COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
P.O. BOX 3265, HARRISBURG, PA 17105-3265

IN REPLY PLEASE REFER TO OUR FILE

September 7, 2004

Mary Jane Phelps, Director
Pennsylvania Code & Bulletin
Room 647, Main Capitol Building
Harrisburg, PA 17120

DOCKETED
SEP 28 2004

Re: L-00030161/57-228
Final Rulemaking
Amending Electric Service Reliability Regulations
52 Pa. Code, Chapter 57

DOCUMENT FOLDER

Dear Ms. Phelps:

Enclosed please find two (2) copies of the face sheet and above-captioned order along with a diskette containing the Executive Summary, Commission Order and Annex A. The Attorney General approved the rulemaking on August 31, 2004. The Commission requests that this order be published as a **final** rulemaking in the Pennsylvania Bulletin.

Very truly yours,

Karen O. Moury
Acting Executive Director

Enclosure

cc: Chief Counsel Pankiw
Regulatory Coordinator DelBiondo
Assistant Counsel Barnes
Mr. Sheets
Docketing ✓

TO: LEGISLATIVE REFERENCE BUREAU

RE: PUC FINAL REGULATION

L-00030161/57-228
Amending Electric Service Reliability Regulations
52 Pa. Code Chapter 57

Under Section A of the Regulatory Review Act, the Act of June 30, 1989 (P.L. 73, No. 19) (71 P.S. §§745.1-745.15), the agency submitted a copy of the final rulemaking, which was published as proposed at 33 Pa.B. 4921 on October 4, 2003 and served on September 19, 2003 to the Independent Regulatory Review Commission and the Chairmen of the House Committee on Consumer Affairs and the Senate Committee on Consumer Protection and Professional Licensure for review and comment. In compliance with Section 5(b.1), the agency also provided the Commission and the Committees with copies of all comments received, as well as other documentation.

In preparing this final form regulation, the agency has considered all comments received from the Commission, the Committees and the public.

This final form regulation was deemed approved by the House Committee on Consumer Affairs and was deemed approved by the Senate Committee on Consumer Protection and Professional Licensure, and was approved by the Independent Regulatory Review Commission on July 29, 2004, in accordance with Section 5(c) of the Act.

CDL - 1

FACE SHEET
FOR FILING DOCUMENTS
WITH THE LEGISLATIVE REFERENCE BUREAU

(Pursuant to Commonwealth Documents Law)

DO NOT WRITE IN THIS SPACE

Copy below is hereby approved as to form and legality. Attorney General. BY Amy M. Elliott (DEPUTY ATTORNEY GENERAL) AUG 31 2004 DATE OF APPROVAL ☐ Check if applicable Copy not approved. Objections attached	Copy below is hereby certified to be true and correct copy of a document issued, prescribed or promulgated by: Pennsylvania Public Utility Commission (AGENCY) DOCUMENT/FISCAL NOTE NO. L-00030161/57-228 DATE OF ADOPTION May 7, 2004 BY James J. McNulty James J. McNulty TITLE (SECRETARY)	Copy below is hereby approved as to form and legality. Executive or independent Agencies. BY Bohdan R. Pankiw Bohdan R. Pankiw Chief Counsel 5-7-04 DATE OF APPROVAL ☐ Check if applicable. No Attorney General approval or objection within 30 days after submission.

L-00030161/57-228
Final Rulemaking
Amending Electric Service Reliability Regulations
52 Pa. Code, Chapter 57

The Pennsylvania Public Utility Commission on May 7, 2004, adopted a final rulemaking order which amends existing regulations by establishing performance and benchmark standards designed to ensure EDC performance does not deteriorate since passage of the Electric Generation Customer Choice and Competition Act. The contact persons are Elizabeth Barnes, Law Bureau, 772-5408 and Thomas Sheets, Bureau of Audits, 783-5000.

EXECUTIVE SUMMARY

L-00030161
Final Rulemaking
Re: Amending Electric Service Reliability Regulations
at 52 Pa.Code Chapter 57

The Electricity Generation Customer Choice and Competition Act (Act), 1996, Dec. 3, P.L. 802, No. 138 §4, became effective January 1, 1997. The Act amends Title 66 of the Pennsylvania Consolidated Statutes ("Public Utility Code" or "Code") by adding Chapter 28 to establish standards and procedures to create direct access by retail customers to the competitive market for the generation of electricity, while maintaining the safety and reliability of the electric system. Specifically, the Commission was given a legislative mandate to ensure that levels of reliability that were present prior to the restructuring of the electric utility industry would continue in the new competitive markets.

In response to this legislative mandate, the Commission adopted a final rulemaking order on April 23, 1998 at Docket No. L-00970120, setting forth various reporting requirements designed to ensure the continuing safety, adequacy and reliability of the generation, transmission and distribution of electricity in the Commonwealth. *See* 52 Pa. Code §§57.191-57.197. The final rulemaking order also suggested that the Commission could reevaluate its monitoring efforts at a later time as deemed appropriate.

On June 12, 2002, the Legislative Budget and Finance Committee (LB&FC) issued a Report entitled, *Assessing the Reliability of Pennsylvania's Electric Transmission and Distribution Systems*. The LB&FC Report made several recommendations regarding the issue of reliability

Shortly thereafter, on July 18, 2002, at M-00021619, the Commission adopted its Bureau of Conservation Economics and Energy Planning's (CEEP) *Inspection and Maintenance Study of Electric Distribution Systems* dated July 3,

2002. CEEP, in part, recommended that the annual reliability reporting requirements be revised to include the causes of outages and percentages categorized by type as well as the annual reporting of each company's plans for the upcoming year's inspection and maintenance of transmission systems including: 1) vegetation management; 2) distribution and substation maintenance activity; and 3) capital improvement projects. The Commission agreed with CEEP's recommendations in this regard.

The Commission created a Staff Internal Working Group on Electric Service Reliability (Staff Internal Working Group) to conduct a reevaluation of its electric service reliability efforts. The group was comprised of members of Commission bureaus with either direct or indirect responsibility for monitoring electric service reliability. The Staff Internal Working Group prepared a report, entitled *Review of the Commission's Monitoring Process for Electric Distribution Service Reliability*, dated July 18, 2002, which reviewed the Commission's monitoring process for electric distribution service reliability and provided comments on recommendations from the LB&FC report. The Staff Internal Working Group report also offered recommendations for tightening the standards for reliability performance and establishing additional reporting requirements by electric distribution companies (EDCs).

On August 29, 2002, the Commission issued an Order at Docket No. D-02SPS021 that tentatively approved these recommendations and directed the Commission staff to undertake the preparation of orders, policy statements, and proposed rulemakings as may be necessary to implement the recommendations contained in the Staff Internal Working Group's report. The Staff Internal Working Group was assigned the responsibility to implement the recommendations. The Staff Internal Working Group, with the legal assistance of the Law Bureau, determined which implementation actions could be accomplished internally (with or without a formal Commission Order), and which actions will require changes to regulations.

The Staff Internal Working Group conducted field visits to EDCs to identify the current capabilities of each EDC for measuring and reporting reliability performance. These field visits began in October 2002 and continued intermittently through March 2003. As a result of the field visits, various forms of reliability reports and reliability data were received from the EDCs and analyzed by the Staff Internal Working Group to determine the most effective and reasonable approach for the Commission to monitor electric distribution service reliability.

The Rulemaking Order seeks to implement Staff Internal Working Group's recommendations and sets forth regulations to better govern the reliability of electric service in Pennsylvania and assure that service does not deteriorate after the Act. Specifically, we propose to substitute the term "operating area" with "service territory" thus altering the definition of a "major event." Additionally, we want to require the EDCs to file quarterly reports as well as the currently required annual reports. We wish the EDCs to report additional information on their reports, i.e., worst circuit information as well as their standards and plans for inspection and maintenance of their distribution systems.

The contact persons are Elizabeth Barnes, Law Bureau (717) 772-5408, and Thomas Sheets, Bureau of Audits (717) 783-5000.

PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, Pennsylvania 17105-3265

Public Meeting held May 7, 2004

Commissioners Present:

Terrance J. Fitzpatrick, Chairman
Robert K. Bloom, Vice Chairman
Glen R. Thomas
Kim Pizzingrilli
Wendell F. Holland

Rulemaking Re Amending Electric Service Reliability Regulations at 52 Pa.Code Chapter 57 — Docket No. L-00030161

FINAL RULEMAKING ORDER

BY THE COMMISSION:

Today, in conjunction with our Final Order at M-00991220, we reexamine our regulations and seek to significantly improve the monitoring of reliability performance in the electric distribution industry.

Procedural History

The Electricity Generation Customer Choice and Competition Act (Act), 1996, Dec. 3, P.L. 802, No. 138 §4, became effective January 1, 1997. The Act amends Title 66 of the Pennsylvania Consolidated Statutes ("Public Utility Code" or "Code") by adding Chapter 28 to establish standards and procedures to create direct access by retail customers to the competitive market for the generation of electricity, while maintaining the safety and reliability of the electric system. Specifically, the Commission was given a legislative mandate to ensure that levels of reliability that were present prior to the restructuring of the electric utility industry would continue in the new competitive markets. 66 Pa.C.S.§§2802(12), 2804(1) and 2807(d).

In response to this legislative mandate, the Commission adopted a final rulemaking order on April 23, 1998 at Docket No. L-00970120, setting forth various reporting requirements designed to ensure the continuing safety, adequacy and reliability of the generation, transmission and distribution of electricity in the Commonwealth. *See* 52 Pa. Code §§57.191-57.197. The final rulemaking order also suggested that the Commission could reevaluate its monitoring efforts at a later time as deemed appropriate.

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The Staff Internal Working Group conducted field visits to EDCs to identify the current capabilities of each EDC for measuring and reporting reliability performance. These field visits began in October 2002 and continued through March 2003. As a result of the field visits, various forms of reliability reports and reliability data were received from the EDCs and analyzed by the Staff Internal Working Group to determine the most effective and reasonable approach for the Commission to monitor electric distribution service reliability.

On June 27, 2003, at Docket No. L-00030161, the Commission adopted the proposed regulations governing the reliability of electric service in Pennsylvania. This Proposed Rulemaking Order was published in the *Pennsylvania Bulletin* and the Commission received comments from the following parties: the Pennsylvania AFL-CIO Utility Caucus (AFL-CIO), Citizens' Electric Company (Citizens'), Metropolitan Edison Company (Met-Ed), Pennsylvania Electric Company (Penelec), Pennsylvania Power Company (Penn Power), PECO Energy Company (PECO), UGI Utilities, Inc. – Electric Division (UGI), Allegheny Power Company (Allegheny Power), Energy Association of Pennsylvania (EAP), the Attorney General's Office of Consumer Advocate (OCA), Pike County Light & Power Company (Pike County), and PPL Electric Utilities Corporation (PPL). Reply comments were filed by OCA, EAP and PPL. The Commission also received comments on January 21, 2004 from the Independent Regulatory Review Commission (IRRC).

Discussion

Upon due consideration of the comments, we make the following determinations regarding each amendment to the existing regulations at 52 Pa. Code §57.191– 57.197.

Amendments to existing regulations at 52 Pa. Code §57.191- 57.197

§ 57.191 Purpose

No changes.

§ 57.192. Definitions.

Circuit and Conductor Definitions

See page 22 of this order regarding Worst Performing Circuits for discussion regarding the addition of these two definitions to the final rulemaking.

Operating Area Definition

In the Proposed Rulemaking Order we proposed deleting the definition of operating area. An "operating area" was defined by Section 57.192 as being, "A geographical area, as defined by an electric distribution company, of its franchise service territory for its transmission and distribution operations."

Some EDCs used one, system-wide operating area to compute their reliability metrics, while other EDCs subdivided their service territories and used multiple operating areas to compute their metrics. The number, size and composition of operating areas used for metric computations introduced variability into the criterion used to exclude major events from the reliability metrics reported to the Commission. An EDC that subdivided its territory into several small geographic operating areas could exclude major events from its metric calculations based on a criterion of an interruption affecting 10% of the customers in an operating area; whereas another EDC, employing only one, service territory-wide operating area had to meet a much higher criterion of an interruption affecting 10% of the total EDC customer base. We proposed that EDCs should compute and report their reliability metrics to the Commission considering the entire service territory as one operating area and the major event exclusion of an interruption that affects 10% of the entire customer base for a duration of five minutes or longer.

Positions of the Parties

PPL and the AFL-CIO filed comments in support of the Commission's proposal to substitute the term "service territory" for the term "operating area." However, OCA urged the Commission to retain the use of operating area information for reliability monitoring purposes. OCA cites its Comments submitted in reference to our Tentative Order at Docket No. M-00991220 as support for its assertion that elimination of monitoring by operating area is not appropriate.

First Energy's Met-Ed, Penelec and Penn Power (collectively referred to as the "FE Companies") submitted joint comments. The FE Companies assert that reporting reliability indices on a "system wide" basis rather than an "operating area" basis is not appropriate for Penelec. The FE Companies state that since Penelec serves about 585,000 customers over an area in excess of 17,000 square miles, it is unlikely that even a severe event and widespread service interruption will affect 10% of Penelec's customers. This means that very few interruptions would be classified as "major events." A reduction in major events will result in Penelec's service reliability appearing to be substantially worse than other EDCs with smaller service territories. Ultimately, the FE Companies claim that it may be difficult for Penelec to achieve its reliability standards. The FE Companies request that the proposed regulations be modified to allow Penelec to have two operating areas for purposes of determining "major events" and for meeting its applicable reliability indices.

Disposition

In its comments at Docket No. M-00991220, the OCA submitted that operating area information reflects how an EDC manages its distribution system and utilizes its resources within its system and that worst performing circuit reports are not a suitable proxy for operating area information. The OCA also recognized that the Staff Report noted that some EDCs defined operating areas differently for internal purposes than for PUC reporting purposes. As a result, the OCA suggested that EDCs be required to continue reporting of operating area reliability metrics using operating areas consistent with those used for internal operations and monitoring.

However, we believe that if EDCs are required to report by the operating areas they use for internal operations, then all previous years' operating area reliability metrics would need to be recomputed each time a company reconfigures its internal operations. This would make it more difficult to find pocket areas of reliability concern since a company could continually reconfigure operating areas to cover areas of concern. The circuit analysis proposed eliminates this potential problem and allows for identifying problem areas that are in need of remedial action. Therefore, we will maintain the proposed regulation as written, where companies report reliability metrics using a system wide operating area and detailed information on the worst performing circuits.

Furthermore, we deny the FE Companies' request to modify the proposed regulation to allow Penelec two service territories. We are not persuaded by the FE Companies' argument that Penelec is disadvantaged in its ability to meet its reliability indices. The Commission's recomputation of the reliability benchmarks and standards at Docket No. M-00991220 allowed for the addition of previously excluded data into the calculation of the benchmarks and standards. For example, as referenced in the M-0099120 Order, Penelec's rolling 12-month CAIDI benchmark and standard are changed from 104 and 134 to 115 and 138 respectively, due to the inclusion of outage data that historically was excluded as a "major event." Additionally, the FE Companies' concern that Penelec's service reliability may appear to be worse than other EDCs' appears to be misplaced, since the proposed regulations only measure an EDC's performance against its own historic (1994-1998) performance and not against the reliability metrics, benchmarks or standards of other EDCs.

Major Event Definition

In the "major event" definition, all references to "operating areas" are replaced with the term "service territory" for the reasons outlined above.

Additionally, as noted in our companion Amended Reliability Benchmarks and Standards Order at M-00991220, we require a formal process to request the exclusion of service interruptions for reporting purposes by proving a service interruption qualifies as a major event as defined by regulations. The Commission is providing EDCs with a form for requesting exclusion of data due to a major event.

Performance Benchmark and Performance Standard Definitions

In our Proposed Rulemaking Order we proposed defining a Performance Benchmark as being "the average historical performance" and a Performance Standard as being "the minimum performance allowed."

Positions of the Parties

IRRC commented that clarity could be improved by specifying that the performance benchmarks are established by the PUC based on each EDC's historical reliability performance and the performance standards are established by the PUC and tied to each EDC's performance benchmark. OCA recommended more detailed definitions of performance benchmarks and standards to include the methodology used to determine the metrics and where the numerical values for the metrics can be found. Comments provided by PPL recommended that the Commission revise the proposed definition of performance benchmark to identify the time period that was used to establish the benchmark, specifically noting the five-year period 1994 – 1998.

Disposition

We agree with IRRC, OCA and PPL that the definitions of performance benchmarks and standards should be expanded for clarity. Therefore, we have revised the definitions in §57.192 as well as incorporated language previously found in §57.194(h)(1)(2) that pertains to the measures applying to the entire service territory and the Commission's process for establishing the measures. We have also provided language that directs the reader to the Commission's Order at Docket No. M-00991220 for the specific numerical values of the performance benchmarks and standards. In addition, we will incorporate definitions of performance benchmarks and performance standards in the Commission's Order at Docket No. M-00991220 that further define the methodology for determining the measures. We will refrain from incorporating detail on the methodology for computing the performance benchmarks and standards as they may be subject to change by Commission Order in the future.

§ 57.193. Transmission system reliability.

No changes.

§ 57.194. Distribution system reliability.

Through regulations and orders, the Commission has established reporting requirements, benchmarks and standards for EDC reliability performance. Currently, EDCs report their performance on the CAIDI, SAIFI, SAIDI, and (as available) MAIFI[1] indices to the Commission on an annual basis. These are generally accepted indices of EDC reliability that measure the frequency and duration of outages at the system or customer level.

The existing regulations at Chapter 57 did not establish the benchmarks or the standards for CAIDI, SAIFI, SAIDI or MAIFI for each company. Instead, the benchmarks and standards were set by Commission Order on December 16, 1999 at Docket No. M-00991220.

Revisions to the language in 57.194(e) and (h)(2)-(4) were proposed in our Proposed Rulemaking Order to clarify the Commission's expectations for reliability performance in relation to performance benchmarks and performance standards. The Commission's expectations for EDC reliability are based on language found at §2802(12) and §2804(1) of the Electric Generation Customer Choice and Competition Act (the Act). Section 2802(12) notes that the purpose of the Act, in part, is:

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[1] CAIDI is Customer Average Interruption Duration Index. It is the average interruption duration of sustained interruptions for those customers who experience interruptions during the analysis period. CAIDI represents the average time required to restore service to the average customer per sustained interruption. It is determined by dividing the sum of all sustained customer interruption durations, in minutes, by the total number of interrupted customers. SAIFI is System Average Interruption Frequency Index. SAIFI measures the average frequency of sustained interruptions per customer occurring during the analysis period. SAIDI is System Average Interruption Duration Index. SAIDI measures the average duration of sustained customer interruptions per customer occurring during the analysis period. MAIFI (Momentary Average Interruption Frequency Index) measures the average frequency of momentary interruptions per customer occurring during the analysis period. These indices are accepted national reliability performance indices as adopted by the Institute of Electrical and Electronics Engineers, Inc. (IEEE), and are defined with formulas at 52 Pa. Code §57.192.

