

PROPOSED RULEMAKING

DELAWARE RIVER BASIN COMMISSION

[25 PA. CODE CH. 901]

Proposed Rulemaking to Amend Schedule of Water Charges

Summary

The Delaware River Basin Commission (Commission) will hold a public hearing to receive comments on proposed amendments to the Administrative Manual—Part III—Basin Regulations—Water Supply Charges to revise the schedule of water charges.

Dates

The Commission will hold a public hearing on Tuesday, April 13, 2010, beginning at 1:30 p.m. The hearing will continue until 3:30 p.m. or a time when all those who wish to testify have been afforded an opportunity to do so. Written comments will be accepted until 5 p.m. on Friday, April 16.

Addresses

The hearing will take place in the Goddard Room at the Commission's office building, located at 25 State Police Drive, West Trenton, NJ. Driving directions are available on the Commission's web site www.drbc.net. Do not rely on Internet mapping services as they may not provide accurate directions to the Commission.

Written comments may be submitted at the hearing and may also be sent as follows by e-mail to Paula.Schmitt@drbc.state.nj.us; otherwise, to the attention of the Commission Secretary, DRBC, either by fax (609) 883-9522; U.S. Mail to P. O. Box 7360, West Trenton, NJ 08628-0360; or delivery service to 25 State Police Drive, West Trenton, NJ 08628-0360. Regardless of the method of submission, written comments should include the name, affiliation (if any) and address of the commentator and the subject line "Schedule of Water Charges."

For further information contact

Contact Paula Schmitt at (609) 477-7224 or Katharine O'Hara at (609) 477-7205 with questions about the public hearing.

Supplementary Information

Background

In response to the need to fund certain water supply storage facility projects, the Commission between 1964 and 1974 established a system of water supply charges pursuant to section 3.7 of the Delaware River Basin Compact. In December of 1964, it adopted Resolution 64-16A, "A Resolution to establish policy concerning water supply in Federal projects authorized in the Comprehensive Plan." This resolution established a revenue stream to repay the obligations the Commission eventually assumed to purchase capacity at the Federal government's Beltzville and Blue Marsh water storage facilities. The resolution specifically provided that the debt for the Commission's share of storage in these facilities would be repaid through the sale of water (or other products and services) and through an apportionment of the costs to the states benefiting from those projects. See Resolution No. 64-16A, adopted December 29, 1964 (adding to the

Comprehensive Plan a "Section IX—Water Supply Policy," par. 3.a. and b. of which establish the described debt repayment mechanisms).

The Commission subsequently adopted Resolution No. 71-4, "A Resolution to amend and supplement the Comprehensive Plan by the addition of a new article on policy for water supply charges." This resolution established a schedule of rates for basin water withdrawals and provided that the "charges for water supplied will include all costs associated with making basin water supply available and maintaining its continued availability in adequate quantity and quality over time." Res. No. 71-4, adopted April 7, 1971, par. A.2. Resolution No. 71-4 requires the Commission to collect sufficient annual revenue to meet all annual project costs, "including debt service, operation, maintenance, replacement, reserves, and associated administrative costs." Res. No. 71-4, par. A.2.b. The Commission recognized that the waters of the basin formed a "unitary system" and thus applied the charges to water withdrawals made throughout the basin, including up-stream of Commission facilities. See Res. No. 71-4, preamble. The unitary system is sometimes referred to as the "pooled water" theory. See, for example, *Delaware River Basin Commission v. Bucks County Water & Sewer Authority*, 641 F.2d 1087, 1094 (3rd Cir. 1982) (citing *Borough of Morrisville v. Delaware River Basin Comm'n*, 399 F.Supp. 469, 471 (E.D. Pa. 1975), *aff'd per curiam*, 532 F.2d 745 (3d Cir. 1976)). Resolution No. 71-4 imposed charges only on withdrawals from surface waters of the basin. In accordance with section 15.1(b) of the Compact, it limited charges to the amounts of water withdrawn in excess of those "that could lawfully have been made without charge on the effective date of the Compact." Compact § 15.1(b).

The Commission has historically placed the revenues generated through the sale of water in an account called the "Water Supply Storage Facilities Fund" (Storage Fund). The Storage Fund holds funds dedicated to pay the costs of project construction, operation, maintenance and replacement, as well as associated administrative costs. See Res. No. 71-4, par. A.2. The estimated balance in the Storage Fund as of June 30, 2009 was \$12.1 million. A snapshot of the Storage Fund at the close of fiscal year ending July 31, 2009, shows the following: the Storage Fund received approximately \$2.6 million in water sale revenue. It disbursed or incurred approximately \$2.2 million in expenses, consisting of approximately \$483,000 in interest paid to the United States Treasury, \$423,000 in asset depreciation, \$310,000 for operations and maintenance of the Blue Marsh and Beltzville projects, \$86,000 for contractual services from the United States Geological Survey for operation and maintenance of stream gauges, and \$933,000 associated with Commission administration. The fund lost \$153,000 on investments (the sole Storage Fund investment loss in 35 years). The approximately \$204,000 difference between the annual costs and revenue is retained in the Storage Fund as a reserve against the future costs of expected significant repair to the facilities.

