

# PROPOSED RULEMAKING

## PENNSYLVANIA PUBLIC UTILITY COMMISSION

[52 PA. CODE CH. 57]

[L-970120]

### Electric Service Reliability Standards

The Pennsylvania Public Utility Commission (Commission) on June 12, 1997, adopted a proposed rulemaking to establish standards and procedures for continuing and ensuring the safety and reliability of electric service in this Commonwealth. The standards provide a uniform method of assessing the reasonableness of electric service reliability. The contact person is Blaine J. Loper, Bureau of Conservation, Economics and Energy Planning, (717) 787-3810 (technical) and Susan T. Povilaitis, Assistant Counsel, Law Bureau (717) 787-2871 (legal).

#### *Executive Summary*

On December 3, 1996, Governor Tom Ridge signed into law Act 138 of 1996, 66 Pa.C. S. Chapter 28 (relating to the Electric Generation Customer Choice and Competition Act) (act), by adding Chapter 28 to establish standards and procedures to create direct access by retail customers to the competitive market for the generation of electricity, while maintaining the safety and reliability of the electric system.

In response to this Legislative mandate, the Commission, on January 24, 1997, instituted a rulemaking proceeding to develop regulations to ensure the safety, adequacy and reliability of the generation, transmission and distribution of electricity in this Commonwealth. An advance notice of proposed rulemaking was published in the *Pennsylvania Bulletin* on February 15, 1997 at 27 Pa. B. 809, with a 30-day comment period.

The Commission adopted a proposed rulemaking adding Subchapter N, to establish standards and procedures for assessing the reasonableness of electric service reliability.

With regard to transmission system reliability, the proposed amendments require electric utilities to conform to industry standards and to the requirements of the North American Electric Reliability Council (NERC) and the appropriate regional reliability council. The proposed amendments also adopt industry accepted performance indicators, such as System Average Interruption Frequency Index and Customer Average Interruption Duration Index, for monitoring the performance and reliability of the transmission and distribution systems, and require annual filings of utility performance results.

The proposed amendments require electric generation suppliers to be members of the appropriate regional reliability council and comply with NERC and regional operating policies, criteria, requirements and standards, including the maintenance of adequate generating reserve capacity.

#### *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 September 30, 1997, to the Independent Regulatory Review Commission (IRRC) and 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 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 10 days after the close of the Committees' review 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.

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

Public meeting held  
June 12, 1997

### Proposed Rulemaking Order

*By the Commission:*

#### *Introduction*

On December 3, 1996, Governor Tom Ridge signed into law Act 138 of 1996, the Electricity Generation Customer Choice and Competition Act (act), which amends Title 66 of the *Pennsylvania Consolidated Statutes* (Public Utility Code or Code) by adding Chapter 28 to establish standards and procedures to create direct access by retail customers to the competitive market for the generation of electricity, while maintaining the safety and reliability of the electric system.

Section 2802(12) of the Code states the following with regard to electric service reliability:

Reliable electric service is of the utmost importance to the health, safety and welfare of the citizens of the Commonwealth. Electric industry restructuring should ensure the reliability of the interconnected electric system by maintaining the efficiency of the transmission and distribution system.

66 Pa.C.S. § 2802(12).

Section 2803 defines "reliability" as follows:

[Reliability] includes adequacy and security. As used in this definition, "adequacy" means the provision of sufficient generation, transmission and distribution capacity so as to supply the aggregate electric power and energy requirements of consumers, taking into account scheduled and unscheduled outages of system facilities; and "security" means designing, maintaining and operating a system so that it can handle emergencies safely while continuing to operate.

66 Pa.C.S. § 2803.

In response to this Legislative mandate, on January 24, 1997, the Commission instituted a rulemaking proceeding to develop regulations to ensure the safety, adequacy and

reliability of the generation, transmission and distribution of electricity in this Commonwealth.

An advance notice of proposed rulemaking was published in the *Pennsylvania Bulletin* on February 15, 1997 (27 Pa. B. 809), with a 30-day comment period. Comments were received from: John G. Alford, Commission Secretary (Secretary Alford); the Delaware Valley Citizens' Council for Clean Air, Pennsylvania Energy Project, the Nonprofits Energy Savings Investment Program, the Sierra Club, the Pennsylvania Energy Efficiency Council and the Pennsylvania Solar Energy Association (collectively, environmentalists); the East Central Area Reliability Council (ECAR); Enron Corp. (Enron); the Industrial Energy Consumers of Pennsylvania (IECPA); the International Brotherhood of Electrical Workers' Pennsylvania Utility Caucus (IBEW); Metropolitan Edison Company and Pennsylvania Electric Company (collectively, GPU Energy); the Office of Consumer Advocate (OCA); the Pennsylvania Builders Association (PBA); the Pennsylvania Electric Association (PEA); Pennsylvania Power & Light Company (PP&L); and the Pennsylvania Rural Electric Association (PREA). A Reliability Working Group, made up of interested participants, was formed by the Commission and met on two separate occasions to discuss the pertinent issues.

This order discusses the comments received and sets forth, in Annex A, proposed amendments governing the safety and reliability of electric service in this Commonwealth.

#### *Discussion*

##### *Transmission and Distribution Facilities*

Several provisions of the Code address the safety and reliability of electric transmission and distribution facilities. Section 2802(20) states:

Since continuing and ensuring the reliability of electric service depends on adequate generation and on conscientious inspection and maintenance of transmission and distribution systems, the independent system operator or its functional equivalent should set, and the commission shall set, through regulations, inspection, maintenance, repair and replacement standards and enforce those standards.

66 Pa.C.S. § 2802(20).

Section 2804(1) addresses standards for Commission assessment and approval of utility restructuring plans:

(1) The commission shall ensure continuation of safe and reliable electric service to all consumers in the Commonwealth, including: . . . (II) the installation and maintenance of transmission and distribution facilities in conformity with established industry standards and practices, including the standards set forth in the National Electric [sic] Safety Code.

66 Pa.C.S. § 2804(1).

Section 2805(b)(1)(iii) addresses electric cooperative corporations as follows:

The reliability of the transmission service provided to electric cooperative corporations must be comparable to the reliability which the transmission supplier provides at the wholesale level.

66 Pa.C.S. § 2805(b)(1)(iii).

Finally, § 2807 sets forth the duties of electric distribution companies:

(a) General rule. Each electric distribution company shall maintain the integrity of the distribution sys-

tem at least in conformity with the National Electric [sic] Safety Code and such other standards practiced by the industry in a manner sufficient to provide safe and reliable service to all customers connected to the system consistent with this title and the commission's regulations.

66 Pa.C.S. § 2807(a).

With regard to transmission system reliability, most commentors believe that transmission line reliability performance standards should remain under the jurisdiction of the North American Electric Reliability Council (NERC), an organization of regional reliability councils established to promote the reliability of the electricity supply for North America. The regional reliability councils represented in this Commonwealth are ECAR, the Mid-Atlantic Area Council (MAAC) and the Northeast Power Coordinating Council (NPCC).

