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March 7, 2016

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

**Re: Rulemaking Re Electric Safety Regulations,
52 Pa. Code Chapter 57
Docket No. L-2015-2500632**

Dear Ms. Chiavetta:

Enclosed for filing please find the comments of PPL Electric Utilities Corporation ("PPL Electric") on the Proposed Rulemaking in the above referenced proceeding.

Pursuant to 52 Pa. Code § 1.11, the enclosed document is to be deemed filed on March 7, 2016, which is the date it was filed electronically using the Commission's E-filing system.

If you have any questions regarding these comments, please call me at (610) 774-5696.

Very truly yours,

A handwritten signature in blue ink that reads "Kimberly A. Klock". The signature is written in a cursive, flowing style.

Kimberly A. Klock

Enclosure

cc via email: Tanya J. McCloskey, Esquire
Mr. John R. Evans
J. Edward Simms, Esquire

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Rulemaking Re Electric Safety :
Regulations, 52 Pa. Code Chapter 57 : Docket No. L-2015-2500632

**COMMENTS OF
PPL ELECTRIC UTILITIES CORPORATION**

TO THE PENNSYLVANIA PUBLIC UTILITY COMMISSION:

By its Proposed Rulemaking Order entered November 19, 2015, the Pennsylvania Public Utility Commission (“Commission”) requested comments on its proposed revisions to Section 57.1 of its regulations and addition of electric safety standards in Section 57.28.¹ PPL Electric Utilities Corporation (“PPL Electric” or the “Company”) herein submits these Comments on the Commission’s proposed revisions to Chapter 57 of its regulations.

I. INTRODUCTION

Electric safety is a primary objective of PPL Electric, and the Company appreciates this opportunity to provide input on the Commission’s proposed revisions concerning electric safety standards. As an electric distribution company (“EDC”) operating in Pennsylvania, the Company believes that its Comments will provide the Commission with a valuable perspective regarding the proposed revisions to Chapter 57. Although the Company agrees that the Commission’s regulations would benefit from further clarifying an EDC’s electric safety responsibilities, PPL Electric has identified some concerns with the proposed revisions in these Comments.

¹ *Rulemaking Re Electric Safety Regulations, 52 Pa. Code Chapter 57, Docket No. L-2015-2500632 (Order Entered Nov. 19, 2015) (“Proposed Rulemaking Order”).*

II. COMMENTS ON THE PROPOSED RULEMAKING ORDER

A. SECTION 57.1

PPL Electric has no comments on the proposed revisions to Section 57.1.

B. SECTION 57.28(a)

PPL Electric has several concerns regarding the language proposed for Section 57.28(a). First, the Company is concerned about requiring an EDC to “use every reasonable effort to properly warn and protect the public from danger.” 52 Pa. Code § 57.28(a)(1) (emphasis added). The Company maintains that the use of the word “every” makes this provision overly broad and unduly burdensome. It is unclear what “every reasonable effort” would be in a given circumstance, thereby making compliance with this regulation nearly impossible to ascertain. In a certain situation, there may be several reasonable methods to properly warn and protect the public from danger, and under the proposed regulation, an EDC would have to identify and employ every single one. Therefore, PPL Electric suggests that the Commission remove the word “every” in Section 57.28(a)(1).

Second, the Company questions the use of the words “the general public” in Section 57.28(a)(1). As currently written, the regulation would require EDCs to “exercise reasonable care to reduce the hazards to which employees, customers, the general public and others may be subjected to by reason of its provision of electric distribution service and its equipment and facilities.” *Id.* § 57.28(a)(1) (emphasis added). By including the words “the general public,” the Commission would impose a very broad duty on EDCs. For example, the regulation arguably would impose a duty on EDCs to keep public highways illuminated for pedestrians.² Moreover,

² In *Flatley v. Upper Darby Township*, the court found that the defendant electric utility did not owe a duty to the plaintiff pedestrian to ensure that its street lights were functioning properly to illuminate the public highway. 56 Pa. D. & C.2d 179, 1972 Pa. Dist. & Cnty. Dec. LEXIS 404 (Pa. Ct. of Common Pleas of Del. Cnty. 1972); *see also*

PPL Electric notes that natural gas distribution companies (“NGDCs”) are not subject to the same requirement. Indeed, the gas safety regulation does not include the words “the general public.” *See id.* § 59.33(a) (“Each public utility . . . shall exercise reasonable care to reduce the hazards to which employees, customers and others may be subjected to by reason of its equipment and facilities.”). For these reasons, PPL Electric recommends that the Commission delete the words “the general public.”

