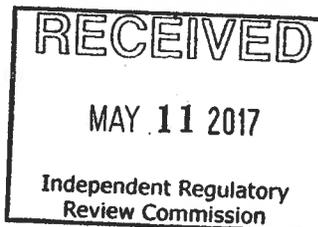


Regulatory Analysis Form

(Completed by Promulgating Agency)

**INDEPENDENT REGULATORY
REVIEW COMMISSION**



IRRC Number: 3132

(All Comments submitted on this regulation will appear on IRRC's website)

(1) Agency
Public Utility Commission (PUC)

(2) Agency Number: L-2015-2500632
Identification Number: 57-313

(3) PA Code Cite: 52 Pa. Code § 57.1 (revising) and 52 Pa. Code § 57.28 (adding)

(4) Short Title:
Rulemaking Re Electric Safety Regulations

(5) Agency Contacts (List Telephone Number and Email Address):

Primary Contact: Terrence J. Buda, tbuda@pa.gov
Secondary Contact: Robert F. Young, rfyoung@pa.gov

(6) Type of Rulemaking (check applicable box):

- Proposed Regulation
- Final Regulation
- Final Omitted Regulation

- Emergency Certification Regulation;
 - Certification by the Governor
 - Certification by the Attorney General

(7) Briefly explain the regulation in clear and nontechnical language. (100 words or less)

The PUC regulates the distribution systems of jurisdictional electric utilities that provide electric service to or for the public for compensation. Accordingly, the PUC proposes to amend and expand its regulations to facilitate safety inspections of electric utility facilities by PUC Electric Safety inspectors in order to promote and ensure public safety.

(8) State the statutory authority for the regulation. Include specific statutory citation.

The Public Utility Code, 66 Pa. C.S. §§ 501, 1501
The Commonwealth Documents Law, 45 P.S. §§ 1201-1202
The Commonwealth Attorneys Act, 71 P.S. § 732.204(b)
The Regulatory Review Act, 71 P.S. § 745.5
The Administrative Code of 1929, 71 P.S. § 232

(9) Is the regulation mandated by any federal or state law or court order, or federal regulation? Are there any relevant state or federal court decisions? If yes, cite the specific law, case or regulation as well as, any deadlines for action.

No. The specific regulation is not mandated by any state/federal law or court action. There are no deadlines for action. However, the regulation incorporates by reference the National Electric Safety Codes (NESC) in proposed Section 57.28 regarding safety and compliance with industry standards. In order to ensure that electric utility companies keep up with best practices and the most updated and applicable standards, the PUC proposed Section 57.28(b) requiring electric utilities to comply with the NESC. Similar to the PUC's gas regulations, 52 Pa. Code § 59.33(d), the PUC here finalized Section 57.28(c), explaining that an electric utility shall be subject to enforcement and inspections of its facilities, books, and records. As in the gas regulations at 52 Pa. Code § 59.33(e), the PUC finalized Section 57.28(d), requiring an electric utility to keep adequate records to assure compliance with this subsection.

(10) State why the regulation is needed. Explain the compelling public interest that justifies the regulation. Describe who will benefit from the regulation. Quantify the benefits as completely as possible and approximate the number of people who will benefit.

The regulation is proposed in furtherance of public safety and the public interest by clarifying the duties, responsibilities and standards for safe operation of the electric distribution network by electric utilities. The regulation also ensures that PUC Electric Safety inspectors have the means and mechanisms to effectively inspect the electric utility facilities under the jurisdiction of the PA Public Utility Commission. The customer and the public at large benefit when electric utility facilities are run safely and effectively. As many people understand, distribution and transmission of electricity has inherent safety risks, including electrocution. The public at large benefits when these facilities are run safely and are in compliance with the industry code. The vast majority of persons in the Commonwealth of Pennsylvania receives or indirectly benefits from the safe and reliable distribution and transmission of electricity.

(11) Are there any provisions that are more stringent than federal standards? If yes, identify the specific provisions and the compelling Pennsylvania interest that demands stronger regulations.

No. Not applicable.

(12) How does this regulation compare with those of the other states? How will this affect Pennsylvania's ability to compete with other states?

This regulation is narrowly focused on the safety of electric utility companies in the Commonwealth. As those utilities are rate-regulated monopolies, competition amongst the states is not an issue here. The regulation incorporates the National Electrical Safety Code (NESC), national safety standards which are used as guidance by other states and jurisdictions. The regulation does not enact specific regulations more stringent than the NESC.

(13) Will the regulation affect any other regulations of the promulgating agency or other state agencies? If yes, explain and provide specific citations.

No. The regulation does not affect other PUC regulations. The regulation does not affect other state agencies, as the PUC has exclusive jurisdiction over the safety of electric service facilities under the PUC's jurisdiction.

(14) Describe the communications with and solicitation of input from the public, any advisory council/group, small businesses and groups representing small businesses in the development and drafting of the regulation. List the specific persons and/or groups who were involved. ("Small business" is defined in Section 3 of the Regulatory Review Act, Act 76 of 2012.)

On November 19, 2015, the Commission issued a *Proposed Rulemaking Order*, seeking comment from the electric distribution companies (EDCs) and other interested stakeholders on the proposed electric safety regulations. The Commission evaluated those comments in rendering this final form rule. Since this regulation is narrowly tailored and consists mainly of adopting and referring to standards that are already required under the Public Utility Code and the Commission's regulations, the Commission did not hold any other informal meetings with stakeholders regarding the proposed regulation.

(15) Identify the types and number of persons, businesses, small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012) and organizations which will be affected by the regulation. How are they affected?

The final regulation affects electric distribution companies (EDCs) operating in the Commonwealth and transmission companies. Currently, the Commission maintains jurisdiction over eleven EDCs, which include:

1. Citizens' Electric of Lewisburg
2. Duquesne Light Company
3. Metropolitan Edison Company (Met-Ed)
4. PECO Energy Company
5. Pennsylvania Electric Company (Penelec)
6. Pennsylvania Power Company (Penn Power)
7. Pike County Light & Power Company
8. PPL Electric Utilities Corp.
9. UGI Utilities, Inc.
10. Wellsboro Electric Company
11. West Penn Power

The PUC reviewed the standards set forth by 13 CFR § 121.201 and the U.S. Small Business Table of Small Business Size Standards Matched to North American Industry Classification System (NAICS) Codes to determine the applicability of this rulemaking to small businesses. The closest relevant small business standard is as follows:

Sector 22 – Utilities

Subsector 221 – Utilities

221122	Electric Power Distribution	1,000 (# employees)
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Per this standard, electric utilities that are EDCs with 1,000 employees or less qualify as “small businesses.” Currently, 8 of 11 electric utilities that are EDCs regulated by the Commission would be considered “small businesses.” However, the PUC notes that many of these EDCs have affiliates and holding companies. For example, FirstEnergy is the parent company of Met-Ed, Penelec, Penn Power, and West Penn. Therefore, some of these EDCs may be more accurately described as sophisticated larger “small businesses” with larger corporate families than traditional, stand-alone “small businesses.”

All of the customers of electric utilities in the Commonwealth will be affected by this rulemaking, which aims to ensure safe and adequate electric distribution and transmission service. The public at large is affected because this rulemaking aims to protect the public from potential accidents or incidents involving electric utility facilities. Thus, all Pennsylvania residents and visitors to the state who utilize or benefit from the distribution and transmission of safe and reliable electric service are affected and stand to benefit from this proposed regulation.

(16) List the persons, groups or entities, including small businesses, that will be required to comply with the regulation. Approximate the number that will be required to comply.

All electric utilities under the PUC's jurisdiction will be required to comply. As explained above, electric utilities that are EDCs with 1,000 employees or less qualify as "small businesses" under the CFR standard. Currently, 8 of 11 that are EDC electric utilities regulated by the Commission would be considered "small businesses." However, the PUC notes that of these electric utilities FirstEnergy has 3 affiliates that are transmission companies. Therefore, some of these electric utilities may be more accurately described as sophisticated larger "small businesses" with larger corporate families than traditional, stand-alone "small businesses."

(17) Identify the financial, economic and social impact of the regulation on individuals, small businesses, businesses and labor communities and other public and private organizations. Evaluate the benefits expected as a result of the regulation.

As explained above in Question 10, the regulation is proposed in furtherance of public safety and the public interest. The purpose of the regulation is to ensure that PUC Electric Safety inspectors have the means and mechanisms to effectively inspect the electric utility facilities under the jurisdiction of the PA Public Utility Commission. The electric utility customers and the public at large benefit when electric utility facilities are run safely and effectively. Millions of people (as customers and members of the public) stand to benefit directly and indirectly from these regulations. If there is a serious and significant accident involving electric utility facilities, this could yield serious financial consequences through liability issues and litigation. Effective inspections that ensure safety at these facilities minimize the likelihood of those serious financial consequences.

(18) Explain how the benefits of the regulation outweigh any cost and adverse effects.

Some costs will be realized by the electric utilities, who must ensure their facilities comply with industry standards and who open their facilities to inspection by the PUC Electric Safety Division. However, the final regulation refers to standards to which electric utilities must already comply. Since the rulemaking does not add more specific requirements, the Commission does not expect a substantial increase in costs for the electric utilities. The PUC was not made aware by the Commenters of the specifics of any adverse effects. Furthermore, some costs may be recoverable by the electric utilities, or paid for by the use of a Distribution System Improvement Charge (DSIC). These regulations establish and reference clear procedures and requirements regarding the inspections of electric utility facilities. Under the Public Utility Code, electric utilities must "maintain adequate, efficient, safe, and reasonable service and facilities" and "make all such repairs, changes, alterations, substitutions, extensions, and improvements in or to such service and facilities as shall be necessary or proper for the accommodation, convenience, and safety of its patrons, employees, and the public." 66 Pa. C.S. § 1501. Therefore, these regulations do not necessarily create an additional adverse financial impact, as these regulations could help prevent an accident (and the costs of inspections would likely be much less than the cost of litigation and liability after a major accident). *See Answers to Question 21 below.*

(19) Provide a specific estimate of the costs and/or savings to the **regulated community** associated with compliance, including any legal, accounting or consulting procedures which may be required. Explain how the dollar estimates were derived.

The regulations do not create specific costs or savings to the regulated community that are easily forecasted and quantifiable. While the Commission's general authority to inspect public utility facilities is set forth in Section 506 of the Public Utility Code, through these regulations, the PUC's Electric Safety Division will be specifically empowered with the authority to conduct inspections of electric utility facilities under the PUC's jurisdiction. These inspections could initially take more time and resources of the electric utilities. However, proper inspections and advisement by PUC staff to the electric utilities could end up saving time, money, and resources in the long-term by preventing an accident or a facility breakdown, thereby avoiding extensive investigations and potential litigation. In short, safe and effective regulations could impose some costs in the near term, but avoid greater costs arising from an accident or incident.

(20) Provide a specific estimate of the costs and/or savings to the **local governments** associated with compliance, including any legal, accounting or consulting procedures which may be required. Explain how the dollar estimates were derived.

The regulations create no new costs to local governments, but could avoid costs attendant to any accident that affects a local government.

(21) Provide a specific estimate of the costs and/or savings to the **state government** associated with the implementation of the regulation, including any legal, accounting, or consulting procedures which may be required. Explain how the dollar estimates were derived.

The regulations do not create specific costs or savings to the state government. Through these regulations, the PUC's Electric Safety Division will be empowered with the authority to conduct inspections of electric utility facilities under the PUC's jurisdiction. These inspections could initially take more PUC staff time and thus state resources. However, proper inspections and advisement by PUC staff to the electric utility companies could end up saving time, money, and resources in the long-term by preventing an accident or a facility breakdown, thereby avoiding extensive investigations and potential litigation. In short, safe and effective regulations could impose some costs in the near term, but avoid greater costs arising from an accident or incident.

(22) For each of the groups and entities identified in items (19)-(21) above, submit a statement of legal, accounting or consulting procedures and additional reporting, recordkeeping or other paperwork, including copies of forms or reports, which will be required for implementation of the regulation and an explanation of measures which have been taken to minimize these requirements.

In implementing these regulations, the PUC's Electric Safety Division will create and utilize an inspection report to guide the conduct and reporting safety requirements for electric utilities under the PUC's jurisdiction. The electric utilities are the only entities required to maintain records and submit reports under these proposed regulations. However, the electric utilities were already required to submit accident reports under Section 57.11 of the PUC's regulations. This regulation in 57.28 is primarily about clarification, referring to requirements that already carry the force of law, and ensuring that the PUC's Electric Safety Division can effectively inspect the facilities of electric utilities for safety purposes. Therefore, the requirements under proposed Section 57.28 are not any more stringent than existing regulations that already govern the conduct of the electric utilities. As to recordkeeping requirements, the PUC explains that the electric utilities shall keep adequate records, accessible to PUC staff. There are no other legal, accounting or consulting procedures, or additional reporting, recordkeeping or other administrative work imposed by the final regulations.

(22a) Are forms required for implementation of the regulation?

No forms are required.

(22b) If forms are required for implementation of the regulation, **attach copies of the forms here**. If your agency uses electronic forms, provide links to each form or a detailed description of the information required to be reported. **Failure to attach forms, provide links, or provide a detailed description of the information to be reported will constitute a faulty delivery of the regulation.**

N/A

(23) In the table below, provide an estimate of the fiscal savings and costs associated with implementation and compliance for the regulated community, local government, and state government for the current year and five subsequent years.

	Current FY Year	FY +1 Year	FY +2 Year	FY +3 Year	FY +4 Year	FY +5 Year
SAVINGS:	\$	\$	\$	\$	\$	\$
Regulated Community	Not quantifiable (NQ)	NQ	NQ	NQ	NQ	NQ
Local Government	N/A	N/A	N/A	N/A	N/A	N/A
State Government	NQ	NQ	NQ	NQ	NQ	NQ
Total Savings	NQ	NQ	NQ	NQ	NQ	NQ

COSTS:						
Regulated Community	NQ	NQ	NQ	NQ	NQ	NQ
Local Government	N/A	N/A	N/A	N/A	N/A	N/A
State Government	NQ	NQ	NQ	NQ	NQ	NQ
Total Costs	NQ	NQ	NQ	NQ	NQ	NQ
REVENUE LOSSES:						
Regulated Community	N/A	N/A	N/A	N/A	N/A	N/A
Local Government	N/A	N/A	N/A	N/A	N/A	N/A
State Government	N/A	N/A	N/A	N/A	N/A	N/A
Total Revenue Losses	N/A	N/A	N/A	N/A	N/A	N/A

(23a) Provide the past three year expenditure history for programs affected by the regulation.

