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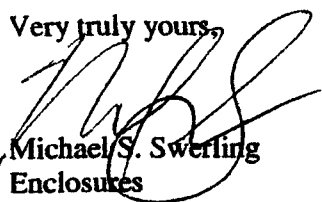
VIA FEDERAL EXPRESS

James J. McNulty, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
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 -
Docket No. L-2009-2104274**

Dear Secretary McNulty:

Enclosed are an original and fifteen (15) copies of the *Comments of PECO Energy Company to the Proposed Rulemaking Order* in the above-captioned matters. An additional copy of this letter is also enclosed to be date-stamped and returned to PECO Energy.

Very truly yours,

Michael S. Swerling
Enclosures

cc: Elizabeth Barnes, Assistant Counsel (via email)

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

PROPOSED RULEMAKING FOR REVISIONS : Docket No. L-2009-2104274
OF 52 PA. CODE CHAPTERS 57, 59, 65 And 67 :
PERTAINING TO UTILITIES' SERVICE :
OUTAGE RESPONSE AND RESTORATION :
PRACTICES; :

**COMMENTS OF PECO ENERGY COMPANY TO THE PROPOSED RULEMAKING
ORDER PERTAINING TO OUTAGE RESPONSE AND RESTORATION**

I. INTRODUCTION

After Hurricane Ike caused service interruptions to more than 450,000 customers in September 2008, the Pennsylvania Public Utility Commission ("Commission") conducted a statewide evaluation of Electric Distribution Company ("EDC") storm response, service restoration and customer communication practices. Certain EDCs filed responses to Commission questions and two public input hearings were held to discuss storm preparation, restoration and communications.

In April 2009, the Commission's Bureau of Conservation, Economics and Energy Planning and Office of Communications filed a report with the Commission entitled, *Electric Distribution Company Service Outage Response and Restoration Practices Report* ("Report"). The Report concluded that during Hurricane Ike, EDCs did not keep open predictable lines of communication with the public, which could have eased public frustration. The Report also found that communication problems occurred because:

The utilities did not utilize the principles of the National Incident Management System and its Incident Command System. These principles include making certain the message is consistent, using one spokesperson for an information release and providing predictability to the release of updated information. The EDC's should consider utilizing a Joint Information System/Joint Information Center that organizes all of the information throughout the utility into one unified

message with one person to deliver that message at predictable timeframes to the public, media and others.¹

Based on the Report, the Commission entered a Proposed Rulemaking Order (“Order”) at Docket L-2009-2104274 seeking comment. The Commission’s Order proposed amendments to regulations concerning reportable accidents and service outages. The purpose of the proposed changes is to create more effective responses to future unscheduled outages.

PECO Energy Company (“PECO”) applauds the Commission’s goals of improving utility response to outages. To help achieve those goals PECO offers the following comments.

II COMMENTS

A. Electric Service Accidents

1. 52 Pa. Code § 57.11(b)(2)

The proposed revision to 52 Pa. Code § 57.11(b)(2) expands the types of personal injuries related to accidents that utilities must report to the Commission. The expanded regulation would include injuries that involve medical attention or hospitalization to employees and non employees. This is a significant and overly broad change from the existing requirement that utilities report injuries to employees that become incapacitated for more than three days. This proposal causes PECO a few areas of concern.

First, the standard is too broad as applied to employee injuries. As applied to employees, the revision is broader than the accidental injury reporting requirements issued by Occupational Safety and Health Administration (“OSHA”). Its mission is to prevent work-related injuries, illnesses, and occupational fatality by issuing and enforcing standards for workplace safety and health. OSHA Standard Number 1904.39(a) states:

¹ Electric Distribution Company Service Outage Response and Restoration Practices Report, page 14.

Basic requirement. Within eight (8) hours after the death of any employee from a work-related incident or the in-patient hospitalization of three or more employees as a result of a work-related incident, you must orally report the fatality/multiple hospitalization by telephone or in person to the Area Office of the Occupational Safety and Health Administration (OSHA), U.S. Department of Labor, that is nearest to the site of the incident. You may also use the OSHA toll-free central telephone number, 1-800-321-OSHA (1-800-321-6742).

