RULES AND REGULATIONS

Title 31—INSURANCE

INSURANCE DEPARTMENT

[31 PA. CODE, CHS. 1, 5, 7 AND 9]

Uniform Classification of Expenses

The Insurance Department (Department) hereby deletes Chapters 1, 5, 7 Chapter 9 to read as set forth in Annex A, under the authority of sections 206, 506, 1501 and 1502 of The Administrative Code of 1929 (71 P. S. §§ 66, 186, 411 and 412); the act of May 9, 1949 (P. L. 1025, No. 298) (Act 298) (40 P. S. §§ 1261—1264); and section 320 of The Insurance Company Law of 1921 (act) (40 P. S. § 443). The regulations apply to property and casualty insurers, the State Workmen's Insurance Fund and title insurers. The regulations prescribe accounting rules for allocating and classifying certain types of expenses in financial statements.

Purpose

The purpose of the deletion of Chapters 1, 5, 7 and 9 is to eliminate obsolete, unnecessary regulations. The regulations were initially adopted October 21, 1949, and last amended July 7, 1970, under the authority of Act 298. Specifically, sections 1 and 2 of Act 298 (40 P. S. §§ 1261 and 1262) require property and casualty insurers, the State Workmen's Insurance Fund and title insurers to maintain uniform classifications of accounts and records as may be prescribed by the Insurance Commissioner (Commissioner) and, in addition, to file reports in a form determined by the Commissioner. The regulations were adopted to prescribe uniform accounting rules for the classification of specific expenses.

Section 320(a) of The Insurance Company Law of 1921 requires insurers to file annual financial statements and, as amended by the act of December 18, 1992 (P. L. 792, No. 176) states, in pertinent part:

> (a)(1) Every stock and mutual insurance company, association, and exchange, doing business in this Commonwealth, shall annually, on or before the first day of March, file in the office of the Insurance Commissioner and with the National Association of Insurance Commissioners a statement which shall exhibit its financial condition on the thirty-first day of December of the previous year . . . The Insurance Commissioner shall require each insurance company, association and exchange to reports its financial condition on the statement convention blanks, in such form as adopted by the National Association of Insurance Commissioners . . . and may make such changes, from time to time, in the form of the same as shall seem best adapted to elicit from them a true exhibit of their financial condition.
>
> (2) Unless otherwise provided by law, regulation or order of the Insurance Commissioner, each insurance company, association and exchange shall adhere to the annual or quarterly statement instructions and the accounting practices and procedures manuals prescribed by the National Association of Insurance Commissioners . . .

Under the authority of Act 298 and section 320 of The Insurance Company Law of 1921, the Commissioner has determined that the form, instructions and manuals prescribed by the National Association of Insurance Commissioners (NAIC) sufficiently address the classification of the types of expenses covered in the regulations. Therefore, the Commissioner currently requires the insurers subject to the regulations, including the State Workmen's Insurance Fund, to adhere to the NAIC form, instructions and manuals for the classification and reporting of those expenses. The regulations in no manner enhance the NAIC instructions and manuals. Therefore, the regulations are outdated and redundant and are no longer needed.

Statutory Authority

The regulations are being deleted under the authority of sections 206, 506, 1501 and 1502 of The Administrative Code of 1929; Act 298 and section 320 of the act. The regulations were adopted under the authority of Act 298.

Comments

Notice of this deletion was published at 27 Pa.B. 3231 (July 5, 1997) as a proposed rulemaking with a 30-day public comment period.

No comments were received from the standing committees. Comments were received from the Pennsylvania Association of Mutual Insurance Companies (PAMIC). On September 3, 1997, the Independent Regulatory Review Commission (IRRC) submitted notice to the Department that IRRC had no objections, comments or suggestions to offer on this rulemaking. The following is a summary of PAMIC's comments and the Department's response in its final rulemaking.

PAMIC agreed that the regulations are outdated but questioned whether the regulations should be updated or deleted. PAMIC commented that its general goal is to give domestic insurers, especially insurers that write business only in this Commonwealth, an opportunity to comment on substantive regulatory issues. PAMIC further stated that the rules under which insurers operate in this Commonwealth should be available to insurers and other parties without incurring the cost of purchasing NAIC publications.

As previously cited, section 320 of the act requires the insurers subject to these regulations to adhere to the NAIC instructions and accounting practices and procedures manuals, unless otherwise provided by law, regulation or order of the Insurance Commissioner. The NAIC instructions and manuals are designed to provide comprehensive, uniform accounting rules for financial reporting by insurers in the various states. The NAIC continually updates its accounting requirements to keep abreast of developments in financial reporting issues. Section 320(a)(2) of the act was adopted in 1992 to clarify Pennsylvania's standard requirement that insurers adhere to the NAIC instructions and manuals when preparing financial statements to be filed with the Department. The 1992 amendments to section 320 of the act were also made to bring this Commonwealth into compliance with the NAIC's state accreditation standards for effective solvency regulation of the insurance industry.

The Department agrees that insurers and all other affected parties should have an opportunity to comment on substantive regulatory issues. Therefore, the Department has historically proposed to adopt substantive financial reporting requirements through the Legislative or regulatory process. For example, the Department pro-

posed legislation to require insurers to file risk-based capital reports with annual financial statements (Act 40-1997). In addition, the requirements relating to annual audited financial reports were adopted by regulation (Chapter 147). However, with respect to the accounting rules for the classification of expenses, the Department believes that compliance with the NAIC instructions and manuals under section 320(a)(2) of the act is both appropriate and sufficient.

The NAIC manual that includes the rules for classifying expenses costs $100. Because the insurers subject to these regulations are currently required to adhere to the NAIC instructions and manuals under section 320(a)(2) of the act, the Department believes the deletion of the regulations should result in minimal or no additional costs to the affected insurers.

Therefore, the Department believes the regulations are redundant and unnecessary and should be deleted to read as set forth in Annex A.

Fiscal Impact

The current cost of the NAIC manual that includes the rules for classifying expenses is $100. Because the affected insurers are currently required to adhere to the NAIC instructions and manuals, the deletion of the regulations will have minimal fiscal impact.

Paperwork

The deletion of the regulations will impose no additional paperwork requirements on the Department or insurers.

Affected Parties

The deletion of the regulations affects property and casualty insurers, the State Workmen's Insurance Fund and title insurers.

Effectiveness/Sunset Date

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

Contact Person

Questions or comments regarding this final rulemaking may be addressed in writing to Peter J. Salvatore, Regulatory Coordinator, Office of Special Projects, 1326 Strawberry Square, Harrisburg, PA 17120, (717) 787-4429.

Regulatory Review

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

These final-form regulations were deemed approved by the House and Senate Committees on June 25, 1998, in accordance with section 5.1(d) of the Regulatory Review Act (71 P. S. § 745.5a(d)). IRRC met on July 9, 1998, and deemed approved the deletion in accordance with section 5.1(e) of the Regulatory Review Act.

Findings

The Commissioner finds that:

(1) Public notice of intention to adopt this rulemaking as amended by this order has been given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202) and the regulations thereunder, 1 Pa Code §§ 7.1 and 7.2.

(2) The adoption of this rulemaking in the manner provided in this order is necessary and appropriate for the administration and enforcement of the authorizing statutes.

Order

The Commissioner acting under the authorizing statutes, orders that:

(a) The regulations of the Department, 31 Pa. Code Chapters 1, 5, 7 and 9, are amended by deleting §§ 1.1—1.4, 1.11—1.14, 1.21—1.26, 1.31—1.34, 1.41, 1.42, 1.51—1.67, 5.1—5.5, 5.11—5.15, 5.21, 5.22, 5.31—5.37, 7.1—7.4, 7.11, 7.12, 9.1, 9.2, 9.11—9.20, 9.31, 9.32 and 9.41—9.48 to read as set forth in Annex A.

(b) The Commissioner shall submit this order and Annex A to the Office of General Counsel and Office of Attorney General for approval as to form and legality as required by law.

(c) The Commissioner shall certify this order and Annex A and deposit them with the Legislative Reference Bureau as required by law.

(d) The regulations rescinded by this order shall be deleted upon publication in the *Pennsylvania Bulletin*.

M. DIANE KOKEN,
Insurance Commissioner

Fiscal Note: Fiscal Note 11-152 remains valid for the final adoption of the subject regulations.

Annex A

TITLE 31. INSURANCE

PART I. GENERAL PROVISIONS

Subpart A. UNIFORM CLASSIFICATION OF EXPENSES

CHAPTER 1. (Reserved)

§§ 1.1—1.4. (Reserved).

§§ 1.11—1.14. (Reserved).

§§ 1.21—1.26. (Reserved).

§§ 1.31—1.134. (Reserved).

§ 1.41. (Reserved).

§ 1.42. (Reserved).

§§ 1.51—1.67. (Reserved).

CHAPTER 5. (Reserved)

§§ 5.1—5.5. (Reserved).

§§ 5.11—5.15. (Reserved).

§ 5.21. (Reserved).

§ 5.22. (Reserved).

§§ 5.31—5.37. (Reserved).

CHAPTER 7. (Reserved)

§§ 7.1—7.4. (Reserved).

§ 7.11. (Reserved).

§ 7.12. (Reserved).

CHAPTER 9. (Reserved)

§ 9.1. (Reserved).

§ 9.2. (Reserved).

§§ 9.11—9.20. (Reserved).

§ 9.31. (Reserved).

§ 9.32. (Reserved).

§§ 9.41—9.48. (Reserved).

[Pa.B. Doc. No. 98-1266. Filed for public inspection August 7, 1998, 9:00 a.m.]

[31 PA. CODE CH. 103]
Uniform Bylaws for Mutual Fire Companies

The Insurance Department (Department) hereby deletes Chapter 103 (relating to uniform bylaws for mutual fire companies) to read as set forth in Annex A, under the authority of sections 206, 506, 1501 and 1502 of The Administrative Code of 1929 (71 P. S. §§ 66, 186, 411 and 412); and section 506 of The Insurance Company Law of 1921 (40 P. S. § 636). The regulation recommends that domestic assessment mutual fire insurance companies adopt uniform bylaws in the form attached to § 103.1 as Exhibit A. The regulation also encourages domestic assessment mutual fire insurance companies to use Pennsylvania's standard fire insurance policy.

Purpose

The purpose of the deletion of Chapter 103 is to eliminate obsolete, unnecessary, burdensome regulations. The regulations were adopted on May 26, 1936, under Article V of The Insurance Company Law of 1921 (40 P. S. §§ 631—702), which governs stock and mutual fire insurance companies. The regulations recommended, but did not mandate, the standardization of bylaws for one small subset of insurers—domestic mutual fire insurance companies that offer policies on an assessable basis. There is no public policy reason for standardizing the bylaws used by this type of insurer, when uniform bylaws are not imposed upon other types of fire insurance companies.

Further, the Commonwealth adopted a comprehensive corporations code at 15 Pa.C.S. (relating to Associations code) (code) in 1988; all other types of insurers may adopt bylaws consistent with that code. Domestic mutual fire insurance companies should have the same flexibility to adopt bylaws as is available to other companies against whom they compete. In addition, Exhibit A does not completely list all provisions that a domestic mutual fire insurance company should include in its bylaws, consistent with the code. Thus, the regulation is outdated as well as incomplete.

This regulation is also unnecessary because sufficient regulatory provisions exist for reviewing bylaws under current statutes, rendering this regulation superfluous. After the deletion of this regulation, the Department will continue to have the statutory authority to review a fire insurer's bylaws at the time of its admission, during a financial examination of the company and at any other time at the request of the Insurance Commissioner. See sections 1504(b) and 3121 of the code (relating to adoption, amendment and contents of bylaws; and bylaws); sections 903(a) and 904(b) of the Insurance Department Act of 1921 (40 P. S. §§ 323.3(a) and 323.4(b)); and section 320(a)(1) of the Insurance Company Law of 1921 (40 P. S. § 443(a)(1)). In addition, because the bylaws' provisions are encompassed within assessable policies, a mutual fire insurance company must submit its bylaws when it seeks review and approval of an assessable insurance policy. See section 354 of the Insurance Company Law of 1921 (40 P. S. § 477b). Accordingly, the regulation is not needed to maintain appropriate regulatory scrutiny of bylaws.

Finally, the regulation was intended to facilitate the review and approval of policy forms used by domestic assessment mutual fire insurance companies. Accordingly, the regulation recommended, but did not mandate, the use of the standard fire insurance policy found in section 506 of the Insurance Company Law of 1921 (40 P. S. § 636). However, the statute itself mandates that all insurance companies issuing fire insurance policies must adhere to the standard policy provisions in section 506. Therefore, the regulation duplicates existing statutory authority governing the standard policy provisions of fire insurance contracts, and inaccurately suggests that use of the standard fire policy is optional rather than mandatory.

Statutory Authority

The regulation is being deleted under the authority of sections 206, 506, 1501 and 1502 of The Administrative Code of 1929 and section 506 of The Insurance Company Law of 1921. The regulation was adopted in 1936 under Article V of The Insurance Company Law relating to fire and marine insurance.

Comments

Notice of this deletion was published at 27 Pa.B. 3064 (June 28, 1997) as a proposed rulemaking with a 30-day public comment period.

No comments were received from the standing committees. Comments were received from The Insurance Federation of Pennsylvania, Inc. (IFP). The IFP expressed support for the deletion of the regulation. On August 27, 1997, the Independent Regulatory Review Commission (IRRC) submitted notice to the Department that IRRC had no objections, comments or suggestions to offer on the deletion of the regulation.

Fiscal Impact

The deletion of the regulation has no fiscal impact because the regulation contains only advisory recommendations, and because of the obsolescence of the regulation.

Paperwork

The deletion of the regulation would impose no additional paperwork requirements on the Department or mutual insurance companies.

Affected Parties

The deletion of the regulation affects domestic assessment mutual fire insurance companies.

Effectiveness/Sunset Date

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

Contact Person

Questions or comments regarding this final-form rulemaking may be addressed in writing to Peter J. Salvatore, Regulatory Coordinator, Office of Special Projects, 1326 Strawberry Square, Harrisburg, PA 17120, (717) 787-4429.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on June 18, 1997, the Department submitted a copy of the proposed deletion to IRRC, the Chairpersons of the House Insurance Committee and the Senate Banking and Insurance Committee. In addition to the submitted final-form regulations, the Department has provided IRRC and the Committees with a copy of a detailed Regulatory Analysis Form prepared by the Department in compliance with Executive Order 1996-1, "Regulatory Review and Promulgation." A copy of the material is available to the public upon request.

These final-form regulations were deemed approved by the House and Senate Committee on June 21, 1998, in accordance with section 5.1(d) of the Regulatory Review Act (71 P. S. § 745.5a(d). IRRC met on July 9, 1998, and deemed approved the deletion in accordance with section 5.1(e) of the Regulatory Review Act.

Findings

The Commissioner finds that:

(1) Public notice of intention to adopt this rulemaking as amended by this order has been given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202) and the regulation thereunder, 1 Pa Code §§ 7.1 and 7.2.

(2) The adoption of this rulemaking in the manner provided in this order is necessary and appropriate for the administration and enforcement of the authorizing statutes.

Order

The Commissioner acting under the authorizing statutes, orders that:

(a) The regulations of the Department, 31 Pa. Code, are amended by deleting § 103.1 and Exhibit A to read as set forth in Annex A.

(b) The Commissioner shall submit this order and Annex A to the Office of General Counsel and Office of Attorney General for approval as to form and legality as required by law.

(c) The Commissioner shall certify this order and Annex A and deposit them with the Legislative Reference Bureau as required by law.

(d) The regulations rescinded by this order shall be deleted upon publication in the *Pennsylvania Bulletin*.

M. DIANE KOKEN,
Insurance Commissioner

(*Editor's Note*: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 28 Pa.B. 3558 (July 25, 1998).)

Fiscal Note: Fiscal Note 11-157 remains valid for the final adoption of the subject regulations.

Annex A

TITLE 31. INSURANCE

PART VI. MUTUAL INSURANCE

CHAPTER 103. (Reserved)

§ 103.1. (Reserved).

EXHIBIT A. (Reserved)

[Pa.B. Doc. No. 98-1267. Filed for public inspection August 7, 1998, 9:00 a.m.]

[31 PA. CODE CH. 117]
Anti-Arson Application

The Insurance Department (Department) hereby deletes Chapter 117 (relating to anti-arson application) to read as set forth in Annex A. The Department adopted the deletion under sections 206, 506, 1501 and 1502 of The Administrative Code of 1929, (71 P. S. §§ 66, 186, 411 and 412) and the Anti-Arson Application Law (act) (40 P. S. §§ 1615.1—1615.11). The regulation requires an insurance company issuing a commercial monoline fire policy insuring property located in this Commonwealth against the peril of fire to secure a completed anti-arson application and specifies the required content of the anti-arson application. The regulation further requires an insured to update the information contained in the application and requires the company to retain the application for 5 years.

Purpose

The purpose of this final rulemaking is to delete Chapter 117 to eliminate outdated regulations which do not serve any compelling public purpose. The regulation was promulgated in 1987 to implement the sections 1—11 of the act (40 P. S. 1615 §§ 1615.1—1615.11). Section 4 of the act (40 P. S. § 1615.4) mandates the use of the anti-arson application for commercial monoline fire policies, designated types of occupancies and designated geographic areas if, after public hearing, the Insurance Commissioner (Commissioner) designates the class as subject to an abnormally high number of claims resulting from arson. In 1986, the Commissioner designated the commercial monoline fire policy as particularly prone to arson and the Department promulgated the subject regulation to clarify the requirements relating to the anti-arson application. Publication of the promulgated regulation can be found at 17 Pa.B. 20 (January 3, 1987).

Following careful review, the Department hereby deletes the regulation for the following reasons. First, under the regulation, only companies issuing commercial monoline fire policies need to secure anti-arson application information. Commercial fire insurance is usually sold as a package along with liability and other business lines of insurance; it is generally not issued as a single or monoline policy. Therefore, the regulation has limited practical application. Second, subsequent to the adoption

of the regulation, no issues relating to arson affecting commercial monoline fire policies have been raised before the Commissioner. The lack of activity over a 10-year period indicates that the regulatory requirements in this area do not serve any compelling public interest. Third, because no method to accurately measure the effect of the anti-arson application requirement was ever implemented, the appropriateness and necessity of the requirement cannot be demonstrated at this time.

Under the act, the Commissioner retains authority to require anti-arson applications at a future time if the Commissioner finds that commercial monoline policies have become subject to an abnormally high number of claims resulting from arson.

Statutory Authority

The regulations are being deleted under the authority of sections 206, 506, 1501 and 1502 of The Administrative Code of 1929 and the act. The regulations were adopted under the authority of the act.

Comments

Notice of proposed rulemaking was published at 27 Pa.B. 1845 as a proposed rulemaking with a 30-day public comment period.

No comments were received from either the Legislative Standing Committees or the Independent Regulatory Review Commission (IRRC). Comments were received during the 30-day comment period from the Insurance Federation of Pennsylvania, Inc. (IFP) , Farmers' Mutual Insurance Company, the FAIR Plan and the Independent Insurance Agents of Pennsylvania (IIAP). Everett Cash Mutual Insurance Company responded after the 30-day comment period. The following is a summary of the comments and the Department's response in its final rulemaking.

IFP

During the 30-day public comment period, the IFP expressed support for the deletion of the regulation stating that the chapter was no longer needed in light of the market realities involving commercial monoline fire policies. The IFP maintains that commercial monoline policies are rarely issued and therefore the regulation is trying to address an arson problem that does not exist.

Farmers' Mutual Insurance Company

During the 30-day public comment period, Farmers' Mutual Insurance Company commented that it opposed deletion of the anti-arson application regulation. Farmers' Mutual Insurance Company states that: 1) for the majority of smaller carriers, commercial monoline policies comprise almost 50% of the total commercial policies; 2) the anti-arson application is an effective deterrent to potential acts of fraud; 3) companies developing their own supplemental applications will tend to de-standardize the application process, creating the potential for confusion or errors in the industry; and 4) potential methods to measure the effect of anti-arson applications could be developed by working with insurance companies to provide the statistics that were previously not obtainable.

The FAIR Plan

During the 30-day public comment period, the FAIR Plan stated that it opposed the deletion of the anti-arson application. The FAIR Plan states that as an insurer issuing commercial monoline fire policies throughout this Commonwealth, it routinely receives the application and finds a high degree of success in defending claims based partly upon material misrepresentations in the anti-arson applications. The FAIR Plan cites a statistical drop in arsons from 6.7% in 1991 to 1% in 1996. Although the FAIR Plan cannot exclusively attribute the drop in figures to the use of anti-arson applications, the FAIR Plan believes any tool helping to limit the costs or number of arsons should not be abandoned.

IIAP

During the 30-day public comment period, the IIAP agreed with the Department, stating that after reviewing this regulation with numerous agencies associated with the trade association in this Commonwealth, the IIAP could see little justification for its retention in the voluntary market which has evolved into one where package coverages are offered, rather than monoline fire as a freestanding policy. However, two reservations were cited: 1) the FAIR Plan may have specific utility given the particular nature of its business; and 2) the value of the anti-arson application as a deterrent to arson cannot be shown, but neither can it be disproved.

Everett Cash Mutual Insurance Company

After the 30-day public comment period, Everett Cash Mutual Insurance Company stated that it opposed the deletion of the anti-arson application regulations due to Everett Cash Mutual Insurance Company's use of the application as an underwriting tool.

Response

In response to the comments, the Department encourages those companies who use an anti-arson application, as a useful underwriting tool, to continue to do so. Since many of the insurers are offering fire policies with other lines of business insurance, the Department has not seen evidence to support the Statewide requirement of an anti-arson applications for each company issuing fire policies. The Department maintains deletion of the anti-arson application regulation will in no way inhibit each company's ability to fully underwrite policies of insurance. Whether or not to use an anti-arson application in the preparation of underwriting materials can be left to the discretion of each company. Companies which do not require them will benefit from the deletion of paperwork that is not applicable to their business. Companies, who continue to use a format similar to the anti-arson application, can still use the information obtained on their application to formulate an underwriting decision.

Fiscal Impact

Property owned and insured by the Commonwealth or its political subdivisions is excluded from the purview of these regulations. Consequently, the Department has determined that the deletion will have no fiscal impact on the Commonwealth or local government entities.

The deletion of the regulations will remove costs placed upon insurance companies, insurance agents and brokers and applicants for commercial fire insurance due to the elimination of the requirement that companies collect and maintain information on the anti-arson application. The impact is nevertheless expected to be unremarkable because commercial monoline policies insuring against the peril of fire are seldom issued.

Persons Regulated

While the regulations apply to all insurance companies issuing policies of property insurance where coverage includes the peril of fire, only companies issuing commercial monoline fire policies need to secure anti-arson application information under the regulations.

Paperwork

The deletion of these regulations will not impose any additional paperwork requirements on the Department, insurance companies, insurance agents or brokers, the Commonwealth or the general public. To the extent that commercial monoline fire insurance policies are issued insuring property in the Commonwealth, the deletion of this regulation will reduce paperwork for insurance companies, agents and brokers and applicants.

Effective/Sunset Date

The Department plans to adopt the date of final publication in the *Pennsylvania Bulletin* as the effective date. Because the rulemaking deletes obsolete regulations, no sunset date has been assigned.

Contact Person

Questions or comments regarding the final rulemaking may be addressed in writing to Peter J. Salvatore, Regulatory Coordinator, 1326 Strawberry Square, Harrisburg, PA 17120, (717) 787-4429.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on March 31, 1997, the Department submitted a copy of this rulemaking to IRRC and to the Chairpersons of the House Insurance Committee and the Senate Banking and Insurance Committee. In addition to the submitted final-form regulations, the Department has provided IRRC and the Committees with a copy of a detailed Regulatory Analysis Form prepared by the Department in compliance with Executive Order 1996-1, "Regulatory Review and Promulgation." In compliance with section 5(c) of the Regulatory Review Act, the Department also provided IRRC and the Committees with copies of the comments received. A copy of that material is available to the public upon request.

These final-form regulations were deemed approved by the House and Senate Committees on June 21, 1998, in accordance with section 5.1(d) of the Regulatory Review Act (71 P. S. § 745.5a(d). IRRC met on July 9, 1998, and deemed approved the regulation in accordance with section 5.1(e) of the Regulatory Review Act.

Findings

The Commissioner finds that:

(1) Public notice of intention to adopt this rulemaking as amended by this order has been given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202) and the regulations thereunder, 1 Pa. Code §§ 7.1 and 7.2.

(2) The adoption of this rulemaking in the manner provided for in this order is necessary and appropriate for the administration and enforcement of the authorizing statutes.

Order

The Commissioner, acting under the authorizing statutes, orders that:

(a) The regulations of the Department, 31 Pa. Code, are amended by deleting §§ 117.1—117.8 and Appendix A to read as set forth in Annex A.

(b) The Commissioner shall submit this order and Annex A to the Office of General Counsel and Office of Attorney General for approval as to form and legality as required by law.

(c) The Commissioner shall certify this order and Annex A and deposit them with the Legislative Reference Bureau as required by law.

(d) The regulations adopted by this order shall take effect upon final publication in the *Pennsylvania Bulletin*.

M. DIANE KOKEN,
Insurance Commissioner

(*Editor's Note*: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 28 Pa.B. 3558 (July 25, 1998).)

Fiscal Note: Fiscal Note 11-150 remains valid for the final adoption of the subject regulations.

