DECISION MEMORANDUM

TO: **COMMISSIONER KEMPTON**
COMMISSIONER SMITH
COMMISSIONER REDFORD
COMMISSION SECRETARY
COMMISSION STAFF

FROM: **DON HOWELL**
DEPUTY ATTORNEY GENERAL

RUL-G-09-01

DATE: **SEPTEMBER 30, 2009**

SUBJECT: **UPDATING THE COMMISSION'S SAFETY AND ACCIDENT REPORTING RULES, DOCKET NO. 31-1101-0901**

On September 2, 2009, the Commission caused to be published in the Administrative Bulletin a Notice of Proposed Rulemaking. In its rulemaking, the Commission proposed several changes to its Safety and Accident Reporting Rules, IDAPA 31.11.01. In particular, the Commission proposed to adopt by reference two national safety codes: the International Fuel Gas Code in Rule 202 and the International Mechanical Code in Rule 203. In these two rules, the Commission proposed to adopt the updated 2009 Edition of these safety codes. The Commission also proposed to adopt the 2009 Edition of the Code of Federal Regulations (CFRs) dealing with gas pipeline safety regulations in Rule 201.

The Commission's Notice also proposed two changes to its Accident Reporting Rules 301 and 302. More specifically, the Commission sought comments regarding the proposal to require utilities to report property damage to themselves or members of the public in excess of $200,000. See Proposed Rule 301.02 and 302.01.c. Finally, the Notice also proposed to make several housekeeping amendments to the rules such as: correcting web address, street address, citations to other authorities; and making clarifications to improve the readability of the proposed rules. The proposed changes are attached for your review.

Pursuant to the public notice contained in the Administrative Bulletin, comments on the proposed changes were due no later than September 23, 2009. The Commission received no comments regarding the proposed changes to its Safety and Accident Reporting Rules.

The Legislative Services Office did report that the Senate and House Subcommittee for Review of Administrative Rules reviewed the proposed changes. In a letter dated September 10, 2009, Legislative Services reported that no objections were made to the proposed rules by the Subcommittees.

COMMISSION DECISION:

1. Does the Commission wish to update its Safety and Accident Reporting Rules by adopting the 2009 Editions to the federal pipeline safety regulations, the International Fuel Gas Code, and the International Mechanical Code?

2. Does the Commission wish to adopt as pending rules the changes to its Accident Reporting Rules regarding property damage in excess of $200,000?

3. Does the Commission also wish to make the housekeeping changes in Rules 000, 004, 005.01, 301.03 (~~automobile~~ motor vehicle), 302.02 and 302.04?

4. Does the Commission wish to submit its pending rules to the 2010 Legislature for review?

Don

Don Howell
Deputy Attorney General

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IDAPA 31 - IDAHO PUBLIC UTILITIES COMMISSION

31.11.01 - SAFETY AND ACCIDENT REPORTING RULES FOR UTILITIES REGULATED BY THE IDAHO PUBLIC UTILITIES COMMISSION

DOCKET NO. 31-1101-0901

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that the Idaho Public Utilities Commission has initiated proposed rulemaking procedures. This action is authorized pursuant to Section 61-515, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 16, 2009.

The hearing site will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the Commission's address below.

DESCRIPTIVE SUMMARY: The following is a non-technical explanation of the substance and purpose of the proposed rulemaking:

The Commission's Safety and Accident Reporting Rules currently adopt by reference several national safety codes and federal safety regulations. In particular, Rules 202 and 203 currently adopt by incorporation the 2006 Editions of the International Fuel Gas Code and the International Mechanical Code, respectively. The Commission is proposing to update its Rules 202 and 203 by adoption of the 2009 Editions. Revisions in the 2009 International Fuel Gas Code include: Section 303.6 (gas-fired appliances installed outdoors); Section 306 (access to gas appliances); Section 310 (electrical bonding for corrugated stainless steel tubing); Table 402.4(13) (sizing for corrugated stainless steel tubing); Section 404 (prohibited locations for gas piping); Section 409.5 (appliance shut-off valves); Section 411.13 (maximum length, minimum size and prohibited locations of appliance connectors); Section 503.7-.8 (venting requirements); and Sections 623.7 and 627 (clearances for gas-fired cook tops and air conditioners). Revisions to the 2009 International Mechanical Code include: Sections 303.5 and 304.4 (restrictions on gas appliance locations); Section 306 (access to gas appliances); Section 403 and Table 403.3 (mechanical ventilation rates); Section 501 (exhaust systems); and Section 504 (gas clothes dryer exhaust requirement).

