

PROPOSED RULEMAKING

FISH AND BOAT COMMISSION

[58 PA. CODE CHS. 53, 105 AND 109]

Commission Property and Boating

The Fish and Boat Commission (Commission) proposes to amend 58 Pa. Code Chapters 53, 105 and 109 (relating to Commission property; operational conditions; and specialty boats and waterskiing activities). The Commission is publishing these amendments as a notice of proposed rulemaking under 30 Pa.C.S. (relating to Fish and Boat Code) (code). The proposed amendments relate to Commission property and boating.

A. *Effective Date*

These proposed amendments will, if approved on final rulemaking, go into effect upon publication of an order adopting the amendments in the *Pennsylvania Bulletin*.

B. *Contact Person*

For further information on the proposed changes, contact Laurie E. Shepler, Assistant Counsel, (717) 657-4546, P. O. Box 67000, Harrisburg, PA 17106-7000.

C. *Statutory Authority*

These proposed amendments are published under the statutory authority of sections 741 and 5123 of the code (relating to control of property; and general boating regulations).

D. *Purpose and Background*

The proposed amendments are designed to update, modify and improve Commission regulations on boating. The specific purpose for the various amendments is described in more detail under the Summary of Proposal.

E. *Summary of Proposal*

(1) *Section 53.8 (relating to boats)*. The Commission has owned and operated lakes for fishing for many years. Boats of any kind were originally prohibited because these lakes were deemed to be for fishing. Over time, these restrictions were relaxed. First, unpowered boats, except sailboats, were permitted. Then the Commission allowed boats with electric motors. Finally, sailboats were permitted but were restricted to boats less than 14 feet on lakes less than 100 acres and less than 17 feet on all other lakes. Sailboats also were not permitted on trout stocked lakes from opening day of trout season until June 1.

The original restrictions were based on the principle that the lakes were fishing lakes and not boating. The actual reasons for the change in direction are lost in the records, but it is assumed that the Commissioners at that time began to realize that fishing from a boat did not hurt the resource and would provide additional enjoyment. Sailboats were considered not to be useful for fishing and therefore were not included. It was further thought that the operation of sailboats would impact the use of the lakes by fishermen. They feared uncontrolled sailboats running over anglers' fishing lines.

The use of Commission lakes by sailboats is limited, but the potential for additional use exists. Since the Commission is charged with providing both fishing and boating opportunities, the Commission proposes to amend

the current regulations to accommodate both uses within acceptable management principles. The proposed amendment will provide additional resources for use by sailboats. The Commission therefore proposes that § 58.3(b) be eliminated. The Commission's Boating Advisory Board (Board) previously recommended the publication of a notice of proposed rulemaking containing this change.

(2) *Sections 105.3 and 109.3 (relating to unacceptable boating practices; and personal watercraft)*. At the 1996 annual conference, the National Association of State Boating Law Administrators (NASBLA) adopted changes to the model Personal Watercraft Act. The amendments were directed at further refining the use and operation of these boats. Although the Commission already has implemented several of the changes, staff wished to include several new sections relating to operating in proximity of other boats. Additionally, staff proposed that the age for operating personal watercraft solo be raised to 16. Staff proposed that these changes be incorporated into § 109.3 (relating to personal watercraft).

At its December 20, 1996 meeting, the Board considered these changes and concluded, with the concurrence of staff, that the majority of the discussed restrictions should not apply solely to personal watercraft but to other boats as well. Therefore, the Board recommended that the Commission amend these provisions, with a few changes, into existing unacceptable boating practices in § 105.3. The Board, however, did not recommend that the Commission adopt the staff's recommendation that the age for operating personal watercraft solo be raised to 16 years.

At its January 25, 1997 meeting, the Commission considered these changes. With regard to § 105.3, the Commission approved the publication of a notice of proposed rulemaking consistent with the recommendations of the Board. With regard to § 109.3, the Commission, contrary to the recommendation of the Board, approved the publication of a notice of proposed rulemaking containing a provision that no person 15 years of age or younger may operate a personal watercraft on the waters of this Commonwealth, except a person 12 to 16 years of age may operate a personal watercraft if a person at least 18 years of age is on board the boat.

