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INDEPENDENT REGULATORY REVIEW COMMISSION

333 MARKET STREET, 14TH FLOOR, HARRISBURG, PA 17101

May 16, 2007

Honorable Wendell Holland, Chairman
Pennsylvania Public Utility Commission
Keystone Building, 3rd Floor
400 North Street
Harrisburg, PA 17105

Re: Regulation #57-248 (IRRC #2571)
Pennsylvania Public Utility Commission
Inspection and Maintenance Standards for the Electric Distribution Companies

Dear Chairman Holland:

Enclosed are the Commission's comments for consideration when you prepare the final version of this regulation. These comments are not a formal approval or disapproval of the regulation. However, they specify the regulatory review criteria that have not been met.

The comments will be available on our website at www.irc.state.pa.us. If you would like to discuss them, please contact me.

Sincerely,

Kim Kaufman
Executive Director
wbg
Enclosure

cc: Honorable Robert M. Tomlinson, Chairman, Senate Consumer Protection and Professional Licensure Committee
Honorable Lisa M. Boscola, Minority Chairman, Senate Consumer Protection and Professional Licensure Committee
Honorable Joseph Preston, Jr., Majority Chairman, House Consumer Affairs Committee
Honorable Robert W. Godshall, Minority Chairman, House Consumer Affairs Committee

Comments of the Independent Regulatory Review Commission

on

Pennsylvania Public Utility Commission Regulation #57-248 (IRRC #2571)

Inspection and Maintenance Standards for the Electric Distribution Companies

May 16, 2007

We submit for your consideration the following comments on the proposed rulemaking published in the October 7, 2006 *Pennsylvania Bulletin*. Our comments are based on criteria in Section 5.2 of the Regulatory Review Act (71 P.S. § 745.5b). Section 5.1(a) of the Regulatory Review Act (71 P.S. § 745.5a(a)) directs the Pennsylvania Public Utility Commission (PUC) to respond to all comments received from us or any other source.

1. General - Fiscal impact; Need; Reasonableness; Consistency with other regulations and statutes; Implementation procedure; Feasibility; Clarity.

The proposed regulation would set prescriptive requirements for the inspection and maintenance (I/M) programs of electric distribution companies (EDCs) under the jurisdiction of the PUC. It generated a significant level of interest. The PUC is to be commended for extending the public comment period and for meeting with stakeholders to gather more information. The paragraphs in the first part of our comments will discuss issues in general. The discussion in the following two parts will focus on the specific provisions of the proposed regulation.

Fiscal impact v. benefit

In the Preamble, the PUC did not address the costs that this rulemaking could potentially impose on the regulated community. However, commentators raised several concerns with its fiscal impact. According to the EDCs, this proposed regulation, especially the minimum I/M timeframes mandated by Section 57.198(e), would significantly increase their operating costs. The EDCs claim that the proposed regulation would cost more than \$75.3 million per year for Pennsylvania ratepayers. At the same time, they claim that no one has identified any quantifiable benefit that can be attributed to the proposed regulation.

Under item #17 on page three of the Regulatory Analysis Form, the PUC stated the following concerning costs or savings:

It is expected that an EDC that follows prudent inspection, maintenance, repair and replacement practices, ultimately (sic) financially benefits from such practice. Although there may be more intermittent costs involved in minor repairs, an EDC should save money on larger repairs which can be prevented by proper maintenance of the system. Further, a properly maintained system should prevent foreseeable outages to customers. The EDC loses money when its customers have an outage.

Since the passage of the Electricity Generation Customer Choice and Competition Act (Act) in 1996, EDCs worked to adapt to the demands of restructuring the electric transmission and distribution sector. They are using different approaches for their I/M programs in response to their respective regions and changes in technology. The prescriptive I/M intervals proposed in Section 57.198(e) do not match the contemporary I/M practices of the EDCs. This difference is the source of the cost impact for EDCs.

Section 5(a)(3) of the Regulatory Review Act requires that when an agency submits a proposed regulation for publication, it should also submit information concerning costs imposed on the public and private sectors. The PUC did not submit this information. Before it moves forward with the final-form regulation, the PUC should carefully examine the costs of this proposed regulation. In addition, it needs to identify the benefits that would be achieved by adoption of the regulation. This analysis needs to be completed before the PUC submits the final-form regulation.

