

# PROPOSED RULEMAKING

## PENNSYLVANIA PUBLIC UTILITY COMMISSION

[52 PA. CODE CHS. 59 AND 69]

[L-940098]

### Natural Gas Supply Emergency Planning

The Pennsylvania Public Utility Commission (Commission) on June 20, 1996, adopted a proposed rulemaking to require natural gas local distribution companies (LDC) to file emergency plans relating to shortages of natural gas supply. Each company may tailor its plan to suit the physical and operating constraints of its system and the demographics of its customer base.

#### *Executive Summary*

The Commission adopted an order June 20, 1996, initiating this proposed rulemaking. This order and Annex A amends Commission regulations by deleting §§ 69.21—69.27, revising §§ 59.63 and 59.64 and adding §§ 59.71—59.75.

The proposed amendments require natural gas LDC to file emergency plans related to shortages of natural gas supply. Each company may tailor its plan to suit the physical and operating constraints of its system and the demographics of its customer base. Under its plan the LDC, with notice to its customers and the Commission, may declare a Class I or a Class II supply emergency depending on the expected severity or duration of natural gas supply shortage, or both. Under the Class I emergency, the LDC can call for conservation and can require partial reduction in use by all customers. A Class I emergency can last for 5 business days. If the supply shortage worsens, the LDC can order classes of customers categorized according to priority of use to curtail natural gas use. Essential human needs customers are in the highest priority class and would be the last class of customers whose use would be curtailed.

A copy of this order and Annex A is being served on the Office of Consumer Advocate, the Office of Small Business Advocate, all jurisdictional natural gas utilities and all other interested parties on the Commission's official service list.

The Commission's contact person is Patricia Krise Burket, Assistant Counsel, Law Bureau, Pennsylvania Public Utility Commission, North Office Building, Room 203, P. O. Box 3265, Harrisburg, PA 17105-3265, telephone (717) 787-3464.

Public Meeting  
held June 20, 1996

*Commissioners Present:* John M. Quain, Chairperson; Lisa Crutchfield, Vice Chairperson; John Hanger; David W. Rolka; and Robert K. Bloom

#### **Proposed Rulemaking Order**

#### *By the Commission:*

By order entered December 1, 1994, we issued an Advance Notice of Proposed Rulemaking related to Natural Gas Emergency Planning which set forth draft proposed regulations related to natural gas emergency plan-

ning for LDCs. The advance notice was published on December 31, 1994, at 24 Pa.B. 6570, with a 30-day comment period. It was intended that the proposed amendments would supplant the Commission's Policy Statement at §§ 69.21—69.27 dealing with gas curtailments.

We received comments from the Industrial Intervenor of Pennsylvania, Peoples Natural Gas Company, Pennsylvania Gas Association, Office of Small Business Advocate, UGI Utilities, Inc.—Gas Division and T. W. Phillips Gas and Oil Company.

After review of these comments, we have revised proposed § 59.74(a) so as to limit utility liability "except where such restriction or discontinuation of service is caused solely by the utility's willful or wanton misconduct." We believe that this standard is more precise than the "except where the failure can be shown to be the result of poor planning or purchasing practice" language used in the previous draft. We have also corrected cross reference citations in §§ 59.72 and 59.74(b) and (b)(3).

The Commission believes that these amendments as now proposed provide for an ordered utility response to natural gas supply emergency situations which require restriction of firm natural gas service. Under emergency conditions which require natural gas service disruptions, it is essential that the utility be able to act in a rapid and unimpeded manner so as to ensure that service to essential human needs and other critical needs are met. Because each Pennsylvania natural gas utility operates with a unique structure with respect to storage, customer alternate fuel capability, interruptible transportation demand, company supply and demand, and other operating characteristics, each jurisdictional LDC is required under the proposed amendments to file with the Commission, and maintain as part of its tariff, its own individualized natural gas supply emergency plan which contain comprehensive and understandable rules for the allocation of supply in periods of shortage. Such a plan will provide notice to customers of actions that the LDC will take in the event of a gas supply shortage, and will allow customers to develop contingency response plans to protect themselves and their property.

