

STATEMENTS OF POLICY

Title 4—ADMINISTRATION

PART II. EXECUTIVE BOARD [4 PA. CODE CH. 9]

Reorganization of the Department of General Services

The Executive Board approved a reorganization of the Department of General Services effective October 16, 2013.

The organization chart at 43 Pa.B. 6513 (November 2, 2013) is published at the request of the Joint Committee on Documents under 1 Pa. Code § 3.1(a)(9) (relating to contents of *Code*).

(Editor's Note: The Joint Committee on Documents has found organization charts to be general and permanent in nature. This document meets the criteria of 45 Pa.C.S. § 702(7) (relating to contents of Pennsylvania Code) as a document general and permanent in nature which shall be codified in the Pennsylvania Code.)

[Pa.B. Doc. No. 13-2043. Filed for public inspection November 1, 2013, 9:00 a.m.]

PART II. EXECUTIVE BOARD [4 PA. CODE CH. 9]

Reorganization of the Governor's Office of Administration

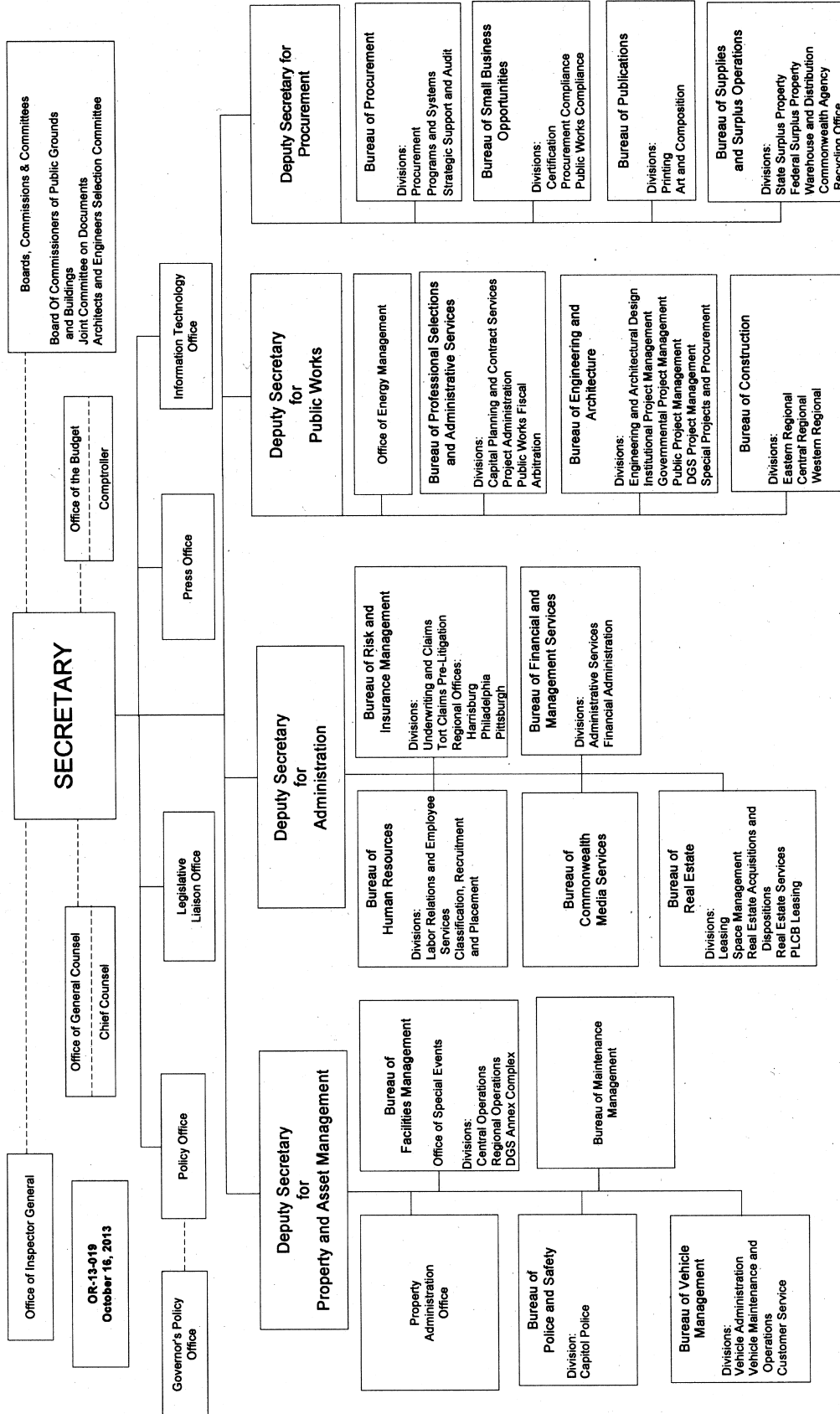
The Executive Board approved a reorganization of the Governor's Office of Administration effective October 16, 2013.

The organization chart at 43 Pa.B. 6514 (November 2, 2013) is published at the request of the Joint Committee on Documents under 1 Pa. Code § 3.1(a)(9) (relating to contents of *Code*).