(3) *Sections 109.2—109.4 (relating to sailboards; personal watercraft; and waterskiing, aquaplaning, kite skiing and similar activities)*. The Coast Guard has adopted regulations that will allow manufacturers to produce fully inflatable personal flotation devices (PFD) for the recreational boating market in 1997. This action is seen by many as a major step forward in boating safety. With these devices, more boaters will be willing to wear a PFD. Wearing a PFD has been shown to be the single most effective factor that boaters can do to increase their chances of surviving a boating accident. However, the fully inflatable PFD is not designed to be the PFD of choice for all activities. While it is ideal for cruising boats and fishing boats, it is not well designed for use on boats where the participant ends up in the water on a routine basis. Examples of this type of boat would be personal watercraft and sailboats. Use by waterskiers also would have the reverse effect than that which is desired.

Some inflatable PFDs are being manufactured so that they automatically inflate when submerged; others must be manually inflated by jerking a cord. Both types will have an oral backup capability. Boaters and waterskiers who are frequently in the water will find an automatic

inflatable device an inconvenience as it inflates every time that it falls into the water. A manual inflation device also would not be a good choice because these individuals often end up in the water under conditions that would not allow them to inflate the device in time to save their lives. Manufacturers intend to place a warning label on their packaging about the dangers of using a fully inflatable PFD in the wrong circumstances. This warning to the purchaser will not be enough to prevent unknowledgeable boaters from purchasing or using these devices when they should not.

The Commission is therefore proposing amendments to §§ 109.2—109.4 that clarify that inflatable PFDs may not be used to meet the requirements of these sections. The Commission's Board previously recommended the publication of a notice of proposed rulemaking containing these changes.

F. Paperwork

The proposed amendments will not increase paperwork and will create no new paperwork requirements.

G. Fiscal Impact

The proposed amendments will have no adverse fiscal impact on the Commonwealth or its political subdivisions. The proposed amendments will impose no new costs on the private sector or the general public.

H. Public Comments

Interested persons are invited to submit written comments, objections or suggestions about the proposed amendments to the Executive Director, Fish and Boat Commission, P. O. Box 67000, Harrisburg, PA 17106-7000, within 30 days after publication of this notice in the *Pennsylvania Bulletin*.

PETER A. COLANGELO,
Executive Director

Fiscal Note: 48A-64. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 58. RECREATION

PART II. FISH AND BOAT COMMISSION

Subpart A. GENERAL PROVISIONS

CHAPTER 53. COMMISSION PROPERTY

§ 53.8. Boats.

* * * * *

[(b) A sailboat over 17 feet in length may not be used on a Commission lake. On lakes less than 100 acres in size, sailboats may not be over 14 feet in length. On trout stocked lakes, sailboats are not allowed between the date trout season opens and June 1.]

- [(c)] (b) ***
- [(d)] (c) ***
- [(e)] (d) ***
- [(f)] (e) ***
- [(g)] (f) ***
- [(h)] (g) ***

- [(i)] (h) ***
- [(j)] (i) ***

Subpart C. BOATING

CHAPTER 105. OPERATIONAL CONDITIONS

§ 105.3. Unacceptable boating practices.

It is unlawful to:

* * * * *

- (5) Cause a boat to become airborne or completely leave the water while crossing the wake of another boat when within 100 feet of the boat creating the wake.**
- (6) Weave through congested traffic.**
- (7) Follow too close to another boat, including personal watercraft. For the purposes of this paragraph, following too close shall be construed as operating in excess of slow, minimum height swell speed within 100 feet to the rear or 50 feet to the side of another boat that is underway, unless the boats are operating in a narrow channel, in which case the boats may operate at the speed and flow of other boat traffic.**
- (8) Operate within 100 feet of a waterskier being towed by another boat.**

CHAPTER 109. SPECIALTY BOATS AND WATERSKIING ACTIVITIES

§ 109.2. Sailboards.

* * * * *

(b) Personal flotation devices. [A person may not] It is unlawful for a person to operate or attempt to operate a sailboard on waters of this Commonwealth unless the person is wearing a Type I, II, III or V United States Coast Guard approved personal flotation device. Inflatable personal flotation devices may not be used to meet this requirement.

§ 109.3. Personal watercraft.