> [T]o create direct access by retail customers to the competitive market for the generation of electricity while maintaining the safety and reliability of the electric system for all parties. Reliable electric service is of the utmost importance to the health, safety and welfare of the citizens of the Commonwealth. Electric industry restructuring should ensure the reliability of the interconnected electric system by maintaining the efficiency of the transmission and distribution system.

Section 2804(1) of the Act sets forth standards for restructuring the electric industry. This section states, "The Commission shall ensure continuation of safe and reliable electric service to all customers in the Commonwealth. . ."

Consistent with the Act, the Commission's policy is to ensure that EDC reliability performance after implementation of the Act be at least equal to the level achieved prior to the introduction of electric choice. In a series of orders at Docket No. M-00991220, the Commission established reliability benchmarks and standards for each EDC. The benchmarks were based on each company's historic performance from 1994-1998. The benchmarks, therefore, represented each EDC's average historical reliability performance level prior to the implementation of electric choice in 1999. The Commission also established performance standards which took into account the variability in each EDC's reliability performance during the 1994-1998 period. The performance standards were set two standard deviations higher than the benchmarks (lower metric scores equal better performance) to allow for a degree of variability that inevitably occurs in reliability performance from year to year.

We stated in our Proposed Rulemaking Order:

> We do not want to send the message that long-term reliability performance that just meets the performance standard is acceptable. Long-term performance that only meets the standard could be significantly worse than the benchmark and thus worse than the

historical performance level that existed prior to the introduction of Electric Choice. Such performance would clearly not be consistent with the intent or language of the Act and the Commission's policy objective for maintaining reliability performance after the introduction of Electric Choice at least as good as it was prior to Electric Choice. Therefore, the Commission emphasizes that long-term reliability performance should be at least equal to the benchmark performance.

Positions of Parties:

PECO and EAP commented that the Commission should clearly distinguish the consequences of a failure to meet the performance benchmarks from a failure to meet the performance standards. These commentators acknowledge that a failure to meet performance standards constitutes non-compliance by the EDC which may result in further investigation, fines, or penalties. The EAP agrees with the Commission that EDCs should manage their businesses to meet the performance benchmarks but that a failure to meet the benchmarks does not equate to a failure to meet the performance standards. The AFL-CIO recommends that the Commission should make it clear that the goal should be utility performance that equals or exceeds the performance benchmarks.

The Commission also received comments about potential compliance actions from several parties. IRRC recommends that the Commission further explain the actions it may take in response to problems identified in a quarterly reliability report. The FE Companies raise a question about whether the Commission will deem an EDC's reliability performance to be unacceptable if it is trending away from the benchmark but within the performance standard. The OCA comments the regulations should require, at a minimum, that whenever an EDC does not meet the performance benchmark on a three-year average basis, the EDC enter into a formal improvement plan with the Commission with enforceable commitments and timetables.

Disposition

In response to comments by PECO and EAP we will distinguish the consequences of a failure to meet the performance benchmarks from a failure to meet the performance standards. The Commission believes that the EDCs should strive to achieve benchmark performance as well as meet the Commission's performance standards. Therefore we will maintain the insertion of language in §57.194(e),(h) and (h)(2) that indicates EDCs shall: (1) design and maintain procedures to achieve the reliability performance benchmarks; (2) take measures to meet the reliability benchmarks; and (3) inspect, maintain and operate its distribution system, analyze reliability results, and take corrective action to meet and achieve the reliability benchmarks. This language is consistent with the Commission's view that EDCs should set their goals to achieve or exceed benchmark performance. This viewpoint is shared in part by EAP who commented that they agree with the Commission that EDCs should manage their businesses to meet the long-term performance benchmarks and that the benchmarks provide the EDCs with an important and meaningful long-term performance target.

We will add clarifying language in §57.194(h)(1) about the consequences of not meeting the performance standards. We state in this section that performance that does not meet the standard will be the threshold for triggering additional scrutiny and perhaps compliance enforcement. The compliance and enforcement language only pertains to instances where an EDC fails to meet the performance standards and not to instances where the EDC fails to meet the performance benchmarks. However, the Commission will carefully monitor an EDC whose reliability performance is not meeting, and is trending away from the benchmark but still falling within the standard even though this will not be cause to initiate compliance and enforcement action.

In response to IRRC's comments requesting that we explain the actions the Commission may take in response to problems identified in a quarterly reliability report, we will add language to §57.194(h)(1) noting the types of information we may consider for compliance enforcement actions and an array of potential compliance actions the Commission may take in response to an EDC not meeting the performance standard. We view the array of potential compliance actions as among those available to the Commission for addressing noncompliance with Commission performance standards in general, whether such noncompliance comes to the attention of the Commission in a quarterly reliability report or by some other means.

In response to OCA's comments that the regulations should require a formal improvement plan when the three-year average performance standard is not met, we have included an improvement plan among the options available to the Commission for potential compliance enforcement actions. However, we have not made it a requirement in any specific circumstance. While the Commission finds there is a role for improvement plans, we want the flexibility to select an appropriate course of action.

§57.195. Reporting Requirements

<u>Submission of Annual Reliability Reports - §57.195(a):</u>

Under paragraph (a), we proposed that the annual reliability report be submitted by March 31 of each year. Currently, the EDCs submit reliability performance reports by May 31 following the year being reported on. If an EDC experiences poor performance in the year being reported on, five or more months pass before the Commission has the ability to determine if the EDC has sufficient corrective measures in place. At the time of receiving the performance report in the next year, it is too late for the EDC to effectively revise its reliability program to address any concerns of the Commission. Advancing the required submittal date from May 31 to March 31 of each year will ensure a timely reporting of reliability performance and review of corrective measures being implemented by an EDC if necessary.

Positions of the Parties

PPL filed comments in support of the Commission's proposal to advance the date for submission of the annual reliability report. However, PPL recommended that the Commission modify its proposed date for submission of this report from March 31 to April 30 because of the need to compile, analyze and thoroughly review the service interruption data used to prepare the annual reliability report. Allegheny Power filed similar comments noting that April 30 is also the due date of the Federal Energy Regulatory Commission (FERC) Form 1. A due date of March 31 may not allow sufficient time for EDCs to collect all necessary cost and reliability data in the format requested by the Commission. Allegheny Power also suggested that the additional month should not hinder the Commission's ability to monitor reliability since the Commission will be receiving quarterly reports. IRRC noted in its comments that given the Commission's proposal to add a quarterly reporting requirement, which will provide reliability performance information in a timely manner, the problem of the Commission being unaware of poor performance prior to receiving the annual report should be alleviated. As such, IRRC suggested that the Commission consider adopting the requests for an April 30 submission date for the more detailed annual reliability reports. The AFL-CIO strongly supports improving the timeliness of reporting reliability data.

Disposition

Both PPL and Allegheny Power have made valid arguments for adopting an April 30 submission date for the annual reliability reports. PPL and Allegheny

Power recognize the importance of timelier reporting, but also note the importance of accurately collecting the data needed to prepare the annual reliability reports. Further, Allegheny Power and IRRC recognize the importance of the quarterly reporting requirements and the role quarterly reports have in conjunction with the annual reports.

The Commission agrees to adopt the request for an April 30 submission date for the more detailed annual reliability reports. As such, paragraph (a) has been revised to require an electric distribution company to submit an annual reliability report to the Commission on or before April 30 of each year.

Major Event Exclusion Reporting - § 57.195(b)(2) and §57.195(e)(1)

Proposed Sections 57.195(b)(2) and 57.195(e)(1) require EDCs to provide, within their annual and quarterly reports, a description of each major event occurring during the reporting year and preceding quarter that the EDCs have excluded from their reported data. The term "major event" is used to identify an abnormal event, for which outage data is to be excluded when calculating service reliability indices. 52 Pa. Code § 57.192.

Positions of the Parties:

PPL states that the requirement to submit a description of each "major event" in the EDC's annual and quarterly reliability reports is overly burdensome, redundant and costly. In support, PPL states that EDCs must submit a service interruption report, pursuant to 52 Pa. Code Section 67.1, describing each service interruption which affects 2,500 or 5% of their total customers (whichever is less) due to a single unscheduled interruption of six or more hours duration. PPL submits that under the proposed annual and quarterly reporting requirements, the EDCs will be required to submit the same information for a "major event" in three separate reports. As a result, PPL proposes to limit the reporting in Section 57.195 to only the dates of the "major events" and the number of customers interrupted.

Allegheny Power believes quarterly reporting of major events on a detailed level duplicates the current process of providing reports to the Commission as the events occur, and adds undue administration to the reporting process.

IRRC noted that several EDCs provided comments indicating that the quarterly and annual reporting of "major events" duplicates information filed by the EDCs in the existing service interruption reports under 52 Pa. Code Section 67.1. IRRC believes the PUC should review this proposed regulation in comparison to other existing reporting requirements, and where appropriate, eliminate redundancies. Further, IRRC suggested the Commission further explain the actions it may take in response to problems identified in a quarterly report.

Disposition:

52 Pa. Code Section 67.1 requires utilities to provide notification to the Commission when 2,500 or 5% of its customers (whichever is less) are without service for 6 hours of more. 52 Pa. Code Section 57.192 defines a major event as at least 10% of the customers being without service for at least 5 minutes. Obviously, there is the potential for 2,500 customers to be out of service for more than 6 hours, thus requiring a Section 67.1 report, 52 Pa.Code §67.1, even though that event would most likely not fulfill the requirements to be classified a major event. Conversely, there is the potential for large numbers of customers to be out of service for less than 6 hours. In this case, the major event criteria may be met, but a Section 67.1 report would not be required. Contrary to PPL's assertion that these types of events are unlikely, they can and have occurred. Thus, tying major event reporting to the Section 67.1 reports does not accomplish this Commission's attempt to ensure the

application of 52 Pa. Code Sections 57.195(b)(2) and 57.195(e)(1) in a timely and consistent manner.

Further, PPL and Allegheny Power have characterized the requirement to submit major event exclusion reports as costly and time consuming. However, neither has presented any reasoning for these assertions. In fact, PPL points out the similarities between the information required for Section 67.1 and Sections 57.195(b)(2) and 57.195(e)(1). This Commission is not aware of any arguments that compliance with the currently effective Section 67.1 regulation is costly and burdensome to utility operations. We therefore find PPL's and Allegheny Power's assertions to be without merit.

Regarding what actions we will take in response to problems identified in a quarterly report, we reiterate what we stated in our companion Order regarding Benchmarks and Standards at M-00991220. The Commission will not take compliance enforcement action against any EDC that meets its performance standard. However, once a standard is violated, Commission staff will carefully review all information presented in the EDC's quarterly and annual reliability reports including the EDC's causal analysis, inspection and maintenance goal data, expenditure data, staffing levels and other supporting information and Section 67.1 reports to determine appropriate monitoring and enforcement actions. Depending upon the findings of this review, we may consider a range of compliance actions including engaging in additional remedial review, requiring additional EDC reporting, conducting an informal investigation, initiating a formal complaint, requiring a formal improvement plan with enforceable commitments and an implementation schedule, and assessing penalties and fines.

While overall system performance trends that fall within the range between the benchmark and standard will not be subject to compliance enforcement, the Commission will keep EDCs whose performance is within the standard, but trending away from the benchmark, under review as a precautionary measure.

<u>MAIFI Data - §57.195(b)(3), §57.195(e)(2), and §57.195(e)(3)</u>

With the increase in the use of more technologically advanced appliances and electrical equipment such as computers, customers are becoming more aware of momentary interruptions. The frequency in which momentary interruptions occur is measured by the Momentary Average Interruption Frequency Index (MAIFI). The requirement to report MAIFI data is discussed in three areas under §57.195 Reporting Requirements. Paragraph (b) lists different information to be provided in the annual reliability report for EDCs having 100,000 or more customers. Included in this list under subparagraph (3) is the reporting of actual values for MAIFI and the data used to calculate this index, if this data is available. Likewise, paragraph (e) lists different information to be provided in the quarterly reliability reports for EDCs having 100,000 or more customers. Subsections (2) and (3) include the reporting of MAIFI data, if it is available. There are EDCs that do not currently have the necessary equipment to collect this data. Other EDCs have indicated that the equipment needed to collect MAIFI data is not currently in place throughout their entire systems. In recognition of this constraint, the reporting of MAIFI data is to be provided if it is available.

<u>Positions of the Parties</u>

Allegheny Power agrees with the Commission's proposal for EDCs to submit MAIFI data on an "as available" basis, and notes that its field equipment does not provide meaningful data for momentary interruptions. Comments filed on behalf of the FE Companies mention that most EDCs do not maintain MAIFI statistics and, for those that do, there is no consistent or uniform protocol for gathering and reporting this information. The FE Companies assert there is a likelihood that the MAIFI numbers will be inaccurate for an individual company and highly misleading if data from two or more EDCs is compared. Therefore, they do not believe MAIFI information should be reported at all.

Disposition

The Commission's purpose in reviewing MAIFI data is not to compare MAIFI performance among the EDCs, but rather to assess how frequently momentary interruptions are affecting the customers of a particular EDC and take note of any remedial actions that the EDC believes are necessary to reduce the frequency of those interruptions. We will therefore keep the reporting requirement for MAIFI data if it is available. If MAIFI data is not currently collected and used, an EDC can simply state that fact in the reports. For EDCs that collect MAIFI data and use it in conjunction with other reliability performance measures (e.g., SAIFI, CAIDI, etc.), the MAIFI data should be included in the reports. For EDCs that collect MAIFI data only on a limited basis, the EDCs can explain how MAIFI data is collected and used along with an explanation as to why they believe the reporting of MAIFI data may not accurately reflect MAIFI performance for their systems and/or at the circuit level.

Causes of Interruptions - §57.195(b)(4)

Paragraph (b), subsection (4) requires EDCs to report a breakdown and analysis of outage causes during the year being reported on, including the number and percentage of service outages and customer interruption minutes categorized by outage cause such as equipment failure, animal contact, and contact with trees. Proposed solutions to the identified service problems are to be reported as well.

Positions of the Parties

The FE Companies noted that they can provide a "breakdown" of the causes of outages as required, but it is unclear to them what further "analysis" is intended or required. In order to avoid confusion or a possible issue about non-compliance, the FE Companies request that the word "analysis" be eliminated from this subsection. PPL recognizes the Commission's need for causal information; however, because the definitions of outage causes differ among the EDCs, PPL noted that caution should be used if comparisons among EDCs are being considered for causal analysis.

Disposition

First we will address the FE Companies' uncertainty with regard to the Commission's requirement for an "analysis." EDCs compile causal data in order to identify the most common causes of service interruptions in their systems. In addition to this identification of service interruption causes, the EDCs typically perform some type of analysis to determine what the contributing factors are behind a particular type of cause. For example, an EDC may have experienced an increase in the number of equipment-related interruptions, and upon further analysis, the EDC determines that the main contributor to these equipment-related interruptions is a certain type of equipment that has malfunctioned. Another example is the differentiation between tree-related outages that occur on rights-of-way versus off right-of-ways. EDCs have more control over the prevention of tree-related interruptions on rights-of-way than off right-of-ways. An EDC's causal data may indicate that trees were the primary cause of service outages. However, upon further analysis, it may be determined that only a small number of tree-related outages occurred on rights-of-way and therefore were preventable. This type of analysis would be included with the breakdown of outage causes proposed under paragraph (b)(4), as well as the proposed solutions, if any, to the identified service problems.

Such an analysis will also address some of the concerns that PPL has made regarding comparison of outage causes among the EDCs. The purpose of obtaining this information is not to compare the causes of interruptions among EDCs, but rather to identify what the primary causes are for service interruptions experienced by an EDC and to determine which causes, if any, can be prevented in the future through proposed solutions. The Commission would like to further clarify the details to be reported under paragraph (b)(4). Included with the breakdown of outage causes during the year being reported on is to be the number and percent of service outages, the number of customers interrupted, and the customer interruption minutes categorized by outage cause such as equipment failure, animal contact, tree related, and so forth. Proposed solutions to identified service problems shall be reported. The Commission will retain the requirement for an analysis concerning the breakdown of service interruption causes proposed under paragraph (b)(4).

Worst Performing Circuits - §57.195(b)(5) and §§ 57.195(e)(3-4)

Since the Commission desires to examine electric reliability on a service territory basis, rather than on an operating area basis, we had determined that a review of the worst performing circuits would be an appropriate approach to monitoring the efforts of the EDCs to improve service performance in specific areas of the service territory. It was therefore proposed in Section 57.195(e)(3) that EDCs report the worst performing 5% of the circuits in the system on a quarterly basis. In addition, we had proposed that the EDCs include in their annual report a list of the remedial efforts that have been taken or are being planned for the circuits that have been on the list of worst performing circuits for a year or more.

Positions of the Parties

The AFL-CIO suggests that the definition of a circuit be added to the regulation. They suggest incorporating the definition of a circuit from the National Electrical Safety Code: "a conductor or system of conductors through which an electric current is intended to flow." (IEEE, *National Electrical Safety Code*, 1997 Edition, section 2 (definitions of special terms)). Conductor, in turn, is defined as "a material, usually in the form of a wire, cable, or bus bar, suitable for carrying an electric current." In its Reply Comments, the Energy Association concurs with the AFL-CIO concerning this proposed addition to the regulation.

PPL recommends that the proposed reporting requirement at Section 57.195(b)(5) be revised as follows: "A list of <u>the major</u> remedial efforts taken to date and planned for circuits that have been on the worst performing 5% of circuits list for a year or more." In support of this, PPL submits that although it tries to identify all repair work performed, there may be situations where additional work is performed because a crew identifies a specific problem while on routine patrol. That work, because of its general nature, may not be tracked. However, the work may result in a performance improvement to the circuit.

Allegheny Power states that providing a list of the 5% worst performing circuits more frequently than annually is not practical. Allegheny states that action plans are established for circuit reliability on an annual basis based upon trends and that quarterly circuit reporting is not useful.

The FE Companies aver that the worst performing circuits may not necessarily involve large numbers of customers or warrant higher priority for remediation than other circuits not on the 5% list. The FE Companies state that since much of the companies' service territory is rural in nature, it is not unusual for the worst performing circuits to be rural lines serving a couple of hundred customers. They request that the proposed regulations explicitly recognize that these types of lines could appear on the worst performing circuit list more often than non-rural lines, but the cost to achieve standard reliability performance levels for these lines could be substantial, and may not be justifiable. Further, the FE Companies maintain that the Commission should not interject itself into the day to day business judgments about how and when to address the worst performing circuits.