We believe NERC and its member regional reliability councils have been instrumental in establishing and ensuring the current level of reliability enjoyed by electric service customers. Additionally, NERC is in the process of establishing mandatory reliability performance policies, standards, principles and guidelines for all regional reliability councils. We propose to require utilities to conform to industry standards and the requirements of NERC and the appropriate regional council, or successor organizations.

Concerning the inspection and maintenance of distribution facilities, the comments fall in three distinct categories. Enron, GPU Energy, IECPA, PEA and PP&L believe that no additional prescriptive standards are necessary, since electric utilities have their own guidelines for operating and upgrading their systems to meet the current and future needs of their customers. GPU Energy and OCA suggest that the Commission's primary concern should be the performance of the delivery system, with the adoption of service reliability indicators, such as the frequency and duration of service interruptions, which directly impact customer satisfaction. Finally, IBEW and PREA recommend that the Commission set forth comprehensive regulations, including specific maintenance and inspection intervals, tree trimming requirements and service outage reporting.

We decline, at this time, to require specific inspection and maintenance standards, since electric utilities are continually developing new methods and technologies to improve the inspection and testing process. Until such time as prescriptive standards are deemed necessary, we propose to adopt the industry accepted indicators, such as System Average Interruption Frequency Index (SAIFI) and Customer Average Interruption Duration Index (CAIDI), to monitor the performance and reliability of the transmission and distribution systems. We also propose to require annual filings of utility performance results and, based on benchmarks established by the Commission, may direct the utility to take corrective action if performance is found to be unacceptable.

The substance of §§ 57.17, 57.18 and 57.26 (relating to service interruptions; inspection of facilities; and construction and maintenance of facilities) of our regulations have been incorporated herein.

##### *Maintenance of Adequate Reserve Margins*

The Code requires the maintenance of adequate generation capacity reserve margins. Section 2804(1) states:

(1) The commission shall ensure the continuation of safe and reliable electric service to all consumers in the Commonwealth, including:

(i) The maintenance of adequate reserve margins by electric suppliers in conformity with the standards required by the North American Electric Reliability Council (NERC) and the regional reliability council appropriate to each supplier, or any successors to those reliability entities, and in conformity with established industry standards and practices.

66 Pa.C.S. § 2804(1).

Also, with regard to requirements for electric generation suppliers, section 2809(e) provides the following:

In regulating the service of electric generation suppliers, the commission shall impose requirements necessary to ensure that the present quality of service provided by electric utilities does not deteriorate, including assuring that adequate reserve margins of electric supply are maintained . . . .

66 Pa.C.S. § 2809(e).

ECAR, GPU Energy, PEA and PP&L believe that, as long as all electricity suppliers agree to comply with the reliability criteria set forth by NERC and the regional reliability councils, additional State government regulation is not required. These commentators aver that Commission-established reliability criteria and protocols could introduce conflict and complexity into control area operations and may actually serve to reduce reliability. Furthermore, more stringent standards may disadvantage electric generation suppliers and discourage them from entering the Pennsylvania market.

ECAR, GPU Energy, IBEW, PEA, PP&L and PREA suggest that, as a condition for approval of all tariffs, licenses or contractual agreements, all electricity suppliers should be required to maintain membership in an appropriate regional reliability council at a level of membership which assures each supplier's full compliance with applicable reliability criteria and protocols. With regard to penalties or sanctions for noncompliance, ECAR, GPU Energy, PEA and PP&L suggest that the Commission defer to NERC and regional reliability council processes now under development.

IBEW avers it is not sufficient, at this time, to rely on NERC and the regional reliability councils to regulate the reliability of electric generation supply in this Commonwealth. OCA recommends that the Commission monitor NERC performance and either supplement or supplant NERC efforts if they do not achieve the strict requirements of the act.

We propose to require electric generation suppliers to fully comply with the operating policies, criteria, requirements and standards of NERC and the appropriate regional reliability council. We also propose to revoke the license of an electric generation supplier if an investigation shows that the supplier is in noncompliance and no corrective action has been taken.

Although we propose to rely on NERC and the regional reliability councils for maintaining electric system reliability, we are not abdicating our responsibility or authority in this area of regulation. We will continue to monitor the activities of NERC and the regional reliability councils to provide for adequate assurances that these entities will be able to maintain the current levels of reliability under the new industry structure. Absent such assurances, we will not hesitate to implement further appropriate measures to ensure reliability.

The Commission reserves the right to waive any or all requirements of these proposed amendments upon peti-

tion by an affected party under § 5.43 (relating to petitions for issuance, amendment, waiver or repeal of regulations).

In order to ensure the continued safety and reliability of electric service in this Commonwealth, we propose to amend Chapter 57 of our regulations by adding Subchapter N, as set forth in Annex A hereto, which establishes standards and procedures for assessing the reasonableness of electric service reliability. Accordingly, under the Public Utility Code (66 Pa. C. S. §§ 501, 524, 1102, 1103, 1501, 1504, 1505, 2802, 2804, 2807 and 2809) and the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201—1208) and the regulations promulgated thereunder at 1 Pa. Code §§ 7.1—7.4, we shall issue for comment proposed amendments to Chapter 57; *Therefore,*

*It Is Ordered That:*

1. The proposed amendments to 52 Pa. Code Chapter 57, as set forth in Annex A hereto, are issued for comment.

2. The Secretary shall certify this order and Annex A and deposit them with the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.

3. Interested persons may submit an original and 15 copies of written comments to the Office of Prothonotary, Pennsylvania Public Utility Commission, P.O. Box 3265, Harrisburg, PA, 17105-3265, within 60 days from the date this order is published in the *Pennsylvania Bulletin*. A copy of written comments shall also be served upon the Commission's Bureau of Conservation, Economics and Energy Planning.

4. The Secretary shall submit this order and Annex A to the Office of Attorney General for approval as to legality.

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

6. The Secretary shall submit this order and Annex A for review by the designated standing committees of both Houses of the General Assembly, and for review and approval by the Independent Regulatory Review Commission.

7. A copy of this order and Annex A shall be served upon the Office of Consumer Advocate, the Office of Small Business Advocate, the Office of Trial Staff, all jurisdictional electric utilities, all parties of record and all Electric Competition Stakeholders.

JAMES J. MCNULTY,  
*Acting Secretary*

*Statement of Commissioner John Hanger*

Chapter 28 requires that the Commission ensure that reliability is maintained at least at current levels as we move into the era of competitive generation. The Commission appreciates the excellent comments filed in response to the Reliability NOPR, which is the Commission's first regulatory response to the statutory mandate.

*Distribution System Reliability*

Interested parties should recognize that the Proposed Rules significantly improve the Commission's ability to ensure that distribution system reliability is at least maintained at current levels. As OCA points out in its comments, approximately 80% of all service interruptions occur due to failures in the distribution system. Distribution systems will remain completely regulated as generation is opened to competition. This proposed rulemaking

is an important step forward in the Commission's ability to ensure the maintenance of reliability levels. It requires safe and reliable operation in accordance with the National Electrical Safety Code, periodic inspections of facilities, programs for improvements of the worst performing circuits, and comprehensive annual reports of service interruptions. Of perhaps greatest importance, the proposed rules include benchmarks to insure that performance is in fact acceptable and require plans to correct unacceptable performance. Thus, compared to today, the Proposed Rules will significantly improve the Commission's ability to monitor distribution system reliability and require operational or system improvements when performance does not meet designated benchmarks.

