



OFFICE OF CONSUMER ADVOCATE

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March 11, 2005

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

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

Dear Secretary McNulty:

Enclosed are an original and fifteen (15) copies of the Office of Consumer Advocate Reply Comments, in the above-referenced proceeding.

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

Sincerely,

A handwritten signature in cursive script that reads "Tanya J. McCloskey".

Tanya J. McCloskey  
Senior Assistant Consumer Advocate

Enclosures

cc: Parties of Record  
Blaine Loper, Bureau of Conservation, Economics and Energy Planning  
Elizabeth Barnes, Law Bureau (e-mail and hard copy)

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BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

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OFFICE OF CONSUMER ADVOCATE'S  
REPLY COMMENTS

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Dated: March 11, 2005

## I. INTRODUCTION

On February 9, 2005, Comments were filed regarding the Pennsylvania Public Utility Commission's ("Commission") Proposed Rulemaking for revisions to 52 Pa. Code Chapter 57 pertaining to adding Inspection and Maintenance Standards for Electric Distribution Companies ("ANOPR"). The OCA reviewed the comments that were posted on the Commission's website. These Comments included those from the Energy Association of Pennsylvania ("EAP"); PECO Energy Company ("PECO"); PPL Electric Utilities Corporation ("PPL"); Duquesne Light Company ("Duquesne"), UGI Utilities, Inc. - Electric Division ("UGI"), Citizens' Electric Company ("Citizens"); Wellsboro Electric Company ("Wellsboro"); the FirstEnergy Companies consisting of Metropolitan Edison Company ("Met-Ed"), Pennsylvania Electric Company ("Penelec"), and Pennsylvania Power Company ("Penn Power"); the Office of Small Business Advocate ("OSBA"); Pennsylvania Utility Contractors Association ("PUCA"); and Pennsylvania AFL-CIO Utility Caucus ("Unions").

The EDCs and EAP argue that inspection and maintenance standards are unnecessary and burdensome and should not be enacted by the Commission. The EDCs and EAP argue that the Commission can monitor an EDC's inspection and maintenance practices through the reporting process already established by the Commission in Section 57.195 and through the EDC's performance pursuant to the reliability indices. The EDCs and EAP also argue that additional inspection and maintenance requirements will limit flexible operation of their systems and will be difficult to implement because of the uniqueness of the EDCs' operating areas.

The OCA and the Unions, however, point out that the Commission must establish inspection, maintenance, repair and replacement standards as required by Section 2802(20). 66

Pa. C.S. § 2802(20). The question here should not be whether standards should be established, but how best to establish enforceable standards that provide for reliable service, allow needed flexibility to the EDCs in establishing and improving practices, and allow an EDC to recognize the unique features of its transmission and distribution system. The OCA submits that adoption of a broad set of inspection and maintenance standards that set forth minimum requirements, coupled with submission and review of individual Transmission and Distribution Maintenance Plans (“T&D Maintenance Plans”) will meet the desired goals. A broad set of minimum standards designed to promote high-quality service and a distribution system that is safe and reliable, can still allow for flexibility in techniques and processes as well as the development of industry “best practices” over time. The individual plans can then meet these minimums and reflect any unique aspects of the EDC’s transmission and distribution system as well as practices that incorporate new technological developments. As with all Commission regulations, to the extent that a particular EDC might have a unique situation that would make compliance with a particular requirement unduly burdensome, the EDC can seek a waiver from the Commission through appropriate procedures.

As the OCA stated in its Comments, inspection and maintenance standards should be promulgated to better enable the Commission and EDCs to meet the statutory obligation to provide safe, adequate, reliability and reasonably continuous service to all customers. 66 Pa. C.S. § 1501. The standards recommended by the OCA, which are very much in line with those recommended by the Unions, represent the *minimum* standards. EDCs remain obligated to implement comprehensive inspection and maintenance standards that will enable them to achieve the level of reliability that is required to provide safe, adequate, reliable and reasonably continuous service based on the characteristics of the service territory. An EDC must, and

should, do more if required to maintain safe, adequate, reliable and reasonably continuous service.

