



2950
National Fuel

RECEIVED
IRRC

2012 JUL 19 AM 10: 57

Christopher M. Trejchel
Assistant General Counsel

July 16, 2012

VIA ELECTRONIC FILING & U.S. MAIL

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

RE: Rulemaking Re Amendment to
52 Pa. Code § 59.18 Meter Location
Docket No. L-2009-2107155

Dear Secretary Chiavetta:

Enclosed please find an original and 15 copies of National Fuel Gas Distribution Corporation's Comments regarding Rulemaking Re Amendment to 52 Pa. Code § 59.18 Meter Location at Dkt. No. L-2009-2107155.

Very truly yours,

Christopher M. Trejchel
(814) 871-8060

CMT/cjc

Enclosures

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

2012 JUL 19 AM 10: 57

2950

Rulemaking Re Amendment to
52 Pa. Code § 59.18 Meter Location

:
: COMMENTS

:
:
:
:
:
:

Docket Number: L-2009-2107155

COMMENTS OF
NATIONAL FUEL GAS DISTRIBUTION CORPORATION

TO THE PENNSYLVANIA PUBLIC UTILITY COMMISSION:

I. Introduction.

On July 28, 2011, the Pennsylvania Public Utility Commission (the "Commission") entered a *Proposed Rulemaking Order* to amend its existing regulations at 52 Pa. Code § 59.18 regarding the location of natural gas meters. The *Proposed Rulemaking Order* was subsequently published in the Pennsylvania Bulletin on June 16, 2012, allowing for comments to be filed within 30 days.

National Fuel Gas Distribution Corporation ("National Fuel" or "the Company") submits the following Comments regarding the *Proposed Rulemaking Order*. National Fuel also supports the Comments of the Energy Association of Pennsylvania, of which National Fuel is a member, filed contemporaneously at this docket.

II. Comments.

A. Conforming to Federal Regulations

Changes to the Commission's existing regulations are not needed in order to conform to Federal regulations.

In its *Proposed Rulemaking Order*, the Commission references a report from the Gas Safety Division that concludes that Federal regulations that address safe meter set installation and location "are in conflict with the existing Pennsylvania regulations." *Proposed Rulemaking Order* at 8. This conclusion was subsequently adopted by the Commission in its *Proposed Rulemaking Order*. However, the Commission does not explain exactly which provisions of the state and federal regulations are inconsistent.¹

The state rule at 52 Pa. Code § 59.18 provides that meters may be located inside or outside, should not be subjected to excessive heat, should be located near the point of entry of the pipe serving the building, should be physically protected if required, and shall be at a location selected by the utility. Rather than being "inconsistent," these simple provisions are very consistent with the federal regulations.² Because the federal regulations are already adopted as state regulation and the state and federal requirements are consistent, the Commission's stated need and justification for these proposed regulatory changes is misplaced.

B. Expansion of Federal Requirements

The Commission's *Proposed Rule* would expand existing state and federal requirements regarding meter and regulator installations.

¹ The Commission's regulations in Chapter 59 adopt as state regulation the Federal gas safety regulations set forth in 49 CFR Parts 191, 192, 193 and 199. *See*, 52 Pa. Code § 59.33.

² *See*, for example, 49 CFR §§ 192.353, 192.355, 192.357, 192.361, 192.363, and 192.365.

In its *Proposed Rulemaking Order*, the Commission states that “The proposed amended language imposes no additional regulatory requirements upon NGDCs that these utilities are not already subject to under federal regulations.” *Id.* at 9. Contrary to this statement, the proposed regulation set forth in Annex A contains a number of provisions that would impose new additional regulatory requirements on natural gas utilities that are more stringent than the Federal regulations. Following is a list of new requirements that appear in the proposed rule but are not currently required under Federal regulations:

- Requiring the service line to terminate in the building it enters.
- Expressly listing potential sources of damage by outside forces to be considered.
- Requiring the service line to be in a straight line perpendicular to the main.
- Restricting installation of meters beneath or in front of openings that “may” be used as emergency fire exits.
- Requiring outside meters to be placed adjacent to the building served.
- Requiring utilities to refer to the guide material (undefined) under 49 CFR 192.355.
- Requiring all inside meters to be attached to an operable outside shut off valve.
- Requiring inside regulators connected to steel service lines to be relocated to the outside by December 31, 2020.
- Precluding meters and service regulators from being located in specific types of spaces such as engine and boiler rooms.