I encourage parties to submit comments on these important protections. In particular, are there other benchmarks of performance besides those suggested that should be used? Are frequency and duration of outages sufficient criteria or should other measures, such as voltage reductions, be used as well? How should the Commission determine the level of performance expected under a benchmark? Should Pennsylvania expect superior performance or accept above average performance? Should Pennsylvania also adopt specific requirements for activities to achieve the required reliability levels? Should specific requirements be adopted but applied only if a utility fails to perform adequately?

*Generation and Transmission*

Generation and transmission reliability have historically been subject to industry reliability standards through the North American Electric Reliability Council (NERC) and regional councils such as the Mid-Atlantic Area Council (MAAC) and the East Central Area Reliability Council (ECAR). While the Commission has monitored the activities of these Councils in the past, Pennsylvania has enjoyed a high level of reliability and intervention by the Commission has not been an issue. For example, this Commission has no reserve requirement standard of its own.

The reliability of the regional generation and transmission markets should improve as a result of competition because the system will be more coordinated. Larger areas with more diverse load and supply can achieve the same level of reliability more efficiently, provided that the system is properly managed.

The change to competitive generation does, however, inherently require changes in the standards and agreements of the Reliability Councils. For example, when the industry included a small number of owners of substantial generation and transmission facilities, it was appropriate to make all players, for example, utilities, subject to the same rules. Many comments wrongly assume that it is competitively neutral or fair to continue to apply the exact same rules to all suppliers. Nothing could be further from the truth. Spinning reserves can be supplied by the system and the costs fully recovered through system charges without requiring every supplier to provide spinning reserves. There is no reason why a small independent solar generator should be required to hold back the sale of a portion of its on-peak output in order to meet a planning reserve requirements. There is no reason to require a supplier who has one Pennsylvania customer supplied through a FERC tariff to be a member of a regional reliability council, although certainly compliance with the requirements of the Council is appropriate.

The fundamental issue, therefore, is whether the Commission should change its historic deference to the indus-

try and the Councils at this time. The proposed rule-making issued today substantially accepts the comments of most parties that, at this point in time, it would be inappropriate for the Commission to provide the Reliability Councils or the generation and transmission owners with specific rules for ensuring the maintenance of continued reliability. This position is appropriate because of the regional and multi-jurisdictional nature of the generation and transmission industry.

The interested parties and the Councils should have the opportunity to develop appropriate institutions, standards and protocols. While some nonutilities have been participating in discussions, all potential interested parties must have a full and fair opportunity to participate in designing the rules of the road. The results must maintain reliability while also promoting robust competition.

At this point in time, the Commission should continue to work with other states, utilities, power pools, suppliers, consumers and FERC to ensure that the regional generation and transmission system develops in a way that assures both reliability and efficiency in a truly competitive market.

Is there a point in time or a sequence of events following which the Commission should intervene more aggressively to ensure the development of reliable transmission and generation? No answer to that question is necessary today, but comments on this question are welcome.

An effective Independent System Operator will be the single most important element of a reliable transmission and generation industry. The industry may not be moving fast enough to establish effective ISOs. With both Pennsylvania and New Jersey committed to implementations of retail competition in the not-too-distant future, it appears that PJM, despite its efforts, is having difficulty achieving organization as a truly independent system operator.

Though the journey to an ISO has been bumpy and is not now ended, the PJM utilities should be commended for the progress that has been made. Within the next few months, it is imperative that the PFM ISO debate be brought to a conclusion.

While the PJM utilities progress towards an ISO has been difficult, Pennsylvania's non-PJM utilities have not informed me or this Commission about what their plans are concerning Independent System Operators. Given that the pilots will commence in 1997 and full competition will be phased in within 19 months, I yet again repeat my concerns about the apparent lack of movement by non-PJM utilities toward securing the reliability and efficiency benefits provided by an ISO.

**Fiscal Note:** 57-185. No fiscal impact; (8) recommends adoption.

**Annex A**

**TITLE 52. PUBLIC UTILITIES**

**PART I. PUBLIC UTILITY COMMISSION**

**Subpart C. FIXED SERVICE UTILITIES**

**CHAPTER 57. ELECTRIC SERVICE**

**Subchapter B. SERVICE AND FACILITIES**

§ 57.17. [ **Service interruptions** ] (Reserved).

[ (a) As used in this section, the term "service interruption" means the interval of time exceeding

1 minute during which the voltage of service rendered falls below 50% of the standard nominal service voltage.

(b) A public utility shall keep a record, including data showing the time, duration and cause of each interruption of electric service affecting the entire system or a major division of the system. ]

§ 57.18. [ Inspection of facilities ] (Reserved).

[ (a) *Periodic inspections.* A public utility shall make periodic inspections of its equipment and facilities in accordance with good practice and in a manner satisfactory to the Commission.

(b) *Inspection reports and records.* A public utility shall file with the Commission a statement of the condition of its equipment and facilities and such reports of inspections, when and in such form as the Commission may require.

(c) *Special inspections.* If equipment or facilities which have for any reason become dangerous, or may cause injury to persons or damage to property, are removed from service because of any defect which may involve a hazard to life, such equipment or facilities shall be thoroughly inspected and tested before being again placed in service. ]

§ 57.26. [ Construction and maintenance of facilities ] (Reserved).

[ Overhead and underground transmission and distribution facilities and crossings of the wires or cables of every public utility over or under the facilities of other public utilities, cooperative associations or communication utilities, including parallel or random installation of underground electric supply and communications conductors or cable, shall be constructed and maintained in accordance with safe and reasonable standards, as set forth in the most recent National Electrical Safety Code. ]

(Editor's Note: The following subchapter is new. It has been printed in regular type to enhance readability.)

#### Subchapter N. ELECTRIC RELIABILITY STANDARDS

§ 57.191. Purpose.

Reliable electric service is essential to the health, safety and welfare of the citizens of this Commonwealth. This subchapter establishes standards and procedures for continuing and ensuring the safety and reliability of the electric system in this Commonwealth. The standards have been developed to provide a uniform method of assessing the reasonableness of electric service reliability.

§ 57.192. Definitions.

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

*Adequacy*—The ability of the electric system to supply the aggregate electrical demand and energy requirements of the customers at all times, taking into account scheduled and reasonably expected unscheduled outages of system elements.

*Control area*—An electric system, bounded by interconnection metering and telemetry, capable of controlling generation to maintain its interchange schedule with other control areas and contributing to frequency regulation of the interconnected systems.

*Electric distribution company*—A public utility providing facilities for the jurisdictional transmission and distribution of electricity to retail customers, except building or facility owners/operators that manage the internal distribution system serving the building or facility and that supply electric power and other related electric power services to occupants of the building or facility.