* * * * *

(b) It is unlawful for a person to operate, or be a passenger onboard, a personal watercraft on the waters of this Commonwealth unless the person is wearing a Type I, II, III or V United States Coast Guard approved personal flotation device. Inflatable personal flotation devices may not be used to meet this requirement.

* * * * *

(h) A person 15 years of age or younger may not operate a personal watercraft on the waters of this Commonwealth, except a person 12 to 16 years of age may operate a personal watercraft if a person at least 18 years of age is on board the boat.

§ 109.4. [Water skiing] Waterskiing, aquaplaning, kite skiing and similar activities.

* * * * *

(f) *PFDs.* [**A person may not**] **It is unlawful for a person to operate a boat on the waters of this Commonwealth for [water skiing] waterskiing unless each person being towed is wearing a Type I, II, III or V United States Coast Guard approved PFD. Inflatable PFDs may not be used to meet this requirement.**

[Pa.B. Doc. No. 97-354. Filed for public inspection March 7, 1997, 9:00 a.m.]

GAME COMMISSION

[58 PA. CODE CH. 147]

Special Permits—Taxidermy

To effectively manage the wildlife resources of this Commonwealth, the Game Commission (Commission), at its January 14, 1997, meeting, proposed the following amendments:

Amend Chapter 147, Subchapter G (relating to taxidermy) to conform with the changes to 34 Pa.C.S. (relating to Game and Wildlife Code) (code).

These proposed amendments will have no adverse impact on the wildlife resources of this Commonwealth.

The authority for these proposals is the code.

These proposals were made public at the January 14, 1997, meeting of the Commission and comments on these proposals can be sent to the Executive Director of the Commission, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797 until April 4, 1997.

Proposed amendments to Chapter 147, Subchapter G

1. Introduction

By the act of December 19, 1996 (P. L. 442, No. 184) (Act 184), section 2926 of the code (relating to taxidermy permits), was amended to provide that taxidermy permits could be issued in three specific areas. This change in the law requires changes to Subchapter G insofar as it involves examination procedures. As a result, the Commission at its January 14, 1997, meeting proposed changing the subchapter. The proposal was made under the authority contained in section 2901(b) of the code (relating to regulations for permits).

2. Purpose and Authority

A change in the code authorizing the issuance of taxidermy permits in three specific areas requires the modification of taxidermy permit examination procedures. The proposed changes provide for restricted taxidermy permits and specify numbers and types of specimens to be submitted for the examination, as required by the statute.

Section 2901(b) of the code authorizes the Commission to promulgate regulations for the issuance of any permit and to control the activities which may be performed under the authority thereof. The proposed changes would be adopted under this authority.

3. Regulatory Requirements

Act 184 requires that as part of the taxidermy examination, an individual must present five specimens from each group for which he is seeking a permit. The proposed changes specify what types of specimens must be submitted and require the submission of 15 specimens for a general permit covering all three groups.

4. Persons Affected

Individuals wishing to be issued a taxidermy permit by the Commission would be affected by the proposed changes.

5. Cost and Paperwork Requirements

Act 184 requires submission of five specimens in each area, tripling the requirement for those wishing to practice taxidermy in all areas. The proposed changes reflect this change in Act 184. Clearly, there will be additional cost to the Commission in terms of having additional specimens examined. The amount of this cost is uncertain and will depend on the number of applicants.

6. Effective Date

These amendments will be effective on the final publication in the *Pennsylvania Bulletin* and will remain in effect until changed by the Commission.

7. Contact Person

For further information on the proposed changes, the contact person is James R. Fagan, Director, Bureau of Law Enforcement, (717) 783-6526, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797.

DONALD C. MADL,
Executive Director

Fiscal Note: 48-97; (1) Game and Wildlife Fund; (2) Implementing Year 1996-97 is \$minor; (3) 1st Succeeding Year 1997-98 is \$minor; 2nd Succeeding Year 1998-99 is \$minor; 3rd Succeeding Year 1999-00 is \$minor; 4th Succeeding Year 2000-01 is \$minor; 5th Succeeding Year 2001-02 is \$minor; (4) Fiscal Year 1995-96 \$n/a; Fiscal Year 1994-95 \$n/a; Fiscal Year 1993-94 \$n/a; (7) Game and Wildlife Fund; (8) recommends adoption.

