

BEFORE THE PUBLIC SERVICE COMMISSION OF MARYLAND

Revisions to COMAR 20.50 – Service	*	
Supplied by Electric Companies – Proposed	*	Administrative Docket
Reliability and Service Quality Standards	*	RM 43

COMMENTS OF MONTGOMERY COUNTY, MARYLAND

Pursuant to the “Notice of Initiating Rule Making, Notice of Comment Period, and Notice of Rule Making Session,” and the “Notice of Extension of Comment Period and Re-scheduling of Rule Making Session,” issued by the Public Service Commission of Maryland (“Commission”) on January 12, 2011, and January 25, 2011, respectively, Montgomery County, Maryland (“Montgomery County”) hereby files its comments in the above-captioned proceeding.

I. THE COMMISSION SHOULD ENSURE THAT THE SPECIFIC STANDARDS ADOPTED HEREIN RESULT IN A LEVEL OF RELIABILITY EQUIVALENT TO THE PERFORMANCE METRICS OF UTILITIES WHO ARE IN THE TOP QUARTILE IN THE NATION

Unquestionably, Montgomery County and its residents and businesses have suffered greatly because of the unreliability and poor quality of electric service provided by Potomac Electric Power Company (“Pepco”). Pepco has previously admitted to this Commission that its performance has ranked in the bottom quartile for reliability nationwide for the past five years during *normal* conditions. Moreover, Pepco’s customers experienced widespread and long-lasting power outages during and after storms that occurred in February, July, and August 2010. Pepco’s customers were treated to a repeat of these disastrous outages during and after the storm that just recently occurred during the last week of January, coupled with a failure of Pepco to adequately communicate with its customers during this major outage event, which underscored the complete lack of progress by Pepco toward providing reliable electric service to its customers. Hence, no one has a stronger interest than Montgomery County in the Commission adopting and enforcing reliability and service quality standards which contain the “best practices” of the electric utility industry and which, if met by Pepco, would place that utility in the first quartile for reliability and service quality.

Accordingly, Montgomery County commends the Commission for recognizing that it is imperative to establish reliability standards and to hold Pepco financially accountable for meeting such standards. Indeed, reliability standards and accountability are the key elements of legislation introduced by the Chairman of Montgomery County’s House Delegation, The Honorable Brian J. Feldman, legislation fully embraced by Governor O’Malley. It is also important that the Commission recognize that the Montgomery County Executive has appointed a community-leader led Work Group to also investigate Pepco reliability issues. The mission of this Work Group is to analyze Pepco’s lack of reliability and to make recommendations for improved service, please see the attached letter from the Work Group’s Chair Norman R. Augustine.

As the Commission fully appreciates, our County is heavily invested in the pending adjudicatory proceeding In The Matter Of An Investigation Into The Reliability And Quality Of The Electric Distribution Service Of Potomac Electric Power Company, Case No. 9240. Prior to the initiation of the instant proceeding, it was the County's expectation that both the level of reliability expected of Pepco as well as the specific means and pace by which Pepco would meet those standards would be resolved therein. By virtue of initiating this proceeding, the County presumes that the Commission believes that establishing reliability standards and accountability measures are best addressed divorced from the consideration of the best practices other utilities employ to achieve high levels of reliability.

The County does not object to such an approach assuming two inter-related concerns are addressed: (1) the integrity of the broader inquiry into Pepco's reliability is not prejudiced; and (2) that the standards applicable to Pepco are not diluted by virtue of different standards that may be more appropriate for other utilities in the state. This latter point is particularly critical. Pepco stands alone in the state as the worst performing utility and our residents have suffered for more than 5 years. The high standards that Pepco must be called upon to achieve should be considered in light of the specific facts pertaining to Pepco, and must not be weakened by virtue of adopting a lowest common denominator approach. Assuming the Commission addresses these concerns, establishing standards upfront that are equivalent to top quartile performing utility metrics can inform and guide the broader inquiry into Pepco's system and the best path forward to meeting such standards in the most expeditious means possible.

