

August 23, 2022

MAINE PUBLIC UTILITIES COMMISSION  
Amendments to Chapter 420 of the  
Commission's Rules – Safety Standards  
for Natural Gas and Liquefied Natural Gas  
Facility Operators

ORDER AMENDING RULE  
AND STATEMENT OF  
FACTUAL AND POLICY  
BASIS

BARTLETT, Chair; DAVIS and SCULLY, Commissioners

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## I. SUMMARY

Through this Order, the Commission amends Chapter 420 – Safety Standards for Natural Gas and Liquefied Natural Gas Facility Operators. The amendments update and modernize the Commission's gas safety rules.

## II. BACKGROUND

### A. Docket Nos. 2019-00029 & 2020-00282

Beginning in early 2019, the Commission's Gas Safety Staff engaged in informal discussions with representatives from Maine's local distribution companies (LDCs) regarding possible changes to Chapter 420 of the Commission's Rules. The informal discussions encompassed all portions of Chapter 420, with ideas and suggestions coming from both the LDCs and the Gas Safety Staff.

As a result of those informal discussions, the Commission, on March 12, 2019, opened an Inquiry in Docket No. 2019-00029 into possible amendments to Chapter 420. In the Commission's view, the productive nature of the informal discussions made it appropriate to engage in a larger public discussion of Chapter 420. To that end, the Commission requested written submissions and proposed changes to Chapter 420 from any interested person or party. The Commission also continued to hold workshops and discussions regarding Chapter 420 with all interested persons.<sup>1</sup>

The Inquiry process ultimately led to the circulation by the Gas Safety Staff, on May 19, 2020, of a "discussion draft" of Chapter 420, which contained the Gas Safety Staff's proposed revisions to the Rule. The Gas Safety Staff's proposals were based on the discussions with the LDCs both before and after the commencement of the Inquiry, and written submissions during the Inquiry. After the circulation of the discussion draft, the parties made additional written suggestions, and the Gas Safety Staff and the parties continued their dialogue regarding Chapter 420.

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<sup>1</sup> The only parties that chose to participate in the Inquiry were Maine's LDCs.

On December 1, 2020, based on the cooperative process both prior to and during the Inquiry, the Commission issued a formal Notice of Rulemaking in Docket No. 2020-00282. The Rule proposed by the Commission was based in large measure on the discussion draft circulated during the Inquiry.

On December 18, 2020, the Commission received initial written comments on the proposed amendments to the rule from Bangor Natural Gas Company (BNG), Maine Natural Gas Corporation (MNG), and Summit Natural Gas of Maine, Inc. (Summit).

On January 6, 2021, the Commission held a public hearing on the proposed amendments to the Rule. Participating in the hearing were representatives from BNG, MNG, and Summit.

On January 22, 2021, the Commission received final written comments regarding the proposed amendments to the Rule from BNG, MNG, Summit, and Northern Utilities, Inc. d/b/a Unitil (Unitil).

On March 10, 2021, the Commission promulgated the amendments to Chapter 420.

B. Docket No. 2022-00155

1. General Background

After the promulgation of the amendments to Chapter 420, Gas Safety Staff discovered that a provision that Staff had intended to propose that the Commission add to the Rule was inadvertently omitted from the proposed amendments. As discussed below, the provision concerned an additional method for locating underground sewer facilities. Gas Safety Staff informed the LDCs on April 23, 2021 of the inadvertent omission, provided the draft language for the location method, and advised the LDCs that the omitted location method would be viewed by the Gas Safety Staff as an acceptable location method. Gas Safety Staff also informed the LDCs that the Commission intended to address this issue in a future rulemaking. The Commission commenced that rulemaking on June 13, 2022 in Docket No. 2022-00155 and proposed to include the omitted location method.

In addition, the 2021 amendments to Chapter 420 included substantial changes to the gas safety enforcement process. Based on a year of experience with the updated process, in the June 13, 2022 Notice of Rulemaking the Commission proposed changes to the process, detailed below, intended to clarify the process, make the process less formal for most enforcement actions, and make the process more straightforward for all formal enforcement actions. The Commission also proposed some non-substantive editorial and grammatical amendments to the Rule.

The Commission set a July 5, 2022 deadline for pre-hearing comments and the only party to file comments was the Office of the Public Advocate (OPA). The

Commission held a public hearing on July 12, 2022 and the only party to participate in the hearing was the OPA. Final comments regarding the proposed amendments to Chapter 420 were due on or before July 22, 2022 and the OPA was the only party to file final comments.

## 2. OPA Comments

In its pre-hearing comments, the OPA expressed concern regarding the public having access to the record of a probable violation. In the OPA's view, it is essential for the OPA and a LDC's customers to have access to information regarding probable violations. The Commission discussed this matter with the OPA at the public hearing and proposed including language in the rule requiring that Notices of Probable Violation, which contain the information at issue, be included in the Docket along with any Consent Agreement between Staff and the LDC. In its final comments, the OPA confirmed that language of this type would satisfy the OPA's concerns.

### III. **AMENDMENTS**

#### A. Section 1: General Provisions

The Commission is not amending Section 1 of the Rule.

#### B. Section 2: Definitions

The Commission is not amending Section 2 of the Rule.