C. Proposed Changes to Annex A

Following are National Fuel’s suggested changes to the proposed rule set forth in Annex A. For convenience a redlined version of Annex A is attached to these Comments as Exhibit A.

§ 59.18(a) - General Requirements

Subpart (a)(1)

National Fuel recommends deleting the second sentence. These rules apply to all customers, including commercial and industrial ratepayers. Although the majority of the time, the service line will end in the building in which the service line enters, the Commission should maintain the existing flexibility in the current rules regarding the termination point of a service line. Large commercial and industrial customers often have unique needs that may require a service line to enter multiple buildings. Eliminating this operational flexibility could prove to be unnecessarily restrictive and problematic for certain customers and for utilities where unique operational circumstances exist.

Subpart (a)(2)

National Fuel recommends adding the phrase “when practical” to the beginning of this rule in order to allow some flexibility for unique circumstances (*e.g.* high pressure services).

Subpart (a)(4)

National Fuel recommends removing the list of items from the regulation. As written the list could be read as excluding other potential outside forces. Also of concern is that persons who are responsible for creating an unsafe condition may be able to rely on this specific listing as a defense to a utility’s claim for damages to its facilities. For example, a common problem utilities face in the winter is meter freeze-ups due to water dripping off a roof onto the meter, snow/ice sliding off a roof, or a customer piling snow up on a meter. A freezing water drip is typically caused by improper insulation or clogged/leaky gutters; keeping roof edges clear of snow/ice build-up is the customer’s and/or property owner’s responsibility; and customers or property owners sometimes intentionally pile snow on the gas meter. When these events occur

and result in damage to the meter and/or regulator, National Fuel may seek recovery of its expenses/losses from the customer or property owner responsible for creating the unsafe condition. A customer or property owner challenging responsibility for such damages could argue that Subpart (a)(4) created a duty in the utility to anticipate this exact type of damage because it is expressly stated in the regulation. This could form the basis for an argument that the utility was negligent *per se* and, therefore, the proposed regulation could effectively create a potential legal defense where one never existed for an irresponsible customer or property owner. Presumably, such a result is not the Commission's intent.

Deleting the 4-item list does not change what the Commission is attempting to accomplish as the proposed rule will still require utilities to consider potential damage from outside sources when selecting the location for its meter or service regulator. The major difference is that with these suggested changes, the rule will not provide a potential legal defense for irresponsible customers and property owners whose failure to properly maintain their properties results in damage to the utility's meter or regulator.

Subpart (a)(5)

Consistent with the comments to Subpart (a)(4) above, National Fuel suggests that Subpart (a)(5) be modified to clarify that the customer or property owner will be responsible for costs and expenses for installation of additional protection or relocation of the meter or regulator when the unsafe condition in question is due to the customer's or property owner's negligence. Protection of facilities on a customer's premises needs to be a joint effort between the utility and the customer. After initial installation, the utility should not be held responsible for protection and relocation costs that occur due to a later change in conditions on the premises that is within the control of the customer or property owner.

Subpart (a)(7)

National Fuel suggests adding language to the regulation that clarifies that the customer shall provide the utility access, at all reasonable times, to the meter or regulator for purposes of performing the functions set forth in Subpart (a)(7). This language is needed to clarify for customers that the utility must be provided reasonable access to its meters and regulators. It is not unusual for a customer to refuse the utility access to perform a work order that the customer doesn't want the utility to complete, such as a meter removal, meter relocation, or meter shut off/lock. Adding this provision would eliminate any doubts as to the utility's right of access to its equipment and would ensure that this provision is consistent with 52 Pa. Code § 59.24 *Access to Meters and Discontinuance of Service*.