OSHA requires reporting of employee deaths or employee injuries of three or more employees that required in-patient hospitalization. According to the proposed regulation, utilities must report any employee injury requiring professional medical attention or hospitalization. Therefore, the Commission is holding utilities to a higher standard than OSHA holds all workplaces. PECO believes it is not in the public interest for the Commission to have a higher workplace safety reporting standard than OSHA. Therefore, PECO recommends that the Commission adopt the same standard used by OSHA and only require utilities to report when in-patient hospitalization of three or more employees as a result of a work-related incident occurs.

The proposed regulation would also require utilities to report employee accidental injuries that may not relate to the event at all. For example, an employee may perform office work to aid in storm response, nowhere in the vicinity of the storm site, and accidentally slip and fall, while on break. There is no value or public interest to reporting such an accident. PECO also believe that there is no value or public interest to reporting minor injuries.

Second, the standard is also too broad as applied to non employee injuries. Sometimes individuals seek medical attention only to learn there is nothing wrong with them. It is unclear what public benefit exists to justify reporting when an individual seeks medical advice, especially when there is nothing wrong with them or the injury is very minor. PECO recommends that utilities only be required to report injuries that required in-patient hospitalization with significant injuries certified by a licensed physician.

Third, utilities should only be required to inform the Commission about reportable injuries that are known. A utility may not immediately know that a third party required or sought medical attention. Sometimes PECO does not know that an individual was injured until right before the statutory period for filing civil complaints is about to expire.

Fourth, individuals may wish to keep their medical history private from the utility or Commission. PECO therefore recommends an exception for injured parties that request information about their injury be kept private.

PECO suggests that utilities be required to report injuries if: 1) the injury comes to the utility's attention within a reasonable time after the event; 2) the injury required in-patient hospitalization with significant injury certified by a licensed physician; and 3) the injured party wishes the Commission and utility to be notified of the injury.

2. 52 Pa. Code § 57.11(b)(4).

The proposed revision to 52 Pa. Code § 57.11(b)(4) requires that utilities report electric service accidents involving unusual circumstances such as actual or suspected acts of sabotage, including cyber security attacks. PECO understands the Commission's desire to be informed about cyber security threats and acts of sabotage. However, it is unclear what amount or type of information the utility must report. PECO feels that reporting highly sensitive information about its security does not benefit the public interest. Once highly sensitive security information is released to the Commission, it may become discoverable in a civil court proceeding. After this information becomes public, it may threaten the security of customer information and compromise the safety of company facilities. Therefore, utilities should only be required to report basic information about an incident, without revealing sensitive security information.

3. 52 Pa. Code § 57.11(b)(5).

The Commission proposes to add 52 Pa. Code § 57.11(b)(5) to the existing regulations. This new section requires utilities to report electric service accidents involving substantial damage to another utility's property or facilities. Utilities were invited to weigh in on how substantial damage should be defined. PECO recommends that substantial damage be defined as claimed property damage of at least \$50,000 in market value. This is how property damage is already defined in 52 Pa. Code § 59.11(b)(ii) regarding reportable natural gas accidents. Substantial damage should have the same meaning for gas and electric accidents. It should be the quantity of damage that defines whether or not the loss is substantial and not the type of service.

4. 52 Pa. Code § 57.11(e)

The Commission proposes a revision to this regulation requiring written reports to be filed within five days of an electric service accident. PECO recognizes that a five day requirement may provide more time to report than the existing requirement that utilities submit written reports immediately following the incident. However, placing an express five day requirement may cause complications, especially if it takes longer than five days to make the area safe, restore service or collect and review the data for accuracy. Therefore, PECO recommends that utilities be required to submit their written reports within a reasonable period after the accident, not to exceed a week after the circumstances of the accident are remedied and the area is made safe.

5. 52 Pa. Code § 57.11(f)

The Commission proposes that utilities submit final internal accident investigation reports to the Commission. PECO has several concerns with submitting these reports to the Commission. An internal investigation report, by its nature, is a confidential document that contains attorney-client privileged information and is protected by the work product doctrine. Once this protected document is submitted to the Commission, the utility loses all protection from disclosure in a civil court proceeding. The results could be far reaching. Once utility employees realize that their communications to utility attorneys are unprotected, they will be less open and more protected with their statements. As a result, internal investigative reports will lose their value as a tool to understand what happened and to avoid repeat accidents. This addition will also discourage initiating full investigations and identifying corrective actions to prevent or minimize similar incidents.

