

# PROPOSED RULEMAKING

## INSURANCE DEPARTMENT

[31 PA. CODE CH. 135]

### Qualifications of Persons Signing Annual Financial Statements

The Insurance Department (Department) proposes to amend Part VIII (relating to miscellaneous provisions) by deleting §§ 135.1 and 135.2 to read as set forth in Annex A. The deletion is being published as a proposed rulemaking to allow the opportunity for public comment. The repeal is proposed under the authority of sections 206, 506, 1501 and 1502 of The Administrative Code of 1929 (71 P. S. §§ 66, 186, 411 and 412); section 301(g) of The Insurance Department Act of 1921 (40 P. S. § 71(g)); and section 320 of The Insurance Company Law of 1921 (act) (40 P. S. § 443). The regulations relate to the qualifications of persons signing annual financial statements for foreign and domestic life, accident and health insurance companies, associations, exchanges, fraternal benefit societies and beneficial societies.

#### *Purpose*

The purpose of this rulemaking is to eliminate obsolete, unnecessary regulations. The regulations adopted were effective January 1, 1971, under the authority of section 320 of the act; section 28 of the act of July 17, 1935 (P. L. 1092, No. 357) (40 P. S. § 1078) (now repealed) relating to fraternal benefit societies; and section 7 of the act of June 4, 1937 (P. L. 1643, No. 342) (40 P. S. § 1107) (now repealed) relating to beneficial societies.

The regulations prescribe the qualifications required of an actuary who signs the annual financial statement filed with the Department by life, accident and health insurance companies, associations, exchanges, fraternal benefit societies and beneficial societies. The regulations require the signing actuary to (1) be a member of the American Academy of Actuaries; or (2) have the educational background necessary for the practice of actuarial science with not less than 7 years of actuarial experience.

The requirements in the regulations are no longer used by the Department and duplicate existing statutory and regulatory authority. The Insurance Department Act of 1921 was amended in 1994 adding section 301(g) requiring a submission of an actuarial opinion of reserves for annual statements, beginning with the year 1993.

The current qualification requirements for actuaries signing annual statements with respect to life insurers and fraternal benefit societies (including accident and health insurance written by those insurers) are found in § 84b.5(b) (relating to general requirements) adopted December 10, 1994, under the authority of section 301(f) of The Insurance Department Act of 1921.

The current actuarial qualification requirements for financial statements filed by property and casualty insurers (including accident and health insurance written by property and casualty insurers) are contained in the instructions for completing annual financial statements. Section 320(a)(2) of the act requires insurers to adhere to the annual statement instruction adopted by the National Association of Insurance Commissioners (NAIC), in the absence of a contrary statute, regulation or order of the Insurance Commissioner. For uniformity, the Common-

wealth has historically relied upon NAIC instructions and has not adopted any laws, regulations or orders governing this topic.

Both the annual statement instructions (governing property and casualty insurers) and § 84b.5(b) sufficiently address the credentials that an actuary must have to sign a financial statement. Chapter 135 (relating to qualifications of persons signing annual financial statements) in no manner enhances the authorizing statutes and regulations. Therefore, the regulations are outdated and redundant, and have been superseded by more recent regulations and requirements.

#### *Affected Parties*

The deletion of the regulations is expected to have a minimal effect on life insurers and fraternal benefit societies because the regulations are outdated and have been superseded by statutory amendment and subsequently adopted regulations.

#### *Fiscal Impact*

The deletion of the regulations has no fiscal impact because of the redundant nature of the regulations in relation to section 301(g) of The Insurance Department Act of 1921, Chapter 84b (relating to actuarial opinion and memorandum) and section 320 of the act. The regulatory provisions remain in effect under the statutes and regulations.

#### *Paperwork*

The deletion of the regulations would impose no additional paperwork requirements on the Department, life insurers or fraternal benefit societies.

#### *Effectiveness/Sunset Date*

The rulemaking will become effective upon final publication in the *Pennsylvania Bulletin*. Because the rulemaking proposes to delete obsolete, redundant regulations, no sunset date has been assigned.

#### *Contact Person*

Questions or comments regarding the proposed rulemaking may be addressed in writing to Elaine Leitzel, Administrative Officer, Office of Regulation of Companies, 1345 Strawberry Square, Harrisburg, PA 17120, (717) 787-8840, within 30 days after its publication in the *Pennsylvania Bulletin*.

