

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Rulemaking Re: Amended Reliability :
Benchmarks and Standards for the :
Electric Distribution Companies : Docket No. L-00030161
:

OFFICE OF CONSUMER ADVOCATE'S
REPLY COMMENTS

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I. INTRODUCTION

On December 8, 2003, Comments were filed regarding the Pennsylvania Public Utility Commission's (Commission) Proposed Rulemaking to amend its reliability benchmarks and standards for electric distribution companies (EDC). The OCA received comments from the Energy Association of Pennsylvania (EAP); PECO Energy Company (PECO); PPL Electric Utilities Corporation (PPL); Allegheny Power Company (Allegheny Power); the FirstEnergy Companies consisting of Metropolitan Edison Company (Met-Ed), Pennsylvania Electric Company (Penelec), and Pennsylvania Power Company (Penn Power); and Pennsylvania AFL-CIO Utility Caucus (AFL-CIO). The EDCs and EAP raise four primary points. First, they argue that the Commission should clarify its regulations to maintain a distinction between the performance benchmark and the performance standard, thus ensuring that there is no specific requirement that an EDC achieve its pre-restructuring level of performance. Second, the EDCs and EAP seek to have the reporting requirements scaled back and seek proprietary treatment of much of the data provided under the reporting requirements. Third, EAP seeks to have reporting of the worst performing circuit information eliminated from the proposed regulations. Fourth, EAP takes issue with a letter sent by the Bureau of Consumer Services to all EDCs regarding the BCS procedures for handling individual consumer quality of service complaints. The AFL-CIO seeks to have the Commission establish inspection, maintenance, repair and replacement standards as required by Section 2802(20) and proposes other clarifications.

The OCA submits that the modifications proposed by EAP and the EDCs would further weaken the Commission's regulations, which even as proposed, do not achieve the mandate of the Electricity Generation Customer Choice and Competition Act (Act). In addition, the proposals

by EAP and the EDCs would compromise the Commission's ability to monitor the progress of EDCs in meeting the Act's requirements, and place a veil of secrecy over the EDCs' actions regarding reliability through treating important information as proprietary. Additionally, the EAP's challenge to BCS's procedures for resolving quality of service complaints, which are growing in number, is misplaced in this proceeding, and fundamentally miscomprehends the purpose of these regulations.

Reliability is of critical importance to all consumers and all citizens in Pennsylvania. The Act was explicit that the level of reliability that was enjoyed by the citizens of this Commonwealth before the restructuring of the electric industry was, at least, to be maintained at pre-restructuring levels. 66 Pa.C.S. §2802(3). Unfortunately, by any measure, for the majority of EDCs in Pennsylvania, this requirement has not been met. The Commission's original regulations have proven to be flawed and unable to achieve the legal requirements. It is now time for the Commission to establish benchmarks and standards consistent with the law, enforce those standards and benchmarks, and adequately inform the public of all steps being taken to ensure reliability. The OCA's proposed modifications to the regulations are designed to move the regulations in that direction. The proposals of EAP and the EDCs move the Commission in the opposite direction--farther away from its legal obligation.

As such, the OCA respectfully submits that the recommendations of the OCA set forth herein and in its initial Comments, as well as in its Comments and Reply Comments to the Tentative Order at Docket No. M-00991220, should be adopted. The Commission must establish regulations that meet the requirements of the Act, allow it to properly monitor the progress of the EDCs, and fully inform consumers and the public of the reliability performance of the EDCs in the Commonwealth. Additionally, the Commission should timely fulfill its statutory obligation under

Section 2802(20) as proposed by the AFL-CIO. With these modifications, the Commission's regulations will take another step toward achieving the mandates of the Act.

II. REPLY COMMENTS

A. The Commission Should Further Clarify The Performance Standards And Benchmarks As Recommended By The OCA In Its Initial Comments.

The EDCs and EAP argue that the Commission regulations are unclear as to what standard or benchmark an EDC must meet under the regulations. See, EAP Comments at 4-5, PPL Comments at 3, FirstEnergy Comments at 5, PECO Comments at 4. The EDCs and EAP take issue with the Commission's proposal to add the phrase "performance benchmark" to Sections 57.194 (e) and (h), arguing that this addition makes it unclear as to whether the EDC is required to meet the performance benchmark or the performance standard. Also, EAP and the EDCs take issue with the Commission's statement that the performance benchmark must be met over the long term, noting that there is no clarity as to what the long term might be. EAP and some EDCs recommend that the term "performance benchmark" be removed from the regulations, particularly Sections 57.194(e) and (h) and that the role of the performance benchmark be limited. Some EDCs recommend that the term "performance benchmark" be better defined in the regulations.

