

RULES AND REGULATIONS

Title 52—PUBLIC UTILITIES

PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

[L-2009-2104274]

Utilities' Service Outage Response and Restoration Practices

The Pennsylvania Public Utility Commission on September 22, 2011, adopted a final 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 Pennsylvania Public Utility Commission (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, in order to revise its regulations regarding service outages at 52 Pa. Code §§ 67.1, et seq., and reportable incidents at 52 Pa. Code §§ 57.11, 59.11, and 65.2.

The Proposed Rulemaking Order entered on November 10, 2009 at Docket No. L-2009-2104274 proposed 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.

The Final Rulemaking Order seeks to benefit millions of Pennsylvania consumers 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
September 22, 2011

Commissioners Present: Robert F. Powelson, Chairperson, joint statement follows; John F. Coleman, Jr., Vice Chairperson, joint statement follows; Wayne E. Gardner; James H. Cawley; Pamela A. Witmer

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

Final Rulemaking Order

By the Commission:

On November 6, 2009, the Commission issued a proposed rulemaking order inviting comment regarding proposed amendments to our current regulations regarding service outages at 52 Pa. Code §§ 67.1, et seq., and reportable accidents at 52 Pa. Code §§ 57.11, 59.11 and 65.2. On April 30, 2009, the Commission adopted the Joint Motion of Vice Chairman Tyrone J. Christy and Commissioner Kim Pizzingrilli to initiate a rulemaking proceeding to revise our regulations on Service Outages at 52 Pa. Code §§ 67.1, et seq., and reportable incidents at 52 Pa. Code sections 57.11, 59.11 and 65.2. Based upon our review and consideration of the many comments filed in this rulemaking proceeding by the industry, statutory advocates and other interested persons, we shall adopt final-form regulations regarding utility reporting of service outage and reportable incidents.

Procedural History

On September 14 and 15, 2008, Hurricane Ike swept through Pennsylvania interrupting electric service to over 450,000 customers. Prompted by this occurrence, on September 25, 2008, Vice Chairman Tyrone J. Christy and Commissioner Kim Pizzingrilli issued a Joint Motion 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 Pennsylvania regarding their service restoration and public notice practices. On the same date, the Commission issued a Secretarial Letter and initiated an investigation into EDCs' service outage responses and restoration practices with the same information requested. EDCs filed responses. 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 Chairman Tyrone J. Christy and Commissioner Kim Pizzingrilli to initiate a rulemaking proceeding to revise our regulations on Service Outages at 52 Pa. Code §§ 67.1, et seq., and reportable incidents at 52 Pa. Code

Sections 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 Order.

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.

- 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), 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.¹

Discussion

On November 6, 2009, we issued a Proposed Rule-making Order inviting comment regarding proposed amendments to our current regulations regarding service outages at 52 Pa. Code §§ 67.1, et seq., and reportable accidents at 52 Pa. Code §§ 57.11, 59.11 and 65.2. Our goal is to have even more effective responses to future unscheduled service outages.

In general, under sections 57.11, 59.11 and 65.2, we proposed 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 proposed establishing deadlines for reporting accidents.

Under section 67.1, we proposed 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 section 67.1 included reporting the number of not only utility workers, but also contract workers specifically assigned to the repair work and mutual aid workers.

Comments have been received from the following: Verizon Pennsylvania, Inc., Verizon North, Inc. and MCI Metro Access Transmission Services, LLC d/b/a Verizon Access Transmission Services (Verizon), Pennsylvania Telephone Association (PTA), UGI Utilities, Inc.,

¹ This report also included the following recommendations which will be addressed in a separate Final Policy Statement Order:

- 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.

UGI Penn Natural Gas, Inc., and UGI Central Penn Gas, Inc. (UGI), Office of Consumer Advocate (OCA), Philadelphia Gas Works (PGW), Allegheny Power, Pennsylvania AFL-CIO Utility Caucus (AFL-CIO), Duquesne Light Company (Duquesne Light), PPL Electric Utilities (PPL), Metropolitan Edison Company, Pennsylvania Electric Company and Pennsylvania Power Company (First-Energy), Energy Association of Pennsylvania (EAP), PECO Energy Company (PECO), Columbia Gas of Pennsylvania, Inc. (Columbia Gas), National Fuel Gas Distribution Corporation (National Fuel), West Penn Power Company d/b/a Allegheny Power (West Penn), and the Independent Regulatory Review Commission (IRRC).

We have reviewed and addressed these comments below.

Comments

General Comments

IRRC requested that the Commission provide an explanation of its statutory authority for the amendments that it is proposing as it pertains to the telephone industry and the water/wastewater industry. IRRC further requested that the Commission explain the need for additional reporting requirements, especially for the gas and water/wastewater industries given that the past concerns related specifically to the electric utility industry. IRRC Comments, p. 1-2.

IRRC questions whether telephone companies will be required to comply with Chapter 67; what is the need for imposing additional requirements on the telephone industry; and asks what problem the Commission is attempting to address. IRRC Comments, p. 2.

Resolution

The Commission's specific statutory authority for the amendments proposed pertaining to the telephone and the water/wastewater industry is from the Pennsylvania Public Utility Code at 66 Pa.C.S. § 1508 relating to reports of utility accidents. Additionally, the Commission has general statutory authority at § 501(a) relating to general powers, § 504 relating to reports by public utilities, § 505 relating to duty to furnish information to commission, and § 506 relating to inspection of facilities and records. Additional statutory authority for telephone utilities comes from 66 Pa.C.S. § 3019(b) relating to powers and duties retained and rules and regulations.

For gas utilities, we tailored our responses to federal gas safety requirements and consulted with Paul Metro, Gas Safety Division Chief. The need for revising these regulations is to keep it consistent with other industries. The Commission did mirror the revised regulation with the federal requirements and/or allows the filing of the federal form when it is consistent with the minimum requirements of the state form. This was done based upon the gas and telephone utilities' comments. With regard to the water section, the revised regulations actually make the reporting requirements easier on the water industry—see revised definition of accidents.

Regarding chapter 67 and whether telephone companies must comply with this section, the Commission agreed with IRRC's comments to consider allowing the submittal of reports required by the Federal Communications Commission (FCC). Furthermore, the Commission provided telephone companies with the option of either complying with subsections (a), (b), and (c) of chapter 67, excluding certain new information requirements or, in lieu of such reporting, the telephone companies may choose to file a comparable outage report required by the

FCC so long as the report contains at a minimum the required information. Accordingly, for a telephone utility that elects to file under the Section 67.1 requirements, there is no change from what is currently required.

We agree with commenters requests concerning filing the federal report and have revised the rulemaking to allow utilities to file the federal report. However, federal forms may change or be eliminated altogether. Thus, we need certain minimum requirements that are listed in the revised regulation. If for example, the federal form does not include the reason for the interruption, utilities can still file the federal form and write in the reason for the interruption.

Regarding Verizon's comments noting the FCC new rules and concerns regarding the confidential and proprietary nature of the documents. This concern is not persuasive, since telephone utilities have been required to file this information with the Commission for years and this has not been a problem. Telephone utilities could have filed a petition at any time regarding any confidential or proprietary concern and this was not done. Also, the documents will now be filed within 10 working days after the last affected customer is restored, which should address the concern of parties having access to outage location information in a manner and timeliness where mischief or criminal actions would be possible. Pursuant to the Commission order entered on December 30, 2005, Section 3015(f) Review Regarding The Lifeline Tracking Report, Accident Report and Service Outage Report, Docket No. M-00051900 the Commission ordered telephone utilities to continue to file service outage reports under 52 Pa. Code § 67.1.

Comments

Chapter 57. Electric Service § 57.11. Accidents.

§ 57.11(b)(2)

IRRC contends that commenters believe the standard; "sufficient that the injured person requires hospitalization" is too broad and would be overly burdensome on the utilities. IRRC Comments, p. 3. EAP, PECO, and FirstEnergy agreed that the requirement is too broad and overly burdensome because the utility may not have access to such information regarding a non-employee or an accident which occurs and is not directly related to the utility facility or operation. EAP Comments, p. 5, FirstEnergy Comments, p. 2, PECO Comments, p. 2-4. FirstEnergy suggests keeping the same language because it strikes the proper balance of distinguishing accidents that may require professional medical attention or hospitalization from serious accidents requiring medical attention. FirstEnergy Comments, p. 2. PPL believes the additional detail in the proposed regulation is not necessary and will provide little or no benefit relative to the additional effort and costs it will impose. PPL Comments, p. 2. PPL contends that the differentiation between employees and the general public as it currently exists is appropriate and treating employees and the general public equally in terms of reporting injuries is unnecessarily burdensome. PPL Comments, p. 3.

Duquesne submits that changing the reporting requirement to those who require professional medical attention would result in a significant increase in reporting and would result in the reporting of minor incidences. Duquesne Comments, p. 3-4. Duquesne requests that the Commission provide clarity in its regulations for reporting accidents, such as only instances of death or serious injury resulting from energized service facilities. Duquesne Comments, p. 5.

