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April 5, 2010

Mr. James J. McNulty, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, Second Floor
Harrisburg, PA 17120

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PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

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INDEPENDENT REGULATORY
COMMISSION
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Re: Proposed Rulemaking for Revision of 52 Pa. Code Chapters 57, 59, 65, and 67 Pertaining to Utilities' Service Outage Response and Restoration Practices, Docket No. L-2009-2104274

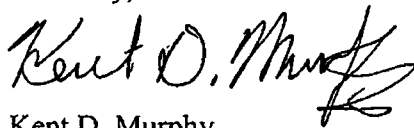
Dear Secretary McNulty:

Enclosed for filing please find an original and fifteen (15) copies of the Comments of UGI Utilities, Inc., UGI Penn Natural Gas, Inc., and UGI Central Penn Gas, Inc. in the above-captioned proceeding.

A copy of the enclosed Comments are being served by electronic mail to the individual Commission Staff member identified in paragraph 6 of the Commission order entered November 10, 2009.

If you need anything further, please do not hesitate to contact me.

Sincerely,


Kent D. Murphy

Enclosure
cc(email): Elizabeth Barnes, Law Bureau

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Proposed Rulemaking for Revision of :
52 Pa. Code Chapters 57, 59, 65 and 67 :
Pertaining to Utilities' Service Outage : Docket No. L-2009-2104274
Response and Restoration Practices :

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COMMENTS
OF
UGI UTILITIES, INC, UGI PENN NATURAL GAS, INC.
AND
UGI CENTRAL PENN GAS, INC.

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

Pursuant to a notice published in the *Pennsylvania Bulletin*, 40 Pa. Bull. 1203 (March 6, 2010), and the Proposed Rulemaking Order of the Pennsylvania Public Utility Commission ("Commission") entered November 10, 2009 ("November 10th Order"), UGI Utilities, Inc., UGI Penn Natural Gas, Inc. and UGI Central Penn Gas, Inc. (together, "UGI Distribution Companies") hereby submit these comments on the regulations proposed in the November 10th Order.¹

I. INTRODUCTION

In the November 10th Order, the Commission proposes to amend its reportable accident and service outage regulations at 52 Pa. Code Chapters, 57, 59, 65 and 67. Specifically, as related to natural gas and electric distribution companies, the changes to Chapters 57 and 59 would enable the Commission to "capture more reportable events,

¹ As a member of the Energy Association of Pennsylvania ("EAPA"), UGI also joins in the Comments being filed by the EAPA in this matter.

such as cyber security attacks, and events that involve damages to a utility company by another utility company” and refine the deadlines for reporting accidents. Moreover, the Commission proposes to change its service outage regulations at 52 Pa. Code Chapter 67. The new Chapter 67 rules would greatly expand the type of outage information reported by electric and natural gas distribution companies under existing regulations to require the information on the total number of sustained outages, “the numbers of not only utility workers, but also contract workers specifically assigned to repair work and mutual aid workers”, and other highly detailed information concerning the handling and statistics of an outage event. November 10th Order at 3-4. The Order offers little discussion on why the information is needed practically or how it would help the Commission discharge its statutory obligations.

II. UGI DISTRIBUTION COMPANIES

The interest of the UGI Distribution Companies in this matter is grounded in a long history of providing regulated natural gas and electric utility service throughout large sections of the Commonwealth of Pennsylvania. In total, UGI’s distribution businesses provide service to more than 630,000 customers subject to the Commission’s jurisdiction and have been providing such service for more than 100 years.

UGI Utilities, Inc. is a natural gas distribution company providing regulated gas sales, transportation, and related services to approximately 337,000 customers in sixteen (16) counties in Central and Eastern Pennsylvania. UGI Utilities, Inc. also is an electric distribution company providing regulated electric sales, provider of last resort and related services to approximately 62,166 customers in Luzerne and Wyoming Counties in Northeastern Pennsylvania.