However, the County does have very strong objections to the precise reliability standards set forth herein, standards that Commission staff advised county officials were taken from the State of Michigan. These reservations are based on the following concerns:

- (1) When county officials asked Commission staff if adoption of these measures would result in Pepco being in the top quartile in the nation, staff responded by saying that they did not know the answer to that question.<sup>1</sup> From the County's perspective, that is the single most important question that must be answered in the affirmative. The precise metrics are less important than knowing that such metrics are those met by the highest performing utilities in the nation. As a community that has suffered from service that ranks among the poorest in the nation for the past 5 years, anything less than a requirement that Pepco provide top quartile service is simply not acceptable.
- (2) Our review of the specific metrics themselves suggest that Pepco's service would hardly improve. For example, proposed Section 20.50.07.05A.(2) (page 12) would find an electric utility's level of performance to be acceptable if "[c]onsidering data including only major event conditions, a utility shall restore service within 60 hours to at least 90% of its customers

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<sup>1</sup> Staff advised county officials that the Michigan model was attractive to it by virtue of its "specificity".

experiencing service interruptions.” The Commission is well aware of how poorly Pepco performed during the January major event outage, as evidenced by its Order No. 83832, issued on February 1, 2011, establishing Case No. 9256, in which the Commission announced that it would conduct a hearing on March 3, 2011, *inter alia*, “to understand why large numbers of customers were out of service for a significant period of time, far exceeding 24 hours.”<sup>2</sup> However, in a PowerPoint presentation made to the Montgomery County Council’s Transportation, Infrastructure, Energy and Environment Committee on February 7, 2011, entitled “January 26, 2011 Weather Event,” Pepco asserted on page 8 that: “[f]rom the peak of the storm, 90% of our customers were restored by 7a.m. Saturday January 29<sup>th</sup> – 2 ½ days from the start of the storm.” *Since 2 ½ days equals 60 hours, this means that Pepco would have been in compliance with proposed Section 20.50.07.05A(2) as an acceptable level of performance even though it is clear beyond question to the residents, businesses, and government of Montgomery County, as well as to this Commission, that Pepco failed miserably in delivering reliable, quality service to its customers.*

- (3) The proposed standards are also ambiguous on several key issues. For example, Section 20.50.07.05A (1) states that “...a utility shall restore service within 36 hours to at least 90% of its customers experiencing service interruptions.” When does the 36 hours begin? In addition, it is unclear as to whether the Commission intends to adopt separate standards for normal and major events. The County believes that is critical insofar as a blending of the two could significantly underestimate service quality for major events
- (4) The proposed standards fail to include critical elements of Pepco’s poor performance such as the adequacy of the utility’s web-based communications. One of Pepco’s glaring failures during its extensive late January power outage was that the outage map contained on its website experienced its own extended outage. Moreover, web-based communications systems should be compatible with iPhones, smartphones, and other mobile communications devices. The proposed regulations also are silent as to standards requiring adequate storm preparation by the utility. The goal should be to prevent or minimize the occurrence and duration of outages. Pepco and other utilities should have sufficient full-time, adequately trained employees who are undertaking adequate maintenance to prevent outages and to lessen the severity of outages that do occur. There should also be standards for obtaining the assistance of additional personnel before a storm occurs, not just in its aftermath. And this need for standards extends not just to those involved in repairing facilities to avoid or shorten outages, but also to supplementing the personnel involved in the utility’s communications with its customers.
- (5) Critical definitions are either ambiguous or render the proposed regulation far too lenient. For instance, the Commission is rightly concerned about the

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<sup>2</sup> Order No. 83832 at p. 2.

quality of an electric utility's telephone communications with its customers, and to that end proposes in Section 20.50.07.05C.(2) (page 13) that a utility must have a "telephone call response factor of 5% or less." The definition of "Telephone call response factor" in Section 20.50.01.03B.(21-1)(pages 3-4) is "the percentage of telephone calls from customers that are not answered by a utility." Hence, the key to the value of this as a true measure of the reliability and quality of a utility's telephone communications with its customers rests with what it means for the utility to adequately "answer" its customers' calls. According to proposed Section 20.50.01.03B.(1)(a) (page 1), "'Answer' means rendering assistance to a telephone caller or accepting information necessary to process a telephone call." Does being told by an automated message that Pepco knows the customer's electricity is out (after the customer has punched in her home phone number in the dark) and then being given an incorrect estimated time that her service will be restored mean that Pepco accepted information necessary to process the customer's call or has rendered assistance? If so, then, under the proposed definition, the customer's call would be deemed to have received an "answer" for purposes of not being included in the "telephone call response factor." Of course, this is not at all what Pepco's customers believe constitute even minimally adequate "answers" to their calls, and neither should the Commission.<sup>3</sup>

Accordingly, the County respectfully submits that the Commission should take a step back. As an initial matter, the Commission should pronounce its absolute commitment to reliability standards that will ensure service equivalent to the service provided by utilities performing in the top quartile nationally. That commitment is foundational. If the Commission believes our citizens should expect anything less than that, then the Commission should so state. Assuming that is not the case, the Commission should then ask its staff to compile the metrics from the best performing utilities in the nation. It is those metrics that should guide and inform both the Commission and the parties to this proceeding. Upon publication of those metrics, the Commission should then ask for an additional round of opening and reply comments.