#### *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on June 3, 1997, the Department submitted a copy of this proposed rulemaking to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House Insurance Committee and the Senate Banking and Insurance Committee. In addition to submitting this proposal, the Department has provided IRRC and the House and Senate Committees with a copy of a detailed Regulatory Analysis Form prepared by the Department in compliance with Executive Order 1996-1. A copy of the material is available to the public upon request.

If IRRC has objections to any portion of the proposal, it will notify the agency within 30 days of the close of the public comment period. The notification shall specify the regulatory review criteria that have not been met by that portion. The Regulatory Review Act specifies detailed

procedures for the Department, the Governor and the General Assembly to review these objections before final publication.

LINDA S. KAISER,  
Insurance Commissioner

**Fiscal Note:** 11-159. No fiscal impact; (8) recommends adoption.

**Annex A**

**TITLE 31. INSURANCE**

**PART VIII. MISCELLANEOUS PROVISIONS**

**CHAPTER 135. [ QUALIFICATIONS OF PERSONS SIGNING ANNUAL FINANCIAL STATEMENTS ]  
(Reserved)**

**§ 135.1 [ Purpose ] (Reserved).**

**[ This chapter is to assure compliance with the requirement that an actuary or a consulting actuary signing the annual financial statement of an insurer is experienced and qualified to perform his duties in a fully competent and professional manner and in the public interest, and to establish, promote and maintain high standards of conduct and competence within the actuarial profession in the interests of policyholders and the insuring public in general. ]**

**§ 135.2 [ Qualified actuaries ] (Reserved).**

**[ Annual financial statements of foreign and domestic life and accident and health insurance companies, associations, exchanges, fraternal benefit societies and beneficial societies and any other related documents, statements or reports filed with the Insurance Department which require the signature of an actuary or consulting actuary shall be signed by a qualified actuary. For the purpose of this chapter, a qualified actuary is either of the following:**

- (1) A member of the American Academy of Actuaries.**
- (2) An individual who has demonstrated to the satisfaction of the Insurance Department that he has the educational background necessary for the practice of actuarial science and that he has not less than 7 years' actuarial experience. ]**

[Pa.B. Doc. No. 97-934. Filed for public inspection June 13, 1997, 9:00 a.m.]

**PENNSYLVANIA PUBLIC  
UTILITY COMMISSION**

**Standardized Cost Support Data to be Provided by ILECs in Arbitration Proceedings**

*Commissioners Present:* John M. Quain, Chairperson; Robert K. Bloom, Vice Chairperson; John Hanger; David W. Rolka; Nora Mead Brownell

Public meeting  
held May 22, 1997

*Proposed Rulemaking to Establish Standardized Cost Support Data to be Provided by ILECs in Arbitration Proceedings; Doc. No. L-00960119*

**Order**

*Background*

On September 9, 1996, at Docket No. P-00961108, TCG Pittsburgh filed a petition (TCG Petition) with this Commission to establish an Interconnection Agreement with Bell Atlantic-Pennsylvania. Additionally, the TCG Petition requested that the Commission initiate a rule-making proceeding to establish guidelines for the cost support data to be provided by Incumbent Local Exchange Carriers (ILECs) in arbitration proceedings before the Commission.

By order entered December 6, 1996, the Commission granted the TCG Petition in part, and adopted an order to publish in the *Pennsylvania Bulletin* an Advance Notice of Proposed Rulemaking to solicit comments regarding standardized cost support data to be provided by ILECs in arbitration proceedings. An Advance Notice was subsequently published on December 21, 1996 at 26 Pa.B. 6100, with a 60-day deadline for comments. On January 10, 1997, the Pennsylvania Telephone Association (PTA) requested an additional 45 days in which to file comments. This request was granted on January 13, 1997, and the comment period deadline was changed to April 7, 1997. All comments were received prior to the revised April deadline.

*Discussion*

GTE North, Inc. (GTE) filed comments which noted that the Commission would determine the cost study methodologies applicable for GTE prior to the establishment, through a rulemaking, of any general standards. GTE also stated that if the Commission intends for a proposed rulemaking to establish requirements for cost proceedings applicable to GTE, then GTE reserved the right to provide additional comments on a late-filed basis.

