

RULES AND REGULATIONS

Title 37—LAW

STATE POLICE

[37 PA. CODE CH. 41]

Designation of Emergency Vehicles

The State Police amends § 41.5 (relating to eligibility) to authorize the Commissioner of the State Police to designate certain vehicles used by the Department of Corrections (Department) as emergency vehicles. Under 75 Pa.C.S. § 6106 (relating to designation of emergency vehicles by Pennsylvania State Police), the State Police may designate a vehicle or group of vehicles as emergency vehicles upon a finding that the designation is necessary to the preservation of life or property or to the execution of emergency governmental functions. This final-form rulemaking amends § 41.5 to allow the Department to apply for emergency vehicle designation of vehicles used by its Hostage Rescue Teams, Hostage Negotiation Teams, Corrections Emergency Response Teams, Corrections Rifle Specialist Teams and the Central Office Special Teams Coordinator.

Statutory Authority

The final-form rulemaking is authorized by 75 Pa.C.S. § 6106.

Affect

The final-form rulemaking will affect the Department.

Fiscal Impact

The final-form rulemaking will have a minimal fiscal impact.

Paperwork Requirements

The final-form rulemaking will not require the completion of additional forms, reports or other paperwork.

Effective Date/Sunset Date

The final-form rulemaking will go into effect upon publication in the *Pennsylvania Bulletin*. No sunset date has been assigned; however, every facet of this final-form rulemaking will be continuously reviewed for effectiveness, clarity and whether it is serving the greater interests of citizens of this Commonwealth.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on December 8, 2003, the State Police submitted a copy of the notice of proposed rulemaking, published at 33 Pa.B. 6228 (December 20, 2003), to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the House Judiciary Committee and the Senate Committee on Law and Justice for review and comment.

Under section 5(c) of the Regulatory Review Act, IRRC and the Committees were provided with copies of the comments received during the public comment period, as well as other documents when requested. In preparing the final-form rulemaking, the Department has considered all comments from IRRC, the House and Senate Committees and the public.

Under section 5.1(j.2) of the Regulatory Review Act (71 P. S. § 745.5a(j.2)), on July 27, 2004, the final-form rulemaking was deemed approved by the House and

Senate Committees. Under section 5(g) of the Regulatory Review Act, the amendment was deemed approved effective July 28, 2004.

Contact Person

The contact person is Syndi L. Guido, Policy Director, State Police, 1800 Elmerton Avenue, Harrisburg, PA 17110, (717) 772-0905. Individuals with a disability who require an alternative format of this final-form rulemaking (such as, large print, audio tape or Braille) should contact Syndi Guido to make the necessary arrangements.

Findings

The State Police finds that:

(1) Public notice of intention to adopt the amendment has been given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202) and the regulations promulgated thereunder, 1 Pa. Code §§ 7.1 and 7.2.

(2) A public comment period was provided and no comments were received.

(3) The adoption of this final-form rulemaking in the manner provided in this order is necessary and appropriate for administration and enforcement of the authorizing statute.

Order

The State Police, acting under the authorizing statute, orders that:

(a) The regulations of the State Police, 37 Pa. Code Chapter 41, are amended by amending § 41.5 to read as set forth in Annex A.

(b) The State Police will submit this order and Annex A to the Office of General Counsel and the Office of Attorney General as required by law for approval as to form and legality.

(c) The State Police shall certify this order and Annex A and deposit them with the Legislative Reference Bureau as required by law.

(d) This order shall take effect upon publication in the *Pennsylvania Bulletin*.

COL. JEFFREY B. MILLER,
Commissioner

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission, relating to this document, see 34 Pa.B. 4528 (August 14, 2004).)

Fiscal Note: Fiscal Note 17-66 remains valid for the final adoption of the subject regulation.

Annex A

TITLE 37. LAW

PART I. STATE POLICE

CHAPTER 41. DESIGNATION OF EMERGENCY VEHICLES

§ 41.5. Eligibility.

(a) *Considerations.* The following vehicles may qualify for an emergency vehicle designation:

(1) The Pennsylvania Emergency Management Agency and local emergency management organization vehicle.

(2) Bona fide rescue organization vehicle.

(3) Department of Corrections vehicles used by members of the Department's Hostage Rescue Teams, Hostage Negotiation Teams, Corrections Emergency Response Teams, Corrections Rifle Specialist Teams and Central Office Special Teams Coordinator.

(b) *Exclusions.* Private vehicles of the following persons will not be considered for an emergency vehicle designation:

(1) Volunteer firemen, fire commissioners, fire inspectors, fire police, fire engineers, other fire department or fire company personnel and members of rescue organizations.

(2) Police, special police, auxiliary police, part-time police, constables, security police and campus police.

(3) Pennsylvania Emergency Management Agency, local emergency management organization or disaster control personnel.

(4) Red Cross personnel.

(5) Military personnel.

(6) The Department of Corrections, its personnel, and members of its Hostage Rescue Teams, Hostage Negotiation Teams, Corrections Emergency Response Teams, Corrections Rifle Specialist Teams and Central Office Special Teams Coordinator.

(c) *Restriction.* A designation will be issued only for a vehicle owned or leased by the applicant.

[Pa.B. Doc. No. 04-1708. Filed for public inspection September 17, 2004, 9:00 a.m.]

Title 52—PUBLIC UTILITIES

PENNSYLVANIA PUBLIC UTILITY COMMISSION

[52 PA. CODE CH. 57]

[L-00030161]

Electric Service Reliability

The Pennsylvania Public Utility Commission (Commission), on May 7, 2004, adopted a final-form rulemaking order which amends existing regulations by establishing performance and benchmark standards designed to ensure electric distribution company performance does not deteriorate since passage of 66 Pa.C.S. Chapter 28 (relating to Electricity Generation Customer Choice and Competition Act).

Executive Summary

The Electricity Generation Customer Choice and Competition Act (Act), 1996, Dec. 3, P.L. 802, No. 138 § 4, became effective January 1, 1997. The Act amends Title 66 of the Pennsylvania Consolidated Statutes ("Public Utility Code" or "Code") by adding Chapter 28 to establish standards and procedures to create direct access by retail customers to the competitive market for the generation of electricity, while maintaining the safety and reliability of the electric system. Specifically, the Commission was given a legislative mandate to ensure that levels of reliability that were present prior to the restructuring of the electric utility industry would continue in the new competitive markets.

In response to this legislative mandate, the Commission adopted a final rulemaking order on April 23, 1998 at

Docket No. L-00970120, setting forth various reporting requirements designed to ensure the continuing safety, adequacy and reliability of the generation, transmission and distribution of electricity in the Commonwealth. See 52 Pa. Code §§ 57.191—57.197. The final rulemaking order also suggested that the Commission could reevaluate its monitoring efforts at a later time as deemed appropriate.

On June 12, 2002, the Legislative Budget and Finance Committee (LB&FC) issued a Report entitled, *Assessing the Reliability of Pennsylvania's Electric Transmission and Distribution Systems*. The LB&FC Report made several recommendations regarding the issue of reliability

Shortly thereafter, on July 18, 2002, at M-00021619, the Commission adopted its Bureau of Conservation Economics and Energy Planning's (CEEP) *Inspection and Maintenance Study of Electric Distribution Systems* dated July 3, 2002. CEEP, in part, recommended that the annual reliability reporting requirements be revised to include the causes of outages and percentages categorized by type as well as the annual reporting of each company's plans for the upcoming year's inspection and maintenance of transmission systems including: 1) vegetation management; 2) distribution and substation maintenance activity; and 3) capital improvement projects. The Commission agreed with CEEP's recommendations in this regard.

The Commission created a Staff Internal Working Group on Electric Service Reliability (Staff Internal Working Group) to conduct a reevaluation of its electric service reliability efforts. The group was comprised of members of Commission bureaus with either direct or indirect responsibility for monitoring electric service reliability. The Staff Internal Working Group prepared a report, entitled *Review of the Commission's Monitoring Process for Electric Distribution Service Reliability*, dated July 18, 2002, which reviewed the Commission's monitoring process for electric distribution service reliability and provided comments on recommendations from the LB&FC report. The Staff Internal Working Group report also offered recommendations for tightening the standards for reliability performance and establishing additional reporting requirements by electric distribution companies (EDCs).

On August 29, 2002, the Commission issued an Order at Docket No. D-02SPS021 that tentatively approved these recommendations and directed the Commission staff to undertake the preparation of orders, policy statements, and proposed rulemakings as may be necessary to implement the recommendations contained in the Staff Internal Working Group's report. The Staff Internal Working Group was assigned the responsibility to implement the recommendations. The Staff Internal Working Group, with the legal assistance of the Law Bureau, determined which implementation actions could be accomplished internally (with or without a formal Commission Order), and which actions will require changes to regulations.

The Staff Internal Working Group conducted field visits to EDCs to identify the current capabilities of each EDC for measuring and reporting reliability performance. These field visits began in October 2002 and continued intermittently through March 2003. As a result of the field visits, various forms of reliability reports and reliability data were received from the EDCs and analyzed by the Staff Internal Working Group to determine the most effective and reasonable approach for the Commission to monitor electric distribution service reliability.

This Rulemaking Order seeks to implement Staff Internal Working Group's recommendations and sets forth

amendments to existing regulations to better govern the reliability of electric service in Pennsylvania and assure that service does not deteriorate after the Act. Specifically, we propose to substitute the term "operating area" with "service territory" thus altering the definition of a "major event." Additionally, we want to require the EDCs to file quarterly reports as well as the currently required annual reports. We wish the EDCs to report additional information on their reports, i.e., worst circuit information as well as their standards and plans for inspection and maintenance of their distribution systems.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on September 19, 2003, the Commission submitted a copy of the notice of proposed rulemaking, published at 33 Pa.B. 4921 (October 4, 2003), to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the House and Senate Committees for review and comment.

Under section 5(c) of the Regulatory Review Act, IRRC and the Committees were provided with copies of the comments received during the public comment period, as well as other documents when requested. In preparing the final-form rulemaking, the Department has considered all comments from IRRC, the House and Senate Committees and the public.

Under section 5.1(j.2) of the Regulatory Review Act (71 P. S. § 745.5a(j.2)), on July 28, 2004, the final-form rulemaking was deemed approved by the House and Senate Committees. Under section 5.1(e) of the Regulatory Review Act, IRRC met on July 29, 2004, and approved the final-form rulemaking.

Public Meeting held
May 7, 2004

Commissioners Present: Terrance J. Fitzpatrick, Chairperson; Robert K. Bloom, Vice Chairperson; Glen R. Thomas; Kim Pizzigrilli; Wendell F. Holland

Rulemaking Re Amending Electric Service Reliability Regulations at 52 Pa. Code Chapter 57; Doc. No. L-00030161

Final Rulemaking Order

By the Commission:

Today, in conjunction with our Final Order at M-00991220, we reexamine our regulations and seek to significantly improve the monitoring of reliability performance in the electric distribution industry.

Procedural History

The Electricity Generation Customer Choice and Competition Act (Act), 1996, Dec. 3, P. L. 802, No. 138 § 4, became effective January 1, 1997. The Act amends Title 66 of the Pennsylvania Consolidated Statutes ("Public Utility Code" or "Code") by adding Chapter 28 to establish standards and procedures to create direct access by retail customers to the competitive market for the generation of electricity, while maintaining the safety and reliability of the electric system. Specifically, the Commission was given a legislative mandate to ensure that levels of reliability that were present prior to the restructuring of the electric utility industry would continue in the new competitive markets. 66 Pa.C.S. §§ 2802(12), 2804(1) and 2807(d).

In response to this legislative mandate, the Commission adopted a final rulemaking order on April 23, 1998 at Docket No. L-00970120, setting forth various reporting requirements designed to ensure the continuing safety,

adequacy and reliability of the generation, transmission and distribution of electricity in the Commonwealth. See 52 Pa. Code §§ 57.191—57.197. The final rulemaking order also suggested that the Commission could reevaluate its monitoring efforts at a later time as deemed appropriate.

On June 12, 2002, the Legislative Budget and Finance Committee (LB&FC) issued a Report entitled, *Assessing the Reliability of Pennsylvania's Electric Transmission and Distribution Systems*. The LB&FC Report made several recommendations regarding the issue of reliability.

Shortly thereafter, on July 18, 2002, at M-00021619, the Commission adopted its Bureau of Conservation Economics and Energy Planning's (CEEP) *Inspection and Maintenance Study of Electric Distribution Systems* dated July 3, 2002. CEEP, in part, recommended that the annual reliability reporting requirements be revised to include the causes of outages and percentages categorized by type as well as the annual reporting of each company's plans for the upcoming year's inspection and maintenance of transmission systems including: 1) vegetation management; 2) distribution and substation maintenance activity; and 3) capital improvement projects. The Commission agreed with CEEP's recommendations in this regard.

The Commission created a Staff Internal Working Group on Electric Service Reliability (Staff Internal Working Group) to conduct a reevaluation of its electric service reliability efforts. The group was comprised of members of Commission bureaus with either direct or indirect responsibility for monitoring electric service reliability.

The Staff Internal Working Group prepared a report, entitled *Review of the Commission's Monitoring Process For Electric Distribution Service Reliability*, dated July 18, 2002, which reviewed the Commission's monitoring process for electric distribution service reliability and provided comments on recommendations from the LB&FC report. The Staff Internal Working Group report also offered recommendations for tightening the standards for reliability performance and establishing additional reporting requirements by electric distribution companies (EDCs).

On August 29, 2002, the Commission issued an Order at Docket No. D-02SPS021 that tentatively approved these recommendations and directed the Commission staff to undertake the preparation of orders, policy statements, and proposed rulemakings as may be necessary to implement the recommendations contained in the Staff Internal Working Group's report. The Staff Internal Working Group was assigned the responsibility to implement the recommendations. The Staff Internal Working Group, which included a representative from the Law Bureau, determined which implementation actions could be accomplished internally (with or without a formal Commission Order), and which actions will require changes to regulations.

The Staff Internal Working Group conducted field visits to EDCs to identify the current capabilities of each EDC for measuring and reporting reliability performance. These field visits began in October 2002 and continued through March 2003. As a result of the field visits, various forms of reliability reports and reliability data were received from the EDCs and analyzed by the Staff Internal Working Group to determine the most effective and reasonable approach for the Commission to monitor electric distribution service reliability.

On June 27, 2003, at Docket No. L-00030161, the Commission adopted the proposed regulations governing

the reliability of electric service in Pennsylvania. This Proposed Rulemaking Order was published in the *Pennsylvania Bulletin* and the Commission received comments from the following parties: the Pennsylvania AFL-CIO Utility Caucus (AFL-CIO), Citizens' Electric Company (Citizens'), Metropolitan Edison Company (Met-Ed), Pennsylvania Electric Company (Penelec), Pennsylvania Power Company (Penn Power), PECO Energy Company (PECO), UGI Utilities, Inc.—Electric Division (UGI), Allegheny Power Company (Allegheny Power), Energy Association of Pennsylvania (EAP), the Attorney General's Office of Consumer Advocate (OCA), Pike County Light & Power Company (Pike County), and PPL Electric Utilities Corporation (PPL). Reply comments were filed by OCA, EAP and PPL. The Commission also received comments on January 21, 2004 from the Independent Regulatory Review Commission (IRRC).

