

Regulatory Analysis Form

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(1) Agency

Pennsylvania Public Utility Commission

(2) I.D. Number (Governor*s Office Use)

L-00060177/57-249

IRRC Number: 2570

RECEIVED
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INDEPENDENT REGULATORY
COMMISSION

(3) Short Title

Proposed Rulemaking For Revision of 52 Pa. Code Chapter 67 pertaining to Service Outage.

(4) PA Code Cite

52 Pa. Code §67.1

(5) Agency Contacts & Telephone Numbers

Primary Contact: Kimberly Hafner (Legal)

Secondary Contact: N/A

(6) Type of Rulemaking (check one)

- Proposed Rulemaking
- Final Order Adopting Regulation
- Final Order, Proposed Rulemaking Omitted

(7) Is a 120-Day Emergency Certification Attached?

- No
- Yes: By the Attorney General
- Yes: By the Governor

(8) Briefly explain the regulation in clear and nontechnical language.

The proposed amendment adds clarity to the term service interruption when pertaining to water service by a water utility under the Commission's jurisdiction in Chapter 67 - Service Outage.

(9) State the statutory authority for the regulation and any relevant state or federal court decisions.

66 Pa. C.S.A. §§ 501 & 1501.

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(10) Is the regulation mandated by any federal or state law or court order, or federal regulation? If yes, cite the specific law, case or regulation, and any deadlines for action.

66 Pa. C.S.A. § 1501

(11) Explain the compelling public interest that justifies the regulation. What is the problem it addresses?

It clarifies the circumstances under which a utility must notify the Commission regarding a service interruption.

(12) State the public health, safety, environmental or general welfare risks associated with nonregulation.

Failure to adopt the amendment may lead to water utilities not notifying the Commission in accordance with existing regulations when the quality of water is not fit for consumption and thus is an interruption of service.

(13) Describe who will benefit from the regulation. (Quantify the benefits as completely as possible and approximate the number of people who will benefit.)

The Commission would be notified when there is a quality issue associated with water since it would be considered a service interruption. The notification would afford the parties the opportunity to take appropriate action as warranted for Pennsylvania water consumers.

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(14) Describe who will be adversely affected by the regulation. (Quantify the adverse effects as completely as possible and approximate the number of people who will be adversely affected.)

Neither consumers nor the water companies will be adversely affected.

(15) List the persons, groups or entities that will be required to comply with the regulation. (Approximate the number of people who will be required to comply.)

All jurisdictional water companies will be required to comply with the regulation. Currently, there are over 100 jurisdictional water companies operating in Pennsylvania.

(16) Describe the communications with and input from the public in the development and drafting of the regulation. List the persons and/or groups who were involved, if applicable.

The proposed amendment is one of the recommendations resulting from an investigation the Commission performed in response to a fluoride spill that occurred at a water plant late last year. As part of the investigation, the Commission worked with the company, the Department of Environmental Protection and the Office of Consumer Advocate.

(17) Provide a specific estimate of the costs and/or savings to the regulated community associated with compliance, including any legal, accounting or consulting procedures which may be required.

It is expected that water companies would experience minimal expense to comply with the amendment.

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(18) Provide a specific estimate of the costs and/or savings to local governments associated with compliance, including any legal, accounting or consulting procedures which may be required.

None.

(19) Provide a specific estimate of the costs and/or savings to state government associated with the implementation of the regulation, including any legal, accounting, or consulting procedures which may be required.

None.

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(20) In the table below, provide an estimate of the fiscal savings and costs associated with implementation and compliance for the regulated community, local government, and state government for the current year and five subsequent years.

	Current FY Year	FY +1 Year	FY +2 Year	FY +3 Year	FY +4 Year	FY +5 Year
SAVINGS:	\$ N/A	\$	\$	\$	\$	\$
Regulated Community						
Local Government						
State Government						
Total Savings						
COSTS:						
Regulated Community						
Local Government						
State Government						
Total Costs						
REVENUE LOSSES:						
Regulated Community						
Local Government						
State Government						
Total Revenue Losses						

(20a) Explain how the cost estimates listed above were derived.