Historically, the Commission has not charged its full administrative cost against the Storage Fund. Periodic reviews of the charges have shown that the costs involved in Commission activities properly chargeable to the Storage Fund have exceeded the amounts actually charged for many years. To the extent that the Storage Fund has not been charged its full allocable costs, contributions by the

signatory parties of the Delaware River Basin Compact (the states of Delaware, New Jersey, New York, Pennsylvania and the Federal government) have made up the difference. In extremely challenging economic times, however, the signatories find themselves less capable of assuming this burden. In Fiscal Year (FY) 2010, an adjustment was made to better align charges to the Storage Fund with actual costs. Even absent this adjustment, the trend evident since 2008 is that retained Storage Fund earnings have leveled off. Recent plant closures in the basin are expected to result in reductions of approximately \$500,000 annually (about 20%) in water sale revenues, while the costs of reservoir maintenance and operations, contractual services and administration continue to rise.

DRBC's Current Schedule of Water Charges. Resolution No. 71-4 provided that water rates would consist of "the weighted-average unit cost of all water stored by or on behalf of the Commission" and specified that the unit cost of all water would be determined "by dividing all of the commission's annual project cost by the net yield of the water supply in federal reservoirs authorized in the commission's Comprehensive Plan." Res. No. 71-4, par. A.2.a. *Also see* Res. No. 78-14, preamble.

In accordance with this formula, the current schedule of water charges was established by Resolution No. 78-14 in October of 1978, based on the unit cost of water stored by the Commission in the Beltzville and Blue Marsh reservoirs. It was codified at section 5.3.1 of the Commission's Administrative Manual—Part III—Basin Regulations—Water Supply Charges (WSC). Section 5.3.1 provides that the Commission "will from time to time, after public notice and hearing, make, amend and revise a schedule of water charges" and that until changed, the charges for water shall be \$.06 per thousand gallons for consumptive use (\$60 per million gallons) and six-tenths of a mill per thousand gallons (\$.60 per million gallons) for nonconsumptive use. (WSC § 5.3.1). These rates which remained unchanged for more than 30 years, lag far behind the rates charged for raw (untreated) water by the Commission's sister agency the Susquehanna River Basin Commission (SRBC) and by the New Jersey Water Supply Authority (NJWSA) for raw water from its Raritan System.

The consumptive use rate established by SRBC in May of 1992, effective January 1, 1993, was \$140 per million gallons, nearly two-and-a-half times the current rate charged by the Commission. In June of 2008, SRBC approved a two-step increase to \$210 per million gallons effective January 1, 2009 and \$280 per million gallons (more than four-and-a-half times the Commission's current rate) effective January 1, 2010. NJWSA charged \$216 per million gallons as of July 1, 2010 and will charge \$220 per million gallons (more than three-and-a-half times the Commission's current rate) as of July 1, 2011 for raw water from its Raritan System. The Commission's proposed 2010 and 2011 rates for consumptively used water remain well below those of its counterparts.

Proposed Rate Increase. Resolution No. 71-4 provided that "[c]osts, rates and charges will be recomputed . . . as often as necessary to reflect relevant changes in any cost components associated with sustaining specific base flows." Res. No. 71-4, par. A.2.a. At this time, to maintain net income to the Storage Fund and ensure financial stability to address future operating and maintenance costs, the Commission is proposing its first water charging rate increase in 32 years. Because many people find the expression of the rates confusing, the Commission

also is proposing that the new rates be established per million gallons rather than per thousand.

In light of the difficult economic climate, the rate change is proposed in two stages. The proposed rates, calculated using the formula established by Resolution No. 71-4 and set forth previously, are as follows: The consumptive use rate is proposed to be increased from \$60 to \$90 per million gallons effective on January 1, 2011, and from \$90 to \$120 per million gallons effective on January 1, 2012. The nonconsumptive use rate is proposed to be increased from \$.60 to \$.90 per million gallons effective on January 1, 2011, and from \$.90 to \$1.20 per million gallons effective on January 1, 2012.

Even with the proposed increases, Delaware Basin water will remain inexpensive when compared to raw water in neighboring jurisdictions. Notably, the proposed 2012 rate of \$120 per million gallons for raw water consumptively used in the Delaware Basin is less than half the rate of \$280 currently in effect in the Susquehanna Basin and only a little more than half the rate of \$216 currently charged by the NJWSA for its Raritan System water, which rate will increase to \$220 effective January 1, 2011. The Commission's proposed 2012 rate is below the current (2010) rate of \$60 per million if adjusted for inflation, which would be approximately \$200 per million gallons.

No Change to Exempt Uses. No change to the list of uses exempt from charges, as set forth at WSC § 5.3.3 is proposed. The following categories of uses are currently exempt from water charges: nonconsumptive uses of less than 1,000 gallons a day and less than 100,000 gallons during any quarter (§ 5.3.3 A.); ballast water used for shipping purposes (§ 5.3.3 B.); water taken, withdrawn or diverted from streams tributary to the River Master's gauging station at Montague, NJ (§ 5.3.3 C.); and water taken, diverted or withdrawn below the mouth of the Cohansey River) and such proportion of water withdrawn above that point and below the mouth of the Schuylkill River as the Executive Director may determine would have no discernable effect upon the maintenance of the salt front below the mouth of the Schuylkill River (§ 5.3.3 D.).

