety
Department of Labor and Industry
Sixteenth Floor
Labor and Industry Building
651 Boas Street
Harrisburg, PA 17121

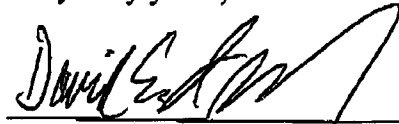
RECEIVED
SEP 23 2009
10:21 AM

Re: Propane and Liquefied Petroleum Gas Proposed Regulations
34 Pa. Code, Part I, Chapter 13
Regulation No. 12-76

Dear Mr. Davenport:

Enclosed please find a copy of the Comments of the Pennsylvania Public Utility Commission in the above-referenced matter. If you have any questions, please do not hesitate to contact me.

Very truly yours,



David E. Screven
Assistant Counsel

Enclosure

cc: IRRRC

SEP 25 AM 9:27

Before the Department of Labor and Industry

Proposed Rulemaking regarding Propane and Liquefied Petroleum Gas [34 PA. CODE CH. 13] Regulation No. 12-76

COMMENTS OF THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

Introduction

In 2002, the General Assembly enacted the Propane and Liquefied Petroleum Gas Act (P.L. 421, No. 61) ("Act 61"), which is codified at 35 P.S. §§ 1329.1-1329.19, that amended and replaced the previously enacted Liquefied Petroleum Gas Act, act of December 27, 1951 P.L. 1793 No. 475 (35 P.S. §§ 1329.1-1329, *repealed*). Act 61 directed the Department of Labor and Industry ("L&I") to promulgate regulations and establish fees to implement Act 61.

In accordance with the directive set forth in Act 61, L&I issued a proposed rulemaking governing the design, inspection and construction of containers and pertinent equipment for the storage and handling of liquefied petroleum gases. On July 25, 2009, the proposed rulemaking proposed rulemaking was published in the Pennsylvania Bulletin. *See* 39 Pa.B. 4340. The proposed rulemaking is intended to amend the existing regulations regarding liquefied petroleum gas at 34 Pa. Code, Chapter 13, Title I, Subchapter A (relating to liquefied petroleum gas). *See* 34 Pa. Code §§ 13.1 – 13.222. The proposed rulemaking also purports to repeal outdated sections in the current regulations with adopted national standards. L&I has employed propane inspectors and the proposed rulemaking establishes rules and regulations through national standards for

the propane inspectors to utilize during inspections. L&I has invited interested persons to submit written comments, suggestions or objections regarding this proposed rulemaking.

Discussion

The Pennsylvania Public Utility Commission ("PaPUC") objects to the scope of L&I's proposed regulations. In particular, the PaPUC believes that L&I's proposed regulations create a jurisdictional conflict where none existed previously. L&I's proposed regulations purport to exert exclusive jurisdiction over propane distribution systems even when the system is operated by a regulated public utility (or an entity which should be operated as a regulated utility) subject to the jurisdiction of the PaPUC. The PaPUC asserts that the proposed regulations should be amended in order to restore the exemption for 'public utility distribution systems' that is presently set forth in the existing regulations since we believe that Act 61 does not expressly provide any basis for the grant of sole jurisdiction over propane distribution systems with the L&I.

Additionally, L&I avers that the proposed rulemaking will bring the Commonwealth's liquefied petroleum gas program up to current national standards of safety, training and inspection by adopting recognized national standards governing the use, storage, and handling of liquefied petroleum gas. Nevertheless, the PaPUC asserts that the United States Code and the federal Department of Transportation's regulations should also be applied to propane distribution systems throughout the Commonwealth. Accordingly, the PaPUC proposes that L&I modify the proposed regulations in the limited ways discussed below.

§ 13.1. Definitions.

The PaPUC was created for the purposes of regulating various public utilities. *See* 66 Pa. C.S. §§ 102 et. seq. Section 102 of the Public Utility Code defines 'public utility' as follows:

Any person or corporation now or hereafter owning or operating in this Commonwealth equipment or facilities for:

- (i) Producing, generating, transmitting, distributing for natural or artificial gas...to or for the public for compensation.

* * *

- (v) Transporting or conveying natural or artificial gas, crude oil, gasoline, or petroleum products....by pipeline or conduit, for the public for compensation.

66 Pa. C.S. § 102.

Based on the above statutory provisions, the Public Utility Code sets forth a legislative mandate for the PaPUC to regulate all *persons or corporations* that own or operate any *flammable gas* distribution systems, both propane and non-propane. While the Public Utility Code does not explicitly mention "propane gas", the PaPUC notes that propane is merely a byproduct of petroleum production.

As mentioned above, the PaPUC has a legislative mandate to regulate *all* aspects of public utilities. Some of the PaPUC's jurisdictional natural gas utilities have operational Gas Beyond the Mains (GBM) programs. These utilities use the GBM program to supply residential or commercial developments with propane gas via a distribution system pipeline until growth will support the extension of its gas mains to

that development in an economically feasible manner. Clearly, these propane distribution systems fall under the PaPUC's jurisdiction.