Program	FY -3	FY -2	FY -1	Current FY
N/A	N/A	N/A	N/A	N/A

(24) For any regulation that may have an adverse impact on small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012), provide an economic impact statement that includes the following:

- (a) An identification and estimate of the number of small businesses subject to the regulation.
- (b) The projected reporting, recordkeeping and other administrative costs required for compliance with the proposed regulation, including the type of professional skills necessary for preparation of the report or record.
- (c) A statement of probable effect on impacted small businesses.
- (d) A description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation.

- (a) As explained in Question 15, approximately 8 out of 11 of the EDC electric utilities may qualify as small businesses under the CFR standard of 1,000 employees or less. However, the PUC notes that many of these electric utilities have affiliates and holding companies. For example, FirstEnergy is the parent company of Met-Ed, Penelec, Penn Power, and West Penn. In addition, FirstEnergy has as affiliates 3 stand-alone transmission companies. Therefore, some of these electric utilities may be more accurately described as sophisticated larger “small businesses” with larger corporate families than traditional, stand-alone “small businesses.”
- (b) The electric utilities will be in the best position to project their costs as a result of complying with the new regulations. The PUC understands some costs will be incurred, but does not believe these costs will be substantial, especially since no new stringent requirements are being proposed. The only requirement here is the general recordkeeping requirement in Section 57.28(d), which is very similar to the current PUC requirement for gas utilities. *See* 52 Pa. Code § 59.33(e). Utility companies already incur administrative record keeping costs and the Commenters did not negatively comment about an increase in costs.
- (c) As explained above and in Question 15, the probable impact on traditional small businesses is marginal and the financial impact on the electric utilities should not be significant or overly burdensome. However, the goal of these regulations is to maintain safe electric distribution and transmission service which provides a substantial economic benefit to small businesses.
- (d) Less intrusive approaches would likely entail complete elimination of some reporting requirements or eliminating reporting requirements from the regulations that already exist and carry the force of law. However, for reasons of public safety, the Commission believes certain reports are necessary on behalf of the public interest and that the PUC’s Electric Safety Division should have the power to inspect these facilities (and provide any necessary safety recommendations in order to minimize the likelihood of an accident or incident). The PUC believes that maintenance and inspection of existing facilities is much less stringent than mandating certain specific requirements.

(25) List any special provisions which have been developed to meet the particular needs of affected groups or persons including, but not limited to, minorities, the elderly, small businesses, and farmers.

As this regulation governs the conduct of electric utility companies and not individual conduct, there are no special provisions for particularly affected groups or persons.

(26) Include a description of any alternative regulatory provisions which have been considered and rejected and a statement that the least burdensome acceptable alternative has been selected.

Since these regulations are narrow and very limited, the PUC did not consider any other alternative provisions. The primary alternative would be to not propose the regulation at all. However, as explained earlier, the importance of and purpose of this regulation is 1) to clarify and distinguish the duties between the electric utility and the customer; 2) to reference the NESC; and 3) to facilitate inspections of electric utility facilities by the PUC's Electric Safety Division.

(27) In conducting a regulatory flexibility analysis, explain whether regulatory methods were considered that will minimize any adverse impact on small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012), including:

- a) The establishment of less stringent compliance or reporting requirements for small businesses;
- b) The establishment of less stringent schedules or deadlines for compliance or reporting requirements for small businesses;
- c) The consolidation or simplification of compliance or reporting requirements for small businesses;
- d) The establishment of performance standards for small businesses to replace design or operational standards required in the regulation; and
- e) The exemption of small businesses from all or any part of the requirements contained in the regulation.

As explained above in Question 26, the only other alternative would be to not propose any regulation. However, the PUC believes it is important 1) to clarify and distinguish the duties between the electric utility and the customer; 2) to reference the NESC; and 3) to facilitate inspections of electric service facilities by the PUC's Electric Safety Division.

Since the regulation is narrowly tailored and the PUC was mindful about ensuring that any regulations would not have an adverse impact on the operations of the electric utilities, the PUC believes that least restrictive measures were taken to both ensure public safety and minimize extraneous unnecessary requirements on the electric utilities.

(28) If data is the basis for this regulation, please provide a description of the data, explain in detail how the data was obtained, and how it meets the acceptability standard for empirical, replicable and testable data that is supported by documentation, statistics, reports, studies or research. Please submit data or supporting materials with the regulatory package. If the material exceeds 50 pages, please provide it in a searchable electronic format or provide a list of citations and internet links that, where possible, can be accessed in a searchable format in lieu of the actual material. If other data was considered but not used, please explain why that data was determined not to be acceptable.

Data is not the basis for this regulation.

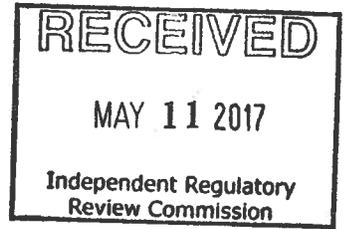
(29) Include a schedule for review of the regulation including:

- | | |
|---|----------------------------------|
| A. The length of the public comment period: | <u>N/A</u> |
| B. The date or dates on which any public meetings or hearings will be held: | <u>None are scheduled</u> |
| C. The expected date of delivery of the final-form regulation: | <u>May 2017</u> |
| D. The expected effective date of the final-form regulation: | <u>Upon publication as final</u> |
| E. The expected date by which compliance with the final-form regulation will be required: | <u>Upon publication as final</u> |
| F. The expected date by which required permits, licenses or other approvals must be obtained: | <u>N/A</u> |

(30) Describe the plan developed for evaluating the continuing effectiveness of the regulations after its implementation.

The PUC staff will continue to work with the public and the electric utility companies with respect to safety inspections and requirements for electric utility companies. We will continue evaluating the utility, necessity, and effectiveness of safety inspection requirements.

**FACE SHEET
FOR FILING DOCUMENTS
WITH THE LEGISLATIVE REFERENCE BUREAU
(Pursuant to Commonwealth Documents Law)**



DO NOT WRITE IN THIS SPACE

Copy below is hereby approved as to form and legality. Attorney General.

BY _____
(DEPUTY ATTORNEY GENERAL)

DATE OF APPROVAL _____

Check if applicable
Copy not approved. Objections attached

Copy below is hereby certified to be true and correct copy of a document issued, prescribed or promulgated by:

Pennsylvania Public Utility Commission
(AGENCY)

DOCUMENT/FISCAL NOTE NO. L-2015-2500632/57-313

DATE OF ADOPTION 4/20/2017

BY Rosemary Chiavetta
Rosemary Chiavetta

TITLE Secy
(SECRETARY)

Copy below is hereby approved as to form and legality. Executive or independent Agencies.

By Bohdan R. Pankiw
Bohdan R. Pankiw
Chief Counsel

4/20/2017
DATE OF APPROVAL

Check if applicable. No Attorney General approval or objection within 30 days after submission.

L-2015-2500632/57-313
Final Rulemaking
Rulemaking Re Electric Safety Regulations
52 Pa Code, Chapter 57

The Pennsylvania Public Utility Commission on April 20, 2017, adopted a final rulemaking order to amend and add electric safety regulations to Chapter 57 in Title 52 of the Pa Code. The contact person is Assistant Counsel Terrence J. Buda, Law Bureau, 717 783-3459.

EXECUTIVE SUMMARY
L-2015-2500632/57-313

Final Rulemaking Re Electric Safety Regulations

52 Pa. Code Chapter 57

Section 1501 of the Public Utility Code requires every public utility in Pennsylvania to “maintain adequate, efficient, safe, and reasonable service and facilities” and to “make all such repairs, changes, alterations, substitutions, extensions, and improvements in or to such service and facilities as shall be necessary or proper for the accommodation, convenience, and safety of its patrons, employees, and the public.” 66 Pa. C.S. § 1501. Pursuant to that authority and Section 501 of the Public Utility Code, 66 Pa. C.S. § 501, the Pennsylvania Public Utility Commission (Commission or PUC) proposes adding safety regulations with respect to the distribution facilities of electric utilities under the Commission’s jurisdiction.

The Commission proposes these final regulations to facilitate safety inspections of electric utilities by the PUC’s Electric Safety Division. The final regulations reference the national electric safety standards in the National Electrical Safety Code (Code) and require jurisdictional electric utilities to adhere to the Code. The final regulations clarify the applicable electric safety standards, record-keeping and reporting rules for electric utilities, and the obligations of utilities in regard to inspections and investigations. The final regulations also clarify the duties and responsibilities between the customer and the electric utility regarding maintenance of certain facilities and equipment.

The PUC contacts for this final rulemaking are Terrence J. Buda, Esq., Assistant Counsel (717-783-3459) and Alyson Zerbe, Regulatory Coordinator (717-772-4597).

**PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17105-3265**

Public Meeting held April 20, 2017

Commissioners Present:

Gladys M. Brown, Chairman
Andrew G. Place, Vice Chairman
John F. Coleman, Jr.
Robert F. Powelson
David W. Sweet

Rulemaking Re Electric Safety Regulations,
52 Pa. Code Chapter 57

Docket No. L-2015-2500632

FINAL RULEMAKING ORDER

BY THE COMMISSION:

In accordance with Sections 501 and 1501 of the Public Utility Code, 66 Pa. C.S. §§ 501 and 1501, the Pennsylvania Public Utility Commission (PUC or the Commission) formally commenced a rulemaking process to amend its existing regulations in Chapter 57, Subchapters A (General Provisions) and B (Service and Facilities) at 52 Pa. Code §§ 57.1 (Definitions) and 57.28 (Electric Safety Standards). On November 19, 2015, the Commission issued a Proposed Rulemaking Order to add a definition for “EDC” (electric distribution company) and to modify the definition of “service terminal” and replace that term with the new term “service point / point of delivery” in 52 Pa. Code § 57.1, and to add electric safety standards at 52 Pa. Code § 57.28.

Comments were filed by the Pennsylvania AFL-CIO Utility Caucus (AFL-CIO), PECO Energy Company (PECO), the Energy Association of Pennsylvania (EAP), the Office of Consumer Advocate (OCA), and the Duquesne Light Company (Duquesne).

The Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company, West Penn Power Company (collectively “the FE Companies”) and PPL Electric Utilities Corporation (PPL Electric), also submitted comments and recommended revisions in response to the Proposed Rulemaking Order. Joint Comments were filed by Pennsylvania American Water Company (PAWC) and System Local 537, Utility Workers Union of America, AFL-CIO (Joint Commenters or PAWC). Finally, The Independent Regulatory Review Commission (IRRC) filed comments on April 6, 2016. IRRC’s comments were not a formal approval or disapproval of the regulation but specify the regulatory review criteria that have allegedly not been met. The Commission reviewed the comments of these interested parties and issues this Final Rulemaking Order.

Background and Procedural History

The Commission first promulgated Section 57.1 (Definitions) in Subchapter A (General Provisions) of its Electric Service regulations in Chapter 57 of the Pennsylvania Code on February 25, 1946. *See* 52 Pa. Code § 57.1. Section 57.1 was later amended on May 20, 1978, 8 *Pa.B.* 1403, and on January 8, 1983, 13 *Pa.B.* 131.

On February 19, 2014, the Commission’s then-Chairman Robert F. Powelson testified to the Pennsylvania House of Representatives Appropriations Committee that there is an average of 26 serious injuries or fatalities in Pennsylvania each year related to electric utility operations. Therefore, the Commission created the Electric Safety Division within the Commission’s Bureau of Investigation & Enforcement (I&E) to ensure that more PUC staff would be dedicated to enforcing the National Electrical Safety Code and performing field audits and investigations.¹ Presently, the Electric Safety Division is a dedicated unit, consisting of four full-time staff: a Supervisor and

¹ Prepared Testimony of Robert F. Powelson Before the Pennsylvania House of Representatives Appropriations Committee, at 9, available at http://www.puc.pa.gov/general/pdf/testimony/Powelson-House_Budget_021914.pdf.

field inspectors for Eastern Pennsylvania, Central Pennsylvania, and Western Pennsylvania. One attorney/prosecutor also provides part-time enforcement support.

The Commission's Gas Safety Division within I&E currently enforces gas safety standards and conducts gas safety inspections through the application of Section 59.33 (Safety) of the Commission's regulations in Chapter 59 pertaining to Gas Service. *See* 52 Pa. Code § 59.33. Section 59.33 clearly and straightforwardly lists the minimum gas safety standards by specifically citing to sections of the United States Code and the Code of Federal Regulations. *See* 52 Pa. Code § 59.33(b). In a similar vein, the Commission believes that the clear outlay of electric safety standards in one section in Chapter 57 of the Commission's regulations will clarify minimum industry standards and will assist the Electric Safety Division in enforcing those standards. Specifically, the Commission intended to reference the national electric safety standards in the National Electrical Safety Code (NESC) in order to remove doubt and minimize legal challenges as to the applicability of the NESC to jurisdictional Pennsylvania electric distribution companies (EDCs). In proposing these electric safety standards, the Commission also sought to clarify the duties and responsibilities between the customer and the electric utility. *See* Annex A, Section 57.28(a).

Legal Context

Under the Public Utility Code, an electric utility in Pennsylvania has a legal duty to maintain safe, adequate and reasonable service and facilities and to make repairs, changes, and improvements that are necessary or proper for the accommodation, convenience, and safety of its patrons, employees, and the public. 66 Pa. C.S. § 1501. Pursuant to its statutory powers, the Commission is authorized to adopt and enforce rules to ensure that electric utilities provide safe, adequate, and reliable service. 66 Pa. C.S. §§ 102, 501. The Commission must ensure that electric utilities adhere to established industry standards and practices, such as the national standards of the NESC, regarding the installation and maintenance of transmission and distribution facilities. 66 Pa. C.S.

