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IRWINA. POPOWSKY
Consumer Advocate

November 13, 2006

James J. McNulty, Secretary
PA Public Utility Commission
Commonwealth Keystone Bldg.
400 North Street
P.O. Box 3265
Harrisburg, PA 17120

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NOV 13 2006

PA PUBLIC UTILITY COMMISSION
COMMON KEYSSTONE BLDG

Re: Proposed Rulemaking for Revision to Chapter 67 of
Title 52 of the PA Code Pertaining to Service
Outage
Docket No. L-00060177

Dear Secretary McNulty:

Enclosed for filing please find an original and fifteen copies of the Comments of the Office of Consumer Advocate in the above-referenced proceeding.

Copies of this document have been served on the parties as evidenced by the attached Certificate of Service.

Sincerely yours,

Erin L. Gannon
Assistant Consumer Advocate
PA Attorney I.D. # 83487
E-Mail: EGannon@paoca.org

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2006 NOV 22 PM 1:31
INDEPENDENT REGULATORY
REVIEW COMMISSION

Enclosure

cc: Kimberly Hafner, Law Bureau
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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

PROPOSED RULEMAKING FOR :
REVISION TO CHAPTER 67 OF : Docket No. L-00060177
TITLE 52 OF THE PA CODE :
PERTAINING TO SERVICE OUTAGES :

**COMMENTS OF THE
OFFICE OF CONSUMER ADVOCATE**

The Office of Consumer Advocate (OCA) files these Comments in support of the Proposed Rulemaking for Revision to Chapter 67 of Title 52 of the Pennsylvania Code Pertaining to Service Outages, 36 Pa. B. 6303 (October 14, 2006) (Rulemaking Order), which was entered by the Pennsylvania Public Utility Commission (PUC or Commission) on May 5, 2006 and published in the Pennsylvania Bulletin on October 14, 2006.

I. INTRODUCTION

The Commission issued this proposed rulemaking following its Investigation into Pennsylvania-American Water Company's (PAWC's) High Fluoride Concentration Incident and of Existing Notification and Reporting Requirements, Docket No. I-00050109 (Fluoride Order). The Order requiring publication of the Staff Report and closing that investigation was published on March 10, 2006. 36 Pa. Bull. 1460. The Commission has also issued a related Order proposing a policy statement to provide guidance regarding the types of public notice that will meet the reasonableness standard under 66 Pa. C.S. § 1501 when there are unscheduled water service interruptions; that Order was published on July 29, 2006, 36 Pa. B. 4013. Proposed Policy Statement Relating to Unscheduled Water Service Interruptions and Associated Actions, Docket No. M-00061956.

In the instant rulemaking, the Commission proposes to amend Section 67.1 of its regulations, 52 Pa. Code § 67.1. This regulation requires certificated electric, gas, water and

telephone utilities to notify the Commission in writing and by telephone “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.” 52 Pa. Code § 67.1(b). Section 67.1 does not contain a definition for the phrase “service interruption.” Rulemaking Order at 3.

In the context of the fluoride spill investigation, PAWC asserted that because there is no definition of “service interruption” in Section 67.1, the utility did not believe that regulation’s notification requirements were triggered unless there is a complete outage or cessation of service. Rulemaking Order at 2; *see also* Fluoride Order at 9-10. The Commission strongly disagreed, stating that a “service interruption” includes an interruption of service affecting the quantity or the quality of water delivered to customers. Fluoride Order at 10. “[W]ater 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.” Rulemaking Order at 3; *see also* Fluoride Order at 10.

To ensure that all water utilities clearly understand their obligations under Section 67.1, the Commission determined that the regulation should be amended to include a definition of “service interruption.” Rulemaking Order at 3; Fluoride Order at 11. The PUC took administrative notice that a similar Department of Environmental Protection (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), and proposes that identical language be added to 52 Pa. Code § 67.1. Specifically, the Commission proposes to amend the regulation by adding the following language to subsection a:

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.

Rulemaking Order, Annex A at 7.

