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March 7, 2016

Via E-File

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, Second Floor, Room-N201
Harrisburg, PA 17120

RECEIVED
IRRC
2016 MAR -8 PM 3:30

RE: Proposal Rulemaking Order for Revision of 52 Pa. Code Chapter 57 Relating to Electric Safety Regulations; Docket No. L-2015-2500632

Dear Secretary Chiavetta:

Enclosed for filing please find an original of PECO Energy Company's comments to the Commission's November 19, 2015 Proposed Rulemaking Order in the above-referenced docket.

Should you have any questions concerning this filing, please contact me at 215-841-5777.

Sincerely,

Enclosure

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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

2016 MAR -8 PM 3: 30

Proposed Rulemaking Order : L-2015-2500632
For Revision of 52 Pa. Code Chapter 57 Relating :
To Electric Safety Regulations :

**COMMENTS OF
PECO ENERGY COMPANY**

I. INTRODUCTION

PECO Energy Company ("PECO") appreciates the opportunity to provide comments on the Commission's proposed rulemaking in this docket.

PECO notes that the Energy Association of Pennsylvania ("EAP") is also filing comments in this docket. The EAP comments provide a comprehensive response to the issues raised in the Commission's Rulemaking Order; PECO joins in and supports the EAP comments. PECO will not repeat the EAP comments here. Instead, PECO's comments are limited to two parts of the proposed regulations that are of particular interest to it. The first is the proposal, set forth in proposed new 52 Pa. Code §57.28(b)(3), that would designate a utility's internal company procedures as Commission-approved safety codes. The second is the proposal, set forth in proposed new 52 Pa. Code §57.82(c), that utilities be required to provide Commission investigators and inspectors with "raw data." For the reasons set forth below, PECO urges the Commission not to adopt these two proposals.

II. PECO's COMMENTS

A. The Commission Should Not Deem a Utility's Internal Company Procedures to be a "Safety Code" in the Commission's Regulations

The Commission's proposed regulations contain the following proposed new provision:

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

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

PECO respectfully submits that this language is intended to, and would raise a utility's internal company procedures, to the status of a Commission-approved "safety code." PECO strongly counsels against that approach.

At the outset, PECO would like to note that it regularly and successfully establishes and utilizes internal company procedures to implement its safety goals. Indeed, PECO is in the top decile of utility industry safety performance, and its use of internal operating procedures is one of the primary tools that it uses to accomplish that top-level performance. PECO's concern is not with having or following internal company procedures; it is with the unintended consequences of transmuted those internal company procedures into something that they were never intended to be – an externally imposed safety code.

As PECO understands it, the role of the Commission in setting standards (safety or otherwise) is to create generally applicable, prospective standards that describe the minimum standards (and, in some cases, aspirational goals) for all utilities in the state. The Commission creates such standards after evaluating the statutory mandates and limitations in the specific area, collecting and reviewing the appropriate comments or evidence on the propriety of proposed standards, and weighing whether a specific standard is in the public interest. After the Commission has set these overarching standards, utilities are then required to conform to the standards, but are given significant latitude in the

procedures that they use to do so. Different utilities may take different approaches, and a single utility may change its approach from time-to-time as it develops its understanding of operational parameters and utility best practices. Each utility will thus have internal company procedures that are unique to its own operations and, moreover, which may change from time-to-time as the utility evolves its operational understanding of the best methods to achieve the standard.

The proposal to deem internal company procedures as “safety codes” runs afoul of that framework in numerous ways. First, by and large the Commission has not seen, taken evidence or comments on, or evaluated the internal company procedures of the various utilities. It therefore cannot have performed its normal function of evaluating the comments and evidence on such standards and making a determination of whether it is in the public interest to impose a given procedure as a required standard. PECO respectfully submits that the Commission should not put itself into the position of stating that numerous internal company policies are in the public interest when it has not seen or evaluated those internal company policies. It is also doubtful that the Pennsylvania courts would approve such an abdication of the Commission’s oversight responsibility.

Second, internal company procedures are, by definition, individualized rather than general standards. This violates the general principle that the Commission should set generally applicable, prospective standards. And, if the internal company standards are elevated to the role of Commission-approved safety codes, 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. This would cause a balkanization of safety standards and enforcement throughout the Commonwealth.