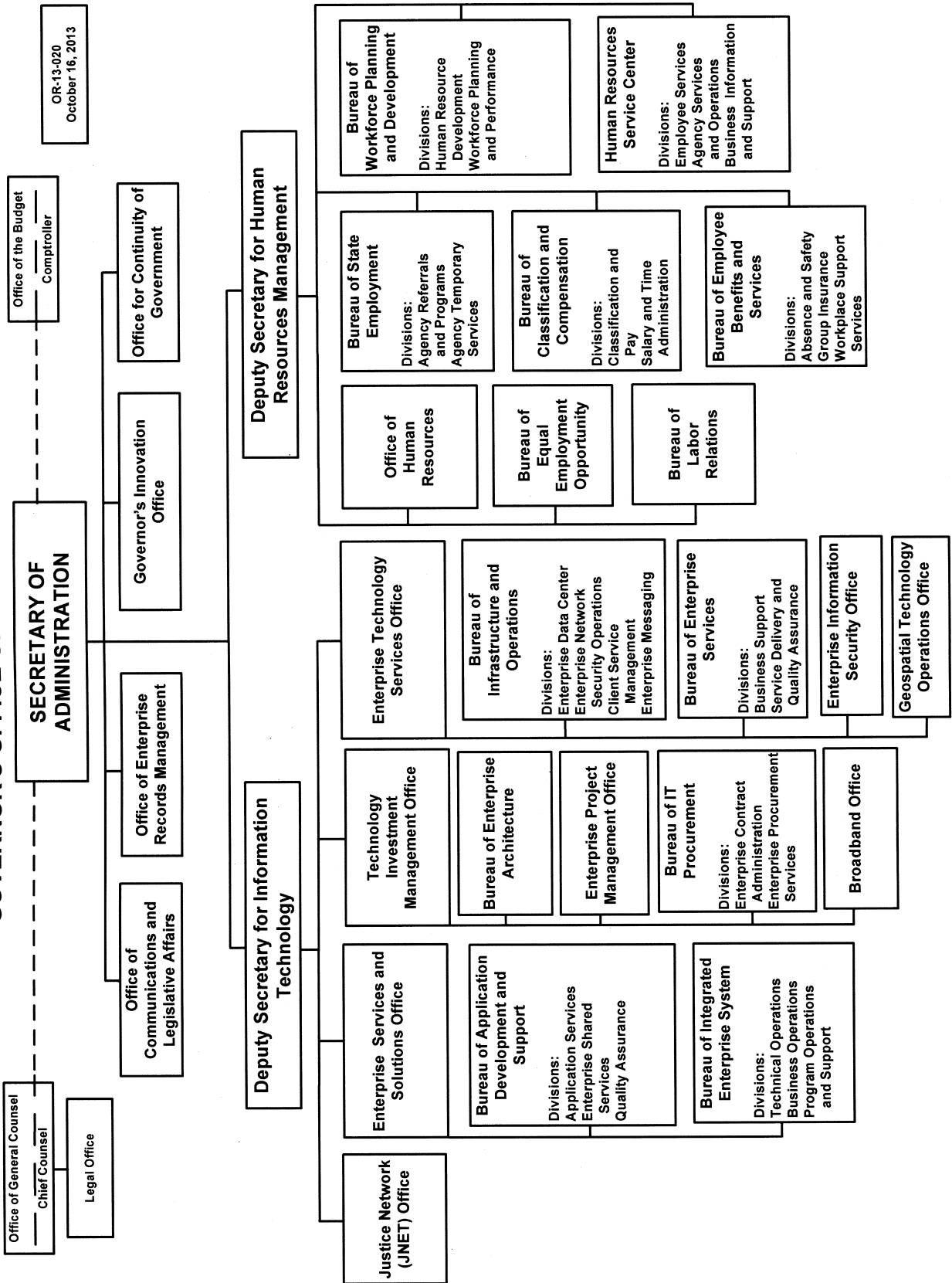
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[Pa.B. Doc. No. 13-2044. Filed for public inspection November 1, 2013, 9:00 a.m.]

DEPARTMENT OF GENERAL SERVICES



GOVERNOR'S OFFICE OF ADMINISTRATION



OR-13-020
October 16, 2013

Title 49—PROFESSIONAL AND VOCATIONAL STANDARDS

STATE BOARD OF FUNERAL DIRECTORS

[49 PA. CODE CH. 13]

Inspections

The State Board of Funeral Directors (Board) adds § 13.253 (relating to inspections—statement of policy) to read as set forth in Annex A.

Effective Date

Although the underlying interpretation in this statement of policy has been effective since the beginning of licensure of funeral directors in this Commonwealth in 1895, this statement of policy is effective upon publication in the *Pennsylvania Bulletin*.

Statutory Authority

The statement of policy is authorized under sections 11, 13, 15 and 16(a) of the Funeral Director Law (act) (63 P. S. §§ 479.11, 479.13, 479.15 and 479.16(a)). Section 102 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. § 1102), known as the Commonwealth Documents Law, defines “statement of policy” as “any document, except an adjudication or a regulation, promulgated by an agency which sets forth substantive or procedural personal or property rights, privileges, immunities, duties, liabilities or obligations of the public or any part thereof, and includes, without limiting the generality of the foregoing, any document interpreting or implementing any act of Assembly enforced or administered by such agency.” Statements of policy that are general and permanent in nature are required to be codified in the *Pennsylvania Code* under 1 Pa. Code § 3.1 (relating to contents of Code).

Background and Purpose of the Statement of Policy

Section 16(b) of the act provides that “[t]he board shall appoint an inspector or inspectors whose title shall be ‘Inspector, State Board of Funeral Directors, Commonwealth of Pennsylvania.’ Such inspectors shall be licensed funeral directors who have been actively engaged in the practice of such profession for at least ten years. Inspectors shall hold office at the pleasure of the board, and shall receive such compensation as shall be fixed by the board with the approval of the department. Inspectors shall be empowered to serve all processes and papers of the board, and shall have the right of entry into any place, where the business or profession of funeral directing is carried on or advertised as being carried on, for the purpose of inspection and for the investigation of complaints coming before the board and for such other matters as the board may direct.”

The statutory authority and organization of the enforcement and prosecution of violations of the act have been amended since the enactment of the act. The act of June 3, 1963 (P. L. 63, No. 44) (Act 44) added section 810 of The Administrative Code of 1929 (71 P. S. § 279.1) creating the Bureau of Professional and Occupational Affairs (BPOA) and the office of Commissioner of Professional and Occupational Affairs (Commissioner). Section 810 of The Administrative Code of 1929 delegates to the Commissioner the authority to perform a variety of functions on behalf of the licensing boards. Section 810(a) of The

Administrative Code of 1929 provides, in pertinent part, “[t]he Commissioner of Professional and Occupational Affairs shall be appointed by the Governor and have the power and his duty shall be . . . (4) To assist any professional and occupational examining board within the department, if, as and when requested by the board; . . . (6) to . . . make such investigations, require such information and do and perform all other acts which may be necessary to determine whether applicants for licensure or registration are qualified to practice the profession or work at the trade or occupation within this Commonwealth, . . . [and] (8) To be responsible for all administrative affairs of each of the professional and occupational examining boards and to coordinate their activities.”

Additionally, the Supreme Court of Pennsylvania has held that “. . . if more than one function is reposed in a single administrative entity, walls of division [must] be constructed which eliminate the threat or appearance of bias. . . . [W]here the very entity or individuals involved in the decision to prosecute are ‘significantly involved’ in the adjudicatory phase of the proceedings, a violation of due process occurs.” *Lyness v. Commonwealth, State Bd. of Medicine*, 529 Pa. 535, 546–547, 605 A.2d 1204, 1209–1210 (1992), citations omitted.