II. COMMENTS

The OCA files these Comments in support of the proposed Rulemaking, which is both consistent with and complementary of the Commission's other efforts in this important area. The definition of service interruption that the Commission proposes to add to Section 67.1 is consistent with the PUC's application of Section 67.1 in the Fluoride Order, wherein the Commission "[put] the water industry on notice that 'service interruption' covers any interruption of service that affects quantity or quality of water delivered to the customer." Fluoride Order at 10. In addition, by adopting the same definition of service interruption contained in the DEP's regulation, 25 Pa. Code § 109.708, the Commission harmonizes the regulatory requirements of the PUC and the DEP for water utilities, over which both agencies exercise a measure of jurisdiction. This action is consistent with guidance handed down by the Commonwealth Court in an analogous situation, where both the PUC and the Department of Transportation had jurisdiction over common carriers, specifically taxicabs. *See Harrisburg Taxicab and Baggage Co. v. Pa. P.U.C.*, 786 A.2d 288 (Pa. Commw. 2001). Indeed, the Commonwealth Court found such harmonization "salutary" where the two agencies had overlapping jurisdiction over the same entities, as the PUC and DEP have here. *Id.* at 293.

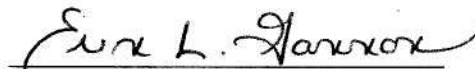
The proposed Rulemaking therefore is intended to notify water utilities that when other provisions of the regulation are met, the utility must notify the Commission by telephone and in writing in the event of a service interruption that affects either the quantity or quality of water delivered to customers. The PUC specified that, even without the addition to the regulation, utilities are required to act accordingly. Rulemaking Order at 11. The new language underscores the importance of Section 67.1 in enabling the Commission to enforce the safe, adequate and reasonable service requirements of Section 1501 of the Public Utility Code, 66 Pa.C.S. §1501; *see also* 66 Pa.C.S. §501, 1504-1505.

III. CONCLUSION

As stated in the OCA's Comments in related proceedings, the OCA commends the Commission for its response to the December 2005 PAWC fluoride spill incident, which created an opportunity for the PUC to review and update its emergency notice requirements for water utilities. The proposed amendment to Section 67.1 of the Public Utility Code clarifies the Commission's existing interpretation and application of this regulation and synchronizes with DEP requirements. The proposed amendment also complements the PUC's efforts to clarify its public notice requirements.

The OCA fully supports the proposed amendment to 52 Pa. Code § 67.1 contained in the Commission's proposed Rulemaking Order.

Respectfully Submitted,



Erin L. Gannon
Assistant Consumer Advocate
Attorney ID# 83487

Counsel for:
Irwin A. Popowsky
Consumer Advocate

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November 13, 2006
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COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
P.O. BOX 3265, HARRISBURG, PA 17105-3265

IN REPLY PLEASE
REFER TO OUR FILE

2570
November 20, 2006

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

INDEPENDENT REGULATORY
REVIEW COMMISSION

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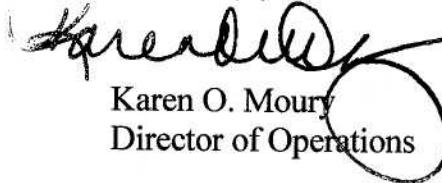
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Re: L-00060177/57-249
Proposed Rulemaking
Revision to Chapter 67 of Title 52
Of the PA Code Pertaining to
Service Outage
52 Pa. Code, Chapter 67

Dear Chairman McGinley:

Enclosed is one (1) copy of comments received regarding the above regulation as required under Section 5(10)(b.1) of the Regulatory Review Act of June 30, 1989 (P.L. 73, No. 19).

