

**COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION**

In the matter of:)
)
ELECTRONIC EMERGENCY DOCKET) Case No. 2020-00085
RELATED TO THE NOVEL CORONA)
VIRUS COVID-19)

**MOTION OF COLUMBIA GAS OF KENTUCKY, INC.
FOR A TEMPORARY WAIVER**

Pursuant to 807 KAR 5:001, 49 U.S.C. 60118(d) and the Order of the Kentucky Public Service Commission (“Commission) issued March 16, 2020, Columbia Gas of Kentucky, Inc., (“Columbia”) moves the Commission to grant a temporary waiver of the inspection requirements laid out in 49 C.F.R. Part 192.481, 192.723 and incorporated through 807 KAR 5:027 Section 2.

In support of this motion, Columbia states as follows:

1. Columbia is engaged in the business of furnishing natural gas service to the public in certain counties in the Commonwealth of Kentucky, pursuant to authority granted by the Public Service Commission (“Commission”).
2. Columbia’s full name and post office address are:

Columbia Gas of Kentucky, Inc.

2001 Mercer Road

P.O. Box 14241

Lexington, KY 40512-4241

Email: pscmailcky@nisource.com

3. Columbia, incorporated October 11, 1905, is a corporation organized and existing under the laws of the Commonwealth of Kentucky and is in good standing with the Commonwealth.
4. Columbia is a wholly-owned subsidiary of NiSource Gas Distribution Group which is a wholly-owned subsidiary of NiSource Inc. (“NiSource”). NiSource is a registered holding company under the Public Utility Holding Company Act of 2005, whose principal office is located at 801 East 86th Avenue, Merrillville, IN 46410.
5. On March 6, 2020, Governor Andy Beshear issued Executive Order 2020-215 declaring a State of Emergency in the Commonwealth of Kentucky in response to the novel coronavirus COVID-19. Shortly following that declaration, on March 16, 2020, the Commission initiated these proceedings to address pressing issues related to utility service across the Commonwealth as a result of COVID-19. The Order, in part, granted a temporary deviation from several provisions of 807 KAR 5:006, including certain inspection requirements “[i]n order to limit in-person

contact, and also to allow the utility focus on essential functions of the utility.”¹

The Commission clarified in a subsequent Order issued March 24, 2020, that the original Order does not grant deviation from any inspection requirements provided for in 49 C.F.R. Part 192 Transportation of Natural and Other Gas by Pipeline: Minimum Federal Safety Standards.

6. On March 20, 2020, the U.S. Department of Transportation’s Pipeline and Hazardous Materials Safety Administration (“PHMSA”) issued a Notice to Gas and Hazardous Liquid Pipeline, Underground Natural Gas Storage and Liquefied Natural Gas Facility Operators and PHMSA State Partners Regarding the National Emergency Relating the Novel Coronavirus Disease (COVID-19) Outbreak (“PHMSA Notice, attached hereto as Attachment A). The PHMSA Notice recognizes that utility operators may have compliance challenges during this National Emergency and directs operators to document any such challenges and communicate them to their state regulator. Additionally, PHMSA indicates it “will not object to waivers, special permits, stays of enforcement or similar measures granted by State authorities to pipeline operators for noncompliance due to COVID-19 with State regulations equivalent to the Federal regulations.”²

¹ Order at p.7 (March 16, 2020).

² See Attachment A.

7. KRS 278.495(2) authorizes the Commission to enforce minimum safety standards adopted by the United States Department of Transportation. 49 C.F.R. Parts 192.723 and 192.481 require operators of natural gas utilities to conduct periodic inspections of its facilities for corrosion and leakage at prescribed intervals of time. In business districts, these inspections must occur at intervals not exceeding 15 months, but at least once each year and in non-business districts, once every three years, but not at an interval exceeding 39 months.³ These inspections include inspections of company-owned piping inside of the customer's home. 807 KAR 5:027 Section 2 adopts the federal standards set forth in 49 C.F.R Part 192. Additionally, 49 U.S.C. §60118(d) grants state authority to waive compliance with a safety standard.⁴

8. In order to maintain minimal personal contact with customers and to allow the company to focus on prioritizing essential work, Columbia will be temporarily suspending the inspections of company-owned inside piping required by 49 C.F.R. Parts 192.723 and 192.481. Given that the duration of the current crisis is unknown,

³ See 49 CFR 192.723 and 192.481.

⁴ 49 USC §60118 (d) requires that the state granting the waiver give written notice of the granted waiver to PHMSA, allowing 60 days for objections. Given the guidance in the PHMSA notice reference herein, Columbia does not believe that PHMSA will object to a waiver.

Columbia's suspension of this work may create a backlog of inspections and put it temporarily out of compliance with the state and federal regulations.

Inspections for inside jurisdictional piping are scheduled and planned to be completed throughout the year based upon a commit date. In order to gain access inside of properties that require the inspection of the jurisdictional piping, prior arrangements must be made with each customer. In order to give multiple options to our customers, appointments can be made beyond the 12 or 36 month requirement, but not to exceed an additional three months. Due to the scheduling offers Columbia made to the customers, there will be instances where the leakage and corrosion inspections may go beyond the 15 or 39 month intervals. Columbia will resume these inspections once the State of Emergency has ended and Columbia believes the risk of exposure to its customers and employees has minimized. In order to mitigate the potential risk created by suspending the inspections, Columbia will prioritize its work to inspect those facilities that may have been missed due to the suspension of the inspection.


9. WHEREFORE, Columbia respectfully requests a waiver from 807 KAR 5:027 Section 2 and 49 C.F.R Parts 192.723 and 192.481 for the duration of the State of Emergency. Columbia will resume the requisite inspections once the State of Emergency has been lifted and Columbia deems safe to do so. Columbia will

continue to respond to emergencies and perform essential work to ensure safe and reliable service to its customers. If the Commission is not inclined to issue a waiver, Columbia requests, in the alternative, a stay of enforcement of the above mentioned regulations.