Annex A

TITLE 31. INSURANCE

PART VII. PROPERTY, FIRE AND CASUALTY INSURANCE

CHAPTER 117. (Reserved)

§§ 117.1—117.8. (Reserved).

APPENDIX A. (Reserved)

[Pa.B. Doc. No. 98-1268. Filed for public inspection August 7, 1998, 9:00 a.m.]

[31 PA. CODE CH. 135]

Qualifications of Persons Signing Annual Financial Statements

The Insurance Department (Department) hereby deletes Chapter 135 (relating to qualifications of persons signing Annual Financial Statements) to read as set forth in Annex A, under the authority of sections 206, 506, 1501 and 1502 of The Administrative Code of 1929 (71 P. S. §§ 66, 186, 411 and 412); section 301(g) of the Insurance Department Act of 1921 (40 P. S. § 71(g)); and section 320 of The Insurance Company Law of 1921 (act) (40 P. S. § 443). The regulations relate to the qualifications of persons signing annual financial statements for foreign and domestic life, accident and health insurance companies, associations, exchanges, fraternal benefit societies and beneficial societies.

Purpose

The purpose of the deletion of Chapter 135 is to eliminate obsolete, unnecessary regulations. Adopted in 1971, the regulations prescribe the qualifications required of an actuary who signs the annual financial statement filed with the Department by life and accident and health insurance companies, associations, exchanges, fraternal benefit societies and beneficial societies. The regulations require the signing actuary to: (1) be a member of the American Academy of Actuaries; or (2) have the educational background necessary for the practice of actuarial science with not less than 7 years of actuarial experience.

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

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

The current actuarial qualification requirements for financial statements filed by property and casualty insurers (including accident and health insurance written by property and casualty insurers) are contained in the instructions for completing annual financial statements. Section 320(a)(2) of the act requires insurers to adhere to the annual statement instructions adopted by the National Association of Insurance Commissioners (NAIC), in the absence of a contrary statute, regulation or order of the Insurance Commissioner. For uniformity, the Commonwealth has historically relied upon NAIC instructions and has not adopted any laws, regulations or orders governing this topic.

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

Statutory Authority

The regulations are being deleted under the authority of sections 206, 506, 1501 and 1502 of The Administrative Code of 1929; section 301(g) of the Insurance Department Act of 1921; and section 320 of the act (40 P. S. § 443). The regulations were adopted under the authority of section 320 of the act; section 28 of the act of July 17, 1935 (P. L. 1092, No. 357) (40 P. S. § 1078) (now repealed) relating to fraternal benefit societies; and section 7 of the act of June 4, 1937 (P. L. 1643, No. 342) (40 P. S. § 1107) (now repealed) relating to beneficial societies.

Comments

Notice of this deletion was published at 27 Pa.B. 2824 (June 14, 1997) as a proposed rulemaking with a 30-day public comment period.

No comments were received from the standing committees, industry trade associations or other parties during the 30-day public comment period. On August 13, 1997, the Independent Regulatory Review Commission (IRRC) submitted notice to the Department that IRRC had no objections, comments or suggestions to offer on the deletion of the regulations.

Fiscal Impact

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

Paperwork

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

Affected Parties

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

Effectiveness/Sunset Date

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

Contact Person

Questions or comments regarding this final-form rulemaking may be addressed in writing to Peter J. Salvatore, Regulatory Coordinator, Office of Special Projects, 1326 Strawberry Square, Harrisburg, PA 17120, (717) 787-4429.

Regulatory Review

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

These final-form regulations were deemed approved by the House Committee on June 21, 1998, and deemed approved by the Senate Committee on June 21, 1998. IRRC met on July 9, 1998, and deemed approved the deletion in accordance with section 5.1(d) of the Regulatory Review Act (71 P. S. § 745.5a(d)). IRRC met on July 9, 1998, and deemed approved the deletion in accordance with section 5.1(e) of the Regulatory Review Act.

Findings

The Commissioner finds that:

(1) Public notice of intention to adopt this rulemaking as amended by this order has been given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202) and the regulations thereunder, 1 Pa Code §§ 7.1 and 7.2.

(2) The adoption of this rulemaking in the manner provided in this order is necessary and appropriate for the administration and enforcement of the authorizing statutes.

Order

The Commissioner acting under the authorizing statutes, orders that:

(a) The regulations of the Department, 31 Pa. Code, are amended by deleting §§ 135.1 and 135.2 to read as set forth in Annex A.

(b) The Commissioner shall submit this order and Annex A to the Office of General Counsel and Office of Attorney General for approval as to form and legality as required by law.

(c) The Commissioner shall certify this order and Annex A and deposit them with the Legislative Reference Bureau as required by law.

(d) The regulations repealed by this order shall be abolished upon publication in the *Pennsylvania Bulletin*.

M. DIANE KOKEN,
Insurance Commissioner

(*Editor's Note*: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 28 Pa.B. 3558 (July 25, 1998).)

Fiscal Note: Fiscal Note 11-159 remains valid for the final adoption of the subject regulations.

Annex A

TITLE 31. INSURANCE

PART VIII. MISCELLANEOUS PROVISIONS

CHAPTER 135. (Reserved)

§ 135.1 (Reserved).

§ 135.2 (Reserved).

[Pa.B. Doc. No. 98-1269. Filed for public inspection August 7, 1998, 9:00 a.m.]

Title 52—PUBLIC UTILITIES

PENNSYLVANIA PUBLIC UTILITY COMMISSION

[52 PA. CODE CHS. 3 AND 54]

[L-970129]

Licensing Requirements for Electric Generation Suppliers

The Pennsylvania Public Utility Commission (Commission) on April 23, 1998, adopted a final rulemaking to implement and codify provisions of the Electricity Generation Customer Choice and Competition Act regarding the licensing of entities defined as electric generation suppliers. The contact persons are Patricia Krise Burket, Law Bureau, (717) 787-3464 and Robert Bennett, Bureau of Fixed Utilities Services, (717) 787-5553.

Executive Summary

Sections 2806(g)(3) and 2809 of 66 Pa.C.S. (relating to implementation, pilot program and performance-based rates; and requirements for electric generation suppliers) require the licensing of electric generation suppliers including brokers, aggregators and marketers. On November 24, 1997, the Commission adopted a proposed regulation for licensing of electric generation suppliers. The proposed regulations were published in the *Pennsylvania Bulletin* on January 31, 1998 at 28 Pa.B. 508 for a 30-day comment period. The Commission adopted final regulations on April 23, 1998.

The purpose of these regulations is to institute a process for licensing electric generation suppliers, and to establish reporting and bonding requirements for the maintenance of a license.

Regulatory Review

Under section 3(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 proposed at 28 Pa.B. 508, and served on January 16, 1998, to the Independent Regulatory Review Commission (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) of the Regulatory Review Act, the Commission also provided IRRC and the Committees with copies of all comments received, as well as other documentation.

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

This final-form regulation was deemed approved by the House Committee on Consumer Affairs on June 8, 1998, approved by the Senate Committee on Consumer Protection and Professional Licensure, June 8, 1998, and was approved by IRRC on June 18, 1998, in accordance with section 5(c) of the Regulatory Review Act.

Public Meeting held
April 23, 1998

Commissioners Present: John M. Quain, Chairperson; Robert K. Bloom, Vice Chairperson, Concurring and Dissenting in part—Statement follows; John Hanger; David W. Rolka; Nora Mead Brownell, Statement follows

Final Rulemaking Order

One of the first steps taken by the Commission pursuant to the Electric Generation Customer Choice and Competition Act, 66 Pa.C.S. §§ 101, et seq. (act), was implementation of retail access pilot programs for the six major electric utilities—PECO Energy Company (PECO), Pennsylvania Power & Light Company (PP&L), Pennsylvania Electric Company (Penelec), Metropolitan Edison Company (Met Ed), Duquesne Light Company (Duquesne), Allegheny Power Systems d/b/a West Penn Power Company (West Penn), UGI Utilities, Inc.—Electric Division (UGI) and Pennsylvania Power Company (Penn Power).[1] The pilot programs permitted customers representing 5% of each utility's peak load for each customer class to choose their own electric generation supplier. Section 2806(g)(3) limited pilot participation of electric generation suppliers to those who were licensed or certified by the Commission.

An electric generation supplier is defined as:

> [a] person or corporation, including municipal corporations which choose to provide service outside their municipal limits except to the extent provided prior to the effective date of this chapter, brokers and marketers, aggregators or any other entities, that sells to end-use customers electricity or related ser-

[1] Pilot Program filings are docketed as follows: Metropolitan-Edison Company, Dkt. No. P-00971168, Pennsylvania Electric Company, Dkt. No. P-0097169, Pennsylvania Power Company, Dkt. No. P-00971173, PECO Energy Company, Dkt. No. P-00971170, Allegheny Power Company, Dkt. No. P-00971172, Duquesne Light Company, Dkt. No. P-00971175, Pennsylvania Power & Light Company, Dkt. No. P-000971183, and UGI Utilities, Inc., Dkt. No. P-00971171.

vices utilizing the jurisdictional transmission and 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.

66 Pa.C.S. § 2803.

Moreover, an "aggregator" or "market aggregator" is defined as "[a]n entity, licensed by the commission, that purchases electric energy and takes title to electric energy as an intermediary for sale to retail customers." 66 Pa.C.S. § 2803. A "broker" or "marketer" is defined as "[a]n entity, licensed by the commission, that acts as an agent or intermediary in the sale and purchase of electric energy but that does not take title to electric energy." 66 Pa.C.S. § 2803.

On January 16, 1997, the Commission issued a Tentative Order and draft licensing application for interim licensing of electric generation suppliers pending the promulgation of regulations. Licensing Requirements for Electricity Generation Suppliers, Docket No. M-00960890 F0004. The Tentative Order established a comment period ending January 31, 1997, and was served on well over 200 persons including the Office of Consumer Advocate, the Office of Small Business Advocate, Pennsylvania jurisdictional electric utilities and members of the Electric Stakeholders Group. The Commission order was also posted on the Commission's electronic bulletin board. Comments were received from numerous parties. On February 13, 1997, the Commission issued a Final Order which adopted interim licensing procedures and a license application. Over 60 electric generation suppliers presently hold interim licenses that were issued pursuant to these interim licensing guidelines.

In its February 13, 1997 Order, the Commission recognized that the interim licensing guidelines were to be temporary in nature, and that they would be replaced by regulations. As the first step in promulgating these regulations, the Commission revised its interim licensing procedures and redrafted them as proposed regulations. On November 24, 1997, the Commission adopted a Proposed Rulemaking Order that set forth the proposed regulations for comment. The proposed regulations were published in the *Pennsylvania Bulletin* at 28 Pa.B. 508 on January 31, 1998. A 30-day comment period was established from the date of *Pennsylvania Bulletin* publication.

Comments were filed by the Pennsylvania Electric Association (PEA) on behalf of its members, PECO, UGI, PP&L, West Penn, Mid-Atlantic Power Supply Association (MAPSA), Green Mountain Energy Resources, LLC (GMER), Office of Consumer Advocate (OCA), NORAM Energy Management and Electric Clearinghouse (Indicated Parties), Environmentalists, Environmental Defense Fund (EDF) and Lawrence G. Spielvogel. Comments were also submitted by IRRC, and Representative Frank Tulli, Senator Alan Kukovich and Representative William Lloyd.

We thank the commentators for their input and will address the comments in relation to the applicable regulation.

§ 54.31. Definitions.

Section 54.31 defines terms that are used in the licensing regulations.

The commentators in this section recommended additional terms that needed to be defined in the regulation. The OCA recommended that the statutory definition of "electric generation supplier" be repeated in the regulations and the addition of the statutory definitions for the terms "aggregator" and "broker or marketer." 66 Pa.C.S. § 2803.

OCA criticizes the definition of "marketing" as being too broad and would cover any communication about a supplier's serviced whether or not there was an intent to provide service on behalf of a supplier. OCA recommends that the definition be narrowed by including the restriction that marketing must include "an offer to provide electric generation service." OCA states that this will exclude image or name brand marketing. IRRC recommends that the final-form regulation contain the statutory definitions of "aggregator," "broker," "electric generation supplier" and "marketer."

The Commission agrees to incorporate the statutory definitions of "electric generation supplier," "broker" or "marketer" and "aggregator" at 66 Pa.C.S. § 2803 into the regulation, but notes that the only place in the licensing regulations where the terms "marketer," "broker," "market aggregator" or "aggregator" are used is in the definition of statutory definition of "electric generation supplier," that is also to be added. The Commission is skeptical as to the need for repeating statutory definitions in a regulation, but as their inclusion will make the regulation complete and more user friendly, we will incorporate these terms as suggested.

As to the OCA's comment to include language that limits the term "marketing" to situations involving an offer to provide service to customers, we find that this restriction narrows the definition too much. Image or name brand advertising is used for one thing—to develop a market niche for a product or service before such offers are extended to individual customers. *Webster's Ninth New Collegiate Dictionary*, (1984), p. 728, defines the verb "market" as "to expose for sale in a market," and marketing as "the act or process of selling or purchasing in a market." "Advertise" has a similar definition: "to call public attention to esp. by emphasizing desirable qualities so as to arouse a desire to buy or patronize" *Webster's Ninth New Collegiate Dictionary*, (1984), p. 59. As it is clear that this type of marketing is designed to positively impact the supplier's market share, there is no reason to allow a supplier to engage in this activity before it is licensed.

Under section 2811, it is the Commission's duty to monitor the competitive market. To be effective in carrying out this duty, the Commission must be aware of all of the players in the market. Accordingly, we decline to incorporate OCA's suggested language into this definition.

Both OCA and MAPSA state that the term "default supplier" does not appear in the statute and recommend that this term should be changed to "provider of last resort." The Commission agrees to this change and has incorporated this change throughout the regulations. The OCA also avers that the "default supplier" definition is too narrow and that the Commission should list the circumstances under which a customer would have need of a default supplier. We will adopt this suggestion and have incorporated into definition of provider of last resort.

PEA states that the definition of "interim license" should reference the Commission February 13, 1997

Order on Final Order on Licensing Requirements for Electricity Generation Suppliers, Docket No. M-00960890 F0004. IRRC supports PEA's recommendation. We agree that this addition will further clarify this definition and have incorporated it into the regulations.

§ 54.32. Application Process.

Section 54.32 sets out the process for applying for an electric generation supplier's license.

IRRC and PEA recommend that the Commission should require service of the license applications on the electric distribution companies in whose service territory the applicant proposes to provide services. The PEA states that this may improve the administrative efficiency between the EDCs and EGSs. IRRC notes that the EDCs must coordinate customer service with the EGSs. We believe that adoption of this proposal could result in a quicker start-up for the EGS, as PEA noted the parties could begin discussions on such matters as energy supply scheduling and billing procedures. We will adopt the PEA recommendation.

Senator Kukovich and the Environmentalists propose that the Commission should determine if an application is complete and acknowledge within 10 days the receipt of the application. The Commission has endeavored to eliminate paper flow bottle necks and will continue to expedite the processing and the review of license applications. However, some applications may not be processed quickly for several reasons. Additionally, the proposed 120 day filing period for the holders of interim licenses could make the adoption of a 10-day standard very difficult to maintain.

GMER and MAPSA express concern about the confidentiality protections offered by the proposed regulations. GMER requested that the Commission reiterate its statement on the protective procedures as was contained on page 11 of the Commission's February 13, 1997 Order at Docket No. M-00960890 F0004 regarding licensing. GMER also notes that an applicant should be permitted to withdraw its proprietary information in the event that its protection is denied.

During the development of our interim licensing requirements, many parties expressed concerns that their responses on the license application may require them to divulge privileged or confidential information. We continue to believe that many of these concerns may be valid and therefore we will adopt the GMER and MAPSA recommendation.

IRRC, OCA and UGI believe that the Commission should clarify whether all interim licenses must reapply or not. OCA and UGI recommend that to prevent confusion, all interim licensees be required to reapply within the proposed 120-day period.

MAPSA states that companies which have already been granted interim licenses should not be required to reapply for a permanent license. MAPSA believes that these interim license holders should be grandfathered or be allowed to update their interim licenses to comply with any new requirements. MAPSA and PP&L state that, if the Commission requires re-licensing, the existing interim license holders may continue to operate until the Commission issues a permanent license. PP&L further recommends that the Commission not require the publication of the notice of an amended application.

From the outset of the establishment of these licensing regulations, we have attempted to diminish the administrative burdens placed on the applicants while requiring the provision of information necessary to demonstrate the financial and technical fitness of the applicant. While we can appreciate the basis for the OCA's recommendation to require all interim licensees to reapply, this may result in unnecessary duplication of efforts for many parties. We agree with MAPSA that interim licenses should be updated to comply with new requirements concerning the licensee's financial and technical fitness. Any valid interim license shall remain in effect during the pendancy of the Commission's review of an updated application. We agree with UGI that any updated applications filed by an interim licensee will be subject to sections 54.33—54.36 which address application form, changes in organizational structure or operational status, publication of notice of filing and protests to the application. In addition, the updated application will also be subject to section 54.32 Application Process.

PEA and IRRC assert that EDCs designated as default suppliers should not be required to obtain an EGS license. As the PEA noted, in our February 13, 1997 Order at Docket No. M-00960890 F0004, we stated, ". . . a license is not required. . ." for an existing public utility or its generating division to provide electric generation within its certified territory. We agree with the PEA and IRRC and we will adopt the PEA's proposed new subsection to be added to section 54.32.

§ 54.33. Application Form.

Section 54.33 lists the information that is requested on the application form, and the types of documentation that may be submitted to the Commission to support the applicant's technical and financial fitness for licensing.

MAPSA claims that section 54.33(a)(2), that requests that an applicant identify the type of service that the supplier proposes to furnish, such as aggregator, marketer, broker, has proven to be particularly useless in the interim licensing requirements and requests that it be eliminated. The Commission disagrees. While section 54.33(a)(2) may have served a marginal purpose in the interim licensing requirements, it is undeniably necessary for the Commission to know the type of service that is being offered to customers so that it not only can monitor the developing market but also can provide pertinent information and education service to consumers about the choices that are available to them.

PEA states that with respect to Rule 54.33(g), the proposed 120-day grace period for an interim license holder to apply for a license is excessive. A 30-day grace period should be adopted.

The Commission believes that the 120-day grace period is reasonable from an administrative perspective. The Commission may process over 60 applications from interim license holders. Shortening the grace period to 30 days will insure that the Commission is inundated by applications in this short period of time, that will make paper management unnecessarily difficult. Accordingly, the Commission will not make this revision.

PEA states that license applicants should be required to provide evidence of membership in (National American Electric Reliability Council) NERC. GMER opines that rather than actual membership in a regional reliability council, it should be sufficient that a supplier have a

relationship with a wholesale supplier which is a member and which will act as the supplier's scheduling agent. The Indicated Parties propose that section 54.33(a)(7) be amended to allow the supplier or the supplier's identified agent to be a member of regional reliability councils, and argued that if the supplier's agent is a member of the applicable councils, then the Commission's objective is met.

The Commission believes that some clarification as the application form and the information requested thereon is necessary. The licensing application is generic and is to be used by all license applicants. The application solicits specific information such as names of officers and affiliates, but it also requests non-specific information intended to demonstrate an applicant's technical and financial fitness to be licensed. This non-specific information to be submitted is of the applicant's choosing and its content depends on the type of service that the applicant requests to be licensed to provide.

While the Commission would expect that suppliers who generate the power that they sell to the end-user will be members of NERC regional councils, it does not expect that aggregators of customer load would need to be members to demonstrate fitness to competently accomplish aggregation. Thus, membership in a NERC regional counsel is not a licensing requirement for all suppliers. However, membership in a NERC regional council does demonstrate technical fitness for a supplier who will be scheduling the transmission of power over the transmission system in coordination with the system owners. We have revised this subsection to indicate that the provision of evidence of NERC membership is required only if it is applicable to the nature and scope of the applicant's proposed services.

MAPSA also states that section 54.33(a)(8) should include the term "applicable rules," as the Commission has already determined that some of the Chapter 56 rules, for example on termination of service, are inapplicable. We agree and have added this word to the regulations.

The Indicated Parties object to section 54.33(a)(4) because it seeks information which is not relevant to a supplier's license request. At most, it is argued that applicants should only be required to identify Pennsylvania utility affiliates. The Commission disagrees. The majority of the suppliers to which we have granted interim licenses are affiliates of out of state public utilities. The energy market that will be developed will not end at the borders of the state; it will be a regional market making it necessary for the Commission to understand such relationships so that it can better carry out its statutory duty to monitor the market for anti-competitive and discriminatory conduct. We will not revise this section.

PP&L, PEA and MAPSA express concern about the Commission's protection of the Social Security Numbers (SSNs) of owners, general partners or corporate officers which are requested on the Commission's application form. PP&L comments that EGSs need to know that the information will not be generally circulated to the public or available to staff persons within the Commission. The Department of Revenue routinely requires that information and has in place a number of controls to keep such SSN information confidential. For this reason, the PUC should modify this requirement to either require only a certification that such SSN information has been filed with the Department of Revenue (and not actually filed with the Commission) or provide a process to keep such information confidential if filed with the Commission.

IRRC also recommends that the Commission delete the requirement for SSNs in section 54.33(b)(4). IRRC states that:

> The federal Privacy Act of 1974 (Privacy Act) is designed to safeguard the right of personal privacy against invasion by agencies which collect and use personal data. Section 7 of the Privacy Act establishes that it is unlawful for any federal, state, or local government agency to deny any individual any right, benefit or privilege provided by law because the individual refuses to disclose his SSN. Any federal, state, or local government agency that requests any individual to disclose his SSN shall inform the individual whether the disclosure is mandatory or voluntary, by what statutory authority or other authority such number is solicited, and what uses will be made of the SSN. Clearly, Congress enacted the Privacy Act with the intent to limit the availability of SSNs. *Tribune-Review v. Allegheny Cty. Housing*, 662 A. 2d 677 (Pa. Cmwlth. 1995).
>
> We question the PUC's authority to require applicants to divulge the SSNs of their owners, general partners, or corporate officers. The Act simply requires suppliers to certify to the PUC that they will pay, and have paid in prior years, the full amount of taxes imposed by the Tax Reform Code of 1971 and by Chapter 28 of the Act. We also question why the PUC needs SSNs to process applications. We recommend that the PUC delete the requirement for SSNs in Section 54.33(b)(4).

IRRC, p. 3.

The Commission agrees that it will not require that SSNs be supplied on the application form. We will delete this requirement.

IRRC states that the Commission should clarify what type of evidence is required by sections 54.33(a)(7) and 54.33(a)(8). We accept this comment. In subsection (a)(7), we have indicated that an applicant shall submit information to demonstrate technical fitness applicable to the type and nature of service that the applicant proposes to provide. The information may include descriptions of the applicant's prior experience, proposed staffing and employe training commitments, business plans, and agreements, arrangements and contracts for generation, transmission and related services. In subsection (a)(8), we have indicated that an applicant shall submit information to demonstrate current and potential ability to comply with Commission's applicable requirements concerning customer billing, customer education, billing and terms of service, and customer information. The information may include prior regulatory experience, prior business experience in energy or other service-oriented industries, staffing and staff training commitments, agreements, arrangements and contracts for customer education and information services, customer satisfaction survey results, government agency reports and complaint statistics compiled by Better Business Bureau or similar business organizations.

In its comments, IRRC also recommends that we move section 54.35(c) that specifies that an application will not be complete for purposes of processing until after proof of newspaper publication of the notice of filing has been

received by the Commission to section 54.33 (Application Form). This provision has now been incorporated into section 54.33(a).

§ 54.34. Change in Organizational Structure or Operational Status.

Section 54.34 addresses the circumstances under which the Commission must be notified as to a change in the supplier's organizational structure or operational status.

MAPSA, GMER, and the Indicated Parties propose that the Commission limit the reporting requirements in this section to "material" changes. IRRC expresses agreement with this proposal and notes that it may not be necessary for the Commission to be notified of every organizational or operational change.

The Indicated Parties also suggest that the EGSs be allowed 60 days in which to notify the Commission, in lieu of the proposed 30 days.

We will adopt these commentators' suggestion to modify section 54.34(a) and (b) to reflect the requirement to provide the Commission information concerning material changes. We will not adopt the proposal to extend the required reporting period from 30 days to 60 days because only material changes in information will be required. The Commission should be made aware of such changes as soon as possible. Furthermore, we will continue to require the EGSs to provide the Commission information concerning the ownership of generation or transmission facilities and affiliations as proposed in section 54.34(b)(1), (2), and (3).

PP&L has proposed that the Commission should clarify this requirement by amending the regulation to note that upon the notification of such a change, unless the Commission directs otherwise, the EGS does not need to file an amended application. IRRC believes that this would add clarity to the proposed regulation. We will adopt this suggestion. Our intention was to obtain this information to evaluate the fitness of the applicants and to monitor the competitive conditions in the marketplace. An amended application may not be necessary.

§ 54.35. Publication of Notice of Filing.

Section 54.35 requires newspaper publication of a notice of an application's filing and sets out requirements for the content of the notice.

Senator Kukovich, IRRC, PP&L, the Environmentalists and West Penn support the use of newspaper notices. Senator Kukovich points out that not everyone has access to the Commission's web site. IRRC and the Environmentalists believe that newspapers provide an effective means of informing the public. West Penn expresses concern that it may not be possible to provide newspaper notice in each county because some counties do not have newspapers of general circulation. West Penn recommends that the Commission's press liaison designate several newspapers that should be used for all notices.

