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January 3, 2005

KJR

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

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

RECEIVED

JAN - 3 2005

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

Dear Mr. McNulty:

Please make the following changes to the above-referenced Certificate of Service list.

Remove:

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

DOCKETED
JUN 2 2 2005

Add:

Shari C. Gribbin, Esquire
PECO Energy Company
2301 Market Street, S23-2
Philadelphia, PA 19103

DOCUMENT
FOLDER

If you have any questions or need further information, please do not hesitate to contact me directly at: 215-841-3606.

Sincerely,



Shari C. Gribbin
Assistant General Counsel

SCG:mb

cc: Certificate of Service

ORIGINAL

Paul E. Russell
Associate General Counsel

PPL
Two North Ninth Street
Allentown, PA 18101-1179
Tel. 610.774.4254 Fax 610.774.6726
perussell@pplweb.com



FEDERAL EXPRESS

January 10, 2005

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

RECEIVED

JAN 10 2005

DOCUMENT FOLDER
PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

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

Dear Mr. McNulty:

Enclosed for filing on behalf of PPL Electric Utilities Corporation 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 as shown on the enclosed Certificate of Service.

Pursuant to 52 Pa. Code § 1.11, the enclosed document is to be deemed filed on January 10, 2005, which is the date it was deposited with an overnight express delivery service as shown on the delivery receipt attached to the mailing envelope.

In addition, please date and time-stamp the enclosed extra copy of this letter and return it to me in the envelope provided.

If you have any questions regarding the enclosed comments, please call.

Very truly yours,

Paul E. Russell

Enclosures

cc: Certificate of Service

114

ORIGINAL

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

Docket No. L-00030161

RECEIVED

JAN 10 2005

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

CERTIFICATION OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing documents upon the participant(s), listed below, in accordance with the requirements of §1.54 (relating to service by a participant):

VIA FEDERAL EXPRESS

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

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

Tanya J. McCloskey, Esquire
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Mark C. Morrow, Esquire
UGI Utilities, Inc. - Electric Division
460 North Gulph Road
King of Prussia, PA 19406

Eric Winslow, President
Citizens' Electric Company
1775 Industrial Boulevard
Lewisburg, PA 17837

Angelo M. Regan, P.E.
Pike County Light & Power
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Robert S. McCarthy
Wellsboro Electric Company
33 Austin Street
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David O. Epple, Vice President
Energy Association of Pennsylvania
800 North Third Street, Suite 301
Harrisburg, PA 17102

Dated: January 10, 2005



Paul E. Russell
PPL Electric Utilities Corporation
Two North Ninth Street
Allentown, PA 18101
(610) 774-4254

RECEIVED

JAN 10 2005

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

Attorney for
PPL Electric Utilities Corporation

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

:
:
:

Docket No. L-00030161

DOCKETED
MAR 17 2005

APPLICATION FOR PROTECTIVE ORDER

TO THE PENNSYLVANIA PUBLIC UTILITY COMMISSION:

**DOCUMENT
FOLDER**

PPL Electric Utilities Corporation ("PPL Electric" or the "Company"), pursuant to the Pennsylvania Public Utility Commission's ("PUC" or the "Commission") regulations at 52 Pa. Code § 5.423, requests the issuance of a protective order restricting the disclosure of proprietary, competitively sensitive or other confidential information which may be filed by the Company pursuant to the reporting requirements contained in 52 Pa. Code, Chapter 57. In support thereof, PPL Electric respectfully represents 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 that was 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 related to the treatment of proprietary information. Specifically, 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. PPL Electric has filed five (5) quarterly reports under 52 Pa. Code, Chapter 57, beginning with the report for the third quarter of 2003, that have reflected the expanded reliability data required by the Commission in the Final Order. It also has 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, PPL Electric did request that the Commission treat those reports as proprietary and confidential. With this Application, the Company is requesting an order from the Commission confirming that the data and information identified below will be treated as proprietary and confidential by the Commission.

4. In general, PPL Electric believes that information pertaining to specific circuits, maintenance practices, budgets and financial data, contracts or staffing is proprietary and, in many cases, confidential. The PUC has a right to obtain this information, but parties outside the Commission may misinterpret or otherwise use this information in an inappropriate manner. Accordingly, PPL Electric requests that the Commission treat as proprietary and confidential all correspondence, documents, data, information, studies, methodologies and other materials that it has

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, Chapter 57:

§ 57.195(e)(3) and (4): Circuit Designations. PPL Electric provides the Commission with distribution circuit designations both by name (e.g., "Emmaus #1") and by numeric identifier (e.g., "13-01"). PPL Electric requests that for the publicly released version of its reports that only the numeric designation be used. The reason for this request is to avoid an inappropriate reaction to a circuit's designation as a worst performing circuit. The Commission is aware that a circuit can be placed on this list through a series of, or even a single, unique event(s), and that in some of these cases, the proper response may be to do nothing to the circuit. PPL Electric's concern is that parties that do not have the experience or technical knowledge of the worst performing circuit program could misinterpret this information, creating potential problems for both the EDC and the Commission.

§ 57.195(e)(6), (7) and (8): Progress towards meeting transmission and distribution inspection and maintenance goals, and maintenance and capital budgets. The description of the progress to meet these goals necessarily involves budget and other financial data which PPL Electric believes is proprietary information.

§ 57.195(e)(9): Dedicated staffing levels. PPL Electric believes that staffing information is proprietary and competitively sensitive, and gives only a partial picture of the resources available to meet its needs. PPL Electric relies on contract personnel to assist its full-time staff for the construction and maintenance of its transmission and distribution system. PPL Electric's concerns about releasing contract information are addressed in discussion of the following section of the Commission's regulations.

§ 57.195(e)(10): Quarterly and year-to-date information on contractor hours and dollars for transmission and distribution operation and maintenance. In addition to the overall concerns that PPL Electric has about the release

of budget and financial data, PPL Electric believes that the requested information is confidential and competitively sensitive between itself and the contractors it engages. The rates set between these parties are a matter of contract and not intended to be made public, and would not only disclose proprietary and competitively sensitive information of PPL Electric, but also that of the contractor(s). EDCs would find it difficult to negotiate favorable prices and other terms if such information is readily available to other contractors.

§ 57.195(e)(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. Within Pennsylvania, some utility workers are represented by collective bargaining agreements; others are not. The requested data may be sensitive to both the management and union(s) of individual EDCs. Moreover, as of the date of this instant request, the PUC has not adopted a uniform method for calculating the requested data. Finally, even with the explanation of the call-out process, some parties may misinterpret the data and make erroneous comparisons among EDCs.

5. As demonstrated above, public release of the specified information could cause substantial harm to PPL Electric and, in some instances, to other EDCs or the Commission itself. The public interest will not be adversely affected by treating the specified information as proprietary and confidential. First, the Commission will have access to all of the information submitted by the Company pursuant to 52 Pa. Code, Chapter 57. Second, the public will have access to a sufficient amount of unrestricted information to remain fully informed about the performance of PPL Electric's distribution and transmission system.

6. If this Application is granted, PPL Electric will submit all future 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.

WHEREFORE, PPL Electric Utilities Corporation respectfully requests that the Commission grant its request to treat the data specified above as proprietary and confidential.

Respectfully submitted,



Paul E. Russell
Associate General Counsel
PPL Electric Utilities Corporation
Two North Ninth Street
Allentown, PA 18101
(610) 774-4254

Dated: January 10, 2005
at Allentown, Pennsylvania

ORIGINAL
Thomas, Thomas, Armstrong & Niesen
Attorneys and Counsellors at Law

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CHARLES E. THOMAS
(1913 - 1998)

January 10, 2005

James J. McNulty, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
P.O. Box 3265
Harrisburg, PA 17105-3265

DOCUMENT
FOUNDED

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

Dear Secretary McNulty:

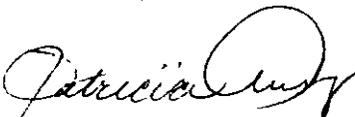
On December 22, 2004, Metropolitan Edison Company, Pennsylvania Electric Company and Pennsylvania Power Company ("the Companies") filed an Application for Protective Order in the above referenced matter. A copy of that Order was not served on the undersigned or on Allegheny Electric Cooperative, Inc. ("AEC") or Pennsylvania Rural Electric Association ("PREA"), parties to many of the Companies' regulatory matters before the Pennsylvania Public Utility Commission involving reliability.

AEC/PREA is a party to a recent Settlement Agreement with the Companies at I-00040102 in which the Companies are required to submit all Reliability Reports to all parties to that Settlement proceeding. AEC/PREA is willing to treat the Reports as Proprietary, but by this letter seeks to emphasize that it in no way is waiving any right to receive any of said Reports, or to subsequently contest their proprietary designation.

Very truly yours,

THOMAS, THOMAS, ARMSTRONG & NIESEN

By


Patricia Armstrong

94

Enclosure

F:\CLIENTS\Utility\PREA\General\050110 Sec. McNulty.wpd

Before the
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

CERTIFICATE OF SERVICE

I hereby certify that I have this 10th day of January, 2005, served a true and correct copy of the foregoing letter upon the persons listed below by first class mail, postage prepaid:

Elizabeth Barnes, Esquire
Pennsylvania Public Utility
Commission
Commonwealth Keystone Building
P.O. Box 3265
Harrisburg, PA 17105-3265

Tanya J. McCloskey
Office of Consumer Advocate
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Scott J. Rubin, Esquire
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Selinsgrove, PA 17870

Hon. William R. Lloyd
Small Business Advocate
Office of Small Business Advocate
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Harrisburg, PA 17101

Eric Winslow, President
Citizens' Electric Company
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Patricia Armstrong



ORIGINAL

OFFICE OF CONSUMER ADVOCATE

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800-684-6560 (in PA only)

IRWINA. POPOWSKY
Consumer Advocate

FAX (717) 783-7152
consumer@paoca.org

January 11, 2005

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

DOCUMENT
FOLDER

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

Dear Secretary McNulty:

Enclosed for filing are an original and three (3) copies of the Answer of the Office of Consumer Advocate in Opposition to the Petition for Protective Order of the FirstEnergy Companies, in the above-referenced proceeding.

Copies have been served on all parties of record as indicated on the enclosed Certificate of Service.

Sincerely,

Tanya J. McCloskey
Senior Assistant Consumer Advocate

Enclosures
cc: Parties or Record
82493.doc

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

DOCKETED
FEB 10 2005

ANSWER OF THE OFFICE OF CONSUMER ADVOCATE
IN OPPOSITION TO
THE PETITION FOR PROTECTIVE ORDER
OF THE FIRSTENERGY COMPANIES

I. INTRODUCTION

Pursuant to 52 Pa. Code § 5.61, the Office of Consumer Advocate ("OCA") hereby files this Answer in response to the Petition of Metropolitan Edison Company, Pennsylvania Electric Company, and Pennsylvania Power Company ("FirstEnergy Companies") for a Protective Order. On May 20, 2004, the Commission entered a Final Rulemaking Order in the above docket amending the Commission's regulations at 52 Pa. Code § 57.195. Rulemaking Re Amending Electric Service Reliability Regulations at 52 Pa. Code Chapter 57, Docket No. L-00030161 (Order entered May 20, 2004)("2004 Final Rulemaking Order") In the 2004 Final Rulemaking Order, the Commission revised the annual and quarterly reliability reporting requirements for electric distribution companies ("EDC") to provide for more complete reporting of information related to the reliability of the distribution system. On December 22, 2004, the FirstEnergy Companies filed a Petition for Protective Order to restrict the disclosure of certain information relating to these reporting requirements. The FirstEnergy Companies seek to have treated as proprietary all prospective reports as well as past quarterly and annual reports that contain the same data. Petition at ¶5. The OCA submits that for the reasons set forth in its

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Answer below, and for the reasons the Commission has previously discussed in its 2004 Final Rulemaking Order, the Commission should deny the FirstEnergy Companies' Petition.

In its Petition, the FirstEnergy Companies request that certain information required to be reported to the Commission in quarterly and annual reports pursuant to 52 Pa. Code § 57.195 be treated as proprietary information. Petition at 3-4. Regarding annual reporting, the FirstEnergy Companies request that the following information required by 52 Pa. Code § 57.195(b)(5), (7), (8), (10), and (11) be deemed proprietary information:

- (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.
- (7) A comparison of the 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 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 begin 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.
- (10) Budgeted transmission and distribution operation and maintenance 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.

In addition, regarding quarterly reporting, the FirstEnergy Companies request that the following information required to be reported pursuant 52 Pa. Code § 57.195(e)(4), (6), (7), (8), (9), (10), and (11) be deemed proprietary information:

- (4) Specific remedial efforts taken and planned for the worst performing 5% of the circuits as identified in paragraph (3).¹

¹ 52 Pa. Code § 57.195(3) relates to reporting of "[r]olling 12-month reliability index values (SAIFI, CAIDI, SAIDI, and if available, MAIFI) and other pertinent information such as customers served, number of interruptions,

- (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 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 or FERC account code as available (for first, second and third 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.

The FirstEnergy Companies provide no specific reasons why this information should be treated as proprietary by the Commission. The OCA submits that the FirstEnergy Companies have failed to establish any basis for keeping this information proprietary. For the reasons set forth in this Answer, as well as the Commission's 2004 Final Rulemaking Order, the OCA submits that the Commission should deny the FirstEnergy Companies' Petition.

II. ANSWER

The information required by Chapter 57 pertains to system reliability, a matter of great public importance. The Commission has recognized this fact and expressed its intention to

customer minutes interrupted, number of lockouts, and so forth, for the worst performing 5% of the circuits in the system."

generally keep these Reports public. In its 2004 Final Rulemaking Order, the Commission stated:

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.

2004 Final Rulemaking Order at 35. The OCA would also note that in an earlier proceeding regarding reliability benchmarks and standards, the Commission also pointed out the importance of making reliability reports accessible by the public. In the Commission's April 30, 1999 Order at Docket Number M-00991220, the Commission denied a request by the Pennsylvania Energy Association that the reliability reports be treated as confidential by the Commission and the OCA. Reliability Benchmarks and Standards, Docket No. M-00991220 (Order entered April 30, 1999)(“April 30, 1999 Order”). In denying the request, the Commission made the following point:

[A]n important policy goal that was to be met in restructuring the electric industry was the preservation of the integrity and reliability of the electric service and electric transmission and distribution system. In light of this goal, it would not be in the public interest to deny public access to this information.

April 30, 1999 Order at 22.

It is clear that the public has a substantial interest in the reliability of the distribution system and in the efforts of an EDC to meet the reliability requirements of the Commission. Under the Commission's regulations, the Commission will issue a protective order:

only when a participant demonstrates that the potential harm to the participant of providing the information would be substantial and that the harm to the participant if the information is disclosed without restriction outweighs the public's interest in free and open access to the administrative hearing process.

52 Pa. Code § 5.423(a).

Here, the FirstEnergy Companies have provided no information as to the type of harm they anticipate or whether the harm would be substantial if information required by Chapter 57 is made available to the public. It is important to recognize that distribution operations remain fully regulated. Much of the information that FirstEnergy requests to be treated as proprietary is the type of information that is often part of a base rate case and is subject to significant public scrutiny in that process. Much of the information is also publicly reported in FERC Form 1 filings and in Annual Reports to shareholders. The public has a right to know how utility dollars are being spent and how the utility is managing its reliability performance.