Given these changes to applicable law, the Board itself does not and, for several decades, has not directed, managed or otherwise supervised inspectors or the inspection program. Rather, the limitations of time, place and scope on funeral establishment inspections have been imposed by the BPOA and the Bureau of Enforcement and Investigation (BEI).

For decades inspections have been conducted by the BPOA and the BEI under the limitations of the act, namely, that inspections are limited to enforcement of the provisions of the act and this chapter, and to physical premises at which the profession of funeral directing is being conducted or advertised as being conducted. Moreover, personnel policies of the Commonwealth have served as the limits on the time that inspections are conducted. Therefore, inspections have always been conducted during regular business hours between Monday and Friday, excluding State holidays, and inspectors have performed inspections in a manner to avoid conflict with funeral viewings and ceremonies.

Notwithstanding the fact that limitations as to time, place and scope of inspections do exist and have been observed in practice, this issue has been a matter of litigation. The opinion of the United States District Court in *Heffner v. Murphy*, 866 F.Supp. 358 (M.D. Pa., 2012) appears to reverse, in part, the effects of Act 44 as well as the decision of the Supreme Court of Pennsylvania protecting due process rights, and imposes on the Board the responsibility to publish limitations as to time, place and scope of inspections. Therefore, to memorialize the existing limitations, the Board has adopted this statement of policy recognizing that it does not claim nor does it possess the legal authority to direct or control inspections or investigations.

Description of the Statement of Policy

In subsection (a), the Board has defined several terms according to long-established and recognized usage.

In subsection (b), the Board has memorialized the authority and rationale for inspections. Funeral directing is a heavily regulated profession. *Pennsylvania Funeral Directors Association v. State Board of Funeral Directors*, 90 Pa.Cmwlth. 175, 494 A.2d 67 (Pa.Cmwlth. 1985). Section 16(b) of the act requires the Board to appoint

inspectors who are individuals who have been licensed as funeral directors for at least 10 years. These inspectors are empowered by the act to serve processes and papers of the Board, and only have the right of entry into places where the practice of funeral directing is occurring or is advertised or held out as being conducted. Inspections further three categories of governmental interests. Inspections protect the public from practices that endanger public health, safety, welfare and result in unfair consumer transactions. Inspections promote price competition by including review of documents required by the Federal Trade Commission in 16 CFR Part 453 (relating to funeral industry practices), a violation of which constitutes unprofessional conduct as set forth in § 13.202(16) (relating to unprofessional conduct). Inspections also serve to educate and inform funeral directors of trends and conditions in the industry and encourage conformity to professional standards.

The Board has also adopted specific findings that the limitations as to time, place and scope have been observed historically and that it serves the public interest to adopt a statement of policy memorializing these longstanding practices at this time.

Under subsection (c), the Board has memorialized the limitations as to the frequency, time and scope of inspections. With regard to the approximate frequency of inspections, routine inspections will not occur more than once every 270 days. The outside range of 540 days is directory and not mandatory. The BEI has limited personnel resources. A funeral establishment that is geographically remote or which may not be open 40 hours a week may be difficult to inspect as often as funeral establishments that are in close proximity to other funeral establishments, or which are open for business 40 hours per week. New business inspections will ordinarily occur within 30 days of a request by the Board Administrator.

Follow-up inspections may be conducted in the exercise of sound discretion of the BEI. Consistent with the directives of Executive Order 1996-1, the goal of the Board's regulatory scheme is to promote compliance. Therefore, the BEI may exercise discretion within reasonable limits and permit a mortuary inspector to afford a licensee the opportunity to correct deficiencies or noncompliant conditions. Factors that may be considered by inspectors in determining whether to allow a licensee time to remedy a noncompliant condition, issue a citation or refer the matter for possible disciplinary action include the gravity of the violation, the number of violations identified during the inspection, the licensee's prior disciplinary history or lack thereof, the immediacy of an effect on the public or employees of the funeral establishment's noncompliance, whether consumer funds or property have been involved, or whether the licensee has articulated an express or implied intent to remain noncompliant. Factors that should not affect the exercise of discretion by an inspector include whether a competitor or a trade association has complained about the noncompliant condition, or whether a licensee is following the advice or instructions of counsel or another officer, employee or other agent of the funeral establishment. If a licensee is given additional time to remedy the deficiency, the inspector would then perform a follow-up inspection to ensure compliance. The timing of follow-up inspections will depend upon other duties of the inspector and any other factor reasonably related to the efficient and responsible administration of the BPOA, as well as affording a reasonable amount of time for the licensee to comply. A reasonable time will depend upon the totality of the circumstances, taking into consideration the noncompliant condition noted at the

inspection, the effect of the noncompliant condition on the public, as well as the amount of time that a reasonably diligent individual would require to become compliant.

Subsection (c) also sets forth limitations as to the time inspections will be performed and the scope of those inspections. Generally, inspections will be conducted only between Monday and Friday during the hours 8 a.m. and 5 p.m., excluding State holidays. Inspections will be limited in scope to information required for an inspector to complete preapproved inspection forms developed by the BPOA and ratified by the Board to include subjects that are within the Board's jurisdiction as defined by the act and other statutes enacted by the General Assembly and as interpreted by judicial decision. The scope of a follow-up inspection is limited to a review of the previously identified deficiency or noncompliant condition. This statement of policy also provides the general rule that routine and follow-up inspections will be conducted without prior notice. However, an appointment may be scheduled for funeral establishments that are remote or isolated and an unscheduled inspection would consume an unreasonable amount of time if nobody is there upon the arrival of the inspector. An appointment may also be scheduled if the funeral establishment is not open during regular business hours (Monday through Friday, 8 a.m. to 5 p.m.). Conversely, new funeral establishment inspections and closing inspections will be scheduled in advance.

Finally, this statement of policy sets forth the possible courses of action in the event of the observation by the inspector of actual or suspected violations depending on whether the violation is or is not within the scope of the inspection report forms ratified by the Board.

Fiscal Impact and Paperwork Requirements

This statement of policy will not have adverse fiscal impact on the Commonwealth or its political subdivisions and will not impose additional paperwork requirements upon the Commonwealth, political subdivisions or the private sector.