The OCA, Horizon, GMER and Lawrence Spielvogel recommend that the Commission should require notices of the applications be published in the *Pennsylvania Bulletin*. Horizon suggests that this notice would be the most cost effective.

The OCA, PEA, UGI and IRRC recommend that the applications be listed on the Commission's web site.

The Indicated Parties propose that the Commission eliminate this requirement and require the applicant to serve a copy of the application and supporting data on the OSA, the Small Business Advocate and the Pennsylvania Attorney General. The applicant would also serve notice to the parties on the various electric restructuring proceedings service lists and also include a copy of the application on disk for the Commission's web site.

West Penn and MAPSA state that all current license holders should not be required to provide a new round of newspaper notification.

We agree with IRRC, Senator Kukovich, PP&L and the Environmentalists that newspaper notification should continue to be employed. From our experience in reviewing interim license applications, the greatest source of delay in processing applications involves the submission of a proof of publication from each newspaper which carried the notice. To expedite the review process we will permit applicants to certify that they have provided newspaper notification in accordance with section 54.35.

We will not require the applicants to provide notice through the *Pennsylvania Bulletin*. The notice may add additional costs and delays to the application process without greatly increasing the level of notice provided over our proposed requirements. There is a distinction between the notice requirement for a certificate of public convenience and EGS license.

We will adopt the suggestions of IRRC, OCA, PEA and UGI to post the notice of the application on the Commission's web site as opposed to the electronic bulletin board. We had initially posted information on all the license applicants on our Internet web site but this led to considerable levels of customer confusion about the status of the applicant. We will clearly note that the applicants have not yet received a license, and we will direct the consumer to the list of licensed EGSs.

We will not adopt the recommendation of the Indicated Parties. While we will direct the applicant to serve copies of the application and supporting information to certain parties, it would be unreasonable to require service to the hundreds of parties engaged in the various electric restructuring proceedings.

As noted earlier in our comments on section 54.32, we will require interim license holders who may be required to update their prior applications and supporting information to provide new newspaper notice. We believe that re-notification should be required in these instances because material issues of financial and technical fitness may be involved in the updated applications.

Finally, IRRC states that section 54.35(c) pertaining to the proofs of publication may be more appropriately placed in section 54.33(a) which lists the information required with the submission of an application.

We will adopt IRRC's recommendation to relocate this regulation.

§ 54.36. Protests to Applications.

Section 54.36 addresses Commission procedures related to protests filed to an application.

The rule proposes that when a protest is filed with the Commission that the Commission staff will determine if the protest complies with applicable rules and whether it is sufficiently documented.

MAPSA comments that the regulation should be amended to allow the applicant to file a motion to dismiss the protest filing of a motion to dismiss. MAPSA also states that if the protest is transferred to an administrative law judge (ALJ), the ALJ should have the ability to dispense with the protest on the basis of a motion for judgment on the pleadings, summary judgment or the like and not be required to "have hearings."

Section 54.36(a) permits an applicant to file an answer within 10 days of the protest's filing date. The applicant is free to request that the protest be dismissed in that pleading. As to including specific language which permits the ALJ to dispense with the pleadings, it is unnecessary to burden the regulation with "process and procedure" which is already available to the applicant in the Commission rules of practice and procedures at 52 Pa. Code Ch. 1, 3, and 5. Therefore, we believe it is unnecessary to change the regulation.

GMER states that the 15-day protest period is a hindrance to competitive efforts by suppliers, and that the period should be shortened to require the filing of protests on or before the Friday following publication in the *Pennsylvania Bulletin*.

Due process requires that reasonable notice and opportunity to be heard be given. We believe that a 15-day notice period is reasonable and will reject GMER suggested revision.

Section 54.36(b) addresses the filing of competitive protests and sanctions for misuse of the protest process. In its comments, IRRC states that the second sentence of the section is duplicative of the first and should be deleted. IRRC also states that the third sentence of section 54.36(b) makes a vague threat of sanctions in the event of misuse of the process, and recommends that the sentence be deleted unless the Commission can specify what constitutes misuse of the process and the types of sanctions will be imposed.

The Commission believes that misuse of the protest process is the repeated filing of baseless protests for no other purpose except to slow the approval process for the applications of potential competitors. The protests would fail to substantiate any infirmity regarding the applicant's technical or financial fitness.

Sanctions that may be imposed against a supplier who is involved in misuse of the protest process include directing that the supplier not sign up any new customers for a specific period of time, or if the misuse has been particularly egregious the suspension of the supplier's license. The sanctions would be imposed only after affording a supplier its due process rights.

Misuse of the protest process by incumbent suppliers constitutes a barrier to entry of new suppliers. As the goal of electric restructuring is the creation of a robust electric generation market, the Commission believes that it is essential to remove this barrier to new applicants and curb anti-competitive activity at its inception. Accordingly, we have revised the subsection related to sanctions for misuse of protest process consistent with this discussion.

§ 54.37. Approval.

Section 54.37 sets out the circumstances under which a license application will be granted.

MAPSA contends that the requirement that the licensing of the supplier should be consistent with the public interest should be deleted because it is vague and unnecessary. MAPSA contends that the Commission should determine whether the applicant meets the requirements of a supplier under the Commission's rule.

We will not adopt this suggested revision. This section reiterates the Commission's duties and puts the applicants on notice that simply completing an application does not automatically result in the issuance of a license.

MAPSA and UGI do not support the "deemed approved" language proposed by the Commission. UGI notes that the Commission should conduct a thorough review of each licensee application. MAPSA requests that only the holders of interim licenses should be "deemed approved."

Senator Kukovich, IRRC and Horizon support the 45-day limit for consideration of an application. IRRC believes the 45-day time limit is reasonable and note that the review period may be extended if necessary. Horizon states that all license applications should be evaluated on the same time table to prevent unnecessary discrimination and competitive disadvantage between EGSs.

PP&L supports the "deemed approved" language but expressed concerns that the Commission will insist on its licensing regulations being followed.

We will retain the 45-day time limit which may be extended by Secretarial Letter and the "deemed approved" provisions of the proposed regulations. The Commission has endeavored to issue licenses as soon as possible, especially prior to the initiation of the Pilot Programs. It has proven to be difficult to process each application in the same time frame because frequently the applicants are required to supply additional information to complete the review process. The Commission will continue to review the applications expeditiously.

§ 54.38. Regulatory Assessments.

Section 54.38 relates to the assessments that licensees will need to pay to the Commission to defray administrative costs incurred by the Commission related to the regulation of electric generation suppliers.

In its comments MAPSA seeks clarification of the nature of the expected assessed costs. MAPSA states that the "generation supplier costs" assessed to licensed generation suppliers should be attributable exclusively to Commission activities related to Electric Generation Supplier regulation, and that the costs assessed to licensed generation suppliers should be incremental to those Commission costs which are recoverable in general assessments upon electric distribution companies.

The Commission does not believe that this suggested clarification is necessary in the regulations. Moreover, the Commission cannot speculate as to the amount that suppliers will be assessed in comparison to the amount that the EDCs will be assessed, but can state that the assessments will be made in accordance with the procedures set out at 66 Pa.C.S. § 510(b).

MAPSA also proposes that the Commission order the "unbundling" of its cost assessments to the extent that an EDC may seek to recover assessed "generation supplier costs" from its ratepayers. These costs MAPSA insists should only be recoverable by EDCs by means of the generation component of their rates and not through its transmission and distribution components. MAPSA insists that this unbundling of assessed costs will better ensure a

level playing field for all generation suppliers required to pay the assessments.

The Commission finds this proposal not only to be premature, and but also not appropriate to this rulemaking. Whether an EDC is seeking to pass along costs that are rightfully assessed against its generation component to its transmission and distribution customers is an issue that should be raised, addressed and resolved in a distribution and transmission rate case. Moreover, many utilities formed and licensed their own supplier affiliates or divisions who will be assessed as part of the supplier group. Accordingly, there is no reason to revise the regulation to recognize this MAPSA comment.

MAPSA also comments that the costs will be assessed to all licensed generation suppliers, including "nontraditional marketers." As we have not addressed nontraditional marketers in this rulemaking, see Discussion, infra., at p. 38-39, we will not address this issue at this time.

§ 54.39. Reporting Requirements.

Section 54.39 sets out reporting requirements with which suppliers must comply for maintenance of their licenses.

West Penn and GMER contend that several of the proposed regulations should be deleted because they require the release of confidential material. West Penn states that the requirement of public reporting of confidential, business sensitive matters for generation suppliers is contrary to the act.

We believe that we have adequately responded to the concerns expressed by several commentators on the need to provide for the confidentiality of certain information required to be supplied to the Commission. We would note that under proposed section 54.39(d), we have put the licensees on notice that they may seek a ruling on confidentiality. Further, we have noted in the proposed regulations the need for the licensees to provide the information under the act. See 66 Pa.C.S. § 2810(c)(6).

EDF states that the proposed regulations should be expanded to include reporting of atmospheric emissions and other significant environmental impacts of the supplier's energy sources mix as well as any relevant actions a supplier has undertaken to mitigate these environmental impacts.

Senator Kukovich states that the applicants must be required to disclose the fuel mix and the emissions from the plant that generate their electricity. Representative Tulli notes that if EGSs claim that they are selling "green" electricity, the consumers need a way to verify that the electricity is cleaner than that provided by other EGSs. MAPSA, the Indicated Parties, and UGI contend that the provision of the energy source information required is unduly burdensome and may be impracticable because the suppliers may not know the sources of their energy. MAPSA states that these reporting requirements should only apply to licensees offering to sell environmentally-friendly power.

IRRC agrees with parties who questioned the need for this information and cites the difficulty to determine the generation sources. IRRC suggests that the Commission delete this requirement or explain the compelling public interest which justifies retaining this reporting requirement.

While we recognize that there will be difficulties for some EGSs to provide complete data, we will expect they will extend their best efforts to obtain the data or representative data to meet this requirement. There are several reasons why we believe this information should be required. We agree with Representative Tulli that consumers should have some information about their energy choices. We believe that the Commission needs this information to monitor the development of a competitive energy marketplace. This information will assist in our commitments to maintain the existing level of reliability. We will be in a better position to make decisions and offer comment on public policy issues which affect generation. We will have information which will be necessary to assess the impacts of possible national or state legislation and regulations on the Commonwealth's economy. The provision of this information will act as a check on the marketing activities of EGSs who may claim all or a portion of their energy supplies have certain characteristics. The requirement of this information may provide EGSs incentives to maintain and improve the impacts of their generation resources. Therefore, we will not adopt the suggestions proposed by the commentators.

§ 54.40. Bonds or Other Security.

Section 54.40 addresses the statutory requirement of a licensee providing a bond or other acceptable security to obtain and to maintain an electric generation license.

The Environmentalists state that nontraditional marketers should be exempt from the bonding requirements because these entities play a supportive role for another licensee and do not receive compensation from consumers or handle consumer payments. The Environmentalists argue that no bond is necessary. EDF suggests that unconventional entities should be exempted from the $250,000 bond.

MAPSA and EDF believe that claims by consumers should be processed according to the applicable contract, not through the bond. MAPSA states that the language concerning the amount of a bond is ambiguous and appeared to include the possibility that another party could ask that the bond for a particular supplier be increased.

We recognize that a nontraditional marketer may conduct their transactions through other licensees and provide to consumers their services without compensation. However, the act requires that each licensee furnishes a bond or other security approved, in both the form and the amount, by the Commission. The act does not allow the Commission to exempt any licensee. In view of this, the Commission proposes that these regulations allow the license applicants to request modification of the security level. See Discussion, infra., at pp. 38-39.

GMER notes that the bond is not meant to be used for collection of unpaid taxes. GMER argues that if the Legislature had intended the bond to be used for payment of unpaid taxes, it could have stated as much.

We agree with GMER to the extent that we will amend section 54.40(b) to delete the references to "other taxes" and section 54.40(e) to delete references to "assessments due," as triggering events for the payments pursuant to bonds or other financial securities. However, we will retain the reference to the payment of gross receipts tax. We believe that it is appropriate to identify this as one of the purposes of the security requirements. There are circumstances, under the act, in which consumers who have paid these taxes to an EGS may subsequently be charged these same taxes by an EDC. We wish to protect these consumers from the costs of an EGS's failure to remit the gross receipts taxes to the Commonwealth.

Senator Kukovich states that bonding requirements for small, entrepreneurial companies that expect to sell less than $5 million per year of electricity should be 5% of their expected revenues rather than $250,000. Senator Kukovich suggests that companies which expect to sell more than $5 million of electricity should post a $250,000 bond.

The Environmentalists also suggest that the initial level of the bond be at 5% of the expected sales and applicants who expect to sell over $5 million of electric be required to provide a $250,000 bond.

While we have noted that an applicant may request modification of the initial $250,000 financial security level, we are reluctant to adopt levels which vary widely upon the expected level of the applicant's sales. We believe that, if the applicant can provide specific reasons for modification of the financial security level, we will modify the $250,000 level accordingly. We believe that by stating clearly that the initial financial security level is a specific amount we have diminished uncertainty and facilitated expeditious licensing. We believe that the process of determining the appropriate expected level of sales would add to a delay in reviewing license applications to the detriment of a competitive marketplace. It may also expose consumers to financial risks, especially from new start-up enterprises in the new competitive market.

Horizon, GMER, MAPSA and West Penn contend that the bonding requirement set at 10% of gross receipts is burdensome, may be excessive and could be a disincentive to competition.

In its comments, IRRC recommends that the Commission explain why it is appropriate and reasonable to set the bonding requirement at 10% of a licensee's quarterly receipts. The Commission understands IRRC's confusion. Under section 54.39(a), a supplier's information about gross receipts is reported quarterly to the Commission so that the Commission can better monitor the development of the competitive market. The bonding level is based on the supplier's annual receipts for the previous year. Reviewing this section, the Commission understands how the confusion arose and has adjusted the language to clarify this provision.

Section 2809(c) allows the Commission to determine the form and the amount of security to ensure the financial responsibility of the supplier and the supply of electricity at retail in accordance with contracts, agreements or arrangements. We are very concerned that we avoid adopting regulatory requirements which limit the inception of a competitive market. At the same time, we recognize our responsibilities to consumers and to the Commonwealth. Consumers may believe that the new competitive marketplace poses too many risks and they may choose not to participate. With these conflicting elements in mind, the Commission wished to clearly state a proposed level of financial security which was adequate but not overly burdensome.

The level proposed is 10% of a supplier's reported annual gross receipts. First, the security level should insure the payment of the GRT and be a reasonable base amount of the security for the Commission to accept. The current GRT rate is 4.4% of annual gross receipts. The Commission does not believe that the bond should be used to secure the payment of any taxes except the GRT as the GRT is the only tax that, if not paid by the supplier, can be collected from ratepayers.

The second major purpose of the bond is to insure "the flow of electricity at retail." The Commission believes that it is reasonable to also base the amount of security necessary to "insure the flow of electricity at retail" on the supplier's annual gross receipts as this is the measure of the amount of business that a supplier conducts in the Commonwealth. Thus, the bonding level is progressive for suppliers, with lower annual sales required to provide a lower bonding amount than suppliers with greater annual sales. Considering that the current year's bonding level is based on the previous year's sales, the prior year's gross revenues may be an inadequate estimate of the upcoming year's revenues if the licensee's sales were increasing or the market price of energy increased. To account for this possibility, the Commission believes it is reasonable to require an additional amount of financial security, over the 4.4% GRT level, resulting in the total 10% level proposed.

IRRC comments that the Commission should provide specific guidance on how the bond or other security must be structured to gain approval of a license application. IRRC also notes that the Commission would approve the use of other security instruments on an ad hoc basis. IRRC recommends that the Commission provide further guidance on the information necessary to use a security other than a bond.

Because of the variety of possible financial security instruments which might be proposed by the applicants and in view of the compressed time-frame available before the initiation of the Pilot Programs, we were reluctant to prescribe a specific form of a bond or other financial security. The Commission staff responded to numerous requests for information and provided applicants with examples of financial security instruments which had been accepted by the Commission. We continue to be concerned that the prescription of a specific form of bond may be an unintended barrier to competition.

We have informed license applicants that the Commission required that the bond or other security name the Commission as the obligee or beneficiary of the bond. Naming the Commission as the sole beneficiary insures that the Commission has notice when a party or parties file a claim for reimbursement against the security so that the Commission can direct its legal staff to intervene as is appropriate to protect the public interest. The bonds and other securities that have proved to be acceptable to the Commission for interim licenses include the following language:

> This bond (or other security) is written in accordance with Section 2809(c)(1)(i) of the Public Utility Code, 66 Pa.C.S. § 2809(c)(1)(i), to assure compliance with applicable provisions of the Public Utility Code, 66 Pa.C.S. §§ 101, *et seq.*, and the rules and regulation of the Pennsylvania Public Utility Commission by the Principle as a licensed electric generation supplier; to ensure the payment of Gross Receipts Tax as required by Section 2810 of the Public Utility Code, 66 Pa.C.S. § 2810; and to ensure the supply of electricity at retail in accordance with contracts, agreements or arrangements. Payments made pursuant to this bond (security) shall enure first to the benefit of the Commonwealth, and second, to any and all retail electric retail electric generation customers to whom the Principle may be held legally liable for failure to supply electric generation pursuant to contract, agreements or arrangements. Any claims made by the Commonwealth shall have priority over claims made by private individuals. Proceeds of the bond (security) may not be used to pay any fines or penalties levied against the Principle for violations of

the law, or for payment of any other tax obligations owed to the Commonwealth.

As seen from the above language, the security must list the purposes for which it is given and the parties who may file claims pursuant to it. The Commission believed that prioritizing the Commonwealth's tax claims above private individual's non-tax claims better protected the suppliers' customers who would ultimately pay the GRT in the event that a supplier's failed to pay the tax. See 66 Pa.C.S. § 2809(c)(2).

In the securities used for the interim licenses, the Commission also required that the securities be interpreted under Pennsylvania law or in the alternative, contain no "choice of law" clause at all.

The Commission has added this additional information to section 54.40(f).

PEA believes that the Commission should expressly establish intermediate priority of EDC's claims between those of the Commonwealth and private persons. UGI states that section 54.40(e) recognizes the claims of the Commonwealth over those of the private person but neglects the priority rights of the EDCs. UGI continues that in accordance with section 2809(c)(2), the EDC is responsible for an EGS's unpaid Gross Receipts tax and permits the EDC to seek reimbursement of the tax from the EGS. Recovery of this expense by the EDC should take priority over claims of the "private person" as specified in § 54.40(e) of these proposed regulations. Therefore, UGI requests that the EDC's claim be given priority in accordance with this responsibility, and that language which prioritizes the EDC's claims below that of the Commonwealth but exceeding that of all other claimants should be added to these regulations. IRRC states that it is reasonable to assign the EDC second priority in claims for payment, after the Commonwealth.

The Commission agrees that the EDCs should have second priority over private persons for the purpose of being reimbursed for claims under provisions of 66 Pa.C.S. §§ 2806(g)(3)(iii), 2809(c)(2) and 2810(m). However, the reason for our agreement is different. An EDC may collect any GRT that it pays to the Commonwealth on behalf of an abdicating supplier from the supplier's former customers. See 66 Pa.C.S. § 2809(c)(2). It is the customers who are at risk of having to pay the GRT twice—once to the supplier who did not turn over the tax collected to the Commonwealth and the same GRT again to the EDC after the EDC pays the tax. We believe that it is in the public interest to permit an EDC to claim against the bond for reimbursement of GRT left unpaid by the supplier. We see this action as preferable to seeking collection of the tax from the EDC transmission and distribution customers through rate increases.

IRRC recommends that the Commission include in the regulation information that would be required to permit the use of an instrument other than a bond as security. The Commission agrees and will revise subsection (f) accordingly. The Commission notes that it prefers a bond to other securities, but will accept a different form of security that can be shown to offer the same degree of safety as a bond and in case of a breach, the same relative ease of collection as a bond.

§ 54.41. Transfer or abandonment of license.

Section 54.41 requires a licensee to obtain Commission permission before transferring a license, and further that a licensee notify the Commission, its customers, the default supplier, now the provider of last resort, and the affected EDC. The notice is to be given at "intervals of 3, 2, 1 billing cycles" preceding the abandonment.

West Penn states that the transfer due to a name change or organizational change of an affiliated company should be permitted subject to pending Commission approval, as opposed to prior Commission approval. West Penn is concerned that there may be an interruption in service by a supplier.

PEA and UGI support the proposed requirement of advanced notice by an EGS of its intent to abandon service.

Representative Lloyd requests that the Commission clarify the customer notice requirements of the "3, 2, 1 billing cycles."

We will not adopt West Penn's suggestion. It has been our experience that after the fact submissions are unsatisfactory. We recognize the need to maintain continuity of service to consumers but we also recognize our responsibility to issue licenses to applicants who meet the requirements of the act. Furthermore, we will amend section 54.34 to note that, upon notification of a material change in organizational structure, unless the Commission otherwise directs, an EGS does not need to file an amended application. This amendment to section 54.34 should address some of West Penn's concerns over transfers due to a name change or organizational change of an affiliate. However, we are concerned that allowing after the fact submissions of license transfers may be detrimental to consumers and the marketplace.

We will adopt Representative Lloyd's suggestion to amend the requirements for notice of the abandonment of service by an EGS. A licensee who wishes to abandon service shall be required to provide 90 days prior notice to the Commission, the affected distribution utilities and default suppliers before the effective date of the abandonment. The EGS shall also provide individual notice to each of its customers with each billing, in each of the three billing cycles preceding the effective date of the abandonment.

§ 54.42. License Suspension; License Revocation.

Section 54.42 sets out the circumstances that would result in license suspension or revocation. These penalties would be imposed consistent with due process considerations.

MAPSA states that the proposed regulation appears to reflect a "strict liability" standard and that an inadvertent and unintentional transfer of a customer could lead to a suspension or revocation. MAPSA suggests that the Commission qualify the regulation to reflect that the violation must be "material" and substantially affect the technical and financial fitness of the supplier. MAPSA also notes that several provisions appear to be redundant and inconsistent with rules established or proposed to be established.

The OCA suggests that a separate basis for revocation for the violation of any other Pennsylvania law that protects consumers should be added to the items listed in the proposed rule.

PEA, UGI and PP&L propose substantial changes to section 54.42(b) and (c) relating to the unauthorized transfer of customers. These parties argue that these provisions are neither necessary nor appropriate for inclusion in these regulations. These parties note that these matters are being addressed in several proceedings before the Commission. PP&L notes that an illegal act on the part of an EDC affiliated with an EGS should not

automatically and necessarily result in the suspension or revocation of the EGS license.

IRRC agrees with the EDC commentators that subsections (b) and (c) were superfluous and a possible source of administrative confusion. IRRC recommends replacing these subsections with a new paragraph which states:

> Receiving and accepting the transfer of a customer, without documentation of the customer's consent as required by Section 2807(d)(1) of the Code.

IRRC also suggests an alternative paragraph which referred to another pertinent Commission rulemaking.

We will not adopt MAPSA's suggestion to add the term "material" to qualify the violations in these provisions. We note that we have clearly stated that our actions under these provisions will be "[c]onsistent with due process, . . ." and arguments involving the nature of the alleged violation may be raised by a licensee in its defense. *See* Section 54.42 (a).

We believe that the OCA's proposal to place applicants on notice that they may be penalized by this Commission for violating Pennsylvania consumer protection laws is appropriate. We have become aware of allegations of abusive practice in other jurisdictions. We are concerned about the impact the abuses may have on the full development of a competitive marketplace. If consumers are reluctant to participate in a competitive market because of the possibility of becoming the victim of fraud or other consumer abuses, the benefits of a fully competitive marketplace will be reduced.

Finally, we will also adopt IRRC's proposal to delete subsections (b) and (c) and replace them with the proposed language which references section 2807(d)(1) of the act. The Commission still retains the authority to examine and penalize the EDCs for acts which violate the Code, the Commission's regulations and the Commission's orders.

§ 54.43. Standards of Conduct and Disclosure for Licensees.

Section 54.43 sets out standards of disclosure and conduct for licensees for the protection of Pennsylvania's consumers.

In its comments, the OCA states that the Commission should directly reference in this regulation the future rules involving customer information and disclosure, change of supplier and other consumer protection rules and the specific provisions of these rules that will overlap with, or substitute for, these general policies at the time of their adoption. The OCA has concerns that the licensees may argue that they have not violated these provisions even though their actions reveal a violation of one or more of the specific rules. In the same vein, GMER states that this section should be coordinated with proposed customer information regulation at section 54.5(e) (relating to terms of service—residential and small customers) which provides for written disclosure of energy sources.

The Commission does not agree that it should reference future rules or their specific provisions in section 54.43 as these rules have not yet been finalized, and specific provisions in these rules as proposed may be changed prior to their approval. When these rulemakings are finalized, the Commission may revisit section 54.43 as necessary.

The majority of the comments were received on Subsection b. Section 54.43(b) provides that upon the request of a customer, a utility shall provide environmental information about its energy sources. PEA states that the provision should apply only to EGSs actually making references to fuel sources, renewable resources and environmental impact characteristics in their marketing communications. UGI states that this subsection is unduly burdensome and should only apply to those companies that are specifically marketing or claim to be providing renewable or "green" energy sources. IRRC recommends that the Commission consider making EGSs who make marketing claims regarding environmental characteristics of their energy substantiate their claims and recommends that subsection (b) should only apply to these marketers.

