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April 7, 2010

VIA HAND-DELIVERY

James J. McNulty, Esq.
Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
Harrisburg, Pennsylvania 17120

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SECRETARY'S BUREAU

**RE: COMMENTS of THE ENERGY ASSOCIATION of PENNSYLVANIA
To The
PROPOSED POLICY STATEMENT REGARDING UTILITY SERVICE
OUTAGE PUBLIC NOTIFICATION GUIDELINES
DOCKET NOs. L-2009-2104274 and M-2008-2065532
And
PROPOSED RULEMAKING FOR REVISION OF 52 PA. CODE CHAPTERS 57,
59, 65 AND 67 PERTAINING TO UTILITIES' SERVICE OUTAGE RESPONSE
AND RESTORATION PRACTICES
DOCKET NOs. L-2009-2104274 and M-2008-2065532**

Dear Secretary McNulty:

Enclosed for filing please find two originals and 15 copies each of the Energy Association of Pennsylvania's comments regarding the above-referenced proceedings.

Sincerely,

Donna M. J. Clark
Vice President & General Counsel

DMJC

Enclosures

CC: James H. Cawley, Chairman (w/enclosure, via hand-delivery)
Tyrone J. Christy, Vice Chairman (w/enclosure, via hand-delivery)
Robert F. Powelson, Commissioner (w/enclosure, via hand-delivery)
Wayne E. Gardner, Commissioner (w/enclosure, via hand-delivery)
Elizabeth Barnes, Esq., Asst. Counsel (ebarnes@state.pa.us)

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**Proposed Rulemaking for Revision of
52 Pa. Code Chapters 57, 59, 65 and 67
Pertaining to Utilities' Service Outage
Response and Restoration Practices**

Docket Number: L-2009-2104274

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**COMMENTS OF THE
ENERGY ASSOCIATION OF PENNSYLVANIA
TO
PROPOSED RULEMAKING ORDER**

I. INTRODUCTION

On April 30, 2009, the Commission unanimously adopted a staff-issued report entitled *Electric Distribution Company Service Outage Response and Restoration Practices Report* ("Report"). The Report emanated from a Commission investigation into the service restoration and public notice practices of electric distribution companies ("EDCs") operating in Pennsylvania following an unexpected and unusually severe storm event in September 2008, i.e., Hurricane Ike. Hurricane Ike interrupted electric service to over 450,000 customers primarily in the western part of Pennsylvania and caused widespread damage to electric utility facilities. The Report summarized the findings of the investigation and made a number of recommendations for further action which are the subject of the instant Proposed Rulemaking Order and a companion Proposed Policy Statement.

In the Report, the Commission staff noted that, with respect to two public input hearings held in Cranberry Township on October 9 and 10, 2008, attendance by the general public was sparse and comments were generally positive. While the eight residents who spoke at the public hearings did recognize a need for improved communications to the public, they generally praised the utilities and other emergency responders for their work in restoring service. See Report at p.1. Equally as important, the Report recognized that “[b]oth the Commission staff and EDCs perform best practice reviews after each storm response to identify areas of improvement. Over the years, both parties have worked well together to improve emergency outage response to the citizens of the Commonwealth of Pennsylvania.” Report at p.21.

On that same date in April 2009, the Commission adopted a Joint Motion offered by Commissioners Christy and Pizzigrilli to initiate a rulemaking to revise certain Commission regulations relating to service outages and to issue a policy statement. Thereafter, on November 10, 2009, the Commission entered the instant Proposed Rulemaking Order at Docket No. L-2009-2104274 for the Revision of 52 Pa. Code Chapters 57, 59, 65 and 67, Pertaining to Utilities’ Service Outage Response and Restoration Practices. The Order was subsequently published in the *Pennsylvania Bulletin* on March 6, 2010 and provided for a 30-day comment period. Subsequently, the Energy Association of Pennsylvania (“Association” or “EAPA”) sought and received a two-day extension of time until April 7 for itself and its member companies to file comments in the instant proceeding. The Association herein submits these comments on behalf of its electric and natural gas distribution company members¹.

¹ EAPA Members include: Allegheny Power, Citizens’ Electric Company, Columbia Gas of PA, Duquesne Light Company, Equitable Gas Company, Metropolitan Edison Company, a *FirstEnergy* Company, National Fuel Gas Distribution Corp., PECO Energy Company, Pennsylvania Electric Company, a *FirstEnergy* Company, Pennsylvania Power Company, a *FirstEnergy* Company, Peoples Natural Gas Company, Philadelphia Gas Works, Pike County Light & Power Co., PPL Electric Utilities, UGI Central Penn Gas, Inc., UGI Electric Utilities, Inc., UGI Gas Utilities, Inc., UGI Penn Natural Gas, Valley Energy, Inc. and Wellsboro Electric Company.

