

## **Report From Agency**

### **PUBLIC SERVICE COMMISSION OF WISCONSIN**

Revision of Wisconsin Administrative Code Chapter PSC 135 Gas Safety  
to Adopt Updates to the Federal Gas Pipeline Safety Code

1-AC-258

**Clearinghouse Rule No. 24-056**

### **REPORT TO LEGISLATURE**

#### **I. Basis and Purpose of the Proposed Rule**

Since 1968 the Commission has incorporated and adopted updates to the federal pipeline safety code in Wisconsin Admin. Code ch. PSC 135. This rulemaking revises Wisconsin Admin. Code ch. PSC 135 to incorporate updates to the federal pipeline safety code since the last revision to Wisconsin Admin. Code ch. PSC 135 took effect.

An existing agreement with the U.S. Department of Transportation, Pipeline and Hazardous Materials Safety Administration (PHMSA), Office of Pipeline Safety, authorizes the Commission to enforce federal natural gas pipeline safety requirements as set out in the Code of Federal Regulations, 49 CFR Parts 191, 192, 193, and 199, for Wisconsin's natural gas pipeline operators, primarily public utilities. As part of this agreement, the Commission adopts the federal pipeline safety code in Wisconsin Admin. Code § PSC 135.019. Under this agreement, the Commission has the authority to make additions to the federal code that are more stringent than the federal standards. Wisconsin Admin. Code § PSC 135.019 currently adopts the federal code as it exists through March 21, 2021. Since that date, PHMSA updated the federal code with respect to gas gathering pipelines, valve installation and rupture detection, safety of gas transmission pipelines, and technical standards to enhance pipeline safety by adopting innovative technologies and best practices. These proposed revisions adopt the federal code through June 28, 2024.

#### **II. Summary of Public Comments**

The Joint Committee for the Review of Administrative Rules (JCRAR) requested that the Commission hold a preliminary hearing on the statement of scope. The Commission held a virtual hearing on January 17, 2023 and February 28, 2023. The Commission held a second preliminary hearing<sup>1</sup> on February 28, 2023, due to a procedural error at the January 17, 2023 preliminary hearing. The Commission received five written comments the comment period of the proposed rulemaking. The Commission received five written comments during the comment period from the Wisconsin Utilities Association (WUA), the Utility Workers Coalition (UWC), We Energies, Wisconsin Public Service Corporation (WPSC), and Wisconsin Manufacturers and Commerce (WMC). The WUA, We Energies, and WPSC proposed changes to Wis. Admin. Code ch. PSC 135 regarding electrically conductive wire installation for plastic service lines, leak surveys, and the abandonment of services which have not been used for ten years. The UWC suggested strengthening construction inspection standards. The WMC requested that the Commission conduct a detailed economic impact analysis that considered the proposed rule's costs to businesses and ratepayers. After considering the comments from the preliminary hearing, the Commission decided to revise the statement of scope to incorporate the public comments received. JCRAR did not request the Commission to hold a preliminary hearing on the revised statement of scope.

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<sup>1</sup> The Statement of Scope was not published in the Wisconsin Administrative Register timely in advance of the first scheduled preliminary hearing. Therefore, a second preliminary hearing was held to ensure procedural compliance with Wis. Stat. ch. 227.

The Commission issued a draft economic impact analysis (EIA) and did not receive comments. The Commission determined that no changes to the draft EIA were necessary. In the EIA, the Commission determined that the proposed rules would result in minimal economic impact. Some proposed changes will reduce operations and maintenance costs to intrastate pipeline operators while others may minimally increase costs. It is estimated that these costs will result in an approximate offset of each other.

On August 21, 2024, the Commission held a virtual public hearing to solicit public input on the draft rules. No oral or written comments were received on the draft rules.

### **III. Appearances at the Public Hearing**

There were no appearances or oral comments at the public hearing.

### **IV. Changes to Rule Analysis and Fiscal Estimate**

No changes were made to the rule analysis or fiscal estimate.

### **V. Response to Legislative Council Rules Clearinghouse Report**

The Legislative Council Rules Clearinghouse submitted comments on August 13, 2024. The comments pertained to: form, style, and placement in administrative code and clarity and grammar, punctuation and use of plain language. Changes to the proposed rule were made to address recommendations by the Legislative Council Rules Clearinghouse.

#### **Comments related to Form, Style and Placement in the Administrative Code**

**Comment 2a.** - *The following comments apply in the rule caption's listing of affected provisions:*

- (1) The treatment types should be listed in the following order: to repeal; to renumber and amend; to amend; and to create. [s. 1.01 (1) (b), Manual.]*
- (2) The listing for s. PSC 135.319 (1) should be revised to more precisely identify "(aw)".*
- (3) The listing for s. PSC 135.727 should be revised to more precisely identify "(hw) (intro.)".*
- (4) The listing for provisions created should be revised to add s. PSC 135.727 (hw) (4).*

**Response:** Agree. The Commission revised the language as recommended by Legislative Council in the rule caption's listing of affected provisions and the listings for s. PSC 135.319 (1) and s. PSC 135.727.