*Electric generation supplier or electricity supplier*—A person or corporation, including municipal corporations which choose to provide service outside their municipal limits except to the extent provided prior to December 3, 1996, brokers, marketers, aggregators or other entities, that sell to end-use customers electricity or related services utilizing the jurisdictional transmission or distribution facilities of an electric distribution company or that purchases, brokers, arranges or markets electricity or related services for sale to end-use customers utilizing the jurisdictional transmission and distribution facilities of an electric distribution company. The term excludes building or facility owner/operators that manage the internal distribution system serving the building or facility and that supply electric power and other related power services to occupants of the building or facility. The term excludes electric cooperative corporations except as provided in 15 Pa. C.S. §§ 7401-7410 (relating to generation choice for customers of electric cooperatives).

*Interruption duration*—A period of time measured to the nearest 1-minute increment which starts when an electric distribution company is notified or becomes aware of an interruption, unless an electric distribution company can determine a more precise estimate of the actual starting time of an interruption, and ends when service is restored.

*Major event*—Either of the following:

(i) An interruption of electric service caused by adverse weather, such as thunderstorms, tornadoes or hurricanes, or by unusual equipment failures which affects at least 10% of the customers in an operating area for a duration of 5 minutes or greater.

(ii) An interruption of electric service resulting from an action taken by an electric distribution company to maintain the security of the electrical system which affects at least one customer, as described in § 57.52 (relating to emergency load control and energy conservation by electric utilities).

*Momentary customer interruption*—The loss of electric service by one or more customers for a period of between 30 seconds and 5 minutes in duration. Instantaneous interruptions of less than 30 seconds in duration are excluded.

*NERC—North American Electric Reliability Council*—An organization of regional reliability councils established to promote the reliability of the electricity supply for North America.

*Operating area*—A geographical area, as defined by an electric distribution company, of its franchise service territory for its transmission and distribution operations.

*Regional reliability council*—An organization established to augment the reliability of its members' bulk electric supply systems through coordinated planning and operation of generation and transmission facilities. The following regional reliability councils impact the bulk electric supply systems within this Commonwealth:

(i) The East Central Area Reliability Coordination Agreement (ECAR).

- (ii) The Mid-Atlantic Area Council (MAAC).
- (iii) The Northeast Power Coordinating Council (NPCC)

*Reliability*—The degree of performance of the elements of an electric system that results in electricity being delivered to customers within accepted standards and in the desired amount, measured by the frequency, duration and magnitude of adverse effects on the electric supply and by considering two basic and functional aspects of the electric system: adequacy and security.

*Reliability indices*—Service performance indicators which measure the frequency and duration of sustained customer interruptions, excluding major events, as follows:

(i) *Customer Average Interruption Duration Index (CAIDI)*— The average interruption duration of sustained interruptions for those customers who experience interruptions during the analysis period. CAIDI represents the average time required to restore service to the average customer per sustained interruption. It is determined by dividing the sum of all sustained customer interruption durations, in minutes, by the total number of interrupted customers. This determination is made by using the following equation:

$$CAIDI = \frac{\sum r_i N_i}{\sum N_i} = \frac{SAIDI}{SAIFI}$$

where:

- i = an interruption event;
- r<sub>i</sub> = restoration time for each interruption event;
- and N<sub>i</sub> = number of customers who have experienced a sustained interruption during the reporting period.

(ii) *System Average Interruption Duration Index (SAIDI)*— The average duration of sustained customer interruptions per customer occurring during the analysis period. It is the average time customers were without power. It is determined by dividing the sum of all sustained customer interruption durations, in minutes, by the total number of customers served. This determination is made by using the following equation:

$$SAIDI = \frac{\sum r_i N_i}{N_T}$$

where:

N<sub>T</sub> = total number of customers served for the area being indexed.

(iii) *System Average Interruption Frequency Index (SAIFI)*— The average frequency of sustained interruptions per customer occurring during the analysis period. It is calculated by dividing the total number of sustained customer interruptions by the total number of customers served. This determination is made by using the following equation:

$$SAIFI = \frac{\sum N_i}{N_T}$$

(iv) *Momentary Average Interruption Frequency Index (MAIFI)*—The average frequency of momentary interruptions per customer occurring during the analysis period. It is calculated by dividing the total number of momen-

tary customer interruptions by the total number of customers served. This determination is made by using the following equation:

$$MAIFI = \frac{\sum M_i}{N_T}$$

where:

M<sub>i</sub> = number of customers who have experienced a momentary interruption during the reporting period.

*Security*—The ability of the electric system to withstand sudden disturbances such as electric short circuits or unanticipated loss of system elements.

*Sustained customer interruption*—The loss of electric service by one or more customers for longer than 5 minutes in duration. This term does not include interruptions intentionally initiated by an electric distribution company, such as scheduled maintenance.

*Worst-performing circuits*—Those circuits which, for each reliability index, are among the 5% of circuits in an operating area with the highest achieved values (lowest performance levels) for the reliability index.

**§ 57.193. Transmission system reliability.**

(a) An electric distribution company shall install, maintain and operate its transmission facilities in a safe and reliable manner in conformity with established industry standards and practices, including the operating policies, criteria, requirements and standards of NERC and the appropriate regional reliability council, or successor organizations, and as set forth in the most recent National Electrical Safety Code.

(b) The reliability of an electric distribution company's transmission service provided to wholesale customers, such as electric cooperative corporations and municipal corporations, shall be comparable to the reliability which the transmission supplier provides at the wholesale level, taking into account the nature of each service area in which electricity is delivered to the customer, the delivery voltage and the configuration and length of the circuit from which electricity is delivered.

**§ 57.194. Distribution system reliability.**

(a) An electric distribution company shall furnish and maintain adequate, efficient, safe and reasonable service and facilities, and shall make necessary repairs, changes, alterations, substitutions, extensions and improvements in or to its service and facilities. Electric service shall be reasonably continuous and without unreasonable interruption or delay.

(b) An electric distribution company shall install, maintain and operate its distribution system in accordance with safe and reasonable standards, as set forth in the most recent National Electrical Safety Code.

(c) An electric distribution company shall make periodic inspections of its equipment and facilities in accordance with good practice and in a manner satisfactory to the Commission.

(d) An electric distribution company shall strive to prevent interruptions of electric service and, when interruptions occur, restore service within the shortest reasonable time. If service must be interrupted for maintenance purposes, an electric distribution company should, when reasonable and practicable, attempt to perform the work

at a time which will cause minimal inconvenience to customers and provide notice to customers in advance of the interruption.

(e) An electric distribution company shall maintain procedures to meet the reliability performance standards in subsection (h). The procedures shall be designed to sustain, at a minimum, the historical level of reliability and to improve service reliability when necessary.

(f) An electric distribution company shall develop and maintain a program for analyzing its worst-performing circuits during the course of each year.

(g) An electric distribution company shall maintain a 5-year historical record of all sustained customer interruptions, including the time, duration and cause of each interruption.

(h) An electric distribution company shall take measures necessary to meet the reliability performance standard in this subsection.

