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March 10, 2005

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

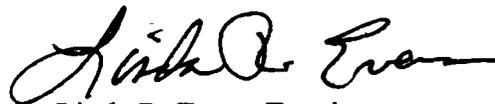
***Re: Advance Notice of Proposed Rulemaking for Revision of  
52 PA Code Chapter 57 Pertaining to Adding Inspection and  
Maintenance Standards for the Electric Distribution Companies  
Docket No. L-00040167***

Dear Secretary McNulty:

Enclosed herewith for filing on behalf of Metropolitan Edison Company, Pennsylvania Electric Company and Pennsylvania Power Company are an original and sixteen (16) copies of Reply Comments in the above-referenced proceeding. Please date stamp the enclosed additional copy and return to me in the enclosed postage-prepaid envelope.

A copy of these Reply Comments is also being mailed electronically to Elizabeth Barnes, Assistant Counsel.

Sincerely,



Linda R. Evers, Esquire

dln  
Enclosures

c: As Per Certificate of Service

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Advance Notice of Proposed Rulemaking for  
Revision of 52 PA Code Chapter 57 Pertaining  
to Adding Inspection and Maintenance Standards  
for the Electric Distribution Companies

Docket No. L-00040167

**CERTIFICATE OF SERVICE**

I hereby certify that I have this date served a true and correct copy of the foregoing document upon the individuals listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

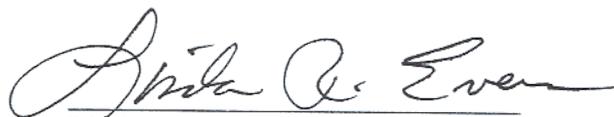
Service by United Parcel Service, postage prepaid, as follows:

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

Service by electronic mail, as follows:

Elizabeth Barnes, Assistant Counsel  
[ebarnes@state.pa.us](mailto:ebarnes@state.pa.us)

Dated: March 10, 2005



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**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Advance Notice of Proposed Rulemaking for  
Revision of 52 PA Code Chapter 57 Pertaining  
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Docket No. L-00040167

**REPLY COMMENTS OF METROPOLITAN EDISON COMPANY,  
PENNSYLVANIA ELECTRIC COMPANY,  
AND PENNSYLVANIA POWER COMPANY**

**I. INTRODUCTION**

Metropolitan Edison Company (“Met-Ed”), Pennsylvania Electric Company (“Penelec”), and Pennsylvania Power Company (“Penn Power”), collectively referred to as the “FirstEnergy Companies” submit reply comments to the above-captioned docket in response to the Comments of the Office of Consumer Advocate (“OCA”) dated February 9, 2005 (the “OCA Comments”) and the Comments of the Pennsylvania AFL-CIO Utility Caucus (“AFL-CIO”) dated February 8, 2005 (“AFL-CIO Comments”).

**II. SUMMARY**

The OCA Comments and AFL-CIO Comments rest upon the presumption that the Commission’s current regulatory framework is insufficient for continuing and ensuring the reliability of electric service in Pennsylvania. Such a presumption overlooks the thorough review and reporting mechanisms already established by the Commission to satisfy the requirements of Section 2802(20) of the Public Utility Code. Further, the OCA Comments and AFL-CIO Comments fail to explain how adding a layer of generalized, Commission-imposed inspection and maintenance (“I&M”) standards to existing regulations will improve system reliability, particularly in light of the significant expense such new regulations would entail.

### III. SPECIFIC COMMENTS<sup>1</sup>

#### A. Existing Regulations are Adequate to Ensure System Reliability.

As noted in the OCA Comments and the AFL-CIO Comments, the General Assembly declared in the Electricity Generation Customer Choice and Competition Act (1996, Dec. 3, P.L. 802, No. 138 §4, effective January 1, 1997), that:

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.

66 Pa.C.S. §2802(20). The OCA asserts that “pursuant to Section 2802(20), the Commission must establish regulations regarding the inspection, maintenance, repair and replacement standards. .” (OCA Comments p. 1). This assertion implies what the AFL-CIO boldly declares - that the Commission has not taken action since enactment of the restructuring legislation to address Section 2802(20). On the contrary, the Commission promptly responded to the mandate of Section 2802(20), by instituting a rulemaking proceeding on January 24, 1997 to develop regulations to ensure the safety, adequacy and reliability of the electric systems in Pennsylvania. The rulemaking proceeding resulted in the amendment of 52 Pa. Code Chapter 57, to add Subchapter N, Electric Reliability Standards. Just last year, the Commission amended the reliability benchmarks and standards for electric distribution companies (“EDCs”) (see Order dated May 7, 2004 at Docket No. M-00991220 and Final Rulemaking Order dated May 7, 2004 at Docket No. L-00030161). In those Orders, the Commission tightened the standards for

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<sup>1</sup> In this Advance Notice of Proposed Rulemaking docket, the FirstEnergy Companies will address the concepts raised in the Commission’s Order, rather than respond to the detailed I&M recommendations asserted in the OCA Comments and AFL-CIO Comments, with the understanding that such level of detail would be the subject of discussion in the event the Commission determines it is necessary to pursue a Notice of Proposed Rulemaking proceeding in this matter.

performance reliability and improved the monitoring of reliability performance in the electric distribution industry.