The OCA recognizes that minimum standards of the EDCs and the Commission must also work in concert with any nationally established standards. That does not mean, however, that matters of Pennsylvania reliability need to, or should, rely exclusively on national standards as the EDCs suggest. The Commission is required to establish and enforce standards that meet Pennsylvania requirements. Moreover, FERC has expressed its own concerns about its authority to enforce reliability standards and NERC, which sets standards, remains a private organization that relies substantially on voluntary cooperation. The OCA urges the Commission to adopt a set of minimum standards such as those recommended by the OCA and by the Unions that reflect the joint federal-state obligation to assure reliability of the transmission and distribution system. The OCA also urges the Commission to consider the use of automatic penalties as a means to enforce compliance with these standards.

Reliability is of critical importance to all consumers and all citizens in Pennsylvania. The Commission's role is to ensure the reliability of the electric distribution and transmission systems. Minimum inspection and maintenance standards will allow the Commission to better meet its obligation. The Public Utility Code explicitly provides that the Commission shall promulgate regulations containing inspection, maintenance, repair and replacement standards for Pennsylvania EDCs. The OCA respectfully submits that the Commission should establish minimum standards as set forth in the OCA's Comments and establish the appropriate review and enforcement mechanism in accordance with the Public Utility Code.

## II. REPLY COMMENTS

### A. Introduction

The EDCs and EAP argue that the Commission should not adopt inspection and maintenance standards. *See*, EAP Comments at 2-4, PPL Comments at 2-6, PECO Comments at 2-3, FirstEnergy Comments at 2, UGI Comments at 2-3, Duquesne Comments at 2-3, Citizens Comments at 3, and Wellsboro Comments at 2. Specifically, the EDCs and EAP argue that inspection and maintenance standards are unnecessary and would be too burdensome for the Commission and EDCs. The EDCs and EAP claim that inspection and maintenance standards would reduce an EDC's flexibility in directing reliability-related resources and would interfere with operating efficiency. *See e.g.*, EAP Comments at 3, PPL Comments at 4, PECO Comments at 3. Furthermore, they claim that inspection and maintenance standards would be redundant because already-established reliability reporting regulations and national inspection and maintenance standards address these issues. *See e.g.*, PPL Comments at 2-3, PECO Comments at 3. As detailed below, the OCA submits that the EDCs and EAP arguments ignore statutory directives and are without merit.

### B. The Commission Must Adopt Maintenance and Inspection Standards.

As an initial matter, the OCA submits that the Commission is statutorily required to promulgate regulations relating to inspection, maintenance, repair and replacement standards for transmission and distribution systems and to enforce those standards. As the OCA and the Unions explain in their Comments, Section 2802(20) of the Public Utility Code requires the Commission to establish these standards. Section 2802(20) provides:

(20) Since continuing and ensuring the reliability of electric service depends on adequate generation and on conscientious inspection and maintenance of transmission and distribution systems. . .the Commission

*shall* set thorough regulations, inspection, maintenance, repair and replacement standards and enforce those standards.

66 Pa. C.S. § 2802(20) (emphasis added).

The position of the EDCs and EAP that no standards are necessary is contrary to the plain language of the Public Utility Code. The need for these regulations has been highlighted by the August 14, 2003 blackout and the numerous reports that have examined the cause of this blackout.<sup>1</sup> *See*, OCA Comments at 1-3. The OCA submits that clear, adequate enforceable standards are not only mandated by the Public Utility Code, but are also necessary to maintaining reliable service in Pennsylvania. The primary question the Commission should address is how best to establish enforceable standards that provide for reliable service, allow needed flexibility to the EDCs in establishing and improving practices, and allow an EDC to recognize the unique features of its transmission and distribution system.

C. Minimum Standards Combined With A Comprehensive T&D Maintenance Plan Will Aid In Maintaining Reliability, Allow For The Recognition Of Unique Features Of An EDC's System And Allow Flexibility For Continuing Development.

The EDCs and EAP argue that due to the unique features of each EDC's service territory, inspection and maintenance standards would be difficult, if not impossible, to develop and would reduce needed flexibility and innovation. The OCA submits, however, that minimum standards will not interfere with improved reliability, or reduce innovation, as suggested by several EDCs. Additionally, minimum standards can be designed to allow for the unique features of an EDC's service territory. To the extent, however, a minimum standard would be unduly burdensome as a result of the unique nature of a service territory, an EDC could seek a

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<sup>1</sup> The OCA would note that the need for enforceable reliability standards is not predicated on such unusual events, but rests on the link between customer reliability and the implementation of inspection and maintenance process of critical facilities.

waiver from the Commission by demonstrating the undue burden and showing how the EDC will meet reliability if the regulation is waived.

