



Thomas J. Sniscak
(717) 703-0800
tjsniscak@hmslegal.com

Whitney E. Snyder
(717) 703-0807
wesnyder@hmslegal.com

100 North Tenth Street, Harrisburg, PA 17101 Phone: 717.236.1300 Fax: 717.236.4841 www.hmslegal.com

August 29, 2022

VIA ELECTRONIC FILING

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, Filing Room
Harrisburg, PA 17120

RE: Policy Statement on Public and Private Fire Protection; Docket No. M-2022-3033054; **COLUMBIA WATER COMPANY'S COMMENTS**

Dear Secretary Chiavetta:

Enclosed for filing are Comments on behalf of Columbia Water Company to the Commission's proposal to issue a policy statement regarding public and private fire protection.

Thank you for your attention to this matter. If you have any questions, please contact me.

Very truly yours,

/s/ Whitney E. Snyder

Thomas J. Sniscak
Whitney E. Snyder

Counsel to the Columbia Water Company

WES/jld

Enclosure

cc: Patrick Cicero, Office of Consumer Advocate (via email – pcicero@paoca.org)
Teresa Wagner, Office of Small Business Advocate (via email – tereswagne@pa.gov)
Richard Kanaskie, BIE (via email – rkanaskie@pa.gov)
Stephanie Wilson, Law Bureau (via email – stepwilson@pa.gov)
Clinton McKinley, TUS (via email cmckinley@pa.gov)

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Policy Statement on Public and Private Fire : Docket No. M-2022-3033054
Protection :

COMMENTS OF COLUMBIA WATER COMPANY

Pursuant to the June 16, 2022 Motion of Commissioner Ralph V. Yanora and the Commission’s June 29, 2022 Secretarial Letter, Columbia Water Company (Columbia Water) submits these comments on the development of a policy statement “reflecting a best practices approach to those aspects of fire protection services subject to Commission oversight.”

I. INTRODUCTION AND GENERAL COMMENTS

Columbia Water supplies public water service to approximately 10,400 residential, commercial, public and industrial customers in Columbia, Marietta and Mountville Boroughs, West Hempfield, Manor, and East Donegal Townships, Lancaster County and Hellam Township, York County, Pennsylvania. In particular, the Columbia Division or its predecessor has supplied water service since 1823, and like many public water systems, faces the ongoing task of modernizing its infrastructure, including fire protection. Columbia Water thanks the Commission for the opportunity to provide these comments on a proposed policy statement on fire protection. Columbia Water requests that if the Commission moves forward with a policy statement that it allow Class A water utilities the opportunity for comment on a draft policy statement prior to promulgation.

From the outset, Columbia Water believes it is important to acknowledge the breadth of Class A water utilities to which the Commission intends to apply the proposed policy statement, which range from utilities like Columbia, with approximately 10,000 customers including customers in rural areas, through much larger utilities that have millions of customers over which additional costs can be spread. Moreover, sizing small distribution systems for fire protection “can correspond to a significant increase in the size of many components.”¹ “In general, the impact of providing water for fire protection ranges from being minimal in large components of major urban systems to being very significant in smaller distribution system pipes and small distribution systems.”² If the Commission seeks to implement a policy statement for all Class A Water Utilities, it should recognize that customers of smaller Class A utilities will bear greater costs to come into compliance with such policy statement and that smaller distribution systems will likely face more significant impacts.

Further regarding costs, Columbia Water believes it is imperative not just for the Commission to consider the significant costs a policy statement regarding fire protection could impose, but also for the Commission to be transparent to ratepayers and representatives thereof including the Office of Consumer Advocate and the Office of Small Business Advocate that such costs for upgrades to utility infrastructure will fall on ratepayers.

Columbia Water is also generally concerned that the policy statement must be clear that it is not a binding norm and does not have the force or effect of a regulation. The Commission should be unequivocal that any policy statement it issues does not form standards or requirements for utilities. That must be done through regulation. Of particular concern is the Commission’s intent

¹ AWWA M31 Manual at 1.

² *Id.*

to issue “standards” for flow, pressure, and duration of flow and pressure. Columbia Water suggests the Commission should not be developing quantitative standards for multiple reasons as described below, but most importantly because such “standards” appear much more like a regulation and less like a statement of policy. Instead of developing quantitative standards, Columbia Water believes the Commission should recognize there is not a one-size fits all standard for these issues.

The Commission should also recognize that many Class A Water Utilities have provisions related to fire protection within their Commission-approved tariff, which have the force and effect of law and is binding on both the utility and its customers. *Pennsylvania Electric Co. v. Pa. Pub. Util. Comm’n*, 663 A.2d 281 (Pa. Cmwlth. 1995). The Commission should not issue any policy that conflicts with Commission-approved utility tariffs, which unlike a policy statement, do have the force and effect of law.