Need for change; Duplication of existing regulations

There are two aspects to consider when looking at the need for this proposed regulation. The first is whether the proposed regulation duplicates or conflicts with existing regulations. The second is whether there are serious problems with I/M programs that need to be addressed via new regulation.

Section 2802(20) of the Act (66 Pa.C.S.A. § 2802(20)) declares that the PUC “shall set through regulations, inspection, maintenance, repair and replacement standards.” Proponents of the proposed regulation point to this statutory language to support the need for regulation. Other commentators point to existing regulations that already provide standards for EDCs to achieve through I/M programs. EDCs are already required to file quarterly and annual reports on reliability of electric service. These existing provisions at 52 Pa. Code § 57.195 direct EDCs to submit various types of data concerning their I/M programs to the PUC.

The existing language in Section 57.195(b)(4) requires that an EDC provide “a breakdown and analysis of outage causes during the year” including “outage cause such as equipment failure, animal contact, tree related, and so forth.” This same subsection includes this statement: “Proposed solutions to identified service problems shall be reported.” Among other requirements, Section 57.195(b)(6) mandates that EDCs provide:

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.

Sections 57.195(b)(7)-(12) direct EDCs to submit a significant amount of detail concerning the maintenance of distribution and transmission systems and I/M programs to the PUC annually. This list includes:

- A comparison of budgeted versus actual transmission and distribution operation and maintenance expenses for the year.
- A comparison of budgeted versus actual transmission and distribution capital expenditures.

- Quantified transmission and distribution I/M goals/objectives.
- Significant changes, if any, to the transmission and distribution I/M programs previously submitted to the PUC.

In addition, the EDCs must provide information on outages in the form of “reliability indices.” Two examples of these indices include “CAIDI-Customer Average Interruption Duration Index” and “SAIFI-System Average Interruption Frequency Index.” These indices are “service performance indicators which measure the frequency, duration and magnitude of customer interruptions,” and allow the PUC to monitor the performance of EDCs in providing electricity and in maintaining the reliability of their transmission and distribution systems. Hence, they are also indicators of whether EDCs have effective I/M programs for their systems.

Second, the Preamble notes the findings of the *Final Report on the August 14, 2003 Blackout in the U.S. and Canada: Causes and Recommendations (Report)* that one of the causes of this large blackout was failure to adequately manage tree growth along transmission lines. However, the transmission line failures noted by the *Report* took place near Cleveland, Ohio.

Beyond the incident in Ohio, the PUC has not identified any serious problems that would be addressed by this proposed regulation. PUC staff did inform us of some concerns with certain EDCs. In fact, PUC counsel informed this Commission that some EDCs were recently ordered, pursuant to an investigation, to maintain a four-year tree trimming cycle for distribution lines, and a five-year cycle for transmission lines in order to improve their service reliability. This example demonstrates that the PUC is already using the information that it gathers via the reliability reports to address I/M concerns on a case-by-case basis.

The PUC is already receiving a significant amount of data concerning EDCs’ I/M programs. What is the need for another regulation concerning I/M plans? Why are the EDCs being asked to submit additional filings to the PUC? The PUC needs to provide a strong justification for this proposed rulemaking.

Feasibility; Implementation procedure

The EDCs expressed significant concern over how quickly they will be able to implement the required I/M intervals in Section 57.198(e). They described the proposed regulation as requiring a “labor intensive” approach to I/M programs. In contrast, they have developed other technologies that reduce labor costs and still provide effective I/M of their distribution and transmission systems. They cite evidence that the current size of the trained labor force may be insufficient to perform all the I/M tasks required by this regulation. The evidence includes a report from the North American Electric Reliability Corporation (NERC) indicating that loss of skilled and experienced technical talent is much more acute in the electric utility industry.

A representative for the EDCs stated that it may take a few years for the EDCs to recruit, hire and train an adequate workforce that would bring them into compliance with the proposed regulation. If the PUC continues to move forward with promulgation of this proposed regulation, it must address this concern and provide an adequate time period for the EDCs to come into compliance.