UGI Penn Natural Gas, Inc. is a natural gas distribution company providing regulated gas sales, transportation, and related services to approximately 160,336 customers in thirteen (13) counties in Central and Eastern Pennsylvania.

UGI Central Penn Gas, Inc. is a natural gas distribution company providing regulated gas sales, transportation, and related services to approximately 75,000 customers in thirty-five (35) counties in Central and Eastern Pennsylvania.

III. SUMMARY

The UGI Distribution Companies have concerns with the Commission's proposed changes to its regulations, primarily as to how the changes would expand the number and type of reportable accidents addressed by Chapters 57 and 59 and the need for the additional information related to outage events under Chapter 67. Many of the proposed rule changes appear unnecessary for the Commission to oversee the safety of regulated electric and natural gas operations and otherwise need clarification.

Applicable to natural gas companies, the existing Chapter 59 rules draw from the incident reporting rules promulgated by the U.S. Department of Transportation, and those rules are then applied in a form tailored for electric distribution companies under the Commission's Chapter 57 regulations. These rules have been effective for about a dozen years in their current form. Therefore, unless the existing rules are somehow now inadequate, it would appear that there is little value, if any, to making the utilities comply with the additional reporting requirements set forth in the proposed amendments.

As to the proposed changes to the Chapter 67 outage regulations, again, there is little to be gained from the proposed additional reporting requirements. For example, adding reporting requirements as to the number of employees, contractors, and mutual

assistance agreement employees tells little as to the quality and effectiveness of a utility's outage response efforts.

Moreover, requiring this information suggests that the Commission is calling into question generally the responsive efforts of utilities to service outage events involving significant numbers of customers. If that is the case, the Commission should be reminded that how a utility manages its operations is a matter for the utility's management to decide, unless it is demonstrated that the utility has abused that discretion or has acted arbitrarily. See, generally, National Fuel Gas Distribution Corporation v. Pennsylvania Public Utility Commission, 464 A.2d 546 (1983). Thus, while the Commission has an interest in seeing that the utility's response to an outage event is conducted in a reasonable manner, it should not assume through a rulemaking the prosecutorial assumption that each utility's response to a reportable outage should be a matter of in-depth investigation. This would appear to be the case with respect to the depth of detail now being proposed for submission through the proposed Chapter 67 regulations.

If the Commission is not questioning the industry generally on its outage response record, then compilation of the statistics on outage response that are called for in the proposed changes to the Chapter 67 regulations would seem to serve no more than a ministerial record-keeping function, not worth the cost of preparing the information, and therefore should not be required. As applied to a natural gas utility, UGI sees little point in creating a more complex reporting infrastructure for outage occurrences that rarely, if ever, occur.

III. COMMENTS

A. Introduction

UGI's comments are organized into four sections, including this introduction. The remaining three sections address in serial fashion the Commission's proposed Chapter 57, 59 and 67 regulations. Generally, our comments question the need for some of the rule changes as well as to the practical side of interpreting the type and nature of information that would be expected.

B. Proposed Changes to Chapter 59

1. 52 Pa Code § 59.11(b).

The current Chapter 59 rules generally apply the definition of the term "incident" found in US DOT pipeline safety regulations as the basis for defining the term "reportable accident." Compare 52 Pa. Code § 59.11(b) and 49 C.F.R. § 191.3.

Specifically, US DOT regulations define the term "incident" as follows:

(1) An event that involves a release of gas from a pipeline or of liquefied natural gas or gas from an LNG facility and

(i) A death, or personal injury necessitating in-patient hospitalization; or

(ii) Estimated property damage, including cost of gas lost, of the operator or others, or both, of \$50,000 or more.

(2) An event that results in an emergency shutdown of an LNG facility.

(3) An event that is significant, in the judgement of the operator, even though it did not meet the criteria of paragraphs (1) or (2).

49 C.F.R. § 191.3. Other US DOT regulations require the pipeline operator to then report the incidents by telephone and hard-copy report within a defined period of time. 49

C.F.R. §§ 191.5 and 191.9.