As explained at pages 6-9 of the OCA's Comments, the Commission should establish specific *minimum* standards for all EDCs. The standards proposed by the OCA and the Unions take a relatively minimalist view of what EDCs should do, given the demands of maintaining transmission and distribution systems. The standards proposed by the OCA are intended to set a floor, below which it is reasonable to assume that reliability is being compromised over the long term, even if not over the near term. Above that floor, the EDC's flexibility is not limited by the OCA's proposal.

The minimum standards recommended by the OCA, as well as by the Unions, focus on systems critical to reliability and specify lengths for inspection cycles and repair times upon the detection of any deficiencies. These standards do not limit the use of new technologies or techniques and they do not limit innovation. These standards are designed to ensure that all critical facilities are reviewed and tested on a regular basis and that deficiencies are remedied in a reasonable time. Far from being limiting, appropriate standards will ensure that proper attention is given to critical facilities and that techniques that can improve the efficiency of review, repair and operation are put in place.

The OCA would also note that the inspection and maintenance standards proposed by the OCA do not present burdens for EDCs. EDCs must incorporate a variety of inspection and maintenance cycles into their operations based on the different equipment or different manufacturers that they use. All EDCs must reflect the particular characteristics of their system and their equipment when designing the inspection and maintenance programs. The standards proposed by the OCA should be incorporated into the programs and practices, if they

are not already a part of those programs, just as all other requirements are included in the programs.

The OCA has also recommended that comprehensive T&D Maintenance Plans be submitted to the Commission on a regular basis. These Plans can address any unique features of a service territory or system. These Plans will also assist the Commission in ensuring that all adequate steps are in place so that an EDC can meet its obligation to provide safe, adequate, reliable and reasonably continuous service.

The OCA submits that if the Commission adopts minimum standards as proposed by the OCA and the Unions, the EDCs will maintain flexibility in operational decision-making as well as in technological improvements. Reliability should be enhanced by minimum standards, not hindered. The OCA would also note that the Pennsylvania minimum standards should be designed to work in concert with, and complement, any bulk transmission reliability practice and standards developed by NERC and adopted by FERC. But Pennsylvania reliability is a matter for the Pennsylvania Commission and it must establish standards appropriate for Pennsylvania.

D. The Reliability Performance Standards And Reporting Requirements Do Not Serve The Same Purpose As Inspection And Maintenance Standards.

The EDCs and EAP have also argued that the Commission's performance benchmarks and performance standards, along with the detailed reporting requirements, are an adequate substitute for inspection and maintenance standards. The Commission's Chapter 57 reliability performance benchmarks and standards are not a substitute for inspection and maintenance standards. The performance benchmarks and standards measure overall system reliability for periods of time that have passed. In other words, this approach is reactive. By the time changes in reliability show up in the performance standards and benchmarks, system

problems may already have developed significantly, may be costly to remedy, and may take extra time to remedy.

The OCA submits that there is a substantial difference between the after-the-fact reporting of reliability indices or taking remedial efforts to restore reliability to already poorly performing circuits on the one hand and performing minimum levels of inspection and maintenance designed to avoid poor reliability before it occurs on the other hand. The statutory directive to establish inspection and maintenance standards reflects the desire to prevent poor reliability performance before it occurs, rather than responding to poor reliability performance that has already occurred.

The inspection, maintenance, repair and replacement standards proposed by the OCA represent a proactive approach. These standards will provide companies with specific, minimum requirements to help increase the probability that reliability problems are detected and remedied before these problems negatively impact reliability performance. Indeed, appropriate inspection, maintenance, repair and replacement standards should not increase the long term costs of providing reliable service may even minimize long term cost. They should also assist in preventing or reversing declines in reliability. Inspection and maintenance standards will aid EDCs in meeting and exceeding their benchmarks and standards and will be a proactive approach to providing adequate and reliable service.