Very truly yours,


Karen O. Moury
Director of Operations

Comments submitted by:

See attached list

cc: Regulatory Coordinator DelBiondo
Assistant Counsel Hafner

Pennsylvania-American Water Co.
National Association of Water Companies
OCA

CERTIFICATE OF SERVICE

Re: Proposed Rulemaking for Revisions to Chapter 67 of
Title 52 of the Pa. Code Pertaining to Service Outages
Docket No. L-00060177

I hereby certify that I have this day served a true copy of the foregoing document,
Comments of the Office of Consumer Advocate, upon parties of record in this proceeding in
accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant), in
the manner and upon the persons listed below:

Dated this 13th day of November, 2006.

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Chairman Alvin C. Bush
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November 13, 2006

BY HAND

James J. McNulty, Secretary
Secretary's Bureau
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
2nd Floor, Room-N201
400 North Street
P.O. Box 3265
Harrisburg, PA 17120

COPY

Re: In Re: Proposed Rulemaking for Revision to
Chapter 67 of Title 52 of the PA Code
Pertaining to Service Outages
PUC Docket No. L-00060177
IRRC Regulation ID #57-249 (#2570)
Comments by PAWC

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INDEPENDENT REGULATORY
REVIEW COMMISSION

Dear Secretary McNulty:

Enclosed for filing please find the original and fifteen (15) copies of the Comments of Pennsylvania-American Water Company (PAWC) on the above-mentioned Rulemaking by the Pennsylvania Public Utility Commission. One copy of a diskette containing the Comments in electronic format is also enclosed.

Please time-stamp and return the additional copies of this filing. If you have any questions or concerns, please contact me. Thank you.

Sincerely,

Michael D. Klein
Michael D. Klein

Enclosures

cc: Velma A. Redmond, Esquire
Persons on Certificate of Service (without diskette)

Certificate of Service

I hereby certify that I have this 13th day of November, 2006, served a true and correct copy of the foregoing document (without diskette) upon the persons, listed below, and addressed as follows:

ViaFirst Class Mail (Postage Prepaid):

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**Attorneys for
Pennsylvania-American Water Company**

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PA PUBLIC UTILITY COMMISSION
SECRETARY'S OFFICE

**Before the
Pennsylvania Public Utility Commission**

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

Docket No. L-00060177

**Comments of
Pennsylvania-American Water Company**

Pennsylvania-American Water Company ("PAWC") respectfully submits these comments in response to the Pennsylvania Public Utility Commission's ("PUC" or "Commission") proposed rulemaking regarding revisions to Chapter 67 of Title 52 of the Pennsylvania Code pertaining to service outages.

I. Introduction

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 PAWC's Yellow Breeches Water Treatment Plant in Fairview Township, Cumberland County.

During the investigation into the incident, PAWC contended that the term "service interruption" was not clearly defined in the Commission's regulation at 52 Pa. Code § 67.1. While it did not agree with PAWC's contention that the regulation lacked a clear definition, the Commission decided to take steps to more clearly define that term. Pursuant to the March 10, 2006 Order, the Commission formally commenced this rulemaking to amend its regulations to clarify what the Commission means by the phrase "service interruption" under 52 Pa. Code § 67.1.

On May 4, 2006, the Commission voted 5-0 to clarify the definition of “service interruption” in Section 67.1. The Commission published the proposed revision to its regulations in the Pennsylvania Bulletin, 36 Pa. Bull. 6303, on October 14, 2006.

Section 67.1 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).

Section 67.1 uses the phrase “service interruption,” but the phrase is not defined.

The proposed rulemaking would add the following definition to Section 67.1(a):

“Service interruption,” regarding water service provided by any water utility under the Commission’s jurisdiction, covers any interruption of service affecting the quantity or quality of water delivered to the customers.

It would **not** add a definition for “service interruptions” for electric, gas or telephone utilities, which are also subject to the notice requirements of Section 67.1.

II. Need for Harmonization with DEP

The Pennsylvania Safe Drinking Water Act¹ (the “SDWA”), gives the Pennsylvania Department of Environmental Protection (“Department” or “DEP”) primary - but not exclusive - jurisdiction to regulate the quality of water supplied to the public in Pennsylvania.

