

STATEMENTS OF POLICY

Title 52—PUBLIC UTILITIES

PENNSYLVANIA PUBLIC UTILITY COMMISSION

[52 PA. CODE CH. 69]

Diversity Policy Statement Revision of 52 Pa. Code §§ 69.801—69.809

Public Meeting held
February 1, 2024

Commissioners Present: Stephen M. DeFrank, Chairperson; Kimberly Barrow, Vice Chairperson; Ralph V. Yanora; Kathryn L. Zerfuss, statement follows; John F. Coleman, Jr.

*Diversity Policy Statement Revision of 52 Pa. Code
§§ 69.801—69.809; M-2023-3038267*

Final Policy Statement and Order

By the Commission:

On August 3, 2023, the Commission (PUC or Commission) entered a Proposed Policy Statement and Order (PPSO) wherein the Commission proposed to revise its Diversity at Major Jurisdictional Utility Companies—Statement of Policy at 52 Pa. Code §§ 69.801—69.809 (Diversity Policy Statement). The PPSO was published in the *Pennsylvania Bulletin* at 53 Pa.B. 6047 (9/30/2023). The comment period closed on November 14, 2023. This Final Policy Statement and Order (FPSO) makes the Commission's intent clear that the Diversity Policy Statement still provides guidance to major telecommunications utilities. Upon publication in the *Pennsylvania Bulletin* of this FPSO, the Diversity Policy Statement will fully comport with the Diversity Reporting regulation at 52 Pa. Code §§ 51.11—51.13 (relating to general, definitions, diversity reporting requirement) (Diversity Reporting Regulation).

Summary of the Proposed Policy Statement

In the PPSO, the Commission acknowledged that, since codification of the Commission's Diversity Regulation which requires certain major jurisdictional public utilities to file reports on their diversity efforts, it is necessary to revise the Diversity Policy Statement. Now that major jurisdictional utilities are required to report on their diversity efforts, reporting diversity efforts is no longer dependent on those major jurisdictional utilities voluntarily complying with a recommendation in a policy statement.

However, while the Commission was constrained to exempt major telecommunications utilities from the definition of a "major jurisdictional utility" as that term is used in the Diversity Reporting Regulation because of statutory preclusion at 66 Pa.C.S. § 3015(f) relating to alternative forms of regulation, the Commission still intended to encourage major telecommunications utilities to report their diversity efforts. As such, we expressly addressed major telecommunications utilities in the Proposed Diversity Policy Statement to make it clear that major telecommunications utilities are still encouraged to comply with the diversity objectives in the Policy Statement and that they are encouraged to report their diversity efforts consistent with the Policy Statement.

Diversity is an economic reality that public utilities should include in their corporate strategies now and in the future, and they should associate diversity with their business objectives and strategies. As such, the Commission continues to recommend that the major jurisdictional utilities providing electric, natural gas, water and wastewater services and the major telecommunications utilities operating in this Commonwealth all incorporate diversity in their business strategy and in the procurement of goods and services. 52 Pa. Code § 69.801 (relating to general).

In the PPSO, we noted that since the promulgation of Diversity Reporting Regulation, references to "major jurisdictional utility" in the Diversity Policy Statement could be read to not include major telecommunications utilities. As this was never the intent, the Diversity PPSO proposed changes to expressly include major telecommunications utilities to make it clear that major telecommunications utilities are still included in the Diversity Policy Statement.

Discussion

The Commission received and reviewed the comments filed in this proceeding. Based upon those comments, the Commission has determined that it will proceed with the proposal to revise the Diversity Policy Statement, with modifications. The Commission received comments from Energy Association of Pennsylvania and Verizon that noted their respective general support of the proposed revisions to the Diversity Policy Statement without any revisions thereto. The Commission also received comments from the Office of Consumer Advocate (OCA) that has suggested changes which we address herein.

Section 69.801 General

The OCA notes that the Commission did not include the term "employment practices" in Section 69.801 (relating to general). In Section 69.801, the OCA posits the following change:

The Commission encourages major jurisdictional utilities and major telecommunications utilities operating in this Commonwealth to incorporate diversity in their business strategy in connection with their employment practices and the procurement of goods and services. Major telecommunications utilities are further encouraged to file diversity reports in the same format as major jurisdictional utilities are directed in 52 Pa. Code §§ 51.11—51.13 (relating to diversity) (Chapter 51).

OCA Comments at 3.

The Commission will not adopt this recommendation because the Commission is not permitted to make managerial decisions such as hiring decisions with respect to the public utilities within its jurisdiction. The Pennsylvania Supreme Court and the Pennsylvania Commonwealth Court have consistently recognized that public utilities make managerial decisions that are not subject to Commission regulation. See *Pa. Pub. Util. Comm'n v. Philadelphia Elec. Co.*, 561 A.2d 1224, 1226-27 (Pa. 1989) ("Recognizing the Commission's duty to the public and a utility's right of self-management, our courts adopted the further proposition that it is not within the province of the Commission to interfere with the management of a utility unless an abuse of discretion or arbitrary action by the utility has been shown.") and *Pickford v. Pa. Pub. Util. Comm'n*, 4 A.3d 707 (Pa. Cmwlth. 2010).

The OCA asserts that the Commission makes a recommendation for employment practices in Section 69.803(1)(4) (guidelines for diversity development) and Section 69.809(a) (filings). However, these sections do not encourage employment practices per se. Section 69.803, in general, encourages diversity programs that are recommendations to public utilities to aid in developing and maintaining a diverse workforce. It is not the Commission's intent to interfere with public utility managerial decisions. With respect to Section 69.809(a), this section simply encourages reporting of the public utility's diversity program, not the implementation of a diversity program.¹ Employment practices are an integral part of a public utility's internal management, and it is not the intent of this Policy Statement to interfere with public utility employment practices. As such, it is not appropriate for the Commission to make management recommendations such as employment practices with respect to the public utilities it regulates.

Resolution: Accordingly, we have adopted the changes that we proposed in the PPSO to Section 69.801 without any further changes.

Proposed Section 69.802 Definitions for Reporting Employee Statistics; Final Section 69.802 Definitions

The terms "control" and "operate" are presently in Section 69.802a (relating to definitions for reporting vendor statistics), which was proposed for deletion in its entirety. The PPSO proposed to incorporate the terms in Section 69.802(a) (relating to definitions for reporting employee statistics). The terms are not, however, used in the final Diversity Policy Statement. The OCA recommends that the Commission remove the terms "control" and "operate" from the final Section 69.802(a) since the terms will not be used in the final Diversity Policy Statement.

The Commission acknowledges that the terms "control" and "operate" are not used in their singular form with respect to the Diversity Reporting Regulation. While "control" is used in its passive form in the definitions of MBE and WBE in the Diversity Reporting Regulation, the word "controlled" is modified with the phrase "whose management and daily business operations are controlled." 52 Pa. Code § 51.12 (relating to definitions). Further, we note that "control" is not defined in the Diversity Reporting Regulation. It is impermissible for a definition in a policy statement to define a term in a regulation. As such, we agree with the OCA that the term "control" should not be defined, and it will be removed from Section 69.802(a) in the final Diversity Policy Statement.