TCG did not file formal comments. Instead, TCG submitted a paper titled "Beyond Cost Models: Managing Interconnection Pricing to Achieve Sustainable Competition." This paper was prepared for TCG to enable TCG to identify pricing policies which will promote viable local exchange competition. This paper contains an extensive discussion of the economic attributes and liabilities of various costing models, but it does not indicate that TCG has any preference for any specific costing model nor does it provide additional comments to support a proposed rulemaking on costing issues.

Combined comments were filed by the Bentleyville Telephone Company (Bentleyville) and Pymatuning Independent Telephone Company (Pymatuning), two small rural Local Exchange Carriers (LECs). These LECs argue that it is premature for the Commission to act to develop standardized cost support data for arbitration proceedings because the pricing rules established by the FCC under the Telecommunications Act of 1996 (TA-96) have been stayed by the Eighth Circuit Court of Appeals. These LECs also note that costing issues may currently be under examination in other Commission forums. Therefore, these LECs aver that the Commission should not attempt to standardize cost support data requirements while these significant changes are underway.

By way of further comment, these LECs assert that if the Commission does proceed with a proposed rule-making, then the Commission should adopt an embedded cost-based methodology because any cost methodology

which ignores embedded costs will not allow small, rural LECs to recover their interconnection costs.

Finally, comments were received from the PTA and Sprint. Both PTA and Sprint argue that the Commission should not proceed with the instant proposed rulemaking. Both PTA and Sprint note that the Eighth Circuit has stayed the pricing provisions of the FCC's Order, and that the FCC's pricing rules may be overturned. These commentators also aver that the need to establish standardized cost support data is reduced because the Commission has already heard the initial series of proceedings involving Competitive Local Exchange Carriers (CLECs) who intend to enter the market. Both commentators suggest that the Commission's time and resources might be better devoted to more time sensitive telecommunications issues.

PTA argues that if the Commission proceeds with a proposed rulemaking or a related policy statement, then the Commission should adopt an embedded cost-based methodology. PTA asserts that this costing methodology would allow consistent recovery of actual network costs incurred by actual LECs who have incurred network interconnection costs. PTA requests that the Commission not adopt the FCC's TELRIC (Total Element Long Run Incremental Cost) method, which bases rates on hypothetical networks and costs. To the contrary, Sprint believes that if the Commission does act, then the Commission should select TELRIC as the proper cost study methodology to be used in arbitration proceedings. However, Sprint avers that neither TA-96 nor the related FCC Order requires this Commission to adopt a specific cost model. Therefore, parties in arbitration proceedings should be permitted to use the TELRIC methodology to develop and present a cost model they believe to be appropriate.

#### *Recommendations*

We agree with the above comments which recommend that the Commission not proceed with a proposed rule-

making. There does not appear to be a pressing need for formal regulations in this matter. The primary rationale for a rulemaking was to prevent burdensome relitigation, in arbitration proceedings, of the proper cost support data required to be supplied by ILECs. This burdensome situation has failed to materialize. The Commission's Office of Administrative Law Judge has already processed several interconnection request proceedings. Thus far, there have been no reports that the cost support data required in these individual proceedings has been a difficult issue to resolve. Additionally, it appears that the majority of interconnection arbitrations have already occurred. Again, any need for immediate Commission action in this matter has dissipated.

We also agree that the pricing rules and costing methodology established by the FCC may be altered by the Eighth Circuit. Since the cost issues of local telecommunications competition are in a state of flux, it would be unwise for the Commission to promulgate regulations or establish fixed, standardized cost support data requirements at this time;

*Therefore, It Is Ordered That:*

1. Docket No. L-00960119, Advance Notice of Proposed Rulemaking Order "To Establish Cost Support Data To Be Provided By ILECs In Arbitration Proceedings," be closed.
2. A copy of this Order be served upon all commentators, the industry trade associations, the Office of Consumer Advocate, the Office of Small Business Advocate and the Office of Trial Staff.
3. A copy of this Order shall be forwarded to the *Pennsylvania Bulletin* for publication.

JOHN G. ALFORD,  
*Secretary*

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