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May 31, 2012

Rosemary Chiavetta, Secretary  
Pa. Public Utility Commission  
P.O. Box 3265  
Harrisburg PA 17105-3265

Re: Implementation of Act 11 of 2012  
Docket No. M-2012-2293611

Dear Secretary Chiavetta:

Enclosed for filing please find the Comments of Pennsylvania AFL-CIO Utility Caucus on Tentative Implementation Order, in the above-referenced proceeding.

The document was filed electronically with the Commission on this date.

Sincerely,



Enclosure

cc: Act 11 Resource Account (email: ra-Act11@pa.gov)  
David Screven (email: dscreven@pa.gov), including Word version  
Louise Fink Smith (email: finksmith@pa.gov), including Word version  
Erin Laudenslager (email: elaudensla@pa.gov), including Word version



## **II. Section 1352: Long-Term Infrastructure Improvement Plans**

### **A. Discussion**

On pages 7-10 of the Tentative Order, the Commission properly outlines most of the requirements of a long-term infrastructure improvement plan. In particular, AFL-CIO commends the Commission for emphasizing that the plan must demonstrate “an *acceleration* of infrastructure replacement over the utility’s historic level of capital improvement.” Tentative Order at 9 (emphasis in original). There is, however, one critical piece of information that is not included in the Tentative Order: the minimum time period that the plan must cover.

Neither the Act nor the Tentative Order defines “long-term,” but the Act does provide some important insight into this issue. The Act requires that the Commission must promulgate regulations to ensure that the Commission conducts a “periodic review [of the plan] at least once every five years.” 66 Pa. C.S. § 1352(b)(1). This provision of the Act indicates that the long-term plan must cover a period well in excess of five years, otherwise there would be nothing to “review” after five years.

As the Commission knows, many of the distribution facilities that will be the subject of these plans have an expected useful life of 40 years or more. AFL-CIO submits that with such long-lived assets, utilities’ long-term infrastructure plans should be required to cover a period of at least 20 years. This would enable the Commission to ensure that utilities are taking a prudent, long-term view of the management of their long-lived assets, including procedures for preventive maintenance, quality assessment, repair, and eventual replacement.

Moreover, plans that cover 20 years or more would enable utilities to make appropriate decisions about the way in which their infrastructure management efforts will be implemented. For example, if needs are relatively short-term (most work will be completed in just a few years),

the utility might make very different decisions about staffing than they would make if the plan shows a relatively consistent level of work for 20 years or more. In order for the Commission to evaluate the reasonableness of a utility's work (and its costs) in any given year, that work must be evaluated in the context of a much longer-term infrastructure management plan.

Indeed, later in the Tentative Order, the Commission recognizes the importance of including workforce management plans in the long-term implementation plan. Specifically, the Tentative Order properly states: "The Commission expects that a utility's plans for the acquisition and use of qualified employees and contractors to comply with this section will be included as part of its long-term infrastructure improvement plan filed pursuant to Section 1352. Acquisition of an adequate and qualified workforce is essential to successful implementation of any long-term plan to improve infrastructure." Tentative Order at 20. But the language regarding the requirements of the plans themselves does not contain such a provision. AFL-CIO submits, therefore, that the Commission's discussion of the contents of a long-term plan should clarify that a workforce management plan must be part of a long-term plan.

In other words, AFL-CIO submits one purpose of Section 1352 is to ensure that utilities are looking at the "big picture" and appropriately managing their long-lived assets. While the Act is silent as to the time period covered by a plan, AFL-CIO submits that the Commission should require utilities to use at least a 20-year time period for their long-term infrastructure improvement plans. In that way, the Act's requirements for five-year reviews of the plans makes sense and would help the Commission ensure that utilities are implementing their long-term management plans in a reasonable manner.

Finally, while AFL-CIO understands that certain details in long-term plans might contain highly sensitive information, AFL-CIO submits that it is extremely important for the long-term

plans to be subject to review by the public. The Tentative Order, incorrectly in AFL-CIO's view, speaks in terms of a plan being "deemed" to be confidential by the utility. AFL-CIO respectfully submits that this is not the correct terminology and that the Commission should clarify that protective orders are not issued automatically or without an appropriate review of the need to protect information from public scrutiny. The Tentative Order also contains an incorrect citation to the Commission's Confidential Security Information regulations.