The Commission also regulates the quality of water provided by a utility to its ratepayers because the “water” supplied to the ratepayers is part of the “service and facilities” of a public utility.²

The current rulemaking presents an opportunity for harmonization between the Commission and the DEP. This process, in the past, has been undertaken by the Commission with other state agencies such as the Pennsylvania Emergency Management Agency, Pennsylvania Department of Community and Economic Development, Pennsylvania Infrastructure Investment Authority and DEP. For example, DEP and the Commission mutually entered into a Memorandum of Understanding with regard to the viability of small drinking water systems.³ While the matter before the Commission today is a proposed rulemaking rather than a Memorandum of Understanding, the subject of the rulemaking lends itself to harmonization between the two state agencies as both agencies are interested in serving the public interest.

The Commission should consider harmonizing the situations that would trigger a 1 hour notice to the Commission with the situations that trigger a 1 hour notice to DEP. This would create one unified set of situations that may require a 1 hour notice. Harmonization into a uniform set of situations would minimize the number of decisions that would need to be made by water utilities in these situations.

Harmonization could take the following form:

“Service interruption,” regarding water service provided by any water utility under the Commission’s jurisdiction, means any situation requiring notice within 1 hour by the water utility to the Pennsylvania Department of Environmental Protection under 25 Pa. Code Chapter 109, relating to safe drinking water.

¹ 35 Pa. Stat. §§ 721.1 to 721.17.

² See 66 Pa. C.S. § 102.

³ See Policy Statement Re: Small Drinking Water Systems Viability and Memorandum of Understanding Between Department of Environmental Resources and Pennsylvania Public Utility Commission, 1993 Pa. PUC LEXIS 147 (November 16, 1993).

Harmonization of the situations would provide notice to the Commission of situations with the potential to have serious affects on the public. Certain water emergencies⁴ and situations with the potential for serious adverse health effects⁵ must be reported to DEP within 1 hour.⁶ This would cover all Tier 1 situations, Tier 2 situations and water emergencies (such as waterborne disease outbreaks, failures in key water treatment processes, natural disasters, chemical spills, and water outages).⁷ In emergencies or situations with the potential for serious adverse health effects, the public must be notified as soon as possible.⁸ The “window” for notifying the public remains open for a maximum of (a) 24 hours for Tier 1 situations;⁹ (b) 30 days for Tier 2 situations.¹⁰

Other situations do not involve serious adverse health effects.¹¹ These situations still impact water quantity or water quality, but they must be reported to DEP within 10 days following the month in which the result is received or the first 10 days following the end of the

⁴ Water emergencies requiring notice to DEP within 1 hour are listed in 25 Pa. Code § 109.701(a)(3).

⁵ Situations with the significant potential to have serious adverse effects on human health as a result of short-term exposure are classified as a “Tier 1” situation. See 25 Pa. Code §§ 109.407(b)(1), 109.408. Other situations with the potential to have serious adverse effects on human health are classified as “Tier 2” situations. See 25 Pa. Code §§ 109.407(b)(2), 109.409.

⁶ 25 Pa. Code §§ 109.408(b)(2) (notification to DEP of Tier 1 situation), 109.409(b)(2)(notification to DEP of Tier 2 situation).

⁷ 25 Pa. Code §§ 109.407(a), 109.408(a), 109.409(a), 109.701(a)(3).

⁸ See footnotes 9 and 10, *infra*.

⁹ 25 Pa. Code §§ 109.408(b)(timing for a Tier 1 public notice); 40 C.F.R. § 141.202 (Tier 1 notice requirements)

¹⁰ 25 Pa. Code §§ 109.409(b)(timing for a Tier 2 public notice); 40 C.F.R. § 141.203 (Tier 2 notice requirements).