Resolution

In response to IRRC, Duquesne and EAP, the Commission notes and agrees with the comments made. The Commission, in response, has changed the language in section (b)(2) to "treatment at a hospital emergency room or in-patient admittance to a hospital, or both" to lessen the reporting burden on each utility. The Commission is in agreement that "professional medical attention" is too broad and would make reporting overly burdensome. This change should narrow the requirement and decrease the reporting instances.

The Commission, however, still contends that reporting is applicable to employees as well as non-employees because utilities must distinguish between them on the UCTA-8 and the Commission needs information regarding both. We are concerned with not just the safety of utility employees, but the public in general. Under Section 66 Pa.C.S. § 1501, utilities have a duty to provide safe and reliable service to the public. Distinguishing between employees and non-employees on the form goes to assisting the Commission to ensure that safe and reliable service. Utility workers are trained to operate safely. The Commission is charged with regulating utilities on safety. 66 Pa.C.S. § 1501.

As to FirstEnergy's comments, the Commission altered the original language to "treatment at a hospital emergency room . . ." in order to properly distinguish between serious and minor accidents that require medical attention and lessen the burden of additional reporting. In response to PPL's comments, requiring reporting only when an injury results in immediate treatment at a hospital emergency room and/or in-patient admittance to a hospital will cause less of a burden than any person who requires professional medical attention or hospitalization.

The Commission will not adopt a reporting standard of "only instances of death or serious injury resulting from energized service facilities." Additional reporting requirements ensure safe and adequate utility service. The Commission should be made aware of any serious injury that raises questions of public safety.

§ 57.11(b)(3)

OCA submits that the existing regulation appears to limit reporting to only prolonged or serious interruptions of normal service from "occurrences of an unusual nature." The OCA suggests that any accident, not just an unusual accident that results in a prolonged and serious interruption of normal service should be reportable. OCA recommends that the limiting language "of unusual nature" be removed from Section 57.11(b)(3). OCA Comments, p. 5.

Resolution

In response to OCA's Comments, the Commission believes that Chapter 67 Service Outages, Section 67.1 covers the concerns of the OCA in this section. The Commission does not find it necessary to expand this section or amend it.

§ 57.11(b)(4)

IRRC asserts that there is no need to report "suspected" occurrences of sabotage or attempts against cyber security measures. IRRC Comments, p. 3. Additionally, it questions whether the Commission considered allowing existing reporting protocols and requirements already approved by the North American Electric Reliability Corporation (NERC) and the Federal Energy Regulatory Commission (FERC). IRRC Comments, p. 3. Duquesne

also suggests that instead of imposing new requirements for acts of sabotage and cyber security attacks, that the new rulemaking leverage existing reporting protocols and requirements already established by NERC and FERC. Duquesne Comments, p. 5-6.

Under the Commission's provision, OCA contends that any attempt against cyber security measures triggers a reportable accident, even if there is no impact on the electric system or service to customers. It suggests that organizations already experience multiple cyber attacks daily, and the frequency of such attacks is increasing. OCA Comments, p. 5. OCA submits that the Commission should require reporting of attempted cyber security attacks, but the mechanism of reportable accidents with its specific requirements and timelines may not be the best place to receive such reports. OCA recommends that cyber security attacks that result in outages or interruptions of service could be reportable accidents, but those which do not result in interruptions or outages should not be subject to reporting. OCA Comments, p. 6.

PECO asserts that reporting highly sensitive information about its security in regards to cyber security threats is not in the public interest. PECO Comments, p. 4. This could result in the release of information in a civil proceeding, and ultimately, release of customer information and information that could compromise the safety of company facilities. PECO contends that only basic information should be reported without revealing sensitive security information. PECO Comments, p. 4.

Resolution

In response to IRRC's concerns, the Commission removed the term "suspected" from this section. This section now only requires reporting for "physical or cyber attack, including attempts against cyber security measures."

In response to OCA's comments, the Commission only requires reporting if the cyber attack causes an interruption of service and/or over \$50,000 in damages, therefore, the reporting requirement will be less burdensome than reporting any cyber attack. Further, the \$50,000 threshold is high enough to prevent reporting minor everyday occurrences but still allows the Commission to have knowledge of incidences that result in a significant expense.

In regard to PECO's comments, in subsection (e), the Commission provides that any information that would compromise the security of the utility or hinder an active criminal investigation may be removed from the written report.

As to OCA and Duquesne's comments, the Commission permits utilities to file alternative forms required by the Bureau of Workers' Compensation, Department of Labor and Industry, or the U.S. Department of Energy so long as these forms contain, at a minimum, the required listed information pursuant to Section 57.11(e). The Commission has allowed alternative forms; however, because federal forms can change sometimes more frequently than state forms, it would not be prudent to tie the information requirements to what is on a specific federal form. Thus, the alternative forms are acceptable as long as the specific required information is listed.

§ 57.11(b)(5)

IRRC states that the Commission already has access to the information requested in this section. IRRC Comments, p. 4. FirstEnergy states its concern with this section because it fails to define substantial damage.

Additionally, FirstEnergy is concerned that companies are unaware of instances of one utility causing substantial damage to the facility or property of another. FirstEnergy and PPL believe this additional reporting is unnecessary and duplicative because the Commission receives an incident report that includes this information from the Pennsylvania Department of Labor and Industry. FirstEnergy Comments, p. 3.

Resolution

The Commission notes and agrees with the comments filed in regard to this section, and as a result, has completely removed section (b)(5). The Commission has deemed it unnecessary because the same reporting is required by other state agencies.

§ 57.11(c)

Duquesne contends that accidents involving vehicles should not be segregated from any other reportable accident and suggests the same standard should apply. Duquesne opposes the requirement to report all accidents involving Company owned vehicles and recommends that motor vehicle and contact accidents be treated the same as any other accident. Duquesne Comments, p. 8.

Resolution

In response to Duquesne's comments, the Commission agreed that not every auto accident should be reportable. Under the exceptions at Section 57.11(c), we exclude all vehicle accidents other than those which involve a vehicle owned by the utility or driven by a utility employee while on duty or in which some or all of the injuries were a result of contact with electrified facilities. An example of a reportable vehicle accident is an accident involving a utility pole, with wires falling down resulting in harm to the driver or passenger from electrocution. Additionally, any accident in which a person is injured by a utility truck concerns the duty of public utilities to maintain safe, reasonable and adequate service under 66 Pa. C.S. § 1501.

§ 57.11(d)

PPL contends that a modification of the proposed time period is appropriate rather than requiring reporting "at once." PPL suggests that the reporting by telephone of such occurrence should be made within two working days, or 48 hours. PPL contends this will give them valuable additional time to properly evaluate the situation before being required to provide an initial report that may be based on incomplete information. PPL Comments, p. 5. FirstEnergy submits that the 24 hour time period is acceptable and further suggests that the notice requirement should be initiated at such time that a company gains knowledge of the reportable accident. First Energy Comments, p. 4. IRRC submits that the Commission should consider the concerns of the commenter's and provide an explanation of why the Commission's proposed timeframes are appropriate. IRRC Comments, p. 3.

Resolution

The Commission notes the comments and concerns of the utilities and decides to keep the 24 hour notice period after a utility becomes aware of a reportable action. Additionally, FirstEnergy agreed with the 24 hour timeframe to report an accident. The Commission is requiring the 24 hour reporting period due to the serious nature of the accidents defined by these regulations. As the state regulatory agency with the duty and responsibility to ensure that utilities provide safe, reasonable and adequate service, such reporting is both reasonable and prudent. In addition, because the Commission receives

inquiries from the media and needs to be informed of events that might involve media attention. Furthermore, the Commission is extending the time period for the written report until thirty days after the incident; therefore, the telephonic report should be timely. Moreover, if the incident is a cyber attack, the Commission will be able to notify other utilities so they can take any necessary precautions.

§ 57.11(e)

PECO asserts that a five day requirement for written reports may cause complications, especially if it takes longer than five days to make the area safe, restore service, or collect and review the data for accuracy. PECO recommends a reasonable period requirement for submitting reports, not to exceed one week after the accident is remedied and the area made safe. PECO Comments, p. 5. FirstEnergy agrees with a five day period to submit written reports but recommends clarification of the five days to be five working days. FirstEnergy Comments, p. 4. PPL states that the five day period is too short to provide complete information after the conclusion of the EDCs investigation. Duquesne and PPL recommend a longer period for reporting to ensure useful, complete, and accurate information. PPL Comments, p. 6, Duquesne Comments, p. 9. Duquesne recommends a thirty day period to report. IRRC asks the Commission to consider the timeframe concerns provided by the commenter's and respond why the timeframes are appropriate. IRRC Comments, p. 3.

Resolution

We note and agree with comments by PPL and Duquesne and changed the five day reporting period to a thirty day time period to submit the written report required under this section. We understand that not all pertinent information is available in that short time frame and we want to have the most complete information available so we will allow the extra time—or 30 days to complete the written report. This is also since we have already been made aware of the incident by the telephone notification within 24 hours required under subsection 57.11(d).