Additional Information

Persons who require additional information about this statement of policy should submit inquiries to Regulatory Unit Counsel, Department of State, P. O. Box 2649, Harrisburg, PA 17105-2649, (717) 783-7200, st-funeral@state.pa.us.

DONALD J. MURPHY,
Chairperson

(Editor's Note: Title 49 of the Pennsylvania Code is amended by adding a statement of policy in § 13.253 to read as set forth in Annex A.)

Fiscal Note: 16A-4823. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS

PART I. DEPARTMENT OF STATE

Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS

CHAPTER 13. STATE BOARD OF FUNERAL DIRECTORS

STATEMENTS OF POLICY

§ 13.253. Inspections—statement of policy.

(a) *Definitions.* The following words and terms, when used in this section, have the following meanings, unless the context clearly indicates otherwise:

Board administrator—An employee of the Bureau with responsibility to administer the business of the Board or another employee assigned to assist this person.

Citation—A notice of a violation beginning disciplinary action issued under section 5(a) of the act of July 2, 1993 (P. L. 345, No. 48) (63 P. S. § 2205(a)) in accordance with Chapter 43b (relating to Commissioner of Professional and Occupational Affairs).

Closing inspection—An inspection performed for the purpose of determining whether a licensed funeral establishment that has discontinued business, changed location or notified the Board of its intent to discontinue business or change location has complied with the act and this chapter.

Complaint—A document filed with the Professional Compliance Office alleging one or more violations of the act or this chapter.

Follow-up inspection—An inspection relating to a prior inspection in which the funeral establishment was determined to be in noncompliance with the act or this chapter. This inspection is conducted for the purpose of determining whether the noncompliant element of the establishment has been brought into compliance.

Inspection—

(i) A visual examination, observation or view of a funeral establishment by an agent of the Bureau of Enforcement and Investigation, including an examination, observation or view of any of the following:

(A) The buildings, fixtures, equipment, implements and materials of the funeral establishment.

(B) Licenses of employees of the funeral establishment.

(C) Documents, forms, advertising and other records required by the act, this chapter or the regulations of the Federal Trade Commission in 16 CFR Part 453 (relating to funeral industry practices).

(D) Other matters that pertain to initial and continued licensure for the purpose of determining a funeral establishment's compliance with licensure requirements.

(ii) The term includes an oral interview or examination of an employee, agent or licensee with a principal place of business at the funeral establishment, or a licensee who assists at the funeral establishment, for the purpose of obtaining information that pertains to the visual examination.

Inspector—An employee under the supervision and direction of the Director of the Bureau of Enforcement and Investigation, regardless of employment classification or title of position assigned by the Office of Administration, who is a licensed funeral director who has been actively engaged in the practice of the profession of funeral directing for at least 10 years.

Investigation—An activity conducted in response to a complaint filed with the Professional Compliance Office regarding an alleged violation of the act or this chapter, or in response to a suspected violation discovered during an inspection, for the purpose of gathering evidence reasonably calculated to determine whether a violation has occurred.

New funeral establishment inspection—An inspection relating to an application for a funeral establishment license.

Routine inspection—An inspection performed for the purpose of determining compliance of a licensed funeral establishment with the provisions of the act, this chapter or 16 CFR Part 453.

(b) *Authority and rationale.*

(1) The profession of funeral directing is a heavily regulated profession.

(2) Section 16(b) of the act (63 P. S. § 479.16(b)) requires the Board to appoint mortuary inspectors.

(3) Under section 16(b) of the act, inspectors are empowered to serve all processes and papers of the Board and have the right of entry into any place, where the business or profession of funeral directing is carried on or advertised as being carried on, for the purpose of inspection and for investigation of complaints filed with the Professional Compliance Office and for other matters as the Board may direct.

(4) The Board finds that the periodic inspection of the premises at which the profession of funeral directing is carried on or advertised as being carried on is necessary to serve several important governmental interests, including:

(i) Ensuring that the public is protected against acts, practices and conditions in the profession of funeral directing that are inimical to public health, safety, welfare and fair consumer transactions.

(ii) Promoting price competition among practitioners of the profession of funeral directing by ensuring that economic advantage is obtained through efficient and sound business practices and not through acts, practices or conditions in the profession of funeral directing that compromise public health, safety, welfare or fair consumer transactions.

(iii) Educating and informing practitioners in the profession of funeral directing of the legal requirements of the profession and of economical and practical means of complying with Federal and State law.

(5) The Board finds that it has been the practice of the Bureau of Enforcement and Investigation to regulate the conduct of inspections and investigations by mortuary inspectors within appropriate limitations as to frequency, scope and timing so as not to impose unreasonable burdens upon licensees.

(6) The Board finds that it is in the interest of the public and of the regulated profession to memorialize a policy regarding the conduct of inspections and investigations performed under the act.

(c) *Limitations on inspections.*

(1) *Frequency.* Inspectors will perform inspections within the following ranges of frequency:

(i) *Routine inspection.* Each funeral establishment licensed by the Board will be inspected no more than once every 270 consecutive days and no less than once every 540 consecutive days.

(ii) *New funeral establishment inspection.* A new funeral establishment will be inspected within 30 days of the date of a request by the Board administrator.

(iii) *Follow-up inspection.* An existing funeral establishment, new funeral establishment, funeral establishment in which ownership is being transferred or a closing funeral establishment in which a deficiency was noted or reported will be inspected no sooner than 7 days and no later than 30 days from the date that the deficiency was noted or reported, or within 30 days of a follow-up inspection in which a prior reported deficiency was found to be uncorrected. This standard is directory and not mandatory. This limit may be extended if, in the exercise of the sound discretion of the inspector or the Bureau of

Enforcement and Investigation, additional time is warranted or other priorities require more immediate attention.

(2) *Time.* Inspectors will perform routine inspections, new funeral establishment inspections, closing inspections and follow-up inspections only between Monday and Friday during the hours of 8 a.m. and 5 p.m., excluding State holidays.

(3) *Scope.* Inspectors will limit the scope of new funeral establishment inspections, routine inspections, follow-up inspections and closing inspections to information required for the completion of forms designed by the Bureau of Enforcement and Investigation and ratified by the Board. As of the date of the adoption of this statement of policy, the form that is in use is an electronic form.