**Comment 2b.** - *The following comments apply to SECTION 5 of the proposed rule, amending s. PSC 135.019 (3):*

- (1) The current rule text states that the attorney general has consented to incorporation by reference of the federal regulation. However, the amendment only updates the federal regulation citation, without identifying the updated attorney general approval. To identify the updated attorney general approval, the rule text does not need further amendment, but the agency's analysis for the proposed rule should be revised to identify that the attorney general has given consent for incorporation of the updated federal regulation.*
- (2) The current rule text states that the Legislative Reference Bureau (LRB) has consented to the incorporation by reference of the federal regulation. However, LRB consent is not required. Consider further amending this provision to remove the reference to LRB's consent. The provision should retain the reference to the material being on file with LRB.*

**Response:** Agree. The Commission revised the agency rule analysis and added a section titled, "Attorney General Consent for Incorporation by Reference" which states that the attorney general has given consent for incorporation by reference of 49 CFR Parts 191, 192, 193, and 199, including the appendices in Wis. Admin.

Code ch. 135 on November 15, 2024. Additionally, the Commission revised the language as recommended by Legislative Council and removed the reference to the Legislative Reference Bureau's consent.

**Comment 2c.** – In SECTION 6 of the proposed rule, it appears that the current text of s. PSC 135.319 (title) and (1) (intro.) are not amended. If the intent is to amend only the text in par. (aw), the current text of the subsection title and sub. (1) (intro.) should not be shown. Additionally, the treatment clause should be revised to more precisely identify “(aw)”.

**Response:** Agree. The Commission revised the language as recommended by Legislative Council. In Section 6, the Commission has deleted the reference to the subsection title and sub. (1) and has revised the treatment clause to more precisely identify “(aw)”.

**Comment 2d.** – In SECTION 9 of the proposed rule, renumbering and amending s. PSC 135.714 (title), the stricken word “Addition” should be shown at the beginning of the title, before the underscored phrase “Transmission lines:”. Additionally, in the text, the stricken word “If” should be shown at the beginning of the provision, before the underscored “(3w) For all steel transmission lines,”.

**Response:** Agree. The Commission revised the language as recommended by Legislative Council.

**Comment 2e.** – The following comments apply in SECTION 10 of the proposed rule:

- (1) It appears that the current text of s. PSC 135.727 (title), (intro.), and (hw) (1) to (3) are not amended. If the intent is to amend only the text in par. (hw) (intro.) and create sub. (4), the current text of the section title, (intro.) and (hw) (1) to (3) should not be shown. Additionally, the treatment clause should be revised to more precisely identify “(hw) (intro.)”.
- (2) In the last sentence of par. (hw) (intro.), it appears that an underscored space is inserted between the words “the” and “following”. The underscoring for the space should be removed, as the current text of the rule already has a space between those words.
- (3) The treatment of sub. (4) should be moved to a separate treatment SECTION, to create par. (hw) (4). In the new treatment SECTION, the created text should be shown without underscoring. [s. 1.04(2), Manual.]
- (4) Consider revising the numbering designations for sub. (4) (i) to (iii). Although the subsection and paragraph numbering is reversed from current drafting conventions, it may be preferable to stay as close as possible to the standard rule numbering designations. Accordingly, consider designating “(i)” to “(iii)” instead as “a.” to “c.”. [s. 1.10(1), Manual.]
- (5) Subsection (4) (intro.) should be revised to add the phrase “all of the following” or “any of the following”, depending on what applicability is intended.
- (6) The text in sub. (4) (i) should be revised to end in a period, rather than a semicolon.
- (7) The text in sub. (4) (ii) should be revised to end in a period, rather than “; and;”.

**Response:** Agree. The Commission revised the language as recommended by Legislative Council. The Commission has deleted the reference to (intro.) and (hw) (1) to (3) and the treatment clause has been revised to more precisely identify “(hw) (intro.)” Sub. 4 has been moved to a separate treatment section to create par. (hw) (4). The new text in this section is not underscored. The numbering designations for sub. (4) have been revised to “a” to “c.” Subsection (4) (intro.) has been revised to add the phrase “all of the following.” The text on sub. (4) (i) and (ii) have been revised to end in a period.

#### Comments related to Clarity, Grammar, Punctuation and Use of Plain Language

**Comment 5.a.** – In s. PSC 135.727 (hw) (4) (intro.), consider revising the plural “Service lines which have not been used... and do not have” to the singular “A service line that has not been used... and does not have”.

*Generally, the singular should be used, as the obligation to comply applies to each unused service line. [s. 1.05 (1)(c), Manual.]*

**Response:** Agree. The Commission revised the language as recommended by Legislative Council. In s. PSC 135.727 (hw) (4) (intro.), “Services lines.....” has been revised to the singular “A service line that has not been used...and does not have.”

**VI. Final Regulatory Flexibility Analysis**

The proposed rule changes are not expected result in significant economic impact on small businesses. The definition of “small business” in Wisconsin Stat. § 227.114 (1) states that to be considered a small business, the business must not be dominant in its field. Since gas utilities are monopolies in their service territories, they are dominant in their fields and are not small businesses. The Commission’s fiscal estimate and economic impact analysis also determined that the proposed rules will not have an economic impact on small businesses. The Commission sought input from all gas utilities, Wisconsin Utilities Association, Utility Workers’ Coalition, and the National Federation of Independent Businesses.

**VII. Response to Small Business Regulatory Review Board Report**

The Small Business Regulatory Review Board did not prepare a report on this rule proposal.

**VIII. Wisconsin Environmental Policy Act and Housing Analysis**

The Commission evaluated whether the rules would have an environmental impact and concluded that the rules do not result in any possible significant, adverse environmental or social impacts. Therefore, preparation of an environmental assessment or environmental impact statement under Wisconsin Stat. § 1.11 was not necessary. The Commission completed an evaluation of the potential impact on housing under Wisconsin Stat. § 227.115 and concluded the rules do not impact housing.