¹¹ A “Tier 3” situation involves all other violations and situations that are not included in Tier 1 and Tier 2 situations. 25 Pa. Code § 109.407(b)(3).

required monitoring period as stipulated by the Department, whichever is shorter.¹² The public receives notice of these situations in the annual Customer Confidence Report.¹³

Unlike the requirements for notifying DEP, the Commission's proposed rulemaking is more stringent and gives the same treatment to each and every situation affecting water quality or quantity. It is important, and appropriate, for the Commission to be notified within 1 hour when DEP is receiving a 1 hour notice (e.g., Tier 1 situations, Tier 2 situations and water emergencies). The rulemaking, however, is broad in scope and includes, without limitation, all other situations that affect water quality or water quantity. This means that the Commission would require notice within 1 hour for any Tier 3 situation (if over the Commission's customer threshold) – even though DEP, and the public, need not learn of this situation until much later.

The scope of situations covered by the proposed definition is broader than necessary. The need to notify the Commission every time anything (such as a Tier 3 situation) occurs that affects 2,500 or 5.0% (whichever is less) of the utility's total customers would create an excessive and burdensome requirement on all water utilities and an inefficient use of the Commission's resources. Since these situations do not have the potential for serious adverse health effects, they should not necessitate the Commission being informed faster than DEP. Immediate attention to these situations is not required by DEP or by the public. Requiring notice to the Commission within 1 hour for these situations is not necessary.

The Commission can effectively regulate the adequacy, efficiency, safety and reasonableness of the water supplied by a water utility without receiving notice in 1 hour of every situation affecting the quantity or quality of water delivered to customers. The

¹² 25 Pa. Code § 109.701(a)(1) (reporting and recordkeeping).

¹³ 25 Pa. Code § 109.410(d).

Commission seeks to ensure that it receives notice in 1 hour (a) when there is an outage, (b) low (or negative pressure) or (c) when consumers cannot drink the water delivered. These concerns are satisfied by harmonization with the situations for notifying DEP within 1 hour. Rather than seeking to independently monitor every change in water quantity or quality (i.e., Tier 1, Tier 2 and Tier 3 situations and water emergencies), the Commission would be better served by harmonizing the situations that may trigger notice to the Commission within 1 hour with the situations that trigger notice to the DEP within 1 hour (i.e., Tier 1 and Tier 2 situations and water emergencies). Importantly, the customer threshold in Section 67.1(b) should remain in place so that the Commission would only receive notice within 1 hour of the more serious or significant adverse events.

It should be noted that this harmonization proposal would only achieve a partial harmonization between the Commission and DEP. It would harmonize the situations that may trigger a 1 hour notice. "Full" harmonization would occur if anytime a utility needed to notify DEP within 1 hour, it automatically knew that it would also need to notify the Commission within 1 hour. To achieve full harmonization, the Commission would need to consider eliminating the customer threshold under Section 67.1(b), which limits notice to situations affecting more than 2,500 or 5.0% (whichever is less) of the utility's total customers, for water utilities.

However, full harmonization should only occur if a customer threshold is added to DEP regulations (which are the subject of a current rulemaking by DEP). The customer threshold ensures that notices are only necessary for the more serious or significant adverse events. Notice of every main break, no matter how small, and all other situations affecting water quality or quantity could easily stretch the limited time, money and personnel of the DEP and the PUC. Receiving a notice for every problem or leak situation could quickly lead to a scenario

where an serious notice from one water supplier is “lost” in the influx of notices for “less serious” situations (involving less significant events) from other water suppliers. Instead of forcing utilities to report each and every situation affecting water quality or quantity, efforts should be made to ensure that DEP and the PUC receive notice within 1 hour only for the more serious or significant adverse events.

III. Comments on the Proposed Definition

Should the Commission elect not to harmonize its requirements with the requirements for notifying DEP, then PAWC offers the following comments on the proposed definition set forth in the rulemaking.

PAWC agrees that clarification is needed for the definition of “service interruption” under Section 67.1. However, PAWC submits that the proposed definition would **not** clarify the issue of notice to the Commission, and would create excessive and burdensome requirements on itself and all water utilities.

