

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Advanced Notice of Proposed Rulemaking	:	
for Revision of 52 Pa. Code Chapter 57	:	Docket No. L-00040167
pertaining to adding Inspection and	:	
Maintenance Standards for the Electric	:	
Distribution Companies	:	

Reply Comments of PECO Energy Company

PECO Energy Company (“PECO Energy”) hereby submits Reply Comments at the above-captioned docket in response to the Comments filed by the Office of Consumer Advocate (“OCA”) and the Pennsylvania AFL-CIO Utility Caucus (“AFL-CIO”) who were responding to the Pennsylvania Public Utility Commission’s (“Commission”) Advanced Notice of Proposed Rulemaking Order (“ANOPR”) and Request for Comments on the addition of Inspection and Maintenance Standards applicable to Electric Distribution Companies (“EDCs”). The Proposed Order was issued by the Commission on November 18, 2004 and published in the Pennsylvania Bulletin on December 11, 2004 (34 Pa. B. 50). The OCA Comments were filed on February 9, 2005 and AFL-CIO Comments on February 8, 2005. Pursuant to the Order, replies were due March 11, 2005.

I. Introduction

OCA and AFL-CIO set forth two basic arguments in support of their position that the Commission should adopt inspection and maintenance standards in the form of regulatory provisions: (1) that such standards are *mandated* by §2802(20) of the Competition Act; and (2) that such standards are necessary to ensure continued reliable service for Pennsylvania electric customers. As is demonstrated below, the Commission has already met its obligations under §2802(20) in several regards and the action contemplated by the ANOPR is not *mandated*.

Further, the recent Reliability Regulations¹ along with other existing requirements amply promote the reliability objectives initially expressed by the Legislature in the Competition Act and later reiterated by this Commission and in the Blackout Report.²

In its Comments, PECO Energy recommended that the Commission refrain from undergoing a formal rulemaking adopting specific inspection and maintenance standards at this time for a number of reasons. The primary reason was that the Commission's regulations already contain several provisions addressing reliability, including inspection and maintenance programs impacting reliability, and provide the Commission adequate authority to monitor and enforce continued reliable service for Pennsylvania electric customers. In light of these regulations, other agency actions and the Commission's continued focus on reliability, PECO Energy maintains its position that inspection and maintenance standards in the form of binding and inflexible regulatory provisions are unnecessary at this time.

II. Both the spirit and the letter of the §2802(20) requirements have been met.

The OCA and AFL-CIO both argue that a rulemaking as contemplated by the ANOPR is mandated by §2802(20). However, the Commission regulations already satisfy the obligations of the Competition Act and specifically this provision. The language of the Act makes clear the legislative intent "continuing and ensuring the reliability of electric service"³ and in that spirit calls for the adoption and enforcement of inspection and maintenance standards. It does not, however, mandate adoption of the action contemplated by this ANOPR when the Commission has not only satisfied the objective of the provision, but has also already met its explicit obligations as stated in §2802(20). The former is satisfied by the recently adopted Reliability

¹ 52 Pa. Code §57.195 et. seq. - Final Rulemaking Order at Docket L-00030161, published in the Pennsylvania Bulletin on September 18, 2004 at 34 Pa.B. 5135.

² Final Report on the August 14 Blackout in the U.S. and Canada as cited in the ANOPR ("Blackout Report").

³ 66 Pa.C.S.A. §2802(20).

Regulations, which were specifically designed not only to ensure reliable service, but continued improvements in reliability. The latter, adoption of inspection and maintenance standards, has also been accomplished as several provisions of the Commission's Regulations adopt other agency inspection and maintenance standards, some of which were developed to specifically address inspection and maintenance issues in the context of reliability.⁴