Subpart (a)(8)

National Fuel recommends a small but significant change to Subpart (a)(8). The proposed regulation would require service lines to be installed in a straight line perpendicular to the main. Installing the service line perpendicular to the main line is preferred, but is not always practical. This is particularly true in rural areas where houses are often set back far from the road such that it would be too difficult and costly to the utility and the customer to install the service line perpendicular to the main. By beginning this regulation with the words "when practical," the Commission would provide the flexibility needed to address the variations in properties served by gas utilities and the day-to-day obstructions (both known and unknown) encountered in the field that may require a service line to be installed so that it is neither straight nor perpendicular to the main.

Subpart (a)(9)(i)

Utility facilities should never be located where they would block or obstruct a designated emergency fire exit. However, Subpart (a)(9)(i) restricts utilities from placing meters and regulators beneath or in front of windows or other openings that “may be used as emergency fire exits.” Arguably any window that is large enough to fit a person through it may be used as an emergency fire exit. The Commission’s purpose for writing this proposed rule in such a broad and ultimately restrictive manner is not clear. As written, this rule would preclude placement of a meter or regulator under any window, even a 2nd floor window. If the meter and regulator is not blocking or otherwise obstructing access to/from a window, what is the justification and rationale for precluding the placement of the meter under that window? As another example, consider a utility providing gas service to an office building that has continuous glass windows on all four sides of the building. Pursuant to this rule, the utility would have no place to install a meter for service adjacent to the building and would be forced to locate the meter away from the building, which is more likely to cause protection concerns. This proposed rule is too broad and will significantly limit the locations that a utility can place a gas meter.

Notably, the comment portion of the *Proposed Rulemaking Order* provides absolutely no insight as to the purpose of or need for this new requirement that far exceeds Federal regulations. If the Commission desires to retain language similar to Subpart (a)(9)(i), National Fuel suggests that it change the focus of the rule to one of preventing placement of meters and regulators at locations that *directly* obstruct access to a window or opening that may be used as an emergency fire exit.

Subpart (a)(10)

National Fuel's recommended changes to Subpart (a)(10) are consistent with our comments regarding Subparts (a)(4) and (5). Where a relocation of facilities is required due to the acts or omissions of the customer or property owner, the utility and its ratepayers should not be required to bear the costs and expenses of the relocation. Likewise, customers and property owners who refuse the utility access to their premises to perform meter relocation work, should not be rewarded for their obstructionism by requiring the utility and its ratepayers to pay for the cost of the meter relocation after it has already demobilized its work crews and/or contractors for the project in question. This is a common tactic employed by customers who hope that by refusing access and delaying the work that the utility will simply acquiesce to their desire to leave the meter indoors. National Fuel's proposed changes clarify that customers refusing reasonable access to perform utility work are doing so at their own financial risk.

Subpart (a)(12)

Although the Commission states in the body of the *Proposed Rulemaking Order* (pg 8) that the "new regulation includes language that allows the natural gas utilities to have sole determination for meter set (meter and regulator) location," the proposed regulation set forth in Annex A contains no such language. The current regulation at § 59.18 states that outside meters will be placed "at a location selected by the utility," but that provision is deleted by the proposed regulation and was not restated anywhere in the new regulation. As a result, the order is inconsistent with Annex A. National Fuel suggests adding that deleted provision (or similar language) to Subpart (a)(12) so that Annex A will be consistent with the stated intent in the order to grant utilities discretion in selecting the location for the meter and regulator.

§ 59.18(b) Outside Meter or Service Regulator Locations

Subpart (b)(1)

National Fuel recommends deleting the requirement that outside meters be located adjacent to the building served. Although most meters are located adjacent to the building being served, placing the meter adjacent to the building is not always practical. Similar to our comments regarding Subpart (a)(8), placing the meter adjacent to the building receiving service can be more difficult and costly in rural areas where homes are often set back far from the road and main line. Additionally, this requirement for placement of the meter adjacent to the building conflicts with 52 Pa. Code § 59.31(d), which requires meters for services off of production and transmission lines to be located as closely as possible to the point where the main line is tapped, rather than adjacent to the building being served.