The Commission does not believe that this requirement is burdensome as the information will be provided only to a customer that requests such information. Moreover, the Commission regards this provision as a necessary consumer protection requirement. The consumer who is interested in purchasing "environmental friendly" generation needs information about other energy sources to be able to assess whether what he is really being offered by a so-called "green" marketer is more environmental friendly than other generation. Therefore, the Commission believes the requirement should apply to all suppliers. The Commission will take IRRC's suggestion regarding making "green" marketers substantiate their claims under advisement.

GMER comments that in the phrase "and environmental characteristics of its electric generation purchases" in subsection (b) is sufficiently over broad as to lead to unreasonable demands on suppliers for generation-specific studies, assessments, projections and the like. EDF states that subsection (b) should require licensees to provide information regarding the environmental characteristics of all power it sells into the Pennsylvania market, not just for the power it purchases. IRRC recommends that the Commission clarify the term "environmental characteristics" that it describes as vague and subject to broad interpretation.

Consistent with these comments, the Commission has revised the provision by removing "environmental characteristics" and substituting "plant emissions." Furthermore, we agree with the commentators that the proposed rule should not apply to the licensee's generation "purchases" but to all generation supplies.

Section 54.43(f) addresses the liability of a licensee for fraudulent, deceptive or other unlawful marketing or billing acts. PEA states that although the subsection (f) holds the licensee liable for misdeeds of its agents or representatives, it fails to hold the licensee liable for its own misdeeds. IRRC supports this recommendation.

The Commission agrees that this omission should be corrected and has revised the regulation accordingly.

§ 3.551. Official Forms.

The OCA believes that the license application and accompanying affidavits should be included in the final version of the rule. Because publication considerations, the Commission has eliminated a number of forms from its regulation, and designated a Forms Officer in our Secretary's Office from whom a copy of a form may be obtained. Because inclusion of a form in the regulations unduly complicates the task of making routine revisions to the form, the Commission declines to make this change. However, the Commission will make the application form available on its Internet home page.

Non-Traditional Marketers

The definition of "electric generation supplier" at 66 Pa.C.S. § 2803 is very broad, and our interpretation of this definition is that every entity that engages in an activity listed as that undertaken by an electric generation supplier must be licensed. In our proposed order, we sought comment on the proposed licensing procedure and the bonding, reporting and other licensing requirements as applied to community-based organizations, civic, fraternal or business associations, common interest groups and other entities that work with a licensed supplier to "market" aggregated services to their members or constituents. We also asked for comments on whether the Commission should adopt specific guidelines for non-traditional marketers, or whether such matters should be addressed through less formal interaction between the applicant and the staff. We thank all commentators who responded to our requests.

In its comments IRRC raises due process concerns about finalizing regulations for non-traditional marketers in this rulemaking. We agree and will not adopt final regulations regarding these marketers in this rulemaking. Instead, we will continue to encourage non-traditional marketers to interact with the Commission staff concerning the preparation of the license applications. The Commission staff will be available to advise any potential applicant on the licensing process.

Also, the Commission advises that non-traditional marketers may petition the Commission for waiver of certain provisions of the licensing regulations. The waivers will be granted for good cause shown.

As we stated in our November 24, 1997 order: inherent in the proposed licensing regulations is the concept that the licensing requirements, that is the nature and quantity of financial and technical fitness documentation required to be submitted in applying for a license, and the reporting, bonding and other administrative requirements for maintaining a license, are directly related to the scope of activities proposed to be licensed. The Commission believes that through application of this concept the licensing regulations will not impose unreasonable burdens on "non-traditional marketers" in applying or maintaining a license. Proposed Rulemaking Order, p. 4.

The Commission believes that it is important that non-traditional marketing groups participate in the electric generation market as the entry of such marketers will lessen the likelihood of domination of the market by a few large entities. The Commission encourages the participation of such entities and consistent with the law, will be flexible in applying the licensing regulations.

In promulgating these licensing regulations the Commission has attempted to balance the maintenance of consumer protection and service quality with the development of a robust electric generation market. The regulations require that license applicants provide the Commission with adequate information so that only technically and financially fit entities are licensed as suppliers. Once licensed, the supplier is required to notify the Commission and others if there is a major change in the supplier's operation or service offerings. The requirements for maintaining a license including bonding, regulatory assessment payments and information report filing are not overly burdensome and should not act as barriers for market entry of new suppliers into Pennsylvania's market.

Accordingly, under section 501 of the Public Utility Code, 66 Pa.C.S. § 501, the Electricity Generation Customer Choice and Competition Act, 66 Pa.C.S. §§ 2801, *et seq.*, and the Commonwealth Documents Law (45 P. S. §§ 1201, *et seq.*) and regulations promulgated thereunder at 1 Pa. Code §§ 7.1—7.4, we amend our regulations by adding §§ 54.31—54.42 , and amending § 3.551 as noted above and as set forth in Annex A; *Therefore,*

It Is Ordered That:

1. The regulations of the Commission, Chapters 3 and 54, are amended by adding §§ 54.31— 54.42 and amending § 3.551 to read as set forth in Annex A, with ellipses referring to the existing text of the regulations.

2. The Secretary shall submit this order and Annex A to the Office of the Attorney General for review as to form and legality.

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

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

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

6. A copy of this order be served upon the Office of Consumer Advocate, the Office of Small Business Advocate, the Pennsylvania Department of Revenue, the Pennsylvania Department of State, all licensed electric generation suppliers and all persons who submitted comments in the rulemaking proceeding.

7. The regulations adopted in this order are effective upon publication in the *Pennsylvania Bulletin*.

8. Alternate formats of this document are available to persons with disabilities and may be obtained by contacting Shirley M. Leming, Regulatory Coordinator, Law Bureau at (717) 772-4597.

JAMES J. MCNULTY,
Secretary

(*Editor's Note:* For the text of the order of the Independent Regulatory Review Commission relating to this document, see 28 Pa.B. 3338 (July 11, 1998).)

Statement of Vice Chairperson Robert K. Bloom

Before the Commission for consideration is the final rulemaking order implementing Licensing Requirements for Electric Generation Suppliers (EGS). The purpose of this rulemaking is to establish uniform procedures for the Commission review, analysis and approval of EGS license applications pursuant to the Electricity Generation Customer Choice and Competition Act (Act). Comments from sixteen interested parties addressing the various proposals within the proposed rulemaking were received and considered in finalizing these regulations.

Overall, I support the final regulations as revised with one exception concerning the security bonds license applicants must furnish to ensure their financial responsibility. The final regulations, similar to the Commission's interim requirements, continue to allow licensees to utilize securities other than a bond to meet this financial responsibility. The regulations initiate a petition process whereby applicants may request special permission to use alternative security instruments. I disagree with this principle. I

believe that the Commission should be consistent and fair and hold all EGS applicants to the same bonding standard. The process included within the regulations will result in unequal treatment of potential competitors in the electric generation market and will result in a burdensome process for Commission staff members to administrate. For these reasons, I must dissent on this portion of the final regulations.

Statement of Commissioner Nora Mead Brownell

I support adoption of the licensing regulations before us, including the provision that licensees may request an alternative form of security. This provision is consistent with section 2809(c) of the Public Utility Code, 66 Pa.C.S. § 2809(c). However, any such request must be substantially justified from the perspectives of equivalent financial protection as well as the nature of the entity's business. Accordingly, although I support the regulations presented to us, I am sympathetic to the concerns of the Vice Chairperson and will review any requests for alternative treatment accordingly.

Fiscal Note: Fiscal Note 57-191 remains valid for the final adoption of the subject regulations.

Annex A

TITLE 52. PUBLIC UTILITIES

PART 1. PUBLIC UTILITY COMMISSION

CHAPTER 3. SPECIAL PROVISIONS

Subchapter H. FORMS

§ 3.551. Official forms.

The following is a list of forms which may be obtained from the Office of the Secretary of the Commission.

* * * * *

(15) Application for electricity or electric generation supplier license.

* * * * *

Subpart C. FIXED SERVICE UTILITIES

CHAPTER 54. ELECTRICITY GENERATION CUSTOMER CHOICE AND COMPETITION

Subchapter B. ELECTRICITY GENERATION SUPPLIER LICENSING

Sec.
54.31. Definitions.
54.32. Application process.
54.33. Application form.
54.34. Change in organized structure or operational status.
54.35. Publication of notice of filing.
54.36. Protests to applications.
54.37. Approval.
54.38. Regulatory assessments.
54.39. Reporting requirements.
54.40. Bonds or other security.
54.41. Transfer or abandonment of license.
54.42. License suspension; license revocation.
54.43. Standards of conduct and disclosure for Licensees.

§ 54.31. Definitions.

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

Aggregator—An entity licensed by the Commission, that purchases electric energy and takes title to electric energy as an intermediary for sale to retail customers. See section 2803 of the code (relating to definitions).

Applicant—A person or entity seeking to obtain a license to supply retail electricity or electric generation service.

Broker—An entity, licensed by the Commission, that acts as an intermediary in the sale and purchase of electric energy but does not take title to electric energy. See section 2803 of the code.

Code—The Public Utility Code, 66 Pa.C.S. §§ 101—3316.

Department—The Department of Revenue of the Commonwealth.

EDC—Electric distribution company.

Electric generation supplier—A person or corporation, including municipal corporations which choose to provide service outside their municipal limits except to the extent provided prior to the effective date of this chapter (*Editor's Note*: The reference to "this chapter" refers to the code.) brokers and marketers, aggregators or any other entities, that sells to end-use customers electricity or related services utilizing the jurisdictional transmission and 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 such building or facility and that supply electric power and other related power services to occupants of the building or the facility. The term excludes electric cooperative corporations except as provided in 15 Pa.C.S. Ch. 74 (relating to generation choice for customers of electric cooperatives). See section 2803 of the code.

Interim license—A temporary license granted to an electric generation supplier under interim standards adopted in the Commission's Final Order on Licensing Requirements for Electricity Generation Suppliers, entered February 13, 1997 at Dkt. No. M-00960890 F0004.

License—A license granted to an electric generation supplier under this subchapter.

Licensee—A person or entity which has obtained a license to provide retail electricity or electric generation service.

Market aggregator—An entity licensed by the Commission, that purchases electric energy and takes title to electric energy as an intermediary for sale to retail customers. See section 2803 of the code.

Marketer—An entity, licensed by the Commission, that acts as an intermediary in the sale and purchase of electric energy but does not take title to electric energy. See section 2803 of the code.

Marketing—The publication, dissemination or distribution of informational and advertising materials regarding the electric generation supplier's services and products to the public by print, broadcast, electronic media, direct mail or by telecommunication.

Offer to provide service—The extension of an offer to provide services or products communicated orally, or in writing to a customer.

Provider of last resort—A supplier approved by the Commission under section 2807(e)(3) of the code (relating to duties of electric distribution companies) to provide generation service to customers who contracted for electricity that was not delivered, or who did not select an alternative electric generation supplier, or who are not eligible to obtain competitive energy supply, or who return to the provider of last resort after having obtained competitive energy supply.

Renewable resource—As defined in section 2803 of the code.

§ 54.32. Application process.

(a) An electric generation supplier may not engage in marketing, or may not offer to provide, or provide retail electricity or electric generation service until it is granted a license by the Commission.

(b) An application for a license shall be made on the form provided by the Commission. A copy of the application may be obtained from the Commission's Secretary. The application form will also be made available on the Commission's Internet web site. An application shall be verified by an oath or affirmation as required in § 1.36 (relating to verification). See section 2809(b) of the code (relating to requirements for electric generation suppliers).

(c) An original and eight copies of the completed application and supporting attachments shall be filed. An application for a license shall be accompanied by the application fee as established in § 1.43 (relating to schedule of fees payable to the Commission).

(d) Copies of the completed application with supporting documentation shall be served on the following: the Office of Consumer Advocate, the Office of Small Business Advocate, the Department and the Office of the Attorney General, and the EDCs through whose transmission and distribution facilities the applicant intends to supply customers.

(e) Incomplete applications and those without supporting attachments, when needed, will be rejected without prejudice. The license application, with supporting attachments, shall be completed in its entirety.

(f) When an answer on the application requires the disclosure of privileged or confidential information not otherwise available to the public, the applicant may designate at each point in the application where information is disclosed that is confidential and privileged.

(1) One copy of this confidential or privileged information conspicuously marked at the top as "CONFIDENTIAL" may be submitted to the Office of the Secretary with the application. An applicant must provide reasons for protecting this information.

(2) The request for confidentiality will be treated as a petition for protective order and will be ruled on by the Commission in conjunction with the license application.

(3) Pending disposition, the information will be used solely for the purpose of evaluating the license application, and the confidentiality of this information will be maintained consistent with regulations in this title pertaining to confidentiality.

(g) An electric generation supplier who has been granted an interim license shall apply for a license under this subchapter by updating its prior license application to include additional and updated information required by § 54.33 (relating to application form). An updated application shall be submitted by December 7, 1998.

(h) An EDC acting within its certified service territory as a provider of last resort is not required to obtain a license.

§ 54.33. Application form.

(a) The application form includes information that will be used in the evaluation of the financial fitness and technical fitness to render service. This information includes the following:

(1) An identification of the geographic area that the applicant proposes to serve.

(2) An identification of the type of service that the applicant proposes to furnish.

(3) An identification of the class of customers to which the applicant proposes to provide these services.

(4) An identification of the applicant's utility affiliates.

(5) A description of the applicant's business structure.

(6) Financial information sufficient to demonstrate financial fitness. This information may include credit ratings and history, audited financial statements, and insurance pertinent to the conduct of the applicant's business as an electric generation supplier.

(7) Evidence of competency and experience in providing the scope and nature of the applicant's proposed services. This evidence may include descriptions of the applicant's prior experience, proposed staffing and employe training commitments, business plans, and agreements, arrangements and contracts for generation, transmission and related services. Documentation of the applicant's membership in the East Central Area Reliability Coordination Agreement (ECAR), the Mid Atlantic Area Council (MAAC) or other National American Electric Reliability Council (NERC) regional reliability councils shall be submitted if applicable to the scope and nature of the applicant's proposed services.

(8) Evidence of information demonstrating the applicant's ability to comply with Commission's applicable requirements concerning customer billing, customer education, billing and terms of service, and customer information. This evidence may include prior regulatory experience of the applicant, prior business experience in energy or other service-oriented industries, staffing and staff training commitments, agreements, arrangements and contracts for customer education and information service, customer satisfaction survey results, government agency reports and complaint statistics compiled by the Better Business Bureau or similar business organizations.

(9) Certification that notice of the application was published in accordance with § 54.35 (relating to publication of notice of filing) shall be filed with the Commission's Secretary. The certification shall be notarized and include a photostatic copy of the notices as published. An application will not be considered complete for Commission review without this certification.

(b) The application also directs, under sections 2806 (g)(3)(i), 2809(c)(1) and 2810 (c)(6) of the code (relating to implementation, pilot programs and performance-based rates; requirements for electric generation suppliers; and revenue-neutral reconciliation), that the applicant provide tax information. This tax information includes:

(1) The name, address, telephone number, electronic numbers and addresses used to transmit tax and related information of the persons responsible for preparing and filing the applicant's Pennsylvania tax returns.

(2) Trade names or fictitious names used by the applicant.

(3) The type of business association (for example, sole proprietor, partnership and corporation).

(4) The names of the owners, general partners or corporate officers.

(5) The number of the applicant's current and anticipated employes working in this Commonwealth.

(6) An identification of the applicant's assets in this Commonwealth.

(7) The principal office in this Commonwealth or of its registered agent.

(8) An applicant's Department tax identification numbers including Sales Tax license number, employer identification number and corporate box number. If tax numbers have not yet been obtained, an applicant shall provide the filing date of its application for these numbers.

(c) Tax information provided under subsection (b) shall be filed with the Secretary of the Department at the time that application is made with the Commission.

§ 54.34. Change in organizational structure or operational status.

(a) The applicant is under a duty to inform the Commission of a material change in the information provided in the application during the pendency of the application, or while the licensee is operating in this Commonwealth.

(b) A material change in the organizational structure or operation that affects an applicant's or a licensee's operation in this Commonwealth shall be reported to the Commission within 30 days of the date of the change. Specifically, notification shall be given to the Commission of a change in the following:

(1) The ownership of generation or transmission facilities or other inputs to electric power production.

(2) An affiliation with an EDC, or an entity which owns generation or transmission facilities or other inputs to electric power production.

(3) An affiliation with an entity that has a franchised service area.

(c) Unless directed otherwise by the Commission, the licensee does not need to file an amended application with the Commission.

§ 54.35. Publication of notice of filing.

(a) Notice of filing an application shall be published in newspapers of general circulation covering each county in which the applicant intends to provide service as required by § 5.14(a)(2) (relating to applications requiring notice). Applicants may contact the Commission's Press Secretary to confirm the identity of the newspapers of general circulation in which notice shall be published.

(b) The notice shall be written in plain language and include the name, address and telephone number of the applicant, a description of the proposed services to be provided and the geographic area to be served. The notice shall include the application docket number and a statement that protests related to the technical or financial fitness of the applicant shall be filed within 15 days of the publication date of the notice with the Commission's Secretary, Public Utility Commission, P. O. Box 3265, Harrisburg, PA 17105-3265. The notice in an acceptable electronic format shall be submitted to the Commission's Secretary for posting on the Commission's Internet web site and, if appropriate, on the Commission's electronic bulletin board.

§ 54.36. Protests to applications.

(a) Consistent with § 5.14(b) (relating to applications requiring notice), a 15-day protest period commences on the date notice of the application filing is published in newspapers. An interested party may file a protest to an application in compliance with § 5.52(a) (relating to content of a protest to an application) and shall set out clearly and concisely the facts upon which challenge to the fitness of the applicant is based. An applicant may file an answer to the protest within 10 days of when the protest is filed. Protests which do not fully comply with § 5.52(a) will be rejected.

(b) Protests may challenge only the applicant's financial and technical fitness to provide the service for which a license is requested. Consistent with the requirements of due process, sanctions, such as revocation or suspension of a supplier's license or the imposition of a fine, may be imposed on parties who intentionally misuse the protest process by repeated filing of competitive protests.

(c) A protest to the applicant's technical or financial fitness to provide service will be assigned to Commission staff for review. Staff will determine if the protest fully complies with § 5.52(a) and sets out clearly and concisely the facts upon which the challenge to the fitness of the applicant is based. Staff will determine if the protest is sufficiently documented. If a protest is not sufficiently documented, Commission staff will prepare a recommendation for Commission consideration dismissing the protest and granting the application. If a protest is sufficiently documented, the application will be transferred to the Office of Administrative Law Judge for hearings or mediation as deemed appropriate.

§ 54.37. Approval.

(a) A license will be issued, authorizing the whole or any part of service requested, if the Commission finds that:

(1) The applicant is fit, willing and able to properly perform the service proposed in conformance with applicable provisions of the code and the lawful Commission orders and regulations, specifically including Chapter 56 (relating to Standards and Billing Practices for Residential Utility Service).

(2) The proposed service is consistent with the public interest and the policy declared in Chapter 28 of the code (relating to the Electricity Generation Customer Choice and Competition Act. See section 2809(b) of the code (relating to requirements for electric generation suppliers).

(b) Completed applications, with all supporting documentation, including any documentation or clarifying information requested by Commission staff, if unprotested, will be processed within 45 days after acceptance by the Commission. If the application is not processed within the time period, the application will be deemed approved. The review period may be extended for a reasonable period of time by Secretarial Letter.

§ 54.38. Regulatory assessments.

(a) A licensee shall be required to pay assessments to be used to defray regulatory costs. See section 510 of the code (relating to assessment for regulatory expenses upon public utilities). Assessments will be based upon the administrative costs incurred by the Commission related to generation suppliers. These costs include:

(1) Maintaining records related to licensees and administering other provisions of the code related to maintenance of adequate reserve margins.

(2) Compliance with Chapter 56 (relating to standards and billing practices for residential utility service).

(3) Fulfilling consumer information and education obligations.

(b) Yearly assessments shall be paid by the licensee within 30 days of receipt of notice of the amount lawfully

charged against it as a condition of maintaining a license to supply electricity or electric generation. See section 510(c) of the code.

§ 54.39. Reporting requirements.

(a) A licensee shall report its level of gross receipts to the Commission on a quarterly basis. Gross receipt information shall be filed with the Commission within the 30 days following the end of the first full quarter, and of each subsequent quarter that the license is in effect.

(b) A licensee shall file an annual report on or before April 30 of each year, for the previous calendar year. The annual report shall contain the following information (See section 2810(c)(6) of the code (relating to revenue-neutral reconciliation):

(1) Updates to the tax information requested in the application in § 54.33(b) (relating to application form).

(2) The total amount of gross receipts from the sales of electricity for the preceding calendar year.

(3) The total amount of electricity sold, stated in kilowatt hours, during the preceding calendar year.

(4) The percentage of total electricity supplied by each energy source, including a detailed breakdown of renewable resources as defined in section 2803 of the code (relating to definitions).

(c) A licensee shall be required to meet periodic reporting requirements as may be issued by the Commission to fulfill the Commission's duty under Chapter 28 of the code (relating to Electricity Generation Customer Choice and Competition Act) pertaining to reliability and to inform the Governor and Legislature of the progress of the transition to a fully competitive electric market.

(d) The information requested in this section will be made available for public review upon request to the Commission subject to any rulings on confidentiality made by the Commission.

§ 54.40. Bonds or other security.

(a) A license will not be issued or remain in force until the licensee furnishes a bond or other security approved by the Commission. See section 2809(c) of the code (relating to requirements for electric generation suppliers).

(b) The purpose of the security requirement is to ensure the licensee's financial responsibility, the payment of gross receipts tax as required by section 2810 of the code (relating to revenue-neutral reconciliation), and the supply of electricity at retail in accordance with contracts, agreements or arrangement. See section 2809(c) of the code.

(c) The initial security level required from each applicant is $250,000. Modifications of this amount commensurate with the nature and scope of business anticipated to be conducted in this Commonwealth may be granted where substantial evidence is submitted in support of the modification. A request for modification of this initial security level may be made in conjunction with the filing of the application. The license will be issued contingent on the submission of proof that the applicant has obtained a bond, or other approved security in the amount directed by the Commission.

(d) After the first year that the license is in effect, the security level for each licensee will be reviewed annually and modified primarily based on the licensee's reported annual gross receipts information. The security level will be 10% of the licensee's reported gross receipts. See section 2809 (c)(1)(i) of the code. Maintenance of a license will be contingent on the licensee providing proof to the Commission that a bond or other approved security in the amount directed by the Commission has been obtained. A licensee may seek approval from the Commission of an alternative level of bonding commensurate with the nature and scope of its operations.

(e) Payments pursuant to the security may result from the licensee's failure to pay the full amount of Gross Receipt Taxes, or failure to supply electricity or other services in accordance with contracts, agreements or arrangements.

(f) The bond or security shall include the following:

(1) The Pennsylvania Public Utility Commission, Commonwealth as the sole beneficiary.

(2) The purpose of the bond as follows:

> This bond (or other security) is written in accordance with Section 2809(c)(1)(i) of the Public Utility Code, 66 Pa.C.S. § 2809(c)(1)(i), to assure compliance with applicable provisions of the Public Utility Code, 66 Pa.C.S. §§ 101, et seq., and the rules and regulation of the Pennsylvania Public Utility Commission by the Principle as a licensed electric generation supplier; to ensure the payment of Gross Receipts Tax as required by Section 2810 of the Public Utility Code, 66 Pa.C.S. § 2810; and to ensure the supply of electricity at retail in accordance with contracts, agreements or arrangements.

(3) A listing of the prioritization of claims for payment under the security from highest priority to lowest priority as follows:

(i) The Commonwealth.

(ii) EDCs for the reimbursement of Gross Receipts Tax.

(c) Private individuals.

(4) A statement that the security shall be interpreted under law of the Commonwealth, or in the alternative, no choice of law is specified.

(g) The applicant may request the use of a security other than a bond. See section 2809 (c)(1)(i) of the code. The application shall include specific information about the licensee's need to use a security other than a bond; and shall provide the name, business address, the nature of the business of the entity issuing the security, and if available, the financial rating of the entity. The applicant shall demonstrate that the financial protection afforded by the security is equivalent to that of a bond.

(h) Licensee liability for unreasonable service, or for violations of the code and Commission orders and regulations is not limited by these security requirements.

§ 54.41. Transfer or abandonment of license.

(a) A license may not be transferred without prior Commission approval. See section 2809(d) of the code (relating to requirements for electric generation suppliers). Approval for transfer shall be obtained by petition to the Commission. The granting of such a petition does not eliminate the need for the transferee to complete and file with the Commission an application that demonstrates the transferee's financial and technical fitness to render service under the transferred license.

(b) A licensee may not abandon service without providing 90 days prior written notice to the Commission, the licensee's customers, the affected distribution utilities and providers of last resort prior to the abandonment of service. The licensee shall provide individual notice to its

customers with each billing, in each of the three billing cycles preceding the effective date of the abandonment.

§ 54.42. License suspension; license revocation.

(a) A licensee shall comply with the applicable requirements of the code and Commission regulations and orders. Consistent with due process, a license may be suspended or revoked, and fines may be imposed against the licensee for:

(1) The failure to pay the yearly assessment.