The OCA does not disagree with the EDCs that the Commission's proposed regulations are unclear about the terms "performance benchmark" and "performance standard," and the role that each plays in the Commission's regulations. Where the OCA disagrees, though, is with the clarification that should be provided. The EDCs and EAP argue that the "performance benchmark," which represents the historic, pre-restructuring level of performance, should not be

established in any form as a requirement, but that it could be a long term objective or target. EAP argues that the Commission's regulations should always maintain a distinction between the performance standard and the performance benchmark. See, EAP Comments at 4-5. In other words, the EDCs and EAP argue that there should be no requirement that an EDC maintain at least its historic level of reliability as required by the Electricity Generation Customer Choice and Competition Act (Act). See, 66 Pa.C.S. §2802(3). The OCA submits, in contrast, that eliminating the performance benchmark from Sections 57.194(e) and (h) and limiting the role of the performance benchmark in the regulations is inconsistent with the mandate of the Act and undermines the public interest.

As set forth in detail in the OCA's Comments at pages 6-9, the OCA's Comments at Docket No. M-00991220 (October 10, 2003) at pages 9-11 and the OCA's Reply Comments at Docket No. M-00991220 at 16-17, the Commission must establish a requirement that an EDC meet its historic, pre-restructuring performance benchmark over a specified period of time. The OCA has recommended the use of the rolling 3-year average for the time period. Without such a requirement, reliability may deteriorate under the Commission's regulations below pre-restructuring levels. This does not satisfy the mandate of the Act that reliability be maintained at least at pre-restructuring levels. The OCA recommended definitions and changes in the regulations in its Comments to achieve this goal. OCA Comments at 8-9.

What the Commission should *not* do is remove the term "performance benchmark" from Sections 57.194(e) and (h) or limit the role of the performance benchmark to nothing more than a vague target that may be achieved some day. Although further clarification is needed as to compliance with the performance benchmark, the Commission's proposed addition of the term

"performance benchmark" in Sections 57.194(e) and (h) is a step in the right direction. The requirement that each EDC design and maintain procedures to achieve the performance benchmark (set forth in Section 57.194(e)), and take the measures necessary to meet the benchmark (set forth in Section 57.194(h)), is necessary under the Act.

The OCA submits that the Commission should retain the term "performance benchmark" in Sections 57.194(e) and (h) and explicitly define this term as recommended by the OCA in its Comments. Specifically, the OCA recommends that the rolling 3-year average standard be set equal to the performance benchmark and that Sections 57.192, 57.194(h)(3) and 57.194(h)(4) be further modified as recommended by the OCA. See, OCA Comments at 8-9.

B. The Commission Should Retain Its Proposed Reporting Requirements And Should Allow The Reports And Information To Remain Publicly Available.

The EDCs and EAP have opposed the Commission's proposal for quarterly reporting of more detailed information on reliability measures. The EDCs and EAP do not object to providing the basic reliability index information quarterly, but object to reporting on such things as O&M budgets, performance in relation to the budget, call-out rates, and the use of contractors. The EDCs and EAP argue that the information sought by the Commission is too detailed, not directly related to reliability, and does not provide meaningful information or insight into an EDC's reliability performance. EAP Comments at 7-9; FirstEnergy Comments at 7-8. The EDCs and EAP argue that if reporting of such things as budgets, performance in relation to budgets, use of contractors, staffing levels and call out rates is required, the information must be treated as proprietary so that it is not "misinterpreted" by the public and will not undermine the EDCs bargaining with contractors and employee representatives. EAP Comments at 10-13; PECO Comments at 8-11; PPL Comments at

8; Allegheny Power Comments at 3-4; FirstEnergy Comments at 17. The OCA submits that the EAP and EDC comments are without merit. The Commission should retain the quarterly reporting requirements and should not treat the information as proprietary or shielded from public view.