The Commission is also proposing to amend Rule 201 to adopt certain provisions of the 2009 Code of Federal Regulations (CFRs) dealing with pipeline safety regulations found at 18 C.F.R. Section 260.9 and 49 C.F.R. Parts 191-193, 195 and 199. Changes from the 2007 CFRs include: operating certain gas transmission pipelines at higher pressures, 73 Fed.Reg. 62148 (Oct. 17, 2008); design factors and pressure limits for natural gas pipelines made from new Polyamide-11 thermoplastic pipe, 72 Fed.Reg. 79002 (Dec. 24, 2008); and updated administrative procedures from the Pipeline Inspection, Protection, Enforcement, and Safety (PIPES) Act of 2006, 73 Fed.Reg. 16526 (March 28, 2008).

The Commission is also proposing changes to Rules 301 and 302 that would require utilities to submit written accident reports within twenty-one (21) days when they sustain damage to their facilities in excess of $200,000 or when a member of the public incurs property damage in excess of $200,000 as a result of contact with utility operating property. Damage resulting from motor vehicle accidents is exempt from the damage reporting rule. Finally, the Commission is proposing to make several housekeeping corrections to its Safety and Accident Reporting Rules regarding street addresses, telephone numbers, e-mail addresses, and citations to other authorities.

FEE SUMMARY: There are no fees associated with this proposed rulemaking.

FISCAL IMPACT: There is no fiscal impact on the state general fund resulting from this rulemaking.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because this proposed rule adopts updated national safety codes and federal regulations necessary for the safety of utility employees and the public during the installation, operation, or maintenance of natural gas pipelines, fuel gas systems and natural gas-fired appliances.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Donald L. Howell, II, Deputy Attorney General, at (208) 334-0312.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the Commission Secretary and must be delivered on or before September 23, 2009. Persons desiring to comment are encouraged to submit written comments at their earliest convenience rather than wait until the comment deadline.

DATED this 21st day of July, 2009.

Jean D. Jewell
Commission Secretary
Idaho Public Utilities Commission
PO Box 83720
Boise, ID 83720-0074
Telephone: (208) 334-0338
Facsimile: (208) 334-3762

Street address for express delivery:

472 W Washington
Boise, Idaho 83702-5918

THE FOLLOWING IS THE PROPOSED TEXT FOR DOCKET NO. 31-1101-0901

000. LEGAL AUTHORITY (RULE 0).
These rules adopt~~ing~~ by reference national safety codes and requir~~ing~~e the reporting of certain accidents ~~are adopted~~ under the general authority of the Public Utilities Law, Chapters 1 through 7, Title 61, Idaho Code, and under the specific authority of Sections 61-515 and 61-517, Idaho Code. ~~(4-1-98)~~(____)

(BREAK IN CONTINUITY OF SECTIONS)

004. PUBLIC RECORDS ACT COMPLIANCE (RULE 4).
Notes of telephone reports required by Rule 301 and written reports required by Rule 302 are public records subject to inspection, examination and copying. Further investigative reports by the Commission or the Commission Staff are investigatory records exempt from disclosure. See Sections 9-337(~~4~~6) and 9-340B, Idaho Code. Reports required by these rules and the results of further investigations by the Commission are by statute prohibited from admission into evidence in any action for damages based on or arising out of the loss of life or injury to the person or property. See Section 61-517, Idaho Code. ~~(4-5-00)~~(____)

005. DEFINITIONS (RULE 5).

01. Utilities. The terms "electrical corporation," "gas corporation," "pipeline corporation," "telephone corporation," and "water corporation" have the meanings given to them by statute in Chapter 1, Title 61, Idaho Code~~,~~; orders of the Idaho Public Utilities Commission~~,~~; and decisions of the Idaho Supreme Court ~~of Idaho~~ construing these statutes. ~~(4-2-08)~~(____)

02. Serious Damage. Damage to natural gas facilities caused by a natural disaster or terrorism that results in a loss of or reduction in pipeline throughput or storage deliverability. (4-2-08)