The Commission has recognized in both its 2004 Final Rulemaking Order and its April 30, 1999 Order that much of the information relating to the reliability of the distribution system was already publicly available and that its further compilation into the reliability reports would not place the EDC at a competitive disadvantage or cause other harm. In the 2004 Final Rulemaking Order, the Commission addressed the EDC's request for broad proprietary treatment as follows:

Although the Commission has no intention of actively sharing this type of information with other parties outside of 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.

2004 Final Rulemaking Order at 34. In the April 30, 1999 Order, addressing similar arguments, the Commission stated:

[W]e fail to see how the information relating to the reliability of an EDC's distribution system could provide others with a competitive

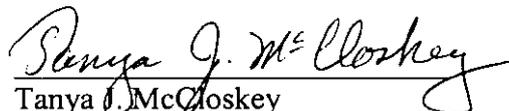
advantage. In a regulated monopolistic electric distribution industry, there are no other competitors.

April 30, 1999 Order at 22. The same reasoning applies to the request of the FirstEnergy Companies here.

In its 2004 Final Rulemaking Order, the Commission allowed EDCs to apply for protective orders relating to reliability reporting, but the Commission was clear that the burden is on the EDC to demonstrate the need for a protective order. See 2004 Final Rulemaking Order at 35. That burden is a significant one, particularly given the substantial public interest in the reliable operation of the distribution and transmission system. FirstEnergy has failed to meet its burden to justify withholding information from public view. The OCA submits that FirstEnergy's request must be denied.

WHEREFORE, the OCA respectfully requests that the Commission deny the FirstEnergy Companies' Petition for a Protective Order and ensure that the required reliability reports remain public.

Respectfully Submitted,



Tanya J. McCloskey
Senior Assistant Consumer Advocate
Lori A. Herman
Assistant Consumer Advocate

Counsel for:
Irwin A. Popowsky
Consumer Advocate

Office of Consumer Advocate
555 Walnut Street 5th Floor, Forum Place
Harrisburg, PA 17101-1923
(717) 783-5048

Dated: January 11, 2005
82451

CERTIFICATE OF SERVICE

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

I hereby certify that I have this day served a true copy of the foregoing document, Answer of the Office of Consumer Advocate in Opposition to the Petition for Protective Order of the FirstEnergy Companies, upon parties of record in this proceeding in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant), in the manner and upon the persons listed below:

Dated this 11th day of January 2005.

SERVICE BY INTEROFFICE MAIL

Elizabeth Barnes, Esquire
Law Bureau
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

RECEIVED
OFFICE OF CONSUMER ADVOCATE
JAN 11 2005

SERVICE BY FIRST CLASS MAIL

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Citizens' Electric Company
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Lewisburg, PA 179837

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

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Citizens' Electric Company
1775 Industrial Boulevard
Lewisburg, PA 17837

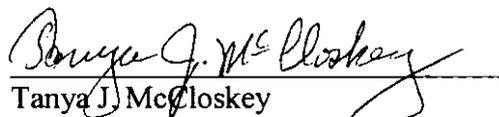
Scott J. Rubin, Esquire
3 Lost Creek Drive
Selinsgrove, PA 17870

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

Mark C. Morrow, Esquire
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33 Austin Street
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Energy Association of Pennsylvania
800 North Third Street, Suite 301
Harrisburg, PA 17102


Tanya J. McCloskey
Senior Assistant Consumer Advocate
Lori A. Herman
Assistant Consumer Advocate

Counsel for
Office of Consumer Advocate
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(717) 783-5048

Scott J. Rubin
Attorney ♦ Consultant

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3 Lost Creek Drive ♦ Selinsgrove, PA 17870 ♦ (570)743-2233 ♦ Fax: (570)743-8145 ♦ scott@publicutilityhome.com

January 11, 2005

DOCUMENT
FOLDER

James McNulty, Secretary
Pa. Public Utility Commission
P.O. Box 3265
Harrisburg PA 17105-3265

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

Dear Secretary McNulty:

Enclosed for filing please find the original and three (3) copies of the Answer of AFL-CIO Utility Caucus in Opposition to Application for Protective Order Filed by Metropolitan Edison Company, Pennsylvania Electric Company, and Pennsylvania Power Company. I am serving copies on all parties, as shown on the attached Certificate of Service.

In addition, I have enclosed an extra copy of the document that I would appreciate having time-stamped and returned in the enclosed envelope.

If you have any questions or require additional information, please do not hesitate to contact me.

Sincerely,


Scott J. Rubin

cc: All parties of record
Elizabeth Barnes, Esq.

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ORIGINAL

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

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ANSWER OF AFL-CIO UTILITY CAUCUS
IN OPPOSITION TO APPLICATION FOR PROTECTIVE ORDER
FILED BY METROPOLITAN EDISON COMPANY,
PENNSYLVANIA ELECTRIC COMPANY, AND
PENNSYLVANIA POWER COMPANY

DOCKETED
MAY 14 2005

On December 22, 2004, Metropolitan Edison Company, Pennsylvania Electric Company, and Pennsylvania Power Company ("FirstEnergy Companies") filed an Application for Protective Order in the above-referenced proceeding.

In response thereto, the AFL-CIO Utility Caucus files this Answer seeking the denial of the FirstEnergy Companies' Application. In essence, the FirstEnergy Companies have failed to even mention, let alone demonstrate that they meet, the requirements for issuance of a Protective Order under 52 Pa. Code § 5.423. In particular, the FirstEnergy Companies have not discussed any of the following factors that the Commission is specifically required to address:

- The extent to which the disclosure would cause unfair economic or competitive advantage.
- The extent to which the information is known by others and used in similar activities.
- The worth or value of the information to the participant and to the participant's competitors.
- The degree of difficulty and cost of developing the information.

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- Other statutes or regulations dealing specifically with disclosure of the information.

52 Pa. Code § 5.423(a).

Further, even if these standards had been addressed, it does not appear that the information that the FirstEnergy Companies are trying to shield from the public would adversely affect the FirstEnergy Companies' competitive position or cause them any type of economic harm. It also does not appear that the information would pose any type of security risk or otherwise affect the public health and safety.

In response to the specific averments of the FirstEnergy Companies' Application, the AFL-CIO Utility Caucus states as follows:

1. Admitted.

2. Admitted, except as to the FirstEnergy Companies' use of the term "directive" to characterize the Secretarial Letter. The Secretarial Letter did not "direct" any utility to seek a protective order; it only made it clear that such an application would be considered by the Commission if a utility sought the issuance of an order under 52 Pa. Code § 5.423.

3. Admitted.

4. Admitted in part and denied in part. It is admitted that the FirstEnergy Companies have filed certain reports with the Commission. It is denied that statements included with such reports that "advise the Commission of the type and nature of data they sought to be protected" has any legal basis or in any way meets the requirements of 52 Pa. Code § 5.423.

5. Admitted in part and denied in part. It is admitted that the FirstEnergy Companies have attached a proposed order. It is denied that the proposed order is consistent with the requirements of 52 Pa. Code § 5.423 in that neither the Application

nor the proposed order contain any information concerning the reasons why any information in the reliability reports should be withheld from the public. In particular, it is far from evident why it is necessary to withhold from the public information about a utility's remedial efforts, budget versus actual expenditures, progress toward meeting goals and objectives, utilization of contractors, or call-out acceptance rates.

Much of this information (particularly budget vs. actual expenditures) is routinely made public as part of utility rate cases. Moreover, information about remedial actions, contractor utilization, call-out acceptance, and other workforce-related data are an integral part of informing the public about the efforts that the utility is undertaking to maintain and improve the reliability of service. Distribution utilities are not subject to competition for these services and the simple identification of remedial measures (without detailed plans and specifications) would not provide any entity with access to confidential information about the location and operation of the utility's key facilities.

It is denied, therefore, that the issuance of the proposed protective order is in compliance with 52 Pa. Code § 5.423. On the contrary, this information should be readily available to the public.

6. Admitted in part and denied in part. It is admitted that the Commission has used the form of protective order in other proceedings. It is denied that there has been any demonstration in this case that the order is necessary to protect "sensitive commercial and/or proprietary information." It is denied, therefore, that it is "appropriate to enter a similar order in this proceeding."

7. No response is required as this paragraph discusses the FirstEnergy Companies' plans if the Commission grants the requested relief.

WHEREFORE, for the reasons set forth above, and particularly because the FirstEnergy Companies have failed to even mention, let alone discuss, the requirements of 52 Pa. Code § 5.423, the Commission should deny the Application and require the FirstEnergy Companies' reliability reports to be available to the public.

Respectfully submitted,



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scott@publicutilityhome.com

Counsel for:
AFL-CIO Utility Caucus

Dated: January 11, 2005

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing upon the parties to this proceeding listed on the following page, by first class mail.



Scott J. Rubin
Counsel for Complainant

Dated: January 11, 2005

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Richard S. Herskovitz, Esq.
Duquesne Light Co.
411 Seventh Ave., 8th Floor
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COMMONWEALTH OF PENNSYLVANIA

DATE: January 12, 2005

SUBJECT: L-00030161

TO: Law Bureau

FROM: James J. McNulty, Secretary *KB*

DOCKETED
MAR 17 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 PPL Electric Utilities Corporation in connection with the above docketed proceeding.

This matter is assigned to your Bureau for appropriate action.

Attachment

cc: FUS
OTS

ksb

COMMONWEALTH OF PENNSYLVANIA



OFFICE OF CONSUMER ADVOCATE

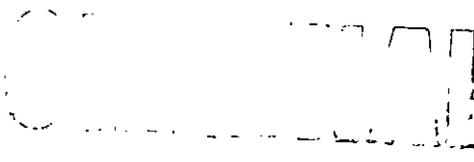
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IRWINA. POPOWSKY
Consumer Advocate

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January 18, 2005

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



PAUC
SECRETARY'S BUREAU

2005 JAN 18 PM 4:16

RECEIVED

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

Dear Secretary McNulty:

Enclosed please find an original and three (3) copies of the Answer of the Office of Consumer Advocate in Opposition to the Petition for Protective Order of Duquesne Light Company, in the above-referenced proceeding.

Copies have been served to the parties of record as indicated on the enclosed Certificate of Service.

Sincerely,

Lori A. Herman
Assistant Consumer Advocate

Enclosures
cc: Parties of Record
82518.doc

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101

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Duquesne Light Petition for Protective :
Order Pertaining To Information contained : Docket No. L-0030161
in its Quarterly and Annual Reliability :
Reports :

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ANSWER OF THE OFFICE OF CONSUMER ADVOCATE
IN OPPOSITION TO
THE PETITION FOR PROTECTIVE ORDER
OF DUQUESNE LIGHT

I. INTRODUCTION

Pursuant to 52 Pa. Code § 5.61, the Office of Consumer Advocate ("OCA") hereby files this Answer in response to the Petition of Duquesne Light ("Duquesne") for a Protective Order. On May 20, 2004, the Commission entered a Final Rulemaking Order at this docket number, amending the Commission's regulations at 52 Pa. Code § 57.195. Rulemaking Re Amending Electric Service Reliability Regulations at 52 Pa. Code Chapter 57, Docket No. L-00030161 (Order entered May 20, 2004) ("2004 Final Rulemaking Order"). In the 2004 Final Rulemaking Order, the Commission revised the annual and quarterly reliability reporting requirements for electric distribution companies ("EDC") to provide for more complete reporting of information related to the reliability of the distribution system. On December 28, 2004, Duquesne filed a Petition for Protective Order to restrict the disclosure of certain information relating to several of these reporting requirements. The OCA submits that for the reasons set forth in its Answer below, and for the reasons the Commission has previously discussed in its 2004 Final Rulemaking Order, the Commission should deny Duquesne's Petition.

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In its Petition, Duquesne requests that certain information required to be reported to the Commission in quarterly and annual reports pursuant to 52 Pa. Code § 57.195 be treated as proprietary information. Regarding annual reporting, Duquesne request that the following information required by 52 Pa. Code § 57.195(b)(6), (7), (8), (9), (10), and (11) be deemed proprietary information:

- (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 the 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 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 begin 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, substation and distribution).
- (10) Budgeted transmission and distribution operation and maintenance 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.

In addition, regarding quarterly reporting, Duquesne requests that the following information required to be reported pursuant 52 Pa. Code § 57.195(e)(6), (7), (8), (9) and (10) be deemed proprietary information:

- (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 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 or FERC account code as available (for first, second and third 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.

In its Petition, Duquesne claims that disclosure of budgeted information relating to operation and maintenance expenses and capital investments, staffing levels, and contractor hours will result in economical harm and will negatively impact Duquesne's reputation with the public. The OCA submits that Duquesne has failed to establish any sufficient basis for keeping this information proprietary. For the reasons set forth in this Answer, as well as the Commission's 2004 Final Rulemaking Order, the OCA submits that the Commission should deny the Duquesne's Petition.

II. ANSWER

The information required by Chapter 57 pertains to system reliability, a matter of great public importance. The Commission has recognized this fact and expressed its intention to generally keep these reports public. In its 2004 Final Rulemaking Order, the Commission stated:

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.

2004 Final Rulemaking Order at 35. The OCA would also note that in an earlier proceeding regarding reliability benchmarks and standards, the Commission also pointed out the importance

of making reliability reports accessible by the public. In the Commission's April 30, 1999 Order at Docket Number M-00991220, the Commission denied a request by the Pennsylvania Energy Association that the reliability reports be treated as confidential by the Commission and the OCA. Reliability Benchmarks and Standards, Docket No. M-00991220 (Order entered April 30, 1999)(“April 30, 1999 Order”). In denying the request, the Commission made the following point:

[A]n important policy goal that was to be met in restructuring the electric industry was the preservation of the integrity and reliability of the electric service and electric transmission and distribution system. In light of this goal, it would not be in the public interest to deny public access to this information.

April 30, 1999 Order at 22.

It is clear that the public has a substantial interest in the reliability of the distribution system and in the efforts of an EDC to meet the reliability requirements of the Commission. Under the Commission's regulations, the Commission will issue a protective order:

only when a participant demonstrates that the potential harm to the participant of providing the information would be substantial and that the harm to the participant if the information is disclosed without restriction outweighs the public's interest in free and open access to the administrative hearing process.

52 Pa. Code § 5.423(a).

Here, with respect to subsections (b)(6) through (11) and (e)(6) through (8), Duquesne claims that disclosure of budgeted information relating to operation and maintenance expenses, capital investments, and vegetation management costs will interfere with Duquesne's ability to negotiate with contractors who submit bids because contractors will inflate their bids if they have access to the Company's budget. Petition at ¶6. Furthermore, Duquesne contends that

public access to projected information would cause the public to draw invalid conclusions about Duquesne's business practices and reduce stock prices and regulatory confidence. Petition at ¶16. Finally, Duquesne contends that staffing level information required by 52 Pa. Code § 57.195(e)(9) would interfere negotiation in labor contracts and that the information relating to vegetation management expenditures required by 52 Pa. Code § 57.195(e)(10) would interfere with contract negotiations with third-party vendors. Petition at ¶¶7 and 8.