As the OCA noted in its Comments, the Commission's proposed regulations greatly improve the reporting requirements. Despite the EDCs' protests, the information requested by the Commission is related to reliability performance and can prove very useful to the Commission in meeting its monitoring obligations. Information in addition to the reliability indices on such things as capital and operating budgets, staffing levels, performance in relation to the budgets, and the causes of outages will help the Commission to follow the progress of an EDC in meeting the requirements of the regulations. If the EDC is concerned that the Commission may not understand the relationship between technological progress and the budgets, for example, the Company is fully capable of providing an explanation with the data to assist the Commission in understanding the information that is provided. Eliminating the reporting, however, is not the proper way to address the concern raised by the EDCs and EAP.¹

The EDCs and EAP also argue that if information regarding budgets, performance relative to budgets, use of contractors and resources in general, staffing levels and call-out rates is going to be reported, it should not be made available to the public. The OCA submits that there is no basis for keeping this information from public view. Indeed, this type of information is often part of a base rate case filing and is often subject to significant public scrutiny in that process. The claim

¹ The EDCs and EAP also argue that collecting this data for reporting purposes will be time consuming and costly. The data that the Commission seeks, however, is the type that one would expect the EDC's management to be monitoring as well. The compilation of this data should not be time consuming if it is being properly monitored by management and maintained by the EDC.

that release of such information will somehow "compromise" bargaining positions would lead to the conclusion that all utility budget information should be withheld from public view. Such an approach is completely inconsistent with the regulatory process. The public has a right to know how their dollars are being spent by the utility and whether they are receiving adequate service at reasonable cost. This is particularly important now, since reliability performance has deteriorated since the passage of the Act. The public should know that appropriate actions are being taken to remedy this deterioration in reliability.

The major concern of EAP and the EDCs seems to stem from an article written by a reporter from the Washington Post after Hurricane Isabel.² *See, e.g.*, EAP Comments at 11-13; PECO Comments at 8-10. The EDCs and EAP argue that publication of information such as that requested by the Commission is "fraught with the potential for distortion, misinterpretation and the possibility of harm to the utility." EAP Comments at 11. The OCA submits, however, that the public has every right to the information since it is ratepayer dollars that provide the funding and it is the service to the ratepayers that is at issue. The fact that someone, somewhere may misinterpret the information is not a proper basis to restrict its view. If the EDC is concerned about a misinterpretation of the information by the public or press, the EDC should include appropriate explanations of the information and its performance with its reports. The EDC should communicate with its customers and the press so that a proper understanding of the material is achieved. Hiding behind a veil of secrecy on such an important topic as reliability would be a disservice to the public and to the Commonwealth.

² PPL further argues that such information is "competitively" sensitive. PPL Comments at 8. Since distribution and transmission are not competitive services but regulated, monopoly services, this comment has no basis.

The OCA submits that the Commission should retain its reporting requirements and should ensure that these reports are publicly available. The EDC is providing an essential, regulated monopoly service, and the public should be permitted access to the information. Any concerns of the EDCs that either the Commission or the public may misinterpret information can be addressed through the inclusion of proper explanations with the reports and through timely contacts with the media and consumers.

C. The Commission Should Retain The Worst Performing Circuit Reporting But Should Provide Further Clarification Regarding This Requirement.

The OCA disagrees with EAP's arguments that the Commission should not include a requirement for reporting of the worst performing circuits. EAP Comments at 6-7. EAP argues that this reporting requirement is unsustainable and vague and notes that the Commission has previously determined not to include such a requirement. Id. Some of the EDCs note that the language, if included, should be clarified and should allow for more flexibility to match each EDC's operating procedures with regard to worst performing circuits. PECO Comments at 11-14; FirstEnergy Comments at 10-11; PPL Comments at 7. The AFL-CIO has also proposed a definition of the term "circuit" for clarification purposes.

The OCA submits that reporting of the worst performing circuit information should be required by the regulations. PECO best summarized the value of worst performing circuit information to the EDC in managing reliability as follows:

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 at 11-12. Reporting on the worst performing circuit program to the Commission will provide valuable information to the Commission in its monitoring of reliability.

The recommendations for clarification of this reporting requirement, and the need for flexibility so that the reporting requirement reflects the EDC's worst performing circuit program, should be considered by the Commission. The reporting requirement can be structured to minimize the burden on the EDCs and to match each EDC's worst performing circuit program. EAP's argument, however, that the information is not useful to the Commission should be rejected. Information on such a fundamental aspect of an EDC's reliability program will certainly be useful to the Commission.³

The OCA submits that reporting of worst performing circuit information will assist the Commission in monitoring the reliability programs of each EDC. The reporting of this information should be required, but modifications of the requirement should be made to better match the EDCs' programs.

