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April 20, 2011

VIA Electronic Filing

Ms. Rosemary Chiavetta, Esquire
Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building – 2 North
P.O. Box 3265
Harrisburg, PA 17105-3265

**Re: Docket No. L-2009-2104274
Proposed Rulemaking to Chapters 57, 59, 65 and 67
Comments of Aqua Pennsylvania, Inc.**

Dear Secretary Chiavetta:

Enclosed please find the original and fifteen (15) copies of the Comments of Aqua Pennsylvania, Inc. (“Aqua”) to the Proposed Rulemaking to Chapter 57, 59, 65 and 67 in the above-referenced proceeding.

As indicated in the courtesy copy listing below, Aqua has sent an electronic copy of the Comments to Ms. Wiedt via electronic mail.

If there are any questions, please do not hesitate to contact me.

Very truly yours,

Reger Rizzo & Darnall LLP


Margaret A. Morris, Esquire

Enclosures

cc: Patricia Wiedt, LB via email

**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 No. L-2009-2104274
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COMMENTS OF AQUA PENNSYLVANIA, INC.

Aqua Pennsylvania, Inc. (“Aqua”) respectfully submits these late-filed comments to the Proposed Rulemaking Order (“*Rulemaking Order*”) of the Pennsylvania Public Utility Commission (“Commission”) entered November 10, 2009 and published in the *Pennsylvania Bulletin*, 40 Pa Bulletin 1203 (March 6, 2010). Due to an administrative oversight, timely comments were not submitted by Aqua. Aqua notes that the proceedings will not be hampered by consideration of its late filed comments. Commission precedent supports consideration of Aqua’s comments¹.

Overall, Aqua’s comments support and track the comments offered on behalf of the gas and electric utilities.

Overview of Proposed Rulemaking

As a result of the interruptions of electric service caused by Hurricane Ike in 2008, the Commission sought information from all jurisdictional electric distribution companies regarding their service restoration and public notice practices. A Report of that information was submitted to the Commission in 2009 and, as a result, the instant rulemaking for all regulated utilities was initiated.

In its *Rulemaking Order*, the Commission stated that its “goal is to have even more effective responses to future unscheduled service outages”.. *Rulemaking Order* at 3. Aqua believes that the proposed rules should be viewed and considered with that goal in mind so that

¹ See, *Re Licensing Requirements for Natural Gas Suppliers*, Docket No. L-00000150, entered April 20, 2001 (comments filed almost eight months after publication were considered.)

the regulated utility responses regarding outages and notification to the public are improved. Aqua has only analyzed the proposed changes to Chapters 65 and 67 since they specifically impact the water industry.

Chapter 65 Water Service

§65.2 Accidents

(b) Reportable accidents. Reportable accidents are those involving utility facilities or operations which result in one or more of the following circumstances:

(2) Injury to a person sufficient that the injured person requires professional medical attention or hospitalization.

Paragraph (2) to this section adds a definition of injury for purposes of a reportable accident under this regulation. Aqua appreciates the Commission's desire to have more information and believes that a clarification of what injuries should be reported is appropriate. Aqua submits that the definition of "medical attention or hospitalization" needs to be more clearly defined and that there should be a nexus between the significant injury and the utility operations. Aqua agrees with the comments filed by PECO Energy on this issue that a reportable injury should be an injury that required in-patient hospitalization with certified significant injury.

(4) An occurrence of an unusual nature that is suspected or determined to be caused by sabotage, including attempts against cyber security measures as defined in 52 PA. Code §§101.1 et seq. (relating to public utility preparedness through self certification) and clarified in the Commission's Order entered on August 3, 2009, at Docket No. M-2009-2104273.

Aqua submits that it is unclear as to what must be reported. What is the definition of "sabotage" as used in this proposed rule? Furthermore, Aqua is concerned that highly sensitive information about its security would be in the public domain. At a minimum, the Commission must establish a process that the report would be treated as confidential and not available to the public through the Commonwealth's Right to Know Law or discoverable in civil and/or criminal proceedings.

(5) Substantial damage to another utility company's facility or property.

This information already appears in the Underground Utility Line Protection Act (“Miss Dig”). Aqua questions the rationale for a duplication of information. Each report required of a regulated utility puts costs on that utility. As the Commission is striving to keep utility rates as low as possible, such duplicative reporting requirements add unnecessary costs to the utility that must ultimately pass those costs on to its customers in the form of higher rates.

If the Commission determines that the proposed rule is consistent with its stated goal then Aqua submits that term “substantial damage” must be objectively defined. Since the Commission’s Gas Regulations at 52 Pa Code § 59.11(b)(ii) have defined substantial damage as \$50,000 of property damage for reportable natural gas accidents, that objective standard should be included in the proposed rule.