Finally, turning internal company standards into Commission-approved safety codes would risk inducing companies to *decrease* the number and scope of internal company procedures so as to self-

limit the number of safety codes to which they would be legally held accountable. This outcome would obviously be contrary to the Commission's goal of enhanced safety. It would also make it very difficult for companies like PECO, which regularly uses internal company procedures as a tool to attain high safety, to continue to justify creating such internal company procedures, because that would regularly create new, individualized safety codes that applied to it and no one else.

PECO respectfully submits that the Commission should have a regulatory safety framework that allows and encourages utilities to implement internal company *procedures that go beyond what is required by the law*. Allow utilities to explore and innovate, to learn and try new procedures, without fear that by doing so they will have immediately created a regulatory requirement to follow that procedure regardless of future experiences, learnings, and best practices. This cannot be accomplished within a regulatory framework in which internal company procedures automatically become a Commission-enforced safety code.

B. The Commission Should Not Require Utilities to Provide it With "Raw Data"

In the Proposed Rulemaking Order (p. 8), the Commission notes that in some past investigations it has encountered "confusion and hesitance from utilities regarding the provision of information, including raw data, to Commission staff at the investigation site." (On page 9, this is referred to as "confusion and resistance.") In order to address this concern, the Commission proposes to enact a new regulation that would state:

57.28 (c) Enforcement. An EDC shall be subject to inspections, investigations, and enforcement actions as may be necessary to ensure 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 with the raw data, reports, supplemental data, and information necessary for the administration and enforcement of this section.

PECO respectfully submits that this provision is unlikely to reduce confusion, hesitation, or resistance on this issue, for three reasons.

First, the term "raw data" is not a defined term in the Commission's regulations or this proposed rulemaking. Moreover, in common parlance the term "raw data" does not have a uniform definition; the online versions of Merriam-Webster's, American Heritage, and Black's Law Dictionaries do not even define the term "raw data." The online resource Wikipedia primarily describes "raw data" primarily in terms of computing data, stating in part that:

Raw data (also known as primary data) is a term for data collected from a source. Raw data has not been subjected to processing or any other manipulation, and are also referred to as primary data. Raw data is a relative term (see data). Raw data can be input to a computer program or used in manual procedures such as analyzing statistics from a survey. The term can refer to the binary data on electronic storage devices such as hard disk drives (also referred to as low-level data).

In computing, raw data may have the following attributes: possibly containing errors, not validated; in different (colloquial) formats; uncoded or unformatted; and suspect, requiring confirmation or citation. . . .

Raw data (sometimes called "sourcey" data or "eggy" data) are the data input to processing. A distinction is sometimes made between *data* and *information* to the effect that information is the *end product* of *data* processing. . . .

Although raw data has the potential to become "information," extraction, organization, and sometimes analysis and formatting for presentation are required for that to occur.

It is difficult to understand how such definitions could be uniformly and successfully applied to the question of which information utilities are required to provide to Commission staff after a safety event.

Second, much of the information that a utility collects after a safety event will be collected as part of its litigation investigation, and will be in a chain of custody for that purpose. The Rulemaking Order notes (p.9) that "[t]his section is not meant to include opinions or mental impressions" within the raw data that must be turned over to the Commission. However, utilities involved in litigation will often have valid reasons to maintain control over information that are not "opinions or mental impressions." Moreover, the proposed regulations themselves do not contain the limitation against providing

"opinions or mental impressions," so even that limitation is likely to result in disagreement as to the scope of required disclosure.

Third, PECO is concerned that the 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 that is a risk, then the sharing of 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. Release of the raw data to the Commission could thus prejudice the litigation position of utilities.

PECO is willing to work with the Commission to gain a greater understanding of the types of data that the Commission needs to properly perform its regulatory oversight function after safety events, and to seek solutions to provide such information in a manner that would not prejudice PECO's litigation positions for those same events. But PECO does not believe the Commission's concerns can or should be solved by creating a broad regulatory requirement to preserve and produce an undefined amount and scope of "raw data."

III. CONCLUSION

PECO requests that the Commission adopt the revisions and suggestions regarding the current rulemaking set forth in the comments of EAP. In addition, for the reasons set forth above, PECO requests that the Commission not adopt the proposed regulation at 52 Pa. Code §57.28(b)(3), which would list "internal company procedures" as a form of Commission-regulated and imposed safety code. Finally, PECO requests that the Commission eliminate the reference to "raw data" in proposed 52 Pa. Code §57.28(c), and instead engage in further discussions with stakeholders regarding the type and scope of information that it believes that it needs preserved at the scene of a safety incident and later produced to the Commission.

Respectfully submitted,

Ward Smith / m/s

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