It is important to recognize that distribution operations remain fully regulated. Much of the information relating to budgeted expenses and investments that Duquesne requests to be treated as proprietary is the type of information that is often part of a base rate case and is subject to significant public scrutiny in that process. For example, in rate cases, utilities submit budgeted information relating to operation and maintenance expense and capital investments that is not treated as proprietary. A comparison of that budgeted data to actual data often occurs during the base rate review. See, e.g., Pa. P.U.C. v. Duquesne Light Co., 59 Pa.PUC 67 at 108, 120, 123 (1985) (relating to tree trimming, maintenance expense, and employee levels); Pa. P.U.C. v. Philadelphia Electric Co., 58 Pa.PUC 743, 749-50, 789-90, 794 (1985) (relating to budgeted versus actual plant, budget for operation and maintenance expenses, and wage expenses); Pa. P.U.C. v. Pennsylvania Power & Light Co., 59 Pa.PUC 332 at 734-35 (1985). The claim that release of such information will compromise bargaining positions would lead to an unreasonable conclusion that all utility budget information should be withheld from public view. This is completely inconsistent with the regulatory process. Moreover, contractors, labor unions and third-party vendors are aware that Duquesne is a regulated utility and that overspending on expenses and investments may be scrutinized by the Commission.

The public has a right to know how utility dollars are being spent and how the utility is managing its reliability performance. Public knowledge of budgeted information, as well as other performance indicators, will not necessarily result in the public forming invalid conclusions about Duquesne's business practices or reduce stock prices and regulatory. If the EDC is concerned about a misinterpretation of the information by the public or a negative impact on its reputation, the EDC can include appropriate explanations with its reports so that the public fully understands the information.

Finally, the Commission has recognized in both its 2004 Final Rulemaking Order and its April 30, 1999 Order that much of the information relating to the reliability of the distribution system was already publicly available and that its further compilation into the reliability reports would not place the EDC at a competitive disadvantage or cause other harm. In the 2004 Final Rulemaking Order, the Commission addressed the EDCs' request for broad proprietary treatment as follows:

Although the Commission has no intention of actively sharing this type of information with other parties outside of 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.

2004 Final Rulemaking Order at 34. In the April 30, 1999 Order, addressing similar arguments, the Commission stated:

[W]e fail to see how the information relating to the reliability of an EDC's distribution system could provide others with a competitive advantage. In a regulated monopolistic electric distribution industry, there are no other competitors.

April 30, 1999 Order at 22. The same reasoning applies to the request of Duquesne here.

In its 2004 Final Rulemaking Order, the Commission allowed EDCs to apply for protective orders relating to reliability reporting, but the Commission was clear that the burden is on the EDC to demonstrate the need for a protective order. See 2004 Final Rulemaking Order at 35. That burden is a significant one, particularly given the substantial public interest in the reliable operation of the distribution and transmission system. Duquesne has failed to meet its burden to justify withholding information from public view. The OCA submits that Duquesne's request must be denied.

WHEREFORE, the OCA respectfully requests that the Commission deny the Duquesne's Petition for a Protective Order and ensure that the required reliability reports remain public.

Respectfully Submitted,



Tanya J. McCloskey
Senior Assistant Consumer Advocate
Lori A. Herman
Assistant Consumer Advocate

Counsel for:
Irwin A. Popowsky
Consumer Advocate

Office of Consumer Advocate
555 Walnut Street 5th Floor, Forum Place
Harrisburg, PA 17101-1923
(717) 783-5048

Dated: January 18, 2005
82510

CERTIFICATE OF SERVICE

RE: Petition for Protective Order :
Pertaining to Information : Docket No. L-00030161
Contained in its Quarterly and :
Annual Reliability Report :

I hereby certify that I have this day served a true copy of the foregoing document, Answer of the Office of Consumer Advocate in Opposition to the Petition for Protective Order of the Duquesne Light Company, upon parties of record in this proceeding in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant), in the manner and upon the persons listed below:

Dated this 18th day of January 2005.

SERVICE BY INTEROFFICE MAIL

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Pennsylvania Public Utility Commission
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Johnnie Simms, Esquire
Office of Trial Staff
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
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Harrisburg, PA 17120

Thomas E. Sheets, Director
George Dorow
Bureau of Audits
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Lori A. Herman
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IRWINA. POPOWSKY
Consumer Advocate

January 19, 2005

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Secretary
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Harrisburg, PA 17120

DOCUMENT
FOLDER

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: L-00030161

Dear Secretary McNulty:

Enclosed for filing are an original and three (3) copies of the Answer of the Office of Consumer Advocate in Opposition to the Petition for Protective Order of PECO Energy Company, in the above-referenced proceeding.

Copies have been served to all parties of record as indicated on the enclosed Certificate of Service.

Sincerely,

Lori A. Herman
Assistant Consumer Advocate

Enclosures
cc: Parties of Record
82522.doc

SECRETARY'S BUREAU

2005 JAN 19 PM 3:57

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Petition of PECO Energy Company for a :
Protective Order For Proprietary : Docket No. L-0030161
Information Required to be Reported Under :
52 Pa. Code § 57.195 :

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FEB 10 2005

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ANSWER OF THE OFFICE OF CONSUMER ADVOCATE
IN OPPOSITION TO
THE PETITION FOR PROTECTIVE ORDER
OF PECO ENERGY COMPANY

I. INTRODUCTION

Pursuant to 52 Pa. Code § 5.61, the Office of Consumer Advocate ("OCA") hereby files this Answer in response to the Petition of PECO Energy Company ("PECO") for a Protective Order. On May 20, 2004, the Commission entered a Final Rulemaking Order at this docket number, amending the Commission's regulations at 52 Pa. Code § 57.195. Rulemaking Re Amending Electric Service Reliability Regulations at 52 Pa. Code Chapter 57, Docket No. L-00030161 (Order entered May 20, 2004) ("2004 Final Rulemaking Order"). In the 2004 Final Rulemaking Order, the Commission revised the annual and quarterly reliability reporting requirements for electric distribution companies ("EDC") to provide for more complete reporting of information related to the reliability of the distribution system. On December 30, 2004, PECO filed a Petition for Protective Order to restrict the disclosure of certain information relating to several of these reporting requirements. The OCA submits that for the reasons set forth in its Answer below, and for the reasons the Commission has previously discussed in its 2004 Final Rulemaking Order, the Commission should deny PECO's Petition.

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In its Petition, PECO requests that certain information required to be reported to the Commission in quarterly and annual reports pursuant to 52 Pa. Code § 57.195 be treated as proprietary information. Regarding annual reporting, PECO requests that the following information required by 52 Pa. Code § 57.195(b)(7), (8) (10), and (11) be deemed proprietary information:

- (7) A comparison of the 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 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.
- (10) Budgeted transmission and distribution operation and maintenance 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.

In addition, regarding quarterly reporting, PECO requests that the following information required to be reported pursuant 52 Pa. Code § 57.195(e)(7), (8), (9), (10), and (11) be deemed proprietary information:

- (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 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 or FERC account code as available (for first, second and third 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.

In its Petition, PECO claims that disclosure of budgeted information relating to operation and maintenance expenses and capital investments, staffing levels, and contractor spending information will result in an economic and competitive disadvantage and will negatively impact PECO's reputation with the public. The OCA submits that PECO has failed to establish any sufficient basis for keeping this information proprietary. For the reasons set forth in this Answer, as well as the Commission's 2004 Final Rulemaking Order, the OCA submits that the Commission should deny the PECO's Petition.

II. ANSWER

The information required by Chapter 57 pertains to system reliability, a matter of great public importance. The Commission has recognized this fact and expressed its intention to generally keep these reports public. In its 2004 Final Rulemaking Order, the Commission stated:

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.

2004 Final Rulemaking Order at 35. The OCA would also note that in an earlier proceeding regarding reliability benchmarks and standards, the Commission also pointed out the importance of making reliability reports accessible by the public. In the Commission's April 30, 1999 Order at Docket Number M-00991220, the Commission denied a request by the Pennsylvania Energy

Association that the reliability reports be treated as confidential by the Commission and the OCA. Reliability Benchmarks and Standards, Docket No. M-00991220 (Order entered April 30, 1999)(“April 30, 1999 Order”). In denying the request, the Commission made the following point:

[A]n important policy goal that was to be met in restructuring the electric industry was the preservation of the integrity and reliability of the electric service and electric transmission and distribution system. In light of this goal, it would not be in the public interest to deny public access to this information.

April 30, 1999 Order at 22.

It is clear that the public has a substantial interest in the reliability of the distribution system and in the efforts of an EDC to meet the reliability requirements of the Commission. Under the Commission's regulations, the Commission will issue a protective order:

only when a participant demonstrates that the potential harm to the participant of providing the information would be substantial and that the harm to the participant if the information is disclosed without restriction outweighs the public's interest in free and open access to the administrative hearing process.

52 Pa. Code § 5.423(a).

Here, with respect to subsections 57.195(b)(7), (8), (10), and (11) and 57.195(e)(7) and (8), PECO claims that disclosure of budgeted information will interfere with PECO's ability to negotiate with contractors who submit bids because contractors could make faulty assumptions about PECO that would put PECO at an unfair bargaining position and result in substantial economic harm to PECO, its shareholders and customers. Petition at ¶29. PECO further contends that the requirement in 57.195(b)(7) requiring PECO to explain any variances of 10% or greater may cause PECO to make plans for a project known before the appropriate time.

Petition at ¶30. Finally, PECO argues that if this information is public, PECO will have less flexibility to shift money to and from different categories due to internal and external pressures. Petition at ¶31. PECO claims that this information is historically proprietary. Petition at ¶32.

The OCA submits that it is important to recognize that distribution operations remain fully regulated. Much of the information relating to budgeted expenses and investments that PECO requests to be treated as proprietary is the type of information that is often part of a base rate case and is subject to significant public scrutiny in that process. For example, in several electric utility rate cases, the EDCs submitted budgeted information relating to operation and maintenance expense and capital investments that was not treated as proprietary. A comparison of that budgeted data to actual data often occurs during the base rate review. See, e.g., Pa. P.U.C. v. PECO Light Co., 59 Pa.PUC 67 at 108, 120, 123 (1985) (relating to tree trimming, maintenance expense, and employee levels); Pa. P.U.C. v. Philadelphia Electric Co., 58 Pa.PUC 743, 749-50, 789-90, 794 (1985) (relating to budgeted versus actual plant, budget for operation and maintenance expenses, and wage expenses); Pa. P.U.C. v. Pennsylvania Power & Light Co., 59 Pa.PUC 332 at 734-35 (1985).

The claim that release of such information will somehow compromise bargaining positions would lead to an unreasonable conclusion that all utility budget information should be withheld from public view. This is completely inconsistent with the regulatory process. Moreover, contractors, labor unions and third-party vendors are aware that PECO is a regulated utility and that overspending on expenses and investments may be scrutinized by the Commission. The public has a right to know how utility dollars are being spent and how the utility is managing its reliability performance.

PECO further claims that public access to staffing levels required by 57.195(e)(9) will also give labor groups an unfair leverage against PECO when negotiating contracts. Petition at ¶20. As the Commission states in the 2004 Final Rulemaking Order:

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 staffing levels by an EDC will not negatively affect its ability to operate.

2004 Final Rulemaking Order at 44. The OCA submits that PECO has not established the harm it will suffer from disclosure of this information. As stated above, this information is routinely provided in rate cases and is not confidential.

With respect to subsection 57.195(e)(10), regarding contractor spend information, PECO claims that public release of this information would interfere with contract negotiations. Petition at ¶15. PECO suggests that the Commission's 2004 Final Rulemaking Order at page 44 indicates that it is reasonable that EDC's request that this information should be made proprietary. Petition at ¶14. The Commission's 2004 Rulemaking Order provides:

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 and EDC and any contract 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.

2004 Final Rulemaking Order at 44. Critically, the Commission's reference upon which PECO relies relates to the specifics of an individual contract and not the aggregate data that is to be reported. PECO must meet its burden under 52 Pa. Code § 5.423 to demonstrate the harm from

this aggregate data, data that is often reviewed in setting base rates. PECO has not met this burden.

PECO also cites 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 (July 20, 2000) ("Exelon Order") for the proposition that pricing data should not be released because such information may cause unfair economic and competitive damage. There the Commission ruled that sales and revenue data that would allow *competitors* to calculate the companies' average price per kWh should be confidential. Exelon Order at *2. The Exelon Order does not apply to PECO because PECO is a regulated entity, unlike the competitive electric generation suppliers in the Exelon Order. Moreover, PECO has not shown how a contractor could calculate any relevant price from aggregate data covering numerous types of contractors. PECO has failed to show how contractor spend information will result in substantial harm to PECO.

Finally, the Commission has recognized in both its 2004 Final Rulemaking Order and its April 30, 1999 Order that much of the information relating to the reliability of the distribution system was already publicly available and that its further compilation into the reliability reports would not place the EDC at a competitive disadvantage or cause other harm. In the 2004 Final Rulemaking Order, the Commission addressed the EDC's request for broad proprietary treatment as follows:

Although the Commission has no intention of actively sharing this type of information with other parties outside of 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.

2004 Final Rulemaking Order at 34. In the April 30, 1999 Order, addressing similar arguments, the Commission stated:

[W]e fail to see how the information relating to the reliability of an EDC's distribution system could provide others with a competitive advantage. In a regulated monopolistic electric distribution industry, there are no other competitors.

April 30, 1999 Order at 22. The same reasoning applies to the request of PECO here.

In its 2004 Final Rulemaking Order, the Commission allowed EDCs to apply for protective orders relating to reliability reporting, but the Commission was clear that the burden is on the EDC to demonstrate the need for a protective order. See 2004 Final Rulemaking Order at 35. That burden is a significant one, particularly given the substantial public interest in the reliable operation of the distribution and transmission system. PECO has failed to meet its burden to justify withholding information from public view. The OCA submits that PECO's request must be denied.

WHEREFORE, the OCA respectfully requests that the Commission deny PECO's
Petition for a Protective Order and ensure that the required reliability reports remain public.

Respectfully Submitted,



Tanya J. McCloskey
Senior Assistant Consumer Advocate
Lori A. Herman
Assistant Consumer Advocate

Counsel for:
Irwin A. Popowsky
Consumer Advocate

Office of Consumer Advocate
555 Walnut Street 5th Floor, Forum Place
Harrisburg, PA 17101-1923
(717) 783-5048

Dated: January 19, 2005
82548

CERTIFICATE OF SERVICE

RE: Petition of PECO Energy Company :
for a Protective Order for Proprietary : Docket No. L-00030161
Information Required to be Reported :
Under 52 Pa. Code § 57.195 :

I hereby certify that I have this day served a true copy of the foregoing document,
Answer of the Office of Consumer Advocate in Opposition to the Petition for Protective Order of
the PECO Energy, upon parties of record in this proceeding in accordance with the requirements of
52 Pa. Code § 1.54 (relating to service by a participant), in the manner and upon the persons listed
below:

Dated this 19th day of January 2005.

RECEIVED
2005 JAN 19 PM 3:57
SECRETARY'S BUREAU

SERVICE BY INTEROFFICE MAIL

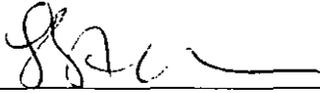
Johnnie Simms, Esquire
Office of Trial Staff
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

SERVICE BY FIRST CLASS MAIL

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Harrisburg, PA 17101

Shari C. Gribbin, Esquire
PECO Energy Company
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Philadelphia, PA 19101



Tanya J. McCloskey
Senior Assistant Consumer Advocate
Lori A. Herman
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82520.doc



ORIGINAL

OFFICE OF SMALL BUSINESS ADVOCATE
Suite 1102, Commerce Building
300 North Second Street
Harrisburg, Pennsylvania 17101

William R. Lloyd, Jr.
Small Business Advocate

January 20, 2005

(717) 783-2525
(717) 783-2831 (FAX)

HAND DELIVERED

James J. McNulty, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
P. O. Box 3265
Harrisburg, PA 17105-3265

RECEIVED
2005 JAN 20 PM 3:04
PA FOR
SECRETARY'S BUREAU

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

Dear Secretary McNulty:

I am delivering for filing today the original plus three copies of the:

1. Notice of Intervention of the Small Business Advocate in the above captioned matter;
2. Public Statement of the Small Business Advocate relating to the filing of that Notice of Intervention; and
3. Answer of the Office of Small Business Advocate to the Petition of Duquesne Light Company for a Protective Order.

