



May 5, 2017

**VIA E-FILING**

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

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

Dear Secretary Chiavetta:

Enclosed for filing please find 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, at the above-referenced docket. Copies of the enclosed Petition have been served on all parties to the rulemaking proceeding in accordance with the enclosed certificate of service.

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

Respectfully yours,

Melanie J. El Atieh

Enclosures

cc: Honorable Gladys M. Brown, Chairman  
Honorable Andrew G. Place, Vice Chairman  
Honorable John F. Coleman, Commissioner  
Honorable Robert F. Powelson, Commissioner  
Honorable David W. Sweet, Commissioner  
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**CERTIFICATE OF SERVICE**

**Docket No. L-2015-2500632**

I hereby certify that I have this day served a true copy of Pennsylvania-American Water Company's Petition for Reconsideration, upon the parties, listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party).

**VIA UPS OVERNIGHT DELIVERY**

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Dated: May 5, 2017

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

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**NOTICE TO PLEAD**

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TO: Parties at Docket No. L-2015-2500632

Pursuant to 52 Pa. Code § 5.572(e), you are hereby notified that Pennsylvania-American Water Company (“PAWC”) has filed a Petition for Clarification and Reconsideration at the above-referenced docket to which you may file an answer within ten (10) days unless otherwise provided in Chapter 5 of Title 52 of the Pennsylvania Code or by the Commission. Your failure to answer will allow the Commission to rule on the Petition without a response from you, thereby requiring no other proof. All pleadings such as an Answer to this Petition must be filed with the Secretary of the Pennsylvania Public Utility Commission at P.O. Box 3265, Harrisburg, PA 17105-3265, with a copy served on the undersigned counsel for PAWC.



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Counsel for *Pennsylvania-American Water Company*

Dated: May 5, 2017

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

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**PETITION FOR CLARIFICATION AND RECONSIDERATION OF  
PENNSYLVANIA-AMERICAN WATER COMPANY**

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Pursuant to Section 703(g) of the Pennsylvania Public Utility Code (“Code”), 66 Pa. C.S. § 703(g), and 52 Pa. Code § 5.572, Pennsylvania-American Water Company (“PAWC” or the “Petitioner”) files this petition for clarification and reconsideration of the specific directive found on page 30 of the Final Rulemaking Order of the Pennsylvania Public Utility Commission (“Commission”), entered in the above-captioned proceeding on April 20, 2017 (“Final Rulemaking Order”). Specifically, the Commission’s directive on page 30 of the Final Rulemaking Order ordered PAWC to file a petition to initiate a rulemaking “within 30 days” to address the issues raised by PAWC and System Local 537, Utility Workers Union of America, AFL-CIO in their Joint Comments, which were submitted on March 7, 2016, in response to the Commission’s proposed rulemaking order in this proceeding. The Commission did not include this directive in its ordering paragraphs.

For the reasons described below, the Commission is requested to clarify and reconsider that specific portion of the Final Rulemaking Order. A rulemaking petition may be unnecessary. It is Petitioner’s understanding that the Energy Association of Pennsylvania (“EAP”) and its electric distribution company (“EDC”) members intend to continue discussions 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 to 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. 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. In support, PAWC states as follows:

## **I. BACKGROUND**

1. On November 19, 2015, the Commission entered a 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, which proposed new definitions and updates to Section 57.1, Definitions, and further proposed the addition of electric safety standards in Section 57.28 of the Commission's regulations in a manner similar to that in place for gas safety standards. 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. The Proposed Rulemaking Order did not provide for the submission of reply comments.

2. On March 7, 2016, PAWC and the System Local 537, Utility Workers Union of America, AFL-CIO ("Local 537 Union") (collectively, the "Joint Commenters") jointly submitted comments ("Joint Comments") to the Commission's Proposed Rulemaking Order. The Joint Comments 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. 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.

3. On March 7, 2016, the AFL-CIO submitted comments to the Commission's Proposed Rulemaking Order.

4. On March 7, 2016, the EAP submitted comments to the Commission's Proposed Rulemaking Order.

5. On April 6, 2016, the Independent Regulatory Review Commission ("IRRC") submitted comments to the Commission's Proposed Rulemaking Order. In its comments, 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.

6. On April 27, 2016, the EAP and Joint Commenters held a meeting to discuss the concerns identified in the Joint Comments.