(1) The reliability performance standard is the minimum level of acceptable electric service reliability below which further review, analysis and corrective action may be necessary. This standard is reached when the actual CAIDI and SAIFI values of each operating area are both equal to or less than the CAIDI and SAIFI values established by the Commission.

(2) Performance shall be considered unacceptable when either the CAIDI or the SAIFI value of an operating area is greater than the standard CAIDI or SAIFI value established by the Commission.

(3) The Commission will, from time to time, issue numerical values for the CAIDI and SAIFI indices for the reliability performance standard for each operating area. An electric distribution company or any other interested party may, at any time, petition the Commission for modification of these standards.

#### § 57.195. Reporting requirements.

(a) An electric distribution company shall submit to the Commission, on or before March 31, 1999, and March 31 of each succeeding year, a reliability report which includes, at a minimum, the information prescribed in this section. An original and 5 copies of the report shall be filed with the Commission's Office of Prothonotary and one copy shall also be submitted to the Office of Consumer Advocate and the Office of Small Business Advocate. The name and telephone number of the persons having knowledge of the matters, and to whom inquiries should be addressed, shall be included.

(b) The report shall include an assessment of electric service reliability in the electric distribution company's service territory, by operating area and system-wide. The assessment shall include a discussion of the electric distribution company's programs and procedures for providing reliable electric service. The assessment shall include a discussion of major events occurring during the preceding calendar year.

(c) The report shall include a table showing the actual values of each of the reliability indices for each operating area and for the electric distribution company as a whole for the preceding 5 calendar years.

(d) When an electric distribution company's reliability performance within an operating area is found to be unacceptable, as defined in § 57.194(h)(3) (relating to distribution system reliability), the report shall include the following:

(1) An analysis of the service interruption patterns and trends.

(2) An analysis of the operational and maintenance history of the affected operating area.

(3) A description of the causes of the unacceptable performance.

(4) A description of the corrective measures the electric distribution company is taking and target dates for completion.

(e) The report shall include a list showing the worst-performing circuits that fail to meet the CAIDI or SAIFI standard for each operating area, a description of the electric distribution company's program for analyzing and improving worst performing circuits and a summary of actions taken and the results of the program for the preceding calendar year.

#### § 57.196. Generation reliability.

(a) An electric generation supplier shall operate and maintain its generating facilities in conformity with established industry standards and practices and in full compliance with the operating policies, criteria, requirements and standards of NERC and the appropriate regional reliability council, or successor organizations.

(b) An electric generation supplier shall maintain appropriate generating reserve capacity in compliance with any applicable reserve requirement standards set forth by the appropriate regional reliability council, or successor organizations.

(c) An electric generation supplier shall abide by applicable Commission regulations, procedures and orders, including emergency orders.

#### § 57.197. Reliability investigations.

(a) Upon complaint, an investigation may be initiated to determine whether an electric distribution company is providing service in accordance with §§ 57.193 and 57.194 (relating to transmission system reliability; and distribution system reliability).

(1) Based upon the record developed in such an investigation, the Commission may enter an order directing the electric distribution company to take the corrective action the Commission deems necessary to improve the reliability of electric service.

(2) If the Commission directs an electric distribution company to make expenditures to repair or upgrade its transmission or distribution system, the electric distribution company may seek an exception to the limitations in 66 Pa. C.S. § 2804(4) (relating to electric utility rate caps).

(b) Upon complaint, an investigation may be initiated to determine whether an electric generation supplier is providing service in accordance with § 57.196 (relating to generation reliability).

(1) Based upon the record developed in such an investigation, the Commission may enter an order directing the electric generation supplier to take the corrective action the Commission deems necessary to improve the reliability of service.

(2) If the corrective action is not taken within the period of time designated by the Commission in an order entered under paragraph (1), the Commission may elect to revoke, either temporarily or permanently, the license of the electric generation supplier, obtained under 66 Pa.

C.S. § 2809(a) (relating to requirements for electric generation suppliers).

[Pa.B. Doc. No. 97-1621. Filed for public inspection October 10, 1997, 9:00 a.m.]

[52 PA. CODE CH. 63]

[L-970123]

**Electronic Transaction Auditing of Telephone Customer Proprietary Information**

The Pennsylvania Public Utility Commission (Commission) adopted an order to promulgate a proposed amendment regarding confidentiality of telephone customer information. The purpose is to require telephone companies to maintain an electronic audit trail of all accesses to private customer information by the telephone company security department, outside persons and governmental agencies. A permanent electronic record of the information must be maintained. The contact person is John A. Levin, Assistant Counsel, Law Bureau, (717) 787-5978.

*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 September 30, 1997, to the Independent Regulatory Review Commission (IRRC) and 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 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 10 days of the close of the Committees' review 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.

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

Public Meeting held  
July 10, 1997

**Proposed Rulemaking Order**

*By the Commission:*

As a result of several incidents involving disclosure or improper use of private or proprietary telephone customer information, the Commission herewith initiates this proposed rulemaking to require the maintenance of electronic transaction auditing records with respect to data processing records and the maintenance of detailed records in any instance in which customer information is disclosed to persons outside the telephone company, any government entity or the telephone company security department.

The Commission is generally aware that data processing and information transaction technology has been improving with respect to availability of adequate data security, transaction auditing and safeguards. The Commission believes that it is now practicable from the standpoint of both operations and cost to require telephone utilities to implement electronic auditing safeguards and maintain permanent electronic records of the auditing in order to protect the public interest. The Commission also believes that it is desirable and cost effective to require that any disclosure of customer information to outside persons, telephone security officers or governmental agencies be permanently recorded in the event of a later allegation of improper access or disclosure by or to those persons.

In order to enable the Commission to carry out its responsibilities under the Public Utility Code to ensure that telephone service is rendered in accordance with the provisions of the Public Utility Code's requirements that service be rendered in a safe, adequate and reliable fashion, the Commission is considering the amendment of its regulation as described above, to read as set forth in Annex A.

Accordingly, under 66 Pa.C.S. §§ 1501—1505, and the act of July 31, 1968 (P.L. 769, No. 240) (45 P.S. §§ 1201—1208), and the regulations promulgated thereunder at 1 Pa.Code §§ 7.1—7.4, we are considering amending the regulations at 52 Pa. Code § 63.135, as noted above and in the manner set forth in Annex A; *Therefore,*

*It Is Ordered That:*

1. A rulemaking proceeding shall be initiated to consider the proposed amendment as set forth in Annex A hereto.

2. This order shall be published in the *Pennsylvania Bulletin*. Interested persons may submit written comments, an original and 15 copies, to Prothonotary, Pennsylvania Public Utility Commission, P. O. Box 3265, Harrisburg, PA 17105-3265, and shall have 45 days from the date the order is published in the *Pennsylvania Bulletin* to submit the comments. Commentators are strongly encouraged, if suggesting changes or additions to the proposed amendment, to supply alternative regulatory language. Commentators suggesting changes or nonadoption of the proposed draft amendment on the basis of allegations of financial or technical hardship are directed to disclose in detail the basis of the allegations, including all cost studies or technical analyses upon which the allegations are based.