Conflict with other regulations

On March 16, 2007, the Federal Energy Regulatory Commission (FERC) issued an order entitled "Mandatory Reliability Standards for the Bulk-Power System" for a final rule. One example of the standards adopted by FERC is vegetation management. FERC is using the vegetation management program developed by NERC. This program does not set forth specific inspection trim cycles but requires that utilities maintain minimum clearances. Unlike the proposed regulation, it provides flexibility for utilities, EDCs or transmission owners to develop their own inspections schedules that are of "sufficient frequency to insure compliance with clearance requirements." In this case, the approach of the proposed regulation to transmission facilities or systems appears to be more stringent than the FERC rule for bulk power system of 100 kV or more.

2. Section 57.192. Definitions. - Reasonableness; Consistency with other regulations and laws; Implementation procedure; Need; Clarity.

Rural and urban areas

The proposed regulation adds two new definitions for the terms "rural area" and "urban area" to Subchapter N (52 Pa. Code §§ 57.191-57.197) relating to electric reliability standards. Commentators questioned the need for these two definitions.

Both definitions use similar terminology. They refer to an area as a "place designated by the United States Bureau of Census...and whose boundaries have been approved by the Secretary of the United States Department of Transportation."

The problem with references to two different federal agencies is that each agency may not use a term in the same way. The following statements are from the Federal Highway Administration (FHWA).

The term Urban Area has been ascribed two slightly different definitions by two different federal agencies. The Department of Commerce's Census Bureau uses the term Urban Area (UA) to refer collectively to the Urbanized Areas (UZA) and Urban Clusters (UC) designated by the Census Bureau for the 2000 decennial Census.

On the other hand, Federal transportation legislation (23 USC 101(a)(36) - (37) and 49 USC 5302(a)(16) - (17)) allows responsible state and local officials in cooperation with each other, and subject to approval by the Secretary of Transportation, to adjust the Census boundaries outward, as long as they encompass, at a minimum, the entire Census designated area.

The FHWA uses the term Federal-Aid Urban Area (FAUA) to distinguish the adjusted urban area boundaries allowed for transportation purposes from those designated by the Census Bureau.

(Source: www.fhwa.dot.gov/planning/census/faq2cdt.htm#q24)

If state or local officials and the U.S. Department of Transportation (USDOT) change the boundaries for these areas from those designated by the U.S. Census Bureau, then which definition or designation should an EDC use? Why are areas approved by the USDOT Secretary

any more appropriate for I/M programs than what EDCs develop and use in designing and implementing I/M in their unique regions?

EDCs also noted problems with making distinctions between rural and urban areas. They noted that many distribution circuits cross both urban and rural areas. Some lines may cross back and forth over different areas many times. Hence, making an artificial distinction between such areas serves no purpose. If the PUC is concerned that that I/M plans address changes in population density, highway or transportation routes, or topography in their regions, then this requirement can be added to the substantive provisions for required I/M plan contents. There is no need to use the words "rural" and "urban," and these two definitions should be deleted from the final-form regulation.

3. Section 57.198. Inspection and maintenance standards. - Fiscal impact; Reasonableness; Consistency with other regulations; Implementation procedure; Need; Clarity.

This new section sets forth procedures for filing I/M plans with the PUC, content requirements for the plans, and specific timeframes for certain I/M activities. It is divided into five subsections. The following paragraphs describe issues related to these subsections.

Subsection (a) – I/M plan contents

The first sentence in Subsection 57.198 (a) is long and confusing. It contains a list of ten specific items to be included in the I/M plan and the words "other facilities critical to maintaining an acceptable level of reliability." To improve clarity, it should be enumerated. The PUC should refer to Chapter 7, entitled "Enumerations" in the *Pennsylvania Code and Bulletin Style Manual* for guidance. The enumerated list should also be moved to the other content requirements for these plans set forth in Paragraphs (1)-(4) of this subsection. In addition, what type of equipment or facilities would be included in "other facilities critical to maintaining an acceptable level of reliability"? Please provide examples.

