

STATEMENTS OF POLICY

PENNSYLVANIA PUBLIC UTILITY COMMISSION

[52 PA. CODE CH. 69]

Unscheduled Water Service Interruptions and Associated Actions

Public Meeting held June 1, 2006

Commissioners Present: Wendell F. Holland, Chairperson; James H. Cawley, Vice Chairperson; Bill Shane; Kim Pizzigrilli; Terrance J. Fitzpatrick

Proposed Policy Statement Relating to Unscheduled Water Service Interruptions and Associated Actions; Doc. No. M-00061956

Proposed Policy Statement

By the Commission:

I. Background

By Order entered March 10, 2006 at I-00050109, the Commission released staff's investigative report relating to Pennsylvania American Water Company's (PAWC) high fluoride concentration incident that occurred on December 10, 2005. As part of the Commission's investigation into the incident, Commission staff was directed to examine the Commission's existing notification and reporting requirements and recommend possible changes, if appropriate. The incident in question affected approximately 34,000 customers of PAWC located in eastern Cumberland County and northern York County served by PAWC's Yellow Breeches Water Treatment Plant (YB Plant) in Fairview Township, Cumberland County. Staff found that the elevated level of fluoride concentration was the result of operator error at the YB Plant, which resulted in a chemical spill of approximately 372 gallons of hydrofluorosilic acid (fluoride) used in the fluoridation process at the plant.

Perhaps the most troubling aspects of this incident, however, were PAWC's failures to notify the Commission in a timely fashion of the spill and to provide its consumers with timely and adequate notice after the Pennsylvania Department of Environmental Protection (DEP) concluded that a "Do Not Consume" advisory was to be put into effect early in the afternoon of December 10th when high levels of fluoride were found in PAWC's potable water supply.¹ In our March 10, 2006 Order, we specifically found that while PAWC may have been in technical compliance with DEP's applicable public notice regulations, PAWC did not provide actual, timely notice to many of the affected customers.² We also found that the contents of PAWC's public notice were inadequate under

¹ On the issue of timely notification to the Commission, we concluded that a proposed rulemaking was necessary to amend 52 Pa. Code § 67.1 so as to address interpretation of the phrase "service interruption" in that section. That rulemaking is moving forward in a separate proceeding at L-00060177, Proposed Rulemaking Order entered on May 5, 2006, and will not be addressed further in the instant proceeding. This proceeding will instead focus exclusively on the public notice shortcomings and the development in this Order of a proposed Chapter 69 policy statement to provide guidance to the industry regarding the types of public notice in the future that will be necessary to meet the reasonableness standard in section 1501 of the Public Utility Code, 66 Pa.C.S. § 1501, when there are unscheduled water service interruptions.

² For its part, DEP issued its own investigative report dated March 2006 that found that PAWC violated several of DEP's notice provisions, including the failure to provide DEP with timely notice (within one hour of discovery of a situation requiring Tier I public notice, the highest alert under its system, or of circumstances which may affect the quality of the drinking water), 25 Pa. Code §§ 109.408(a)(7) & 109.701(a)(3), the failure to issue the "Do Not Consume" advisory on a more expeditious basis because PAWC did not have appropriate communications staff on site, 25 Pa. Code

DEP's public notice regulations, as PAWC failed: (i) to identify when the fluoride spill entered the potable water distribution system, 25 Pa. Code § 109.411(a)(2); (ii) to include any of the required adverse health effects language, 25 Pa. Code § 109.411(a)(3) & (d)(1) or (d)(2); and (iii) to identify the population at risk, including any subpopulations of customers that are particularly vulnerable to the contaminant in their water supply, 25 Pa. Code § 109.411(a)(4). In addition, we found that PAWC failed to use its Internet website to notify the public about the incident and water advisory.

In determining whether the issue of public notice for unscheduled service interruptions should be addressed in a new Commission regulation or other directive such as a policy statement, we opined that the detailed public notice requirements already contained in DEP's regulations made it unnecessary for the Commission to impose an additional layer of public notice regulations on water utilities. At the same time, however, we agreed with comments filed by the Office of Consumer Advocate (OCA) that the issuance of a policy statement for the purpose of providing guidance to the industry on the types of notice that will be deemed acceptable and appropriate in meeting the reasonableness standard under 66 Pa.C.S. § 1501 would be beneficial. We, therefore, directed staff to prepare for consideration a proposed Chapter 69 policy statement regarding public notice standards for unscheduled water service interruptions to be considered at a future Public Meeting.