§ 2804(1), § 2807(a); 52 Pa. Code § 57.198(b). Commission staff may initiate an investigation, or may do so upon complaint by an affected party, to determine whether an electric utility is providing utility service in accordance with those standards. *See* 52 Pa. Code § 57.194(b), § 57.197(a); *see also* 52 Pa. Code § 57.12. An electric utility that violates the Public Utility Code or Commission orders or regulations subjects that electric utility to a civil penalty of \$1,000 per violation for every day of that violation’s continuing offense. 66 Pa. C.S. § 3301(a)-(b).

The Commission embarked on this rulemaking proceeding in order to add (1) electric safety regulations to clarify the applicable electric safety standards, (2) electric utility record keeping and reporting rules, and (3) electric utility obligations in regard to inspections and investigations. The delineation and description of electric safety standards in a new subchapter of our regulations is in the public interest as these standards provide clearer, more transparent, and more specific guidance to the regulated community and the public than the Commission’s existing regulations.

These regulations will empower the PUC’s Electric Safety Division to enforce electric safety standards at jurisdictional electric distribution facilities to ensure public safety and protect the public interest. *See* 66 Pa. C.S. § 1501. Pursuant to this authority, the Commission’s power to promulgate regulations, 66 Pa. C.S. § 501(b), and the Commonwealth Documents Law, 45 P.S. § 1201, the Commission proposed electric safety regulations governing the electric systems of jurisdictional electric companies in the Commonwealth of Pennsylvania. *See* Annex A, Section 57.28.

COMMENTS TO THE PROPOSED RULEMAKING ORDER

The AFL-CIO proposes that Service point/point of delivery instead be defined as “the point of connection between the facilities of the EDC and the customer’s premises wiring.” AFL-CIO contends that its definition is preferable because it is based on the nature of the physical equipment, even where the utility has not “designated” a particular

point of interconnection. Secondly, because the term “facilities” as defined by Section 102 of the Public Utility Code refers to physical plant and equipment, the AFL-CIO asserts that the use of the word “premises” when referring to the customer’s property will eliminate any unnecessary confusion.

AFL-CIO also believes there are serious problems in the Commonwealth involving coordination between EDCs and field employees of water and wastewater providers. AFL-CIO offers additional language covering the duties of EDCs under Section 57.28 (a), with respect to this matter. Only the AFL-CIO and the Joint Commenters have raised and addressed this issue of inter-utility coordination for the protection of the public.

Regarding the Commission’s proposal in Section 57.28(b)(2) to follow the NESC standards, the AFL-CIO recommends that the regulation expressly require EDC adherence to the most recent adopted version of the NESC because a new version of the NESC is published every five years and may reflect changes in standards.

Lastly, AFL-CIO suggests that Section 57.28(d) of the proposed rule be modified to make clear that an EDC is also required to maintain (and make available to the Commission) other safety-related records and reports that are required under other applicable state and federal laws and regulations.

The Joint Commenters generally supported the proposals in the Proposed Rulemaking Order but submitted comments in the interest of the safety of Pennsylvania-American’s employees, customers, and contractors, who perform subsurface utility work on water and wastewater pipes and facilities located near exposed underground and overhead power lines. The Joint Commenters assert that in the absence of timely and appropriate actions by the EDC, these lines could potentially cause serious injuries or fatalities. Despite this safety issue, the Joint Commenters acknowledge that

there is currently nothing in state or federal statutes or regulations that require EDCs to timely and appropriately coordinate with local water/wastewater utilities.

PAWC recommends a requirement that EDCs coordinate in a prompt and timely manner with water and wastewater utilities under the Commission's jurisdiction to ensure the safety of such workers during the course of their work whether the work is planned or emergent. PAWC requests that the Commission adopt the suggested general requirements of coordination and establish an inter-utility working group to develop the specifics on how cooperation between EDCs and water/wastewater utilities can be achieved.

EAP supports the revised definition of "service terminal" in Section 57.1 (Definitions) but recommends using only one term "service point" in order to eliminate any confusion springing from the use of two terms for one definition. EAP notes in support that the term "service point" is used in the NESC.

EAP also recommends renaming Paragraph (1) in Section 57.28(a) "Electric utility responsibility" in order to be more consistent with the succeeding Paragraph (2) "Customer responsibility." EAP also recommends removing "every" from Section 57.28(a) (1) because EAP believes it implies that the legal obligation exceeds a reasonable standard, which is clearly not the law. EAP asserts that "general public" should also be removed from this subsection because it is redundant and could be interpreted as creating a new liability risk for EDCs which is not adequately disclosed in the proposed rulemaking. EAP would also re-word the last phrase of the subsection to read "may be subjected to by reason of its equipment and facilities" to better align with the purpose of the proposed rule which was aimed at safety standards regarding facilities and equipment, not the broader provision of electric distribution service. Further, EAP suggests using the term "service point" in both subparagraphs.

EAP urges the Commission to delete all of the proposed paragraphs under Section 57.28(b) except Paragraph (b)(2) requiring adherence to the NESC standards. Explaining that safety is a primary objective of EAP and all its members, EAP points out that gas safety standards were established in Pennsylvania by the adoption of a single set of compliance obligations, *i.e.* 49 CFR Parts 191-193, 195 and 199. EAP also suggests that the proposed regulation explain that the NESC is to be applied pursuant to its terms and should account for the applicability of future revisions of editions of the NESC to the installation, operation, and maintenance of EDC equipment and facilities. EAP urges the Commission to follow a comparable path in limiting the electric safety code to the NESC.

EAP suggests striking Paragraph (b)(4) because EAP believes it again restates an existing obligation for EDCs under PA One Call, and further causes confusion by creating a compliance obligation through regulations subject to Commission enforcement for a statute which gives another agency enforcement power. EAP also notes that the pending legislation did not pass the house so any attempt to promulgate regulations in this area is premature.

EAP recommends the removal of Section 57.28(b)(3) as EAP believes the paragraph reflects overreaching by the Commission into the area of management of investor owned electric utilities for which the Commission lacks the authority.

In regards to Section 57.28(c), EAP recommends the Commission use the language found in the gas safety regulations found at Section 59.33(d) as EAP considers it more straightforward. EAP believes the direct use of the word “inspections” suffices, and that the addition of “investigation” in the proposed electric safety standards is duplicative, and may appear to merge the roles of the Electric Safety Division with that of I&E. EAP also contends that “raw data” should be removed from the regulation because use of such information which has not been vetted or verified by the utility may not demonstrate whether a company is complying with substantive safety standards and

would likely lead to misinformation and misinterpretation. According to EAP, it does not believe that an additional on-the-spot reporting requirement is necessary since current regulation provides time for an electric utility to review, analyze and verify data compiled at an accident site and the utility is obligated to submit a written report following an initial thirty day period. *See* 52 Pa. Code § 57.11(e).

EAP further recommends the addition of the phrase “as it shall from time to time request” to provide clarity on when utilities are meant to submit such information to the Commission. EAP suggests that the Commission remove the second sentence from Section 57.28 (d) as it is unnecessary to restate the existing obligations under Section 57.11.

EAP sent a separate letter (not part of its comments) to inform the Commission that while it hopes to work with the Joint Commenters, EAP disagrees with the solutions offered by the Joint Commenters. EAP submits that the recommended coordination language suggested by the Joint Commenters and the AFL-CIO is beyond the scope of this Proposed Rulemaking Order.

PECO supports the comments made by EAP, but focuses its attention on eliminating two sections of the proposed rule: Section 57.28(b) (3) and Section 57.28(c). PECO submits that the language of Section 57.28(b) (3) that raises an internal company procedure to the level of a Commission-approved “safety code” conflicts with the Commission’s intended role in setting standards. PECO also submits that the enforcement provision at Section 57.28(c) should not require utilities to provide the Commission with “raw data.” For one reason, PECO asserts that the term “raw data” is confusing as it is not defined within the Commission’s regulations nor does it have a uniform definition in common parlance. Thirdly, PECO is concerned that the Proposed Rulemaking Order does not contain any discussion of whether “raw data” provided to a Commission investigator would be subject to a third party Right-to-Know request.

The OCA asserts that the creation of the Electric Safety Division has been a substantial move forward in helping to address consumer questions and concerns as to potential electric safety issues. The OCA shares the Commission's goal of minimizing any potential disputes surrounding the applicability of these regulations, and ensuring that Electric Safety Division personnel have the necessary authority and access to electric facilities in order to adequately investigate potential electric safety concerns.

The OCA suggests that the Commission replace the term "Electric Distribution Company (EDC)" with the term "Public Utility" to ensure that the Commission does not limit its jurisdiction over the safety of electric facilities owned by public utilities but that do not fit squarely within the definition of EDCs under 66 Pa. C.S. § 2803. OCA points to examples like the Trans-Allegheny Interstate Line Company (TrAILCo) which is a Pennsylvania Public Utility that owns non-jurisdictional, interstate transmission lines and thus is not an EDC as currently defined. The Pennsylvania Public Utility Code defines EDC as a "public utility providing facilities for the jurisdictional transmission and distribution of electricity to retail customers, except building or facility owners/operators that manage the internal distribution system serving such building or facility and that supply electric power and other related electric power services to occupants of the building or facility." 66 Pa. C.S. § 2803. Therefore, OCA is concerned that as proposed, the rules could lead to a jurisdictional vacuum as the Electric Safety Division would only be authorized to enforce the regulation against EDCs and would not cover entities like TrAILCo.

The OCA submits that while Federal authorities like the Federal Energy Regulatory Commission (FERC), the North American Electric Reliability Corporation (NERC), and their instrumentalities are focused on maintaining and monitoring the reliability of the interstate grid, the enforcement of safety still lies with the States. The OCA explained that it has received a number of calls from concerned customers regarding the safety of transmission facilities such as the stability of a transmission tower,

or that voltage is seeping through the ground in the area of an interstate transmission line. Thus, OCA suggests that the Electric Safety Division be given the authority to properly investigate potential safety matters armed with clear jurisdiction over such facilities in order to further the Commission's goal of providing clarity and minimizing the number of potential legal challenges.

Duquesne supports the Commission's overall objective in undertaking this rulemaking in order to remove the uncertainty of expectations and enforcement powers of the Electric Safety Division. Duquesne also supports the positions articulated in EAP's comments to the Commission. Therefore, in addition to seeking clarifications and revisions, Duquesne expressed some concern that the regulations, as proposed, inappropriately attempt to incorporate directives that are overreaching and unrelated to enforcement powers, as well as unnecessary in light of existing regulations.

Duquesne suggests that the term "point of delivery" should be removed from Section 57.1 as it is duplicative and unnecessary given that the NESC uses the term "service point." Further, Duquesne offers clarification to the Commission's citation to the NESC which states that "the exact physical location of the service point...is often located on the rooftop of a customer's premise or even underground," noting that overhead services generally terminate on the building but not necessarily the rooftop.

Duquesne suggests that only the NESC standards should be included in Section 57.28 (b) as the minimum safety standards. Duquesne asserts that given the fact that the Energy Generation Customer Choice and Competition Act (Competition Act) and the Commission's own regulations already incorporate the NESC standards, the Commission should not attempt to include additional requirements as minimum safety standards. Duquesne points out that NESC standards have been referenced in Commission regulations since 1977 (Section 57.82), and have been incorporated into regulations codified after the Competition Act's effective date. *See* 52 Pa. Code §§ 57.193(a),

57.194(b) and 57.198(b). Therefore, Duquesne maintains that the Commission's Electric Safety Standards proposal attempts to include additional requirements as minimum electric safety standards that are neither included nor addressed in the Competition Act. Duquesne also objects to the crafting of the proposed safety standards as mainly reiterating existing obligations and adding unnecessary and duplicative requirements.

Additionally, because the records subsection of the regulation, Section 57.28(d), only requires information tied to compliance with the NESC, Duquesne asserts that it should follow that the NESC is the only minimum standard set forth in the rulemaking. Assuming that the NESC standards are kept as the minimum electric safety standards, Duquesne recommends that the Commission clarify that the NESC standards in place at the time of a unit or facility's installation will be the applicable standards to that unit or facility.

Duquesne submits that Paragraph (b)(1) should be deleted as it merely reiterates existing obligations. Duquesne submits that Paragraph (b)(3) should be deleted as internal procedures are not minimum standards, are not consistent across all EDCs as each service territory has specific needs, and are not the appropriate means to regulate the management of a utility. Duquesne submits that Paragraph (b)(4) is premature as the One Call law is not yet under the Commission's jurisdiction and thus should be removed from the proposed regulation. Duquesne further contends that Paragraph (b)(5) is too broad and ambiguous to offer EDCs a clear understanding of what is required for compliance. Duquesne seeks clarification as to why these additional standards would be required for the electric industry but not for the gas industry as covered under Section 59.33.

Next, Duquesne advocates for the deletion of the word "investigation" from Section 57.28(c) because providing such access to the Commission deviates from the gas safety standards at Section 59.33 and is unnecessary given the Commission's ability to

factor an entity's cooperation into its determinations of civil penalties and the ability of I&E to file a Motion to Compel. Duquesne also suggests that the Commission consider defining the word "inspection" under this same section to clarify that information gathered by the Commission via inspection is exempt from a Right-to-Know request. According to Duquesne, this clarification is consistent with Commonwealth Court case law, which has found that gas safety inspection materials are exempt from disclosure under § 708(b)(17), the noncriminal investigation exemption under the Right-to-Know law. *Pennsylvania Pub.Util. Comm'n v. Gilbert*, 40 A.3d 755, 762 (Pa. Cmwlth. 2012). Duquesne submits that the Court recognized that potential public disclosure of inspection materials could cause utilities to be less likely to cooperate with requests and therefore make it more difficult for the Commission to carry out its enforcement duties. *Id.* at 761. In order to avoid any confusion over the applicability of Right-to-Know law Section 708(b)(17), Duquesne suggests that the Commission consider defining the term "inspection" as part of the rulemaking by indicating that it is akin to a noncriminal investigation by the Commission.