Finally the obligation to file a report consistent with this proposed rule should lie with the harmed utility since that utility would be in a better position to assess damages.

(e) Internal investigation reports. The utility shall submit a copy of its final internal investigation report when it is completed for all reportable accidents under subsection (b), paragraphs (1), (2), and (4). The final internal investigation report shall be treated in accordance with 66 Pa. C. S. §1508 (relating to the reports of accidents). If the report is not expected to be completed within 1 year of the date of the occurrence of the reportable accident, the utility shall notify the Commission’s Bureau of Fixed Utility Service, which may require quarterly status updates until completion of the report.

There are several issues associated with this proposed rule. First, the proposed rule violates Rule 1.6, Confidentiality of Information, of the Pennsylvania Rules of Professional Conduct which requires that attorneys not reveal such information as contemplated by the proposed rule. Once the privilege is waived by providing information to a third party (the Commission), the privilege is forever waived.

Finally, Aqua concurs with the comments of the other regulated companies throughout the Commonwealth that such a rule is not consistent with the stated goal in initiating this proposed rulemaking.

Chapter 67 Service Outages

§67.1 General provisions

- (b) *All electric, gas, water and telephone utilities shall notify the Commission when 2,500 or 5.0%, which ever is less, of their total customers have an unscheduled service interruption in a single event for 6 or more projected consecutive hours. Written notification shall be filed with the Commission within 5 working days after the total restoration of service. Where storm conditions cause multiple reportable interruptions as defined by this section, a single composite report shall be filed for the event. Each report shall contain the following information:*

- (1) *The total number of sustained outages during the event. Sustained outages are of a duration of 5 minutes or greater.*
- (2) *The approximate number of outage cases and trouble cases for each county affected during the event. Trouble cases are non-outage cases such as line-down calls and emergency calls.*
- (3) *The approximate number of sustained outages for each county affected during the event.*
- (4) *The number of outage cases exceeding 6 or more hours in duration.*
- (5) *A listing of each outage case exceeding 6 or more hours in duration, including the following:*
 - (i) *Geographic location (municipality or township).*
 - (ii) *Total number of customers affected.*
 - (iii) *Duration of the outage.*
 - (iv) *Initial date and time of the outage.*
 - (v) *Restoration time and date.*
- (6) *The reason for the interruption.*
- (7) *The projected time for service restoration of the event.*
- (8) *A listing of the number of utility workers assigned specifically to the repair work by general function, that is linemen, troublemen, tree crew, and the like.*
- (9) *A listing of the number of contract workers assigned specifically to the repair work by company and by general function, that is linemen, troublemen, tree crew, and the like.*
- (10) *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.*
- (11) *The date and time of the first information of a service interruption.*
- (12) *The date and time that repair crews were assembled.*
- (13) *The actual time that service was restored to the last affected customer.*
- (14) *A general description of the physical damage sustained by the utility facilities as a result of the event. This shall include facilities replaced due to damage, and a listing of the number of poles, transformers, spans of wire, pipes or valves replaced.*
- (15) *For weather-related events, the utility's weather reports, outlooks or scenarios for the day before and the day of the interruption event.*
- (16) *For all interruption events that caused outages to more than 10% of customers in the utility's service territory, and to the best of the utility's ability to access historical data, the historical ranking of the event in terms of the number and duration of outages and examples of two comparable events, including the number and duration of outages for those comparable events*

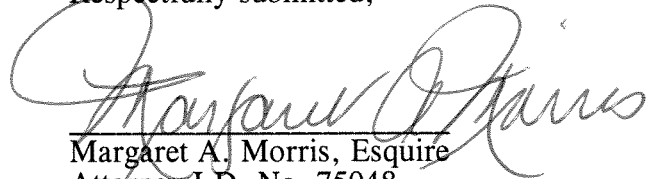
Currently, utilities have five days to submit reports after total restoration of service. The proposed rule requests six additional data points, some of which may not be possible. The requirement that utilities provide the outage by county may be problematic since many utilities track outages by service centers, poles, etc.

Aqua submits that the timeframe for the additional data may be onerous and unreasonable when compared to the added cost to provide the additional items.

Aqua supports improving the information that is listed on the utility's website and continuing the voluntary submissions as determined by the Commission staff and the utility.

WHEREFORE, for the foregoing reasons, Aqua Pennsylvania, Inc. respectfully requests that the Commission issue a final rulemaking order that is consistent with these comments.

Respectfully submitted,



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Dated: April 20, 2011

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