Subchapter N currently requires, among other things, that EDCs:

install, maintain and operate its distribution system in conformity with the National Electrical Safety Code;

- make periodic inspections of its equipment and facilities in accordance with good utility practice and in a manner satisfactory to the Commission;

design and maintain procedures to achieve and take measures necessary to meet the reliability performance benchmarks and minimum performance standards established by the Commission.

52 Pa. Code §57.194. Subchapter N further provides that:

Additional monitoring and enforcement actions that may be taken are engaging in additional remedial review, requiring additional EDC reporting, conducting and informal investigation, initiating a formal complaint, requiring a formal improvement plan with enforceable commitments, requiring an implementation schedule, and assessing penalties and fines.

52 Pa. Code §57.194(h)(1)(ii). In short, the Commission already has adequate tools in its toolbox to ensure that EDCs have reasonable I&M programs which are being appropriately implemented, and benchmarks to measure reliability performance. The regulations that are already in place require a high standard of reliability performance while recognizing the need for flexibility in how each utility manages its own system.

**B. Adding New Layers of Regulation As Proposed by the OCA and AFL-CIO Would Result in Significant Cost With No Demonstrable Improvement to System Reliability.**

The OCA, with the assistance of two consultants who have a history of promoting new layers of I&M regulations at the Commission and jurisdictions throughout the country, proposes

that the Commission adopt new I&M regulations. However, the OCA fails to explain, as does the AFL-CIO, how such new initiatives will actually improve system reliability.

Uniform I&M standards may sound good, but ignore the complexities involved in maintaining an electric system. The OCA acknowledges that “EDCs will need to exercise their professional judgment based on their distribution systems and service territories.” (OCA Comments p. 5). Having their I&M programs micro-managed through Commission-imposed standards would inhibit the exercise of this professional judgment and could potentially result in a degradation of system reliability.

Furthermore, it is not clear how the OCA’s proposed “two-tiered approach” – minimum standards and individual plan filings - adds any value to the existing oversight structure. (OCA Comments p. 9). If, as the OCA proposes, the Commission imposes a “broad” set of I&M standards, which allow for “flexibility in techniques and processes used,” then we will, in essence, end up in the place we began. (OCA Comments p. 6). Currently, EDCs have their own system-tailored I&M programs and they operate under the Commission’s review, with detailed benchmarking (tailored for each EDC, in recognition of the fact that each EDC’s system has unique characteristics) and reporting obligations, as discussed above. If the Commission already has the ability to review individual plan filings and such plans are currently adequate (having been designed in the EDC’s professional judgment and reviewed by the Commission), why do we need minimum standards? Or, is the OCA taking the position that such I&M programs are currently inadequate, and therefore should be revised by the Commission via the establishment of new minimum standards? The OCA has presented nothing more than its belief that, theoretically, minimum standards will somehow improve reliability.

The cost associated with the development and implementation of generic Commission-imposed I&M standards would be substantial, and would ultimately be borne by Pennsylvania ratepayers. Before such expenses are incurred, the need for such new regulations must be clearly established. Since the Commission's enhanced reliability benchmarks and standards were adopted less than a year ago, it is far too premature to determine such regulations are insufficient to ensure reliability of the electric system in Pennsylvania

Therefore, while the OCA's proposal would result in much work for reliability standard consultants and much cost for the EDCs and their ratepayers, it is unlikely to actually improve reliability. The EDCs are responsible for the operation and maintenance of their systems, and they therefore must have the ability to tailor their I&M programs to meet their unique system needs. The Commission should continue its role of monitoring each EDC's I&M program through progress reporting and measuring results of such activities, but should not micro-manage the content of such programs.

**C     Automatic Penalties for Failure to Meet Standards are Inappropriate**

In the event of reliability concerns, the Commission already has the power, through 52 Pa. Code §57.194(h)(1)(ii), to investigate the EDC and, if appropriate, assess penalties and fines. Electric system reliability is a complex matter and there are factors outside of an EDC's control, such as weather, that impacts I&M activities. As the AFL-CIO recognizes "There could be legitimate reasons why a utility did not precisely meet an inspection and maintenance cycle." (AFL-CIO Comments, p. 7). It is therefore fundamentally unfair to try to shortcut the Commission's review process by structuring an automatic penalty for failure to meet standards.

#### **IV. CONCLUSION**

Commission-imposed, generalized inspection and maintenance standards are unnecessary and inappropriate. Rather, EDCs should continue to implement tailored, company-specific I&M procedures, and the Commission should continue to monitor and enforce each EDC's reliability performance through its extensive, existing regulations.

Respectfully submitted,

Dated: March 10, 2005



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