3. A copy of this order and Annex A shall be served upon the Office of Consumer Advocate, the Office of Small Business Advocate, the Office of Trial Staff, all telephone utilities and the Pennsylvania Telephone Association.

4. The Secretary shall submit this order and Annex A to the Office of Attorney General for approval as to legality, and to the Governor's Budget Office for review of fiscal impact.

5. The Secretary shall submit this order and Annex A for review by the designated standing committees of both Houses of the General Assembly, and for review by the Independent Regulatory Review Commission.

6. The contact person is John Levin, Assistant Counsel, Pennsylvania Public Utility Commission, P. O. Box 3265, Harrisburg, PA 17105-3265, (717) 787-5978.

JAMES J. MCNULTY,  
*Acting Secretary*

**Fiscal Note:** 57-186. 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 J. CONFIDENTIALITY OF CUSTOMER COMMUNICATIONS AND INFORMATION**

**§ 63.135. Customer information**

This section describes procedures for determining employe access to customer information and the purposes for which this information may be used by employes responding to requests for customer information from persons outside the telephone company and the recording of use and disclosure of customer information.

\* \* \* \* \*

(5) *Safeguarding customer information.* A telephone company is responsible for implementing appropriate procedures to safeguard customer information and prevent access to it by unauthorized persons. Tangible customer records such as paper or microfiche records and electromagnetic media shall be stored in secure buildings, rooms and cabinets, as appropriate, to protect them from unauthorized access. Data processing and other electronic systems shall contain safeguards, such as codes and passwords, preventing access to customer information by unauthorized persons and shall be accompanied by electronic transaction auditing which shall create audit data sufficient to establish a permanent record of each instance in which customer data is accessed, copied, printed, changed, deleted or added. Electronic transaction audit data shall be retained indefinitely, and shall be kept in a manner which permits access and retrieval of audit information by time of access, date of access, accessing individual, accessing individual's position, accessing individual's affiliation, the customer's name, the customer's account number, the portion of customer information accessed and the reason for access. Storage of the audit data may be made in any media format determined to be appropriate by the utility, but shall be promptly and properly maintained and transferred to a more current media format if the original or any successor medium becomes technologically obsolete or is in danger of becoming technologically obsolete.

\* \* \* \* \*

(6) [ *Recording use and disclosure* ] *Disclosure of customer information.* [ Because of the frequency with which customer information is used and disclosed in the ordinary course of business, it is neither practical nor desirable to record each instance in which customer information is used or disclosed by an employe. However, the importance of some forms of customer information and the circumstances under which the information may be used or disclosed dictate that a record is required of the use or disclosure of customer information, as follows:

(i) Each instance in which customer information is used or disclosed for purposes other than to furnish service to the customer, to collect charges

due from the customer or to accomplish other ordinary and legitimate business purposes.

(ii) Each instance in which information is disclosed to persons outside of the telephone company, subject to subparagraph (i).

(iii) Each instance in which customer information is disclosed to a government entity or the telephone company security department.

(iv) Each instance in which a record is required by other telephone company practices or procedures. ]

The utility shall maintain a permanent record of each instance in which customer information in any form is disclosed to the telephone security department or security personnel, any governmental agency or any other person outside of the telephone company for purposes other than to furnish service to the customer or to collect charges due from the customer. The record shall be maintained in electronic database format and shall list the time of access, the date of access, the accessing individual, the accessing individual's position, the accessing individual's affiliation, the name, address, telephone number and affiliation of the person to whom the information was disclosed, the customer's name, the customer's account number, the portion of customer information accessed and the reason for access. Storage of the data may be made in any media format determined to be appropriate by the utility, but shall be promptly and properly maintained and transferred to a more current media format if the original or any successor medium becomes technologically obsolete or is in danger of becoming technologically obsolete.

\* \* \* \* \*

[Pa.B. Doc. No. 97-1622. Filed for public inspection October 10, 1997, 9:00 a.m.]

**[52 PA. CODE CH. 57]**

[L-970121]

**Standards for Changing Customer's Electric Supplier**

The Pennsylvania Public Utility Commission (Commission) on April 24, 1997, adopted an order to promulgate proposed regulations to implement and codify 66 Pa.C.S. § 2807(d)(1) (relating to duties of electric distribution companies) which requires the establishment of regulations ensuring that an electric distribution company does not change a customer's electric supplier without direct oral confirmation from the customer of record or written evidence of the customer's consent to a change of supplier. The contact persons are Terrence J. Buda, Assistant Counsel, Law Bureau, (717) 787-5755 and Joseph Farley, Bureau of Consumer Services, (717) 787-4963.

*Executive Summary*

On December 3, 1996, Governor Tom Ridge signed into law, 66 Pa.C.S. Chapter 28 (relating to Electricity Generation Customer Choice and Competition Act) (act). The act revised the Public Utility Code, 66 Pa.C.S. §§ 101, et seq., by inter alia, adding Chapter 28, relating to restructuring of the electric utility industry. The purpose of the

law is to permit customers to buy electric generation from their choice of electricity generation suppliers.

Section 2807(d)(1) of the act requires the establishment of regulations ensuring that an electric distribution company does not change a customer's electricity supplier without direct oral confirmation from the customer of record or written evidence of the customer's consent to a change of supplier. The purpose of the regulations is to implement and codify this provision of the act.

#### *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), the Commission submitted a copy of this proposed regulations on September 30, 1997, 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 regulations, 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 objection to any portion of the proposed regulations, 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 regulations, it will notify the Commission within 10 days after the expiration of committee review 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 IRRC, the General Assembly and the Governor of objections raised.

*Commissioners Present:* John M. Quain, Chairperson; John Hanger, statement follows; David W. Rolka; Robert K. Bloom

Public meeting held  
April 24, 1997

### **Proposed Rulemaking Order**

#### *By the Commission:*

By order entered February 6, 1997, we issued an Advanced Notice of Proposed Rulemaking (ANPR) to establish regulations to ensure that customer consent is obtained prior to the change of a customer's electric distribution supplier. The ANPR was published in the *Pennsylvania Bulletin* on February 22, 1997, at 27 Pa.B. 934, and a 30-day comment period set.

We received comments from the Pennsylvania Electric Association (PEA) on behalf of its member companies, from the Office of the Consumer Advocate (OCA), from New Energy Ventures - Mid Atlantic (NEV) and from the Enron Corporation (Enron). After consideration of all the comments we are ready to set forth the proposed regulations establishing requirements that must be met prior to changing a customer's electric generation supplier.

In our ANPR we invited comments on four specific areas of interest involving customers changing electric suppliers. These included the procedures necessary to ensure that customers do not have their suppliers switched without their consent, the customer's responsibility for payment of bills when an unauthorized change is alleged, record maintenance/reporting requirements

and potential penalties that the Commission could impose for unauthorized changes of suppliers. We received comments on all these areas.

#### *Procedures for Changing a Customer's Electricity Supplier*

The Electric Generation Customer Choice and Competition Act (act) requires that the Commission promulgate regulations to ensure that customer consent is obtained prior to a change of electric suppliers. The act allows an authorized change to be initiated once an electric distribution company has received direct oral confirmation from the customer or written evidence of the customer's request.