(i) During the course of an inspection, an inspector is not authorized to demand production of documents, or to demand entrance to a part of the premises of a funeral establishment, that are not within the scope of the subject matter of approved inspection report forms.

(ii) During the course of a follow-up inspection, an inspector will limit the scope of the inspection to a review of the previously reported deficiency.

(4) *Notice of inspection.*

(i) *General rule.* Routine inspections and follow-up inspections will be conducted without prior notice to the funeral establishment, its owners, officers, employees or funeral directors practicing at the funeral establishment. New funeral establishment inspections and closing inspections will be scheduled in advance.

(ii) *Exceptions.* Within the sound discretion of the Director of the Bureau of Enforcement and Investigation, an inspector may schedule an appointment to conduct a routine inspection or follow up inspection in the following circumstances:

(A) The funeral establishment is geographically remote or isolated and an unscheduled inspection would consume an unreasonable amount of time if a person was not present upon the arrival of the inspector.

(B) The funeral establishment is not open Monday through Friday from 8 a.m. to 5 p.m.

(5) *Amendments, modifications and changes to scope of inspections.* The Board will ratify amendments, modifications or changes to the scope of inspection forms only if amendments, modifications or changes include subjects that are within the Board's jurisdiction as defined by statutes enacted by the General Assembly and interpreted by judicial decision.

(6) *Observation of actual or suspected violations in the conduct of inspections.*

(i) *General rule.* An inspector is authorized to issue a citation, or refer for further investigation or formal disciplinary action, observed actual or suspected violation of the act or this chapter which is within the scope of the inspection report forms ratified by the Board.

(ii) *Evidence in plain view of violations not within the scope of inspection report forms.*

(A) *Observed actual violations.* If, during the course of an inspection, an inspector observes evidence in plain view of an actual violation of the act, this chapter, 16 CFR Part 453 or other law and the violation is not within the scope of the inspection report forms ratified by the

Board, the inspector is authorized to issue a citation or report the observed violation for investigation or formal disciplinary action.

(B) *Observed suspected violations.* If, during the course of an inspection, an inspector observes evidence in plain view of a suspected violation of the act, this chapter, 16 CFR Part 453 or other law and the violation is not within the scope of the inspection report forms ratified by the Board, the inspector is authorized to report the suspected violation for further investigation or formal disciplinary action.

[Pa.B. Doc. No. 13-2045. Filed for public inspection November 1, 2013, 9:00 a.m.]

PENNSYLVANIA PUBLIC UTILITY COMMISSION

[52 PA. CODE CH. 69]

[M-2013-2382943]

Utility Service Outage Response, Recovery and Public Notification

The Pennsylvania Public Utility Commission (Commission), on September 26, 2013, adopted a proposed policy statement which revises existing response, recovery and public notification guidelines with additional storm preparation and response best practices that were developed following hurricanes Irene and Sandy.

Public Meeting held
September 26, 2013

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

*Proposed Policy Statement Regarding Utility Service
Outage Response, Recovery and Public Notification
Guidelines; Doc. No. M-2013-2382943*

Proposed Policy Statement

By the Commission:

Background and 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, the Commission issued a Secretarial Letter to all electric distribution companies (EDCs) operating in Pennsylvania seeking information regarding their service and public notice practices. On the same date, an investigation was initiated into EDCs' service outage responses and restoration practices with the same information requested. Responses were filed by the EDCs. As part of this investigation, the Commission also held two public input hearings in western Pennsylvania and solicited information from EDCs regarding their current and past storm preparation and response practices.

In April 2009, the Commission's Bureau of Conservation, Economics and Energy Planning and Office of Communications submitted a report to the Commission entitled, Electric Distribution Company Service Outage Response and Restoration Practices Report (Outage Response and Restoration 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 former 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 Section 67.1, et seq., and reportable incidents at 52 Pa. Code Sections 57.11, 59.11 and 65.2. The Joint Motion also directed that a Policy Statement be issued.

The Outage Response and Restoration Report summarized the findings of the staff's investigation and recommended the following future actions:

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

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

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

- Utility personnel should communicate with the news media and public in a consistent fashion. Common talking points should be distributed to all utility employees who may be in contact with the public and news media.

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

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

- Utilities should provide a greater level of detail in their written reports to the Commission for unscheduled service interruptions that meet the criteria under 52 Pa. Code § 67.1(b), 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.

Given the communication methods and reaction of consumers from the September 2008 electric outages and subsequent large-scale and extended duration outage events, including those in the late summer and fall of 2011, we subsequently issued a Final Policy Statement on December 15, 2011 for our EDCs and NGDCs. It was similar to the one adopted on November 9, 2006, for our jurisdictional water utilities. Additionally, we revised the policy statement for water to make it consistent with the electric and gas sections. For example, we revised the water section to encourage the use of social media and other emerging technology. We also added the section on the NIMS standards that water utilities should strive to follow.

On September 23, 2011, the Commission issued a Final Rulemaking Order revising 52 Pa. Code §§ 7, 59, 65 and 67 regarding utilities' service outage response and restoration practices with the goal of having even more effective responses to future unscheduled service outages. In general, under sections 57.11, 59.11 and 65.2, we expanded our regulations to capture more reportable events, such as cyber security attacks, and established deadlines for reporting accidents. Under section 67.1, we expanded 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 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.

Hurricane Irene hit Pennsylvania in August of 2011. On October 12, 2011, the Commission held a Special Reliability Meeting, focusing the discussion on the Commission's role in storm response as well as the preparation and response of the six EDCs that were affected most by Irene.¹ On August 7, 2012, the Commission issued three reports. The first report summarized the preparation and response of the PUC and EDCs to Hurricane Irene. The second report detailed information relating to handling of high-call volumes during major storms and corrective actions currently underway or completed. This report also addressed the need to focus on the increase in severe weather events and whether infrastructure improvements are necessary. The third report summarized outage information submitted by the EDCs for the period from May through November 2011 on full or partial circuit outages greater than 24 hours; between 24 and 48 hours; greater than 48 hours to 72 hours; and greater than 72 hours. This report also considered circuits that were among the worst performing 5 percent of circuits identified in the PUC-filed Quarterly Reliability Reports for the first three quarters of 2011.²

Hurricane Sandy swept through Pennsylvania in October of 2012. Following Hurricane Sandy, the Commission directed the EDCs to work together to share best practices learned from the response to Sandy and to develop best practices to address some of the issues identified during the response to Sandy. On January 10, 2013, the Commission held a Special Reliability Meeting which focused on the preparation and response of the EDCs for Sandy as well as a briefing on the EDC best practice group's progress.³ On March 20, 2013, the EDC Best Practices Team briefed the Commission Reliability staff on the group's progress at a meeting of the Energy Association of Pennsylvania's Electric Transmission and Distribution Committee. On May 7, 2013, the Commission and EDC Best Practices Team briefed the PA Senate Consumer Protection & Professional Licensure Committee on the lessons learned from Sandy and the Best Practice Team's progress. On September 13, 2013, the EDC Best Practices Team updated the Commission's Reliability and Emergency Response Staff on the group's progress.