§ 57.11(f) *internal investigation reports*

PECO states that the internal investigation accident reports contain confidential information and attorney-client privileged information that is protected by the work product doctrine. Utility employees will be less open if they know their statements may become a public document, and therefore, the investigative reports will lose their value as a tool to understanding what happened in the accident and avoiding repeat accidents. PECO, FirstEnergy and PPL assert that reporting attorney-client privileged information to the Commission is a violation of Rule 1.6 of the Pennsylvania Rules of Professional Conduct. PECO Comments, p. 6, PPL Comments, p. 7, FirstEnergy Comments, p. 4. PPL suggests that any confidential information should be removed from the internal report if submitted to the Commission.

PPL contends that this requirement is unnecessary, provides no meaningful benefit, and could have significant legal ramifications. PPL Comments, p. 6. The submission of the written report is sufficient for the Commission to monitor incidents, and the internal investigation report will provide little or no additional benefit. PPL Comments, p. 7.

Resolution

The Commission notes the concerns expressed by PECO, PPL and FirstEnergy in regard to their internal

reports. We agree that adoption of a general rule to require the submission of such internal reports in all circumstances by regulation would be overbroad. A general rule that would require utilities to provide their internal investigation reports may damage or inhibit a utility's ability to manage its legal position and could impose on matters that evolve into litigated matters. Additionally, it could compromise the security of the utility or hinder an active criminal investigation and may be removed from the written report.

Accordingly, due to the above-mentioned concerns, the Commission has removed the entire subsection (f). Nevertheless, while we are removing this requirement as a general rule, we note that this in no way limits the Commission's authority to require, on a case by case basis, any follow up information, data, documents, or reports deemed necessary by the Commission to investigate an outage or accident pursuant to 66 Pa.C.S. §§ 504—506. Lastly, we have added a new subsection (g) to incorporate this authority in these regulations.

Chapter 59. Gas Service § 59.11 Accidents.

§ 59.11(b)(2)

UGI, PECO and Columbia assert that expanding the definition to include “injury to a person sufficient that the injured person requires professional medical attention” is overbroad and would require each utility to report when an individual is merely examined by a paramedic and is deemed fine. UGI Comments, p. 6-7, Columbia Comments, p. 5, PECO Comments, p. 8. UGI suggests requiring a personal injury report only where there is a release of gas from a pipeline and the injury necessitates inpatient hospitalization. UGI Comments, p. 7. PGW states that there is no definition of the term “professional medical attention,” and as a result, it is uncertain what level of injury must be reported. PGW Comments, p. 2.

Resolution

The Commission agrees with the commenters and has changed the reporting requirement from “injured persons requiring professional medical attention or hospitalization” to “an injured person who requires immediate treatment at a hospital emergency room or in-patient admittance to a hospital, or both.” The Commission is in agreement that the “professional medical attention” is too broad and would make reporting overly burdensome.

§ 59.11(b)(5)

IRRC questions the need for reporting “suspected” occurrences of sabotage or attempts against cyber security measures. Additionally, IRRC asks whether the Commission has considered allowing existing reporting requirements already approved by NERC and FERC. IRRC Comments, p. 3.

PGW suggests that instead of requiring reporting of insignificant computer/cyber events, the regulation should instead require reporting in occurrences that result in a service outage and is reported to the police or a government agency which performs police functions. PGW Comments, p. 2. Columbia asserts that it is already required to report cyber crimes to the Department of Homeland Security. Columbia Comments, p. 5.

PECO states that there is confusion as to what amount or what type of information the utility must report to the Commission. PECO is also concerned that reporting highly sensitive information about its security does not benefit the public interest because if the Commission has the information it could become discoverable in a civil court proceeding. This information could then be a threat

to the security of customer information and compromise the safety of the facilities. PECO Comments, p. 10. UGI is also concerned with the release of information to the public because of the chance it could interfere with criminal investigations of the incident that may involve terrorist or other organizations working against national interests. UGI suggests modifying the provision to excuse the report where it could interfere with an ongoing criminal or civil investigation or other matter involving the national interest. UGI Comments, p. 7.

Resolution

In response to IRRC's comments, the Commission has removed the language "suspected" and "determined to be caused by sabotage" and changed it to "physical or cyber attack." Additionally, the Commission has considered the existing reporting requirements already approved by NERC and FERC. The Commission asserts that NERC does not involve gas utilities. The Commission will allow gas utilities to use the form required by the Federal Department of Transportation through the Pipeline and Hazardous Materials Safety Administration (PHMSA) as long as this form has the minimum information required under this section. This requirement is consistent with the PHMSA forms that gas utilities have to send in whenever they have a physical or cyber attack. We allow them to file this federal form under Section 59.11(e) as long as it contains the minimum information.

In response to PECO and UGI's comments, in subsection (e), the Commission has provided that a utility may remove information that would compromise the security of the utility or hinder an active criminal investigation. This should eliminate any problems that are against the public interest or a threat to the security of customer information of utility facilities.

In regard to the comments filed by PGW and Columbia, the Commission believes that this information must be reported because the Department of Homeland Security does not have jurisdictional power over any of the utilities; therefore, it does not have regulatory power. The Commission, is not aware of any forms that are filed with the Department of Homeland Security. In addition, the Department of Homeland Security has no obligation to share information with the Commission.

The Commission has changed the \$25,000 threshold to \$50,000 for reporting incidences in this paragraph to be consistent with the federal standards for reporting by gas utilities. The Commission has limited this requirement to an occurrence as described, "which causes an interruption of service or over \$50,000 in damages, or both."

§ 59.11(b)(6)

PGW and PECO assert that damage to another utility company's facility or property would not rise to the level deemed "substantial" until the cost of repair exceeded \$50,000. PGW Comments, p. 2-3, PECO Comments, p. 10-11. UGI contends that the information required in this section is already available to the Commission under the Commonwealth's "Dig-Safe" Law administered by the Pennsylvania Department of Labor and Industry (L&I). UGI Comments, p. 8. The information is already made available to the Commission through the L&I pursuant to an inter-agency arrangement. UGI suggests that this would provide no additional benefit to the Commission, and therefore, should be rejected in the final rule. UGI Comments, p. 8.

Resolution

The Commission agrees with the comments filed by UGI and finds that the reporting of substantial damage

to another utility company's facility would provide no additional benefit. Also, this information is reported to other state agencies such as the L&I so we do not need to make them file with us as well. Therefore, the Commission has decided to remove this subsection from the regulation.

§ 59.11(c) exceptions

UGI asserts that a motor vehicle exception exists for electric utility accidents resulting in any injury; however, no exception has been proposed for gas utilities. UGI Comments, p. 9-10. UGI argues that gas utilities should not be required to report injuries that are sourced in motor vehicle accidents where electric utilities are exempt from reporting. UGI Comments, p. 10.

Resolution

The Commission agrees with UGI's comments and adds an exception for gas utilities in subsection (c), paragraphs (1) and (2). Additionally, we are making this consistent with the electric and water provisions at Sections 57.11(c)(1), (2) and Sections 65.2(c)(1), (2).

§ 59.11(c) telephone reports—now 59.11(d)

UGI states that "at once" is not a realistic standard for reporting an incident by telephone and asks the Commission to consider using a standard that does not require the utility to make any report immediately. UGI contends that utilities do not report at once, but actually report when they have made certain that they adequately understand the facts of the situation and can communicate those facts to the Commission. UGI asks the Commission to change the standard to "at the earliest practicable moment following discovery." UGI Comments, p. 10-11.

PGW contends that the 24 hour reporting requirement should be 24 hours after the event is known to the utility. PGW Comments, p. 3.

Resolution

As we did with electric, the Commission has changed the standard from "at once" to "immediately after the utility becomes aware of the occurrence of a reportable accident." The Commission made this change in response to UGI's comments to clarify the time period in which the utility must report to the Commission by telephone. For events under subsection (b)(1), (3), (4), and (5) the reporting time period is now "immediately after the utility becomes aware of the occurrence of a reportable event." For events under subsection (b)(2), in response to PGW's comment, the Commission has changed the standard to "within 24 hours after the utility becomes aware of a reportable accident."

§ 59.11(d) written reports—now section 59.11(e)

IRRC asks the Commission to consider the proposed timeframe and whether it is appropriate for making a written report. IRRC Comments, p. 3. Columbia asserts that the timeframe to make a written report should be changed from five days to thirty days, making it consistent with the federal reporting requirements. Columbia is concerned that five days may not be enough time for a utility to collect accurate data and fully assess it. Columbia fears that this requirement will likely result in an increase in the number of amended reports. Columbia Comments, p. 5-6. PECO agrees that the timeframe is too short to file a report but recommends a time not exceeding one week after the circumstances of the accident is remedied to submit the written report. PECO Comments, p. 11. UGI also proposes a thirty day reporting require-

ment because a five day is insufficient to gather the information needed for the report, particularly in instances where there is a release of natural gas with significant resulting property damage and injuries to the person. UGI Comments, p. 11.