Discussion

Upon due consideration of the comments, we make the following determinations regarding each amendment to the existing regulations at 52 Pa. Code §§ 57.191—57.197.

Amendments to existing regulations at 52 Pa. Code §§ 57.191—57.197

§ 57.191 Purpose

No changes.

§ 57.192. Definitions.

Circuit and Conductor Definitions

See page 22 of this order regarding Worst Performing Circuits for discussion regarding the addition of these two definitions to the final rulemaking.

Operating Area Definition

In the Proposed Rulemaking Order we proposed deleting the definition of operating area. An "operating area" was defined by Section 57.192 as being, "A geographical area, as defined by an electric distribution company, of its franchise service territory for its transmission and distribution operations."

Some EDCs used one, system-wide operating area to compute their reliability metrics, while other EDCs subdivided their service territories and used multiple operating areas to compute their metrics. The number, size and composition of operating areas used for metric computations introduced variability into the criterion used to exclude major events from the reliability metrics reported to the Commission. An EDC that subdivided its territory into several small geographic operating areas could exclude major events from its metric calculations based on a criterion of an interruption affecting 10% of the customers in an operating area; whereas another EDC, employing only one, service territory-wide operating area had to meet a much higher criterion of an interruption affecting 10% of the total EDC customer base. We proposed that EDCs should compute and report their reliability metrics to the Commission considering the entire service territory as one operating area and the major event exclusion of an interruption that affects 10% of the entire customer base for a duration of five minutes or longer.

Positions of the Parties

PPL and the AFL-CIO filed comments in support of the Commission's proposal to substitute the term "service territory" for the term "operating area." However, OCA urged the Commission to retain the use of operating area information for reliability monitoring purposes. OCA cites its Comments submitted in reference to our Tentative

Order at Docket No. M-00991220 as support for its assertion that elimination of monitoring by operating area is not appropriate.

First Energy's Met-Ed, Penelec and Penn Power (collectively referred to as the "FE Companies") submitted joint comments. The FE Companies assert that reporting reliability indices on a "system wide" basis rather than an "operating area" basis is not appropriate for Penelec. The FE Companies state that since Penelec serves about 585,000 customers over an area in excess of 17,000 square miles, it is unlikely that even a severe event and widespread service interruption will affect 10% of Penelec's customers. This means that very few interruptions would be classified as "major events." A reduction in major events will result in Penelec's service reliability appearing to be substantially worse than other EDCs with smaller service territories. Ultimately, the FE Companies claim that it may be difficult for Penelec to achieve its reliability standards. The FE Companies request that the proposed regulations be modified to allow Penelec to have two operating areas for purposes of determining "major events" and for meeting its applicable reliability indices.

Disposition

In its comments at Docket No. M-00991220, the OCA submitted that operating area information reflects how an EDC manages its distribution system and utilizes its resources within its system and that worst performing circuit reports are not a suitable proxy for operating area information. The OCA also recognized that the Staff Report noted that some EDCs defined operating areas differently for internal purposes than for PUC reporting purposes. As a result, the OCA suggested that EDCs be required to continue reporting of operating area reliability metrics using operating areas consistent with those used for internal operations and monitoring.

However, we believe that if EDCs are required to report by the operating areas they use for internal operations, then all previous years' operating area reliability metrics would need to be recomputed each time a company reconfigures its internal operations. This would make it more difficult to find pocket areas of reliability concern since a company could continually reconfigure operating areas to cover areas of concern. The circuit analysis proposed eliminates this potential problem and allows for identifying problem areas that are in need of remedial action. Therefore, we will maintain the proposed regulation as written, where companies report reliability metrics using a system wide operating area and detailed information on the worst performing circuits.

Furthermore, we deny the FE Companies' request to modify the proposed regulation to allow Penelec two service territories. We are not persuaded by the FE Companies' argument that Penelec is disadvantaged in its ability to meet its reliability indices. The Commission's recomputation of the reliability benchmarks and standards at Docket No. M-00991220 allowed for the addition of previously excluded data into the calculation of the benchmarks and standards. For example, as referenced in the M-0099120 Order, Penelec's rolling 12-month CAIDI benchmark and standard are changed from 104 and 134 to 115 and 138 respectively, due to the inclusion of outage data that historically was excluded as a "major event." Additionally, the FE Companies' concern that Penelec's service reliability may appear to be worse than other EDCs' appears to be misplaced, since the proposed regulations only measure an EDC's performance against its own

historic (1994-1998) performance and not against the reliability metrics, benchmarks or standards of other EDCs.

Major Event Definition

In the "major event" definition, all references to "operating areas" are replaced with the term "service territory" for the reasons previously outlined.

Additionally, as noted in our companion Amended Reliability Benchmarks and Standards Order at M-00991220, we require a formal process to request the exclusion of service interruptions for reporting purposes by proving a service interruption qualifies as a major event as defined by regulations. The Commission is providing EDCs with a form for requesting exclusion of data due to a major event.

Performance Benchmark and Performance Standard Definitions

In our Proposed Rulemaking Order we proposed defining a Performance Benchmark as being "the average historical performance" and a Performance Standard as being "the minimum performance allowed."

Positions of the Parties

IRRC commented that clarity could be improved by specifying that the performance benchmarks are established by the PUC based on each EDC's historical reliability performance and the performance standards are established by the PUC and tied to each EDC's performance benchmark. OCA recommended more detailed definitions of performance benchmarks and standards to include the methodology used to determine the metrics and where the numerical values for the metrics can be found. Comments provided by PPL recommended that the Commission revise the proposed definition of performance benchmark to identify the time period that was used to establish the benchmark, specifically noting the five-year period 1994-1998.

Disposition

We agree with IRRC, OCA and PPL that the definitions of performance benchmarks and standards should be expanded for clarity. Therefore, we have revised the definitions in § 57.192 as well as incorporated language previously found in § 57.194(h)(1)(2) that pertains to the measures applying to the entire service territory and the Commission's process for establishing the measures. We have also provided language that directs the reader to the Commission's Order at Docket No. M-00991220 for the specific numerical values of the performance benchmarks and standards. In addition, we will incorporate definitions of performance benchmarks and performance standards in the Commission's Order at Docket No. M-00991220 that further define the methodology for determining the measures. We will refrain from incorporating detail on the methodology for computing the performance benchmarks and standards as they may be subject to change by Commission Order in the future.

§ 57.193. Transmission system reliability.

No changes.

§ 57.194. Distribution system reliability.

Through regulations and orders, the Commission has established reporting requirements, benchmarks and standards for EDC reliability performance. Currently, EDCs report their performance on the CAIDI, SAIFI,

SAIDI, and (as available) MAIFI¹ indices to the Commission on an annual basis. These are generally accepted indices of EDC reliability that measure the frequency and duration of outages at the system or customer level.

The existing regulations at Chapter 57 did not establish the benchmarks or the standards for CAIDI, SAIFI, SAIDI or MAIFI for each company. Instead, the benchmarks and standards were set by Commission Order on December 16, 1999 at Docket No. M-00991220.

Revisions to the language in 57.194(e) and (h)(2)—(4) were proposed in our Proposed Rulemaking Order to clarify the Commission's expectations for reliability performance in relation to performance benchmarks and performance standards. The Commission's expectations for EDC reliability are based on language found at § 2802(12) and § 2804(1) of the Electric Generation Customer Choice and Competition Act (the Act). Section 2802(12) notes that the purpose of the Act, in part, is:

[T]o create direct access by retail customers to the competitive market for the generation of electricity while maintaining the safety and reliability of the electric system for all parties. Reliable electric service is of the utmost importance to the health, safety and welfare of the citizens of the Commonwealth. Electric industry restructuring should ensure the reliability of the interconnected electric system by maintaining the efficiency of the transmission and distribution system.

Section 2804(1) of the Act sets forth standards for restructuring the electric industry. This section states, "The Commission shall ensure continuation of safe and reliable electric service to all customers in the Commonwealth"

Consistent with the Act, the Commission's policy is to ensure that EDC reliability performance after implementation of the Act be at least equal to the level achieved prior to the introduction of electric choice. In a series of orders at Docket No. M-00991220, the Commission established reliability benchmarks and standards for each EDC. The benchmarks were based on each company's historic performance from 1994-1998. The benchmarks, therefore, represented each EDC's average historical reliability performance level prior to the implementation of electric choice in 1999. The Commission also established performance standards which took into account the variability in each EDC's reliability performance during the 1994-1998 period. The performance standards were set two standard deviations higher than the benchmarks (lower metric scores equal better performance) to allow for a degree of variability that inevitably occurs in reliability performance from year to year.

We stated in our Proposed Rulemaking Order:

We do not want to send the message that long-term reliability performance that just meets the performance standard is acceptable. Long-term performance that only meets the standard could be signifi-

¹ CAIDI is Customer Average Interruption Duration Index. It is the average interruption duration of sustained interruptions for those customers who experience interruptions during the analysis period. CAIDI represents the average time required to restore service to the average customer per sustained interruption. It is determined by dividing the sum of all sustained customer interruption durations, in minutes, by the total number of interrupted customers. SAIFI is System Average Interruption Frequency Index. SAIFI measures the average frequency of sustained interruptions per customer occurring during the analysis period. SAIDI is System Average Interruption Duration Index. SAIDI measures the average duration of sustained customer interruptions per customer occurring during the analysis period. MAIFI (Momentary Average Interruption Frequency Index) measures the average frequency of momentary interruptions per customer occurring during the analysis period. These indices are accepted national reliability performance indices as adopted by the Institute of Electrical and Electronics Engineers, Inc. (IEEE), and are defined with formulas at 52 Pa. Code § 57.192.

cantly worse than the benchmark and thus worse than the historical performance level that existed prior to the introduction of Electric Choice. Such performance would clearly not be consistent with the intent or language of the Act and the Commission's policy objective for maintaining reliability performance after the introduction of Electric Choice at least as good as it was prior to Electric Choice. Therefore, the Commission emphasizes that long-term reliability performance should be at least equal to the benchmark performance.

Positions of Parties:

PECO and EAP commented that the Commission should clearly distinguish the consequences of a failure to meet the performance benchmarks from a failure to meet the performance standards. These commentators acknowledge that a failure to meet performance standards constitutes non-compliance by the EDC which may result in further investigation, fines, or penalties. The EAP agrees with the Commission that EDCs should manage their businesses to meet the performance benchmarks but that a failure to meet the benchmarks does not equate to a failure to meet the performance standards. The AFL-CIO recommends that the Commission should make it clear that the goal should be utility performance that equals or exceeds the performance benchmarks.

The Commission also received comments about potential compliance actions from several parties. IRRRC recommends that the Commission further explain the actions it may take in response to problems identified in a quarterly reliability report. The FE Companies raise a question about whether the Commission will deem an EDC's reliability performance to be unacceptable if it is trending away from the benchmark but within the performance standard. The OCA comments the regulations should require, at a minimum, that whenever an EDC does not meet the performance benchmark on a three-year average basis, the EDC enter into a formal improvement plan with the Commission with enforceable commitments and timetables.

Disposition

In response to comments by PECO and EAP we will distinguish the consequences of a failure to meet the performance benchmarks from a failure to meet the performance standards. The Commission believes that the EDCs should strive to achieve benchmark performance as well as meet the Commission's performance standards. Therefore we will maintain the insertion of language in § 57.194(e), (h) and (h)(2) that indicates EDCs shall: (1) design and maintain procedures to achieve the reliability performance benchmarks; (2) take measures to meet the reliability benchmarks; and (3) inspect, maintain and operate its distribution system, analyze reliability results, and take corrective action to meet and achieve the reliability benchmarks. This language is consistent with the Commission's view that EDCs should set their goals to achieve or exceed benchmark performance. This viewpoint is shared in part by EAP who commented that they agree with the Commission that EDCs should manage their businesses to meet the long-term performance benchmarks and that the benchmarks provide the EDCs with an important and meaningful long-term performance target.

We will add clarifying language in § 57.194(h)(1) about the consequences of not meeting the performance standards. We state in this section that performance that does not meet the standard will be the threshold for triggering

additional scrutiny and perhaps compliance enforcement. The compliance and enforcement language only pertains to instances where an EDC fails to meet the performance standards and not to instances where the EDC fails to meet the performance benchmarks. However, the Commission will carefully monitor an EDC whose reliability performance is not meeting, and is trending away from the benchmark but still falling within the standard even though this will not be cause to initiate compliance and enforcement action.

In response to IRRRC's comments requesting that we explain the actions the Commission may take in response to problems identified in a quarterly reliability report, we will add language to § 57.194(h)(1) noting the types of information we may consider for compliance enforcement actions and an array of potential compliance actions the Commission may take in response to an EDC not meeting the performance standard. We view the array of potential compliance actions as among those available to the Commission for addressing noncompliance with Commission performance standards in general, whether such noncompliance comes to the attention of the Commission in a quarterly reliability report or by some other means.

In response to OCA's comments that the regulations should require a formal improvement plan when the three-year average performance standard is not met, we have included an improvement plan among the options available to the Commission for potential compliance enforcement actions. However, we have not made it a requirement in any specific circumstance. While the Commission finds there is a role for improvement plans, we want the flexibility to select an appropriate course of action.

§ 57.195. Reporting Requirements

Submission of Annual Reliability Reports—§ 57.195(a):

Under paragraph (a), we proposed that the annual reliability report be submitted by March 31 of each year. Currently, the EDCs submit reliability performance reports by May 31 following the year being reported on. If an EDC experiences poor performance in the year being reported on, five or more months pass before the Commission has the ability to determine if the EDC has sufficient corrective measures in place. At the time of receiving the performance report in the next year, it is too late for the EDC to effectively revise its reliability program to address any concerns of the Commission. Advancing the required submittal date from May 31 to March 31 of each year will ensure a timely reporting of reliability performance and review of corrective measures being implemented by an EDC if necessary.

Positions of the Parties

PPL filed comments in support of the Commission's proposal to advance the date for submission of the annual reliability report. However, PPL recommended that the Commission modify its proposed date for submission of this report from March 31 to April 30 because of the need to compile, analyze and thoroughly review the service interruption data used to prepare the annual reliability report. Allegheny Power filed similar comments noting that April 30 is also the due date of the Federal Energy Regulatory Commission (FERC) Form 1. A due date of March 31 may not allow sufficient time for EDCs to collect all necessary cost and reliability data in the format requested by the Commission. Allegheny Power also suggested that the additional month should not hinder the Commission's ability to monitor reliability since the Commission will be receiving quarterly reports. IRRRC

noted in its comments that given the Commission's proposal to add a quarterly reporting requirement, which will provide reliability performance information in a timely manner, the problem of the Commission being unaware of poor performance prior to receiving the annual report should be alleviated. As such, IRRC suggested that the Commission consider adopting the requests for an April 30 submission date for the more detailed annual reliability reports. The AFL-CIO strongly supports improving the timeliness of reporting reliability data.