PECO submits that neither the proposed statutory language nor the discussions in the Tentative Order and Proposed Rulemaking provide clear insight into what the Commission expects from the EDC's worst performing circuit reports and programs. PECO states that EDCs have different worst performing circuit programs and acknowledges that it is difficult to draft statutory language that not only provides sufficient guidance on what is expected but also retains the flexibility needed to accommodate the EDCs' varied programs. PECO supports the EAP's suggestion that to effectively meet the Commission's monitoring goal and provide sufficient guidance to the EDCs while retaining the requisite flexibility, the proposed regulation should be modified to provide that the worst performing circuits report should: (1) describe the EDC's worst performing circuit program, (2) list the 5% worst circuits and (3) describe the EDC's performance relative to its worst performing circuits program.

In its comments, the EAP suggests that the proposed regulation regarding worst performing circuits is impermissibly vague, has already been ruled by the

Commission to be of little or no value, and has also been interpreted as such by other Commissions as well.

In its Reply Comments, the OCA disagrees with the EAP's request to remove the proposed worst performing circuits reporting requirement. The OCA submits that PECO best summarized the value of worst performing circuit information to the EDC by stating the following:

> PECO Energy, for example, has long recognized that it can achieve the dual objectives of improving system reliability indices and reducing the likelihood of customer complaints: (1) by examining in detail the reliability history of the 5% of its circuits on which the largest share of customer service interruptions occur; and (2) concentrating its efforts on improving the reliability of those circuits. The specific circuits change from year to year, but PECO Energy and many other EDCs have found that remedial attention to 5% of its circuits each year is a cost-effective and manageable way to improve reliability. (PECO Comments, p. 11-12).

The OCA, in addressing the EAP's comment, notes that the Commission previously rejected the reporting of worst performing circuit information when it ruled that reporting of operating area information would be required. Here the Commission is proposing to replace operating area information with the worst performing circuit information.

The OCA recommends that the Commission consider the recommendations for clarification of the reporting requirement and the need for flexibility so that the reporting requirement reflects the EDC's worst performing circuit program. The reporting requirement should be structured to minimize the burden on the EDCs and to match each EDC's worst performing circuits program.

Disposition

We agree with the AFL-CIO and the EAP that the definition of a circuit needs to be established. Therefore, we will adopt the AFL-CIO suggestion that the National Electrical Safety Code definition of a circuit be added to the regulation. We will add the following to Section 57.192:

<u>Circuit - a conductor or system of conductors through which an electric current is intended to flow.</u>

<u>Conductor - a material, usually in the form of a wire, cable, or bus bar, suitable for carrying an electric current.</u>

Additionally, we accept PPL's reasoning in its request for a modification to the proposed reporting requirement at Section 57.195(b)(5) to include the reporting of only major remedial efforts on the worst performing circuits list. The proposed regulation at Section 57.195(b)(5) is modified to read:

(5) A list of <u>the major</u> remedial efforts taken to date and planned for circuits that have been on the worst performing 5% of circuits list for a year or more.

In response to EAP's, Allegheny Power's and the FE Companies' assertions that the submission of worst performing circuits data provides no useful information to the Commission in its review of an EDC's reliability and FE Companies' assertion that the Commission should not interject itself into the day to day business judgments about how and when to address the worst performing circuits, we reiterate that analysis of an EDC's worst performing circuits is only one aspect of reliability that is proposed to be reviewed by the Commission. Analysis of an EDC's worst performing circuits, along with an integrated analysis of all other quarterly and annual data, will be used to perform a review of an EDC's reliability performance. Moreover, we direct the respondents to the Commission's Final Order at Docket No. M-00991220. The section of the Order that discusses the Commission's potential enforcement actions provides additional support and explanation for our position on this issue. Finally, we find the OCA's discussion in this matter compelling as well.

We acknowledge PECO's comments that the regulation should be modified to include a (1) description of the EDC's worst performing circuit program, (2) listing of the 5% worst circuits and (3) description of the EDC's performance relative to its worst performing circuits program; but we observe that Sections 57.195(e)(3-4) already require that information. Therefore, we see no need to modify the proposed regulations, since the requested modifications are already subsumed within the proposed regulations.

Reporting of T&D Inspection and Maintenance Goals and Program Changes, and T&D Operation, Maintenance and Capital Expenditures - §57.195(b)(6-12), (c), and (e)(6-8)

As noted in the Proposed Rulemaking Order, a staff study completed by the Bureau of CEEP recommended that the EDCs be required to submit documentation on transmission and distribution (T&D) inspection and maintenance activities in lieu of the Commission prescribing specific standards for those activities. Thus, in paragraphs (b)(6, 9, 12) of the regulations outlining the contents of the annual reliability report for large EDCs, we proposed that they provide a comparison of budgeted T&D inspection and maintenance goals/objectives to actual results achieved for the year being reported on, budgeted goals/objectives for the current year, and any significant changes to the inspection and maintenance programs previously submitted. Smaller EDCs are to provide similar annual information per paragraph (c). We also proposed, in paragraph (e)(6) relative to the new quarterly reliability reports, that the large EDCs submit quarterly and year-to-date information on their progress in meeting the inspection and maintenance goals/objectives that would be provided to the Commission via the annual report. It was felt that further reporting requirements in this area would assist the Commission staff in assuring that the EDCs are actively engaging in and carrying out plans that have a direct impact on reliability.

In addition to the inspection and maintenance data, proposed paragraphs (b)(7, 8, 10, 11) relative to the annual reliability report require that the large EDCs provide comparisons of budgeted to actual T&D operation and maintenance (O&M) expenditures and T&D capital expenditures for the year being reported on, as well as budgeted T&D O&M expenditures and capital expenditures for the current year. Again, paragraph (c) requires similar annual information for the smaller EDCs. For the quarterly reliability report, we proposed in paragraphs (e)(7-8) that only the large EDCs submit quarterly and year-to-date information on budgeted versus actual T&D O&M and capital expenditures. This expenditure data, along with the inspection and maintenance data, would provide Commission staff with a informed and timely perspective on the commitment of resources for system maintenance and upgrades.

__Positions of the Parties__

PECO, the FE Companies, Allegheny Power, UGI, and EAP take issue with the requirements to report on T&D inspection and maintenance goals/objectives, and T&D operations and maintenance and capital expenditures. They generally believe that such information is proprietary, that it does not provide any meaningful insight into (or does not necessarily have a direct relationship to) reliability performance, and that it should only be required upon identification of an actual reliability problem. The parties further argue that the requested information is subject to wide variations over the course of a year, inasmuch as an EDC's business plans and priorities can and do change. They are specifically concerned that tracking variances in this information could be highly misleading and could put the Commission in the inappropriate position of second guessing or micro-managing an EDC's routine business judgments. Citizens', while noting that it is important to assign a cost to efforts aimed at improving reliability, feels that the annual reporting of inspection and maintenance data and expenditure data is burdensome.

IRRC recommends that the Commission specify the procedures for identifying and protecting the confidentiality of the proprietary information provided. IRRC further questions whether we have considered allowing the reporting of the transmission and distribution operation and maintenance expenses and capital expenditures in an alternate format than the Federal Energy Regulatory Commission (FERC) account format in order to accommodate EDC operational practices. IRRC believes the PUC should either specify the acceptable alternate formats in the final-form regulation or include a cross-reference to the procedures outlined in 52 Pa.Code §1.91 (relating to Applications for waiver of formal requirements).

Notably, with some relatively minor exceptions, PPL did not take issue with providing the inspection and maintenance data nor the expenditure data for the periods requested, and made no claim that this particular information is proprietary. Moreover, the remaining large EDC, Duquesne Light, filed no comments opposing the submission of the data. Comments filed by the AFL-CIO support all of the proposed reporting requirements, but suggest that the inspection and maintenance goals/objectives be supplemented by enforceable inspection, maintenance, repair, and replacement standards. The OCA commented that the proposed regulations vastly improve the reporting requirements, and feels that we should go even further by requiring the EDCs to submit comprehensive T&D maintenance plans to the Commission annually and provide their customers with an annual report on reliability performance. This would be in addition to the annual report that the Commission is proposing to issue under §57.195(j).

Several parties, including the FE Companies, Allegheny Power, PPL, and EAP, indicated in their comments that many EDCs do not budget either T&D O&M expenditures or capital expenditures by FERC account. We had proposed the annual reporting of such budget information under paragraphs (b)(10-11), with obvious carryover implications for all budget to actual comparisons to follow under (b)(7-8) and (e)(7-8). PPL suggests that we modify these reporting requirements to allow for budget information by functional activity.

In joint reply comments filed by the FE Companies, they reject OCA's suggestion that the EDCs be required to submit an annual report to customers. They argue that the amount of, and confidentiality of, data to be included in such a report via bill inserts (or the like) would render the idea undoable. The EAP, in its reply comments, argues that the budget to actual data comparisons, and OCA's proposed annual reports to customers, have little or no probative value to the Commission's ability to analyze reliability performance. It therefore has offered revisions to the proposed regulations that would eliminate the budget to actual expenditure data from the annual reliability reports of all EDCs and from the quarterly reports of the larger EDCs. The quarterly comparisons of inspection and maintenance goals/objectives to actual results achieved would also be eliminated for large EDCs.

The OCA states in its reply comments that, despite the EDC claims to the contrary, the additional information requested by the Commission is related to reliability and can be very useful to the Commission in meeting its monitoring obligations. Further, the OCA feels there is no basis for keeping this information from the public view since it is often part of a base rate case filing and thus often subject to significant public scrutiny. In the OCA's view, the ratepayers have a right to know how their dollars are being spent and whether they are receiving adequate service at a reasonable cost.

Disposition

The Commission will retain its proposal to have the EDCs report on their T&D inspection and maintenance goals/objectives as provided for in §57.195(b)(6), (9), (c) and (e)(6)[2]. Although we are not prescribing enforceable inspection, maintenance, repair and replacement standards for EDCs as favored by the AFL-CIO nor requiring comprehensive T&D maintenance plans as suggested by the OCA, we do believe it is vital for each company to establish and carry out individual goals/objectives for these activities. Such goals and objectives provide a "game plan" for completing inspection and maintenance efforts throughout the year, and thus are directly related to short-term and long-term reliability performance. The Commission desires to monitor the accomplishment of each large EDC's plan at various points during the year as a way of ensuring that reliability matters remain a priority. We recognize, and concur with some of the commenters, that the best-laid plans will change in a year's time due to any number of unforeseen events. However, requiring that large EDCs report their progress against the established goals and objectives on a quarterly basis will ensure that Commission staff has more timely knowledge of these unforeseen events and their potential impact on reliability performance. Waiting until there is an actual reliability problem to get the data (as favored by the some of the industry parties) is not acceptable. Moreover, it is inconsistent with one of the LB&FC's recommendations that the Commission be more proactive in its approach to monitoring reliability.

We note that similar to the O&M and capital expenditure quarterly data proposed under paragraphs (e)(7-8), the quarterly and year-to-date information for the inspection and maintenance goals/objectives required under paragraph (e)(6) of the regulations need only be submitted for the first, second, and third quarters. The

[2] See Attachment A to the Tentative Order entered on June 27, 2003 at Docket No. M-00991220 for a report in the form preferred by the Commission.

necessary wording to convey our intentions in this regard had inadvertently been omitted from the Tentative Order.

The Commission will also retain its proposal to have the EDCs report their T&D O&M and capital expenditure data as provided for in §57.195(b)(7, 8, 10, 11), (c), and (e)(7, 8). We concur with several of the commenting parties that increases or decreases in O&M and/or capital expenditures can occur from quarter to quarter or year to year for a variety of reasons that are not directly related to reliability. However, we cannot agree with some of the parties that this data does not provide any meaningful insight into reliability performance. This would only be true if such data were being looked at in a vacuum and were only provided in summary amounts. The Commission seeks to have the EDCs report both budgeted and actual O&M and capital expenditures in the level of detail that is already reported to operations management personnel on an annual and quarterly basis. This level of expenditure data, when evaluated side by side with other data on inspection and maintenance goals and objectives, staffing levels, contractor usage, and outage causes, can be very useful for gaining a perspective on, and ascertaining trends in, reliability investment by the EDC. Our intent is not to micro-manage or second-guess management as suggested by certain parties, but to be fully informed about reliability matters in a timely manner. Again, waiting until there is an actual problem to obtain this information does not fulfill our regulatory obligation to proactively monitor reliability at the EDCs.

The parties should note that we have adopted the suggestion of PPL that we modify reporting requirements to allow for budget (and thus actual expenditure data for comparison purposes) to be provided by functional activity rather than FERC account. We acknowledge that most EDCs use a responsibility (activity-based) system for internal budgeting and expense collection purposes because it more closely conforms to operations. In these companies, use of the FERC system of accounts is generally limited to Commission annual reports. While revising the language in §57.195(b)(10-11) to allow for reporting of budget and expenditure data by the EDCs' own functional account codes, we've taken the opportunity to clarify that the required data under paragraphs (b)(7-8) and (e)(7-8) is to be reported by those same internal account codes.

We've also taken the opportunity to add language setting a threshold for required variance explanations under paragraphs (b)(7-8). PPL stated in its comments that it believes the phrase "any variances" in the Tentative Order is overly broad and will require unnecessary explanation of insignificant deviations. The Company thus recommended explanation thresholds of $1 million for O&M expenditure variances and $5 million for capital expenditure variances. While we agree that thresholds would be appropriate, PPL's proposed amounts are too high. Further, the thresholds do not vary by company size. We will therefore set the thresholds at 10% or more of each budget line item. This is consistent with variance explanation policies at many companies. We should point out here that we have declined to add PPL's suggested threshold wording for requiring explanations of deviations from established inspection and maintenance goals and objectives in paragraph (b)(6). This wording "a material change in a T&D inspection and maintenance goal/objective" leaves too much to judgment. Nevertheless, Commission staff will be reasonable and consider the materiality of variances when reviewing the adequacy of explanations here. We believe the addition of the term, "by the EDC's own functional account code" satisfies IRRC's requirement that we specify an alternative acceptable format.

In addition to the issues discussed above, the Commission will address two other general matters brought up by the parties when commenting on the reporting of

T&D inspection and maintenance goals/objectives, and O&M and capital expenditures. The first matter involves comments by Citizens', UGI and a few other industry parties that the requested data is burdensome. We do not find this to be a valid criticism inasmuch as all companies affected by this rulemaking prepare inspection and maintenance goals and budget O&M expenditures annually, and compare them to actual data at least quarterly. Moreover, the Commission has now defined the required items such that the EDCs can literally pull them off the shelf and submit them without a lot of modification. A good example of this is the requirement to submit budgeted and actual expenditures using accounts from their own responsibility accounting systems. As a result of the flexibility granted the EDCs to comply with the data requirements, we do not believe that an excessive burden has been placed on them.

The second general matter brought to our attention by IRRC and the EDCs involves proprietary data claims. Many of the commenters from industry believe that information on goals/objectives and budgeted versus actual expenditures is confidential and thus should not be made available to the public. Further, they feel that such data could be misinterpreted by the public, or worse yet, used by competitors and other outside parties against them. Although the Commission has no intention of actively sharing this type of information with other parties outside the regulatory arena, we find the broad proprietary claims by industry to be largely without merit. First, some of this information (i.e., annual O&M and capital expenditures) is already available to the public in the annual reports filed with the Commission. Second, an EDC's transmission and distribution operations are still fully regulated and thus are not subject to competition from other EDCs. If an EDC wishes to keep specific parts of its reported data confidential, it will have to file a petition requesting proprietary treatment. Merely stamping the data proprietary will not guarantee such treatment.

The proposed regulations did not address the confidential treatment of proprietary data. We acknowledge that the EDCs will now be required to report some transmission and distribution data not heretofore reported; however, we view the reports to be of public concern, and will generally treat the entire reports as being public. We do not want a proprietary and non-proprietary version submitted initially. If the EDC anticipates that portions of its report should remain proprietary, then the burden is on the EDC to apply for a protective order under 52 Pa. Code §5.423 in advance of its report if it wants portions of its report to remain confidential and proprietary.

Reporting Requirements for Smaller EDCs - §57.195(c) and (f)

The Commission proposed annual and quarterly reporting requirements for smaller EDCs in paragraphs (c) and (f) respectively. The smaller EDCs have been defined as those with less than 100,000 customers. In comparison to the large EDCs, the Commission has limited the annual and quarterly reporting requirements for the smaller EDCs. This is to reduce the reporting burdens of these companies given the size, configuration, and operational aspects of their systems.

Positions of the Parties

Comments were filed by the FE Companies pertaining to the reporting requirements and the relative size of Penn Power. It is stated that Penn Power is "substantially smaller" than all of the other larger EDCs. Penn Power has approximately 154,000 customers while the next largest EDC has approximately 511,000 customers (Met-Ed). Penn Power asserts that its service territory and the nature of its operations and reliability data far more resemble the smaller EDCs than the larger EDCs. As such, Penn Power requests that the Commission redefine the term "smaller EDCs" to include EDCs with less than 185,000 customers. This would allow Penn Power to be classified as a smaller EDC and have the benefit of the limited reporting requirements for smaller EDCs.

In its reply comments, the OCA does not believe that it is appropriate for Penn Power to be classified as a smaller EDC. The OCA points out that the 154,000 customers served by Penn Power is much greater than the number of customers served by those EDCs designated as small EDCs in Pennsylvania. UGI is the largest of the small EDCs, but only serves approximately 61,500 customers. OCA also states that Penn Power has a service territory that is significant in size and part of a much larger electric utility system (the First Energy system). The OCA does not believe that there is any indication of an excessive burden placed on Penn Power in meeting these reporting requirements. For these reasons, OCA states that the Commission should reject the request to have the regulations modified for Penn Power.

Disposition

The FE Companies' request that Penn Power be classified as a smaller EDC is rejected. The reply comments of the OCA identify important facts about the relative size of Penn Power and the resources available to the EDC. Penn Power is much larger in comparison to the smaller EDCs, especially when considering the resources available to Penn Power through FirstEnergy. As part of the FirstEnergy system, Penn Power's reliability performance is monitored and managed through the same organization as the two other larger EDCs in Pennsylvania (Met-Ed and Penelec). The Commission will therefore retain the definition of smaller EDCs for quarterly reporting requirements as any EDC serving less than 100,000 customers.

Submission of Quarterly Reliability Reports – §§57.195(d), (e), and (f)

Paragraph (d) proposed the submission of quarterly reliability reports to the Commission on or before May 1, August 1, November 1 and February 1. Paragraph (e)(1-11) specified eleven quarterly reporting requirements for the larger EDCs serving 100,000 or more customers. Among those requirements are a rolling 12-month computation of the reliability indices, a rolling 12-month analysis of circuit reliability, and a description of any remedial action taken to correct the problems. Proposed paragraph (f) limited the quarterly reporting requirements for the smaller EDCs to paragraphs (e)(1), (2) and (5). As noted previously in this rulemaking, the reduced requirements are designed to reduce the reporting burdens of these companies given the size, configuration, and operational aspects of their systems.

