

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC EMERGENCY DOCKET RELATED)	CASE NO.
TO THE NOVEL CORONAVIRUS COVID-19)	2020-00085

ORDER

On March 16, 2020, the Commission established this docket in response to a state of emergency brought on by the pandemic of the novel coronavirus, COVID-19. On March 30, 2020, Columbia Gas of Kentucky, Inc. (Columbia Kentucky) filed with the Commission a motion for temporary waiver (Motion).

In its Motion, Columbia Kentucky moves for temporary waiver of the inspection requirements contained in 49 C.F.R Part 192.481, 192.723, and incorporated by 807 KAR 5:027, Section 2, noting it intends to “resume the requisite inspections once the State of Emergency has been lifted and Columbia Kentucky deems safe to do so.”¹ As grounds for its Motion, Columbia Kentucky states that on March 20, 2020, the U.S. Department of Transportation’s Pipeline and Hazardous Materials Safety Administration (PHMSA), issued a notice² (PHMSA Notice), *inter alia*, recognizing that utility operators may have compliance challenges during the state of emergency and directed the utilities to document these challenges and report them to the state regulator. Columbia Kentucky asserts that PHMSA stated that it would not object to waivers or stays of enforcement granted from state regulators.

¹ Motion at 5.

² Motion, Attachment A.

Columbia Kentucky specifically requests a temporary waiver from 49 C.F.R. Parts 192.723 and 192.481. As 49 C.F.R. Part 192.723 requires, *inter alia*, a gas utility must conduct leakage surveys of its distribution systems in business districts at intervals not to exceed 15 months and at least once each calendar year. As 49 C.F.R. Part 192.481 requires, *inter alia*, a utility must inspect its pipelines for corrosion at least once every calendar year, but with intervals not to exceed 39 months. Columbia Kentucky asserts that these requirements include inspection of its piping inside a customer's house.

Columbia Kentucky states that in order to minimize contact between Columbia Kentucky's employees and customers, Columbia Kentucky will suspend inspection of inside piping required by 49 C.F.R. Parts 192.723 and 192.481. Columbia Kentucky states that it scheduled the inside piping inspections based upon a specific date in order to coordinate with the customer to ensure that the employee can gain access to the piping. Given the unknown duration of the state of emergency, Columbia Kentucky states that its suspension of the inspection may create a backlog of inspections, extending the duration between inspections and thus violating state and federal regulations. Columbia Kentucky requests that if the Commission does not grant a waiver, that it temporarily stay enforcement of the regulations.

Columbia Kentucky's request for a waiver from the inspection requirements in 49 C.F.R. Parts 192.723 and 192.481 is premature. At this time, Columbia Kentucky has not provided sufficient evidence or reason for the Commission to find that a waiver is necessary. Accordingly, the Commission finds that Columbia Kentucky's Motion should be denied. Columbia Kentucky is anticipating an event that may not transpire and has failed to provide evidence sufficient for the Commission to find that violation of law is

imminent or reasonably anticipated. As Columbia Kentucky has stated, the state of emergency will be of an unknown duration, making it impossible to know whether Columbia Kentucky's suspension of inspecting indoor company-owned piping will lead to possible violations of 49 C.F.R. Parts 192.723 and 192.481. For the identical reasons, the Commission also denies Columbia Kentucky's alternative request to stay enforcement of the relevant regulations.

The Commission's decision to deny this Motion is made without prejudice. Columbia Kentucky may renew its motion if or when a violation of 49 C.F.R. Parts 192.723 and 192.481 is imminent or reasonably anticipated. A renewed motion should be verified by an executive from Columbia Kentucky with direct knowledge of the relevant facts related to compliance and the issues pertaining to Columbia Kentucky. Finally, the Commission notes that the PHMSA Notice is carefully crafted and thus reads it accordingly. PHMSA's Notice relates primarily to operator qualifications and alcohol and drug testing. Although PHMSA's Notice does note that it will not object to waivers for intrastate operators regulated by state authorities, the notice goes on to state that it "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."

IT IS THEREFORE ORDERED that:

1. Columbia Kentucky's motion for temporary waiver is denied, in its entirety, without prejudice.
2. This Order shall be served on all major local gas distribution utilities operating in the Commonwealth of Kentucky.

By the Commission



ATTEST:

A handwritten signature in blue ink, consisting of stylized initials and a surname, positioned above a horizontal line.

Executive Director

