

NATIONAL ASSOCIATION OF WATER COMPANIES Pennsylvania Chapter

2651

Chair

John D. Hollenbach
United Water Pennsylvania, Inc.
P.O. Box 4151
Harrisburg, PA 17111-0151
Phone: 717-561-1103
john.hollenbach@unitedwater.com

Vice Chair

Kathy Pape
Pennsylvania-American Water Company
800 West Hershey Park Drive
P.O. Box 888
Hershey, PA 17033-0888
Phone: 717-531-3200
Kathy.Pape@amwater.com

Secretary

David Lewis
Columbia Water Company
220 Locust Street
P.O. Box 350
Columbia, PA 17512-0350
Phone: 717-684-2188
dlewis@pa.net

Treasurer

Kathy Miller
The York Water Company
130 East Market Street
P.O. Box 15089
York, PA 17401-1219
Phone: 717-845-3601
kathym@yorkwater.com

Past Chair

Jeffrey R. Hines
The York Water Company
130 East Market Street
P.O. Box 15089
York, PA 17405
Phone: 717-718-2953
jeffh@yorkwater.com

Manager of Governmental Relations

Erik A. Ross
Dewey & LeBoeuf LLP
1101 New York Avenue NW
Suite 1100
Washington, DC 20005-4213
Phone: 646-270-2516
eross@dl.com

Counsel

Michael D. Klein
Dewey & LeBoeuf LLP
1101 New York Avenue NW
Suite 1100
Washington, DC 20005-4213
Phone: 202-986-8154
mklein@dl.com

January 7, 2008

James J. McNulty, Secretary
PA Public Utility Commission
Commonwealth Keystone Bldg.
400 North Street
P.O. Box 3265
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
2008 JAN -7 PM 2:00
RECEIVED

**Before the
Pennsylvania Public Utility Commission**

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)

**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

Erik A. Ross
Manager of Government Relations
Dewey & LeBoeuf LLP
1101 New York Avenue NW

Suite 1100
Washington, DC 20005-4213
(646) 270-2516

National Association of Water Companies.
Pennsylvania Chapter
John D. Hollenbach, Chairman
P.O. Box 4151
Harrisburg, PA 17111-0151
Phone: 717-561-1103