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INDEPENDENT REGULATORY REVIEW COMMISSION

333 MARKET STREET, 14TH FLOOR, HARRISBURG, PA 17101

May 5, 2010

Honorable James H. Cawley, Chairman
Pennsylvania Public Utility Commission
Keystone Building, 3rd Floor
400 North Street
Harrisburg, PA 17105

Re: Regulation #57-271 (IRRC #2822)
Pennsylvania Public Utility Commission
Utilities; Service Outage Response and Restoration Practices

Dear Chairman Cawley:

Enclosed are the Commission's comments for consideration when you prepare the final version of this regulation. These comments are not a formal approval or disapproval of the regulation. However, they specify the regulatory review criteria that have not been met.

The comments will be available on our website at www.irrc.state.pa.us. If you would like to discuss them, please contact me.

Sincerely,

Kim Kaufman
Executive Director
wbg
Enclosure

cc: Honorable Robert M. Tomlinson, Majority Chairman, Senate Consumer Protection and Professional Licensure Committee
Honorable Lisa M. Boscola, Minority Chairman, Senate Consumer Protection and Professional Licensure Committee
Honorable Joseph Preston, Jr., Majority Chairman, House Consumer Affairs Committee
Honorable Robert W. Godshall, Minority Chairman, House Consumer Affairs Committee
Robert A. Mulle, Esq., Office of Attorney General
Andrew Clark, Esq., Office of General Counsel

Comments of the Independent Regulatory Review Commission



Pennsylvania Public Utility Commission Regulation #57-271 (IRRC #2822)

Utilities; Service Outage Response and Restoration Practices

May 5, 2010

We submit for your consideration the following comments on the proposed rulemaking published in the March 6, 2010 *Pennsylvania Bulletin*. Our comments are based on criteria in Section 5.2 of the Regulatory Review Act (71 P.S. § 745.5b). Section 5.1(a) of the Regulatory Review Act (71 P.S. § 745.5a(a)) directs the Pennsylvania Public Utility Commission (Commission) to respond to all comments received from us or any other source.

1. Statutory authority.

The Commission has provided its statutory authority for this rulemaking as it relates to the electric and gas utility industries in Section 11 of the Regulatory Analysis Form (RAF). However, it has not provided its statutory authority for this rulemaking as it pertains to two other utility industries that will be affected: the telephone industry and the water/wastewater industry. When the Commission submits the final-form regulation, we ask that it provide an explanation of its statutory authority for the amendments it is proposing under this rulemaking.

2. Need for the regulation.

According to the Commission, this rulemaking establishes a more uniform approach for reporting standards among the gas, water/wastewater and electric industries in the event of utility service outages. It is the result of an investigation and a Commission staff report entitled *Electric Distribution Company Service Outage Response and Restoration Practices Report*. This investigation and report were prompted by 450,000 electric outages caused by Hurricane Ike in September of 2008.

Some commentators have noted that the regulation will require more detailed reporting of certain events. They are of the opinion that the additional

information being reported will not lead to improved outage response and restoration of service.

In addition, commentators representing the gas industry are concerned that the report noted above pertains to outages experienced by the electric utility industry. They believe that applying the findings in a report specific to that industry is inappropriate because infrastructure and operational differences between gas service and electric service require different outage response and restoration practices. Given these views, we ask the Commission to explain the need for these additional reporting requirements, especially for the gas and water/wastewater utility industries.

3. Applicability to telephone industry. – Possible conflict with statutes; Need; Implementation procedures.

According to Section 16 of the RAF, electric utility, gas, and water/wastewater companies will be required to comply with the proposed rulemaking and telephone companies will be encouraged to comply with the proposed rulemaking. As noted by a commentator, proposed changes to Chapter 67, pertaining to service outages, would affect telephone companies. How will the Commission implement the proposed changes to Chapter 67? Will telephone companies be required to comply?

In addition, and as noted above, what is the need for imposing the additional requirements on the telephone industry? What problem is the Commission attempting to address?

Furthermore, commentators assert that Section 3015(f) of Act 183 of 2004 (66 Pa.C.S.A. § 3015(f)) imposes strict statutory limitations on the Commission's authority to require additional reporting requirements. We ask the Commission to further explain why the additional requirements being imposed on the telephone industry do not conflict with the cited statute above, and why the benefits of the additional requirements "substantially outweigh the attendant expense and administrative time and effort required of the local exchange telecommunications company to provide it." (See 66 Pa.C.S.A § 3015(f)(1)(ii)).

Finally, the commentators have suggested that the Commission consider allowing the submittal of reports required by the Federal Communications Commission and the Department of Homeland Security in lieu of these regulatory changes. Has the Commission considered this alternative?

4. Timeframes for providing reports to the Commission. – Reasonableness.

Commentators have raised concerns with various sections of the proposed rulemaking that require a utility to provide information or reports to the Commission within certain timeframes. We ask the Commission to consider the concerns of the commentators on each of the sections below and provide an explanation of why the Commission’s proposed timeframes are appropriate:

- §§ 57.11(d), 59.11(c) and 65.2(c) – a report shall be made by telephone within 24 hours of a reportable accident.
- §§ 57.11(e), 59.11(d) and 65.2(d) – a written report shall be made within five days of a reportable accident.
- § 67.1(b) – written notification shall be filed within five working days after the total restoration of service.