Upon review of Staff's recommendation, we now believe a comprehensive approach is appropriate. The policy statement should not only provide guidance to utilities related to public notice during unscheduled water service interruptions, but also should address associated actions such as the provision of alternative water supplies, public notice templates, and notice to the Commission.

II. Discussion

The Commonwealth Documents Law defines a statement of policy as:

[A]ny document, except an adjudication or a regulation, promulgated by an agency which sets forth substantive or procedural personal or property rights, privileges, immunities, duties, liabilities or obligations of the public or any part thereof, and includes, without limiting the generality of the foregoing, any document interpreting or implementing any statute enforced or administered by such agency.³

Id. § 1102. The Pennsylvania Supreme Court described the critical distinction between a duly promulgated regulation (substantive rule) and a statement of policy as follows:

The critical distinction between a substantive rule and a general statement of policy is the different practical effect that these two types of pronouncements have in subsequent administrative proceedings. . . . A properly adopted substantive rule establishes a standard of conduct which has the force of law. . . . The underlying policy embodied in the rule is not generally subject to challenge before the agency.

A general statement of policy, on the other hand, does not establish a "binding norm." . . . A policy statement

§ 109.408(b)(1), and the failure to provide DEP with a completed copy of the required Public Notification Certification Form, 25 Pa. Code § 109.701(a)(4).

³ Commonwealth Documents Law, Act of July 9, 1976, P. L. 877, No. 160, § 1, 45 Pa.C.S. §§ 501, et seq.

announces the agency's tentative intentions for the future. When the agency applies the policy in a particular situation, it must be prepared to support the policy just as if the policy statement had never been issued.

Pa. Human Relations Comm'n v. Norristown Sch. Dist., 374 A.2d 671, 679 (Pa. 1977) (quoting *Pacific Gas & Electric Co. v. FPC*, 506 F.2d 33, 38 (D.C. Cir. 1974)).

Our policy statement in the instant case is intended to provide guidance to the industry regarding the types of public notice necessary to meet the reasonableness standard in section 1501 of the Public Utility Code when there are unscheduled water service interruptions. The purpose of this proposed policy statement is to help ensure that actual, timely notice to customers is provided by water utilities whenever there is any event that potentially endangers public health and/or safety of the customer's water supply. Our proposed policy statement, therefore, will include a series of acceptable methods for improving the timeliness and effectiveness of notice to water customers whenever it has been determined that any event such as a terrorist act, chemical spill, or water line break, has affected the quality or quantity of the water customers' potable water supply. In addition, the proposed policy statement will propose guidelines for alternative water supplies, public notice templates, and notice to Commission personnel.

A. Methods of Public Notification

The public notice guidelines envisioned within the parameters of this proposed policy statement are applicable to unscheduled service interruptions. This term currently is not defined in our regulations. However, the Commission recently promulgated proposed regulations to define the term as:

... an interruption of service affecting the quantity or quality of water delivered to the customers . . .⁴

Unscheduled service interruptions can include, but are not limited to main breaks, chemical spills, floods, outbreaks of waterborne illnesses, acts of vandalism or terrorism, and storm-related damage.

The findings of the PAWC investigation, supported by the OCA comments, revealed that the utility's notification procedures failed to adequately alert large numbers of customers in a timely and reasonable manner about the hydrofluorosilic acid spill and the "Do Not Consume" advisory. The policy statement proposed today is intended to enhance customer notification in situations that not only have a direct or immediate health and safety impact (as specified within "Boil Water" or "Do Not Consume" advisories), but in any situation where water quality or quantity may be affected. With timely and adequate notice, customers can safely and efficiently reschedule a number of common household activities if they know their water is unsafe to drink, in short supply, discolored, sediment-laden, etc., on a short-term basis until the advisory is lifted.