The purpose of requiring a quarterly report is to provide more frequent information to the Commission about service reliability. This will enable the Commission to identify potential problems in a timely manner and monitor an EDC's response to problems which may arise between annual reports. The quarterly report requires a description of each major event occurring during the preceding quarter that the EDC has excluded from its reported data.

Positions of the Parties

The EAP, Allegheny Power, Citizens', the FE Companies, PECO, and Pike County submitted comments to the proposed quarterly reports.

The EAP does not believe that some of the quarterly reporting requirements provide meaningful insight to an EDC's reliability performance. The FE Companies state that the benefits of quarterly reporting are miniscule compared to the time, expense, burden and resources the EDCs will have to incur in order to collect, calculate, review and publish the information on a quarterly and annual basis. PECO submits that with the exception of the major outage reporting proposed in paragraph (e)(1) and the rolling indices information proposed in paragraph (e)(2), the other quarterly reporting requirements will not provide any meaningful insights into the reliability performance of the EDCs. The EAP asserts that the quarterly reporting requirements proposed in paragraph (e) are an unreliable means of measuring performance, since the primary measure of performance is an annual target. The EAP references the information required under paragraphs (e)(3) and (e)(5) as statistical information that should not be analyzed based on the performance in any given quarter, but rather an annual basis. Similar concerns have been averred by Allegheny Power, PECO, and the FE Companies noting that reliability performance is best evaluated over a long-term horizon, such as 12 months, rather than on a short-term horizon, such as 3 months.

Of the smaller EDCs, Pike County commented that subjecting smaller EDCs to the quarterly reporting requirements would significantly increase their workload with minimal countervailing benefits. Pike County requests that its quarterly reporting obligation be limited to providing updated SAIFI, CAIDI and SAIDI statistics as proposed in paragraph (e)(2). Citizens' believes that quarterly reporting is excessive and provides little meaningful information, because system reliability can vary significantly in the short term based on isolated local events such as vehicle accidents, storms, etc.

Disposition

We will first address the comments regarding the analysis of reliability performance on a quarterly basis versus an annual basis. The EAP, Allegheny Power, PECO, and the FE Companies have inaccurately characterized the information to be provided in the quarterly reports proposed under paragraphs (e)(2 & 3). These parties have given the impression that the quarterly reports proposed under paragraphs (e)(2 & 3) require reported performance only for the three months in a given quarter. Both paragraphs specifically state that rolling 12-month data is to be reported. This rolling 12-month data is to be reported every quarter. As such, the reliability performance will be evaluated over a period of 12 months. The EAP, Allegheny Power, PECO, and the FE Companies have all indicated that it is best to evaluate reliability performance over a longer term, which is why the Commission has proposed the quarterly reporting of rolling 12-month data in paragraphs (e) (2); (3).

The Commission recognizes an omission in paragraph (e)(5) that was pointed out by the EAP and PECO. As written, paragraph (e)(5) requires a breakdown and analysis of outage causes during the preceding quarter. To be consistent with the other reliability and outage data being reported in paragraphs (e)(2);(3), paragraph (e)(5) has been revised to clarify that a rolling 12-month breakdown and analysis of outage causes is to be reported every quarter. Again, this does not mean that only causal data for the three months of a given quarter are reported. Each quarterly report will break down and analyze the most recent 12-month period of outage causes, including the number and percent of service outages, the number of customers interrupted, and the customer interruption minutes categorized by outage cause such as equipment failure, animal contact, tree-related, and so forth. Proposed solutions to identified service problems shall be reported. As noted earlier, Citizens' stated that its reliability performance can vary significantly over the short term due to isolated local events such as vehicle accidents. The quarterly reporting of the breakdown and analysis of outage causes will enable EDCs such as Citizens' to identify and explain the situations behind any isolated local events.

Next we will address all comments regarding the overall requirement of quarterly reporting and its appropriateness. The LB&FC Report found that the Commission was not receiving EDC reliability performance information in a timely manner. Additionally, the LB&FC found that the Commission was not requiring EDCs to report the causes of outages along with the reported reliability performance. The LB&FC recommended that the Commission require submission of summary monthly and year-to-date information on the causes of all service interruptions. The LB&FC pointed out that such information is essential to interpret the information in the annual reliability reports and to follow up with the EDCs on the performance they report. The LB&FC also emphasized that current regulations authorize the PUC to require submission of such information. The Commission has considered the merits of the LB&FC findings and recommendations, and we believe the proposed quarterly information in paragraph (e)(5) will satisfy the LB&FC's concerns regarding the timely reporting of causes of service interruptions.

Also, in IRRC's and Allegheny Power's comments related to paragraph (a) and the submittal date for the annual reliability report, it was noted that the Commission's proposal to add a quarterly reporting requirement will provide reliability performance data in a timely manner. IRRC also argued that the problem of the Commission being unaware of poor reliability performance prior to receiving the annual report should be alleviated. As such, IRRC suggested that the

Commission consider adopting the requests for an April 30 submission date for the more detailed annual reliability reports. As stated earlier, the Commission agrees with IRRC and has adopted the request for an April 30 submission date for the more detailed annual reliability reports given that proposed quarterly reports will be in effect.

The FE Companies have asserted that the time, expense, and resources the EDCs will have to incur to collect, calculate, review and publish the information on a quarterly basis will be a burden to EDCs. These comments leave the impression that EDC management does not routinely measure, record, analyze, and produce internal reports to keep adequately informed of the EDC's reliability performance and compliance with reliability regulations in Pennsylvania. The Commission has not been given this impression in our dealings with the EDCs nor would the Commission view this as prudent management of activities that affect electric reliability. Pike County and Citizens' have also implied that the proposed quarterly reporting requirements will be a burden for smaller EDCs. Although the quarterly reports as proposed may require EDCs to maintain and periodically submit the specified information in a defined format that may be slightly different than is currently maintained and reported internally, it should not be difficult to maintain this information in any off-the-shelf software commonly used by all EDCs. Once the desired format for the information is established and saved electronically, it should not be burdensome to update future reports.

The Commission is requiring the EDCs to periodically report reliability information to the Commission that it should already be maintaining and analyzing. In fact, not all of the EDCs have submitted comments claiming that it will be burdensome to provide the proposed reliability information on a quarterly basis. It has been suggested that the Commission should only need to see this type of information once poor reliability performance has been determined. The LB&FC has already scrutinized this type of approach to monitoring electric reliability and determined it to be unsatisfactory. Therefore, the Commission will retain the requirement of quarterly reporting as proposed in paragraphs (e) and (f) including the breakdown and causes of interruptions. Paragraph (e)(5) has been revised to clarify the reporting of a rolling 12-month breakdown and analysis of outage causes every quarter.

Staffing Levels and Contractor Information – §57.195(e)(9);(10)

Paragraph (e)(9) proposed that quarterly reports filed by the larger EDCs (those serving 100,000 or more customers) include the number of dedicated staffing levels for transmission and distribution operations and maintenance at the end of the quarter, in total and by specific category such as linesmen, technicians, and electricians. Similarly, paragraph (e)(10) proposed that quarterly reports filed by larger EDCs include quarterly and year-to-date information on contractor hours and dollars for transmission and distribution operations and maintenance. The Commission expects to continually monitor staffing levels and the use of contractors to ensure that adequate resources are being devoted to the reliability of electric service.

Positions of the Parties

Comments were filed by the FE Companies as well as PPL. The FE Companies and PPL believe that specific information relating to staffing levels and contractor hours and dollars are proprietary. One of the concerns is that if this information were made available to the public, an EDC's ability to negotiate contracts with third-party vendors and others could be adversely affected. The FE Companies also assert that decisions about required resources to perform transmission and distribution work are dynamic and could change frequently in a typical operating year and budget cycle. Therefore, reporting of this type of information could easily lead the Commission and others to second-guess an EDC's business judgments. The FE Companies urge the Commission to eliminate these reporting requirements from the proposed rules. If the information specified is ultimately required to be filed, the FE Companies believe the regulations should allow the EDCs to limit its dissemination to the Commission and its staff, the OCA and Office of Small Business Advocate (OSBA), subject to a blanket prohibition against public disclosure, and to prohibit such information from being inserted into the Commission's public files. PPL recommends that the Commission either eliminate the proposed reporting requirements, or, in the alternative, permit EDCs to retain this information at their main office, and make it available for Commission review and inspection, as necessary.

Disposition

EDCs must effectively utilize internal and external resources to ensure that reliable electric service is provided to their customers. The Commission recognizes the proprietary nature of contractor information. However, the Commission must understand what resources have been employed by an EDC in order to adequately monitor its reliability activities and performance. Providing this information will prevent the Commission from second-guessing how an EDC determines the resources it needs to ensure reliable service. Second-guessing would occur if the Commission did not receive staffing level and contractor information periodically throughout the year, but then criticized an EDC at year-end when reliability performance appeared inadequate. Periodic review of the resource levels and any accompanying explanations of any changes to staffing levels or arrangements with contractors will enable the Commission to better understand the resource decisions the EDCs must face, and may therefore prevent any unnecessary scrutiny of an EDC's use of internal and external resources for reliability activities.

The Commission does not intend to publish all of the specifics of contractual arrangements made between an EDC and its various contractors used to perform transmission and distribution operation and maintenance activities. However, the information submitted in the reports will be kept in public files and is available for inspection. Additionally, concerns raised by the FE Companies and PPL over the dissemination of this information by other parties who will receive the quarterly reports must be addressed. Under paragraph (d)(1), EDCs are required to submit quarterly reliability reports to OCA and OSBA in addition to the Commission. While we believe it is a reasonable request that the Commission, the OCA and OSBA be prohibited from disclosing the specific details of any contract (i.e., hours and dollars) between an EDC and any contractor an EDC employs for transmission and distribution operations and maintenance, the burden will be upon the EDC to apply for a protective order under 52 Pa.Code §5.423 in advance of the filing of its report if it wants portions of its report to remain confidential and proprietary[3].

The Commission does not see any reason why an EDC's staffing levels for positions such as linesman, technician, and electrician should be considered proprietary. The EDCs are regulated utilities, which are not subject to competition like unregulated entities. Therefore, the disclosure of the staffing levels by an EDC will not negatively affect its ability to operate.

Section 57.195(e)(11) (Call-Out Acceptance Rates)

[3] In addition, Section 219 of the Commission's Procedures Manual gives utilities the ability to file confidential documents and seek protective orders when the allegedly proprietary information is sought by the public.

We proposed to obtain information on monthly call-out acceptance rates for transmission and distribution maintenance workers. The monthly call-out acceptance rates may provide some perspective on reliability performance.

Positions of the Parties

The AFL-CIO does not disagree with the reporting requirement at Section 57.195(e)(11), but suggests a time-based measure (the amount of time it takes the EDC to obtain the necessary personnel) rather than a measure based on the percentage of employees called. The AFL-CIO avers that a time-based measure would better reflect some EDCs' use of automated calling methods, which can obtain the necessary personnel more quickly, even though the percentage of those called who respond affirmatively might be lower.

The AFL-CIO asserted that a low call-out acceptance rate (or a lengthy call-out acceptance time) is an indication there may be a serious management issue within the EDC. Thus, it should prompt a more detailed investigation by the Commission to determine if the utility is properly managing its work force and its outage response efforts.

Citizens' states that in addition to call-out acceptance, many other things contribute to overall restoration time. Thus, focusing solely on the call-out acceptance rate will not necessarily lead to meaningful conclusions regarding reliability or restoration effectiveness.

The FE Companies comment that it is inappropriate to report call-out acceptance rates since there is no uniform method by which EDCs define such rates or report them. They state that by requiring the reporting of call-out acceptance rates, it appears that the Commission believes there is a direct correlation between the call-out response rate and an EDC's reliability performance. The FE Companies do not believe this to be correct and assert that the lack of a standard definition for call-out acceptance, along with the inability to account for variations among the EDC's labor agreements, could lead to unreasonable and inappropriate comparisons. Therefore, the FE Companies believe the requirement to report call-out acceptance rates should be eliminated.

In its reply comments, the EAP submits that reporting of call-out acceptance rates is an excellent example of the type of information that would be irrelevant to reliability evaluations. The EAP states that the Department of Transportation's Federal Motor Carrier Standards Administration issued its final *Hours of Service* rule in April 2003 and the application of this rule renders comparisons between historical and future call-out rates meaningless. Thus, call-out acceptance rates would provide little insight to the Commission in its review of an EDC's reliability performance. The EAP suggests the elimination of this reporting requirement. However, if the reporting of the information becomes a requirement, the Energy Association states that the information should not be made public.

Disposition

We agree with the AFL-CIO that a time-based measure (the amount of time it takes the EDC to obtain the necessary personnel) should be incorporated into the proposed regulation at Section 57.195(e)(11), in addition to the proposed measure based on the percentage of accepted calls. We will amend Section 57.195(e)(11) to state:

> (11) Monthly call-out acceptance rate for transmission and distribution maintenance workers presented in terms of both the percentage of accepted call-outs and the amount of time it takes the EDC to obtain the necessary personnel. A brief description of the EDC's call-out procedure should be included when appropriate.

In response to the comments of Citizens', the FE Companies, and EAP that the call-out acceptance rates do not provide consistent and valuable information to the Commission in its review of an EDC's reliability performance, we reiterate that the call-out acceptance rate is only one aspect of an EDC's reliability plans and reports that will be reviewed by the Commission. When analyzing an EDC's reliability performance, Commission staff will consider call-out acceptance rates together with all other quarterly and annual data. In addition, we direct the respondents to the Commission's Final Order at M-00991220. The section of the Order that discusses the Commission's potential enforcement actions provides additional support and explanation for our position on this issue.

Section 57.195(i) (Parallel Measurement)

Positions Of The Parties

In reply comments, the FE Companies respond to comments by OCA that reliability has deteriorated by noting that it is dangerous to conclude service reliability has deteriorated by a comparison of data collected in two materially different ways. The FE Companies state that because of the vast difference in data quality and quantity subsequent to the installation of the outage management systems, no meaningful trends or benchmarks can be derived from data under the old system compared to data under the new system.

Disposition

We wholeheartedly support the EDCs implementing technology improvements in the systems that gather, analyze and report on reliability performance. However, we cannot accept that with each improvement in the measurement systems the EDC and the Commission lose the ability to have accurate reliability performance trend data as the FE Companies note happened in the past.

Therefore, we will add an additional provision to the regulations that requires parallel measurement and analysis whenever changes are made to the reliability measuring systems used by the EDCs. Through the use of parallel measurement and analysis, which entails holding other variables constant and measuring reliability under the old and new systems concurrently for a period of time, the EDC should be able to isolate and quantify any independent influence that the change in measurement methods has on reliability performance index scores. This will enable the EDC and the Commission to separate out the effects of changes in reliability measurement from true changes in reliability performance so that we can accurately assess true reliability performance and trends.

§ 57.196. Generation reliability

No changes.

§ 57.197. Reliability investigations and enforcement

No changes.

Other Issues Raised In Comments

Inspection and Maintenance Standards

In its June 12, 2002 report, the LB&FC noted there was insufficient information to allow the Commission to determine if EDCs are implementing their reliability programs as described by the EDCs. The LB&FC also noted that the Commission was in the process of reviewing the establishment of regulations regarding inspection, maintenance, repair and replacement standards, and that IRRC recommended the Commission evaluate what other states have done or are doing regarding inspection and maintenance standards. The LB&FC review found that other states typically do not have specific minimum performance standards for inspection and maintenance programs that companies must meet, but they do have ongoing and detailed reporting requirements concerning such programs. In this way, the states are able to assess whether companies have reasonable inspection and maintenance programs, if they are implementing their programs, and if not, why not. This information is routinely reported and is available for use by the State Commissions. As such, the LB&FC did not recommend prescriptive standards, but suggested establishment of reporting requirements to permit the Commission to monitor the EDCs' progress in implementing their plans for inspecting and maintaining their transmission and distribution systems.

On August 29, 2002, the Commission adopted a study entitled *Inspection and Maintenance Study of Electric Distribution Systems* dated August 27, 2002. CEEP agreed with the LB&FC and recommended that the annual reliability reporting requirements be revised to include the routine submission of documentation on inspection and maintenance activities including: 1) vegetation management; 2) distribution and substation maintenance activity; and 3) capital improvement projects. The Commission agreed with CEEP's recommendations in this regard.

The recommendations cited in the *Inspection and Maintenance Study of Electric Distribution Systems Report* were incorporated into the proposed paragraphs of Section 57.195 (b)(6, 8, 9, 11, 12);(c); and (e) of this rulemaking. Paragraphs (b)(6, 8, 9, 11, 12) outline annual reliability reporting requirements for the larger EDCs related to T&D inspection and maintenance goals/objectives, significant changes to the inspection and maintenance programs, and T&D capital expenditure budgets. Smaller EDCs are to provide similar annual information per paragraph (c). Paragraphs (e)(6);(8) require that the large EDCs submit quarterly and year-to-date information on their progress in achieving the inspection and maintenance goals/objectives and meeting the capital expenditure budget as provided to the

Commission in the annual report. It was felt that these reporting requirements address the suggestions of the LB&FC to require routine detailed reporting to assist the Commission in assuring that the EDCs have reasonable inspection and maintenance programs and are implementing their own capital improvement plans.

Positions of the Parties

The AFL-CIO criticized the Commission for not proposing specific inspection and maintenance standards. In its reply comments, OCA agreed with the AFL-CIO's position, citing 66 Pa.C.S. §2802(20) which provides:

> Since continuing and ensuring the reliability of electric service depends on adequate generation and on conscientious inspection and maintenance of transmission and distribution systems, the independent system operator or its functional equivalent should set, and the commission shall set through regulations, inspection, maintenance, repair and replacement standards and enforce those standards.

Disposition

In the past, the Commission has evaluated the prospect of implementing prescribed inspection and maintenance standards for all EDCs in Pennsylvania and has stated on several occasions that it did not believe specific inspection and maintenance standards were necessary or appropriate. Instead, the Commission focused its efforts on regulating reliability performance – i.e., comparing data regarding the frequency and duration of outages to benchmarks from a historical period. We addressed this issue in our Final Rulemaking Order of April 24, 1998, at L-970120, 27 Pa.B. 809, which promulgated the regulations at Chapter 57, Subchapter N (relating to electric reliability standards). We declined to require specific inspection and maintenance standards because of the new methods and technologies that utilities were developing to improve the inspection and testing process. However, we directed the Commission's Bureau of CEEP to conduct a study of this issue of developing specific inspection and maintenance standards and to submit recommendations for the Commission's consideration.

Specifically, we stated:

> [T]he Commission believes that it is inappropriate, at this time, to establish specific performance standards due to the need to better understand existing performance levels and to permit flexible modification of standards as the competitive market develops.

We further stated in our Order:

> While we are adopting the NESC [National Electrical Safety Code] as the basic external standard, neither existing regulations nor the NESC provides specific standards for inspection and maintenance. These standards will be adopted in subsequent orders.

Id. at pp.3-4.

