

COMMONWEALTH OF PENNSYLVANIA



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OFFICE OF CONSUMER ADVOCATE

555 Walnut Street, 5th Floor, Forum Place
Harrisburg, Pennsylvania 17101-1923
(717) 783-5048
800-684-6560 (in PA only)

IRWINA. POPOWSKY
Consumer Advocate

FAX (717) 783-7152
consumer@paoca.org

April 5, 2010

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

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INDEPENDENT REGULATORY
COMMISSION

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 for filing are the Comments of the Office of Consumer Advocate, in the above-referenced proceeding.

Should you have any questions, please contact our office at the telephone number above.

Respectfully Submitted,

Candis A. Tunilo

Candis A. Tunilo
Assistant Consumer Advocate
PA Attorney I.D. # 89891

Enclosures

cc: Elizabeth Barnes, Assistant Counsel, LAW Bureau – electronic service only

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

COMMENTS OF THE
OFFICE OF CONSUMER ADVOCATE

The Office of Consumer Advocate (OCA) files these Comments in support of the Proposed Rulemaking for revision of 52 Pa. Code Chapters 57, 59, 65 and 67 pertaining to utilities' service outage and restoration practices, 40 Pa. B. 1203 (March 6, 2010) (Rulemaking Order), which was entered by the Pennsylvania Public Utility Commission (Commission) on November 10, 2009, and published in the Pennsylvania Bulletin on March 6, 2010.

I. INTRODUCTION

On September 14 and 15, 2008, Hurricane Ike swept through the Commonwealth causing interruptions in electric service to over 450,000 customers. The Commission issued this proposed rulemaking following its direction to Law Bureau to prepare a Secretarial Letter seeking information from all jurisdictional electric distribution companies (EDCs) regarding their service restoration and public notice practices.¹ The EDCs filed their responses, and the

¹ See Joint Motion of Vice Chairman Tyrone J. Christy and Kim Pizzingrilli at Docket No. M-2008-2065532 (Sept. 25, 2008).

Commission convened two public input hearings in western Pennsylvania in order to provide an opportunity for customers to be heard regarding the Hurricane Ike service interruption and EDCs' responses thereto. On April 20, 2009, the Commission adopted a report entitled *Electric Distribution Company Service Outage Response and Restoration Practices Report* (Report), which was prepared and submitted by the Bureau of Conservation, Economics and Energy Planning and the Office of Communications.

The Commission has also issued a related Order proposing a policy statement to provide guidance regarding the types of public notice that will meet the reasonableness standard under 66 Pa. C.S. § 1501 when there are unscheduled utility service interruptions. That Order was also published on March 6, 2010, 40 Pa. B. 1210: Proposed Policy Statement Regarding Utility Service Outage Public Notification Guidelines, Docket No. M-2008-2065532.

In the aftermath of Hurricane Ike, the Commission determined it was appropriate to review the accident reporting procedures for all utilities. In the instant rulemaking, the Commission proposes to amend Section 67.1 *et seq.*, 52 Pa. Code § 67.1 *et seq.*, regarding service outages and Sections 57.11, 59.11 and 65.2, 52 Pa. Code §§ 57.11, 59.11 and 65.2, regarding reportable accidents.

II. COMMENTS

The OCA files these Comments in support of the proposed Rulemaking, which is both consistent with and complementary to the Commission's other efforts in these important areas. While supportive of the proposed Rulemaking, the OCA offers suggestions to clarify certain proposed changes to the Commission's regulations, which are explained in more detail below.

A. 52 Pa. Code § 57.11: Accidents (Electric Service)

1. Introduction.

The Commission proposes changes to several subparts of Section 57.11 of its regulations, including Sections 57.11(b)(2), (3), (4), (5), (c), (d), (e) and (f). Section 57.11 of the Commission's regulations contains the accident reporting requirements involving the facilities or operations of EDCs. See 52 Pa. Code § 57.11. In the Rulemaking Order, the Commission proposes to expand the reporting regulations to capture more reportable events. In particular, the Commission proposes to expand Section 57.11(b) to include the need for a report when there is injury to a person that requires professional medical attention or hospitalization. Reports will now also include such events as cyber security attacks and events that involve damages to a utility company by another utility company. See Rulemaking Order at 3-8 and Annex A, proposed §§ 57.11(b). The Commission also proposes to establish deadlines for reporting accidents. See Rulemaking Order at Annex A, proposed §§ 57.11(d) and (e).

