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Philadelphia Gas Works

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VIA ELECTRONIC FILING AND FIRST CLASS MAIL

ATTN: James J. McNulty, Secretary
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg , PA 17105-3265

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Re: Proposed Rulemaking for Revision of 52 Pa.Code Chapters 57, 59, 65 and 67;
Docket No. L-2009-2104274

Dear Secretary McNulty:

Enclosed for filing please find the Comments of Philadelphia Gas Works in the above referenced docket.

Please contact me at the above number if you have concerns.

Very Truly Yours,

Denise Adamucci

cc: Elizabeth Barnes (Via email ebarnes@state.pa.us)

Enclosure

**BEFORE THE
PENNSYLVANIA UTILITY COMMISSION**

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

COMMENTS OF PHILADELPHIA GAS WORKS

I. INTRODUCTION

Philadelphia Gas Works (“PGW”) respectfully submits these Comments to the Pennsylvania Public Utility Commission (“Commission”) in response to the Proposed Rulemaking for Revision of 52 Pa. Code Chapters 57, 59, 65 and 67 (“RO”) published in the Pennsylvania Bulletin on March 6, 2010 (40 Pa.B. 1203). The purpose of the RO is to amend regulations regarding service outage and restoration in the electric, gas and water industries. PGW appreciates this opportunity to provide the Commission with its comments on the RO’s proposed regulatory language. With respect to any modifications made to regulatory language herein, PGW adopted the regulation as proposed and marked-up the proposed language. While PGW offers suggestions and feedback on certain of the proposals set forth in the RO, it does so without waiving its rights to assert that a proposed regulation is a violation of law.

COMMENTS ADDRESSING THE RO

1. Chapter 59
(a) § 59.11(b)(2)

PGW believes that the current language of 59.11(b)(1)(i) adequately protects the public and clearly defines the obligations of utilities. The current regulation requires reporting in the event of death or personal injury necessitating inpatient hospitalization – a utility likely would

have knowledge of, or could obtain information regarding, such circumstances. In contrast, the proposed regulation is less specific and does not define the term “professional medical attention.” As a result, it is uncertain what level of injury would require reporting and whether a utility would have knowledge of circumstances which require reporting. For example, is reporting required if a person visits a doctor with a claim that certain medical conditions have resulted from an accident but the doctor is unable to confirm such medical conditions, or if a person experiences inconsequential injury? There is likely negligible value from a report on such types of injuries. Accordingly, PGW agrees with the Commission’s view that a threshold test for severity of injuries is warranted, and proposes the below modification to the proposed language:

(2) Injury to a person sufficient that the injured person requires ~~professional medical attention~~ (i) in patient hospitalization, or (ii) suffers a serious medical injury, as certified by a licensed physician, which requires recurrent treatments by a licensed physician or nurse practitioner.

(b) § 59.11(b)(5)

In order to ensure that the Commission is not unnecessarily burdened with reporting on insignificant computer/cyber events, the regulations should establish limits on reporting requirements. PGW proposes the below modification to the proposed language.

(5) An occurrence of an unusual nature that is suspected or determined to be caused by sabotage, which results in a service outage and is reported to the police or a government agency which performs police functions, including attempts against cyber security measures as defined in Chapter 101 (relating to public utility preparedness through self certification) and clarified in the Commission’s Order entered on August 3, 2009, at Docket No. M-2009-2104237.

(c) § 59.11(b)(6)

PGW submits that damage to another utility company’s facility or property would

not rise to a level deemed “substantial” until costs for repair of the damage exceed \$50,000, assuming the utility is informed of such costs by the other utility.

(d) § 59.11(c) and (d)

As discussed above, a utility may not become aware that a person has sought “medical attention” until some time afterward. For this reason, the 24 hour reporting requirement with respect to subsection (b)(2) should apply 24 hours after such event is known to the utility and, similarly, the written reporting requirement should apply after such event is known.

(e) § 59.11(e)

66 Pa. C.S. § 1508 applies to accidents in or about or in connection with the operation of a utility’s “service and facilities, wherein any person shall have been killed or injured.” An incident described in proposed section § 59.11(b)(5) would not necessarily fall under this description and the Commission does not have the statutory authority to extend the scope of 66 Pa. C.S. § 1508 in this manner.

While PGW understands the Commission’s interest in investigating accidents involving death or serious injury, there are several areas of concern with this proposal which require revision to the proposed regulation. As an initial matter, it is unclear what type of report would be deemed to be a final internal investigation report. At most, the Commission should require a utility to pass along any reports that come into its possession that set forth an actual cause of an accident. Further, a utility’s knowledge would be limited to the facts regarding its service and operations and, as such, this is the only information that the utility should be required to provide to the Commission. The reporting requirement should also specifically exclude information protected by the attorney-client privilege. Finally, since a utility may not have knowledge of a

reportable event until some time after the accident, particularly with respect to 59.11(b)(2), the one year requirement should run from the date of knowledge of the reportable injury. PGW proposes the below modification to the proposed language.

(e) *Internal investigation reports.* The utility shall submit a copy of ~~its final internal investigation report when it is completed~~ reports that set forth a finding of the actual utility service or operational cause of an accident, excluding information protected as privileged, for all reportable accidents under subsection (b)(1); ~~and (2) and (5).~~ The final internal investigation report submitted hereunder 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 known 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.

2. Chapter 67

(f) 67.1(a) Although 52 Pa.Code § 67.1(a) is not proposed for modification, PGW notes that in accordance with this subsection, Chapter 67 of the Code is applicable to gas utilities holding a certificate of public convenience under Chapter 11 of the Public Utility Law (66 Pa.C.S. §§ 1101 and 1102). However, with respect to PGW, and in accordance with 66 Pa.C.S. § 2212(c), Chapter 11 (relating to certificates of public convenience) applies to a city natural gas distribution operation, such as PGW, only to the extent it seeks to provide gas distribution services outside its corporate or municipal limits. Since PGW views its possible omission from the scope of Chapter 67 as inadvertent, and because PGW recognizes the importance of the PUC's efforts to create uniform outage response and restoration practices, it has provided comments on the proposed revisions to this Chapter.

(g) Comments. As a threshold matter, PGW respectfully submits that gas utilities should not be included in the scope of all of the modifications to Chapter 67. With respect to the heightened reporting requirements, it is unnecessary to group electric outages together with gas outages, as larger scale gas outages are rare and the facilities and infrastructure

for the two types of utilities are dramatically different. Further, the burdens of new requirements on gas utilities should be consistent with the expected benefits. The current regulations are adequate for gas utility outage reporting. At the least, the Commission should modify proposed sections 67.1(b)(1), (4 and 5) and (16), as explained below:

- 67.1(b)(1): PGW does not have software systems that would track outages (by the minute, hour or day).
- 67.1(b)(4 and 5): PGW does not have the current systems or capability to report outages on a per customer basis. For example, in the event of an outage in a low pressure system area, PGW would only have knowledge of the area affected and an estimated number of customers affected.
- 67.1(b)(16): Given that gas outages are unusual, this subsection is unnecessary and may not prove useful in evaluating such outages.

III. CONCLUSION

PGW appreciates the opportunity to present comments to this proposed RO.

Respectfully Submitted,

/s/ Denise Adamucci

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