The proposed regulations permit customers to contact the electric distribution company directly and supply certain customer specific information to initiate the change of service. The PEA commented that the Electric Distribution Company (EDC) should be able to require that the customer provide certain information prior to initiating the change including the customer's name, address, Social Security number, present supplier, proposed supplier and electric distribution customer account number. We agree that the customer must provide certain information to prove that they possess the authority to initiate the switch. Our proposed regulations include that requirement.

Electric suppliers will receive and initiate attempts to secure oral authorization from customers to change suppliers. NEV commented that the EDC can validate the request through direct oral confirmation. In Enron's view, there need be no direct communication between the customer and the EDC if the electric supplier has verified the request using an appropriately qualified independent third party. The OCA endorses the option of a customer contacting a supplier directly to initiate a change providing a record is kept of the contact.

We agree that it is important to make changing a carrier as easy and convenient as possible for customers. We also note that the act requires that certain things occur before a change takes place. In this instance, the act requires that the EDC receive direct oral confirmation from the customer of record. Therefore our proposed regulations require that a contact occur. In the interests of making this easy for a customer, our proposed regulations permit the supplier to immediately transfer the call to the EDC so the change can be initiated. In addition, the electric supplier is permitted to announce the transfer and to stay on the line to render assistance if it is needed. In those instances when transfers are not possible, the supplier is permitted to supply the customer with a phone number to the EDC so that the customer can initiate the change. Alternately, the supplier may acquire written authorization from the customer and supply that to the EDC to initiate the change.

The proposed regulations offer similar options to agents and marketers involved in the direct marketing of a supplier's services. The lone exception being that on supplier initiated contacts, immediate transfers to the EDC are prohibited. We believe this consumer protection is necessary to avoid the unauthorized change of service problems that have occurred in the telephone industry. Under our proposed regulations, the customer would have to make direct contact with the EDC to initiate the change. The supplier retains the option of securing written authorization on these contacts. We seek comments as to whether this is an appropriate balance between consumer protections and marketing.

NEV commented that the Commission should recognize that the reference to customer of record in the act include

designated agents of the customer of record. We agree that some customers may consent to having another person act on their behalf. Therefore, our regulations allow for customers to produce a signed document identifying the persons permitted to act on their behalf. In this regard, the PEA comments included a requirement that the EDC have the option of requesting written confirmation of the customer's previous oral communication. In those instances where the customer cannot verbally provide the required information, the EDC shall require that the customer either call back with complete information or produce written authorization. In addition, the proposed regulations allow the EDC to make a request when evidence exists that the request is not being made by or with the approval of the customer.

We agree with the OCA that written authorization should not include canceled checks or forms used to enter contests. Our proposed regulations limit valid written authorization to a document signed by the customer whose sole purpose is to initiate the change of electric suppliers.

#### *Customer's Responsibility for Payment of Bills*

As noted in our ANPR, customer allegations of unauthorized changes of carriers in the telephone industry have often been accompanied by disputes over bills rendered by the carrier accused of making the switch. Therefore we invited comments on this issue. NEV commented that suppliers should be paid for services provided. The comment stresses that when a supplier change is upheld customers should be required to pay outstanding bills including interest and other outstanding charges. The OCA takes the position that customers should not be required to pay suppliers who have "wrongfully slammed them." We agree with both commentators. Therefore our proposed regulations require that an allegation of an unauthorized change of supplier be considered a dispute and be processed consistent with our Chapter 56 regulations. In addition, if the customer files the dispute within the first three billing periods since the change and an unauthorized switch is discovered, the customer is not responsible for electric supplier bills rendered during that period. We believe that not requiring the customer to pay for the unauthorized service will be a significant incentive in limiting unauthorized changes of electricity supplier. We welcome comments on the merits of this proposal.

In addition, we agree with the OCA that customers should not be responsible for charges involving switchbacks when unauthorized switches have occurred. Our proposed regulations reflect that position.

#### *Record Maintenance/Reporting Requirements*

The OCA commented that both suppliers and distribution companies should track unauthorized change of supplier complaints and report to the Commission on an annual basis. NEV takes the position that every supplier should maintain complaint records and provide them at the request of the Commission but there should be no routine reporting requirement. In our view, especially as customers begin making choices about their electric supplier, this information is very important. Therefore our proposed regulations require reporting on an annual basis. We fully realize that the future may lessen or eliminate the need for the requirement. Therefore it is our intention to revisit these regulations within the next 5 years to make appropriate revisions.

#### *Potential Penalties for Unauthorized Change of Supplier*

We agree that the Commission already possesses the tools to penalize distributors and suppliers for violations

of these regulations. The tools include fines as well as the revocation of licenses. As a result, there is no need to propose additional penalties at this time.

In proposing these regulations we believe we have met the intent of the act. We have made it as easy as possible for customers who wish to change electric suppliers to do so. In addition, we have established the necessary protections to assure that customers do not have their electricity supplier changed without their consent.

Accordingly, under 66 Pa.C.S. §§ 501, 504—506, 1301 and 1501, and the act of July 31, 1968 (P. L. 769 No. 240) (45 P. S. §§ 1201—1208), and the regulations promulgated thereunder at 1 Pa.Code §§ 7.1—7.4, the Commission proposes adoption of the proposed rulemaking to establish regulations to ensure that customer consent is obtained prior to a change of electric suppliers as noted and set forth in Annex A, *Therefore*,

#### *It Is Ordered That:*

1. The Commission's regulations are hereby proposed to be amended by adding §§ 57.171—57.177.
2. The Secretary shall submit this order and Annex A to the Office of Attorney General for approval as to legality.
3. The Secretary shall submit this order and Annex A to the Governor's Budget Office for review of fiscal impact.
4. 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.
5. Interested parties may submit written comments, an original and 15 copies, within 30 days from the date the notice is published in the *Pennsylvania Bulletin*, to the Office of Prothonotary, Pennsylvania Public Utility Commission, P. O. Box 3265, Harrisburg, PA 17105-3265. A copy of written comments shall also be served upon the Commission's Bureau of Consumer Services and Law Bureau.
6. A copy of this order shall be served upon all persons who have previously submitted comments in this rulemaking proceeding.
7. The contact persons for this matter are Joe Farley, Bureau of Consumer Services (717) 787-4963 and Terry Buda, Law Bureau (717) 787-5755.

JAMES J. MCNULTY,  
*Acting Secretary*

#### **State of Commissioner John Hanger**

In the long-distance telephone industry, consumers have repeatedly complained that their long-distance service was switched to another company, or "slammed," without their consent. There is no reason to tolerate such incidents, and the Proposed Regulations issued today are an attempt to prevent such abuses without creating any unnecessary barriers to customer choice.

In particular, the Proposed Regulations relieve the consumer of payment for services rendered for up to three months after the customer reasonably should have known of an unauthorized change of suppliers. This remedy should provide a significant disincentive to slamming while not permitting customers to benefit from delaying complaints of unauthorized switching.