Under the proposed amendments, if after all interruptible load has been curtailed, and the utility reasonably foresees an inability to fulfill the daily requirements of all of its firm customers, the utility, on its own volition, but with notice to the public and the Commission, may impose a Class I Supply Emergency and require all firm commercial, industrial retail and nonresidential transportation customers to reduce volumetric consumption of gas by a fixed percentage with overruns subject to excess consumption penalties as defined in the utility's tariff/supply emergency plan. This reduction is to be imposed by the utility equally to all commercial and industrial load without regard to priorities of use. An initial Class I Supply Emergency will have a maximum duration of 5 full business days following the date of the notice.

In situations where firm demands for natural gas cannot be met despite implementation of the Class I supply emergency plan, a Class II supply emergency event will be declared by the LDC. In the event of a Class II supply emergency event, gas will be curtailed according

to a schedule of priority of use.<sup>1</sup> Customers in Priority 1, as defined in the proposed amendments at § 59.73(d), which include residential customers and commercial customers providing for essential human needs, as defined at § 59.1, will be the last customers for which natural gas service is to be curtailed. In determining whether to declare a Class II Supply Emergency, the LDC is to consider priorities of service, gas ownership, contractual responsibilities of all affected parties and system operational constraints and other physical limitations affecting supply and delivery.

The wide discretion given to the utility under the proposed amendments is counterbalanced with protections to the customers. The utility must "reasonably foresee" a problem with the gas supply before it can declare any restriction of natural gas service, and where an injury, loss or expense is caused to a customer solely by the utility's willful or wanton misconduct in discontinuing or restricting natural gas service, the utility's liability is unlimited.

As for transportation customers, in the event of an appropriation of firm transportation gas during a curtailment, the utility will compensate the firm transportation customer for the cost of lost service. The compensation paid will be the higher of: the hypothetical cost of firm gas service or the actual cost incurred by the customer for purchase of substitute fuel. Alternatively, natural gas utilities may replace confiscated gas at the customer's discretion. Moreover, although a utility's obligation to deliver noncontract, back-up supplies to transportation customers of lower priority classification than Priority 1 is limited to best efforts and in accordance with the established priorities, transportation customers who have paid a full backup tariff rate will be eligible for rate rebate in the event the utility is unable to supply backup gas.

The regulations also provide for immediate notification of customers and of the Commission whenever a utility declares a Class I or Class II Supply Emergency. Immediate notification of such an event will allow the Commission to act as a clearinghouse to provide timely information to the Governor, the Pennsylvania Emergency Management Agency and other government entities, and to perform any necessary liaison work related to a natural gas supply shortage.

The Commission believes that the proposed amendments accommodate the interests of all parties in natural gas supply emergency planning, and that such regulations are in the public interest.

Accordingly, under sections 501, 504, 505, 506 and 1501 of the Public Utility Code, 66 Pa.C.S. §§ 501, 504, 505, 506 and 1501, and the Commonwealth Documents Law (45 P. S. § 1201 et seq.), and the regulations promulgated thereunder, we shall institute a rulemaking proceeding to promulgate regulations related to natural gas emergency planning; Therefore,

*It is Ordered that:*

1. A rulemaking proceeding related to natural gas emergency planning is hereby instituted at this docket.

2. The Commission hereby proposes amendment to its regulations by deleting §§ 69.21—69.27 and by revising §§ 59.63 and 59.64 and adding §§ 59.71—59.75 consistent with the discussion in the body of this order, as provided in Annex A to this order.

3. The Commission shall submit this order and Annex A to the Attorney General's Office for approval as to legality.

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

5. The Secretary shall submit this order and Annex A for informal review by the designated standing committees of both houses of the General Assembly, and for informal review and approval by the Independent Regulatory Review Commission (IRRC).