We also agree with the OCA that the term "operation" should be removed from Section 69.802 as well. Again, it is impermissible for a policy statement to define terms used in a regulation. Further, while the term "operation" is used in the definitions of Minority-Owned Business Enterprise (MBE) and Women-Owned Business Enterprise (WBE) in the Diversity Reporting Regulation, respectively, the term "operation" is given context with the words "management and daily business" preceding "operation." See 52 Pa. Code § 51.12(c) (relating to definitions and the definitions for MBE—Minority-owned business enterprise and WBE—Women-owned business enterprise). As such, we agree with the OCA that "operate" should not be a defined term in Section 69.802, and it has been removed from the final Diversity Policy Statement.

¹ This presumes that the reporting public utility has a diversity program. If one does not exist, then the reporting public utility would not have such a program to report.

Resolution: The terms "control" and "operate" are removed from Section 69.802.

Proposed Section 69.802a Definitions for Reporting Vendor Statistics

Resolution: As explained in the PPSO, this section is removed in its entirety from the final Diversity Policy Statement and the section number is reserved.

Sections 69.803—69.809

Resolution: These sections are adopted as explained in the PPSO except for minor edits, as discussed infra.

Housekeeping

Upon further review of the Diversity Policy Statement, the Commission recognized that the use of the term "major jurisdictional company" was still in use in the title as well as some areas in the Diversity Policy Statement itself. The Commission has revised these references so that they accurately reflect the terminology we have adopted throughout.

Resolution: The term "major jurisdictional company" is removed from the Policy Statement title, and it is replaced with "Utilities And Major Telecommunications Utilities." The term "major jurisdictional utility companies" is also replaced with "major jurisdictional utilities" in Sections 69.802 and 69.809.

Conclusion

Accordingly, pursuant to 66 Pa.C.S. §§ 501, 505, 506, and 512, we have adopted as final, the revisions to Sections 69.801—69.809 as set forth in Annex A, attached hereto. We note that any issue, comment, or reply comment requesting a further change to the Diversity Policy Statement or objecting to a possible change, but which we may not have specifically delineated herein, shall be deemed to have been duly considered and denied at this time without further discussion. The Commission is not required to consider expressly or at length each contention or argument raised by the parties. *Consolidated Rail Corp. v. Pa. Pub. Util. Comm'n*, 625 A.2d 741 (Pa. Cmwlth. 1993); see also, generally, *U. of PA v. Pa. Pub. Util. Comm'n*, 485 A.2d 1217 (Pa. Cmwlth. 1984); *Therefore*,

It Is Ordered That:

1. The Commission adopt the final Policy Statement as set forth in Annex A to this Final Policy Statement and Order.
2. The Law Bureau will deposit this Order and Annex A with the Office of the Budget for fiscal review.
3. Upon receipt of the fiscal note, the Law Bureau will deposit this Order and Annex A with the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.
4. This final Policy Statement shall become effective upon publication in the *Pennsylvania Bulletin*.
5. This Order and Annex A be posted on the Commission's website. That the contact persons for this matter are Joseph P. Cardinale, Jr., Assistant Counsel, Law Bureau, 717-787-5558, jcardinale@pa.gov; and Rhonda L. Daviston, Assistant Counsel, Law Bureau, 717-787-6166, rdaviston@pa.gov.

ROSEMARY CHIAVETTA,
Secretary

ORDER ADOPTED: February 1, 2024

ORDER ENTERED: February 1, 2024

**STATEMENT OF COMMISSIONER
KATHRYN L. ZERFUSS**

Before the Commission today are the final amendments to our Diversity Policy Statement, 52 Pa. Code §§ 69.801—69.809. I would like to thank the interested parties that filed comments and letters concerning these amendments as well as our Law Bureau for the work involved in finalizing these amendments. These amendments ensure that the Policy Statement is consistent with our recent Diversity Reporting Regulations, 52 Pa. Code §§ 51.11—51.13.²

As you may know, the Diversity Policy Statement retains important provisions that recommend major jurisdictional electric, natural gas, water and wastewater utilities, and major telecommunications utilities incorporate diversity into their business strategies in relation to their employment practices and the procurement of goods and services. These Diversity Policy Statement provisions, coupled with our Diversity Reporting Regulations, provide this Commission with valuable insight into the efforts utilities are making to attract the labor force, including the labor force generated through contracts and subcontracts, that is essential to providing safe, reasonable, efficient, and reliable service.

I would like to reiterate previous comments I have made in this proceeding that emphasize how utilities' diversity programs impact and strengthen their relationships with the customers that live and work in their communities and, ultimately, impact the way customers are served. I, again, commend the utilities for filing their first annual diversity reports last year, and I encourage them to continue with their diversity efforts and look forward to receiving their reports this year.

The Commonwealth has made some indelible marks by creating programs and opportunities to further develop a diverse workforce in Pennsylvania, such as the creation of the Commonwealth Workforce Transformation Program³ and the Governor's Executive Order 2023-18.⁴ I appreciate the Commonwealth's recent diversity and workforce equity actions, and I am excited for the Commission to continue engaging in actions that grow our diverse workforce here, as well as our accompanying workforce development efforts. I have been engaging in conversations with the Commonwealth's Chief Diversity Officer to see how this Commission can ensure that we are moving the needle to attract diversity of thought and diversity of perspective and to celebrate and support peoples' differences. It is critical for us to be self-aware and mindful of our actions so that we can be an employer of choice and attract and maintain a strong workforce to ensure that Pennsylvania residents and businesses are receiving safe, reasonable, efficient, and reliable utility service.

Date: February 1, 2024

KATHRYN L. ZERFUSS,
Commissioner

² On April 14, 2022, the Commission voted to adopt regulations requiring regular reporting on diversity programs and efforts by major jurisdictional utilities providing electric, natural gas, water, and wastewater services. The Diversity Reporting Regulations were enacted upon publication in the *Pennsylvania Bulletin*, at 52 Pa.B. 5934, on September 17, 2022.

³ The Commonwealth Workforce Transformation Program aims to assist Pennsylvania in growing its diverse workforce by using the federal investments of the federal Infrastructure Investment and Jobs Act of 2021, Pub.L. 117-169 (IIJA), and the federal Inflation Reduction Act of 2022, Pub.L. 117-169 (IRA), to create "good jobs with family-sustaining wages and equitable pathways to these good jobs for workers from all communities." Executive Order 2023-17.

⁴ Executive Order 2023-18 opens up new opportunities for small businesses and small diverse businesses to compete for state contracts by making the state procurement process more accessible and taking proactive steps and outreach to help these businesses grow and succeed.

Fiscal Note: Fiscal Note 57-343 remains valid for the final adoption of the subject regulations.

(Editor's Note: The Pennsylvania Code is amended by amending the statement of policy in 52 Pa. Code §§ 69.801—69.809 to read as set forth in Annex A.)

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**

**DIVERSITY AT MAJOR JURISDICTIONAL
UTILITIES AND MAJOR TELECOMMUNICATIONS
UTILITIES—STATEMENT OF POLICY**

§ 69.801. General.

