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Melanie J. El Atieh
Director, Corporate Counsel

800 West Hersheypark Drive
Hershey, PA 17033

Phone: (717) 531-3362

Facsimile: (717) 531-3399

melanie.elatich@amwater.com

March 7, 2016

VIA E-FILING

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
P. O. Box 3265
Harrisburg, Pennsylvania 17105-3265

**Re: Rulemaking Re Electric Safety Regulations, 52 Pa. Code, Chapter 57;
Docket No. L-2015-2500632**

Dear Secretary Chiavetta:

Enclosed for filing in the above-referenced docket, please find the joint comments of Pennsylvania-American Water Company and System Local 537, Utility Workers Union of America, AFL-CIO. These comments are being filed in accordance with the Pennsylvania Public Utility Commission's Proposed Rulemaking Order issued on November 19, 2015 in the above-captioned proceeding and published in the *Pennsylvania Bulletin* on February 6, 2016. This document is permitted to be electronically filed.

Should you have any questions or concerns regarding this filing, please contact me. Thank you for your attention to this matter.

Sincerely,

Melanie J. El Atieh

Enclosure

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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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RULEMAKING RE: ELECTRIC SAFETY : DOCKET NO: L-2015-2500632
REGULATIONS, 52 PA. CODE :
CHAPTER 57 :

**JOINT COMMENTS OF
PENNSYLVANIA-AMERICAN WATER COMPANY AND
SYSTEM LOCAL 537, UTILITY WORKERS UNION OF AMERICA, AFL-CIO
TO THE COMMISSION'S PROPOSED RULEMAKING ORDER
RE: ELECTRIC SAFETY REGULATIONS**

TO THE PENNSYLVANIA PUBLIC UTILITY COMMISSION:

I. INTRODUCTION

Pennsylvania-American Water Company ("Pennsylvania-American" or "PAWC") and the System Local 537, Utility Workers Union of America, AFL-CIO ("Local 537 Union") (collectively, the "Joint Commenters") hereby jointly submit these comments to the Pennsylvania Public Utility Commission's (the "Commission's") November 19, 2015 Proposed Rulemaking Order Re: Electric Safety Regulations, 52 Pa. Code Chapter 57, at Docket No. L-2015-2500632 ("Proposed Rulemaking Order"). Pursuant to its authority and duty under the Public Utility Code, 66 Pa. C.S. §§ 501, 1501, the Commission proposed minor revisions and updates to Section 57.1 and proposed adding electric safety standards in Section 57.28 in the Proposed Rulemaking Order. The Commission sought comments from all interested parties on the proposed regulations, which were attached as Annex A to the Proposed Rulemaking Order.

Pennsylvania-American is a "public utility" as such term is defined in the Pennsylvania Public Utility Code, 66 Pa. C.S. § 102, subject to the regulatory jurisdiction of the Commission. Pennsylvania-American furnishes water and wastewater services to approximately 672,536

customers throughout its certificated service territory, which includes all or portions of 400 municipalities and 36 counties across the Commonwealth.

The Local 537 Union represents certain employees of Pennsylvania-American as well as employees of other water and wastewater utility and municipal employers.

In the Commission's Proposed Rulemaking Order, the Commission explained that, under the Public Utility Code, an electric distribution company ("EDC") in Pennsylvania has a legal duty to maintain safe, adequate and reasonable service and facilities and to make repairs, changes, and improvements that are necessary or proper for the accommodation, convenience, and safety of its patrons, employees, and the public. 66 Pa. C.S. § 1501. The Commission further explained in the Proposed Rulemaking Order that, pursuant to its statutory powers, the Commission is authorized to adopt and enforce rules to ensure that EDCs provide safe, adequate, and reliable service. 66 Pa. C.S. §§ 102, 501. The Proposed Rulemaking Order modifies the electric safety regulations to clarify the electric safety standards applicable to EDCs and their customers, the EDC record keeping and reporting rules, and EDC obligations in regard to inspections and investigations. Specifically, the Commission references in the proposed regulations the national electric safety standards in the National Electric Safety Code ("NESC") to remove doubt and minimize legal challenges as to the applicability of the NESC to jurisdictional Pennsylvania EDCs.