(2) The failure to furnish and maintain a bond or other security approved by the Commission in the amount directed by the Commission.

(3) The nonpayment of taxes under Article II of the Tax Reform Code of 1971 (72 P. S. §§ 7201—7281.2) and Article XI of the Tax Reform Code of 1971 (72 P. S. §§ 8101—8104) and any taxes imposed by Chapter 28 of the code (relating to Electricity Generation Customer Choice and Competition Act). See sections 2806(g)(3) and 2809(c)(1) of the code (relating to implementation, pilot program and performance based rates; and requirements for electric generation suppliers).

(4) The failure to waive confidentiality with respect to tax information in the possession of the Department. See section 2810(c)(6)(iv) of the code (relating to revenue-neutral reconciliation).

(5) The failure to provide the address of its principal office in this Commonwealth or of its registered agent.

(6) The failure to follow the principles in § 54.43 (relating to standards of conduct and disclosure for licensees).

(7) A violation of applicable provisions of the code, this title and lawful Commission orders. See section 2809(b) of the code.

(8) A violation of Pennsylvania consumer protection law.

(9) The transfer of a customer without the customer's consent. See section 2807(d)(1) of the code (relating to duties of electric distribution companies).

§ 54.43. Standards of conduct and disclosure for licensees.

To protect consumers of this Commonwealth, licensees shall adhere to the following principles in the provision of electric generation service:

(1) A licensee shall provide accurate information about their electric generation services using plain language and common terms in communications with consumers. When new terms are used, the terms shall be defined again using plain language. Information shall be provided in a format that enables customers to compare the various electric generation services offered and the prices charged for each type of service.

(b) A licensee shall respond to reasonable consumer requests for information regarding energy sources by percentage, and plant emissions of its electric generation supply.

(c) A licensee shall provide notification of change in conditions of service, intent to cease operation as an electric generation supplier, explanation of denial of service, proper handling of deposits and proper handling of complaints in accordance with this title.

(d) A licensee shall maintain the confidentiality of a consumer's personal information including the name, address and telephone number, and historic payment information, and provide the right of access by the consumer to his own load and billing information.

(e) A licensee may not discriminate in the provision of electricity as to availability and terms of service based on race, color, religion, national origin, sex, marital status, age, receipt of public assistance income, and exercise of rights under Subchapter IV of the Consumer Credit Protection Act (15 U.S.C.A. §§ 1691—1691f), relating to Equal Credit Opportunity. See 12 CFR 202-1—202.14 (relating to equal credit opportunity Regulation B).

(f) A licensee is responsible for any fraudulent deceptive or other unlawful marketing or billing acts performed by the licensee, its employes, agents or representatives. Licensee shall inform consumers of state consumer protection laws that govern the cancellation or rescission of electric generation supply contracts. See section 7 of the Unfair Trade Practices and Consumer Protection Law (73 P. S. § 201-7).

(g) A licensee shall comply with relevant Commission regulations, orders and directives that may be adopted.

[Pa.B. Doc. No. 98-1270. Filed for public inspection August 7, 1998, 9:00 a.m.]

[52 PA. CODE CH. 54]

[L-970127]

Adjustment of Electric Distribution Company Rates for Changes in State Tax Liability

The Pennsylvania Public Utility Commission (Commission) on April 23, 1998, adopted a final rulemaking to address the requirements of 66 Pa.C.S. § 2804(16) (relating to standards for restructuring of electric industry) that the Commission by regulation allow an electric distribution company (EDC) to recover changes in its State tax liability by establishing the time, manner, form and State tax liability under 66 Pa.C.S. §§ 2801—2812 (relating to Electricity Generation Customer Choice and Competition Act) (act). The contact persons are Lawrence Barth, Law Bureau (717) 772-8579 and Robert Wilson, Bureau of Fixed Utilities Services (717) 783-6162.

Executive Summary

On December 3, 1996, Governor Tom Ridge signed into law the act which is codified as Chapter 28 (relating to restructuring of electric utility industry). The act establishes standards and procedures to create direct access by retail customers to the competitive market for electricity generation while maintaining safe and reliability electric service and tax revenue neutrality to this Commonwealth. The act includes two new taxes: a use tax on electricity to complement the tax on gross receipts from retail sales of electricity, and a revenue-neutral reconciliation (RNR) allowing the Commonwealth to recoup State tax losses that may result from the restructuring of the electricity industry and the transition thereto.

The regulations address the requirement of section 2804(16) of the act that the Commission by regulation allow an electric distribution company (EDC) to recover changes in its State tax liability by establishing the time, manner, form and information content of the filings required by an EDC seeking recovery of changes in its State tax liability under the act.

Minor modifications have been made to the draft regulations adopted by the Commission on November 7,

1997, based upon comments from the Office of Consumer Advocate and the Independent Regulatory Review Commission (IRRC) regarding the effective date of EDC filings to recover changes to State tax liabilities and various other clarifications.

The Commission accepted recommended modifications and issued a final rulemaking order at its public meeting of April 23, 1998.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on January 16, 1998, the Commission submitted a copy of the final rulemaking, which was published as proposed at 28 Pa.B. 490 (January 31, 1998) to IRRC and the Chairpersons of the House Committee Consumer Affairs and the Senate Committee on Consumer Protection and Professional Licensure for review and comment. Under section 5(c) of the Regulatory Review Act, 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.

Under section 5.1(d) of the Regulatory Review Act (71 P. S. § 745.5a(d)), these final-form regulations were deemed approved by the House and Senate Committees on June 8, 1998, and were approved by IRRC on June 18, 1998, in accordance with section 5.1(e) of the Regulatory Review Act.

Public Meeting held
April 23, 1998

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

Final Rulemaking Order

By the Commission:

By Order entered November 7, 1997, the Commission initiated a rulemaking at Docket No. L-00970127 to adopt regulations governing the adjustment of EDC rates for changes in State tax liability. The regulations, which are required by 66 Pa.C.S. 2804(16), were undertaken by the Commission to implement the act. The act establishes standards and procedures to create direct access by retail customers to the competitive market for electricity generation while maintaining tax revenue neutrality to the Commonwealth.

Recognizing that restructuring the electric industry would affect the State taxes associated with the production, delivery and sale of electricity in this Commonwealth, the General Assembly enacted a use tax on electricity in addition to the tax on gross receipts from retail sales of electric energy. 66 Pa.C.S. §§ 2806(g)(3)(iii) and 2809(c)(2). The Legislature also established a RNR to "recoup losses that may result from the restructuring of the electric industry and the transition thereto." 66 Pa.C.S. § 2810(a). The intent of the RNR is to maintain the proportional tax obligations among customer classes and individual EDCs.

Section 2804(16) of the act requires the Commission to issue regulations that allow an EDC to recover changes in its State tax liability to the extent that the resulting rate does not exceed the rate cap established, except as provided in the act. 66 Pa.C.S. § 2804(16)(i). The act also permits an EDC to seek recovery of State tax liability changes under the act when the recovery would produce rates above the rate cap.

Regulations to implement these provisions of the act were developed by the Electric Competition Tax Working Group, which includes Commission staff, the Office of Consumer Advocate (OCA), the Office of Small Business Advocate, the Department of Revenue (DOR), the Pennsylvania Electric Association and its member EDCs and electricity suppliers. The regulations establish the time, manner, form and information content of the filings required of an EDC seeking recovery of changes in its State tax liability under the act.

Specifically, § 54.93 (relating to manner of filing) requires proposed rate changes under Chapter 54 (relating to adjustment of electric generation customer choice) to comply with the existing Commission regulations at § 53.51(c) and (d) (relating to perfection of tariffs or tariff supplements and service of proposed rate changes).

Section 54.94 (relating to recovery of changes in State tax liability) sets forth the information that must be provided when an EDC seeks recovery of changes in its State tax liability when the resulting rates do not exceed the rate cap.

Section 54.95 (relating to recovery of RNR tax liability producing rates above the rate cap) provides information and procedures that apply when an EDC seeks recovery of changes in its RNR tax liability when the resulting rates would exceed the rate cap.

Section 54.96 (relating to recovery of sections 2806(g) and 2809(c) tax liability producing rates above the rate cap) provides information and procedures that apply when an EDC seeks recovery of changes in its tax liability under 66 Pa.C.S. §§ 2806(g) and 2809(c) when the resulting rates would exceed the rate cap.

Section 54.97 (relating to State tax adjustment surcharge) provides information and procedures that apply when an EDC seeks to modify its State Tax Adjustment Surcharge (STAS) to recover new or increased taxes under the act.

Finally, § 54.98 (relating to customer notice requirements) requires proposed rate increases under Chapter 54 to comply with existing Commission regulations at §§ 53.41—53.45 (relating to posting of tariffs and notices).

On November 7, 1997, the Commission adopted an opinion and order setting forth proposed regulations under Chapter 28 of the act and providing for a 30-day comment period after publication in the *Pennsylvania Bulletin*. The proposed regulations were published for comment at 28 Pa.B. 490 (January 31, 1998). Written comments were provided by the Pennsylvania Electric Association (PEA), Pennsylvania Power and Light Company (PP&L), UGI Utilities, Inc.—Electric Division (UGI) and the OCA. Following public comment, the Independent Regulatory Review Commission (IRRC) submitted written comments.

Discussion

The PEA, PP&L and UGI comments supported the regulation and recommended that it be approved as drafted. The OCA and IRRC had several recommendations to improve the clarity of the regulation and facilitate the review of related filings.

In § 54.94(b)(2), the OCA sought a fixed date of 60 days after filing for an effective date, rather than 30 days after the perfection of the filing. The OCA states that tying an

effective date to the perfection of the filing is too indefinite and that this kind of tax filing should be effective in much the same fashion as the revenue-neutral reconciliation under the statute. See 66 Pa.C.S. § 2804(16). We agree, and have modified § 54.94 to require an effective date that is 60 days after the filing date. This modification is also made to § 54.96.

The OCA also points out, with respect to § 54.94(b)(2), that an EDC would be allowed to recover tax payments under sections 2806(g) and 2809(c) of the act from ratepayers without first seeking recovery from the defaulting electric generation supplier.

We will clarify that recovery from EDC ratepayers through the provisions of this regulation will occur only after other means are exhausted by the Department of Revenue (DOR) and the EDC, to recover the taxes owed by the EGS. The act provided that bonds from the EGS when it obtains its license would be available to cover taxes that are due. The act also gives the EDC the ability to seek payment first from the EGS and the individual ratepayer that used the electricity. The act contains a provision for tariff indemnification language and PUC license revocation as incentives for the EGS licensees to pay their taxes. It is the Commission's understanding that the DOR will explore all of the remedies available to it before it provides a written notice to the EDC that it is being assessed the unpaid taxes of the EGS. This will include attaining the funds from the bond required by the act, where the Commission has been named beneficiary, thus giving it control over those funds. Should the funds from the bond be unavailable or inadequate to pay the liability, the DOR will assess a use tax upon the EDC. See 66 Pa.C.S. § 2809(C)(2). The EDC would then be allowed to attempt to recover the use tax from the EGS or the "appropriate party" which used the electricity. Only upon failure to recover the use tax, would the EDC attempt to recover the taxes from its entire customer base through the provisions of the instant regulation.

IRRC raised a similar concern with § 54.94 and recommended a provision requiring the EDC to provide a statement of the reason for the proposed rate change.

We accept the OCA recommendation to require an affidavit at the time of filing, which assures that the EDC has not recovered the taxes through the tariff indemnification and that it has been assessed the tax liability by the DOR. A statement of the reason for the rate change is also a filing requirement.

IRRC provided comments with respect to § 54.95, recommending that clarifications be made in a number of areas. Based upon those recommendations, the following modifications are being made to the regulation.

Section 54.95 is reorganized to put individual directives into separate subsections with respect to type of filing, timeframes, nature of the review process and required information. We shall address the IRRC concern regarding the clarity of notification process by the DOR. In the act, the publication in the *Pennsylvania Bulletin* by DOR of the RNR rate change will serve as the notification to the EDC of a tax rate change, triggering the need for information from the EDC in 30 days, if it wishes to collect increased taxes from ratepayers.

The final-form regulations are also modified to clarify what is meant by the requirement for "demonstrating the impact" of the rate change upon customers. The demonstration of impact is also modified in § 54.96 under the IRRC recommendation.

The OCA has recommended that § 54.96 filing requirements be modified to include an income statement for the most recent 12-month period, providing "recent earnings data to allow the Commission to adjudicate whether the rates are just and reasonable." The EDCs must provide detailed quarterly earnings reports, including an income Statement and rate base calculations, under §§ 71.1—71.9. Additional monthly data to support a tax increase filing is therefore, unnecessary. No modification has been made to the final-form regulations in this regard.

IRRC has asked that § 54.97(a)(2) be modified to clarify the phrase "Gross receipts tax rate under to the RNR." The draft regulation of the November 7, 1997, opinion and order did not contain this language. The language appears to have been mistakenly changed during the printing process. The correct language, as set forth in the following and in the regulation will be maintained:

(2) Adjustments to the gross receipts tax rate pursuant to the RNR.

IRRC has also asked that we clarify the meaning of "the complement of the gross receipts tax rate" in § 54.97(a)(4). A complement is a mathematical term which means one minus. The subsection has been modified to make this clarification.

Accordingly, under sections 501, 1301 and 2804(16) of the Public Utility Code, 66 Pa.C.S. §§ 501, 1301 and 2804(16), and the Commonwealth Documents Law (45 P. S. § 1201 et seq.) and the regulations promulgated thereunder at 1 Pa. Code §§ 7.1—7.4, we adopt the regulations in §§ 54.91—54.98 as noted above and as set forth in Annex A as final-form regulations. *Therefore*,

It is Ordered that:

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

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

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

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

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

6. The Secretary shall provide a copy of this Order and Annex A for placement on the Commission's site on the World Wide Web.

7. These final-form regulations become effective upon publication in the *Pennsylvania Bulletin*.

8. A copy of this Order and Annex A shall be provided to all persons that submitted comments in the rulemaking proceeding at Docket No. L-00970127, and upon all jurisdictional electric distribution utilities and licensed EGSs; the OCA and the Office of the Small Business Advocate.

9. 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 (800) 654-5988.

10. The regulations of the Commission, 52 Pa. Code Chapter 54, are amended by adding §§ 54.91—54.98 to read as set forth in Annex A.

JAMES J. MCNULTY,
Secretary

(*Editor's Note*: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 28 Pa.B. 3338 (July 11, 1998).)

Fiscal Note: Fiscal Note 57-188 remains valid for the final adoption of the subject regulations.

Annex A

TITLE 52. PUBLIC UTILITIES

PART I. PUBLIC UTILITY COMMISSION

Subpart C. FIXED SERVICE UTILITIES

CHAPTER 54. ELECTRICITY GENERATION CUSTOMER CHOICE

Subchapter D. ADJUSTMENT OF ELECTRIC DISTRIBUTION COMPANY RATES FOR CHANGES IN STATE TAX LIABILITY

Sec.

§ 54.91. Purpose.

This subchapter implements Chapter 28 of the code (relating to Electricity Generation Customer Choice and Competition Act) governing adjustments to the rates of an EDC to reflect changes in its State tax liability. This subchapter establishes the time, manner, form and information content of the filings required by an EDC seeking recovery of changes in its State tax liability. This subchapter also establishes specialized procedures to supplement existing procedures relating to public utility rate changes. Finally, this subchapter establishes the effective dates of relevant EDC rate adjustments and the applicable customer notification requirements for these adjustments.

§ 54.92. Definitions.

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

CTC—Competitive transition charge—The competitive transition charge as defined in section 2803 of the code (relating to definitions).

Code—The Public Utility Code, 66 Pa.C.S. §§ 101—3316.

Customer—A retail electric customer as defined in section 2803 of the code.

Department—The Department of Revenue of the Commonwealth.

EDC—Electric distribution company—An EDC as defined in section 2803 of the code.

Electric generation supplier or *electricity supplier*—An electric generation supplier or an electricity supplier as defined in section 2803 of the code.

ITC—Intangible transition charge—The intangible transition charge as defined in section 2812(g) of the code (relating to approval of transition bonds).

Rate cap or *price cap*—The limits on the allowable charges of an EDC, and the exceptions and exclusions from these limits, as prescribed by section 2804(4) of the code (relating to standards for restructuring of electric industry).

RNR—Revenue neutral reconciliation—Section 2810 of the code (relating to revenue-neutral reconciliation).

STAS—State tax adjustment surcharge—The State tax adjustment surcharge as defined in § 69.51 (relating to definitions).

Transition or *stranded costs*—The transition or stranded costs as defined in section 2803 of the code.

§ 54.93. Manner of filing.

Each proposed change in rates in this subchapter shall be perfected in accordance with § 53.51(c) (relating to general) and shall be served in accordance with § 53.51(d).

§ 54.94. Recovery of changes in State tax liability.

(a) The Commission will permit an EDC to recover from customers changes in its State tax liability arising from sections 2806(g), 2809(c) and 2810 of the code (relating to implementation, pilot programs and performance-based rates; requirements for electric generation suppliers; and revenue-neutral reconciliation) and §§ 69.51—69.56 (relating to inclusion of State taxes and gross receipts taxes in base rates) to the extent that the resulting rates do not exceed the rate or price cap.

(b) An EDC seeking recovery of changes in its State tax liability under this section shall provide the following information to the Commission:

(1) A description of the surcharge proposed by the EDC, and a statement of reasons for the proposed rate change.

(2) A statement that the surcharge becomes effective for service rendered beginning 60 days after the filing of the tariffs or tariff supplements.

(3) If applicable, the calculations supporting the amount of its tax liability arising from the RNR.

(4) If applicable, the amount of payments under sections 2806(g) and 2809(c) of the code for the immediately preceding 12-month period ending on June 30, plus interest accrued at 6% per year from the time of payment until the time the payments are reflected in customer rates, supported by a copy of the notification received from the Department assessing these taxes and related interest.

(5) If applicable, an affidavit which states that the EDC has not recovered the taxes through tariff indemnification tariff provisions or other means, and that the Department has assessed the taxes.

§ 54.95. Recovery of RNR tax liability producing rates above the rate cap.

(a) An EDC proposing to increase its rates above the rate cap due to the RNR shall file a single issue rate proceeding under section 1308(a) of the code (relating to voluntary changes in rates).

(b) The EDC's filing provides information which enables the Commission to determine if the filing is an accurate claim for the amount of its tax liability arising from the RNR and whether recovery of its RNR tax liability causes the resulting rates to exceed the rate cap.

(c) Within 30 days of receiving the Department's notice of the change in the applicable tax rate established by the RNR, an EDC proposing to increase its rates as described in this section shall provide the following information to the Commission:

(1) A statement that the reason for the proposed rate increase is to permit the EDC to recover that portion of its RNR tax liability that produces rates above the rate cap.

(2) A proof of revenue calculation by rate class demonstrating the impact of the proposed rate increase upon each class of customers. The EDC shall, at a minimum, show both the dollar and percentage change being proposed for each tariffed rate.

(3) A description of the surcharge for recovering the increased tax liability.

(4) A notice that the surcharge becomes effective 60 days from the date the EDC files the proposed rate increase.

§ 54.96. Recovery of sections 2806(g) and 2809(c) tax liability producing rates above the rate cap.

(a) The Commission will permit an EDC to recover, through its State Tax Adjustment Surcharge or other appropriate mechanism, changes in its State tax liability and related interest under sections 2806(g) and 2809(c) of the code (relating to implementation, pilot programs and performance-based rates; and requirements for electric generation suppliers) when that recovery produces rates above the rate cap, upon certification by affidavit that the following apply:

(1) The EDC has not recovered the taxes due pursuant to its tariff indemnification provisions.

(2) The Department has not collected the taxes due under the other means set forth in sections 2806(g)(3)(iii) and 2809(c)(2).

(b) In addition to the affidavit required under subsection (a), the EDC shall file with the Commission:

(1) A statement of the amount of payments under section 2806(g) or 2809(c) for the immediately preceding 12-month period ending on June 30, plus interest accrued at 6% per year from the time of payment until the time the payments are reflected in customer rates, supported by a copy of the notification received from the Department assessing these taxes and related interest.

(2) A proof of revenue calculation by rate class demonstrating the impact of the proposed rate increase upon each class of customers. The dollar and percentage changes shall be shown for each tariffed rate.

(3) A description of the surcharge for recovering the increased tax liability.

(4) A statement that the surcharge becomes effective for service rendered beginning 60 days after the filing of tariffs or tariff supplements.

§ 54.97. State tax adjustment surcharge.

(a) *Surcharge calculation*. Every EDC subjected to new or increased State taxes under sections 2806(g), 2809(c) and 2810 of the code (relating to implementation, pilot programs and performance-based rates; requirements for electric generation suppliers; and revenue-neutral reconciliation) and §§ 69.51—69.56 (relating to inclusion of State taxes and gross receipts taxes in base rates) that proposes to modify its STAS to recover these taxes shall include the following information in its surcharge calculation:

(1) The amounts paid under sections 2806(g) and 2809(c) for the immediately preceding 12-month period ending on June 30, plus interest accrued at 6% per year from the time of payment until the time the payments are reflected in customer rates. The EDC shall also provide an affidavit that it has not recovered these taxes under the other means in sections 2806(g)(3)(iii) and 2809(c)(2) of the code.

(2) Adjustments to the gross receipts tax rate pursuant to the RNR.

(3) When applicable, paragraphs (1) and (2) shall be added to any other amounts recoverable under the STAS.

(4) The total of paragraph (3) divided by a factor which is the complement of the Gross Receipts Tax (GRT) rate (1 minus the GRT rate), adjusted by the RNR to the extent that recovery is approved by the Commission under section 2804(16) of the code (relating to standards for restructuring of electric industry).

(5) The quotient of paragraph (4) divided by gross intrastate operating revenues derived from service under rates subject to the jurisdiction of the Commission for the most recently completed calendar year, exclusive of the revenues produced by the surcharge permitted by subsection (a). This quotient shall be expressed as a percentage.

(2) If the EDC increased or decreased its rates under the Commission's jurisdiction during or after the most recently completed calendar year, it shall include in its computation the appropriate adjustments to paragraphs (1)—(5), as if the increased or decreased rates had been in effect for all of that calendar year.

(b) For rate changes that require the STAS to be filed under this section, every EDC shall provide the following information to the Commission:

(1) For a change in an EDC's RNR tax liability contained in a notice from the Department, the information described in § 54.94(b)(3) (relating to recovery of changes in State tax liability).

(2) For amounts paid by an EDC under sections 2806(g) and 2809(c) of the code, the information described in § 54.94(b)(4).

(c) Every tariff or tariff supplement modifying an EDC's STAS under this section shall carry an effective date which shall be 10 days after its filing with the Commission and shall be applicable for service rendered on or after the effective date.

§ 54.98. Customer notice requirements.

(a) An EDC proposing to increase its rates under § 54.94 or § 54.96 (relating to recovery of changes in State tax liability; recovery of sections 2806(g) and 2809(c) tax liability producing rates above the rate cap) shall provide customer notice as provided in § 53.45(g) (relating to public notice of new tariffs and tariff changes).

(b) An EDC proposing to increase its rates under § 54.95 (relating to recovery of RNR tax liability producing rates above the rate cap) shall provide customer notice and follow the tariff posting procedures in §§ 53.41—53.45 (relating to posting of tariffs and notices).

[Pa.B. Doc. No. 98-1271. Filed for public inspection August 7, 1998, 9:00 a.m.]

[52 PA. CODE CH. 54]

[L-970126]

Customer Information Disclosure for Electricity Providers

The Pennsylvania Public Utility Commission (Commission) on April 30, 1998, adopted a final rulemaking to provide adequate customer information concerning purchase of all electric services in a competitive generation market. The contact persons are Terrence Buda, Law Bureau, (717) 787-5755 and Annunciata Marino, Bureau of Fixed Utilities Service, (717) 772-2151.

Executive Summary

On December 3, 1996, Governor Tom Ridge signed into law 66 Pa.C.S. §§ 2801—2812 (relating to Electricity Generation Customer Choice and Competition Act) (act). The act revised Chapter 28 (relating to restructuring of the electric utility industry). The purpose of the act is to permit customers their choice of electricity generation suppliers while maintaining reliable and safe electric service.

Section 2807(d)(2) of the act requires the establishment of regulations ensuring that each electric distribution company, electricity supplier, marketer, aggregator and broker provide adequate and accurate customer information to enable customers to make informed choices regarding the purchase of all electricity services offered by that provider. The purpose of the regulation 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 the final rulemaking, which was published as proposed at 28 Pa.B. 501 (January 31, 1998), and served on January 16, 1998, to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the House Committee Consumer Affairs and the Senate Committee on Consumer Protection and Professional Licensure for review and comment. In compliance with section 5(b.1) of the Regulatory Review Act, 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 on June 8, 1998. IRRC met on June 18, 1998, and approved in accordance with section 5.1(e) of the Regulatory Review Act (71 P. S. § 745.5a(e)).

Public Meeting held
April 30, 1998

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

Final Rulemaking Order

By the Commission:

On November 6, 1997, we adopted a proposed rulemaking order establishing customer information disclosure requirements for electricity providers. The order was entered on November 7, 1997, at Docket No. L-00970126. The regulations, which are required under 66 Pa.C.S. § 2807(d)(2), were undertaken as part of the implementation duties performed by the Commission under the Electricity Generation Customer Choice and Competition Act (act). Signed into law on December 3, 1996, by Governor Tom Ridge, the act revised the Public Utility Code, 66 Pa.C.S. §§ 101, *et seq.*, by adding Chapter 28, relating to restructuring of the electric utility industry.