A. “Interruption of Service”

The Commission’s proposed definition of “service interruption” is unworkable. The meaning of a “service interruption” is very important to the proposed definition. It is only when such an “interruption” occurs do we get to the next parts of the proposed definition. If all parts of the proposed definition are satisfied, a public notice may be triggered if the customer threshold under Section 67.1(b) is satisfied.

1. Circular Definition

The Commission’s proposed definition of “service interruption” uses the phrase “interruption of service.” Using the term to be defined as part of the definition creates a “circular

definition.” The proposed definition does not add clarity to the definition, and could be challenged on constitutional grounds.¹⁴

2. **Lack of Clarification**

The proposed definition does not clarify the meaning of an “interruption” for water utilities. Broadly speaking, an “interruption” is defined as an event or situation that breaks the uniformity or continuity of service.¹⁵ “Service” is defined by the Code as including “any and all acts done, rendered or performed and any and all things furnished, or supplied by public utilities.” 66 Pa. C.S. § 102.

The proposed definition provides no examples or illustrations of an “interruption.” From the context of Section 67.1, an interruption includes outages, supply cut-offs, or a complete cessation of service. In March 2006, the Commission stated that service is also “interrupted” when consumers cannot drink the water delivered.

The proposed language reaches beyond the above-mentioned situations. The proposed definition includes other situations that would not normally be considered an “interruption.” For example, changes in water pressure can affect the quantity or quality of water delivered to the customers. Water pressure can fluctuate within operational standards. Thus, the proposed definition could be construed as requiring notice within 1 hour of every change in water pressure (affecting 2,500 or 5%, whichever is less, of the utility’s total customers) – even if the utility is operating within the range of normal operating pressures set forth in 52 Pa. Code § 65.6(a).

¹⁴ See Goldy v. Beal, 429 F.Supp. 640 (E.D.Pa.1976), which declared the basic commitment section of the Pennsylvania Mental Health and Mental Retardation Act of 1966, 50 P.S. § 4406, to be unconstitutionally vague due to its circular definition of mental illness.

¹⁵ See Merriam-Webster Online Dictionary, < <http://www.m-w.com/dictionary/interruption> >.

The proposed definition also raises other questions. Drought conditions may affect the quantity of water available to customers. Are drought conditions considered an “interruption” within the meaning of the proposed definition?

To avoid such questions, the Commission should explicitly indicate its intent on what situations are covered. It is recommended that the Commission cover (a) outages and (b) situations with the potential for serious adverse health effects.

3. **Unscheduled Interruptions Only**

The Commission’s proposed definition of interruption is not explicitly limited to unscheduled interruptions. Scheduled interruptions are discussed in 52 Pa. Code § 65.5(b). Unscheduled interruptions are discussed in 52 Pa. Code § 67.1.

The context of Section 67.1 limits the notice requirements to unscheduled “interruptions.” See the first sentence of 25 Pa. Code § 67.1(a) and the first sentence of 25 Pa. Code § 67.1(b). However, no such limitation appears in the proposed definition. Because the Commission uses two classifications of “interruptions,” the use of the phrase “any interruption” could be construed as including both scheduled (i.e., controlled) and unscheduled interruptions within the meaning of the proposed definition.

To avoid ambiguity, the Commission should explicitly indicate its intent on what interruptions are covered by the proposed definition. It is recommended that the Commission use the word “unscheduled” in the proposed definition. Use of this word would clarify the intent to limit interruptions to unscheduled interruptions. Alternatively, the Commission could avoid using the term “interruption” as part of the definition.

B. “Affecting”

The proposed definition uses the word “affecting.” As a verb, affect means to influence or to have an effect on.¹⁶ “Affects” can be positive or negative. Without any limitations, both positive and negative influences are included within the proposed definition.

To avoid ambiguity, the Commission should explicitly indicate its intent on what interruptions are covered by the proposed definition. It is recommended that the Commission use the words “seriously and adversely” in the proposed definition. Use of these words would clarify the Commission’s intent. Alternatively, the Commission could avoid using the term “affecting” as part of the definition.