PAMELA M. BUSH, ESQ.,
Commission Secretary

Fiscal Note: 68-54. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 25. ENVIRONMENTAL PROTECTION

PART V. DELAWARE RIVER BASIN COMMISSION

CHAPTER 901. GENERAL PROVISIONS

§ 901.3. Water supply charges.

The Basin Regulations—Water Supply Charges as set forth in 18 CFR Part 420 [(1994)] (2010) are hereby incorporated by reference and made a part of this title.

[Pa.B. Doc. No. 10-391. Filed for public inspection March 5, 2010, 9:00 a.m.]

PENNSYLVANIA PUBLIC UTILITY COMMISSION

[52 PA. CODE CHS. 57, 59, 65 AND 67]

[L-2009-2104274 / 57-271]

Utilities' Service Outage Response and Restoration Practices

The Pennsylvania Public Utility Commission (Commission) on November 6, 2009, adopted a proposed rulemaking order which establishes a more uniform approach for reporting standards among the gas, water/wastewater and electric industries in the event of utility service outages.

Executive Summary

Prompted by 450,000 electric outages caused by Hurricane Ike in September, 2008, the Commission initiated an investigation into electric utility service storm response, service restoration and customer communication practices. The Commission publicly adopted a staff report entitled, *Electric Distribution Company Service Outage Response and Restoration Practices Report*, Docket No. M-2008-2065532, and initiated a rulemaking proceeding on April 30, 1999, to revise its regulations regarding service outages in Chapter 67 (relating to service outages) and reportable incidents in §§ 57.11, 59.11 and 65.2 (relating to accidents).

The instant Proposed Rulemaking Order entered on November 10, 2009, at Docket No. L-2009-2104274 proposes to amend regulations regarding service outage and restoration in the electric, gas and water industries. A companion Proposed Policy Statement was also entered on November 10, 2009, at Docket No. M-2008-2065532.

This Proposed Rulemaking Order seeks to benefit millions of consumers in this Commonwealth by implementing revisions to the Commission's regulations for service outages and reportable accidents involving utility facilities including:

- Amendments to Chapter 57 to broaden the scope of reportable accidents involving electric utility service, establish a uniform reporting period and require the filing of the utility's internal investigation report.
- Amendments to Chapter 59 to broaden the scope of reportable accidents involving gas utility service, establish a uniform reporting period and require the filing of the utility's internal investigation report.
- Amendments to Chapter 65 to broaden the scope of reportable accidents involving water utility service, establish a uniform reporting period and require the filing of the utility's internal investigation report.
- Amendments to Chapter 67 to require that fixed utilities provide a greater level of detail to the Commission regarding outage events.

The Commission will benefit from a more uniform approach to reporting standards among the gas, water/wastewater and electric industries as information will be better organized, more consistent, and better distributed using modern technology from the industries when there are significant outages. The industries affected by the regulations will benefit from the regulations as they will know what is expected of them regarding the reporting during outages as well as clear guidelines regarding restoration practices. The regulations are designed to help

the utilities bolster their goodwill with their customers while at the same time the regulations are not financially or unduly burdensome upon the industries.

Public Meeting held
November 6, 2009

Commissioners Present: James H. Cawley, Chairperson; Tyrone J. Christy, Vice Chairperson, Joint Statement; Kim Pizzingrilli, Joint Statement; Wayne E. Gardner, Absent; Robert F. Powelson

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

Proposed Rulemaking Order

By the Commission:

Procedural History

On September 14 and 15, 2008, Hurricane Ike swept through this Commonwealth interrupting electric service to over 450,000 customers. Prompted by this occurrence, on September 25, 2008, a Joint Motion of Vice Chairperson Tyrone J. Christy and Commissioner Kim Pizzingrilli was issued at Docket No. M-2008-2065532, directing Law Bureau to prepare a Secretarial Letter seeking information from all jurisdictional electric distribution companies (EDCs) operating in this Commonwealth regarding their service restoration and public notice practices. On the same date, a Secretarial Letter was issued and an investigation was initiated into EDCs' service outage responses and restoration practices with the same information requested. Responses were filed by the EDCs. As part of this investigation, the Commission also held two public input hearings in western Pennsylvania and solicited information from EDCs regarding their current and past storm preparation and response practices.

In April, 2009, the Commission's Bureau of Conservation, Economics and Energy Planning and Office of Communications submitted a report to the Commission entitled, *Electric Distribution Company Service Outage Response and Restoration Practices Report* (Report). This Report was adopted by the Commission at Public Meeting of April 30, 2009, at Docket No. M-2008-2065532. On the same date, this Commission adopted the Joint Motion of Vice Chairperson Tyrone J. Christy and Commissioner Kim Pizzingrilli to initiate a rulemaking proceeding to revise our regulations on Service Outages in 52 Pa. Code Chapter 67 and reportable incidents in 52 Pa. Code §§ 57.11, 59.11 and 65.2. The Joint Motion also directed a Policy Statement be issued, which we will address in a separate Proposed Policy Statement.