By this final rulemaking order, we adopt regulations which require each electricity provider to furnish adequate and accurate information that enables consumers to make informed choices regarding the purchase of all electricity services offered by that provider. In general, our regulations mandate that all information shall be provided to customers in an understandable format that allows them to compare prices and services on a uniform basis. Additionally, by this final rulemaking order, we direct that all electricity providers strictly adhere to our Policy Statement at 52 Pa. Code § 69.251 regarding the use of plain language in all written communications with consumers.

In order to facilitate the establishment of interim requirements prior to the promulgation of regulations, the Commission staff prepared a Discussion Document on Customer Information that was distributed to Electric Competition Stakeholders on February 3, 1997. On February 14, 1997, a public forum was held and a Working Group for Customer Information Disclosure was formally established. On March 7, 1997, written comments to the discussion document were received. By order entered April 1, 1997, at Docket No. M-00960890F.0008, we initiated a Request for Comments Concerning Proposed Interim Customer Information Requirements for Electric Distribution Companies and Electricity Suppliers. On July 11, 1997, the Commission entered an order establishing Customer Information Interim Guidelines.

The proposed regulations at Docket No. L-00970126 were published for comment at 28 Pa.B. 501 on January 31, 1998, with a 30-day comment period set. Written comments were provided by the following parties:

- Office of Consumer Advocate (OCA)
- Office of Attorney General (OAG)
- Allegheny Power (AP)
- Conectiv Energy (Conectiv)
- Duquesne Light Company (Duquesne)
- Enron Energy Services, Inc. (Enron)
- Environmental Defense Fund (EDF)
- The Environmentalists (consisting of the Clean Air Council, the Sierra Club, Citizen Power, the Group Against Smog and Pollution, the Energy Coordinating Agency, and the Nonprofits Energy Savings Investment Program)

- GPU Energy (GPU)
- Green Mountain Energy Resources L.L.C. (Green Mountain)
- Horizon Energy Company (Horizon)
- Lebanon Methane Recovery, Inc. (LMR)
- Mid-Atlantic Power Supply Association (MAPSA)
- NorAm Energy Management, Inc. and Electric Clearinghouse Inc. (NEMEC)
- PECO Energy (PECO)
- PP&L, Inc. (PP&L)
- Pennsylvania Coal Association (PCA) on behalf of its members
- The Pennsylvania Electric Association (PEA) on behalf of its member companies
- Renewable Energy Alliance (REA)
- Lawrence G. Spielvogel, Inc. (Spielvogel)
- UGI Utilities, Inc.—Electric Division (UGI)
- Constellation Energy Source (Constellation)
- State Representative William R. Lloyd, Jr. (Representative Lloyd)
- State Representative Frank Tulli, Jr. (Representative Tulli)
- State Senator Allen G. Kukovich (Senator Kukovich)
- Independent Regulatory Review Commission (IRRC)

Discussions about the proposed rulemaking also occurred during meetings with IRRC and in briefings before the House Consumer Affairs Committee and the Senate Committee on Consumer Protection and Professional Licensure.

Following review and consideration of the comments and discussions noted above, the Commission has developed final-form regulations. The overall objective of these regulations, of assuring that consumers have accurate and adequate information to meaningfully participate in a competitive generation market, has not changed. However, in response to the persuasive comments of several interested parties, we have extensively revised certain language and have reorganized the material in an effort to clarify many of the requirements. Each change is discussed in more detail.

Through these regulations, we have attempted to achieve a balance between the need for customer information and the development of competition in the retail electric industry. In doing so, we recognize that the varied forms of customer communications, such as billing, disclosure statements, customer choice of supplier, products and prices, customer relations, licensing requirements and distribution services, are interrelated and are important aspects of customer information disclosure requirements.

At the outset, Enron asserts that these regulations will adversely affect a restructured electric industry by inhibiting the full development of competition, thereby reducing potential consumer savings. Although Enron raises a legitimate concern about the potential effect of costly disclosure requirements on a competitive generation market, we believe that these regulations impose only the disclosure burdens that are necessary to ensure that adequate and accurate information is conveyed to customers in an understandable format, as required by § 2807(d)(2) of the act.

Enron also challenges the Commission's legal authority to promulgate these regulations. In particular, Enron claims that many of the specific details set forth by our regulations go beyond what is contemplated by the act. Horizon raises similar concerns, particularly challenging the Commission's statutory basis for the scope of the regulations and suggesting that the Commission take measures to ensure that customers are not inundated with information.

Section 2807(d)(2) of the act clearly and explicitly directs the Commission to establish regulations requiring electricity providers to furnish adequate and accurate information in a format that is understandable to consumers. That provision also specifically requires that customers be provided with information that allows them to compare prices and services on a uniform basis. Through our adoption of this final rulemaking order, we simply seek to fulfill the statutory objectives of ensuring that consumers receive accurate and adequate information and are sufficiently equipped to make informed decisions about alternative generation sources.

In determining the proper scope of these final regulations, the Commission is primarily guided by use of the term "adequate" in § 2807(d)(2). While it is equally important for the Commission to ensure that accurate information is furnished, the statutory requirement for the Commission to warrant the provision of adequate information necessarily entails the development of detailed regulations. In order to fulfill that legislative mandate, the Commission has determined what is adequate and has prescribed the necessary bill format and bill content, disclosure statement requirements and pricing practices for electricity providers to follow to assure the adequacy of the information that is conveyed to consumers.

The scope of these regulations is further defined by the statutory language requiring that information must "enable customers to make informed choices" and be "in an understandable format that enables consumers to compare prices and services on a uniform basis." See 66 Pa.C.S. § 2807(d)(2). We believe that in order to satisfy our responsibility under the act, it is necessary to prescribe standard procedures governing the distribution of providing information to consumers. Through requiring all electricity providers to adhere to certain uniform rules applicable to communications with consumers, our final regulations seek to enable customers to meaningfully compare prices and services offered by a diverse group of electricity providers.

The following is a section by section summary of comments and regulatory analysis in support of the adoption of customer information disclosure requirements in this final rulemaking order.

Section 54.1. Purpose.

GPU seeks to clarify that these regulations apply only to residential and small business customers. In fact, however, §§ 54.1—54.3 apply to all customers, including large commercial and industrial customers, while the remaining regulation apply only to residential and small business customers. The purpose statement has been clarified to indicate this distinction.

Section 54.2. Definitions.

IRRC recommends that we adopt, verbatim, the statutory definitions at § 2803 of the act for the following terms: Aggregator, broker, CTC, customer, EDC, EGS, marketer, renewable resource, and transition or stranded costs. We have done so.

Basic Services—Enron suggests that the term be changed to Basic Service Charges. We have responded by slightly modifying the definition to substitute "transition charges" for "transition services" in an effort to eliminate any confusion regarding services and charges. Also, in view of Enron's concern about the distinction between basic and nonbasic services, we have changed the nonbasic services definition to indicate that they are optional services. The OCA recommends that we amend the definition to specify electric service and we have done so.

Customer Information—Several commentators, including the OCA and IRRC, suggest that the definition be broadened to include written information in addition to verbal and electronic communications, and we have done so. As to Enron's suggestion that this definition should refer only to information that is necessary to enable customers to make informed decisions, we disagree. While an important objective of section 2807(d)(2) and these regulations is to equip customers with the ability to make informed decisions, the overall purpose also includes the need to ensure that all information conveyed to customers is adequate and accurate. Therefore, we have not restricted the definition as requested by Enron.

Distribution Charges—As recommended by GPU and PEA, we have modified this definition to include the phrases "over a distribution system" and "from the transmission system" so as to more accurately describe these charges. Enron suggests that the reference to 52 Pa. Code § 56.15(4) be deleted. Upon review of this subsection, we conclude that the only inappropriate line item (on the bill) is "energy or fuel adjustment charge." Appropriate items are State tax adjustment surcharge, State sales tax and State gross receipts tax. Therefore, we have amended the definition to reflect that the subsection applies, to the extent it is applicable. Additionally, since we currently view universal service as a component of distribution charges and note that this matter is the subject of a concurrent investigation, so we have also designated it "as applicable."

Electric Distribution Company (EDC)—Several commentators including IRRC, suggest that the acronym for electric distribution company be corrected from EDIC to EDC, and we have done so.

Electricity Providers—Several commentators note that section 2807(d)(2) is applicable to EDCs, electricity suppliers, marketers, aggregators and brokers. We agree that a level playing field should exist, and have also added third parties acting on behalf of these entities. Collectively, these parties are referred to as "electricity providers," and we have added this term to this section to clarify the obligations of these entities as imposed by these regulations.

Electricity Supplier or Supplier—We adopt Enron's suggestion to change the defined term to Electricity Generation Supplier (EGS) or Supplier. Also, IRRC notes that the proposed definition contains an incorrect statutory cite, which we have now corrected.

Generation Charges—We agree with the comments of the OCA and IRRC indicating that this definition should not be linked to cost. Therefore, we have deleted the reference to cost.

Intangible Transition Charge (ITC)—GPU recommends that the definition of ITC match the definition of ITC in the act, and we have done so. We also agree with IRRC that the definition should note that the charges are authorized by the Commission, and we have made that change.

Non-Basic Services—We have added the word "optional" to describe these services. As discussed above, this change is necessary to clarify the distinction between Basic and Non-Basic Services.

Renewable Resource—The Environmentalists advocate a definition which is not consistent with the statutory definition. As proposed by the Environmentalists, hydropower is defined as low "impact" rather than low "head" and relies on the American River's Criteria, and a generator size limit. Since we believe that this change would over-complicate the definition, we decline the suggestion. We have, however, adopted the Environmentalists' proposal to include biomass-based methane gas as a renewable resource. As suggested by IRRC, we have changed the text of the proposed definition to mirror the definition in the statute, except that we have added biomass-based methane gas to the list of technologies. Also, in an effort to be consistent with the statute, we have not deleted "energy from waste" as the Environmentalists suggest in their proposed definition.

Small Commercial—Most commentators, including IRRC, are strongly opposed to defining this term based upon the number of employes working for that customer, and suggest either replacing that criterion with an electric load limit or simply relying on the fact that a customer is served on a small commercial rate. NEMEC, GPU, PP&L and the PEA all indicate the reasonableness of this proposal, and we agree. Therefore, we have adopted the suggestion to use a maximum registered load limit of 25 kW within the last 12 months, in conjunction with a rate class reference, for this definition. Further, we have renamed this term "small business customer" in these final regulations to encompass both small commercial and small industrial consumers.

Terms of Service—In view of the OAG's suggestion that we consider Terms of Service as the equivalent of Consumer Contracts, we have deleted this definition and have incorporated this concept in the definition of "Consumer Contract," as noted above.

Transition Charges—Although we have reviewed the recommendations of GPU and the PEA to include transition charges other than CTC and ITC in this definition, we have declined to make this revision. We have, however, accepted Enron's recommendation regarding use of the acronym "EDC" instead of "electric utility."

Section 54.3. Standards and pricing practices for retail electricity service.

We received numerous comments in response to this section, ranging from opposition to strong support for the proposals regarding the use and distribution of a Glossary and a Dictionary. In view of the mandate in § 2807(d)(2) that "information shall be provided to consumers in a clear and understandable format that enables consumers to compare prices and services on a uniform basis," we conclude that all participants in the competitive industry need a common foundation in the terminology of the industry. Specifically, to provide consumers with a basis for accurate comparisons and clear communications, the industry should use consistent terminology and units of measure. Both the short Glossary of 16 terms called "Common Electric Competition Terms" and the more extensive "Consumer's Dictionary for Electric Competition" with 77 terms provide this consistent approach to customer information. Also, we note that we have revised many definitions of terms in the Glossary and Dictionary in accordance with the comments of PEA, the OCA and the Environmentalists.

The Glossary contains basic terms and definitions which will enable consumers to easily understand the new terminology that will be used when they are shopping for electric service. The more inclusive Dictionary is for use by those consumers who have an interest in a greater understanding of the electricity market. While we recognize that some flexibility is needed in a competitive market, we believe that the common use by all electricity providers of the terms and definitions in the Dictionary will enable consumers, EDCs and EGSs to communicate in a consistent manner.

In response to comments received from EDCs and IRRC, we have decided that it would be most cost effective for the EDCs to distribute the Glossary through their respective consumer education programs. Therefore, we have revised these regulations to eliminate the need for EDCs to include the Glossary as a bill insert.

IRRC recommends that § 54.3(2) be omitted and we agree. IRRC also suggests that § 54.3(3) be modified to delete the first sentence, which we have done. As to the second sentence in § 54.3(3), we have followed IRRC's recommendation to move it to another section, and we note that, with minor modifications, that material is now set forth in § 54.7.

Regarding § 54.3(4), IRRC suggests providing definitive standards with which electricity providers should comply in responding to customer inquiries and complaints. Since all electricity providers are responsible for complying with Chapter 56 regulations (See 66 Pa.C.S. § 2809(e)(f)), including the dispute procedures set forth in 52 Pa. Code §§ 56.2, 56.151 and 56.152, we have removed both § 54.3(4) and § 54.3(5) from the final regulations.

Section 54.4. Bill format—residential and small commercial customers.

To be consistent with our revision to the definitions section, we have changed the title of this section to "Bill format for residential and small business customers." Also, we agree with IRRC that we should add a provision in this section requiring that prices billed must reflect marketed prices and the agreed upon prices in the disclosure statement. That requirement is now set forth in § 54.4(a).

IRRC also points out that the provider of last resort should be treated like an EGS in our billing requirements. We agree and have included that change in § 54.4(b). Generally, we note our intention to view a provider of last resort as an EGS for purposes of communicating with customers.

GPU asks that we amend this section to permit a customer to request and receive only a bill summary, while UGI cautions us about the costs to EDCs associated with requiring changes to bill formats. In establishing these regulations, we have tried to achieve the goal of providing adequate and accurate customer information without being overly prescriptive. The minimum requirements imposed by these regulations allow some degree of flexibility for billing entities while providing customers with essential information that should minimize customer confusion.

IRRC and Green Mountain comment that the requirement at § 54.4(b) might be interpreted as requiring an EGS to duplicate EDC charges on its bill. We agree with this concern and emphasize that an EGS is not required to duplicate EDC charges. We have added clarifying language to this section.

We received comments from IRRC, Representative Lloyd and several others about what specific charges should be required on the bills, as well as questioning the need to require that certain charges appear on the first page of the bill. In view of all of these comments, we believe that we must permit as much flexibility as possible. Therefore, we have revised the regulations so that they contain a list of the required billing items and billing sections without mandating that any certain information be included on the first page. Consistent with the comments of GPU and IRRC, we suggest that when issuing a single bill, EDCs should consider developing a summary page as the first page and then providing the required itemization of all charges later in the bill.

EDCs and EGSs have made it clear through comments, and we agree, that their charges should appear in separate sections of the bill. Therefore, we have revised this section to set forth that requirement.

Under a single bill option, basic charges will appear in both EDC and EGS sections of the bill. In view of both the termination process for nonpayment and the application of partial payments to the EDC and the EGS, we have required the distinction between basic and nonbasic charges in both the EDC and EGS portions of the customer bill where applicable.

Several comments were received regarding the standard pricing unit requirement at § 54.4(a). Most of the comments offer widespread support while others recommend changes or ask us for clarifications. We have clarified that the requirement for a standard pricing unit does not mean that all customers will be charged the same unit price. We do not intend to limit pricing options. We agree with the OCA, IRRC, PEA and PP&L that the requirement for a standard pricing unit for generation charges in the bill format section means that the price or pricing option will be presented in a standard pricing unit, such as in actual dollars or cents per kWh, in the customer bill.

We have required that Generation Charges be listed first among the basic charges in the appropriate EDC or EGS section of the bill with one notable exception. The Customer Charge may appear before Generation Charges.

The treatment of Transmission Charges was widely debated among the numerous commentators. We agree with the comments provided by the OAG, PEA, GPU, PP&L and UGI that section 2804(3) of the act clearly requires the unbundling of Transmission Charges. Therefore, we have required that Transmission Charges be unbundled on all customer bills, regardless of whether the customer is eligible for choice or not, and regardless of which billing option is applicable.

MAPSA states that the Commission should recognize that there is likely to be a substantial upgrading of metering technology which should be reflected in these rules if they are to remain robust. We have therefore required advanced metering charges to be itemized as a basic charge on the bill.

Conectiv urges the Commission not to restrict the messages that may be communicated on bills. We agree, and have not done so. We have required, however, that such messages are to be presented separately from the billing requirements. Also, we note that while we will not require the provider of a single bill to include messages for another entity outside the requisite billing requirements, such as information regarding the availability of an EGS's optional nonbasic services, we do expect the parties' cooperation in these matters. Further, we recognize the possibility that over time certain transitional issues might prompt the Commission to direct billing entities to include or change specific billing messages.

We accept the recommendation of the OCA and IRRC that monthly (rather than quarterly) disclosure of itemized nonbasic services is necessary to enable customers to be fully informed of the charges for the services they are receiving. Therefore, we have revised the regulations to incorporate this change.

PP&L is opposed to billing for EGS charges for nonbasic services for those customers who choose a single bill option. We do not expect EDCs to provide the itemized or unbundled listing of nonbasic charges on the bill without compensation.

EGSs oppose the requirement for them to show both the annual and the monthly average usage figure on the bill. They point out that the usage information will be in the domain of the entity reading the meter for billing purposes. We agree, and note the inapplicability of this requirement to EGSs. We also agree with PEA that these two usage figures should be presented in kWh as the standard pricing unit.

The requirement that the billing entity for generation must include a bill message informing customers of proposed changes in their terms of service or of an impending expiration of the terms of service is opposed by IRRC, PEA and the EDCs. We accept that the responsibility for providing these messages rests with the EGS. Also, while we agree that this notification is not a billing issue, we address the issue in detail later in this order.

We agree with IRRC that "General Information" should be a separate and distinct section to the bill and the billing entity's information should be listed first. We also agree with PP&L to remove "For" from the "For General Information" section title.

PEA and UGI state that it would be expensive and burdensome for the EDC to provide the proposed information about the EGS, including license number and an internet address. We agree and have revised this requirement to include only the name, address and telephone number of the EGS.

PP&L comments that the bill message indicating who sets prices for generation services is incorrect since some customers will not make a choice during the EDC's transition period. We agree and have modified this section to apply only to the bills of customers who have chosen to receive generation services from an EGS.

Several commentators note that the FERC, and not the Commission, regulates transmission prices and services. We agree and have revised this section accordingly. Specifically, we now require a third statement to be included in the bill message to clarify this point. In an effort to provide billing entities with more flexibility, we have noted that the three statements about how prices are established may be displayed together in paragraph form on the bill.

Conectiv argues that in the two-bill option we were inconsistent in our requirement at § 54.4(b)(17), by directing the EDC to provide only the name of the EGS. We disagree, since we believe that requiring the same or more comprehensive information about the EGS in two parts of the bill is excessive and unnecessary.

Several commentators state that we have not provided enough guidance on the treatment of the billing items required under 52 Pa. Code § 56.15, such as the customer charge, taxes, late payment charges, reconnection fee and security deposit. We believe these billing items are basic charges and have required that they be treated as such in their placement on the customer bill.

IRRC and other commentators raise questions about the appropriateness of including definitions of basic services and nonbasic services in the requirements of § 54.4. We agree that we do not need to provide definitions of these two terms in § 54.4. We also concur with IRRC that it is not necessary for the Commission to either name or define specific nonbasic services in these regulations.

We have required that only certain charges and terms be defined in the Bill Format section. Specifically, we have required definitions for only Generation Charges, Transmission Charges, Distribution Charges, Customer Charge/Basic Charge (Charge for Basic Service at § 56.1), Advanced Metering Charges and Transition Charges in accordance with the Commission's "Common Electric Competition Terms." If an entity bills for one of these charges, they must define it.

We agree with Conectiv that the phrase "when appropriate" in § 54.4(c) is confusing. Thus, we have revised this section to state that the billing entity shall provide bills to the Commission upon request.

Section 54.5. Terms of Service for residential and small commercial customers.

Several commentators offer different suggestions for renaming this section, noting that it addresses when it is necessary and appropriate to require a written disclosure. We agree that the name of this section should reflect this purpose. Also, we note that to be consistent with the change to the definitions section, we should revise the name to incorporate small business, rather than small commercial, customers. Therefore, we have revised the title of this section to the following: "Disclosure statement—residential and small business customers."

We also agree with IRRC about the need for this section to include a requirement that the agreed upon prices in the disclosure statement reflect the marketed prices and the billed prices. Therefore, we have revised this section to incorporate that requirement.

As a general matter, IRRC and other commentators indicate that this section is overly prescriptive. While we agree that the Commission may not dictate the pricing in a competitive market, we believe that it is necessary for the regulations to require that actual prices be disclosed to consumers. Our experience during the implementation of pilots has shown that an offer for a percentage savings off the fully bundled rate caused a great deal of customer confusion. Some EGSs did not clearly indicate whether they were taking a percentage off just the generation charges of the EDC bill or a percentage off the total EDC bill. Since these two scenarios produce vastly different savings to the customer, we recognize the need to require that actual prices be provided in the disclosure statement.

IRRC also raises a concern about the need for plain language. We agree and note that all disclosure statements are subject to the Commission's plain language requirement. Additionally, in response to comments of IRRC, we have clarified that the regulations require disclosure statements to contain only those items that apply to a particular EGS's terms of service.

We agree with Spielvogel that EGSs should provide written disclosure statements at no charge to customers. Additionally, we accept the criticism and comments of the OAG, IRRC and others that § 54.5(a)(1) is inaccurate and confusing. We have, therefore, revised it to require the EGS to provide the disclosure statement when the customer requests that an EGS initiate service.

A number of commentators including IRRC raise questions about the relationship between the provider of last

resort and an EDC and when a written disclosure of the terms of service is appropriate. We agree with IRRC and Representative Lloyd that the provider of last resort, whether it is the EDC or not, must give written disclosure of the terms of service whenever a customer receives service from them.

PP&L suggests that we add the phrase "other sales promotions" at § 54.5(c)(5) to accommodate what EGSs offered in the pilot program. We agree and have made that change.

We also agree with the OCA that customers will need information about advanced metering from EGSs who offer a generation pricing option requiring an advanced meter. In those cases, the EGS must disclose the advanced metering charge.

We received comments from IRRC and many others for clarification of § 54.5(g) regarding the difference between termination and cancellation. Although we have now deleted that particular section, we note that the term "cancellation" is used in § 54.5(c)(7), so that the requested clarification is still necessary. While termination of service follows the procedures established by Chapter 56 of the Commission's regulations, cancellations could occur for reasons other than for non-payment of bills and could often be initiated by customers.

A number of commentators question the rationale behind allowing automatic renewals for fixed term agreements to result in another fixed term agreement. We emphasize that we have not proposed that a customer's failure to act can result in the automatic renewal of another fixed term agreement. However, our regulations do allow for a renewal clause in a fixed term agreement, provided that the renewal occurs with proper customer notice and the new agreement is open-ended.

Enron comments that § 54.5(b)(10) improperly imposes an obligation on the EGS to notify customers when their provider of last resort changes. We agree and have revised the regulation, at § 54.5(h), to place this responsibility on the new provider of last resort.

PECO claims that the 3-day right of rescission is not necessary in view of other requirements. We believe three business days for a right of rescission is adequate and consistent with applicable consumer protections that the OAG points out at section 201-7 of the Unfair Trade Practices and Consumer Protection Law, 73 P. S. §§ 201.1—201-9.2. We also agree that the rescission period does not begin until the customer receives the written disclosure.

The OCA states we should inform the customer of acceptable methods to exercise the 3-day right of rescission. We agree. The acceptable means for exercising the right to cancel includes orally, in writing or electronically. We also agree with the OAG that there should be a prohibition against waivers of the right to a 3-day right of rescission. Both of these revisions have been incorporated in the regulations.

Conectiv comments that the complaint handling language appearing in this section is duplicative. We agree that this matter is fully addressed in these regulations at § 54.9, and therefore, we have deleted the complaint handling language from this section.

Most commentators, including the OAG and the OCA, support the regulations at § 54.5(e), relating to disclosure of energy sources, but ask for changes to improve clarity and verifiability. As a result of these comments, we have deleted § 54.5(e) and have moved these requirements to § 54.6.

As noted by some of the comments, the definitions section at § 54.5(f) needs to be consistent with the definitions in the bill format section. The EGS should define only Generation Charges, Transmission Charges (if applicable) and each nonbasic service that the customer has agreed to purchase. The definitions must appear in a distinctly separate section of the disclosure statement, as described in the revised § 54.5(e).

IRRC asks that we clarify our intent at § 54.5(i). Several commentators state that the responsibility to notify a customer of proposed changes in the terms of service or of an impending expiration of service rests with the EGS. Since we do not intend to shift the cost of the notices to the EDCs, we agree that the burden for the notices rests with the EGS. We have provided, however, at § 54.5(g) that the EGS should be permitted to include the messages in bills or in a separate mailing. Further, we note that if the customer has chosen a single-bill option, and the EDC is willing to provide the notice for the EGS, the EDC may charge the EGS a fee for providing notice on the bill.

Several comments suggest that we state "last three bills" in the notices at § 54.5(i). We agree and have made that revision at § 54.5(g).

