

**PENNSYLVANIA PUBLIC UTILITY COMMISSION
HARRISBURG, PENNSYLVANIA 17105-3265**

**Investigation into Pennsylvania American Water
Company's High Fluoride Concentration Incident and of
Existing Notification and Reporting Requirements**

**PUBLIC MEETING
March 2, 2006**

**MAR-2006-L-0022*
Docket No. I-00050109**

MOTION OF COMMISSIONER KIM PIZZINGRILLI

Before the Commission today is the investigative report completed by Commission Staff into the incident that occurred on December 10, 2005 at the Pennsylvania American Water Company's (PAWC) Yellow Breeches Water Treatment Plant which resulted in excessive levels of fluoride in its drinking water. The report is the culmination of a two month investigation that included meetings with PAWC officials, a site visit at the affected plant and the input from other state and local agency officials. Initially, I would like to extend appreciation to our Staff and those parties that assisted the Commission in this review. In particular, I commend PAWC for the manner in which it cooperated with this investigation including making its employees and facilities available and by responding fully to all data requests.

The report acknowledges that PAWC has taken several measures to prevent a similar occurrence including equipment and safety enhancements, operator education and training, updating its Emergency Response Plan and changes to its notification procedures. While I find the report to be both comprehensive and informative, I will move to amend our existing regulations to define the term service interruption; remind utilities of their obligation to retain updated Emergency Response Plans; and, eliminate the need for filing tariff amendments as recommended by Staff.

Compliance with 52 Pa. Code Section 67.1 (Notice to Commission)

The Commission's regulations provide that a utility shall notify the Commission by telephone within one hour after a preliminary assessment of conditions reasonably indicates that there is an unscheduled service interruption affecting 2,500 or 5%, whichever is less, of their total customers in a single incident for six or more projected consecutive hours. 52 Pa. Code §67.1(b).

PAWC asserts that the term "service interruption" is not defined in regulation and states that the common understanding of this term requires an outage, supply cut off or cessation of service. PAWC contends that this incident did not result in the loss of service (i.e. customers did have water that could be used for all purposes other than consumption). Staff recommends that by Order, the Commission puts the water industry on notice that service interruption covers any interruption of service that affects the quantity or quality of water delivered to the customer. I support this recommendation but suggest that we take the additional step of amending our regulations to ensure that regulated water utilities have a clear understanding of what the Commission deems a "service interruption." It is critically important that utilities affected by 52 Pa. Code §67.1 understand their obligation to provide the Commission with telephone and

written notification in the event of a service interruption. This will enable the Commission to ensure that utilities are furnishing adequate, efficient, safe and reasonable service consistent with the Public Utility Code. 66 Pa. C.S. §1501. Therefore, I move that the Commission initiate a rulemaking proceeding to amend our existing regulations to define the term “service interruption” with respect to water utilities in 52 Pa. Code §67.1.

Emergency Response Plans

Pursuant to Section 67.1 of our regulations, the Commission has a duty to maintain telephone lines for the purpose of emergency notification from utilities. 52 Pa. Code §67.1. The Commission fulfills this obligation by providing all utilities with current emergency numbers of our emergency personnel. It is incumbent upon the utility to retain updated contact information in their Emergency Response Plan. Indeed, the Commission’s *Public Utility Preparedness Through Self-Certification* regulations requires that Emergency Response Plans of jurisdictional utilities include notification of the appropriate emergency services and emergency preparedness support agencies and organizations. 52 Pa. Code §101.3(a)(4)(iii). In order for a utility to adhere to this requirement, the regulations require that it annually certify to the Commission that its plans have been reviewed and updated. 52 Pa. Code §101.3(d). PAWC admitted that its Emergency Response Plan did not contain current Commission emergency contact numbers.

The findings of this report should be a reminder to all utilities that it is critically important to update their Emergency Response Plans, at a minimum, on an annual basis so that they are prepared in the event of an emergency. Utilities have an obligation pursuant to 52 Pa. Code Sections 101.1 *et seq.* to develop and maintain written physical and cyber security, emergency response and business continuity plans, to review, test and update them annually. In addition, an annual self-certification form is required to be filed with the Commission attesting that the plans have been updated and tested. A copy of this Order should be served on all fixed utilities.

Proposed Amendment to Tariffs

The Office of Consumer Advocate recommends and Staff agrees that all regulated water utilities should file a tariff amendment within 90 days of the entry of the Order to indicate that they will comply with 52 Pa. Code §67.1 *et seq.* and Department of Environmental Protection regulations at 25 Pa. Code Section §§109.407, *et. seq.* Although well intended, I believe this requirement is onerous and unnecessary to impose on utilities since they are required by law to comply with these stated provisions. Rather than impose the burden of filing amended tariffs, I will move that all regulated water utilities be served a copy of this Order to remind them of their legal obligation to comply with Commission regulations.

THEREFORE, I MOVE:

1. That the Order be modified consistent with this Motion.
2. That the Law Bureau shall initiate the rulemaking proceeding consistent with this Motion.
3. That a copy of this Order be served on all jurisdictional water and fixed utilities.
4. That the Law Bureau, with the assistance of the Bureau of Fixed Utility Services prepare an order consistent with this Motion.

Date

KIM PIZZINGRILLI, COMMISSIONER