From a business perspective, diversity should be associated with a public utility's business objectives and strategies. Diversity is an economic reality that public utilities should include in their corporate strategies now and in the future. The Commission encourages major jurisdictional utilities and major telecommunications utilities operating in this Commonwealth to incorporate diversity in their business strategy in connection with the procurement of goods and services. Major telecommunications utilities are further encouraged to file diversity reports in the same format as major jurisdictional utilities are directed in 52 Pa. Code §§ 51.11—51.13 (relating to diversity).

§ 69.802. Definitions.

(a) The following words and terms, when used in §§ 69.801—69.809, have the following meanings:

Long-term plan—A plan applicable to a period of 5 years.

MIL—minimum improvement level—A level or goal which, when achieved, indicates progress in a preferred direction. An MIL is neither a requirement nor a quota, and no specific participation levels are intended.

Major telecommunications utility—A telecommunications public utility under 66 Pa.C.S. § 102 (relating to definitions) with 50,000 or more access lines.

Midterm plan—A plan applicable to a period of 3 years.

Short-term plan—A plan applicable to a period of 1 year.

Subcontract—An agreement or arrangement between a contractor and a party or person—in which the parties do not stand in the relationship of an employer and an employee—for the furnishing of supplies or services for the use of real or personal property, including lease arrangements, which in whole or in part, is necessary to the performance of any one or more contracts.

Substantial objectives—Objectives which are realistic and clearly demonstrate a major jurisdictional utility's commitment to increase minority/women/persons with disabilities/LGBTQ/veteran-owned business share of the utility's purchases and contracts.

(b) The following terms, when used in §§ 69.801—69.809, are used as defined in § 51.12 (relating to definitions).

Asian (not Hispanic or Latino)

Black or African American (not Hispanic or Latino)

Diversity

Exempt procurement

Hispanic or Latino

LGBTQ—Lesbian, gay, bisexual, transgender, queer and questioning

Major jurisdictional utility

MBE—Minority-owned business enterprise

Minority

Native American or Alaska Native (not Hispanic or Latino)

Native Hawaiian or Pacific Islander (not Hispanic or Latino)

Person with disabilities

Two or more races (not Hispanic or Latino)

Veteran

WBE—Women-owned business enterprise

White (not Hispanic or Latino)

§ **69.802a. [Reserved].**

§ **69.803. Guidelines for diversity development.**

The Commission encourages major jurisdictional utilities and major telecommunications utilities to implement diversity programs. This effort may include the following:

(1) The articulation of a corporate policy by the senior executives of the major jurisdictional utility and the major telecommunications utility committing it to improving its level of diversity in the workplace and within its procurement process.

(2) The development and implementation of a corporate-wide diversity program with specified goals and objectives for each year.

(3) The appointment of utility managers to be responsible for the success of the program.

(4) The training of managers regarding implementing diversity initiatives in the areas of employment and contracting for goods and services.

(5) The location of qualified minority/women/persons with disabilities/LGBTQ/veteran-owned business contractors and mentoring, partnering and training qualified women/minority/persons with disabilities/LGBTQ/veteran-owned businesses contractors to serve the needs of the major jurisdictional utility and the major telecommunications utility.

§ **69.804. Contracting recommendations.**

The Commission recommends that major jurisdictional utilities and major telecommunications utilities strive to take maximum efforts to provide that minority/women/persons with disabilities/LGBTQ/veteran-owned businesses have an equal opportunity to compete for the purchase of equipment, supplies, services, fuels, materials, construction, professional services, advertising, and the like. The Commission encourages each major jurisdictional utility and each major telecommunications utility to develop a diversity program which is designed to provide that a fair proportion of products and services contracts are offered to minority/women/persons with

disabilities/LGBTQ/veteran-owned businesses. It is recommended that each major jurisdictional utility and each major telecommunications utility adopt the general guidelines in §§ 69.805—69.808 in the development or enhancement of their diversity program relative to contracting for goods and services.

§ **69.805. Program development.**

The major jurisdictional utilities and the major telecommunications utilities are encouraged to have an appropriate executive accountable for providing overall direction and guidance to the minority/women/persons with disabilities/LGBTQ/veteran-owned business program. Each major jurisdictional utility and each major telecommunications utility is invited to maintain a staff to implement program requirements concerning the women/minority/persons with disabilities/LGBTQ/veteran-owned businesses. It may not be necessary for a major jurisdictional utility or a major telecommunications utility to increase its staff or to reassign existing staff to minority/women/persons with disabilities/LGBTQ/veteran-owned business program responsibilities if the major jurisdictional utility or the major telecommunications utility can implement its program effectively through its current resource commitment and management structure.

§ **69.806. Minimum improvement levels.**

By March 1 of each year, each major jurisdictional utility and each major telecommunications utility is encouraged to annually set substantial and verifiable short-term, midterm and long-term plans for the utilization of minority/women/persons with disabilities/LGBTQ/veteran-owned businesses. Minimum improvement levels should be set annually for each major product and services category which provides opportunities for procurement.

(1) The major jurisdictional utilities and the major telecommunications utilities may consider the following factors in setting their minimum improvement levels:

(i) Their total purchasing or contracting projections, or both, including fees to financial (for example, financial institutions, and the like), advertising, legal and professional services.

(ii) Availability of minority/women/persons with disabilities/LGBTQ/veteran-owned businesses in the major jurisdictional utility's or the major telecommunications utility's service area and surrounding communities.

(iii) Market dynamics based on historical data and trends.

(iv) Other appropriate factors which would increase the minority/women/persons with disabilities/LGBTQ/veteran-owned businesses share of utility business.

(2) Program objectives should be established for both minority-owned, non-minority women-owned, persons with disabilities-owned, LGBTQ-owned and veteran-owned business enterprises.

(3) Each major jurisdictional utility or each major telecommunications utility may exclude a specific product or service when it is clearly evident the minority/women/persons with disabilities/LGBTQ/veteran-owned businesses do not provide a specific product or service, or that exempt procurement is the only available procurement method for obtaining that specific product or service. Each major jurisdictional utility and each major telecommunications utility should demonstrate the unavailability of minority/women/persons with disabilities/LGBTQ/veteran-owned businesses capable of supplying these products and services on a case-by-case basis. Because

there may in the future be minority/women/persons with disabilities/LGBTQ/veteran-owned businesses capable of supplying products or services currently being supplied by an exempt procurement provider, the major jurisdictional utility or the major telecommunications utility should explain in its annual report the continued use of any exempt procurement provider.

(4) Each major jurisdictional utility and each major telecommunications utility which is presently purchasing products or services from affiliates may subtract the dollars paid to affiliates for these products or services from the total dollars used as the basis for establishing minimum improvement levels for purchases from minority/women/persons with disabilities/LGBTQ/veteran-owned businesses if the major jurisdiction utility or the major telecommunications utility requires the affiliate to establish an appropriate subcontracting program for minority/women/persons with disabilities/LGBTQ/veteran-owned businesses where the affiliates employ subcontractors. Each major jurisdictional utility and each major telecommunications utility which takes advantage of this section should report to the Commission, in its annual report, whether the affiliates have established a subcontracting program and describe the results of the program.

(5) Overall program levels should be expressed as a percentage of total dollars awarded to outside suppliers and contractors other than products and services which fall within an exempt procurement category established by the major jurisdictional utility or the major telecommunications utility.