6. The Secretary shall deposit this order and Annex A with the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*. Interested parties may submit written comments, an original and 15 copies to John G. Alford, Secretary, Pennsylvania Public Utility Commission, and shall have 30 days from the date this order is published to submit comments.

7. A copy of this order shall be served upon all jurisdictional natural gas utilities, the Office of Consumer Advocate, the Office of Small Business Advocate and upon any other parties identified on the Commission's official service list.

JOHN G. ALFORD,  
*Secretary*

#### *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), the Commission submitted a copy of these proposed amendments on August 9, 1996, to IRRC and to the Chairpersons of the House Committee on Consumer Affairs and the Senate Committee on Consumer Protection and Professional Licensure. In addition to submitting the proposed amendments, the Commission has provided IRRC and the Committees with a copy of a detailed Regulatory Analysis Form prepared by the Commission in compliance with Executive Order 1996-1. A copy of this material is available to the public upon request.

If the Committees have an objection to any portion of the proposed amendments, they will notify the Commission within 20 days of the close of the public comment period. If IRRC has objections to any portion of the proposed amendments, it will notify the Commission within 30 days of the close of the public comment period. The notification shall specify the regulatory review criteria which have not been met by that portion. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the regulations, by the Commission, the General Assembly and the Governor of any objections raised.

*(Editor's Note: A proposal to amend § 59.1, which is proposed to be amended in this document, remains outstanding at 26 Pa.B. 1370 (March 30, 1996).)*

**Fiscal Note:** 57-176. No fiscal impact; (8) recommends adoption.

<sup>1</sup> At § 59.73(d) of the proposed regulations, four priority categories are established. There is no differentiation made between small and large commercial and industrial customers. However, in developing its supply emergency plan, a utility is given the authority to establish subcategories within each priority category to account for the specific characteristics of its customer base.

Annex A
TITLE 52. PUBLIC UTILITIES
PART I. PUBLIC UTILITY COMMISSION
Subpart C. FIXED UTILITY SERVICES
CHAPTER 59. GAS SERVICE
GENERAL PROVISIONS

§ 59.1. Definitions.

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

Alternate fuel—Any fuel other than natural gas.

Alternate fuel capability—The installed and operationally proven ability to use an alternate fuel.

\* \* \* \* \*

Commercial use—Gas usage by customers engaged primarily in the sale of goods and services including consumption by office buildings, institutions and government agencies not considered essential human needs use.

Critical use—Gas usage where natural gas is the only feasible form of energy due to its combustion characteristics, controllability or chemical properties.

\* \* \* \* \*

Customer—[ A party supplied with gas service by a public utility ] End use consumer of a gas sold or transported by the LDC.

\* \* \* \* \*

Essential human needs use—Gas usage by customers for service to any building where persons normally reside, including apartment houses, dormitories, hotels, hospitals and nursing homes, and to the following customers: medical and human life support systems, blood banks, outpatient health facilities, physicians' offices; schools; churches; telephone, radio, television and newspaper facilities; police, firefighting, emergency management and emergency response facilities; military bases; Federal facilities essential to the National defense and Pennsylvania National Guard facilities; and public utility facilities.

\* \* \* \* \*

Firm service—Service under retail and firm transportation rate schedules, providing that the firm transportation gas has arrived at the LDC city gate, under which a utility is expressly or impliedly obligated to deliver specific volumes within a given time frame or which anticipate no curtailments, but which may permit unexpected curtailments when service to higher priority customers is threatened under a Class I or Class II emergency.

\* \* \* \* \*

Industrial use—Gas usage by customers engaged primarily in a process which creates or changes raw or unfinished materials into another form or product including the generation of power for sale.

Interruptible service—Service under nonfirm retail or transportation schedules or contracts where the utility expressly reserves the option to inter-

rupt or suspend service. Interruptible service requires a demonstrated ability to use alternate fuel as a condition of service.