Duquesne also points out that there is no "raw data" requirement included in the gas safety standards and suggests that its inclusion here could sweep non-safety related information into the regulation's purview since the term is undefined. Duquesne also seeks clarification on the scope of the facilities, books, and records that must be provided to the Electric Safety Division during inspections because, as Duquesne suggests, the current language is broad and could make the Commission susceptible to increased hacking efforts.

Duquesne recommends the term "adequate records" as used in Section 57.28(d) be clarified so that EDCs have a better understanding of the scope and time frame of information to be kept. Duquesne also suggests eliminating sentences two and three from this section as they are duplicative and unnecessary.

The FE Companies support the inclusion of the definition for EDC in the proposed rulemaking as well as replacing the term “service terminal.” However, the FE Companies propose to further clarify the definitions section of the regulation by deleting “point of delivery” and strictly using the term “service point” as it is the term used by the NESC and EDCs’ tariffs in Pennsylvania. The FE Companies believe including a second term in addition to this may cause confusion. The FE Companies also recommend minor language changes to Section 57.28(a) (1) and (2), namely, titling Paragraph (1) “Electric utility responsibility” instead of “Duties of electric utility” and use of the term “service point” instead of “point of delivery of electric supply” in Subparagraph (2)(ii). Further, the FE Companies would suggest a few minor language changes regarding customer responsibility.

The FE Companies contend that Section 57.28(b) is overly broad and redundant as it is unnecessary to state that EDCs must comply with Chapter 57, PA One Call, and all other state and federal laws and regulations, when such obligations exist with or without their restatement within the proposed rulemaking. Therefore, in the interests of streamlining the proposed rules for clarity and ease of application, the FE Companies propose that Paragraphs (b)(1), (4), and (5) be eliminated in any final proposed rulemaking. While the FE Companies agree with the adoption of the NESC as the minimum safety standards, it would suggest further clarification in the application of the NESC. Principally, the FE Companies submit that the Commission should make it clear that the applicable standard to a set of facilities installed is that standard which was effective at the date of installation since the NESC is updated more frequently than electric facilities are replaced. Further, the FE Companies would like the Commission to clarify the role of the grandfathering period, by ensuring that a grandfathering period is applied to the NESC revisions in determining which standards apply to a facility. The FE Companies believe this grandfathering period is appropriate and beneficial to ensuring consistent interpretation in the proposed rules. For these reasons, the FE Companies suggest the addition of the term “National Electric Safety Code (NESC)” to Section 57.1

so as to provide greater clarity when this term is referenced throughout Section 57.28 and the rest of the Commission's regulations:

National Electric Safety Code or NESC - The current edition of the National Electric Safety Code (NESC) published by the Institute of Electrical and Electronic Engineers (IEEE) designated as the American National Standard (ANSI) C2 at the time of facility installation. The effective date of any edition of the NESC shall be 180 days after the publication date by the IEEE for application to new installations and extensions where both design and utility approval were started after the expiration of the 180 day period.

The FE Companies propose the addition of an exception to Section 57.28 so as to ensure the Commission does not create conflicting standards within its own regulations as there are other regulations that adopt certain editions of the NESC. According to the FE Companies, there are many points throughout the Pennsylvania Code which adopt the specific language of various editions of the NESC as the standard to measure utility operations.

The FE Companies also propose that Section 57.28(b)(3) be deleted from the regulation as the provision would create numerous unwanted practical and legal implications. The FE Companies submit that internal procedures are often meant as mere guidelines and to demand adherence to some practices would reduce EDC discretion. Additionally, the FE Companies warn that inclusion of such a provision could raise due process concerns as the regulation's language does not limit application to only those procedures which are related to safety and each EDC would be subjected to different compliance standards.

The FE Companies urge the Commission to clarify the term "raw data" and why it is needed as there is no equivalent requirement in the current gas safety standards. The FE Companies object to its inclusion if it is intended to require EDCs to provide unverified data on site at inspection. The FE Companies also believe it is unnecessary and inappropriate to additionally reference investigations within this provision, since

“investigations” are initiated and administered by I&E attorneys via communications with the utilities’ attorneys. The FE Companies also recommend replacing the words “an electric” with “each public” utility each time it appears in the enforcement provision of the proposed regulation. Lastly, the FE Companies recommend that the second sentence of Section 57.28(d) be deleted as it merely restates an existing legal obligation and unnecessarily deviates from the language applied to the gas industry.

PPL suggests that the word “every” be deleted from Section 57.28(a)(1) as they believe it makes the requirements unclear as well as overly broad and burdensome. PPL would further like to see the category “the general public” eliminated from this same section as PPL submits that no such requirement exists for natural gas distribution companies. Thirdly, PPL is concerned about requiring an EDC to exercise reasonable care to reduce hazards in “its provision of electric distribution service.” PPL Electric believes the quoted language is too broad and vague, and should be deleted.

PPL objects to the use of the word “minimum” in Section 57.28(b) because PPL believes the NESC should not be considered the minimum standard as it is the preeminent source for electrical safety standards, and use of the word minimum implies that other unspecified safety standards may apply. Additionally, PPL suggests that Section 57.28 (b)(3) be deleted from the regulation as such a standard does not exist for the gas industries and would create different minimum standards for all EDCs as internal procedures tend to vary from EDC to EDC. PPL contends that Section 57.28(b)(5) should also be deleted because it is unnecessary to restate that EDCs must comply with applicable laws and regulations. Alternatively, if the Commission chooses to keep the provision, PPL recommends the Commission clarify which standards it is incorporating.

PPL asserts that “raw data” should be deleted from Section 57.28 (c) because such data is often incomplete and inaccurate, plus, there is no equivalent language found in the gas safety standards. PPL also suggests that the Commission clarify the circumstances

under which an EDC will be required to provide information to the Commission by incorporating the language from Section 59.33 that provides, such information will be provided to the Commission “as it shall from time to time request.” Finally, PPL proposes that the regulations be revised to specifically state that any information supplied to the Commission or its staff pursuant to these regulations will be protected as privileged and confidential and exempt from the Right-to-Know Law.

The IRRC recommends that the definition of EDC be limited to “electric distribution company” in order to eliminate any confusion the “or electric utility” portion may add. Further, the IRRC asserts that if the Commission can clearly establish that the Public Utility Code provides the Commission with jurisdiction over the safety of other “substantial electric facilities” situated in Pennsylvania that are owned by public utilities but do not fit neatly within the strict definition of an EDC, then another definition should be added that encompasses the safety of these other facilities. Additionally, the IRRC would like to see a definition added to the rule describing the National Electric Safety Code (NESC).

The IRRC asserts that the Commission should choose between the terms “service point” and “point of delivery” and define and use only one term. Referencing the comments by the AFL-CIO warning of situations where the utility may not have designated a point of interconnection, IRRC suggests that the Commission review the definition to ensure it encompasses as many circumstances as possible. Lastly on this point, IRRC recommends that the definition be modified to state that the location of this point of interconnection designated by the EDC should be established in the utility’s Commission-approved tariff.

In Section 57.28(a), the IRRC suggests the removal of the word “effectively” from this subsection as IRRC asserts that it is unnecessary since the tariff is approved by the Commission. The IRRC also recommends the deletion of the word “every” in

Section 57.28(a) (1) because it agrees with EAP comments that its inclusion implies that an EDC's legal obligations exceed a reasonable standard. The IRRC urges the Commission to review and amend the phrase "...by reason of its provision of electric distribution service and its associated equipment and facilities," to clarify whether the regulation applies to the safety of EDC services beyond its associated equipment and facilities. The IRRC also proposes that Paragraph (a) (2) be deleted in its entirety as the Preamble does not establish a statutory basis or justification for the Commission to regulate customers' maintenance of wiring and equipment beyond the service point.

The IRRC supports the position of EAP to delete all but Paragraph (2) from Section § 57.28(b). The IRRC asserts that Paragraphs (1) and (5) are unnecessary because they simply restate existing obligations. Paragraph (3) should be removed, the IRRC suggests, because it would allow an EDC to unilaterally write its own safety regulations through internal processes and to amend those regulations at its own discretion, thus bypassing the Commission and the procedures of the Regulatory Review Act. The IRRC agrees with EAP that Paragraph (b) (4) is premature and should be deleted until House Bill 445 is passed into law. In regards to the sole survivor, Paragraph (2), the IRRC submits that an implementation period should be included in the regulation and language should be added to clarify which NESC standards apply to existing facilities when the NESC is updated.

The IRRC seeks clarification of what is included within the term "raw data" within Section 57.28(c) and why this information is needed by the Commission. Additionally, the IRRC urges the Commission to revise the "adequate records" requirement as used in subsection (d) so as to clearly state what records are required for compliance. The IRRC contends that the second sentence of (d) is duplicative of requirements under Section 57.11 and should be deleted.

The IRRC suggests that the Commission consider adding an amendment to facilitate coordination between individual utility safety and reliability provisions in 66 Pa. C.S. § 1501 and the overall safety of those who work for the other utilities under its jurisdiction. The IRRC leaves it to the Commission to decide whether to address this concern here or in a separate proposed regulation. Lastly, the IRRC joins others in questioning why the electric safety requirements differ from the gas safety requirements and await the Commission’s responses to these concerns.

COMMENTS AND DISCUSSION TO SPECIFIC REGULATORY PROVISIONS OF THE PROPOSED RULEMAKING ORDER

§ 57.1. Definitions

EDC—Electric distribution company or electric utility—An electric distribution company as defined in 66 Pa. C.S. § 2803 (relating to definitions).

For clarification purposes, we proposed adding a definition for *EDC – electric distribution company or electric utility*. For purposes of consistency and deference, we referenced the definition of EDC in the Public Utility Code, which defines an EDC as the “public utility providing facilities for the jurisdictional transmission and distribution of electricity to retail customers, except building or facility owners/operators that manage the internal distribution system serving such building or facility and that supply electric power and other related electric power services to occupants of the building or facility.” See 66 Pa. C.S. § 2803. Similarly, EDC is also defined with reference to this definition in the Public Utility Code later in Chapter 57 of our regulations. See 52 Pa. Code § 57.192. We also added the synonymous term *electric utility* for clarity, as that term is used in common parlance and in the courts and we proposed using that term in describing the proposed safety standards.

In the Definitions section, the OCA recommends that the Commission replace the Section 2803 definition of “electric distribution company” or “EDC” with the Section 102 definition of the term “A public utility.” The purpose of this change as explained by

the OCA is to ensure that the Commission does not limit its jurisdiction over the safety of electric facilities owned by public utilities but that do not fit squarely within the definition of EDC under 66 Pa. C.S. § 2803.

By limiting the applicability of the regulations to EDCs, the OCA expressed concern that the Commission through the proposed regulation might be unnecessarily limiting its jurisdiction over the safety of electric facilities owned by public utilities. The OCA's concern with using the term "EDC" is that substantial electric facilities are situated in Pennsylvania that are owned by "public utilities," yet such entities may not be included within the definition of EDC as found in the proposed regulations.

More specifically, the OCA offers as an example the Trans-Allegheny Interstate Line Company (TrAILCo) which is a Pennsylvania Public Utility that owns non-jurisdictional, interstate transmission lines and thus is not an EDC as currently defined by Pennsylvania Law.² The OCA interprets the proposed regulations such that the Electric Safety Division's authority to enforce the safety regulations at issue here would be limited to only EDCs, and would not cover such entities as TrAILCo.

The OCA explains that the Commission has jurisdiction over all Pennsylvania public utilities as those entities are defined in Section 102 of the Public Utility Code. This jurisdiction, however, is not exclusive as the OCA further explains that the Federal Energy Regulatory Commission (FERC) also has jurisdiction over public utilities in Pennsylvania that own interstate electric transmission lines as to rates, rules, and regulations as found in the tariff filings of such utilities at FERC.³

² See, *In Re: Application of TrAILCo for approval for certificate of public convenience to offer, render, furnish or supply transmission service in the Commonwealth of Pennsylvania (TrAILCo)*, Docket No. A-110172 *et al* (Order entered December. 12, 2008).

³ See *e.g.*, *Application of Trans-Allegheny Interstate Line Company*, Docket Nos. A-2010-2187540 and A-2010-2187542 at 16 (Order entered March 15, 2012).

The OCA submits that while Federal authorities like FERC, the North American Electric Reliability Corporation (NERC), and their instrumentalities are focused on maintaining and monitoring the reliability of the interstate grid, the enforcement of safety still lies with the States. The OCA states that it has received a number of calls from concerned customers regarding the safety of transmission facilities such as the stability of a transmission tower, or that voltage is seeping through the ground in the area of an interstate transmission line. Thus, OCA suggests that the Electric Safety Division be given the authority to properly investigate potential safety matters armed with clear jurisdiction over such facilities. The OCA believes that such an edict will further the Commission's goal of providing clarity and minimize the number of potential legal challenges.

IRRC also commented that if the Commission agrees with the OCA and can clearly establish that the Public Utility Code provides the Commission with jurisdiction over the safety of these other facilities, the Commission should provide that the regulation encompasses the safety of the other facilities.

DISCUSSION

We submit that it was not our intent to limit the authority of the Electric Safety Division and the application of the proposed regulations. In addressing the jurisdictional status of a stand-alone transmission company, this Commission has agreed that it has “important public policy interests to protect by maintaining jurisdiction over electric transmission facilities located within the Commonwealth” and that “[g]ranting a certificate of public convenience to TrAILCo to function as a public utility in Pennsylvania will facilitate that continuing oversight.”⁴ Relying on ATSI's operation and use of its transmission facilities and the distribution facilities of Penn Power to serve

⁴ *Petition of American Transmission Systems, Inc. (ATSI) for a Declaratory Order that it is not a Public Utility as defined in 66 Pa. C.S. § 102*, Docket No. P-2013-2388149 (Order entered August 11, 2016) citing *In Re: Application of Trans-Allegheny Interstate Line Company*, Docket No. A-110172, *et al.*, (April 13, 2007), at 15, ¶ 43.

