

RULES AND REGULATIONS

Title 52—PUBLIC UTILITIES

PENNSYLVANIA PUBLIC UTILITY COMMISSION

[52 PA. CODE CHS. 1 AND 74]

[L-970122]

Perfection of Security Interests in Intangible Transition Property

The Pennsylvania Public Utility Commission (Commission) on July 10, 1997, adopted a final rulemaking to establish the processes necessary for the perfection of security interests in intangible transition property required by 66 Pa.C.S. § 2812(d) (relating to approval of transition bonds). These bonds may be necessary to help electric utilities manage the transition to electric competition in this Commonwealth. The bonds would help retire the stranded costs a utility faces. Stranded costs represent the expenses a utility incurred to provide electricity before competition, which expenses may not be recovered now that competition is going to be implemented in this Commonwealth.

Executive Summary

At its public meeting of July 10, 1997, the Commission adopted an order establishing final regulations for the perfection of security interests in intangible transition property under section 2812(d) of the Electric Generation Customer Choice Act of 1996 (act), 66 Pa.C.S. § 2812(d). Final regulations are necessary to facilitate the issuance of the transition bonds allowed under 66 Pa.C.S. § 2812.

At its public meeting of April 10, 1996, the Commission adopted an order that proposed regulations for the perfection of security interests in intangible transition property under 66 Pa.C.S. § 2812. A public comment period of 20 days was provided. The Commission also took other steps, including dissemination of the order and proposed regulations on its electronic bulletin board and mailings to members of the legal and financial communities, to facilitate input about the proposed regulations. The staff had several meetings with the interested parties on the myriad technical details necessary to creating a workable regulations. The changes in the final regulations reflect the Commission's response to those comments.

The Commission contact persons are Joseph K. Witmer, Assistant Counsel, Law Bureau, (717) 787-3663 and Shirley M. Leming, Regulatory Coordinator, Law Bureau, (717) 772-4597.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), the Commission submitted a copy of the final rulemaking, which was published as a proposed rulemaking at 27 Pa.B. 2134, for a 20-day comment period and served on April 21, 1997 to IRRC and the Chairpersons of House Committee on Consumer Affairs and the Senate Committee on Consumer Protection and Professional Licensure for review and comment. In compliance with section 5(b.1), the Commission also provided IRRC and the Committees with copies of all comments received, as well as other documentation.

In preparing these final-form regulations, the Commission has considered all comments received from IRRC, the Committees and the public.

These final-form regulations were deemed approved by the House Committee on Consumer Affairs and by the Senate Committee on Consumer Protection and Professional Licensure, and were approved by IRRC on September 4, 1997, in accordance with section 5(c) of the Regulatory Review Act.

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

Public Meeting held
July 10, 1997

Final Rulemaking Order

By order adopted and entered April 10, 1997, we initiated a rulemaking at Doc. No. L-00970122 to adopt regulations governing the perfection of security interests in intangible transition property. The regulations, which are required under 66 Pa.C.S. § 2812(d)(3), were undertaken as part of the implementation duties performed by the Commission under the Electric Generation Customer Choice and Competition Act.

Background

On December 3, 1996, Governor Tom Ridge signed into law the "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.¹

On April 10, 1997, the Commission adopted an Opinion and Order setting forth proposed regulations under Chapter 28 with a 20-day public comment period. Moreover, the Commission took several measures to extend the public comment period beyond the formal 20 days set forth in the April 10, 1997 Order.

The proposed regulations at Doc. No. L-00970122 were published for comment at 27 Pa.B. 2134 (May 3, 1997). The deadline for public comment was May 23, 1997. Written comments were provided by the following parties:

- Pennsylvania Electric Association (PEA);
- Philadelphia Electric Company (PECO);
- Public Utility Commission Office of Trial Staff (OTS).

In addition, copies of the proposed regulations were provided to the Pennsylvania Bankers Association, the Pennsylvania Bar Association, the Article 9 Committee of the Pennsylvania Bar Association, the Global Power Group of Fitch Investors, L.P., the Asset Backed Finance Group of Merrill Lynch, the Securities Commission and the Department of State.

Following public comment, State Representative William R. Lloyd, Jr. (D-69th) and the Independent Regulatory Review Commission (IRRC) submitted written comments.

No other parties provided written comments. However, the Department of State participated extensively in several meetings and provided feedback on the proposed regulations. The Department of State's comments were largely confined to Uniform Commercial Code implications as well as public information and access issues.

¹ Chapter 28 authorizes the issuance of Qualified Rate Orders for the recovery of qualified transition expenses of an electric utility. Recovery of those expenses can give rise to Intangible Transition Property interests perfected under these regulations.

Following review of the comments and several meetings with the interested parties, the Commission developed the final-form regulations incorporating the appropriate comments of the interested parties. These regulations are basically similar in function to those finalized by our order entered April 10, 1997, at Doc. No. L-00970122 except for some revised language as discussed in more detail below. The changes are largely due to the persuasive comments of the interested parties.²

Discussion

The regulations are necessary because the Commission is required under 66 Pa.C.S. § 2812(d)(3) to promulgate regulations governing the perfection of security interests arising under any Commission-issued QRO. 66 Pa.C.S. § 2812(d)(3). The Commission is also required by 66 Pa.C.S. § 2812(d)(4) to establish and maintain a separate system of records to reflect the date and time of receipt of all filings. The Commission may also provide for the filing of a notice of a transfer of intangible transition property to an assignee in accordance with such a system.