2. Expansion of Instances Of Reportable Accidents.

i. Sections 57.11(b)(2) and (3).

The OCA supports the proposed changes to Section 57.11 of the Commission's regulations that would expand the circumstances where an accident or event is reportable to the Commission by the electric distribution company. Section 57.11(b) has been modified in several respects that will provide for better information being provided to the Commission. In subsections 57.11(b)(2) and (3), the Commission proposes a more encompassing reporting requirement when there is an injury involving the facilities or operations of an electric distribution company. As it relates to accidents or events resulting in injuries, the requirement has been broadened to include all persons, not just employees, and it has been made clear that an

injury that requires professional medical attention for or hospitalization of either an employee or a non-employee triggers a reportable incident.

The OCA submits that these proposed revisions will significantly improve the reporting to the Commission and better enable the Commission to ensure safe and adequate utility service. Under the existing regulations, a report was triggered for an injury involving an employee that would incapacitate the employee from performing ordinary duties for 3 days. For an off-duty employee or another person, they would have to be incapacitated from their customary vocation or mode of life for more than one day to cause a reportable accident. See 52 Pa. Code § 57.11(b). The proposed changes eliminate the need to distinguish between employees on duty, employees off duty, and non-employees, thus making the reporting determination less complex. Further, the proposed regulations recognize the importance of reporting any incident where there has been an injury serious enough to require medical treatment. Any such injury raises questions of public safety that the Commission should be made aware of in a reasonable period of time.

The OCA would suggest, though, that the Commission ensure that such accident reports specifically identify whether injuries were to employees (on duty or otherwise) or to non-employees, even though an injury or injuries to either one will trigger a reportable accident.

ii. Sections 57.11(b)(3) and (4)

In subsections 57.11(b)(3) and (4), reportable accidents related to “occurrences of an unusual nature” are set forth. See Rulemaking Order at Annex A, proposed §§ 57.11 (b)(3). The existing subsection that targets “an occurrence of an unusual nature” that results in a prolonged and serious interruption of normal service is retained. See Rulemaking Order at Annex A, proposed § 57.11 (b)(3) (currently 52 Pa. Code §§ 57.11(b)(4)). A new “occurrence of

an unusual nature” related to sabotage or attempts against cyber security measures is added. Rulemaking Order at Annex A, proposed § 57.11 (b)(4).

The OCA submits that as to the existing regulation, this reporting requirement appears to limit reporting to only prolonged or serious interruptions of normal service from “occurrences of an unusual nature.” The OCA submits that any accident, not just an unusual accident, that results in a prolonged and serious interruption of normal electric service should be reportable. As such, the OCA recommends that the limiting language of “unusual nature” be removed from proposed subsection 57.11(b)(3).

As for the proposed addition of “reportable accidents” based on “an occurrence of an unusual nature,” which is suspected or determined to be caused by sabotage, the OCA submits that some refinement of this proposed regulation may be necessary. See Rulemaking Order at Annex A, proposed §§ 57.11 (b)(4). Of particular concern, the occurrences are defined to include attempts against cyber security measures. Under this definition, any attempt against cyber security measures triggers a reportable accident, even if there is no impact on the electric system or on electric service to customers. As the electric transmission and distribution systems become more completely controlled by automatic systems, as evidenced by implementation of smart grid and/or advanced metering infrastructure programs, these systems will become increasingly exposed to the possibility of cyber attack. Anecdotal evidence suggests that organizations that are already heavily computerized experience multiple cyber attacks daily, and that the frequency of such attacks is increasing.

As the computerization of the electric system increases, it is possible that these systems will come under increasing levels of cyber attack. While the Commission should require reporting of attempted cyber security attacks, the mechanism of reportable accidents with

its specific requirements and timelines may not be the best place to receive such reports. The OCA would recommend that cyber security attacks that result in outages or interruptions of service could be “reportable accidents” but that cyber security attacks that do not have this result be subject of a separate reporting requirement to the Commission.

3. Filing And Reporting-- Sections 57.11(d), (e) and (f).

The Commission also proposes to establish deadlines for reporting accidents. See Rulemaking Order at Annex A, proposed §§ 57.11(d) and (e). The regulations for EDCs currently require that written accident reports, when applicable, be submitted to the Commission “immediately following” the accident. See 52 Pa. Code §§ 57.11(d). The Commission proposes to change the language “immediately following” to “within 5 days” in order to require a more objective standard and to provide more uniformity with the rules already in place for water/wastewater utilities. Rulemaking Order at 3-8; See also 52 Pa. Code § 65.2(d). The Commission also proposes to require EDCs to submit to it a copy of its final internal investigation report. See Rulemaking Order at Annex A, proposed § 57.11(f). The OCA supports these proposals. The requirements will provide clarity as to when the initial report is due and that the final investigatory report must also be filed.