The end of the first sentence in Subsection (a) states that an EDC shall have a plan "in a format that the Commission [PUC] prescribes." When and how will the 11 EDCs be notified of the prescribed format? Format requirements should be included in the final-form regulation.

The second sentence of Subsection (a) reads: "The Commission [PUC] will review each plan and may issue orders to ensure compliance with this section." The intent of this sentence is unclear. The procedures for PUC review of plans are detailed in Section 57.198(b) of this proposed regulation. As noted below, a different sentence in this subsection states the PUC may require an EDC to correct problems by submitting an updated plan. Hence, the second sentence in Subsection (a) is redundant, and should be deleted.

The final sentence of Subsection (a) states that the PUC "may require an EDC to submit an updated plan at any time containing information the Commission [PUC] may prescribe." It is unclear how and when the PUC would notify an EDC to update its plan. Under what circumstances, would it be necessary to update a plan? How would the PUC notify the EDC of the "information" that the PUC is prescribing be contained in the plan? After the EDC submits its updated plan, when would the PUC notify the EDC that the update was approved?

Subsection 57.198(b) and (c) set forth detailed procedures and time periods for PUC review and approval of plans and revised plans. If the PUC intends to retain the ability to request that EDCs update previously-approved plans, then a new and separate subsection clarifying this process should be added to the final-form regulation. It should set forth the process, procedures and criteria that the PUC will use in determining the need for information and plan updates, and for notifying the affected EDC. It should also include provisions similar to those in Subsections (b) and (c) for PUC review and approval of plan updates.

Subsection (a)(1) – Industry codes; Rural and urban areas; I/M intervals

Subsection (a)(1) begins with the statement that the I/M “plan must be based on industry codes, National electric industry practices, manufacturers’ recommendations, sound engineering judgment and past experience.” What are “industry codes” and “National electric industry practices”? If this is a broad reference to codes such as the National Electricity Safety Code or to the code and practices of organizations such as the Institute of Electrical and Electronic Engineers and NERC, then the appropriate codes or organizations should be referenced in the final-form regulation.

The phrase “sound engineering judgment” is vague since engineers may respectfully disagree on what is sound. It is our understanding that the PUC will determine whether a plan is based on reasonable or sound engineering judgment. Hence, it will be a part of the PUC review of plans under Subsection 57.198(b) and if the PUC identifies problems in a plan, it will notify the EDC of the plan’s deficiencies pursuant to Subsection 57.198(b)(3). Therefore, it is not necessary to include the words “sound engineering judgment” in the proposed regulation, and we recommend that this phrase be deleted.

The final sentence in Subsection (a)(1) states: “The plan must take into account the **broad** minimum inspection and maintenance intervals provided for in subsection (e)” (emphasis added). Why is the word “broad” used in this sentence? Since the provisions in Subsection (e) set very specific minimum intervals, the use of the word “broad” is confusing. It should be deleted from the final-form regulation.

Subsection (a)(2) – Adequate resources

This subsection reads:

An EDC shall reduce the risk of future service interruptions by accounting for the age, condition, design and performance of system components and by providing adequate resources to maintain, repair, replace and upgrade the system.

How will the PUC determine if an EDC has provided “adequate resources to maintain, repair, replace and upgrade the system”?

Subsection (a)(3) – Vegetation clearance program

This subsection requires that the EDC I/M plan “include a program for the maintenance of minimum clearances of vegetation from the EDC’s overhead transmission and distribution facilities sufficient to avoid contact under design-based conditions.” EDCs questioned the need

for this provision and called it unreasonable. Incidental contact with vegetation or tree branches does not necessarily cause outages. Given the growth of some trees, this requirement could actually force some EDCs to perform trimming annually and would greatly increase costs with no quantifiable benefit. The PUC needs to explain the basis and intent for this requirement.

Subsection (a)(4) – Plans to be consistent with I/M goals and objectives

Subsection 57.198(a)(4) refers to quarterly and annual reliability reports from an EDC. If these are the reports required by the existing provisions at Sections 57.193(c) and 57.195, then the proposed regulation should include cross-references to these existing provisions.