The PEA and PECO largely agreed on the comments they separately provided. Both parties disputed the distinction in the proposed regulations between the Filing Date and the Effective Date and urged the Commission to make the regulations' definitions consistent with those in Chapter 28. They also urged the Commission to simplify the number system used for security filings and to correct some inadvertent transpositions in terminology. In addition, they asked the Commission to delete the references to liberal construction, retention of discretion, informational filings with the Secretary of State and the use of UCC Forms 1 and 3. Finally, they disputed the Commission's proposed filing fees as excessive in light of the services rendered to the filing parties.³

IRRC's comments reflected those of the PEA and PECO with regard to the filing date and effective date, making definitions consistent with Chapter 28, correcting the reversal of release and retransfer, and the deletion of provisions governing liberal construction, retention of discretion and the use of UCC Forms 1 and 3. IRRC also agreed with PEA and PECO that the proposed fees were disproportionate to the benefit conferred and that there was no reason to require informational filings with the Department of State.⁴

IRRC's comments also went beyond those of the PEA and PECO in specific instances. IRRC urged the Commission to clarify the definitions of "certificate" and "file number" and to eliminate unnecessary language in the definitions section in § 74.2. IRRC also urged the Commission to combine subsections (a) and (b) in the information, filing and hours section in § 74.4 and simplify the language governing termination notices in § 74.8.⁵

Finally, Rep. Lloyd commented on an apparent ambiguity between "intangible transition property" and "intangible transition notice" in the proposed regulations. The

OTS' comments urged the Commission to retain the distinction between the filing and effective date. The OTS also proposed definitions for "intangible transition property" and "qualified rate order" different from those set forth in the proposed regulations.⁶

General Issues. Our April 10, 1996 order solicited comments on five general issues concerning the proposed regulations. We dispose of those issues as follows:

Issue 1: The Filing Date vs. The Effective Date. The Commission's proposed regulations made a distinction between the Filing Date and the Effective Date for perfection of a security interest. Upon consideration of the comments, the Commission is deleting this requirement consistent with our following discussion. The Commission agrees with the comments that the ministerial nature of the task involved does not lend itself to such a refined distinction.

Issue 2: Definitions. The Commission defined terms under the act and also crafted new definitions. Consistent with our discussion, the Commission has confined all terms to the language of Chapter 28 whenever that language is provided. In the absence of that language, the Commission relied on the comments of the interested parties, in particular the PEA, PECO and IRRC, to develop clear definitions that reflect the realities of the financial markets.

Issue 3: Liberal Construction. The Commission proposed a provision allowing for the liberal construction of the proposed regulations. Upon consideration, the Commission will delete this provision based on the comments suggesting that the provision was unnecessary, redundant and could cause more harm than good to the perfection process provided for in Chapter 28.

Issue 4: Retention of Discretion. Section 74.9(a) of the proposed regulations preserved administrative discretion. Upon consideration, the Commission agrees with the comments to the extent that the express retention of discretion is unnecessary and counterproductive.

Issue 5: Use of Proposed Forms and UCC-1 and UCC-3. The Commission proposed use of Form A and Form B as well as UCC-1 and UCC-3. Upon consideration, the Commission concludes that UCC Form-1 and UCC Form-3 are unnecessary and no longer in the public interest. The Commission agrees with the comments that any perfection under Chapter 28 can be readily attained by simply filing Form A or Form B.

Detailed Discussion of the Final-Form Regulation. Section 74.1 sets forth the purpose of the regulations. The original § 74.1 contained a general statement of purpose. The revised § 74.1 sets forth a more concise purpose of the regulations in response to the comments of the interested parties.

Section 74.2 (relating to definitions) provides a list of definitions for the regulations. The original definition section consisted of a general statement of meaning with definitions taken from both Chapter 28 and the comments of others.

The revised § 74.2 contains a narrower general statement in response to IRRC and the new definitions. The new definitions for "assignee," "financing party," "intangible transition property" and "qualified rate order" are limited to their meaning in Chapter 28 in response to comments from PECO, the PEA, Rep. Lloyd and IRRC. The definition of "assignment" has been deleted as confus-

² The Commission staff, consisting of Pat Burkett, Shirley Leming, James McNulty, Veronica Smith and Joe Witmer, convened several meetings and telephone conferences between IRRC, the PEA, PECO, the Department of State and the Commission's Law Bureau. IRRC's participants were Fiona Wilmarth and James Smith, PEA's participants were Hugh M. Dougan of Winthrop, Stimson in New York and Dave Everard and Dick Flati; PECO's participants were E. Carolan Berkley from Ballard, Spahr in Philadelphia and Ward Smith; and the Department of State's participants were Mike Frick, Patricia Hegedus, John Henderson and Bob DaSouza. The Commission and its staff recognize that their valuable contribution helped facilitate the timely completion of these regulations in an extremely short time period notwithstanding the complex and novel challenges presented by the regulations.

³ Comments on PECO Energy (May 21, 1997), pp. 1-25; Comments of PEA (May 23, 1997), pp. 1-13; Comments of E. Carolan Berkley (June 12, June 27, June 28, 1997, and June 30, 1997); Comments of Hugh Dougan (June 12, June 26, and June 30, 1997).

⁴ IRRC Comments, pp. 1-6.

⁵ IRRC Comments, pp. 1-6.

⁶ Rep. William R. Lloyd comments (June 12, 1997), p. 1; OTS Comments, (May 22, 1997), pp. 1-2.

ing based on comments from PECO. The definitions of "certificate" and "file number" have been revised in response to comments from IRRC. The remaining definitions are edited for clarity and to correct minor errors. The Commission agrees with the comments that definition revisions are needed for clarity and brevity.