Likewise, the Commission's quarterly and annual reporting requirements are not a substitute for inspection and maintenance standards. The reporting requirements at Section 57.195 of the Pennsylvania Code require EDCs to provide the Commission with inspection and maintenance goals and quarterly reports as to the EDCs' progress in meeting these goals.

Separate inspection and maintenance standards will provide EDCs with a better understanding of what goals are minimally acceptable to the Commission and will help EDCs meet these goals.

While the Commission has improved on its reliability performance benchmarks and standards, these benchmarks and standards do not ensure that proper inspection and maintenance standards are in place. These performance measures would only alert the Commission to a problem with inspection, maintenance, repair and replacement practices after these practices have caused reliability problems for the system. Well designed inspection, maintenance, repair and replacement standards reduce the likelihood that such deterioration occurs at all.

E. Automatic Penalties For Failure To Achieve Minimum Standards Are An Appropriate Enforcement Mechanism.

The EDCs and EAP oppose the inclusion of automatic penalties in inspection and maintenance regulations promulgated by the Commission. The EDCs and EAP claim that the Commission already has the ability to impose fines and that the Commission should retain flexibility in assessing fines for non-compliance to consider the reasons for non-compliance. The OCA submits, however, that the use of predetermined penalties to enforce compliance with the minimum inspection and maintenance standards should be considered by the Commission. The OCA has provided a discussion of this issue, and examples from other states, in its Comments and will not repeat that discussion in detail here. *See* OCA Comments at 18-22. The OCA submits that the use of an automatic mechanism, along with the filing of a compliance plan with detailed milestones and penalties for failure to achieve those milestones, should be a part of the regulations.

In its Comments, the OCA recommends the use of automatic financial mechanisms, such as rate reductions, bill credits or fines, to convey the importance of proper

inspection and maintenance of the transmission and distribution system to the EDCs, customers and the public. The primary argument of the EDCs is that the Commission should retain discretion to consider individual circumstances before assessing any penalty. It is important to note that in its Comments, the OCA recommended that automatic financial mechanisms be utilized when an EDC has failed to both meet its reliability standards *and* meet the minimum inspection and maintenance standards. Such a two-tiered failure of regulations that are designed to provide ratepayers with safe, adequate, reliable and reasonably continuous service is significant. The use of an automatic, and significant, financial mechanism will clearly convey to the EDCs the importance of placing appropriate focus on these matters.

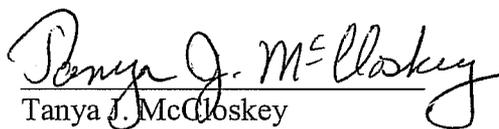
The OCA continues to recommend that failure to meet the Commission's inspection and maintenance standards, along with a failure to meet the reliability performance standards, should result in predetermined rate reductions, bill credits, or civil penalties. This requirement should not displace any enforcement mechanism already in place for failure to meet the performance benchmarks and standards. This enforcement mechanism should also work in concert with the requirement that an EDC that fails to meet its performance standards or the minimum inspection, maintenance, repair, and replacement standards develop a compliance plan with enforceable milestones and commitments to achieve these milestones.

Reliability is of critical importance to consumers and the Commonwealth for health, safety, and economic reasons. Properly structured penalties or other financial consequences for failure to comply with predetermined standards and obligations can assist the Commission in maintaining the needed levels of reliability in Pennsylvania.

### III. CONCLUSION

For the reasons set forth above, and in the OCA's Comments, the OCA urges the Commission to promulgate regulations setting forth inspection, maintenance, repair and replacement standards. The standards recommended by the OCA and the Unions provide a sound basis for the development of appropriate regulations.

Respectfully submitted,



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Dated: March 11, 2005  
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CERTIFICATE OF SERVICE

RE: Advanced Notice of Proposed Rulemaking :  
for revision of 52 Pa. Code Chapter 57 :  
Pertaining to Adding Inspection and : Docket No. L-00040167  
Maintenance Standards for the Electric :  
Distribution Companies :

I hereby certify that I have this day served a true copy of the foregoing document, the Office of Consumer Advocate Reply Comments, 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 11<sup>th</sup> day of March 2005.

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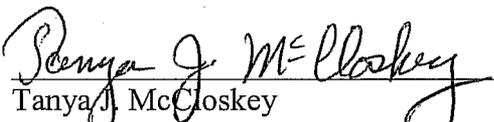
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