Copies of each of the documents listed above are being served today on all known parties in this proceeding. A Certificate of Service to that effect is enclosed.

Sincerely,

William R. Lloyd, Jr.
Small Business Advocate

DOCUMENT
FOLDER

Enclosures
cc: Parties of Record

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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PA 1000
SECRETARY'S BUREAU

2005 JAN 20 PM 3: 04

RECEIVED

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

**ANSWER OF THE
OFFICE OF SMALL BUSINESS ADVOCATE
TO THE PETITION OF DUQUESNE LIGHT COMPANY
FOR A PROTECTIVE ORDER**

In accordance with Section 5.61 of the regulations of the Pennsylvania Public Utility Commission ("PUC" or "Commission"), 52 Pa. Code § 5.61, the Office of Small Business Advocate ("OSBA") files this Answer to the Petition of Duquesne Light Company ("Duquesne" or "Company") for a Protective Order ("Petition") filed with the Commission on December 28, 2004. Pursuant to Section 5.423 of the Commission's regulations, 52 Pa. Code § 5.423, Duquesne requested that the Commission issue a Protective Order restricting access to, and disclosure of, proprietary and/or confidential information that may be contained in the quarterly and annual reliability reports that the Company is required to file in accordance with Section 57.195 of the Commission's regulations, 52 Pa. Code § 57.195. The OSBA responds to the numbered paragraphs in Duquesne's Petition as follows:

1. The Commission's Final Rulemaking Order in Rulemaking Re Amending Electric Service Reliability Regulations at 52 Pa. Code Chapter 57, Docket No. L-00030161 (Order entered May 20, 2004) ("Final Rulemaking Order"), is a public document that speaks for itself. Therefore, no response is necessary.

2. The Final Rulemaking Order is a public document that speaks for itself. Therefore, no response is necessary.

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FEB 08 2005

DOCUMENT
FOLDER

3. The Commission's Secretarial Letter dated October 21, 2004, is a public document that speaks for itself. Therefore, no response is necessary.

4. Admitted.

5. Paragraph No. 5 of Duquesne's Petition consists of legal opinions and conclusions to which no response is necessary.

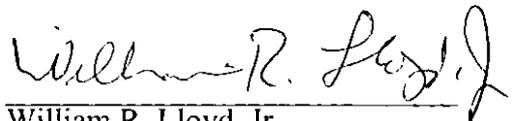
6. The OSBA is without sufficient knowledge or information upon which to form a belief regarding the extent to which disclosure to the general public of the information described in Paragraph No. 6 of Duquesne's Petition may harm the Company. The OSBA denies that disclosure to the OSBA of the information described in Paragraph No. 6 of Duquesne's Petition, subject to a protective order, would cause harm to the Company. Rather, if a protective order is otherwise warranted, the OSBA should be permitted to obtain and review such information subject to a protective order that allows the OSBA to safeguard the interests of small business customers within the Company's service territory but ensures that sensitive Company data is not made broadly available to the public. The remainder of Paragraph No. 6 of Duquesne's Petition consists of legal opinions and conclusions to which no response is necessary.

7. The OSBA is without sufficient knowledge or information upon which to form a belief regarding the extent to which disclosure to the general public of the information described in Paragraph No. 7 of Duquesne's Petition may harm the Company. The OSBA denies that disclosure to the OSBA of the information described in Paragraph No. 7 of Duquesne's Petition, subject to a protective order, would cause harm to the Company. Rather, if a protective order is otherwise warranted, the OSBA should be permitted to obtain and review such information subject to a protective order that allows the OSBA to safeguard the interests of small business customers within the Company's service territory but ensures that sensitive Company data is not made broadly available to the public. The remainder of Paragraph No. 7 of Duquesne's Petition consists of legal opinions and conclusions to which no response is necessary.

8. The OSBA is without sufficient knowledge or information upon which to form a belief regarding the extent to which disclosure to the general public of the information described in Paragraph No. 8 of Duquesne's Petition may harm the Company. The OSBA denies that disclosure to the OSBA of the information described in Paragraph No. 8 of Duquesne's Petition, subject to a protective order, would cause harm to the Company. Rather, if a protective order is otherwise warranted, the OSBA should be permitted to obtain and review such information subject to a protective order that allows the OSBA to safeguard the interests of small business customers within Duquesne's service territory but ensures that sensitive Company data is not made broadly available to the public. The remainder of Paragraph No. 8 of Duquesne's Petition consists of legal opinions and conclusions to which no response is necessary.

WHEREFORE, the Office of Small Business Advocate respectfully requests that, if the Commission grants Duquesne's Petition for Protective Order, any Protective Order issued by the Commission afford the OSBA reasonable access to the information described in Paragraph Nos. 6, 7, and 8 of Duquesne's Petition so as to allow the OSBA to protect the interests of small business customers within the Company's service territory.

Respectfully submitted,



William R. Lloyd, Jr.
Small Business Advocate

Karen S. Miller
Assistant Small Business Advocate

Office of Small Business Advocate
Suite 1102, Commerce Building
300 North Second Street
Harrisburg, PA 17101
(717) 783-2525
(717) 783-2831 (fax)

Dated: January 20, 2005

ORIGINAL

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

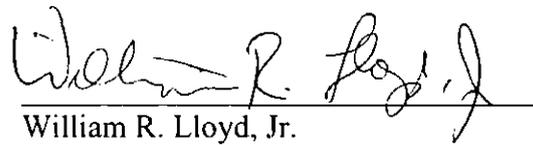
**Office of
Small Business Advocate
Notice of Intervention**

The Office of Small Business Advocate, an agency of the Commonwealth authorized by the Small Business Advocate Act (Act 181 of 1988, 73. P.S. §§399.41 - 399.50) to represent the interest of small business consumers as a party in proceedings before the Pennsylvania Public Utility Commission, files this Notice of Intervention in this proceeding pursuant to the provisions of 52 Pa. Code §5.71(a)(1).

Representing the Office of Small Business Advocate in this proceeding is:

Karen S. Miller, Esquire
Office of Small Business Advocate
Suite 1102, Commerce Building
300 North Second Street
Harrisburg, Pennsylvania 17101
(717) 783-2525
(717) 783-2831 (fax)
karenmil@state.pa.us

DOCUMENT
FOLDER


William R. Lloyd, Jr.
Small Business Advocate

Date: January 20, 2005

DOCKETED
FEB 08 2005

**PUBLIC STATEMENT OF
SMALL BUSINESS ADVOCATE
CONCERNING THE INTEREST
OF SMALL BUSINESS CONSUMERS
TO BE PROTECTED BY THE FILING OF A
NOTICE OF INTERVENTION
IN THE PROCEEDING INVOLVING THE PETITION OF
DUQUESNE LIGHT COMPANY
FOR A PROTECTIVE ORDER
AT DOCKET NO. L-00030161**

The Small Business Advocate is authorized and directed to represent the interest of small business consumers of utility services in Pennsylvania under the provisions of the Small Business Advocate Act, Act 181 of 1988, 73 P.S. §§399.41 - 399.50 (the "Act"). The Act further provides that the Small Business Advocate is to issue publicly a written statement setting forth the specific interest of small business consumers to be protected by the intervention in any proceeding involving those interests before the Public Utility Commission ("PUC" or "Commission"). This public statement relates to the filing today by the Small Business Advocate of a Notice of Intervention in the proceeding involving the Petition of Duquesne Light Company for Protective Order, Pertaining to Information Contained in its Quarterly and Annual Reliability Reports ("Duquesne") at Docket No. L-00030161.

The Office of Small Business Advocate ("OSBA") has intervened in this case to assure that the interests of the small business customers now served by Duquesne are adequately represented and protected. The OSBA will participate in this proceeding to the extent necessary to identify and advance any issues that are important to small business consumers who will be affected by this matter.

Date: January 20, 2005

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FOLDER**

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

CERTIFICATE OF SERVICE

I certify that I am serving two copies of the Answer to Duquesne Light Company's Petition for Protective Order, and Notice of Intervention and Public Statement on behalf of the Office of Small Business Advocate by first class mail upon the persons addressed below:

Richard S. Herskovitz, Esquire
Assistant General Counsel
Duquesne Light Company
411 Seventh Avenue, 8th Floor
Pittsburgh, PA 15219
(412) 393-3662
(412) 393-5602 (fax)

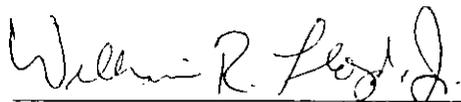
Johnnie E. Simms, Director
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Pa. Public Utility Commission
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(717) 772-2677 (fax)

Bohdan R. Pankiw, Chief Counsel
Law Bureau
Pa. Public Utility Commission
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(717) 783-3458 (fax)

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Consumer Advocate
Office of Consumer Advocate
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(717) 783-7152 (fax)

Thomas E. Sheets, Director
Bureau of Audits
Pa. Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265
(717) 783-5000
(717) 783-9866 (fax)

Mr. George Dorow
Bureau of Audits
Pa. Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265
(717) 783-5000
(717) 783-9866 (fax)



William R. Lloyd, Jr.
Small Business Advocate

Date: January 20, 2005

PA PUC
SECRETARY'S BUREAU

2005 JAN 20 PM 3:04

RECEIVED

Scott J. Rubin
Attorney ♦ Consultant

ORIGINAL

3 Lost Creek Drive ♦ Selinsgrove, PA 17870 ♦ (570)743-2233 ♦ Fax: (570)743-8145 ♦ scott@publicutilityhome.com

January 20, 2005

James McNulty, Secretary
Pa. Public Utility Commission
P.O. Box 3265
Harrisburg PA 17105-3265

DOCUMENT
FOLDER

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

Dear Secretary McNulty:

Enclosed for filing please find the original and three (3) copies of the Answer of AFL-CIO Utility Caucus in Opposition to Applications for Protective Orders Filed by Duquesne Light Company, PECO Energy Company, and PPL Electric Utilities Corporation. I am serving copies on all parties, as shown on the attached Certificate of Service.

In addition, I have enclosed an extra copy of the document that I would appreciate having time-stamped and returned in the enclosed envelope.

If you have any questions or require additional information, please do not hesitate to contact me.

Sincerely,


Scott J. Rubin

cc: All parties of record
Elizabeth Barnes, Esq.

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05 JAN 21 AM 8:58
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RJP

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

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ANSWER OF AFL-CIO UTILITY CAUCUS
IN OPPOSITION TO
APPLICATIONS FOR PROTECTIVE ORDERS
FILED BY DUQUESNE LIGHT COMPANY, PECO ENERGY
COMPANY, AND PPL ELECTRIC UTILITIES CORPORATION

Applications and Petitions for Protective Orders regarding Electric Reliability

Service reports were filed by Duquesne Light Company ("Duquesne") on December 28, 2004; PECO Energy Company ("PECO") on December 30, 2004; and PPL Electric Utilities Corporation ("PPL") on January 10, 2005.

In addition, on December 22, 2004, Metropolitan Edison Company, Pennsylvania Electric Company, and Pennsylvania Power Company ("FirstEnergy Companies") filed an Application for Protective Order. The AFL-CIO Utility Caucus filed a response to the FirstEnergy Companies' Application on January 11, 2005.

The AFL-CIO Utility Caucus now files this Answer to the requests of Duquesne, PECO, and PPL, and again seeks the denial of the utilities' requests to prohibit the public from seeing substantial portions of their reliability reports. As explained more fully below, each of the utilities has failed to meet the stringent requirements necessary for withholding important information from the public.

Under the Commission's regulations, 52 Pa. Code § 5.423, the Commission must consider and address the following factors before it can withhold information from the public:

- The extent to which the disclosure would cause unfair economic or competitive advantage.
- The extent to which the information is known by others and used in similar activities.
- The worth or value of the information to the participant and to the participant's competitors.
- The degree of difficulty and cost of developing the information.
- Other statutes or regulations dealing specifically with disclosure of the information.

52 Pa. Code § 5.423(a).

The information that the utilities are trying to shield from the public would not adversely affect the companies' competitive positions and would not cause them any type of economic harm. Moreover, it also does not appear that the information would pose any type of security risk or otherwise affect the public health and safety.

Collectively, the utilities have requested that 14 of the Commission's reporting requirements be kept confidential. Rather than responding to the specific numbered paragraphs of each utility's filing, AFL-CIO Utility Caucus will provide a separate response to each reporting requirement that one or more of the utilities has sought to withhold from the public.

1. 52 Pa. Code § 57.195(b)(6) (annual comparison of established transmission and distribution inspection and maintenance goals and objectives versus actual results achieved); requested by Duquesne. Duquesne's only argument for withholding this information from the public is that the public might not understand the information or get the wrong impression. Specifically, Duquesne states that it could "lend itself to

confusion, distortion, and misinterpretation by others.” Duquesne Petition ¶ 6. The fact that someone might not understand information is no reason to withhold the information from the public. Indeed, in the interests of educating the public, the information should be disclosed and explained to the public by the utility. Rather than keeping the public uninformed and confused, full disclosure of the relevant information would help to educate the public about the factors that affect the reliability of a utility’s service. There is nothing in the Commission’s regulations or any statute that would authorize the Commission to withhold information from the public because it might be confusing or lead to the wrong impression.

2. 52 Pa. Code § 57.195(b)(7) (annual comparison of budgeted versus actual transmission and distribution operation and maintenance expenses) and 52 Pa. Code § 57.195(b)(8) (same information concerning capital expenditures); requested by Duquesne and PECO. This type of information is routinely provided by utilities during base rate cases and, to the best of AFL-CIO’s knowledge, has never been withheld from the public. Duquesne and PECO assert that this type of information could provide contractors or potential contractors with important information about the utility’s work plan or resources. That argument, however, appears to be based on nothing more than speculation. While contractors might find it interesting to see a utility’s overall budget and an explanation of why actual expenditures differed from the budget, it is difficult to see how this could give any potential contractor an advantage. The contractor is bidding on a particular project. The utility is not disclosing the budget for that particular project, or otherwise disclosing any information that could help a contractor determine the amount that the utility is willing to pay, let alone develop the bid that is necessary to win

the work over other potential contractors. To the best of AFL-CIO's knowledge, the Commission has never withheld information from the public about utilities' budgets and expenditures – so long as the categories are broad enough – and there is no reason to do so now.

3. 52 Pa. Code § 57.195(b)(9) (transmission and distribution goals and objectives for the current year); requested by Duquesne. As is the case with § 57.195(b)(6), Duquesne's only argument for withholding this information from the public is that the public might not understand the information or get the wrong impression. This is not a reason for withholding information from the public, as explained in paragraph 1, above.