Finally, the policy statement should not create conflicting standards. While the Commission has recognized other guidance and standards on these topics already exist, including the Department of Environmental Protection’s Public Water Supply Manual, the Uniform Construction Code, and the Statue Insurance Services Office requirements, there are other standards and guidance that must be considered, including varying municipal ordinances and industry guidance like the American Water Works Association (AWWA) Manual M31, Fourth Edition Distribution System Requirements for Fire Protection. Any policy statement the Commission issues should strive to harmonize these other sources, not create another “standard” for fire protection. In particular, the AWWA M31 Manual has very useful guidance that the Commission should consider incorporating. Moreover, the Commission should also consider the

AWWA's study on Impacts of Fire Flow on Distribution System Water Quality, Design, and Operation.

II. SPECIFIC TOPICS ADDRESSED IN SECRETARIAL LETTER

A. Hydraulic Distribution System Modeling Required for Fire Protection

The Secretarial Letter asked Class A utilities to address Hydraulic Distribution System Modeling:

The Commission expects that Class A jurisdictional water utilities operate with a sophisticated level of technical expertise, which includes utilizing modern water industry tools such as computerized hydraulic modeling software. A computerized hydraulic model of a distribution system empowers utility management to understand system operating parameters and components with both accuracy and precision. This includes forecasting system behavior under the operating conditions imposed by the instantaneous demand requirements of fire protection. Further, a computerized hydraulic model can and should be a key component, along with maintenance and other system data, in decision making for capital expenditures to maximize system reliability for fire protection services offered to the public. Regarding the computerized hydraulic modeling useful for that purpose the Commission seeks input on the following questions:

1. What are the most effective methodologies/computerized hydraulic models that are currently utilized by utilities to implement a computerized hydraulic model of water distributions systems? Which are most effective for the modeling of system requirements related to fire protection service?
2. Based upon a concerted effort, what is a reasonable timeframe and the estimated incremental one-time and ongoing expenditures for a utility to identify all the system facilities and water main data required to develop such a computerized hydraulic model?
3. What are the expected ongoing maintenance requirements for existing models? Are these models a one-and-done investment or are they subject to ongoing incremental costs owing to updates?

Secretarial Letter at 4.

Regarding the statement that the Commission “expects that Class A jurisdictional water utilities operate with a sophisticated level of technical expertise,” Columbia Water asks the Commission to consider the cost to customers of implementing new technologies such as a continuously updated hydraulic modeling particularly for small to mid-size Class A water utilities. In particular, any policy statement reflecting a preference for costly new technology should be transparent with the public, OCA and OSBA and Pennsylvania rate payers that the costs of these new technologies are recoverable from ratepayers. If the Commission develops a policy statement indicating that costly hydraulic modeling is a “best practice” for Class A water utilities, the Commission also needs to be clear that such an undertaking comes at significant costs that are recoverable through rates.

Columbia Water will next address each individual question related to hydraulic modeling, specific to Columbia Water’s practices.

1. Effectiveness of Modeling Types

Columbia Water is in the initial stages of updating its hydraulic model using Bentley’s WaterGEMS software. This software is equally effective at modeling water distribution systems and fire flow projections.

2. Timeframe and Expenditures

Columbia Water will use an engineering consulting firm to update its model. This update is expected to take more than 18 weeks. The initial update to the model will cost \$68,000. Typically, Columbia Water uses the model for planning purposes and the model is only updated as planning projections require, or major distribution system changes occur. However, to use the

model for ongoing fire protection purposes and modeling would require the model to be updated on a quarterly basis at an estimated cost of \$15,000 - \$20,000 annually.

3. Ongoing Costs

To use a model for ongoing fire protections will require the model to be updated at least quarterly. These models are not “one and done” type investments. Quarterly updates are estimated to cost \$5,000 per quarter.