II. COMMENTS

A. General

The Proposed Rulemaking Order recommends changes and increased reporting regarding “reportable accidents” (52 Pa. Code, Chapters 57, 59 and 65) and service outages (52 Pa. Code, Chapter 67) for electric, gas and water utilities.² Specifically, as related to natural gas and electric distribution companies, the changes to Chapters 57 and 59 would enable the Commission to “capture more reportable events, such as cyber security attacks, and events that involve damages to a utility company by another utility company” and would establish deadlines for reporting accidents and filing final internal investigation reports. See Proposed Rulemaking Order at p.3.

Further, with respect to service outages, changes proposed to Chapter 67 would greatly expand the type of outage information currently required from EDCs and NGDCs. For example, rather than seeking the approximate number of customers involved in a single incident, the proposed regulations ask for “the total number of sustained outages during the event...[with sustained outages defined as outages] of a duration of 5 minutes or greater.” See Proposed Chapter 67.1(b)(i). Other proposed changes to Chapter 67 include reporting not only the number of utility workers by general function (i.e., linemen, trouble men, tree crew) assigned to the repair following an unscheduled service interruption, but the number of contract workers and mutual aid workers assigned by general function. Revisions proposed to Chapter 67 also seek a

² EAPA notes that the original investigation focused on the EDCs and information was elicited from electric utilities pursuant to a Joint Motion of Vice Chairman Tyrone J. Christy and Commissioner Kim Pizzingrilli issued on September 25, 2008. The information provided by EDCs then formed the basis of the Report adopted by the Commission in April 2009. Similar information has not been solicited from natural gas distribution companies (“NGDCs”) or, to the best of the Association’s knowledge, from water utilities. As discussed within, the differences between electric and gas utility delivery systems, as well as certain requirements imposed on NGDCs by the U.S. Department of Transportation, arguably eliminate the need for the proposed regulatory revisions as they pertain to natural gas utilities OR, at a minimum, underscore the need for further education by stakeholders of current practices and requirements.

greater level of detail and analysis than previously requested with no change in the five-day period provided for submission of a written report following total restoration of service.

The Order offers minimal discussion as to the basis and necessity for the proposed changes beyond the premise that technological advances allow for a greater collection of data and no explanation as to how the expanded reporting requirements for reportable accidents and service outages would improve the ability of the Commission to meet its statutory obligations. An examination of the Report, however, reveals that in many instances Commission staff agreed with the methods employed by the EDCs to deal with service outages, including the manner of communicating with the public, but had a general sense that utility efforts should be more proactive and better coordinated.

As noted earlier, following any unscheduled service interruption, Pennsylvania utilities have historically cooperated with Commission staff to review and improve best practices. The Association and its members are committed to continuing the effort to improve emergency outage response and restoration practices. The Association is concerned, however, that while the proposed regulatory revisions increase the level of reporting detail required from utilities, the additional information elicited will not lead to improved outage response and restoration for EDCs and, in many instances, is not relevant to the limited unscheduled service interruptions experienced by customers of the natural gas utilities.³

B. Specific Comments to Proposed Revisions to Chapters 57, 59 and 67

The Association supports and adopts the comments submitted by its member companies regarding the proposed changes to Chapters 57 and 59. In particular, the Association echoes the

³ The Association incorporates comments from its individual NGDC members which provide that service outages occur less frequently in the natural gas industry due to the underground nature of gas facilities. Natural gas facilities are far less susceptible to events such as storms and, with respect to “incidents” or “events”, must comply with regulations promulgated and enforced by the United States Department of Transportation. Current regulations draw from the federal requirements and, as stated by UGI in its comments, there appears to be little value in making the proposed changes particularly as they relate to natural gas utilities.

concerns of its members regarding proposed changes to the definition of “reportable accidents” under §57.11(b) and §59.11(b). Expanding §57.11(b)(2) to include all incidents requiring professional medical attention or hospitalization is unduly burdensome and overly broad both in terms of the ability of an electric utility to have access to such information regarding a non-employee or an accident which occurs and is not directly related to a utility facility or operation AND in terms of the need for the Commission to collect such data to fulfill its statutory obligation. Similarly, the addition of §59.11(b)(2) which appears to require a natural gas utility to file a report each time an injury occurs on utility property requiring professional medical attention is overly broad UNLESS the injury is significant and tied to some aspect of services provided by the utility. The Association suggests reverting to the current language for both the electric and natural gas utilities such that a nexus exists between a significant injury and utility operations before an accident is treated as a “reportable accident.”