³ EAP also argues that the Commission has previously rejected the reporting of worst performing circuit information when it established its current regulations. EAP Comments at 7. It is important to note that the Commission rejected this element when it ruled that reporting of operating area information would be required. See, Final Rulemaking Order To Amend 52 Pa. Code Chapter 57 To Ensure Electric Reliability, Docket No. L-00970120, slip op. at 15-16 (Order entered April 24, 1998). Here, the Commission is proposing to replace operating area information with the worst performing circuit information. As the OCA noted in its Comments, though, reporting of both operating area information and worst performing circuit information should be required since they address two different aspects of reliability program management.

D. EAP's Complaints About The October 17, 2003 BCS Letter Are Without Merit And Not Appropriate In This Rulemaking Docket.

EAP and PECO have included a section in their Comments in this proceeding asking the Commission to postpone the effective date of a letter issued by the Bureau of Consumer Services on October 17, 2003 regarding quality of service complaints. EAP Comments at 14-15; PECO Comments at 14. EAP argues that the BCS letter is inconsistent with the proposed regulations and that it sets new standards, rules and procedures. EAP argues that the effectiveness of this letter should be postponed until after the regulations become effective. The OCA submits, however, that EAP's arguments are without merit and are not appropriately raised in this docket. EAP's and PECO's comments on this letter should be disregarded.

Upon receipt of the EAP Comments, the OCA requested and received a copy of the letter that was sent by BCS to all EDCs. The letter clearly indicates the purpose of the letter in the opening sentence where it states:

The purpose of this letter is to inform you of a change the Bureau of Consumer Services (BCS) is making to our process for investigating informal complaints relating to quality of service (e.g. alleged numerous outages, recurring voltage problems, etc.)

BCS Letter at 1. The letter then sets forth procedures for consideration of the consumer complaint, including the additional steps that BCS will follow if an adequate resolution of poor service quality is not provided by the EDC.

Initially, the OCA submits that this rulemaking proceeding is not the appropriate forum to address an action by BCS. If EAP or individual EDCs had issues with the BCS letter, the procedures for challenging a staff action should have been followed. 52 Pa. Code §5.44. It is not appropriate to insert this issue, out of context, into a rulemaking proceeding.

Second, and more fundamentally, EAP misunderstands the difference between this rulemaking and individual consumer complaints regarding quality of service. This rulemaking sets forth a means for the Commission to ensure that an EDC is managing its system on an overall basis in a manner consistent with the Act. But, each individual customer is entitled by law to receive adequate, efficient, safe and reasonable service that is reasonably continuous and without unreasonable interruption or delay. 66 Pa.C.S. §1501. Achieving an overall system reliability number as established in this rulemaking does not relieve an EDC of the obligation to provide reasonably continuous service without unreasonable interruption or delay to each customer. Indeed, EAP's position is akin to saying that if an EDC billed almost all of its customers correctly, individual customers who have received an incorrect bill should not complain and BCS should do nothing about it.

The OCA submits that BCS must review and resolve all individual complaints about service quality. The BCS letter simply sets forth the information needed to consider the complaint and the procedures to be followed upon determination by BCS that the complaint is well-founded. The OCA submits that clarity to the process as provided in the letter will assist all parties in the handling of quality of service complaints, which as BCS statistics show, are continuing to grow in Pennsylvania. See, 1996-2002 Utility Consumer Activities Report and Evaluation. If an EDC disagrees with a BCS conclusion or resolution, procedures are in place for appeal of those decisions to the Commission. That, then, would be the proper forum for addressing an EDC disagreement with a BCS resolution.

The OCA submits that the BCS letter is not inconsistent with this rulemaking and does not affect this rulemaking. The BCS function to properly resolve specific consumer complaints

differs from the purpose of this rulemaking to ensure that overall reliability is being maintained at appropriate levels. Any legitimate concerns with a BCS action should be pursued through the appropriate procedures at the Commission and should not be made a part of this rulemaking.

E. The Requests Of FirstEnergy For Specific Modifications To The Proposed Regulations For Two Of Its Operating Subsidiaries Should Be Rejected.

