

COMMONWEALTH OF PENNSYLVANIA

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COPY

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October 13, 2006

**HAND DELIVERED**

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

SECRETARY'S BUREAU  
2006 OCT 13 PM 3:58

**Re: 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:

I am delivering for filing today the original plus fifteen copies of the Comments of the Office of Small Business Advocate on the Implementation Order. I have also e-mailed the Comments to Elizabeth Barnes for posting on the Commission's website.

If you have any questions, please contact me.

Sincerely,

A handwritten signature in black ink that reads "William R. Lloyd, Jr." in a cursive style.

William R. Lloyd, Jr.  
Small Business Advocate

Enclosure

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

SECRETARY'S BUREAU

2005 OCT 19 PM 3:53

**COMMENTS OF THE  
OFFICE OF SMALL BUSINESS ADVOCATE**

**INTRODUCTION**

By Order entered November 29, 2004, the Pennsylvania Public Utility Commission (“PUC” or “Commission”) provided advance notice of a proposed rulemaking regarding the establishment of inspection, repair, and replacement standards to assure electric distribution reliability. By Ordering Paragraphs 3 and 4, the Commission invited comments from electric distribution companies (“EDCs”) and other interested parties on five specific issues. On February 9, 2005, the Office of Small Business Advocate (“OSBA”) submitted comments in response to the Commission’s invitation.

By Proposed Rulemaking Order entered April 21, 2006, the Commission issued its proposed regulations for public comment. Pursuant to Ordering Paragraph 5, interested parties may file written comments within 30 days from the date of publication of the Proposed Rulemaking Order in the *Pennsylvania Bulletin*. Because the Proposed Rulemaking Order was published on October 7, 2006, at 36 *Pa. B.* 6097, the deadline for the filing of comments is November 6, 2006.

The OSBA hereby submits the following comments on the Proposed Rulemaking Order in response to the Commission's invitation.

## COMMENTS

1. In its Proposed Rulemaking Order, at 25, the Commission rejected the possibility of establishing minimum SAIDI, SAIFI, and CAIDI reliability standards which would be applicable to all EDCs.<sup>1</sup> In so doing, the Commission stated that “[t]he [Electricity Generation Customer Choice and Competition] Act does not *require* an improvement of service reliability in some EDC territories from their performance prior to the Act.” (emphasis added) The Commission then concluded that “standards regarding reliability *must* be tied to the historical performance of each EDC prior to the effective date of the Act.” (emphasis added) These statements should not be interpreted as implying that the Act deprived the Commission of authority under Section 1501 of the Public Utility Code, 66 Pa. C.S. § 1501, to require an EDC to improve its reliability beyond the level on the effective date of the Act or of authority under Sections 523 and 526 of the Public Utility Code, 66 Pa. C.S. §§ 523 and 526, to reduce or deny rate relief for an EDC which is failing to provide adequate service.<sup>2</sup> Accordingly, the OSBA recommends the addition of the following subsection to proposed Section 57.198:

(f) Nothing herein shall be construed to limit the Commission's authority:

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<sup>1</sup> The Commission has set pre-restructuring benchmarks and future performance standards, based on the System Average Interruption Frequency Index (“SAIFI”), the Customer Average Interruption Duration Index (“CAIDI”), and the System Average Interruption Duration Index (“SAIDI”).

<sup>2</sup> With regard to preservation of the Commission's authority to order improvements in reliability, *see, e.g.*, Section 2807(a) of the Public Utility Code, 66 Pa. C.S. § 2807(a), which provides that “[e]ach electric distribution company shall maintain the integrity of the distribution system . . . in a manner sufficient to provide safe and reliable service . . . *consistent with this title . . .*” (emphasis added) With regard to preservation of the Commission's ratemaking authority, *see, e.g.*, Sections 2802(16) and 2804(10) of the Public Utility Code, 66 Pa. C.S. §§ 2802(16) and 2804(10), which provide that transmission service and distribution service continue to be subject to Commission regulation, including regulation of rates.

(1) Under 66 Pa. C.S. § 1501, to investigate and adjudicate the reliability of an EDC's distribution service regardless of how that reliability compares to the EDC's reliability on the effective date of 66 Pa. C.S. Ch. 28; or

(2) Under 66 Pa. C.S. §§ 523 and 526, to reduce, or deny, a request for rate relief if the EDC has failed, is failing, or is likely to fail to provide adequate service.

2. The Commission has already adopted 52 Pa. Code §§ 57.191-57.197 in an effort to establish standards and procedures for ensuring and measuring distribution system safety and reliability. Pursuant to those regulations, the Commission has also calculated historical performance levels and acceptable future performance levels for each EDC. *See Amended Reliability Benchmarks and Standards for the Electric Distribution Companies*, Docket No. M-00991220 (Order entered May 11, 2004). An EDC's success or failure in achieving a safe and reliable system is determined primarily by whether the EDC meets the Commission-set standards as measured by reliability indices. In effect, the Commission has told EDCs *what* must be accomplished but has not told EDCs *how* it must be accomplished. In contrast, the Proposed Rulemaking Order seeks to improve reliability through the use of EDC-specific plans containing prescriptive requirements (e.g., how often trees are to be trimmed, poles and lines are to be inspected, etc.). Unfortunately, it is possible that an EDC could be in compliance with its approved plan without being in compliance with the currently applicable standards as measured by SAIFI, CAIDI, and SAIDI. Accordingly, the OSBA recommends the addition of the following subsection to proposed Section 57.198:

(g) An EDC's adherence to its plan shall not be construed to limit the Commission's authority:

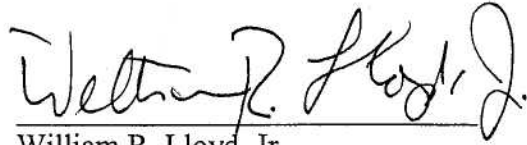
(1) Under 66 Pa. C.S. § 1501, to investigate and adjudicate the reliability of an EDC's distribution service; or

(2) Under 66 Pa. C.S. §§ 523 and 526, to reduce, or deny, a request for rate relief if the EDC has failed, is failing, or is likely to fail to provide adequate service.

3. In recognition that maintenance needs may differ on the basis of geography, the Proposed Rulemaking Order would allow some elements of an EDC's plan to be applicable only to a "rural area" and other elements to be applicable only to an "urban area." The definitions to be added to Section 57.192 would distinguish the two areas by total population rather than by population density. The OSBA suggests that justifiable geographic differences in maintenance requirements across an EDC's service territory are more likely to be correlated with an area's population density than with the area's overall population. The OSBA also notes that the General Assembly is considering House Bill 2347, which would codify a uniform definition of "rural area" and, by implication, of "non-rural area." Under HB 2347, population density would be an element in the definition of "rural area." Accordingly, the OSBA recommends that the Commission revise the proposed definitions in Section 57.192 to reflect HB 2347.

WHEREFORE, the OSBA respectfully recommends that the Commission promulgate regulations consistent with the foregoing comments.

Respectfully submitted,



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Dated: October 13, 2006

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