Not applicable.

Regulatory Analysis Form

(20b) Provide the past three year expenditure history for programs affected by the regulation.

Program	FY -3	FY -2	FY -1	Current FY
N/A				

(21) Using the cost-benefit information provided above, explain how the benefits of the regulation outweigh the adverse effects and costs.

Not applicable.

(22) Describe the nonregulatory alternatives considered and the costs associated with those alternatives. Provide the reasons for their dismissal.

Not applicable.

(23) Describe alternative regulatory schemes considered and the costs associated with those schemes. Provide the reasons for their dismissal.

Not applicable.

Regulatory Analysis Form

(24) Are there any provisions that are more stringent than federal standards? If yes, identify the specific provisions and the compelling Pennsylvania interest that demands stronger regulation.

Not applicable.

(25) How does this regulation compare with those of other states? Will the regulation put Pennsylvania at a competitive disadvantage with other states?

The proposed amendment is similar to a New Jersey regulation that requires that a utility shall exercise reasonable diligence to avoid interruptions, curtailments or deficiencies of service (referred to as interruptions of service). No, it will not put Pennsylvania at a competitive disadvantage.

(26) Will the regulation affect existing or proposed regulations of the promulgating agency or other state agencies? If yes, explain and provide specific citations.

Yes. It affects 52 Pa. Code Chapter 67 overall.

(27) Will any public hearings or informational meetings be scheduled? Please provide the dates, times, and locations, if available.

No.

Regulatory Analysis Form

(28) Will the regulation change existing reporting, record keeping, or other paperwork requirements? Describe the changes and attach copies of forms or reports which will be required as a result of implementation, if available.

Yes. The proposed amendment will require the companies to notify the Commission in accordance with existing regulations when there is a service interruption that concerns quantity or quality of water delivered to customers.

(29) Please list any special provisions which have been developed to meet the particular needs of affected groups or persons including, but not limited to, minorities, elderly, small businesses, and farmers.

Not applicable.

(30) What is the anticipated effective date of the regulation; the date by which compliance with the regulation will be required; and the date by which any required permits, licenses or other approvals must be obtained?

The amendment will be adopted as final following publication in the Pennsylvania Bulletin after review of all comments submitted to the Commission and approval by IRRC and the legislative committees.

(31) Provide the schedule for continual review of the regulation.

After taking effect, the final regulations will be reviewed on an on-going basis and as warranted.

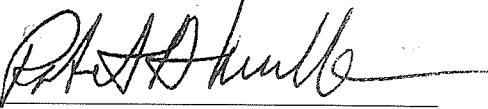
**FACE SHEET
FOR FILING DOCUMENTS
WITH THE LEGISLATIVE REFERENCE BUREAU**

(Pursuant to Commonwealth Documents Law)

2570

DO NOT WRITE IN THIS SPACE

Copy below is hereby approved as to form and legality. Attorney General.

BY 
(DEPUTY ATTORNEY GENERAL)

JUN 08 2006

DATE OF APPROVAL

Check if applicable
Copy not approved. Objections attached

Copy below is hereby certified to be true and correct copy of a document issued, prescribed or promulgated by:

Pennsylvania Public Utility Commission
(AGENCY)

DOCUMENT/FISCAL NOTE NO. L-00060177/57-249

DATE OF ADOPTION May 4, 2006

BY 

James J. McNulty

TITLE (SECRETARY)

Copy below is hereby approved as to form and legality. Executive or independent Agencies.

BY 

Bohdan R. Pankiw
Chief Counsel

5-4-06

DATE OF APPROVAL

Check if applicable. No Attorney General approval or objection within 30 days after submission.

L-00060177/57-249
Proposed Rulemaking
Revision to Chapter 67 of Title 52 of the Pa. Code
Pertaining to Service Outages
52 Pa. Code, Section 67

The Pennsylvania Public Utility Commission on May 4, 2006, adopted a proposed rulemaking order which amends Chapter 67 to include a definition of service interruption as it pertains to water utilities. The contact person is Kimberly Hafner, Law Bureau, 787-5000.

