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March 7, 2016

Rosemary Chiavetta, Secretary  
PA Public Utility Commission  
Commonwealth Keystone Bldg.  
400 North Street  
Harrisburg, PA 17120

Re: Rulemaking Re Electric Safety  
Regulations, 52 Pa. Code Chapter 57  
Docket No. L-2015-2500632

Dear Secretary Chiavetta:

Attached for electronic filing please find the Office of Consumer Advocate's Comments in the above-referenced proceeding.

Respectfully submitted,

/s/ Darryl Lawrence  
Darryl Lawrence  
Senior Assistant Consumer Advocate  
PA Attorney I.D. # 93682

Attachment

cc: Johnnie Simms, I&E (email only)  
John Evans, OSBA (email only)

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BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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Rulemaking Re Electric Safety Regulationis, : Docket No. L-2015-2500632  
52 Pa. Code Chapter 57 : :

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COMMENTS OF THE  
OFFICE OF CONSUMER ADVOCATE

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Dated: March 7, 2016

## I. INTRODUCTION

On November 19, 2015, the Pennsylvania Public Utility Commission (Commission) issued a proposed rulemaking order to amend its regulations at Chapter 57 of the Pennsylvania Code and to add electric safety standards to that Chapter. Rulemaking Re Electric Safety Regulations, 52 Pa. Code Chapter 57, Docket No. L-2015-2500632 (Order entered Nov. 19, 2015) (Proposed Rulemaking Order). The Proposed Rulemaking Order seeks to amend 52 Pa. Code Chapter 57 in order to make minor revisions and updates to Section 57.1 and also proposes to add electric safety standards in Section 57.28. The Proposed Rulemaking Order would provide specific references to national electric safety standards, as embodied within the National Electric Safety Code (NESC), in Chapter 57 and would also provide further clarity in the area of the individual duties and responsibilities of both the electric utilities and customers. The stated goal of the proposed revisions and additions is to enable the Commission's Electric Safety Division to enforce the applicable electric safety standards found in the NESC in order to ensure public safety and to protect the public interest, while at the same time providing clarity as to the applicability of the NESC and the enforcement powers of the Electric Safety Division in order to minimize potential legal challenges to the applicability of same. On February 5, 2016 the Proposed Rulemaking Order was published in the *Pennsylvania Bulletin*. 46 Pa.B. 654. The Proposed Rulemaking Order provided that comments on the proposed revisions were being sought and a 30-day comment period after publication in the *Pennsylvania Bulletin* was established.

The Office of Consumer Advocate (OCA) appreciates the opportunity to respond to the Commission's proposed rulemaking and fully supports the Commission in its endeavors to provide the Electric Safety Division with the tools it needs to ensure the safety of electric

facilities within the Commonwealth. 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 also 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. In these Comments, the OCA supports the Commission's initiative and offers recommended clarifications and modifications to ensure that the Commission's authority and the applicability of the regulations are accurate.

## II. COMMENTS

In the Proposed Rulemaking Order the terms "electric distribution company" and "electric utility" are used interchangeably, but it is proposed that the definition of EDC as found in the Public Utility Code be used to provide clarity as to those entities covered by the proposed regulations. By limiting the applicability of the regulations to EDCs, the OCA is concerned that the Commission might be unnecessarily limiting its jurisdiction over the *safety*<sup>1</sup> of electric facilities owned by public utilities through its Proposed Rulemaking Order. Specifically, the OCA suggests herein that the Commission should consider replacing the term "Electric Distribution Company" (EDC) as used in the Proposed Rulemaking Order with the term "Public

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<sup>1</sup> The OCA's Comments herein specifically address the "safety" of electric facilities as opposed to the "reliability" aspects of these facilities. These concepts can be, and often are, different. For example, a transmission substation that repeatedly causes outages due to equipment failure presents a reliability concern. If the same substation's fences/gates were in a state of disrepair such that access to that high-voltage facility was not secure, an immediate public safety concern would be present.

Utility.”<sup>2</sup> In support of this recommendation, the OCA provides the following discussion for the Commission’s further consideration.<sup>3</sup>

The 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. 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 fit within the definition of EDC as found in the proposed regulations.

One example would be the Trans-Allegheny Interstate Line Company, TrAILCo.<sup>4</sup> TrAILCo is a Pennsylvania Public Utility that owns non-jurisdictional, interstate transmission lines and thus is not an EDC as defined by Pennsylvania law.<sup>5</sup> Accordingly, as the OCA reads the proposed regulations, 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

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<sup>2</sup> In relevant part here, the Public Utility Code defines a “public utility” as:

(1) Any person or corporations now or hereafter owning or operating in this Commonwealth equipment or facilities for:  
(i) Producing, generating, transmitting, distributing or furnishing natural or artificial gas, electricity, or steam for the production of light, heat, or power to or for the public for compensation.

66 Pa.C.S. § 102.

<sup>3</sup> Attached to these Comments is a marked up version of the proposed regulations consistent with the OCA’s recommendations herein.

<sup>4</sup> The OCA uses TrAILCo here as but one example.

<sup>5</sup> See generally, In re TrAILCo, Dock. No, A-110172 et al (Order entered Dec. 12, 2008).

TrAILCo.<sup>6</sup> The OCA is concerned that, as currently written, the Proposed Rulemaking Order could lead to a jurisdictional vacuum as to the *safety* of electric facilities in the Commonwealth.