***B. Proposed Changes in Tentative Order***

To implement its recommendations regarding long-term infrastructure improvement plans, AFL-CIO proposes the following changes (in legislative format) in the Tentative Order's provisions relating to Section 1352 (Tentative Order at 7-10):

**Section 1352 – Long-Term Infrastructure Improvement Plan**

In order to qualify for DSIC recovery, Section 1352 requires that a utility submit a long-term infrastructure improvement plan that is approved by the Commission. *See* 66 Pa. C.S. § 1352(a). This provision ensures that the quarterly DSIC repairs, improvements, and replacements to eligible property are being made consistent with a long-term plan that has carefully examined the utility's current distribution infrastructure, including its elements, age, and performance and that also reflects reasonable and prudent planning of expenditures over the course of ~~many~~ at least 20 years to replace and improve aging infrastructure in order to maintain the safe, adequate, and reliable service required by law. *See* 66 Pa. C.S. § 1501. The following ~~six~~ seven elements must be included in the long-term infrastructure improvement plan:

- (1) Types and age of eligible property;
- (2) Schedule for its planned repair and replacement;
- (3) Location of the eligible property;
- (4) Reasonable estimate of the quantity of property to be improved;
- (5) Projected annual expenditures and measures to ensure that plan is cost effective; ~~and~~
- (6) Manner in which replacement of aging infrastructure will be accelerated *and* how repair improvement or replacement will maintain safe and reliable service; ~~and~~
- (7) A workforce management and training plan designed to ensure that the utility will have access to a qualified workforce to perform the work in a

cost-effective, safe, and reliable manner during the time period covered by the long-term infrastructure improvement plan.

The long-term plan must include the types and age of eligible property. *See* 66 Pa. C.S. § 1352(a)(1). In the Commission’s view, this necessarily includes a review of all distribution plant, including its inventory, age, functionalities, reliability and performance. The long-term plan must also include a schedule for the planned repair and replacement of eligible property. *See* 66 Pa. C.S. § 1352(a)(2).<sup>\*</sup> This schedule must be long-term cover a time period of at least 20 years and be forward-looking, based on a utility’s analysis of equipment failures, their nature, causes, locations, analysis of reliability performance indicators, and forecasts of future reliability concerns. For EDCs, we expect this analysis to include consideration of reliability metrics such as SAIDI, SAIFI and CAIDI.<sup>†</sup> For NGDCs, we expect this analysis to include consideration of and consistency with the Distribution Integrity Management Program (DIMP) plans filed pursuant to Federal natural gas pipeline standards.<sup>‡</sup>

The long-term plan must also include a general description of the location of the eligible property and a reasonable estimate of the quantity of eligible property to be improved. *See* 66 Pa. C.S. § 1352(a)(3) and (a)(4). The long-term plan must include the utility’s “projected annual expenditure” to implement the plan and measures taken to ensure that the plan is “cost effective.” 66 Pa. C.S. § 1352(a)(5). The plan’s discussion of cost-effectiveness should include, but not be limited to, the utility’s plans to cost-effectively ensure that the work will be performed by qualified personnel during the life of the plan.

Finally, the legislation requires that the long-term plan demonstrate the “manner in which replacement of aging infrastructure will be accelerated *and* how repair improvement or replacement will maintain safe and reliable service.” 66 Pa. C.S. § 1352(a)(6) (emphasis added). In the Commission’s judgment, this is the core element of the long-term plan. The Commission expects the utility’s long-term plan to set forth a comprehensive strategy for capital replacement and

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<sup>\*</sup> Parties are invited to address how the utility will comply with Section 59.38 of our regulations while implementing the long-term plan. *See* 52 Pa. Code § 59.38.

<sup>†</sup> Pursuant to the Commission’s electric reliability regulations at 52 Pa. Code §§ 57.191 – 57.198, EDCs are required to maintain safe, adequate and reliable service and to monitor system reliability metrics that include Customer Average Interruption Duration Index (CAIDI), System Average Interruption Duration Index (SAIDI), and System Average Interruption Frequency Index (SAIFI).