Similarly, in our *Inspection and Maintenance Study Order* of August 29, 2002, at M-00021619, the Commission stated that its effort to protect reliability was "constantly evolving" and that it would continue to assess the need for inspection and maintenance standards in the future. Id. at 11.

Shortly after we entered our Proposed Rulemaking Order on July 27, 2003, the August 14, 2003 blackout occurred across portions of Pennsylvania, New Jersey, New York, Michigan, Ohio and Canada. New information arising from the blackout provides a basis for revisiting the need for inspection and maintenance standards. One of the causes noted for the blackout was the failure of FirstEnergy Corporation to adequately manage tree growth along transmission lines located in Ohio. *Final Report on the August 14 Blackout in the U.S. and Canada,* U.S. – Canada Power System Outage Task Force, pp. 17, 57-64 (April 2004). In the wake of the blackout, the Federal Energy Regulatory Commission (FERC) commissioned a study of a utility vegetation management practices. This led to a report entitled "Utility Vegetation Management Final Report" prepared by CN Utility Consulting, LLC and released by FERC in March 2004. The report concluded, among other things, that the "[c]urrent oversight of UVM [utility vegetation management] activities by appropriate agencies or organizations is overwhelmingly inadequate" (Report p. 68). To remedy this inadequacy, the report recommended:

> 2. DEVELOP CLEAR UVM PROGRAM EXPECTATIONS FOR UTILITY COMPANIES
>
> Oversight organizations should work with the utility companies, the UVM industry, and other stakeholders to develop measurable and achievable program objectives. The development of these expectations will require a joint effort to identify what specifically can be done to ensure the reduced likelihood of future tree and power line conflicts. Given the myriad of site-specific UVM related variables throughout North America, we would expect that these expectations may differ based on local environmental conditions and other factors. With that caveat, we offer the following three examples of items that could be included as part of these expectations:
>
> - Adoption of specific UVM Best Practices
> - Development of, and adherence to comprehensive UVM schedules
> - Achieving specific reductions in tree-related outages

(Report, pp. 68-69). While it is not binding on this Commission, this report should not be ignored as the Commission considers how to preserve reliability.

Therefore, we will direct Law Bureau to issue an advance notice of proposed rulemaking on inspection and maintenance standards. The purpose of this proceeding will be to determine whether the Commission should now adopt specific inspection and maintenance standards, and if so, what types of standards would be appropriate.

In the meantime, the Commission is putting into effect the reporting requirements on inspection and maintenance activities as attached in Annex A. While it may be argued that these requirements do not go far enough, there is no harm in implementing them while the Commission considers the adoption of specific inspection and maintenance standards. If the Commission ultimately promulgates regulations establishing specific inspection and maintenance standards, the reporting requirements issued today can be modified in the future.

Until new regulations are promulgated, the proposed reporting requirements for inspection and maintenance goals/objectives and capital expenditure budgets established today will enable the Commission to assess whether companies have reasonable inspection and maintenance programs and capital improvement plans, if they are implementing those programs and plans, and if not, why not. Proper industry practices must be adhered to by the EDCs to ensure reliable service. We intend to continually examine the reasonableness of utility reliability plans and expect the EDCs to adhere to proper industry practices.

Bureau of Consumer Services Letter of October 17, 2003

Positions of the Parties

PECO and EAP filed comments stating that the October 17, 2003 letter to EDCs from the Commission's Bureau of Consumer Services (BCS) is inappropriate, unreasonable, premature and should be withdrawn. In response, the OCA commented that EAP's comments about the BCS letter are without merit and not appropriate in the Rulemaking Docket. OCA notes that the purpose of the letter as stated is to inform the EDCs of a change BCS is making to the Commission's process for investigating informal service quality complaints filed with the Commission. OCA draws a distinction between a process for handling individual consumer complaints as contained in the letter, and this rulemaking which should be viewed as a means for the PUC to ensure that the EDCs are managing their systems on an overall basis consistent with the Act.

Disposition

We adopt the position of the OCA that the October 17, 2003 letter from BCS to EDCs about a change in the process for investigating informal quality service complaints is not germane to this rulemaking.

Overall, we believe that the regulations, as herein amended in consideration of comments received, and as attached hereto as Annex A, are consistent with the public interest and shall be adopted at this time through final order. Annex A reflects through its red-lined markings, the cumulative changes made to Annex A of this Commission's Proposed Rulemaking Order entered on June 27, 2003. Accordingly, under authority at Section 501 of the Public Utility Code, 66 Pa.C.S. §501, and Sections 201, *et seq.,* of the Commonwealth Documents Law, 45 P.S. §§1201, *et seq.,* 66 Pa.C.S. §§2801 *et seq.* and the regulations promulgated thereunder at 52 Pa.Code §§57.191-57.197; and sections 201 and 202 of the act of July 31, 1968 (P.L. 769, No. 240)(45 P.S. §§1201 and 1202) and the regulations promulgated thereunder at 1 Pa.Code §§7.1, 7.2 and 7.5; section 204(b) of the Commonwealth Attorneys Act (71 P.S. §732.204(b)); section 5 of the Regulatory Review Act (71 P.S. §732.204(b)); and section 612 of The Administrative Code of 1929 (71 P.S. §232) and the regulations promulgated thereunder at 4 Pa.Code §§7.251-7.235, we adopt the regulations set forth in Annex A; **THEREFORE, IT IS ORDERED:**

1. That 52 Pa. Code, Chapter 57 is hereby amended by the addition of the regulations as set forth in Annex A, attached hereto.

2. That the Secretary submit this Final Rulemaking Order and Annex A for review and approval by the designated Standing Committees of both houses of the General Assembly, and for review and approval of the Independent Regulatory Review Commission.

3. That the Secretary shall submit this Order and Annex A to the Governor's Budget Office for review of fiscal impact.

4. That the Secretary shall submit a copy of this Order and Annex A to the Office of Attorney General for review as to legality.

5. That the Secretary certify this Order and Annex A and deposit them with the Legislative Reference Bureau to be published in the *Pennsylvania Bulletin.*

6. That the amendments to Chapter 57 embodied in Annex A shall become effective upon final publication in the *Pennsylvania Bulletin.*

7. That a copy of this Order and Annex A be filed in the folder regarding benchmarks and standards at M-00991220.

8. That the contact persons for this rulemaking are (technical) Thomas Sheets, Director of Bureau of Audits, (717)783-5000 and (legal) Elizabeth H. Barnes, Law Bureau, (717)772-5408.

9. That a copy of this Order and Annex A be served upon all electric distribution companies operating in Pennsylvania, the Office of Consumer Advocate, the Office of Small Business Advocate, the Energy Association of Pennsylvania, and the Pennsylvania AFL-CIO – Utility Caucus.

10. That the Law Bureau prepare an Advance Notice of Proposed Rulemaking regarding Inspection and Maintenance Standards pursuant to 66 Pa.C.S. §2802(20).

BY THE COMMISSION:

James J. McNulty
Secretary

(SEAL)

ORDER ADOPTED: May 7, 2004

ORDER ENTERED: MAY 2 0 2004

Annex A
TITLE 52. PUBLIC UTILITIES
PART I. PUBLIC UTILITY COMMISSION
Subpart C. FIXED SERVICE UTILITIES
CHAPTER 57. ELECTRIC SERVICE

Subchapter N. ELECTRIC RELIABILITY STANDARDS

§ 57.192. Definitions.

The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise:

* * * * *

CIRCUIT – A CONDUCTOR OR SYSTEM OF CONDUCTORS THROUGH WHICH AN ELECTRIC CURRENT IS INTENDED TO FLOW.

CONDUCTOR – A MATERIAL, USUALLY IN THE FORM OF A WIRE, CABLE, OR BUS BAR, SUITABLE FOR CARRYING AN ELECTRIC CURRENT.

* * * * *

***EDC*--Electric distribution company. An electric distribution company as defined in 66 Pa.C.S. § 2803 (relating to definitions).**

* * * * *

***FERC*--Federal Energy Regulatory Commission.**

* * * * *

Major event--

(i) Either of the following:

(A) An interruption of electric service resulting from conditions beyond the control of the [electric distribution company] **EDC** which affects at least 10% of the customers in [an operating area] **the EDC's service territory** during the course of the event for a duration of 5 minutes each or greater. The event begins when notification of the first interruption is received and ends when service to all customers affected by the event is restored. [When one operating area experiences a major event, the major event shall be deemed to extend to all other affected operating areas of that electric distribution company.]

* * * * *

[*Operating area*--A geographical area, as defined by an electric distribution company, of its franchise service territory for its transmission and distribution operations.]

***Performance benchmark*~~--The average historical performance.~~** A NUMERICAL VALUE THAT CHARACTERIZES AN EDC'S AVERAGE HISTORICAL RELIABILITY PERFORMANCE FOR A SPECIFIC TIME PERIOD IN THE PAST. THE BENCHMARK IS BASED ON AN EDC'S PERFORMANCE FOR THE ENTIRE SERVICE TERRITORY AND IS A REFERENCE POINT FOR COMPARISON OF FUTURE RELIABILITY PERFORMANCE. THE COMMISSION WILL, FROM TIME TO TIME, ESTABLISH BENCHMARKS FOR EACH RELIABILITY INDEX AND EACH EDC. THE PERFORMANCE BENCHMARKS ARE ESTABLISHED BY COMMISSION ORDER AT DOCKET NO. M-00991220.

***Performance standard*~~--Minimum performance allowed.~~** A NUMERICAL VALUE THAT ESTABLISHES A MINIMUM LEVEL OF EDC RELIABILITY ALLOWED BY THE COMMISSION. THE PERFORMANCE STANDARD IS A CRITERION TIED TO THE PERFORMANCE BENCHMARK THAT APPLIES TO RELIABILITY PERFORMANCE FOR THE EDC'S ENTIRE SERVICE TERRITORY. THE COMMISSION WILL, FROM TIME TO TIME, ESTABLISH NEW PERFORMANCE STANDARDS FOR EACH RELIABILITY INDEX FOR EACH EDC. THE PERFORMANCE STANDARDS ARE ESTABLISHED BY COMMISSION ORDER AT DOCKET NO. M-00991220.

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§ 57.194. Distribution system reliability.

* * * * *

(e) An [electric distribution company] **EDC** shall design and maintain procedures to achieve the reliability **performance benchmarks and** MINIMUM performance standards established ~~under subsection (h)~~ BY THE COMMISSION.

* * * * *

(h) An [electric distribution company] **EDC** shall take measures necessary to meet the reliability **performance benchmarks and** MINIMUM performance standards ~~adopted under this subsection~~ ESTABLISHED BY THE COMMISSION.

~~(1) In cooperation with an electric distribution company and other affected parties, the Commission will, from time to time, establish numerical values for each reliability index or other measures of reliability performance that identify the benchmark performance of an electric distribution company, and performance standards.~~

~~(2) The benchmark will be based on an [electric distribution company's] **EDC'S** historic **system-wide** performance [for each operating area] for that measure **for the entire service territory.** [In establishing the benchmark, the Commission~~

~~may consider historic superior or inferior performance or system-wide performance.]~~

~~(3)~~ (1) The performance standard shall be the **~~short term,~~** minim[al]UM level of EDC RELIABILITY performance ALLOWED BY THE COMMISSION for each measure for all [electric distribution companies, regardless of the benchmark established] **EDCs**. **Performance that does not meet the standard for any reliability measure shall be the threshold for triggering additional scrutiny** AND POTENTIAL COMPLIANCE ENFORCEMENT ACTIONS **by THE Commission'S PROSECUTORIAL staff. ~~When performance does not meet the standard, Commission staff will contact the EDC regarding possible remedial review and reporting activities.~~**

(i) THE COMMISSION WILL CONSIDER HISTORICAL PERFORMANCE LEVELS, PERFORMANCE TRENDS, AND THE NUMBER AND TYPE OF STANDARDS VIOLATED WHEN DETERMINING APPROPRIATE ADDITIONAL MONITORING AND COMPLIANCE ENFORCEMENT ACTIONS. THE COMMISSION WILL CONSIDER OTHER INFORMATION AND FACTORS INCLUDING AN EDC'S OUTAGE CAUSE ANALYSIS, INSPECTION AND MAINTENANCE GOAL DATA, OPERATIONS AND MAINTENANCE AND CAPITAL EXPENDITURE DATA, AND STAFFING LEVELS AS PRESENTED IN THE QUARTERLY AND ANNUAL REPORTS AS WELL AS IN FILED INCIDENT REPORTS.

(ii) ADDITIONAL MONITORING AND ENFORCEMENT ACTIONS THAT MAY BE TAKEN ARE ENGAGING IN ADDITIONAL REMEDIAL REVIEW, REQUIRING ADDITIONAL EDC REPORTING, CONDUCTING AN INFORMAL INVESTIGATION, INITIATING A FORMAL COMPLAINT, REQUIRING A FORMAL IMPROVEMENT PLAN WITH ENFORCEABLE COMMITMENTS, REQUIRING AN IMPLEMENTATION SCHEDULE, AND ASSESSING PENALTIES AND FINES.

~~(4)~~ (2) An [electric distribution company] **EDC** shall inspect, maintain and operate its distribution system, analyze [performance] **reliability results,** and take corrective measures **as** necessary to achieve PERFORMANCE [the performance standard] **benchmark**S AND **performance** STANDARDS. [An electric distribution company with a benchmark establishing performance superior to the performance standard shall maintain benchmark performance, except as otherwise directed by the Commission.]

§ 57.195. Reporting requirements.

(a) An [electric distribution company] **EDC** shall submit **an annual reliability report** to the Commission, on or before [May] **~~March 31~~**[, 1999, and May 31] APRIL 30 of each [succeeding] year [, a reliability report which includes, at a minimum, the information prescribed in this section].

(1) An original and [5] **six** copies of the report shall be filed with the Commission's Secretary and one copy shall also be submitted to the Office of Consumer Advocate and the Office of Small Business Advocate.

(2) The name [and telephone number]**, title, telephone number and e-mail address** of the persons [having] **who have** knowledge of the matters, and [to whom inquiries should be addressed] **can respond to inquiries,** shall be included.

(b) The **annual reliability** report **for larger EDCs (those with 100,000 or more customers)** shall include [an assessment of electric service reliability in the electric distribution company's service territory, by operating area and system-wide.]**, at a minimum, the following elements:**

(1) [The] **An overall current** assessment [shall include] **of the state of the system reliability in the EDC's service territory including** a discussion of the [electric distribution company's] **EDC's current** programs and procedures for providing reliable electric service.

(2) [The assessment shall include a] **A** description of each major event **that occurred during the year being reported on,** including the time and duration of the event, the number of customers affected, the cause of the event and any modified procedures adopted to avoid or minimize the impact of similar events in the future.

[(c) The report shall include a] **(3) A** table showing the actual values of each of the reliability indices[, and other performance measures required by this subchapter or Commission order, for each operating area and] **(SAIFI, CAIDI, SAIDI, and if available, MAIFI)** for the [electric distribution company as a whole] **EDC's service territory** for each of the preceding [5] **3** calendar years. **The report shall include the data used in calculating the indices, namely the average number of customers served, the number of sustained customer minutes interruptions, the number of customers affected and the minutes of interruption. If MAIFI values are provided, the number of customer momentary interruptions shall also be reported.**

(4) A breakdown and analysis of outage causes during the year being reported on, including the number and percentage of service outages, THE NUMBER OF CUSTOMERS INTERRUPTED, **and customer interruption minutes categorized by outage cause such as equipment failure, animal contact, tree related, and so forth. Proposed solutions to identified service problems shall be reported.**

(5) A list of THE MAJOR **remedial efforts taken to date and planned for circuits that have been on the worst performing 5% of circuits list for a year or more.**

(6) A comparison of established transmission and distribution inspection and maintenance goals/objectives versus actual results achieved during the year being reported on. Explanations of any variances shall be included.

(7) A comparison of budgeted versus actual transmission and distribution operation and maintenance expenses for the year being reported on IN TOTAL AND DETAILED BY THE EDC'S OWN FUNCTIONAL ACCOUNT CODE OR FERC ACCOUNT CODE AS AVAILABLE**. Explanations of any variances** 10% OR GREATER **shall be included.**

(8) A comparison of budgeted versus actual transmission and distribution capital expenditures for the year being reported on IN TOTAL AND DETAILED BY THE EDC'S OWN FUNCTIONAL ACCOUNT CODE OR FERC ACCOUNT CODE AS AVAILABLE**. Explanations of any variances** 10% OR GREATER **shall be included.**

(9) Quantified transmission and distribution inspection and maintenance goals/objectives for the current calendar year detailed by system area (that is, transmission, substation and distribution).

(10) Budgeted transmission and distribution operation and maintenance expenses for the current year in total and detailed by THE EDC'S OWN FUNCTIONAL ACCOUNT CODE OR **FERC account** CODE AS AVAILABLE.

(11) Budgeted transmission and distribution capital expenditures for the current year in total and detailed by THE EDC'S OWN FUNCTIONAL ACCOUNT CODE OR **FERC account** CODE AS AVAILABLE.

(12) Significant changes, if any, to the transmission and distribution inspection and maintenance programs previously submitted to the Commission.

(c) The annual reliability report for smaller EDCs (those with less than 100,000 customers) shall include all items in subsection (b) except for the requirement in paragraph (5).

(d) An EDC shall submit a quarterly reliability report to the Commission, on or before May 1, August 1, November 1 and February 1.

(1) An original and six copies of the report shall be filed with the Commission's Secretary and one copy shall also be submitted to the Office of Consumer Advocate and the Office of Small Business Advocate.

(2) The name, title, telephone number and e-mail address of the persons who have knowledge of the matters, and can respond to inquiries, shall be included.

(e) The quarterly reliability report for larger companies (those with 100,000 or more customers) shall, at a minimum, include the following elements:

(1) A description of each major event that occurred during the preceding quarter, including the time and duration of the event, the number of customers affected, the cause of the event and any modified procedures adopted in order to avoid or minimize the impact of similar events in the future.

(2) Rolling 12-month reliability index values (SAIFI, CAIDI, SAIDI, and if available, MAIFI) for the EDC's service territory for the preceding quarter. The report shall include the data used in calculating the indices, namely the average number of customers served, the number of sustained customer interruptions, the number of customers affected, and the customer minutes of interruption. If MAIFI values are provided, the report shall also include the number of customer momentary interruptions.

(3) Rolling 12-month reliability index values (SAIFI, CAIDI, SAIDI, and if available, MAIFI) and other pertinent information such as customers served, number of interruptions, customer minutes interrupted, number of lockouts, and so forth, for the worst performing 5% of the circuits in the system. An explanation of how the EDC defines its worst performing circuits shall be included.

(4) Specific remedial efforts taken and planned for the worst performing 5% of the circuits as identified in paragraph (3).