Requiring PECO to submit attorney-client privileged information to the Commission also violates the Pennsylvania Rules of Professional Conduct applicable to attorneys practicing law in Pennsylvania. Pennsylvania Rules of Professional Conduct, Rule 1.6 states:

Rule 1.6 Confidentiality of Information

(a) A lawyer shall not reveal information relating to representation of a client unless the client gives informed consent, except for disclosures that are impliedly authorized in order to carry out the representation, and except as stated in paragraphs (b) and (c).

(b) A lawyer shall reveal such information if necessary to comply with the duties stated in Rule 3.3.

(c) A lawyer may reveal such information to the extent that the lawyer reasonably believes necessary:

(1) to prevent reasonably certain death or substantial bodily harm;

(2) to prevent the client from committing a criminal act that the lawyer believes is likely to result in substantial injury to the financial interests or property of another;

(3) to prevent, mitigate or rectify the consequences of a client's criminal or fraudulent act in the commission of which the lawyer's services are being or had been used; or

(4) to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client, to establish a defense to a criminal charge or civil claim or disciplinary proceeding against the lawyer based upon conduct in which the client was involved, or to respond to allegations in any proceeding concerning the lawyer's representation of the client; or

(5) to secure legal advice about the lawyer's compliance with these Rules; or

(6) to effectuate the sale of a law practice consistent with Rule 1.17.

(d) The duty not to reveal information relating to representation of a client continues after the client-lawyer relationship has terminated.

None of the situations which allow lawyers to disclose attorney-client privileged information exist in the Commission's proposed regulation. Therefore, requiring that internal reports be submitted to the Commission will violate Rule 1.6. For the reasons set forth above, PECO recommends that this addition be removed from the proposal in its entirety.

However, if the Commission deems such reporting necessary, PECO recommends that the timeframe within which such reports must be filed be updated to state, "If the report is not expected to be completed within 2 years 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." PECO may not know about an injury until the two year statute of limitations is about to expire. Therefore, PECO requests that the proposed language allow a period of two years to expire before the utility must notify the Commission that the report will not be completed on time.

B. Natural Gas Accidents

1. 52 Pa. Code § 59.11(b)(2)

The proposed revision to 52 Pa. Code § 59.11(b)(2) expands the types of personal injuries related to accidents that utilities must report to the Commission. The expanded regulation would include injuries that involve medical attention or hospitalization to employees and non employees. This is a significant and overly broad change from the existing requirement that utilities report injuries to employees that become incapacitated for more than three days. This proposal causes PECO a few areas of concern.

First, the standard is too broad as applied to employee injuries. As applied to employees, the revision is broader than the accidental injury reporting requirements issued by Occupational Safety and Health Administration (“OSHA”). Its mission is to prevent work-related injuries, illnesses, and occupational fatality by issuing and enforcing standards for workplace safety and health. OSHA Standard Number 1904.39(a) states:

Basic requirement. Within eight (8) hours after the death of any employee from a work-related incident or the in-patient hospitalization of three or more employees as a result of a work-related incident, you must orally report the fatality/multiple hospitalization by telephone or in person to the Area Office of the Occupational Safety and Health Administration (OSHA), U.S. Department of Labor, that is nearest to the site of the incident. You may also use the OSHA toll-free central telephone number, 1-800-321-OSHA (1-800-321-6742).

OSHA requires reporting of employee deaths or employee injuries of three or more employees that required in-patient hospitalization. According to the proposed regulation, utilities must report any employee injury requiring professional medical attention or hospitalization. Therefore, the Commission is holding utilities to a higher standard than OSHA holds all workplaces. PECO believes it is not in the public interest for the Commission to have a higher workplace safety reporting standard than OSHA. Therefore, PECO recommends that the

Commission adopt the same standard used by OSHA and only require utilities to report when in-patient hospitalization of three or more employees as a result of a work-related incident occurs.