EXECUTIVE SUMMARY

L-00060177/57-249
Proposed Rulemaking
Revision to Chapter 67 of Title 52 of the Pa. Code
Pertaining to Service Outages

Title 66 of the Pennsylvania Consolidated Statutes Annotated (“Public Utility Code” or “Code”) contains provisions that address a utility’s character of services and its facilities. In addition, the statute also has provisions regarding the Commission’s administrative authority and regulations. *See*, 66 Pa.C.S. §§ 501 and 1501. Specifically, 66 Pa. C.S.A. § 1501 provides:

Every public utility shall furnish and maintain adequate, efficient, safe, and reasonable service and facilities, and shall make all such repairs, changes, alterations, substitutions, extensions, and improvements in or to such service and facilities as shall be necessary or proper for the accommodation, convenience, and safety of its patrons, employees, and public. Such service also shall be reasonably continuous and without unreasonable interruptions or delay....

In addition, 66 Pa.C.S.A. § 501 provides:

- (a) ... In addition to any powers expressly enumerated in this part, the commission shall have full power and authority, and it shall be its duty to enforce, execute and carry out, by its regulations, orders, or otherwise, all and singular, the provisions of this part, and the full intent thereof; and shall have the power to rescind or modify any such regulations or orders...
- (b) ... The commission may make such regulations, not inconsistent with law, as may be necessary or proper in the exercise of its powers or for the performance of its duties. ...

In early December 2005 there was a fluoride release incident at the Pennsylvania American Water Company’s (PAWC) Yellow Breeches Water Treatment Plant in Fairview Township, Cumberland County. The incident affected approximately 34,000 customers of PAWC located in eastern Cumberland County and northern York County. As a result of the incident PAWC issued a “Do Not Consume” advisory.

By a December 23, 2005 order, Commission staff conducted an investigation into the cause of the high fluoride incident, the level of compliance by PAWC with the Public Utility Code and the Commission’s regulations regarding safe and reliable water service, the applicable notification procedures, whether the problems were addressed and whether any improvements in the notification procedures were warranted. The Final

Investigation Order and Release of Staff Report addressed the several areas of concern noted in the Commission's December 23, 2005 order specifically, the operational response of PAWC, the timeliness and adequacy of the public notice, the adequacy of alternative drinking water supplies, compliance with 52 Pa. Code § 67.1 (Notice to Commission), additional steps to inform and assist consumers, and the obligation to update emergency response plans.

The Commission's regulations provide that a utility shall notify the Commission by telephone within one hour after a preliminary assessment of conditions reasonably indicates that there is an unscheduled service interruption affecting 2,500 or 5%, whichever is less, of a utility's total customers in a single incident of six or more projected consecutive hours. 52 Pa. Code § 67.1(b).

In the context of the Commission's fluoride spill investigation, PAWC asserted that the term "service interruption" is not defined in the regulation and stated that the common understanding of this term requires an outage, supply cut off or cessation of service. PAWC contended that the incident did not result in the loss of service (*i.e.*, customers had water that could be used for all purposes other than consumption). The Commission disagreed with PAWC's interpretation that the requirement in the Commission's regulations to notify the Commission of an incident by telephone is only triggered when there is a total outage of service.

The Commission formally commences this rulemaking to amend its regulations to clarify what the Commission deems a "service interruption" under 52 Pa. Code § 67.1. The Commission proposes to provide clarity by noting that the term service interruption pertains to quantity and quality. The exact proposed language is set forth in Annex A.

The contact person is Kimberly Hafner, Law Bureau (717)787-5000.

**PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17105-3265**

Public Meeting held May 4, 2006

Commissioners Present:

Wendell F. Holland, Chairman
James H. Cawley, Vice Chairman
Bill Shane
Kim Pizzingrilli
Terrance J. Fitzpatrick

In Re: Proposed Rulemaking for Revision
to Chapter 67 of Title 52 of the PA Code
Pertaining to Service Outages

Docket No. L-00060177

PROPOSED RULEMAKING ORDER

BY THE COMMISSION:

On March 10, 2006, the Commission adopted the Final Investigation Order and Release of Staff Report at Docket No. I-00050109 regarding the December 2005 fluoride release incident at the Pennsylvania American Water Company's (PAWC) Yellow Breeches Water Treatment Plant in Fairview Township, Cumberland County. Pursuant to the March 10, 2006 Order, the Commission formally commences this rulemaking to amend our regulations to clarify what the Commission deems a "service interruption" under 52 Pa. Code § 67.1.

Background

By a December 23, 2005 order, Commission staff conducted an investigation into the cause of the high fluoride incident, the level of compliance by PAWC with the Public Utility Code and our Commission's regulations regarding safe and reliable water service

and the applicable notification procedures. The investigation also addressed whether these procedures were complied with and whether any improvements in the notification procedures were warranted. As part of its inquiry, Commission staff met with representatives from the Department of Environmental Protection (DEP), the Cumberland County Emergency Management Services, PAWC and the Office of Consumer Advocate.

The Final Investigation Order and Release of Staff Report addressed several areas of concern noted in the Commission's December 23, 2005 order specifically, the operational response of PAWC, the timeliness and adequacy of the public notice, the adequacy of alternative drinking water supplies, compliance with 52 Pa. Code § 67.1 (Notice to Commission), additional steps to inform and assist consumers, and the obligation to update emergency response plans.

Discussion

This proposed rulemaking addresses the issue of notice to the Commission regarding service outages, 52 Pa. Code § 67.1. The Commission's regulations provide that a utility shall notify the Commission by telephone within one hour after a preliminary assessment of conditions reasonably indicates that there is an unscheduled service interruption affecting 2,500 or 5%, whichever is less, of a utility's total customers in a single incident of six or more projected consecutive hours. 52 Pa. Code § 67.1(b).

In the context of the fluoride spill investigation, PAWC asserted that the term "service interruption" is not defined in regulation and stated that the common understanding of this term requires an outage, supply cut off or cessation of service. PAWC contended that the incident did not result in the loss of service, (*i.e.*, customers had water that could be used for all purposes other than consumption).

The Commission disagreed with PAWC's interpretation that the requirement in

our regulations to notify the Commission of an incident by telephone is only triggered when there is a total outage of service. Water for consumption is the most vital and important aspect of service provided by a water utility and if consumers cannot drink it, then from their perspective and ours, service has been interrupted.

Chapter 67 (Service Outages) consists only of Section 67.1 (General provisions). Section 67.1 uses the phrase “service interruption” but the phrase is not defined. In the March 10, 2006 Order, the Commission determined that it is necessary to take the additional step of amending Commission regulations to ensure that regulated water utilities have a clear understanding of what the Commission deems a “service interruption.”

In its March 10, 2006 Order, the Commission placed the water industry on notice that “service interruption” covers any interruption of service that affects the quantity or quality of water delivered to the customer. In arriving at that conclusion, the Commission took administrative notice that a similar DEP regulation defines a “service interruption” as “affecting quantity *or quality* of the water delivered to the customer.”

25 Pa. Code § 109.708 (emphasis added). As noted earlier, water for consumption is the most vital and important aspect of service provided by a water utility, and if consumers cannot drink it, then from their perspective, and the Commission’s, service has been interrupted. In addition, since the Commission and the DEP work closely on water related matters issues, the Commission finds it reasonable to have the same the regulatory definition of “service interruption.”

Therefore, the Commission proposes to amend as set forth in “Annex A,” attached, our regulation at section 67.1 so as to include a definition of “service interruption” as it pertains to water utilities.