Pennsylvania customers, the Commission found that ATSI was a public utility as defined in Section 102. In addition to granting TrAILCo's Certificate of Public Convenience (CPC) Application, and requiring ATSI to file a CPC application, the Commission has approved other stand-alone electric transmission company's applications to operate as Pennsylvania public utilities under 66 Pa. C.S. § 102.⁵

The OCA notes that our jurisdiction is not exclusive because the FERC has jurisdiction over public utilities in Pennsylvania that own interstate electric transmission lines as to rates, rules and regulations as found in FERC tariff filings.⁶ Although transmission rates are regulated by FERC, States still exercise traditional authority with respect to safety and reliability of its transmission facilities. 16 U.S.C. § 824(o)(i)(3). Stand-alone transmission companies use facilities for "transmitting . . . electricity . . . for the production of light, heat, or power to or for the public for compensation," 66 Pa. C.S. § 102, and those facilities must meet established standards for safety and reliability. 52 Pa. Code § 57.191

FERC's position on the regulation and enforcement of *safety* for electric facilities is that it rests with the States. This position is clearly stated on FERC's website under the caption "Safety & Inspections" that:

Once Electricity projects become operational, *safety is regulated, monitored and enforced by the state* in which the project resides, with the exception of hydropower projects, for which FERC retains jurisdiction when they are operational.⁷

⁵ See e.g., *Joint Application of Mid-Atlantic Interstate Transmission, LLC, Metropolitan Edison Company and Pennsylvania Electric Company*, Docket No. A-2015-2488903, *et al.* (Order entered August 24, 2016).

⁶ See e.g., *Application of Trans-Allegheny Interstate Line Company*, Docket Nos. A-2010-2187540 and A-2010-2187542 at 16 (Order entered March 15, 2012).

⁷ See <http://www.ferc.gov/industries/electric/safety.asp> (emphasis added).

Therefore, based on statutory authority, our regulations, and precedent, we do not believe that our jurisdiction over Pennsylvania public utilities that own interstate transmission lines is limited. For more clarity, however, we shall adopt the OCA's recommendation and make sure the regulation covers issues involving safety of electric transmission facilities in the Commonwealth. In fact, our statutory authority and obligation with respect to ensuring the continuation of safe and reliable electric service is clear since transmission and distribution facilities must conform with established industry standards, including the National Electric Safety Code. 66 Pa. C.S. § 2804(i)(ii).

We shall adopt the language change in the definition recommended by the OCA, as follows:

ELECTRIC UTILITY – A PUBLIC UTILITY AS DEFINED UNDER 66 PA.C.S. § 102 (RELATING TO DEFINITIONS).

In addition, we shall replace EDC with “electric utility” throughout the regulation.

Service point or point of delivery – The location designated by the EDC where the utility's service supply lines terminate and the customer's facilities for receiving service begin.

In this section, we proposed updating and modernizing the term and definition for *Service terminal*. *Service terminal* is currently defined as “[t]he point at which the service lines of the public utility terminate and the customer's facilities for receiving the service begin.” 52 Pa. Code § 57.1. We explained that *Service terminal* is still an important term and concept, as it indicates the separation of duties between the customer and the utility. However, the term *service terminal* is not used as frequently as *service point*, the term used in the NESC, and *point of delivery*, a term used in Pennsylvania and PUC case law⁸ to indicate the jurisdictional separation between the customer and the

⁸ This case law is discussed below in the proposed Section 57.28(a).

utility. Therefore, we proposed replacing the term *service terminal* with *service point / point of delivery*.⁹

We also proposed a new definition for *Service point* or *Point of delivery* as “the location designated by the electric utility where the utility’s service supply lines terminate and the customer’s facilities for receiving service begin.” This definition still retains the same basic concept as the existing definition for *service terminal*, but also recognizes, in alignment with the NESC, that an electric utility designates the location of the *service point* in its tariff.¹⁰ We noted that the exact physical location of the *service point* may differ between utilities and between customers, as the service point is often located on the rooftop of a customer’s premises or even underground.¹¹

The AFL-CIO proposed that *Service point / point of delivery* instead be defined as “the point of connection between the facilities of the EDC and the customer’s premises wiring.” AFL-CIO believes that this definition is preferable because it is based on the nature of the physical equipment, even where the utility has not “designated” a particular point of interconnection. Furthermore, because the term “facilities” as defined by the § 102 of the Public Utility Code refers to physical plant and equipment, the AFL-CIO asserts that the use of the word “premises” when referring to the customer’s property will eliminate any unnecessary confusion.

EAP contends the use of one term “*Service point*” in relation to the revised definition would suffice and notes that the term “*Service point*” is used in the NESC. NESC, Section 2. Definitions of special terms at p. 15 (2012 Edition). EAP agrees that the exact physical location of the service point is to be determined by the EDC consistent

⁹ This definition name was then changed to “*Service point or point of delivery*” by the legislative reference bureau for publication.

¹⁰ National Electrical Safety Code, at page 15. The Institute of Electrical and Electronics Engineers, Inc. (2012 Edition, Aug. 2011).

¹¹ *Id.* Duquesne responds that overhead services terminate on the building and not on the actual rooftop.

with the NESC and as detailed in its tariff. *Id.* IRRC agrees with the use of one term for clarity and the reference to the electric utility's tariff. IRRC also recommends that the NESC should be defined in this section. FE also agrees with these recommendations.

DISCUSSION

We shall not adopt the AFL-CIO recommendation to modify the definition. The title of Subchapter B is "Service and Facilities." The emphasis of Section 57.28 is on facilities of the electric utility and using the reference to the term "customer's facilities" is not confusing as it clearly denotes that those facilities are owned and controlled by the customer. The word "facilities" is a generic term and is not solely described as applying only to ownership and control by a public utility. In fact, the definition of "Customer's installation" in the same section uses the word "facilities" to identify all that is "necessary to bring the terminus of the wiring of a customer to a location where it may be connected to the service line." *See* 52 Pa. Code § 57.1. Definitions.

Also, we have not included a definition of the term "National Electric Safety Code", as was suggested in the comments. The title itself is descriptive, and its application we explain in the Safety code under Paragraph (b)(2), and addressed herein.

Finally, we believe that our proposed definition is sufficiently clear as to the service point interconnection but we will accept IRRC's recommendation to add clarity to the definition and be consistent with subsection 57.28(a) by including language identifying that the location of interconnection is to be designated by the electric utility in its Commission-approved tariff.

§ 57.28. Electric Safety Standards.

As discussed, the Commission believes that the clear outlay of electric safety standards in one section in Chapter 57 of the Commission's regulations will assist the Electric Safety Division in enforcing those standards. *Compare* 52 Pa. Code § 59.33 (providing gas safety standards). Specifically, the Commission wanted to reference the NESC to remove doubt and minimize legal challenges as to the applicability of the NESC to jurisdictional Pennsylvania electric distribution companies. In proposing these electric safety standards, the Commission also sought to clarify the duties and responsibilities between the customer and the electric utility.

Coordination of safety with other utilities – protection of the public health, safety and welfare

The AFL-CIO initially commended the Commission for proposing regulations to clarify the safety-related responsibilities of electric distribution companies. The AFL-CIO submits that it has members that include the International Brotherhood of Electrical Workers and the Utility Workers Union of America and workers from other Pennsylvania utilities including telecommunications, natural gas, water and wastewater providers, who often work in close proximity to EDC facilities. In addition to recommending a change to the definition of service point / point of delivery, that was addressed herein, the AFL-CIO raises an issue that there are two service problems in the Commonwealth involving coordination between EDCs and field employees of water and wastewater providers that creates safety hazards for these field workers.

First, AFL-CIO states that there are many instances around the Commonwealth where water and wastewater mains are buried in close proximity to energized EDC lines. When a water or wastewater main leaks or ruptures, AFL-CIO explains that a potentially hazardous situation arises where the water/wastewater employee may be standing in a trench filled with water and there is an energized electric line in the same trench. The AFL-CIO contends that coordination between the water or wastewater utility and the

EDC is not clear, and water utility employees are directed to move energized electric lines, often without the proper equipment, training, or protective clothing. Also, the AFL-CIO believes that it is a common safety practice among EDC employees to refuse to enter a trench with an energized electric line, yet water utility workers are routinely told to do so.

Second, the AFL-CIO submits that it has been common practice for many decades to connect the ground for a home or business to the copper water service line and if an EDC's neutral becomes damaged, the water line then serves the function of the neutral and completes the circuit back to the EDC transformer. Under these circumstances, AFL-CIO believes water workers are in danger of receiving a severe electric shock and when a water worker severs a pipe to remove a defective section, or removes a water meter for repair or replacement, the current back to the transformer is interrupted and this can cause electronics in the home or business to be damaged or destroyed. The AFL-CIO maintains that EDCs do not cooperate and believe that as part of their public safety obligation, EDCs should be required to respond to the site and mitigate the hazard quickly so that the water workers can continue to restore service to customers without risking bodily harm or physical harm to the customer's electronics. Finally, the AFL-CIO maintains that the electric companies should be required to install permanent remedies like repairing a damaged neutral so that the next water worker will not be needlessly shocked.

In summary, AFL-CIO recommends that the duties of EDC's under Section 57.28 (a) expressly include (1) responsibility for all EDC facilities within a common trench that is opened by any other utility or service provider that shares the underground space with the EDC, and (2) a duty of providing safety to water workers once an energized electric line has been identified in order to resolve the serious problems currently existing in the coordination between EDCs and field employees of water and wastewater providers.

The Joint Commenters generally support the proposals in the Proposed Rulemaking Order but submitted comments in the interest of the safety of PAWC's employees, customers, and contractors, who perform subsurface utility work on water and wastewater pipes and facilities located near exposed underground and overhead power lines. The Joint Commenters assert that in the absence of timely and appropriate actions by the EDC, these lines could potentially cause serious injuries or fatalities.

Based on Occupational Safety & Health Administration (OSHA) regulations, PAWC specifically explains that an employer is prohibited from permitting an employee to work in such proximity to any part of an electric power circuit that the employee could contact the electric power circuit in the course of work, unless the employee is protected against electric shock by de-energizing the circuit and grounding it or by guarding it effectively by insulation or other means. 29 CFR 1926.416(a)(1). Because PAWC cannot take the steps necessary to actually de-energize a line or guard it with insulation all work must stop until an EDC responds to a water utility worker's call to de-energize or insulate an exposed power line in proximity to any work site of the water utility.

According to PAWC, it can only contact the EDC and request that the EDC send qualified company personnel to safely and appropriately address the situation – by either de-energizing the line or guarding it with insulation – just as the EDC would be required to do under the federal regulations for its own employees. Although PAWC asserts that its ability to provide, safe, adequate and reliable water supply service to its customers may be jeopardized if the EDC does not properly prioritize and respond to requests made by water and wastewater utilities, there is currently nothing in state or federal statutes or regulations that require EDCs to timely and appropriately coordinate with local water and wastewater utilities.

PAWC believes the duties listed in Section 57.28 (a)(1), which include a duty to warn and protect the public from danger, covers other utility workers not employed by

EDCs within the categories of “the general public” or “others.” In any event, PAWC suggests that the Commission clarify the standards an EDC must meet to ensure the safety and protection of local water and wastewater utility workers and assist the Electric Safety Division in the enforcement of EDC duties to ensure the safety of local utility workers. Specifically, PAWC recommends a requirement that EDCs coordinate in a prompt and timely manner with water and wastewater utilities under the Commission’s jurisdiction to ensure the safety of such workers during the course of their work whether the work is planned or emergent. The Joint Commenters would also like to see a requirement that EDCs use every reasonable effort in the assessment and operation of EDC equipment and facilities to prevent electric shock and injury to the employees of water and wastewater utilities, including, as appropriate, the de-energizing or insulation of EDC equipment or facilities. The Joint Commenters further suggest providing other utility workers with contact information of qualified, authorized EDC representatives who will serve as a point of contact for the coordination of a timely and appropriate response. Further, the Joint Commenters suggest requiring EDCs to formally assign priority status to responses to water and wastewater emergency repairs involving exposed power lines in close proximity with the work area.

Alternatively, if the Commission chooses to give additional consideration to the issue of greater inter-utility coordination for the protection of the public, and not take this opportunity within this proposed rulemaking to adopt regulations intended to address these safety issues, PAWC requests that the Commission adopt the suggested general requirements of coordination as set forth in PAWCs comments and establish an inter-utility working group to develop the specifics on how cooperation between EDCs and water and wastewater utilities can be achieved. Additionally, PAWC suggests requiring EDCs to then submit a report to the Commission by a certain set date explaining how each utility plans to comply with the coordination requirement.

The IRRC suggests that the Commission consider adding an amendment to facilitate coordination between individual utility safety and reliability provisions in 66 Pa. C.S. § 1501 and the overall safety of other utility workers. The IRRC leaves it to the Commission to decide whether to address this concern here or in a separate proposed regulation that would allow more opportunity for comment and to build a consensus on the language of the amendment to the regulation.

DISCUSSION

Both the AFL-CIO and PAWC have offered extensive changes to the Section 57.28 electric safety standards by inclusion of additional regulatory requirements that will apply to duties and responsibilities of electric utility companies. The AFL-CIO's proposed modifications add provisions that will apply to the electric utility, customers, and other utility service providers identified as natural gas, communications, and water or wastewater utility service providers. PAWC's changes address the standards an electric utility must meet to ensure the safety and protection of only local water and wastewater utility workers and assist the Electric Safety Division in the enforcement of electric utility duties to ensure the safety of local utility workers. However, the PAWC explained that since Section 57.28 (a)(1) includes a duty to warn and protect the public from danger, this covers other utility workers not employed by the electric utility within the categories of "the general public" or "others." Therefore, PAWC reasons that these proposed revisions also apply to other utility service providers other than water and waste utility workers.