Many commentators point out that § 54.5(i) needs to be revised to require an explanation of the customer's options. We agree that some clarification of these options, as now referenced in 54.5(g), is necessary. For that purpose, the following describes the possible outcomes for customers when they receive a notice for expiration of the consumer contract or for changes in the terms of service. When the notice is for an expiration of the contract, outcomes include:

- the customer continues to receive service with the current EGS under an open-ended agreement;
- the customer chooses another EGS; or
- the contract expires and the customer does not choose another EGS and receives service from the provider of last resort.

When the notice is for a change in the terms of service, outcomes include:

- the customer agrees to the new terms of service regardless of whether the agreement is fixed or open-ended; or
- the customer does not accept the changes to the terms of service. If the customer does not accept the new terms of service, the customer must choose another EGS or service will default to the provider of last resort.

Section 54.6. Energy use and efficiency information.

Many commentators express support for these regulations, but IRRC and the EDCs question the need for them. In view of the latter concerns, we have re-focused this section to address consumer requests for information about generation supply. To implement this change, we have determined that it is necessary to use the collective term "electricity providers" to refer to EDCs, electricity suppliers, brokers, marketers and aggregators and any third party acting on behalf of these entities. Additionally, to provide the requested clarification in distinguishing between customers and potential customers in the market, we refer to the term "consumers" to include both for this requirement. Also, we note that we have added definitions for electricity providers and consumers in these regulations.

Concerning generation supply, we accept the comments of IRRC and others that the need for requiring automatic disclosure of energy sources in the agreement may be overly prescriptive. We believe that disclosure would be useful to customers, however, when suppliers advertise their electricity as renewable and when customers request energy source information. Therefore, we have imposed an obligation on EGSs to respond to reasonable requests made by consumers for information concerning generation sources.

IRRC requests that we examine various options for verifying the accuracy of suppliers' claims and to explain what steps we will take to insure the accuracy of energy source information when it is provided. In response, we refer to the FTC "Green Guides," our February 5, 1998 Memorandum of Understanding with the OAG, our authority to consider performance factor criteria in EDC rate cases, and our proposed licensing regulations at § 54.39(b).

Additionally, in response to comments by IRRC indicating the need to clarify these regulations, we have made several revisions. In particular, we have revised our regulations at § 54.6(b) to explain how the verification process will work. Also, we have imposed specific requirements at § 54.6(c) that are applicable to claims of EGSs that their generation has certain special characteristics. Further, we have made revisions to address the OAG's concerns about the marketing of "green" and "environmentally friendly" energy sources. In particular, at § 54.6(f), we have endorsed specific principles outlined by the FTC "Green Guides" relating to the use of general, unsubstantiated and unqualified claims of environmental benefits.

We find GPU's allegation to be unfounded concerning a competitive disadvantage to the EDC if renewables suppliers are not required to sell into the transmission grid. Electricity from renewable generation sources has been typically more costly to produce than from traditional energy sources because of capital costs. The proposed rules and regulations at §§ 54.121 and 54.122 concerning competitive safeguards are sufficient to address GPU's concerns.

In addition, we accept commentators' concerns about clarity in general concerning load profile as originally addressed in § 54.9(d) and we have relocated these requirements to § 54.6, with the exception of the privacy component. Most EDCs believe that the term load profile should be changed to "historical billing data" because that information is readily available for supply scheduling purposes and we agree. Spielvogel and IRRC recommend that we identify the data for this purpose, and we have done so at § 54.2.

IRRC asks that we explain the need for historical billing data by consumers. It is important that customers receive historical billing data to enable them to receive price and service offers. EDCs will provide EGSs with this information for scheduling transmission and supply services. Therefore, pricing and service options which are offered to customers are largely dependent upon their historical usage data, and customers need this data in order to shop. To enable residential and small business consumers to compare prices and services that are available in the competitive generation market, it is necessary to require EDCs to provide them with historical billing data.

Section 54.7. Supplier disclosure for pricing.

Although several commentators' support the concept of having this type of information available at the marketing stage, most commentators criticize the specific approach proposed by the regulations. In particular, IRRC and Enron note concerns over the availability to EGSs of all of the required information. We agree and have deleted this section. We note, however, that we have adopted the OAG's recommended approach for the disclosure of this information, by addressing it in the Marketing/Sales Activities section (which was previously set forth in § 54.8, but is now included in the new § 54.7).

Section 54.8. Marketing/sales activities.

As noted above, this subject is now addressed in § 54.7 of the final regulations. We agree with IRRC that a requirement should be added so advertised prices reflect the prices in the disclosure statement and the bill. We have included that requirement in § 54.7(a).

Comments submitted by the OCA and the OAG support a uniform price mechanism for comparison. We agree that generally, marketing information should enable consumers to compare prices on a uniform basis. Therefore, we have revised the regulations to require the inclusion of average unit price information in marketing materials that offer terms of services for acceptance by consumers. We believe that this requirement will ensure that customers receive the price information that they want and need in order to effectively shop for generation supply. Since radio and television advertisements are typically shorter and include less detail, we do not expect the same level of disclosure to be provided. While we agree with the OCA that it would be helpful for these advertisements to indicate how consumers can acquire more detailed information, we have not imposed this requirement due to the concern that it would unnecessarily increase the costs of the advertisements.

Commentators strongly oppose the submission of marketing plans as proposed by § 54.8(b). We accept that position and note that we do not intend to review or approve marketing plans. Further, we will not routinely request marketing materials. If, however, we are investigating some impropriety or if the information is necessary to resolve a complaint, we may request copies of certain advertising materials disseminated to consumers.

In accordance with the act, any confidential, proprietary or trade secret information that we collect during that process will not be disclosed to any person not directly employed or retained by the Commission without the consent of the party providing the information. Nevertheless, we note that under the act, we may disclose such information to the OCA and OSBA under an appropriate confidentiality agreement. Similarly, if a disclosure of the information is necessary to prevent or restrain a violation of Federal of State law, we are permitted to disclose it, after providing reasonable notice and opportunity to prevent or limit the disclosure. See 66 Pa.C.S. § 2811(c)(2) and (3). Moreover, as a general matter, when a provider designates certain materials as proprietary, we will follow our normal operating procedures to address any requests for the release of this information.

Section 2811(a) of the act provides the Commission with the authority to monitor the market for the supply and distribution of electricity to retail customers and to take steps as set forth in § 2811 to prevent anticompetitive or discriminatory conduct and the unlawful exercise of market power. Further, a Memorandum of Understanding executed on February 5, 1998 between the Pennsylvania Office of Attorney General and the Commission was developed to distinguish the roles of each agency when

unfair or deceptive marketing practices, terms of service disputes, or other anticompetitive or discriminatory conduct is alleged.

Section 54.9. Privacy of customer information.

This subject is now addressed in § 54.8. In response to comments from IRRC, Representative Lloyd and others pointing out that § 54.9(a) was confusing, we have clarified this section.

Most commentators support customer control of information release. Spielvogel and Constellation believe that customer permission should be valid until revoked, so as not to require new customer permission for each EGS, and we agree.

Several comments note that customers should have as many options as possible for restricting the release of private information. We agree and have added "electronically" as another means which customers may utilize for this purpose. Further, our revisions to this section should facilitate communications between EGSs and customers.

Section 54.10. Complaint handling process.

This subject is now addressed in § 54.9. PP&L offers a revision to clarify our intent with respect to the situation in which a customer contacts the wrong entity to register a complaint. We accept PP&L's language and have so revised the regulations.

Conclusion

Accordingly, under 66 Pa.C.S. §§ 501, 504—506, 1301, 1501 and 2807, and the Commonwealth Documents Law, 45 P. S. §§ 1201, et. seq., and the regulations promulgated thereunder at 1 Pa. Code §§ 7.1—7.4, we adopt the final rulemaking order to establish regulations to ensure that consumers receive adequate and accurate customer information in a clear and understandable format that enables them to compare prices and services on a uniform basis, as set forth in Annex A; *Therefore*,

It is ordered that:

1. The regulations of the Commission, 52 Pa. Code Chapter 54 are amended by adding §§ 54.1—54.9 to read as set forth in Annex A.

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 the fiscal impact.

4. The Secretary shall submit this order and Annex A for formal review by the designated standing committees of both houses of the General Assembly, and for formal review and approval by IRRC.

5. The Secretary shall deposit the original certified order and Annex A with the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.

6. A copy of this order and Annex A shall be served upon all persons who submitted comments in this rulemaking proceeding.

7. The regulations adopted with this order are effective upon publication in the *Pennsylvania Bulletin*.

8. Electricity providers are directed to adhere to the Commission's Policy Statement on Plain Language Guidelines in § 69.251 in all written communications with consumers.

9. For purposes of the applicability of provisions of this final order, providers of last resort are viewed as electric generation suppliers.

10. This final order regarding customer information regulations supersedes the previous orders, but still has effect as interim guidelines. Consequently, each EGS shall bring its consumer contracts into compliance with this order and submit the updated contracts to the Commission by September 8, 1998, for review and approval.

JAMES J. MCNULTY,
Secretary

(*Editor's Note*: The proposal to add § 54.10, included in the proposed rulemaking at 28 Pa.B. 501, has been withdrawn by the Commission.)

(*Editor's Note*: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 28 Pa.B. 3338 (July 11, 1998).)

Fiscal Note: Fiscal Note 57-187 remains valid for the final adoption of the subject regulation.

Annex A

TITLE 52. PUBLIC UTILITIES

PART I. PUBLIC UTILITY COMMISSION

Subpart C. FIXED SERVICE UTILITIES

CHAPTER 54. ELECTRICITY GENERATION CUSTOMER CHOICE

Subchapter A. CUSTOMER INFORMATION

Sec.

§ 54.1. Purpose.

(a) The purpose of this subchapter is to require that electricity providers enable customers to make informed choices regarding the purchase of electricity services offered by providing adequate and accurate customer information. Information shall be provided to customers in an understandable format that enables customers to compare prices and services on a uniform basis.

(b) As to the scope of this subchapter, this section and §§ 54.2—54.3 apply to all customers, including large commercial and industrial customers. Sections 54.4—54.9 apply only to residential and small business customers, as the term is defined in § 54.2 (relating to definitions).

§ 54.2. Definitions.

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

Aggregator or *market aggregator*—An entity, licensed by the Commission, that purchases electric energy and takes title to electric energy as an intermediary for sale to retail customers.

Basic services—Services necessary for the physical delivery of electricity service, including generation, transmission and distribution. Transition charges, although temporary in scope, are basic service charges (See the definition of transition charges in this section).

Broker or *marketer*—An entity, licensed by the Commission, that acts as an agent or intermediary in the sale and purchase of electric energy but does not take title to electric energy.

CTC—Competitive Transition Charge—A nonbypassable charge applied to the bill of every customer accessing the transmission or distribution network which (charge) is designed to recover an electric utility's transition or stranded costs as determined by the Commission in sections 2804 and 2808 of the code (relating to standards for restructuring of electric industry; and competitive transition charge).

Code—The Public Utility Code, 66 Pa.C.S. §§ 101—3316.

Consumer—A retail electric customer or potential customer of retail electricity service.

Consumer contract—The written disclosure statement of the terms of service between a customer and an EGS which satisfies the definition of consumer contract in section 3 of the Plain Language Consumer Contract Act (73 P. S. § 2203).

Customer—A retail electric customer.

Customer information—Written, oral or electronic communications used by electricity providers to communicate to consumers prices and terms of service.

Distribution charges—Basic service charges for delivering electricity over a distribution system to the home or business from the transmission system. These charges include basic service under § 56.15(4) (relating to billing information) and universal service, as applicable.

EDC—Electric Distribution Company—The public utility providing facilities for the jurisdictional transmission and distribution of electricity to retail customers, except building or facility owners or 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.

EGS—Electric Generation Supplier or *Supplier*—

(i) A person or corporation, including a municipal corporation, which provides service outside its municipal limits except to the extent provided prior to the effective date of this chapter. (*Editor's Note*: The reference to "this chapter" refers to the code.) This includes brokers and 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.

(ii) The term excludes building or facility owner/operators that manage the internal distribution system for the building or facility and that supply electric power and other related power services to occupants of the building or facility.

(iii) The term also excludes electric cooperative corporations except as provided in 15 Pa.C.S. Chapter 74 (relating to generation choice for customers of electric cooperatives).

Electricity providers—The term refers collectively to the EDC, EGS, electricity supplier, marketer, aggregator or broker, as well as any third party acting on behalf of these entities.

Generation charges—Basic service charges for generation supply to retail customers. This excludes charges for transmission or other charges related to electric service.

Historical billing data—The minimum of 13 months of data as recorded by the EDC, which contains dollar amount billed. This data is kWh consumption on-peak and off-peak or at some other prescribed interval of consumption and associated cost and, if applicable, at demand levels at the intervals recorded and associated costs of those demand levels.

ITC—Intangible Transition Charge—Charges authorized by the Commission to be imposed on all customer bills and collected, through a nonbypassable mechanism by the electric utility or its successor or by any other entity which provides electric service to a person that was a customer of an electric utility located within the certificated territory of the electric utility on January 1, 1997, or that, after January 1, 1997, became a customer of electric services within the territory and is still located within the territory, to recover qualified transition expenses pursuant to a qualified rate order, in a manner that does not shift interclass or intraclass costs and maintains consistency with the allocation methodology for utility production plant accepted by the Commission in the electric utility's most recent base rate proceeding.

Marketer or *Broker*—An entity, licensed by the Commission, that acts as an agent or intermediary in the sale and purchase of electric energy and does not take title to the electric energy.

Nonbasic services—Optional recurring services which are distinctly separate and clearly not required for the physical delivery of electric service.

Renewable resource—The term includes technologies such as solar photovoltaic energy, solar thermal energy, wind power, low-head hydropower, geothermal energy, landfill or other biomass-based methane gas, mine-based methane gas, energy from waste and sustainable biomass energy.

Small business customer—The term refers to a person, sole proprietorship, partnership, corporation, association or other business entity that receives electric service under a small commercial, small industrial or small business rate classification, and whose maximum registered peak load was less than 25 kW within the last 12 months.

Transition charges—Basic service charges for costs defined as transition or stranded costs, comprised of a CTC and an ITC, designed to recover an EDC's transition or stranded costs as authorized by the Commission.

Transition or stranded costs—An electric utility's known and measurable net electric generation-related costs, determined on a net present value basis over the life of the asset or liability as part of its restructuring plan, which traditionally would be recoverable under a regulated environment but which may not be recoverable in a competitive electric generation market and which the Commission determines will remain following mitigation by the electric utility. The term includes those items enumerated in the definition of "transition or stranded costs," in section 2803 of the code (relating to definitions).

Transmission charges—Basic service charges for the cost of transporting electricity over high voltage wires from the generator to the distribution system of an EDC.

§ 54.3 Standards and pricing practices for retail electricity service.

In furnishing retail electricity service, EDCs and EGSs or any entity that otherwise provides retail electricity service information to customers, shall comply with the following:

(1) Use common and consistent terminology in customer communications, including marketing, billing and disclosure statements.

(i) Use the term EDC as described in § 54.2 (relating to definitions) as a standard term.

(ii) Use the terms as defined in the Commission's "Consumer's Dictionary for Electric Competition" (Dictionary), maintained on file in the Commission's Office of Communications. EDCs shall provide this dictionary upon customer request. The "Common Electric Competition Terms" as described in subparagraph (iii) shall indicate the phone number and address to request the dictionary.

(iii) EDCs shall distribute the "Common Electric Competition Terms," as part of its consumer education program.

§ 54.4. Bill format for residential and small business customers.

(a) EGS prices billed shall reflect the marketed prices and the agreed upon prices in the disclosure statement.

(b) The following requirements apply only to the extent to which an entity has responsibility for billing customers, to the extent that the charges are applicable. The provider of last resort will be considered to be an EGS for the purposes of this section. Duplication of billing for the same or identical charges by both the EDC and EGS is not permitted.

(1) EDC charges shall appear separately from EGS charges.

(2) Charges for basic services shall appear before charges for nonbasic services, and appear distinctly separate.

(3) Customer bills shall contain the following charges, if these charges are applicable, and these charges shall appear in a distinct section of the bill. The designation or label of each charge as either a basic charge or nonbasic charge appears in parenthesis following the name of the charge. This label of either basic or nonbasic is not required to accompany the name of the charge on the bill.

(i) Generation charges (basic).

(A) Generation charges shall be presented in a standard pricing unit for electricity in actual dollars or cents per kWh, actual average dollars or cents per kWh, kW or other Commission-approved standard pricing unit.

(B) Generation charges shall appear first among the basic charges with one exception. EDCs may place the customer charge first among the basic charges.

(ii) Transmission charges (basic).

(iii) Distribution charges (basic).

(iv) Customer charge or basic charge (charge for basic service in § 56.15 (relating to billing information)) (basic).

(v) Advanced metering charges (basic).

(vi) Transition charges (basic).

(vii) Taxes (Shall comply with § 56.15) (basic).

(viii) Late payment charges (basic).

(ix) Security deposit (basic).

(x) Reconnection fee (basic).

(xi) Itemization of nonbasic charges (nonbasic).

(xii) Overall billing total.

(4) The entity reading the meter for billing purposes shall provide the following electricity use data figures:

(i) The total annual electricity use for the past 12 months in kWh, including the current billing cycle. This is a single cumulative number.

(ii) The average monthly electricity use for the past 12 months in kWh, including the current billing cycle. This is a single cumulative number.

(5) The requirements of § 56.15 shall be incorporated in customer bills to the extent that they apply.

(6) Definitions for the following charges and terms are required in a customer's bill, if they appear as billing items, as contained in "Common Electric Competition Terms" and shall be in a distinctly separate section of the bill:

(i) Generation charges.

(ii) Transmission charges.

(iii) Distribution charges.

(iv) Customer charge/basic charge (Charge for basic service in § 56.15).

(v) Advanced metering, if applicable.

(vi) Transition charges.

(7) "General Information" is the required title for customer contact information in a customer's bill.

(i) The name, address and telephone number for the EGS and EDC shall be included.

(ii) Both EDC and EGS information in subparagraph (i) is required on all customer bills with the billing entity's information first.

(8) When a customer chooses the option to receive a separate bill for generation supply, the EDC shall include in a customer's bill the following information where the EGS charges would normally appear:

(i) The EGS's name.

(ii) A statement that the customer's EGS is responsible for the billing of EGS charges.

(9) When a customer chooses the option to receive a single bill from the EDC, the EDC shall include in the customer's bill the name of the EGS where the EGS charges appear.

(10) For customers who have chosen electric generation services from a competitive supplier, the customer's bill shall include the following statements which may appear together in a paragraph:

(i) "Generation prices and charges are set by the electric generation supplier you have chosen."

(ii) "The Public Utility Commission regulates distribution prices and services."

(iii) "The Federal Energy Regulatory Commission regulates transmission prices and services."

(c) The billing entity shall provide samples of customer bills to the Commission for review.

§ 54.5. Disclosure statement for residential and small business customers.

(a) The agreed upon prices in the disclosure statement shall reflect the marketed prices and the billed prices.

(b) The EGS shall provide the customer written disclosure of the terms of service at no charge whenever:

(1) The customer requests that an EGS initiate service.

(2) The EGS proposes to change the terms of service.

(3) Service commences from a provider of last resort.

(c) The contract's terms of service shall be disclosed, including the following terms and conditions, if applicable:

(1) Generation charges shall be disclosed according to the actual prices.

(2) The variable pricing statement, if applicable, shall include:

(i) Conditions of variability (state on what basis prices will vary).

(ii) Limits on price variability.

(3) An itemization of basic and nonbasic charges distinctly separate and clearly labeled.

(4) The length of the agreement, which includes:

(i) The starting date.

(ii) The expiration date, if applicable.

(5) An explanation of sign-up bonuses, add-ons, limited time offers, other sales promotions and exclusions, if applicable.

(6) An explanation of prices, terms and conditions for special services, including advanced metering deployment, if applicable.

(7) The cancellation provisions, if applicable.

(8) The renewal provisions, if applicable.

(9) The name and telephone number of the provider of last resort.

(10) An explanation of penalties, fees or exceptions, printed in type size larger than the type size appearing in the terms of service.

(11) Customer contact information that includes the name of the EDC and EGS, and the EGS's address, telephone number, Commission license number and Internet address, if available. The EGS's information shall appear first and be prominent.

(12) A statement that directs a customer to the Commission if the customer is not satisfied after discussing the terms of service with the EGS.

(13) The name and telephone number for universal service program information.

(d) Customers shall be provided a 3-day right of rescision period following receipt of the disclosure statement.

(1) The 3-day right of rescission is 3 business days.

(2) The 3-day right of rescission begins when the customer receives the written disclosure.

(3) The customer may cancel in writing, orally or electronically, if available.

(4) Waivers of the 3-day right of rescision are not permitted.

(e) Definitions for generation charges and transmission charges, if applicable, are required and shall be defined in accordance with the "Common Electric Competition Terms." Definitions for each of the nonbasic services, if applicable, are required. The definition section of the bill shall be distinctly separate.

(f) The EGS shall include in the customer's disclosure statement the following statements which may appear together in a paragraph:

(1) "Generation prices and charges are set by the electric generation supplier you have chosen."

(2) "The Public Utility Commission regulates distribution prices and services."

(3) "The Federal Energy Regulatory Commission regulates transmission prices and services."

(g) Disclosure statements shall include the following customer notification:

(1) "If you have a fixed term agreement with us and it is approaching the expiration date or whenever we propose to change our terms of service in any type of agreement, you will receive written notification from us in each of our last three bills for supply charges or in corresponding separate mailings that precede either the expiration date or the effective date of the proposed changes. We will explain your options to you in these three advance notifications."

(h) If the provider of last resort changes, the new provider of last resort shall notify customers of that change, and shall provide customers with their name, address, telephone number and Internet address, if available.

§ 54.6. Request for information about generation supply.

(a) EGSs shall respond to reasonable requests made by consumers for information concerning generation energy sources.

(1) EGSs shall respond by informing consumers that this information is included in the annual licensing report and that this report exists at the Commission. Providers shall explain that the report is available to them and shall offer to provide it, if requested.

(2) The provider of last resort shall file at the Commission the annual licensing report as required by the Commission's licensing regulations in this chapter and otherwise comply with paragraph (1).

(3) EGSs operating for less than 1 year may respond to customer inquiries about generation energy sources by furnishing the information as described in subsection (b).

(b) Verification of the anticipated generation energy source, of the identifiable resources (if and when they have been "claimed") and the fact that energy characteristics were not sold more than once, shall be conducted by an independent auditor at the end of each calendar year and contained in the annual report to the Commission, relating to information disclosure requirements in subsection (a) and the licensing regulations in this chapter.

(c) Whenever EGSs market their generation as having special characteristics, such as "produced in Pennsylvania" or "environmentally friendly" and the like, providers shall have available information to substantiate their claims.

(1) Disclosure of generation energy sources shall be identifiable, which is defined as electricity transactions which are traceable to specific generation sources by any auditable contract trail or equivalent, such as a tradable commodity system, that provides verification that the electricity source claimed has been sold only once to a retail customer. If generation energy sources are not identifiable, the provider shall disclose this fact.

(d) Electricity providers, whether they make distinguishing claims or not, shall include in their general communications with consumers that electricity is the product of a mix of generation energy sources, that is delivered over a system of wires.

(e) Electricity providers shall respond to reasonable consumer requests for energy efficiency information, by indicating that these materials are available upon request from the Commission or the EDC.

(f) The use of general, unsubstantiated and unqualified claims of environmental benefits, such as "green" and "environmentally friendly," is prohibited. The Commission supports the application of the Federal Trade Commission's (FTC) Guides for the Use of Environmental Marketing Claims (see 16 CFR §§ 260.1—260.8 (relating to guides for the use of environmental marketing claims)), in the enforcement of this section and the following specific principles:

(1) Section 260.6(a) (relating to general principles) which states that qualifications or disclosure should be clear, prominent, and of relative type size and proximity to the claim being qualified. In addition, contrary assertions which undercut the qualifications should not appear.

(2) Section 260.6(c) which states that environmental claims should not overstate the environmental attribute or benefit, expressly or by implication.

(3) Section 260.6(d) which suggests that marketing materials which make comparative claims should clearly state the basis for the comparison, be able to be substantiated, and be accurate at the time they are made.

(4) Section 260.7(a) (relating to environmental marketing claims) which labels unqualified claims of environmental benefit as deceptive.

(5) Section 260.7(f) which addresses claims regarding source reduction, such as reduced toxicity or reductions of other environmentally negative effects.

(g) Residential and small business customers are entitled to receive at no charge and at least once a year, historical billing data from whomever reads the meter for billing purposes.

(1) The EDC is only obligated to provide information that is readily available in its billing system.

(2) The historical billing data shall be conveyed in terms of kWh, and kW, as applicable, and associated charges for the current billing period and for the year preceding the current billing period.

(3) The historical billing data will be updated with each billing cycle.

(h) Electricity providers shall notify consumers either in advertising materials, disclosure statements or bills that information on generation energy sources, energy efficiency, environmental impacts or historical billing data is available upon request.

§ 54.7. Marketing/sales activities.

(a) Advertised prices shall reflect prices in disclosure statements and billed prices.

(b) Marketing materials that offer terms of service for acceptance by consumers shall include prices, as follows:

(1) If using a fixed price, the EGS shall show in a table the price per kWh for an average customer using 500, 1,000 or 2,000 kWh of electricity.