5. Section 57.11. Accidents. – Need; Reasonableness; Implementation procedures; Clarity.

Subsection (b) Reportable accidents.

Subsection (b)(2) is being amended to state that an injury to a person “sufficient that the injured person requires professional medical attention or hospitalization” is a reportable accident. Commentators from the utility industry have expressed concern with this provision and a similar provision found in § 59.11(b)(2), pertaining to reportable accidents and gas service. We note that similar language is also found in § 65.2(b)(2), pertaining to reportable accidents and water service. They believe that this reporting requirement is too broad and would be overly burdensome. For example, would allergic reactions that require professional medical attention have to be reported? If so, what value could be derived from this information? In the Preamble to the final-form regulation, we ask the Commission to explain why the proposed language is needed and why the existing language is not sufficient.

Under Subsection (b)(4), the Commission is adding “an occurrence of an unusual nature that is suspected or determined to be caused by sabotage, including attempts against cyber security measures...” as a reportable accident. Similar language is found in § 59.11(b)(5) and § 65.2(b)(4). There are several concerns with this provision. First, what is the need for reporting “suspected” occurrences of sabotage or attempts against cyber security measures? Second, as suggested by commentators, has the Commission considered allowing existing reporting protocols and requirements already approved by the North American Electric Reliability Corporation and the Federal Energy Regulatory Commission?

“Substantial damage to another utility company’s facility or property” is being added as a reportable accident under Subsection (b)(5). Similar language is found in § 59.11(b)(6) and § 65.2(b)(5). In the Preamble to the proposed regulation, the Commission specifically notes that it is seeking comment on what should be meant by the term “substantial.” Commentators have provided feedback on this issue and have suggested the utility that was harmed be the party responsible for reporting the accident because they would have a better understanding of the extent of the damage. We agree that the final-form regulation should include a more precise standard relating to the term “substantial.” In addition, we ask why it is appropriate for the utility that causes the damage to report the accident and not the utility whose property was damaged.

Finally, commentators have raised the concern that the information being requested via this subsection is already available to the Commission through other reports that must be filed with the Pennsylvania Department of Labor and Industry under the Underground Utility Line Protection Law. (73 P.S. § 176 et. seq.). If the Commission already has access to this information, what is the need for including this requirement under Subsection (b)(5)?

Subsection (f) Internal investigative reports.

The Commission is proposing to add the following language to this subsection and also to § 59.11(e) and § 65.2(e):

The utility shall submit a copy of its final internal investigation report when it is completed for all reportable accidents under subsection (b)(1), (2) and (4). The final internal investigation report shall be treated in accordance with 66 Pa.C.S. § 1508 (relating to the reports of accidents.) If the report is not expected to be completed within 1 year of the date of the occurrence of the reportable accident, the utility shall notify the Commission's Bureau of Fixed Utility Services, which may require quarterly status updates until completion of the report.

Commentators have noted that these reports are often prepared in anticipation of litigation or criminal proceedings. They are concerned that providing the written reports may violate certain attorney-client privileges and the Pennsylvania Rules of Professional Conduct. One commentator noted that the protections afforded under 66 Pa.C.S. § 1508 can only be extended to events and reports when a person was killed or injured. Therefore, the protections of § 1508 would not be applicable to cyber-security attacks. Given these concerns, we recommend that the Commission allow utilities to redact certain

information or provide a mechanism that would allow utilities to request an exemption or waiver from this requirement.

6. Section 67.1. General Provisions. – Need; Fiscal impact; Implementation procedures.

Subsection (b) currently requires utilities that experience unscheduled service interruptions to provide written notification to the Commission. The existing regulation requires the notification to include 10 pieces of information. The revised regulation amends this subsection to require six additional pieces of information. Commentators have suggested that the existing reporting requirements are sufficient. What is the need for the additional information and how will it be used by the Commission?

Under Subsection (b)(1), utilities will be required to report the total number of outages that last five minutes or greater during an event. In addition, Subsection (b)(5)(i) will require utilities to list outage cases exceeding six or more hours by municipality or township. Commentators have stated that they are not equipped to capture this type of data. Will the Commission require a utility to provide this data if they do not have the technology to readily produce it? Has the Commission estimated the cost this requirement may impose on these utilities? The Commission should include the cost estimates in the RAF and Preamble that accompany the final-form regulation.

Facsimile Cover Sheet



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INDEPENDENT REGULATORY REVIEW COMMISSION
333 MARKET STREET, 14TH FLOOR, HARRISBURG, PA 17101

To: Sherri A. DelBiondo
Regulatory Review Coordinator
Law Bureau
Agency: Pennsylvania Public Utility Commission
Phone: 2-4597
Fax: 3-3458
Date: May 5, 2010
Pages: 7

Comments: We are submitting the Independent Regulatory Review Commission's comments on the Pennsylvania Public Utility Commission's regulation #57-251 (IRRC #2822). Upon receipt, please sign below and return to me immediately at our fax number 783-2664. We have sent the original through interdepartmental mail. You should expect delivery in a few days. Thank you.

Accepted by: Sh DelBiondo **Date:** 5-5-10