(6) Payments for fuel, purchased power and franchise tax fees need not be included in the procurement dollar base used to establish minimum improvement levels.

(7) Each major jurisdictional utility and each major telecommunications utility is encouraged to make special efforts to increase utilization of minority/women/persons with disabilities/LGBTQ/veteran-owned businesses, in conjunction with its established minimum improvement levels, in areas that are considered to be technical in nature, and where there has been low utilization, such as consultants, legal and financial services.

(8) Each major jurisdictional utility and each major telecommunications utility is invited to consider the utilization of minority/women/persons with disabilities/LGBTQ/veteran-owned businesses when outsourcing noncore business functions and report these contracts as part of the annual report.

§ 69.807. Subcontracting program.

Each major jurisdictional utility and each major telecommunications utility is encouraged to establish and maintain a subcontracting program for its prime contractors to utilize minority/women/persons with disabilities/LGBTQ/veteran-owned business subcontractors. The subcontracting program will serve as an enhancement to and not a replacement for a minority/women/persons with disabilities/LGBTQ/veteran-owned business program.

(1) Each major jurisdictional utility and each major telecommunications utility should incorporate in purchase orders, requests for bid proposals and other appropriate procurement documents related to procurement efforts subject to its subcontracting program, a statement such as follows:

“It is the policy of this utility that businesses owned by minorities, women, persons with disabilities, LGBTQ and veterans should have an equal opportunity to compete for subcontracts. The contractor

agrees to use its best efforts to carry out this policy to the fullest extent consistent with the efficient performance of this contract.”

(2) Each major jurisdictional utility and each major telecommunications utility is encouraged to assist its prime contractors in developing plans to increase the opportunities for participation by minority/women/persons with disabilities/LGBTQ/veteran-owned business subcontractors. Prime contractors will be encouraged to submit these plans and the results to the major jurisdictional utility or the major telecommunications utility.

(3) The subcontracting program should apply to purchases/contracts exceeding \$500,000 for products and services, and for construction contracts over \$1 million. The subcontracting program need not be applied to exempt procurements. See 52 Pa. Code § 51.12 (relating to definitions) for the definition of “exempt procurement.”

(4) Each major jurisdictional utility and each major telecommunications utility is encouraged to inform suppliers of products and services that subcontracting with businesses owned by minority/women/persons with disabilities/LGBTQ/veterans is a factor that may be considered in the bid evaluation process.

(5) [Reserved].

§ 69.808. External outreach.

Each major jurisdictional utility and each major telecommunications utility should implement an outreach program to inform, to recruit and to expand procurement activities to qualified and qualifiable businesses owned by minority/women/persons with disabilities/LGBTQ/veterans. Outreach activities may vary for each major jurisdictional utility and each major telecommunications utility depending on its size, service territory and specific lines of business. Each major jurisdictional utility and each major telecommunications utility should, at a minimum, consider implementation of the following:

(1) Actively seek out opportunities to identify business contractors and suppliers that are owned by minority/women/persons with disabilities/LGBTQ/veterans and to expand source pools.

(2) Actively support the efforts of organizations experienced in promoting the interest of minority/women/persons with disabilities/LGBTQ/veteran-owned businesses.

(3) Initiate business development partnerships (long-term), joint ventures or venture capital projects with minority/women/persons with disabilities/LGBTQ/veteran-owned businesses such as outsourcing agreements of noncore utility business functions when applicable to allow business expansion within the minority/women/persons with disabilities/LGBTQ/veteran-owned business community. Provide technical/management support (short-term) to ensure the success of this initiative.

(4) Work with minority/women/persons with disabilities/LGBTQ/veteran-owned business contractors to facilitate contracting relationships by explaining utility qualification requirements, bidding and contracting procedures, materials requirements, invoicing and payment schedules and other procurement practices and procedures.

§ 69.809. Major telecommunications utility filings.

(a) The major telecommunications utilities are encouraged to file with the Secretary of the Commission an annual report describing their diversity program activity for the prior year. The annual report should contain the following elements:

(1) A copy of any corporate policy committed to improving diversity in the workplace and in the procurement process.

(2) A description of any training implemented on diversity initiatives in employment and in the contract of goods and services.

(3) The demographic composition of the major telecommunications utility's workforce, reporting the number of employees by gender, race and ethnicity, persons with disabilities, and veterans on a form provided by the Commission.

(4) A description of any diversity recruiting strategies.

(5) A description of any diversity promotion efforts.

(6) A description of any diversity retention efforts.

(7) A brief description of any involvement with organizations promoting diversity.

(8) A brief summary of MBEs/WBEs that the major telecommunications utility contracts with for goods and services. Include percentage of dollars spent with MBEs/WBEs versus non-MBEs/non-WBEs.

(b) Information that is otherwise unobtainable to the major telecommunications utility, for example, prime contractor utilization of minority/women/persons with disabilities/LGBTQ/veteran-owned businesses as subcontractors, should be reported as unobtainable in the annual filings.

(c) Major telecommunications utilities that file annual reports with the Commission should file their respective annual reports confidentially in conformance with the filing specifications at § 1.32 (relating to filing specifications).

(d) Reporting of persons with disability and LGBTQ status should be confidential and voluntary on the part of the employee.

(e) If a major telecommunications utility files an annual report, the information and form filed shall be confidential.

[Pa.B. Doc. No. 24-429. Filed for public inspection March 29, 2024, 9:00 a.m.]

Title 52—PUBLIC UTILITIES

PENNSYLVANIA PUBLIC UTILITY COMMISSION

[52 PA. CODE CH. 69]

Policy Statement on Public and Private Fire Protection, 52 Pa. Code §§ 69.1501—69.1504

Public Meeting held
December 21, 2023

Commissioners Present: Stephen M. DeFrank, Chairperson; Kimberly Barrow, Vice Chairperson; Ralph V. Yanora; Kathryn L. Zerfuss; John F. Coleman, Jr.

*Policy Statement on Public and Private Fire Protection,
52 Pa. Code §§ 69.1501—69.1504; M-2022-3033054*

Final Policy Statement

By the Commission:

On November 10, 2022, the Pennsylvania Public Utility Commission (PUC or Commission) entered a Proposed Policy Statement and Order wherein the PUC set forth recommended guidelines for the provision of public and

private fire protection service by water public utilities (Policy Statement). The Proposed Policy Statement was published in the *Pennsylvania Bulletin* at 53 Pa.B. 379 (January 14, 2023). The comment period closed on March 15, 2023. The Final Policy Statement is intended to provide water public utilities with a best practice guide for fire protection service and system hydraulic monitoring that the PUC considers reasonable and will be codified at 52 Pa. Code §§ 69.1501—69.1504. Ensuring that regulated fire protection service offerings are safe, reasonable, and adequate is a matter of utmost concern to the Commission and the public.

Background and Procedural History

The fire protection role of the Commonwealth's regulated water public utilities is a matter of utmost public importance. Ensuring that regulated fire protection service offerings are safe, reasonable, and adequate is likewise a matter of utmost concern to the PUC. Public and private fire protection services, whether serving a ubiquitous roadside fire hydrant or a sophisticated private commercial sprinkler system, are expected to supply adequate water safely, reliably, and immediately upon demand.