LDC—Local distribution company.

\* \* \* \* \*

Plant protection use—Minimum volumes of natural gas required to prevent physical harm to the customer's plant facilities or danger to plant personnel when the protection cannot be afforded through the use of an alternative fuel. Plant protection requirements include volumes necessary for the protection of the material in process as would otherwise be destroyed but does not include deliveries required to maintain production. The term also includes gas usage by customers engaged primarily in the sale of goods and services, including consumption in retail establishments, office buildings, government agencies, schools and other institutions.

\* \* \* \* \*

Residential use—Gas usage in a residential dwelling or unit for space heating, air conditioning, cooking, water heating or other domestic purposes.

\* \* \* \* \*

REPORTING AND CURTAILMENT OF SERVICE

§ 59.63. [ Curtailment ] Natural gas emergency tariffs.

As part of its officially filed tariff, each jurisdictional gas utility shall have on file with the Commission detailed procedures for [ the curtailment of service ] addressing natural gas supply emergencies. The [ curtailment ] natural gas supply emergency tariffs shall [ be under ] conform with Commission [ guidelines contained at ] regulations in [ §§ 69.21—69.27 (relating to gas curtailment) ] §§ 59.71—59.75 (relating to natural gas supply emergency planning).

§ 59.64. Notice of [ curtailment or nonperformance of supply ] implementation of a utility's natural gas supply emergency plan.

(a) Each major jurisdictional utility, as defined in § 59.61 (relating to reserved), shall inform the Commission, in writing, of any [ curtailment ] implementation of its natural gas supply emergency plan, breach of performance, suspension of performance or nonperformance by a gas supplier, transportation utility or major shipper (defined as any shipper utilizing transportation tariffs whose monthly demand is in excess of 5% of the jurisdictional utility's monthly throughput in any given month) [ within 48 hours after the action becomes known to the jurisdictional utility ] as soon as practicable, or as specifically required by Commission regulations. Notice to the Commission shall include a statement as to the estimated effect on the utility and its customers, including any resulting curtailments, penalties or additional costs.

(b) Each major jurisdictional utility, as defined in § 59.61, shall contemporaneously notify its customers and the Commission whenever [ curtailments are instituted ] its natural gas supply emergency plan is implemented or changed. The notice shall be provided as soon as practicable or as specifically required by Commission regulations. Notice shall also be sup-

**plied when consumption restrictions imposed under the emergency plan are lifted.**

(*Editor's Note:* The following §§ 59.71—59.75 are new. They have been printed in regular type to enhance readability.)

**NATURAL GAS SUPPLY EMERGENCY PLANNING**

**§ 59.71. Natural gas supply emergency planning.**

(a) Each jurisdictional natural gas utility shall have on file with the Commission a natural gas supply emergency plan containing simplified and understandable rules to allow its customers to develop responsive plans to protect themselves and their property in the event of a natural gas shortage or other supply emergency.

(1) Each supply emergency plan shall include provisions for the following in the event of a natural gas supply emergency:

(i) Public service announcements calling for voluntary, discretionary usage reductions, for example, lowering thermostats controlling space heating requirements to 65° F during the day and 60° F at night; and reducing water heater temperature.

(ii) Periodic reports to the public concerning the emergency situation.

(iii) Reasonable notice to customers of the expected date of the initiation of a Class I or Class II Supply Emergency as defined in §§ 59.72 and 59.73 (relating to Class I supply emergency; and Class II supply emergency), respectively, when disruptions are anticipated.

(2) Each LDC's natural gas supply emergency plan shall include a provision under which all customer categories are requested to participate in voluntary load and usage reductions in conjunction with mandatory usage reductions by firm customers, as may be required.

(b) Each LDC's supply emergency plan shall provide for reasonable notice to the public as soon as practicable after declaration of a supply emergency.

