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INDEPENDENT REGULATORY REVIEW COMMISSION

333 MARKET STREET, 14TH FLOOR, HARRISBURG, PA 17101

April 6, 2016

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Keystone Building, 400 North Street
2nd Floor, North Wing
Harrisburg, PA 17120

Re: Regulation #57-313 (IRRC #3132) (L-2015-2500632)
Pennsylvania Public Utility Commission
Electric Safety Regulations

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2016 APR -8 AM 10:56
PA P.U.C.
SECRETARY'S BUREAU

Dear Secretary Chiavetta:

Enclosed are the Commission's comments for consideration when you prepare the final version of this regulation. These comments are not a formal approval or disapproval of the regulation. However, they specify the regulatory review criteria that have not been met.

The comments will be available on our website at www.irrc.state.pa.us. If you would like to discuss them, please contact me.

Very truly yours,

David Sumner
Executive Director
sfh
Enclosure

cc: Honorable Robert M. Tomlinson, Majority Chairman, Senate Consumer Protection and Professional Licensure Committee
Honorable Lisa M. Boscola, Minority Chairman, Senate Consumer Protection and Professional Licensure Committee
Honorable Robert W. Godshall, Majority Chairman, House Consumer Affairs Committee
Honorable Peter J. Daley, II, Minority Chairman, House Consumer Affairs Committee
Amy Elliott, Esq., Office of Attorney General

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Comments of the Independent Regulatory Review Commission

2016 APR -8 AM 10: 56



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SECRETARY'S BUREAU

Pennsylvania Public Utility Commission Regulation #57-313 (IRRC #3132)

Electric Safety Regulations

April 6, 2016

We submit for your consideration the following comments on the proposed rulemaking published in the February 6, 2016 *Pennsylvania Bulletin*. Our comments are based on criteria in Section 5.2 of the Regulatory Review Act (71 P.S. § 745.5b). Section 5.1(a) of the Regulatory Review Act (71 P.S. § 745.5a(a)) directs the Pennsylvania Public Utility Commission (PUC) to respond to all comments received from us or any other source.

1. Section 57.1. Definitions. – Consistency with statute; Reasonableness; Need; Clarity.

EDC—Electric distribution company or electric utility

There are two concerns. First, this definition includes two terms: “electric distribution company” and “electric utility.” Including the term “electric utility” is ambiguous because the definition refers to the statutory definition “electric distribution company.” To be consistent with the statute, the term “electric utility” should be deleted from this definition. The regulation should define and use the single term used in the statute: “electric distribution company.”

Second, the Office of Consumer Advocate (OCA) commented that it believes this definition may not include “substantial electric facilities” situated in Pennsylvania that are owned by public utilities yet may not fit within the definition of EDC, such as Trans-Allegheny Interstate Line Company. Does the definition of EDC encompass all of the entities intended to comply with this regulation? If the PUC agrees with the OCA and can clearly establish that the Public Utility Code provides the PUC with jurisdiction over the safety of these other facilities, the PUC should add another term to the definitions and body of the regulation so that the regulation encompasses the safety of the other facilities.

Service point or point of delivery

We have three concerns. First, the Energy Association of Pennsylvania (EAP) commented that the use of two terms for a single definition could cause uncertainty and confusion in practice. We agree that using two terms lacks clarity. We recommend that the regulation define and use one term.

Second, the Pennsylvania AFL-CIO Utility Caucus (AFL-CIO) advocates using the National Electric Safety Code (NESC) definition because the NESC definition applies in circumstances

where the electric utility may not have designated a point of interconnection. The PUC should review this definition to ensure it encompasses as many circumstances as possible.

Third, the definition states the demarcation point is “the location designated by the EDC” The designation of this point should be established by the EDC in its PUC approved tariff, as reflected in proposed Subsection 57.28(a). To be consistent with Subsection 57.28(a), the definition should include additional language to state the location designated by the EDC “in its PUC approved tariff,” or similar language.

National Electric Safety Code (NESC)

We agree with the commentators that a definition of this term should be added to this section.

2. Section 57.28. Electric safety standards. – Statutory authority; Reasonableness; Duplication; Implementation procedure; Clarity.

Subsection (a) Duties and responsibilities

This subsection states the separation of duties and responsibilities . . . “shall be **effectively** described in the EDC’s tariff that is filed with and approved by the Commission.” (Emphasis added.) Since the tariff is approved by the PUC, the word “effectively” is not needed. The term is also unclear. We recommend deleting the word “effectively” from Subsection (a).

Paragraph (a)(1) Duty of an EDC

There are two concerns. First, this paragraph begins with the phrase “An EDC **shall use every reasonable effort** to properly warn and protect the public from danger” (Emphasis added.) EAP commented that the word “every” implies the legal obligation exceeds a reasonable standard and requires additional extraordinary action by a utility to reduce hazards which is clearly not the law. While we fully agree with protection of persons from danger, it is not clear what additional standard is set by requiring “every” reasonable effort. For example, subsequent Paragraph (b)(2) requires compliance with the standards established by the NESC. Does the language of Paragraph (a)(1) requiring “every reasonable effort” imply something beyond the NESC? The word “every” should be deleted unless the PUC can explain the need for it and clarify its meaning within the language of the overall regulation.

Second, this paragraph ends with the phrase “. . . by reason of its provision of electric distribution service **and** its associated equipment and facilities.” (Emphasis added.) EAP commented that the wording of the regulation could imply this regulation applies to the safety of electric distribution services beyond its associated equipment and facilities. We agree that the use of the word “and,” emphasized above, implies this safety regulation applies to both the broad category of electric distribution services and the associated equipment and facilities. We recommend that the wording of this phrase be reviewed and amended to clearly state what it applies to.