The proposed regulation would also require utilities to report employee accidental injuries that may not relate to the event at all. For example, an employee may perform office work to aid in storm response, nowhere in the vicinity of the storm site, and accidentally slip and fall, while on break. There is no value or public interest to reporting such an accident. PECO also believe that there is no value or public interest to reporting minor injuries.

Second, the standard is also too broad as applied to non employee injuries. Sometimes individuals seek medical attention only to learn there is nothing wrong with them. It is unclear what public benefit exists to justify reporting when an individual seeks medical advice, especially when there is nothing wrong with them or the injury is very minor. PECO recommends that utilities only be required to report injuries that required in-patient hospitalization with significant injuries certified by a licensed physician.

Third, utilities should only be required to inform the Commission about reportable injuries that are known. A utility may not immediately know that a third party required or sought medical attention. Sometimes PECO does not know that an individual was injured until right before the statutory period for filing civil complaints is about to expire.

Fourth, individuals may wish to keep their medical history private from the utility or Commission. PECO therefore recommends an exception for injured parties that request information about their injury be kept private.

PECO suggests that utilities be required to report injuries if: 1) the injury comes to the utility's attention within a reasonable time after the event; 2) the injury required in-patient

hospitalization with significant injury certified by a licensed physician; and 3) the injured party wishes the Commission and utility to be notified of the injury.

2. 52 Pa. Code § 59.11(b)(5)

The proposed revision to 52 Pa. Code § 57.11(b)(5) requires that utilities report natural gas service accidents involving unusual circumstances such as actual or suspected acts of sabotage, including cyber security attacks. PECO understands the Commission's desire to be informed about cyber security threats and acts of sabotage. However, it is unclear what amount or type of information the utility must report. PECO feels that reporting highly sensitive information about its security does not benefit the public interest. Once highly sensitive security information is released to the Commission, it may become discoverable in a civil court proceeding. After this information becomes public, it may threaten the security of customer information and compromise the safety of company facilities. Therefore, utilities should only be required to report basic information about an incident, without revealing sensitive security information.

3. 52 Pa. Code § 59.11(b)(6)

The Commission proposes to add 52 Pa. Code § 59.11(b)(6) to the existing regulations. This new section requires utilities to report natural gas service accidents involving substantial damage to another utility's property or facilities. Utilities were invited to weigh in on how substantial damage should be defined. PECO recommends that substantial damage be defined as claimed property damage of at least \$50,000 in market value. This is how property damage is

already defined in 52 Pa. Code § 59.11(b)(ii) regarding reportable natural gas accidents. There should not be different values for what constitutes substantial damage in the same regulation.

4. 52 Pa. Code § 59.11(d)

The Commission proposes a revision to this regulation requiring written reports to be filed within five days of a natural gas service accident. PECO recognizes that a five day requirement may provide more time to report than the existing requirement that utilities submit written reports immediately following the incident. However, placing an express five day requirement may cause complications, especially if it takes longer than five days to make the area safe, restore service or collect and review the data for accuracy. Therefore, PECO recommends that utilities be required to submit their written reports within a reasonable period after the accident, not to exceed a week after the circumstances of the accident are remedied and the area is made safe.

5. 52 Pa. Code § 59.11(e)

The Commission proposes an addition requiring utilities to submit final internal accident investigation reports to the Commission. PECO has several concerns with submitting these reports to the Commission. An internal investigation report, by its nature, is a confidential document that contains attorney-client privileged information and is protected by the work product doctrine. Once this protected document is submitted to the Commission, the utility loses all protection from disclosure in a civil court proceeding. The results could be far reaching. Once utility employees realize that their communications to utility attorneys are unprotected, they will be less open and more protected with their statements. As a result, internal

investigative reports will lose their value as tool to understand what happened and to avoid repeat accidents. This addition will also discourage initiating full investigations and identifying corrective actions to prevent or minimize similar incidents.

Requiring PECO to submit attorney-client privileged information to the Commission also violates the Pennsylvania Rules of Professional Conduct applicable to attorneys practicing law in Pennsylvania. Pennsylvania Rules of Professional Conduct, Rule 1.6 states:

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(3) to prevent, mitigate or rectify the consequences of a client's criminal or fraudulent act in the commission of which the lawyer's services are being or had been used; or

(4) to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client, to establish a defense to a criminal charge or civil claim or disciplinary proceeding against the lawyer based upon conduct in which the client was involved, or to respond to allegations in any proceeding concerning the lawyer's representation of the client; or

(5) to secure legal advice about the lawyer's compliance with these Rules;
or

(6) to effectuate the sale of a law practice consistent with Rule 1.17.

