

# NATIONAL ASSOCIATION OF WATER COMPANIES

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January 7, 2008

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PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

James J. McNulty, Secretary  
 PA Public Utility Commission  
 Commonwealth Keystone Bldg.  
 400 North Street  
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 Harrisburg, PA 17120-3265

RE: Proposed Rulemaking Regarding  
 Implementation of the Public Utility Confidential  
 Security Information Disclosure Protection Act  
 Docket No. L-00070185; Regulation ID#57-256 (2651)

Dear Secretary McNulty:

Enclosed for filing please find an original and fifteen copies of  
 the Chapter's comments in the above-referenced proceeding.

The National Association of Water Companies (NAWC) is a  
 non-profit trade association that exclusively represents private or  
 investor-owned drinking water utilities. The Pennsylvania Chapter  
 consists of 11 member companies that provide reliable drinking water to  
 more than 3.5 million Pennsylvanians everyday in 43 of the  
 Commonwealth's 67 counties. In addition, two of our member  
 companies own and operate several wastewater systems.

Very truly yours,

*Erik A. Ross*

Erik A. Ross  
 Manager of Governmental  
 Relations

CC: Carl S. Hisiro  
 John Jewett

INDEPENDENT REGULATORY  
REVIEW COMMISSION

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**Before the  
Pennsylvania Public Utility Commission**

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PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

In Re: Proposed Rulemaking Regarding  
Implementation of the Public Utility  
Confidential Security Information  
Disclosure Protection Act

Docket No. L-00070185;  
Regulation ID#57-256 (2651)

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**Comments of  
National Association of Water Companies, Pennsylvania Chapter**

The National Association of Water Companies (NAWC) is a non-profit trade association that exclusively represents private or investor-owned drinking water utilities. The Pennsylvania Chapter consists of 11 member companies that provide reliable drinking water to more than 3.5 million Pennsylvanians everyday in 43 of the Commonwealth's 67 counties. In addition, two of our member companies own and operate several wastewater systems.

**I. Introduction**

On August 30, 2007, the Pennsylvania Public Utility Commission (Commission) adopted a proposed rulemaking order which establishes protocols and procedures to be followed when public utilities file records with the Commission containing confidential security information and challenges to the utility's designations or requests to examine records containing confidential security information are made. The proposed rulemaking implements Act 156 (P.L. No. 1435, No. 156), known as the Public Utility Confidential Security Information Disclosure Protection Act (CSI Act) (35 P.S. §§ 2141.1—2141.6).

The CSI Act provides safeguards for confidential security information of public utilities that is provided to State agencies such as the Commission from disclosure that may compromise

security against sabotage or criminal or terrorist acts. In creating this mandate of nondisclosure of confidential security information, the CSI Act directs the Commission to develop, among other things: (1) filing protocols and procedures for public utilities to follow when submitting records containing confidential security information; and (2) protocols and procedures to address challenges to the designations or requests to examine records containing confidential security information. 35 P.S. § 2141.3.

## II. Comments

The Chapter worked closely with State Representative Carole Rubley (prime sponsor of Act 156 of 2006), State agencies, the Governor's Legislative Office, Pennsylvania Newspaper Association and others on the drafting of Act 156 of 2006. The Chapter also submitted comments on the Commission's Advanced Notice of Proposed Rulemaking on June 15, 2007.

The proposed regulations in 52 Pa. Code Chapter 102 (relating to confidential security information) spell out the purpose of the new regulations; provide a series of definitions that are identical to the corresponding definitions in the CSI Act, except for "member of the public," which is defined in a way to be consistent with section 2 of the Right-to-Know Law (65 P.S. § 66.2); and address the filing and challenge procedures contemplated by the CSI Act.

The proposed regulations also address issues such as how a utility is to label confidential security information to be filed with the Commission, how the Commission is to handle previously-filed unmarked records in its possession and how electronic submissions will be treated.

Finally, the proposed rulemaking amends § 5.423 (relating to orders to limit availability of proprietary information) by adding a new subsection (g) whose sole purpose is to refer the reader to the new Chapter 102.

The Chapter strongly supports this proposed rulemaking and believes it satisfies the legislative intent and meaning of the CSI Act. Our specific comments follow:

**§ 102.3 (relating to filing procedures)**

The Chapter supports the language contained in subsection (a) which requires utilities, unless directed by the Commission or its staff to do otherwise, to maintain any record containing confidential security information on site and to rely on the Commission's self-certification process described in Chapter 101 (relating to public utility preparedness through self certification) of the Commission's regulations. We agree that this provision will minimize the Commission's storage costs and Commission staff's exposure to possible sanctions that could result from mishandling confidential security information filed with the Commission.

With respect to subsection (c), the Chapter agrees that the public utility has the responsibility to identify records containing confidential security information. Moreover, when the public utility fails to designate a record as containing confidential security information, it does not obtain the protections offered in Act 156. Any record that is not identified, stamped and separated as set forth in subsection (b), will be made available to the public under the Right-to-Know Law. The intent was to relieve State agencies of the burden of having to perform a tedious search of all of its records to identify those containing confidential security information.

However, the Chapter believes that State agencies should allow public utilities to resubmit and replace existing records if they contain confidential security information, without having to remit a new permit or filing fee. Therefore, the Chapter strongly supports subsections (d) and (e) relating to the status of previously-filed records and the Commission's responsibility for handling unmarked records that may contain confidential security information. We agree that the proposed regulations contain common sense approaches to dealing with the two issues that

protect Commission employees while maximizing the protections afforded by the statute in areas not expressly covered by the statute.

**§ 102.4 (relating to challenge procedures to confidentiality designation)**

The Chapter strongly supports subsections (f) and (g) which address how confidential security information is to be accessed by the statutory advocates. Specifically, authorized individuals employed by the statutory advocates shall be provided with access to confidential security information on file with the Commission when they provide the public utility with a justification for the need of the information and execute access agreements that summarize responsibilities and personal liabilities when confidential security information is knowingly or recklessly released, published or otherwise disclosed.

Moreover, unopened envelopes marked "Confidential Security Information" filed with the Commission will be given only to Commission employees authorized to review the information as provided for in Act 156. Authorized Commission employees will execute access agreements that summarize responsibilities and personal liabilities when confidential security information is knowingly or recklessly released.

**III. Conclusion**

The Chapter appreciates the opportunity to present comments on this Proposed Rulemaking regarding Implementation of the CSI Act and requests that the Commission consider our comments.

Respectfully submitted,

*Erik A. Ross*

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