Resolution

The Commission notes and agrees with the comments filed alleging that the timeframe is not long enough to provide adequate and sufficient information in a written report. For the reasons discussed, the timeframe to file a written report with the Commission has been changed from five days to thirty days after the occurrence of a reportable accident. We are allowing this extra time to file the written report since we have already been made aware of the incident by telephone notification as required under subsection 59.11(d).

§ 59.11(e) *internal investigation reports*

UGI opposes the imposition of a requirement to provide internal investigation reports because the matters potentially evolve into litigated matters of a civil or criminal nature. UGI contends that exposing the mental impressions and thought processes of counsel could greatly damage the utility's ability to manage its legal position in those matters. UGI, PECO and PGW state that this subsection may violate the attorney-client privilege. UGI Comments, p. 12, PECO Comments, p. 11, UGI suggests deleting this section, or at minimum, allowing the utility to redact any information that may compromise an expert, consultant or legal opinion. UGI Comments, p. 12.

Resolution

The Commission notes the concerns expressed by PECO, UGI, and PGW in regard to their internal reports. We agree that adoption of a general rule to require the submission of such internal reports in all circumstances by regulation would be overbroad. A general rule that would require utilities to provide their internal investigation reports may damage or inhibit a utility's ability to manage its legal position and could impose on matters that evolve into litigated matters. Additionally, it could compromise the security of the utility or hinder an active criminal investigation and may be removed from the written report.

Accordingly, due to the above-mentioned concerns, the Commission has removed the entire subsection (e). Nevertheless, while we are removing this requirement as a general rule, we note that this in no way limits the Commission's authority to require, on a case by case basis, any follow up information, data, documents, or reports deemed necessary by the Commission to investigate an outage or accident pursuant to 66 Pa.C.S. §§ 504—506. Lastly, we have added a new subsection (g) to incorporate this authority in these regulations.

Chapter 65. Water Service § 65.2 Accidents.

§ 65.2(b)(2)

OCA contends that accident reports should specifically identify whether injuries were to employees, on duty or off duty, or to non-employees. OCA Comments, p. 10.

Resolution

The Commission agrees with the comments made by OCA. The UCTA-8 reporting form currently requires that each utility distinguish whether the injury was to an employee or a non-employee. This is already in the form. See attached UCTA-8 form. We did not remove this distinction or change that on the form. Additionally, the Commission changed the reporting requirement from an

injury that requires "professional medical attention or hospitalization" to an injury that requires "immediate treatment at a hospital emergency room or in-patient admittance to a hospital, or both." This requirement was changed by the Commission to avoid the inconvenience to a utility by requiring it to report minor injuries.

The Commission has also changed this provision to allow water utilities to report accidents to the Commission using the forms required by the Bureau of Workers' Compensation, Department of Labor and Industry. See § 65.2(e).

§ 65.2(b)(3)

OCA asserts that any accident that results in a prolonged and serious interruption of normal utility service should be reportable not just those "of an unusual nature." OCA Comments, p. 11.

Resolution

The Commission has kept the requirement that only an occurrence of an unusual nature should be reported under this paragraph because other regulations by the Commission require utilities to report service outages depending on number of customers affected, etc. Occurrences of an unusual nature are rare but the Commission needs to know if a serious service interruption occurs that does not fall under one of the other sections for reporting, but happens to be of an unusual nature. For example, if tornado damage in a small town affects only 400 people; but causes an interruption of service to those people, it must be reported to the Commission because it is unusual and of a significant nature for that particular town.

§ 65.2 (b)(4)

OCA submits that a "reportable accident" for the purposes of this section should include cyber security attacks that result in an interruption in utility service to customers while cyber security attacks that do not result in service interruptions should be reported to the Commission through a separate process. OCA Comments, p. 11.

Resolution

The Commission agrees that cyber attacks that result in an interruption should be reported to the Commission but also contends that those attacks that result in over \$50,000 in damages should also be reported because this is a large enough threshold that it will not burden utilities with reporting everyday minor incidences. If we required them to report every cyber attack, this would require a significant amount of reporting since this happens every day. We changed this to make the requirement threshold \$50,000 in damages. This threshold is significant damages so that every daily incident will not be reported. This is also consistent with the federal regulations.

§ 65.2(b)(5)

IRRC asks the Commission to explain why it is appropriate for the utility that causes the damage to report the accident and not the utility whose property was damaged. IRRC Comments, p. 4.

Resolution

The Commission has decided to remove this entire section because the Commission already receives an incident report that includes this information from the Pennsylvania Department of Labor and Industry. The Commission has deemed it unnecessary to include this section because the same reporting is required by other state agencies.

§ 65.2 (c)

The Commission has added a section for exceptions for reportable accidents caused by certain motor vehicles resulting in injury to make it consistent with electric and gas utilities provisions at §§ 57.11(c) and 59.11(c) respectively.

§ 65.2(c) telephone reports now Section 65.2(d)

IRRC asks the Commission to explain why a report by telephone should be made within 24 hours of a reportable accident. IRRC Comments, p. 3.

Resolution

The Commission needs to be notified immediately upon the utilities becoming aware of an accident under subsections (b)(1), (3), and (4). This was changed to make it consistent with the requirements for the electric and gas utilities. Reportable accidents, as defined herein, are serious in nature and should be disclosed as soon as possible to the state regulatory agency with the duty and responsibility to ensure that utilities provide safe, reasonable and adequate service, such reporting is both reasonable and prudent. In addition, for newsworthy events that would involve media inquiries such as deaths and actual physical cyber attacks, it is important that the Commission is notified by telephone immediately upon the utility becoming aware of the event.

§ 65.2(d) written reports, now Section 65.2(e)

IRRC asks the Commission to explain why a written report should be made within five days of a reportable accident. IRRC Comments, p. 3.

Resolution

The Commission changed the five day requirement of a written report to thirty days for the convenience of the utility companies. Additionally, this extra time will allow the companies to provide an accurate and complete report to the Commission. This section was changed to make it consistent with electric and gas utilities.

§ 65.2(e) internal investigation reports

IRRC states that commenters are concerned with this section because internal investigative reports are often prepared in anticipation of litigation or criminal proceedings. Providing this information may also violate the attorney-client privilege and the Pennsylvania Rules of Professional Conduct. IRRC Comments, p. 4. IRRC recommends allowing utilities to redact information that would harm the utility or allow an exemption or waiver from this requirement. IRRC Comments, p. 4-5.

Resolution

The Commission agrees with the concerns of the commenters and has eliminated this section in its entirety. We agree that adoption of a general rule to require the submission of such internal reports in all circumstances by regulation would be overbroad. A general rule that would require utilities to provide their internal investigation reports may damage or inhibit a utility's ability to manage its legal position and could impose on matters that evolve into litigated matters. Additionally, it could compromise the security of the utility or hinder an active criminal investigation and may be removed from the written report.

Accordingly, due to the above-mentioned concerns, the Commission has removed the entire subsection (e). Nevertheless, while we are removing this requirement as a general rule, we note that this in no way limits the Commission's authority to require, on a case by case

basis, any follow up information, data, documents, or reports deemed necessary by the Commission to investigate an outage or accident pursuant to 66 Pa.C.S. §§ 504—506. Lastly, we have added a new subsection (g) incorporate this authority in these regulations.

Chapter 67. Service Outages § 67.1. General Provisions § 67.1(b)

IRRC states its concern for the additional reporting obligations by utilities and states that commenters suggest that the original requirements are sufficient. IRRC questions the need for the additional information and how it will be used by the Commission.

Verizon contends that the Commission should not increase its service outage requirements for telephone companies. Verizon Comments, p. 2. Verizon submits that the Commission's statutory limitations on its authority to require telephone carrier reporting in 66 Pa.C.S. § 3014(f) and the Commission's representation to IRRC that the new rules are optional for telephone carriers requires the Commission to modify its proposed regulations to limit its application. Verizon Comments, p. 2. Verizon asserts that the Commission has made no finding that the substantial level of detail for service outage reporting meets the standards under 66 Pa.C.S. § 3015(f)(1). Verizon Comments, p. 7.

PECO states that the five days allotted to compile, review, and submit the information, in addition to the information already requested, is not enough time. PECO is concerned with the cost involved in compiling an extensive report and is worried that PECO will still be fulfilling restoration obligations during this time period. PECO Comments, p. 14. Additionally, IRRC maintains that there have been concerns raised about the timeframes in submitting written reports after the restoration of service and requests that the Commission provide an explanation of why the timeframe is appropriate. IRRC Comments, p. 3. Further, EAP contends that the five day timeframe may lead to reporting inaccurate information because the time is not sufficient. EAP Comments, p. 7. FirstEnergy also finds that the collection of additional information within this timeframe is overly burdensome and extremely difficult to do. FirstEnergy Comments, p. 5. Lastly, Duquesne states that it cannot compile the data with its existing technology quickly. Duquesne Comments, p. 10.