<sup>‡</sup> Pursuant to Federal pipeline safety laws, NGDCs were required to file and implement, by August 2, 2011, a DIMP plan. *See* 49 C.F.R. § 192.1005. The plan elements must include, *inter alia*, risk evaluation and ranking, performance measurement and monitoring, and periodic evaluation and improvement. *See* 49 C.F.R. § 192.1007.

improvement that will address aging infrastructure, system integrity, reduce reliability risks, and maintain safe, adequate and reasonable service.

Moreover, the Commission expects that the long-term plan will reflect and maintain an *acceleration* of infrastructure replacement over the utility's historic level of capital improvement. We recognize that some utilities have already taken substantial steps recently to increase prudent capital investment to address their aging infrastructure; those utilities should indicate in their long-term plan how the DSIC will maintain or augment acceleration of infrastructure replacement and prudent capital investment.

Subsection (a)(7) empowers the Commission to order a new or revised plan if the utility's proposed long-term plan is not adequate. *See* 66 Pa. C.S. § 1352(a)(7). Further, subsection (b) provides for the Commission to promulgate regulations for periodic review of the plan at least once every 5 years, and that the DSIC will terminate if the utility is not in compliance with its approved long-term plan. *See* 66 Pa. C.S. § 1352(b).

In regard to timing for the filing of a long-term infrastructure improvement plan, we note that, unlike Section 1353(a), which provides that a utility may not petition for approval of a DSIC before January 1, 2013, there is no such time bar in Section 1352 for filing a petition for Commission approval of a utility's long-term infrastructure plan. The long-term plan is a necessary element of a DSIC petition. *See* 66 Pa. C.S. § 1353(b)(3). Thus, if the long-term plan is filed and approved in advance of the DSIC petition, it will reduce the scope of issues to be resolved as part of the DSIC petition process and can make review of the DSIC petition more efficient. Accordingly, since there is no statutory time bar to file for approval of a utility's long-term plan, the Commission will accept and encourage those filings to be made, if a utility is prepared to do so, prior to filing for DSIC approvals on and after January 1, 2013.

Finally, we note that if any of the information contained in the long-term infrastructure improvement plan is ~~deemed~~ alleged by the utility to be proprietary and confidential, or if the utility believes that the information qualifies as Confidential Security Information under 35 P.S. § 2141, the plan can be submitted with a request for proprietary treatment pursuant to a protective order. *See* 52 Pa. Code § 5.423 (Propriety Information) and 52 Pa. Code §§ ~~101.1—101.7~~ 102.1—102.4 (Confidential Security Information). The Commission will make every effort to ensure that plans are subject to public review and comment, while respecting a utility's need to protect information that the utility demonstrates could pose a risk to the utility's business or operations

### III. Section 1359: Projects

On pages 19-20 of the Tentative Order, the Commission discusses how it proposes to implement the requirements of Section 1359 of the Public Utility Code. The Commission correctly states that Section 1359(a) “requires the Commission to establish standards to ensure that work to repair, improve, or replace eligible property is performed by qualified employees of the utility or independent contractors.” Tentative Order at 19. As discussed above, the Tentative Order also properly requires the long-term implementation plan to include information showing that the utility will have an adequately sized and qualified workforce in place to perform the work during the life of the plan.

#### A. *Standards for Qualified Personnel*

The Tentative Order, however, fails to comply with the Act’s requirements to “establish standards to ensure that work ... is performed by qualified employees of either the utility or an independent contractor in a manner that protects system reliability and the safety of the public.” 66 Pa. C.S. § 1359(a) (emphasis added). AFL-CIO proposes that the following standards should be established by the Commission to ensure that qualified employees perform all work on DSIC-eligible projects.

First, the general definition of a “qualified” person, as established by the U.S. Department of Labor, Occupational Safety and Health Administration, is “one who, by possession of a recognized degree, certificate, or professional standing, or who by extensive knowledge, training, and experience, has successfully demonstrated his ability to solve or resolve problems relating to the subject matter, the work, or the project.” 29 C.F.R. § 1926.32.