B. Fire Protection Service Afforded by Current System Design Requirements

The Secretarial Letter asked Class A utilities to address current fire protection services:

While the Commission does not currently have a policy statement specific to the provision of regulated fire protection service, the Pennsylvania Department of Environmental Protection (DEP) has established some system design requirements to serve fire protection service in its Public Water Supply Manual – Part II, Community System Design Standards, effective May 6, 2006 (PWS Manual). The PWS Manual’s Section VIII. Distribution Systems, B.3. Fire Protection, indicates that “[w]hen fire protection is to be provided, system design should be such that fire flows and facilities are in accordance with the requirements of the State Insurance Services Office.” The PWS Manual’s Section VIII, D. Hydrants, outlines specific guidelines for hydrants including location and spacing, hydrant valves and nozzles, hydrant leads, and hydrant drainage. While the Commission should not replicate the design standards of DEP or the State Insurance Services Office, it should consider whether and how Class A water providers have interpreted and applied these design standards in terms of the actual fire protection services provided to the public. That is, the aspect of fire protection service within the exclusive sphere of Commission jurisdiction rather than that of DEP or the State Insurance Services office. The Commission seeks input on the following questions related to the uniformity of these interpretations and how utility application of these standards has shaped public expectations regarding fire protection service, including:

1. What standards should public water utilities attain for the provision of regulated public fire protection service including, but not limited to flow, pressure, and duration of flow and pressure?
2. What costs and timeframes might the public expect to improve or upgrade facilities not now providing public fire protection service in accordance with DEP or State Insurance Services Office requirements?
3. What procedures should a public fire service provider employ should a fire protection connection not meet minimum requirements? For example, what customer notifications or public/private fire hydrant markings would be effective to denote expected levels of service from any fire protection facility?

Secretarial Letter at 4-5.

First, Columbia Water requests the Commission be clear about what it means when it uses terms such as “requirements” or “standards.” A policy statement does not create binding norms like a regulation and any policy statement should be clear in its language so as to indicate it is not creating standards or requirements. For example, the Public Water Supply Manual – Part II, Community System Design Standards, effective May 6, 2006 (PWS Manual) is also a policy document, not a binding norm and clearly states:

The policies and procedures herein are not an adjudication or a regulation. There is no intent on the part of DEP to give the rules in these policies that weight or deference. This document establishes the framework within which DEP will exercise its administrative discretion in the future. DEP reserves the discretion to deviate from this policy statement if circumstances warrant.

PWS Part II at 1. The Commission should likewise be clear it is not creating requirements.

Regarding jurisdiction and topics covered by the proposed policy statement, the Secretarial Letter references “the aspect of fire protection service within the exclusive sphere of Commission jurisdiction.” Both the regulated community and ratepayers, including municipalities, will benefit from the Commission’s delineation in the policy statement guidance of the contours of the

Commission’s jurisdiction over fire protection. Description of the Commission’s jurisdiction over fire protection will also aid in keeping the guidance in the policy statement within the sphere of Commission’s jurisdiction.

Columbia Water will next address each individual question related to current provision of fire protection, specific to Columbia Water’s practices.

1. Flow, Pressure, and Duration of Flow and Pressure

Columbia Water requests that the Commission not issue “standards” for flow, pressure, or duration of flow and pressure. Providing any quantified “standard” in a policy statement will lead to confusion and appear more like a binding norm than a true statement of policy. Moreover, any Commission “standard” will likely conflict with other existing guidance (which already may contain conflicts), such as the PWS, municipal ordinances, or other existing guidance.

Moreover, there is not one flow/pressure/duration that is universally acceptable. The requirements for a rural residential community with widely spaced homes would be considerably different than the requirements for an industrial park that accommodates a chemical or petroleum factory. In fact, there are engineering professionals and whole industries that focus solely on designing and specifying fire systems for individual sites. There is no one-size-fits-all solution.

There could also be unintended consequences of specifying minimum flows, such as negative impacts on the quality of water. Oversizing a water system to accommodate fire flows will certainly affect the water quality in the distribution system due to excess water-age that comes with oversizing water infrastructure. Low disinfectant residuals and high disinfectant byproduct concentrations are two water quality issues that are directly related to oversized water infrastructure.

Requiring minimum fire protection standards may subject utilities to greater liabilities. The utility will likely need to prove, after a fire event, that any minimum specified was in fact available, especially if there was loss of life or property.³

2. Costs and Timeframes

If the Commission were to establish standards in a policy statement (which as described above, it should not), utilities would face a costly, burdensome, and lengthy task of coming into “compliance.” Again, Columbia Water notes that the DEP PWS is a policy document, not a standard. Columbia Water estimates the industry would face a decades long endeavor costing the water industry trillions of dollars to comply with new standards. Undertaking such upgrades would be like upgrading all roads in Pennsylvania to 4-lane highways to prevent the occasional traffic jam. Again, if the Commission were to issue a policy statement on this subject, it needs to be clear to the public and ratepayers that such costs will be borne by ratepayers.

3. Procedures for Fire Protection Connections Not Meeting “Standards”

International Organization for Standardization (“ISO”) already evaluates each community and gives it a rating. A public notice could be provided directing the public to the ISO rating. Columbia Water thus does not see the need for the Commission to issue any guidance on this topic.