Rather than tie the reporting requirement for incidents involving death or personal injury to a release of gas, the proposed changes to Section 59.11(b) would require the utility to report every incident involving a utility's facility or operations that result in the death of a person, or an injury that "requires professional medical attention or hospitalization." Additional changes to Section 59.11(b) would replace the use of operator's judgment to determine whether an event is significant, by requiring the utility to report "an occurrence of an unusual nature that is suspected or determined to be caused by sabotage, including attempts against cyber security measures" or an incident causing "substantial damage to another utility company's facility or property." November 10th Order at 19.

While not opposed to certain of the changes generally (such as the reporting of death related to a utility's facilities or operations), the UGI Distribution Companies believe that certain of the rule changes are unnecessary or otherwise vague and ambiguous and therefore require clarification.

a. Proposed 52 Pa. Code § 59.11(b) (2)

Proposed § 59.11(b) (2) appears to require the utility to file a report each time an injured person "requires professional medical attention". Under this standard, a utility would be required to report even the most insignificant of injuries such as a sprained ankle or a laceration requiring stitches that happens to occur on a utility's property, whether through a slip and fall accident, a trespass involving criminal mischief on the part of the injured, or worse.

The value to the Commission of receiving a report for every personal injury that occurs on a utility's property is questionable. Only when the injury is significant and tied

to some aspect of the services provided by the utility should the information be relevant to the Commission's authority under Chapter 15 of the Public Utility Code. Accordingly, UGI Distribution Companies suggest that the Commission borrow from its current regulation the concept that requires a personal injury report only where there is a "release of gas from a pipeline" and the injury necessitates "inpatient hospitalization" so that the report can be tied to a significant injury and service that is being provided by the gas utility.

b. Proposed 52 Pa. Code § 59.11(b) (5)

UGI is also concerned with the proposed new requirement that a utility report "an occurrence of an unusual nature that is suspected or determined to be caused by sabotage." Our concern is two-fold.

First, the UGI Distribution Companies believe that such reports should be made with utmost confidentiality to the Commission, as public dissemination of the information may interfere with criminal investigations of the incident that, in turn, may involve terrorist or other organizations working against our national interests. Therefore, the Commission should modify this provision to provide that the utility report will be held in confidence by the Commission and that the utility need not file the report where to do so could interfere with an ongoing criminal or civil investigation or other matter involving the national interest.

Second, we believe that the Commission should provide more definition to the circumstances that would be characterized as "sabotage." "Sabotage", as defined, is an effort intended to disrupt operations. Accordingly, acts that are unintentional or result from negligence would not be considered to have resulted from sabotage and therefore

would not be reported under 59.11(b)(5). If the Commission intends a different definition to the term, it should so clarify in its final rulemaking order.

c. **Proposed 52 Pa. Code § 59.11(b)(6)**

Proposed § 59.11(b)(6), which requires the utility to file a report of each incident causing “substantial damage to another utility company’s facility or property”, would appear to require the utility to provide information that is already available to it under the Commonwealth’s “Dig-Safe” Law administered by the Pennsylvania Department of Labor and Industry (“PA L&I”). Specifically, subpart (16) of § 5 of the Underground Utility Line Protection, Act 287 of 1974 as amended, requires the following:

(16) To submit an incident report to the department not more than ten business days after striking or otherwise damaging a facility owner's line during excavation or demolition activities that resulted in personal injury or property damage to parties other than the affected excavator or facility owner. In addition, the incident report may be furnished to the Pennsylvania Public Utility Commission and the Pennsylvania Emergency Management Agency pursuant to memoranda of understanding negotiated between these agencies and the department.

As the information is already being reported to the agency responsible for administering the “Dig-Safe” law and is already made available to the Commission through the PA L&I pursuant to an inter-agency arrangement, it would appear that, at least as applied to underground facilities, this additional reporting requirement would provide no benefit to the Commission and therefore should be rejected in the final rule.