As discussed above, over the past three years, the Bureau of Technical Utility Services (TUS) has reviewed several significant service outages, including the Sandy Report prepared in May of 2013.⁴ Following this review, TUS recommended that the Commission consider revising the Utility Service Outage Public Notification Guidelines for Pennsylvania EDCs so that the efforts that were undertaken by the EDCs to improve their storm response performance following Hurricanes Irene and Sandy can be memorialized.

While this Proposed Policy Statement focuses mainly on improving coordination, communications, event forecast-

¹ Link to documents from the meeting: http://www.puc.pa.gov/consumer_info/electricity/reliability.aspx.

² The reports are available on the Commission's website at: http://www.puc.pa.gov/utility_industry/electricity.aspx.

³ The presentations from this meeting are available here: http://www.puc.pa.gov/consumer_info/electricity/reliability.aspx.

⁴ The Sandy Report can be found on the Commission's website at http://www.puc.state.pa.us/Electric/pdf/October_2012_Sandy_Report-public.pdf.

ing, and holding exercises in order to better respond to major storms, the Commission will continue to work with various utility working groups to identify further best practices in an effort to achieve continuous improvement. The Commission will continue to enhance its policies as these best practices are further developed and defined.

Establishment of Critical Infrastructure Interdependency Working Group

In addition to revising this Policy Statement to account for the experience gained in the more recent significant service outages, the Commission recognizes the need to coordinate restoration of critical infrastructure facilities. Coordinating the response between electric, telephone, water, wastewater, and natural gas systems in areas where more than one of those systems may be affected during major outage events such as hurricanes, tropical storms, major flooding, ice storms, heavy snows, cybersecurity incidents and other similar occurrences is an important component to an effective response. Thus, the Commission has recommended the establishment of a Critical Infrastructure Interdependency Working Group. The Commission also recognizes that non-jurisdictional stakeholders such as municipal water and wastewater systems, mid-stream natural gas companies, wireless telecommunications carriers and cable companies provide vital services and would also benefit from coordination with regulated utilities. To provide a means for all parties to discuss interdependencies and share best practices, the Commission is establishing the Critical Infrastructure Interdependency Working Group (Working Group). We invite comment on the establishment of this Working Group from all interested persons.

The Working Group will meet at least once per calendar year. The Commission will invite all jurisdictional EDCs, incumbent telephone, facilities-based competitive telecommunications, water, wastewater, and natural gas distribution utilities with 5,000 or more customers. The Commission will also invite certain non-jurisdictional stakeholders to participate, including non-jurisdictional utilities as well as county and state emergency response officials.

One of the goals of the Working Group will be for parties to come to an understanding of their critical interdependencies and how to coordinate restoration of services where more than one party is affected in a geographic area. This would include identification of mission critical facilities and their interdependencies such as commercial power, natural gas service, telecommunications, and water/sewer service. Also, participants could discuss prioritization of restoration of those mission critical facilities based on their current and projected capabilities such as alternate power generation, water and gas storage, populations served, and other considerations. Many utilities already have relationships in place with critical interdependency partners and those utilities would be encouraged to share the best practices of those relationships with the group. Utilities are encouraged to work with their trade associations such as the Energy Association of PA, Pennsylvania Telephone Association, the Broadband Cable Association of Pennsylvania, the Electric Power Generation Association, CTIA-The Wireless Association, the National Association of Water Companies and the Pennsylvania Section of the American Water Works Association.

We hereby invite comment on the establishment of the Working Group and the adoption of a Proposed Policy Statement regarding Service Outage Response Recovery and Public Notification Guidelines. This Proposed Policy

Statement, coupled with the regulations at Chapters 57, 59, 65, and 67 of Title 52 of the Pennsylvania Code, represents a comprehensive strategy for addressing electric service outage restoration practices. We recommend all interested persons review this Order and submit comments to this Commission.

Proposed Policy Statement

General discussion

We are seeking comment on whether we should revise the policy statement to apply to other industries including water, wastewater, gas, and telecommunications. At this time, we are simply revising Section 69.1702 (NGDC) and Section 69.1602 (Water) to change the name of the Emergency Preparedness Coordinator to Lead Emergency Preparedness Liaison Officer consistent with the proposed revision here in 52 Pa. Code § 69.1902 (EDC).

Further, we invite comment on the cost/benefit analysis regarding what benefits versus what costs the EDCs, and potentially other industries, may incur with implementation of the policy statement. In particular, we invite comment regarding the associated costs in developing storm damage and outage prediction models as outlined in the proposed preparation and response measure at Section 69.1903(f).

§ 69.1902 Notification guidelines.

We are proposing revising § 69.1902 to change the name of the Emergency Preparedness Coordinator to Lead Emergency Preparedness Liaison Officer (Lead EPLO). This is based upon an internal administrative decision. This was not a substantive change to the administrative duties of this position but it is a different title. The Commission is proposing changing the title to Lead EPLO to be consistent with other Pennsylvania state agencies that use this same title.

§ 69.1903 Preparation and response measures.

Section 69.1903 is a proposed new section which sets forth the suggested measures for Pennsylvania EDCs that were developed after review of the utilities' storm response for Hurricanes Irene and Sandy. This will memorialize a number of the best practices that were identified in the review, as well as other initiatives that would be of benefit.

Subsection 69.1903(a) states that EDCs should offer company liaisons to counties including County Emergency Operations Centers or 9-1-1 Centers, depending on the county's preference, in the EDCs' service territories during high impact and major outage events.