Utilities are obligated to provide safe and reliable service pursuant to 66 Pa.C.S. § 1501. This proposed policy statement is intended to provide guidance to the industry regarding the types of public notice necessary to meet the reasonableness standard in section 1501 of the Public Utility Code when there are unscheduled water service interruptions. One of the primary purposes of this proposed policy statement is to help ensure that actual,

timely notice to customers is provided by water utilities whenever there is any event that potentially endangers public health and/or safety of the customer's water supply. Our proposed policy statement, therefore, will include a series of acceptable methods for improving the timeliness and effectiveness of notice to water customers whenever it has been determined that any event such as a terrorist act, chemical spill, or water line break, has affected the quality or quantity of their potable water supply. Such situations may also include localized events such as a main break, hydrant repair, flushing or other similar event that can be expected to impact adversely some or all of a utility's customers.

These acceptable methods of public notification include taking advantage of existing technology such as sending faxes and/or e-mail notification to local radio and television stations, cable systems, newspapers and other print and news media; using Reverse 911[®] (outbound dialing) notification to affected customers' landline or wireless phones where locally available; sending e-mail and text messages to affected customers who have opted to receive such notice; and utilizing the utility's Internet website. Indeed, use of the utility's Internet website is a rapid, efficient and low-cost method of providing notice that should be a part of every utility's public notice protocols for unscheduled water service interruptions.

Other types of direct/personal notification, such as doorknob flyers, may be considered, where feasible. Additionally, actual notice to all affected health care and child care facilities and other facilities, such as schools and restaurants, as determined in consultation with the Department of Environmental Protection, the Department of Agriculture, the Department of Health, the Department of Aging, or other state agencies, as appropriate, is recommended. Depending upon the severity of the event and the potential health risks involved, the utility should coordinate with State and local emergency management agencies as needed to use the Emergency Alert System (EAS).⁵

The utility should also consider using its own 24/7 emergency phone line and integrated voice response system to provide relevant information about the event. The relevant information that should be provided with any of these notification methods should include a description of the affected location(s); a statement of the event's potential impact on the public, including possible adverse health effects and the population or subpopulation particularly at risk; and a description of actions customers should take to ensure their safety, with updates as often as needed.

The proposed policy statement reiterates that all water utilities are required to follow the regulations relating to public notification as promulgated by the DEP at 25 Pa. Code § 109.407—416, which are now undergoing revisions. While the DEP's regulations currently call for utilities to provide notice "... as soon as possible, but no later than 24 hours after the water supplier learns of the violation or situation . . .,"⁶ the Commission encourages jurisdictional utilities to provide notification as soon as possible. With today's technological advances in the field of communications, the Commission believes quick responses are more realistic than ever before. We also hasten to add that when issues arise that would be

⁵ The EAS was established by the Federal Communications Commission in November 1994. The EAS replaced the Emergency Broadcast System as a tool the government and others may use to warn the public about emergency situations. For more information on Pennsylvania's implementation of the EAS, see www.pema.state.pa.us/.

⁶ 25 Pa. Code § 109.407, general public notification requirements, now undergoing revisions.

⁴ The definition of "unscheduled service interruption" is currently being revised within our proposed rulemaking at L-00060177.

helpful to be in the notification to the public, they should be included as well, dependent upon the specifics of the incident. Therefore, in addition to service interruptions clearly affecting health and safety (as defined within DEP's regulations), the Commission further encourages utilities to provide public notification for all other unscheduled service interruptions (such as main flushing or other localized event affecting the water quantity or quality), to the extent practicable.

Finally, another tool to help ensure that the public is informed as best as possible is for utilities to have a knowledgeable contact person stationed on site during the emergency. However, the size and resources of the individual utility will dictate the extent to which this recommendation can be carried out.

In setting forth this proposed policy statement, we realize that of the Commission's approximately 100 jurisdictional investor-owned water companies (and approximately 40 municipal systems serving beyond their corporate boundaries), fewer than ten are large enough to be expected to carry out the complete array of public notification actions delineated within the Commission's proposed policy statement. Nonetheless, the intent of the policy statement can readily be met by the smallest of regulated water companies. Essentially, all regulated water companies need to determine their individual level of response, commensurate with their resources and circumstances, to any given unscheduled interruption in service. The appropriate actions should be coupled with the best available technology to deliver the public notice, realistic with a smaller utility's resources.