The original § 74.3 provided for the liberal construction of the regulations to facilitate perfection of security interests. That provision has been deleted in response to comments from the PEA, PECO and IRRC. The Commission agrees with the commenting parties that the provision was unnecessary and counterproductive to its intended purpose.

The original § 74.4 set forth the location for information about the filing and the hours for receipt of filings. The revised § 74.3 combines the original § 74.4(a) and (b) into one section. The Commission agrees with IRRC that both sections served a similar function and need not be replicated.

The original § 74.5 mandated an informational filing with the Department of State's Corporation Bureau and determined the effect of a successor entity on a filing. The revised § 74.4 imposes no mandatory filing obligations on a filing party. Instead, the Commission will forward a copy of a filing under this chapter to the Secretary of State for informational purposes. The Commission agrees with the comments that another mandated filing by a filing party could undercut the purpose of Chapter 28 and provoke litigation over technical compliance.

The original § 74.6 set forth the general rule and requirements for filing an intangible transition property notice and the procedures that would govern minor errors, amendments and recharacterizations. The revised § 74.5 retains most of the same requirements.

The original § 74.6(a)(5) and (7) governed the filing of public statements and identification of a filing party. The revised § 74.5(a) combines both functions in one subsection. The Commission agrees with PECO that the requirements of the original § 74.6(a)(5) and (7) are better met through a revised § 74.5(a)(5) that sets forth both requirements in one clause.

The original § 74.6(d) and (f) governed what forms had to be filed for perfection. The revised § 74.5(d) only requires the filing of Form A with the Commission. The revised § 74.5(f) only requires the filing of Form B with the Commission. The Commission agrees with the parties that the regulations should minimize any confusion between perfection under this chapter and the Uniform Commercial Code. The Commission also agrees with the parties that Form A and Form B are all that is necessary to secure the perfection sought by this chapter.

The original § 74.7 governed the filing of notices, the duration of notice, lapses in notice and the role of the filing officer under the regulation. The revised § 74.6 retains most of these functions with some modifications.

However, the original § 74.7(a) granted the filing officer the discretion to reject or otherwise return an unreasonable and insufficient filing. The revised § 74.6(a) deletes this discretionary authority. The Commission agrees with IRRC, the PEA and PECO that express statements about the authority are redundant and could lead to unnecessary litigation over when a party perfected a filing.

In addition, the original § 74.7(e)(3) required the filing officer to place perfected filings in a general docket and the Commission's qualified rate order docket. The revised

§ 74.6 deletes this filing obligation. The Commission agrees with the PEA, and Hugh Dougan in particular, that the perfection requirements contemplated by this chapter will require a discrete file number for every filing made under this chapter. The Commission also agrees with PECO, and E. Carolan Berkley in particular, that filings by the filing officer in the general docket and qualified rate order docket should not relate to the perfection provided under this chapter.

The original § 74.7(g) governed the fees for services performed under this chapter. The revised § 74.6 deletes this language here and in the other sections of the proposed regulations. The revised regulations combine the fee requirements in § 74.12 of the final-form regulations. The Commission agrees with the comments of the PEA and PECO that the fee provisions originally scattered throughout the proposed regulations are better consolidated in one subsection of the final-form regulation.

The original § 74.8 set forth provisions governing termination notices, filing officer duties, and fees. The revised § 74.7 retains similar provisions with the exception of minor adjustments made to correct errors and provide clarity. In addition, the revised § 74.7 deletes the language regarding fees and places it in § 74.12 of the final-form regulations. The Commission agrees with the comments on the fees provision based on our earlier discussion.

The original § 74.9 established procedures for the assignment of security interests, fees and the role of the filing officer. The revised § 74.8 retains most of these requirements with the exception of minor adjustments made to correct errors and provide clarity. In addition, the original fee provisions set forth in § 74.8(b) and (d) have been deleted and moved to § 74.12 of the final-form regulations. The Commission agrees with the parties on the fees provision based on our earlier discussion.

The original § 74.10 governed release or retransfers, filing fees and the duties of the filing officer. The revised § 74.9 retains the purpose of § 74.10. However, the inadvertent juxtaposition of release and retransfer is corrected in the revised § 74.9 consistent with the comments of IRRC, the PEA and PECO. In addition, the original § 74.10(a) language regarding the requirements for action under this subchapter have been broken out in a revised § 74.9(b) for clarity. Finally, the original § 74.10(b) language regarding fees was deleted and moved to § 74.12 consistent with our earlier discussion.

The original § 74.11 governed the procedures and fees for information requests, certificates and copies. The original § 74.11 contained a phrase dealing with a notice of a Federal tax lien. The revised § 74.10 deletes this phrase. The Commission agrees with the comments from the PEA and PECO that the phrase is redundant, unnecessary and handled elsewhere. The original § 74.11(b) language regarding fees was deleted in the revised § 74.10 consistent with our earlier discussion.

The original § 74.12 governed record retention, admissibility and filing officer requirements. The revised § 74.11 contains similar language with the exception of minor adjustments made to correct errors and provide clarity.

The original § 74.13 governed fees and the filing of notice changes. The revised § 74.12 contains similar language, with the exception of minor adjustments made to correct errors and provide greater clarity, and provides one all-encompassing discussion of the applicable fees. The Commission agrees with those comments consistent with our earlier discussion.

The original § 74.14 governed the duties and obligations of the Forms Officer. The original § 74.14 language regarding UCC Form-1 and UCC Form-3, however, has been deleted consistent with our discussion.

The revised § 74.14 allows a permissive filing by the Commission with the Department of State for a filing made under this chapter. The Commission agrees with the parties that a mandatory filing by a filing party is not necessary and it also agrees with the Department of State that an informational filing is in the public interest. The Commission believes this permissive filing strikes a balance between the PECO and PEA opposition to mandatory filings and the Department of State's concern with public access and information about perfection under this chapter.