Disposition

Both PPL and Allegheny Power have made valid arguments for adopting an April 30 submission date for the annual reliability reports. PPL and Allegheny Power recognize the importance of timelier reporting, but also note the importance of accurately collecting the data needed to prepare the annual reliability reports. Further, Allegheny Power and IRRC recognize the importance of the quarterly reporting requirements and the role quarterly reports have in conjunction with the annual reports.

The Commission agrees to adopt the request for an April 30 submission date for the more detailed annual reliability reports. As such, paragraph (a) has been revised to require an electric distribution company to submit an annual reliability report to the Commission on or before April 30 of each year.

Major Event Exclusion Reporting—§ 57.195(b)(2) and § 57.195(e)(1)

Proposed Sections 57.195(b)(2) and 57.195(e)(1) require EDCs to provide, within their annual and quarterly reports, a description of each major event occurring during the reporting year and preceding quarter that the EDCs have excluded from their reported data. The term "major event" is used to identify an abnormal event, for which outage data is to be excluded when calculating service reliability indices. 52 Pa. Code § 57.192.

Positions of the Parties:

PPL states that the requirement to submit a description of each "major event" in the EDC's annual and quarterly reliability reports is overly burdensome, redundant and costly. In support, PPL states that EDCs must submit a service interruption report, pursuant to 52 Pa. Code Section 67.1, describing each service interruption which affects 2,500 or 5% of their total customers (whichever is less) due to a single unscheduled interruption of six or more hours duration. PPL submits that under the proposed annual and quarterly reporting requirements, the EDCs will be required to submit the same information for a "major event" in three separate reports. As a result, PPL proposes to limit the reporting in Section 57.195 to only the dates of the "major events" and the number of customers interrupted.

Allegheny Power believes quarterly reporting of major events on a detailed level duplicates the current process of providing reports to the Commission as the events occur, and adds undue administration to the reporting process.

IRRC noted that several EDCs provided comments indicating that the quarterly and annual reporting of "major events" duplicates information filed by the EDCs in the existing service interruption reports under 52 Pa. Code Section 67.1. IRRC believes the PUC should review this proposed regulation in comparison to other existing reporting requirements, and where appropriate, eliminate redundancies. Further, IRRC suggested the

Commission further explain the actions it may take in response to problems identified in a quarterly report.

Disposition:

52 Pa. Code Section 67.1 requires utilities to provide notification to the Commission when 2,500 or 5% of its customers (whichever is less) are without service for 6 hours or more. 52 Pa. Code Section 57.192 defines a major event as at least 10% of the customers being without service for at least 5 minutes. Obviously, there is the potential for 2,500 customers to be out of service for more than 6 hours, thus requiring a Section 67.1 report, 52 Pa. Code § 67.1, even though that event would most likely not fulfill the requirements to be classified a major event. Conversely, there is the potential for large numbers of customers to be out of service for less than 6 hours. In this case, the major event criteria may be met, but a Section 67.1 report would not be required. Contrary to PPL's assertion that these types of events are unlikely, they can and have occurred. Thus, tying major event reporting to the Section 67.1 reports does not accomplish this Commission's attempt to ensure the application of 52 Pa. Code Sections 57.195(b)(2) and 57.195(e)(1) in a timely and consistent manner.

Further, PPL and Allegheny Power have characterized the requirement to submit major event exclusion reports as costly and time consuming. However, neither has presented any reasoning for these assertions. In fact, PPL points out the similarities between the information required for Section 67.1 and Sections 57.195(b)(2) and 57.195(e)(1). This Commission is not aware of any arguments that compliance with the currently effective Section 67.1 regulation is costly and burdensome to utility operations. We therefore find PPL's and Allegheny Power's assertions to be without merit.

Regarding what actions we will take in response to problems identified in a quarterly report, we reiterate what we stated in our companion Order regarding Benchmarks and Standards at M-00991220. The Commission will not take compliance enforcement action against any EDC that meets its performance standard. However, once a standard is violated, Commission staff will carefully review all information presented in the EDC's quarterly and annual reliability reports including the EDC's causal analysis, inspection and maintenance goal data, expenditure data, staffing levels and other supporting information and Section 67.1 reports to determine appropriate monitoring and enforcement actions. Depending upon the findings of this review, we may consider a range of compliance actions including engaging in additional remedial review, requiring additional EDC reporting, conducting an informal investigation, initiating a formal complaint, requiring a formal improvement plan with enforceable commitments and an implementation schedule, and assessing penalties and fines.

While overall system performance trends that fall within the range between the benchmark and standard will not be subject to compliance enforcement, the Commission will keep EDCs whose performance is within the standard, but trending away from the benchmark, under review as a precautionary measure.

MAIFI Data—§ 57.195(b)(3), § 57.195(e)(2), and § 57.195(e)(3)

With the increase in the use of more technologically advanced appliances and electrical equipment such as computers, customers are becoming more aware of momentary interruptions. The frequency in which momentary interruptions occur is measured by the Momentary

Average Interruption Frequency Index (MAIFI). The requirement to report MAIFI data is discussed in three areas under § 57.195 Reporting Requirements. Paragraph (b) lists different information to be provided in the annual reliability report for EDCs having 100,000 or more customers. Included in this list under subparagraph (3) is the reporting of actual values for MAIFI and the data used to calculate this index, if this data is available. Likewise, paragraph (e) lists different information to be provided in the quarterly reliability reports for EDCs having 100,000 or more customers. Subsections (2) and (3) include the reporting of MAIFI data, if it is available. There are EDCs that do not currently have the necessary equipment to collect this data. Other EDCs have indicated that the equipment needed to collect MAIFI data is not currently in place throughout their entire systems. In recognition of this constraint, the reporting of MAIFI data is to be provided if it is available.

Positions of the Parties

Allegheny Power agrees with the Commission's proposal for EDCs to submit MAIFI data on an "as available" basis, and notes that its field equipment does not provide meaningful data for momentary interruptions. Comments filed on behalf of the FE Companies mention that most EDCs do not maintain MAIFI statistics and, for those that do, there is no consistent or uniform protocol for gathering and reporting this information. The FE Companies assert there is a likelihood that the MAIFI numbers will be inaccurate for an individual company and highly misleading if data from two or more EDCs is compared. Therefore, they do not believe MAIFI information should be reported at all.

Disposition

The Commission's purpose in reviewing MAIFI data is not to compare MAIFI performance among the EDCs, but rather to assess how frequently momentary interruptions are affecting the customers of a particular EDC and take note of any remedial actions that the EDC believes are necessary to reduce the frequency of those interruptions. We will therefore keep the reporting requirement for MAIFI data if it is available. If MAIFI data is not currently collected and used, an EDC can simply state that fact in the reports. For EDCs that collect MAIFI data and use it in conjunction with other reliability performance measures (e.g., SAIFI, CAIDI, etc.), the MAIFI data should be included in the reports. For EDCs that collect MAIFI data only on a limited basis, the EDCs can explain how MAIFI data is collected and used along with an explanation as to why they believe the reporting of MAIFI data may not accurately reflect MAIFI performance for their systems and/or at the circuit level.

Causes of Interruptions—§ 57.195(b)(4)

Paragraph (b), subsection (4) requires EDCs to report a breakdown and analysis of outage causes during the year being reported on, including the number and percentage of service outages and customer interruption minutes categorized by outage cause such as equipment failure, animal contact, and contact with trees. Proposed solutions to the identified service problems are to be reported as well.

Positions of the Parties

The FE Companies noted that they can provide a "breakdown" of the causes of outages as required, but it is unclear to them what further "analysis" is intended or required. In order to avoid confusion or a possible issue about non-compliance, the FE Companies request that the word "analysis" be eliminated from this subsection.

PPL recognizes the Commission's need for causal information; however, because the definitions of outage causes differ among the EDCs, PPL noted that caution should be used if comparisons among EDCs are being considered for causal analysis.

Disposition

First we will address the FE Companies' uncertainty with regard to the Commission's requirement for an "analysis." EDCs compile causal data in order to identify the most common causes of service interruptions in their systems. In addition to this identification of service interruption causes, the EDCs typically perform some type of analysis to determine what the contributing factors are behind a particular type of cause. For example, an EDC may have experienced an increase in the number of equipment-related interruptions, and upon further analysis, the EDC determines that the main contributor to these equipment-related interruptions is a certain type of equipment that has malfunctioned. Another example is the differentiation between tree-related outages that occur on rights-of-way versus off right-of-ways. EDCs have more control over the prevention of tree-related interruptions on rights-of-way than off right-of-ways. An EDC's causal data may indicate that trees were the primary cause of service outages. However, upon further analysis, it may be determined that only a small number of tree-related outages occurred on rights-of-way and therefore were preventable. This type of analysis would be included with the breakdown of outage causes proposed under paragraph (b)(4), as well as the proposed solutions, if any, to the identified service problems.

Such an analysis will also address some of the concerns that PPL has made regarding comparison of outage causes among the EDCs. The purpose of obtaining this information is not to compare the causes of interruptions among EDCs, but rather to identify what the primary causes are for service interruptions experienced by an EDC and to determine which causes, if any, can be prevented in the future through proposed solutions. The Commission would like to further clarify the details to be reported under paragraph (b)(4). Included with the breakdown of outage causes during the year being reported on is to be the number and percent of service outages, the number of customers interrupted, and the customer interruption minutes categorized by outage cause such as equipment failure, animal contact, tree related, and so forth. Proposed solutions to identified service problems shall be reported. The Commission will retain the requirement for an analysis concerning the breakdown of service interruption causes proposed under paragraph (b)(4).

Worst Performing Circuits—§ 57.195(b)(5) and § 57.195(e)(3—4)

Since the Commission desires to examine electric reliability on a service territory basis, rather than on an operating area basis, we had determined that a review of the worst performing circuits would be an appropriate approach to monitoring the efforts of the EDCs to improve service performance in specific areas of the service territory. It was therefore proposed in Section 57.195(e)(3) that EDCs report the worst performing 5% of the circuits in the system on a quarterly basis. In addition, we had proposed that the EDCs include in their annual report a list of the remedial efforts that have been taken or are being planned for the circuits that have been on the list of worst performing circuits for a year or more.

Positions of the Parties

The AFL-CIO suggests that the definition of a circuit be added to the regulation. They suggest incorporating the definition of a circuit from the National Electrical Safety Code: "a conductor or system of conductors through which an electric current is intended to flow." (IEEE, *National Electrical Safety Code*, 1997 Edition, section 2 (definitions of special terms).) Conductor, in turn, is defined as "a material, usually in the form of a wire, cable, or bus bar, suitable for carrying an electric current." In its Reply Comments, the Energy Association concurs with the AFL-CIO concerning this proposed addition to the regulation.

PPL recommends that the proposed reporting requirement at Section 57.195(b)(5) be revised as follows: "A list of the major remedial efforts taken to date and planned for circuits that have been on the worst performing 5% of circuits list for a year or more." In support of this, PPL submits that although it tries to identify all repair work performed, there may be situations where additional work is performed because a crew identifies a specific problem while on routine patrol. That work, because of its general nature, may not be tracked. However, the work may result in a performance improvement to the circuit.

Allegheny Power states that providing a list of the 5% worst performing circuits more frequently than annually is not practical. Allegheny states that action plans are established for circuit reliability on an annual basis based upon trends and that quarterly circuit reporting is not useful.

The FE Companies aver that the worst performing circuits may not necessarily involve large numbers of customers or warrant higher priority for remediation than other circuits not on the 5% list. The FE Companies state that since much of the companies' service territory is rural in nature, it is not unusual for the worst performing circuits to be rural lines serving a couple of hundred customers. They request that the proposed regulations explicitly recognize that these types of lines could appear on the worst performing circuit list more often than non-rural lines, but the cost to achieve standard reliability performance levels for these lines could be substantial, and may not be justifiable. Further, the FE Companies maintain that the Commission should not interject itself into the day to day business judgments about how and when to address the worst performing circuits.

PECO submits that neither the proposed statutory language nor the discussions in the Tentative Order and Proposed Rulemaking provide clear insight into what the Commission expects from the EDC's worst performing circuit reports and programs. PECO states that EDCs have different worst performing circuit programs and acknowledges that it is difficult to draft statutory language that not only provides sufficient guidance on what is expected but also retains the flexibility needed to accommodate the EDCs' varied programs. PECO supports the EAP's suggestion that to effectively meet the Commission's monitoring goal and provide sufficient guidance to the EDCs while retaining the requisite flexibility, the proposed regulation should be modified to provide that the worst performing circuits report should: (1) describe the EDC's worst performing circuit program, (2) list the 5% worst circuits and (3) describe the EDC's performance relative to its worst performing circuits program.

In its comments, the EAP suggests that the proposed regulation regarding worst performing circuits is impermissibly vague, has already been ruled by the Commis-

sion to be of little or no value, and has also been interpreted as such by other Commissions as well.

In its Reply Comments, the OCA disagrees with the EAP's request to remove the proposed worst performing circuits reporting requirement. The OCA submits that PECO best summarized the value of worst performing circuit information to the EDC by stating the following:

PECO Energy, for example, has long recognized that it can achieve the dual objectives of improving system reliability indices and reducing the likelihood of customer complaints: (1) by examining in detail the reliability history of the 5% of its circuits on which the largest share of customer service interruptions occur; and (2) concentrating its efforts on improving the reliability of those circuits. The specific circuits change from year to year, but PECO Energy and many other EDCs have found that remedial attention to 5% of its circuits each year is a cost-effective and manageable way to improve reliability. (PECO Comments, p. 11-12).

The OCA, in addressing the EAP's comment, notes that the Commission previously rejected the reporting of worst performing circuit information when it ruled that reporting of operating area information would be required. Here the Commission is proposing to replace operating area information with the worst performing circuit information.

The OCA recommends that the Commission consider the recommendations for clarification of the reporting requirement and the need for flexibility so that the reporting requirement reflects the EDC's worst performing circuit program. The reporting requirement should be structured to minimize the burden on the EDCs and to match each EDC's worst performing circuits program.

Disposition

We agree with the AFL-CIO and the EAP that the definition of a circuit needs to be established. Therefore, we will adopt the AFL-CIO suggestion that the National Electrical Safety Code definition of a circuit be added to the regulation. We will add the following to Section 57.192:

Circuit—a conductor or system of conductors through which an electric current is intended to flow.

Conductor—a material, usually in the form of a wire, cable, or bus bar, suitable for carrying an electric current.

Additionally, we accept PPL's reasoning in its request for a modification to the proposed reporting requirement at Section 57.195(b)(5) to include the reporting of only major remedial efforts on the worst performing circuits list. The proposed regulation at Section 57.195(b)(5) is modified to read:

(5) A list of *the major* remedial efforts taken to date and planned for circuits that have been on the worst performing 5% of circuits list for a year or more.