Summary of Recommendations

The Report summarized the findings of the investigation and recommended the following future actions:

- Utilities should apply the principles of the National Incident Management System (NIMS) and its Incident Command System when managing widespread service outages. Application of NIMS would include:

1. Development of written crisis communication plans consistent with national NIMS standards.

2. Establishment of a Joint Information System/Joint Information Center to coordinate responses when multiple utilities in the same region are affected by an incident.

- Utility personnel should communicate with the news media and public in a consistent fashion. Common talking

points should be distributed to all utility employees who may be in contact with the public and news media.

- During incident management, utilities should establish a schedule for the regular release of information to the news media.

- Utilities should strive to use the best available technology to facilitate the sharing of information, including automated dialing systems, electronic mail and text messaging.

- Utilities should provide a greater level of detail in their written reports to the Commission for unscheduled service interruptions that meet the criteria under 52 Pa. Code § 67.1(b) (relating to general provisions), including the level of damage to utility facilities, number of personnel utilized through mutual aid agreements, and other matters identified in the report.

- The Commission should establish a more uniform approach to reportable accidents involving utility facilities and operations.

Discussion

We invite comment regarding proposed amendments to our current regulations regarding service outages in 52 Pa. Code Chapter 67 and reportable accidents in 52 Pa. Code §§ 57.11, 59.11 and 65.2 (relating to accidents). Our goal is to have even more effective responses to future unscheduled service outages.

In general, under §§ 57.11, 59.11 and 65.2, we propose to expand our regulations to capture more reportable events, such as cyber security attacks, and events that involve damages to a utility company by another utility company. We further propose establishing deadlines for reporting accidents.

Under § 67.1, we propose to expand our general provisions regarding service outages such that rather than just an approximate number of customers involved in a single incident is reported, the total number of sustained outages during the event are reported. As utilities employ better technology to more accurately count their sustained outages, this information is reportable to the Commission and we should be made aware of it. Other proposed changes to § 67.1 include reporting the number of not only utility workers, but also contract workers specifically assigned to the repair work and mutual aid workers.

Proposed Amendments to Regulations

52 Pa. Code § 57.11 Accidents. (Electric Industry)

We propose amending § 57.11(b) such that a reportable accident would include injury to a person when the injured person requires professional medical attention or requires hospitalization. We removed the employee requirement from paragraph (2) because an injury to a person includes the class of employee or nonemployee alike. It is all encompassing.

We further propose deleting existing paragraph (3) and adding a new paragraph (4) such that an occurrence of an unusual nature involving suspected acts of sabotage, including cyber security attacks, are reported. Thus, for example, a physical break-in to a substation or a cyber security attack against an electric utility is reportable even though no one is injured as a result.

We propose adding language to create a new paragraph (5) "Substantial damage to another utility company's facility or property." We propose that companies should report when they hit any part of other utilities' facilities, including poles, lines, cables, and the like, when the

damage is substantial. We invite comment on what should be meant by substantial.

Additionally, we propose adding exceptions to the regulation under a new subsection (c). We seek to exclude those injuries that are suffered as a result of a motor vehicle accident with electric utility facilities, such as a car crashing into a pole, while still including any motor vehicle accident that results in injuries as a result of contact with electrified utility facilities, or motor vehicle accidents involving utility-owned vehicles or vehicles driven by a utility employee while on duty.

We further propose amendments to original subsection (c) Telegraphic reports. The term "or telegraph" shall be stricken as it is an outdated means of communication. We propose adding the requirement that a report by telephone must be made within 24 hours of the time a reportable event occurred under section (b)(2) or (5).

We propose amending original subsection (d) Written reports such that we strike the phrase "immediately following" and change it to "within 5 days of the occurrence." We believe this is a more objective standard. We invite comment on the reasonableness of the time frame.

We propose adding subsection (f) relating to internal investigation reports. We propose requiring the utility to submit a copy of its final internal investigation report when it is completed for all reportable accidents under section (b)(1), (2) and (4). If the report is not expected to be completed within 1 year of the date of occurrence, the utility should notify the Bureau of Fixed Utility Services, which may require quarterly status updates until completion of the report. We invite comment on this proposed addition.

52 Pa. Code § 59.11 Accidents. (Gas Industry)

We propose amending § 59.11(b) such that reportable accidents are redefined to include the death of a person or injury to a person sufficient that the person requires professional medical attention or hospitalization. We believe a threshold test for severity of injuries is warranted.

We propose amending original paragraph (1) such that it is now paragraph (3) and it qualifies an event involving a release of gas from a pipeline, or of LNG or gas from an LNG facility such that there must be an estimated property damage, including the cost of gas lost of the operator or others, of at least \$50,000 in market value. We intend for propane air systems to be included under the term "natural gas" because the Federal definition of natural gas includes propane and the PUC has adopted the Federal regulations. Therefore, when the regulations call for "an event that involves a release of gas from a pipeline or of LNG or gas from an LNG facility," propane is covered. The LNG items and property damage minimums are in § 59.11 to be consistent with Federal Department of Transportation reporting regulations. This should make it easier for pipeline utilities to determine what is reportable and what is not.