4. 52 Pa. Code § 57.195(b)(10) (budgeted transmission and distribution operation and maintenance expenses for the current year) and 52 Pa. Code § 57.195(b)(11) (same information for capital expenditures); requested by Duquesne and PECO. Duquesne and PECO make the same arguments for withholding current-year budget information from the public as they do in arguing that historic budget information should be withheld (see paragraph 2, above). Once again, there is no reason to believe that disclosing a budget for an entire account would provide any useful or meaningful information to a potential contractor.

5. 52 Pa. Code § 57.195(e)(3) (data relating to the worst performing 5% of circuits) and 52 Pa. Code § 57.195(e)(4) (remedial efforts taken and planned for the worst performing 5% of circuits); requested by PPL. PPL asks to withhold from the public the identification of its worst performing circuits “to avoid an inappropriate reaction to a circuit's designation as a worst performing circuit.” PPL Application ¶ 4. As was the case with Duquesne's requests concerning information about goals and objectives (see

paragraphs 1 and 3, above), there is absolutely no basis under the Commission's regulations or otherwise for withholding information from the public because the public might get the wrong impression or have an "inappropriate reaction." If PPL is concerned that the public might not fully understand why a circuit is among the worst on PPL's system, then PPL is free to explain to the public what this means and what PPL will be doing to ensure that the circuit does not remain on that list. That is no reason, however, to fail to inform the public about the identity of the worst performing circuits.

6. 52 Pa. Code § 57.195(e)(6) (quarterly progress toward meeting inspection and maintenance goals and objectives); requested by Duquesne and PPL. Duquesne makes the same arguments regarding this requirement as it makes about the disclosure of other goals and objectives. See paragraphs 1 and 3, above. Similarly, PPL argues that describing the progress toward meeting its goals "necessarily involves budget and other financial data which PPL Electric believes is proprietary information." As AFL-CIO explained in paragraphs 1, above, there is nothing about the disclosure of goals and objectives, or a utility's progress toward meeting them, that is confidential or proprietary. The reporting requirement does not require the disclosure of project-specific budgets or projections. All it does is request "information" on the utility's efforts to achieve its goals and objectives. Once again, there is no reason why this information would provide any advantage to prospective contractors, and there is no justification for withholding it from the public.

7. 52 Pa. Code § 57.195(e)(7) (quarterly comparison of budgeted versus actual transmission and distribution operation and maintenance expenses) and 52 Pa. Code § 57.195(e)(8) (same information concerning capital expenditures); requested by

Duquesne, PECO, and PPL. The same arguments are made by the utilities about quarterly information as they make about annual information. As AFL-CIO explained in paragraph 2, above, this type of information is routinely disclosed in rate cases and is otherwise made available to the public. There is no reason to believe that disclosure of information for an entire functional account would provide any prospective contractor with an advantage, or otherwise place the utility at a disadvantage.

8. 52 Pa. Code § 57.195(e)(9) (staffing levels), 52 Pa. Code § 57.195(e)(10) (contractor hours and dollars), and 52 Pa. Code § 57.195(e)(11) (call-out acceptance rates and times); requested by Duquesne (§§ 57.195(e)(9) and (e)(10) only), PECO, and PPL. The utilities assert that any information about their workforce levels is “competitively sensitive” (PPL Application ¶ 4), could affect labor or contractor negotiations (PECO Petition ¶ 20), and might be misleading to the public (Duquesne Petition ¶¶ 6 and 7; PECO Petition ¶¶ 21 and 22; PPL Application ¶ 4). The utilities never explain why any of this would occur. Utility employment levels have been part of the annual reports filed with the Commission and FERC for decades. This information has been publicly available and there is no legitimate reason for that to change. Moreover, labor unions are well aware of the number of utility employees and contractors performing various types of work at the utility, so it is not reasonable to believe that they would achieve some type of unfair advantage if this information were made available to the public in a Commission report. Further, as AFL-CIO has explained above, if this type of information might give the public the wrong impression about a utility’s commitment to safety and reliability, then the utility should be encouraged to explain that to the public. The remedy for an ill-informed public is not the withholding of important information;

rather, the remedy is to provide that information along with a full and impartial explanation of what it means.

WHEREFORE, for the reasons set forth above, the AFL-CIO Utility Caucus submits that Duquesne, PECO, and PPL have failed to show that there is any valid reason for withholding from the public any information in its reliability reports. The Commission, therefore, should deny the requests for Protective Orders filed by Duquesne, PECO, and PPL and require the companies' reliability reports to be fully available to the public.

Respectfully submitted,



Scott J. Rubin, Esq.
3 Lost Creek Drive
Selinsgrove, PA 17870
(570) 743-2233
Fax: (570) 743-8145
scott@publicutilityhome.com

Counsel for:
AFL-CIO Utility Caucus

Dated: January 20, 2005

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing upon the parties to this proceeding listed on the following page, by first class mail.



Scott J. Rubin
Counsel for Complainant

Dated: January 20, 2005

Elizabeth Barnes, Esq.
Pa. Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

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

Hon. William R. Lloyd
Small Business Advocate
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Harrisburg, PA 17101

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COMMONWEALTH OF PENNSYLVANIA



OFFICE OF CONSUMER ADVOCATE

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Consumer Advocate

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January 31, 2005

ORIGINAL
SECRETARY'S BUREAU

2005 JAN 31 PM 3:58

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

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

Dear Secretary McNulty:

Enclosed for filing are an original and three (3) copies of the Answer of the Office of Consumer Advocate in Opposition to the Petition for Protective Order of PPL Electric Utilities Corporation, in the above-referenced proceeding.

Copies have been served to all parties of record as indicated on the enclosed Certificate of Service.

Sincerely,

Lori A. Herman
Assistant Consumer Advocate

Enclosures
cc: Parties of Record
82735

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142

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

ORIGINAL
SECRETARY'S BUREAU
2005 JAN 31 PM 3:58

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

ANSWER OF THE OFFICE OF CONSUMER ADVOCATE
IN OPPOSITION TO
THE PETITION FOR PROTECTIVE ORDER
OF PPL ELECTRIC UTILITIES CORPORATION

I. INTRODUCTION

Pursuant to 52 Pa. Code § 5.61, the Office of Consumer Advocate ("OCA") hereby files this Answer in response to the Petition of PPL Electric Utilities Corporation ("PPL") for a Protective Order. On May 20, 2004, the Commission entered a Final Rulemaking Order at this docket number, amending the Commission's regulations at 52 Pa. Code § 57.195. Rulemaking Re Amending Electric Service Reliability Regulations at 52 Pa. Code Chapter 57, Docket No. L-00030161 (Order entered May 20, 2004)("2004 Final Rulemaking Order"). In the 2004 Final Rulemaking Order, the Commission revised the annual and quarterly reliability reporting requirements for electric distribution companies ("EDC") to provide for more complete reporting of information related to the reliability of the distribution system. On January 10, 2005, PPL filed a Petition for Protective Order to restrict the disclosure of certain information relating to several of these reporting requirements. The OCA submits that for the reasons set forth in its Answer below, and for the reasons the Commission has previously discussed in its 2004 Final Rulemaking Order, the Commission should deny PPL's Petition.

In its Petition, PPL requests that certain information required to be reported to the Commission in quarterly reports pursuant to 52 Pa. Code § 57.195 be treated as proprietary

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information. PPL requests that the following information required by 52 Pa. Code § 57.195(e)(3), (4), (6), (7), (8), (10) and (11) be deemed proprietary information:

- (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 worse 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).
- (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 the 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 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.
- (10) Budgeted transmission and distribution operation and maintenance 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.

In its Petition, PPL claims that release of this information would cause substantial harm to PPL, as well as other EDCs and the Commission. Petition ¶ 5. PPL further claims that the public will not be adversely affected by treating this information as proprietary. Id. The OCA submits that PPL has failed to establish any sufficient basis for keeping this information

proprietary. For the reasons set forth in this Answer, as well as the Commission's 2004 Final Rulemaking Order, the OCA submits that the Commission should deny the PPL's Petition.

II. ANSWER

The information required by Chapter 57 pertains to system reliability, a matter of great public importance. The Commission has recognized this fact and expressed its intention to generally keep these reports public. In its 2004 Final Rulemaking Order, the Commission stated:

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.

2004 Final Rulemaking Order at 35. The OCA would also note that in an earlier proceeding regarding reliability benchmarks and standards, the Commission also pointed out the importance of making reliability reports accessible by the public. In the Commission's April 30, 1999 Order at Docket Number M-00991220, the Commission denied a request by the Pennsylvania Energy Association that the reliability reports be treated as confidential by the Commission and the OCA. Reliability Benchmarks and Standards, Docket No. M-00991220 (Order entered April 30, 1999)(“April 30, 1999 Order”). In denying the request, the Commission made the following point:

[A]n important policy goal that was to be met in restructuring the electric industry was the preservation of the integrity and reliability of the electric service and electric transmission and distribution system. In light of this goal, it would not be in the public interest to deny public access to this information.

April 30, 1999 Order at 22.

It is clear that the public has a substantial interest in the reliability of the distribution system and in the efforts of an EDC to meet the reliability requirements of the

Commission. Under the Commission's regulations, the Commission will issue a protective order:

only when a participant demonstrates that the potential harm to the participant of providing the information would be substantial and that the harm to the participant if the information is disclosed without restriction outweighs the public's interest in free and open access to the administrative hearing process.

52 Pa. Code § 5.423(a).

Here, with respect to subsections (e)(3) and (4), relating to circuit designations, PPL requests that the publicly released version of the quarterly reports contain only the numeric designation and that the name of the circuit be treated as confidential. PPL claims that the public does not have technical understanding of the worst performing circuit program and may misinterpret the information. Petition at 3. Similarly, with respect to subsection (e)(11), PPL claims that the public may not understand the call-out process and may misinterpret the data or make erroneous comparisons between the EDCs. Petition at 4. PPL has not explained how release of this information will cause substantial harm that outweighs the public benefit of having access to this information. If PPL is concerned about misinterpretation of the information by the public, PPL can include appropriate explanations with each report so that the public fully understand the information.

With respect to subsections (e)(6) through (8), PPL merely states that disclosure of transmission and distribution inspection and maintenance goals and maintenance of capital budgets is proprietary information. PPL has provided no information as to the type of harm they anticipate or whether the harm would be substantial if information required by these subsections is made public. In fact, information relating to budgets for operation and maintenance expenses and capital investments are submitted by utilities filing base rate cases. A comparison of that

budgeted data to actual data often occurs during the base rate review. See, e.g., Pa. P.U.C. v. Duquesne Light Co., 59 Pa.PUC 67 at 108, 120, 123 (1985) (relating to tree trimming, maintenance expense, and employee levels); Pa. P.U.C. v. Philadelphia Electric Co., 58 Pa.PUC 743, 749-50, 789-90, 794 (1985) (relating to budgeted versus actual plant, budget for operation and maintenance expenses, and wage expenses); Pa. P.U.C. v. Pennsylvania Power & Light Co., 59 Pa.PUC 332 at 734-35 (1985).

With respect to subsections (e)(9), pertaining to release of staffing levels; (e)(10), pertaining to contractor hours and dollars for operation and maintenance; and (e)(11), pertaining to monthly call-out acceptance rates, PPL claims that disclosure of this information will interfere with the bargaining process and cause PPL economic harm. Petition at 4-5. It is important to recognize that distribution operations remain fully regulated. As explained above, much of the information relating to operation and maintenance costs and staffing levels that PPL requests to be treated as proprietary is the type of information that is often part of a base rate case and is subject to significant public scrutiny in that process. This information is also included in annual FERC reports. Contractors and labor unions already have access to this information and are aware that PPL is a regulated utility and that overspending on expenses and investments may be scrutinized by the Commission. The public has a right to know how utility dollars are being spent and how the utility is managing its reliability performance.

With regard to staffing levels, the Commission has stated that it sees no reason why this information should be treated as proprietary, and the OCA submits that PPL has not explained the substantial harm it will incur if this information is made public. As the Commission stated in the 2004 Final Rulemaking Order:

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, disclosure of staffing levels by an EDC will not negatively affect its ability to operate.

2004 Final Rulemaking Order at 44. As stated above, this information is routinely provided in rate cases and is not confidential.

Finally, the Commission has recognized in both its 2004 Final Rulemaking Order and its April 30, 1999 Order that much of the information relating to the reliability of the distribution system was already publicly available and that its further compilation into the reliability reports would not place the EDC at a competitive disadvantage or cause other harm. In the 2004 Final Rulemaking Order, the Commission addressed the EDCs' request for broad proprietary treatment as follows:

Although the Commission has no intention of actively sharing this type of information with other parties outside of 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.

2004 Final Rulemaking Order at 34. In the April 30, 1999 Order, addressing similar arguments, the Commission stated:

[W]e fail to see how the information relating to the reliability of an EDC's distribution system could provide others with a competitive advantage. In a regulated monopolistic electric distribution industry, there are no other competitors.

April 30, 1999 Order at 22. The same reasoning applies to the request of PPL here.

In its 2004 Final Rulemaking Order, the Commission allowed EDCs to apply for protective orders relating to reliability reporting, but the Commission was clear that the burden is

on the EDC to demonstrate the need for a protective order. See 2004 Final Rulemaking Order at 35. That burden is a significant one, particularly given the substantial public interest in the reliable operation of the distribution and transmission system. PPL has failed to meet its burden to justify withholding information from public view. The OCA submits that PPL's request must be denied.

WHEREFORE, the OCA respectfully requests that the Commission deny the PPL's Petition for a Protective Order and ensure that the required reliability reports remain public.

Respectfully Submitted,



Tanya J. McCloskey
Senior Assistant Consumer Advocate
Lori A. Herman
Assistant Consumer Advocate

Counsel for:
Irwin A. Popowsky
Consumer Advocate

Office of Consumer Advocate
555 Walnut Street 5th Floor, Forum Place
Harrisburg, PA 17101-1923
(717) 783-5048

Dated: January 31, 2005
82664

CERTIFICATE OF SERVICE

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

I hereby certify that I have this day served a true copy of the foregoing document, Answer of the Office of Consumer Advocate in Opposition to the Petition for Protective Order of PPL Electric Utilities COrporation, upon parties of record in this proceeding in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant), in the manner and upon the persons listed below:

Dated this 31st day of January, 2005.

SERVICE BY E-MAIL and INTEROFFICE MAIL

Johnnie E. Simms, Esquire
Office of Trial Staff
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

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2005 JAN 31 PM 3:58
SECRETARY'S BUREAU

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Angelo M. Regan, P.E.
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COMMONWEALTH OF PENNSYLVANIA



OFFICE OF SMALL BUSINESS ADVOCATE
Suite 1102, Commerce Building
300 North Second Street
Harrisburg, Pennsylvania 17101

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William R. Lloyd, Jr.
Small Business Advocate

January 31, 2005

(717) 783-2525
(717) 783-2831 (FAX)

HAND DELIVERED

James J. McNulty, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
P. O. Box 3265
Harrisburg, PA 17105-3265

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2005 JAN 31 PM 3:13
SECRETARY'S BUREAU

**Re: Rulemaking Re Amending Electric Service Reliability
Regulations at 52 Pa. Code, Chapter 57; Application of
PPL Electric Utilities Corporation for Protective Order
Docket No. L-00030161**

Dear Secretary McNulty:

I am delivering for filing today the original plus three copies of the:

1. Notice of Intervention of the Small Business Advocate in the above captioned matter;
2. Public Statement of the Small Business Advocate relating to the filing of that Notice of Intervention; and
3. Answer of the Office of Small Business Advocate to the Application of PPL Electric Utilities Corporation for a Protective Order.