In response to EAP's, Allegheny Power's and the FE Companies' assertions that the submission of worst performing circuits data provides no useful information to the Commission in its review of an EDC's reliability and FE Companies' assertion that the Commission should not interject itself into the day to day business judgments about how and when to address the worst performing circuits, we reiterate that analysis of an EDC's worst performing circuits is only one aspect of reliability that is proposed to be reviewed by the Commission. Analysis of

an EDC's worst performing circuits, along with an integrated analysis of all other quarterly and annual data, will be used to perform a review of an EDC's reliability performance. Moreover, we direct the respondents to the Commission's Final Order at Docket No. M-00991220. The section of the Order that discusses the Commission's potential enforcement actions provides additional support and explanation for our position on this issue. Finally, we find the OCA's discussion in this matter compelling as well.

We acknowledge PECO's comments that the regulation should be modified to include a (1) description of the EDC's worst performing circuit program, (2) listing of the 5% worst circuits and (3) description of the EDC's performance relative to its worst performing circuits program; but we observe that Sections 57.195(e)(3—4) already require that information. Therefore, we see no need to modify the proposed regulations, since the requested modifications are already subsumed within the proposed regulations.

Reporting of T & D Inspection and Maintenance Goals and Program Changes, and T & D Operation, Maintenance and Capital Expenditures—§ 57.195(b)(6—12), (c), and (e)(6—8)

As noted in the Proposed Rulemaking Order, a staff study completed by the Bureau of CEEP recommended that the EDCs be required to submit documentation on transmission and distribution (T & D) inspection and maintenance activities in lieu of the Commission prescribing specific standards for those activities. Thus, in paragraphs (b)(6, 9, 12) of the regulations outlining the contents of the annual reliability report for large EDCs, we proposed that they provide a comparison of budgeted T & D inspection and maintenance goals/objectives to actual results achieved for the year being reported on, budgeted goals/objectives for the current year, and any significant changes to the inspection and maintenance programs previously submitted. Smaller EDCs are to provide similar annual information per paragraph (c). We also proposed, in paragraph (e)(6) relative to the new quarterly reliability reports, that the large EDCs submit quarterly and year-to-date information on their progress in meeting the inspection and maintenance goals/objectives that would be provided to the Commission via the annual report. It was felt that further reporting requirements in this area would assist the Commission staff in assuring that the EDCs are actively engaging in and carrying out plans that have a direct impact on reliability.

In addition to the inspection and maintenance data, proposed paragraphs (b)(7, 8, 10, 11) relative to the annual reliability report require that the large EDCs provide comparisons of budgeted to actual T & D operation and maintenance (O & M) expenditures and T & D capital expenditures for the year being reported on, as well as budgeted T & D O & M expenditures and capital expenditures for the current year. Again, paragraph (c) requires similar annual information for the smaller EDCs. For the quarterly reliability report, we proposed in paragraphs (e)(7—8) that only the large EDCs submit quarterly and year-to-date information on budgeted versus actual T & D O & M and capital expenditures. This expenditure data, along with the inspection and maintenance data, would provide Commission staff with a informed and timely perspective on the commitment of resources for system maintenance and upgrades.

Positions of the Parties

PECO, the FE Companies, Allegheny Power, UGI, and EAP take issue with the requirements to report on T & D inspection and maintenance goals/objectives, and T & D operations and maintenance and capital expenditures. They generally believe that such information is proprietary, that it does not provide any meaningful insight into (or does not necessarily have a direct relationship to) reliability performance, and that it should only be required upon identification of an actual reliability problem. The parties further argue that the requested information is subject to wide variations over the course of a year, inasmuch as an EDC's business plans and priorities can and do change. They are specifically concerned that tracking variances in this information could be highly misleading and could put the Commission in the inappropriate position of second guessing or micro-managing an EDC's routine business judgments. Citizens', while noting that it is important to assign a cost to efforts aimed at improving reliability, feels that the annual reporting of inspection and maintenance data and expenditure data is burdensome.

IRRC recommends that the Commission specify the procedures for identifying and protecting the confidentiality of the proprietary information provided. IRRC further questions whether we have considered allowing the reporting of the transmission and distribution operation and maintenance expenses and capital expenditures in an alternate format than the Federal Energy Regulatory Commission (FERC) account format in order to accommodate EDC operational practices. IRRC believes the PUC should either specify the acceptable alternate formats in the final-form regulation or include a cross-reference to the procedures outlined in 52 Pa. Code § 1.91 (relating to Applications for waiver of formal requirements).

Notably, with some relatively minor exceptions, PPL did not take issue with providing the inspection and maintenance data nor the expenditure data for the periods requested, and made no claim that this particular information is proprietary. Moreover, the remaining large EDC, Duquesne Light, filed no comments opposing the submission of the data. Comments filed by the AFL-CIO support all of the proposed reporting requirements, but suggest that the inspection and maintenance goals/objectives be supplemented by enforceable inspection, maintenance, repair, and replacement standards. The OCA commented that the proposed regulations vastly improve the reporting requirements, and feels that we should go even further by requiring the EDCs to submit comprehensive T & D maintenance plans to the Commission annually and provide their customers with an annual report on reliability performance. This would be in addition to the annual report that the Commission is proposing to issue under § 57.195(j).

Several parties, including the FE Companies, Allegheny Power, PPL, and EAP, indicated in their comments that many EDCs do not budget either T & D O & M expenditures or capital expenditures by FERC account. We had proposed the annual reporting of such budget information under paragraphs (b)(10—11), with obvious carryover implications for all budget to actual comparisons to follow under (b)(7—8) and (e)(7—8). PPL suggests that we modify these reporting requirements to allow for budget information by functional activity.

In joint reply comments filed by the FE Companies, they reject OCA's suggestion that the EDCs be required to submit an annual report to customers. They argue that the amount of, and confidentiality of, data to be included

in such a report via bill inserts (or the like) would render the idea undoable. The EAP, in its reply comments, argues that the budget to actual data comparisons, and OCA's proposed annual reports to customers, have little or no probative value to the Commission's ability to analyze reliability performance. It therefore has offered revisions to the proposed regulations that would eliminate the budget to actual expenditure data from the annual reliability reports of all EDCs and from the quarterly reports of the larger EDCs. The quarterly comparisons of inspection and maintenance goals/objectives to actual results achieved would also be eliminated for large EDCs.

The OCA states in its reply comments that, despite the EDC claims to the contrary, the additional information requested by the Commission is related to reliability and can be very useful to the Commission in meeting its monitoring obligations. Further, the OCA feels there is no basis for keeping this information from the public view since it is often part of a base rate case filing and thus often subject to significant public scrutiny. In the OCA's view, the ratepayers have a right to know how their dollars are being spent and whether they are receiving adequate service at a reasonable cost.

Disposition

The Commission will retain its proposal to have the EDCs report on their T & D inspection and maintenance goals/objectives as provided for in § 57.195(b)(6), (9), (c) and (e)(6).² Although we are not prescribing enforceable inspection, maintenance, repair and replacement standards for EDCs as favored by the AFL-CIO nor requiring comprehensive T & D maintenance plans as suggested by the OCA, we do believe it is vital for each company to establish and carry out individual goals/objectives for these activities. Such goals and objectives provide a "game plan" for completing inspection and maintenance efforts throughout the year, and thus are directly related to short-term and long-term reliability performance. The Commission desires to monitor the accomplishment of each large EDC's plan at various points during the year as a way of ensuring that reliability matters remain a priority. We recognize, and concur with some of the commentators, that the best-laid plans will change in a year's time due to any number of unforeseen events. However, requiring that large EDCs report their progress against the established goals and objectives on a quarterly basis will ensure that Commission staff has more timely knowledge of these unforeseen events and their potential impact on reliability performance. Waiting until there is an actual reliability problem to get the data (as favored by the some of the industry parties) is not acceptable. Moreover, it is inconsistent with one of the LB&FC's recommendations that the Commission be more proactive in its approach to monitoring reliability.

We note that similar to the O & M and capital expenditure quarterly data proposed under paragraphs (e)(7—8), the quarterly and year-to-date information for the inspection and maintenance goals/objectives required under paragraph (e)(6) of the regulations need only be submitted for the first, second, and third quarters. The necessary wording to convey our intentions in this regard had inadvertently been omitted from the Tentative Order.

The Commission will also retain its proposal to have the EDCs report their T & D O & M and capital expenditure data as provided for in § 57.195(b)(7, 8, 10, 11), (c), and (e)(7, 8). We concur with several of the commenting

parties that increases or decreases in O & M and/or capital expenditures can occur from quarter to quarter or year to year for a variety of reasons that are not directly related to reliability. However, we cannot agree with some of the parties that this data does not provide any meaningful insight into reliability performance. This would only be true if such data were being looked at in a vacuum and were only provided in summary amounts. The Commission seeks to have the EDCs report both budgeted and actual O & M and capital expenditures in the level of detail that is already reported to operations management personnel on an annual and quarterly basis. This level of expenditure data, when evaluated side by side with other data on inspection and maintenance goals and objectives, staffing levels, contractor usage, and outage causes, can be very useful for gaining a perspective on, and ascertaining trends in, reliability investment by the EDC. Our intent is not to micro-manage or second-guess management as suggested by certain parties, but to be fully informed about reliability matters in a timely manner. Again, waiting until there is an actual problem to obtain this information does not fulfill our regulatory obligation to proactively monitor reliability at the EDCs.

The parties should note that we have adopted the suggestion of PPL that we modify reporting requirements to allow for budget (and thus actual expenditure data for comparison purposes) to be provided by functional activity rather than FERC account. We acknowledge that most EDCs use a responsibility (activity-based) system for internal budgeting and expense collection purposes because it more closely conforms to operations. In these companies, use of the FERC system of accounts is generally limited to Commission annual reports. While revising the language in § 57.195(b)(10—11) to allow for reporting of budget and expenditure data by the EDCs' own functional account codes, we've taken the opportunity to clarify that the required data under paragraphs (b)(7—8) and (e)(7—8) is to be reported by those same internal account codes.

We've also taken the opportunity to add language setting a threshold for required variance explanations under paragraphs (b)(7—8). PPL stated in its comments that it believes the phrase "any variances" in the Tentative Order is overly broad and will require unnecessary explanation of insignificant deviations. The Company thus recommended explanation thresholds of \$1 million for O & M expenditure variances and \$5 million for capital expenditure variances. While we agree that thresholds would be appropriate, PPL's proposed amounts are too high. Further, the thresholds do not vary by company size. We will therefore set the thresholds at 10% or more of each budget line item. This is consistent with variance explanation policies at many companies. We should point out here that we have declined to add PPL's suggested threshold wording for requiring explanations of deviations from established inspection and maintenance goals and objectives in paragraph (b)(6). This wording "a material change in a T & D inspection and maintenance goal/objective" leaves too much to judgment. Nevertheless, Commission staff will be reasonable and consider the materiality of variances when reviewing the adequacy of explanations here. We believe the addition of the term, "by the EDC's own functional account code" satisfies IRRC's requirement that we specify an alternative acceptable format.

In addition to the issues previously discussed, the Commission will address two other general matters brought up by the parties when commenting on the

² See Attachment A to the Tentative Order entered on June 27, 2003 at Docket No. M-00991220 for a report in the form preferred by the Commission.

reporting of T & D inspection and maintenance goals/objectives, and O & M and capital expenditures. The first matter involves comments by Citizens', UGI and a few other industry parties that the requested data is burdensome. We do not find this to be a valid criticism inasmuch as all companies affected by this rulemaking prepare inspection and maintenance goals and budget O & M expenditures annually, and compare them to actual data at least quarterly. Moreover, the Commission has now defined the required items such that the EDCs can literally pull them off the shelf and submit them without a lot of modification. A good example of this is the requirement to submit budgeted and actual expenditures using accounts from their own responsibility accounting systems. As a result of the flexibility granted the EDCs to comply with the data requirements, we do not believe that an excessive burden has been placed on them.

The second general matter brought to our attention by IRRC and the EDCs involves proprietary data claims. Many of the commentators from industry believe that information on goals/objectives and budgeted versus actual expenditures is confidential and thus should not be made available to the public. Further, they feel that such data could be misinterpreted by the public, or worse yet, used by competitors and other outside parties against them. Although the Commission has no intention of actively sharing this type of information with other parties outside the regulatory arena, we find the broad proprietary claims by industry to be largely without merit. First, some of this information (i.e., annual O & M and capital expenditures) is already available to the public in the annual reports filed with the Commission. Second, an EDC's transmission and distribution operations are still fully regulated and thus are not subject to competition from other EDCs. If an EDC wishes to keep specific parts of its reported data confidential, it will have to file a petition requesting proprietary treatment. Merely stamping the data proprietary will not guarantee such treatment.

The proposed regulations did not address the confidential treatment of proprietary data. We acknowledge that the EDCs will now be required to report some transmission and distribution data not heretofore reported; however, we view the reports to be of public concern, and will generally treat the entire reports as being public. We do not want a proprietary and non-proprietary version submitted initially. If the EDC anticipates that portions of its report should remain proprietary, then the burden is on the EDC to apply for a protective order under 52 Pa. Code § 5.423 in advance of its report if it wants portions of its report to remain confidential and proprietary.

Reporting Requirements for Smaller EDCs—§ 57.195(c) and (f)

The Commission proposed annual and quarterly reporting requirements for smaller EDCs in paragraphs (c) and (f) respectively. The smaller EDCs have been defined as those with less than 100,000 customers. In comparison to the large EDCs, the Commission has limited the annual and quarterly reporting requirements for the smaller EDCs. This is to reduce the reporting burdens of these companies given the size, configuration, and operational aspects of their systems.

Positions of the Parties

Comments were filed by the FE Companies pertaining to the reporting requirements and the relative size of Penn Power. It is stated that Penn Power is "substantially smaller" than all of the other larger EDCs. Penn

Power has approximately 154,000 customers while the next largest EDC has approximately 511,000 customers (Met-Ed). Penn Power asserts that its service territory and the nature of its operations and reliability data far more resemble the smaller EDCs than the larger EDCs. As such, Penn Power requests that the Commission redefine the term "smaller EDCs" to include EDCs with less than 185,000 customers. This would allow Penn Power to be classified as a smaller EDC and have the benefit of the limited reporting requirements for smaller EDCs.

In its reply comments, the OCA does not believe that it is appropriate for Penn Power to be classified as a smaller EDC. The OCA points out that the 154,000 customers served by Penn Power is much greater than the number of customers served by those EDCs designated as small EDCs in Pennsylvania. UGI is the largest of the small EDCs, but only serves approximately 61,500 customers. OCA also states that Penn Power has a service territory that is significant in size and part of a much larger electric utility system (the First Energy system). The OCA does not believe that there is any indication of an excessive burden placed on Penn Power in meeting these reporting requirements. For these reasons, OCA states that the Commission should reject the request to have the regulations modified for Penn Power.

Disposition

The FE Companies' request that Penn Power be classified as a smaller EDC is rejected. The reply comments of the OCA identify important facts about the relative size of Penn Power and the resources available to the EDC. Penn Power is much larger in comparison to the smaller EDCs, especially when considering the resources available to Penn Power through FirstEnergy. As part of the FirstEnergy system, Penn Power's reliability performance is monitored and managed through the same organization as the two other larger EDCs in Pennsylvania (Met-Ed and Penelec). The Commission will therefore retain the definition of smaller EDCs for quarterly reporting requirements as any EDC serving less than 100,000 customers.