(5) A ROLLING 12-MONTH breakdown and analysis of outage causes during the preceding quarter, including the number and percentage of service outages, THE NUMBER OF CUSTOMERS INTERRUPTED, and customer interruption minutes categorized by outage cause such as equipment failure, animal contact, tree related, and so forth. Proposed solutions to identified service problems shall be reported.

(6) Quarterly and year-to-date information on progress toward meeting transmission and distribution inspection and maintenance goals/objectives (FOR FIRST, SECOND AND THIRD QUARTER REPORTS ONLY).

(7) Quarterly and year-to-date information on budgeted versus actual transmission and distribution operation and maintenance expenditures IN TOTAL AND DETAILED BY THE EDC'S OWN FUNCTIONAL ACCOUNT CODE OR FERC ACCOUNT CODE AS AVAILABLE. (For first, second and third quarter reports only.)

(8) Quarterly and year-to-date information on budgeted versus actual transmission and distribution capital ~~expenditures,~~ IN TOTAL AND DETAILED BY THE EDC'S OWN FUNCTIONAL ACCOUNT CODE OR FERC ACCOUNT CODE AS AVAILABLE. (For first, second and third quarter reports only.)

(9) Dedicated staffing levels for transmission and distribution operation and maintenance at the end of the quarter, in total and by specific category (for example, linemen, technician and electrician).

(10) Quarterly and year-to-date information on contractor hours and dollars for transmission and distribution operation and maintenance.

(11) Monthly call-out acceptance rate for transmission and distribution maintenance workers PRESENTED IN TERMS OF BOTH THE PERCENTAGE OF ACCEPTED CALL-OUTS AND THE AMOUNT OF TIME IT TAKES THE EDC TO OBTAIN THE NECESSARY PERSONNEL. A BRIEF DESCRIPTION OF THE EDC'S CALL-OUT PROCEDURE SHOULD BE INCLUDED WHEN APPROPRIATE.

(f) The quarterly reliability report for smaller companies (those with less than 100,000 customers) shall, at a minimum, include paragraphs (1), (2) and (5) identified in subsection (e).

[(d)] **(g)** When an [electric distribution company's] **EDC's** reliability performance [within an operating area] is found to [be unacceptable] **not meet the Commission's established performance standards,** as defined in § 57.194(h) (relating to distribution system reliability), the **Commission may require a** report [shall] **to** include the following:

(1) [An analysis of the service interruption patterns and trends.] **The underlying reasons for not meeting the established standards.**

(2) [An analysis of the operational and maintenance history of the affected operating area.

(3) A description of the causes of the unacceptable performance.

(4)] A description of the corrective measures the [electric distribution company] **EDC** is taking and target dates for completion.

(h) An EDC shall, within 30 calendar days, report to the Commission any problems it is having with its data gathering system used to track and report reliability performance.

(I) WHEN AN EDC IMPLEMENTS A CHANGE IN ITS OUTAGE MANAGEMENT SYSTEM FOR GATHERING AND ANALYZING RELIABILITY PERFORMANCE THAT HAS THE POTENTIAL TO AFFECT RELIABILITY INDEX VALUES, THE EDC SHALL CONDUCT PARALLEL MEASUREMENT AND ANALYSIS TO ISOLATE AND QUANTIFY THE INFLUENCE THAT THE MEASUREMENT CHANGE EXERTS ON RELIABILITY INDEX VALUES. THE LENGTH OF THE PARALLEL MEASUREMENT PERIOD SHALL BE SUFFICIENT TO ISOLATE AND QUANTIFY THE INDEPENDENT EFFECTS OF THE MEASUREMENT CHANGE.

(J) ~~(i)~~ The Commission will prepare an annual reliability report and make it available to the public.

* * * * *

Regulatory Analysis Form

(1) Agency Pennsylvania Public Utility Commission	This space for use by IRRC
(2) I.D. Number (Governor*s Office Use) L-00030161/57-228	**IRRC Number:**

(3) Short Title

Rulemaking Re Amending Electric Service Reliability Regulations at 52 Pa.Code Chapter 57

(4) PA Code Cite	(5) Agency Contacts & Telephone Numbers
52 Pa. Code Sections 57.192, 57.194 and 57.195	Primary Contact: Elizabeth H. Barnes, Law Bureau (717)772-5408 Secondary Contact: Thomas Sheets, Audits (717)783-5000

(6) Type of Rulemaking (check one)	(7) Is a 120-Day Emergency Certification Attached?
☐ Proposed Rulemaking ☒ Final Order Adopting Regulation ☐ Final Order, Proposed Rulemaking Omitted	☒ No ☐ Yes: By the Attorney General ☐ Yes: By the Governor

(8) Briefly explain the regulation in clear and nontechnical language.

The rulemaking order amends current regulations found at 52 Pa.Code §§57.192, 57.194 and 57.195. Specifically, the rulemaking seeks to implement actions recommended in the Legislative Budget and Finance Committee report of June 12, 2002, the Commission's Bureau of Conservation Economics and Energy Planning's report of July 3, 2002, and the Commission's Staff Internal Working Group on Electric Reliability's Report of July 18, 2002. One recommendation being implemented is a tightening of the current performance reliability standards. Another is additional and more frequent reporting requirements. Instead of annual reports regarding an electric distribution company's performance reliability indices for its operating areas, and system-wide performance, the EDCs will be required to file an annual report including the EDC's plans for inspection and maintenance of its transmission lines and facilities, as well as the reliability indices and worst performing circuits and what is being done about them. Additionally, the EDCs will have to report on a quarterly basis their reliability indices and worst circuits.

(9) State the statutory authority for the regulation and any relevant state or federal court decisions.

The authority for the regulation is the Electricity Generation Customer Choice and Competition Act of December 3, 1996, P.L. 138 §4, effective January 1, 1997. The Act amends Title 66 of the Pennsylvania Consolidated Statutes by adding Chapter 28 to establish standards and procedures to create direct access by retail customers to the competitive market for the generation of electricity, while maintaining the safety and reliability of the electric system. Specifically, the Commission was given a legislative mandate to ensure that levels of reliability that were present prior to the restructuring of the electric industry would continue in the new competitive era.

In response to this legislative mandate, the Commission adopted a final rulemaking order on April 23, 1998 at Docket No. L-00970120, setting forth various reporting requirements designed to ensure the continuing safety, adequacy and reliability of the generation, transmission and distribution of electricity in the Commonwealth. 52 Pa.Code §§57.191-57.197. The final rulemaking order also suggested that the Commission could reevaluate its monitoring efforts at a later time as deemed appropriate. This rulemaking is in response to such an evaluation.

(10) Is the regulation mandated by any federal or state law or court order, or federal regulation? If yes, cite the specific law, case or regulation, and any deadlines for action.

Yes. 66 Pa.C.S. §2802(12) provides that the purpose of the restructuring of the electric utility industry is to modify existing legislation and regulations and to establish standards and procedures in order to create direct access by retail customers to the competitive market for the generatioin of electricity while maintaining the safety and reliability of the electric system for all parties. Thus, the Commission was given a leglislative mandate that electric reliability levels stay the same during the transition period from a non-competitive environment to a competitive one.

(11) Explain the compelling public interest that justifies the regulation. What is the problem it addresses?

In order to ensure a smooth transition from a monopoly market to a competitive market, there should be reliability standards based upon historical performance prior to the Act which must be met after the Act by the electric distribution companies. These reliability indices should be reported quarterly rather than annually so that the Commission keeps better track of the performance of the EDCs.

The Legislative Budget & Finance Committee Report of June 12, 2002, noted the Commission had an annual reporting requirement regarding reliability indices, CAIDI, SAIFI, SAIDI and MAIFI. The LB&FC stated that it was 17 months before the data was received by the Commission, and suggested the Commission should track the companies closer. The Commission has proposed to amend its regulations in §57.194 to require quarterly reporting. The Commission also proposes to tighten its existing 2-standard deviation standard allowed for consistent annual performance, which permitted performance worse than the worst year's performance from 1994-1998 (prior to the Act).

(12) State the public health, safety, environmental or general welfare risks associated with nonregulation.

Without these regulations, the service quality of electric distribution could deteriorate.

(13) Describe who will benefit from the regulation. (Quantify the benefits as completely as possible and approximate the number of people who will benefit.)

All consumers will benefit, both customers of the 6 large EDCs and the 4 small. Residential and business, rural and urban customers alike would benefit from these regulations.

(14) Describe who will be adversely affected by the regulation. (Quantify the adverse effects as completely as possible and approximate the number of people who will be adversely affected.)

No person or entity will be adversely affected by the regulations. Arguably, with advances in technology and low inflation, it should be cheaper to provide the same service going forward as in 1994-1998.

(15) List the persons, groups or entities that will be required to comply with the regulation. (Approximate the number of people who will be required to comply.)

All of the Electric Distribution Companies will be required to comply with the regulations. The list of EDCs includes Allegheny Power, Duquesne Light, Met-Ed, Penelec, Penn Power, PECO, PPL, Citizens, Wellsboro, UGI and Pike County.

(16) Describe the communications with and input from the public in the development and drafting of the regulation. List the persons and/or groups who were involved, if applicable.

The Legislative Budget & Finance Committee had input from its report. The Commission Staff spoke with representatives from the large EDCs and small EDCs before recommending changes to the regulations to the Commission.

(17) Provide a specific estimate of the costs and/or savings to the regulated community associated with compliance, including any legal, accounting or consulting procedures which may be required.

Unknown.

Regulatory Analysis Form

(18) Provide a specific estimate of the costs and/or savings to local governments associated with compliance, including any legal, accounting or consulting procedures which may be required.

Not applicable

(19) Provide a specific estimate of the costs and/or savings to state government associated with the implementation of the regulation, including any legal, accounting, or consulting procedures which may be required.

Any costs would be de minimus.

Regulatory Analysis Form

(20) In the table below, provide an estimate of the fiscal savings and costs associated with implementation and compliance for the regulated community, local government, and state government for the current year and five subsequent years.

	Current FY Year	FY +1 Year	FY +2 Year	FY +3 Year	FY +4 Year	FY +5 Year
SAVINGS:	$	$	$	$	$	$
Regulated Community						
Local Government						
State Government						
Total Savings						
COSTS:						
Regulated Community						
Local Government						
State Government						
Total Costs						
REVENUE LOSSES:						
Regulated Community						
Local Government						
State Government						
Total Revenue Losses						

(20a) Explain how the cost estimates listed above were derived.

Not applicable.

Regulatory Analysis Form

(20b) Provide the past three year expenditure history for programs affected by the regulation.

Program	FY -3	FY -2	FY -1	Current FY

(21) Using the cost-benefit information provided above, explain how the benefits of the regulation outweigh the adverse effects and costs.

Not applicable.

(22) Describe the nonregulatory alternatives considered and the costs associated with those alternatives. Provide the reasons for their dismissal.

None.

(23) Describe alternative regulatory schemes considered and the costs associated with those schemes. Provide the reasons for their dismissal.

None.

(24) Are there any provisions that are more stringent than federal standards? If yes, identify the specific provisions and the compelling Pennsylvania interest that demands stronger regulation.

None.

(25) How does this regulation compare with those of other states? Will the regulation put Pennsylvania at a competitive disadvantage with other states?

Massachusettes has Service Quality Standards. New Jersey and New York also have reliability standards and regulations. It is unknown if the regulation will put Pennsylvania at a competitive disadvantage with other states.

(26) Will the regulation affect existing or proposed regulations of the promulgating agency or other state agencies? If yes, explain and provide specific citations.

No.

(27) Will any public hearings or informational meetings be scheduled? Please provide the dates, times, and locations, if available.

Not at this time.

Regulatory Analysis Form

(28) Will the regulation change existing reporting, record keeping, or other paperwork requirements? Describe the changes and attach copies of forms or reports which will be required as a result of implementation, if available.

A "Complete Planned Work for Ensuring Reliability" report will be required to be filed.

(29) Please list any special provisions which have been developed to meet the particular needs of affected groups or persons including, but not limited to, minorities, elderly, small businesses, and farmers.

None.

(30) What is the anticipated effective date of the regulation; the date by which compliance with the regulation will be required; and the date by which any required permits, licenses or other approvals must be obtained?

We are asking for voluntary compliance with quarterly reporting of reliability indices by circuits instead of operating areas beginning November 1, 2003. We believe the target effective date for the regulations should be June, 2004.

(31) Provide the schedule for continual review of the regulation.

An annual report will be issued by the Commission critiquing the regulation, standards and performance in the EDC industry.

ORIGINAL

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December 22, 2004

VIA UPS OVERNIGHT

DOCUMENT FOLDER

RECEIVED
DEC 22 2004
PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

James J. McNulty, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
Harrisburg, Pennsylvania 17120

Re: Rulemaking Re Amending Electric Service Reliability Regulations at 52 Pa. Code Chapter 57
Docket No. L-00030161

Dear Secretary McNulty:

Enclosed herewith for filing on behalf of Metropolitan Edison Company, Pennsylvania Electric Company and Pennsylvania Power Company are an original and three (3) copies of an Application for Protective Order in the above-referenced matter.

Copies of this Application are being served upon all parties of record in accordance with the enclosed Certificate of Service.

Very truly yours,

RYAN, RUSSELL, OGDEN & SELTZER LLP

Alan Michael Seltzer / FLW
Alan Michael Seltzer

Enclosures
AMS:flw

c: Linda Evers, Esquire
As per Certificate of Service

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Rulemaking Re Amending Electric Service Reliability Regulations at 52 Pa. Code Chapter 57	Docket No. L-00030161

APPLICATION FOR PROTECTIVE ORDER

TO THE PENNSYLVANIA PUBLIC UTILITY COMMISSION:

Metropolitan Edison Company, Pennsylvania Electric Company and Pennsylvania Power Company (the "Companies"), pursuant to the Commission's regulations at 52 Pa. Code § 5.423, request the issuance of a protective order restricting the disclosure of proprietary, competitive or other confidential information which may be filed by one or more of the Companies in accordance with the reporting requirements contained in 52 Pa. Code, Chapter 57. In support thereof, the Companies respectfully represent the following:

1. On May 20, 2004, the Commission entered its Final Rulemaking Order ("Final Order") in the above matter. The Final Order amended the Commission's regulations at 52 Pa. Code Chapter 57 by, among other things, requiring electric distribution companies ("EDCs") to report to the Commission detailed transmission and distribution data not previously reported. *Final Order*, at 35.

2. The Commission issued a Secretarial Letter to all EDCs on October 21, 2004 ("Secretarial Letter") clarifying a portion of the Final Order relating to the treatment of proprietary information. In particular, the Secretarial Letter authorized EDCs to file a petition for proprietary treatment, pursuant to 52 Pa. Code § 5.423, for information contained in their

required quarterly and annual reliability reports submitted to the Commission under 52 Pa. Code § 57.195. This Application is being submitted in accordance with that directive.

3. The Companies' next reliability report under 52 Pa. Code Chapter 57 is due on February 1, 2005. In accordance with the Secretarial Letter, this Application is being filed at least thirty (30) days in advance of the due date of that report in order to ensure sufficient time for parties to respond and for the Commission to review and rule on this Application.

4. The Companies have filed five quarterly reports under 52 Pa. Code Chapter 57, including the third quarter report filed November 1, 2003, that have reflected the expanded reliability data directed by the Commission in the Final Order. They have also filed the annual reliability report for 2003. Although these prior quarterly and annual reports were not preceded by the filing of an application for a protective order, the Companies did advise the Commission of the type and nature of data they sought to be protected from public scrutiny and dissemination. With this Application, however, the Companies seek an order from the Commission confirming that the data and information previously identified as proprietary and confidential will be maintained and treated by the Commission prospectively in that manner and in accordance with the form of protective order attached to this Application as Exhibit A.

5. The Companies request that the Commission issue the protective order attached to this Application as Exhibit A. The proposed order is consistent with the requirements of 52 Pa. Code § 5.423, and is designed to avoid harm to the Companies from the disclosure of confidential and proprietary information while at the same time applying the least restrictive limitation on other possible parties to this proceeding. Specifically, the Companies desire to protect the past, present and prospective confidentiality of correspondence, documents, data, information, studies, methodologies and other materials they have submitted or will submit to the

Commission in reports annually or quarterly in connection with the following provisions of the Commission's regulations at 52 Pa. Code § 57.195:

- (b)(5) A list of the major remedial efforts taken to date and planned for circuits that have been the worst performing 5% of circuits listed for a year or more.
- (b)(7) A comparison of budgeted versus actual transmission and distribution operation and maintenance expenses for the year being reported on.
- (b)(8) A comparison of budgeted versus actual transmission and distribution capital expenditures for the year being reported on.
- (b)(10) Budgeted transmission and distribution operation and maintenance expenses for the current years in total and detailed by FERC account.
- (b)(11) Budgeted transmission and distribution capital expenditures for the current year in total and detailed by FERC account.
- (e)(4) Specific remedial efforts taken and planned for the worst performing 5% of the circuits.
- (e)(6) Quarterly and year-to-date information on progress toward meeting transmission and distribution inspection and maintenance goals/objectives.
- (e)(7) Quarterly and year-to-date information on budgeted versus actual transmission and distribution operation and maintenance expenditures.
- (e)(8) Quarterly and year-to-date information on budgeted versus actual transmission and distribution capital expenditures.
- (e)(9) Dedicated staffing levels for transmission and distribution operation and maintenance at the end of the quarter, in total and by specific category.

- (e)(10) Quarterly and year-to-date information on contractor hours and dollars for transmission and distribution operation and maintenance.
- (e)(11) Monthly call-out acceptance rate for transmission and distribution.

6. The form of protective order attached to this Application as Exhibit A has been adopted by the Commission in other proceedings where sensitive commercial and/or proprietary information was sought to be protected. It is appropriate to enter a similar order in this proceeding.

7. If this Application is granted, the Companies will submit present and prospective reliability reports annually and quarterly under 52 Pa. Code Chapter 57 on both a proprietary and non-proprietary basis as directed by the Secretarial Letter, and will submit proprietary and non-proprietary versions of the four quarterly reports and one annual report filed previously with the Commission for which the Companies are also seeking confidential treatment.

WHEREFORE, the Companies respectfully request that the Commission (i) adopt and issue the protective order that is attached to this Application and (ii) grant any further relief that is just and reasonable under the circumstances.

Respectfully submitted,

Alan Michael Seltzer

Alan Michael Seltzer
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Reading, Pennsylvania 19612

Attorneys for Metropolitan Edison Company,
Pennsylvania Electric Company, and
Pennsylvania Power Company

Dated: December 22, 2004

W:\Ams\Reliability Rulemaking\Application for Protective Order No. 5.DOC

EXHIBIT A

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Rulemaking Re Amending Electric Service Reliability Regulations at 52 Pa. Code Chapter 57	Docket No. L-00030161

<u>PROTECTIVE ORDER</u>

IT IS ORDERED THAT:

1. This Protective Order, submitted by Metropolitan Edison Company, Pennsylvania Electric Company, and Pennsylvania Power Company ("Penn Power") (collectively, the "Joint Applicants"), is hereby granted with respect to all materials and information identified at Paragraph 2 of this Protective Order which are filed with the Pennsylvania Public Utility Commission ("Commission") as part of the annual and quarterly reliability reports submitted to the Commission under and pursuant to its regulations at 52 Pa. Code Chapter 57. All persons now and hereafter granted access to the materials and information identified in Paragraph 2 of this Protective Order shall use and disclose such information only in accordance with this Order.