03. Serious Interruption of Service. Interruptions of natural gas pipeline service to communities, major governmental installations, and large industrial plants outside of communities or any other interruption that is significant in the judgment of the natural gas pipeline. Interruptions of less than three (3) hours or planned maintenance outages need not be reported. (4-2-08)

(BREAK IN CONTINUITY OF SECTIONS)

201. FEDERAL NATURAL GAS SAFETY REGULATIONS (RULE 201).
The Commission incorporates by reference Part 260.9, Title 18 (April 1, 200~~7~~9) and Parts 191, 192, 193, 195, and 199, Title 49, the Code of Federal Regulations (October 1, 200~~7~~9), except that federal accident reporting requirements contained in the rules adopted by reference in Rule 201 are replaced for state reporting purposes by orders of the Commission or rules of the Commission. These regulations are found in the Code of Federal Regulations, available from the~~,~~ U.S. Government Printing Office, Superintendent of Documents, Attn: New Orders, PO Box 371954, Pittsburgh, PA 15250-7954. The incorporated CFR Parts are also available in electronic format at www.gpoaccess.gov/nara. All gas and pipeline corporations subject to the Commission's jurisdiction are required to abide by applicable provisions of these federal regulations adopted by reference. ~~(4-2-08)~~(____)

202. INTERNATIONAL FUEL GAS CODE (IFG~~4~~C) (RULE 202).

01. Incorporation by Reference. The Commission incorporates by reference the International Fuel Gas Code, 200~~6~~9 Edition except for Part 2 of Chapter 1. The International Fuel Gas Code is published by the International Code Council, ~~3~~500 New Jersey Avenue, NW, 6th Floor, Washington D.C. 20001-2070. The Code is available from the Code Council and may be ordered online at www.iccsafe.org. Telephone orders may be placed by calling toll-free 800-786-4452. ~~(4-2-08)~~(____)

02. Utility Compliance. All gas corporations subject to the jurisdiction of this Commission are required to abide by applicable provisions of the International Fuel Gas Code and to connect for service and light only those installations that: (3-20-04)

a. Have been inspected and approved by authorized agencies; or (4-1-98)

b. When inspecting agencies do not exist, to require their customers to abide by applicable provisions of the International Fuel Gas Code as a condition of receiving service or continuing to receive service. (3-20-04)

203. INTERNATIONAL MECHANICAL CODE (IMC) (RULE 203).

01. Incorporation by Reference. The Commission incorporates by reference those portions of the 200~~6~~9 International Mechanical Code explicitly referring to gas or gas-burning appliances except Part 2 of Chapter 1. The International Mechanical Code is published by the International Code Council, ~~3~~500 New Jersey Avenue, NW, 6th Floor, Washington D.C. 20001-2070 and may be ordered by calling toll-free 800-786-4452 or online at www.iccsafe.org. ~~(4-2-08)~~(____)

02. Utility Compliance. Gas corporations subject to the jurisdiction of this Commission are required to abide by applicable provisions of the International Mechanical Code and to connect for service and light only those installations that: (3-20-04)

a. Have been inspected and approved by authorized agencies; or (4-1-98)

b. When inspecting agencies do not exist, to require their customers to abide by applicable provisions of the International Mechanical Code as a condition of receiving service or continuing to receive service. (3-20-04)

(BREAK IN CONTINUITY OF SECTIONS)

301. IMMEDIATE REPORTING OF FATALITIES AND CERTAIN ACCIDENTS AND MAJOR NATURAL GAS INTERRUPTIONS (RULE 301).

01. Fatality and ~~Accident~~ Hospitalization Reporting. Whenever any employee of an electrical corporation, gas corporation, pipeline corporation, telephone corporation, or water corporation or any member of the public dies or requires in-patient hospitalization as a result of contact with or proximity to utility operating property, the utility must notify the Commission by telephone of the fatality or hospitalization no later than the first business day following discovery of the fatality or reporting of the hospitalization, except as provided in Subsection 31.11.01.301.02. Reports should be made to the Commission Secretary at (208) 334-0338. ~~(4-2-08)~~( )

02. Property Accident Reporting. Whenever an electrical corporation, gas corporation, pipeline corporation, telephone corporation, or water corporation or any member of the public suffers property damage in excess of two hundred thousand dollars ($200,000) as a result of contact with or proximity to utility operating property, the utility shall file a written report with the Commission, except as provided in Subsection 31.11.01.301.03. Reports shall be made to the Commission Secretary at (208) 334-0338. ( )