Third, the Company is concerned about requiring an EDC to exercise reasonable care to reduce hazards in “its provision of electric distribution service.” PPL Electric believes that the quoted language is too broad and vague. The Pennsylvania Public Utility Code defines “service” “in its broadest and most inclusive sense,” including “any and all acts done, rendered, or performed, and any and all things furnished or supplied, and any and all facilities used, furnished, or supplied by public utilities . . . in the performance of their duties . . .” 66 Pa. C.S. § 102. Indeed, there are many aspects of providing electric distribution service that would be covered by this regulation, including customer service. In contrast, the gas safety regulation contains no requirement for NGDCs to exercise reasonable care to reduce hazards in the provision of natural gas distribution service. *See* 52 Pa. Code § 59.33(a). Rather, they only need to “exercise reasonable care to reduce hazards to which employees, customers and others may be subjected to by reason of its equipment and facilities.” *Id.* (emphasis added). PPL Electric maintains that EDCs should be subject to a similar standard and, therefore, suggests deleting the words “its provision of electric distribution service.”

Dattner v. Lamm, 5 Pa. D. & C.2d 552, 1955 Pa. Dist. & Cnty. Dec. LEXIS 230 (Pa. Ct. of Common Pleas of Phila. Cnty. 1955).

C. SECTION 57.28(b)

PPL Electric has significant concerns about the proposed language in Section 57.28(b), which outlines the “minimum safety standards” with which EDCs must comply. To begin, the Company disagrees with the use of the word “minimum.” Under Section 57.28(b)(2), an EDC would have to comply with at least the “standards established by the National Electrical Safety Code (NESC).” 52 Pa. Code § 57.28(b)(2). However, the NESC should not be considered a “minimum safety standard.” The NESC is the preeminent source for electrical safety standards. In fact, it is the “American National Standard” approved by the American National Standards Institute (“ANSI”). The NESC’s importance and breadth should not be marginalized by transforming it into a minimum safety standard, particularly when the NESC is the standard to which most EDCs adhere. Furthermore, using the word “minimum” implies that there may be other safety standards not identified or defined in the regulations to which EDCs should adhere. For these reasons, PPL Electric recommends deleting the word “minimum” in Section 57.28(b).

In addition, several issues exist with making the EDC’s “internal company procedures” a minimum safety standard. *See id.* § 57.28(b)(3). First, the NGDCs’ internal company procedures are not listed as a minimum safety standard in 52 Pa. Code § 59.33(b), and PPL Electric believes that EDCs and NGDCs should be treated similarly in this regard. Moreover, the Commission essentially proposes to delegate authority for setting applicable minimum safety standards to the individual EDCs. However, EDCs’ internal company procedures often vary from EDC to EDC and have not been drafted as a universal minimum safety standard for all EDCs. By establishing internal company procedures as a minimum safety standard, the Commission likely would create different minimum safety standards for all EDCs. This lack of uniformity in safety regulation would be poor public policy because it would overly complicate the Commission’s enforcement and evaluation of compliance.

Furthermore, listing internal company procedures as a minimum safety standard would have unintended consequences. For example, an EDC's failure to adhere to any of its internal company procedures could subject the EDC to potential fines, penalties, or customer complaints. More importantly, EDCs could be placed at a greater risk of liability in tort suits based on a theory of negligence *per se*. See *Mahan v. Am-Gard, Inc.*, 841 A.2d 1052, 1059 (Pa. Super. 2003) ("Pennsylvania recognizes that a violation of a statute or ordinance may serve as the basis for negligence *per se*." (quoting *Wagner v. Anzon, Inc.*, 684 A.2d 570, 574 (Pa. Super. 1996)), *appeal denied*, 858 A.2d 110 (Pa. 2004). In such cases, a plaintiff would allege that the EDC should be liable because it violated its internal company procedures and, consequently, 52 Pa. Code § 57.28(b)(3), even if those internal procedures were more stringent than the current standards. As a result, EDCs would have an incentive to revise their internal company procedures to make them equal to or lesser than the other electric safety standards specified in Section 57.28(b)(3). Consequently, Section 57.28(b)(3) would have an effect opposite to the one intended by the Commission. Therefore, PPL Electric suggests that the Commission delete subsection (b)(3) from the final regulation.