Annex A

TITLE 58. RECREATION

PART III. GAME COMMISSION

CHAPTER 147. SPECIAL PERMITS

Subchapter G. TAXIDERMY

§ 147.121. Definitions.

In addition to the definitions in the act and § 131.2 (relating to definitions), the following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise:

* * * * *

General taxidermy permit—A permit issued to a person to engage in the activities described in section 2926(b) and (b.1) of the act (relating to taxidermy permits).

* * * * *

Restricted taxidermy permit—A permit issued to a person to engage in taxidermy for one of two specific categories only:

(i) **Big and small game, excluding wild turkey.**

(ii) **Fish or game birds including wild turkey.**

* * * * *

§ 147.122. Application.

(a) An application for examination shall be submitted on a form supplied by the Commission. A nonrefundable fee of \$50 shall be submitted with the application. An

additional \$100 shall be submitted for each category listed on the permit if the examination is passed.

(b) The applicant shall list on the application if testing for a general permit or a restricted permit. If the applicant is testing for a restricted permit, the category shall be listed.

- (1) Big and small game, excluding wild turkey.
- (2) Fish.
- (3) Game birds, including wild turkey.

§ 147.123. Taxidermy examination.

(a) Taxidermy permit applicants shall present [five] fifteen specimens that have been mounted by the applicant within the last 3 years. The required specimens shall be: One antlered whitetail deer head, [one small mammal, one upland game bird, one duck or other waterfowl and one fish.] one other big game specimen, two small game specimens and one furbearer specimen. Five different fish specimens will be required and five game birds shall include one wild turkey mount, two upland game birds and two waterfowl specimens. [The] All birds shall be mounted with the feet and legs visible. [The] All specimens shall be found in the wild within this Commonwealth.

(b) Restricted taxidermy permit applicants shall present five specimens that have been mounted by the applicant within the last 3 years in the category they are attempting to secure a permit. Big and small game applicants shall present one antlered whitetail deer head, one other big game specimen, two small game specimens and one furbearer specimen. Fish applicants shall present five different fish specimens, game bird applicants shall present one wild turkey, two upland game birds and two waterfowl specimens. All birds and waterfowl shall be mounted with the feet and legs visible. All specimens must be found in the wild within this Commonwealth.

- [(b)] (c) * * *
- [(c)] (d) * * *
- [(d)] (e) * * *

§ 147.129. Unlawful acts.

- (a) It is unlawful to:
 - * * * * *

(11) [Violate other provisions of this title or the act] Receive, possess or hold a specimen other than authorized when issued a restricted taxidermy permit.

(12) Practice taxidermy on a specimen other than authorized when issued a restricted taxidermy permit.

* * * * *

[Pa.B. Doc. No. 97-355. Filed for public inspection March 7, 1997, 9:00 a.m.]

PENNSYLVANIA PUBLIC UTILITY COMMISSION

[52 PA. CODE CH. 57]

[L-950108]

Obsolete Regulations Concerning Electric Service

The Pennsylvania Public Utility Commission (Commission) on October 3, 1996, adopted a proposed rulemaking regarding the elimination of obsolete regulations regarding electric service. The rulemaking has two distinct purposes. The first is to eliminate regulations which the Commission believes are burdensome to the electric utility industry. These regulations relate to record maintenance, system frequency and sales promotion practices for gas and electric utilities. The second purpose is to revise the procedure to request exemption from the application of the undergrounding requirement for electric service in new residential developments. The contact person is Patricia Krise Burket, Assistant Counsel, Law Bureau, (717) 787-3464.

Executive Summary

By order entered May 23, 1995, the Commission adopted the Advance Notice of Proposed Rulemaking to Review and Rescind All Obsolete and Excessive Regulations. After a 60-day comment period, the Commission adopted the above-captioned proposed rulemaking by order entered January 25, 1996, at L-950108, which establishes a 30-day comment period. An amended proposed rulemaking order was adopted October 3, 1996, which addressed the procedure to request exemption from the application of the undergrounding requirement for electric service in new residential developments.