The proposed regulations in the Commission's Proposed Rulemaking Order are intended to empower the Commission's Electric Safety Division to enforce electric safety standards at jurisdictional EDCs facilities to ensure public safety and protect the public interest. *See* 66 Pa. C.S. § 1501. The Proposed Rulemaking Order explained that the Commission recently created the Electric Safety Division within the Bureau of Investigation & Enforcement ("BI&E") to

ensure the dedication of Commission staff to enforcing the NESC and performing field audits and investigations (similar to the Commission's Gas Safety Division within BI&E that enforces gas safety standards). As explained in the Proposed Rulemaking Order, the Electric Safety Division was created after the Commission's then-Chairman, and current Commissioner, Robert F. Powelson testified to the Pennsylvania House of Representatives Appropriations Committee on February 19, 2014, regarding the number of serious injuries or fatalities in Pennsylvania each year related to electric utility operations. The Commission stated in the Proposed Rulemaking Order that it believes that the clear outlay of electric safety standards in one section in Chapter 57 of the Commission's regulations will assist the Electric Safety Division in enforcing those standards. *Compare* 52 Pa. Code § 59.33 (providing gas safety standards).

II. COMMENTS

As explained below, the Joint Commenters generally support the proposals in the Proposed Rulemaking Order, but offers the following comments for the Commission's consideration to further ensure public safety and protect the public interest. Specifically, the Joint Commenters submit these comments in the interest of the safety of Pennsylvania-American's employees, customers and contractors, who perform subsurface utility work on water and wastewater pipes and facilities located near exposed underground and overhead power lines. In the absence of timely and appropriate action by the EDC, these lines could potentially cause serious injuries or fatalities.

Under Occupational Safety & Health Administration ("OSHA") regulations, an employer is prohibited from permitting an employee to work in such proximity to any part of an electric power circuit that the employee could contact the electric power circuit in the course of work, unless the employee is protected against electric shock by de-energizing the circuit and

grounding it or by guarding it effectively by insulation or other means. 29 CFR 1926.416(a)(1). While Pennsylvania-American – as an employer – is able to adopt operating standards and practices consistent with the OSHA regulation that prohibit its employees from performing work on water mains and facilities that will risk contact with nearby energized power lines, PAWC – like other water providers – cannot take the steps necessary to actually de-energize the line or guard it with insulation. The most PAWC is able to do is to contact the EDC and request that the EDC send qualified company personnel to safely and appropriately address the situation – by either de-energizing the line or guarding it with insulation – just as the EDC would be required to do under the federal regulations for its own employees. In such circumstances, the EDC must take necessary action with respect to its facilities to ensure the safety and welfare of other local utility workers.

Until the EDC takes appropriate action to respond to a request by a water utility to de-energize or insulate an exposed power line located in such proximity to any repair or replacement work being performed to water pipes or facilities that risk contact with utility workers, all such work must come to a stop. Without such measures taken by the EDC, PAWC often cannot continue to perform and complete work on water mains or facilities – even in emergency situations – to the detriment of its customers. Depending on the type of work being performed to its water/wastewater facilities (e.g. in the case of a water main break, work requiring immediate attention), PAWC's ability to continue to provide safe, adequate and reliable water supply service to its customers may be jeopardized if the EDC does not properly prioritize the requests made by the water/wastewater utilities and respond in a timely and appropriate manner to address the EDC facilities.