Subpart (b)(7)

National Fuel recommends deleting Subpart (b)(7) from the proposed regulation. This proposed rule references "guide material" to 49 CFR 192.355. However, no such guide material is included in the Federal regulation and the Commission fails to define what guide material it is referring to.

Based on the language included in the proposed regulation, National Fuel presumes the guide material being referred to is the *Guide for Gas Transmission and Distribution Piping Systems*, which is commonly referred to as the GPTC. Although the GPTC is a very helpful guidance document, it is not regulation, is not incorporated by reference into the Part 192 regulations, and is not written to be a formal regulation. In fact, the preface to the GPTC specifically cautions against adopting its guidance as regulation, stating that "it is not intended for public authorities or others to adopt the Guide in mandatory language, in whole or in part, in

laws, regulations, administrative orders, ordinances, or similar instruments as the sole means of compliance.” *Guide for Gas Transmission and Distribution Piping Systems*, 2009 Edition, pg xiii. The GPTC is useful as a guide to help operators comply with regulations, but it does not address all conditions that an operator might encounter and therefore does not set forth the sole means of compliance with the Federal regulations.

Because the GPTC is intended solely as a guidance document, the Commission should neither incorporate portions of the GPTC into its regulations by reference as attempted in proposed Subpart (b)(7), nor should it attempt to adopt GPTC guidance provisions as a mandatory regulation (notably most of the proposed regulation closely mirrors GPTC guidance provisions).

§ 59.18(c) Inside Meter or Service Regulator Locations

Subpart (c)(1)

National Fuel recommends deleting Subpart (c)(1)(i) and inserting a new provision to allow meters to be located inside when deemed necessary in the sole judgment of the utility.

The proposed requirement allowing for meters to be located inside due to restrictions in Federally-approved historic districts is a significant deviation from and more stringent requirement than the Federal regulations. Also, the Commission should not relinquish its jurisdiction over meter and regulator siting to individuals claiming rights as a Federal historical location/district. Regarding gas safety and access to meters, the Commission is the agency in the Commonwealth with authority to establish gas meter and regulation location standards. This important responsibility should not be delegated to a detached Federal historical society or the local manager, owner or occupant of a property designated as being in a Federal historical district. If the Commission were to maintain this exception to placing meters outdoors, it will be

an invitation for anyone living in a Federal historical district to demand that their meters be left or moved indoors to the detriment of gas safety and the utility's operational needs for reasonable access to its facilities. This proposed rule would result in a significant shift of authority from the Commission and the utility to the customer/property owner. Considering the recent sensitivity to issues concerning gas safety across the nation, it is surprising that the Commission would consider adopting a proposed rule that places aesthetic values ahead of gas safety and efficient utility operations.

The Commission should delete Subpart (c)(1)(i) and trust, as it always has, in the utility's ability to provide gas service to customers in historical districts in a safe effective manner while taking into account, to the extent practical, local concerns regarding the placement of gas meters and regulators. Any customer who feels that a utility has abused its discretion regarding the location of gas meters and regulators can always reach out to the Commission for review and guidance. To maintain operational flexibility and the appropriate balance of authority over meter location issues, the Commission should delete Subpart (c)(1)(i).³

Subpart (c)(3)

The proposed regulations do not include a "grandfather clause" or other similar provision that clearly indicates that these rule changes are not intended to require immediate changes to existing facilities that may not be compliant with the proposed rule. Regarding Subpart (c)(3), it is unclear whether the rule applies retroactively or prospectively. New regulations that affect utility operations are typically applied prospectively, therefore, National Fuel recommends clarifying Subpart (c)(3) by stating that the proposed rule only applies to *new* inside meters installed after the effective date of the regulation.

³ National Fuel's proposed language change would preserve utility discretion to locate meters indoors in areas the utility determines to be high-risk vandalism districts. *See*, Exhibit A.