Further, we propose adding language to address sabotage in new paragraph (5). We also propose adding paragraph (6) because companies should report when they hit any part of other utilities' facilities, including poles, lines, cables, and the like, when the damage is substantial. We invite comment on what should be meant by substantial. Subsection (c) regarding Telegraphic reports should be amended such that "telegraphic" and "or telegraph" should be stricken since these are outdated means of notifying the Commission.

We did not propose an exception for injuries suffered as a result of a motor vehicle accident with utility facilities

language in the gas service regulations as there are in the electric service regulations because gas meter hits are not reportable unless they meet the threshold established in the regulations. However, the counties usually call in meter hits into the 911 system which get passed through PEMA's network and then the Commission is notified of the meter hits. Gas meter hits rarely happen when compared to vehicles hitting electric facilities including poles. Thus, we propose allowing an exception for electric utility pole hits that happen frequently, but we require those hits that present a danger of serious bodily injury and/or increase our ability to direct safe utility service to be reported.

Regarding subsection (d) (relating to written reports), we propose changing the language from "immediately" to "within 5 days" of the occurrence. This provides a more definite deadline. Finally, we propose adding subsection (e), Internal investigation reports, such that the utility shall be required to submit a copy of its final Internal investigation report when it is completed for all reportable accidents. If the report is not expected to be completed within 1 year of the date of occurrence of the reportable accident, then the utility shall notify the Bureau of Transportation and Safety's Gas Safety Division, which may require quarterly status updates until completion of the report.

52 Pa. Code § 65.2 Accidents. (Water/Wastewater Industry)

We propose adding subsection (b)(2) to § 65.2 because we think qualifying the injury is important. There ought to be a threshold test for serious injuries. The new language would state as follows:

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

We further propose amending this section to include:

(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 Chapter 101 (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.

We propose adding paragraph (5) because the Commission wants to be notified of a utility causing substantial damage to another utility's facility or property. While there is not as urgent a need to be notified immediately, the Commission believes that within a 24 hour time frame is reasonable and sufficient.

We further propose changes to subsection (c) for similar reasons as stated previously. Telegraphic reports are outdated and we would like a 24 hour deadline for certain reportable accidents.

We propose changing the deadline for filing a Form UCTA-8 from "immediately following" to "within 5 days" of the occurrence of a reportable accident.

We propose adding subsection (e), Internal investigation reports. We believe the utility should submit a copy of its final internal investigation report when it is complete for all reportable accidents. If the report is not expected to be completed within 1 year of the date of occurrence, the utility should notify the Bureau of Fixed Utility Services, which may require quarterly status updates until completion of the report. We invite comment regarding these proposals.

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

As discussed previously, 52 Pa. Code § 67.1 should be opened for review, specifically the written notification § 67.1(b). Additional required information should be considered in that section, which is typically requested by our Bureau of Fixed Utility Services (FUS) for major events and is already reported to FUS on a consistent basis in the outage reports filed by certain electric utilities, although voluntarily. Additional required information should include: 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 damage to equipment (replaced transformers, poles, spans of wire, pipes or valves for water and gas utilities, electronic equipment for telephone utilities); 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.

This information is available to the EDCs and certain electric utilities already report this information voluntarily to our Bureau of Fixed Utility Services. We do however, recognize that 52 Pa. Code § 67.1 applies, not only to electric, but to gas, water and telephone utilities holding certificates of public convenience. We believe the additional information requested may be of use in reviewing the outage response of telephone, gas or water/wastewater utilities. The issue of whether the additional reporting requirements would be limited to electric utilities can be addressed during the review procedure.

We propose changing the term "incident" to "event" in § 67.1(b) to avoid confusion as to what constitutes the reportable level of outages. "Single incident" could be construed to mean a single outage order, which rarely would rise to the customer level of 2,500 or 5%, whichever is less. Also, "single incident" could be construed to mean an outage incident in a specific area of the service territory. The intent of the Code, as has been borne out in the past practice of the outage reports filed by utilities, is that the "incident" is the cause of the outages that will result in at least 2,500 or 5%, whichever is less, of customers experiencing an outage of 6 or more consecutive hours. That may be from one outage order, or multiple outage orders spread over the service territory. The "incident" has been interpreted to mean the event that caused the outages. So, if it is a storm that brings high winds and rain, then the outage report would include all outages stemming from that storm, assuming that at least 2,500 or 5%, whichever is less, of customers experience an outage of 6 or more consecutive hours and thus trigger the reporting requirement. We seek comment on whether the change in term from "incident" to "event" is necessary, or if sufficient precedent has been established and the term "incident" as it is used in § 67.1(b) is clear. We are also proposing adding an additional requirement on the Commission of posting blank outage reporting forms on the Commission's web site for utilities to download and use.