B. Alternative Water Supplies

In addition to the advanced methods of public notification, this proposed policy statement reminds utilities of the need to ensure that adequate quantities of alternative supplies of water are made available in pre-determined, conspicuous and in sufficient locations relative to the number of customers affected by the incident. This includes the use of water tankers and/or free bottled water. When using tankers, containers should be made available for those customers who did not bring them. Utilities should also make efforts, based on prior coordination with community-based organizations, for example, to provide water to elderly or homebound customers to the extent practicable. When bottled water is used, utilities should have plans in place, based on prior coordination with local vendors, to have adequate supplies to last for the duration of the outage.

C. Advance Template Preparation

Utilities should have public notice templates prepared in advance to be available when needed to avoid wasting critical time developing materials from scratch. The notices should cover all possible scenarios from water conservation to Boil Water Alerts to contaminants of concern and associated health effects. Smaller utilities can look to resources such as the DEP, the United States Environmental Protection Agency, the Pennsylvania Section of the American Water Works Association, and the Pennsylvania Chapter of the National Association of Water Companies, for assistance in developing public notice templates.

D. Notice to Commission

Notice should be made to Commission personnel as soon as possible of the utility's knowledge of an unscheduled service interruption. It should be noted, however, that our regulation at 52 Pa. Code § 67.1(c) already directs utilities to contact the Commission within one

hour following preliminary assessment of conditions. Furthermore, all jurisdictional utilities should maintain lists of appropriate Commission contact personnel, including current after-hour contact numbers.

III. Conclusion

Consistent with the Commission's recent educational campaign, *Prepare Now: Be Water Wise*, the overriding message for emergency preparedness and response, including public notification, is one of being prepared now, prior to an emergency. The Commission strongly encourages all utilities to take any and all steps, appropriate to the level of resources and customers served, to think through all possible scenarios, including lessons learned from recent disasters, and to have all necessary tools pre-designed and in place. When a service interruption or emergency occurs, the utility will be ready without hesitation to respond by implementing what has already been thoroughly pre-designed in advance. As we have learned, once the emergency is unfolding, precious time will be wasted designing an appropriate response. At the least, interruptions of regular household water uses can be minimized and at the most drastic, protection of health and safety can be maximized by preparing now.

We propose to amend Chapter 69 of our regulations by adding 52 Pa. Code §§ 69.1601—69.1603 as set forth in Annex A hereto, which establishes a Policy Relating to Unscheduled Water Service Interruptions and Associated Actions, and invite all interested parties to submit comments. Accordingly, under section 501 of the Public Utility Code, 66 Pa.C.S. § 501, and the Commonwealth Documents Law, 45 P.S. §§ 1201—1208, and regulations promulgated thereunder at 1 Pa. Code §§ 7.1—7.4, we amend our regulations at 52 Pa. Code Chapter 69 as previously noted and as set forth in Annex A; *Therefore,*

It Is Ordered That:

1. The proposed amendments to 52 Pa. Code Chapter 69, as set forth in Annex A, are issued for comment.
2. The Secretary shall submit this Order and Annex A to the Governor's Budget Office for review of fiscal impact.
3. The Secretary shall certify this order and Annex A and deposit them with the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.
4. Interested persons may submit an original and 15 copies of written comments to the Office of the Secretary, Pennsylvania Public Utility Commission, P. O. Box 3265, Harrisburg, PA, 17105-3265, within 30 days from the date this order is published in the *Pennsylvania Bulletin*.
5. A copy of this order shall be posted on the Commission's website and served on the Office of Consumer Advocate, the Office of Small Business Advocate, the central and regional offices of the Department of Environmental Protection, the Pennsylvania Chapter of the National Association of Water Companies and all jurisdictional water and wastewater utilities.
6. The contact persons for this matter are Carl S. Hisiro, (717) 783-2812 and Adam D. Young, (717) 772-8582, Law Bureau (legal) and Paul Diskin (717) 214-5558 and E. Festus Odubo, (717) 783-6181, Bureau of Fixed Utility Services (technical).

JAMES J. MCNULTY,
Secretary

Fiscal Note: 57-250. No fiscal impact; (8) recommends adoption.