Conclusion

The Commission seeks comment from the water industry and the statutory advocates, as well as from any other interested member of the public regarding the proposed change in our regulation. Interested parties will have 30 days from publication of this Order to file comments. Since the proposed amendment is concise and uncomplicated and we are committed to completing the amendment to our procedural regulations in a timely fashion, we will not provide for reply comments. Accordingly, pursuant to section 501 of the Public Utility Code, 66 Pa. C.S.A. §.501, and the Commonwealth Document Law, 45 P.S. §§ 2101, *et seq.*, and regulations promulgated there under at 1 Pa. Code §§ 7.1-7.4, we amend the regulation as noted above and as set forth in Annex A; **THEREFORE,**

IT IS ORDERED:

1. That a Rulemaking proceeding is hereby initiated at this docket to consider the revisions to Commission regulation at 52 Pa. Code § 67.1 set forth in Annex A, attached.
2. That the Secretary shall submit a copy of this Order and Annex A to the Office of Attorney General for preliminary review as to form and legality.
3. That the Secretary shall submit a copy of this Order and Annex A to the Governor's Budget Office for review of fiscal impact.
4. That the Secretary shall submit this Order and Annex A for review and comments by the Independent Regulatory Review Commission and the designated Legislative Standing Committees.

5. That the Secretary shall certify this Order and Annex A and deposit them with the Legislative Reference Bureau to be published in the *Pennsylvania Bulletin*.

6. That a copy of this Order and Annex A shall be served upon the Office of Consumer Advocate, the Office of Small Business Advocate, the Office of Trial Staff, the central and regional offices of the Pennsylvania Department of Environmental Protection, the Pennsylvania Chapter of the National Association of Water Companies, and upon all jurisdictional water and wastewater utilities.

7. That interested persons may submit an original and 15 copies of any comments referencing the docket number of the proposed regulations within 30 days of publication in the *Pennsylvania Bulletin* the Pennsylvania Public Utility Commission, Attn: Secretary, P.O. Box 3265, Harrisburg, PA 17105-3265. One copy of a diskette containing the comments in electronic format should also be submitted. A courtesy copy of all written comments shall be served upon the Commission's Law Bureau, Attn: Assistant Counsel Kimberly Hafner.

8. That comments should include any proposed language for revision and a clear explanation for the recommendation.

9. That the contact person for this rulemaking is Kimberly Hafner, Assistant Counsel, Law Bureau, 717-787-5000. Alternate formats of this document are available to persons with disabilities and may be obtained by contacting Sherri DelBiondo, Regulatory Coordinator, Law Bureau, 717-772-4579.

BY THE COMMISSION

James J. McNulty
Secretary

(SEAL)

ORDER ADOPTED: May 4, 2006

ORDER ENTERED: May 5, 2006

ANNEX A

TITLE 52. PUBLIC UTILITIES PART 1. PUBLIC UTILITY COMMISSION Subpart C. FIXED SERVICE UTILITIES CHAPTER 67. SERVICE OUTAGES

§ 67.1 General provisions.

(a) Electric, gas, water and telephone utilities holding certificates of public convenience under 66 Pa.C.S. §§ 1101 and 1102 (relating to organization of public utilities and beginning of service and enumeration of acts requiring certificate) shall adopt the following steps to notify the Commission with regard to unscheduled service interruptions. The term service interruption, when pertaining to water service provided by a water utility under the Commission's jurisdiction, covers an interruption of service affecting the quantity or quality of water delivered to the customers.

(b) All electric, gas, water, and telephone utilities shall notify the Commission when 2,500 or 5.0%, whichever is less, of their total customers have an unscheduled service interruption in a single incident for six or more projected consecutive hours. Written notification shall be filed with the Commission within five working days after the total restoration of service. Where storm conditions cause multiple reportable interruptions as defined by this section, a single composite report shall be filed. Each report shall contain the following information:

- (1) The approximate number of customers involved in a single incident.
- (2) The geographic area affected, in terms of the county and local political subdivision.
- (3) The reason for the interruption.
- (4) The projected time for service restoration.
- (5) The number of utility workers and others assigned specifically to the repair work.
- (6) The date and time of the first information of a service interruption.
- (7) The date and time that repair crews were assembled.
- (8) The date and time that the supervisor made the first call.
- (9) The approximate time that repair work was started.