(c) The plan shall provide that the utility give notice as soon as practicable to customers with whom the utility has executed firm transportation agreements. If a customer acquired its gas supplies through a broker or marketer with whom the customer has executed an agency agreement, and the agreement is on file at the utility, the utility may, unless otherwise directed by the customer, provide notice to the broker or marketer. Notice to the broker or marketer shall then be deemed to constitute notice to the customer. In these cases, failure of the broker or marketer to give notice to the customer does not exempt the customer from compliance with the terms of the supply emergency plan.

(d) The natural gas utilities are also encouraged to make contractual or informal arrangements with their transportation customers and sales customers, neighboring LDCs, transportation customers on the interstate pipeline system and others to obtain supplies or, as an alternative, to implement usage reductions so as to avoid firm service reductions, and otherwise minimize the level of supply or capacity disruption.

**§ 59.72. Class I supply emergency.**

(a) A Class I supply emergency exists whenever the firm demands for natural gas on an LDC's system exceed or threaten to exceed the gas supply or capacity that is actually and lawfully available to the utility to meet such demands.

(b) The LDC shall have the authority to declare a Class I supply emergency when the LDC reasonably foresees an immediate threat to system operating integrity with respect to Priority 1 customers as defined at § 59.73(d) (relating to Class II supply emergency).

(c) If the utility reasonably foresees an inability to fulfill the firm daily requirements of its customers, the utility may require each commercial and industrial retail and transportation customer to reduce consumption of gas by a percentage amount established by the utility. The reduction required shall be determined by the utility without regard to priorities of use. The authorized volume may not be less than the minimum volume of firm service necessary for plant protection requirements.

(d) The utility shall specify in the notice of the Class I supply emergency the authorized consumption for each affected customer for a specified period of up to 5 business days following the date of the notice.

(e) Upon declaration of a Class I supply emergency, the LDC shall immediately contact the Commission's Office of Executive Director, and as soon thereafter as is practicable provide to the Commission ten copies of the distributed notice.

(f) The initially declared Class I supply emergency shall have a maximum duration of 5 business days. An LDC may extend a Class I supply emergency unless directed by the Commission to initiate operations under the Class II gas supply emergency rules in § 59.73.

**§ 59.73. Class II supply emergency.**

(a) In situations where interruptible service has been interrupted and implementation of Class I supply emergency measures are incapable of meeting firm demand, a Class II supply emergency will be declared by the LDC's management.

(b) Maximum possible notice of a Class II supply emergency shall be given to each affected customer. The notice shall be implemented by telephone, fax or electronic data interchange specifying the curtailment percentage of the customer's firm gas service and resulting volumetric consumption allowance. If the level of gas curtailment is subsequently increased, an additional notice shall be provided to each affected customer.

(c) Upon declaration of a Class II supply emergency or when the level of gas curtailment is increased, the LDC shall immediately contact the Commission's Office of Executive Director, and as soon thereafter as is practicable shall provide to the Commission ten copies of the distributed notice.

(d) In the event of a Class II supply emergency, available gas supplies to the utility shall be allocated to its customers in accordance with the following priority categories which are listed in descending order of priority:

(1) *Priority 1.* Residential and commercial essential human needs. Transportation customers that fall into Priority 1 are required to maintain standby service unless they have an alternate fuel capability.

(2) *Priority 2.* Firm retail and transportation customers, not covered in paragraph (1).

(3) *Priority 3.* Interruptible firm transportation customers.

(4) *Priority 4.* Interruptible transportation customers.

(e) Higher priority consumption may not be curtailed until consumption in a lower category has been completely restricted unless system operational constraints

and other physical limitations affecting supply and delivery warrant a different result. If only partial restriction of any one classification is justified, implementation of curtailment within that priority classification should be pro rata. Pro rata rationing, to the extent practical under the circumstances, shall be based on a method set forth in the LDC's natural gas emergency plan.

(f) Utilities may in their individual supply emergency plans divide any or all of the priority of use categories into subcategories.