2. The materials subject to this Order are all correspondence, documents, data, information, studies, methodologies and other materials which the Joint Applicants have submitted or will submit annually or quarterly at any time prospectively in connection with the following provisions of the Commission's regulations at 52 Pa. Code Chapter 57 (hereinafter individually or collectively referred to as "Proprietary Information"):

- (b)(5) A list of the major remedial efforts taken to date and planned for circuits that have been the worst performing 5% of circuits listed for a year or more.
- (b)(7) A comparison of budgeted versus actual transmission and distribution operation and maintenance expenses for the year being reported on.
- (b)(8) A comparison of budgeted versus actual transmission and distribution capital expenditures for the year being reported on.
- (b)(10) Budgeted transmission and distribution operation and maintenance expenses for the current years in total and detailed by FERC account.
- (b)(11) Budgeted transmission and distribution capital expenditures for the current year in total and detailed by FERC account.
- (e)(4) Specific remedial efforts taken and planned for the worst performing 5% of the circuits.
- (e)(6) Quarterly and year-to-date information on progress toward meeting transmission and distribution inspection and maintenance goals/objectives.
- (e)(7) Quarterly and year-to-date information on budgeted versus actual transmission and distribution operation and maintenance expenditures.
- (e)(8) Quarterly and year-to-date information on budgeted versus actual transmission and distribution capital expenditures.
- (e)(9) Dedicated staffing levels for transmission and distribution operation and maintenance at the end of the quarter, in total and by specific category.

- (e)(10) Quarterly and year-to-date information on contractor hours and dollars for transmission and distribution operation and maintenance.
- (e)(11) Monthly call-out acceptance rate for transmission and distribution.

3. Proprietary Information shall be made available to the Commission and its Staff for use in this proceeding. For purposes of filing, to the extent that Proprietary Information is placed in the Commission's report folders, such information shall be handled in accordance with routine Commission procedures inasmuch as the report folders are not subject to public disclosure. To the extent that Proprietary Information is placed in the Commission's testimony or document folders, such information shall be separately bound, conspicuously marked, and accompanied by a copy of this Order. Public inspection of Proprietary Information shall be permitted only in accordance with this Protective Order.

4. Proprietary Information shall be made available to counsel of record, if any, in this proceeding pursuant to the following procedures.

a. Proprietary Information. To the extent required for participation in this proceeding, a party's counsel may afford access to Proprietary Information made available by another party ("the producing party") to the party's expert(s), subject to the following restrictions.

i. Proprietary Information shall be produced for inspection by party's counsel of record only. If the inspecting lawyer desires copies of such material, or desires to disclose its contents to persons other than counsel of record, she or he shall submit a written request to the producing party's counsel. If requesting and producing parties are unable to reach agreement with respect to such a request, they may submit the issue orally to the presiding Administrative Law Judge.

ii. No other persons may have access to the Proprietary Information except as authorized by order of the Commission. No person who may be entitled to receive, or who is afforded access to any Proprietary Information shall use or disclose such information for the purposes of business or competition, or any purpose other than the preparation for and conduct of this proceeding or any administrative or judicial review thereof.

5. Prior to making Proprietary Information available to any person as provided in paragraph 4 of this Protective Order, counsel shall deliver a copy of this Order to such person and shall receive a written acknowledgment from that person in the form attached to this Order and designated as Appendix A. Counsel shall promptly deliver to the producing party a copy of the executed acknowledgment form.

6. A producing party shall designate data or documents as constituting or containing Proprietary Information by affixing an appropriate proprietary stamp or typewritten designation on such data or documents. Where only part of data compilations or multi-page documents constitutes or contains Proprietary Information, the producing party shall designate only the specific data or pages of documents which constitute or contain Proprietary Information.

7. Any public reference to Proprietary Information by counsel or persons afforded access thereto shall be to the title or exhibit reference in sufficient detail to permit persons with access to the Proprietary Information to fully understand the reference and not more. The Proprietary Information shall remain a part of the record, to the extent admitted, for all purposes of administrative or judicial review.

8. Part of any record of this proceeding containing Proprietary Information including, but not limited to, all exhibits, writings, testimony, cross examination, argument and

responses to discovery, and including reference thereto as mentioned in ordering paragraph 7 above, shall be sealed for all purposes, including administrative and judicial review, unless such Proprietary Information is released from the restrictions of this Order, either through the agreement of the parties or pursuant to an order of the Commission. Unresolved challenges arising under paragraph 9 shall be decided on motion or petition by the presiding officer or the Commission as provided by 52 Pa. Code § 5.423(a). All such challenges shall be resolved in conformity with existing rules, regulations, orders, statutes, precedent, etc., to the extent that such guidance is available.

9. The parties affected by the terms of this Order shall retain the right to question or challenge the confidential or proprietary nature of Proprietary Information; to question or challenge the admissibility of Proprietary Information; to refuse or object to the production of Proprietary Information on any proper ground, including but not limited to irrelevance, immateriality or undue burden; to seek an order permitting disclosure of Proprietary Information beyond that allowed in this Order; and to seek additional measures of protection of Proprietary Information beyond those provided in this Order. If a challenge is made to the designation of a document or information as Proprietary Confidential, the party claiming that the information is Proprietary retains the burden of demonstrating that the designation is necessary and appropriate.

10. Upon completion of this proceeding, including any administrative or judicial review, all copies of all documents and other materials, including notes, which contain any Proprietary Information, shall be immediately returned upon request to the party furnishing such Proprietary Information. In the alternative, parties may provide an affidavit of counsel affirming that the materials containing or reflecting Proprietary Information have been destroyed.

Dated: ____________________ ____________________________

APPENDIX A

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Rulemaking Re Amending Electric Service Reliability Regulations at 52 Pa. Code Chapter 57	Docket No. L-00030161

TO WHOM IT MAY CONCERN:

The undersigned is the expert, employee or counsel of ______________________ (the retaining party).

The undersigned has read and understands the Protective Order deals with the treatment of Proprietary Information. The undersigned agrees to be bound by, and comply with, the terms and conditions of said Order. The undersigned represents and agrees that any Proprietary Information shall be used or disclosed only for purposes of preparation for and the conduct of the above proceeding, and any administrative or judicial review thereof, and shall not be disclosed or used for any other purposes including, without limitation, business or competition.

____
SIGNATURE

____
PRINT NAME

____
ADDRESS

DATE: __________

____
EMPLOYER

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RECEIVED

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION DEC 2 2 2004

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

Rulemaking Re Amending Electric Service Reliability Regulations at 52 Pa. Code Chapter 57	:	Docket No. L-00030161

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the Application for Protective Order on behalf of Metropolitan Edison Company, Pennsylvania Electric Company, and Pennsylvania Power Company upon the individuals listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

Service by UPS Overnight, postage prepaid, addressed as follows:

Elizabeth Barnes, Esq.
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
Harrisburg, PA 17120

Tanya J. McCloskey
Office of Consumer Advocate
555 Walnut Street, 5th Floor
Harrisburg, PA 17101

Scott J. Rubin, Esquire
3 Lost Creek Drive
Selinsgrove, PA 17870

Hon. William R. Lloyd
Small Business Advocate
300 N. 2nd Street, Suite 1102
Harrisburg, PA 17101

Eric Winslow, President
Citizens' Electric Company
P.O. Box 551
Lewisburg, PA 17837

John L. Munsch, Esquire
Allegheny Energy
800 Cabin Hill Drive
Greensburg, PA 15601-1689

Delia W. Stroud, Esquire
PECO Energy Company
2301 Market Street, S26-2
Philadelphia, PA 19101

Paul E. Russell, Esquire
PPL Electric Utilities Corp.
Two North Ninth Street
Allentown, PA 18101-1179

Mark C. Morrow, Esquire
UGI Utilities, Inc. – Electric Div.
460 North Gulph Road
King of Prussia, PA 19406

Angelo M. Regan, P.E.
Pike County Light & Power
390 West Route 59
Spring Valley, NY 10977-5300

Robert S. McCarthy
Wellsboro Electric Company
33 Austin Street
Wellsboro, PA 16901

David Epple, Esquire Energy
Association of Pennsylvania
800 North Third Street, Suite 301
Harrisburg, PA 17102

John A. Kelchner
Citizens' Electric Company
1775 Industrial Boulevard
Lewisburg, PA 17837

Dated: December 22, 2004

Alan Michael Seltzer

Alan Michael Seltzer
RYAN, RUSSELL, OGDEN & SELTZER LLP
1105 Berkshire Boulevard, Suite 330
Wyomissing, Pennsylvania 19610-1222
(610) 372-4761

Linda R. Evers, Esquire
2800 Pottsville Pike
P.O. Box 16001
Reading, Pennsylvania 19612

Attorneys for Metropolitan Edison Company,
Pennsylvania Electric Company, and
Pennsylvania Power Company

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LAW OFFICES
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December 23, 2004

RECEIVED

DEC 27 2004

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

VIA UPS OVERNIGHT

James J. McNulty, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
Harrisburg, Pennsylvania 17120

Re: Rulemaking Re Amending Electric Service Reliability Regulations at 52 Pa. Code Chapter 57 Docket No. L-00030161

Dear Secretary McNulty:

Due to an improper number of copies inadvertently being enclosed in yesterday's filing in the above-referenced matter, enclosed please find three (3) copies of an Application for Protective Order to be filed in conjunction with the original, which was sent yesterday.

If you have any questions, please contact me.

Very truly yours,

RYAN, RUSSELL, OGDEN & SELTZER LLP

Jennifer A. Brower

Jennifer A. Brower
Firm Administrator

Enclosures

COMMONWEALTH OF PENNSYLVANIA

DATE: December 27, 2004

SUBJECT: L-00030161

TO: Law Bureau

FROM: James J. McNulty, Secretary KB

DOCKETED JAN 20 2005

DOCUMENT FOLDER

Rulemaking Re Amending Electric Service Reliability Regulations at 52 PA Code Chapter 57

Attached is a copy of an Application for Protective Order, filed by Metropolitan Edison Company, Pennsylvania Electric Company and Pennsylvania Power Company in connection with the above docketed proceeding.

This matter is assigned to your Bureau for appropriate action.

Attachment

cc: FUS
OTS

ksb

ORIGINAL

Duquesne Light
Our Energy... Your Power

411 Seventh Avenue
8th Floor
Pittsburgh, PA 15219

Tel 412-393-3662
Fax 412-393-5602
rherskovitz@duqlight.com

Richard S. Herskovitz
Assistant General Counsel

December 28, 2004

OVERNIGHT MAIL

RECEIVED

DEC 28 2004

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

DOCUMENT FOLDER

Mr. James J. McNulty, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
Harrisburg, PA 17120

Re: Petition for Protective Order Pertaining to Information contained in its Quarterly and Annual Reliability Reports
Docket No. L-00030161

Dear Secretary McNulty:

Enclosed for filing on behalf of Duquesne Light Company ("Duquesne") is an original and three (3) copies of a Petition for Protective Order. Specifically, this petition requests the Commission to issue an Order restricting access to, and disclosure of, proprietary and/or confidential information contained in the quarterly and annual reliability reports required to be filed by Duquesne in accordance with 52 Pa. Code §57.195.

Please date stamp the fourth copy of this Petition enclosed, and kindly return it to me in the self-addressed stamped envelope for my file.

Thank you.

Very truly yours,

RS Herskovitz

Richard S. Herskovitz

Enclosures

c: Bohdan R. Pankiw, Esquire
Chief Counsel

Thomas E. Sheets, Director
Bureau of Audits

George Dorow
Bureau of Audits

22

ORIGINAL

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Petition of Duquesne Light Company for Protective Order, Pertaining to Information contained in its Quarterly and Annual Reliability Reports	: : :	Docket No. L-00030161

DOCKETED
JAN 20 2005

RECEIVED
DEC 28 2004
PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

PETITION FOR PROTECTIVE ORDER

Duquesne Light Company ("Duquesne" or "Company") petitions the Commission pursuant to Section 5.423 of the Commission's regulations, 52 Pa. Code §5.423, to issue a Protective Order restricting access to, and disclosure of, proprietary and/or confidential information contained in the quarterly and annual reliability reports required to be filed by Duquesne by Section 57.195 of the regulations, 52 Pa. Code §57.195. In support of its petition, Duquesne respectfully represents the following:

1. The Commission's Final Rulemaking Order Amending Electric Service Reliability Regulations at 52 Pa. Code Chapter 57 (Order entered May 20, 2004 at Docket No. L-00030161) amended Section 57.195 of the regulations to require Electric Distribution Companies (EDCs) to file quarterly and annual reliability reports.

2. In the May 2004 Order, the Commission directed EDCs to apply for a Protective Order under 52 Pa. Code §5.423 in advance of filing its reports if it desired portions of the reports to be treated as confidential and proprietary.

DOCUMENT FOLDER

3. By Secretarial Letter dated October 21, 2004, the Commission directed that any petition for proprietary treatment of EDC reliability reports be filed at least thirty (30) days in advance of the due date of the report.

4. Duquesne's quarterly reliability report for the quarter ended December 31, 2004, is due to be filed on February 1, 2005, and the Company's annual report is due April 30, 2005.

5. As set forth in detail in paragraphs 6-8 below, certain information that will be included in Duquesne's quarterly and annual reports is deemed to be confidential and proprietary and should not be subject to public access and disclosure.

6. The information to be provided in response to 52 Pa. Code §57.195(b)(6)-(8) and (e)(6)-(8), relating to estimated, targeted or budgeted work hours, completed miles of line clearance and vegetation management work, and associated expenditures, as well as the information to be provided in response to 52 Pa. Code 57.195(b)(9)-(11), relating to goals, objectives and budgeted or estimated capital expenditures and O&M expenses, should be deemed confidential and proprietary and not subject to public access or disclosure. Disclosure of company projections lends itself to confusion, distortion, and misinterpretation by others which can result in both reputational and economic harm to Duquesne. Duquesne's work plan is a multi-year guideline and is not static. It is regularly adjusted to accommodate changing situations and customer requirements.

Additionally, disclosure of associated expenditures for competitively bid work projects can result in loss of competitive advantage for both Duquesne and for innovative contract firms. Duquesne uses contractors to support peak periods, when required work exceeds available in-house manhours. In order to do this at least cost, the Company must be able to negotiate with contractors competitively. Revealing such information may serve to minimize negotiating abilities of Duquesne with its contractors. Economies of larger and/or long-term competitive contracts can have a tremendous impact on negotiations with vendors. Publicly held information can negatively influence such opportunities for any service purchaser. These sections of the regulations request detailed information regarding progress toward completing planned work, in terms of dollars and work hours (as well as overhead miles in the case of Vegetation Management) broken down by specific project type. These data points, if made public, would give prospective contractors inside information that would compromise Duquesne's ability to negotiate the best price for the work required. The contractors would be able to determine the "in house" value of work hours for various types of work, as well as the magnitude of Duquesne's needs. Contractors could and would increase their bids based on detailed information about the Company's work plan. The economic harm caused to Duquesne, and in turn to Duquesne's customers, overrides the need for this data to be made public.

Estimated numbers also do not indicate the appropriateness or inappropriateness of Duquesne's business decisions. Publication of such information would allow the public to draw invalid inferences and unwarranted conclusions about Duquesne's business practices, management of its resources, and its reliability performance, any of which can lead to reductions in stock prices, as well as reductions in shareholder, ratepayer and regulator confidence. The fact Duquesne reports all the actual annual figures in its FERC Form 1 each year, and now its annual reliability report to be filed each April at the Commission, is reason enough not to require public disclosure of estimates, budgets, and other projections during the course of the year. If the public is to draw inferences and conclusions, at least let them be based on actual numbers, not projections.

7. The information to be provided in response to Section 57.195(e)(9), staffing levels, likewise should not be subject to public disclosure not only for the reasons set forth in paragraph 6 above, but also because such staffing levels are often negotiated numbers in labor contracts, or may even be subject to frequent revisions. Staffing levels are a key to how a contractor performs the work. Innovative contractors tend to require less staff to complete work compared to ones who lean on the ideal of performing work the way it was performed in the past. Pay rates also vary based on a contractor's willingness to negotiate within their staff. For example, contractors may have the same number of people on a crew, but one will use apprentices or lesser experienced crew members than the other who uses journeymen workers. The advantage is the cost and sometimes production, especially for physically demanding work. Public disclosure of dedicated staffing levels by category could also be used by contractors to raise their bids for projects. By viewing consecutive quarterly reports, a contractor could track changes in staffing levels and determine the relative need for a specific type of worker, enabling them to manipulate their bids.

8. The information to be provided in response to Section 57.195(e)(10), contractor hours and dollars, causes concerns other than those referenced in paragraphs 6 and 7 above. Public reporting of this information jeopardizes Duquesne's ability to negotiate cost effective contracts with third-party vendors. The major portion of Duquesne's contractor expenditure is for the Company's extensive vegetation

management program. Nearly 100% of overhead line clearance for vegetation is performed by contractors, who bid on work packages at a fixed price. Negotiating the best price with these contractors is very difficult for a number of reasons. There are very few contractors qualified to do this type of work, and larger vegetation management companies frequently buy out competitors. Disclosure of such detailed data regarding contractor expenditures and work hours would further compromise Duquesne's ability to negotiate the best price for overhead line clearance.

WHEREFORE, Duquesne requests the Commission to issue a Protective Order which prohibits public access to, and disclosure of, the targeted figures in response to 52 Pa. Code Sections 57.195(b)(6) and (e)(6); the budgeted information in response to Sections 57.195(b)(7) and (8) and (e)(7) and (8); the staffing levels in response to Section 57.195 (e)(9); the contractor hours and dollars in response to Section 57.195(e)(10); and the goals, objectives and budgeted and/or estimated capital expenditures and O&M expenses in response to Sections 57.195(b)(9)-(11).

Dated: December 28, 2004

Respectfully submitted,

RS Herskovitz

Richard S. Herskovitz
Assistant General Counsel
Duquesne Light Company
411 Seventh Avenue
Suite 8-2
Pittsburgh, PA 15219
(412) 393-3662 (Phone)
(412) 393-5602 (Fax)
rherskovitz@duqlight.com

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Petition of Duquesne Light Company for Protective Order, Pertaining to Information contained in its Quarterly and Annual Reliability Reports	: : : :	Docket No. ____________

AFFIDAVIT

I, Joseph G. Belechak, being duly sworn according to law depose and say that I am authorized to make this affidavit on behalf of Duquesne Light Company, being the holder of the office of Senior Vice President and Chief Operations Officer with that corporation, and that the facts set forth in the foregoing document are true and correct to the best of my knowledge, information and belief, and Duquesne Light Company expects to be able to prove the same at any hearing hereof.