(10) The actual time that service was restored to the last affected customer.

(c) In addition to the requirements of subsection (b) the utility shall notify the Commission by telephone within one hour after preliminary assessment of conditions reasonably indicates that the criteria listed in subsection (b) may be applicable. The first four items shall be used as guidelines for the telephone report. The Commission will maintain telephone lines for this purpose and will notify each utility of the numbers to be called.

(d) The Commission will implement a plan to govern its internal operations in receiving notification of service interruptions, in investigating such interruptions, and in assisting the customers of the utility, the utility and Commonwealth agencies in restoring service.

(e) All electric, gas, water and telephone utilities shall list in the local telephone directories of their service areas a telephone number to be used during normal operating hours and an emergency telephone number to be used 24 hours in emergency service situations.



PENNSYLVANIA PUBLIC UTILITY COMMISSION
COMMONWEALTH OF PENNSYLVANIA
HARRISBURG, PENNSYLVANIA

WENDELL F. HOLLAND
CHAIRMAN

September 27, 2006

The Honorable John R. McGinley, Jr.
Chairman
Independent Regulatory Review Commission
14th Floor, Harristown II
333 Market Street
Harrisburg, PA 17101

Re: L-00060177/57-249
Proposed Rulemaking
Revision of 52 Pa. Code Chapter 67
Pertaining to Service Outages
52 Pa. Code, Chapter 67

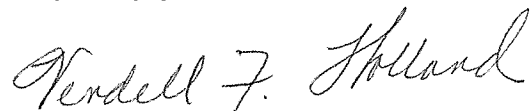
Dear Chairman McGinley:

Enclosed please find one (1) copy of the proposed rulemaking and the Regulatory Analysis Form prepared in compliance with Executive Order 1996-1, "Regulatory Review and Promulgation." Pursuant to Section 5(a) of the Regulatory Review Act of June 30, 1989 (P.L. 73, No. 19) (71 P.S. §§745.1-745.15) the Commission is submitting today a copy of the proposed rulemaking and Regulatory Analysis Form to the Chairman of the House Committee on Consumer Affairs and to the Chairman of the Senate Committee on Consumer Protection and Professional Licensure.

The purpose of this proposal is to include a definition of service interruption as it pertains to water utilities. The contact person is Kimberly Hafner, Law Bureau, 787-5000.

The proposal has been deposited for publication with the
Legislative Reference Bureau.

Very truly yours,

A handwritten signature in cursive script that reads "Wendell F. Holland".

Wendell F. Holland
Chairman

Enclosures

cc: The Honorable Robert M. Tomlinson
The Honorable Lisa Boscola
The Honorable Robert J. Flick
The Honorable Joseph Preston, Jr.
Legislative Affairs Director Perry
Chief Counsel Pankiw
Assistant Counsel Hafner
Regulatory Coordinator DelBiondo
Judy Bailets, Governor's Policy Office

TRANSMITTAL SHEET FOR REGULATIONS SUBJECT
TO THE REGULATORY REVIEW ACT

ID Number: L-00060177/57-249

Subject: Revision to Chapter 67 of Title 52 of the Pa. Code
Pertaining to Service Outages

Pennsylvania Public Utility Commission

TYPE OF REGULATION

- Proposed Regulation
- Final Regulation with Notice of Proposed Rulemaking Omitted.
- Final Regulation
- 120-day Emergency Certification of the Attorney General
- 120-day Emergency Certification of the Governor

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FILING OF REPORT

Date Signature Designation

9/27/06 *Sandra Basore* HOUSE COMMITTEE
Consumer Affairs

9-27-06 *Neil Leggett* SENATE COMMITTEE
Consumer Protection and
Professional Licensure

9/27/06 *Kathy Cooper* Independent Regulatory
Review Commission

Attorney General

Legislative Reference
Bureau