This order eliminates and revises regulations related to the electric and gas industries which the Commission believes are excessive and/or obsolete. Specifically, the rulemaking deletes § 57.13 (relating to records) which removes the burdensome requirements that records be kept at an office of the electric public utility within its service territory and be open to the Commission's inspection. Deletion of § 57.15 (relating to system frequency) will eliminate filing and maintenance of system frequency reports by electric utilities. Sections 57.61—57.67 and 59.51 will be deleted to remove burdensome paperwork requirements for electric and natural gas utilities in regard to sales promotion activities. Sections 57.85 and 57.86 (relating to tariff filings; and exceptions) will be revised to simplify the procedure whereby developers may be granted an exemption from requirement that electric service in new residential developments be located underground.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)) on February 20, 1997, the Commission submitted a copy of these proposed amendments 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 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 Legislative 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 after 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 proposed amendments, by IRRC, the General Assembly and the Governor of objections raised.

Public Meeting held
October 3, 1996

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

Amended Proposed Rulemaking Order

By the Commission:

By Order entered May 23, 1995, at Docket No. L-950103, we issued an Advance Notice of Proposed Rulemaking To Review And Rescind All Obsolete And Excessive Rules And Regulations. The advance notice was published in the *Pennsylvania Bulletin* on June 3, 1995, 25 Pa.B. 2188, and a 60-day comment period set. We received comments from the Pennsylvania Electric Association and our own Bureaus of Law and CEEP which were specific to the electric industry and reflected the need to eliminate two sections and revise other sections contained in Chapter 57. Accordingly, on January 25, 1996, at Docket No. L-00950108, we entered an order initiating a proposed rulemaking to revise Chapter 57. On May 22, 1996, however, we withdrew the proposed rulemaking order from consideration by the Office of Attorney General prior to publication so as to allow for Commission reconsideration of specific changes proposed to the regulations which require that electric service in new residential developments be placed underground.

The instant proposed rulemaking order covers the same subject matter as the previous order but with additional revisions to existing regulations. We believe that the revisions and deletions proposed will clarify, simplify and remove excessive and burdensome requirements from our electric service regulations.

We have decided to retain the undergrounding requirement for electric service in new residential developments. To compensate, we have proposed revisions which should streamline the existing process for obtaining exemptions from the requirement where compliance would work an undue hardship or is otherwise impractical.

Our review of the affected sections was careful and meticulous. We are well aware of our duty to ensure the safety of utility service, and our proposed changes will not result in any lapse in our mandate. The proposed changes are as follows:

§ 57.13. Records. Deletion of this section removes the burdensome requirement that records be kept at an office of the public utility within its service territory and open for Commission examination. New methods of electronic and optical data storage and transmission are available which eliminate the need to maintain hard copies of records on site.

§ 57.15. System frequency. This section is eliminated as excessive and obsolete.

§§ 57.61—57.67 and 59.51. Sales Promotion Practices for Gas and Electric Utilities. These regulations were

created at a time when there were fewer competitive forces acting upon Pennsylvania gas and electric utilities. These rules which require burdensome paperwork impose a market disadvantage on utilities as compared to new entrants and other nonregulated suppliers. Deletion of these regulations will permit gas and electric utilities to be innovative without the burden of reporting their sales activities months in advance of their implementation.

§ 57.85. Tariff filing. This regulation is unnecessary to the extent that it requires electric utilities to incorporate a Commission regulation on undergrounding requirements into their tariff rules. Repeating provisions of a regulation in a tariff does not increase the force of the regulation as it already must be obeyed. This regulation also requires that moneys received from an applicant for electrical service be credited to Contributions in Aid of Construction. As it is axiomatic that moneys paid to utilities by applicants for service for necessary and additional costs incurred by the utility for construction of facilities to serve the applicants are Contributions in Aid of Construction, the provision is surplusage that may be eliminated. Also, because of an internal Commission reorganization, the Bureau of Safety and Compliance referenced in subsection (c) is no longer the Commission bureau with which electrical utilities must file their undergrounding construction specification standards and revisions. The appropriate bureau is now the Bureau of Fixed Utility Services. The regulation will be revised to account for this change.

§ 57.86. Exceptions to mandatory undergrounding of electrical service in new residential developments. Commission regulations at §§ 57.81—57.88 require that electric service in new residential developments be placed underground. The existing procedure at § 57.86 that must be followed in order to obtain an exemption from the requirement not only is unnecessarily complicated, but also is inconsistent with other Commission procedures related to waiver of regulations. Therefore, this regulation will be revised to simplify the exemption process.