The PTA commented that it did not oppose changing the word "incident" to "event", although, the PTA does not find it necessary to make this change, because the current regulation has already been consistently implemented as an "event," rather than individual incidents. PTA Comments, p. 10.

Resolution

In response to IRRC, the additional information collected by the Commission will go to the Commission's review of each utility's response to outages and to the reliability and restoration of the outage. The additional information will also be used for any follow-up site visits and for inquiries. As noted in the original order, several utilities already provide this additional information. Further, we exempted telephone, gas and water utilities from these additional regulations. There is no reason a utility cannot provide this information since the Commission has extended the time deadline and expanded the geographic area.

As to Verizon's comments regarding the application of the reporting requirements to telephone companies, we

agree with the comments and revised the section to accurately reflect them. As discussed in the general comments section to this final rulemaking order, the Commission did not add to or change any of the current reporting requirements for telephone companies. Section 67.1 has an exception for telephone utilities at subsection (f)(3) that exempts telephone utilities from the general obligation to file information required under subsections (b)(2), (4), (5), (8), (9), (10), (12), (14), (15), and (16).

We agree with commenters requests concerning filing the federal report and have revised the rulemaking to allow utilities to file the federal report. For this reason, the Commission has provided telephone utilities with the option of filing, in lieu of the section 67.1 information, the comparable FCC report—so long as it contains, at a minimum, the information required under subsections 67.1(b)(1), (3), (6), (7), (11), and (13).

The Commission notes and agrees with the concerns and suggestions made by the various commenters regarding the timeframe to compile and produce the additional outage reporting requirements. To allow utilities additional time to fulfill their reporting obligations and to provide for greater accuracy under section 67.1, the Commission has modified this section to permit reporting in ten (10) working days after the total restoration of service instead of five (5) working days.

The Commission finds it crucial to change the language to “event” instead of “incident” because a single incident could be construed to mean a single outage order, which would rarely rise to the level of 2,500 or 5 percent of total customers. Further, single incident could be construed to mean an outage incident in a specific area of the service territory.

§ 67.1(b)(1)

Duquesne asserts that it cannot automatically differentiate customers on outage duration of greater or less than five minutes. If this requirement is finalized, Duquesne would have to review and process the information manually. Determining the “total number of sustained outages” for any event will involve a large volume of data. Duquesne suggests that the Commission retain the language “approximate number of customers involved in a single incident.” Duquesne Comments, p. 10. Furthermore, Duquesne believes that the utility and the Commission cannot accurately assess the magnitude of an event by reviewing only the “total number of sustained outages.”

PTA opposes the new standard using the term “sustained outage” as defined as a loss of service for “5 minutes or greater.” PTA contends that the Commission is incorrect in assuming that technical advances have given utility companies better software systems capable of calculating sustained outages more accurately. It states that separately identifying outages that exceed 5 minutes but do not rise to the level of a 6 hour outage would require changes to the current track and remedy platforms with no measureable benefit in return. PTA suggests that the proposed modification should be rejected. IRRRC submits a question as to whether the Commission will require this data if the utility is not equipped to capture this type of data and does not have the technology to readily produce the data.

PGW contends that gas and other utilities should not be grouped together because gas outages are rare and the facilities and infrastructure are considerably different. PGW suggests that subsection (b)(1) creates a burden on

it because it does not have the software systems that would track the outages by the minute, hour, or day. PGW Comments, p. 4-5.

Resolution

The Commission agrees with Duquesne and PTA and retains, with only a slight alteration, the language as is: the “approximate number of customers interrupted during the event.” The Commission finds it important to change the language to event instead of incident because a single incident could be construed to mean a single outage order, which would rarely rise to the level of 2,500 or 5 percent. Further, single incident could be construed to mean an outage incident in a specific area of the service territory. PGW will not be burdened by the lack of software systems to track outages by the minute, hour, or day because the requirement has been removed and the regulation only requires the approximate number of customers involved.

§ 67.1(b)(2)

PTA objects to subsection (b)(2) because of the additional requirement of reporting trouble, or non-outage, cases. PTA asserts that its Member Companies currently have systems in place to report network outages separately from trouble reports and to combine both into a new, revised service outage report would require changes to their current program. PTA states that this will negatively impact its Member Companies’ financial and personnel resources. PTA Comments, p. 11.

Duquesne is in support of the additional requirements; however, it does not support the time period in which it must produce the additional data because workers are exhausted from working extended hours to restore service and clean-up activity is underway after restoration of service. Duquesne Comments, p. 11.

PGW and UGI contend that gas utilities should not be subject to the same heightened reporting requirements as electric utilities. PGW Comments, p. 4, UGI Comments, p. 17. UGI asserts that gas facilities are located underground and, therefore, lack susceptibility of widespread outages. UGI Comments, p. 17. Columbia states that (b)(2) is not applicable to gas utilities because “trouble cases [that] are non-outage cases such as line-down calls and emergency calls” are undoubtedly inapplicable to gas utilities because of infrastructure differences. Columbia Comments, p. 6.

Resolution

First, as explained in the Commission’s order adopted December 15, 2005 at Docket No. M-00051900, there is a fundamental nexus between service quality, as measured by the service outage reports, and whether regulated telephone rates are just and reasonable. Moreover, in the Commission’s judgment, the benefits of obtaining this information will substantially outweigh the burden of providing it, especially since the information is already compiled by telephone utilities in the normal course of business. If providing the information in a single report is problematic, the Commission will accept two separate documents in satisfaction of this reporting requirement. Lastly, the Commission believes the data should be separated by geographic area because the utilities have the technological ability to track and report information in this manner.

We disagree with UGI that gas utilities lack susceptibility of widespread outages as demonstrated by Hurricane Lee, however, we recognize the limitations of gas utilities given their tracking systems, and therefore we

will make an exception under subsection (f)(1). This removes the requirement for gas utilities to submit the data required by subsection (b)(2). Additionally, subsection (f)(2) also exempts water utilities from reporting data required by subsection (b)(2).

The Commission agrees with the concerns of Duquesne and has scaled back the reporting requirement from 5 days to 10 days.

§ 67.1(b)(3)

PTA states that it is in opposition of the use of the term “sustained outages” in this section; however, it does not object to providing the approximate number of customers with no service for 6 or more hours by county. PTA Comments, p. 12.

Resolution

Regarding subsections (b)(1) and (b)(3), the Commission agrees with PTA and removes the word “sustained” from the regulation because a five minute outage does not fit the generally accepted understanding of sustained: continuous, chronic, unrelenting, unremitting, prolonged, or lasting. The Commission agrees that it would be overly burdensome for utilities to separately identify service losses involving a five minute increment. Subsection (b)(3) now states “the approximate number of outage cases.” The Commission removed the term “sustained and added the word cases.”

§ 67.1(b)(4)

PGW asserts that it does not have the current systems or capability to report outages on a per customer basis; it would only have knowledge of the area affected and an estimated number of customers affected. PGW Comments, p. 5.

PTA suggests removal of subsections (4) and (5) because they become redundant because of its suggested changes to subsection (b)(2).

Resolution

The Commission agrees that the utilities may not be able to track on a per customer basis; however, the Commission is only requesting the total number of outage cases and total number of customers affected. The utilities are not required to report on a per customer basis. As to PTA’s comments, telephone utilities are not required to report information under subsections (b)(4) and (5) pursuant to the exceptions for telephone utilities in subsection (f)(3).

§ 67.1(b)(5)

Regarding subsection (b)(5)(i), IRRC submits a question as to whether the Commission will require this data if the utility is not equipped to capture this type of data and if the utility does not have the technology to readily produce the data.

PGW asserts that it does not have the current systems or capability to report outages on a per customer basis; it would only have knowledge of the area affected and an estimated number of customers affected. PGW Comments, p. 5.

FirstEnergy objects to reporting outages by municipality or township because the Companies represented by FirstEnergy currently have a system in place to provide data by county and city as a result of the service address provided by the customer. FirstEnergy states that it cannot provide the information by township at this time. FirstEnergy suggests that the level of reporting by geo-

graphic location be identified as “county or city” as an alternative. FirstEnergy Comments, p. 5-6.

PGW and UGI contend that gas utilities should not be subject to the same heightened reporting requirements as electric utilities. PGW Comments, p. 4, UGI Comments, p. 17. UGI asserts that gas facilities are located underground and, therefore, lack susceptibility of widespread outages. UGI Comments, p. 17.

Resolution

The Commission agrees with FirstEnergy and has changed the geographic location in (b)(5)(i). To correspond to the comments, we added that approximate geographic information could be provided by county, city, municipality or township. Because of the data collecting systems currently in place by many utilities, the Commission believes it would be excessively burdensome to require a new system to collect by only municipality or township, so now utilities can also report by county or city. Systems should be able to find this information.

With regard to PGW comments concerning reporting outages on a per customer basis, the Commission does not require reporting by customer. Instead, the Commission requests an approximate location and number of customers affected.