Subpart (c)(4)

National Fuel recommends that the arbitrary deadline for relocating existing regulators outdoors be deleted from the proposed regulation as these facility relocations will be appropriately addressed pursuant to the utility's distribution integrity management plan. Furthermore, it is important to maintain some flexibility to locate regulators indoors when the utility deems it necessary for safety or operational reasons. Modifying the proposed rule to allow flexibility in locating regulators on existing steel services would be consistent with the Federal regulations, which do not impose a brightline rule as suggested in the proposed regulation.

Subpart (c)(5)

National Fuel suggests that Subpart (c)(5) be modified to read consistent with the Federal rule set forth in 49 CFR § 192.353(c), which requires meters and regulators to be situated "not less than 3 feet (914 millimeters) from any source of ignition or any source of heat which might damage the meter." The proposed rule would establish restrictions based on the function of the space, regardless of distance from an ignition source, which is a substantial deviation from and expansion of the Federal requirements. Restrictions based on the function of the space will lead to confusion and will result in many existing indoor meters being out of compliance. For example, if a residential customer has an open unfinished basement that contains the customer's boiler or furnace, the basement could arguably be considered a "boiler or heater room" under the proposed rule and the meter could not be placed anywhere in the basement. It is unlikely such a broad unjustified restriction is intended by this proposed regulation, but as written, that would be the result. The proposed rule should be modified to conform to the Federal 3-foot setback standard.

Subpart (c)(7)

Subpart (c)(7) should be deleted because it is not necessary. Utilities are already required to comply with 49 CFR § 192.365 as it is already incorporated into and adopted as Commission regulation pursuant to 52 Pa. Code § 59.33. Also, the proposed rule addresses installation of an outside shut off valve in Subpart (c)(3) so it is not necessary to repeat that provision again in Subpart (c)(7).

III. Conclusion

For the reasons set forth above, National Fuel respectfully requests that the Commission modify the proposed rule as recommended herein.

Respectfully submitted,

Date:

July 16, 2012

Christopher M. Trejchel

Christopher M. Trejchel
Pa. I.D. No. 84513
Attorney for National Fuel Gas
Distribution Corporation
P.O. Box 2081
Erie, PA 16512
Phone: (814) 871-8060
Fax: (814) 871-8061
E-mail: trejchec@natfuel.com

EXHIBIT A

ANNEX A
TITLE 52. PUBLIC UTILITIES
PART I. PUBLIC UTILITY COMMISSION
Subpart C. FIXED SERVICE UTILITIES
CHAPTER 59. GAS SERVICE

* * * * *

§ 59.18. [Location of meters.] Meter and regulator location.

[Meters shall be installed in either of the following locations:

- (1) Inside the building, preferably in a dry, well-ventilated place not subject to excessive heat, and as near as possible to the point of entrance of the pipe supplying service to the building.
- (2) Outside the building at a location selected by the utility. A meter cover or housing is required if, in the judgment of the utility, conditions require the physical protection for the meter installation.]

(a) General requirements.

(1) When practical, a building may not have more than one service line. Service lines must terminate in the building in which the service line enters.

(2) When practical, Mmeters shall be installed at the service regulator. When more than one meter is set on a particular premises, they shall be set at one location. When it is necessary to install meters at multiple locations on the premises, the utility operator shall provide a tag or other means to indicate there are multiple meter locations.

(3) An outside, above-ground meter location shall be used when availability of space and other conditions permit.

(4) When selecting a meter or service regulator location, a utility shall consider potential damage by outside forces, including:

(i) Vehicles.

(ii) Construction equipment.

(iii) Tools or other materials which could be placed on the meter.

(iv) Falling objects, such as packed snow or ice from a roof.

(5) When the potential for damage is evident, the meter or service regulator shall be protected or an alternate location selected. The utility shall not be responsible for costs and expenses related to protecting or relocating the meter or service regulator when the potential for damage is the result of the customer's or property owner's acts or omissions.

(6) Meters and service regulators may not be installed in contact with the soil or other potentially corrosive materials. A utility shall consider the potential for shorting out the insulating fitting when choosing a location.