Accordingly, under sections 501, 504, 505, 506, 1301 and 1501 of the Public Utility Code, 66 Pa.C.S. §§ 501, 504, 505, 506, 1301 and 1501, and the Commonwealth Documents Law (45 P. S. § 1201 *et seq.*) and the regulations promulgated thereunder, we shall revise our original rulemaking order to accomplish the objectives described in the body of this order; *Therefore,*

It is Ordered That:

1. The previously instituted rulemaking proceeding is hereby amended as stated in the body of this order.
2. The Commission's regulations are hereby proposed to be amended by deleting §§ 57.13, 57.15, 57.61—57.67, and 59.51 and revising §§ 57.85 and 57.86 as stated in the body of the order.
3. The Secretary shall submit this order and Annex A to the Office of Attorney General 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 IRRC.
6. The Secretary shall deposit this order and Annex A with the Legislative Reference Bureau for publication in

the *Pennsylvania Bulletin*. Interested persons 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 the Pennsylvania Electric Association who submitted comments in the original rulemaking proceeding entered January 25, 1996.

JOHN G. ALFORD,
Secretary

Fiscal Note: 57-163. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 52. PUBLIC UTILITIES

PART I. PENNSYLVANIA PUBLIC UTILITY COMMISSION

Subpart C. FIXED UTILITY SERVICES

CHAPTER 57. ELECTRIC SERVICE

Subchapter B. SERVICE AND FACILITIES

§ 57.13. [Records] (Reserved).

[Records required by this chapter shall be kept within this Commonwealth at an office of the public utility located in the territory served by it, and shall be open for examination by the Commission or a representative of the Commission. If a utility finds it necessary to keep its records outside the territory served or this Commonwealth, the Commission shall be so notified.]

§ 57.15. [System frequency] (Reserved).

[(a) *Standard frequency.* A public utility supplying alternating current service shall adopt and file with the Commission a standard frequency or frequencies for its system, the suitability of which may at any time be determined by the Commission.

(b) *Allowable variation.* A public utility shall maintain the system frequency within 3% of the standard frequency adopted. Momentary variations of frequency of more than 3%, which are clearly not due to lack of proper equipment or reasonable care on the part of the public utility, will not be considered as violations of this section.

(c) *Records.* A public utility shall keep in continuous operation in the major generating station or in the office of the load dispatcher, one graphic recording frequency meter to record system frequency.]

Subchapter F. (Reserved)

(*Editor's Note:* As part of this proposal, the Commission is proposing to delete Subchapter F, §§ 57.61—57.67, which appears at 52 Pa. Code pages 57-44.2—57-49, serial pages (217208), (205795), (205796), (217209) and (205835)—(205839).)

Subchapter H. UNDERGROUND ELECTRICAL SERVICE IN NEW RESIDENTIAL DEVELOPMENTS

§ 57.85. [Tariff filing] Undergrounding construction; specification standards.

[(a) A public utility furnishing electric service to the public shall file a tariff supplement adding § 57.83 (relating to applicants for electrical service)

to its tariff. The tariff supplement shall become effective on the date filed.

(b)] Public utilities furnishing electric service to the public shall file their undergrounding construction, specification standards and revisions thereto with the Commission's Bureau of [Safety and Compliance] Fixed Utility Services.

[(c) Amounts the public utility receives under § 57.83(4) (relating to applicants for electrical service) shall be credited to Contributions in Aid of Construction.]

§ 57.86. Exceptions.

(a) Whenever a public utility or any affected person believes that the application of the tariff rule works an undue hardship, involves a physical impossibility[,] or is otherwise inappropriate, the utility or [persons] person may request an exception from the undergrounding requirements [of §§ 57.81—57.85] by providing the Commission with the following:

* * * * *

(2) A [letter] petition setting forth:

* * * * *

(b) [Upon the filing of an exception request, Commission staff will notify the utilities involved and the appropriate local government authority, review the facts stated in the request, and issue to the applicant and the utility an informal written report and decision within 180 days of the request for exception. Failure of the party requesting an exception to supply sufficient data within the 180 day period shall result in the automatic denial of the request.] A copy of the petition shall be mailed to all appropriate local government authorities, and to all other affected persons and utilities.