Dated at Columbus, Ohio, this 30th day of March 2020.

Respectfully submitted,

COLUMBIA GAS OF KENTUCKY, INC

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**NOTICE TO GAS AND HAZARDOUS LIQUID PIPELINE, UNDERGROUND
NATURAL GAS STORAGE AND LIQUEFIED NATURAL GAS FACILITY
OPERATORS AND PHMSA STATE PARTNERS REGARDING THE NATIONAL
EMERGENCY RELATING TO THE NOVEL
CORONAVIRUS DISEASE (COVID-19) OUTBREAK**

**RE: Notice of Stay of Enforcement and Notice of Enforcement Discretion to Operators
Affected by the Coronavirus (COVID-19) Outbreak**

In light of the March 13, 2020, the President’s Declaration of a National Emergency (National Emergency) Relating to the Novel Coronavirus Disease (COVID-19) Outbreak, the U.S. Department of Transportation’s Pipeline and Hazardous Materials Safety Administration (PHMSA), Office of Pipeline Safety, recognizes that operators (including hazardous liquid and gas pipeline, underground natural gas storage and liquefied natural gas operators) impacted by recent events may be faced with resource constraints due to COVID-19. Limited personnel resources and the ongoing need to meet operational and maintenance needs may necessitate actions by personnel that may not fully meet federal operator qualification (OQ), control room management (CRM), and employment drug testing requirements.

Federal regulations in Title 49 Code of Federal Regulations (C.F.R.) Subpart N of Part 192, Subpart H of Part 193, and Subpart G of Part 195, require operators to ensure, through evaluation or training, that each worker performing operation or maintenance activities is either qualified under the operator's written OQ program or has demonstrated capability to perform assigned functions. Sections 192.631(d)(4) and 195.446(d)(4) and (h) of the regulation also require operators with controllers working in control rooms to implement programs to establish and follow certain hours-of-service and to conduct specialized training programs for pipeline controllers. Furthermore, Part 199 of the regulation requires pre-employment and random drug testing for workers who perform certain activities known as “covered functions.” See 49 C.F.R. § 199.105(a) and (c).

PHMSA understands that some pipeline operators are finding it extremely difficult to meet one or more of these regulatory requirements because of personnel and resource constraints due to the National Emergency and have sought temporary relief as they develop strategies and alternatives for maintaining normal operations and protecting the health and safety of their personnel and the public.

This Notice advises operators affected by the National Emergency that PHMSA does not intend to take any enforcement action with regard to OQ and CRM requirements, and will consider exercising its enforcement discretion with regard to Part 199 drug testing requirements. PHMSA is taking into consideration the exigent circumstances that may drive operators regulated by PHMSA to be unable able to comply with the following: (1) OQ requirements found in 49 C.F.R. §§ 192.801-192.809, 193.2707-2709, 193.2713-2717, and 195.501-195.509; and (2) control room requirements found in 49 C.F.R. §§ 192.631(d)(4) and 195.446(d)(4) and (h) due to COVID-19.

Operators are encouraged to fully use the flexibilities already afforded by part 199 regarding pre-employment and random drug testing. Operators are permitted under the part 199 regulations to schedule the date, time, and location of the pre-employment drug test. Moreover, the regulations allow for random drug testing to be spread reasonably throughout the calendar year. PHMSA will consider using its enforcement discretion with regard to requirements found in 49 C.F.R. § 199.105(a) and (c). Operators who are unable to comply with these regulations should maintain documentation explaining what specific requirements are not being met, how the non-compliance is related to COVID-19, and what alternative measures are being taken to ensure safety. Operators should also communicate with their regulator as indicated in this notice.

In addition to these three specific areas, PHMSA realizes there may be other regulatory requirements under the Federal pipeline safety laws in 49 C.F.R. Parts 190 through 199 that pose compliance challenges for operators during this National Emergency. In such cases, it is important that operators adequately document any such issues and communicate promptly with their regulator about them. PHMSA will exercise discretion in its overall enforcement of other parts of the pipeline safety regulations with the intent of providing operators with the flexibility to maintain normal operations while ensuring public safety and protection of the environment.

For intrastate operators regulated by State authorities, PHMSA will not object to waivers, special permits, stays of enforcement or similar measures granted by State authorities to pipeline operators for noncompliance due to COVID-19 with State regulations equivalent to the Federal regulations.

Operators who determine that they cannot comply with the regulations described in this Notice because of challenges due to COVID-19 should promptly notify the following:

- x For operators Regulated by PHMSA: Please contact PHMSA's Office of Pipeline Safety by email at Pipeline-COVID-19-notices@dot.gov; and
- x For Intrastate operators Regulated by State Authorities: Please contact your State Program Manager – State Program Manager contacts available at: <http://www.napsr.org/state-program-managers.html>.

This Notice is effective on March 20, 2020, and will remain in effect until further notice or modification by the Associate Administrator for Pipeline Safety, PHMSA. Nothing in this Notice prohibits PHMSA from rescinding this stay of enforcement or enforcing the regulations outline above if it determines that a significant safety issue or other circumstance warrants doing so.

Please be advised that this Notice applies only to operators faced with limited resources as a result of the impacts of the National Emergency and does not relieve them from complying with any other applicable provisions of the Federal pipeline safety regulations and acting reasonably to use trained, non-impaired workers to perform operations, maintenance and control-room tasks. Furthermore, pipeline operators subject to this Notice remain fully responsible for the safe operation of their systems and maintaining the capability to detect and respond to critical pipeline safety issues and adequately respond to pipeline emergencies.

