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## OFFICE OF CONSUMER ADVOCATE

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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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 2006 NOV 15 PM 2:18  
 INDEPENDENT REGULATORY  
 REVIEW COMMISSION

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

Enclosure

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

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PROPOSED RULEMAKING FOR :  
REVISION TO CHAPTER 67 OF :  
TITLE 52 OF THE PA CODE :  
PERTAINING TO SERVICE OUTAGES :

Docket No. L-00060177  
INDEPENDENT REGULATORY  
REVIEW COMMISSION

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**COMMENTS OF THE  
OFFICE OF CONSUMER ADVOCATE**

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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.

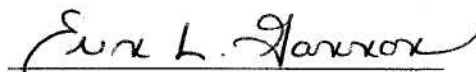
The proposed Rulemaking therefore is intended to notify water utilities that when other provisions of the regulation are met, the utility must notify the Commission by telephone and in writing in the event of a service interruption that affects either the quantity or quality of water delivered to customers. 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,



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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 13<sup>th</sup> day of November, 2006.

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