

**PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17105-3265**

Public Meeting held May 18, 2017

Commissioners Present:

Gladys M. Brown, Chairman
Andrew G. Place, Vice Chairman
John F. Coleman, Jr.
Robert F. Powelson
David W. Sweet

Rulemaking Re Electric Safety Regulations,
52 Pa. Code Chapter 57

Docket No. L-2015-2500632

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RECONSIDERATION ORDER

BY THE COMMISSION:

Before the Commission is a May 5, 2017 Pennsylvania-American Water Company Petition for Clarification and Reconsideration regarding the specific directive found on page 30 of the Commission's Final Rulemaking Order entered on April 20, 2017. The Commission had formally commenced a rulemaking process to amend its existing regulations in Chapter 57, Subchapters A (General Provisions) and B (Service and Facilities) at 52 Pa. Code §§ 57.1 (Definitions) and 57.28 (Electric Safety Standards). On November 19, 2015, the Commission issued a Proposed Rulemaking Order to add a definition for "EDC" (electric distribution company) and to modify the definition of "service terminal" and replace that term with the new term "service point / point of delivery" in 52 Pa. Code § 57.1, and to add electric safety standards at 52 Pa. Code § 57.28.

The Commission's proposed regulations were attached as Annex A to the Proposed Rulemaking Order. The Proposed Rulemaking Order was published in the

Pennsylvania Bulletin on February 6, 2016, and the Commission sought comments from all interested parties on the proposed regulations due March 7, 2016.

Comments were filed by a number of interested parties including the Pennsylvania AFL-CIO Utility Caucus (AFL-CIO) and the Energy Association of Pennsylvania (EAP). Joint Comments were filed by Pennsylvania-American Water Company (PAWC) and System Local 537, Utility Workers Union of America, AFL-CIO (Joint Commenters or PAWC). Finally, The Independent Regulatory Review Commission (IRRC) filed comments on April 6, 2016. The Commission reviewed the comments of these interested parties, revised the proposed rules and issued a Final Rulemaking Order on April 20, 2017.¹

The Joint Comments filed in this Rulemaking described concerns for safety when water and wastewater utilities are working in close proximity to electric distribution companies' (EDCs) energized lines and there is potential for an electric line to energize the work area of another utility, presenting a direct hazard to their workers.² In the interests of the employees and customers of water/wastewater utilities, the Joint Commenters proposed specific revisions to the new Section 57.28 of the Commission's regulations addressing standards and procedures for coordination between EDCs and water/wastewater utilities to avoid the circumstances described in the Joint Comments.

PAWC submits that the IRRC recognized the comments submitted by the Joint Commenters and the AFL-CIO and recommended that the Commission consider an amendment to its rulemaking to coordinate the individual utility safety and reliability provisions in 66 Pa. C.S. § 1501 and the overall safety of those who work for other utilities under its jurisdiction. However, IRRC also offered an alternative disposition to

¹ The Final Rulemaking regarding Electric Safety Regulation was delivered May 11, 2017 to IRRC and the Committees.

² AFL-CIO also believes there are problems in the Commonwealth involving coordination between EDCs and field employees of water and wastewater providers.

“address this concern in a separate proposed regulation which would allow more opportunity for comment and to build consensus on the language of the amendment to the regulation.” IRRC comments, page 5.

As indicated previously, on May 5, 2017, the PAWC filed a Petition for Clarification and Reconsideration (Petition) regarding the specific directive found on page 30 of the Commission’s Final Rulemaking Order entered on April 20, 2017. PAWC noted that the Commission did not include this directive on filing a petition for issuance of a regulation in its ordering paragraphs.³ The Commission is requested to clarify and reconsider only this specific portion of the Final Rulemaking Order.

On May 15, 2017, EAP filed a response to the Petition concurring with the request to stay the directive on page 30 of the Final Rulemaking Order requiring PAWC to petition the Commission within 30 days for issuance of a regulation and provide, instead, a 240-day period of time for PAWC and EAP to address these coordination issues. However, EAP concurs in the Petition only to the extent that the relief requested is narrowly focused on the directive provided to PAWC by the Commission. EAP also agrees that the Petition does not seek clarification or reconsideration of the final regulations set forth in Annex A to the Final Rulemaking Order, and that the regulatory process will proceed and not result in a stay or reconsideration of the final regulations.