Moreover, the Commission also should recognize the importance of on-the-job training for utility field workers. The Act should not be interpreted to prohibit this important training

function. Personnel in recognized training or apprenticeship programs, however, must be supervised on-site and at all times by fully qualified personnel, with one fully qualified person (often referred to as a journeyman) being responsible for no more than one trainee or apprentice. Thus, a person who is undergoing on-the-job training and who, in the course of such training, has demonstrated an ability to perform certain tasks safely at his or her level of training, and who is under the direct supervision of a journeyman, should be considered to be a qualified person for the performance of those certain tasks.

In addition to these general requirements, the following specific requirements should apply for work performed on an electric distribution system: With the exception of fully supervised trainees and apprentices as discussed above, each employee of an electric distribution utility, and each employee of an independent contractor, performing work on a DSIC-eligible project for an electric distribution utility, shall meet the requirements of Section 420(b) (Qualifications of Employees) of the currently effective edition of the National Electrical Safety Code (“NESC”), and such other training requirements of the NESC that apply to the specific work being performed (e.g., Section 446 which includes training requirements for personnel working on energized lines). It is reasonable for the Commission to rely on the NESC for such standards and, indeed, the Commission has done so in other regulations relating to the safety and reliability of electric facilities. See, e.g., 52 Pa. Code §§ 57.82, 57.193, 57.194, and 57.198.

Similarly, the following specific requirement should apply for work performed on a natural gas distribution system: With the exception of fully supervised trainees and apprentices as discussed above, each employee of a natural gas distribution utility, and each employee of an independent contractor, performing work on a DSIC-eligible project for a natural gas distribution utility, shall meet the requirements of the U.S. Department of Transportation, Pipeline and

Hazardous Materials Safety Administration, as found in 49 C.F.R. Part 192, Subpart N (Qualification of Pipeline Personnel).

Finally, each employee of a utility, and each employee of an independent contractor, operating a crane on a DSIC-eligible project shall meet the requirements of the U.S. Department of Labor, Occupational Safety and Health Administration, as found in 29 C.F.R. § 1926.1427 (Operator qualification and certification).

In addition, AFL-CIO submits that each utility using a DSIC shall retain records with the names and qualifications of each employee of a utility, and each employee of an independent contractor, who performs work on each DSIC-eligible project. The records should be sufficient to determine the identity and qualifications of each employee for each specific project the costs of which the utility seeks to include in a DSIC. The records shall be retained for a period of at least five years after completion of the project, and shall be made available to the Commission, its designee, or other interested parties as part of an audit under Section 1358(e)(1)(i) of the Public Utility Code or an annual reconciliation under Section 1358(e)(1)(ii) of the Public Utility Code.

***B. Requirements for Inspection of Work Performed by Independent Contractors***

The Tentative Order properly states that the Act requires any work on DSIC-eligible projects that is performed by independent contractors must be inspected by utility employees. Tentative Order at 19, 66 Pa. C.S. § 1359(b).

AFL-CIO submits that in order to minimize future controversies and establish criteria that can be used when auditing utilities' compliance with the requirements of Section 1359, the Commission should establish minimum standards to apply for such inspections. The standards suggested below are designed to ensure that work performed by independent contractors is

performed in a manner that is safe to the workers, does not jeopardize the public, and is consistent with the quality of work that would be performed by properly trained and supervised utility employees.

As a general matter, the Commission should require that any utility employee who inspects the work (“the Inspector”) must be fully qualified to perform, or otherwise knowledgeable about, all work that is being inspected.

In addition, where all employees of an independent contractor working on a job site either hold the requisite qualifications or are fully supervised trainees or apprentices as discussed above, the Inspector shall be responsible for inspecting the work on no more than two job sites, subject to the following provisions: (a) the job sites are located within a travel time of not more than 15 minutes from each other; (b) each employee of the independent contractor shall have the ability to contact the Inspector by cellular telephone, pager, or other immediately available electronic means; and (c) the Inspector must be present on the job site whenever an employee of an independent contractor is in the process of excavating over or around (i) energized electricity lines or (ii) natural gas mains, services, or other facilities through which natural gas is flowing.