(d) The duty not to reveal information relating to representation of a client continues after the client-lawyer relationship has terminated.

None of the situations which allow lawyers to disclose attorney-client privileged information exist in the Commission's proposed regulation. Therefore, requiring that internal reports be submitted to the Commission will violate Rule 1.6. For the reasons set forth above, PECO recommends that this addition be removed from the proposal in its entirety.

However, if the Commission deems such reporting necessary, PECO recommends that the timeframe within which such reports must be filed be updated to state, "If the report is not expected to be completed within 2 years 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." PECO may not know about an injury until the two year statute of limitations is about to expire. Therefore, PECO requests that the proposed language allow a period of two years to expire before the utility must notify the Commission that the report will not be completed on time.

C. 52 Pa. Code § 67.1, Service Outages

The Commission is proposing revisions and additions to the regulations related to what information utilities must submit to the Commission after unscheduled service interruptions. The Commission is seeking more detailed data than what is already provided. For the most part, PECO can obtain and provide the requested information. However, the timeframes within which PECO must submit this data may be onerous. More importantly, while PECO may be able to provide most of the requested information, within a reasonable timeframe, it is unclear what

value the additional data provides. Also, PECO is not equipped to provide the geographic location by municipality or township of outage cases.

The proposed regulations require EDCs to submit the following additional information within five days after an unscheduled outage occurs:

- 1) Total number of sustained outages during an event;
- 2) Approximate number of outage cases and trouble cases for each affected county;
- 3) Approximate number of sustained outages for each county;
- 4) Number of outage cases exceeding 6 hours;
- 5) Listing of outage cases exceeding 6 hours to include:
 - a. Geographic location (municipality or township)
 - b. Total number of customers affected
 - c. Outage duration
 - d. Initial date and time of the outage
 - e. Restoration time and date
- 6) Listing of utility workers, contractors and mutual aid workers that assisted in outage response and categorized by function such as lineman, troubleman, tree crew and the like;
- 7) Description of physical damage to utility facilities including all equipment that was replaced.
- 8) Utility weather reports, outlooks or scenarios for the day of and day prior to the event.
- 9) For events to more than 10% of the customer base, the utility will provide historical data including two past events for comparison.

Five days is not enough time to compile, review and submit this information, in addition to the information already required in the existing regulation. There also will be a cost involved with compiling such an extensive report especially for major storms, while PECO may still be fulfilling restoration obligations and unwinding from its restoration efforts.

More importantly, the level of detail requested and the timeframe within which it is requested is only useful for the role of an entity that is actively managing or co-managing event

response. PECO understands that the Commission cannot nor desires to co-manage event response with PECO. Therefore, it makes more sense to submit the requested information to the Commission in the form of periodic reports, which allow the Commission to fulfill its role as a regulator to review whether PECO's restoration practices. Periodic submittals of this information serve the manager-regulator functions properly because the data can be retrieved, reviewed and submitted after all restoration efforts have concluded and the utility has had an opportunity to unwind. Therefore, PECO recommends that utilities be required to submit the additional data periodically.

PECO also suggests that natural gas events do not require all of the additional data requested. Therefore, PECO requests an exception for natural gas events that excludes reporting:

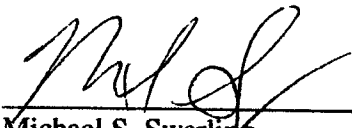
- 1) Approximate number of outage cases and trouble cases for each affected county;
- 2) Approximate number of sustained outages for each county;
- 3) Number of outage cases exceeding 6 hours;
- 4) Utility weather reports, outlooks or scenarios for the day of and day prior to the event;
- 5) For events to more than 10% of the customer base, the utility will provide historical data including two past events for comparison.

III. CONCLUSION

PECO appreciates the opportunity to comment on the Commission's Proposed Rulemaking Order. PECO respectfully requests that the Commission adopt its comments to the Order.

Respectfully submitted,

Dated: April 7, 2010



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