

September 5, 2008

Ms. Annmarie Robertson
Director
Division of Pipeline Safety
Indiana Utility Regulatory Commission
101 W. Washington Street, Suite 1500 East
Indianapolis, Indiana 46204

Ms. Beth Krogel Roads
Commission Counsel
Indiana Utility Regulatory Commission
101 W. Washington Street, Suite 1500 East
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Re: Proposed Revision of Indiana Pipeline Safety Standards for
Transportation of Gas, Hazardous Liquids, Carbon Dioxide Fluids, and
Related Pipeline Facilities

Dear Annmarie and Beth,

On behalf of the Indiana Energy Association and our gas utility members, we want to thank you for providing an opportunity to provide comments on the draft rule referred to above. We appreciated the opportunity to discuss these draft rule changes in the workshop conducted on June 23, 2008 and the proposed changes provided by the Commission in response to that workshop.

Below, you will find our initial thoughts regarding the latest draft. We have incorporated these thoughts into an attached redlined version of the draft rule, which also includes the proposed changes made by the Commission in response to the workshop. In reviewing the draft, we believe the process could benefit from an additional workshop of interested stakeholders and we respectfully request that an additional session be scheduled prior to any official promulgation activity undertaken by the agency.

Our suggestions are as follows:

In the definition section, at 170 IAC 5-3-0.2, the term “accident” is defined. The term “Accident” is also used in 170 IAC 5-3-4--Reports to pipeline safety division. Since the term “Accident” is now included in the definition section, the use of the term in 5-3-4 may be confusing to the natural gas operator. The term “accident” is used in 49 CFR 195 (hazardous liquids), while the term ‘incident’ is used in 49 CFR 192 (natural/other gases). Adding the phrase “hazardous liquids” to the definition of the term “Accident” will clarify the intent of the subsequent section for operators.

In draft 170 IAC 5-3-1(b), which provides recordkeeping requirements for the companies, we suggest striking retention requirements for “routine or unusual inspections” as these terms are ambiguous and do not provide a clear understanding of what would be required. The term would seem to bring in common occurrences such as maintenance and repair of pipeline markers under the recordkeeping requirement and have the effect of discouraging common checks of various items, which do not necessarily require record keeping at the present time. We believe the remaining items listed for recordkeeping are comprehensive and will serve to provide the agency with the information necessary to ensure safety and an effective audit.

In addition, we suggest amending the requirement that records be maintained for “the life of the pipeline” and replace that provision with a suggestion that records of both the current inspection cycle and the previous inspection cycle be maintained. We believe this concept makes sense for both the agency, which will be able to compare current inspection information with that of the previous inspection, and the operator, which will be able to better manage a reasonable recordkeeping requirement. Currently, record retention for steel facilities is for the life of the pipe. Pending Distribution Integrity Management (DIM) regulations will require more stringent record retention for facilities identified as “at risk”.

We also suggest changing the word “kept” to “available” in this section with regard to the location of the records. We believe this is necessary, particularly given the advancement of technology based recordkeeping. It is possible that records may be kept on a server outside Indiana, but certainly available within the state. Also, we suggest striking the provision “without prior notice” with regard to the commission’s request for documents. Providing the operator notice is logical and will actually benefit the agency as much as the operator. These are document intensive audits and allowing the operator to

prepare the documents in a organized fashion, particularly if the documents are filed electronically, makes sense for all involved.

We have made suggested changes to 170 IAC 5-3-2 ITEM I, which provides requirements for Operations and Maintenance (O&M) Plans. We deleted the portion requiring “procedures for handling abnormal operations”. The key element of ensuring proper operator reaction to what may be deemed an abnormal operation is training of our personnel for such occurrences, which is already addressed in Operator Qualification Programs as well as an operator’s emergency and O&M procedures.

In ITEM III (paragraph (e)) of that same section, we have replaced the word “initiate” with “perform the original initiation of” and replace the term “customer” with “premise”. We believe this change is consistent with the stated goal of inspection upon initial installation of the service, is consistent with 49 CFR §192.357 and provides certainty as to the requirements placed on the operator.