#### § 59.74. Utility liability.

(a) Each gas utility may restrict or discontinue service in accordance with its natural gas supply emergency plan without thereby incurring any liability for any loss, injury or expense that may be sustained by the customer except when the restriction or discontinuation of service is as a result of the utility's willful or wanton misconduct.

(b) Utility liability for actions taken under a Class I or Class II event or to a regulation, policy statement, directive or order issued by the Commission or an emergency order issued by the Governor shall be governed by the following principles:

(1) In the event of appropriation of firm transportation gas during a curtailment, the utility shall compensate the firm transportation customer for the cost of lost gas service. This value to be the higher of the customer's actual cost of gas service or the actual cost of substitute fuel. Utilities are permitted to replace curtailed gas at the option of the customer.

(2) The utility shall have the right to discontinue service, for the duration of the Class I or Class II supply emergency, to a customer that continues to take gas in violation of the utility's natural gas supply emergency plan.

(3) The utility's obligation to deliver noncontract, back-up supplies to transportation customers of lower priority class than Priority 1, as defined in § 59.73(d)(1) (relating to Class II supply emergency), is limited to best efforts and in accordance with priorities established in the LDC's gas supply emergency plan. Transportation customers who have paid a full back-up tariff rate will be eligible for refund if the utility is unable to supply back-up gas.

#### § 59.75. Penalties for unauthorized takes.

Each utility is permitted to utilize its own appropriate billing periods for calculating pipeline transportation, storage service, balancing or other penalties and its own procedure for imposing those penalties on customers who consume gas in a manner that is contrary to the utility's natural gas supply emergency plan.

### CHAPTER 69. GENERAL ORDERS, POLICY STATEMENTS AND GUIDELINES ON FIXED UTILITIES

*(Editor's Note: The Commission is proposing to delete present guidelines in §§ 69.21—69.27 (relating to gas curtailment) which appear at pages 69-13—69-21, serial pages (201985)—(201993).)*

#### §§ 69.21—69.27. (Reserved).

[Pa.B. Doc. No. 96-1369. Filed for public inspection August 23, 1996, 9:00 a.m.]

## [52 PA. CODE CH. 63]

[L-960117]

### Reseller Location Surcharge Price Cap

#### *Executive Summary*

By order entered April 30, 1996, the Pennsylvania Public Utility Commission (Commission) adopted a rulemaking to modify the regulations of telephone resellers' location surcharge. The proposal would amend the present regulations by imposing a \$1 price cap for use of the telephone. In order to charge a higher rate, the reseller would be required to seek Commission approval subject to general ratemaking. In addition, the proposed amendments would require that the charge for the location surcharge be clearly posted in plain view at each telephone station.

The contact person is Janet M. Sloan, Assistant Counsel, Law Bureau, (717) 787-3663.

*Commissioners Present:* John M. Quain, Chairperson; Lisa Crutchfield, Vice-Chairperson; John Hanger; David W. Rolka; and Robert K. Bloom

Public Meeting held  
April 25, 1996

#### Proposed Rulemaking Order

#### *By the Commission:*

On November 27, 1991, the Commission entered a final order promulgating regulations which declared jurisdiction over interexchange resellers and established procedures governing the interexchange resellers and aggregators. The regulations became effective on April 4, 1992, and are codified in §§ 63.111—63.118.

The regulations impose a price cap form of regulation on resellers by generally prohibiting them from charging a higher rate for a given interexchange call than the highest rate charged for that same call by any facilities-based interexchange carrier or transporter. In addition to the capped rate, resellers are permitted to assess a charge for using the telephone, a charge commonly referred to as the location surcharge. The location surcharge is not capped by the regulations, but must be a flat rate and must be posted in plain view at each telephone station in order to provide consumer notice of the assessment and the amount of the location surcharge and provide consumers with the opportunity to go to another telephone or access another carrier, if desired.<sup>1</sup> Furthermore, pursuant to § 63.115 (relating to tariff supplements), resellers are permitted to seek Commission approval of rate increases which would allow the reseller to charge rates which exceed the price cap and in doing so charge higher rates than any facilities-based carrier. Commission review of any such rate filing by a reseller is subject to general ratemaking procedures as provided for in Chapter 13 of the Public Utility Code.