Paragraph (a)(2) Customer responsibility

This paragraph would establish the PUC regulation and enforcement of all electric utility customers to safely maintain and inspect wiring and equipment beyond the service point (e.g., within the customer's home in most circumstances). Is the PUC's actual intent for this provision to regulate customers or is the intent to state that the EDC is not responsible for customer's wiring and equipment? A regulation establishes a binding norm between an agency, in this case the PUC, and the regulated community, in this case the customer. The Preamble does not establish a statutory basis or justification for the PUC to regulate maintenance of wiring and equipment owned by the customer beyond the service point. Therefore, as the regulation is worded, it is not clear that the PUC has this jurisdiction or how the PUC would enforce this paragraph. While we believe the customer should be diligent in the area of electric safety, the PUC should delete this paragraph from the regulation in its entirety. Alternatively, if the PUC believes it has jurisdiction to regulate customers in this manner, it should provide a thorough explanation of the statutory authority to regulate them, the need to regulate them and how it would enforce this regulation.

Subsection (b) Safety code

This subsection states:

“A jurisdictional EDC shall comply with all of the following minimum safety standards:

- (1) This chapter.
- (2) The standards established by the National Electrical Safety Code.
- (3) The procedures established by the EDC and set forth in the EDC's internal company procedures.
- (4) The standards established by sections 1—11 of the act of December 10, 1974 (73 P. S. §§ 176—186), known as the Underground Utility Line Protection Act, and Pennsylvania One Call.
- (5) Other applicable and governing State and Federal laws and regulations.”

EAP commented and provided justification for deleting all but Paragraph (2). We agree and explain our concerns with each paragraph below.

Paragraphs (b)(1) and (5)

EAP believes Paragraphs (1) and (5), which require compliance with this chapter and other applicable laws and regulations, are unnecessary because they restate existing obligations and are so overly broad as to be vague. We agree that Paragraphs (1) and (5) are not needed. We recommend deleting them unless the PUC can provide justification for why they are needed.

Paragraph (b)(3)

This paragraph would assimilate an EDC's internal company procedures as an enforceable PUC regulation. EAP questions whether such a proposed standard is either authorized or practical. EAP cites two court decisions in support of its position: PUC v. Philadelphia Electric Company, 522 Pa. 338, 561 A.2d 1224 (Pa. Supreme Ct. 1989) and Pickford v. PUC, 4 A.3d 707 (Pa. Commw. Ct. 2010). What happens if the PUC disagrees with an internal procedure, but is bound to enforce it by this regulation? Most importantly, the PUC would be delegating its regulatory authority to safety "procedures established by the EDC and set forth in the EDC's internal company procedures." This would allow an EDC to unilaterally write its own safety regulations via its internal documents and furthermore to amend them at the EDC's discretion, independent of the PUC, and outside the Regulatory Review Act process which provides for public comment, Standing Committee review and our review. For these reasons, we strongly recommend deleting Paragraph (3).

Paragraph (b)(4)

EAP observes, in addition to other concerns, that Paragraph (4) is premature because House Bill 445, which would transfer enforcement authorities to the PUC, has not been passed into law. We agree that Paragraph (4) is premature in this area and should be deleted pending passage of the legislation into law and establishment of any memoranda of understanding between agencies to implement the legislation as it may pertain to the scope of this regulation.

Implementation of the NESC and revisions to the NESC

In regard to Paragraph (b)(2), which adopts the standards established by the NESC, there are two concerns. First, EAP suggested adding a 180-day period after a new edition of the NESC takes effect to allow for training and implementation. EAP provided suggested language. We agree that an implementation period should be included in the regulation.

Second, several commentators suggest adding language to clarify that the NESC standards in place at the time of a facility's installation should be the standards that apply to that facility. The PUC should consider adding language to clarify what standards apply to existing facilities when the NESC is updated.

Subsection (c) Enforcement

Commentators question what data the regulation requires by requiring "raw data" and further question whether this is a new category of information. The PUC should further explain the need for this data and clarify the regulation to more clearly state what data is required.

Subsection (d) Records

We have two concerns. First, the first sentence is vague by requiring "adequate records as required for compliance with the safety code." The view of what are "adequate records for compliance" could vary. We recommend that the PUC review and amend this requirement to clearly state what records are required for compliance.

Second, the second sentence of this subsection restates an existing requirement under Section 57.11. Since Section 57.11 independently establishes this reporting requirement, this sentence is duplicative and not needed in Subsection (d).

3. Coordination of safety with other utilities. – Protection of the public health, safety and welfare.

Three parties commented on coordination of safety with other utilities: the AFL-CIO, and a joint comment by Pennsylvania American Water Company and System Local 537, Utility Workers of America, AFL-CIO. These comments described concerns for safety when water and sewer utilities are working in close proximity to electric utility lines and there is potential for an electric line to energize the work area of another utility, presenting a direct hazard to their workers.

To avoid the circumstances described in the comments, we recommend that the PUC consider an amendment to coordinate the individual utility safety and reliability provisions in 66 Pa. C.S. § 1501 and the overall safety of those who work for other utilities under its jurisdiction. While it may be possible to amend this rulemaking to address these circumstances, we defer to the PUC to determine whether to include an amendment in this rulemaking or to address this concern in a separate proposed regulation which would allow more opportunity for comment and to build consensus on the language of the amendment to the regulation.

4. Existing gas service regulation at 52 Pa. Code § 59.33 – Reasonableness.

Almost all of the comments from the electric industry include references to the existing gas safety regulation found at 52 Pa. Code § 59.33. These comments compare this proposed regulation to the existing language of the gas regulation and question why the electric safety requirements differ from the gas safety requirements. We believe the commentators raise valid points and we too question why the standards would vary. We will review the PUC responses to these public comments as part of our consideration of whether the final regulation is in the public interest.