§ 67.1(b)(7)

PTA does not find the words “of the event” necessary because it is generally understood that the projected time for service restoration means an estimate when all interruptions will be restored. Additionally, PTA states that it is not the event that is restored, therefore, the words at the end of the sentence appear awkward. PTA Comments, p. 12.

Resolution

The Commission finds it essential to use the word “event” rather than “incident” because a single incident could be construed to mean a single outage order, which would rarely rise to the level of 2,500 or 5 percent. Further, single incident could be construed to mean an outage incident in a specific area of the service territory.

§ 67.1(b)(10)

The OCA suggests that this section should require reporting on both the use of mutual aid by Pennsylvania utilities and the use of Pennsylvania utility assets as part of mutual aid to other states. OCA Comments, p. 10.

Resolution

The Commission disagrees with the OCA’s comments because, if the utility is having a chapter 67 reportable event, we do not expect that the utility will be relocating their crews indiscriminately. We do not wish to micromanage the utility’s response to these outage situations. The utility does not need to tell us where it is sending its crews. We do not need this additional information.

As a courtesy, electric utilities typically inform staff that they are sending mutual aid to another state although this is not required. Mutual aid in the electric industry has been practiced for over fifty years and is in the public interest. Utilities that send aid are fully reimbursed for their costs. These companies already have well established crisis and reimbursement schedules.

§ 67.1(b)(15)—(16)

PTA opposes the requirements set forth in subsections (b)(15) and (16) because the data has no benefit to affected customers or to the Companies represented by

PTA. PTA asserts that customers will have experienced the weather first hand and, therefore, the information will have no benefit to them. Additionally, PTA contends that most outages, when caused by weather, are statewide, and therefore, the Commission will already have knowledge of it. PTA Comments, p. 12. PTA states that the historical information can arguably benefit the Commission for comparison purposes; however, the data has no bearing on the status of the current service interruptions or their repairs. PTA maintains that this additional requirement imposes a burden on the Companies and provides no benefit to gaining customer good will or keeping the Commission informed. PTA Comments, p. 13.

PGW and UGI contend that gas utilities should not be subject to the same heightened reporting requirements as electric utilities are subject to. PGW Comments, p. 4, UGI Comments, p. 17. UGI asserts that gas facilities are located underground and, therefore, lack susceptibility of widespread outages. UGI Comments, p. 17. Moreover, PECO states that natural gas events do not require reports on the utility weather reports, outlooks or scenarios for the day of and day prior to the event and the historical data of the past two events for comparison purposes.

Resolution

Telephone companies, pursuant to (f)(3) are not required to provide the information in subsections (b)(15) and (16).

With regard to the gas utility commenters, the Commission agrees that it is not necessary for gas utilities to report the weather and historical data. To resolve this, the Commission created an exception in (f)(1) and (2) for gas and water utilities respectively, excluding those utilities from the reporting requirements in subsections (b)(15) and (16).

Furthermore, for all utilities, under subsection (16), the collection of historical data, only requires the best of the utility's ability to access the historical data.

§ 67.1(c)

Duquesne does not object to the one hour reporting requirement to the Commission by telephone; however, it states that it cannot compile sustained outage data due to its system within the one hour timeframe. Duquesne Comments, p. 12. Duquesne suggests allowing EDCs the option of reporting either under the current requirement on the "approximate number of customers involved in a single incident" or under a "sustained outage." Additionally, Duquesne asserts that during the time after a disruption, it is gathering resources, fact-finding, and analyzing, as well as, restoring service as quickly as possible. Duquesne Comments, p. 12. Duquesne suggests reporting to the Commission when supportable findings and assessments are made so long as that time period does not exceed three hours. Duquesne Comments, p. 13.

PTA contends that the forms provided by the Commission should be optional to ensure efficient and expedient reporting. PTA Comments, p. 13-14. Further, PTA suggests that paragraphs (b)(6) and (7) be removed to reflect PTA's suggested changes in prior sections. PTA Comments, p. 14.

Resolution

In response to Duquesne's concern regarding the telephone notification within one hour, § 67.1(b) only requests the information from subsections (b)(1), (3), (6) and (7). A more detailed report is required under 67.1(b)

within 10 days of total restoration when the utility will more easily have the information required.

The Commission agrees that the forms provided on the Commission's web site are for use at the utilities' option. Further, the Commission is providing the forms to facilitate ease in reporting service outages. Additionally, telephone companies can opt out of reporting under subsections (b)(15) and (16) under the exception in (f)(3). Nevertheless, while we are removing this requirement as a general rule, we note that this in no way limits the Commission's authority to require, on a case by case basis, any follow up information, data, documents, or reports deemed necessary by the Commission to investigate an outage or accident pursuant to 66 Pa.C.S. §§ 504—506. Lastly, we have added a new subsection (g) incorporate this authority in these regulations.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on February 18, 2010, the Commission submitted a copy of the notice of proposed rulemaking, published at 40 Pa.B. 1203 (March 6, 2010), to IRRC and the Chairpersons of the House Committee on Consumer Affairs and the Senate Committee on Consumer Protection and Professional Licensure for review and comment.

Under section 5(c) of the Regulatory Review Act, IRRC and the House and Senate Committees were provided with copies of the comments received during the public comment period, as well as other documents when requested. In preparing the final-form rulemaking, the Commission has considered all comments from IRRC, the House and Senate Committees and the public.

Under section 5.1(j.2) of the Regulatory Review Act (71 P. S. § 745.5a(j.2)), on November 16, 2011, the final-form rulemaking was deemed approved by the House and Senate Committees. Under section 5.1(e) of the Regulatory Review Act, IRRC met on November 17, 2011, and approved the final-form rulemaking.

Conclusion

Accordingly, pursuant to Sections 501, 504, 505, 506, 1501, 3009(b), (d), and 2801, et seq., and the regulations promulgated thereunder at 52 Pa. Code §§ 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 at 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 745.5 of the Regulatory Review Act, 71 P. S. § 745.5 and Section 612 of the Administrative Code of 1929, 71 P. S. § 232, and the regulations promulgated thereunder at 4 Pa. Code §§ 7.231—7.234, we will adopt as final the proposed revisions to Sections 57, 59, 65, and 67 as set forth in Annex A; *Therefore,*

It Is Ordered That:

1. The regulations of the Commission, 52 Pa. Code Chapters 57, 59, 65 and 67, are amended by amending §§ 57.11, 59.11, 65.2 and 67.1 to read as set forth in Annex A.

2. The Secretary shall submit this order and Annex A to the Office of Attorney General for approval as to legality.

3. The Secretary shall submit this order and Annex A to the Governor's Budget Office for review of fiscal impact.

4. The Secretary shall submit this order and Annex A for review by the designated standing committees of both houses of the General Assembly, and for review and approval by IRRG.

5. The Secretary shall certify this order and Annex A with the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.

6. These regulations shall become effective upon publication in the *Pennsylvania Bulletin*.

7. This Final Order, Annex A and Report of Service Outage be posted on the Commission's web site.

8. The contact persons for this final-form rulemaking are Daniel Searforce, Bureau of Technical Utility Services, (717) 783-6159 (technical) and Patricia T. Wiedt, Law Bureau, (717) 787-5755 (legal). Alternate formats of this document are available to persons with disabilities and may be obtained by contacting Sherri DelBiondo, Regulatory Review Assistant, Law Bureau, (717) 772-4597.

9. A copy of this order and Annex A be served on all parties that filed comments at Docket No. L-2009-2104274 Utilities' Service Outage Response and Restoration Practices, 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.

ROSEMARY CHIAVETTA,
Secretary

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 41 Pa.B. 6470 (December 3, 2011).)

Fiscal Note: Fiscal Note 57-271 remains valid for the final adoption of the subject regulations.

*Joint Statement of Chairperson Robert F. Powelson
and Vice Chairperson John F. Coleman, Jr.*

Today the Commission is issuing final regulations setting reporting rules for our jurisdictional utilities for service outage and restoration practices. While these rules were not formally formalized before the historical outages resulting from the effects of Hurricane Irene and Tropical Storm Lee, we assure all interested parties that the Commission and utilities operated at the highest level of coordination. This can be demonstrated by the efforts of the Commission's emergency preparedness team, who spent countless hours coordinating service outage issues as well as communicating with utilities on restoration efforts.

However, anticipating flooding, various cities and municipalities, including the city of Harrisburg, directed PUC jurisdictional electric utilities to terminate service to thousands of homes and businesses throughout the affected parts of the Commonwealth. This was largely done without coordination with the Pennsylvania Emergency Management Agency (PEMA) or the Commission. In the future, we urge all cities and municipalities to coordinate such large-scale utility terminations with the PUC and PEMA through the State Emergency Operations Center. It is imperative that both residential and business customers receive adequate notice of such terminations; had such coordination taken place the Commission could have worked with the utilities to ensure this notice occurred. Additionally, the PUC and PEMA need such utility outage information for response and planning purposes.