As indicated above, the language changes being proposed involve other utility service providers and these industries like gas and communications have not participated in this rulemaking. Given the topic of this rulemaking, electric safety, it is not surprising that utility companies in the gas, communications, and water and wastewater industries (only PAWC filed comments) did not participate as interested parties. Therefore, we shall adopt IRRC's suggestion that this matter not be addressed in this rulemaking. Clearly, these issues that involve OSHA regulations and very specific circumstances such

as safety practices in trenches with energized electric lines and proper grounding are beyond the scope of this rulemaking. At this point, when we are about to issue a final rulemaking order, we have not had the opportunity to hear from all interested parties that want to be heard and fully develop the issues raised by these comments.¹²

Despite our disposition here to defer this matter to another possible rulemaking, we consider this a serious matter given the allegations made by AFL-CIO and the Joint Commenters. However, rather than grant PAWC's request to adopt the general requirements of coordination as set forth in its comments and establish an inter-utility working group to develop specifics and further require EDCs to then submit a report to the Commission to explain how each utility plans to comply with the coordination requirement, we shall direct PAWC to file a petition for issuance of a regulation pursuant to 52 Pa. Code § 5.43. Given the specific allegation made by the Joint Commenters and the regulatory language that has already been drafted, including the provisions proposed by the AFL-CIO, PAWC is in a better position to initiate this rulemaking and formulate the relevant issues. We shall order PAWC to file the subject petition within 30 days and provide for comments to the petition to be filed by interested parties within 30 days of the filing of the petition. The petition shall be served on all the parties to this rulemaking.

SECTION 57.28(A) DUTIES AND RESPONSIBILITIES

(a) *Duties and responsibilities.* The separation of duties and responsibilities between an EDC and a customer with respect to the facilities utilized for electric service shall be effectively described in the EDC's tariff that is filed with and approved by the Commission.

(1) *Duty of an EDC.* An EDC shall use every reasonable effort to properly warn and protect the public from danger, and shall exercise reasonable care to reduce the hazards to which employees, customers, the general public and others may be subjected to by reason of its provision of electric distribution service and its associated equipment and facilities.

¹² In fact, EAP filed a letter disagreeing with the claims made by the Joint Commenters and the AFL-CIO and reserved the right to file formal reply comments.

(2) Customer responsibility.

(i) A customer is responsible for the ownership and maintenance of the customer's facilities beyond the service point.

(ii) A customer is responsible for maintaining and inspecting electrical wiring and electrical equipment beyond the point of delivery of electric supply.

Under Pennsylvania law, maintenance and inspection duties between the electric utility and the customer are generally divided at the *service point* or the *point of delivery* of electricity to the customer. *Alderwoods v. Duquesne Light Co.*, 106 A.3d 27, 38 (Pa. 2015); *Hineline v. Metro. Edison Co.*, 1990 Pa. PUC LEXIS 156, at *6 (Pa. P.U.C. 1990). The NESC explains that the *service point* is the point of demarcation between the serving electric utility and premises wiring of the customer.¹³ The *service point* is also the jurisdictional line of demarcation between two national codes: (1) the NESC and (2) the National Electrical Code (NEC).¹⁴ Beyond the service point, the customer owns and assumes the responsibility for the maintenance and security of the internal wiring. *See Hineline*, 1990 Pa. PUC LEXIS 156, at *6 (citing *Craft v. Pa. Elec. Co.*, 50 Pa. P.U.C. 1 (1976); *see Norbeck v. Pa. PUC*, 2011 Pa. Cmmw. Unpub. LEXIS 601, at *21-22 (Pa. Cmwth. Ct. 2010) (explaining that the utility tariff did not require the utility to take ownership of customer-owned service lines). Accordingly, the electric utility does not have a freestanding duty to inspect customer-owned electric equipment. *Alderwoods*, 106 A.3d at 38; *see Norris v. Phila. Elec. Co.*, 5 A.2d 114, 116 (Pa. 1939).

Under this framework and legal guidance, we proposed Section 57.28(a) to clarify and explain the duties and responsibilities between the customer and the electric utility. As is current practice, the duties “shall be effectively described in the electric utility’s tariff that is filed with and approved by the Commission.” *See Annex A, Section*

¹³ NESC, at page 15. The revised 2012 Edition of the NESC clarifies the relative applicability of the NESC versus the NEC. *See NESC*, at Foreword, p. iii-vi.

¹⁴ The NEC, which governs electricians and building contractors and not public utilities, provides standards for the safe installation of electrical wiring inside the premises (*i.e.*, the premises wiring system owned by the customer).

57.28(a). Here, we explained that an electric utility shall use every reasonable effort to properly warn and protect the public from danger and to reduce hazards to the public due to its provision of electric distribution service and its associated equipment and facilities. *See* Annex A, Section 57.28(a)(1). We also explained that the customer is responsible for the ownership and maintenance of the customer’s facilities beyond the service point and delivery of electric supply. *See* Annex A, Section 57.28(a)(2).

DISCUSSION

EAP recommends that using a subparagraph title of “Electric utility responsibility” would be consistent with the paragraph “Customer responsibility” found at new Section 57.28 (a) (2). However, since we will effectively be deleting Paragraph (a) (2) “Customer responsibility,” as the subsection will now only cover electric utilities, we will change the title of subsection (a) to “Responsibilities” which is the terminology used in the Gas Safety regulation in Section 59.33(a), and it will not be necessary to have titles to Paragraphs (a)(1) and (a)(2) because the subsection title “Responsibilities” only applies to an electric utility. Furthermore, it is unnecessary to use both words, “duties and responsibilities,” as they have a similar meaning, *i.e.*, a moral or legal obligation. We shall also take out the reference to “duties” in the body of the provision. Moreover, we find merit with IRRC’s recommendation that the word “effectively” be removed. In addition to it being essentially unclear in this context, the word is unnecessary because the provision already confirms that the separation of responsibilities is described in a tariff approved by the Commission. We shall also accept EAP’s recommendation to strike “every” and the term “general public” from the proposed Section 57.28 (a) (1) as neither of these terms are found in Section 59.33(a) and insertion of the modifier “every” implies that the legal obligation exceeds a reasonable standard. EAP contends that the addition of the term “the general public” to the language of Section 57.28(a) is redundant. PPL agrees and IRRC also comments that the word “every” is unclear as it fails to explain what additional standard is set by requiring “every reasonable effort.” As we have indicated, we shall also accept the recommendation to remove the reference to the

“general public.” We agree that the word “general” is unclear but we shall retain the use of the word “public,” which clearly is a category separate and apart from employees and customers, and not redundant.

Finally, in this paragraph EAP contends that the proposed rules are aimed at providing a standard for safety with respect to “facilities and equipment” and not to the broader provision of electric distribution service that is provided for under the proposed language. EAP submits that other provisions address reasonable and reliable service.

We disagree that this regulation does not apply to the safety of electric distribution services beyond its associated equipment and facilities. The location of this regulation is Subchapter B. SERVICE AND FACILITIES and electric safety does not just apply to facilities. Clearly, the practices and procedures of electric utility employees working on the facilities are relevant to safety. In other words, electric utility employees must follow reasonable and adequate procedures based on adequate and proper training. In response to IRRC’s recommendation to clarify this phrase, we will make one modification - electric distribution will be removed and replaced with electric utility because the safety of electric utility service and facilities should not be limited to just electric distribution service but must also apply to transmission service as we explained in the definitions section.

With respect to Paragraph (2) “Customer responsibility,” IRRC points out that as drafted the paragraph would establish Commission regulation and enforcement of all electric utility customers to safely maintain and inspect wiring and equipment beyond the service point. According to IRRC, the Preamble does not establish a statutory basis or justification for the Commission to regulate maintenance of wiring and equipment owned by the customer beyond the service point. IRRC asks the question whether it is mainly our intent to declare that an electric utility is not responsible for a customer’s wiring and equipment. We agree that it is our intent to declare jurisdiction from the perspective of

the electric utility and not the customer. Therefore, this disposition will delete most of the paragraph as we shall reword the paragraph to make this declaration of jurisdiction that the electric utility's responsibilities end at the service point.

SECTION 57.28(B) SAFETY CODE

(b) *Safety code.* A jurisdictional EDC shall comply with all of the following minimum safety standards:

- (1) This chapter.**
- (2) The standards established by the National Electrical Safety Code.**
- (3) The procedures established by the EDC and set forth in the EDC's internal company procedures.**
- (4) The standards established by sections 1—11 of the act of December 10, 1974 (73 P. S. §§ 176—186), known as the Underground Utility Line Protection Act, and Pennsylvania One Call.**
- (5) Other applicable and governing State and Federal laws and regulations.**

In this section, the Commission establishes and explains the minimum safety standards to which all jurisdictional EDCs must comply. The electric utilities must adhere to Chapter 57 of the Commission's regulations governing electric service. 52 Pa. Code § 57 *et seq.*; *see* Annex A, Section 57.28(b)(1). As discussed, the electric utilities must adhere to the standards established by the National Electrical Safety Code. 66 Pa. C.S. § 2804(1), § 2807(a); *see* Annex A, Section 57.28(b)(2). We also propose to require that an electric utility comply with its own internal company procedures. *See* Annex A, Section 57.28(b)(3).

Additionally, we proposed to require electric utilities to adhere to the Underground Utility Line Protection Act (PA One Call). *See* 73 P.S. § 176; *see* Annex A, Section 57.28(b)(4). PA One Call requires underground facility owners, including public utilities, to become members of the One Call System, a Commonwealth-wide

communication system that provides a single nationwide toll-free telephone number or 811 number for excavators, designers, or other persons covered by Act 287 to call facility owners and notify them of their intent to perform excavation, demolition, or similar work. 73 P.S. §§ 176-177. *See* Annex A, Section 57.28(b)(4). Finally, we inform EDCs as to their duty to adhere to any and all applicable and governing state and federal laws and regulations. *See* Annex A, Section 57.28(b)(5).

The proposed safety code paragraphs have drawn mostly negative comments. PECO supports the comments made by EAP, but focuses its attention on eliminating two sections of the proposed rule: Section 57.28(b) (3) and Section 57.28(c). PECO submits that the language of Section 57.28(b) (3) that raises an internal company procedure to the level of a Commission-approved “safety code” conflicts with the Commission’s intended role in setting standards. PECO submits that internal company procedures were never intended to be externally imposed safety codes. The way it works, PECO explains, is that the Commission sets standards, utilities are then required to conform to those standards, but they are given significant latitude in the procedures they use to comply with the standard. In other words, each utility will have internal company procedures that are unique to its own operations, which may change over time based on the utility’s operational experience.

By deeming internal company procedures as “safety codes” without examining evidence, taking comments, or evaluating the internal company procedures of the various utilities, PECO contends that the Commission cannot have performed its normal function of determining whether it is in the public interest to impose a certain procedure as a required standard. Further, PECO notes that internal company procedures, by definition, are not rules of general applicability and submits inclusion of Section 57.28(b) (3) would cause a “balkanization of safety standards and enforcement” throughout the state. If the internal company standards are elevated to the role of Commission-approved safety codes, PECO argues that this would literally mean that an identical activity could be legal

at some Pennsylvania utilities but a regulatory violation at other Pennsylvania utilities, depending solely upon whether the respective utilities had chosen to include the given activity in an internal operating procedure. Therefore, PECO suggests that converting these internal policies into Commission-approved safety codes would incentivize utilities to reduce the number and scope of internal procedures so as to minimize the number of safety codes they have to adhere to legally.

PECO also submits that the enforcement provision at Section 57.28(c) should not require utilities to provide the Commission with “raw data.” For one reason, PECO asserts that the term “raw data” is confusing as it is not defined within the Commission’s regulations nor does it have a uniform definition in common parlance. Secondly, PECO stresses that the Proposed Rulemaking Order (Page 9) states that the section is “not meant to include opinions or mental impressions.” However, much of the information collected after a safety event will be collected as part of a litigation investigation and the utility will likely have valid reasons to maintain control over information that are not “opinions or mental impressions.” PECO also notes that the proposed regulation itself does not contain the limitation on opinions or mental impressions which could cause some disagreement as to what is required. Thirdly, PECO is concerned that the Proposed Rulemaking Order does not contain any discussion of whether “raw data” provided to a Commission investigator would be subject to a third party Right-to-Know request. If the answer is yes, PECO asserts that the civil discovery process would be bypassed and the release of raw data to the Commission could prejudice the utility’s position.

EAP would only keep Paragraph (2) and IRRC agrees with EAP’s assessment. EAP contends that Paragraphs (1) and (5) are vague and unnecessary because they restate existing obligations. IRRC concurs and also, strongly agrees, with EAP’s objection to Paragraph (3) that the Commission, by proposing that internal company procedures be included in the regulation as a substantive compliance standard, improperly infringes on a utility company’s management discretion. EAP submits there is no authority for

individual company procedures or rules forming the basis for compliance actions by the Commission. IRRC interprets this provision as if the Commission delegated its regulatory authority over safety procedures to the electric utility in its operating procedures. In other words, IRRC explains this would effectively allow the electric utility to write its own safety regulations independent of the Commission and outside the Regulatory Review Act process. IRRC also agrees with EAP's observation that Paragraph (4) (b) is premature because the legislation that would transfer enforcement authority over PA One Call has not been passed into law. Finally, IRRC agrees with EAP's suggestion to add a 180-day period after a new edition of the NESC takes effect to allow for training and implementation and requests that the Commission should consider adding language to clarify what standards apply to existing facilities when the NESC is updated.

DISCUSSION

We shall accept most of the changes recommended by the Commenters and IRRC to simplify the safety code. The most important aspect of the safety code is to identify the minimum safety standards that an electric utility must comply with in providing electric utility service. In addition, it was our intent to list and provide notice of all the laws and regulations that are applicable in one section in Chapter 57 to assist the Electric Safety Division in enforcing these standards. In so doing, we recognize, as pointed out by IRRC, that the paragraphs may restate existing obligations, are overly broad, unpractical and premature. Based on these criticisms, we shall delete Paragraphs (1), (4), and (5).

However, we further recognize, as pointed out by EAP, that gas safety standards under Section 59.33 were established in Pennsylvania by the adoption and implementation of federal pipeline safety laws, "including all subsequent amendments thereto." The regulation notes that these are minimum safety standards for gas and we shall utilize the same terminology for electric by limiting the electric safety code to the NESC. We do not agree with PPL that the use of this term marginalizes the NESC. The

utilization of the term and purpose is to create a threshold the electric utility must attain, not that the NESC has electrical safety standards that are inferior. The use of this term “minimum safety standards” for natural gas has not proven to cause any discrepancies with respect to implementation of the regulation. We shall keep the term “minimum,” as it also used in the gas safety code. In addition, while we shall use the NESC safety standards, we shall not adopt the recommendations of EAP and IRRC with respect to the *implementation period*, and EAP’s language as it applies to accepting the NESC standards and explanation as to which editions take effect.