## II. THE USE OF DISCRETIONARY CIVIL PENALTIES IS GROSSLY INADEQUATE TO ENSURE ACCOUNTABILITY

Section 20.50.07.08A. (page 20) of the draft regulations states that "[a] utility that fails to meet all or any of the service interruptions, downed wire repair, or service quality standards under COMAR 20.50.07.05 shall be subject to a civil penalty under Title 13 of the Public Utilities Act." Section 13-201 of the Maryland Code limits a civil penalty to \$10,000 per violation, with each day constituting a separate offense.

This approach to holding Pepco accountable is grossly inadequate. The financial consequences to our community over the past 5 years resulting from Pepco's unacceptably poor service is, conservatively speaking, in the tens of millions of dollars, if

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<sup>3</sup> Also attached to these Comments is an extensive list of other problems and concerns that Montgomery County has identified concerning the proposed regulations.

not hundreds. Lost wages, lost profits, lost food, hotel expenses, generators bought, overtime for county crews – these are just some of the extraordinary financial burdens that Pepco has caused our residents to suffer. To date, Pepco has not suffered any financial repercussions for its long history of poor service. None. In fact, as the Commission has acknowledged when it recently opened yet another proceeding, Pepco is financially indifferent to extended outages. This must change. Going forward, if Pepco does not provide top quartile service, the financial consequences to Pepco should be comparable to those imposed on our residents.

Discretionary civil penalties of this magnitude will not achieve that result and will not make it right by our residents. Section 13-201 (e) requires that “[a] civil penalty collected under this section shall be paid into the General Fund of the State.” This means that none of the penalties would be refunded to Pepco’s customers. That is fundamentally unfair.

In addition, the proposed rule gives no guidance as to what constitutes a violation. If Pepco did not restore service quickly enough, would each customer not restored in a timely manner up to the minimum percentage set forth in the particular regulation be a separate violation, or is Pepco liable for a maximum of only \$10,000 per day no matter how many customers are still in the dark past the time set forth in the regulation? More broadly, Pepco might not face any civil penalty even though it violates the regulatory requirement because proposed Section 20.50.07.08A. provides only that a violating utility is “subject to a civil penalty,” not that one will actually be ordered. Moreover, Section 13-201 (d) gives the Commission the discretion to order the payment of a smaller civil penalty.<sup>4</sup>

The Commission has itself already recognized that civil penalties are only one means to achieve accountability. In Case No. 9240, on February 10, 2011, the Commission issued a “Notice Expanding Scope of Issues,” in which it stated that:

“The Commission hereby asks the parties to include in testimony they file in this case any suggested remedies the Commission should consider imposing on Pepco if the Commission were to find that Pepco has failed to maintain a reliable system or to provide reliable service to its customers. The parties’ suggested remedies may include, but need not be limited to, imposition of civil penalties pursuant to Sections 13-201 and 13-202 of the Public Utilities Article, *Annotated Code of Maryland* (“PUA”); change(s) in the schedule or manner of operations pursuant to PUA Section 5-101(c)(2); modification or the Company’s service territory or revocation of the Company’s authority to exercise its franchise(s) pursuant to PUA Section 5-201; [footnote omitted] or any other remedies that the parties believe appropriate.”<sup>5</sup>

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<sup>4</sup> The Commission also may impose a civil penalty for a “safety violation” under Section 13-202 of the Maryland Code, but Section 13-202(2)(i), the maximum penalty amount is only “\$50,000 for a related series of violations.”

<sup>5</sup> Notice at pp. 1-2.

The Commission is right to look at broader remedies.<sup>6</sup> Indeed, our County Council has recently heard testimony on the benefits of public power, and is pursuing more information on the threshold regulatory, statutory, and legal issues that would be implicated in the pursuit of one of the remedies specifically identified by the Commission in the above referenced Notice -- the “revocation of the Company’s authority to exercise its franchise(s) pursuant to PUA Section 5-201.”