The Commission addressed this issue in the Final Rulemaking Order (pages 29-30) stating that Joint Commenters “offered extensive changes to the Section 57.28 electric safety standards by inclusion of additional regulatory requirements” and “the

³ PAWC submits it is unclear whether the Commission intended to order PAWC to take action because it did not include an ordering paragraph to that effect in the Final Rulemaking Order. PAWC requests, however, that the Commission clarify such directive. The Commission submits that the failure to include the directive in an ordering paragraph was an oversight. We specifically addressed the issue in the body of the Order and quoted the directive in the body and that directive should have been included in the ordering paragraphs. Therefore, to fail to include the directive in the ordering paragraph was an oversight but does not render the Order ineffective on this issue and is moot because of our disposition of the Petition.

language changes being proposed involve other utility service providers and these industries like gas and communications have not participated in this rulemaking.” We then adopted IRRC’s suggestion that this matter not be addressed in this rulemaking. We determined that the issues “are beyond the scope of this rulemaking” and “we have not had the opportunity to hear from all interested parties that want to be heard and fully develop the issues raised by these comments.” Ultimately, we decided to “direct PAWC to file a petition for issuance of a regulation” because “PAWC is in a better position to initiate this rulemaking and formulate the relevant issues.” On page 30 of the Final Rulemaking Order, the Commission stated as follows:

We shall order PAWC to file the subject petition within 30 days and provide for comments to the petition to be filed by interested parties within 30 days of the filing of the petition. The petition shall be served on all the parties to this rulemaking.

In support of the Petition, the PAWC submits that the rulemaking petition may be unnecessary since it has an understanding that the EAP and its EDC members intend to continue discussion with PAWC about a resolution of the issues raised in the Joint Comments. Accordingly, Petitioner requests that, at the Public Meeting scheduled for May 18, 2017, the Commission grant reconsideration and stay the directive that PAWC file a rulemaking petition for 240 days. PAWC submits that a stay will allow more opportunity to build consensus on addressing the issues and concerns raised by both the Joint Commenters and the EAP, both within and outside the scope of this rulemaking proceeding.⁴ Should a resolution of the issues not be achieved by the close of the proposed 240-day stay period, PAWC will inform the Commission accordingly and take such steps at that time as the Commission directs. Even if the Commission believed a

⁴ On April 27, 2016, the EAP and Joint Commenters held a meeting to discuss the concerns identified in the Joint Comments. On May 18, 2016, the EAP submitted a letter in this docket on behalf of its EDC members stating that it had met with the Joint Commenters on April 27, 2016, and that EAP and its EDC members support efforts of other utilities to promote safe work practices around energized electric cables and that the EAP and its EDC members disagreed over coordination issues PAWC raised in its comments. On January 31, 2017, EAP sent correspondence to PAWC relating to the matters raised in the Joint Comments and discussed during the April 27, 2016 meeting. On April 18, 2017, PAWC sent reply correspondence to EAP and filed such letter in this rulemaking docket.

rulemaking necessary, PAWC contends that 30 days is an insufficient amount of time to file a petition addressing the complex and important issues and concerns that have been raised throughout this proceeding and in the off-the-record correspondence and meetings.

According to PAWC, it is unclear whether the Commission intended the due date of such petition to be computed beginning from the entry date of the Final Rulemaking Order or the publication date of the final regulations in the *Pennsylvania Bulletin*. Petitioner requests that the Commission clarify when the computation of time is intended to begin.

In any event, PAWC requests that the Commission reconsider this portion of the order because a rulemaking petition may be unnecessary. Petitioner submits that PAWC, the EAP, and the EDC members of the EAP commonly believe that working toward building consensus among the industries may potentially result in a more workable outcome for both industries in the interest of consumers and the health and safety of utility workers. Supported by Commission policy promoting settlements, it is Petitioner's understanding that the EAP and its EDC members intend to continue their discussions with PAWC about a resolution of the issues raised in the Joint Comments. *See, e.g.*, 52 Pa. Code §§ 5.231.