Subsection (6) also would require the utility to make a determination as to whether damage cause to the other utility is “substantial”. This use of the word “substantial” is somewhat vague as to its intent and therefore could result in a

differing view among utilities as to what property damages would be considered “substantial.” It also raises the question as to how the utility causing the damage would know whether the damage was “substantial” in the eyes of the utility whose property was damaged.

Without an objective definition of the term substantial that provides a dollar threshold such as \$50,000, the consistency of reporting among the various reporting utilities could be called into question. So, if the Commission decides to retain this rule, it should be modified to provide a more objective reporting standard.

Finally, the rule should be clarified to provide that the utility being harmed should submit the report. The harmed utility would be in the better position to know the value of the damage to its facilities due to the line hit or other underground damage.

Therefore, the UGI Distribution Companies believe that paragraph (6) should be modified to require only that information that is not required to be provided already to PA L&I under the Dig-Safe Law, to provide an objective definition of the term “substantial,” and to provide that the harmed utility should be responsible for submitting the report to the Commission.

d. Lack of Motor Vehicle Accident Exception

While the Commission proposes a motor vehicle exception for electric utility accidents resulting in an injury, see proposed 52 Pa. Code § 57.11(c), a

similar exception has not been proposed for gas utilities. This disparate treatment has not been explained, does not appear explicable, and should be corrected. Gas utilities should not be required to report injuries that are sourced in motor vehicle accidents where electric utilities are exempt from such reporting. The UGI Distribution Companies recognize that electric utilities need to report where the injuries caused in the motor vehicle accident were due to contact with electrified facilities and therefore the rule would need to be modified to provide for reporting of motor vehicle accidents where injuries were due to contact with natural gas facilities transporting or storing natural gas or due to gas escaping from such facilities.

2. 52 Pa Code § 59.11(c).

This provision requires utilities to make telephonic reports of reportable accidents “at once” for incidents occurring under subsection (b), paragraphs (1), (3), (4), and (5) and within 24 hours after the occurrence of a reportable accident under subsection (b), paragraphs (2) and (6).

The UGI Distribution Companies have one concern with this rule. While we recognize that the “at once” notification requirement is presently in the current rule, the Commission should consider using a more realistic standard that does not require the utility to make any report immediately. Practically speaking, utilities do not currently report any event “at once,” but rather they report only after they have made certain that they adequately understand the facts of the situation and can communicate those facts to the Commission. Accordingly, the Commission should replace the current “at once”

standard to one used by the US DOT in similar circumstances, which requires the utility to make the telephone report “[a]t the earliest practicable moment following discovery”. See 49 C.F.R. § 191.5.

3. 52 Pa Code § 59.11(d).

This provision requires that written accident reports must be submitted within 5 days of the occurrence of a reportable accident. This new requirement reflects a change from the current requirement that the report be made “immediately following” the accident. Both the current and the proposed timing for submitting a report runs in stark contrast with the 10-day rule under the Dig-Safe Law and the 30-day rule for incidents reported under US DOT regulations. See Section IV.B.1.c. above; 49 C.F.R. 191.9.

UGI believes that the 5-day reporting requirement in many instances will provide insufficient time for the utility to gather sufficient information needed for the report, particularly in instances where there is a release of natural gas and significant resulting property damage and injuries to the person. Accordingly, the UGI Distribution Companies believe that reporting requirement should be extended to a 30-day reporting requirement in line with US DOT regulations.

4. 52 Pa.Code § 59.11(e).

UGI Distribution Companies emphatically oppose the imposition of any requirement that a utility be require to provide final investigative reports in instances involving death, personal injury or sabotage. These types of matters potentially evolve into litigated matters of a civil or, in the instance of sabotage or intentional act, a criminal nature. Therefore, in many instances, those final investigative reports may be prepared

by, or at the request of counsel in anticipation of litigation. Accordingly, while the utilities should be prepared to fully cooperate in the Commission's or other public authority's investigation of incidents covered by a utility's investigative report, the utility should not be required to provide reports prepared by, or at the request of counsel.