Submission of Quarterly Reliability Reports—§§ 57.195(d), (e), and (f)

Paragraph (d) proposed the submission of quarterly reliability reports to the Commission on or before May 1, August 1, November 1 and February 1. Paragraph (e)(1—11) specified eleven quarterly reporting requirements for the larger EDCs serving 100,000 or more customers. Among those requirements are a rolling 12-month computation of the reliability indices, a rolling 12-month analysis of circuit reliability, and a description of any remedial action taken to correct the problems. Proposed paragraph (f) limited the quarterly reporting requirements for the smaller EDCs to paragraphs (e)(1), (2) and (5). As noted previously in this rulemaking, the reduced requirements are designed to reduce the reporting burdens of these companies given the size, configuration, and operational aspects of their systems.

The purpose of requiring a quarterly report is to provide more frequent information to the Commission about service reliability. This will enable the Commission to identify potential problems in a timely manner and monitor an EDC's response to problems which may arise between annual reports. The quarterly report requires a description of each major event occurring during the preceding quarter that the EDC has excluded from its reported data.

Positions of the Parties

The EAP, Allegheny Power, Citizens', the FE Companies, PECO, and Pike County submitted comments to the proposed quarterly reports.

The EAP does not believe that some of the quarterly reporting requirements provide meaningful insight to an EDC's reliability performance. The FE Companies state that the benefits of quarterly reporting are miniscule compared to the time, expense, burden and resources the EDCs will have to incur in order to collect, calculate, review and publish the information on a quarterly and annual basis. PECO submits that with the exception of the major outage reporting proposed in paragraph (e)(1) and the rolling indices information proposed in paragraph (e)(2), the other quarterly reporting requirements will not provide any meaningful insights into the reliability performance of the EDCs. The EAP asserts that the quarterly reporting requirements proposed in paragraph (e) are an unreliable means of measuring performance, since the primary measure of performance is an annual target. The EAP references the information required under paragraphs (e)(3) and (e)(5) as statistical information that should not be analyzed based on the performance in any given quarter, but rather an annual basis. Similar concerns have been averred by Allegheny Power, PECO, and the FE Companies noting that reliability performance is best evaluated over a long-term horizon, such as 12 months, rather than on a short-term horizon, such as 3 months.

Of the smaller EDCs, Pike County commented that subjecting smaller EDCs to the quarterly reporting requirements would significantly increase their workload with minimal countervailing benefits. Pike County requests that its quarterly reporting obligation be limited to providing updated SAIFI, CAIDI and SAIDI statistics as proposed in paragraph (e)(2). Citizens' believes that quarterly reporting is excessive and provides little meaningful information, because system reliability can vary significantly in the short term based on isolated local events such as vehicle accidents, storms, etc.

Disposition

We will first address the comments regarding the analysis of reliability performance on a quarterly basis versus an annual basis. The EAP, Allegheny Power, PECO, and the FE Companies have inaccurately characterized the information to be provided in the quarterly reports proposed under paragraphs (e)(2 & 3). These parties have given the impression that the quarterly reports proposed under paragraphs (e)(2 & 3) require reported performance only for the three months in a given quarter. Both paragraphs specifically state that rolling 12-month data is to be reported. This rolling 12-month data is to be reported every quarter. As such, the reliability performance will be evaluated over a period of 12 months. The EAP, Allegheny Power, PECO, and the FE Companies have all indicated that it is best to evaluate reliability performance over a longer term, which is why the Commission has proposed the quarterly reporting of rolling 12-month data in paragraphs (e)(2); (3).

The Commission recognizes an omission in paragraph (e)(5) that was pointed out by the EAP and PECO. As written, paragraph (e)(5) requires a breakdown and analysis of outage causes during the preceding quarter. To be consistent with the other reliability and outage data being reported in paragraphs (e)(2); (3), paragraph (e)(5) has been revised to clarify that a rolling 12-month

breakdown and analysis of outage causes is to be reported every quarter. Again, this does not mean that only causal data for the three months of a given quarter are reported. Each quarterly report will break down and analyze the most recent 12-month period of outage causes, including the number and percent of service outages, the number of customers interrupted, and the customer interruption minutes categorized by outage cause such as equipment failure, animal contact, tree-related, and so forth. Proposed solutions to identified service problems shall be reported. As noted earlier, Citizens' stated that its reliability performance can vary significantly over the short term due to isolated local events such as vehicle accidents. The quarterly reporting of the breakdown and analysis of outage causes will enable EDCs such as Citizens' to identify and explain the situations behind any isolated local events.

Next we will address all comments regarding the overall requirement of quarterly reporting and its appropriateness. The LB&FC Report found that the Commission was not receiving EDC reliability performance information in a timely manner. Additionally, the LB&FC found that the Commission was not requiring EDCs to report the causes of outages along with the reported reliability performance. The LB&FC recommended that the Commission require submission of summary monthly and year-to-date information on the causes of all service interruptions. The LB&FC pointed out that such information is essential to interpret the information in the annual reliability reports and to follow up with the EDCs on the performance they report. The LB&FC also emphasized that current regulations authorize the PUC to require submission of such information. The Commission has considered the merits of the LB&FC findings and recommendations, and we believe the proposed quarterly information in paragraph (e)(5) will satisfy the LB&FC's concerns regarding the timely reporting of causes of service interruptions.

Also, in IRRC's and Allegheny Power's comments related to paragraph (a) and the submittal date for the annual reliability report, it was noted that the Commission's proposal to add a quarterly reporting requirement will provide reliability performance data in a timely manner. IRRC also argued that the problem of the Commission being unaware of poor reliability performance prior to receiving the annual report should be alleviated. As such, IRRC suggested that the Commission consider adopting the requests for an April 30 submission date for the more detailed annual reliability reports. As stated earlier, the Commission agrees with IRRC and has adopted the request for an April 30 submission date for the more detailed annual reliability reports given that proposed quarterly reports will be in effect.

The FE Companies have asserted that the time, expense, and resources the EDCs will have to incur to collect, calculate, review and publish the information on a quarterly basis will be a burden to EDCs. These comments leave the impression that EDC management does not routinely measure, record, analyze, and produce internal reports to keep adequately informed of the EDC's reliability performance and compliance with reliability regulations in Pennsylvania. The Commission has not been given this impression in our dealings with the EDCs nor would the Commission view this as prudent management of activities that affect electric reliability. Pike County and Citizens' have also implied that the proposed quarterly reporting requirements will be a burden for smaller EDCs. Although the quarterly reports as proposed may require EDCs to maintain and periodically submit

the specified information in a defined format that may be slightly different than is currently maintained and reported internally, it should not be difficult to maintain this information in any off-the-shelf software commonly used by all EDCs. Once the desired format for the information is established and saved electronically, it should not be burdensome to update future reports.

The Commission is requiring the EDCs to periodically report reliability information to the Commission that it should already be maintaining and analyzing. In fact, not all of the EDCs have submitted comments claiming that it will be burdensome to provide the proposed reliability information on a quarterly basis. It has been suggested that the Commission should only need to see this type of information once poor reliability performance has been determined. The LB&FC has already scrutinized this type of approach to monitoring electric reliability and determined it to be unsatisfactory. Therefore, the Commission will retain the requirement of quarterly reporting as proposed in paragraphs (e) and (f) including the breakdown and causes of interruptions. Paragraph (e)(5) has been revised to clarify the reporting of a rolling 12-month breakdown and analysis of outage causes every quarter.

Staffing Levels and Contractor Information—§ 57.195—(e)(9); (10)

Paragraph (e)(9) proposed that quarterly reports filed by the larger EDCs (those serving 100,000 or more customers) include the number of dedicated staffing levels for transmission and distribution operations and maintenance at the end of the quarter, in total and by specific category such as linesmen, technicians, and electricians. Similarly, paragraph (e)(10) proposed that quarterly reports filed by larger EDCs include quarterly and year-to-date information on contractor hours and dollars for transmission and distribution operations and maintenance. The Commission expects to continually monitor staffing levels and the use of contractors to ensure that adequate resources are being devoted to the reliability of electric service.

Positions of the Parties

Comments were filed by the FE Companies as well as PPL. The FE Companies and PPL believe that specific information relating to staffing levels and contractor hours and dollars are proprietary. One of the concerns is that if this information were made available to the public, an EDC's ability to negotiate contracts with third-party vendors and others could be adversely affected. The FE Companies also assert that decisions about required resources to perform transmission and distribution work are dynamic and could change frequently in a typical operating year and budget cycle. Therefore, reporting of this type of information could easily lead the Commission and others to second-guess an EDC's business judgments. The FE Companies urge the Commission to eliminate these reporting requirements from the proposed rules. If the information specified is ultimately required to be filed, the FE Companies believe the regulations should allow the EDCs to limit its dissemination to the Commission and its staff, the OCA and Office of Small Business Advocate (OSBA), subject to a blanket prohibition against public disclosure, and to prohibit such information from being inserted into the Commission's public files. PPL recommends that the Commission either eliminate the proposed reporting requirements, or, in the alternative, permit EDCs to retain this information at their main office, and make it available for Commission review and inspection, as necessary.

Disposition

EDCs must effectively utilize internal and external resources to ensure that reliable electric service is provided to their customers. The Commission recognizes the proprietary nature of contractor information. However, the Commission must understand what resources have been employed by an EDC in order to adequately monitor its reliability activities and performance. Providing this information will prevent the Commission from second-guessing how an EDC determines the resources it needs to ensure reliable service. Second-guessing would occur if the Commission did not receive staffing level and contractor information periodically throughout the year, but then criticized an EDC at year-end when reliability performance appeared inadequate. Periodic review of the resource levels and any accompanying explanations of any changes to staffing levels or arrangements with contractors will enable the Commission to better understand the resource decisions the EDCs must face, and may therefore prevent any unnecessary scrutiny of an EDC's use of internal and external resources for reliability activities.

The Commission does not intend to publish all of the specifics of contractual arrangements made between an EDC and its various contractors used to perform transmission and distribution operation and maintenance activities. However, the information submitted in the reports will be kept in public files and is available for inspection. Additionally, concerns raised by the FE Companies and PPL over the dissemination of this information by other parties who will receive the quarterly reports must be addressed. Under paragraph (d)(1), EDCs are required to submit quarterly reliability reports to OCA and OSBA in addition to the Commission. While we believe it is a reasonable request that the Commission, the OCA and OSBA be prohibited from disclosing the specific details of any contract (i.e., hours and dollars) between an EDC and any contractor an EDC employs for transmission and distribution operations and maintenance, the burden will be upon the EDC to apply for a protective order under 52 Pa. Code § 5.423 in advance of the filing of its report if it wants portions of its report to remain confidential and proprietary.³

The Commission does not see any reason why an EDC's staffing levels for positions such as linesman, technician, and electrician should be considered proprietary. The EDCs are regulated utilities, which are not subject to competition like unregulated entities. Therefore, the disclosure of the staffing levels by an EDC will not negatively affect its ability to operate.

Section 57.195(e)(11) (Call-Out Acceptance Rates)

We proposed to obtain information on monthly call-out acceptance rates for transmission and distribution maintenance workers. The monthly call-out acceptance rates may provide some perspective on reliability performance.

Positions of the Parties

The AFL-CIO does not disagree with the reporting requirement at Section 57.195(e)(11), but suggests a time-based measure (the amount of time it takes the EDC to obtain the necessary personnel) rather than a measure based on the percentage of employees called. The AFL-CIO avers that a time-based measure would better reflect some EDCs' use of automated calling methods, which can obtain the necessary personnel more quickly, even though the percentage of those called who respond affirmatively might be lower.

³ In addition, Section 219 of the Commission's Procedures Manual gives utilities the ability to file confidential documents and seek protective orders when the allegedly proprietary information is sought by the public.

The AFL-CIO asserted that a low call-out acceptance rate (or a lengthy call-out acceptance time) is an indication there may be a serious management issue within the EDC. Thus, it should prompt a more detailed investigation by the Commission to determine if the utility is properly managing its work force and its outage response efforts.

Citizens' states that in addition to call-out acceptance, many other things contribute to overall restoration time. Thus, focusing solely on the call-out acceptance rate will not necessarily lead to meaningful conclusions regarding reliability or restoration effectiveness.

The FE Companies comment that it is inappropriate to report call-out acceptance rates since there is no uniform method by which EDCs define such rates or report them. They state that by requiring the reporting of call-out acceptance rates, it appears that the Commission believes there is a direct correlation between the call-out response rate and an EDC's reliability performance. The FE Companies do not believe this to be correct and assert that the lack of a standard definition for call-out acceptance, along with the inability to account for variations among the EDC's labor agreements, could lead to unreasonable and inappropriate comparisons. Therefore, the FE Companies believe the requirement to report call-out acceptance rates should be eliminated.

In its reply comments, the EAP submits that reporting of call-out acceptance rates is an excellent example of the type of information that would be irrelevant to reliability evaluations. The EAP states that the Department of Transportation's Federal Motor Carrier Standards Administration issued its final *Hours of Service* rule in April 2003 and the application of this rule renders comparisons between historical and future call-out rates meaningless. Thus, call-out acceptance rates would provide little insight to the Commission in its review of an EDC's reliability performance. The EAP suggests the elimination of this reporting requirement. However, if the reporting of the information becomes a requirement, the Energy Association states that the information should not be made public.

Disposition

We agree with the AFL-CIO that a time-based measure (the amount of time it takes the EDC to obtain the necessary personnel) should be incorporated into the proposed regulation at Section 57.195(e)(11), in addition to the proposed measure based on the percentage of accepted calls. We will amend Section 57.195(e)(11) to state:

- (11) Monthly call-out acceptance rate for transmission and distribution maintenance workers presented in terms of both the percentage of accepted call-outs and the amount of time it takes the EDC to obtain the necessary personnel. A brief description of the EDC's call-out procedure should be included when appropriate.

In response to the comments of Citizens', the FE Companies, and EAP that the call-out acceptance rates do not provide consistent and valuable information to the Commission in its review of an EDC's reliability performance, we reiterate that the call-out acceptance rate is only one aspect of an EDC's reliability plans and reports that will be reviewed by the Commission. When analyzing an EDC's reliability performance, Commission staff will consider call-out acceptance rates together with all other quarterly and annual data. In addition, we direct the respondents to the Commission's Final Order at

M-00991220. The section of the Order that discusses the Commission's potential enforcement actions provides additional support and explanation for our position on this issue.

Section 57.195(i) (Parallel Measurement)

Positions of the Parties

In reply comments, the FE Companies respond to comments by OCA that reliability has deteriorated by noting that it is dangerous to conclude service reliability has deteriorated by a comparison of data collected in two materially different ways. The FE Companies state that because of the vast difference in data quality and quantity subsequent to the installation of the outage management systems, no meaningful trends or benchmarks can be derived from data under the old system compared to data under the new system.