(c) [A public utility of an affected person may appeal the informal decision rendered by Commission staff by filing a letter petition with the Secretary of the Commission stating the facts in question and requesting a hearing. Appeals shall be referred to the Commission's Office of Administrative Law Judge for hearing and decision.

(d)] If an exception request initiated by an applicant for electric service is granted, and the applicant thereafter desires underground electric service, [then §§ 57.82 and 57.83 (relating to installation of distribution and service lines; and applicants for electric service) apply] this subchapter applies as if no exception [had] has been granted.

CHAPTER 59. GAS SERVICE

[SALES PROMOTION PRACTICES]

§ 59.51. [General] (Reserved).

[Sales promotion practices engaged in by gas utilities, or affiliates on their behalf, shall conform with §§ 57.61—57.67 (relating to sales promotion practices), which govern the forms of promotional activity in which electric and gas utilities under the jurisdiction of the Commission may engage.]

[Pa.B. Doc. No. 97-356. Filed for public inspection March 7, 1997, 9:00 a.m.]

[52 PA. CODE CH. 58]

[L-00960118]

Residential Low Income Usage Reduction Programs

The Pennsylvania Public Utility Commission (Commission) adopted a proposed rulemaking to modify regulations to continue existing usage reduction programs for low income customers funded from gross utility revenues. The criteria for the continuation of low income usage reduction programs includes, but is not limited to: (1) annual funding for a utility's program; (2) integration of the program to operate with a utility's customer service and collection programs and other relevant public or private programs; (3) tenant eligibility; (4) onsite energy surveys; (5) program conservation measures; (6) conservation education; and (7) program evaluation. The contact persons are Rhonda Daviston, Assistant Counsel, Law Bureau, (717) 787-6166 and David Mick, Bureau of Consumer Services, (717) 783-3232.

Executive Summary

At the public meeting held September 19, 1996, the Commission adopted an order which promulgates the proposed rulemaking to extend the Residential Low Income Usage Program (LIURP) which is scheduled to expire on or before January 28, 1998.

The Commission recognizes LIURP's weatherization and conservation services have achieved significant benefits for utilities and low income customers. Analyses reveal that the LIURP program has achieved, among other goals, its initial goal of reducing energy usage, utility bills and arrearages for residential low income households. Based upon its experience with the LIURP program for over 9 years, the Commission believes that LIURP produces benefits for the regulated utilities associated with load management, avoided cost of future generation, and fuel purchasing, as well as diminished environmental impacts related to energy production and transmission. Reducing overall energy use through LIURP has implications for energy conservation which produces similar benefits.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on February 20, 1997, the Commission submitted a copy of these proposed amendments 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 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 Legislative 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 IRRC has objections to any portion of the proposed amendments, it will notify the Commission within 30 days after 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 objections raised.

Public Meeting held
September 19, 1996

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

Proposed Rulemaking Order

The LIURP expires on or before January 28, 1998. See § 58.3 (relating to establishment of residential low income usage reduction program). In order to continue this program, the regulations must be revised accordingly.

Since its inception in 1988, the LIURP program, §§ 58.1—58.18, has provided conservation services to more than 110,000 low income households. Services may have included full weatherization conservation treatments, furnace repair and replacement, water heating measures, and electric baseload measures.

Analyses of the program and its results reveal that LIURP has achieved, among other goals, its initial goal of reducing energy usage, utility bills and arrearages for residential low income households. Based upon the Commission's experience with the LIURP program over nearly 9 years, we believe that LIURP produces both load management and energy conservation benefits. Assisting low income customers to reduce energy demand has benefits associated with load management, avoided cost of future generation and fuel purchasing, as well as diminished environmental impacts related to energy production and transmission. Reducing overall energy use through LIURP has implications for energy conservation which produces similar benefits.

LIURP benefits can also be viewed from a broader perspective. LIURP services engender improved community relations for utility companies as they become partners in addressing critical social needs in their service territories. Because of the labor intensive nature of usage reduction services, LIURP is also producing economic development benefits. At the same time, LIURP is improving the condition of Pennsylvania's existing housing stock.