The Commenters assert that it is important to clarify which edition of the NESC applies and explain how the effective date is determined. *See* NESC Section 1, Rule 016 at p. 6 (2012 Edition). In this regard, EAP suggested the following language as a new paragraph (b)(2): “New editions of the NESC shall take effect no sooner than 180 days following their publication, unless the Commission provides public notice and opportunity for public input to determine an alternative effective date.”

However, upon further reflection, we do not believe that the language proposed by EAP captures the issues of design and approval lag time in construction or the explanation of the ability to immediately use the latest edition of the Code upon being published. Although we are not maintaining that it was necessarily the intent on the part of the EAP to condense the Rule, there is more substance to the Rule than this requirement. Moreover, the sentence could be interpreted incorrectly to imply that the general rule is that new editions cannot take effect less than 180 days from publication unless administrative action is taken. As provided for in the *Note* to the Rule: “There is neither an intention to require or imply that this edition be implemented before 180 days from the publication date, nor an intention to prohibit earlier implementation.” The *Note* also states that utilities and regulatory authorities have not less than 180 days to take necessary action to comply. NESC Section 1, Rule 016 Handbook at p. 16 (2012 Edition). In fact, the general rule for determining the effective date is that the “edition

may be used at any time on or after the publication date,” and the edition “shall become effective no later than the first day of the month after 180 days have elapsed following its publication date for application to new installations and extensions where both design and approval were started after the expiration of that period, unless otherwise stipulated by the administrative authority.”

Rather than implement a regulatory provision that may be interpreted incorrectly or simply duplicate the provision in the regulation, we shall not include the sentence offered by EAP. Instead the subsection (b) Safety code will require compliance with the NESC and leave it to the electric utility to comply with the Rules of the NESC that apply to determining the effective date of the NESC edition. In other words, the Safety code requires that an electric utility shall comply with the minimum safety standards established by the NESC which includes rules for determining the effective date of the NESC edition.

We have also considered adding language to clarify what standards apply to existing facilities when the NESC is updated. IRRC noted that several commenters suggest adding language to clarify that the NESC standards in place at the time of a facility’s installation should be the standards that apply to that facility. We agree with this analysis and also that it should be clarified what standards apply to existing installations and extensions. For example, under Rule 013, the current NESC rules “apply to all new installations and extensions, except that they may be waived or modified by the administrative authority.” NESC Section 1, Rule 013 at p. 4 (2012 Edition). When that occurs, the rule provides that safety is to be provided in other ways. In addition, the general rule for existing installations is that “[w]here an existing installation meets, or is altered to meet, these rules, such installation is considered to be in compliance with this edition and is not required to comply with any previous edition.” NESC Section 1, Rule 013 at p. 4 (2012 Edition). Rather than transcribe the entire four pages of Rule 013. Application, in this regulation, we believe that it is sufficient to again

rely on the language of the subsection (b) Safety code that an electric utility shall comply with the minimum safety standards established by the NESC which includes rules for installations.

It was our intent by proposing Paragraph (3) that electric utility companies prepare and follow written procedures for conducting their activities. To satisfy the Section 1501 obligation to provide safe service, we would expect that Pennsylvania electric utilities prepare and follow written procedures for conducting their installations, operations, and maintenance activities. IRRC was especially concerned this paragraph would allow electric utilities to effectively write their own safety regulations, and bypass the Regulatory Review Act. However, the NESC under Part 4, Work Rule 410A does require that electric utility employers utilize positive procedures to secure compliance with the NESC safety rules. Furthermore, under Part 4, Work Rule 410A, the General Operating Routine requires supervisors to conduct job briefings before beginning each job and that should include work procedures, personal protective equipment requirements, energy source controls, hazards associated with the job, and special precautions. The NESC also provides for general operating routines to provide for control of access to the worksite and control of the work to be performed to ensure that the safety rules are observed. Handbook to Rule 421.

Therefore, since we expect that an electric utility would have a safe operating procedure for a certain activity, and that a worker would comply with their own internal procedures, and that NESC already requires formal work procedures, we shall not make the establishment of internal company procedures a specific regulatory requirement.

SECTION 57.28(C) ENFORCEMENT

(c) *Enforcement.* An EDC is subject to inspections, investigations and enforcement actions as may be necessary to assure compliance with this section. The facilities, books and records of an EDC shall be accessible to the Commission and its

staff for the inspections and investigations. An EDC shall provide the Commission or its staff the raw data, reports, supplemental data and information necessary for the administration and enforcement of this section.

On occasion, the Commission's I&E Bureau has had difficulty in obtaining certain information from electric utilities. Prior to the creation of the Electric Safety Division, I&E depended on utilities to provide information to assist I&E in carrying out investigations.¹⁵ Even with the Electric Safety Division established, I&E still needs to be able to readily and easily acquire information from electric utilities. Since there are only three electric safety inspectors in the Commonwealth (East, Central, and West), an inspector may not be able to arrive at the scene of an incident while the evidence is still fresh and untouched. The Electric Safety Division has encountered some confusion and hesitance from utilities regarding the provision of information, including raw data, to Commission staff at the investigation site.

In order to alleviate any confusion on the part of the electric utilities as to what information must be provided to the Commission and to ensure that the Electric Safety Division can effectively carry out its inspections and investigation, we proposed Section 57.28(c) to require an EDC to make its books, facilities, and records available to staff of I&E and the Electric Safety Division during inspections and investigations. *See* 52 Pa. Code § 59.33(d) (similar enforcement section for gas safety). This was to include the raw data collected at the time of the initial incident investigation. The raw data is to be provided to the electric safety inspector as it is collected if a safety inspector is on site during the initial investigation. *See* Annex A, Section 57.28(c). Here, we emphasized that an EDC “shall provide the Commission or its staff the raw data, reports, supplemental data, and information necessary for the administration and enforcement of this section.” *See* Annex A, Section 57.28(c). This section is not meant to include opinions or mental impressions.

¹⁵ If a civil suit was also pending, then Plaintiffs' counsels often served as sources of information.

PECO first notes with respect to this subsection that the term “raw data” is not defined and even in common parlance does not have a uniform definition which then raises the question which information utilities are required to provide to Commission staff after a safety incident. In addition, PECO submits that information that a utility collects may be collected as part of its litigation investigation chain of custody and has valid reasons for maintaining control. Finally, because of third party Right-to-know requests, PECO states that sharing raw data with Commission staff could effectively bypass the civil court discovery process which contains significant protections against the release of certain types of information.

EAP recommends using the language in the gas safety regulation at Section 59.33(d), as the addition of the word “investigation” is considered to be duplicative and unnecessary. Moreover, EAP believes use of the term “raw data” is overly broad and does not agree that utilities are or should be obligated to turn over “raw data” at an incident site.

EAP further believes that turning over “raw data” collected from a utility work site before it has been subject to internal vetting, evaluation and verification by the utility may not demonstrate whether a company is complying with substantive safety standards and would likely lead to misinformation and misinterpretation. EAP argues that § 57.11(e) provides the utility thirty (30) days to review, analyze and verify data before submitting a written report and, therefore, on-the-spot reporting is not required. In fact, EAP does not believe an additional on-the-spot reporting requirement is necessary.

EAP acknowledges that issues of process and protocol have arisen with respect to on-site investigations by the Electric Safety Division that are conducted simultaneously with the utilities internal investigation of a reportable accident or incident. EAP believes the thirty (30) day reporting requirement appears to have provided the proper balance between the staff need to timely evaluate incidents and the utilities need to ensure that the

information reported is accurate and complete. EAP fears that the regulations could be interpreted to mean that the utilities would, on an ongoing basis or other frequency, be continually submitting all “reports, supplemental data, and information” pursuant to the Commission’s administration and enforcement of the proposed safety standard.

Duquesne expressed concern with the perceived broad verbiage of this proposed section because authorizing the Commission to have unrestricted access to EDC files could subject the Commission to an increase in hacking attempts.

The FE Companies question why there is a difference in language from the gas safety regulation as there has been no allegation of inadequacies identified in the gas safety regulation. The FE Companies are concerned that the “raw data” provision would require electric utilities to provide unverified, and in some cases unrecorded data on site at any inspection that the Commission’s Electric Safety Division inspectors might be holding. According to the FE Companies, the data presented on site may be offered without verification, analysis and evaluation for accuracy and completion. The FE Companies submit that this “on the spot” data is not required to be submitted to other entities without a documented request. Moreover, the FE Companies contend the data may not be accurate and that EDCs should be allowed to perform their own investigations and confirm data. Finally, since the FE Companies maintain that legal process is already in place to enforce a utility’s compliance with requests made by I&E during investigations, it is unnecessary and inappropriate to reference investigations within the provision. According to the FE Companies, to the extent it is contemplated that this information be shared with I&E by the Electric Safety Division, utilities should be given the due process right of attorney representation and review for any information that may find its way into the hands of Commission prosecutors with the intent of initiating an investigation.

PPL also has concerns over this subsection first noting that raw data may be incomplete or inaccurate and should not be provided to Commission staff while the electric utility is still investigating. Also, PPL proposes that the final sentence in the subsection should incorporate the language from Section 59.33(d) that such information will be provided to the Commission as it shall from “time to time request.” Finally, PPL proposes that the regulations be revised to specifically state that any information supplied to the Commission or its staff pursuant to the regulations shall be protected as privileged and confidential and exempt from disclosure under 66 Pa. C.S. § 335(d).

IRRC determines that the Commission should further explain the need for this raw data and clarify the regulation to more clearly state what data is required. IRRC notes that these comments compare this proposed regulation to the existing language of the gas safety regulation at 52 Pa. Code § 59.33 and questions why the electric safety requirements should differ from the gas safety requirements.

DISCUSSION

The “raw data” we are referring to is primarily up-to-date measurements of facilities and conductors, on the scene closest to the time of the incident as possible. Since weather conditions and load can suddenly change over a short amount of time after an incident, these measurements need to be recorded as soon as possible. The utilities are best equipped to safely obtain these measurements and we expect that these measurements would be taken. Furthermore, we would expect that this information be provided to our field inspector if the information is requested and if for some reason an issue develops as to the accuracy of the information, that matter can be raised in the written report of a reportable accident required under Section 57.11. We do not consider this a new category of information. Although this may be data not yet subject to analysis, we do not consider it information that would not be included in “reports, supplemental data, and information necessary for the administration and enforcement of this section.”

Therefore, we shall remove the term “raw data” which may appear to be too informal and not uniformly defined.

However, we shall not accept the recommendations to maintain the exact language utilized in the counterpart gas safety regulation with respect to enforcement. We do not agree that use of the word “investigations” with “inspections” is necessarily duplicative, since they do not have the same meaning. Certainly a general inspection of facilities is not the same as a specific informal investigation conducted by I&E pursuant to 52 Pa. Code § 3.113. Although EAP opines that it is unnecessary to include language that purports to establish the Commission’s authority to bring enforcement actions, we believe that including the term “investigations” resolves any issues that may be raised questioning I&E’s authority as Commission staff to make informal requests for documents and information. The regulation, as proposed, simply represents the compliance obligation of the electric utility.

In addition, although PPL argues that the term “investigations” is not utilized in the gas safety regulations at Section 59.33, we do not believe this is a sufficient reason to warrant removing a relevant term here since any future modification of the gas safety regulations may consider inclusion of the term. We do, however, find merit with PPL’s concern that since agency records relating to a noncriminal investigation are exempt from the Pennsylvania Right-to-Know Law,¹⁶ the proposed language could strip the information provided by the electric utility of this protection. As indicated above, to address this concern PPL proposes that the regulations be revised to specifically state that any information supplied to the Commission or its staff pursuant to the regulations shall be protected as privileged and confidential and exempt from disclosure under 66 Pa. C.S. § 335(d).

¹⁶ *Pennsylvania Pub. Util. Comm’n v. Gilbert*, 40 A.3d 755, 762 (Pa. Cmwlth. 2012).

We are in agreement and shall apply this protection by amending the phrase to read “inspections and other types of noncriminal investigations.” At the same time, we do not share the same concern with respect to removing the phrase “as it shall from time to time request,” that is also contained in the gas safety regulations at Section 59.33. Without this qualifier, PPL and EAP believe there is no procedure for when or how the electric utility will provide information to the Commission or its staff and the regulation could be interpreted to mean that the utilities would, on an ongoing basis or other frequency, be continually submitting all “reports, supplemental data, and information” pursuant to the Commission’s administration and enforcement of the proposed safety standard. Frankly, no interested parties have responded that this qualifier as written controls the number of requests for information made by staff. Therefore, we do not agree that removing this qualifier somehow will open the flood gates to numerous requests for information. Moreover, we do not believe that implementing the regulation without the qualifier will be imposing an additional burden on the electric utility.

Therefore, we shall not delete the word “investigations” in the first and second sentence, but we shall modify the subsection to read “inspections and other types of noncriminal investigations” in both sentences. However, we do find merit that the phrase “and enforcement actions” is unnecessary. Here, we agree with EAP’s analysis that these words may be unnecessary as the Association acknowledges there is no need to include language that purports to establish the Commission’s enforcement authority since neither EAP nor its members question the authority of the Commission to bring enforcement actions for alleged violations of the Public Utility Code or regulations promulgated thereunder.

SECTION 57.28(D) RECORDS

(d) *Records.* An EDC shall keep adequate records as required for compliance with the safety code set forth in subsection (b). An electric utility shall submit reports for each reportable accident under § 57.11 (relating to accidents). The records shall be accessible to the Commission and its staff.

As explained above, the Electric Safety Division has encountered confusion and resistance from utilities regarding the provision of information, including raw data, to Commission staff at the investigation site. By the same reasoning underlying the proposed Section 57.28(c), we proposed Section 57.28(d) requiring an electric utility to keep “adequate records” as required under the Commission’s regulations and the National Electric Safety Code. *See* 52 Pa. Code § 59.33(e) (similar records section for gas safety). As these records will assist I&E in carrying out its investigations, we emphasize that these records must be “accessible to the Commission and its staff.” *See* Annex A, Section 57.28(d).