Annex A**TITLE 52. PUBLIC UTILITIES****PART I. PUBLIC UTILITY COMMISSION****Subpart C. FIXED SERVICE UTILITIES****CHAPTER 69. GENERAL ORDERS, POLICY STATEMENTS AND GUIDELINES ON FIXED UTILITIES****UNSCHEDED WATER SERVICE INTERRUPTIONS AND ASSOCIATED ACTIONS****§ 69.1601. General.**

(a) The purpose of this statement of policy is to provide guidance to the water industry relating to unscheduled water service interruptions, particularly regarding the types of public notice and associated actions that will be deemed acceptable and appropriate for meeting the safe, reasonable and adequate standard in 66 Pa.C.S. § 1501 (relating to character of service and facilities) and for complying with the Commission's regulation in § 56.71 (relating to interruption of service). It is imperative that water customers receive actual, timely and sufficient notice of unscheduled service interruptions whenever a situation affects water quality or quantity and particularly when the water is unsafe to drink.

(b) In addition to the notification guidelines contained in this statement of policy, water utilities shall conform to the public notice requirements of the Department of Environmental Protection found in 25 Pa. Code §§ 109.407—109.416 (relating to public notification). This statement of policy should not be considered to modify or replace in any way the public notice requirements of the Department of Environmental Protection.

§ 69.1602. Public notification guidelines.

(a) In the event of an unscheduled water service interruption, the following acceptable methods of public notification should be considered and utilized as appropriate:

(1) Fax/e-mail notification to local radio and television stations, cable systems, newspapers and other print and news media as soon as possible after the event occurs. The notification must provide relevant information about the event, such as the affected location, its potential impact including possible adverse health effects and the population or subpopulation particularly at risk, and a description of actions customers should take to ensure their safety, with updates as often as needed.

(2) Use of the utility's own Internet website and 24/7 emergency phone line and integrated voice response system to provide relevant information about the event, such as the affected location, its potential impact including possible adverse health effects and the population or subpopulation particularly at risk, and a description of actions customers should take to ensure their safety, with updates as often as needed.

(3) Reverse 911[®] (outbound dialing) notification to affected customers' landline or wireless phones when locally available.

(4) Actual notice to affected health care and child care facilities and other facilities, for example, schools and restaurants, as determined by consultation with the Department of Environmental Protection, the Department of Agriculture, the Department of Health, the Department of Aging and other State agencies as necessary.

(5) Other types of direct or actual notice, such as doorknob flyers distributed to affected customers, when feasible.

(6) E-mail and text message notification to affected customers who have opted to receive the notice.

(7) Coordination with State and local emergency management agencies as needed to use the emergency alert system for qualifying situations.

(b) Utilities should have public notice templates prepared in advance to be available when needed to avoid wasting critical time developing materials when confronted with an unscheduled service interruption. The notices should cover all possible scenarios from water conservation to boil water alerts to contaminants of concern and associated health effects. Smaller utilities can look to resources such as the Department of Environmental Protection, the United States Environmental Protection Agency, the Pennsylvania Section of the American Water Works Association and the Pennsylvania Chapter of the National Association of Water Companies for assistance in developing public notice templates.

(c) To ensure that the public is informed, utilities should have a knowledgeable contact person stationed onsite during the emergency, if possible.

§ 69.1603. Other associated actions.

(a) Water utilities need to ensure that adequate quantities of alternative supplies of water are made available in a sufficient number of conspicuous and predetermined locations relative to the number of customers affected by the incident. This includes the use of water tankers or free bottled water, or both. When using tankers, containers should be made available for those customers who did not bring them. Utilities should also make efforts, based on prior coordination with community-based organizations, for example, to provide water to elderly or homebound customers to the extent practicable. When bottled water is used, utilities should have plans in place, based on prior coordination with local vendors, to have adequate supplies to last for the duration of the outage.

(b) Notice should be made to Commission personnel as soon as possible upon a utility becoming aware of an unscheduled service interruption. It should be noted that § 67.1(c) (relating to general provisions) already directs utilities to contact the Commission within 1 hour following preliminary assessment of conditions. Furthermore, jurisdictional utilities should maintain lists of appropriate Commission contact personnel, including current after-hour contact numbers.

[Pa.B. Doc. No. 06-1447. Filed for public inspection July 28, 2006, 9:00 a.m.]