From the perspective of low income LIURP recipients, the program has several worthwhile benefits. These include improved comfort levels, safer living conditions through reduction in the use of secondary heating devices, and more moderate and manageable utility bills. Furthermore, reduced energy bills contribute to the availability of affordable housing for low income families.

The current regulations have been modified to reflect certain changes in the program and prospective changes in the utility markets. The definition of "covered utility" has been amended to confine the program's parameters to local distribution utilities to ensure that the utility that has direct customer access will continue to provide the LIURP program.

Refrigerator replacement has been specified in regulations so as to allow the electric utility more leeway in its program implementation. Next, upon informal requests from several utilities presently involved in the LIURP program, a section has been added to allow for landlord contributions. Finally, in response to other informal utility comments and requests, the special needs customer program has been expanded to allow for 20% of the utility's LIURP budget. This will give the covered utility

greater flexibility in administering its program by slightly expanding customer eligibility requirements.

Accordingly, under section 501 of the Pennsylvania Public Utility Code, 66 Pa.C.S. § 501, sections 201 and 202 of the Commonwealth Documents Law (45 P. S. §§ 1202 and 1202) and regulations promulgated thereunder at 1 Pa. Code §§ 7.1—7.5, we propose to amend our regulations at §§ 58.1—58.18 as set forth in Annex A; *Therefore,*

It is Ordered that:

1. A Rulemaking Docket shall be opened to consider regulations set forth in Annex A.

2. The Secretary shall submit a copy of 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 15 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.

JOHN G. ALFORD,
Secretary

Statement of Commissioner John Hanger

When the LIURP program began in 1988, it represented an ambitious attempt to provide conservation services to low income households. Since then, LIURP has been documented to be a useful program that works, and it should be continued. LIURP helps manage electric load for the utility, conserves energy and increases comfort while reducing payment problems for low income households while producing other community benefits as well.

I encourage interested parties to file comments on how to make this important program even better.

Fiscal Note: 57-179. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 52. PUBLIC UTILITIES

PART I. PENNSYLVANIA PUBLIC UTILITY COMMISSION

Subpart C. FIXED UTILITY SERVICES

CHAPTER 58. RESIDENTIAL LOW INCOME USAGE REDUCTION PROGRAMS

§ 58.2. Definitions.

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

* * * * *

Covered utility—A jurisdictional electric or gas **local distribution** utility having sales of natural gas for purposes other than resale exceeding 10 billion cubic feet or sales of electric energy for purposes other than resale exceeding 750 million kilowatt-hours during the preceding calendar year or both.

* * * * *

§ 58.3. Establishment of residential low income usage reduction program.

A covered utility shall establish a usage reduction program for its low income customers. **[The program shall be initially offered by January 28, 1988, and shall continue for 10 years following the initial offering. A covered utility may, with the approval of the Commission, continue to provide services after 10 years from the initial offering of program services.]**

§ 58.8. Tenant eligibility.

(a) Program measures. An eligible customer who is a tenant shall have an equal opportunity to secure program services if the landlord has granted written permission to the tenant for the installation of program measures, and the landlord agrees, in writing, that rents will not be raised **unless the increase is related to matters other than the installation of the usage reduction measures**, and the tenant not evicted for a stated period of time at least 12 months after the installation of the program measures, if the tenant complies with ongoing obligations and responsibilities owed the landlord.

(b) Landlord contributions. A covered utility may seek landlord contributions as long as the contributions do not prevent an eligible customer from receiving program services. Contributions from landlords shall be used by the utility as supplemental to its approved Residential Low Income Usage Program budget.

§ 58.10. [Priority of program services] Program announcement.

* * * * *

(c) A covered utility may spend up to **[10] 20%** of its annual program budget on eligible special needs customers as defined in § 58.2 (relating to definitions).

§ 58.11. Energy survey.

(a) If an applicant is eligible to receive program services, an onsite energy survey shall be performed to determine if the installation of program measures would be appropriate. The installation of a program measure is considered appropriate if it is not already present and performing effectively and when the energy savings derived from the installation will result in a simple payback of 7 years or less. A 12-year simple payback criterion shall be utilized for the installation of side wall insulation, attic insulation, space heating system replacement **[and],** water heater replacements **and refrigerator replacement** when the expected lifetime of the measure exceeds the payback period.

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