Disposition

We wholeheartedly support the EDCs implementing technology improvements in the systems that gather, analyze and report on reliability performance. However, we cannot accept that with each improvement in the measurement systems the EDC and the Commission lose the ability to have accurate reliability performance trend data as the FE Companies note happened in the past. Therefore, we will add an additional provision to the regulations that requires parallel measurement and analysis whenever changes are made to the reliability measuring systems used by the EDCs. Through the use of parallel measurement and analysis, which entails holding other variables constant and measuring reliability under the old and new systems concurrently for a period of time, the EDC should be able to isolate and quantify any independent influence that the change in measurement methods has on reliability performance index scores. This will enable the EDC and the Commission to separate out the effects of changes in reliability measurement from true changes in reliability performance so that we can accurately assess true reliability performance and trends.

§ 57.196. Generation reliability

No changes.

§ 57.197. Reliability investigations and enforcement

No changes.

Other Issues Raised In Comments

Inspection and Maintenance Standards

In its June 12, 2002 report, the LB&FC noted there was insufficient information to allow the Commission to determine if EDCs are implementing their reliability programs as described by the EDCs. The LB&FC also noted that the Commission was in the process of reviewing the establishment of regulations regarding inspection, maintenance, repair and replacement standards, and that IRRC recommended the Commission evaluate what other states have done or are doing regarding inspection and maintenance standards. The LB&FC review found that other states typically do not have specific minimum performance standards for inspection and maintenance programs that companies must meet, but they do have ongoing and detailed reporting requirements concerning such programs. In this way, the states are able to assess whether companies have reasonable inspection and maintenance programs, if they are implementing their programs, and if not, why not. This information is routinely reported and is available for use by the State Commissions. As such, the LB&FC did not recommend prescriptive standards, but suggested establishment of reporting

requirements to permit the Commission to monitor the EDCs' progress in implementing their plans for inspecting and maintaining their transmission and distribution systems.

On August 29, 2002, the Commission adopted a study entitled *Inspection and Maintenance Study of Electric Distribution Systems* dated August 27, 2002. CEEP agreed with the LB&FC and recommended that the annual reliability reporting requirements be revised to include the routine submission of documentation on inspection and maintenance activities including: 1) vegetation management; 2) distribution and substation maintenance activity; and 3) capital improvement projects. The Commission agreed with CEEP's recommendations in this regard.

The recommendations cited in the *Inspection and Maintenance Study of Electric Distribution Systems Report* were incorporated into the proposed paragraphs of Section 57.195(b)(6, 8, 9, 11, 12); (c); and (e) of this rulemaking. Paragraphs (b)(6, 8, 9, 11, 12) outline annual reliability reporting requirements for the larger EDCs related to T & D inspection and maintenance goals/objectives, significant changes to the inspection and maintenance programs, and T & D capital expenditure budgets. Smaller EDCs are to provide similar annual information per paragraph (c). Paragraphs (e)(6); (8) require that the large EDCs submit quarterly and year-to-date information on their progress in achieving the inspection and maintenance goals/objectives and meeting the capital expenditure budget as provided to the Commission in the annual report. It was felt that these reporting requirements address the suggestions of the LB&FC to require routine detailed reporting to assist the Commission in assuring that the EDCs have reasonable inspection and maintenance programs and are implementing their own capital improvement plans.

Positions of the Parties

The AFL-CIO criticized the Commission for not proposing specific inspection and maintenance standards. In its reply comments, OCA agreed with the AFL-CIO's position, citing 66 Pa.C.S. § 2802(20) which provides:

Since continuing and ensuring the reliability of electric service depends on adequate generation and on conscientious inspection and maintenance of transmission and distribution systems, the independent system operator or its functional equivalent should set, and the commission shall set through regulations, inspection, maintenance, repair and replacement standards and enforce those standards.

Disposition

In the past, the Commission has evaluated the prospect of implementing prescribed inspection and maintenance standards for all EDCs in Pennsylvania and has stated on several occasions that it did not believe specific inspection and maintenance standards were necessary or appropriate. Instead, the Commission focused its efforts on regulating reliability performance—i.e., comparing data regarding the frequency and duration of outages to benchmarks from a historical period. We addressed this issue in our Final Rulemaking Order of April 24, 1998, at L-970120, 27 Pa.B. 809, which promulgated the regulations at Chapter 57, Subchapter N (relating to electric reliability standards). We declined to require specific inspection and maintenance standards because of the new methods and technologies that utilities were developing to improve the inspection and testing process. However, we directed the Commission's Bureau of CEEP to conduct a

study of this issue of developing specific inspection and maintenance standards and to submit recommendations for the Commission's consideration.

Specifically, we stated:

[T]he Commission believes that it is inappropriate, at this time, to establish specific performance standards due to the need to better understand existing performance levels and to permit flexible modification of standards as the competitive market develops.

We further stated in our Order:

While we are adopting the NESC [National Electrical Safety Code] as the basic external standard, neither existing regulations nor the NESC provides specific standards for inspection and maintenance. These standards will be adopted in subsequent orders.

Id. at pp. 3-4.

Similarly, in our *Inspection and Maintenance Study Order* of August 29, 2002, at M-00021619, the Commission stated that its effort to protect reliability was "constantly evolving" and that it would continue to assess the need for inspection and maintenance standards in the future. Id. at 11.

Shortly after we entered our Proposed Rulemaking Order on July 27, 2003, the August 14, 2003 blackout occurred across portions of Pennsylvania, New Jersey, New York, Michigan, Ohio and Canada. New information arising from the blackout provides a basis for revisiting the need for inspection and maintenance standards. One of the causes noted for the blackout was the failure of FirstEnergy Corporation to adequately manage tree growth along transmission lines located in Ohio. *Final Report on the August 14 Blackout in the U.S. and Canada, U.S.—Canada Power System Outage Task Force*, pp. 17, 57-64 (April 2004). In the wake of the blackout, the Federal Energy Regulatory Commission (FERC) commissioned a study of a utility vegetation management practices. This led to a report entitled "Utility Vegetation Management Final Report" prepared by CN Utility Consulting, LLC and released by FERC in March 2004. The report concluded, among other things, that the "[c]urrent oversight of UVM [utility vegetation management] activities by appropriate agencies or organizations is overwhelmingly inadequate" (Report p. 68). To remedy this inadequacy, the report recommended:

2. DEVELOP CLEAR UVM PROGRAM EXPECTATIONS FOR UTILITY COMPANIES

Oversight organizations should work with the utility companies, the UVM industry, and other stakeholders to develop measurable and achievable program objectives. The development of these expectations will require a joint effort to identify what specifically can be done to ensure the reduced likelihood of future tree and power line conflicts. Given the myriad of site-specific UVM related variables throughout North America, we would expect that these expectations may differ based on local environmental conditions and other factors. With that caveat, we offer the following three examples of items that could be included as part of these expectations:

- Adoption of specific UVM Best Practices
- Development of, and adherence to comprehensive UVM schedules
- Achieving specific reductions in tree-related outages

(Report, pp. 68-69). While it is not binding on this Commission, this report should not be ignored as the Commission considers how to preserve reliability.

Therefore, we will direct Law Bureau to issue an advance notice of proposed rulemaking on inspection and maintenance standards. The purpose of this proceeding will be to determine whether the Commission should now adopt specific inspection and maintenance standards, and if so, what types of standards would be appropriate.

In the meantime, the Commission is putting into effect the reporting requirements on inspection and maintenance activities in Annex A. While it may be argued that these requirements do not go far enough, there is no harm in implementing them while the Commission considers the adoption of specific inspection and maintenance standards. If the Commission ultimately promulgates regulations establishing specific inspection and maintenance standards, the reporting requirements issued today can be modified in the future.

Until new regulations are promulgated, the proposed reporting requirements for inspection and maintenance goals/objectives and capital expenditure budgets established today will enable the Commission to assess whether companies have reasonable inspection and maintenance programs and capital improvement plans, if they are implementing those programs and plans, and if not, why not. Proper industry practices must be adhered to by the EDCs to ensure reliable service. We intend to continually examine the reasonableness of utility reliability plans and expect the EDCs to adhere to proper industry practices.

*Bureau of Consumer Services Letter of October 17, 2003
Positions of the Parties*

PECO and EAP filed comments stating that the October 17, 2003 letter to EDCs from the Commission's Bureau of Consumer Services (BCS) is inappropriate, unreasonable, premature and should be withdrawn. In response, the OCA commented that EAP's comments about the BCS letter are without merit and not appropriate in the Rulemaking Docket. OCA notes that the purpose of the letter as stated is to inform the EDCs of a change BCS is making to the Commission's process for investigating informal service quality complaints filed with the Commission. OCA draws a distinction between a process for handling individual consumer complaints as contained in the letter, and this rulemaking which should be viewed as a means for the PUC to ensure that the EDCs are managing their systems on an overall basis consistent with the Act.

Disposition

We adopt the position of the OCA that the October 17, 2003 letter from BCS to EDCs about a change in the process for investigating informal quality service complaints is not germane to this rulemaking.

Overall, we believe that the regulations, as herein amended in consideration of comments received, and Annex A, are consistent with the public interest and shall be adopted at this time through final order. Annex A reflects the cumulative changes made to Annex A of this Commission's Proposed Rulemaking Order entered on June 27, 2003. Accordingly, under authority at Section 501 of the Public Utility Code, 66 Pa.C.S. § 501, and Sections 201, et seq., of the Commonwealth Documents Law, 45 P.S. §§ 1201, et seq., 66 Pa.C.S. §§ 2801 et seq. and the regulations promulgated thereunder at 52 Pa. Code §§ 57.191—57.197; and sections 201 and 202 of

the act of July 31, 1968 (P.L. 769, No. 240) (45 P.S. §§ 1201 and 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 5 of the Regulatory Review Act (71 P.S. § 732.204(b)); and section 612 of The Administrative Code of 1929 (71 P.S. § 232) and the regulations promulgated thereunder at 4 Pa. Code §§ 7.251—7.235, we adopt the regulations set forth in Annex A; *Therefore,*

It Is Ordered That:

1. 52 Pa. Code, Chapter 57 is amended by amending §§ 57.192, 57.194 and 57.195 to read as set forth in Annex A, with ellipses referring to the existing text of the regulations.

2. The Secretary submit this final rulemaking order and Annex A for review and approval by the designated standing committees of both houses of the General Assembly, and for review and approval of IRRC.

3. The Secretary shall submit this Order and Annex A to the Governor's Budget Office for review of fiscal impact.

4. The Secretary shall submit a copy of this order and Annex A to the Office of Attorney General for review as to legality.

5. The Secretary certify this order and Annex A and deposit them with the Legislative Reference Bureau to be published in the *Pennsylvania Bulletin*.

6. The amendments to Chapter 57 embodied in Annex A shall become effective upon final publication in the *Pennsylvania Bulletin*.

7. A copy of this order and Annex A be filed in the folder regarding benchmarks and standards at M-00991220.

8. The contact persons for this rulemaking are (technical) Thomas Sheets, Director of Bureau of Audits, (717) 783-5000 and (legal) Elizabeth H. Barnes, Law Bureau, (717) 772-5408.

9. A copy of this order and Annex A be served upon all electric distribution companies operating in this Commonwealth, the Office of Consumer Advocate, the Office of Small Business Advocate, the Energy Association of Pennsylvania and the Pennsylvania AFL-CIO—Utility Caucus.

10. The Law Bureau prepare an Advance Notice of Proposed Rulemaking regarding Inspection and Maintenance Standards under 66 Pa.C.S. § 2802(20).

JAMES J. MCNULTY,
Secretary

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission, relating to this document, see 34 Pa.B. 4528 (August 14, 2004).)

Fiscal Note: Fiscal Note 57-228 remains valid for the final adoption of the subject regulations.

Annex A

TITLE 52. PUBLIC UTILITIES

PART I. PUBLIC UTILITY COMMISSION

Subpart C. FIXED SERVICE UTILITIES

CHAPTER 57. ELECTRIC SERVICE

Subchapter N. ELECTRIC RELIABILITY STANDARDS

§ 57.192. Definitions.

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

Adequacy—The ability of the electric system to supply the aggregate electrical demand and energy requirements of the customers from various electric generation suppliers at all times, taking into account scheduled and reasonably expected unscheduled outages of system elements.

Circuit—A conductor or system of conductors through which an electric current is intended to flow.

Conductor—A material, usually in the form of a wire, cable, or bus bar, suitable for carrying an electric current.

Control area—An electric system or systems, bounded by interconnection metering and telemetry, capable of controlling generation to maintain its interchange schedule with other control areas and contributing to frequency regulation of the interconnected systems.

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

Electric generation supplier or electricity supplier—An electric generation supplier or electricity supplier as defined in 66 Pa.C.S. § 2803.

FERC—Federal Energy Regulatory Commission.

IEEE—Institute of Electrical and Electronic Engineers.

Interruption duration—A period of time measured to the nearest 1-minute increment which starts when an electric distribution company is notified or becomes aware of an interruption, unless an electric distribution company can determine a more precise estimate of the actual starting time of an interruption, and ends when service is restored. Interruptions shall be categorized, based on duration, such as momentary or sustained interruptions, or by similar descriptions, as adopted by the IEEE or similar organization identified by the Commission. This subchapter requires tracking, reporting and evaluation of two categories of interruption duration that will incorporate any changes in the terms used or the definitions of those terms as adopted by the IEEE or Commission order.

Major event—

(i) Either of the following:

(A) An interruption of electric service resulting from conditions beyond the control of the EDC which affects at least 10% of the customers in the EDC's service territory during the course of the event for a duration of 5 minutes each or greater. The event begins when notification of the first interruption is received and ends when service to all customers affected by the event is restored.

(B) An unscheduled interruption of electric service resulting from an action taken by an EDC to maintain the adequacy and security of the electrical system, including emergency load control, emergency switching and energy conservation procedures, as described in § 57.52 (relating to emergency load control and energy conservation by electric utilities), which affects at least one customer.

(ii) The term does not include scheduled outages in the normal course of business or an electric distribution company's actions to interrupt customers served under interruptible rate tariffs.

Momentary customer interruption—

(i) The loss of electric service by one or more customers for the period defined as a momentary customer interruption by the IEEE as it may change from time to time.

(ii) The term does not include interruptions described in subparagraph (i) of the definition of "major event," or the authorized termination of service to an individual customer.

NERC—North American Electric Reliability Council—An organization of regional reliability councils established to promote the reliability of the electricity supply for North America.

Performance benchmark—A numerical value that characterizes an EDC's average historical reliability performance for a specific time period in the past. The benchmark is based on an EDC's performance for the entire service territory and is a reference point for comparison of future reliability performance. The Commission will, from time to time, establish benchmarks for each reliability index and each EDC. The performance benchmarks are established by Commission Order at Docket No. M-00991220.

Performance standard—A numerical value that establishes a minimum level of EDC reliability allowed by the Commission. The performance standard is a criterion tied to the performance benchmark that applies to reliability performance for the EDC's entire service territory. The Commission will, from time to time, establish new performance standards for each reliability index for each EDC. The performance standards are established by Commission Order at Docket No. M-00991220.

* * * * *

§ 57.194. Distribution system reliability.