Currently, nothing in state or federal statutes or regulations require the EDCs to timely and appropriately coordinate with local water or wastewater utilities to address exposed power lines in a utility work area that may present a risk of electric shock to utility workers.¹ Section 57.28(a)(1) of the Commission's proposed regulations in the Proposed Rulemaking Order explains the duties and responsibilities of the EDC with respect to electric safety including the duty to use every reasonable effort to properly warn and protect the public from danger and to reduce hazards to which employees, customers, the general public, and others may be subjected to by reason of the EDC's provision of electric distribution service and its associated equipment and facilities. PAWC believes that utility workers not employed by the EDCs fit within the "general public" or "others" category of this standard and thus the duties stated in Section 57.28(a)(1) would include the duties an EDC owes to the workers of other local utilities who are subjected to danger or hazards in the course of utility work by reason of the EDC's equipment and facilities. However, PAWC also believes that the proposed regulations should specify the standards an EDC must meet to ensure the safety and protection of local water/wastewater utility workers. Clarification of such standards will assist the Electric Safety Division in the enforcement of the EDCs' duties to ensure the safety of local utility workers and protection of the public interest.

¹ Specifically, federal OSHA safety regulations govern the relationship between employers and employees in developing workplace health and safety standards, and therefore do not extend to the relationship between EDCs and other local utilities. *See* 29 CFR §§ 1910 *et. seq.* Additionally, the standards established by the Underground Utility Line Protection Act (PA One Call Act or Act 287) also do not address this issue. *See* 73 P.S. §§ 176 *et. seq.* The purpose of the PA One Call Act is to protect the public health and safety by preventing excavation or demolition work from damaging underground lines used in providing electricity, communication, gas, propane, oil delivery, oil product delivery, sewage, water or other service; imposing duties upon the providers of such service, recorders of deeds, and persons and other entities preparing drawings or performing excavation or demolition work; and prescribing penalties. The PA One Call Act prescribes the system of processes and procedures that must be followed, including the obligation of "Facility Owners" to respond to a request from an excavator and provide information concerning the location of its lines, to ensure safe excavation and digging practices to avoid damage to or interference with all underground lines.

The Commission's Proposed Rulemaking Order should require EDCs to coordinate in a timely manner with water and wastewater public utilities subject to the Commission's regulatory jurisdiction, to ensure the safety and protection of utility workers during the course of work performed on necessary repairs or replacements to water/wastewater facilities, whether planned or because of emergencies. Specifically, the EDCs should be required to:

- coordinate with water and wastewater public utilities that are regulated by the Commission to timely and appropriately address EDC facilities that present a risk of contact to the employees of such water and wastewater utilities in the course of planned or emergency water/wastewater utility work;

- use every reasonable effort in the assessment and operation of EDC equipment and facilities to prevent electric shock and injury to the employees of water and wastewater utilities, including, as appropriate, the de-energizing or insulation of EDC equipment or facilities;

- provide to water and wastewater utilities the contact information of qualified, competent and authorized EDC representatives who will serve as the point of contact (and back-up point of contact) to respond to requests regarding EDC facilities;

- provide qualified and sufficient EDC representatives to respond in a prompt and appropriate manner to requests made by water and wastewater utilities to de-energize or insulate exposed underground or overhead power lines; and

- formally assign priority status to responses to water/wastewater emergency repair situations involving exposed power lines located in close proximity to or within the emergency work area.


In sum, the Joint Commenters believe the issues raised in these comments are critically important to the health and safety of the water and wastewater utility workforce in Pennsylvania and believe that there is opportunity within this proposed rulemaking for the Commission to encourage greater inter-utility coordination for the protection of the public.

Attached to these comments as "Appendix A" are Pennsylvania-American's specific proposals for revision to the proposed regulations consistent with these comments. Pennsylvania-American further recognizes that the Commission may wish to give additional consideration to the issue of inter-utility coordination before adopting regulations intended to address the safety and welfare of utility workers who are subjected to danger or hazards in the course of water/wastewater utility work by reason of the EDC's equipment and facilities. Accordingly, as an alternative to revising its proposed regulations as specifically proposed herein, Pennsylvania-American requests that the Commission adopt the general requirements of coordination as set forth in PAWC's comments and establish an inter-utility working group to develop the specifics on how cooperation can be achieved between the EDCs and water/wastewater utilities, and require each EDC to file a report with the Commission by a date certain on how they are complying with the coordination requirement.