We believe the proposed changes to § 67.1 are in compliance with our Final Rulemaking Order of August 21, 2006, *In re: Rulemaking Re: PUC Filing and Reporting Requirements on Local Exchange Carriers*, L-00050176. The Commission held that Service Outage Reports met the standards prescribed in 66 Pa.C.S.

§ 3015(f) and therefore required the continuation of filing these reports. We held that the Service Outage Report was necessary to ensure that the local exchange carriers (LECs) are charging just and reasonable rates in compliance with Chapter 30. Quality of service is directly related to just and reasonable rates. Since Service Outage Reports bear an impact on service quality, they are crucial to ensuring that the rates the LECs are charging are just and reasonable within the meaning of 66 Pa.C.S. § 1301.

However, regarding the telephone industry, this Commission also found that Accident Reports under 52 Pa. Code § 63.11 did not meet the exceptions for report filing under 66 Pa.C.S. § 3015(f)(1). We held that the Accident Reports did not have direct nexus to the rates charged by LECs in accordance with Chapter 30 and the alternative forms of rate regulation sufficient to satisfy the exceptions set forth in section 3015(f)(1)(i). Therefore, we eliminated the accident report requirement and § 63.11 was reserved. As the industries of gas, water/wastewater, and electric still have an Accident Report requirement, we propose changes to those current requirements in accordance with staff's report.

We propose changing the reporting requirement under original subsection (b)(1) of "the approximate number of customers involved in a single incident" to "total number of sustained outages during the event. Sustained outages are of a duration of 5 minutes or greater." We believe with technological advances, that generally utility companies have better software systems capable of calculating sustained outages more accurately, and thus, the Commission seeks this information as part of a § 67.1 report.

We propose amending original subsection (b)(2) such that the phrase, "the geographic area affected, in terms of the county and local political subdivision" is deleted and replaced with "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." We would like the information divided by county as we believe the utilities have the technological ability to track and report this information to the Commission.

New subsection (b)(3) requires the report contain, "the approximate number of sustained outages for each county affected during the event." This is merely the information already reportable under subsection (b)(1) broken down into counties.

New subsection (b)(4) adds "the number of outage cases exceeding 6 or more hours in duration." We believe these are the more serious outages, and if the companies can track this information, the Commission should be apprised of it in a timely manner.

Subsection (b)(5) adds a requirement that the outage cases exceeding six hours in duration be listed along with the following factors: 1) geographic location; 2) total number of customers affected; 3) duration of the outage; 4) initial date and time; and 5) restoration date and time of each outage.

As utilities rely upon mutual aid workers and contractors to complete their repair work in addition to their own utility workers, we believe the listing of the number of utility, contract, and mutual aid workers assigned to repair work should be provided to the Commission as part of a § 67.1 report. This is reflected in subsection (b)(9). We invite comment regarding this proposal.

Subsection (b)(14) requires listing 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, that is listing the number of poles, transformers, spans of wire, pipes or valves replaced. This is not an exhaustive list. We believe the information is pertinent to the event and related outages and the Commission would like said information.

Subsection (b)(16) requires reporting 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. This information will give the Commission perspective of how the event ranks in relation to historical events.

In subsection (c), we propose adding a final sentence as follows. "Blank outage reporting forms shall be posted on the Commission's web site and shall be available for download." This binds the Commission to doing its part in facilitating ease in reporting service outages.

Finally, in subsection (e), we add a requirement that all utilities shall list on their web sites, a phone number to be used during normal operating hours and an emergency telephone number to be used 24 hours in emergency service situations. We believe this requirement will better assist customers and reflects modern technological ways of communication.

Thus, in conclusion, we propose a more uniform approach to reporting standards among the gas, water/wastewater and electric industries. Accordingly, under 66 Pa.C.S. § 501, § 1501 and §§ 2801—2815 and the regulations promulgated thereunder in §§ 57.191—57.197; and sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202) and the regulations promulgated thereunder in 1 Pa. Code §§ 7.1, 7.2 and 7.5; section 204(b) of the Commonwealth Attorneys Act (71 P. S. § 732-204(b)); section 5 of The Administrative Code of 1929 (71 P. S. § 232) and the regulations promulgated thereunder in 4 Pa. Code §§ 7.231—7.234, we are considering adopting the proposed amendments set forth in Annex A; *therefore*,

It Is Ordered That:

1. This proposed rulemaking docket be opened to consider the regulations as set forth in Annex A.
2. The Secretary submit this proposed rulemaking order and Annex A to the Office of Attorney General for review as to form and legality and to the Governor's Budget Office for review of fiscal impact.
3. The Secretary shall submit this order and Annex A for review and comment by the designated standing committees of both Houses of the General Assembly, and for review and comment by the Independent Regulatory Review Commission.
4. The Secretary certify this order and Annex A and deposit them with the Legislative Reference Bureau to be published in the *Pennsylvania Bulletin*.
5. Interested parties shall have 30 days from the date of publication in the *Pennsylvania Bulletin* of the proposed rulemaking order and Annex A to file an original and 15 written comments to the Pennsylvania Public Utility Commission, Attention: Secretary James J. McNulty, P. O. Box 3265, Harrisburg, PA 17105-3265.
6. An electronic copy of the comments should be electronically mailed to Elizabeth Barnes, Assistant Counsel,

at ebarnes@state.pa.us, and these comments in turn will be placed on the Commission's web site for public viewing at www.puc.state.pa.us.