The filing fees for the perfection of security interests under the act are set forth in § 1.43(a) (relating to schedule of fees payable to the Commission). The Commission has significantly reduced the fees established in the final-form regulations. The Commission takes this action in light of the comments from the PEA and PECO that the charges were excessive in light of the benefits conferred. The Commission accepts, for the time being, the claim that the number and frequency of these filings will not be so extensive, complex or time-consuming that the proposed fee was appropriate.

However, the Commission disagrees with IRRC that no fee should be charged for the services rendered to these entities. That is because the perfection services rendered by the Commission under this chapter are not the type of services that have previously been provided by the Commission. The type of services that will be rendered under this chapter are closer to those traditionally rendered by the Department of State. Moreover, the entities securing perfection services from the Commission under this chapter may not be public utilities normally subject to our traditional assessment process.

Finally, the perfection services provided under this chapter may extend for long periods of time under 66 Pa.C.S. §§ 2808 and 2812 of the act. The filing fees facilitate the fair and orderly transition to competition as required by 66 Pa.C.S. § 2802(13) and are flexible as required by 66 Pa.C.S. § 2812(b)(9). The filing fees would allocate the costs of providing the services closer to the source of cost causation consistent with the general principle of economic pricing.

Consequently, the Commission concludes that the filing fees, albeit significantly reduced, are a necessary and appropriate component to the regulations established under this chapter. The Commission's fees, albeit significantly reduced, are premised on the parties' comments on the anticipated level of service. The fees are intended to cover, at least partially, the reasonable costs, including staffing and related infrastructure support and development, of providing that anticipated level of service. The Commission reserves the right to revisit this issue in the event circumstances are different from those used today to set the fees.

Accordingly, under sections 501 and 2812(d), 66 Pa.C.S. §§ 501 and 2812(d), of the Public Utility Code, and the act of July 31, 1968 (P.L. 769, No. 240) (45 P.S. §§ 1201—1208) and 71 P.S. §§ 745.1—745.15, the Commission adopts the regulations, following as Annex A of this order as final-form regulations; *Therefore,*

It Is Ordered that,

1. The regulations of the Commission, 52 Pa. Code, are amended by amending § 1.43 and by adding §§ 74.1—

74.14 and Appendices A and B to read as set forth in Annex A, with ellipses referring to the existing text of the regulations.

2. This order, together with Annex A, be published as final in the *Pennsylvania Bulletin*.

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

4. The Secretary shall submit a copy of this order, together with Annex A, to the Governor's Budget Office for review of fiscal impact.

5. The Secretary shall submit this Order and Annex A for formal review and comments by the designated standing committees of both Houses of the General Assembly, and for formal review and approval by IRRC.

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

7. The Secretary shall provide a copy of this Order and Annex A for placement on the Commission's electronic Bulletin Board, the Department of State's Corporation Bureau, the Pennsylvania Electric Association, the Pennsylvania Banking Association and the Commonwealth of Pennsylvania Securities Commission.

8. This regulation shall become effective upon publication in the *Pennsylvania Bulletin*.

9. A copy of this Order and Annex A shall be provided to all persons that submitted comments in the rule-making proceeding at Docket No. L-00970122, and upon all jurisdictional utilities subject to the Commission's jurisdiction, the Office of Consumer Advocate and the Office of Small Business Advocate.

10. Alternate formats of this Order and Annex A are available to persons with disabilities and may be obtained by contacting Shirley M. Leming, Regulatory Coordinator, Law Bureau, at (717) 772-4597, or toll free, through the AT&T Relay Center at 1 (800) 654-5988.

By the Commission

JAMES J. MCNULTY,
Acting Secretary

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 27 Pa.B. 4879 (September 20, 1997).)

Fiscal Note: Fiscal Note 57-183 remains valid for the final adoption of the subject regulations.

Annex A

TITLE 52. PUBLIC UTILITIES

PART I. PUBLIC UTILITY COMMISSION

Subpart A. GENERAL PROVISIONS

CHAPTER 1. RULES OF ADMINISTRATIVE PRACTICE AND PROCEDURE

Subchapter E. FEES

§ 1.43. Schedule of fees payable to the Commission.

(a) *Fees for services.* The fees for services rendered by the Commission are as follows:

<i>Description</i>	<i>Fee (in dollars)</i>
* * * * *	

<i>Description</i>	<i>Fee (in dollars)</i>
Initial filing of Form A for intangible transition property notice	\$550
Subsequent filing of notice changes in intangible transition property notice on Form B	\$350
Chapter 74 public information requests relating to perfection of security interests	\$10 plus standard per page copying costs.
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Subpart C. FIXED SERVICE UTILITIES
CHAPTER 74. PERFECTION OF SECURITY INTERESTS IN INTANGIBLE TRANSITION PROPERTY

Sec.	Purpose.
74.1.	Definitions.
74.3.	Information, filing and hours.
74.4.	Place of filing.
74.5.	Intangible transition property notice requirements; amendment; forms; error; recharacterization.
74.6.	Intangible transition property notice filing; duration; lapses; filing officer.
74.7.	Termination notice; filing officer.
74.8.	Assignment of security interest or interest of an assignee; filing officer.
74.9.	Release or retransfer; filing officer.
74.10.	Information requests; filing officer.
74.11.	Record retention; admissibility; filing officer.
74.12.	Fees.
74.13.	Forms officer.
74.14.	Additional Commission filings; Commission information filing.

§ 74.1. Purpose.

