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EDISON ELECTRIC INSTITUTE

**SUBMISSION TO THE OFFICE OF MANAGEMENT AND BUDGET
CONCERNING DRAFT FINAL OSHA STANDARDS
29 C.F.R. § 1910.269 AND 29 C.F.R. PART 1926, SUBPART V**

Edison Electric Institute (“EEI”) is the association of U.S. shareholder-owned electric companies. Its members serve 95 percent of the ultimate customers in the shareholder-owned segment of the industry, and represent approximately 70 percent of the U.S. electric power industry. It also has more than 65 international electric companies as Affiliate members, and more than 170 industry suppliers and related organizations as Associate members.

I. Introduction

On June 15, 2005, OSHA issued a notice of proposed rulemaking to update its existing standards on Electric Power Generation, Transmission; Electrical Protective Equipment, 29 C.F.R. § 1910.269 (Operations and Maintenance) and 29 C.F.R. Part 1926, Subpart V (Power Transmission and Distribution Construction) (70 *Fed. Reg.* 34,822).

OSHA has submitted the final draft standards for OMB review under Executive Orders 12866/13563.¹ EEI appreciates the opportunity to meet with OMB and OIRA to discuss the forthcoming standards, and is pleased to be joined by the International Brotherhood of Electrical Workers, AFL-CIO (“IBEW”).

EEI and IBEW have a long history of working together on safety and health issues. During the rulemaking, IBEW and EEI provided substantial comments to OSHA on the proposal. EEI and IBEW agree on many of the issues in OSHA’s proposal. Both organizations seek final rules that reflect the labor-management consensus on key issues that they communicated to OSHA during the rulemaking. EEI and IBEW view the revised standards as critical to safety in the industry. The publication of the final rules will provide interested stakeholders long overdue certainty and finality.

II. The Issues Of Principal Concern

EEI and IBEW have not seen the final draft rule, which makes it difficult to anticipate and discuss the issues to consider. Nevertheless, EEI and IBEW have identified two key issues that have been of particular joint concern throughout the rulemaking:

- Minimum approach distances (“MAD”)
- Protection from electric arcs/flame resistant clothing

¹ <http://www.reginfo.gov/public/do/eoDetails?rrid=122106>.

EEI and IBEW are interested in assuring that OSHA's approach to these issues reflects the judgments and experience that labor and management share, and which both organizations communicated to OSHA during the rulemaking. Our goal is to enhance employee protection, while avoiding an adverse economic effect on the utility industry, and confusion and consequent increased risk for utility employees.

OMB could assist in assuring an appropriate outcome by ascertaining whether OSHA plans to address these issues in the final rule in the manner adopted in the 2012 edition of the National Electric Safety Code, ANSI C-2 ("NESC"). As OMB and OIRA are aware, the Code is a national consensus standard, and the Committees involved consist of a broad range of experts drawn from labor and the utility industry. In formulating the 2012 edition, the NESC Committee grappled with flame resistant clothing ("FR") and MADs, and arrived at provisions in the Code that have broad support among labor and management in the electric utility industry. Also, since the NESC is a National Consensus Standard, under Section 6(b)(8) of the OSH Act, 29 U.S.C. § 655 (b)(8), OSHA is not permitted to deviate substantially from the Code without an adequate statement of reasons of why the deviation is necessary to increase employee safety and health.²

As explained in our November 2011 meeting with OMB/OIRA, in the past it has at times been necessary for EEI to file petitions for judicial review of new standards directly affecting electric utilities in order to persuade OSHA to discuss how disputed issues might be resolved. This was so in 1994 as to the original 29 C.F.R. § 1910.269, and in 2010 as to the OSHA standard on cranes and derricks in construction, 29 C.F.R. §1926.1400 -1442. EEI would much prefer to avoid such an approach this time. Litigation would be a waste of resources for all concerned, and we ask OMB to help avoid such a needless outcome.

For background, we submit below detailed information on MAD, and FR clothing, and fall protection.

A. Minimum Approach Distances

Few issues are more fundamental to electric utility work than minimum approach distances ("MAD"), also referred to as "clearance distances." These are the distances that qualified electric line workers must maintain from energized, high-voltage lines and equipment before they take precautions that allow them to work on or with these installations. Depending upon the circumstances, such precautions may include wearing insulated rubber gloves and/or rubber sleeves, applying insulated line hose to exposed energized conductors, or working with insulated fiberglass "hot sticks" to manipulate energized equipment.

The applicable rules and clearance distances in the existing construction standard appear at 29 C.F.R. § 1926.950(c) and Table V-1. The rules and distances in the existing General Industry (operations and maintenance) standard (which are very close to but not exactly the same as in Part 1926), appear at 29 C.F.R. § 1910.269(1)(2) and Tables R-6 through R-10.

The 2005 notice of proposed rulemaking proposed to modify these distances. 70 *Fed. Reg.* 34,822. In 2009, OSHA reopened the rulemaking record on this issue. 74 *Fed. Reg.* 46,958.

² *AFL-CIO v. Brennan*, 530 F.2d 109, 117 (3d Cir. 1975).

In response, IBEW and EEI jointly advised OSHA that it should defer action on the MAD issue until the 2012 NESC had been issued. As was expected, section 44, pp. 280-86 of the new 2012 NESC incorporates provisions addressing MAD, based on the latest Institute of Electrical and Electronics Engineers technical recommendations.

The NESC is the national consensus standard on clearance distances for electric utility work on high voltage lines and equipment. EEI and IBEW agree that if the final standards make changes to the MAD, OSHA should adopt the distances in the new NESC Code. Deviating from the new NESC distances would only create costly confusion in the industry.

B. Protection from Electric Arcs/Flame Resistant Clothing

The proposed standard contains a requirement that would require “employers to estimate the heat energy from electric arcs that may be encountered by employees and to provide clothing that will be flame resistant if it could be ignited when an electrical fault occurs and that can protect against the estimated level of energy when an electric arc occurs.” *70 Fed Reg.* 34,866. At the time of the public hearing on the proposal in 2006, there was considerable controversy over how such calculations could be made, including debate over the approach set forth in then National Fire Protection Association (“NFPA”) standard 70E.

EEI members and IBEW agree that employees need to be protected from the hazard of electric arcs. In the absence of definitive standards, most utilities have made determinations as to the nature of protective clothing to provide to their employees, and many require its use.

A good deal has been learned about FR clothing since the OSHA standard was proposed in 2005. Thus, the 2012 NESC contains provisions on this issue that are now well-accepted in the industry. *See* section 410.A.3 and Tables 410-1, 410-2 and 410-3, pp. 262-67. To avoid controversy while protecting employees, OSHA should simply adopt the provisions of the 2012 NESC on arc-rated clothing, and should not stray beyond the NESC.

In particular, the agency should not adopt the FR clothing provisions of NFPA 70E. Indeed, the scope provision of NFPA 70E clearly does not apply to generation, transmission and distribution installations under the exclusive control of electric utilities. Rather, the document was composed largely by representatives from general industry, and was not prepared from the perspective of addressing the unique electric utility workplace.