7. Comments should, where appropriate, address the issues identified in this order and should include, where applicable, a numerical reference to the attached Annex A which the comments address, proposed language for revision, and a clear explanation for the recommendation.

8. A copy of this order and Annex A be filed at Docket No. M-2008-2065532 and Docket No. L-2009-2104274.

9. A copy of this order and Annex A be served upon all EDCs operating in this Commonwealth, all jurisdictional water and wastewater companies, all natural gas distribution companies, all jurisdictional telephone utilities, the Office of Consumer Advocate, the Office of Small Business Advocate, the AFL-CIO Utility Caucus, the Pennsylvania Utility Contractors Association, the Energy Association of Pennsylvania, and the Director of the Pennsylvania Emergency Management Agency (PEMA).

10. The contact persons for this rulemaking are Daniel Searfoorce, Bureau of Fixed Utility Services, (717) 783-6159 (technical) and Elizabeth Barnes, Law Bureau, (717) 772-5408 (legal).

By the Commission,

JAMES J. McNULTY,
Secretary

(Editor's Note: For a proposed statement of policy relating to this proposed rulemaking, see 40 Pa.B. 1210 (March 6, 2010).)

Fiscal Note: 57-271. No fiscal impact; (8) recommends adoption.

Joint Statement of Commissioner Kim Pizzingrilli and Vice Chairperson Tyrone J. Christy

Pennsylvania experienced widespread electric distribution service outages as a consequence of Hurricane Ike in September of 2008. On September 25, 2008, the Commission initiated an investigation to evaluate current electric utility service storm response, service restoration, and customer communication practices. The Commission released a report on April 30, 2009 that summarized the findings of this investigation and recommended revisions to existing regulations and the adoption of a new policy statement.

This proposed rulemaking will implement the recommended revisions to the Commission's regulations for service outages and reportable accidents involving utility facilities including:

- Amendments to Chapter 57 to broaden the scope of reportable accidents involving electric utility service, establish a uniform reporting period, and require the filing of the utility's internal investigation report.
- Amendments to Chapter 59 to broaden the scope of reportable accidents involving gas utility service, establish a uniform reporting period, and require the filing of the utility's internal investigation report.
- Amendments to Chapter 65 to broaden the scope of reportable accidents involving water utility service, establish a uniform reporting period, and require the filing of the utility's internal investigation report.
- Amendments to Chapter 67 to require that fixed utilities provide a greater level of detail to the Commission regarding outage events.

We would like to thank our staff for their comprehensive review of utility practices, the Commission's regulations, and the development of these recommendations. The proposed amendments are intended to enhance service outage response, reporting and restoration practices. We encourage all affected utilities and interested parties to review these proposed revisions and provide comments.

KIM PIZZINGRILLI,
Commissioner
TYRONE J. CHRISTY,
Vice Chairperson

Annex A

TITLE 52. PUBLIC UTILITIES
PART I. PUBLIC UTILITY COMMISSION
Subpart C. FIXED SERVICE UTILITIES
CHAPTER 57. ELECTRIC SERVICE
Subchapter B. SERVICE AND FACILITIES

§ 57.11. 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 [**an employe on duty sufficient to incapacitate him from performing his ordinary duties for a period longer than 3 days**] a person sufficient that the injured person requires professional medical attention or hospitalization.

(3) [**Injury to a person other than an employe on duty sufficient to incapacitate the injured person from following his customary vocation, or mode of life, for a period of more than 1 day.**

(4)] An occurrence of an unusual nature, whether or not death or injury of a person results, which apparently will result in a prolonged and serious interruption of normal service.

(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 Chapter 101 (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.**

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

(c) *Exceptions.* Injuries may not include those suffered as a result of a motor vehicle accident with utility facilities unless one or more of the following circumstances apply:

(1) **A vehicle involved in the accident is owned by the utility or driven by a utility employee while on duty.**

(2) **Some or all of the injuries were as a result of contact with electrified facilities.**

(d) [*Telegraphic*] *Telephone reports.* A report by telephone [**or telegraph**] shall be made at once in the event of the occurrence of a reportable accident [**resulting in the death of a person or in an occurrence of an unusual nature**] under subsection (b)(1), (3) and

(4). A report by telephone shall be made within 24 hours of a reportable accident under subsection (b)(2) and (5).

[(d)] (e) *Written reports.* A written report shall be made on Form UCTA-8 [**immediately following**] within 5 days of the occurrence of a reportable accident. Accidents reportable on forms required by the Bureau of [**Workmen's**] Workers' Compensation, [**Pennsylvania**] Department of Labor and Industry, may be reported [**by transmitting**] to the Commission by filing a copy of [**such reports**] the forms in lieu of a report on Form UCTA-8. The Commission will place blank UCTA-8 forms available for download on the Commission's web site.