(a) An EDC shall furnish and maintain adequate, efficient, safe and reasonable service and facilities, and shall make repairs, changes, alterations, substitutions, extensions and improvements in or to the service and facilities necessary or proper for the accommodation, convenience and safety of its patrons, employees and the public. The service shall be reasonably continuous and without unreasonable interruptions or delay.

(b) An EDC shall install, maintain and operate its distribution system in conformity with the applicable requirements of the National Electrical Safety Code.

(c) An EDC shall make periodic inspections of its equipment and facilities in accordance with good practice and in a manner satisfactory to the Commission.

(d) An EDC shall strive to prevent interruptions of electric service and, when interruptions occur, restore service within the shortest reasonable time. If service must be interrupted for maintenance purposes, an EDC should, where reasonable and practicable, attempt to perform the work at a time which will cause minimal inconvenience to customers and provide notice to customers in advance of the interruption.

(e) An EDC shall design and maintain procedures to achieve the reliability performance benchmarks and minimum performance standards established by the Commission.

(f) An EDC shall develop and maintain a program for analyzing the service performance of its circuits during the course of each year.

(g) An EDC shall maintain a 5-year historical record of all known customer interruptions by category of interruption duration, including the time, duration and cause of each interruption. An EDC shall retain all records to support the reporting requirements under § 57.195 (relating to reporting requirements) for 5 years.

(h) An EDC shall take measures necessary to meet the reliability performance benchmarks and minimum performance standards established by the Commission.

(1) The performance standard shall be the minimum level of EDC reliability performance allowed by the

Commission for each measure for all EDCs. Performance that does not meet the standard for any reliability measure shall be the threshold for triggering additional scrutiny and potential compliance enforcement actions by the Commission's prosecutorial staff.

(i) The Commission will consider historical performance levels, performance trends, and the number and type of standards violated when determining appropriate additional monitoring and compliance enforcement actions. The Commission will consider other information and factors including an EDC's outage cause analysis, inspection and maintenance goal data, operations and maintenance and capital expenditure data, and staffing levels as presented in the quarterly and annual reports as well as in filed incident reports.

(ii) Additional monitoring and enforcement actions that may be taken are engaging in additional remedial review, requiring additional EDC reporting, conducting an informal investigation, initiating a formal complaint, requiring a formal improvement plan with enforceable commitments, requiring an implementation schedule, and assessing penalties and fines.

(2) An EDC shall inspect, maintain and operate its distribution system, analyze reliability results, and take corrective measures as necessary to achieve performance benchmarks and performance standards.

§ 57.195. Reporting requirements.

(a) An EDC shall submit an annual reliability report to the Commission, on or before April 30 of each year.

(1) An original and six copies of the report shall be filed with the Commission's Secretary and one copy shall also be submitted to the Office of Consumer Advocate and the Office of Small Business Advocate.

(2) The name, title, telephone number and e-mail address of the persons who have knowledge of the matters, and can respond to inquiries, shall be included.

(b) The annual reliability report for larger EDCs (those with 100,000 or more customers) shall include, at a minimum, the following elements:

(1) An overall current assessment of the state of the system reliability in the EDC's service territory including a discussion of the EDC's current programs and procedures for providing reliable electric service.

(2) A description of each major event that occurred during the year being reported on, including the time and duration of the event, the number of customers affected, the cause of the event and any modified procedures adopted to avoid or minimize the impact of similar events in the future.

(3) A table showing the actual values of each of the reliability indices (SAIFI, CAIDI, SAIDI, and if available, MAIFI) for the EDC's service territory for each of the preceding 3 calendar years. The report shall include the data used in calculating the indices, namely the average number of customers served, the number of sustained customer minutes interruptions, the number of customers affected and the minutes of interruption. If MAIFI values are provided, the number of customer momentary interruptions shall also be reported.

(4) A breakdown and analysis of outage causes during the year being reported on, including the number and percentage of service outages, the number of customers interrupted, and customer interruption minutes categorized by outage cause such as equipment failure, animal

contact, tree related, and so forth. Proposed solutions to identified service problems shall be reported.

(5) A list of the major remedial efforts taken to date and planned for circuits that have been on the worst performing 5% of circuits list for a year or more.

(6) A comparison of established transmission and distribution inspection and maintenance goals/objectives versus actual results achieved during the year being reported on. Explanations of any variances shall be included.

(7) A comparison of budgeted versus actual transmission and distribution operation and maintenance expenses for the year being reported on in total and detailed by the EDC's own functional account code or FERC account code as available. Explanations of any variances 10% or greater shall be included.

(8) A comparison of budgeted versus actual transmission and distribution capital expenditures for the year being reported on in total and detailed by the EDC's own functional account code or FERC account code as available. Explanations of any variances 10% or greater shall be included.

(9) Quantified transmission and distribution inspection and maintenance goals/objectives for the current calendar year detailed by system area (that is, transmission, substation and distribution).

(10) Budgeted transmission and distribution operation and maintenance expenses for the current year in total and detailed by the EDC's own functional account code or FERC account code as available.

(11) Budgeted transmission and distribution capital expenditures for the current year in total and detailed by the EDC's own functional account code or FERC account code as available.

(12) Significant changes, if any, to the transmission and distribution inspection and maintenance programs previously submitted to the Commission.

(c) The annual reliability report for smaller EDCs (those with less than 100,000 customers) shall include all items in subsection (b) except for the requirement in paragraph (5).

(d) An EDC shall submit a quarterly reliability report to the Commission, on or before May 1, August 1, November 1 and February 1.

(1) An original and six copies of the report shall be filed with the Commission's Secretary and one copy shall also be submitted to the Office of Consumer Advocate and the Office of Small Business Advocate.

(2) The name, title, telephone number and e-mail address of the persons who have knowledge of the matters, and can respond to inquiries, shall be included.

(e) The quarterly reliability report for larger companies (those with 100,000 or more customers) shall, at a minimum, include the following elements:

(1) A description of each major event that occurred during the preceding quarter, including the time and duration of the event, the number of customers affected, the cause of the event and any modified procedures adopted in order to avoid or minimize the impact of similar events in the future.

(2) Rolling 12-month reliability index values (SAIFI, CAIDI, SAIDI, and if available, MAIFI) for the EDC's service territory for the preceding quarter. The report shall include the data used in calculating the indices,

namely the average number of customers served, the number of sustained customer interruptions, the number of customers affected, and the customer minutes of interruption. If MAIFI values are provided, the report shall also include the number of customer momentary interruptions.

(3) Rolling 12-month reliability index values (SAIFI, CAIDI, SAIDI, and if available, MAIFI) and other pertinent information such as customers served, number of interruptions, customer minutes interrupted, number of lockouts, and so forth, for the worst performing 5% of the circuits in the system. An explanation of how the EDC defines its worst performing circuits shall be included.

(4) Specific remedial efforts taken and planned for the worst performing 5% of the circuits as identified in paragraph (3).

(5) A rolling 12-month breakdown and analysis of outage causes during the preceding quarter, including the number and percentage of service outages, the number of customers interrupted, and customer interruption minutes categorized by outage cause such as equipment failure, animal contact, tree related, and so forth. Proposed solutions to identified service problems shall be reported.

(6) Quarterly and year-to-date information on progress toward meeting transmission and distribution inspection and maintenance goals/objectives (for first, second and third quarter reports only).

(7) Quarterly and year-to-date information on budgeted versus actual transmission and distribution operation and maintenance expenditures in total and detailed by the EDC's own functional account code or FERC account code as available. (For first, second and third quarter reports only.)

(8) Quarterly and year-to-date information on budgeted versus actual transmission and distribution capital expenditures in total and detailed by the EDC's own functional account code or FERC account code as available. (For first, second and third quarter reports only.)

(9) Dedicated staffing levels for transmission and distribution operation and maintenance at the end of the quarter, in total and by specific category (for example, linemen, technician and electrician).

(10) Quarterly and year-to-date information on contractor hours and dollars for transmission and distribution operation and maintenance.

(11) Monthly call-out acceptance rate for transmission and distribution maintenance workers presented in terms of both the percentage of accepted call-outs and the amount of time it takes the EDC to obtain the necessary personnel. A brief description of the EDC's call-out procedure should be included when appropriate.

(f) The quarterly reliability report for smaller companies (those with less than 100,000 customers) shall, at a minimum, include paragraphs (1), (2) and (5) identified in subsection (e).

(g) When an EDC's reliability performance is found to not meet the Commission's established performance standards, as defined in § 57.194(h) (relating to distribution system reliability), the Commission may require a report to include the following:

(1) The underlying reasons for not meeting the established standards.

(2) A description of the corrective measures the EDC is taking and target dates for completion.

(h) An EDC shall, within 30 calendar days, report to the Commission any problems it is having with its data gathering system used to track and report reliability performance.

(i) When an EDC implements a change in its outage management system for gathering and analyzing reliability performance that has the potential to affect reliability index values, the EDC shall conduct parallel measurement and analysis to isolate and quantify the influence that the measurement change exerts on reliability index values. The length of the parallel measurement period shall be sufficient to isolate and quantify the independent effects of the measurement change.

(j) The Commission will prepare an annual reliability report and make it available to the public.

[Pa.B. Doc. No. 04-1709. Filed for public inspection September 17, 2004, 9:00 a.m.]

Title 58—RECREATION

GAME COMMISSION

[58 PA. CODE CH. 135]

Lands and Buildings

To effectively manage the wildlife resources of this Commonwealth, the Game Commission (Commission), at its June 29, 2004, meeting, adopted an amendment to § 135.48 (relating to State game lands roads open to vehicular traffic for disabled persons).

The final-form rulemaking will have no adverse impact on the wildlife resources of this Commonwealth.

The authority for the final-form rulemaking is 34 Pa.C.S. (relating to Game and Wildlife Code) (code).

Notice of proposed rulemaking was published at 34 Pa.B. 3137 (June 19, 2004).

1. Introduction

The Commission amended § 135.48 to permit the Executive Director to designate State game lands (SGL) roads open to vehicular traffic for disabled persons.

2. Purpose and Authority

At the June 1999 Commission meeting, the Commissioners voted to authorize the Executive Director and staff to decide on all future trail designations needed to administer Chapter 135 (relating to lands and buildings) pertaining to roads open for disabled hunters to travel on all-terrain vehicles. The Commission has decided to grant the same authorization for SGL roads open to licensed vehicular traffic for disabled persons.

Section 721(a) of the code (relating to control of property) provides "The administration of all lands and waters owned, leased or otherwise controlled by the commission shall be under the sole control of the Director, and the commission shall promulgate regulations . . . for its use and protection as necessary to properly manage these lands or waters." The amendment to § 135.48 was adopted under this authority.

3. Regulatory Requirements

The final-form rulemaking amends § 135.48 to permit the Director to designate SGL roads open to vehicular traffic for disabled persons.

4. *Persons Affected*

Disabled persons wishing to hunt or trap in this Commonwealth will be affected by the final-form rulemaking.

5. *Comment and Response Summary*

There were no official comments received regarding this final-form rulemaking.

6. *Cost and Paperwork Requirements*

The final-form rulemaking should not result in additional cost or paperwork.

7. *Effective Date*

The final-form rulemaking will be effective upon publication in the *Pennsylvania Bulletin* and will remain in effect until changed by the Commission.

8. *Contact Person*

For further information regarding the final-form rulemaking, contact Michael A. Dubaich, Director, Bureau of Law Enforcement, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797, (717) 783-6526.

Findings

The Commission finds that:

(1) Public notice of intention to adopt the administrative amendment adopted by this order has been given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202) and the regulations thereunder, 1 Pa. Code §§ 7.1 and 7.2.

(2) The adoption of the amendment of the Commission in the manner provided in this order is necessary and appropriate for the administration and enforcement of the authorizing statute.

Order

The Commission, acting under authorizing statute, orders that:

(a) The regulations of the Commission, 58 Pa. Code Chapter 135, are amended by amending § 135.48 to read as set forth at 34 Pa.B. 3137.

(b) The Executive Director of the Commission shall certify this order and 34 Pa.B. 3137 and deposit them with the Legislative Reference Bureau as required by law.

(c) This order shall become effective upon final-form publication in the *Pennsylvania Bulletin*.

VERNON R. ROSS,
Executive Director

Fiscal Note: Fiscal Note 48-191 remains valid for the final adoption of the subject regulation.

[Pa.B. Doc. No. 04-1710. Filed for public inspection September 17, 2004, 9:00 a.m.]

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GAME COMMISSION
[58 PA. CODE CH. 137]
Wildlife; Feeding

To effectively manage the wildlife resources of this Commonwealth, the Game Commission (Commission), at its June 29, 2004, meeting, adopted an amendment to § 137.33 (relating to feeding of certain wildlife prohibited).

The final-form rulemaking will have no adverse impact on the wildlife resources of this Commonwealth.

The authority for the final-form rulemaking is 34 Pa.C.S. (relating to Game and Wildlife Code) (code).

Notice of proposed rulemaking was published at 34 Pa.B. 3015 (June 12, 2004).

1. *Introduction*

The Commission amends § 137.33 to allow the ban on feeding bears to remain in effect, until amended or deleted by the Commission, by removing the expiration language from the section.

2. *Purpose and Authority*

In recent years, bear populations have increased in parts of this Commonwealth. These increases in bear populations have unfortunately resulted in increased instances of bear/human conflicts. The feeding of bears has consistently been an aggravating factor in many of these conflicts, because this feeding has attracted bears to developed areas. In an effort to limit bear/human conflicts, Chapter 137 (relating to wildlife) was amended to make it unlawful to feed bears. This amendment, however, contained expiration language, which directed that "This section shall expire October 31, 2004, unless a regulation is promulgated reauthorizing it." The Commission has reauthorized § 137.33 to allow it to remain in effect until it is amended or deleted by removing the expiration language.

Section 103(a) of the code (relating to ownership, jurisdiction and control of game and wildlife) states that "The ownership, jurisdiction over and control of game or wildlife is vested in the commission . . ." Section 2102(a) of the code (relating to regulations) provides that "The commission shall promulgate such regulations as it deems necessary and appropriate concerning game or wildlife . . . including regulations relating to the protection, preservation and management of game or wildlife and game . . . in this Commonwealth." The amendment to § 137.33 was adopted under this authority.

3. *Regulatory Requirements*

The final-form rulemaking amends § 137.33 by removing the expiration language, thus allowing the ban on feeding bears to remain in effect until it is amended or deleted by the Commission.

4. *Persons Affected*

Persons living within areas where black bears are located will be affected by the final-form rulemaking.

5. *Comment and Response Summary*

There were no official comments received regarding this final-form rulemaking.

6. *Cost and Paperwork Requirements*

The final-form rulemaking should not result in additional cost or paperwork.

7. *Effective Date*

The final-form rulemaking will be effective upon publication in the *Pennsylvania Bulletin* and will remain in effect until changed by the Commission.

8. *Contact Person*

For further information regarding the final-form rulemaking, contact Michael A. Dubaich, Director, Bureau of Law Enforcement, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797, (717) 783-6526.