We look forward to discussing this and other topics during the Commission's Special Electric Reliability Forum to be held on October 12, 2011 in Hearing Room 1 of the Commonwealth Keystone Building in Harrisburg.

ROBERT F. POWELSON,
Chairperson

JOHN F. COLEMAN, Jr.,
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.

(a) *General.* A public utility shall submit a report of each reportable accident involving the facilities or operations of the public utility in this Commonwealth to the Secretary of the Commission.

(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 immediate treatment at a hospital emergency room or in-patient admittance to a hospital, or both.

(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.

(4) An occurrence of an unusual nature that is a physical or cyber attack, including attempts against cyber security measures as defined in Chapter 101 (relating to public utility preparedness through self certification) that causes an interruption of service or over \$50,000 in damages, or both.

(c) *Exceptions.* Injuries, as defined in subsection (b)(1) and (2), may not include those suffered as a result of a motor vehicle accident with utility facilities unless one or both 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) *Telephone reports.* A report by telephone shall be made immediately after the utility becomes aware of the occurrence of a reportable accident under subsection (b)(1), (3) or (4). A report by telephone shall be made within 24 hours after a utility becomes aware of a reportable accident under subsection (b)(2).

(e) *Written reports.* A written report shall be made on Form UCTA-8 within 30 days of the occurrence of a reportable accident. For reportable accidents under subsection (b)(4), a utility may remove from Form UCTA-8 information that would compromise the security of the utility or hinder an active criminal investigation. Accidents reportable on forms required by the Bureau of Workers' Compensation, Department of Labor and Industry, or the United States Department of Energy, may be reported to the Commission by filing a copy of the forms

in lieu of a report on Form UCTA-8, as long as the alternative forms, at a minimum, provide the following information:

- (1) The utility name.
- (2) The date of reportable accident.
- (3) The date of report.
- (4) The location where the reportable accident occurred.
- (5) The name, age, residence and occupation of the injured or deceased parties.
- (6) The general description of the reportable accident.
- (7) The name and telephone number of the reporting officer.

(f) *Form availability.* Blank UCTA-8 forms are available for download on the Commission's web site.

(g) *Reports not exclusive.* The reporting under this chapter is not limited to the requirements in this section and does not limit requests for additional information.

**CHAPTER 59. GAS SERVICE
SERVICE AND FACILITIES**

§ 59.11. Accidents.

(a) *General.* Each public utility shall submit a report of each reportable accident involving the facilities or operations of the public utility in this Commonwealth as provided in this section. The reports shall be addressed to the Secretary of the Commission.

(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 immediate treatment at a hospital emergency room or in-patient admittance to a hospital, or both.
- (3) An event that involves a release of gas from a pipeline or of LNG or gas from an LNG facility, 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.
- (4) An event that results in an emergency shutdown of an LNG facility.
- (5) An occurrence of an unusual nature that is a physical or cyber attack, including attempts against cyber security measures as defined in Chapter 101 (relating to public utility preparedness through self certification) which causes an interruption of service or over \$50,000 in damages, or both.

(c) *Exceptions.* Injuries, as defined in subsection (b)(1) and (2), may not include those suffered as a result of a motor vehicle accident with utility facilities unless one or both 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 natural gas facilities transporting or storing natural gas or due to gas escaping from natural gas facilities.

(d) *Telephone reports.* A report by telephone shall be made immediately after the utility becomes aware of the occurrence of a reportable accident under subsection (b)(1), (3), (4) and (5). A report by telephone shall be made

within 24 hours after the utility becomes aware of a reportable accident under subsection (b)(2).

(e) *Written reports.* A written report shall be made on Form UCTA-8 within 30 days of the occurrence of a reportable accident. For reportable accidents under subsection (b)(5), a utility may remove from Form UCTA-8 information that would compromise the security of the utility or hinder an active criminal investigation. Accidents reportable on forms required by the Bureau of Workers' Compensation, Department of Labor and Industry, or the United States Department of Transportation, Pipeline and Hazardous Materials Safety Administration, may be reported to the Commission by filing a copy of the forms in lieu of a report on Form UCTA-8, as long as the alternative forms, at a minimum, provide the following information:

- (1) The utility name.
- (2) The date of the reportable accident.
- (3) The date of the report.
- (4) The location where the reportable accident occurred.
- (5) The name, age, residence and occupation of the injured or deceased parties.
- (6) The general description of the reportable accident.
- (7) The name and telephone number of the reporting officer.

(f) *Form availability.* Blank UCTA-8 forms are available for download on the Commission's web site.

(g) *Reports not exclusive.* The reporting under this chapter is not limited to the requirements in this section and does not limit requests for additional information.

CHAPTER 65. WATER SERVICE

§ 65.2. Accidents.

(a) *General.* A public utility shall submit a report of each reportable accident involving the facilities or operations of the public utility in this Commonwealth. The reports shall be addressed to the Secretary of the Commission.

(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 immediate treatment at a hospital emergency room or in-patient admittance to a hospital, or both.
- (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.

(4) An occurrence of an unusual nature that is a physical or cyber attack, including attempts against cyber security measures as defined in Chapter 101 (relating to public utility preparedness through self certification) which causes an interruption of service or over \$50,000 in damages, or both.

(c) *Exceptions.* Injuries, as defined in subsection (b)(1) and (2), may not include those suffered as a result of a motor vehicle accident with utility facilities unless one or both 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 water facilities transporting or storing water or due to water escaping from water facilities.

(d) *Telephone reports.* A report by telephone shall be made immediately after the utility becomes aware of the occurrence of a reportable accident under subsection (b)(1), (3) and (4). A report by telephone shall be made within 24 hours after a utility becomes aware of a reportable accident under subsection (b)(2).

(e) *Written reports.* A written report shall be made on Form UCTA-8 within 30 days of the occurrence of a reportable accident. For reportable accidents under subsection (b)(4), the utility may remove from Form UCTA-8 information that would compromise the security of the utility or hinder an active criminal investigation. Accidents reportable on forms required by the Bureau of Workers' Compensation, Department of Labor and Industry, Department of Environmental Protection or the United States Environmental Protection Agency may be reported to the Commission by filing a copy of the forms in lieu of a report on Form UCTA-8, as long as the alternative forms, at a minimum, provide the following information:

- (1) The utility name.
- (2) The date of reportable accident.
- (3) The date of report.
- (4) The location where the reportable accident occurred.
- (5) The name, age, residence and occupation of the injured or deceased parties.
- (6) The general description of the reportable accident.
- (7) The name and telephone number of the reporting officer.

(f) *Form availability.* Blank UCTA-8 forms are available for download on the Commission's web site.

(g) *Reports not exclusive.* The reporting under this chapter is not limited to the requirements in this section and does not limit requests for additional information.

CHAPTER 67. SERVICE OUTAGES

§ 67.1. General provisions.

(a) Electric, gas, water and telephone utilities holding certificates of public convenience under 66 Pa.C.S. §§ 1101 and 1102 (relating to organization of public utilities and beginning of service and enumeration of acts requiring certificate) shall adopt the following steps to notify the Commission with regard to unscheduled service interruptions.

(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 event for 6 or more projected consecutive hours. A service outage report shall be filed with the Commission within 10 working days after the total restoration of service. Where storm conditions cause multiple reportable interruptions as defined by this section, a single composite service outage report shall be filed for the event. Each report must contain the following information:

- (1) The approximate number of customers interrupted during the event.
- (2) The approximate number of trouble cases for each county affected during the event. Trouble cases are

non-outage cases such as primary and secondary line-down calls and emergency calls.

(3) The approximate number of outage cases 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) Approximate geographic location (county, city, 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. 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 1 hour after preliminary assessment of conditions reasonably indicates that the criteria listed in subsection (b) may be applicable. Subsection (b)(1), (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 are available for download on the Commission's web site.

(d) A written report shall be made on Form UCTA-8 within 5 days of a reportable accident. Accidents which are also reportable to the Bureau of Workmen's Compens-

sation, Department of Labor and Industry, may be reported to the Commission by filing a copy of the report submitted to that Bureau in place of Form UCTA-8.

(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.

(f) As defined in subsection (b), the service outage report must contain the required information except for the following utilities:

(1) Gas utilities are not required to submit the information under subsection (b)(2), (5), (14), (15) and (16).

(2) Water utilities are not required to submit the information under subsection (b)(2), (15) and (16).

(3) Telephone utilities are not required to submit the information under subsection (b)(2), (4), (5), (8), (9), (10),

(12), (14), (15) and (16). Alternatively, in lieu of the service outage report required under subsection (b), telephone utilities may file a comparable outage report required by the Federal Communications Commission as long as the comparable report, at a minimum, contains the following information:

(i) The name of the reporting entity.

(ii) The reason for the interruption.

(iii) The date and time of the first information of a service interruption.

(iv) The approximate number of customers interrupted.

(v) The geographic area affected by the interruption.

(vi) The actual time that service was restored to the last affected customer.