Subsection 69.1903(b) states that EDCs should offer regional conference calls for state and local elected officials and local emergency managers for major service outage events. We defined major service outage events to include hurricanes, tropical storms, major flooding, ice storms, heavy snows, and other similar occurrences.

Subsection 69.1903(c) states that EDCs should develop and hold a storm restoration exercise at least once each calendar year and should notify the counties in their service territories of the dates and times of such exercises at least 3 months in advance and invite the counties to participate in the exercise. Although, these storm restoration exercises may already be a part of the normal emergency response or business continuity exercise programs required of EDCs under 52 Pa. Code § 101.3(b), we are now proposing in this subsection that EDCs bring in other stakeholders to this process as participants.

Subsection 69.1903(d) states that both large and small EDCs should provide outage information on their websites. However, dependent on the size of the EDC, as defined by 52 Pa. Code § 57.195(b), different requirements for the website are stated as well as different times for updating the information listed.

Subsection 69.1903(e) states that after a major outage event, EDCs should coordinate after action review with each other as well as solicit input from each county and other utilities as to the companies' performance during the event and any suggested improvements or comments on successful initiatives.

Subsection 69.1903(f) states that all EDCs should develop a storm damage and outage prediction model that provides a means for the EDC to estimate expected storm damage and the potential number of service outages given inputs such as weather data, service territory geography/topography, historical data on similar storms, customer density, and location of crew and service centers.

Subsection 69.1903(g) states that EDCs should continue their work on improving the process of providing timely and accurate estimated times of restoration (ETR) during all service outages, but especially during major service outage events.

Conclusion

The Commission welcomes comments on all aspects of this proposed policy statement and establishment of a Critical Infrastructure Interdependency Working Group. We anticipate that commenters will provide helpful suggestions concerning the utility service outage response recovery process and options discussed herein including applying this to other industries including water, wastewater, gas and telecommunications. Upon review and evaluation of the comments, we expect to issue a Final Order that will include a Statement of Policy concerning the Commission's expectations on these matters.

To facilitate public comment on these matters, a 30-day comment period is established. No reply comments will be permitted. *Therefore,*

It Is Ordered That:

1. The proposed amendments to 52 Pa. Code §§ 69.1602, 69.1702 and 69.1902—69.1903, as set forth in Annex A, are issued for comment.

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

3. The Secretary shall certify this Order and Annex A and deposit them with the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.

4. Interested parties shall have 30 days from the date of publication in the *Pennsylvania Bulletin* of the Proposed Policy Statement and Annex A to file an original copy of comments to the Pennsylvania Public Utility Commission, Attention: Secretary Rosemary Chiavetta, P. O. Box 3265, Harrisburg, PA 17105-3265.

5. An electronic copy of the comments should be electronically mailed to Patricia Wiedt, Assistant Counsel, at pwiedt@pa.gov, and these comments in turn will be placed on the Commission's website for public viewing at www.puc.pa.gov. Attachments may not exceed three megabytes.

6. Comments should, where appropriate, address the issues identified in this Order and should include, where applicable, a numerical reference to the attached Annex A

which the comment(s) address, proposed language for revision, and a clear explanation for the recommendation.

7. A copy of this Order and Annex A be filed at Docket No. M-2013-2382943.

8. A copy of this Order and Annex A be served upon all electric distribution companies operating in Pennsylvania, all jurisdictional water and wastewater companies, all natural gas distribution companies, all jurisdictional telephone utilities, the Office of Consumer Advocate, the Office of Small Business Advocate, the AFL-CIO Utility Caucus, the Pennsylvania Utility Contractors Association, the Energy Association of Pennsylvania, the Pennsylvania Telephone Association (PTA), the Director of the Pennsylvania Emergency Management Agency (PEMA), the County Commissioners Association, and the three Area Directors of PEMA.

9. The contact persons for this are Patricia Wiedt, Law Bureau, (717) 787-5755, pwiedt@pa.gov, Daniel Searfoorce, Bureau of Technical Utility Services, dsearfoorc@pa.gov, (717) 783-6159, and Jennifer Kocher, jekochoer@pa.gov, (717) 783-6152.

ROSEMARY CHIAVETTA,
Secretary

Fiscal Note: 57-300. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 52. PUBLIC UTILITIES PART I. PUBLIC UTILITY COMMISSION Subpart C. FIXED SERVICE UTILITIES CHAPTER 69. GENERAL ORDERS, POLICY STATEMENTS AND GUIDELINES ON FIXED UTILITIES

UNSCHEDULED WATER SERVICE INTERRUPTIONS AND ASSOCIATED ACTIONS

§ 69.1602. Public notification guidelines.

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

(1) *Mass media.* Facsimile/electronic mail notification to local radio and television stations, cable systems, newspapers and other print and news media as soon as possible after the event occurs. These notifications must provide relevant information about the event, such as the affected locations, its potential impact including the possible duration of the outage, the possible adverse health effects and the population or subpopulation particularly at risk, and a description of actions affected ratepayers/occupants should take to ensure their safety, with updates as often as needed. Updates should be provided on a predictable, regular schedule for the duration of the event. The Commission's Office of Communications and Lead Emergency Preparedness [**Coordinator**] **Liaison Officer** should also receive these notifications.

* * * * *

UTILITY SERVICE OUTAGE PUBLIC NOTIFICATION GUIDELINES—NATURAL GAS DISTRIBUTION MARKET

§ 69.1702. Notification guidelines.

(a) *Acceptable methods of public notification.* In the event of a service interruption, the following acceptable methods of public notification should be considered and utilized as appropriate:

(1) *Mass media.* Facsimile/electronic mail notification to local radio and television stations, cable systems, newspapers and other print and news media as soon as possible after the event occurs. These notifications must provide relevant information about the event, such as the affected locations, its potential impact including the possible duration of the outage, and a description of actions affected ratepayers/occupants should take to ensure their safety, with updates as often as needed. Updates should be provided on a predictable, regular schedule for the duration of the event. The Commission's Office of Communications and **Lead** Emergency Preparedness [**Coordinator**] **Liaison Officer** should also receive these notifications.

* * * * *

**UTILITY SERVICE OUTAGE RESPONSE RECOVERY
AND PUBLIC NOTIFICATION GUIDELINES—
ELECTRIC DISTRIBUTION MARKET**

§ 69.1902. Notification guidelines.