(f) *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)(1), (2) and (4). The final internal investigation report shall be treated in accordance with 66 Pa.C.S. § 1508 (relating to 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 Services, which may require quarterly status updates until completion of the report.

CHAPTER 59. GAS SERVICE

SERVICE AND FACILITIES

§ 59.11. Accidents.

* * * * *

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

- (1) The death of a person.
- (2) Injury to a person sufficient that the injured person requires professional medical attention or hospitalization.
- (3) An event that involves a release of gas from a pipeline or of LNG or gas from an LNG facility, [**and one of the following:**] which results in estimated property damage, including the cost of gas lost of the operator or others, of at least \$50,000 in market value.

[(i) A death, or personal injury necessitating inpatient hospitalization.

(ii) Estimated property damage, including cost of gas lost, of the operator or others, or both, of \$50,000 or more.

(2)] (4) An event that results in an emergency shutdown of an LNG facility.

[(3) An event that is significant, in the judgment of the operator, even though it did not meet the criteria of paragraph (1) or (2).]

(5) 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 Chapter 101 (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.

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

(c) [*Telegraphic*] *Telephone reports.* A report by telephone [**or telegraph**] shall be made at once in the event of the occurrence of a reportable accident [**resulting in the death of a person or in an occurrence of unusual nature**] under subsection (b)(1), (3), (4) and (5). A report by telephone shall be made within 24 hours of a reportable accident under subsection (b)(2) and (6).

(d) *Written reports.* A written report shall be made on Form UCTA-8 [**immediately following**] within 5 days of the occurrence of a reportable accident [**as defined in subsection (b)**]. Accidents reportable [**to the Commission which reports are also**] on forms required by the Bureau of [**Workmen's**] Workers' Compensation, Department of Labor and Industry, may be reported [**by transmitting**] to the Commission by filing a copy of the [**reports**] forms in lieu of a report on Form UCTA-8. The Commission will place blank UCTA-8 forms available for download on the Commission's web site.

(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)(1), (2) and (5). 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 Services, which may require quarterly status updates until completion of the report.

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:

- (1) The death [**or injury**] of a person.
- (2) Injury to a person sufficient that the injured person requires professional medical attention or hospitalization.

(3) An occurrence of an unusual nature, whether or not death or injury of a person results, which apparently will result in a prolonged and serious interruption of normal service [**of more than 3 days**].

(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 Chapter 101 (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.

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

(c) [*Telegraphic*] *Telephone reports.* A report by telephone [**or telegraph**] shall be made [**within 24 hours**] in the event of the occurrence of a reportable accident [**resulting in death of a person, or in the event of an occurrence of an unusual nature**] under subsection (b)(1), (3) and (4). A report by

telephone shall be made within 24 hours of a reportable accident under subsection (b)(2) and (5).

(d) *Written reports.* A written report shall be made on Form UCTA-8 within 5 days of the occurrence of a reportable accident. Accidents [which are also] reportable [to the] on forms required by the Bureau of [Workmen's] Workers' Compensation, Department of Labor and Industry, may be reported to the Commission by filing a copy of the [report submitted to that Bureau] forms in [place of] lieu of a report on Form [UCTA-8.19] UCTA-8. The Commission will place blank UCTA-8 forms available for download on the Commission's web site.

(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)(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 Services, which may require quarterly status updates until completion of the report.

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%, whichever is less, of their total customers have an unscheduled service interruption in a single [incident] event for [six] 6 or more projected consecutive hours. Written notification shall be filed with the Commission within [five] 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] must contain the following information:

(1) The [approximate number of customers involved in a single incident] total number of sustained outages during the event. Sustained outages are of a duration of 5 minutes or greater.

(2) [The geographic area affected, in terms of the county and local political subdivision] The approximate number of outage cases and trouble cases for each county affected during the event. Trouble cases are nonoutage 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.

[(4)] (7) The projected time for service restoration of the event.

[(5) The] (8) A listing of the number of utility workers [and others] 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.

[(6)] (11) The date and time of the first information of a service interruption.

[(7)] (12) The date and time that repair crews were assembled.

[(8) The date and time that the supervisor made the first call.

(9) The approximate time that repair work was started.

(10)] (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. The description must 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

(c) In addition to the requirements of subsection (b), the utility shall notify the Commission by telephone within [one] 1 hour after preliminary assessment of conditions reasonably indicates that the criteria listed in subsection (b) may be applicable. [The first four items] Subsection (b)(1), (2), (3), (6) and (7) shall be used as guidelines for the telephone report. The Commission will maintain telephone lines for this purpose and will notify each utility of the numbers to be called. **Blank outage reporting forms will be posted on the Commission's web site and will be available for download.**

* * * * *

(e) All electric, gas, water and telephone utilities shall list in the local telephone directories of their service areas, **and on their web sites**, a telephone number to be used during normal operating hours and an emergency telephone number to be used 24 hours in emergency service situations.

[Pa.B. Doc. No. 10-392. Filed for public inspection March 5, 2010, 9:00 a.m.]