This chapter implements the ministerial requirements of section 2812(d)(1)–(4) of the act (relating to security interests in intangible transition property) governing the perfection of a security interest in intangible transition property and the filing of notice of transfer to an assignee of an interest in intangible transition property. This chapter establishes the recordkeeping regulations and requirements and provides technical rules on administration concerning the perfection of the security interests and the filing of the notices of transfer to an assignee. This chapter also establishes how an intangible transition property notice is filed, what a filing must contain and what obligatory record retention requirements are imposed on the Commission. This chapter governs notice, amendment, effectiveness, and termination of the perfection of a security interest and notice of transfer to an assignee.

§ 74.2. Definitions.

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

Act—66 Pa.C.S. Chapter 28 (relating to restructuring of electric utility industry).

Assignee—An assignee as defined in section 2812(g) of the act (relating to approval of transition bonds).

Assignor—An electric utility or other person who transfers an interest in intangible transition property to an assignee.

Certificate—A document establishing, based upon the file number, a qualified rate order docket number and general docket number, whether there is on file with the Commission on the date and time stated a presently effective intangible transition property notice.

Commission—The Pennsylvania Public Utility Commission, including an appointed successor entity.

Continuation notice—A notice submitted to extend the effectiveness of an intangible transition property notice.

Department of State—The Corporation Bureau of the Department of State of the Commonwealth, including an appointed successor entity.

File number—A numerical sequence assigned by the Commission to identify a specific filing made under this chapter.

Filing—The submission of a completed intangible transition property notice or other document described in this chapter to the filing officer, together with the applicable filing or processing fee, and the acceptance thereof by the filing officer as evidenced by the indication of a file number and filing date thereon.

Filing date—The date and time at which a filing is accepted by the Commission as described in this chapter.

Filing officer—An authorized person in the Office of the Prothonotary of the Commission, including an appointed successor entity or office.

Filing party—A person who makes a filing under this chapter. The term does not include the Commission.

Financing party—A financing party as defined in section 2812(g) of the act.

General docket—A generic docket established by the Commission as a collective repository for all filings pertaining to the perfection of a security interest in, or the transfer to an assignee of an interest in, intangible transition property.

General docket number—The generic docket number M-00970937 established by the Commission to identify the general docket for perfection of security interests.

Grantor—An electric utility or other person who grants a security interest in intangible transition property to another person. The term does not include the Commission.

Information request—A request from a person to the Commission concerning a filing.

Intangible transition property—Intangible transition property as defined in section 2812(g) of the act.

Intangible transition property notice—A notice of a security interest in, or of a transfer to an assignee of an interest in, intangible transition property, complying with § 74.6 (relating to intangible transition property notice filing; duration; lapses; filing officer) and properly filed amendments to the notice.

Lapse—The expiration of the period of effectiveness of an intangible transition property notice.

Person—A human being, partnership, corporation, public authority or trust (including a business trust), unincorporated association, limited liability company, joint stock company or any other legal entity, whether public or private, existing under the laws of the Commonwealth, another state, the United States or a foreign country.

Qualified rate order—A qualified rate order as defined in section 2812(g) of the act.

Qualified rate order docket number—The established Commission filing number for a qualified rate order.

Release—An action taken by a filing party to alter a right, duty or obligation concerning the perfection of a security interest.

Retransfer—An action taken by an assignee to return to an assignor all or a portion of the interest of the assignee in intangible transition property.

Security interest—An interest in intangible transition property securing the payment or performance of an obligation.

Termination notice—The notice submitted to terminate perfection of a security interest.

§ 74.3. Information, filing and hours.

(a) Information on the procedures and forms for filing under this chapter, submittals, requests and other information or instructions supplementing this chapter in special instances can be obtained upon request:

Office of the Prothonotary
 Pennsylvania Public Utility Commission
 Attention: Filing Officer
 P. O. Box 3265
 Harrisburg, Pennsylvania 17105-3265

If hand carried or delivered by courier, submittals, requests or other information shall be delivered as follows:

Office of the Prothonotary
 Attention: Filing Officer
 Pennsylvania Public Utility Commission
 Harrisburg, Pennsylvania 17120

(b) A filing, information request concerning the procedures and forms for filing under this chapter, submittals, requests and other information or instructions supplementing this chapter in special instances shall be sent to the attention of the filing officer.

§ 74.4. Place of filing.

(a) *Place of filing.* An intangible transition property notice shall be filed with the filing officer of the Commission by the filing party and be accompanied by the payment of the filing fees established by the Commission.

(b) *Effect of successor entity on filing.* An effective intangible transition property notice continues in force and effect even though the grantor or assignor whose intangible transition property notice is (or originally was) the subject of a filing merges, consolidates or otherwise reorganizes.

§ 74.5. Intangible transition property notice requirements; amendment; forms; error; recharacterization.

(a) *General rule.* An intangible transition property notice will be deemed sufficient if it provides the following:

- (1) The name of the grantor or assignor.
- (2) The address of the grantor or assignor.
- (3) A signature of an authorized person acting on behalf of the grantor or assignor.
- (4) The name of the financing party or assignee.
- (5) The address of the financing party or assignee from which information concerning the security interest or transfer of an interest in intangible transition property may be obtained.
- (6) The signature of an authorized person acting on behalf of the financing party or assignee.

(7) A statement setting forth whether all or a portion of the recovery permitted under the qualified rate order (from which the intangible transition property is derived) is covered by the intangible transition property notice. If the portion covered by an intangible transition property notice relates to less than all of the qualified rate order,

the portion or the amount thereof to which the intangible transition property notice relates shall be stated.

(8) A statement (subject to subsection (h)) of whether the intangible transition property notice is intended to be filed to perfect a security interest in intangible transition property or to give notice of a transfer of an interest in intangible transition property to an assignee.