We acknowledge that § 1508 of the Public Utility Code prohibits public disclosure of such a report, except upon order of the Commission. However, the mere disclosure of the document to the Commission likely will lead to requests for the investigative reports related to ongoing or potential litigation. Exposing the mental impressions and thought processes of counsel to potential disclosure could greatly damage a utility's ability to manage its legal position in those matters.

It is also recognized that § 1508 provides that the reports "shall not be admitted in evidence for any purpose in any suit or action for damages growing out of any matter or thing mentioned in such report." This prohibition provides little solace, as disclosure of the report itself can provide to an opposing party or the Commission itself a road map of the utility's position in the matter, which will facilitate the opposing party's case preparation and discovery materials. This invasion of the attorney-client relationship clearly would be antithetical to a utility's right to effective counsel.

Therefore, UGI requests that proposed § 59.71(e) be deleted from any final rule promulgated by the Commission in this proceeding. At a minimum, the Commission should permit the utilities to redact any information in their final investigative reports that comprises expert, consultant or legal opinion. The Commission's interest should be served with the provision of facts related to the incident and not legal or expert judgment

as to fault or potential liability found in a document prepared by or at the request of counsel.

C. Proposed Changes to Chapter 57

Many of the concerns expressed by UGI relative to the Commission's propose changes to its Chapter 59 regulations are equally applicable to the proposed changes to the Chapter 57 regulations. The following comments will note where our Chapter 59 comments apply and separately discuss any additional concerns.

1. 52 Pa Code § 57.11(b).

a. **Proposed 52 Pa. Code § 57.11(b)(2)**

This provision, as proposed, is identical to proposed § 59.11(b)(2).

Accordingly, the UGI Distribution Companies' comments are the same. See Section IV.B.1.a.

However, as this regulation applies to electric utilities, the reportable injury should be associated with a significant electric utility operational event such as a power outage or electric trouble event such as a downed line, which would bring the electric requirement in line with the currently effective § 59.11(b) (2) requirement for natural gas utilities to issue a report where there is a release of gas from a pipeline. Moreover, the Commission should require a report only when the injury is severe enough to require "inpatient hospitalization" so that the report can be tied to a significant injury.

b. **Proposed 52 Pa. Code § 57.11(b) (4)**

This provision, as proposed, is identical to proposed § 59.11(b) (5).

Accordingly, UGI's comments are the same. See Section IV.B.1.b above.

c. Proposed 52 Pa. Code § 57.11(b)(5)

This provision, as proposed, is identical to proposed § 59.11(b) (6).

Accordingly, the UGI Distribution Companies' comments are the same. See Section IV.B.1.c above.

2. 52 Pa Code § 57.11(c).

This paragraph provide exceptions to the definition of reportable accidents set forth in paragraph (b) for injuries “suffered as a result of a motor vehicle accident unless one or both of [two] circumstances apply.” Those circumstances include when 1) a vehicle involved in the accident is owned by the utility or driven by a utility while on duty or 2) some or all of the injuries occurred as a result of contact with electrified facilities. These exceptions are appropriate but similar ones should be applied to the natural gas industry. See Section IV.B.1.d. above.

3. 52 Pa Code §§ 57.11(d), (e), and (f).

These paragraphs, as proposed, are identical to proposed §§ 59.11(c), (d), and (e). Accordingly, the UGI Distribution Companies' comments are the same. See Sections IV.B.2, 3, and 4 above.

D. Proposed Changes to Chapter 67.

1. The Additional Information Required by The Proposed Rule Is Unnecessary for the Commission's to Exercise Oversight into Outage Response.