Copies of each of the documents listed above are being served today on all known parties in this proceeding. A Certificate of Service to that effect is enclosed.

Sincerely,

DOCUMENT
FOLDER

Karen S Miller

Karen S. Miller
Assistant Small Business Advocate

Enclosures
cc: Parties of Record

152

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Rulemaking Re Amending Electric :
Service Reliability Regulations :
At 52 Pa. Code, Chapter 57; : **Docket No. L-00030161**
Application of PPL Electric Utilities :
Corporation for Protective Order :

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Office of
Small Business Advocate
Notice of Intervention

The Office of Small Business Advocate, an agency of the Commonwealth authorized by the Small Business Advocate Act (Act 181 of 1988, 73. P.S. §§ 399.41 - 399.50) to represent the interest of small business consumers as a party in proceedings before the Pennsylvania Public Utility Commission, files this Notice of Intervention in this proceeding pursuant to the provisions of 52 Pa. Code § 5.71(a)(1).

Representing the Office of Small Business Advocate in this proceeding is:

Karen S. Miller, Esquire
Office of Small Business Advocate
Suite 1102, Commerce Building
300 North Second Street
Harrisburg, Pennsylvania 17101
(717) 783-2525
(717) 783-2831 (fax)
karenmil@state.pa.us

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Karen S. Miller
Karen S. Miller
Assistant Small Business Advocate

For:

William R. Lloyd, Jr.
Small Business Advocate

Date: January 31, 2005

DOCKETED
FEB 11 2005

**PUBLIC STATEMENT OF
SMALL BUSINESS ADVOCATE
CONCERNING THE INTEREST
OF SMALL BUSINESS CONSUMERS
TO BE PROTECTED BY THE FILING OF A
NOTICE OF INTERVENTION
IN THE PROCEEDING INVOLVING THE APPLICATION OF
PPL ELECTRIC UTILITIES CORPORATION
FOR A PROTECTIVE ORDER
AT DOCKET NO. L-00030161**

The Small Business Advocate is authorized and directed to represent the interest of small business consumers of utility services in Pennsylvania under the provisions of the Small Business Advocate Act, Act 181 of 1988, 73 P.S. §§ 399.41 - 399.50 (the "Act"). The Act further provides that the Small Business Advocate is to issue publicly a written statement setting forth the specific interest of small business consumers to be protected by the intervention in any proceeding involving those interests before the Public Utility Commission. This public statement relates to the filing today by the Small Business Advocate of a Notice of Intervention in the proceeding involving the Application of PPL Electric Utilities Corporation ("PPL") for a Protective Order at Docket No. L-00030161.

The Office of Small Business Advocate ("OSBA") has intervened in this case to assure that the interests of the small business customers now served by PPL are adequately represented and protected. The OSBA will participate in this proceeding to the extent necessary to identify and advance any issues that are important to small business consumers who will be affected by this matter.

Date: January 31, 2005

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FEB 11 2005

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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 of PPL Electric Utilities :
Corporation for Protective Order :

**ANSWER OF THE
OFFICE OF SMALL BUSINESS ADVOCATE
TO THE APPLICATION
OF PPL ELECTRIC UTILITIES CORPORATION
FOR PROTECTIVE ORDER**

On January 10, 2005, PPL Electric Utilities Corporation (“PPL” or “Company”) filed with the Pennsylvania Public Utility Commission (“PUC” or “Commission”) an Application for Protective Order (“Application”) pursuant to 52 Pa. Code § 5.423. Specifically, PPL requested that the Commission issue a Protective Order restricting the disclosure of proprietary, competitively sensitive or other confidential information that may be filed by the Company pursuant to the reporting requirements contained in 52 Pa. Code Ch. 57. In accordance with 52 Pa. Code § 5.61, the Office of Small Business Advocate (“OSBA”) responds to the numbered paragraphs in PPL’s Application as follows:

1. The Commission’s Final Rulemaking Order in Rulemaking Re Amending Electric Service Reliability Regulations at 52 Pa. Code Chapter 57, Docket No. L-00030161 (Order

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entered May 20, 2004) (“Final Rulemaking Order”), is a public document that speaks for itself. Therefore, no response is necessary.

2. The Commission’s Secretarial Letter dated October 21, 2004, is a public document that speaks for itself. Therefore, no response is necessary.

3. The OSBA admits that PPL has filed five quarterly reports and one annual report under 52 Pa. Code Ch. 57. The Company’s statement that its reports have reflected the expanded reliability data required by the Commission in its Final Rulemaking Order is a legal conclusion to which no response is necessary. The OSBA admits that PPL requested that the reports be treated as proprietary and confidential. PPL’s instant Application is a public document filing that speaks for itself; therefore, no response to the Company’s description of the content of the Application is necessary.

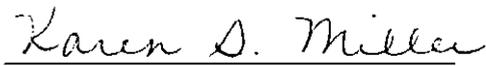
4. The OSBA is without sufficient knowledge or information upon which to form a belief regarding the extent to which disclosure to the general public of the information described in Paragraph No. 4 of PPL’s Application may harm the Company. The OSBA denies that disclosure to the OSBA of the information described in Paragraph No. 4 of PPL’s Application, subject to a protective order, would cause harm to the Company. Rather, if a protective order is otherwise warranted, the OSBA should be permitted to obtain and review such information subject to a protective order that allows the OSBA to safeguard the interests of small business customers within the Company’s service territory but ensures that sensitive Company data is not made broadly available to the public. The remainder of Paragraph No. 4 of PPL’s Application consists of legal opinions and conclusions to which no response is necessary.

5. Paragraph No. 5 of PPL's Application consists of legal opinions and conclusions to which no response is necessary.

6. Paragraph No. 6 of PPL's Application consists of a statement of PPL's intentions in the event the Commission grants the Company's Application. Therefore, no response is necessary.

WHEREFORE, the Office of Small Business Advocate respectfully requests that, if the Commission grants PPL's Application for Protective Order, any Protective Order issued by the Commission afford the OSBA reasonable access to the information described in Paragraph No. 4 of PPL's Application so as to allow the OSBA to protect the interests of small business customers within the Company's service territory.

Respectfully submitted,


Karen S. Miller
Assistant Small Business Advocate

For:

William R. Lloyd, Jr.
Small Business Advocate

Office of Small Business Advocate
Suite 1102, Commerce Building
300 North Second Street
Harrisburg, PA 17101
(717) 783-2525
(717) 783-2831 (fax)

Dated: January 31, 2005

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Rulemaking Re Amending Electric :
Service Reliability Regulations :
At 52 Pa. Code, Chapter 57; : Docket No. L-00030161
Application of PPL Electric Utilities :
Corporation for Protective Order :

CERTIFICATE OF SERVICE

I certify that I am serving two copies of the Answer to the Application of PPL Electric Utilities Corporation's for Protective Order, and Notice of Intervention and Public Statement on behalf of the Office of Small Business Advocate by first class mail upon the persons addressed below:

Paul E. Russell, Esquire
Corporate Counsel
PPL Electric Utilities Corporation
Two North Ninth Street
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(610) 774-6726 (fax)

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(717) 783-9866 (fax)

Mr. George Dorow
Bureau of Audits
Pa. Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265
(717) 783-5000
(717) 783-9866 (fax)



Karen S. Miller
Assistant Small Business Advocate

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2005 JAN 31 PM 3:14
SECRETARY'S BUREAU

Date: January 31, 2005

ORIGINAL

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January 31, 2005

VIA UPS OVERNIGHT

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

JAN 31 2005
PAID
RECEIVED

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

Dear Secretary McNulty:

Enclosed for filing, please find an original and three (3) copies of Metropolitan Edison Company, Pennsylvania Electric Company and Pennsylvania Power Company's Reply to Answers to the Application for Protective Order in the above-referenced matter.

Copies of the enclosed document 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

Alan Michael Seltzer

Enclosures
AMS:flw

c: Linda Evers, Esquire
As per Certificate of Service

DOCUMENT
FOLDER

176

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

Scott J. Rubin, Esquire
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Hon. William R. Lloyd
Small Business Advocate
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Harrisburg, PA 17101

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Citizens' Electric Company
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Spring Valley, NY 10977-5300

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Dated: January 31, 2005

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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

REPLY TO ANSWERS TO APPLICATION FOR PROTECTIVE ORDER

Metropolitan Edison Company, Pennsylvania Electric Company and Pennsylvania Power Company (the "Companies"), pursuant to the Commission's regulations at 52 Pa. Code § 5.63 are filing the following Reply to the Answers of the Office of Consumer Advocate ("OCA") and the AFL-CIO Utility Caucus ("AFL") as follows:

I. Introduction

1. On December 22, 2004, the Companies filed an Application with this Commission pursuant to its regulations at 52 Pa. Code § 5.423 seeking a protective order in connection with certain information required to be filed quarterly and annually with the Commission pursuant to its regulations at 52 Pa. Code Chapter 57.

2. The Application seeks a protective order with respect to information contained in 52 Pa. Code §§ 57.195(b)(5), (7), (8), (10), (11) and 52 Pa. Code §§ 57.195(e)(4), (6), (7), (8), (9), (10) and (11).

3. The Companies' request for a protective order is in accordance with a Secretarial Letter issued by the Commission to all electric distribution companies ("EDCs") on October 21, 2004 authorizing the EDCs to file a petition for proprietary treatment.

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4. On or about January 11, 2005, the AFL and the OCA filed Answers in response to the Application seeking affirmative relief in the form of a dismissal of the Application.

5. This Reply is being submitted in accordance with the Commission's regulations at 52 Pa. Code § 5.63 in order to clarify the Companies' position and to demonstrate that the submission of certain information on a quarterly and annual basis as required by the Commission's regulations under 52 Pa. Code Chapter 57 will cause unfair economic or competitive damage to the Companies and is not otherwise in the public interest.

II. Applicable Standards

6. The Commission's regulations at 52 Pa. Code § 5.423 govern the treatment of proprietary information. In general, those rules require a protective order to use the "least restrictive means of limitation which will provide the necessary protections from disclosure." The Commission or the presiding officer, in deciding whether to grant a request for a protective order, is required to consider, among other relevant factors, the following:

1. The extent to which disclosure would cause unfair economic or competitive damage.
2. The extent to which the information is known by others and used in similar activities.
3. The worth or value of the information to the participant and the participant's competitors.
4. The degree of difficulty and cost of developing the information.
5. Other statutes or regulations dealing specifically with disclosure of the information.

III. Argument

7. In its Answer, the OCA goes to great lengths to indicate that reliability reports are a matter of public interest and should be available generally to the public. The Companies agree that the public has a substantial interest in the reliability of electric distribution systems and the efforts of each individual EDC to meet the reliability requirements established by the Commission. The Companies are also aware that the Commission has in the past denied blanket requests that the reliability reports be treated as confidential. Reliability Benchmarks and Standards, Docket No. M-00991220 (Order entered April 30, 1999).

8. However, it is important to note that the specific information sought to be maintained in a confidential fashion in this proceeding is selected information contained in the quarterly and annual reports --- not the entire reports themselves. Moreover, nothing in the proposed form of protective order submitted by the Companies with the Application would preclude any party from seeking relief from the specific restrictions from public dissemination of the information. The protective order sought in this case is a preventative measure to deal with discrete information that can be used by the wrong party in a fashion against with the Companies' business interests.

9. The information sought to be protected by the Companies in the Application falls into a specific categories that need to be protected to ensure that the Companies are not subjected to a competitive disadvantage in the marketplace. Specifically, protection is sought with respect to contractor-related information (Section 57.195(e)(10)); staffing levels (Section 57.195(e)(9)); budget information (Section 57.195(b)(7), (8), (9) and (11) and 57.195(e)(7) and (8)); remedial efforts to address the

worst performing circuits (Section 57.195(b)(5) and (e) (4)); and call-out acceptance rates (Section 57.195(e)(11)). Each of these specific areas will be discussed below.

A. Contractor Information

10. 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.”

11. On page 44 of the Final Rulemaking Order entered by the Commission on May 20, 2004 amending its regulations at 52 Pa. Code at Chapter 57 (“Final Order”), the Commission recognizes the proprietary nature of specific details on contracts between EDCs like Companies and their contractors, and finds 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, the Companies request that the Commission issue a protective order with regard to the details of specific contracts.

12. The Companies also believe that the Commission should 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 provide for services. Allowing this information to become public will put the Companies at an economic and competitive disadvantage. Contractors could use the average price as leverage in specific contract negotiations, which would likely result in higher costs to the Companies.

13. 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.*”).

14. 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.

15. As in *Petitions of Exelon Energy et al.*, the Commission should issue a protective order with regard to the Companies’ 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

16. 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).”

17. On page 44 of the Final Order, the Commission holds 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. While it is true that the Companies’ distribution activities are not subject to competition from outside companies, they must nevertheless 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 the Companies’ ability to

negotiate future contracts at arms-length thereby resulting in higher costs to the Companies and subsequent higher rates for customers.

18. 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, resulting in possible public image problems, even if the Companies are meeting or exceeding the Commission's reliability levels.

19. 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. Restricting the availability of this data to parties that can interpret it in proper context is essential to the Companies' overall operations and the public interest.

20. The Companies recognize and support the Commission's request that they file staffing level information. However, they are concerned with the harm that could be 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.

21. Therefore, it is appropriate to include staffing level information in the proposed protective order

C. Budget Information

22. 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.

23. 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 the Companies, their customers and shareholders. (See 52 Pa. Code § 5.423(a)(1)).

24. 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 related explanation are not kept confidential, it could create an uneven playing field for bidding on the project or economic harm to the Companies. In addition, it could create a scenario where the Companies are forced to make plans for a project known before the appropriate time.

25. 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, correlate with actual expenditures. To effectively and appropriately manage their business, the Companies often amend their budgets and reallocate resources to respond to issues that arise within the quarter.

26. 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). The type of budget information being requested by the Commission has historically been proprietary and not made available to the public. 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.

27. In addition to the specific factors listed in Section 5.423, the regulations provide 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, the Companies request that the Commission consider the potential misuse of such information. Parties may use budget information to argue that the Companies should have performed a particular activity without understanding the management decisions behind the specific numbers. This is unfair and may require the Companies to defend their projections and/or explain why those projections changed rather than demonstrate their reliability objectives and achievements.

28. For the reasons specified above, the Companies believe that all budgeted information should be maintained in confidence and subject to the proposed protective order. Under this protocol, the Companies’ business interests will be protected while Commission, the Office of Consumer Advocate (“OCA”) and the Office of Small Business Advocate (“OSBA”) will be able to review this data subject to the proposed protective order.

D. Call-Out Rates and Times

29. 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.”

30. 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 the Companies’ bargaining power, resulting in higher costs and subsequent higher rates.

31. Call-out rates are new measures just now being introduced to the Pennsylvania regulatory regime and there are no industry standards to compare this data between electric distribution companies. This situation could result in misinterpretation or improper comparisons of call-out rates between and among the various electric distribution companies, creating adverse public opinion concerning their performance.

32. For the reasons specified above, it is appropriate to include all call-out information provided pursuant to Section 57.195(e)(11) in the Companies’ proposed protective order.

E. Remedial Efforts

33. Section 57.195(b)(5) and Section 57.195(e)(4) require the submission of major remedial efforts taken to address the worst performing 5% of the Companies’ circuits.