7. On May 18, 2016, the EAP submitted a letter in this docket on behalf of its EDC members stating that it was not filing the letter as reply comments to the Proposed Rulemaking Order. In its letter, EAP explained that it had met with the Joint Commenters on April 27, 2016, that safety is of paramount importance for all "Pennsylvania energy utilities," 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.

8. 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.

9. On April 18, 2017, PAWC sent reply correspondence to EAP and filed such letter in this rulemaking docket.

10. On April 20, 2017, the Commission entered its Final Rulemaking Order in this rulemaking docket, stating on pages 29-30 the following:

Both the AFL-CIO and PAWC have offered extensive changes to the Section 57.28 electric safety standards by inclusion of additional regulatory requirements that will apply to duties and responsibilities of electric utility companies. The AFL-CIO's proposed modifications add provisions that will apply to the electric utility, customers, and other utility service providers identified as natural gas, communications, and water or wastewater utility service providers. PAWC's changes address the standards an electric utility must meet to ensure the safety and protection of only local water and wastewater utility workers and assist the Electric Safety Division in the enforcement of electric utility duties to ensure the safety of local utility workers. However, the PAWC explained that since Section 57.28 (a)(1) includes a duty to warn and protect the public from danger, this covers other utility workers not employed by the electric utility within the categories of "the general public" or "others." Therefore, PAWC reasons that these proposed revisions also apply to other utility service providers other than water and waste utility workers.

As indicated above, the language changes being proposed involve other utility service providers and these industries like gas and communications have not participated in this rulemaking. Given the topic of this rulemaking, electric safety, it is not surprising that utility companies in the gas, communications, and water and wastewater industries (only PAWC filed comments) did not participate as interested parties. Therefore, we shall adopt IRRC's suggestion that this matter not be addressed in this rulemaking. Clearly, these issues that involve OSHA regulations and very specific circumstances such as safety practices in trenches with energized electric lines and proper grounding are beyond the scope of this rulemaking. At this point, when we are about to issue a final rulemaking order, 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.

Despite our disposition here to defer this matter to another possible rulemaking, we consider this a serious matter given the allegations made by AFL-CIO and the Joint Commenters. However, rather than grant PAWC's request to adopt the general requirements of coordination as set forth in its comments and establish an inter-utility working group to develop specifics and further require EDCs to then submit a report to the Commission to explain how each utility plans to comply with the coordination requirement, we shall direct PAWC to file a petition for issuance of a regulation pursuant to 52 Pa. Code § 5.43. Given the specific allegation made by the Joint Commenters and the regulatory language that has already been drafted, including the provisions proposed by the AFL-CIO, PAWC is in a better position to initiate this rulemaking and formulate the relevant issues.

*See* Final Rulemaking Order at 29-30.

11. Following the above discussion, 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.

See Final Rulemaking Order at 30.

12. At Public Meeting on May 4, 2017, Vice Chairman Place issued a “Public Meeting Statement Introducing Electrical Safety Month” which contained numerous prescriptive statements directed at contractors and homeowners operating close to power lines.<sup>1</sup>

## II. ARGUMENT

13. 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).

14. The standards for granting reconsideration were set forth in *Duick v. Pennsylvania Gas & Water Company*, 56 Pa.P.U.C. 553 (1982):

A Petition for Reconsideration, under the provisions of 66 Pa. C.S. § 703(g), may properly raise any matters designed to convince the Commission that it should exercise its discretion under this code to rescind or amend a prior order in whole or in part.

In this regard we agree with the court in the Pennsylvania Railroad Company case, wherein it was stated that:

Parties ... cannot be permitted by a second motion to review and reconsider, to raise the same questions which were specifically decided against them ... what we expect to see raised in petitions for reconsideration are new and novel arguments, not previously heard or considerations which appear to have been overlooked by the Commission.

Additionally, a Petition for Reconsideration is properly before the Commission where it pleads newly discovered evidence, alleges errors of law, or a change in circumstances.

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<sup>1</sup> The Public Meeting Statement of Vice Chairman Place is available on the Commission’s website at: [http://www.puc.pa.gov/general/pdf/Electrical\\_Safety\\_Month\\_Statement-Place-2017-05-04.pdf](http://www.puc.pa.gov/general/pdf/Electrical_Safety_Month_Statement-Place-2017-05-04.pdf)

*See Duick*, 56 Pa.P.U.C. at 555.