L&I's proposed rulemaking attempts to define its jurisdiction over liquefied petroleum gas by adding the definitional terms "Distributor" and "Transfer" in this section and by deleting the term "Dealer", which had previously expressly exempted public utilities that distributed liquefied petroleum gas by pipelines, from this section. In particular, the proposed regulations define the term "Transfer" to include the term pipeline which provides for the distribution systems used by traditional propane companies and natural gas public utilities that utilize pipelines to provide propane service to their customers. The PaPUC notes that the exemption for "public utility distribution systems," which was set forth in the definition of "System" in the prior regulation has been omitted from the proposed rulemaking. Cf. 34 Pa. Code § 13.1.

Based on the revisions to the definitional section set forth in the proposed regulation to the definitional, the PaPUC believes the scope of the proposed regulations is over broad and purports to provide L&I with exclusive jurisdiction over all liquefied petroleum gas or propane distribution systems throughout the Commonwealth, including those operated by natural gas public utilities presently under the jurisdiction of the PaPUC.

Accordingly, based on the definitional section set forth in the proposed regulations, there appears to be a jurisdictional conflict between the PaPUC's enabling statute, the Public Utility Code, 66 Pa. C.S. § 101, et seq., and L&I's interpretation of Act 61 regarding propane service. The PaPUC does not believe that Act 61 has preempted it

from exercising any jurisdiction over propane distribution systems. Therefore, it is the opinion of the PaPUC that the proposed regulations conflict with the Public Utility Code as the regulations can be interpreted as vesting sole jurisdiction over propane distribution systems with the L&I.

The PaPUC believes that the proposed regulations create an extensive jurisdictional conflict where none existed previously. Nevertheless, the PaPUC believes that this jurisdictional dilemma with L&I can be resolved. The previous regulations expressly exempted public utilities; however, the proposed regulations remove that exemption. Accordingly, the PaPUC proposes the following change be made to section 13.1:

Distributor--

- (i) A person authorized by the Department to sell or transfer LPG.**
- (ii) The term includes a cylinder exchange cabinet or a dispensing station.**
- (iii) The term excludes all public utilities regulated by the Public Utility PaPUC distributing liquefied petroleum gas by pipelines.**

The PaPUC strongly believes that the definition of 'Distributor' contained in the proposed regulations should be amended in order to restore the exemption for 'public utility distribution systems' that is presently set forth in the existing regulations since Act 61 does not expressly provide any basis for the grant of sole jurisdiction over propane distribution systems with L&I. §

13.4 Adoption of national standards

The proposed rulemaking adopts recognized national standards governing the use, storage and handling of liquefied petroleum gas and purportedly brings the Commonwealth's liquefied petroleum gas program up to current national standards of safety, training and inspection. In particular, these standards require propane systems to comply with the National Fire Protection Association (NFPA) Code # 54 and #58.

The PaPUC asserts that the United States Code and the federal Department of Transportation's regulations for safety and inspection should also apply to propane distribution systems throughout the Commonwealth. These regulations can be found at 49 CFR § 192 and include propane among the flammable gases regulated by the Department of Transportation's Pipeline and Hazardous Material Administration (PHMSA). The PaPUC notes that it has entered into an agreement with the PHMSA to enforce its regulations and standards related to inspecting pipeline facilities transporting petroleum products including propane. Under this agreement, the PaPUC's gas safety inspectors, acting as agents of the federal government under the authority of the Federal Pipeline Safety Act, routinely go out and inspect the facilities of propane gas operators providing service in the Commonwealth utilizing the more stringent PHMSA national standards.

It appears that the proposed rulemaking does not follow the federal regulations regarding propane distribution system safety inspections and enforcement. Liquefied petroleum gas is a highly flammable and combustible material which can pose a serious threat to life and property if stored or handled improperly or if a leak occurs. The

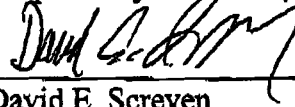
Commonwealth should ensure that our inspectors are using the most stringent standards of safety, training and inspection in order to prevent catastrophes regarding propane gas.

The PaPUC states that PHMSA's national standards that it utilizes to perform safety inspections under its agreement with the PHMSA should be incorporated into the proposed regulation. These national standard should be applied to propane distribution systems throughout the Commonwealth. Moreover, the proposed regulations could possibly be deemed to be contrary to law if the national standards of the PHMSA are also not incorporated and adopted in some manner therein.

Conclusion

The PaPUC respectfully requests that L&I consider its foregoing comments in finalizing the revisions to its proposed regulations related to propane service.

Respectfully submitted,



David E. Screven
Assistant Counsel

Robert F. Young
Deputy Chief Counsel

Bohdan R. Pankiw
Chief Counsel

Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105
(717) 787-5000
Dated: September 23, 2009