Amendments to the Commonwealth's Uniform Construction Code¹ over the past several decades have expanded the topic of fire protection to aspects of regulated water public utility service well beyond the provision of adequate numbers of functional fire hydrants. Internal fire protection services in the form of sprinkler systems have long been a requirement for commercial and industrial buildings. Municipal building codes and insurance requirements also increasingly mandate the installation of sprinkler systems in various types of residential construction as well. Lives and property depend on these emergency systems to work at a moment's notice. In turn, sophisticated water distribution system design, construction, management, and operations are required to accommodate and serve this type of high-volume instantaneous demand.

On June 16, 2022, the PUC adopted the Motion of Commissioner Ralph V. Yanora. The Motion directed the PUC's Bureau of Technical Utility Services (TUS), in conjunction with the PUC's Law Bureau, to solicit input from Class A water public utilities on the development of a policy statement reflecting a best practices approach to those aspects of fire protection services subject to PUC oversight. On June 29, 2022, the PUC issued a Secretarial Letter seeking comment from Class A water public utilities on the proposed policy. The PUC sought input on two areas specifically: (1) the use of hydraulic distribution system modeling required for fire protection; and (2) fire protection service afforded by current system design requirements. The Secretarial Letter was published at 52 Pa.B. 4064 (July 16, 2022).

Comments on the proposed policy were received from Aqua Pennsylvania, Inc. (Aqua), Columbia Water Company (Columbia), and the National Association of Water Companies—Pennsylvania Chapter (NAWC).

On November 10, 2022, the PUC entered the Proposed Policy Statement Order which set forth the proposed

¹The Act of Nov. 10, 1999 (P.L. 491, No. 45) (35 P.S. §§ 7210.101—7210.1103), known as the Pennsylvania Construction Code Act (PCCA). The PCCA directed the Pennsylvania Department of Labor and Industry to oversee statewide application and periodic review of certain international building and mechanical codes (i.e., regulations) known collectively as the Uniform Construction Code, 34 Pa. Code §§ 401.1—405.42, (PaUCC), last amended effective February 2022, 52 Pa.B. 971 (2/12/2022). See also National Fire Protection Association 13 (NFPA 13) Standard for the Installation of Sprinkler Systems, Section 8.2.6.6.4 (2022), <https://www.nfpa.org/codes-and-standards/13/nfpa-13> (last accessed 11/22/2023).

contents of the Policy Statement. The Proposed Policy Statement Order was published at 53 Pa.B. 379 (January 14, 2023). On February 27, 2023, the PUC received comments on the Proposed Policy Statement from Aqua. On February 28, 2023, the PUC received comments from NAWC; Columbia, Community Utilities of Pennsylvania, Inc., and Audubon Water Company (Joint Commenters); and the Office of Consumer Advocate (OCA). On March 15, 2023, OCA filed reply comments.

Discussion

The PUC received and reviewed the comments and reply comments filed in this proceeding. Based upon those comments and reply comments, the PUC has determined that it will proceed with a Final Policy Statement. We will first address the comments and reply comments related to language in the proposed Policy Statement. Thereafter, we will address comments and reply comments related to more general issues raised by the commenters.

I. Section 69.xx1. General Scope And Purpose

Section 69.xx1 of the Proposed Policy Statement conveyed the scope and purpose of the expected actions and level of public fire protection service and system hydraulic monitoring that the PUC considers reasonable.

A. Comments

NAWC asserts that the second sentence of Section 69.xx1(b) in the proposed policy statement is too broad and recommends starting the second sentence with “In providing fire protection services, . . .” NAWC Comments at 2. Aqua expressed that it fully supports the comments of NAWC. Aqua Comments at 1. For Section 69.xx1(b), OCA recommends a measured approach for requiring utilities to use and maintain computerized hydraulic models. OCA Comments at 5.

B. Resolution

The PUC reiterates that this Policy Statement is intended to encourage the investigation and planning that a water public utility should undertake to provide reasonable fire protection service throughout its service territory, with the understanding that this goal may take some time to accomplish. Water public utilities are encouraged to operate with a sophisticated level of technical expertise, including the use of modern water industry tools; however, water public utilities are afforded the opportunity to develop their own plan as to the implementation of computerized hydraulic models. The PUC has consistently explained that “a policy statement is intended to provide guidance regarding the policy the agency intends to implement in future adjudications.”²

To clarify that the language of Section 69.xx1(a) is intended to encourage, rather than require, water public utilities to provide reasonable fire protection service throughout the Commonwealth, the PUC will amend the last sentence of Section 69.xx1(a) by replacing “will consider” with “may consider” a water public utility’s efforts when determining just and reasonable rates for a water public utility. Moreover, while the PUC may con-

sider the costs associated with implementing these guidelines and whether those costs may be recovered, the PUC notes that it is best guided by the applicable law related to rate cases.

The PUC will amend the first sentence of proposed Section 69.xx1(b) to state “Class A water public utility” rather than “Class A public water utilities” to be consistent with the defined term and remainder of the Policy Statement. The PUC also agrees with the recommendation of NAWC and will amend the second sentence of proposed Section 69.xx1(b) to start with “In providing fire protection services,” to ensure that this sentence is unambiguous.

II. Section 69.xx2. Definitions

Section 69.xx2 of the Proposed Policy Statement included definitions to provide clarity and understanding to the Policy Statement.

A. Comments

NAWC supports the concept of defining “discrete system” the same way in both proposed Section 69.xx2 and proposed 52 Pa. Code § 65.20a(b) (relating to water conservation measures) in the Water Audit Rulemaking at Docket No. L-2020-3021932.³ Specifically, NAWC recommends modifying the proposed definition as delineated in its comments on Section 65.20a(b) in the Water Audit Rulemaking proceeding. NAWC Comments at 2-3. NAWC also suggests adding a definition for “fire protection connections.” NAWC Comments at 3.

B. Resolution

The PUC understands NAWC’s comments regarding “discrete system” as defined in proposed § 69.xx2 and proposed § 65.20a(b), but the PUC concludes that the definition of “discrete system” does not need to be modified for the Policy Statement. In the Water Audit Rulemaking, NAWC proposed minor clarifications to the definition of “discrete system” clarifying whether a “stand-alone pipe network” includes treatment works and revising the definition to include a large interconnected system with multiple water sources. However, the definition of “discrete system” included in the Proposed Policy Statement was purposefully crafted in such a way as to include the entirety of a pipeline network system and water sources (which includes water treatment plants and interconnections with other systems that are owned and operated by the same company). As such, the PUC will not expand the definition in the Policy Statement.