(a) *Acceptable methods of public notification.* In the event of a service interruption, the following acceptable methods of public notification should be considered and utilized as appropriate:

(1) *Mass media.* Facsimile/electronic mail notification to local radio and television stations, cable systems, newspapers and other print and news media as soon as possible after the event occurs. These notifications must provide relevant information about the event, such as the affected locations, its potential impact including the possible duration of the outage, and a description of actions affected ratepayers/occupants should take to ensure their safety, with updates as often as needed. Updates should be provided on a predictable, regular schedule for the duration of the event. The Commission's Office of Communications and **Lead** Emergency Preparedness [**Coordinator**] **Liaison Officer** should also receive these notifications.

* * * * *

(*Editor's Note:* The following section is new and printed in regular type to enhance readability.)

§ 69.1903. Preparation and response measures.

(a) *Electric distribution company liaisons to counties.* An electric distribution company (EDC) should offer a company liaison to counties (County Emergency Operations Centers or 9-1-1 Centers, depending on the county's preference) in its service territory during high-impact and major service outage events.

(1) An EDC should inform the Commission's Lead Emergency Preparedness Liaison Officer (EPLO) of the counties in which the company has placed liaisons.

(2) The threshold for when a company liaison is offered should be determined in agreement with the counties.

(3) A county may request a company liaison for events that do not meet the established threshold.

(4) An EDC should respond to a county's request for a company liaison.

(5) An EDC should inform the Commission's Lead EPLO when a company liaison request has been made.

(6) In a county served by more than one EDC, the EDCs should coordinate their response to the county so that the county has representation from the desired EDCs.

(7) An EDC should meet at least yearly with each county to review the liaison program and other emergency response issues.

(b) *EDC regional conference calls.* An EDC should offer regional conference calls for State and local elected officials and local emergency managers for major service outage events.

(1) Examples of major service outage events include:

(i) Hurricanes.

(ii) Tropical storms.

(iii) Major flooding.

(iv) Ice storms.

(v) Heavy snows.

(vi) Cybersecurity incidents.

(2) Regions should be determined based on the geographic locations affected by the major service outage event.

(3) An EDC should begin conference calls at least 2 days prior to an expected major service outage event and should offer to continue the conference calls until affected customers' service is restored.

(4) An EDC should ensure participants on the conference call have the required call-in information prior to initiating the calls.

(5) EDCs should work together to share best practices on how to structure and manage the regional conference calls, especially in those areas that are served by multiple EDCs.

(6) An EDC should notify the Commission's Lead EPLO when initiating regional conference calls.

(c) *EDC storm exercises.* An EDC should develop and hold a storm restoration exercise at least once each calendar year.

(1) An EDC should notify the counties and other utilities in its service territory of the dates and times of storm restoration exercises at least 3 months in advance.

(2) An EDC should invite counties in its service territory to participate in its storm restoration exercises.

(3) An EDC is encouraged to coordinate the planning of its exercises with counties and the Commonwealth, especially in conjunction with the annual State-level Spring Weather Exercise event facilitated by the Pennsylvania Emergency Management Agency.

(4) An EDC that has a large service territory should hold several smaller-scale exercises on a regional level.

(5) An EDC should inform the Commission's Lead EPLO of the dates and times of its storm restoration exercises.

(6) An EDC should review its exercise After Action Reports with the Commission, including corrective actions or best practice implementations planned as a result.

(d) *EDC outage web sites.*

(1) A large EDC, as defined in § 57.195(b) (relating to reporting requirements), should have an outage information section or portal on its web site. The outage information should be updated on a periodic basis of at least once per hour. The outage section or portal should provide one of the following:

(i) A graphic outage map of the service territory with county boundaries clearly defined that shows current

service outages for the entire service territory and current outages in each county using text, colors or some other means. The outage map should:

(A) Allow users to click on a specific county and view the total number of customers out of service for the county.

(B) Indicate the current number of customers out of service by municipality or borough.

(C) Provide estimated times of restoration.

(D) Include the number of customers served in each county and municipality or borough.

(ii) A summary tab that allows users to view the total number of customers out of service for the municipality or borough in each county along with an option to view the total number of customers out of service for the municipality or borough in each county along with estimated times of restoration and the number of customers served in each county and municipality or borough.

(2) A small EDC, as defined in § 57.195(c), should provide an outage section on its web site that provides:

(i) Outage and estimated restoration information by county and municipality or borough for service outages that meet the reporting criteria as defined in § 67.1(b) (relating to general provisions).

(ii) Outage and estimated restoration information, updated at least twice daily, and noting the next update time for each posting.

(3) Outage information for large and small EDCs should be provided until the last customer's service affected by the outage event is restored.

(e) *EDC post-storm after action reviews.* After major service outage events as defined in subsection (b)(1), an EDC should:

(1) Coordinate after action reviews with other EDCs and solicit input from each county and other utilities as to the EDC's performance during the event and suggested improvements or comments on successful initiatives.

(2) Report to the Commission on best practices identified and areas for improvement along with a timeline of

implementation of those best practices and corrective actions for the areas of improvement. The report should be within 1 calendar year of the major service outage event's occurrence.

(3) Submit a consolidated report to the Commission for major service outage events involving multiple EDCs.

(f) *EDC storm outage prediction models.* An EDC should develop a storm damage and outage prediction model.

(1) A storm outage prediction model should be a means for an EDC to estimate expected storm damage and the potential number of service outages given inputs such as weather data, service territory geography/topography, historical data on similar storms, customer density, and location of crews and service centers.

(2) An EDC should provide the Commission with an overview of its model when it is completed. An EDC is encouraged to work together with other EDCs throughout the county and with academic institutions to develop its prediction model.

(3) An EDC that already has a working model is encouraged to share its best practices with other EDCs while respect is given to proprietary elements in its model.

(4) An EDC should provide an overview of its developed and implemented model to the Commission and county emergency managers in its service territory.

(5) An EDC should provide the Commission's Lead EPLO and county emergency managers with its model's predictions prior to storms that are expected to cause service outages that meet the reporting criteria under § 67.1(b) as affecting its service territory.

(g) *EDC estimated time of restoration messaging.* An EDC should continue its work on improving the process of providing timely and accurate estimated times of restoration during service outages, especially during major outage events as defined in subsection (b)(1).

[Pa.B. Doc. No. 13-2046. Filed for public inspection November 1, 2013, 9:00 a.m.]