The current Chapter 67 regulations require electric and gas utilities to notify the Commission when 2,500 or 5.0 percent, whichever is less, of their total customers have an unscheduled service interruption in a single incident for 6 or more projected

consecutive hours. A written report is required to be filed with the Commission within 5 working days after the total restoration of service. 52 Pa. Code § 65.1(b). 52 Pa. Code § 67.1(b) also requires the utility to include ten sets of information in the report: 1) the approximate number of customers involved in a single incident, 2) the geographical area affected, in terms of the county and local political subdivisions, 3) the reason for the interruption, 4) the projected time for service restoration of the event, 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, and 10) the actual time that service was restored to the last customer.

The proposed Chapter 67 regulations add to the existing list an additional six requirements and modify some of the existing requirements to exact more detailed information. November 10th Order at 22-24. These requirements will add greatly to the data collection burden of the existing rules because of the additional detail required to be provided.

The UGI Distribution Companies submit that regulations should not be used for the mere purposes of collecting information. That information to be collected should be necessarily tied to achieving a useful goal for the Commission. Here, it would appear that the existing regulations serve the useful purpose of informing the Commission as to the root cause of an outage, how many customers were effected, how quickly the outages were resolved, and an approximation of the resources used to restore service and repair facilities.

Regarding the new regulations, however, the depth of detail required does not appear to serve a purpose other than mere information gathering and therefore, the additional requirements should be rejected. This is not to say that monitoring service quality is not a valid objective under the Public Utility Code. But service quality monitoring should not require the Commission to treat every reportable outage as an investigatory event, as the proposed regulations appear to assume.

Requirements as to the number of workers, their function, whether they are employed by the utility itself, a contractor or another utility are details that are unnecessary to service quality monitoring. Rather, this information goes to the core utility outage response planning that should not be questioned by the Commission unless the Commission has reason to believe the utility has abused its discretion in matters. See, generally, National Fuel Gas Distribution Corporation, v. Pennsylvania Public Utility Commission, 464 A.2d 546 (1983). Thus, unless the Commission has good reason to believe that the utility committed such an abuse and the Commission has placed the utility on notice that it is being investigated; the utility should not be compelled to provide the information through a rulemaking requirement.

UGI would suggest that Commission should not establish regulations that, in effect, treat every significant outage event as one potentially involving unsafe or inadequate service, or an abuse of discretion on the part of the utility. If the Commission otherwise has reason to believe that the utility failed in this regard during a particular outage, then the Commission may assume the role of a prosecutor for the purpose of enforcing the standards of the Public Utility Code and submit the utility to an

investigation with a discovery process. In that way, the utility can be placed on notice that it is being investigated and prepare its defense.

2. The New Outage Regulations Are Not Applicable to the Natural Gas Industry.

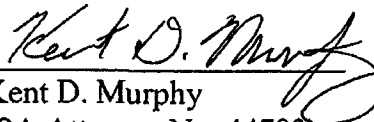
At a minimum, the proposed regulations should not be applied to the gas industry. The incidence of outages for the natural gas industry is far less than that of electric utilities due to the underground nature of gas facilities and the lack of susceptibility of these facilities to events such as storms or other events that cause widespread electric outages such as poor vegetation management practices or equipment failure. Moreover, the concepts laid out in the proposed rule (“sustained outages,” “trouble cases,” and “outages exceeding 6 or more hours”, outage “ranking,” and “outages to more than 10 percent of the utility’s customers”) appear to be tied to the electric utility industry and do not have a ready application to the gas industry. Simply stated, gas utilities do not measure these statistics and no useful purpose would be served in doing so. Accordingly, if the Commission remains committed to requiring the data laid out in the proposed Chapter 67 Regulations, it should exclude natural gas companies from the mix and have separate requirements for each industry, with the gas industry rules remaining the same as they are currently.

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V. CONCLUSION

WHEREFORE, for the foregoing reasons, UGI Utilities, Inc., UGI Penn Natural Gas, Inc. and UGI Central Penn Gas, Inc. request that the Commission issue a final rulemaking order that is consistent with these comments.

Respectfully submitted,



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