Additionally, with respect to §57.11(b)(6) and §59.11(b)(6) regarding a new requirement that the utility file a report of each incident causing “substantial damage to another utility company’s facility or property”, the Association recommends the inclusion of an objective definition of the term “substantial” such as providing a dollar threshold amount of \$50,000. The Association further suggests that the utility harmed should file the report inasmuch as it would be in a better position to assess the damage. Finally, with respect to underground facilities, the Association notes that the Commission receives an incident report from the Pennsylvania Department of Labor & Industry in connection with its administration of the Underground Utility Line Protection Law (Act 237 of 1974, as amended) when damage occurs to a facility owner’s line and asks that the reporting of identical information be eliminated from any final regulation.

The Association also recommends eliminating the new requirements that a utility submit “a copy of its final internal investigation report” for “reportable accidents” involving a death, an

injury to a person sufficient that the injured person requires professional medical attention or hospitalization and an occurrence of an unusual nature suspected or determined to be caused by sabotage. See Proposed Regulations at §57.11(f) and §59.11(e). Internal investigation reports compiled in situations involving death, personal injury or sabotage are likely to be prepared in anticipation of litigation or a criminal proceeding at the request and with the assistance of counsel. Association members would certainly commit to cooperating in the investigation of a reportable accident with the Commission or other public authority and internal reports subject to the protections of the attorney-client privilege need not be part of mandatory filing requirements to guarantee that cooperation.

While the reference to 66 Pa. C.S. §1508 provides some protection, disclosure of the internal investigation report once filed can be ordered by the Commission and may be subject to a successful Right to Know request under Pennsylvania Law. The Association believes that the Commission should balance the interest of the utility to maintain the protections of its attorney-client privilege with the Commission's interest in obtaining the facts related to a reportable accident. The possibility of disclosing legal or expert judgment provided in the course of a utility internal investigation militates against requiring that the final internal investigation report be included as part of a new regulatory requirement. This potential invasion of the attorney-client privilege would be antithetical to a utility's right to effective counsel and would not assist the Commission in its statutory mission. Accordingly, the Association requests that both §59.11(f) and §57.11(e) be deleted from any final rule promulgated.

The Association further supports the points raised by its members with respect to Chapter 67. The current regulations require EDCs and NGDCs to notify the Commission when 2,500 or 5% of their customers, whichever is less, have an unscheduled interruption of service in a single incident for six or more projected consecutive hours. The utility must then file a report within 5

working days following total restoration of service. See 52 Pa. Code §67.1(b). The required report currently contains ten separate data points. The suggested revision seeks 6 additional data points and modifies existing requirements to exact more detailed information.

The Association suggests that the increased and detailed level of data required is not necessary or useful to the Commission for the purpose of understanding the basis of a service outage, the number of customers affected, the speed in which the outage was resolved and the types of resources used to restore service and repair facilities. In fact, the proposed requirements for reporting outages by county may not be possible. Outages are tracked by service centers, substations, circuits and pole numbers and these do not necessarily align with municipalities or county divisions. Collection of such extensive information on a routine basis for every service outage exaggerates the significance of the event, implying that the outage itself is in all cases worthy of an independent investigation by the Commission together with consideration of Commission action beyond the historical best practices review. The Association does not believe this to be the case given the past experience and questions the need for additional regulatory oversight.

From the perspective of an EDC, the new reporting requirements require collecting and processing a large volume of data relating to customers affected by the outage which would not necessarily aid in avoiding a future outage or communicating to the public during the current incident. The timeframes suggested for filing a report or reporting by telephone to the Commission are insufficient and could result in the provision of inaccurate information. See Proposed 52 Pa. Code §67.1(b)(4) and §67.1(c). From the perspective of a NGDC, the additional detailed information required does not appear applicable to natural gas utilities. Gas utilities do not necessarily measure these statistics or experience the service outages as set forth at 52 Pa. Code §67.1(b). For both industries, the added requirements create a need for additional internal

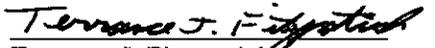
infrastructure and cost without a clear benefit to customers in an economically challenging environment.

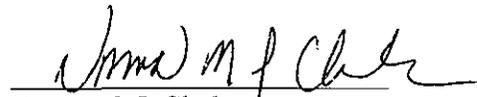
The Association suggests limiting the proposed changes in Chapter 67 to improving information provided on utility websites and continuing the voluntary submittal of extra data as determined by the cooperative efforts of staff and utilities.

III. CONCLUSION

The Association supports the historical practice of reviewing and assessing outage response and restoration following major unscheduled weather-related service outages experienced by customers of electric distribution companies. The Association, however, questions the need for the proposed amendments to regulations found at 52 Pa. Code, Chapters 57, 59 and 67. An expansion of regulatory oversight does not seem warranted based on the experience of Hurricane Ike. Current regulations and practices are in place to assess and improve outage response and restoration. Moreover, the increased collection of detailed data does not appear to help the Commission meet its statutory obligations. For these reasons, the Association would respectfully request that the Commission reconsider the need for additional regulatory oversight.

Respectfully submitted,


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