C. “Quantity or Quality of Water”

The proposed definition requires notice if there is a change in the “quantity or quality of water delivered to customers.” However, it does not link the “quantity or quality of water” to violations of Drinking Water Standards under the SDWA, *or even the potability of the drinking water*. So, any change in quantity or quality will trigger a notice to the Commission.

This language conflicts with the Commission’s stated intent. In March 2006, the Commission stated that service is also “interrupted” when consumers cannot drink the water delivered. The proposed definition does not stop at the potability of water delivered to customers or even violations of the SDWA. Rather, it seeks to include every change in the quantity or quality of water delivered to customers. By doing so, it would require a 1 hour notice to the Commission even if the water is drinkable and there is no violation of the SDWA.

For example, a heavy rainfall could increase turbidity. Increased turbidity would affect the water quality.¹⁷ But, the water could still be drinkable by the customer and the

¹⁶ See Merriam-Webster Online Dictionary, < <http://www.m-w.com/dictionary/affecting> >.

increased turbidity could still meet the Drinking Water Standards under the SDWA. Such a situation would not deprive the public of drinkable water or have the potential for a serious adverse health effects. Yet, the Commission would require notice within 1 hour.

The Commission should explicitly indicate its intent on what situations are covered. It is recommended that the Commission cover (a) outages, (b) water pressure below the standards set in 52 Pa. Code § 65.6 (relating to pressures) and (c) situations with the potential for serious adverse health effects.

D. Use of Suggested Revisions

Based on the foregoing comments, the proposed definition could be revised as follows:

“Service interruption,” regarding water service provided by any water utility under the Commission’s jurisdiction, means any unscheduled outages, or situations where the utility knows or has reasonable cause to believe that water pressure is below the standards set in 52 Pa. Code § 65.6 (relating to pressures) or situations with the potential for serious adverse health effects.

This suggested revision should satisfy the Commission’s concerns that it receive notice in 1 hour of events over the customer threshold (a) when there is a lack of water (by outage or low pressure) or (b) when consumers cannot drink the water delivered. The situations where consumer cannot drink the water are situations with the potential for serious adverse health effects (i.e., Tier 1 and Tier 2 situations).

It would also (1) avoid use of the term “interruption” as part of the definition, which resolves our comments in Section III A(1) and A(3); (2) avoid use of the term “affecting” as part of the definition, which resolves our comments in Section III B; and (3) provide

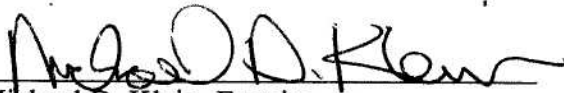
¹⁷ “Water quality” is part of the “service” provided by a water utility because water is the thing furnished or supplied by the utility to its customers. See 66 Pa. C.S. § 102.

clarification on the situations covered (i.e., outages and situations with the potential for serious adverse health effects), which resolves our comments in Section III A(2) and C.

IV. Conclusion

PAWC appreciates the opportunity to present comments on the proposed rulemaking regarding revisions to Chapter 67 of Title 52 of the Pennsylvania Code pertaining to service outages, and requests that the Commission consider its comments on the issues.

Respectfully submitted,



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NATIONAL ASSOCIATION OF WATER COMPANIES PENNSYLVANIA CHAPTER

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RE: **Docket No. L-00060177**
Proposed Rulemaking for Revision to Chapter 67 of Title 52 of
the PA Code Pertaining to Service Outages

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Dear Secretary McNulty:

The National Association of Water Companies (NAWC) is a non-profit trade association that exclusively represents private or investor-owned drinking water utilities. The Pennsylvania Chapter consists of 11 member companies that provide reliable drinking water to more than 3.5 million Pennsylvanians everyday in 43 of the Commonwealth's 67 counties. In addition, two of our member companies own and operate several wastewater systems.

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The Chapter respectfully submits the following comments in response to the Pennsylvania Public Utility Commission's (PAPUC or Commission) proposed rulemaking regarding revisions to Chapter 67 of Title 52 of the Pennsylvania Code pertaining to service outages.