Consistent with the County’s contention that discretionary civil penalties are insufficient to get management’s attention and fail to provide direct restitution to Pepco’s consumers, the County urges the Commission to consider mandatory reductions in Pepco’s rate of return. This Commission authorizes Pepco’s rate of return, currently 8.18%. As noted above, Pepco’s returns have heretofore not been affected by its poor service. Consistent with the broad concept of “performance based ratemaking”, a concept embraced by many other states, Pepco’s financial return should be explicitly conditional on its providing good quality service. If Pepco fails to provide either acceptable reliability or good customer service – arguably two thirds of Pepco’s most basic responsibilities – then Pepco’s authorized return should be commensurately reduced. And that reduction should be returned to Pepco’s customers.

In sum, the County urges the Commission to (1) state its intention to require Pepco to provide service no less reliable than those provided by utilities in the top quartile nationally; (2) direct staff to publish the metrics of reliability met by top performing utilities; (3) consider a much broader and more meaningful array of accountability measures than civil penalties, including measures that would ensure financial consequences comparable to the financial losses incurred by residents and direct refunds to residents; (4) closely coordinate the various proceedings, particularly this proceeding and Case No. 9240 with special attention to the expert consultant’s report; and (5) provide for further rounds of comments by the parties.

#### REQUEST TO BE INCLUDED ON SERVICE LIST

Montgomery County requests that the following individuals be included on the service list in this proceeding to receive service of all orders, pleadings, and other documents:

Ms. Lisa Brennan  
Montgomery County, Maryland Office of Consumer Protection  
100 Maryland Avenue, Suite 330  
Rockville, MD 20850  
240-777-3635  
[lisa.brennan@montgomerycountymd.gov](mailto:lisa.brennan@montgomerycountymd.gov)

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<sup>6</sup>The issuance of this Notice focusing on the importance of much broader remedies in Case No. 9240, contrasted with the treatment of remedies in the proposed regulations in the instant RM 43 proceeding, underscores why it is essential that these proceedings proceed in a coordinated manner.

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WHEREFORE, Montgomery County requests that the Commission ensure that the specific standards adopted herein result in a level of reliability equivalent to the performance metrics of utilities who are in the top quartile in the nation.

Respectfully submitted,

Marc Hansen  
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February 17, 2011



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January 28, 2011

The Honorable Isiah Leggett  
Montgomery County Executive  
100 Monroe Street; 2<sup>nd</sup> floor  
Rockville, MD 20850

Dear Mr. Leggett:

The independent twelve-member Work Group you established in October 2010, in an effort to address increasing Pepco operational and customer service issues and to help assure reliable electricity for the County, has been actively working to gather and analyze a wealth of information and data in preparation for providing a final report to you.

To address the complexities of these issues the committee has formed seven sub-groups: Infrastructure, Major Events Outages, Non-Major Event Outages, Customer Relations, Economic Considerations, Pepco Response, and Government Interface.

To date, the Work Group and sub-groups have held approximately 14 meetings, begun reviewing several thousand documents, conducted a public hearing to obtain residential and commercial customer views on the efficiency, effectiveness, and reliability of Pepco's service, solicited written comments from residents and businesses, disseminated two online feedback surveys, interviewed representatives from other utility companies, and made several data requests to Pepco for additional information.

The Work Group anticipates that it will provide a final report to you in April 2011. We understand that you intend to use the Work Group's recommendations to assist in articulating Montgomery County's position with respect to the Public Service Commission's investigation of Pepco's reliability in PSC Case #9240 to which Montgomery County is a party.

However, we have learned that the Public Service Commission has embarked upon a rule making administrative hearing process (RM #43) in which the PSC seeks to issue reliability standards for utilities prior to the PSC completing its investigation of Pepco's reliability in PSC Case #9240 and prior to the PSC receiving the benefits of reviewing its expert consultant report which is a key element of PSC Case #9240.

In light of the foregoing, this interim communication to you is to strongly suggest that Montgomery County file appropriate comments to the Public Service Commission in RM #43 stating that the issuance of reliability standards appears very necessary and is welcomed, however, the timing of such administrative action appears not to be best suited to accomplish the ultimate goal of identifying carefully considered means of improving electric utility reliability and ensuring that the delivery of electricity is safe, reliable, and affordable. Thank you.