(g) The reporting under this chapter is not limited to the requirements in this section and does not limit requests for additional information.

(Editor's Note: The following form is available on the Commission's web site. It will not be codified in the Pennsylvania Code.)

**REPORT OF SERVICE OUTAGE TO
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

SECRETARY'S BUREAU
P O BOX 3265
HARRISBURG, PA 17105-3265

Phone-In Reports: Always call (717) 773-7377
Email RA-PUCPEMA@pa.gov

An original and one copy of this report are to be mailed to the Secretary's Bureau at the address above, even if an electronic copy has been emailed to the address above.

Information Required:

1. Reporting Utility: _____
Address: _____

2. Name and title of person making report:

(Name) (Title)

3. Telephone number: _____
(Telephone Number)

4. Date and time initial telephonic report was made to Commission:

(Date) (Time)

5. Interruption or Outage:
(a) Number of customers affected: _____
(b) Approximate number of outage cases and trouble cases for each county affected during the event: _____

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(c) Approximate number of outages for each county affected during the event: _____

(d) Approximate number of outage cases exceeding 6 or more hours in duration: _____

(e) A listing of each outage case exceeding 6 or more hours in duration, including the following information:

<i>Outage Case</i>	<i>Approximate Geographic Location (county, city, muni or twp)</i>	<i>Total Number of Customers Affected</i>	<i>Duration of the Outage</i>	<i>Initial Date and Time of the Outage</i>	<i>Restoration Date and Time</i>

(f) Reason for the interruption or outages: _____

(g) Projected time of restoration: _____

(h) The number of utility workers, contract workers and workers received as mutual aid assigned specifically to the repair work by general function, that is linemen, troublemen, tree crew, and the like:

<i>Utility/Company</i>	<i># of Workers</i>	<i>General Function</i>

(i) The date and time of the first information of a service interruption: _____

(j) The date and time that repair crews were assembled: _____

(k) The actual time that service was restored to the last affected customer: _____

(l) A general description of the physical damage sustained by the utility facilities as a result of the interruption/outage: _____

(m) If the interruption / outage event was weather-related, the utility’s weather reports, outlooks, or scenarios for the day before and the day of the interruption/outage event: _____

(n) If the interruption / outage event caused approximate outages that exceed 10% or more of customers in the utility’s entire service territory, rank the event in terms of the number and duration of outages and provide 2 comparable events, including the number and duration of outages for those comparable events:

<i>Event and Rank</i>	<i>Event Date</i>	<i>Number of Outages</i>	<i>Duration of Outages</i>

Remarks: _____

[Pa.B. Doc. No. 12-4. Filed for public inspection January 6, 2012, 9:00 a.m.]

Title 67—TRANSPORTATION

DEPARTMENT OF TRANSPORTATION

[67 PA. CODE CH. 231]

Intrastate Motor Carrier Safety Requirements; Snow Removal Operations

The Department of Transportation (Department), under the authority in 75 Pa.C.S. §§ 4704 and 6103 (relating to inspection by police or Commonwealth personnel; and promulgation of rules and regulations by department), amends Chapter 231 (relating to intrastate motor carrier safety requirements) to read as set forth in Annex A. This rulemaking is being submitted as a final regulation with proposed rulemaking omitted under section 204 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. § 1204), known as the Commonwealth Documents Law (CDL).

The Department published a final-form rulemaking at 40 Pa.B. 2106 (April 24, 2010) that amended the Intrastate Motor Carrier Safety Regulations to comply with the Federal Motor Carrier Safety Regulations. After the final-form rulemaking, during the winter of 2010-2011, State (the Department and the Turnpike Commission (Commission)) and local governments contacted the Department and expressed concern that the final-form rulemaking rescinded § 231.346 which had been interpreted to allow drivers of snow plows to operate on 12-hour driving shifts. The Federal Motor Carrier Safety Regulations limit drivers of commercial vehicles to 11-hour shifts. During several snowstorms in the past winter, the Department, the Commission and local municipalities experienced difficulty in securing sufficient numbers of qualified snow plow operators to effectively keep roads safe

and free of snow and still comply with the restrictions of the newly adopted regulations.

The final-omitted rulemaking is needed to provide State and local governments with the flexibility to ensure that roadways can be cleared of snow. Insofar as the amendment has been requested by State and local governments and State or local governments will not be adversely impacted by the amendment, the Department has determined that the approach of the 2011-2012 winter season makes it impractical, unnecessary and contrary to the public interest to provide public notice and comment on the rulemaking in accordance with section 204(c)(3) of the CDL.

Purpose of Chapter

The purpose of Chapter 231 is to prescribe the minimum requirements and qualifications for drivers, vehicles and other matters regarding the intrastate operation of commercial vehicles.

Purpose of the Final-Omitted Rulemaking

The purpose of the amendments to Chapter 231 is to provide State and local governments with more flexibility under the regulations for snow removal activities, roadway maintenance activity and traffic control support operations to keep the highways and roadways of this Commonwealth safe for travel.

Summary of Significant Amendments

This final-omitted rulemaking will exempt State and local government drivers performing roadway maintenance, snow plow operations and traffic control support operations from the hours of service and driver log requirements. This final-omitted rulemaking will also extend the permitted driving time from 11 hours to 12

hours for drivers of private carriers who are performing snow removal operations for State or local governments.

Persons and Entities Affected

This final-omitted rulemaking will affect State and local government drivers who drive commercial motor vehicles to provide snow removal, highway maintenance and traffic control support activities. This final-omitted rulemaking will also affect private motor carrier drivers who provide snow removal activities on behalf of State or local governments.

Fiscal Impact

Implementation of this final-omitted rulemaking will not require the expenditure of any additional funds by the Commonwealth or local municipalities. These regulations will not impose any additional costs on the regulated community.

Regulatory Review

Under section 5.1(c) of the Regulatory Review Act (71 P. S. § 745.5a(c)), on October 21, 2011, the Department submitted a copy of the final-omitted rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House and Senate Transportation Committees. On the same date, the final-omitted rulemaking submitted to the Office of Attorney General for review and approval under the Commonwealth Attorneys Act (71 P. S. §§ 732-101—732-506).

Under section 5.1(j.2) of the Regulatory Review Act, on December 14, 2011, the final-omitted rulemaking was deemed approved by the House and Senate Committees. Under section 5.1(e) of the Regulatory Review Act, IRRC met on December 15, 2011, and approved the final-omitted rulemaking.

Sunset Provisions

The Department is not establishing a sunset date for this regulation, since this regulation is required to participate in the Federal Motor Carrier Safety Assistance Program. The Department, however, will continue to closely monitor this regulation for its effectiveness.

Contact Person

The contact person for technical questions about the final-omitted rulemaking is Daryl St. Clair, Bureau of Highway Safety and Traffic Engineering, 400 North St., 6th Floor, Commonwealth Keystone Building, Harrisburg, PA 17120, (717) 787-6899.

Order

The Department orders that:

(a) The regulations of the Department, 67 Pa. Code Chapter 237, are amended by amending § 231.8 to read as set forth in Annex A, with ellipses referring to the existing text of the regulation.

(b) The Secretary of the Department shall submit this order and Annex A to the Office of General Counsel and the Office of Attorney General for approval as to legality and form as required by law.

(c) The Secretary shall certify this order and Annex A and deposit the same with the Legislative Reference Bureau as required by law.

(d) This final-omitted rulemaking shall take effect upon publication in the *Pennsylvania Bulletin*.

BARRY J. SCHOCH, P.E.,
Secretary

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 41 Pa.B. 7045 (December 31, 2011).)

Fiscal Note: 18-426. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 67. TRANSPORTATION

PART I. DEPARTMENT OF TRANSPORTATION

Subpart A. VEHICLE CODE PROVISIONS

ARTICLE VIII. ADMINISTRATION AND ENFORCEMENT

CHAPTER 231. INTRASTATE MOTOR CARRIER SAFETY REQUIREMENTS

Subchapter A. GENERAL

§ 231.8. Additions or modifications to 49 CFR.

As stated in § 231.7 (relating to adoption of portions of 49 CFR by reference), this chapter generally incorporates 49 CFR Parts 382, 385, 390, 391, 392, 393, 395 and 396. The following modification, additions and deletions to those parts apply:

* * * * *

(15) 49 CFR 395.1 (relating to scope of rules in this part) is modified by adding subsections as follows:

(q.1) This part does not apply to transportation relating to snow removal, roadway maintenance and traffic control support activities performed by a state or any political subdivision of the state.

(q.2) A driver performing highway snow removal operations on behalf of the state or any political subdivision of the state who is not eligible to be exempted under subsection (q.1) may operate a commercial motor vehicle for up to 12 hours provided that:

(1) The driver does not drive a commercial motor vehicle after having been on duty for more than 16 hours; and

(2) The driver has not been on duty 70 hours in 7 consecutive days or 80 hours in 8 consecutive days.

[Pa.B. Doc. No. 12-5. Filed for public inspection January 6, 2012, 9:00 a.m.]