B. 52 Pa. Code § 59.11: Accidents (Gas Service).

The Commission proposes changes to several subparts of Section 59.11 of its regulations, including Sections 59.11(b)(1), (2), (3), (4), (5), (6), (c), (d), (e) and (f). Section 59.11 of the Commission’s regulations contains the accident reporting requirements involving the facilities or operations of natural gas distribution companies (NGDCs). See 52 Pa. Code § 59.11. The Commission proposes changes to Section 59.11, which parallel those changes proposed to Section 57.11 for EDCs. See Rulemaking Order at 6-7. In addition, the

Commission proposes to add language to Section 59.11(b) so that propane air systems are included in the term "natural gas," which will make the reporting requirements for NGDCs more consistent with the Federal Department of Transportation reporting regulations. See Rulemaking Order at 6; Annex A, proposed § 59.11(b)(3). Also, similar to that proposed for Section 57.11, the Commission proposes to establish deadlines for reporting accidents. See Rulemaking Order at Annex A, proposed §§ 59.11(d) and (e).

As to the changes to Sections 59.11(b) that parallel those made to Section 57.11, the OCA supports those changes. The OCA would also note that the Commission has proposed adding as a reportable accident related to the facilities or operation of a natural gas utility the death of a person. The OCA strongly supports this addition. Clearly the death or injury of a person should be reported to the Commission.

The OCA would also note that subsection 59.11(b)(3)(i) regarding accidents related to pipelines on LNG facilities may need to be modified given the proposed subsection 59.11(b)(2). In subsection 59.11(b)(2), a reportable accident includes an injury to a person sufficient to require professional medical attention or hospitalization. Subsection 59.11(b)(3)(i) does not include the reference to professional medical attention. The OCA submits that this reference should be added to subsection 59.11(b)(3)(i).

Finally, Section 59.11(b) related to gas service does not include as a reportable accident occurrences that result in a prolonged and serious interruption of normal service. Such a requirement, based on "occurrences of an unusual nature," is included for electric service in proposed Section 57.11(b)(3) and for water service in Section 65.2(b)(3). The OCA recommends a similar requirement for gas service, but as noted in its comments above, the OCA

recommends that any occurrence, not just unusual occurrences, that results in a prolonged and serious interruption of normal service should be a reportable accident.

C. 52 Pa. Code § 65.2: Accidents (Water Service).

The Commission proposes changes to several subparts of Section 65.2 of its regulations, including Sections 65.2(b)(2), (3), (4), (5), (c), (d), and (e). Section 65.2 of the Commission's regulations contains the accident reporting requirements involving the facilities or operations of water/wastewater utilities. See 52 Pa. Code § 65.2. The Commission proposes changes to Section 65.2, which parallel those changes proposed to Section 57.11 for EDCs and Section 59.11 for NGDCs with regard to the definition of "reportable accidents" and deadlines for reporting requirements.

As with the similar proposed changes to Sections 57.11 and 59.11, the OCA generally agrees with these changes because they add clarity to the requirements and uniformity in accident reporting to all certificated utilities. The OCA's Comments and suggestions regarding Section 57.11(b) would apply to this section as well.

D. 52 Pa. Code § 67.1: General Provisions (Service Outages).

Chapter 67 of the Commission's regulations requires certificated electric, gas, water and telephone utilities to notify the Commission in writing and by telephone "when 2,500 or 5.0%, whichever is less, of their total customers have an unscheduled service interruption in a single incident for six or more projected consecutive hours." 52 Pa. Code § 67.1(b) (Emphasis added). In the proposed rulemaking, the Commission proposes to change the term "incident" to "event" in order to avoid confusion as to what constitutes a reportable level of outage. Rulemaking Order at 9-10.