(9) The qualified rate order docket number from which the intangible transition property is derived.

(10) The general docket number.

(b) *Filing sequence.* An intangible transition property notice may be filed before a security agreement is made or a security interest otherwise attaches or before a transfer of an interest in intangible transition property to an assignee becomes effective.

(c) *Effect of partial completion.* An intangible transition property notice which otherwise complies with this section will be deemed sufficient when it is signed by the financing party or assignee instead of the grantor or assignor, if it is submitted to perfect a security interest in or record a transfer to an assignee of:

(1) In the case of a security interest, intangible transition property as to which the filing of an intangible transition property notice has lapsed.

(2) Intangible transition property under a security agreement or an agreement effecting a transfer to an Assignee signed by the grantor or assignor and authorizing the financing party or the assignee, to file an intangible transition property notice. The intangible transition property notice shall state that it is being submitted in accordance with a security agreement or an agreement effecting a transfer signed by the grantor or assignor that authorizes the filing of an intangible transition property notice by the financing party or the assignee.

(d) *Form.* A filing party shall submit Form A, in Appendix A, to comply with subsection (a).

(e) *Amendments.* Except when only one signature is expressly required by a provision of this chapter, an intangible transition property notice may be amended only with a written document signed by both the grantor or assignor and the financing party or assignee. An amendment does not extend the period of effectiveness of an intangible transition property notice unless it is filed as a continuation notice. If any amendment adds intangible transition property, it is effective as to the added intangible transition property only from the filing date of the amendment.

(f) *Amendment form.* A filing party shall submit Form B, in Appendix B, to comply with subsection (e).

(g) *Sufficiency of name.* An intangible transition property notice sufficiently shows the name of the grantor or assignor who is not an individual only if it gives the partnership, corporate, trust or entity name of the grantor or assignor, as the name is shown on the public records in the jurisdiction of organization in the case of persons who are required to register in the public records to organize or as the name is shown on the organizational documents of the person in the case of other persons formed under written agreements that are not required to register in the public records to organize. An intangible transition property notice that sufficiently shows the name of the grantor or assignor is not rendered ineffective by the absence of trade names or other names or names of partners, members or associates. A filed intan-

gible transition property notice remains effective with respect to intangible transition property transferred by the grantor or assignor even though the financing party or the assignee knows of or consents to the transfer. No amendment to an intangible transition property notice is required to reflect a change in the name, identity or corporate structure of a grantor or assignor.

(h) *Effect of minor errors; recharacterization.* An intangible transition property notice substantially complying with this chapter will be sufficient even if it contains minor errors which are not seriously misleading. If an intangible transition property notice is filed to give notice of a transfer to an assignee of an interest in intangible transition property under this chapter, and the transfer is thereafter held for any reason or purpose to constitute the grant of a security interest in the intangible transition property, the intangible transition property notice will be deemed to constitute a filing with respect to a security interest under this chapter, from and as of the filing date of the original intangible transition property notice, without the necessity of any amendment of (or other action by the parties with respect to) the originally filed intangible transition property notice.

§ 74.6. Intangible transition property notice filing; duration; lapses; filing officer.

(a) *What constitutes a filing.* Presentation of an intangible transition property notice and tender of the filing or processing fee, and acceptance of the intangible transition property notice by the filing officer by indication of a file number and filing date on the intangible transition property notice, will constitute a filing under the act and this chapter. Nothing in the act or this chapter precludes the filing officer from refusing to accept for filing an intangible transition property notice not complying with this chapter.

(b) *Purposes of filing.* An intangible transition property notice shall be filed to perfect the security interest of a financing party in intangible transition property. An intangible transition property notice shall also be filed in respect of each transfer to an assignee of an interest in intangible transition property.

(c) *Duration of effectiveness of filing in general.* An intangible transition property notice filed to perfect the security interest of a financing party will be effective for 12 years from the filing date. An intangible transition property notice filed to perfect the security interest of a financing party lapses on the expiration of the 12-year period unless a continuation notice is filed prior to the lapse. An intangible transition property notice filed to record the transfer to an assignee of intangible transition property is continuously effective.

(d) *Lapse.* Upon lapse, the security interest becomes unperfected and is deemed to have been unperfected as against a person who became a purchaser or lien creditor before the lapse.

(e) *Continuation notice.* A continuation notice shall be filed by a financing party no earlier than 6 months prior to the expiration of the 12-year period specified in subsection (c). A continuation notice shall be signed by the financing party, identify the original notice by file number and state that the original intangible transition property notice is still effective. A continuation notice signed by a person other than the financing party of record shall be accompanied by a separate written statement of assignment of the security interest signed by the financing party of record and comply with this chapter, including payment of the required fees. Upon timely filing

of the continuation notice, the effectiveness of the original notice is continued for 12 years after the last date to which the filing was effective whereupon it lapses in the same manner as provided in subsection (d) unless another continuation notice is filed prior to a lapse. Succeeding continuation notices may be filed in the same manner to continue the effectiveness of the original notice.

(1) Unless a statute on disposition of public records provides otherwise, the filing officer may remove a lapsed notice from the files and destroy it if he has retained a microfilm or other photographic record or, in other cases, 1 year after the lapse.

(2) The filing officer will manage the intangible transition property notice filings to retain a filing that is continued beyond the 12-year limitation.

(f) *Establishment and duties of filing officer.*

(1) The Commission will establish and appoint a filing officer to maintain the records and to take other necessary action. The filing officer will place copies of filings made under this chapter in the appropriate dockets for future reference and manage the filings.