(7) The meter location must accommodate access for meter reading, inspection, repairs, testing, changing, relocating, removing, and operation of the gas shut-off valve. The utility shall, at all reasonable times, have free access to the customer's premises for these purposes.

(8) When practical, the meter location must accommodate for the installation of the service line in a straight line perpendicular to the main.

(9) Meters and service regulators may not be installed in the following locations:

- (i) ~~Directly beneath or in front of windows or other building openings which may be used as emergency fire exits.~~
- (ii) Under interior or exterior stairways.
- (iii) A crawl space with limited clearance.
- (iv) Near building air intakes.

(10) When the Commission or a utility determines that a meter or regulator must be moved for safety reasons, all costs associated with the relocation of such meter or regulator shall be borne by the utility, except when the customer or property owner caused the unsafe condition. When a utility moves a meter in addition to the regulator, pursuant to this section, the cost of extending customer-owned facilities to the new meter location shall be borne by the utility. A customer or property owner who refuses the utility access to perform a meter relocation may be required to pay all costs associated with the meter relocation, including service line costs.

(11) A customer requesting that a meter or regulator be moved shall pay the costs associated with such relocation when the meter and regulator are currently situated in a suitable location pursuant to state and federal guidelines/regulations.

(12) Utilities shall address meter location in their tariffs. Meters (meter and regulator) shall be installed in a location selected by the utility.

(b) Outside meter or service regulator locations. Outside meters or service regulators shall be installed in the following locations:

(1) Above ground in a protected location, adjacent to the building served.

(2) In a properly designed buried vault or meter box.

(i) The vault or meter box shall be located on a customer's property, either adjacent to the building served or near the gas main.

(ii) Vaults may be located in a public right of way. Consent of local jurisdictions may be required.

(3iii) A utility shall consider proper design and location criteria for a meter box, including the following:

(i1) Ventilation.

(ii2) Vehicular traffic.

(iii3) Potential for soil accumulation.

(iv4) Surface water runoff.

(v5) High water table.

(vi6) Proximity to building air intakes or openings.

(vii7) Proximity to an excessive heat source.

(4iv) Piping installed through vault walls shall be properly coated to protect from corrosion.

(5v) Vaults containing gas piping may not be connected by means of a drain connection to any other underground structure.

(6vi) When a meter box is located outside a paved surface, a utility shall consider the potential for fill, topsoil, or sod being placed over the vault, and when practical, choose an alternate location.

(7) A utility shall refer to the guide material under 49 C.F.R. § 192.355 (relating to considerations involving service regulator and relief vents in vaults).

(c) Inside meter or service regulator locations.

(1) Inside meter locations shall be considered only when:

(i) ~~An acceptable outside location is not available due to restrictions in Federally approved Historic Districts or in high risk vandalism districts.~~

(ii) Protection from ambient temperatures is necessary to avoid meter freeze-ups.

(ii) Determined to be necessary in the judgment of the utility.

(2) Regulators shall be located outside when a meter is located inside.

(3) All new ~~installed~~ inside meters installations shall be attached to an operable outside shut off valve.

(4) Except when determined to be impractical in the judgment of the utility, ~~All existing regulators, connected to steel service lines, shall be relocated to the outside by year end 2020~~ of the building served in accordance with the utility's distribution integrity management plan.

(5) Meters and service regulators may not be located ~~in engine, boiler, heater, or electrical equipment rooms, living quarters, closets, restrooms, bathrooms, or similar confined locations~~ less than 3 feet from any source of ignition or any source of heat which might damage the meter or regulator.

(6) Each service regulator installed within a building shall be located as near as practical to the service line entry point. When selecting the service regulator location, venting requirements and the vent piping location and length shall be considered.

(7) ~~When a meter or service regulator is located inside a building, a utility shall comply with 49 CFR §192.365 (relating to valve locations).~~ A utility shall install a readily accessible shut-off valve outside the building for new inside meter installations.

(d) *Other meter or service regulator locations.* A utility may consider a specially constructed cabinet recessed in the building wall, sealed from inside the building and vented to, and accessible from, outside the building.