Joseph G. Belechak

Joseph G. Belechak

Sworn and subscribed before me this 27th day of December, 2004. Mary Jane Hammer

COMMONWEALTH OF PENNSYLVANIA
Notarial Seal
Mary Jane Hammer, Notary Public
City Of Pittsburgh, Allegheny County
My Commission Expires Oct. 6, 2007
Member, Pennsylvania Association Of Notaries

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Petition of Duquesne Light Company for Protective Order, Pertaining to Information contained in its Quarterly and Annual Reliability Reports	:	Docket No. ____________

PROPOSED
PROTECTIVE ORDER

IT IS ORDERED:

1. That the Petition of Duquesne Light Company, for issuance of a Protective Order restricting access to, and disclosure of, proprietary and/or confidential information contained in the Company's quarterly and annual reliability required to be filed by Duquesne pursuant to 52 Pa. Code §57.195 is hereby granted.

2. Public access to, and disclosure of, the targeted figures in response to 52 Pa. Code Sections 57.195(b)(6) and (e)(6); the budgeted information in response to Sections 57.195(b)(7) and (8) and (e)(7) and (8); the staffing levels in response to Section 57.195(e)(9); the contractor hours and dollars in response to Section 57.195(e)(10); and the goals, objectives and budgeted and/or estimated capital expenditures and O&M expenses in response to Sections 57.195(b)(9)-(11), are hereby prohibited.

BY THE COMMISSION

James J. McNulty
Secretary

(SEAL)

ORDER ADOPTED:

ORDER ENTERED:

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Petition of DUQUESNE LIGHT COMPANY for Protective Order, Pertaining to Information contained in its Quarterly and Annual Reliability Reports	: : :	Docket No. ____________

CERTIFICATE OF SERVICE

I hereby certify that I have this day served true and correct copies of the foregoing document upon the individuals listed, in accordance with the requirements of 52 Pa. Code § 5.41.

Via First Class Mail

Irwin A. Popowsky, Esquire
Office of Consumer Advocate
Forum Place, 5th Floor
555 Walnut Street
Harrisburg, PA 17101-1923

John Simms, Esquire
Office of Trial Staff
Pennsylvania Public Utility Commission
Commonwealth Keystone Bldg., 2nd Fl.
400 North Street
Harrisburg, PA 17120

William R. Lloyd, Jr., Esquire
Office of Small Business Advocate
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RS Herskovitz

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Duquesne Light Company
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Email: rherskovitz@duqlight.com

Dated: December 28, 2004

COMMONWEALTH OF PENNSYLVANIA

DATE: December 29, 2004

SUBJECT: L-00030161

TO: Law Bureau

FROM: James J. McNulty, Secretary KB

DOCKETED
JAN 20 2005

DOCUMENT FOLDER

Rulemaking Re Amending Electric Service Reliability Regulations at 52 PA Code Chapter 57

Attached is a copy of an Application for Protective Order, filed by Duquesne Light Company in connection with the above docketed proceeding.

This matter is assigned to your Bureau for appropriate action.

Attachment

cc: FUS
OTS

ksb

Morgan, Lewis & Bockius LLP
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Morgan Lewis
COUNSELORS AT LAW

Anthony D. Kanagy
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akanagy@morganlewis.com

December 30, 2004

VIA HAND DELIVERY

DOCUMENT FOLDER

James J. McNulty
Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor North
Harrisburg, PA 17105-3265

Re: Petition of PECO Energy Company for a Protective Order for Proprietary Information Required to be Reported Under 52 Pa. Code § 57.195; Docket No. P-

Dear Secretary McNulty:

Enclosed for filing are an original and (3) three copies of the Petition of PECO Energy Company for a Protective Order for Proprietary Information Required to be Reported Under 52 Pa. Code § 57.195.

Copies have been served on the Office of Consumer Advocate and the Office of Small Business Advocate as indicated on the attached Certificate of Service.

Please serve all documents regarding this proceeding to the undersigned and to Shari C. Gribbin of PECO Energy Company.

Respectfully submitted,

Anthony D. Kanagy

Anthony D. Kanagy

ADK/kms

Enclosures

c: Shari C. Gribbin, Esquire
Certificate of Service

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

PETITION OF PECO ENERGY COMPANY FOR A PROTECTIVE ORDER FOR PROPRIETARY INFORMATION REQUIRED TO BE REPORTED UNDER 52 PA CODE § 57.195.	:	Docket No. P-

TO THE PENNSYLVANIA PUBLIC UTILITY COMMISSION:

INTRODUCTION

PECO Energy Company ("PECO") hereby petitions the Pennsylvania Public Utility Commission ("Commission"), pursuant to 52 Pa. Code § 5.423, for a protective order for proprietary information required to be reported on an annual basis under 52 Pa. Code §§ 57.195(b)(7),(8),(10) and (11) and on a quarterly basis under 52 Pa. Code §§ 57.195(e)(7),(8),(9),(10) and (11). In support of this Petition, PECO states as follows:

PROCEDURAL BACKGROUND

1. On May 20, 2004, the Commission entered a Final Rulemaking Order amending the electric service reliability regulations at 52 Pa. Code Chapter 57. *Rulemaking Re Amending Electric Service Reliability Regulations at 52 Pa. Code Chapter 57,* Docket No. L-00030161 (the "Order"). The Order establishes detailed annual and quarterly service performance and reliability reporting requirements.

2. Many of the requirements require electric distribution companies ("EDCs") to report confidential and proprietary information that could cause EDCs substantial harm.

3. In the Order, the Commission stated that an EDC could apply for a protective order under 52 Pa. Code § 5.423 in advance of filing its report if the EDC wanted portions of its annual and quarterly reports to remain confidential.

4. In addition, in a Secretarial Letter issued on October 21, 2004, at Docket No. L-00030162 ("Secretarial Letter"), the Commission stated that EDCs could file one petition for proprietary treatment and that the Commission's ruling on the petition would apply to subsequent reports to the extent that the information was the same.

5. Pursuant to the Commission's directives in the Order and the Secretarial Letter, PECO hereby files its request for a protective order.

SUMMARY

6. The electric service reliability regulations require PECO to report, among other things, contractor spend information, staffing level information, budget information and call-out information. As explained in more detail below, disclosing this information to the public could cause PECO substantial harm.

7. PECO has carefully evaluated the requirements imposed by the regulations and has only requested confidential treatment for those it deems the most sensitive.

8. PECO recognizes that the Commission has valid reasons to require PECO to report this information, and PECO supports the Commission in this regard. It is PECO's view that harm will be caused by reporting this information to the public at large. The harm to PECO will come in the form of economic losses and potential public image concerns as the reported information could be distorted and misconstrued.

9. While PECO is not generally subject to competition from outside companies in the traditional sense, PECO must negotiate contracts with outside contractors and labor groups representing PECO employees. Allowing these groups access to the sensitive information required to be reported under Section 57.195 will place PECO at a severe disadvantage in negotiations and will likely cause economic harm in the form of higher contract prices and subsequent higher rates.

10. In addition, staffing level information, budget information and call-out information could be distorted and misconstrued by outside parties, even when PECO's reliability levels meet or exceed the Commission's standards. This would present unnecessary public image concerns and could cause subsequent economic harm to PECO's customers and shareholders. In addition, it could make PECO spend valuable resources defending individual decisions rather than demonstrating its reliability goals and achievements.

PROTECTIVE ORDER STANDARDS

11. Under 52 Pa. Code § 5.423 the Commission may issue a Protective Order to limit or prohibit disclosure of trade secrets and other confidential commercial information where the potential harm to a participant would be substantial and outweighs the public's interest in a free and open administrative process. In applying this standard, the Commission should consider, along with other relevant factors: (1) the extent to which disclosure would cause unfair economic or competitive damage; (2) the extent to which the information may already be known by others; and (3) the potential value of such information to the participant and the participant's competitors. See 52 Pa. Code § 5.423(a)(1)-(3).

SPECIFIC REGULATIONS FOR WHICH RELIEF IS SOUGHT

12. PECO requests that the Commission issue a protective order for proprietary information required to be reported on an annual basis under 52 Pa. Code §§ 57.195(b)(7),(8),(10) and (11) and on a quarterly basis under 52 Pa. Code §§ 57.195(e)(7),(8),(9),(10) and (11).

A. Contractor Spend Information

13. Section 57.195(e)(10) requires EDCs to report "Quarterly and year-to-date information on contractor hours and dollars for transmission and distribution operation and maintenance."

14. On page 44 of the Order, the Commission recognizes the proprietary nature of specific details of contracts between PECO and its contractors, and indicates its belief that it is reasonable for an EDC to request that the Commission, the OCA and the OSBA be prohibited from disclosing the specific details of any contract. As such, PECO requests that the Commission issue a protective order with regard to the details of specific contracts.

15. In addition, PECO respectfully requests that the Commission issue a protective order with regard to providing this information in the aggregate. If this information is provided in the aggregate, contractors will be able to determine the average contract price for services. Allowing this information to become public puts PECO at an economic and competitive disadvantage. Contractors could use the average price as leverage in specific contract negotiations. This is unfair to PECO and would likely result in higher costs.

16. The Commission has historically protected pricing information such as this from public disclosure. *Petitions of Exelon Energy; Reliant Energy Retail, Inc.; and Statoil Energy Services, Inc. for Protective Order,* Docket Nos. P-00991752; P-00991753; and P-00991755; 2000 Pa. PUC LEXIS 50, Order Entered July 20, 2000 ("*Petitions of Exelon Energy et al.*").

17. In *Petitions of Exelon Energy et al.*, the Commission ruled on Petitions filed by Exelon Energy, Reliant Energy Retail, Inc. and Statoil Energy Services, Inc. requesting that the Commission issue a protective order with regard to providing sales and revenue data that would allow competitors to calculate the companies average price per kWh. The Commission ruled that this data should be kept confidential. 2000 Pa. PUC LEXIS 50, *6 - *7.

18. As in *Petitions of Exelon Energy et al.*, the Commission should issue a protective order with regard to PECO's contractor spend data because providing the data to the public would allow outside contractors to calculate the average price for contractor services.

B. Staffing Levels

19. Section 57.195(e)(9) requires EDCs to report "Dedicated staffing levels for transmission and distribution operation and maintenance at the end of the quarter, in total and by specific category (for example, linemen, technician and electrician)."

20. On page 44 of the Order, the Commission states its belief that staffing levels for each category should not be considered proprietary. According to the Commission, EDCs are regulated entities not subject to competition, and therefore, this information should not be kept confidential. PECO recognizes that its distribution activities are not subject to competition from outside companies. However, PECO must negotiate contracts with labor groups, and staffing levels are often the subject of labor negotiations. Providing this information to the public will almost certainly give labor groups additional leverage in contract negotiations and inhibit PECO's ability to negotiate future contracts at arms-length thereby resulting in higher costs to PECO and subsequent higher rates for customers.

21. In addition, there are substantial public policy reasons for keeping staffing level information proprietary. If staffing levels are made public, outside parties could misinterpret or distort this information to the detriment of PECO's public image, even when PECO is meeting or exceeding the Commission's reliability levels.

22. With regard to staffing levels, absolute numbers do not directly correlate with reliability. Advances in technology and better equipment often increase reliability levels even with a corresponding reduction in staff. Mere numbers never provide the complete picture, but must be put in the context of technological enhancements, improved productivity and efficiency, weather conditions or other relevant variables.

23. An example of the potential for misuse and misinterpretation of such data is illustrated by a recent *Washington Post* article.[1/] In this article, the author applied a simple comparison of absolute numbers for spending and staffing levels as reported by utilities and leaped to the conclusion that reductions in staffing levels and maintenance spending significantly contributed to the Hurricane Isabel related outages. The author also concluded that a reduction in tree-trimming expenditures led to increased outages. The authors conclusions were incorrect. In fact, the Hurricane Isabel problems were largely caused by the uprooting of trees both inside and outside the utility right-of-way, a problem no staffing levels or tree-trimming programs could prevent.

24. In addition, the Commission's own work demonstrates that absolute operations and maintenance numbers do not necessarily indicate any decreased reduction in reliability. In the Commission's docket on *Inspection and Maintenance Study of EDCs,* Docket No. M-00021619, Order Entered August 29, 2002, the Commission attached its 2002 internal inspection and maintenance study. In that study, the Commission's staff found that transmission and distribution maintenance expenses, without tree trimming, decreased for two companies, PECO and Duquesne Light Company ("Duquesne"), while increasing for all the other large companies. However, PECO and Duquesne had some of the better performance within the industry during the applicable time period. Tentative Order, Docket No. M-00991220. Thus, as the Commission's own data attests, absolute numbers do not always provide an accurate picture.

25. As stated above, PECO recognizes and supports the Commission's request that PECO file staffing level information. However, PECO is concerned with the harm that could be

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1/ Mathew Mosk, Peter Whoriskey, *Utilities Held Down Spending on Upkeep, Regulators didn't order Upgrades Before Isabel,* Washington Post, October 17, 2003 at A01.

caused by providing this information to the public at large as the raw numbers could be taken out of context without a corresponding explanation of other factors.

26. EDCs who do not meet the performance standards should report and explain their data and remediation plans to the Commission. Where there has been no previously identified problem with the EDC's provision of service, it would be inappropriate to provide this information to the public. It is unfair to expose EDCs who meet the reliability standards to such unwarranted scrutiny, unfounded conclusions and require them in effect to defend their good performance.

27. Therefore, PECO respectfully requests that the Commission issue a protective order with respect to the staffing level information.

C. Budget Information

28. Sections 57.195(b)(7),(8),(10) and (11) and 57.195(e)(7) and (8) require EDCs to report quarterly and year-to-date budget and actual expenditure data detailed by the EDC's own functional account code or FERC account code.

29. Budget information is highly sensitive, proprietary information. Budgets include projected expenditures based upon: (1) past experience, and (2) new projects and plans that are often not public. Budget information could be used by knowledgeable parties, including contractors, to determine if rumored projects were likely. For example, if a budget was considerably higher than past expenditures, parties could likely assume that a substantial new project or projects were in the works before the project or projects were officially made public. This could place bidding parties in an unequal position with regard to bidding for the project. In addition, parties could use the budget information as leverage in bidding for known projects because the budget information may provide insight on available funds. This could cause

substantial economic harm to PECO, its customers and shareholders. (See 52 Pa. Code § 5.423(a)(1)).

30. These problems are compounded by the requirements in Sections 57.195(b)(7) and (8) which require EDCs to explain any variances of 10% or greater. It is possible that a variance of this size could be caused by delays in implementing a project that has not been made public. If this budget information and explanation is not kept confidential, it could create an uneven playing field for bidding on the project or economic harm to PECO. In addition, it could create a scenario where PECO is forced to make plans for a project known before the appropriate time.

31. Budget targets are created for each quarter to assist in the management of business activities. Budget numbers are projections based upon estimates of future costs and rarely, if ever, meet actual projections. To effectively and appropriately manage its business, PECO often amends its budget and reallocates resources to respond to issues that arise within that quarter. If PECO is required to make its budget information public, this may result in decreased flexibility to shift money from category to category because of internal or external pressures. Again, this could cause substantial economic harm to PECO due to the need to increase budget amounts rather than shift budgeted money from one category to another.

32. In addition to evaluating potential economic harm, the regulations also direct the Commission to consider the extent to which information is known by others when deciding to issue a protective order. 52 Pa. Code § 5.423(a)(2). PECO respectfully requests that the Commission consider that budget information is historically proprietary information. As a general rule, budget information is strictly confidential, and businesses, whether regulated or unregulated, do not provide this type of information to the public. This is yet another reason to keep budget information confidential.

33. In addition to the specific factors listed in Section 5.423, the regulation provides for the Commission to consider "other relevant factors" in deciding whether to issue a protective order. 52 Pa. Code § 5.423(a). In this case, PECO requests that the Commission consider the potential misuse of such information. Parties may use budget information to argue that PECO should have performed a particular activity without understanding the management decisions behind the specific numbers. This is unfair and puts PECO in the unenviable position of having to defend its projections and why those projections changed rather than demonstrate its reliability objectives and achievements.

34. PECO believes that its request to keep budget information confidential is quite reasonable. Under PECO's proposal, parties will still have access to information regarding actual dollars spent. The only limit will be on budget information, and this information will be provided, on a confidential basis, to the Commission, the Office of Consumer Advocate ("OCA") and the Office of Small Business Advocate ("OSBA") for review.

D. Call-Out Rates and Times

35. Section 57.195(e)(11) requires EDCs to report the "Monthly call-out acceptance rate for transmission and distribution maintenance workers presented in terms of both the percentage of accepted call-outs and the time it takes the EDC to obtain the necessary personnel."

36. Like staffing levels described above, call-out rates are often the subject of negotiations in labor contracts. If call-out information, including percentage of accepted call-outs and time it takes to obtain the necessary personnel, is made public, this could reduce PECO's bargaining power resulting in higher costs and subsequent higher rates. For this reason,

PECO respectfully requests that the Commission issue a protective order for all call-out information provided pursuant to Section 57.195(e)(11).[2/]

2/ The Energy Association of Pennsylvania ("EAPA"), on behalf of PECO and other members, has filed a request for temporary waiver of reporting the amount of time it takes for an EDC to obtain necessary personnel in the event of a call-out due to the fact that PECO and other EDCs do not currently collect this data or have means to collect it. As such, PECO is not currently reporting this data. Therefore, PECO requests that the Commission issue a protective order for this information when it becomes available and is reported by PECO in the future.

CONCLUSION

WHEREFORE, PECO Energy Company respectfully requests that the Commission issue a protective order for proprietary information required to be reported on an annual basis under 52 Pa. Code §§ 57.195(b)(7),(8),(10) and (11) and on a quarterly basis under 52 Pa. Code §§ 57.195(e)(7),(8),(9),(10) and (11).

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Counsel for PECO Energy Company

Date: December 30, 2004

VERIFICATION

I, Shari C. Gribbin, hereby verify that I am Counsel for PECO Energy Company, that I am authorized to make this verification on its behalf, and that the information contained in the foregoing petition is true and correct to the best of my knowledge, information and belief. This verification is made subject to the penalties relating to unsworn falsification to authorities as prescribed by 18 Pa. C.S. § 4904.

Shari C. Gribbin, Esquire
PECO Energy Company

Date: December 30, 2004

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been served upon the following persons, in the manner indicated, in accordance with the requirements of § 1.54 (relating to service by a participant).

VIA HAND DELIVERY

Office of Consumer Advocate
555 Walnut Street
Forum Place 5th Floor
Harrisburg, PA 17101-1923

Office of Small Business Advocate
Commerce Building Suite 1102
300 North Second Street
Harrisburg, PA 17101

Date: December 30, 2004

Anthony D. Kanagy

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