(2) The filing officer will also mark each intangible transition property notice and each subsequent related filing with a consecutive file number and with the date and time of filing and will hold the intangible transition property notice and each subsequent related filing or microfilm or other photographic or electronic copy thereof for public inspection. Consecutive file numbers for intangible transition property notices and subsequent related notices filed in each calendar year will begin with the number one preceded by the last two digits of the calendar year in which the filing occurs. In addition, the filing officer will index the intangible transition property notices according to the name of the grantor or assignor and will mark in the index the file number and the address of the grantor or assignor.

(g) *Legible papers.* The duties of the filing officer prescribed in this chapter relate only to clearly legible papers submitted to the filing officer. The filing officer will accept only clearly legible papers. No intangible transition property notice or other related notice will be accepted unless it is typed or printed in black ink and, in the determination of the filing officer, can be interpreted or reproduced using the technology employed by the Commission.

§ 74.7. Termination notice; filing officer.

(a) *General rule.* Whenever there is no outstanding secured obligation and no commitment to make advances, incur obligations or otherwise give value, the financing party shall on written demand by the grantor send the grantor a termination notice to the effect that it no longer claims a security interest under the applicable intangible transition property notice, which shall be identified by its file number. A termination notice signed by a person other than the financing party of record shall be accompanied by a separate written notice of assignment of the security interest signed by the financing party of record and complying with this chapter, including payment of the required fee. If the affected financing party fails to file a termination notice or send a termination notice within 10 days after proper demand therefor, the financing party shall be liable for the loss caused to the grantor by reason of the failure.

(b) *Duties of filing officer.* On presentation to the filing officer of a termination notice, the filing officer shall mark the date and time of filing on the termination notice. If

the filing officer has received the termination notice in duplicate, the filing officer will return one copy of the termination notice to the financing party marked to show the date and time of filing thereof. The filing officer may remove the original, microfilm or other photographic record from the file no sooner than 1 year after receipt of the termination notice.

§ 74.8. Assignment of security interest or interest of an assignee; filing officer.

(a) *Assignment disclosed in intangible transition property notice.* An intangible transition property notice may disclose an assignment of a security interest of a financing party or of the interest of an assignee in the intangible transition property described in a filed intangible transition property notice by indication in the notice of the name and address of the transferee. Either the original financing party or assignee or the transferee may sign this statement as the financing party or assignee. On presentation to the filing officer of an intangible transition property notice, the filing officer will mark it as provided for in this chapter.

(b) *Separate notice of assignment.* A financing party or assignee of record may assign all or a part of its rights under an intangible transition property notice by submitting a separate written notice of assignment signed by the financing party or assignee of record and setting forth the name of the financing party or assignee of record, the grantor or assignor, the file number and the filing date of the intangible transition property notice and the name and address of the transferee, a description of the interest in the intangible transition property assigned, the qualified rate order docket number for the qualified rate order from which the intangible transition property is derived, and the general docket number. A copy of the assignment is sufficient as a separate notice if it complies with the preceding sentence. On presentation to the filing officer of a separate notice which complies with this section, the filing officer will mark a separate notice with the date and time of the filing. The filing officer will mark the assignment on the indices of the intangible transition property notice or enter the assignment information into the computerized system for intangible transition property notices.

(c) *Status of transferee.* After the filing of an assignment under this section, the transferee becomes the financing party or assignee of record as to the interest assigned.

§ 74.9. Release or retransfer; filing officer.

(a) A financing party or assignee of record may by its signed notice release or retransfer all or a part of its interest in intangible transition property described in a filed intangible transition property notice.

(b) The notice of a release or retransfer is sufficient if it contains the following:

- (1) A description of the intangible transition property being released or retransferred.
- (2) The name and address of the grantor or assignor.
- (3) The name and address of the financing party or assignee.
- (4) The file number of the intangible transition property notice.
- (5) The qualified rate order docket number for the qualified rate order from which the intangible transition property is derived.
- (6) The general docket number.

(c) A notice of release or retransfer signed by a person other than the financing party or assignee of record shall be accompanied by a separate written statement of assignment of the interest in intangible transition property signed by the financing party or assignee of record and comply with this chapter, including payment of the required fee.

(d) Upon presentation of a notice of release or retransfer to the filing officer, the filing officer will mark the notice with the date and time of filing and will mark the same on the indices of the intangible transition property notice or enter the release or retransfer information into the computerized system for intangible transition property notices.

§ 74.10. Information requests; filing officer.

(a) *Marking copy of intangible transition property notice filed.* If the filing party submitting an intangible transition property notice, continuation notice, termination notice, notice of assignment, notice of release or notice of retransfer, furnishes the filing officer with a copy, the filing officer will upon request mark upon the copy the file number and date and time of the filing of the original and deliver or send the copy to the filing party.

(b) *Furnishing certificates and copies.* Upon request of a person, the filing officer will issue a certificate showing whether there is on file on the date and time stated therein, a presently effective intangible transition property notice naming a particular grantor or assignor and a notice of assignment and, if there is, giving the date and time of filing of each notice and the names and addresses of each financing party or assignee named therein. A certificate will also show whether there is on file on the date and time stated therein, a notice affecting intangible transition property of the grantor or assignor, and if there is, giving the date and time of filing of each notice. Upon request, the filing officer will furnish, upon payment of the requisite fee, a copy of a filed intangible transition property notice, or notice affecting intangible transition property of a grantor or assignor, or a continuation notice, termination notice, notice of assignment, notice of release or notice of retransfer respecting an intangible transition property notice.

§ 74.11. Record retention; admissibility; filing officer.