#### C. Section 3(D): Location of Underground Facilities Where Trenchless Technology is Used

The Commission is amending Section 3(D) of the Rule to add an additional method for locating underground sewer facilities that was inadvertently omitted from the 2021 proposed amendments to the Rule. The additional location method is a relative elevation locating method for gravity sewer mains. As a part of this adjustment to the Rule, and as described to the LDCs following the previous rulemaking, the Commission is moving the last sentence of Section 3(D)(2)(d) to the end of the new gravity sewer main subsection (Section 3(D)(2)(e)) as originally intended.

#### D. Section 4: Emergency Procedures

The Commission is not amending Section 4 of the Rule.

#### E. Section 5: Installation and Maintenance Standards

The Commission is not amending Section 5 of the Rule.

F. Section 6(A): Operator Qualification (OQ) Program Requirements

The Commission is making non-substantive grammatical changes to Section 6(A) of the Rule.

G. Section 7: Documentation and Reporting Requirements

The Commission is not amending Section 7 of the Rule.

H. Section 8(B): Response Options Open to Operators

After the implementation of the 2021 amendments to the Rule, the Commission proposed in the June 13, 2022 Notice of Rulemaking that the process for operator responses to Notices of Probable Violation (NOPVs) be simplified and structured to encourage the informal resolution of NOPVs without the need to involve a Hearing Examiner. The Commission largely adopts those proposed amendments. Under the amended Section 8(B), operators have the option to engage in an entirely-informal resolution process with the Gas Safety Staff. Should the operator and the Gas Safety Staff reach a mutually acceptable resolution to the NOPV, the Commission will assign a Docket to the NOPV. Once the Commission assigns a Docket, the consent agreement entered into by the parties will be placed before the Commission for approval. As suggested by the OPA, the Commission will also file a copy of the NOPV in the Docket. At no point in this informal process will a Hearing Examiner be necessary.

Alternatively, operators may choose to have the Commission appoint a Hearing Examiner to oversee and manage the process of resolving the NOPV at the beginning of the process. If the operator chooses to engage with a Hearing Examiner, the Commission will assign a Docket to the NOPV, file the NOPV in that Docket, and conduct the process in that Docket. As with the entirely informal process, any consent agreement entered into by the parties will be placed before the Commission for approval.

Further, if the operator chooses the informal process described at the beginning of this Section, the operator or the Gas Safety Staff may at any time in the process request that the Commission appoint a Hearing Examiner to assist with the resolution of the NOPV. It is the Commission's expectation that parties will primarily utilize this alternative when the parties have reached an impasse and desire assistance in reaching a mutually acceptable resolution to the NOPV. If either party exercises this alternative, the Commission will assign a Docket to the NOPV, file a copy of the NOPV in that Docket, and the Hearing Examiner will conduct the remainder of the process in that Docket.

The Commission is also removing the rarely used "written plan" option from Section 8 of the Rule. The intent of this provision—providing operators with a straightforward means of quickly resolving an NOPV—is just as readily accomplished using the revised informal resolution procedure.

It is the Commission's expectation that the changes to Section 8(B) will further encourage operators and Gas Safety Staff to engage informally and cooperatively to resolve NOPVs without the need to involve a Hearing Examiner, while maintaining the availability of a Hearing Examiner as a backstop to assist the parties if needed.

The Commission is also making a non-substantive editorial change to Section 8(A)(5) of the Rule.

I. Section 9: Federal Regulation Waivers

The Commission is not amending Section 9 of the Rule.

J. Section 10: State Regulation Waivers

The Commission is not amending Section 10 of the Rule.

**IV. ORDERING PARAGRAPHS**

In light of the foregoing, the Commission

**O R D E R S**

1. That Chapter 420 – Safety Standards for Natural Gas and Liquefied Natural Gas Operators is hereby amended as described in the body of this Order and as set forth in the amended Rule attached to this Order;
2. That the Administrative Director shall file the amended Rule with the Secretary of State;
3. That the Administrative Director shall notify the following of this Order Amending Rule:
  - a. All Local Distribution Companies in Maine;
  - b. All persons who have filed with the Commission a written request for notifications regarding Notices of Rulemaking within the past year; and
  - c. The Office of the Public Advocate; and
4. That the Administrative Director send copies of this Order Amending Rule and the attached amended Rule to:
  - a. The Secretary of State for publication in accordance with 5 M.R.S. § 8053(5); and
  - b. The Executive Director of the Legislative Council, 115 State House Station, Augusta, Maine, 04333-0015.



## NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S. § 9061 requires the Public Utilities Commission to give each party at the conclusion of an adjudicatory proceeding written notice of the party's rights to seek review of or to appeal the Commission's decision. The methods of review or appeal of Commission decisions at the conclusion of an adjudicatory proceeding are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 11(D) of the Commission's Rules of Practice and Procedure (65-407 C.M.R. ch. 110) within **20** days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought. Any petition not granted within **20** days from the date of filing is denied.
2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within **21** days of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S. § 1320(1)-(4) and the Maine Rules of Appellate Procedure.
3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S. § 1320(5).

Pursuant to 5 M.R.S. § 8058 and 35-A M.R.S. § 1320(6), review of Commission Rules is subject to the jurisdiction of the Superior Court.

Note: The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.