From a practical point of view, the Commission imposed reseller price caps only have substantive effect on the operator service provider (OSP) sector of the general class of resellers. OSPs are resellers which provide interexchange service to end users through aggregators, entities which make telephones available for the provision of interexchange service to the transient public, or

<sup>1</sup> Effective April 14, 1995, the Commission amended the reseller regulations to impose specific requirements, pertaining to the assessment of location surcharges, on inmate service providers, a subcategory of OSPs. Furthermore, the Commission restructured the regulations, through the addition of 52 Pa. Code § 63.112a, to clarify the application of the location surcharge posting requirement to other OSPs.

through local exchange carrier (LEC) pay telephones. OSPs have historically been the subject of rate gauging complaints since because the end user does not select the interexchange carrier, market based rate controls do not provide adequate consumer protections.<sup>2</sup> In other reseller markets, the price caps have little substantive impact since the marketplace forces these carriers to compete at rate levels at or below the reseller price caps in order to attract and retain business.

Upon review, our 3 1/2 years of experience with reseller price caps combined with the location surcharge posting requirement has yielded mixed results. On one hand, intrastate OSP rates have clearly and significantly decreased as evidenced by the fact that intrastate OSP rates levels are, as a general rule, well below intrastate rate levels where no price caps are in place. In this regard, most OSPs and their aggregator customers have been relatively responsive to the Commission's informal insistence that location surcharges not exceed levels which are generally satisfactory to consumers, as measured by the level of consumer complaints. However, a minority of carriers have been unresponsive to informal regulatory pressures and have continued to engage in price gauging activity. Furthermore, compliance with the reseller regulations has been far from perfect, requiring frequent, time and resource consuming enforcement activity, often through formal litigation. Additionally, location surcharge postings, although theoretically providing a "price tag" or important consumer notice, are typically included in small print and ambiguously worded language. To the extent the postings are noticeable and informationally adequate, they are typically misunderstood or completely ignored by unsuspecting consumers.

Given the foregoing experience, we have concluded that stricter consumer protections are necessary to protect telephone users from OSP price gauging activity and that our regulatory framework must be modified to allow for more effective and efficient reseller regulation. It is this conclusion which results in our action today.

The rationale behind permitting OSPs to assess location surcharges is recognition of the fact that since resellers are typically smaller firms than facilities based carriers they likely will have higher costs of providing service. Furthermore, because of a lack of name recognition, OSPs typically will be required to pay higher commissions to aggregators or site owners in order to attract business. Accordingly, permitting location surcharges acts to stimulate competition in the aggregator telephone marketplace. However, at the same time, consumers must be protected from irresponsible activity which results in exorbitant rates without full consumer awareness. It is this required balance between these two interests which we are evaluating in determining to amend our reseller regulations.

Following careful consideration, it is clear to us that the reseller regulations must be amended to establish a cap on location surcharges. From our review, it appears that a \$1 cap strikes the appropriate balance between competitive pressures and consumer protections. Combined with the posting requirements, the \$1 location surcharge cap will provide consumers the necessary information to make competitive choices, but at the same time will provide protections from exorbitant rate levels. Furthermore, OSPs will still be permitted to charge a reasonable amount above facilities-based carriers without

<sup>2</sup> The inadequacy of market based price controls in OSP markets is recognized by 66 Pa.C.S. § 3008(a) which statutorily defines interexchange service to aggregator telephones as noncompetitive service.

making a formal rate filing with the Commission. OSPs can still seek to increase rates further through a Chapter 13 filing if such an increase is justified.