The PUC agrees with the comment of NAWC regarding adding a definition for “fire protection connection.” The term is not currently defined in the Public Utility Code or in PUC regulations. The PUC will also add definitions for “fire hydrant,” “flushing hydrant,” “fire protection service,” and “water public utility.” These revisions follow NAWC’s suggestion to add a definition for “fire protection connection,” to more clearly define the facilities and services covered by the Policy Statement, and to clarify the applicability of the Policy Statement recommendations to all PUC-jurisdictional water public utilities. The PUC will amend the definition of “Class A water public

²See, e.g., *Pa. PUC, et al. v. Philadelphia Gas Works*, Docket No. R-2023-3037933, (Order entered Nov. 9, 2023) (citing *In Re PGW Petition, Order and Proposed Policy Statement*, Docket No. P-2009-2136508, (Final Order entered April 19, 2010)). See also *Eastwood Nursing & Rehab. Ctr. v. Dept. of Public Welfare*, 910 A.2d 134, 143 (Pa. Commw. Ct. 2006); *Dep’t of Env’t Res. v. Rushton Min. Co.*, 591 A.2d 1168 (Pa. Commw. Ct. 1991) (A general statement of policy is an announcement to the public of the policy the agency hopes to implement and is not a binding rule).

³The goal of the Water Audit Rulemaking is to implement the American Water Works Association (AWWA) Water Audit methodology as a best management practice in water loss control in Pennsylvania.

utility” to improve clarity. With the addition these definitions, the PUC will remove language throughout the Policy Statement and will replace it with these defined terms.

III. Section 69.xx3. Fire Protection Service Afforded By Current System Design

Section 69.xx3 of the Proposed Policy Statement proposed guidance regarding operating procedures.

A. Comments

NAWC is concerned about establishing the same parameters for both new and existing assets and asks the PUC to confirm that a public utility’s operating procedures can set different parameters for existing as compared to new fire protection connections and fire hydrants for proposed § 69.xx3. NAWC Comments at 3. OCA agrees with NAWC that any new policies should be implemented differently for existing fire protection facilities. OCA Comments at 4. OCA also recommends that public utilities be permitted to set different minimum parameters for discrete systems (i.e., those that generate less annual revenue than a Class A water public utility) as this will provide flexibility for a utility to evaluate costs and benefits on a system-by-system basis, recognizing differences in existing facilities and operating characteristics in determining appropriate minimum parameters for fire protection service. OCA Comments at 6.

Regarding marking fire hydrants, NAWC recommends that hydrants not providing a minimum level of service be marked but does not support a complicated color-coding scheme to show expected levels of service. NAWC Comments at 4. NAWC further asserts that, regarding fire protection connections, proposed § 69.xx3(b)(3) as currently drafted is not clear as to what should be marked. OCA recommends that fire hydrants that do not provide acceptable fire flow be readily identifiable and that, where such hydrants can serve a useful purpose as a blow-off hydrant, the unacceptable-flow hydrants be marked as such instead of being removed. OCA Comments at 3 and 7.

NAWC recommends that, if a fire protection connection does not meet minimum requirements, the public utility should notify the owner of the property, the municipality, and the local fire department, preferably in writing. NAWC Comments at 7. OCA agrees with NAWC regarding the importance of notification to the owner of the property, the municipality, and the local fire department if a fire protection connection does not meet the public utility’s minimum operating characteristics. OCA Comments at 3-4. In providing public notice regarding their marking system or public fire hydrant capacity, OCA suggests that public utilities could send that notice to customers at the same time and/or in the same manner that the public utility satisfies DEP requirements for delivering Consumer Confidence Reports.⁴ OCA Comments at 3. For private fire protection connections that do not meet minimum requirements, OCA agrees with NAWC that the public utility should notify the owner of the property, the municipality, and the local fire department, preferably in writing. OCA Comments at 3-4, citing NAWC Comments to ANOPR at 7. OCA asserts that the public utility should also follow up with the customer to discuss ways to resolve the issue. OCA Comments at 3-4.

⁴OCA cites www.dep.pa.gov/Citizens/My-Water/PublicDrinkingWater/Pages/Consumer-Confidence-Reports.aspx#VkC7F6Mo59A (last accessed on November 21, 2023).

To improve clarity, NAWC recommends replacing “incapable of” with “not” for proposed §§ 69.xx3(b)(3) and 69.xx3(b)(4). NAWC Comments at 4. NAWC asserts that proposed § 69.xx3(b)(5) should be removed. NAWC Comments at 4. NAWC further recommends replacing “of” with “or” and changing “cannot” to “does not” in proposed § 69.xx3(b)(6). NAWC Comments at 5.

Aqua expressed that it fully supports the comments of NAWC. Aqua Comments at 1.

B. Resolution

For proposed § 69.xx3(b)(1), the PUC concludes that it does not need to confirm that a water public utility can set different parameters for new and existing fire protection connections and hydrants as this Policy Statement allows a water public utility the flexibility to set forth a methodology that works for its facilities. The Policy Statement affords a water public utility the flexibility to evaluate costs and benefits on a system-by-system basis recognizing differences in existing facilities and operating characteristics. The PUC, in its Policy Statement, is encouraging a water public utility to develop predetermined minimum operating characteristics for fire protection service, which may take a water public utility an extended period to be able to implement consistently across its various certificated service territories.

For proposed § 69.xx3(b)(1), the PUC will change the word “basis” to “methodology” to clarify that the determination is to be based on a definable methodology or standard. The PUC will also amend this subsection to explain that the determination is to set the “minimum operating characteristics by which [the water public utility] will provide” fire protection service.

The PUC will add language to proposed § 69.xx3(b)(2) specifying that the testing and maintenance program is for fire hydrants “owned or operated by a water public utility.” The PUC will add a sentence to the end of this subsection recommending that a water public utility encourage customers with private hydrants to test and exercise their private fire hydrants. This provision is being added to clarify the PUC’s recommendation and limit the scope of the suggested program to only those hydrants owned by the water public utility. The PUC does not intend for a water public utility to test private fire protection systems; however, the PUC notes that it is important for all hydrants to be tested and exercised, including private facilities.

Similarly, the PUC concludes that further clarification is not needed for proposed § 69.xx3(b)(3) as a water public utility has the flexibility to establish its own marking method consistent with its established minimum operating characteristics.

The PUC agrees with the comments of NAWC and will replace “incapable of” with “not” for proposed §§ 69.xx3(b)(3) and 69.xx3(b)(4) to improve clarity. The PUC agrees with the comments of OCA and will revise proposed § 69.xx3(b)(4) to include a provision allowing hydrants to be marked and used as flushing hydrants. Where the water public utility determines a fire hydrant does not provide service at the minimum operating characteristics for fire protection service and may serve a useful purpose as a flushing hydrant, the water public utility can mark the fire hydrant as such, either permanently or until the hydrant can be removed, remediated,

or replaced. The PUC will revise proposed §§ 69.xx3(b)(4) and 69.xx3(b)(6) to include the term “minimum operating characteristics” and provide consistency throughout this Section.

The PUC will remove proposed § 69.xx3(b)(5) and add § 69.1503(d), recommending that a water public utility, as part of an acquisition due diligence process, analyze and estimate the level of capital expenditures and associated timeframes for a water public utility to remediate, repair, or both, the water system to be acquired, to bring the fire protection service up to at least the water public utility’s minimum operating characteristics. Proposed § 69.xx3(b)(5) indicated that a water public utility’s operating procedures and best practices should include: “An analysis of the level of capital expenditures and associated timeframes for a water public utility to remediate, repair, or both a water system, as part of an acquisition due diligence process, required to bring the fire protection service up to at least the water public utility’s acceptable operating characteristics.” This was turned into § 69.1503(d) because requesting that a public utility complete this type of analysis was more appropriate as a standalone requirement than including it in operating procedures and practices. The requirements of § 69.1503(d) are intended to be a one-time analysis at the time of an acquisition rather than an ongoing standard operating procedure. The PUC notes that it has already included a provision at proposed § 69.xx3(b)(6) recommending a written notification process for any fire protection connection found not to be providing service at the minimum operating characteristics. The PUC is also revising proposed § 69.xx3(b)(6) by changing “cannot” to “found not to be providing” to improve clarity.

