



National Fuel

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Lee E. Hartz
Assistant General Counsel

April 6, 2010

**VIA Electronic Filing &
NEXT DAY UPS**

Secretary James J. McNulty
Pennsylvania Public Utility Commission
Commonwealth Keystone Bldg.
400 North Street
Harrisburg, PA 17120

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

REC'D
APR 12 2010
P.U.C.

Dear Secretary McNulty:

Pursuant to the Pennsylvania Public Utility Commission's Order entered on November 10, 2009 at the above Docket, enclosed for filing are an original and 15 copies of the Comments of National Fuel Gas Distribution Corporation ("Comments"). This document is also being electronically filed.

An electronic copy of these Comments is being served as indicated below as requested in the Order.

If you should have any questions regarding this filing, please contact me anytime at (814) 871-8060. Many thanks for your assistance in this matter.

Very truly yours,

Lee E. Hartz

Enclosures

cc: *VIA E-Mail:*
Elizabeth Barnes, Assistant Counsel (ebarnes@state.pa.us)

**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
Response and Restoration Practices** :
: **COMMENTS**
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: **Docket Number: L-2009-2104274**
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**COMMENTS OF
NATIONAL FUEL GAS DISTRIBUTION CORPORATION
TO THE PROPOSED RULEMAKING ORDER**

TO THE PENNSYLVANIA PUBLIC UTILITY COMMISSION:

I. Introduction.

On November 10, 2009, the Pennsylvania Public Utility Commission (the "Commission") entered a Proposed Rulemaking Order (the "Proposed Rulemaking") at this Docket. The Proposed Rulemaking, which was subsequently published in the Pennsylvania Bulletin on March 6, 2010, provided that interested parties could file comments within 30 days of the publication date and the Commission later extended that deadline until April 7, 2010. The Proposed Rulemaking, among other things, proposes changes to the Commission's regulations relative to service outages and reportable accidents. In general, the Proposed Rulemaking: (1) proposes to expand the Commission's regulations to include a greater number of reportable accidents; (2) establishes new deadlines for reporting accidents; and, (3) expands current regulations regarding information that must be reported in an outage situation.

National Fuel Gas Distribution Corporation ("NFGDC"), a certificated natural gas distribution company providing service to approximately 213,000 customers in Northwestern

and North-central Pennsylvania, appreciates this opportunity to submit comments on the Proposed Rulemaking. As a natural gas distribution company ("NGDC"), NFGDC will not be providing comments on the proposed amendments to 52 Pa. Code § 57.11 (dealing with the electric industry) or 52 Pa. Code § 65.2 (dealing with the water/wastewater industry). NFGDC's comments will generally follow the form of the "Annex A" which was published with the Proposed Rulemaking Order.

In addition to the instant comments, the Energy Association of Pennsylvania (the "EAPA"), of which NFGDC is a member, is contemporaneously filing Comments at this Docket. NFGDC incorporates herein and supports the Comments filed by the EAPA.

II. Comments.

A. § 59.11 Accidents.

This section of the Proposed Rulemaking, generally, attempts to expand the number and types of reportable accidents that would be included in this regulation. However, in NFGDC's opinion, some of the alterations to this regulation are confusing and overly broad which may lead to inconsistent reporting.

For instance, proposed § 59.11(b)(2) would now include as a reportable accident an "injury to a person sufficient that the injured person requires professional medical attention." In NFGDC's opinion, the inclusion of this language is over broad and would encompass many situations that do not warrant a report. For instance, a utility office worker may twist an ankle while in the utility's office and subsequently see a doctor. Under the proposed language, such an incident could be determined to be reportable. Clearly, minor incidents such as this are not the intent of the regulation. Also the phrase "requires professional medical attention" is vague and subject to various interpretations.

For these reasons, NFGDC suggests modifying the proposed language to both provide more clarity and reasonably limit the potential number of reportable accidents. A statement such as “Injury to a person sufficient that the injured person is admitted to a medical care facility or hospital” may be more appropriate. However, if the regulation remains as broad as it is stated, there should be a “knowledge” qualifier inserted to balance the broad nature of the requirement. That is, utilities should not be held accountable to make reports on something that they may not have knowledge of. For instance, if someone who suffers what initially appears to be a minor injury has later complications and seeks medical attention, that may not be immediately known to the utility, if at all.

Likewise, the proposed language of § 59.11(b)(5) is problematic. The proposed language reads:

An occurrence of an unusual nature that is suspected or determined to be caused by sabotage, including attempts against cyber security measures as defined in 52 Pa. Code §§ 101.1 *et seq.* (relating to public utility preparedness through self certification) and clarified in the Commission’s Order entered on August 3, 2009 at Docket No. M-2009-2104273.

As an initial matter, the reference to a separate Commission order in a regulation is improper. The purpose of a regulation is to provide a bright-line rule or requirement for a regulated entity to follow. Tying a regulation to a separate Commission Order, which may be subject to varying interpretations, will weaken the regulation and create potential confusion in adherence and application. Secondly, the phrase “unusual nature” is somewhat vague and potentially subject to various interpretations.

Further, as written this regulation could be too broad with respect to “attempts against cyber security measures.” For instance, utilities with internal electronic mail systems will from, time to time, see instances of individuals “spamming” the mail servers with messages or

otherwise attempting to flood electronic mail systems. While such attempts can be a nuisance, they are not likely the type of occurrence that should be reported on a regular basis. However, given the breadth of the Proposed Rulemaking it could be interpreted that these types of instances would need to be reported.

The language of proposed § 59.11(b)(6) would expand breadth of the reporting requirement to include incidents of “substantial damage to another utility company’s facility or property.” NFGDC proposes that, given the other existing reporting requirements, this proposed section is unnecessary. First, in a scenario where one utility causes damage to the facilities of a second company, the company with the damaged facility or property would be in a better position to know whether those damages are “substantial.” Second, if those damages are, in fact, substantial, they will be reported, by the company who owns them, under the one of the other sections of proposed § 59.11(b)(6).

B. § 59.11(e) Internal Investigation Reports.

The Proposed Rulemaking adds this new section that would require a utility to submit a copy of its final internal investigation report for certain reportable accidents. However, in many instances, these reports should not be disclosed. In many cases, these reports will be prepared at the request of, or with the assistance of a utility’s in-house or outside counsel. As such, the reports will contain various attorney-client communications and/or attorney work product. Both of these types of communications are, for various sound legal, ethical and societal reasons, often afforded privileges from disclosure. If the utilities are required to submit these reports in the fashion proposed those privileges would be ineffective and the documents would be subject to discovery. This section of the proposed rulemaking should be removed.

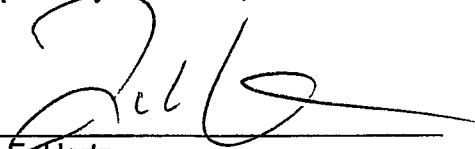
C. Chapter 67 – Service Outages: § 67.1 General Provisions.

NFGDC has no comments on the proposed changes to this regulation.

III. Conclusion.

National Fuel Gas Distribution Corporation appreciates the opportunity to provide comments regarding the Proposed Rulemaking and thanks the Commission for its time and attention to this matter.

Respectfully submitted,



Dated: April 6, 2009

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