Discussion

The Commission has the authority to grant reconsideration and rescind its prior orders pursuant to Sections 703(g) of the Code, 66 Pa. C.S. § 703(g), and Section 5.572 of the Commission's regulations, 52 Pa. Code 5.572 (relating to petitions for relief following the issuance of a final decision). As a basis for the Petition, PAWC submits that the Commission's Order is unclear and needs clarification. In addition to not including an ordering paragraph to reflect directing PAWC to initiate a rulemaking, PAWC believes it is unclear whether the Commission intended the due date of such petition to be computed beginning from the entry date of the Final Rulemaking Order or

the publication date of the final regulations in the *Pennsylvania Bulletin*. Petitioner requests that the Commission clarify when the computation of time is intended to begin.⁵ Given our disposition of the Petition, this issue becomes moot.

As explained further, if PAWC, the EAP and its EDC members do not resolve their issues by the close of the proposed 240-day stay period, PAWC will inform the Commission accordingly and proposes that either it will file the contemplated petition to initiate a rulemaking, or, in lieu of PAWC filing such petition, PAWC will propose that the Commission allow for PAWC to file a letter stating its decision not to file such petition and explaining that it has reached a mutual understanding with the EDCs as to the coordination standards and procedures to be followed by the EDCs and PAWC in the future and how those standards and procedures protect the public interest. Finally, PAWC submits that the only consequence of PAWC not filing the rulemaking petition contemplated by the Commission by the close of the stay period should be that PAWC foregoes the opportunity to file any such petition thereafter in connection with this proceeding.

PAWC requests that the Commission rescind the directive that has PAWC file the subject petition for issuance of a regulation pursuant to 52 Pa. Code § 5.43 and issue a new order reflecting PAWC's commitment discussed above that within 240 days of the entry date of the new order PAWC shall file either (1) a petition to initiate a rulemaking that frames the relevant issues and proposes regulations to address the issues, with answers to the subject petition due within 20 days from the date of filing such petition; or (2) a letter stating PAWC's decision not to file a petition and explaining that PAWC achieved substantial consensus with the EDCs as to the inter-utility coordination standards and procedures to be followed in the future, and explaining how such standards and procedures protect the public interest.

⁵ Should the Commission not grant reconsideration, Petitioner submits that PAWC's rulemaking petition is due within 30 days from the date the final regulations are published in the *Pennsylvania Bulletin*.

In addition, in the event PAWC does not file a petition in accordance with paragraph (1) above, PAWC agrees to forego the opportunity to file any such petition thereafter in connection with this proceeding. In the event a petition is filed by PAWC in accordance with paragraph (1) above, and should the Commission decide to initiate a rulemaking based on the petition and answer, interested parties shall be afforded an opportunity to comment on proposed rulemaking in accordance with the Pennsylvania Regulatory Review Act and the Commonwealth Documents Law; **THEREFORE,**

IT IS ORDERED:

1. That the Pennsylvania-American Water Company's Petition for Clarification and Reconsideration (Petition) regarding the specific directive found on page 30 of the Commission's Final Rulemaking Order entered on April 20, 2017, is hereby granted.

2. That the directive on page 30 of the Final Rulemaking Order stating as follows: "We shall order PAWC to file the subject petition within 30 days and provide for comments to the petition to be filed by interested parties within 30 days of the filing of the petition. The petition shall be served on all the parties to this rulemaking;" is hereby rescinded.

3. That the Pennsylvania-American Water Company shall within 240 days of the entry date of this Reconsideration Order, file either: (1) a petition to initiate a rulemaking that frames the relevant issues and proposes regulations to address the issues, with answers to the subject petition due within 20 days from the date of filing such petition; or (2) a letter stating PAWC's decision not to file a petition and explaining that PAWC achieved substantial consensus with the EDCs as to the inter-utility coordination standards and procedures to be followed in the future, and explaining how such standards and procedures protect the public interest.

4. That in the event PAWC does not file a petition in accordance with Ordering Paragraph (3) above, PAWC agrees to forego the opportunity to file any such petition thereafter in connection with this proceeding.

5. That in the event a petition is filed by PAWC in accordance with subparagraph (1) above, in Ordering Paragraph (3), and should the Commission decide to initiate a rulemaking based on the petition and answer, interested parties shall be afforded an opportunity to comment on proposed rulemaking in accordance with the Pennsylvania Regulatory Review Act and the Commonwealth Documents Law.

BY THE COMMISSION

A handwritten signature in cursive script, appearing to read "Rosemary Chiavetta".

Rosemary Chiavetta
Secretary

(SEAL)

ORDER ADOPTED: May 18, 2017

ORDER ENTERED: May 18, 2017