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Background

On May 4, 2006, the Commission unanimously voted to clarify the definition of "service interruption" in Section 67.1. On October 14, 2006, the PAPUC published the proposed revision to its regulations in the Pennsylvania Bulletin, 36 Pa. Bull. 6303.

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Section 67.1 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).

Section 67.1 uses the phrase "service interruption," but the phrase is not defined. The proposed rulemaking would add the following definition to Section 67.1(a):

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.

It would not add a definition for "service interruptions" for electric, gas or telephone utilities, which are also subject to the notice requirements of Section 67.1.

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 Pennsylvania Department of Environmental Protection (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).

In addition, since the Commission and DEP work closely on water related issues, the Commission finds it reasonable to have the same regulatory definition of "service interruption."

Comments

While the Chapter supports the Commission's decision to clarify what it deems a "service interruption" under Section 67.1(a) and to be consistent with the DEP's regulations, we do have some concerns with the definition, as drafted, and how it relates to DEP's regulations. First, the proposed definition uses the phrase "interruption of service" to define "service interruption" which only serves to further confuse; rather than clarify its intent. Moreover, the proposed definition does not describe or define what an "interruption" is or provide a standard for water utilities to follow.

Second, the Chapter is concerned that the Commission's proposed definition is too broad and may cause confusion among water utilities with respect to one-hour reporting requirements. While it is important and appropriate for the Commission to be notified within one-hour when DEP is receiving a one-hour notice (e.g., Tier 1 situations -- 25 Pa. Code §§ 109.408(b), Tier 2 situations -- 25 Pa. Code §§ 109.409(b), and water emergencies such as waterborne disease outbreaks, failures in key treatment processes, natural disasters, chemical spills, and water outages), the Commission's proposed rulemaking is more stringent and gives the same treatment to each and every situation affecting water quality or quantity. This means that the Commission would require notice within one-hour for any Tier 3 situation (all other violations and situations that are not included in Tier 1 and Tier 2 situations -- 25 Pa. Code § 109.407(b)(3)), even though DEP and the public need not learn of this situation until much later.

As you know, the DEP, through its Small Water System Technical Assistance Center (TAC), is currently drafting a rulemaking to revise its public notification requirements at 25 Pa. Code §§ 109.407-416 (relating to public notification). The Chapter believes that this is a unique opportunity for both the Commission and DEP to work together and create one unified set of situations that would require public notification, including one-hour notice to the Commission and DEP.

James J. McNulty
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Therefore, the Chapter recommends that the definition be amended to read:

The term "service interruption," 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~~ means any situation requiring notice within one-hour by the water utility to the Pennsylvania Department of Environmental Protection under 25 Pa. Code Chapter 109, relating to safe drinking water.

The Chapter's proposed changes to the definition would not only clarify that situations affecting both quantity or quality of the water delivered to the customer are covered, but also ties them to the specific situations and criteria established under 25 Pa. Code Chapter 109. If the Commission and DEP utilize a consistent regulatory standard, it would minimize the number of decisions to be made by water utilities and provide notice to both when situations with the potential for serious affects to public health arise.

Finally, the Commission, under Section 67.1(b), limits notice to situations affecting more than 2,500 or 5.0% (whichever is less) of the utility's total customers, for water utilities. However, the DEP, under 25 Pa. Code Chapter 109, does not provide such a customer threshold. The Chapter believes that this is another area where the Commission and DEP should work together to provide a uniform standard. Requiring notice of every main break and all other "less serious" situations affecting water quality or quantity is not necessary and we don't want an influx of notices involving "less serious" situations to drown out those notices that are potentially serious or adverse situations.

The Chapter thanks you for considering our comments on this most important issue to our industry and customers. If you should need any additional information or have any questions, please do not hesitate to contact me.

Very truly yours,

Erik A. Ross

ERIK A. ROSS

Manager of Governmental Relations

CC: Alvin C. Bush, IRRC
Senator Tomlinson
Senator Boscola
Representative Flick
Representative Preston