In lieu of retaining the original of a filing, a filing officer may make microfilm, photographic, photostat, electronic or other copies which accurately reproduce an original and may thereafter dispose of the originals so copied, and the copy will be admissible in evidence in a proceeding with the same effect as though it were an original. If a filing officer upon making a copy of a paper disposes of the original, then upon the filing of a termination notice the filing officer will be relieved of the duties imposed regarding the underlying intangible transition property notice, and instead will mark the termination notice on the index and will send to the financing party an acknowledgement of the filing of the termination notice.

§ 74.12. Fees.

(a) The fees are those in § 1.43(a) (relating to schedule of fees payable to the Commission) for services. The fees in § 1.43(a) governing this chapter are based on the total direct and indirect administrative cost of providing the service, including staffing and infrastructure support, necessary to effectuate the perfection of a security interest under the act and as required by 66 Pa. Code § 317(a) (relating to fees for services rendered by Commission).

(b) The initial filing fee will be that in § 1.43 for the filing of Form A. The fee for changes and other actions with respect to an intangible transition property notice in connection with an amendment, assignment, continuation, release, retransfer or termination will be that in § 1.43 for the filing of Form B. The forms will be available from the filing officer of the Commission. The fee for information requests relating to this chapter is the fee in § 1.43 for Chapter 74 related public information requests.

§ 74.13. Forms officer.

The filing officer shall also be the forms officer responsible for providing Forms to the public. The forms will include, at a minimum, the following:

- (1) Form A, in Appendix A, for intangible transition property notice.
- (2) Form B, in Appendix B, for any amendment, assignment, continuation, release, retransfer or termination of interest in an intangible transition property notice.
- (3) An established fee schedule.
- (4) Other forms as may be necessary to effectuate the

perfection of a security interest under the act and this chapter.

§ 74.14. Additional Commission filings; Commission informational filing.

(a) *Commission filing.* The filing officer may place a copy of any filing in the Commission's general docket and in the qualified rate order docket related to the intangible transition property covered by any intangible transition property notice.

(b) *Informational filing.* The filing officer will forward to the Department of State, for informational purposes only, a copy of any filing in accordance with the procedures and fees as determined to be necessary by the Department of State. Any failure of the Commission to make such an informational filing shall have no effect whatsoever on the perfection of a security interest in or transfer of an interest in intangible transition property under section 2812(d) of the act (relating primarily to perfection of security interests in intangible transition property). The Commission is not liable in law or equity for failure to make the informational filing.

APPENDIX A

For Filing Officer Only
File Number:
Filing Date:

**Form A
Intangible Transition Property Notice**

General Docket Number: M-00970937

Name of Grantor or Assignor:

Address of Grantor or Assignor:

Name of Financing Party or Assignee:

Address of Financing Party or Assignee from which Information concerning the Security Interest or Transfer in Interest Intangible Transition Property may be obtained:

This Intangible Transition Property Notice covers the Intangible Transition Property arising from the following Qualified Rate Order:

Commission Docket Number:

Date of Entry:

State whether the Intangible Transition Property Notice relates to all the above Qualified Rate Order and the amount of Intangible Transition Property arising therefrom, or only to a portion of such Order or Amount:

_____ All _____ Portion

If "Portion" is checked, state either:

The Portion of the Qualified Rate Order to which this Notice relates (by reference to the applicable section(s) or paragraphs(s) of the Order:

OR

The Amount of the Intangible Transition Property to which this Notice relates (in comparison to the Total Amount of such property):

\$ _____ of a Total of \$ _____

Check one:

- _____ This Form A is filed to Perfect a Security Interest in Intangible Transition Property.
- _____ This Form A is filed to give notice of a Transfer of an Interest in Intangible Transition Property to an Assignee.

Signature of Grantor or Assignor

Signature of Financing Party or Assignor

APPENDIX B

Form B
Intangible Transition Property Notice Changes

This Intangible Transition Property Notice filing relates to an Intangible Transition Property Notice originally filed at (File Number). The P.U.C. General Docket relating to such filing is Docket No. M-00970937 and the Qualified Rate Order Docket No. is .

Name of Grantor or Assignor:

Address:

Name of Financing Party or Assignee of Record:

Address:

The following change in the intangible transition property notice is contemplated by this filing: (Check One):

- Amendment: The original Intangible Transition Property Notice identified above is amended as set forth below.
Assignment: The Financing Party or Assignee of record has assigned to the transferee, whose name and address is set forth below, rights in the Intangible Transition Property described above under the original Intangible Transition Property Notice identified above.
Certificate: Request showing whether there is on file on the date and hour stated therein, a presently effective Intangible Transition Property Notice based on information provided to the Filing Officer.
Continuation: The original Intangible Property Notice identified above is still effective.
Release: The Financing Party of record has released the Intangible Transition Property described below from the Intangible Transition Property covered by the original Intangible Transition Property Notice identified above.
Retransfer: The Assignee of record has retransferred the Intangible Transition Property described below from the Intangible Transition Property covered by the original Intangible Transition Property Notice identified above.
Termination: The Financing Party of record is no longer claiming a security interest in the Intangible Transition Property described in the original Intangible Transition Property Notice identified above.

Description

The following describes the Intangible Transition Property added by amendment, assigned, released, retransferred, terminated, or describing any other amendment to the Intangible Transition Property Notice:

Transferee Name:

Transferee Address:

Description of the Intangible Transition Property added by amendment, assigned, released, retransferred, terminated, or describing any other amendment to the Intangible Transition Property Notice:

Signature of Financing Party or Assignee of record

Signature of Grantor or Assignor

[Pa.B. Doc. No. 97-1662. Filed for public inspection October 17, 1997, 9:00 a.m.]