15. As an initial matter, 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. If in fact the Commission intended to direct PAWC to initiate a rulemaking proceeding as described in the body of the Commission's rulemaking order, PAWC appreciates the opportunity provided by the Commission's directive. PAWC requests, however, that the Commission clarify such directive.<sup>2</sup> In addition, 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.<sup>3</sup>

16. In any event, PAWC requests that the Commission reconsider that portion of the order because a rulemaking petition may be unnecessary. It is Petitioner's understanding 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. Given this, 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. This is consistent with the Commission's policy of promoting settlements. *See, e.g.*, 52 Pa. Code §§ 5.231

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<sup>2</sup> Petitioner also notes that the Commission's regulations in Chapter 5 of Title 52 of the Pennsylvania Code contemplate that a petition be followed by an answer to the petition. As framed on page 30 of the Commission's Final Rulemaking Order, however, the Commission provided for interested parties to "comment" on the rulemaking petition, which differs from the usual procedure. The Commission may wish to clarify the procedure in its reconsideration order. Petitioner submits that following a petition and answer, the Commission may issue a decision, and should it decide to initiate a rulemaking proceeding, interested parties should be provided an opportunity to "comment" on the notice of proposed rulemaking in compliance with the Pennsylvania Regulatory Review Act and the Commonwealth Documents Law.

<sup>3</sup> Computation of time is governed by Section 1.12(a) of the Commission's regulations, yet it is not clear from the Final Rulemaking Order when the time period begins to run. 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*.

(settlements in general), 69.91 (settlement of complaint cases), 69.301 (mediation), 69.401 (settlement of major rate cases), 69.1201 (settlement of enforcement orders).

17. Petitioner, therefore, requests that the Commission stay the deadline to file a petition for at least 240 days. A stay of the deadline to file a petition to initiate a rulemaking, as proposed herein, will allow more opportunity for the EDCs and PAWC to hold additional meetings and discussions to try to build consensus on addressing the issues and concerns raised in the Joint Comments in this rulemaking proceeding as well as outside of this docketed proceeding.<sup>4</sup>

18. Moreover, if a rulemaking is necessary, PAWC submits that 30 days is insufficient 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. Additionally, Vice Chairman Place's May 4, 2017 Public Meeting Statement contained numerous prescriptive statements directed at contractors working around electric power lines that were not included in the Final Rulemaking Order, and PAWC believes further time is necessary to review such statements in order to determine how they may impact any potential rulemaking petition.

19. In the event 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. At such time, PAWC proposes that either it will file the contemplated petition to initiate a rulemaking, or, in lieu of PAWC filing such petition, PAWC proposes 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. PAWC submits that the only consequence of PAWC not filing the rulemaking

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<sup>4</sup> A number of issues and concerns were either raised or discussed during the meeting held on April 27, 2016, between the EAP and PAWC; in the EAP letter dated May 18, 2016, which was not filed as reply comments in this docket; and in the correspondence of the EAP and PAWC exchanged on January 31, 2017, and April 18, 2017, respectively.

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.

### **III. CONCLUSION AND REQUEST FOR RELIEF**

WHEREFORE, Pennsylvania-American Water Company respectfully requests that the Commission grant this petition for clarification and reconsideration and:

(a) rescind 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.”;

(b) issue a new order revising the directive on page 30 of the Final Rulemaking Order and including an ordering paragraph that requires 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. In the event PAWC does not file a petition in accordance with paragraph (b)(1) above, PAWC foregoes 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 (b)(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; and

(c) order such other and further relief as the Commission deems just and reasonable under the circumstances.

Respectfully submitted,



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Dated: May 5, 2017

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Rulemaking Re Electric Safety Regulations, :  
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**VERIFICATION**

I, James F. Sheridan, Vice President – Operations for Pennsylvania-American Water Company, hereby state that the facts set forth in the Petition for Clarification and Reconsideration filed by Pennsylvania-American Water Company in the above-captioned docket are true and correct to the best of my knowledge, information and belief and that I expect to be able to prove same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa. C.S. § 4904 (relating to unsworn falsification to authorities).



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James F. Sheridan

Dated: May 5, 2017