In addition, I note that this Commission has full authority to impose fines and rescind licenses for slamming. I have every intention of using these remedies mercilessly.

The Proposed Regulations require a customer to contact the local distribution utility directly or in writing to authorize all changes in supplier resulting from supplier initiated contact. When a customer or an authorized representative initiates the supplier contact resulting in a change of supplier, the supplier may immediately transfer contact to the local distribution utility to implement the change. Upon such contact, written authorization is required if basic customer information has not been provided.

Are these restrictions necessary to prevent slamming? In particular, is it necessary for the consumer to have direct contact with the local distribution utility in order to process a change of supplier or would written authorization be adequate? Is it useful to distinguish between changes when the customer or the supplier initiated the contact?

I encourage comments on this important consumer and supplier issue.

**Fiscal Note:** 57-184. No fiscal impact; (8) recommends adoption. Any increased regulatory costs to the Commission will be paid from available resources.

**Annex A**

**TITLE 52. PUBLIC UTILITIES**

**PART I. PUBLIC UTILITY COMMISSION**

**Subpart C. FIXED SERVICE UTILITIES**

**CHAPTER 57. ELECTRIC SERVICE**

**Subchapter M. STANDARDS FOR CHANGING A CUSTOMER'S ELECTRIC SUPPLIER**

- Sec. 57.171. Customer initiated contacts.
- 57.172. Persons authorized to act on behalf of a customer.
- 57.173. Electric generation supplier initiated contacts.
- 57.174. Valid written authorization.
- 57.175. Customer responsibility to pay bills.
- 57.176. Record maintenance.

**§ 57.171. Customer initiated contacts.**

(a) When a customer or a person authorized to act on the customer's behalf contacts the electric distribution company to verbally request a change of electric suppliers the distribution company shall change the supplier when the following requirements are satisfied:

- (1) The customer or authorized party provides the electric distribution company with:
  - (i) The customer's name and address.
  - (ii) The customer's account number.
  - (iii) The customer's Social Security number.
  - (iv) The name of the present supplier.
  - (v) The name of the proposed supplier.

(2) The customer is sent a confirmation package by the electric distribution company noting the proposed change. Included in this package shall be notification of a 10 day waiting period in which the order may be canceled before the change of suppliers is made. This notice shall include the date service with the new supplier will begin unless the customer contacts the electric distribution company to cancel the change.

(b) When a customer or authorized party is unable to provide the required information to process a change of

supplier or the electric distribution company has evidence that the request is not being made by or with the approval of the customer of record the distribution company shall require that the customer supply signed written authorization before the change of suppliers takes place. The electric distribution company shall offer to supply the customer with a form to submit to initiate the change of suppliers. Upon receipt of the written authorization, the electric distribution company shall send the customer a confirmation package that includes the date service with the new supplier will begin unless the customer cancels the change.

(c) When a customer or a person authorized to act on the customer's behalf contacts the electric generation supplier to verbally request a change of electric supplier, the supplier shall offer the customer a choice of the following options:

(1) The customer or authorized party shall be offered an immediate contact including transfer of the telephone call to the electric distribution company to initiate the change. If the customer chooses this option the supplier may initiate the transfer, make the electric distribution company aware of the reason for the transfer and remain on the line to render assistance necessary to process the customer's request.

(2) When it is not practically possible for the supplier to initiate the contact or transfer the call to the electric distribution company, the supplier should provide the customer with:

- (i) The distribution company contact number
- (ii) An explanation of the information the distribution company requires
- (iii) An explanation that the customer must contact the distribution company to initiate the request.

(3) The electric generation supplier may offer to send the customer a written authorization form to be completed and returned to the electric distribution company or to the electric generation supplier. If the written authorization is returned to the supplier, it is the supplier's responsibility to furnish the electric distribution company with a copy of the document authorizing the change.

(d) When a customer or authorized party has verbally provided the electric distribution company with the required information or produced written authorization to change electricity suppliers, the electric distribution company shall make the change in the first new billing period following the 10-day waiting period.

**§ 57.172. Persons authorized to act on behalf of a customer**

A customer may identify persons authorized to make changes to the customer's account. To accomplish this, the customer shall provide the electric distribution company with a signed document identifying by name those persons who have the authority to initiate changes to the account.

**§ 57.173. Electric generation supplier initiated contacts.**

When the electric generation supplier or an entity representing an electric generation supplier initiates a contact with a customer that results in a customer request for a change of electric supplier, the customer shall be offered the following options to initiate the change:

- (1) The supplier shall provide the customer with:

- (i) The distribution company contact number.
  - (ii) An explanation of the information the distribution company requires.
  - (iii) An explanation that the customer must contact the distribution company to initiate the request.
- (2) The electric generation supplier may offer to send the customer a written authorization form to be completed and returned to the electric distribution company or to the electric generation supplier. When the written authorization is returned to the electric supplier, it is the supplier's responsibility to furnish the electric distribution company with a copy of the document authorizing the change.

**§ 57.174. Valid written authorization.**

A document signed by the customer of record whose sole purpose is to obtain the customer's consent to change electric generation suppliers shall be accepted as valid and result in the initiation of the customer's request. Documents not considered as valid include cancelled checks, signed entries into contests and documents used to claim prizes won in contests.

**§ 57.175. Customer responsibility to pay bills.**

- (a) When a customer contacts a electric distribution company or an electric generation supplier and alleges that an electric supplier has been changed without consent, the company contacted shall:
  - (1) Consider the matter a customer registered dispute.
  - (2) Investigate and respond to the dispute consistent with §§ 56.151 and 56.152 (relating to utility company dispute procedures).
- (b) When the customer's dispute has been filed within the first three billing periods since the since the customer should reasonably have known of a change of suppliers and the dispute investigation establishes that the change occurred without the customer's consent, the customer is not responsible for electric supplier bills rendered during

that period. If the customer has made payments during this period, the company responsible for initiating the change of supplier shall issue a complete refund within 30 days of the close of the dispute.

(c) A customer who has had electric suppliers changed without having consented to that change shall be switched to the prior supplier for no additional fee. Charges involved in the switch back to the prior supplier are the responsibility of the company that initiated the change without the customer's consent.

(d) If a customer files an informal complaint with the Commission alleging that an electric supplier was changed without consent, the Bureau of Consumer Services will issue a decision that includes a determination of customer liability for any electric supplier bills rendered since the change of supplier.

**§ 57.176. Record maintenance.**

Each electric distribution company and each electric generation supplier shall preserve all records relating to unauthorized change of electric supplier disputes for 4 years from the date the customers filed the dispute. These records shall be made available to the Commission or its staff upon request.

**§ 57.177. Reporting requirements.**

Within 90 days after the end of each calendar year, each electric distribution company and each electric generation supplier shall file with the Commission a report containing the following information regarding change of electric supplier disputes for the previous calendar year:

- (1) The number of disputes filed by customers.
- (2) The number of instances when the dispute investigation established that the customer's electric supplier had been switched without consent.

[Pa.B. Doc. No. 97-1623. Filed for public inspection October 10, 1997, 9:00 a.m.]