Subsection (b) – Plan review process

This subsection requires EDCs to submit their I/M plans by October 1, 2007. As discussed above, the EDCs believe that there are not sufficient numbers of trained and experienced people available to meet the I/M schedules set forth in Subsection (e). They claim it will take years to recruit and train an adequate workforce to implement this proposed regulation. If the prescriptive requirements in Subsection (e) are retained in the final-form regulation, the PUC should carefully examine whether the October 2007 deadline is achievable.

There appears to be a drafting error in the first sentence of Subsection (b). It states that “on or before October 1, 2007, and every 2 years thereafter, an EDC shall submit its whole plan for the following calendar year” to the PUC. As written, this provision would have the PUC receive a one-year plan every two years. It is our understanding that the PUC also wants the EDCs to submit updates on their plans for the second year. The PUC’s intent for when and how EDCs will submit plans and updates should be clarified in the final-form regulation.

Subsections (b) and (c) – Designee

Subsections (b) and (c) set forth the process for EDCs to submit plans and revised plans for PUC review and approval. Both subsections would allow the PUC or “its designee” to accept or reject the plan or revised plan. Representatives for EDCs suggested that the words “or its designee” be deleted from the proposed regulation. There is concern that the proposed regulation does not describe or define the “designee.” Another concern is that EDCs are not given the ability to appeal or challenge decisions made by the “designee.” The regulation should be amended to define the “designee” and specify how EDCs may appeal the designee’s decision, or the term should be deleted from the final-form regulation.

Subsection (c) – Revised plans from EDCs

This subsection allows an EDC to revise its plan and submit it to the PUC for review. Like Subsection (b), this subsection states that the PUC will have 90 days to review and “accept or reject the revisions to the plan.” Unlike Subsection (b), however, Subsection (c) contains no provision stating that the PUC will notify the EDC as to why it rejected the plan nor a provision stating that the revised plan is “deemed accepted” absent any action by the PUC within 90 days. These provisions should also appear in Subsection (c) in the final-form regulation.

Subsection (d) – Recordkeeping

This subsection requires that an EDC “maintain records of its inspection and maintenance activities sufficient to demonstrate compliance with” the timeframes for I/M programs set forth in Subsection (e). The PUC needs to provide examples of the types of records that would be “sufficient.” Would this include date-stamped records signed by EDC staff who performed the tasks?

Subsection (e) Minimum timeframes for I/M activities

This subsection sets specific statewide minimum schedules for several different types of I/M activities including vegetation management, and inspections of poles, overhead lines and substations. The EDCs contend there is no basis for setting specific minimum requirements and that they are not cost-effective.

I/M inspection schedules or timeframes for different EDCs may depend on the regions where their systems are located, the different types of plants and geography in those regions, fluctuating weather patterns, variations in equipment or infrastructure, and other factors. The need for frequent visual inspections of lines or other equipment was challenged by the EDCs given that many problems are caused by internal factors which may not be detected during visual inspections. In many situations, EDCs contend that new technologies provide better results than visual inspections.

In addition, a provision in this subsection mandated annual “foot patrol” inspections of distribution lines. The need for foot patrols was questioned in situations when the lines run parallel to roadways and EDC staff could inspect the lines from vehicles.

The PUC needs to respond to these concerns and explain in detail the need for each requirement. What is the basis for setting statewide minimum timeframes that apply to all EDCs? As an alternative, the PUC should consider allowing EDCs to develop their own I/M programs and schedules that match the conditions and demands of the regions in which they operate.



Facsimile Cover Sheet



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To: Sherri A. DelBiondo
Regulatory Review Coordinator
Law Bureau
Agency: Pennsylvania Public Utility Commission
Phone: 2-4597
Fax: 3-3458
Date: May 16, 2007
Pages: 10

Comments: We are submitting the Independent Regulatory Review Commission's comments on the Pennsylvania Public Utility Commission's regulation #57-248 (IRRC #2571). Upon receipt, please sign below and return to me immediately at our fax number 783-2664. We have sent the original through Interdepartmental mail. You should expect delivery in a few days. Thank you.

Accepted by: *Sherri A. DelBiondo* Date: 5-16-07