In the context of this rulemaking, FirstEnergy makes two specific requests for its operating subsidiaries. First, the Company requests that the regulations be modified to allow an EDC with the size of Pennsylvania Electric Company (Penelec) to have two operating areas for purposes of determining major events. FirstEnergy argues that with a service territory in excess of 17,000 square miles and 585,000 customers over that area, very few interruptions would qualify as "major events." FirstEnergy Comments at 6. Second, FirstEnergy requests that the demarcation point for "small EDCs" be changed so that Pennsylvania Power Company (Penn Power) can qualify as a "small EDC." FirstEnergy argues that allowing Penn Power, with 154,000 customers, to be considered a small EDC would relieve Penn Power of some reporting requirements under Section 57.195. First Energy Comments at 13. FirstEnergy does not appear to request that Penn Power be held to the performance standards applicable to small EDCs. The OCA submits that both requests should be denied.

The OCA agrees that Penelec has a large service territory, but it is not clear to the OCA that this will significantly impact the number of events that could be classified as major events under the Commission's definitions. More fundamentally, Penelec does have particular challenges given the geographic size of its service territory, and its procedures must be adequate to respond to these factors. The reliability index information for the service territory will assist the Commission

in determining whether Penelec is adequately addressing the needs of its entire service territory. As the OCA discussed in its Comments, though, reporting on an operating area basis should continue so that the Commission can ensure that resources are properly deployed throughout the service territory.

As to the request to have Penn Power classified as a "small EDC" for reporting purposes, the OCA submits that such classification is not appropriate. Penn Power serves 154,000 customers, far in excess of the number of customers served by those EDCs designated as small EDCs in Pennsylvania. Except for UGI, the small EDCs serve under 10,000 customers.⁴ Even UGI serves well under 100,000 customers.⁵ Penn Power has a service territory that is significant in size and part of a much larger electric utility system, the FirstEnergy system. Penn Power's circumstances are significantly different than the other small EDCs and Penn Power's circumstances do not warrant any form of special treatment. Moreover, there is no indication that there is any excessive burden on Penn Power in meeting these reporting requirements.

For these reasons, the request of the FirstEnergy Companies to have the regulations modified for Penelec and Penn Power should be rejected. Penelec should not establish two operating areas for defining major event and Penn Power should not be considered a "small EDC" for reporting purposes or any other purpose.

⁴ Recent information from each small EDC's website shows that Wellsboro Electric serves about 5,700 customers, Citizens' Electric serves about 5,533 customers, and Pike serves about 4,385 customers. See, www.wellsboroelectric.com, www.citizenselectric.com, and www.oru.com.

⁵ UGI-Electric serves about 61,500 customers. See, www.ugi.com.

F. The AFL-CIO Request For The Commission To Establish Inspection, Maintenance, Repair And Replacement Standards As Required By Section 2802(20) Should Be Acted On By The Commission In A Timely Manner.

In its Comments at pages 2-4, the AFL-CIO points out that the Commission has not proposed specific inspection and maintenance standards as part of this rulemaking, as required by Section 2802(20) of the Act. Section 2802(20) of the Act 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.*

66 Pa.C.S. §2802(20)(emphasis added). AFL-CIO argues that the Act requires the Commission to establish these standards and that the Commission should comply with these requirements as part of this rulemaking. AFL-CIO recommends that the Commission amend Section 57.194(c) to include specific, enforceable standards.

The OCA agrees with AFL-CIO that Section 2802(20) clearly requires the Commission to establish standards through regulations. To the best of the OCA's knowledge, the Commission has not established these standards through any other rulemaking and it is not a part of this rulemaking. The OCA urges the Commission to timely fulfill its statutory obligation to establish standards regarding the inspection, maintenance, repair and replacement of transmission and distribution systems. The Commission should not delay any further in fulfilling this statutory obligation.

III. CONCLUSION

For the reasons set forth above, and in the OCA's Comments as well as its Comments and Reply Comments at Docket No. M-00991220, the OCA continues to urge the Commission to modify its proposed regulations to ensure compliance with the mandates of the Act. The Commission must establish performance requirements that meet the Act's mandate and must develop an aggressive enforcement mechanism to ensure compliance. Additionally, the Commission must ensure that it receives the necessary information to monitor an EDC's progress and must ensure that information is fully available to the public. The Commission should also timely fulfill its statutory obligation under Section 2802(20) to establish inspection, maintenance, repair and replacement standards.

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