III. CONCLUSION

The Joint Commenters appreciate the opportunity to provide comments to the Proposed Rulemaking Order. For the reasons explained above, the Joint Commenters generally support the proposals in the Proposed Rulemaking Order but respectfully request that the Pennsylvania Public Utility Commission adopt the proposals consistent with these comments.

Respectfully submitted,


Melanie J. El Atieh, Esquire (PA ID # 209323)
Director, Corporate Counsel – Mid-Atlantic Division
American Water Works Service Company, Inc.
800 West Hersheypark Drive
Hershey, PA 17033
Telephone: (717) 531-3362
Facsimile: (717) 531-3399
Email: melanie.elatieh@amwater.com

Counsel for Pennsylvania-American Water Company

Dated: March 7, 2016

APPENDIX A
TO THE COMMENTS OF
PENNSYLVANIA-AMERICAN WATER COMPANY

Subchapter A. GENERAL PROVISIONS

* * * * *

Subchapter B. SERVICE AND FACILITIES

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§ 57.28. Electric safety standards.

(a) *Duties and responsibilities.* The separation of duties and responsibilities between an electric utility and a customer with respect to the facilities utilized for electric service shall be effectively described in the electric utility's tariff that is filed with and approved by the Commission.

(1) *Duty of electric utility.* An electric utility shall use every reasonable effort to properly warn and protect the public from danger, and shall exercise reasonable care to reduce the hazards to which employees, customers, the general public, and others may be subjected to by reason of its provision of electric distribution service and its associated equipment and facilities.

(2) *Customer responsibility.*

(i) A customer shall be responsible for the ownership and maintenance of the customer's facilities beyond the service point.

(ii) A customer shall be responsible for maintaining and inspecting electrical wiring and electrical equipment beyond the point of delivery of electric supply.

(b) *Safety code.* A jurisdictional EDC shall comply with all of the following minimum safety standards:

(1) The regulations established by § 57.1 *et. seq. (as amended)* (relating to electric service).

(2) The standards established by the National Electrical Safety Code (NESC).

(3) The procedures established by the electric utility and set forth in the EDC's internal company procedures.

(4) The standards established by the Underground Utility Line Protection Act (PA One Call or Act 287) at 73 P.S. §§ 176 *et. seq.* (relating to excavating and demolition).

(5) All other applicable and governing state and federal laws and regulations.

(c) Coordination with Water and Wastewater Public Utilities.

(1) An electric utility shall use every reasonable effort to coordinate with water and wastewater public utilities that are regulated by the Commission as a "public utility" under Section 102 of the Public Utility Code, 66 Pa.C.S. § 102, in order to reduce the hazards to which the employees and contractors of water and wastewater public utilities may be subjected to in the course of utility work by reason of the electric utility's equipment and facilities.

(2) An electric utility shall provide to water and wastewater public utilities the contact information of qualified, competent and authorized EDC representatives who will serve as the point of contact to respond to exposed power lines located in close proximity to or within the utility work area. The electric utility shall update the contact list on a semi-annual basis and provide the updated list to the water and wastewater public utilities.

(3) An electric utility shall respond in a prompt and appropriate manner to requests made by water and wastewater utilities to assess and mitigate exposed underground or overhead power lines located in close proximity to or within the utility work area, including, as appropriate, the de-energizing or insulation of equipment or facilities.

(4) An electric utility shall assign priority status to its responses to water and wastewater emergency repair situations involving exposed power lines located in close proximity to or within the emergency work area.

~~(e)~~ (d) Enforcement. An EDC shall be subject to inspections, investigations, and enforcement actions as may be necessary to assure compliance with this section. The facilities, books, and records of an electric utility shall be accessible to the Commission and its staff for the inspections and investigations. An electric utility shall provide the Commission or its staff the raw data, reports, supplemental data, and information necessary for the administration and enforcement of this section.

~~(d)~~-(e) Records. An EDC shall keep adequate records as required for compliance with the safety code set forth in subsection (b). An electric utility shall submit reports for each reportable accident under § 57.11 (relating to accidents). The records shall be accessible to the Commission and its staff.

* * * * *