0~~2~~3. Operating Property -- ~~Automobile~~ Motor Vehicle Accident Exception. As used in this rule, operating property means electric plant as defined in Section 61-118, Idaho Code, gas plant as defined in Section 61-116, Idaho Code, pipelines as defined in Section 61-114, Idaho Code, telephone line as defined in Section 61-120, Idaho Code, or water systems as defined in Section 61-124, Idaho Code. This reporting rule does not apply to fatalities, hospitalization, and property damage arising out of ~~automobile~~ motor vehicle accidents, even if the ~~automobile~~ motor vehicle later comes into contact with utility plant. Office buildings or portions of office buildings not associated with the physical delivery of utility services or commodities are not considered operating property. ~~(4-1-98)~~( )

0~~3~~4. Major Service Interruptions or Damage to Natural Gas Pipelines. The Commission incorporates by reference Section 260.9, Title 18, the Code of Federal Regulations (April 1, 2007). Every natural gas corporation must report serious damage to natural gas facilities and serious interruptions of service to the Commission. Natural gas corporations should also report other serious damage not caused by natural disaster or terrorism if such damages create the potential for serious delivery problems on its own system or the pipeline grid. (4-2-08)

302. WRITTEN REPORTING OF ACCIDENTS AND NATURAL GAS INTERRUPTIONS (RULE 302).

01. Reporting Required. In addition to any telephone reporting required under Rule 301, a written report shall be submitted for: (4-2-08)

a. Every accident involving an employee of the utility or member of the public that results in a fatality or in-patient hospitalization; (4-2-08)

b. Any other accident the utility finds significant; or (4-2-08)

c. Property damage to utility plant or non-utility property in excess of two hundred thousand dollars $200,000; or ( )

~~c~~d. Serious damage or service interruption of natural gas pipelines. (4-2-08)

02. Submitting the Written Report. All written reports ~~must~~ shall be submitted to the Commission within twenty one (21) days after the fatality, ~~or injury~~ hospitalization or damage is discovered. Reports regarding serious damage or service interruption shall be submitted at the earliest feasible time. Reports should be mailed to:

COMMISSION SECRETARY
IDAHO PUBLIC UTILITIES COMMISSION
PO BOX 83720
BOISE, ID 83720-0074

Street Address for Express Mail:
472 W. WASHINGTON ST.
BOISE, ID 83702-59~~83~~18

~~(4-2-08)~~(____)

Copies of such reports may also be provided by facsimile at (208) 334-3762 or by electronic mail to secretary@puc.~~state.id.us~~idaho.gov. ~~(5-3-03)~~(____)

03. Contents of Written Accident Report. There is no standard form for written reports prescribed by this rule. Gas companies may file copies of reports submitted to federal regulators under 49 C.F.R. Part 191. All reports submitted ~~must~~ shall contain the following information: ~~(4-2-08)~~(____)

a. Name of person(s) involved in the accident; (7-1-93)

b. Status of persons involved in the accident (e.g., employees, children, contractors, etc.); (7-1-93)

c. Time of day, day of the week and month, and location of the accident or discovery of the accident; (4-2-08)

d. Description of the accident, the extent of property damage, and events leading up to the accident; ~~and~~ ~~(4-2-08)~~(____)

e. The scope of service interruption, if any, and the duration of service interruption; and (____)

~~e~~f. The company name, contact person, e-mail address and direct telephone number of the reporting official. ~~(4-2-08)~~(____)

04. Contents of Written Report Involving Damage or Interruption to Natural Gas Facilities. All written reports shall provide the following information: (4-2-08)

a. The location and cause of the service interruption or damage to natural gas pipeline or storage facilities; (4-2-08)

b. The nature of the serious damage to pipeline or storage facility; (4-2-08)

c. The specific identification and location of any facilities damaged; (4-2-08)

d. The time the service interruption or damage to facilities occurred; (4-2-08)

e. The customers affected by the interruption of service or damage to facilities; (4-2-08)

f. A brief description of emergency actions taken to maintain service; (4-2-08)

g. An estimate of the time (if available) when pipeline throughput or storage deliverables are expected to be restored; and (4-2-08)

h. The company name, contact person, e-mail address and direct telephone number of the reporting official. ~~(4-2-08)~~(____)