34. Identification of poor performing circuits and remedial activities may allow the public to associate a circuit with a specific city or area. This data could be then

erroneously used to conclude that an entire area or community has poor service reliability and is not worthy of economic development and business growth. Needless to say, the identification of poor performing circuits should never be understood by businesses as a deterrent to economic growth.

35. The specification of remedial actions will allow suppliers to identify material and labor needs of an electric distribution company before contracts are negotiated. This could result in higher costs for a utility since a supplier would have advance knowledge of the company's equipment and labor needs.

36. Remedial plans are often based upon information that is available when a plan to improve performance is made for a circuit. Since some of these plans are made months before actual construction takes place, changes could occur for a variety of reasons, including changing customer demographics. Since customers will not be aware of these planned changes or why the original plans were changed, they could easily misinterpret the information that is available and unjustifiably criticize the utility.

37. Finally, broad public identification of the Companies' worst performing circuits and planned remediation efforts could create safety and security issues in the wake of heightened terrorist concerns subsequent to September 11th. It is important to avoid any public discussion of vulnerabilities in the electric distribution delivery system in order to minimize the possibility of this sensitive information coming into the possession of those who will use it to harm the Companies or the general public. It is clearly in the public interest and in the economic interests of the Companies to avoid unwanted destruction of their equipment and facilities. Minimizing the public dissemination of the identity of the worst performing circuits and the specific remedial

efforts planned to address them could save millions of dollars of capital costs, maintenance expenses, etc. and, in the most extreme situations, the lives of employees and others. Accordingly, this type of information clearly needs to be included in the proposed protective order.

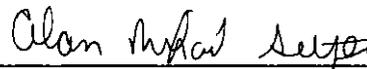
III. Conclusion

38. The Companies understand and appreciate the concerns raised by the AFL and the OCA in their respective Answers to the Application. What must be kept in mind is that the Companies are not proposing a blanket restriction on all data to be included in their annual and quarterly reports; nor are they suggesting that these parties be precluded from seeing all of the information sought to be included in those reports. What the Companies are seeking is a reasonable mechanism to prohibit broad public disclosure of certain data that could be easily misinterpreted and misused by an unknowing public, that could cause economic harm to the Companies or disrupt their normal operations. The proposed protective order balances the Companies' need and desire for some level of protection with the AFL and the OCA's desire for customers to have as much possible information relating to the reliability of their electric distribution systems.

WHEREFORE, Metropolitan Edison Company, Pennsylvania Electric Company and Pennsylvania Power Company respectfully request that the Answers of the Office of Consumer Advocate and the AFL-CIO Utility Caucus be dismissed and the Commission grant the relief requested by the Companies in the Application.

Respectfully submitted,

Dated: January 31, 2005



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ORIGINAL

February 9, 2005

VIA HAND DELIVERY

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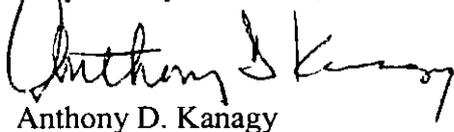
Re: Petition of PECO Energy Company for a Protective Order for Proprietary Information
Required to be Reported Under 52 Pa. Code § 57.195; Docket No. L-00030161

Dear Secretary McNulty:

Enclosed for filing are an original and (3) three copies of the Reply of PECO Energy Company to the Answer of AFL-CIO Utility Caucus Opposing PECO Energy's Petition for a Protective Order.

As indicated by the enclosed certificate of service, copies of the Reply are being served upon all parties of record.

Respectfully submitted,


Anthony D. Kanagy

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Enclosures

c: Shari C. Gribbin, Esquire
Certificate of Service

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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PETITION OF PECO ENERGY COMPANY :
FOR A PROTECTIVE ORDER FOR : Docket No. L-00030161
PROPRIETARY INFORMATION :
REQUIRED TO BE REPORTED UNDER 52 :
PA CODE § 57.195. :

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REPLY OF PECO ENERGY TO THE ANSWER OF
AFL-CIO UTILITY CAUCUS OPPOSING PECO ENERGY'S PETITION
FOR PROTECTIVE ORDER

On January 20, 2005, the AFL-CIO Utility Caucus filed its Answer ("Answer") to the Petitions of PECO Energy Company ("PECO") and other electric distribution companies ("EDCs"), in which the EDCs requested protection from publication of certain proprietary information required to be reported pursuant to the newly adopted Reliability Regulations.¹ Since it was responding to several petitions in one answer, the AFL-CIO separately addressed each of several reporting requirement that EDCs were requesting confidential treatment for rather than respond to each individual Petition.² Claiming in general that the various EDCs failed to meet their burden in establishing that this information should be protected, the AFL-CIO relies on two primary points: (1) that this type of information should be published because it is "routinely" published and "otherwise made available" to the public; and (2) a general argument that it should be available to the public for educational purposes. As will be made clear in the arguments that follow, AFL-CIO's argument that this information is "routinely"

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¹ 52 Pa. Code §57.195 *et seq.* has recently adopted in proceedings before this Commission: *Rulemaking Re Amending Electric Service Reliability Regulations at 52 Pa. Code Chapter 57*, Docket L-00030161 and *Amended Reliability Benchmarks and Standards for the Electric Distribution Companies*, Docket M-00991220.

² In its Answer, although not specifically set out as New Matter, AFL-CIO raises New Matter which is not addressed in PECO's Petition. Pursuant to 52 Pa. Code § 5.62, PECO hereby responds to this New Matter.

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published is incorrect and neither of these arguments should be accorded any weight in the Commission's determination as to whether such protection should be granted.

While other EDCs requested protection for additional information, PECO limited its request for protection to the following items: Contractor Spend Information, § 57.195(e)(10); Staffing Levels, § 57.195(e)(9); Budget Information, §§ 57.195(b)(7)(8)(10-11) and §§ 57.195(e)(7-8); and Call-Out Rates and Times, § 57.195(e)(11). As set forth at length in PECO's Petition, all of the items for which PECO requests protection are items traditionally recognized as sensitive and proprietary information.

AFL-CIO argues that this information is "routinely" provided to the public and points to a base rate proceeding as an example. AFL-CIO uses this example because it is the only common scenario where such information might be subject to release to the public. In the context of a base rate proceeding, there is a compelling argument for releasing the information: the utility is requesting payment for its services and to recover its costs/expenses. The public, in responding to this request, would need to see this type of information to evaluate the EDC's position and analysis. This is not a base rate proceeding. In addition, base rate proceedings are not routine for EDCs. PECO and other EDCs have not historically filed base rate proceedings on an annual or even regular basis. In some instances, an EDC may go ten or more years without filing a base rate proceeding. It can hardly be argued that this would constitute the "routine" provision of such information to the public. Moreover, it is the routine filing of this information which will likely cause harm to PECO and other EDCs because it will create a clearer picture of proprietary matters which contractors and labor unions will be able to use to PECO's detriment.

Further, contrary to AFL-CIO's general statement that such information is "otherwise made available to the public,"³ prior to the adoption of the new reporting requirements, this

³ Answer at 6.

information has not previously been required on a regular basis, and thus not made available to the public.⁴

In fact, other than the newly required reports and the base rate proceeding example, the only real context where EDCs might be asked to provide this type of information and where it *might* be subject to publication would be a litigated proceeding or a Commission investigation of an EDC's activities. In the former, a litigated proceeding, it is rare that an EDC would provide such information without an agreement by all parties to keep it confidential. Parties agree to this condition because they recognize the sensitive nature of the information. In the latter context, the Commission itself often agrees to keep it confidential unless the investigation escalates into a public matter, in which case PECO itself would argue that protection may not be justifiable. So, the AFL-CIO's argument that this information should be made public because it is "routinely available" and "otherwise made available to the public" is not true and has no merit whatsoever.

The other primary argument set forth by AFL-CIO is that the information should be made available to the public for educational purposes. However, in making its argument on behalf of the public as a whole, AFL-CIO cites to no compelling reason for the public's need for the information. Instead it concludes its argument by stating "the remedy for an ill-informed public is not the withholding of important information." (Answer at 6). This statement demonstrates that the AFL-CIO misses the point of the confidentiality requests and, in fact, of the Reliability Rulemaking in its entirety. First and foremost, the objective of the Rulemaking was to assure continued improvement in reliability performance by Pennsylvania EDCs. This objective is not harmed by a Commission decision to withhold from general publication certain portions of the

⁴ Here too, AFL-CIO provides no good example. The closest the AFL-CIO comes is in its attempt to support the position that employment levels are not competitively sensitive information. (Answer at 6). AFL-CIO argues that "employment levels" have traditionally been reported in annual reports. In this analysis, however, AFL-CIO fails to distinguish between a report on an annual basis of general employment levels and detailed information about employment levels by specific category. Annual reports do not generally report employment levels by specific category. Thus, this information is not otherwise available to the public.

reports it obtains to monitor such performance. The Commission will have full reports and all the information necessary to make determinations about whether the EDC's performance is sufficient or warrants investigation. If the Commission determines that there are issues of concern and the information is relevant, it can always make a determination during the course of an investigation into the particular EDC's activities to provide additional information to the public.

Second, the requests for protection of sensitive and proprietary information by the EDCs was not intended to inhibit the flow of necessary information to the public. There will still be plenty of information available to the public, thus providing the ability to effectively evaluate the EDCs' reliability performance. In addition to all the remaining items for which protection has not been requested, the public also has available to it the benchmark and standards performance reports, the information that will likely be of most use to the general public. Withholding sensitive information, now required to be reported on a very frequent basis, while providing all of this other information will strike the best balance and still provide the public the necessary information regarding an EDC's reliability performance.

Finally, it should be noted that the Office of Consumer Advocate ("OCA") also filed responses to the various petitions setting forth similar general public interest arguments. It was PECO's assumption that because the OCA was required to be served under the regulations, it would receive a full version of the report but would be subject to the same restrictions as the Commission should any protection be granted. In light of this and since the public interest arguments made by OCA have been addressed in this brief, PECO will not file a separate response. However, PECO does request that if its Petition is granted in whole or in part, the Commission specifically designate in the Order that the OCA is subject to the same restrictions applicable at the Commission.

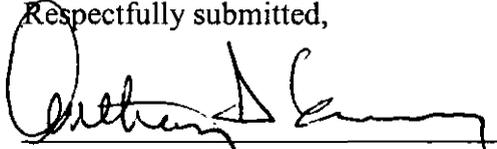
The EDCs have provided ample support for their positions and a number of examples for how this information could be used to their detriment. These outweigh the idea of publishing something just because the information is there and the public *might* want to see it.

Traditionally, the Commission has evaluated this issue in the context of a specific request by an individual or a request for a limited window of information that was to be provided in context.

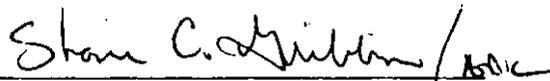
This situation is different. These are regular reports of sensitive information that when taken in the aggregate paint a very clear picture of certain proprietary matters. The only argument on the other side is “the public might want to know” and is made despite the fact that the public will already have sufficient information to track reliability performance. Declining to open the entire report up to the public as a rule, does not prevent the Commission from determining later, in the context of a specific problem or investigation into an EDC’s activities, that the general protection should be lifted. In light of these factors, the Commission should provide the protection requested and grant PECO’s petition to restrict from general publication § 57.195(e)(10) Contractor Spend Information; § 57.195(e)(9), Staffing Levels; §§ 57.195(b)(7)(8)(10-11) and §§ 57.195(e)(7-8), Budget Information; and § 57.195(e)(11), Call-Out Rates and Times.

WHEREFORE, PECO Energy Company respectfully requests that the Pennsylvania Public Utility Commission grant its Petition for a Protective Order.

Respectfully submitted,



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Counsel for PECO Energy Company

Date: February 9, 2005

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **Reply Of PECO Energy To The Answer Of AFL-CIO Utility Caucus Opposing PECO Energy's Petition For Protective Order** 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).

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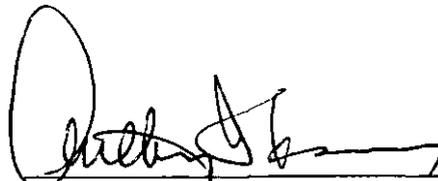
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Date: February 9, 2005



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ORIGINAL

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March 3, 2005

VIA EXPRESS MAIL

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Harrisburg, PA 17120

MAR 3 2005

**Re: Amended Electric Service Reliability Regulations at
52 Pa. Code, Chapter 57, Docket No. L-00030161**

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Dear Secretary McNulty:

Enclosed for filing please find an original and three copies of the Application of UGI Utilities, Inc. – Electric Division for a Protective Order. Copies of this filing have been served upon the persons indicated on the attached Certificate of Service.

Should you have any questions concerning this filing, please feel free to contact me.

Very truly yours,

Mark C. Morrow

Counsel for UGI Utilities, Inc. –
Electric Division

cc: Certificate of Service

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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

MAY 8 2005

**APPLICATION OF UGI UTILITIES, INC. –
ELECTRIC DIVISION FOR A PROTECTIVE ORDER**

**DOCUMENT
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UGI Utilities, Inc. – Electric Division (“UGI”), in accordance with the provisions of 52 Pa.Code §5.423 and the Commission’s October 21,2004 Secretarial Letter issued at the above docket, hereby petitions for the issuance of a protective order with respect to certain information specified in 52 Pa.Code §57.195(b)(7), (8), (10) and (11)¹ that UGI shall be required to submit to the Commission on or before April 30, 2005, and annually thereafter. In support of this application, UGI states the following:

1. As a result of a Final Rulemaking Order entered on May 20, 2004 in the above-docket, UGI shall be required to submit a reliability report to the Commission on or before April 30, 2005 and annually thereafter, containing, amongst other things, the following new information:

§57.195(b)(7) – A comparison of budgeted versus actual transmission and distribution operation and maintenance expenses for the year being reported on in

¹ The filing requirements specified in 52 Pa.Code §57.195(b)(7) and (8) are incorporated into the requirements for annual reliability reports for smaller electric distribution companies such as UGI by the provisions of 52 Pa.Code §57.195(c).

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.

§57.195(b)(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.

§57.195(b)(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.

§57.195(b)(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.

2. In an October 21, 2004 Secretarial Letter issued to all electric distribution companies ("EDC"), the Commission clarified that EDCs could file a petition for proprietary treatment, pursuant to 52 Pa. Code §5.423, for information contained in quarterly or annual reliability reports filed pursuant to 52 Pa.Code §57.195, and that such petitions should be filed at least thirty (30) days in advance of a report's due date.
3. UGI recognizes that the information provided under the above-noted subsections of 52 Pa.Code §57.195 may be considered by the Commission and other interested parties to be of relevance in monitoring trends in reliability.
4. However, the public dissemination of information about past and currently planned maintenance and capital expenditures could have an adverse impact on UGI's ability

to obtain the best market rates from vendors of goods and services used by UGI to maintain and improve its electric transmission and distribution facilities.