IV. Section 69.xx4. Hydraulic Distribution System Modeling Recommended For Fire Protection

Section 69.xx4 of the Proposed Policy Statement included guidance regarding the use of computerized hydraulic modeling.

A. Comments

For proposed § 69.xx4, NAWC recommends that the title be changed to replace the term “required” with “recommended.” NAWC Comments at 5. NAWC believes proposed § 69.xx4(a) is unnecessary and should be deleted. NAWC Comments at 5. NAWC asserts that the PUC should clarify the interplay of proposed §§ 69.xx4(b) and 69.xx4(c)(1). NAWC Comments at 5. Finally, NAWC recommends that proposed § 69.xx4(b) be modified to use the defined term “discrete system.” NAWC Comments at 5.

Aqua expressed that it fully supports the comments of NAWC. Aqua Comments at 1. Aqua further asserted that hydraulic modeling requirements for each system would require approximately five years and additional resources to adequately develop and routinely maintain, particularly for smaller systems where the costs may outweigh the benefit of such a model. Aqua Comments at 1.

For proposed § 69.xx4(b), OCA supports the flexibility to determine whether to use computerized hydraulic modeling but cautions that it should be used where the benefits of a computerized hydraulic model justify the costs required to build, calibrate, and maintain the model. OCA Comments at 8. For systems where a computerized hydraulic model is used for ongoing fire protection purposes, the schedule should be based on considerations

other than time. Id. For example, it should be updated based on changes that impact the system’s ability to provide fire protection service, such as changes to the locations and water demands of major customers, number of customers, increase or decrease of distribution storage or pumping capacity of sources. Id.

B. Resolution

The PUC agrees with the comments of NAWC and will amend the title of proposed § 69.xx4 by replacing the term “Required” with “Recommended” as this is a policy statement and not a binding regulation. The PUC acknowledges NAWC’s comments regarding proposed § 69.xx4(a). However, instead of removing proposed § 69.xx4(a), the PUC will combine § 69.xx4(b) with § 69.xx4(a) as the background in proposed § 69.xx4(a) explains the recommendation for water public utilities to use hydraulic distribution system modeling. The PUC will also renumber the proposed § 69.xx4(c) to § 69.xx4(b) and include the defined term “discrete system” to ensure consistency and clarity throughout the Policy Statement.

V. Rate Impact And Cost Concerns

A. Comments

OCA is concerned about the cost and disruption to customers if utilities are required to redesign and resize existing systems. OCA Comments at 4. Aqua expressed concern that extensive infrastructure upgrades for facilities to provide fire protection services may not be economically feasible in certain areas of its service territory. Aqua Comments at 1.

The Joint Commenters assert that the fact that a public utility does not yet have a plan should not be considered as a reason to deny any portion of a requested rate increase. Joint Comments at 2. The Joint Commenters request that the PUC make it clear to ratepayers, when adjudicating a rate case, if the public utility is expending funds to further the PUC’s policy on fire protection. Joint Comments at 3. The Joint Commenters further assert that there is significant expense associated with the implementation of hydraulic modeling and consistent updates and that the PUC should ensure, in adjudicating future rate proceedings, that costs associated with implementation of the policy statement are fully recoverable in rates. Joint Comments at 3.

OCA responds that the PUC cannot guarantee full rate recovery related to compliance with the Policy Statement as such a decision would be inappropriate and inconsistent with the Public Utility Code. OCA Reply Comments at 2. OCA explains that a public utility’s decision whether to use and maintain computerized hydraulic models, and to claim recovery for costs incurred, if it chooses to do so, should be subject to review and should be recoverable if and only to the extent that the public utility shows that its service and facilities are safe, adequate and reasonable and that any claims for cost recovery are for expenditures that were also prudent and reasonable. OCA Reply Comments at 3. OCA requests that the PUC clarify, and include in the Policy Statement, a statement that a water public utility’s determinations and plans, and related claims for cost recovery, will be subject to review in public utility base rate cases. OCA Reply Comments at 3. OCA recommends that any new policies should be implemented differently for existing fire protection facilities. OCA Comments at 4.

Aqua asserts that extensive infrastructure upgrades for facilities to provide fire protection services may not be economically feasible in certain areas of its service territory. Aqua Comments at 1.

B. Resolution

The PUC has included a provision at proposed § 69.xx1(a) stating that the PUC may consider a water public utility's effort to meet the recommendations in this Policy Statement when determining just and reasonable rates for the water public utility. While the Commission may consider the costs associated with implementing these guidelines and whether those costs may be recovered, the Commission is best guided by the applicable law related to rate cases. The PUC reiterates that this Policy Statement is intended to encourage the necessary investigation and planning that a water public utility should undertake to provide an equivalent level of service throughout its various service territories, with the understanding that this goal will take time to accomplish.

VI. Shared Responsibility and Other Agency Oversight

A. Comments

Aqua asserts that the provision of fire protection should not be the sole responsibility of a water public utility. Aqua Comments at 1.

OCA agrees with other commenters that PUC guidelines should harmonize with other existing guidance which includes the guidance of the DEP, the UCC, and the AWWA Manual, to minimize costs of compliance. OCA Comments at 2. OCA also suggests that a public utility be encouraged to share this information with local fire services and municipalities. OCA Comments at 3.

The Joint Commenters request the PUC to make clear that a public utility has the discretion to otherwise assist local fire departments in ensuring reasonable fire service is available for those properties that are not able to be served by the public utility's system and that demonstration that such an adequate alternate plan exists should be considered "compliant" with the Policy Statement. Joint Comments at 3-4.

B. Resolution

It should be noted that the PUC's Policy Statement is consistent with existing guidance related to fire protection service. The Policy Statement encourages a water public utility to meet certain standards regarding fire protection service and does not prohibit a water public utility from coordinating with other entities, such as local fire departments, to ensure reasonable fire service is available.

C. Ministerial

The PUC has also made several non-substantive ministerial revisions to the proposed Policy Statement as set forth in Annex A which include: established a numbering sequence for the Policy Statement that is consistent with Chapter 69 in Title 52 of the *Pennsylvania Code*,⁵ corrected spacing, capitalization and punctuation errors; uncapitalized "Computerized Hydraulic Model" in proposed § 69.xx2; changed "water public utilities" to "a water public utility" throughout; and added the word "systems" to proposed § 69.xx4(b)(3).

Conclusion

Accordingly, pursuant to 66 Pa.C.S. §§ 501, 505, 506, and 512, we will adopt as final the Policy Statement as set forth in Annex A, attached hereto; *Therefore*,

⁵The proposed Annex reflected §§ 69.XX1—69.XX4; those sections correspond linearly to §§ 69.1501—69.1504 in the final Policy Statement as set forth in the Annex A attached to this Final Policy Statement.