Sections 57.193 and 57.194 of the Commission's regulations adopt the inspection and maintenance standards set forth by the National Electric Safety Code ("NESC"), the North American Electric Reliability Council ("NERC") and regional reliability councils relative to both transmission and distribution. Specifically, §57.193 "Transmission system reliability" adopts NESC requirements; NERC requirements and standards; and regional reliability council requirements. This provision also requires annual reporting of the performance of the transmission system as built and operated. These agencies all have, or have recently adopted, inspection and maintenance standards applicable to EDCs relative to reliability performance. Section 57.194 "Distribution system reliability," adopts the requirements of the NESC and provides for adequate, safe and reasonable service (one of the items OCA requested be included in the new standards it proposed). Moreover, sub-section (h)(1)(ii) provides for additional monitoring and enforcement action and reporting and sub-section (h)(2) requires distribution system inspection and maintenance programs sufficient to meet reliability objectives. 52 Pa. Code §57.194(h).

⁴ The AFL-CIO also argues that "the concerns that prompted the inclusion of Section 2802(20) "have proven to be correct...EDCs have dramatically reduced their distribution work force, reduced their budgets for system maintenance and testing, and dramatically changed their inspection and maintenance practices." AFL-CIO makes these sweeping unsupported statements about how EDCs are operating in the post-Competition Act era but utterly fails to support them. PECO Energy denies the credibility of these statements and the alleged "potential" impact on reliability, but will not engage in the discussion here as this is not an appropriate forum for such a debate since the commenting parties are not submitting evidence or testimony to support our respective positions at this time.

As was noted in PECO Energy's Comments, these agencies have ample expertise with regard to transmission and distribution systems, have already expended a great deal of resources and effort in the development of inspection and maintenance standards and it is completely reasonable that the Commission adopt these standards rather than attempt to add yet another layer of regulatory requirements, which would only reduce the flexibility needed by EDCs to implement efficient and effective inspection and maintenance programs.

In addition to the adoption of these other agency standards, the recently enacted Reliability Regulations require specific and extensive information relative to inspection and maintenance programs and these requirements along with 66 Pa. C.S.A. §516 and 52 Pa. Code §57.194(h)(ii) provide the Commission the right tools for monitoring such programs: review, investigation and enforcement authority at the individual EDC level. In fact, it is clear that the current structure accomplishes precisely what the OCA requests in its Comments, a two-tiered approach with broad standards applicable throughout Pennsylvania while providing the Commission sufficient monitoring and enforcement authority to address individual EDC inspection and maintenance programs in the context of that particular EDC's service territory.

With all of these Regulations already in place to address inspection and maintenance programs and having met both the spirit and the letter of the §2802 provision no further action is necessary at this time. To enact additional regulatory requirements in the midst of the implementation of the existing Commission and other agency requirements would be redundant, could cause confusion and is not the most efficient or effective means for accomplishing the ultimate objective, ensuring reliable service and further improvements to reliability in general.

III. Commission regulations provide for continued reliable service for Pennsylvania electric customers

The Commission noted in its ANOPR that its primary objective is to ensure continued reliable service, the legislature emphasized in §2802(20) that the primary objective of that provision was “ensuring the reliability of electric service” and the OCA and AFL-CIO cite to this as their primary concern in requesting such standards. PECO Energy agrees with the Commission, the legislature and the other parties, that reliability and the role inspection and maintenance programs play in reliable service is important. However, it is PECO Energy’s position that new standards are not necessary to achieve this objective. The Commission has already taken sufficient action in setting stringent reliability performance and reporting requirements and in doing so also has the ability to assure continuous improvements in reliability in general.

In support of their arguments that even more regulation is needed, both the OCA and AFL-CIO propose a broad set of minimum standards applicable to all EDCs. They agree that specific standards are not the best option, citing to the difficulty other states have had implementing and enforcing their inspection and maintenance standards.⁵ In particular, the OCA urges the Commission to adopt a two-tiered standard that provides minimum inspection and maintenance standards and the authority to require specific reports of inspection and maintenance programs by each of the EDCs.⁶ A new set of regulations is not needed to achieve this two-tiered structure. The current statutory and regulatory scheme already fulfills both of these requests. The provisions cited above set forth minimum standards for each of the EDCs relative to distribution and transmission and also provide the Commission authority to review,

⁵ The OCA and AFL-CIO discuss the California and Ohio provisions both of which are still in implementation phase.