Also, the Commission proposes additional information requirements for major events, including: the utilities' weather reports, outlooks or scenarios and forecasts for the day before and day of the interruption of service if the outage was caused by a weather event; the total number of outage cases and trouble cases (non-outage) by county; the number of utility and contractor crews and personnel received as mutual aid; a description of the damage to equipment; a historical ranking of the outage in terms of the number and duration of outages and examples of two comparable storms or events and the outage number and duration of those storms or events. Rulemaking Order at 9, 11-13. The foregoing information is usually requested by the Bureau of Fixed Utility Services (FUS) for major events and typically reported by EDCs in outage reports filed with FUS. Rulemaking Order at 9. The Commission also proposes to post blank outage reporting forms on its website for utilities to download and use. Rulemaking Order at 10. This approach is intended to create a more uniform approach to reporting standards among the gas, water/wastewater and electric industries. Rulemaking Order at 13.

The OCA generally supports the proposed changes to Section 67.1, which apply to all certificated utilities. It is important to remove any potentially ambiguous language in favor of more clear standards. The new language also underscores the importance of Section 67.1 in enabling the Commission to enforce the safe, adequate and reasonable service requirements of Section 1501 of the Public Utility Code, 66 Pa.C.S. §1501; *see also* 66 Pa.C.S. §501, 1504-1505.

Regarding the proposed additional reporting requirements in Section 67.1, the OCA supports the additional information requirements. The OCA would note that in subsection 67.1(b)(10), the Commission requires "a listing of the number of workers received as mutual aid by company and by general function, that is linemen, troublemen, tree crew, and the like." This requirement appears to derive from the Report submitted to the Commission by the Bureau of

Conservation, Economics and Energy Planning and the Office of Communications. In the Report, the Mid-Atlantic Mutual Aid Assistance group (MAMA) is discussed. The Report states:

Commission Staff has found the use of the MAMA group to be a valuable asset to Pennsylvania EDCs. We do however wish to maintain the ability to monitor the use of Pennsylvania assets in the assistance of other states and ensure that our jurisdictional EDCs are not relying too heavily on MAMA assistance for electric outage restoration.

Report at 4-5. (Footnote added). A two-fold concern is noted in the Report – the receipt of aid by Pennsylvania utilities and the provision of aid by Pennsylvania utilities. The Rulemaking Order addresses only one part of the concern--the number of utility and contractor crews and personnel received as mutual aid. See Rulemaking Order at Annex A, proposed § 67.1(b)(10). The Commission may wish to require reporting on both parts—use of mutual aid by Pennsylvania utilities and use of Pennsylvania utility assets as part of mutual aid to other states as the Report indicates.

III. CONCLUSION

As stated in the foregoing Comments, the OCA generally supports the proposed amendments to 52 Pa. Code §§ 67.1, 57.11, 59.11, and 65.2 contained in the Commission's Proposed Rulemaking Order. However, the OCA submits that the following changes be incorporated into the proposed amendments:

- RE: proposed § 57.11(b)(2), § 59.11(b)(2), and § 65.2(b)(2): Accident reports should specifically identify whether injuries were to employees (on duty or otherwise) or to non-employees;
- RE: proposed § 59.11(b)(3)(i): Reportable accidents for pipelines should include an injury to a person sufficient to require professional medical attention.

- RE: proposed § 59.11(b): A subsection should be added for a reportable accident related to occurrences, whether or not death or injury of a person results, which result in a prolonged and serious interruption of normal service.
- RE: proposed § 57.11 (b)(3) and 52 Pa. Code § 65.2(b)(3): *Any* accident that results in a prolonged and serious interruption of normal utility service should be reportable;
- RE: proposed §§ 57.11 (b)(4), 59.11(b)(5) and 65.2(b)(4): A “reportable accident” for purposes of these sections should include cyber security attacks that result in an interruption in utility service to customers while cyber security attacks that do not result in service interruptions should be reported to the Commission through a separate process; and
- RE: proposed § 67.1: The use of Pennsylvania utility assets as part of mutual aid to other states should be reported in addition to the use of mutual aid by Pennsylvania utilities.

Respectfully Submitted,



Candis A. Tunilo
 Assistant Consumer Advocate
 PA Attorney I.D. # 89891
 E-Mail: CTunilo@paoca.org

Tanya J. McCloskey
 Senior Assistant Consumer Advocate
 PA Attorney I.D. # 50044
 E-Mail: TMcCloskey@paoca.org
 Counsel for:
 Irwin A. Popowsky
 Consumer Advocate

Office of Consumer Advocate
 555 Walnut Street
 5th Floor, Forum Place
 Harrisburg, PA 17101-1923
 (717) 783-5048
 Dated: April 5, 2010
 124563