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. 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.<sup>7</sup> FERC also has authority over the *reliability* aspects of such interstate facilities, with such authority now having been delegated to the North American Electric Reliability Corporation (NERC) for all such facilities that are rated at 100kV and above.<sup>8</sup> Unlike the federal authority over the *reliability* of such interstate facilities, however, FERC's position on the regulation and enforcement of *safety* for electric facilities is that it rests with the States. FERC's website provides:

#### Safety & Inspections

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.<sup>9</sup>

FERC's distinction between authority over reliability and safety is in line with the Federal Power Act. In 2005 Congress passed the Energy Policy Act of 2005 which subsequently

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<sup>6</sup> The OCA recognizes that there are other entities in Pennsylvania that own electric distribution and transmission facilities that are not "Public Utilities." These Comments do not address the disposition of such entities as to the application of the revised regulations.

<sup>7</sup> See e.g., Application of Trans-Allegheny Interstate Line Company, Docket Nos. A-2010-2187540 and A-2010-2187542 at 16 (Order entered Mar. 15, 2012).

<sup>8</sup> See Revisions to Electric Reliability Organization Definition of Bulk Electric System and Rules of Procedure, Order No. 773, 141 FERC ¶ 61,236 (2012).

<sup>9</sup> See <http://www.ferc.gov/industries/electric/safety.asp> (emphasis added).

became law and introduced changes to the existing Federal Power Act.<sup>10</sup> Part of those changes included authorizing FERC to create and empower an Electric Reliability Organization (ERO) to establish and enforce reliability standards for the bulk electric system.<sup>11</sup> As part of this Section in the Federal Power Act on Electric Reliability, there is also a savings provision that provides in relevant part:

Nothing in this section shall be construed to preempt any authority of any State to take action to ensure the safety, adequacy, and reliability of electric service within that State, as long as such action is not inconsistent with any reliability standard, except that the State of New York may establish rules that result in greater reliability within that State, as long as such action does not result in lesser reliability outside the State than that provided by the reliability standards.

16 USCS 824o(i)(3).

The Federal authorities and their instrumentalities are focused on the *reliability* of the interstate grid. The fact is, however, a properly designed and functioning interstate transmission system could experience a serious event, such as a tower collapse or an extra-high-voltage conductor (line) failure and not violate any of NERC's reliability rules or regulations.<sup>12</sup> Such an event may very well draw an investigation by NERC in order to establish a root cause and the results could prove useful for future industry training, but these activities are all reactive.

The OCA has a practical concern in this area. The OCA has received customer calls expressing concerns about 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, to name but a few. To the best of the OCA's knowledge, the Federal

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<sup>10</sup> Energy Policy Act of 2005, Pub. L. No. 109-58, 119 Stat. 594 (2005).

<sup>11</sup> See generally, Federal Power Act, Electric Reliability 16 USCS § 824o.

<sup>12</sup> The interstate electric transmission system is routinely tested for its ability to withstand an event where one major component, such as a 500 kV transmission line, has failed and yet the system continues to operate without any appreciable loss of load or damage to other elements of the system. NERC reliability regulations refer to such an event as an "N-1" scenario.

authorities do not have staff or personnel to investigate such potential safety issues. Consistent with the Commission's goal of providing clarity and minimizing any potential legal challenges, in the OCA's view, the Electric Safety Division should have the authority to investigate such potential safety matters armed with clear jurisdiction over such facilities.

### III. CONCLUSION

The OCA appreciates the opportunity to provide these Comments for the Commissions' consideration as it finalizes these important revisions to the Pennsylvania Code. The OCA supports the Commission's efforts to provide enhanced safety regulations and enforcement for electric facilities within the Commonwealth and also to provide clarity to all stakeholders affected by the proposed regulations. The OCA looks forward to continuing to work with the Commission and the stakeholders to implement these revisions in a manner that best serves the public interest.

Respectfully Submitted,

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DATED: March 7, 2016

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**ANNEX**  
**TITLE 52. PUBLIC UTILITIES**  
**PART 1. 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:

\* \* \* \*

*EDC—electric distribution company or electric utility—An electric distribution company A public utility as defined in 66 Pa. C. S. § 2803 102 (relating to definitions).*

\* \* \* \*

*Service point / Point of delivery*—The location designated by the electric utility where the utility's service supply lines terminate and the customer's facilities for receiving service begin.

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

\* \* \* \*

**Subchapter B. SERVICE AND FACILITIES**

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**§ 57.28. Electric safety standards.**

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

(1) *Duty of electric utility.* An 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 service and its associated equipment and facilities.

(2) *Customer responsibility.*

- (i) A customer shall be responsible for the ownership and maintenance of the customer's facilities beyond the service point.
- (ii) A customer shall be responsible for maintaining and inspecting electrical wiring and electrical equipment beyond the point of delivery of electric supply.

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

- (1) The regulations established by § 57.1 *et. seq.* (*as amended*) (relating to electric service).
- (2) The standards established by the National Electrical Safety Code (NESC).
- (3) The procedures established by the electric utility and set forth in the EDC's electric utility's internal company procedures.
- (4) The standards established by the Underground Utility Line Protection Act (PA One Call or Act 287) at 73 P.S. §§ 176 *et. seq.* (relating to excavating and demolition).
- (5) All other applicable and governing state and federal laws and regulations.

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