⁶ OCA Comments at 5 and 9.

investigate and enforce. The current structure provides the EDCs the needed flexibility, while retaining sufficient Commission authority to monitor inspection and maintenance programs and their impact on reliability.

This coupled with the actions being taken by other agencies in response to the same issue (reliability and in particular concerns raised by the Blackout Report) adequately protects Pennsylvania consumers and the integrity of electric service reliability. Even OCA urges the Commission, should it adopt standards, to be mindful of existing standards issued by other agencies such as the Federal Energy Regulatory Commission (“FERC”), NERC and the Regional Transmission Operators. (OCA Comments at 8). As discussed in part two above, the requirements being issued by these organizations have already been adopted by the Commission and will thus be effective once finalized by those agencies. Adoption of additional regulations by the Commission, when there are already sufficient Commission requirements in place and at a time where so many other agencies are preparing requirements to address the same issue, would be redundant and would more likely result in confusing and potentially conflicting obligations.

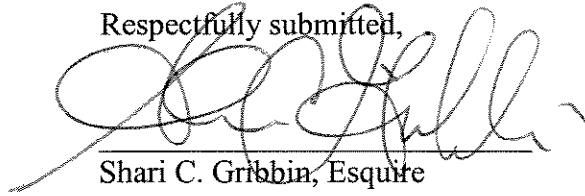
The OCA also urges the Commission to make clear that compliance with minimum standards does not mean that EDCs are relieved of their responsibility to provide reasonable and safe service. This too has been addressed by the current regulations and stated by the Commission during the course of the rulemaking for the Reliability Regulations. It is also clear from the language of §57.194, the other existing regulations and from the Commission’s authority to conduct further review and investigation, as well as impose a variety of penalties for failure to meet reliability objectives, that it is contemplated that simply meeting benchmarks and standards may not satisfy an EDC’s obligations to its customers to provide reliable, reasonable and safe service.

As the issue of inspection and maintenance programs in the context of reliability has already been addressed by the Commission as well as a number of other organizations, the better approach would be to allow some time for compliance with these other regulations in order to evaluate their effectiveness with regard to inspection and maintenance rather than enact further regulations, which may result in restrictive and potentially conflicting requirements that do not permit EDCs sufficient flexibility to effectively manage their inspection and maintenance programs.

IV. Conclusion

Reliability is an important issue. An issue that has been addressed by the Commission in several of its existing regulations and is also being addressed by other agencies such as the FERC, NERC and PJM Interconnection (“PJM”), just to name a few. The development of inspection and maintenance standards to deal with this issue is unnecessary at this time. The current regulatory structure provides an ample means for addressing inspection and maintenance programs and their impact on reliability and already accomplishes what the OCA and AFL-CIO wish to see accomplished. The enactment of regulatory requirements would likely result in rigid standards that do not allow the EDCs much needed flexibility to effectively manage inspection and maintenance relative to their individual transmission and distribution systems. Again PECO Energy suggests that the better course of action would be for the Commission to utilize the tools available to it through the existing regulations and only to set standards on an individual basis as part of a plan designed to address specific inspection and maintenance issues identified through the reporting, audit, inquiry and investigation processes.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Shari C. Gribbin', written over a horizontal line.

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Dated: March 11, 2005

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CERTIFICATE OF SERVICE

I hereby certify that I have this date served a true copy of the Reply of PECO Energy Company to OCA and AFL-CIO Comments on the above-referenced Advanced Notice of Proposed Rulemaking upon the individuals listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant) and have e-mailed a copy of the Comments to Elizabeth Barnes, Pennsylvania Public Utility Commission in accordance with the requirements of the ANOPR.

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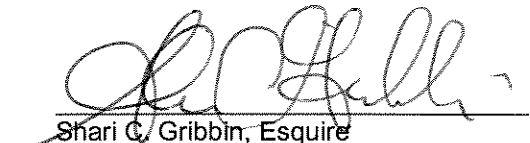
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Dated: March 11, 2005



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