In ITEM III (e)(1) we have amended (C) to indicate that at the time of installation the meter and regulator are protected from “reasonably anticipated” outside forces. We believe the term “reasonably anticipated” creates both the proper burden on the operator and protects our customers.

Finally, in ITEM III (e) (2), we have exchanged the term “pressure tight” for “free of hazardous leaks”. The term “pressure tight” is more restrictive than code requirements (NFPA, IFGC) that have jurisdiction over customer fuel lines. This commission’s initial proposal puts greater restrictions on the gas operator for these non-jurisdictional fuel lines, which would likely shift the burden of proof to the operator in possible future litigation.

In ITEM XI (c) (4) we suggest changing “maximum allowable operating pressure” to “pressure ranges.” In most instances, maps the operators utilize, which are widely distributed to operator personnel, rely on a legend to indicate a pressure range. The MAOP of individual lines are not specifically marked with such documentation on these maps. This change continues to provide the agency and the gas operator with necessary information and allows the operators to continue with common industry practice.

ITEM XIII (paragraph b-3) is amended to provide an effective date of January 1, 2009 (another date aligning with promulgation of the rule may be more appropriate) in which meters installed after that date are subject to the provisions. We have also added a provision which

indicates the requirements are not applicable to situations in which the meter is installed immediately abutting a building wall of the residential dwelling.

While we appreciate the agency's concern over the safety of a customer-owned service line, we are concerned with the new proposed requirement on a variety of fronts. First and foremost, we believe the proposed language creates substantial liability on the operator for the inspection of lines which the operator does not own and for which the Commission has no jurisdiction to regulate. If a leak is present on the customer-owned line, but is not found in the survey, the operator will be presumed to be liable for damages caused by a line in which he or she has no ownership interest and no control over. In addition to damages, associated legal fees, insurance and cost recovery issues are all concerns to be considered. We have attached a letter from an insurance agent who works with many of the smaller Indiana gas operators, which outlines many of the insurance-related coverage concerns.

The proposed provision creates additional liability concerns as well. The operator does not own these service lines, has no easement for the customer-owned lines, and has no right of access to these lines. If access is denied, an operator's physical presence on the property outside their recorded right-of-way could be deemed trespass.

Finally, there are questions as to the feasibility of locating lines to be surveyed and the effectiveness and cost of various tools, which may be considered effective in locating non-steel lines or lines without tracer wires. Customer-owned service lines are not mapped and would be very difficult to locate even with the best equipment available. Service connections may be split between buildings or wrap around dwellings. Lines serving farm taps may run for several hundred feet, with nothing but a guess as to where they are located.

As you are aware, pursuant to 49 CFR §192.16 gas operators must notify customers that these lines are subject to leakage and corrosion and that they should maintain their lines by employing leak detection and corrosion testing on a regular basis. It is also important to know that as meters which are not set against the structure are replaced, they are indeed moved to the base of the structure and the service lines in question are eliminated. We believe these activities should certainly continue. However, we do not believe a change in regulation, which would most certainly have the impact of shifting the legal burden of proving safety of a customer-owned line and a new set of liabilities to the operator is equitable. We propose an implementation date which will actually work to encourage meters to be moved to the structure as the best alternative. We also submit that meters set next to the structure

should not be subject to the rule for many of the same reasons expressed above for those that are not.

Our final suggestion relates to Operator Qualification Program requirements provided in ITEM XIV (paragraph g). We have inserted “calendar” years for the three year interval for qualification, deleted “not to exceed thirty-nine (39) months from the date of the most recent qualification for the task” and deleted “with an extension not to exceed three (3) months from the previous qualification date”. These suggestions allow the operators flexibility needed to provide additional opportunities for more effective jobsite training rather than simulation training. Allowing three calendar years, rather than three years also encourages operators to conduct this training early in the calendar year in order to take advantage of a more flexible schedule in subsequent qualification periods.

Again the IEA appreciates the opportunity to submit comments on the draft rule. We look forward to the opportunity to discuss these suggestions in an additional workshop of interested stakeholders. Please contact me with any questions you may have.

Very truly yours,

Stan Pinegar