It Is Ordered That:

1. The Public Utility Commission will adopt the Final Policy Statement as set forth in Annex A to this Order.
2. This Final Order and Annex A will be posted on the Public Utility Commission's website.
3. The Law Bureau will deliver this Order and Annex A to the Governor's Office of the Budget for fiscal review.
4. After receipt of the fiscal note from the Governor's Office of the Budget, the Law Bureau will deposit this Order and Annex A with the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.
5. This Policy Statement will become effective upon publication in the *Pennsylvania Bulletin*.
6. The contact persons for this matter are Stephanie A. Wilson, Assistant Counsel, Law Bureau, 717-787-1859, stepwilson@pa.gov; Joseph P. Cardinale, Jr., Assistant Counsel, Law Bureau, 717-787-5558, jcardinale@pa.gov; and Karen Thorne, Regulatory Review Assistant, 717-772-4597, kthorne@pa.gov.

ROSEMARY CHIAVETTA,
Secretary

ORDER ADOPTED: December 21, 2023

ORDER ENTERED: January 9, 2024

Fiscal Note: Fiscal Note 57-339 remains valid for the final adoption of the subject regulations.

(Editor's Note: The Pennsylvania Code is amended by adding a statement of policy in 52 Pa. Code §§ 69.1501—69.1504 to read as set forth in Annex A.)

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

PUBLIC FIRE PROTECTION SERVICE AND SYSTEM HYDRAULIC MONITORING—STATEMENT OF POLICY

§ 69.1501. General scope and purpose.

(a) *Water public utilities.*

The coordination and consistent application of safe, adequate and reliable fire protection service offers a tremendous benefit to public safety, emergency fire protection organizations and associated personnel. Safe, reasonable and adequate regulated fire protection service offerings are a matter of utmost concern to the Commission. The policies and recommendations in this policy statement are intended to provide water public utilities with a guideline of the recommended actions and level of public fire protection service and system hydraulic monitoring that the Commission considers reasonable. The Commission may consider a water public utility's effort to meet the recommendations in this policy statement when determining just and reasonable rates for the water public utility.

(b) *Class A water public utilities.*

Fire protection services are often provided by Class A water public utilities. In providing fire protection services, a Class A water public utility should operate with a sophisticated level of technical expertise including the use of modern water industry tools such as computerized hydraulic modeling software.

§ 69.1502. **Definitions.**

The following words and terms, when used in §§ 69.1501—69.1504 (relating to public fire protection service and system hydraulic monitoring—statement of policy), have the following meanings, unless the context clearly indicates otherwise:

Class A water public utility—A water public utility that is a “Class A water utility” as defined in § 56.2 (relating to definitions).

Computerized hydraulic model—A computer-based mathematical simulation used to predict the performance of a water system.

Discrete system—A stand-alone pipe network with boundaries that encompass all sources of water and endpoints.

Fire hydrant—An above-ground, valved connection to a water distribution system having one or more outlets that is used to supply water for fire suppression.

Flushing hydrant—An above-ground, valved connection to a water distribution system having one or more outlets that is used for flushing a water line of detritus material or stagnant water.

Fire protection connection—The pipes and appurtenances owned or operated by a water public utility extending from a water supply main to a designated location, either adjacent to or within a structure or structures equipped with automatic fire sprinklers or other fire suppression devices or systems or to a fire hydrant, through which supplemental water is used to supply water for fire suppression or extinguishment.

Fire protection service—The provision of the necessary facilities and the completion of certain activities to include the required maintenance by a water public utility related to the supply of water to a customer or the public for the purpose of fire suppression or extinguishment.

Water public utility—The term includes any of the following definitions:

(1) A “public utility” as defined in 66 Pa.C.S. § 102 (relating to definitions).

(2) An “authority” as defined in 66 Pa.C.S. § 3201 (relating to definitions).

(3) A “municipal corporation” as defined in 66 Pa.C.S. § 102, to the extent its extraterritorial water service and rates are regulated by the Commission.

§ 69.1503. **Fire protection service afforded by current system design.**

(a) A water public utility’s operating procedures and best practices related to fire protection service should be maintained within this Commonwealth at an office or offices of the water public utility located in the territory served by it and should be open for examination by the Commission.

(b) A water public utility’s operating procedures and best practices related to fire protection service should include all of the following:

(1) A determination, based on a definable methodology or standard, or both, of operating characteristics such as minimum flow, pressure and duration of flow and pressure that the water public utility will consider its minimum operating characteristics by which it will provide fire protection service. These predetermined minimum operating characteristics should be applied to all fire protection connections.

(2) A fire hydrant testing and maintenance program to ensure that all fire hydrants owned or operated by a water public utility within a discrete system are tested and exercised on a specified schedule as determined operationally and economically feasible by the water public utility. A water public utility may encourage customers with private fire hydrants to test and exercise their private fire hydrants.

(3) A method to clearly mark and identify each fire protection connection found not to be providing service at the water public utility’s minimum operating characteristics for fire protection connections.

(4) An estimated schedule to remove, remediate or replace a fire protection connection found not to be providing service at the water public utility’s minimum operating characteristics for fire protection service. Where the water public utility determines a fire hydrant does not provide service at the minimum operating characteristics for fire protection service and may serve a useful purpose as a flushing hydrant, the water public utility can mark the fire hydrant as such, either permanently or until the hydrant can be removed, remediated or replaced.

(5) A written notification process to affected customers and local jurisdictions that may include property owners, the municipality and the local fire department of the location of any fire protection connection found not to be providing service at the water public utility’s minimum operating characteristics.

(c) In conjunction with its obligations under § 65.4 (relating to records), a water public utility that provides fire protection service should update its maps, plans and records to include the location of and, if feasible, the last known operating characteristics of all fire protection connections.

(d) In conjunction with its obligations under 66 Pa.C.S. § 505 (relating to duty to furnish information to commission; cooperation in valuing property) a water public utility should, as part of an acquisition due diligence process, analyze and estimate the level of capital expenditures and associated timeframes for a water public utility to remediate, repair, or both, a water system required to bring the fire protection service up to at least the water public utility’s minimum operating characteristics.

§ 69.1504. **Hydraulic distribution system modeling recommended for fire protection.**

(a) A Class A water public utility should develop and implement a plan to create, use and maintain a computerized hydraulic model for each discrete system as hydraulic distribution system modeling is a valuable aide in forecasting system capabilities under varying operational conditions.

(b) The plan should address all of the following:

(1) A determination of the minimum water system size, based upon the complexity of the distribution pipe network and water service requirements, that should have a model.

(2) An identification of the commercially available hydraulic modeling software to be used.

(3) A description of how data from the public utility's other informational databases and systems can be integrated into the computerized hydraulic model, including geographic information systems, supervisory control and data acquisition systems, and customer information systems.

(4) A schedule by which the computerized hydraulic model will be calibrated, updated and maintained to ensure the accuracy is sufficient to reasonably predict a discrete system's operational behavior to a determined level of accuracy set by the water public utility.

[Pa.B. Doc. No. 24-430. Filed for public inspection March 29, 2024, 9:00 a.m.]