Findings

The Commission finds that:

(1) Public notice of intention to adopt the administrative amendment adopted by this order has been given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202) and the regulations thereunder, 1 Pa. Code §§ 7.1 and 7.2.

(2) The adoption of the amendment of the Commission in the manner provided in this order is necessary and appropriate for the administration and enforcement of the authorizing statute.

Order

The Commission, acting under authorizing statute, orders that:

(a) The regulations of the Commission, 58 Pa. Code Chapter 137, are amended by amending § 137.33 to read as set forth at 34 Pa.B. 3015.

(b) The Executive Director of the Commission shall certify this order and 34 Pa.B. 3015 and deposit them with the Legislative Reference Bureau as required by law.

(c) This order shall become effective upon final-form publication in the *Pennsylvania Bulletin*.

VERNON R. ROSS,
Executive Director

Fiscal Note: Fiscal Note 48-188 remains valid for the final adoption of the subject regulation.

[Pa.B. Doc. No. 04-1711. Filed for public inspection September 17, 2004, 9:00 a.m.]

GAME COMMISSION
[58 PA. CODE CH. 137]
Wildlife; Release

To effectively manage the wildlife resources of this Commonwealth, the Game Commission (Commission), at its June 29, 2004, meeting, adopted an amendment to § 137.2 (relating to release of animals).

The final-form rulemaking will have no adverse impact on the wildlife resources of this Commonwealth.

The authority for the final-form rulemaking is 34 Pa.C.S. (relating to Game and Wildlife Code) (code).

Notice of proposed rulemaking was published at 34 Pa.B. 3015 (June 12, 2004).

1. *Introduction*

The Commission amends § 137.2 to make unlawful the release of captive held or captive raised game or wildlife into the wild without first securing a permit.

2. *Purpose and Authority*

Formerly, there were limited, if any, legal restraints prohibiting the release of captive held or captive raised game or wildlife into the wild. Release of captive held or captive raised game or wildlife into the wild is a serious concern due to the possibility of disease spread, unnatural predation and habitat competition. The spread of disease by released animals is a concern because of the potential devastating effects that certain current diseases could have on the native wild animals of this Commonwealth. The recent problems with monkey-pox and chronic wasting disease in other areas are prime examples. Released captive held or captive raised game or wildlife can also

negatively impact native species by direct predation and by competition for habitat. The amendment to § 137.2 makes unlawful the release of captive held or captive raised game or wildlife into the wild without first securing a permit.

Section 2102(c) of the code (relating to regulations) directs that "The commission shall promulgate regulations concerning the transportation, introduction into the wild, importation, exportation, sale, offering for sale or purchase of game or wildlife or the disturbing of game or wildlife in their natural habitat." Section 2102(a) of the code provides that "The commission shall promulgate such regulations as it deems necessary and appropriate concerning game or wildlife and hunting or furtaking in this Commonwealth, including regulations relating to the protection, preservation and management of game or wildlife and game or wildlife habitat, permitting or prohibiting hunting or furtaking, the ways, manner, methods and means of hunting or furtaking, and the health and safety of persons who hunt or take wildlife or may be in the vicinity of persons who hunt or take game or wildlife in this Commonwealth." The amendment to § 137.2 was adopted under this authority.

3. *Regulatory Requirements*

The final-form rulemaking will make unlawful the release of captive held or captive raised game or wildlife into the wild without first securing a permit.

4. *Persons Affected*

Persons wishing to release captive held or captive raised game or wildlife into the wild in this Commonwealth will be affected by the final-form rulemaking.

5. *Comment and Response Summary*

There were no official comments received regarding this final-form rulemaking.

6. *Cost and Paperwork Requirements*

The final-form rulemaking should not result in additional cost or paperwork.

7. *Effective Date*

The final-form rulemaking will be effective upon publication in the *Pennsylvania Bulletin* and will remain in effect until changed by the Commission.

8. *Contact Person*

For further information regarding the final-form rulemaking, contact Michael A. Dubaich, Director, Bureau of Law Enforcement, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797, (717) 783-6526.

Findings

The Commission finds that:

(1) Public notice of intention to adopt the administrative amendment adopted by this order has been given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202) and the regulations thereunder, 1 Pa. Code §§ 7.1 and 7.2.

(2) The adoption of the amendment of the Commission in the manner provided in this order is necessary and appropriate for the administration and enforcement of the authorizing statute.

Order

The Commission, acting under authorizing statute, orders that:

(a) The regulations of the Commission, 58 Pa. Code Chapter 137, are amended by amending § 137.2 to read as set forth at 34 Pa.B. 3015.

(b) The Executive Director of the Commission shall certify this order and 34 Pa.B. 3015 and deposit them with the Legislative Reference Bureau as required by law.

(c) This order shall become effective upon final-form publication in the *Pennsylvania Bulletin*.

VERNON R. ROSS,
Executive Director

Fiscal Note: Fiscal Note 48-187 remains valid for the final adoption of the subject regulation.

[Pa.B. Doc. No. 04-1712. Filed for public inspection September 17, 2004, 9:00 a.m.]

GAME COMMISSION [58 PA. CODE CH. 141]

Hunting and Trapping; Protective Material

To effectively manage the wildlife resources of this Commonwealth, the Game Commission (Commission), at its June 29, 2004, meeting, adopted amendments to § 141.20 (relating to protective material required).

The final-form rulemaking will have no adverse impact on the wildlife resources of this Commonwealth.

The authority for the final-form rulemaking is 34 Pa.C.S. (relating to Game and Wildlife Code) (code).

Notice of proposed rulemaking was published at 34 Pa.B. 3016 (June 12, 2004).

1. Introduction

The Commission amends § 141.20 to expand and clarify the list of specific animal species that may be hunted without wearing daylight fluorescent orange-colored material.

2. Purpose and Authority

In an effort to clarify the applicability of § 141.20, the Commission added furbearers and coyotes (except from the first day to the last day inclusive of the regular firearms deer season or any bear season) to the list of specific animal species that may be hunted without wearing daylight fluorescent orange-colored material. This expansion should aid in the reduction in confusion regarding the wearing of protective material for all who must abide by or enforce, or both, the regulations.

Section 2102(a) of the code (relating to regulations) provides that "The commission shall promulgate such regulations as it deems necessary and appropriate concerning game or wildlife and hunting or furtaking in this Commonwealth, including regulations relating to . . . the health and safety of persons who hunt or take wildlife or may be in the vicinity of persons who hunt or take game or wildlife in this Commonwealth." The amendments to § 141.20 were adopted under this authority.

3. Regulatory Requirements

The final-form rulemaking adds furbearers and coyotes (except from the first day to the last day inclusive of the regular firearms deer season or any bear season) to the list of specific animal species that may be hunted without wearing daylight fluorescent orange-colored material.

Regulatory requirements will therefore be relaxed by the final-form rulemaking.

4. Persons Affected

Persons wishing to hunt or trap furbearers or coyotes in this Commonwealth will be affected by the final-form rulemaking.

5. Comment and Response Summary

There were no official comments received regarding this final-form rulemaking.

6. Cost and Paperwork Requirements

The final-form rulemaking should not result in additional cost or paperwork.

7. Effective Date

The final-form rulemaking will be effective upon publication in the *Pennsylvania Bulletin* and will remain in effect until changed by the Commission.

8. Contact Person

For further information regarding the final-form rulemaking, contact Michael A. Dubaich, Director, Bureau of Law Enforcement, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797, (717) 783-6526.

Findings

The Commission finds that:

(1) Public notice of intention to adopt the administrative amendment adopted by this order has been given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202) and the regulations thereunder, 1 Pa. Code §§ 7.1 and 7.2.

(2) The adoption of the amendment of the Commission in the manner provided in this order is necessary and appropriate for the administration and enforcement of the authorizing statute.

Order

The Commission, acting under authorizing statute, orders that:

(a) The regulations of the Commission, 58 Pa. Code Chapter 141, are amended by amending § 141.20 to read as set forth in Annex A.

(b) The Executive Director of the Commission shall certify this order and Annex A and deposit them with the Legislative Reference Bureau as required by law.

(c) This order shall become effective upon final-form publication in the *Pennsylvania Bulletin*.

VERNON R. ROSS,
Executive Director

Fiscal Note: Fiscal Note 48-186 remains valid for the final adoption of the subject regulation.

Annex A

TITLE 58. RECREATION

PART III. GAME COMMISSION

CHAPTER 141. HUNTING AND TRAPPING

Subchapter A. GENERAL

§ 141.20. Protective material required.

(a) It is unlawful to hunt or assist to hunt game or wildlife or move to or from a hunting location, from 1 hour before legal hunting hours to 1 hour after legal hunting hours outside of a motorized vehicle, at any time

without wearing a minimum of 250 square inches of daylight fluorescent orange-colored material on the head, chest and back combined so that it is visible in a 360° arc. This shall include going to or from a hunting location before or after legal shooting hours. Except as provided in subsection (b)(2) and (3), camouflage orange clothing is lawful provided it contains the minimum amount of fluorescent orange-colored material.

(b) *Permitted acts.* It is lawful to:

(1) Hunt without wearing daylight fluorescent orange-colored material for:

(i) Crows.

(ii) Doves.

(iii) Waterfowl.

(iv) Small game under the authority of a valid falconry permit.

(v) Deer during the flintlock muzzleloader season with lawful firearms and ammunition for the flintlock muzzleloader season by properly licensed flintlock muzzleloader hunters.

(vi) Furbearers.

(vii) Coyotes except from the first day to the last day inclusive of the Statewide regular firearms deer season or any bear season.

(2) Hunt for woodchucks while wearing a hat made of solid daylight fluorescent orange-colored material on the head only.

(3) Move about or relocate while wearing a hat containing a minimum of 100 square inches of a solid daylight fluorescent orange-colored material on the head only and be stationary without wearing the required orange-colored material when hunting for:

(i) Turkey during the spring turkey season.

(ii) Turkey during the fall turkey season in Wildlife Management Units 1A, 1B, 2A, 2B, 5B, 5C and 5D.

(iii) Deer with a bow and arrow or crossbow and bolt during any archery season which is concurrent with the fall turkey season.

(4) Be on stand and stationary while hunting for turkey during the fall season in Wildlife Management Units 2C, 2D, 2E, 2F, 2G, 3A, 3B, 3C, 3D, 4A, 4B, 4C, 4D, 4E and 5A and in lieu of the required 250 square inches place a minimum of 100 square inches of daylight fluorescent orange-colored material within 15 feet of the hunter's location so it is visible in a 360° arc.

(5) Except as provided in paragraph (3)(iii) and during any firearms season for deer that precedes the regular firearms season, hunt for deer with a bow and arrow or crossbow during any archery deer season without wearing daylight fluorescent orange-colored material. When stationary during the overlap with the firearms season for deer in lieu of the required 250 square inches place a minimum of 100 square inches of daylight fluorescent orange-colored material within 15 feet of the hunter's location so it is visible in a 360° arc.

(c) A person who violates this section shall be subject to the penalties as provided in the act.

[Pa.B. Doc. No. 04-1713. Filed for public inspection September 17, 2004, 9:00 a.m.]

GAME COMMISSION
[58 PA. CODE CH. 147]
Special Permits; Taxidermy

To effectively manage the wildlife resources of this Commonwealth, the Game Commission (Commission), at its June 29, 2004, meeting, adopted an amendment to § 147.123 (relating to taxidermy examination) to clarify requirements regarding the use of reproductions and associated parts in addition to the types of species that may be used to mount fish, both in the General and Specialty class.

The final-form rulemaking will have no adverse impact on the wildlife resources of this Commonwealth.

The authority for the final-form rulemaking is 34 Pa.C.S. (relating to Game and Wildlife Code) (code).

Notice of proposed rulemaking was published at 34 Pa.B. 3017 (June 12, 2004).

1. *Introduction*

The Commission's taxidermy testing process and procedures have long been admired and respected throughout the country. Few other states impose professional standards on their taxidermists and it shows in the quality of completed work. In keeping with these standards, the Commission has followed the recommendations of the taxidermist board by making the following amendments relative to the mounting of fish, both in the General and Specialty class.

2. *Purpose and Authority*

The taxidermist board had concerns that the regulations did not adequately address the use of reproductions and associated artificial parts in addition to the types of species that may be used to mount fish, both in the General and Specialty class, to complete the taxidermy examination. The amendments to § 147.123 will eliminate this confusion while also maintaining the high standards and skill level required for a taxidermy permit.

Section 2901(b) of the code (relating to authority to issue permits) provides that "the commission may, as deemed necessary to properly manage the game or wildlife resources, promulgate regulations for the issuance of any permit and promulgate regulations to control the activities which may be performed under authority of any permit issued." Section 2102(a) of the code (relating to regulations) provides that "The commission shall promulgate such regulations as it deems necessary and appropriate concerning game or wildlife . . . in this Commonwealth . . ." The amendments to § 147.123 were adopted under this authority.

Section 2926(a) of the code (relating to taxidermy permits) provides that "The commission shall set up a system of examinations to determine the fitness of all future applicants for the permits" and section 2926(b.1) of the code provides that "a taxidermist may be licensed to obtain a permit for one or more of the following areas: (i) big and small game animals, excluding wild turkey; (ii) fish; and (iii) game birds, including wild turkey."

3. *Regulatory Requirements*

The final-form rulemaking will identify what types of reproductions and associated artificial parts in addition to the types of species that may be used to mount fish, both in the General and Specialty class, to complete the taxidermy examination.

4. *Persons Affected*

Persons wishing to obtain a taxidermy permit in this Commonwealth will be affected by the final-form rulemaking.

5. *Comment and Response Summary*

There were no official comments received regarding this final-form rulemaking.

6. *Cost and Paperwork Requirements*

The final-form rulemaking should not result in additional cost or paperwork.

7. *Effective Date*

The final-form rulemaking will be effective upon publication in the *Pennsylvania Bulletin* and will remain in effect until changed by the Commission.

8. *Contact Person*

For further information regarding the final-form rulemaking, contact Michael A. Dubaich, Director, Bureau of Law Enforcement, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797, (717) 783-6526.

Findings

The Commission finds that:

(1) Public notice of intention to adopt the administrative amendment adopted by this order has been given

under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202) and the regulations thereunder, 1 Pa. Code §§ 7.1 and 7.2.

(2) The adoption of the amendment of the Commission in the manner provided in this order is necessary and appropriate for the administration and enforcement of the authorizing statute.

Order

The Commission, acting under authorizing statute, orders that:

(a) The regulations of the Commission, 58 Pa. Code Chapter 147, are amended by amending § 147.123 to read as set forth at 34 Pa.B. 3017.

(b) The Executive Director of the Commission shall certify this order and 34 Pa.B. 3017 and deposit them with the Legislative Reference Bureau as required by law.

(c) This order shall become effective upon final-form publication in the *Pennsylvania Bulletin*.

VERNON R. ROSS,
Executive Director

Fiscal Note: Fiscal Note 48-189 remains valid for the final adoption of the subject regulation.

[Pa.B. Doc. No. 04-1714. Filed for public inspection September 17, 2004, 9:00 a.m.]