5. For example, UGI recently solicited bids for a substantial upgrade to its Mountain Substation. Given UGI's small size, if UGI's past and currently budgeted capital expenditures had been publicly available, it would have been an easy matter for bidders to figure out what UGI had budgeted for this project (by subtracting historical capital expenditures from the substantially higher budgeted capital expenditures), and this information could have materially affected the bids submitted.
6. An appropriate balance can be struck between the needs of public and other parties to monitor and use information gathered under the provisions of 52 Pa.Code §57.195(b)(7), (8), (10) and (11), and the need of UGI and its customers to keep certain budget and expense information confidential to preserve the ability of UGI to effectively negotiate with vendors.
7. That balance can be struck through the issuance of a protective order, substantially in the form attached in Appendix A hereto, that permits access to the information by interested parties that agree to (a) only use the information for the purpose of monitoring reliability, (b) treat and handle the information in a confidential manner and (c) file the information, or testimony or exhibits referring to the information, under seal in any Commission proceeding.
8. UGI is aware that in response to requests for protective orders filed by certain other EDCs at this docket, the AFL-CIO Utility Caucus ("AFL-CIO") has argued that disclosure of historical maintenance and capital expenditures, and current

maintenance and capital expenditure budget information, presents no harm since such information is routinely disclosed in rate cases and the provision of aggregate data would provide no benefit to vendors.

9. While UGI would question the AFL-CIO's assumption that the information submitted in a base rate proceeding might not also be the subject of a protective order, the sporadic disclosure of information in relatively infrequent base rate cases is not, in UGI's view, comparable to the annual disclosures required under the Commission's reliability regulations.
10. Perhaps more importantly, while the disclosure of aggregate data might be of less use to a vendor in the case of larger EDCs that might have multiple major projects in progress over a particular reporting period, that is not the case with small EDCs such as UGI.
11. UGI is also aware that in response to requests for protective orders filed by certain other EDCs at this docket both the AFL-CIO and the Office of Consumer Advocate ("OCA") have argued that expenditure and budget data should be disclosed because the public has an interest in the reliability of electric facilities.
12. Under 52 Pa.Code §57.195(b)(1), (2), (3), (4), (6), (9), and (12), however, the public will have full access to detailed information concerning the current state of reliability of UGI's system and current programs and procedures for providing reliable electric service, a description of major system events, tables showing actual values for specified reliability indices, transmission and distribution inspection and maintenance

goals and a discussion of any significant changes in inspection and maintenance programs.

13. Moreover, if UGI's request for a protective order is granted, the adopted restrictions will not prohibit interested parties from having access to the protected information for the legitimate purpose of monitoring reliability, or from using the information in proceedings before the Commission.

WHEREFORE, UGI Utilities, Inc. – Electric Division requests respectfully that the Commission issue a protective order substantially in the form attached in Appendix A hereto.

Respectfully submitted,



Mark C. Morrow
Senior Counsel
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Fax.: (610) 992-3258
morrowm@ugicorp.com

Dated: March 3, 2005

APPENDIX A

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

PROTECTIVE ORDER

Upon consideration of the Application for a Protective Order filed by UGI Utilities, Inc. – Electric Division (“UGI”), it is ordered that:

1. The Application for a Protective Order filed by UGI is hereby granted.
2. The information subject to this Protective Order is all information separately submitted by UGI under seal as part of its annual electric reliability report providing the information specified under 52 Pa.Code §57.195(b)(7), (8), (10) and (11) (the “Proprietary Information”).
3. The Proprietary Information shall be available to the Commission’s staff and to third parties who execute and file with the Commission’s Secretary the acknowledgment attached as Attachment A hereto, and shall only be used for the purpose on monitoring the reliability of UGI’s electric transmission and distribution system. A copy of all signed acknowledgments shall be served upon UGI at the time they are filed with the Commission’s Secretary.

4. Parties with access shall treat the Proprietary Information with the same degree of care as they would treat their own proprietary information, and shall limit the disclosure of such information to only those persons that are required to assist the party with the task of monitoring or evaluating the reliability of UGI's transmission and distribution system.
5. In no event shall a vendor or an affiliate of a vendor of goods or services to the electric transmission and distribution industry be permitted access to the Proprietary Information, except upon petition to the Commission.
6. In the event any party with access wishes to use the Proprietary Information in any pleading or testimony submitted to the Commission, it shall file the Proprietary Information under seal.
7. The Secretary's Office shall store the Proprietary Information in non-public files.

BY THE COMMISSION

ATTACHMENT A
**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**ACKNOWLEDGMENT
OF PROTECTIVE ORDER**

The undersigned hereby acknowledge they have read and agree to comply with the terms of the Protective Order issued by the Commission in the above docket specifying rules for the treatment and use of information filed by UGI Utilities, Inc. – Electric Division pursuant to the provisions of 52 Pa.Code §57.195(b)(7), (8), (10) and (11).

By: _____
Name Printed:
Title:
Address:

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

CERTIFICATE OF SERVICE

I hereby certify that I have, this 3rd day of March, 2005, served a true and correct copy of the Application of UGI Utilities, Inc. – Electric Division for a Protective Order in the manner and upon the persons listed below in accordance with the requirements of 52 Pa.Code §1.54 (relating to service by a participant):

VIA FIRST CLASS MAIL:

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Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

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Allegheny Energy
800 Cabin Hill Road
Greensburg, PA 15601-1689

Tanya J. McCloskey, Esquire
Office of Consumer Advocate
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Shari C. Gribben, Esquire
PECO Energy Company
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1105 Berkshire Boulevard, Suite 330
Wyomissing, PA 19610-1222

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

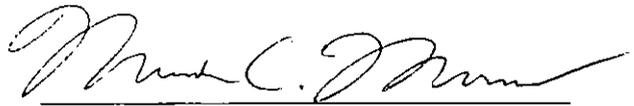
Paul E. Russell, Esquire
PPL Electric Utilities Corporation
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Eric Winslow, President
Citizens' Electric Company
1775 Industrial Boulevard
Lewisburg, PA 17837

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

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

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morrowm@ugicorp.com

MAR 07 05

COMMONWEALTH OF PENNSYLVANIA

DATE: March 4, 2005

SUBJECT: L-00030161

TO: Law Bureau

FROM: James J. McNulty, Secretary *KB*

DOCKETED
MAY 02 2005

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UGI Utilities, Inc.-Electric Division

Attached is a copy of an Application for Protective Order, filed by UGI Utilities, Inc.-Electric Division in connection with the above docketed proceeding.

This matter is assigned to your Bureau for appropriate action.

Attachment

cc: FUS
OTS

was

KJR



ORIGINAL

OFFICE OF CONSUMER ADVOCATE

555 Walnut Street, 5th Floor, Forum Place
Harrisburg, Pennsylvania 17101-1923
(717) 783-5048
800-684-6560 (in PA only)

IRWINA. POPOWSKY
Consumer Advocate

FAX (717) 783-7152
consumer@paoca.org

March 21, 2005

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

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RECORDED
MAR 21 2005
SECRETARY'S BUREAU

RE: Amended Electric Service Reliability
Regulations at 52 Pa. Code, Chapter 57
Docket No. L-00030161

Dear Secretary McNulty:

Enclosed for filing are an original and three (3) copies of the Answer of the Office of Consumer Advocate in Opposition to the Petition for Protective Order of UGI Utilities, Inc. - Electric Division, in the above-referenced proceeding.

Copies have been served on the parties of record as indicated on the enclosed Certificate of Service.

Sincerely,

Lori A. Herman
Assistant Consumer Advocate

Enclosures
cc: Parties of Record
83618.doc

KJR

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

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REGISTRATION BUREAU

ANSWER OF THE OFFICE OF CONSUMER ADVOCATE
IN OPPOSITION TO
THE PETITION FOR PROTECTIVE ORDER
OF UGI UTILITIES, INC. - ELECTRIC DIVISION

DOCKETED
JUN 16 2005

I. INTRODUCTION

Pursuant to 52 Pa. Code § 5.61, the Office of Consumer Advocate ("OCA") hereby files this Answer in response to the Petition of UGI Utilities, Inc. - Electric Division ("UGI") for a Protective Order. On May 20, 2004, the Commission entered a Final Rulemaking Order at this docket number, amending the Commission's regulations at 52 Pa. Code § 57.195. Rulemaking Re Amending Electric Service Reliability Regulations at 52 Pa. Code Chapter 57, Docket No. L-00030161 (Order entered May 20, 2004) ("2004 Final Rulemaking Order"). In the 2004 Final Rulemaking Order, the Commission revised the annual and quarterly reliability reporting requirements for electric distribution companies ("EDC") to provide for more complete reporting of information related to the reliability of the distribution system. On March 3, 2005, UGI filed a Petition for Protective Order to restrict the disclosure of certain information relating to several of these reporting requirements. The OCA submits that for the reasons set forth in its Answer below, and for the reasons the Commission has previously discussed in its 2004 Final Rulemaking Order, the Commission should deny UGI's Petition.

In its Petition, UGI requests that certain information required to be reported to the Commission in annual reports pursuant to 52 Pa. Code § 57.195 be treated as proprietary

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information. UGI requests that the following information required by 52 Pa. Code § 57.195(b)(7), (8) (10), and (11) be deemed proprietary information:

- (7) A comparison of the 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 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.
- (10) Budgeted transmission and distribution operation and maintenance 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.

In its Petition, UGI claims that disclosure of information about past and currently planned maintenance and capital expenditures could have an adverse impact on UGI's ability to obtain competitive market rates from vendors for goods and services for electric transmission and distribution facilities. UGI proposed that this information should be proprietary and only available to the Commission's staff and to third parties who execute and file an acknowledgement with the Secretary. See Petition, Appendix A at 1. UGI suggests that vendors or affiliates of vendors of goods and services to the electric transmission and distribution industry should be prohibited access to this information, unless they file a petition with the Commission. *Id.* at 2. The OCA submits that UGI has failed to establish any sufficient basis for keeping this information proprietary. For the reasons set forth in this Answer, as well as the

Commission's 2004 Final Rulemaking Order, the OCA submits that the Commission should deny the UGI's Petition.

II. ANSWER

The information required by Chapter 57 pertains to system reliability, a matter of great public importance. The Commission has recognized this fact and expressed its intention to generally keep these reports public. In its 2004 Final Rulemaking Order, the Commission stated:

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.

2004 Final Rulemaking Order at 35. The OCA would also note that in an earlier proceeding regarding reliability benchmarks and standards, the Commission also pointed out the importance of making reliability reports accessible by the public. In the Commission's April 30, 1999 Order at Docket Number M-00991220, the Commission denied a request by the Pennsylvania Energy Association that the reliability reports be treated as confidential by the Commission and the OCA. Reliability Benchmarks and Standards, Docket No. M-00991220 (Order entered April 30, 1999)(“April 30, 1999 Order”). In denying the request, the Commission made the following point:

[A]n important policy goal that was to be met in restructuring the electric industry was the preservation of the integrity and reliability of the electric service and electric transmission and distribution system. In light of this goal, it would not be in the public interest to deny public access to this information.

April 30, 1999 Order at 22.

It is clear that the public has a substantial interest in the reliability of the distribution system and in the efforts of an EDC to meet the reliability requirements of the

Commission. Under the Commission's regulations, the Commission will issue a protective order:

only when a participant demonstrates that the potential harm to the participant of providing the information would be substantial and that the harm to the participant if the information is disclosed without restriction outweighs the public's interest in free and open access to the administrative hearing process.

52 Pa. Code § 5.423(a).

Here, with respect to subsections 57.195(b)(7), (8), (10), and (11), UGI claims that disclosure of budgeted information could adversely impact UGI's ability to obtain the best prices for goods and services relating to improvement of the electric transmission and distribution systems if vendors have access to such data. Petition at ¶4, 5. UGI recognizes that the information provided pursuant to the above subsections of Chapter 57 may be considered by the Commission and by other interested parties to monitor reliability trends, but wishes to prohibit vendors and their affiliates from obtaining this information. *Id.* Thus, UGI proposes to treat the information reported, and any information referring to information, as proprietary for use it only in monitoring reliability. Petition at ¶7.

The OCA submits that it is important to recognize that distribution operations remain fully regulated. Much of the information relating to budgeted expenses and investments that UGI requests to be treated as proprietary is the type of information that is often part of a base rate case and is subject to significant public scrutiny in that process. For example, in several electric utility rate cases, the EDCs submitted budgeted information relating to operation and maintenance expense and capital investments that was not treated as proprietary. A comparison of that budgeted data to actual data often occurs during the base rate review. See, e.g., Pa. P.U.C. v. PECO Light Co., 59 Pa.PUC 67 at 108, 120, 123 (1985) (relating to tree

trimming, maintenance expense, and employee levels); Pa. P.U.C. v. Philadelphia Electric Co., 58 Pa.PUC 743, 749-50, 789-90, 794 (1985) (relating to budgeted versus actual plant, budget for operation and maintenance expenses, and wage expenses); Pa. P.U.C. v. Pennsylvania Power & Light Co., 59 Pa.PUC 332 at 734-35 (1985).

UGI's Petition acknowledges that historical and current maintenance and capital expenditures is publicly available in rate proceedings, but argues that the disclosure of information in rate cases is relatively infrequent. Petition ¶ 8, 9. UGI further claims that dissemination of this information to vendors may have a greater impact on smaller utilities because smaller companies do not have multiple major projects in progress as larger EDCs do. Petition ¶10.

UGI's arguments are inconsistent with the regulatory process. Moreover, contractors, labor unions and third-party vendors are aware that UGI is a regulated utility and that overspending on expenses and investments may be scrutinized by the Commission. The public has a right to know how utility dollars are being spent and how the utility is managing its reliability performance.

Finally, the Commission has recognized in both its 2004 Final Rulemaking Order and its April 30, 1999 Order that much of the information relating to the reliability of the distribution system was already publicly available and that its further compilation into the reliability reports would not place the EDC at a competitive disadvantage or cause other harm. In the 2004 Final Rulemaking Order, the Commission addressed the EDC's request for broad proprietary treatment as follows:

Although the Commission has no intention of actively sharing this type of information with other parties outside of 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.

2004 Final Rulemaking Order at 34. In the April 30, 1999 Order, addressing similar arguments, the Commission stated:

[W]e fail to see how the information relating to the reliability of an EDC's distribution system could provide others with a competitive advantage. In a regulated monopolistic electric distribution industry, there are no other competitors.

April 30, 1999 Order at 22. The same reasoning applies to the request of UGI here.

In its 2004 Final Rulemaking Order, the Commission allowed EDCs to apply for protective orders relating to reliability reporting, but the Commission was clear that the burden is on the EDC to demonstrate the need for a protective order. See 2004 Final Rulemaking Order at 35. That burden is a significant one, particularly given the substantial public interest in the reliable operation of the distribution and transmission system. UGI has failed to meet its burden to justify withholding information from public view. The OCA submits that UGI's request must be denied.

WHEREFORE, the OCA respectfully requests that the Commission deny UGI's
Petition for a Protective Order and ensure that the required reliability reports remain public.

Respectfully Submitted,



Tanya J. McCloskey
Senior Assistant Consumer Advocate
Lori A. Herman
Assistant Consumer Advocate

Counsel for:
Irwin A. Popowsky
Consumer Advocate

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Dated: March 21, 2005
83422.msw

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SECTION 5 BUREAU

CERTIFICATE OF SERVICE

Amended Electric Service Reliability : Docket No. L-00030161
Regulation at 52 Pa. Code, Chapter 57 :

I hereby certify that I have this day served a true copy of the foregoing document, Answer of the Office of Consumer Advocate in Opposition to the Petition for Protective Order of UGI Utilities, Inc. - Electric Division, upon parties of record in this proceeding in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant), in the manner and upon the persons listed below:

Dated this 21st day of March, 2005.

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