Here, we also noted that Section 57.11 of the Commission’s regulations requires an electric utility to submit a report of each reportable accident involving the facilities or operations to the Secretary of the Commission. 52 Pa. Code § 57.11(a).

EAP suggests that the proposed regulatory language describing the requirement for EDCs to keep adequate records relating to safety be revised such that the second sentence of the proposal be removed from the final rule. Since it is not necessary to restate the existing section 57.11 reporting requirement relating to accidents in this new regulatory section, Duquesne believes the subsection should be streamlined because of the duplicative reference to Section 57.11. Duquesne also believes the reference to “adequate records” should be clarified by the Commission. The FE Companies agree that the language of the provision is redundant.

IRRC considered the first sentence to be vague by requiring “adequate records as required for compliance with the safety code,” since the view of what are “adequate records for compliance” could vary. Finally, IRRC points out that the second sentence merely restates an existing requirement that is established under Section 57.11.

DISCUSSION

IRRC recommends that we review and amend this requirement to clearly state what records are required for compliance. We would agree that the subsection is vague only to extent that the records that would be required for compliance would depend on what provision of the safety code or the NESC was in issue or what aspect of service or facilities is involved. The Safety Rules record retention requirement in the NESC provides as follows for Overhead Lines (Rule 214(A) (4)) and Underground Lines (Rule 313(A) (4)): “Inspection Records: Any conditions or defects affecting compliance with this Code revealed by inspection or test, if not promptly corrected, shall be recorded; such records shall be maintained until the conditions or defects are corrected.” In addition, the Safety Rules record retention requirement for Electric Supply Stations (Rule 121(A) Handbook) provides that defective conditions that are found should be recorded and a procedure should be in place to track such defects until they are remedied. These provisions clarify what inspection records are necessary to adequately record construction, operations, and maintenance activities undertaken pursuant to the NESC. Therefore, we would agree that the compliance record could vary because it would depend on what work was involved and again what provision of the NESC was involved. We believe that the rule as written provides sufficient notice that an electric utility must keep records that verify their compliance with the safety code. We further believe that if the provision would have merely required the electric utility to keep records, that would be vague, but the rule clearly requires “adequate” records just as the electric utility is required to furnish reasonable and adequate service under the Public Utility Code. 66 Pa. C.S. §1501. However, based on vagueness concerns, we shall not adapt the AFL-CIO’s recommendation that EDCs maintain other safety-related records that are

required under other laws or regulations. Although it may be important to have access to reports of employee accidents, Section 57.11 already requires a public utility to make this report. Finally, we shall delete the second sentence in response to IRRC's comment that the requirement is redundant as Section 57.11 already independently establishes this reporting requirement.

CONCLUSION

Accordingly, pursuant to Sections 501 and 1501 of the Public Utility Code, 66 Pa. C.S. §§ 501 and 1501; Sections 201 and 202 of the Act of July 31, 1968, P.L. 769 No. 240, 45 P.S. §§ 1201-1202, and the regulations promulgated thereunder at 1 Pa. Code §§ 7.1, 7.2, and 7.5; Section 204(b) of the Commonwealth Attorneys Act, 71 P.S. § 732.204(b); Section 745.5 of the Regulatory Review Act, 71 P.S. § 745.5; and Section 612 of the Administrative code of 1929, 71 P.S. § 232, and the regulations promulgated thereunder at 4 Pa. Code §§ 7.231-7.234, we are considering adopting the final regulations set forth in Annex A, attached hereto; **THEREFORE**,

IT IS ORDERED:

1. That the Secretary's Bureau shall serve a copy of this Final Rulemaking Order and Annex A on all jurisdictional electric utility companies, the Office of Consumer Advocate, the Office of Small Business Advocate, the Energy Association of Pennsylvania and all other parties that filed comments at Docket No. L-2009-2107155. The Order and Annex A shall be posted and made available electronically on the Commission's website.

2. That the Law Bureau shall certify this Final Rulemaking Order and Annex A and shall deposit them with the Legislative Reference Bureau to be published in the *Pennsylvania Bulletin*.

3. That the Law Bureau shall submit this Final Rulemaking Order and Annex A to the Office of Attorney General for approval as to legality.

4. That the Law Bureau shall submit this Final Rulemaking Order and Annex A to the Governor's Budget Office for review of fiscal impact.

5. That the Law Bureau shall submit this Final Rulemaking Order and Annex A for review by the designated standing committees of both houses of the General Assembly, and for review and approval by the Independent Regulatory Review Commission.

6. That the final regulations become effective upon publication in the *Pennsylvania Bulletin*.

7. That the contact person for this proposed rulemaking is Terrence J. Buda, Assistant Counsel, Law Bureau, (717) 787-5000. Alternate formats of this document are available to persons with disabilities and may be obtained by contacting Alyson Zerbe, Regulatory Review Coordinator, Law Bureau, 717-772-4597.

BY THE COMMISSION



Rosemary Chiavetta
Secretary

(SEAL)

ORDER ADOPTED: April 20, 2017

ORDER ENTERED: April 20, 2017

ANNEX A

TITLE 52. PUBLIC UTILITIES

PART I. PUBLIC UTILITY COMMISSION

SUBPART C. FIXED SERVICE UTILITIES

CHAPTER 57. ELECTRIC SERVICE

SUBCHAPTER A. GENERAL PROVISIONS

§ 57.1. Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

* * * * *

Customer's installation—Wiring and equipment on the premises of a customer, and poles, wires or cables and other facilities necessary to bring the terminus of the wiring of a customer to a location where it may be connected to the service line.

~~—*EDC*—*Electric distribution company or electric utility*—*An electric distribution company as defined in 66 Pa.C.S. § 2803 (relating to definitions).*~~

Electric supply line—The wires or cables, with the necessary supporting or containing structures and appurtenances, used in connection with an overhead or underground system of a public utility, providing electric power, located on a public highway or utility right-of-way and used to transmit or distribute electric energy.

ELECTRIC UTILITY – A PUBLIC UTILITY AS DEFINED UNDER 66 PA.C.S. § 102 (RELATING TO DEFINITIONS).

* * * * *

Service line—The wires or cables and appurtenances which connect the electric supply line of the public utility with the customer's installation and which comply with either of the following:

(i) If overhead-open-wire or cable-construction, the span, normally 100 feet, extending to a suitable support provided by the customer.

(ii) If the electric supply line is of underground construction, the underground facilities extending to but not exceeding 18 inches inside the property line of the customer.

[Service terminal—The point at which the service lines of the public utility terminate and the customer's facilities for receiving the service begin.]

Service point or point of delivery—The location OF INTERCONNECTION designated by the EDC ELECTRIC UTILITY IN ITS COMMISSION-APPROVED TARIFF where the utility's service supply lines terminate and the customer's facilities for receiving service begin.

Siting application—An application filed with the Commission by a public utility under § 57.71 (relating to application).

* * * * *

Subchapter B. SERVICE AND FACILITIES

§ 57.28. Electric safety standards.

~~(a) *Duties and responsibilities RESPONSIBILITIES.* The separation of duties and responsibilities between an EDC ELECTRIC UTILITY and a customer with respect to the facilities utilized for electric service shall be effectively described in the EDC'S ELECTRIC UTILITY'S tariff that is filed with and approved by the Commission.~~

~~(1) *Duty of an EDC.* An EDC ELECTRIC UTILITY shall use every reasonable effort to properly warn and protect the public from danger, and shall exercise reasonable care to reduce the hazards to which employees, customers, the general public and others may be subjected to by reason of its provision of electric distribution UTILITY service and its associated equipment and facilities.~~

~~(2) *Customer responsibility.*~~

~~(i) A customer is responsible for the ownership and maintenance of the customer's facilities beyond the service point.~~

~~(ii) A customer is responsible for maintaining and inspecting electrical wiring and electrical equipment beyond the point of delivery of electric supply.~~

(2) AN ELECTRIC UTILITY IS NOT RESPONSIBLE FOR THE OWNERSHIP AND MAINTENANCE OF THE CUSTOMER'S FACILITIES BEYOND THE SERVICE POINT.

~~(b) *Safety code.* A jurisdictional EDC shall comply with all of the following minimum safety standards:~~

~~(1) This chapter.~~

~~(2) The standards established by the National Electrical Safety Code.~~

~~(3) The procedures established by the EDC and set forth in the EDC's internal company procedures.~~

~~(4) The standards established by sections 1—11 of the act of December 10, 1974 (73 P. S. §§ 176—186), known as the Underground Utility Line Protection Act, and Pennsylvania One Call.~~

~~(5) Other applicable and governing State and Federal laws and regulations.~~

(b) *SAFETY CODE.* AN ELECTRIC UTILITY SHALL COMPLY WITH THE MINIMUM SAFETY STANDARDS ESTABLISHED BY THE NATIONAL ELECTRIC SAFETY CODE (NESC) PURSUANT TO ITS TERMS OF APPLICABILITY.

~~(c) *Enforcement.* An ~~EDC~~ ELECTRIC UTILITY is subject to inspections, AND OTHER TYPES OF NONCRIMINAL investigations and enforcement actions as may be necessary to assure compliance with this section. The facilities, books and records of an ~~EDC~~ ELECTRIC UTILITY shall be accessible to the Commission and its staff for the inspections and OTHER TYPES OF NONCRIMINAL investigations. An ~~EDC~~ ELECTRIC UTILITY shall provide the Commission or its staff the raw data, reports, supplemental data and information necessary for the administration and enforcement of this section.~~

~~(d) *Records.* An ~~EDC~~ ELECTRIC UTILITY shall keep adequate records as required for compliance with the safety code in subsection (b). An ~~EDC~~ shall submit reports for each reportable accident under § 57.11 (relating to accidents). The records shall be accessible to the Commission and its staff.~~

SCOTT J RUBIN ESQ
333 OAK LANE
BLOOMSBURG, PA 17815-2036

TORI L GIESLER ESQ
FIRSTENERGY SERVICE CO
2800 POTTSVILLE PIKE
PO BOX 16001
READING PA 19612-6001

DONNA MJ CLARK ESQ
ENERGY ASSOCIATION OF PA
800 N THIRD STREET STE 205
HARRISBURG PA 17102

DARRYL LAWRENCE ESQ
OFC OF CONSUMER ADVOCATE
555 WALNUT ST 5TH FL FORUM PL
HARRISBURG PA 17101-1923

RICHARD G WEBSTER JR
PECO
2301 MARKET ST S15
PHILADELPHIA PA 19103

KIMBERLY A KLOCK ESQ
PPL
OFFICE OF GENERAL COUNSEL
2 NORTH NINTH ST
ALLENTOWN PA 18101-1179

SHELBY LINTON-KEDDIE ESQ
DUQUESNE LIGHT CO
800 N THIRD ST STE 203
HARRISBURG PA 17102

MELANIE J EL ATIEH ESQ
PA AMERICAN WATER
800 WEST HERSHEY PARK DR
HERSHEY PA 17033



COMMONWEALTH OF PENNSYLVANIA
PUBLIC UTILITY COMMISSION
400 NORTH STREET
HARRISBURG, PA 17120

GLADYS M. BROWN
CHAIRMAN

May 11, 2017

The Honorable George D. Bedwick
Chairman
Independent Regulatory Review Commission
14th Floor, Harristown II
333 Market Street
Harrisburg, PA 17101

**Re: L-2015-2500632/57-313
Final Rulemaking Regarding Electric Safety Regulations
52 Pa. Code, Chapter 57**

Dear Chairman Bedwick:

Enclosed please find one (1) copy of the regulatory documents concerning the above-captioned rulemaking. Under Section 745.5(a) of the Regulatory Review Act, the Act of June 30, 1989 (P.L. 73, No. 19) (71 P.S. §§745.1-745.15) the Commission, on January 27, 2016, submitted a copy of the Notice of Proposed Rulemaking to the Senate Committee on Consumer Protection and Professional Licensure, the House Consumer Affairs Committee and the Independent Regulatory Review Commission (IRRC). This notice was published at 46 *Pa.B.* 654 on February 6, 2016. The Commission also provided the Committees and IRRC with copies of all comments received in compliance with Section 745.5(b.1).

In preparing this final form rulemaking, the Commission has considered all comments received from the Committees, IRRC and the public.

Sincerely,

Gladys M. Brown
Chairman

Enclosures

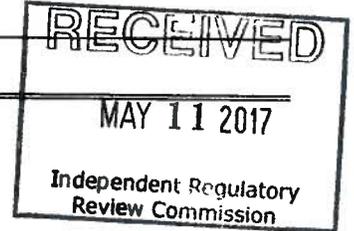
pc: The Honorable Robert M. Tomlinson
The Honorable Lisa Boscola
The Honorable Robert Godshall
The Honorable Thomas R. Caltagirone
June Perry, Legislative Affairs Director
Bohdan Pankiw, Chief Counsel
Terrence J. Buda, Assistant Counsel
Alyson Zerbe, Regulatory Coordinator

TRANSMITTAL SHEET FOR REGULATIONS SUBJECT
TO THE REGULATORY REVIEW ACT

ID Number: L-2015-2500632/57-313

Subject: Final Rulemaking Re Electric Safety Regulations
52 Pa. Code Chapter 57

Pennsylvania Public Utility Commission



TYPE OF REGULATION

- Proposed Regulation
- Final Regulation with Notice of Proposed Rulemaking Omitted.
- Final Regulation
- 120-day Emergency Certification of the Attorney General
- 120-day Emergency Certification of the Governor

FILING OF REPORT

<u>Date</u>	<u>Signature</u>	<u>Designation</u>
5/11/17	Jane M. [Signature]	HOUSE COMMITTEE (Godshall) Consumer Affairs
5/11/17	Tommy M. Blawie [Signature]	SENATE COMMITTEE (Tomlinson) Consumer Protection and Professional Licensure
5/11/17	K. Cooper [Signature]	Independent Regulatory Review Commission
		Attorney General
		Legislative Reference Bureau