4. New Versus Existing Facilities

New water system expansions and extensions could be designed and built to a given fire protection standard. But changes to existing systems would need to occur over time and be phased. For water utility customers, it would be a costly and disruptive process to go back and

³ See, e.g., *Wagner v. Anzon, Inc.*, 684 A.2d 570 (Pa. Super. 1996) (“Pennsylvania recognizes that a violation of a statute or ordinance may serve as the basis for negligence *per se*.”).

redesign/resize entire systems. A comprehensive study of each street and community would be required to determine the specific fire protection required. In commercial areas, if one industry moves out and another moves in, the fire protection needs would need to be reevaluated and the distribution system revised again to meet the new needs. It would be difficult, if not impossible, to predict all future fire protection needs, thus systems would be in need of near constant updates.

Enacting new standards may prevent some troubled municipal systems from being acquired due to cost barriers. Existing municipal systems not subject to the Commission's jurisdiction will not have this same fire protection requirements and thus it will take a long time, and a lot of capital, to upgrade a newly acquired municipal system to meet the minimum fire protection standard if the Commission chooses to implement such standard.

5. Revenue Requirement, Cost Allocation, and Rate Design

Implementing and coming into compliance with new "standards" for fire protection will significantly impact revenue requirements for years to come. To the extent the Commission develops any such standards, it needs to be transparent with ratepayers and the public within the policy document and clearly state that the costs of upgrades will be paid for through rates.

Rates would need to cover all of the capital invested to upgrade the system and the extra operating costs associated with having millions of gallons of water stored and ready to fight fires. Commercial and Industrial customers would likely bear the brunt of the rate increases since the water systems would need to be sized to provide fire protection for the largest/highest risk customers which by default benefits the residential /low risk customers.

The Commission must also recognize the allocation and rate design limitations of 66 Pa. C.S. §§ 1326, 1328:

(a) Prohibition.--A public utility that furnishes water to or for the public shall not impose a standby charge on owners of residential structures equipped with automatic fire protection systems.

(b) Definition.--As used in this section, the term "standby charge" means an amount, in addition to the regular rate, assessed against the owner of a residential structure for the reason that the residential structure is equipped with an automatic fire protection system.

Id. at § 1326.

(a) General rule.--A public utility that furnishes water to or for the public shall be allowed to recover in rates the full cost of service related to public fire hydrants.

(b) Charge to municipalities and other customers of the public utility.--

(1) In determining the rates to be charged for public fire hydrants by a public utility that furnishes water to or for the public, *the commission shall as part of a utility's general rate proceeding provide for the recovery of the costs of public fire hydrants in such a manner that the municipalities in which those public fire hydrants are located are not charged for more than 25% of the cost of service for those public fire hydrants*, as such cost of service is reasonably determined by the commission.

(2) The commission shall also as part of the utility's general rate proceeding provide for the recovery of the remaining cost of service for those public fire hydrants not recovered from the municipalities under paragraph (1) by assessing all customers of the public utility the remaining cost of service to the public fire hydrants. The remaining cost of service for those public fire hydrants shall be included in the public utility's fixed or service charge or minimum bill.

(c) Effect on current rates.--The legal rates charged to municipalities for public fire hydrants in effect on the effective date of this section shall remain frozen and shall not be changed until the present rates for those public fire hydrants are determined to be below the 25% ceiling established under subsection (b). The remaining cost of service for those public fire hydrants not recovered from the municipality shall be recovered from all customers of the public utility in the public utility's fixed or service charge or minimum bill.

(d) Definition.--As used in this section, the term "public fire hydrant" means a fire hydrant that is charged, at least in part, to a municipality such as a city, borough, town or township.

Id. at 1328. In particular, to come into compliance with any standards the Commission sets forth in its policy statement will significantly increase the cost of service for public fire protection, but the municipality that pays for such protection can only be charged 25% of the cost to serve, leaving the rest of the revenue requirement for other ratepayers to bear, including residential ratepayers.

III. CONCLUSION

Columbia Water thanks the Commission for the opportunity to provide comments on a proposed policy statement for fire protection. Columbia Water also asks that if the Commission decides to move forward with a policy statement, that it provide Class A Water Utilities the opportunity to comment on a draft policy statement before it is promulgated.

Respectfully submitted,

/s/ Whitney E. Snyder

Thomas J. Sniscak

Whitney E. Snyder

Hawke McKeon & Sniscak LLP

100 North Tenth Street

Harrisburg, PA 17101

tjsniscak@hmslegal.com

wesnyder@hmslegal.com

Telephone: (717) 236-1300

Facsimile: (717) 236-4841

DATED: August 29, 2022

Counsel for Columbia Water Company