PPL Electric also believes that subsection (b)(5), which requires an EDC to comply with "[a]ll other applicable and governing state and federal laws and regulations," is unnecessary, overly broad, and vague. 52 Pa. Code § 57.28(b)(5). No need exists to recite that EDCs must comply with applicable laws and regulations because those laws and regulations speak for themselves. However, if the Commission intends to identify the applicable standards in Section 57.28(b), the Company maintains that the regulation should be precise as to the safety standards it is incorporating. By way of comparison, the gas safety regulation specifies the exact pipeline safety laws and regulations that compose the Commission's safety standards for natural gas

distribution service and contains no “catch-all” language like the proposed 52 Pa. Code § 57.28(b). *See id.* § 59.33(b). Accordingly, PPL Electric suggests deleting subsection (b)(5).

D. SECTION 57.28(c)

As proposed, Section 57.28(c) states that EDCs “shall be subject to inspections, investigations, and enforcement actions as may be necessary to assure compliance with this section.” 52 Pa. Code § 57.28(c). To aid in those inspections, investigations, and enforcement actions, the regulation would require EDCs to: (1) have their “facilities, books, and records” accessible to the Commission; and (2) “provide the Commission or its staff the raw data, reports, supplemental data, and information necessary for the administration and enforcement of this section.” *Id.*

PPL Electric has several concerns about the proposed Section 57.28(c). First, the regulation too expansive because it requires the EDC to provide “raw data” to the Commission or its staff. Raw data is incomplete and may be inaccurate. Therefore, it must be reviewed and corrected, if needed, before it is provided to any entity. As a result, an EDC should not be required to provide raw data to the Commission or its staff while the EDC is still investigating an incident. Moreover, the Company observes that the requirement to provide “raw data” does not exist under the equivalent NGDC regulation. *See id.* § 59.33(d). PPL Electric believes that Section 57.28(c) should mirror Section 59.33(d) and, as a result, that the reference to “raw data” should be deleted.

Second, the Commission should clarify the circumstances under which an EDC will be required to provide information to the Commission and its staff under Section 57.28(c). The gas safety regulation specifies that the NGDC will “provide the Commission or its staff the reports, supplemental data and information it shall from time to time request in the administration and enforcement of this section.” *Id.* § 59.33(d) (emphasis added). As currently written, nothing in

the proposed Section 57.28(c) outlines a procedure for when or how the EDC will provide information to the Commission or its staff. The regulation simply states that an EDC will “provide the Commission or its staff the raw data, reports, supplemental data, and information necessary for the administration and enforcement of this section.” *Id.* § 57.28(c). Therefore, PPL Electric proposes that the final sentence in Section 57.28(c) should incorporate the language from Section 59.33(d) that such information will be provided to the Commission “as it shall from time to time request.”

Third, PPL Electric is concerned that providing information “necessary” for the Commission’s “enforcement” of Section 57.28 would make such information subject to disclosure under 66 Pa. C.S. § 335(d). Section 335(d) of the Pennsylvania Public Utility Code states that any time the Commission “conducts an investigation of an act or practice of a public utility and makes a decision,” the Commission must publicly release any documents that it “relied” upon in “reaching its determination.” *Id.* Although agency records relating to a noncriminal investigation are exempt from the Pennsylvania Right-to-Know Law, one may argue that the proposed language for Section 57.28(c) could strip the information provided by the EDC of this protection. Thus, PPL Electric proposes that the regulations be revised to specifically state that any information supplied to the Commission or its staff pursuant to the regulations shall be protected as privileged and confidential and exempt from disclosure under 66 Pa. C.S. § 335(d).

III. CONCLUSION

For all of the reasons stated above, PPL Electric Utilities Corporation requests that the Pennsylvania Public Utility Commission consider these Comments in the development of its final revisions to Chapter 57 of the Commission's regulations.

Respectfully submitted,



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