Where all employees of an independent contractor working on a job site have not demonstrated, at the time the work is being performed, that they hold the requisite qualifications or are fully supervised trainees or apprentices as discussed above, however, the Inspector shall be responsible for inspecting the work on only one job site, and shall be present on that job site whenever one or more employee of the independent contractor is present on the site. Meeting this inspection requirement, however, is not sufficient for the work to be eligible for inclusion in the DSIC unless the utility can subsequently demonstrate that, in fact, each employee of the independent contractor was qualified at the time the work was performed.

In order to ensure compliance with these requirements, each utility using a DSIC should be required to retain records with the names and qualifications of the Inspector or Inspectors who is/are responsible for each specific project the costs of which the utility seeks to include in a DSIC. The records shall be retained for a period of at least five years after completion of the project, and shall be made available to the Commission, its designee, or other interested parties as part of an audit under Section 1358(e)(1)(i) of the Public Utility Code or an annual reconciliation under Section 1358(e)(1)(ii) of the Public Utility Code.

***C. Proposed Changes in Tentative Order***

To implement its recommendations regarding worker qualifications and inspections, AFL-CIO proposes the following changes (in legislative format) in the Tentative Order's provisions relating to Section 1359 (Tentative Order at 19-20):

**Section 1359 – Projects**

Section 1359 (a) of the Code requires the Commission to establish standards to ensure that work to repair, improve, or replace eligible property is performed by qualified employees of the utility or independent contractors to protect system reliability and public safety. Section 1359(b) provides that work performed by independent contractors is subject to inspection by utility employees. Section 1359(c) provides that work not performed by qualified employees is not eligible for DSIC recovery, even if the work is performed on DSIC-eligible projects.

As discussed above, theThe Commission expects that a utility's plans for the acquisition and use of qualified employees and contractors to comply with this section will be included as part of its long-term infrastructure improvement plan filed pursuant to Section 1352. Acquisition of an adequate and qualified workforce is essential to successful implementation of any long-term plan to improve infrastructure.

We hereby establish the following standards for determining whether the personnel performing work on DSIC-eligible projects are qualified.

First, we adopt the general definition of a "qualified" person, as established by the U.S. Department of Labor, Occupational Safety and Health Administration, as "one who, by possession of a recognized degree, certificate, or

professional standing, or who by extensive knowledge, training, and experience, has successfully demonstrated his ability to solve or resolve problems relating to the subject matter, the work, or the project.” 29 C.F.R. § 1926.32.

Moreover, we recognize the importance of on-the-job training for utility field workers. We do not interpret the Act to prohibit this important training function. Personnel in recognized training or apprenticeship programs, however, must be supervised on-site and at all times by fully qualified personnel, with one fully qualified person (often referred to as a journeyman) being responsible for no more than one trainee or apprentice. Thus, a person who is undergoing on-the-job training and who, in the course of such training, has demonstrated an ability to perform certain tasks safely at his or her level of training, and who is under the direct supervision of a journeyman, should be considered to be a qualified person for the performance of those certain tasks.

In addition to these general requirements, the following specific requirements shall apply for work performed on an electric distribution system: With the exception of fully supervised trainees and apprentices as discussed above, each employee of an electric distribution utility, and each employee of an independent contractor, performing work on a DSIC-eligible project for an electric distribution utility, shall meet the requirements of Section 420(b) (Qualifications of Employees) of the currently effective edition of the National Electrical Safety Code (“NESC”), and such other training requirements of the NESC that apply to the specific work being performed (e.g., Section 446 which includes training requirements for personnel working on energized lines). We rely on the NESC for such standards as we have done in various regulations regarding the safety of electric facilities. See, e.g., 52 Pa. Code §§ 57.82, 57.193, 57.194, and 57.198.

Similarly, the following specific requirement shall apply for work performed on a natural gas distribution system: With the exception of fully supervised trainees and apprentices as discussed above, each employee of a natural gas distribution utility, and each employee of an independent contractor, performing work on a DSIC-eligible project for a natural gas distribution utility, shall meet the requirements of the U.S. Department of Transportation, Pipeline and Hazardous Materials Safety Administration, as found in 49 C.F.R. Part 192, Subpart N (Qualification of Pipeline Personnel).