Accordingly, through this order, we will initiate a proposed rulemaking to amend § 63.112a (relating to charge for use of the telephone) of our reseller regulations so as to impose a \$1 cap on the amount assessed by resellers as a charge for the use of the telephone. Furthermore, we will modify our definition section at § 63.112 (relating to definitions) so that the definitions in the regulations will more closely parallel definitions contained in Chapter 30 of the Public Utility Code at 66 Pa.C.S. § 3002.

Accordingly, under sections 501, 1301, 3008 and 3009(d) of the Public Utility Code, 66 Pa.C.S. §§ 501, 1301, 3008 and 3009(d), sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1202 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 745.5 of the Regulatory Review Act (71 P. S. § 745.5); 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 find that the regulations governing interexchange resellers should be amended as set forth in Annex A to this order or as amended after receipt of comments; Therefore,

*It is Ordered that:*

1. A proposed rulemaking docket is hereby opened to consider the amended regulations set forth in Annex A.
2. The Secretary shall submit this order and Annex A to the Office of Attorney General for review as to form and legality and to the Governor's Budget Office for review of fiscal impact.
3. The Secretary shall submit this order and Annex A for review and comment to the Independent Regulatory Review Commission and to the Legislative Standing Committees.
4. The Secretary shall duly certify this order and Annex A and deposit them with the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.
5. Within 30 days of this order's publication in the *Pennsylvania Bulletin*, an original and 10 copies of any comments concerning this order and Annex A should be submitted to the Pennsylvania Public Utility Commission, P. O. Box 3265, Harrisburg, PA 17105-3265.
6. Alternate formats of this document are available to persons with disabilities and may be obtained by contacting Shirley M. Leming, Regulatory Coordinator, Law Bureau at (717) 772-4597 or through the AT&T Relay Center at (800) 654-5988.

JOHN G. ALFORD,  
*Secretary*

#### *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), the Commission submitted a copy of these proposed amendments on August 9, 1996, to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House Committee on Consumer Affairs and the Senate Committee on Consumer Protection and Professional Licensure. In addition to submitting the proposal, the Commission has provided IRRC and the Committees with a copy of a detailed Regulatory Analysis Form prepared by the Commission in

compliance with Executive Order 1996-1. A copy of this material is available to the public upon request.

If the Committees have objections to any portion of the proposed amendments, they will notify the Commission within 20 days of the close of the public comment period. If IRRRC has objections to any portion of the proposed amendments, it will notify the Commission within 30 days of the close of the public comment period. The notification shall specify the regulatory review criteria which have not been met by that portion. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the regulations, by the agency, the General Assembly and the Governor of objections raised.

**Fiscal Note:** 57-174. No fiscal impact; (8) recommends adoption.

**Annex A**

**TITLE 52. PUBLIC UTILITIES**

**PART I. PUBLIC UTILITY COMMISSION**

**Subpart C. FIXED SERVICE UTILITIES**

**CHAPTER 63. TELEPHONE SERVICE**

**Subchapter H. INTEREXCHANGE RESELLERS**

**§ 63.112. Definitions.**

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

\* \* \* \* \*

**Aggregator telephone**—A telephone which is made available to the transient public, customers or patrons, including coin telephones, credit card telephones and telephones located in hotels, motels, hospitals and universities.

*Charge for the use of the telephone*—A [ charge made by an aggregator whether or not collected by an interexchange carrier ] location surcharge assessed as a component of the charge for an interexchange call [ , for the use of its telephone to make an interexchange call ] placed by an end user from an aggregator telephone.

\* \* \* \* \*

**§ 63.112a. Charge for use of the telephone.**

\* \* \* \* \*

**(b) The charge for the use of the telephone may not exceed a flat rate of \$1 per call.**

**[(b) (c)]** Except as provided for in subsection **[(c) (d)]**, the charge for the use of the telephone shall be posted in plain view at each telephone.

**[(c) (d)]** \*\*\*

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