Sincerely,



Norman R. Augustine  
Work Group Chair

cc: Pepco Work Group Members

ADDITIONAL COMMENTS OF MONTGOMERY COUNTY, MARYLAND  
RM 43

- All standards regardless of category should include:
  - Standards should not be a “one size fits all” and for each category of standard. Consideration should be given to magnitude of the event as well as the criticality of the facilities (i.e., restoration standards for medical and public safety facilities should be more stringent)
  - Clear direction of the timeframe of the standards indicating whether they refer to daily or yearly numbers.
  - A clear distinction between the standard of normal conditions and Major Events.
  - Penalties should not be static, but should increase for each incident and be a percentage of a customer’s bill, not a constant dollar amount (to a customer, regarding the lowest performing feeders, etc.).
  - A significant portion of penalties levied should be provided back to the customers impacted and in a manner commensurate with that customers power usage.
  - Allocation of penalties should address both rate classes, outage duration and customer type (e.g., residential or business tariff)
  - Reporting should not be limited solely to annual reports but captured at more frequent intervals such as quarterly.
- There is no standard for Downed Wire repairs.
  - Standard should exist for normal conditions
  - Standard should exist for Major Events
  - Standards should exist for reporting live wire situations to government officials
- Vegetation Management standards should include consideration of the following:
  - Standard for vegetation management should not be based on minimum vegetation management requirements but rather best practices.
  - Provisions to ensure to that enhanced pruning measures do not lead to tree death widespread tree death or instability. This could potentially denude the community and create further hazards for the overhead line system.
  - The environmental consequences in terms of Urban Tree Canopy (UTC) loss for the enhanced pruning measures.

- Enhancements to the arborist certification process to ensure that they are capable of safely instating these enhanced tree trimming measures without jeopardizing tree health and stability.
- A replacement process for removed trees in state, county or municipal rights of way in keeping with the replacement policy currently utilized on private property.
- Within the vegetation management requirements the final target for rural distribution miles is six years after the effective date of legislation. If they are cutting to four years of growth, how will the compliance be measured after the cutting to six years? Will trees trimmed in the first two years comply within the requirement? For example, proposed Section 20.50.07G.(1) (page 11) states, “On no less than one hundred percent (100%) of its total urban distribution miles by the four (4) year anniversary of the effective date of this regulation, and on no less than one hundred percent (100%) of its total rural distribution miles by the six (6) year anniversary of the effective date of this regulation.”
- Service Quality standards need to be more comprehensive and need to differentiate between normal conditions and Major Events. These standards should include:
  - Standards should exist for normal conditions
    - More stringent standards should exist for telephone pickup times
    - Standards should exist for the number of customer hang ups
    - Standards should exist for the quality of customer service
    - Standards should exist for the accuracy of “estimated time of restoration” provided by utility
    - Standards should be different for “live person answered calls” versus automated system answered calls
    - Standards should exist for live wire down and other life threatening calls that are more stringent
      - This standard should include the total time to reach a live person
    - Standards should exist for reporting known outages to customers
    - Standards should exist for reporting planned outages to customers
  - Standard should exist for Major Events
    - Any standard established should define when a Major Event begins

- More stringent standards should exist for telephone pickup times
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  - Standards should exist for the quality of customer service
  - Standards should exist for the accuracy of “estimated time of restoration” provided by utility
  - Standards should be different for “live person answered calls” versus automated system answered calls
  - Standards should exist for live wire down and other life threatening calls that are more stringent
    - This standard should include the total time to reach a live person
  - Standards should exist for reporting known outages to customers
  - Standards should exist for reporting planned outages to customers
  - The standard should utilize previously reported measures whenever possible to allow progress over time to be measured.
    - For example, previous storm reports have reflected a call answering timeframe of 60 seconds whereas the proposed RM43 standard transforms this into a 90 seconds average answering time. Any lessening of requirements should be fully justified by the PSC.
- Standards should exist for utilities to provide data in a proactive manner to public safety officials during normal and major events.
  - Standards should exist to compel utilities to report outage totals, types and numbers of facilities without power, impacted utility infrastructure (i.e., feeders, transformers, substations) and by geographical area in an accurate and timely basis
  - Standards should exist regarding the accuracy and timeliness for restoration times provided by utilities for critical facilities.
- RM 43 should address the following categories of standards or provisions;
  - System design
  - Impacts of customer density and geography/topology
  - Periodic performance evaluations conducted by 3<sup>rd</sup> party consultants
  - Anomalous events that do not achieve major outage status, but do create abnormally high number of outages (i.e. Minor Events). These may not be “Blue sky”, but are not quite Major Events.