Finally, each employee of a utility, and each employee of an independent contractor, operating a crane on a DSIC-eligible project shall meet the requirements of the U.S. Department of Labor, Occupational Safety and Health Administration, as found in 29 C.F.R. § 1926.1427 (Operator qualification and certification).

In addition, each utility using a DSIC shall retain records with the names and qualifications of each employee of a utility, and each employee of an

independent contractor, who performs work on each DSIC-eligible project. The records shall be sufficient to determine the identity and qualifications of each employee for each specific project the costs of which the utility seeks to include in a DSIC. The records shall be retained for a period of at least five years after completion of the project, and shall be made available to the Commission, its designee, or other interested parties as part of an audit under Section 1358(e)(1)(i) of the Public Utility Code or an annual reconciliation under Section 1358(e)(1)(ii) of the Public Utility Code.

In order to minimize future controversies and establish criteria that can be used when auditing utilities' compliance with the requirements of Section 1359, the Commission hereby establishes minimum standards to apply for inspections of DSIC-eligible work that is performed by independent contractors. These standards are designed to ensure that work performed by independent contractors is performed in a manner that is safe to the workers, does not jeopardize the public, and is consistent with the quality of work that would be performed by properly trained and supervised utility employees.

As a general matter, any utility employee who inspects the work ("the Inspector") must be fully qualified to perform, or otherwise knowledgeable about, all work that is being inspected.

In addition, where all employees of an independent contractor working on a job site either hold the requisite qualifications or are fully supervised trainees or apprentices as discussed above, the Inspector shall be responsible for inspecting the work on no more than two job sites, subject to the following provisions: (a) the job sites are located within a travel time of not more than 15 minutes from each other; (b) each employee of the independent contractor shall have the ability to contact the Inspector by cellular telephone, pager, or other immediately available electronic means; and (c) the Inspector must be present on the job site whenever an employee of an independent contractor is in the process of excavating over or around (i) energized electricity lines or (ii) natural gas mains, services, or other facilities through which natural gas is flowing.

Where all employees of an independent contractor working on a job site have not demonstrated, at the time the work is being performed, that they hold the requisite qualifications or are fully supervised trainees or apprentices as discussed above, however, the Inspector shall be responsible for inspecting the work on only one job site, and shall be present on that job site whenever one or more employee of the independent contractor is present on the site. Meeting this inspection requirement, however, is not sufficient for the work to be eligible for inclusion in the DSIC unless the utility can subsequently demonstrate that, in fact, each employee of the independent contractor was qualified at the time the work was performed.

In order to ensure compliance with these requirements, each utility using a DSIC shall retain records with the names and qualifications of the Inspector or Inspectors who is/are responsible for each specific project the costs of which the utility seeks to include in a DSIC. The records shall be retained for a period of at least five years after completion of the project, and shall be made available to the Commission, its designee, or other interested parties as part of an audit under Section 1358(e)(1)(i) of the Public Utility Code or an annual reconciliation under Section 1358(e)(1)(ii) of the Public Utility Code.

Further, the Commission expects that each quarterly DSIC filing will include a verification, (*see* 52 Pa. Code § 1.36), by the utility that qualified employees or contractors were used, and that work performed by independent contractors were inspected by utility employees, in compliance with Section 1359, for the work to repair, improve, or replace eligible property placed in service during the prior three-month period. The utility's compliance with this section shall also be subject to audit.

#### **IV. Conclusion**

The Pennsylvania AFL-CIO Utility Caucus, therefore, respectfully requests the Pennsylvania Public Utility Commission to amend the Tentative Implementation Order to include the following, as set forth in more detail above:

- (A) requirements that long-term implementation plans cover a period of at least 20 years;
- (B) clarifications that long-term implementation plans must include the utility's workforce management and training plans to ensure that all DSIC-eligible work will be performed by qualified personnel who can perform the work safely and responsibly throughout the period of the long-term implementation plan;
- (C) specific standards for determining whether personnel performing DSIC-eligible work are qualified; and

(D) criteria for ensuring the proper inspection of DSIC-eligible work that is performed by independent contractors.

Respectfully submitted,



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Dated: May 31, 2012