(2) If using a variable price mechanism, the EGS shall factor in all costs associated with the rate charged to the customer, and show the average price per kWh for usages of 500, 1,000 and 2,000 kWh of electricity in a table format.

(3) The EGS shall note the effective date of the prices shown in the table provided under paragraph (1) or (2).

(c) Advertising materials targeted for residential and small business sales shall be made available upon request of the Commission in the event of a formal or informal complaint or investigation.

§ 54.8. Privacy of customer information.

(a) An EDC or EGS may not release private customer information to a third party unless the customer has been notified of the intent and has been given a convenient method of notifying the entity of the customer's desire to restrict the release of the private information. Specifically, a customer may restrict the release of either the following:

(1) The customer's telephone number.

(2) The customer's historical billing data.

(b) Customers shall be permitted to restrict information as specified in subsection (a) by returning a signed form, orally or electronically.

(c) Nothing in this section prohibits the EGS and EDC from performing their mandatory obligations to provide electricity service as specified in the disclosure statement and in the code.

§ 54.9. Complaint handling process.

EDCs and EGSs shall disclose to consumers the following with respect to the rights of consumers in the handling and resolution of complaints:

(1) Residential and small business customers shall directly contact the party responsible for the service in question as an initial step for complaint and problem resolution. If the customer mistakenly contacts the wrong entity, the customer shall be promptly referred to the appropriate contact. In the event of a power outage, the customer shall be directed to the EDC.

(2) Complaints that pertain to Chapter 56 (relating to standards and billing practices for residential utility service) matters shall be handled and resolved in accordance with the applicable standards in Chapter 56.

(3) EDCs and EGSs shall give the Commission access to disclosure statements, billing and other customer information resources for compliance reviews as deemed necessary by the Commission. When complaints arise and are brought before the Commission for resolution, the obligation of the EGS shall be extended to the provision of pricing information.

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[52 PA. CODE CH. 54]

[L-970130]

Reporting Requirements for Universal Service and Energy Conservation Programs

The Pennsylvania Public Utility Commission (Commission) on April 30, 1998, adopted a final rulemaking to establish standard reporting requirements for universal service and energy conservation programs. The data collected as a result of the reporting requirements will assist the Commission in monitoring the progress of the electric distribution companies (EDC) in achieving universal service in its service territory. The contact persons are Kathryn G. Sophy, Law Bureau (717) 772-8839 and Janice Hummel, Bureau of Consumer Services (717) 783-9088.

Executive Summary

On December 3, 1996, Governor Tom Ridge signed into law 66 Pa.C.S. §§ 2801—2812 (relating to Electricity Generation Customer Choice and Competition Act) (act). The act revised 66 Pa.C.S. (relating to Public Utility Code), by inter alia, adding Chapter 28 (relating to restructuring of the electric utility industry). The act is clear in its intent that electric distribution companies (EDCs) are to continue, at a minimum, the protections, policies and services that now assist customers who are low-income to afford electric service. Section 2804(9) of the act requires the Commission to ensure that universal service and energy conservation policies, activities and services are appropriately funded and available in each electric distribution territory.

The purpose of this rulemaking is to establish standard reporting requirements for universal service and energy conservation programs. The data collected as a result of the reporting requirements will assist the Commission in ensuring that universal service is available and appropriately funded as required by the act.

The regulations establish that the EDCs will report the following information to the Commission: 1) Annual reports on residential low-income collections and universal service and energy conservation programs; 2) Plans every 3 years for universal service and energy conservation programs; 3) Every 6 years an independent third-party evaluation that measures the degree that an EDC's universal service and energy conservation programs are working to provide affordable utility service at reasonable rates.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. §§ 745.5(a)), on January 16, 1998, the Commission submitted a copy of the final rulemaking, which was published as proposed at 28 Pa.B. 518 (January 31, 1998) 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 for review and comment. Under section 5(c) of the Regulatory Review Act, 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.

Under section 5.1(d) of the Regulatory Review Act (71 P. S. § 745.5a(d)), these final-form regulations were deemed approved by the House and Senate Committees on June 8, 1998, and were approved by IRRC on June 18, 1998, in accordance with section 5.1(e) of the Regulatory Review Act.

Public Meeting held
April 30, 1998

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

Final Rulemaking Order

By the Commission:

At public meeting of December 4, 1997, the Commission issued an order adopting and directing publication of proposed regulations to establish reporting requirements for universal service and energy conservation programs.

On December 3, 1996, Governor Tom Ridge signed into law the act. The act is clear in its intent that the EDCs are to continue, at a minimum, the protections, policies and services that now assist customers who are low-income to afford electric service. Section 2804(9) of the act (relating to standards for restructuring of electric industry) requires the Commission to ensure that universal service and energy conservation policies, activities and services are appropriately funded and available in each electric distribution territory.

On July 10, 1997, the Commission issued a final order that established Guidelines for Universal Service and Energy Conservation Programs (Guidelines). As part of that order, the Commission issued temporary reporting requirements until we developed formal regulations through our normal rulemaking process. By order adopted December 4, 1997, and entered on December 10, 1997, at Docket No. L-00970130, we initiated a proposed rulemaking to establish reporting requirements for universal service and energy conservation programs, Chapter 54 (relating to universal service and energy conservation reporting). The purpose of this rulemaking is to establish standard reporting requirements for universal service and energy conservation programs. The data collected as a result of the reporting requirements will assist the Commission in ensuring that universal service is available and appropriately funded in each EDC's service territory. The reporting requirements will also ensure that the data is reported uniformly and consistently.

On January 7, 1998, the Office of Attorney General issued its approval of the proposed regulations as to form and legality. On January 16, 1998, the Commission delivered copies of the proposed rulemaking to the Chairperson of the House Committee on Consumer Affairs, the Chairperson of the Senate Committee on Consumer Protection and Professional Licensure, the Independent Regulatory Review Commission (IRRC) and to the Legislative Reference Bureau. The proposed rulemaking was published for comment in the *Pennsylvania Bulletin*, at 28 Pa.B. 518 for a 45-day comment period that ended March 17, 1998. The Commission also posted the order on the Commission's Internet website.

We also received written comments from the following parties; Roger Colton, Fisher, Sheehan and Colton (FSC); Duquesne Light Company (Duquesne); The Environmentalists; Equitable Gas Company (Equitable); GPU Energy; the Independent Regulatory Review Commission (IRRC); the Office of Consumer Advocate (OCA); the Office of Trial Staff (OTS); PP&L, Inc. (PP&L); PECO Energy; Pennsylvania Electric Association (PEA), on behalf of its member companies; Pennsylvania Gas Association (PGA); and UGI Utilities, Inc.—Electric Division (UGI-Electric).

We have considered all these comments. We appreciate and thank the commentators for suggestions to improve the proposed reporting requirements.

We have identified certain issues that were common to a number of the comments and will address them in a combined fashion. We begin by addressing the comments to specific sections. We address other non-section specific comments after our response to the specific section-by-section comments.

§ 54.71. Statement of purpose and policy.

PEA suggested the statement of purpose is not accurate. Section 2806(e) of the act requires each EDC to submit a universal service plan as part of its restructuring plan. Under the provisions of section 2806(f) of the act the Commission will have reviewed the plans, held

hearings and issued an order that establishes each EDC's universal service component of the restructuring plans. Therefore, PEA stated the reports are not necessary to determine each EDC's progress in achieving universal service but are necessary to determine each EDC's compliance with their universal service plan. PP&L, UGI and Duquesne supported PEA's position that the reports are necessary to determine each EDC's compliance with their universal service plan. PP&L commented that if the Commission's intent is to define universal service programs as providing special programs to all low-income customers, then PP&L disagrees with that broad definition.

First, we clarify that the Commission's intent is not to define universal service programs as providing special programs to all low-income customers. The Guidelines for Universal Service and Energy Conservation Programs (Guidelines) at M-00960890F0010 define eligible customers as customers whose household income is at or below 150% of the Federal poverty guidelines and who meet other nonincome criteria. Those nonincome criteria are defined for each universal service program component.

We agree with PEA's comments that the data submitted in the reporting requirements will assist the Commission in determining if each EDC is complying with its approved plan. However, we believe that a review of the collection and program data is also necessary to assist the Commission in ensuring that universal service is appropriately funded and available in each EDCs service territory, as required by the act. Section 2804(15) of the act states, "At the time each utility files its restructuring plan with the Commission, the utility shall submit an *initial* plan that sets forth how it shall meet its universal service and energy conservation obligations." (emphasis added) By including the term "initial," we believe the act envisioned that each EDC would file subsequent universal service plans. The number of low-income residential customers who are or may become payment troubled is not static. In order for universal service programs to be appropriately funded and available, EDCs and the Commission will need to continue to evaluate the relationship between need and program services. The Commission determined in the PECO restructuring order at R-00973953 that the Commission will not set an arbitrary limit on the number of customers who participate in universal service. The Commission will determine annually a schedule for achieving an appropriate level of participation. The universal service reports will be an important tool to assist the Commission in determining an appropriate level of participation.

IRRC commented that the last three sentences in this section contain extraneous information and duplicate other requirements. IRRC recommended that the Commission delete these sentences. We accept IRRC's recommendation.

FSC commented that the purpose "seems to indicate that the universal service programs will be reviewed in some performance-based context." However, the reporting requirements measure activities and output. FSC recommended that the Commission evaluate universal service using performance-based criteria. Duquesne also commented that the Commission should measure an EDC's universal service performance rather than count activities. FSC included with its comments a document titled *Performance-Based Evaluation of Maintaining Universal Service in a Competitive Utility Industry (1998).* The document provided a framework for the Commission to use to measure the performance results of universal service programs. The framework included five separate measurements to assess the performance over time of universal service policies. The document relied on the performance measurement concept designed in the Government Performance and Results Act of 1993.

We believe the regulations will provide most of the data FSC recommends using to measure performance. We agree that measuring performance is superior to measuring activities. The framework proposed by FSC appears to provide a workable approach, and we will consider this framework as we develop tools to measure performance. The framework does not measure utilities against each other but instead measures their performance against a base period.

OCA commented that the language referencing the timeline for evaluations appears to be inconsistent with § 54.74(c). We accept OCA's comments and will delete § 54.74(c).

§ 54.72. Definitions.

CARES—Duquesne commented that the Commission does not clearly define eligibility. We do not intend that EDCs use the definitions in the rulemaking for the purpose of defining eligibility. The EDCs should use the eligibility criteria for universal service programs defined in the Guidelines.

Classification of accounts—Commentators overwhelmingly disagreed with including the "nonconfirmed low-income residential accounts" in "classification of accounts." PEA commented the definition does not define two categories: confirmed low-income residential accounts and nonconfirmed low-income residential accounts. PEA stated the nonconfirmed category is not appropriate because it is too vague, unrealistic, speculative and unrelated to an EDC's compliance with its universal service plan. Equitable, PGA, PP&L and UGI all objected to this section for similar reasons to PEA. PGA argued that neither the act nor the intent of the act requires nonconfirmed low-income reporting. PGA commented that census data is unreliable for this type of reporting because different utilities (especially gas utilities in western Pennsylvania) provide service in the same counties. IRRC's comments echoed those of the other parties. Because "nonconfirmed low-income residential accounts" are not part of any established programs, IRRC questioned the value of obtaining the information.

Commentators have persuaded us to delete the nonconfirmed low-income residential category under "classification of accounts." However, we will substitute a section that requests EDCs to estimate the number of low-income households in their service territory. The EDC should base these estimates, in part, on available census data. We will also define "confirmed low-income residential accounts" as "Accounts where the EDC has obtained information that would reasonably place the customer in a low-income designation." Examples of such information are receipt of Low-Income Home Energy Assistance Program (LIHEAP) grants, income source noted as TANF or General Assistance on an application for service; or the customer's self-report of income in conjunction with establishing a payment arrangement or application for a utility low-income program.

Collection operating expenses—Duquesne commented that the definition appears to include all accounts. We will amend the definition to clarify that we are requesting data for residential accounts.

Customer Assistance Program—PEA requested the Commission to remove "that are less than current bill"

from the definition. Both IRRC and PEA pointed out that a CAP bill is not always less than a current bill, such as a CAP customer who heats with electric will have low consumption months when their actual bill may be less than the CAP bill. The definition is also inconsistent with the Commission's Guidelines at M-0096098F0010. IRRC requested that the Commission delete the last sentence or remove "affordable" and "that are less than current bill." The PGA, the Environmentalists and Equitable requested the Commission to remove "affordable" from the definition. They pointed out that the Commission's CAP Policy Statement does not use the subjective term "affordable." OCA recommended the Commission to change "alternative collection method" to "alternative billing method" to reflect that a CAP is not merely a credit and collections method. We will amend the definition to use the same language as used in the Commission's CAP Policy Statement. The CAP Policy Statement definition does not include the term "affordable" and includes the term "may be for an amount that is less than current bill." We believe using the same language as the Policy Statement addressed most of the parties' concerns.

Direct Dollars and Indirect Dollars—PEA requested the Commission delete these definitions from the regulations. PEA stated the definitions incorrectly suggest that LIHEAP, hardship fund grants and other grants are a part of a CARES program. EDCs do not have the resources to track results of referrals. PEA stated these definitions are not relevant because they do not measure an EDC's compliance with its universal service plan, and therefore, the Commission should delete them. PGA also objected to the reporting of indirect dollars. PGA commented that a customer's application for indirect benefits is "afforded confidential protection." There is no cost-effective way for a utility to track these benefits. Equitable's comments were similar to PGA's. PP&L commented that the definitions are too restrictive and recommended that the Commission substitute "low-income" for "CARES" in both definitions. For reasons similar to other commentors, IRRC also requested that the Commission delete the "indirect dollars" category.

Commentators have persuaded us to delete the reporting requirements for "indirect dollars." Several EDCs currently provide information to the Commission on "direct dollars." One of the purposes of a CARES program is to help customers pay utility bills. Direct dollars is a performance measure for the CARES program. The EDCs should report total dollars and numbers of grants received. We are not requesting EDCs to report on referrals or outcome of referrals.

EDC—We will comply with IRRC's request to add the full statutory definition of this term.

Payment rate—Duquesne suggested only full payments be used in the payment rate definition. We agree with Duquesne's suggestion and will amend the definition.

Payment troubled—IRRC questioned the use of a 2-year time period to define payment troubled. They recommended that the Commission reduce the 2-year period to a 1-year period that will allow a more reasonable period for EDCs to measure payment troubled. PEA stated the definition is not consistent with the Guidelines and requested us to use the same definition. PEA stated the Guidelines define "payment troubled" with four approaches. The Environmentalists recommended that the Commission delete this definition. Equitable objected to using this term to define non low-income customers whose lifestyle choices may cause delinquencies. PP&L commented the definition is too broad and recommended the Commission change the definition to the following: "A household that has failed to maintain two or more payment arrangements in a two-year period." OCA recommended the Commission expand the definition of "payment troubled" to include more than one type of payment troubled customer. Finally, OCA recommended the definition include one of the following situations: non-payment of any portion of a bill in the last 12 months, or extraordinary financial pressure.

We accept IRRC's recommendation to reduce the time period from 2-years to 1-year. We clarify that the definition of payment troubled for reporting requirements is to provide information on the numbers of customers who are or may be potentially eligible for universal service programs. An increase in the number of low-income customers who are payment troubled may be one indication of the need for universal service programs. The definition does not change the eligibility criteria for CAP as PEA suggests. The Guidelines define "payment troubled" as an eligibility criterion for CAP. In the Guidelines, the Commission defines "payment troubled" as a household who has failed to maintain one or more payment arrangements. The four approaches listed by PEA are four options to prioritize the enrollment of eligible customers. The four options are not additional eligibility criteria. We believe the classification of payment troubled accounts addresses Equitable's concerns. We believe that the language of "one or more" failed payment arrangements addresses PP&L's concerns. Finally, we disagree with OCA to expand the definition. We believe the expansion proposed by OCA may be burdensome for EDCs to track.

Process evaluation—IRRC and PEA pointed out that the proposed regulations make no reference to a process evaluation, therefore the Commission should delete this definition. OCA recommended that the Commission expand the definition to include the purpose of determining whether the implementation of the program satisfies participants (customers, company representatives, CBOs and other interested parties). We accept IRRC and PEA's reason to delete this definition.

Residential account in arrears—IRRC recommended that "30 days overdue" is more reasonable than "one day overdue" and requested the Commission to make that change. PEA commented that each EDC defines "residential account in arrears" differently. PEA did not object to this definition if the Commission's purpose is to use it in universal service reporting requirements only. Duquesne, Equitable, PP&L and PGA all provided various alternatives to the proposed definition.

Unfortunately, each EDC appears to define "residential account in arrears" differently. However, we feel strongly that one standard is necessary. Therefore, we will amend the definition to read "at least 30 days overdue." This revision appears more in line with current reporting practices and meets our goal of standardizing the data from the reports.

Universal Service and Energy Conservation—We will comply with IRRC's request to add the full statutory definition of this term.

Additional definitions

OCA recommended that the Commission add the following definition:

Program Benefits—CAP benefits include the average dollar and percentage reduction of bills from the expected bill for non-CAP customers. LIURP benefits include the kWh savings and bill savings stated as percentages and dollars. Hardship benefits are bill credits, cash or other

benefits. CARES benefits are social services including counseling, referrals and education, and other benefits provided by CARES programs.

We accept OCA's recommendation with minor changes. We will delete the general category of program benefits and define specific program benefits for each universal service component. The EDCs currently provide this information to the Commission. The Commission also provides information on program benefits to the Department of Public Welfare (DPW). DPW uses the total dollar amount of benefits from these programs to leverage additional Federal energy assistance dollars from the Low-Income Home Energy Assistance Program (LIHEAP).

§ 54.73. Universal service and energy conservation program goals.

IRRC recommended that for clarity the Commission replace "provide" with "establish" in § 54.73(b)(4). We will make this change.

PEA stated the Commission misplaces universal service goals in regulations addressing reporting requirements and requested the Commission to delete them. We believe the data submitted from this rulemaking is necessary for the Commission to ensure that universal service programs are available and appropriately funded as required by the act. Finally, the goals are consistent with the goals in the Guidelines.

The Environmentalists recommended that the Commission add two goals relating to energy usage and referrals. We believe that the regulations in § 54.73(b)(3) cover the Environmentalists' concerns.

§ 54.74. Universal service and energy conservation plans.

a. *Plan Submission*

IRRC commented that requiring the first plan to be due in 1999 is unreasonable and recommended a more reasonable date to begin is the year 2000. PP&L also supported the date suggested by IRRC. Also objecting to the April 1999 date, PEA and Duquesne suggested alternative dates for the first plan to be submitted. Parties suggested that a later date will allow EDCs to apply the "lessons learned" from the pilot programs and phase-in. IRRC also suggested that the Commission establish a requirement that we act on these plans in a reasonable time such as 60 days. Duquesne suggested the Commission act within 90 days. Both IRRC and PP&L also requested the Commission to change the deadline for submitting a revised plan from 30 days to 45 days to allow the EDCs to respond more effectively. Finally, IRRC recommended that the Commission break out the requirements in § 54.74(a) into separate subsections to aid the clarity of these requirements. Commentors have persuaded us to use the year 2000 timeline for the first plan submission as IRRC and PP&L suggested. We accept IRRC and PP&L's suggestion to change the deadline for submitting a revised plan from 30 days to 45 days to allow the EDCs to respond more effectively. IRRC has also persuaded us to establish a 60-day time frame for the Commission to act on the plans. Finally, we will break out the requirements in § 54.74(a).

The Environmentalists recommended that EDCs submit their plans annually instead of biennially. We reject the Environmentalists recommendation as being too burdensome. PGA commented that the Commission and utilities could better accommodate staffing issues and program considerations if utilities filed universal service plans every 4 years using a staggered schedule. The utilities could then coordinate their plans with the independent evaluations. PGA commented that every other April 1 the proposed requirements to review and approve plans would inundate the Commission and interested parties. PGA pointed out that if the Commission does not stagger the reporting timelines for plans and evaluations, there may be a shortage of independent evaluators. Because of this shortage, evaluators may charge inflated prices for their evaluations. Equitable provided reasons why a new plan may not be necessary every other year. We accept PGA's suggestion to stagger the due dates of the universal service plans, with the first plan due 2/2000. We have also reconsidered the amount of time the plans should cover. PGA suggested plans cover a 4-year time frame. Although we believe 4 years may be too long a time frame, we have reconsidered that a plan submission every 2 years may be too often. Therefore, we are changing the time-frame that plans cover from 2 to 3 years. Appendix A shows the staggered schedule.

b. *Plan Contents*

OCA recommended that the Commission add a new subsection to § 54.74. OCA proposed that this new section will require EDCs to evaluate the differences between their approved plan and the results of the implementation of that plan. The EDC should explain the reason for the differences and a plan to address those differences. OCA recommended an EDC include the following: A description of the variances in program design, participation, budget, overall benefits, average benefits, disconnections, length of disconnections, timing of service losses, Percentage of Income Payment Plans of participants and nonparticipants. With minor modifications, we accept the OCA's suggestion to add this section.

FSC proposed that five new components regarding performance measures be added to this section. We have addressed this comment at § 54.71.

IRRC, PEA and UGI requested the Commission to amend the language in § 54.74(b) to read as follows, "The components of universal service and energy conservation may include the following." Parties commented that language as proposed is inconsistent with language in the Guidelines. IRRC commented that we clarify our intent for "other program, policies and protections." We will amend § 54.74(b) so that the language is consistent with the Guidelines. During the Commission's process to develop universal service guidelines, the EDCs requested the flexibility to include new programs that we have not envisioned as part of universal service programs. "Other programs" allows them the flexibility they requested.

The Environmentalists recommended that the Commission add two additional sections relating to assessment of eligible customers and estimates of energy savings and costs. We believe that § 54.74(b)(3) and (4) addresses the Environmentalists' request to add a section regarding assessment of eligible customers. We do not believe that every program element requires energy savings, therefore, we will not incorporate the Environmentalists' request regarding justification, energy costs and savings.

c. *Cost-Effectiveness*

Several commentators, IRRC, PEA, PP&L and the Environmentalists, requested the Commission to delete this section. PEA stated that cost-effectiveness is a subjective, internal measure. A cost-benefit analysis would be costly and complex and would not measure whether or not an EDC is complying with its universal service plan. The Environmentalists suggested this section properly belongs in the evaluation section. PP&L requested the Commission to clarify the intent of this section or delete

it. OCA commented that this section is inconsistent with § 54.71. OCA recommended that an EDC conduct an independent evaluation every 4 years instead of every 6. We will delete this section and address cost-effectiveness in the evaluation section.

§ 54.75. Annual residential collection and universal service and energy conservation program reporting requirements.

PEA requested that the phrase "on its progress on achieving universal service within its service territory" be amended to "regarding each EDC's compliance with its universal service plan." Section 2804(9) of the act imposes a duty on the Commission to ensure that universal service programs are available and appropriately funded. For this reason, we will modify the language in this section to place the emphasis on the Commission's duty to ensure that universal service programs are available and appropriately funded rather than on the EDC's "progress on achieving universal service."

Duquesne commented that April 2000 is too soon to submit a report. Duquesne suggested the first report is due no earlier than April 2001. PEA recommended that the first plans be submitted in 2003. We accept Duquesne's suggestion.

Collection reporting.

§ 54.75(1)(i)

OCA commented that allowing an EDC to define "residential low-income customers" at § 54.75(1)(i) may result in a different definition than the Commission's. IRRC also found this provision confusing. Considering IRRC and OCA's comment, we are deleting this requirement. These regulations will provide a definition for a low-income residential customer.

§ 54.75(1)(ii)

Equitable commented that tracking the activities in § 54.75(1)(ii) will be labor intensive and expensive. In response to Equitable's comment, we do not expect EDCs to provide an itemized break-down of the individual collection expenses noted in the section. Our intent in listing collection activities at § 54.75(1)(ii) is to provide examples of activities that EDCs may include in reporting operating expenses.

§ 54.75(1)(iii)

The OTS commented that § 54.75(1)(iii) should include net residential write-offs as well as gross residential write-offs in order to evaluate the effectiveness of collection activities included in write-offs. IRRC supported the OTS comment. We agree and amend this section to reflect the OTS suggestion.

§ 54.75(1)(iv)—(ix)

OCA recommended that an EDC report on sections § 54.75(1)(iv)—(ix) by month for the 12 months covered by the report. OCA recommended that the Commission modify § 54.75(1)(v) and (vi) to include reporting on arrears data by vintage and bands of arrears. OCA also recommended that EDC separate costs in connection with the following: bundled sales bills, EDC billing for the EDC and supplier, and EDC billing only its own account. Finally, OCA recommended that the Commission modify § 54.75(1)(viii)—(ix) to include the average length of time customers are off the system and the sales (dollars and kWh) lost a result of disconnection. We accept OCA's suggestion that an EDC report on § 54.75(1)(iv)—(ix) by month for the 12 months covered by the report. The EDCs currently collect monthly information for their own monitoring purposes. Monthly information will allow the Commission to average monthly figures where appropriate to allow for year to date comparisons with prior years. Monthly information will consider that collections are subject to seasonal variations and policy decisions of EDCs. However, we decline to expand the collection reporting relating to arrearage data as proposed by OCA in § 54.75(1)(v), (vi) and (viii)—(ix). An expansion of these requirements may be overly burdensome to the EDCs.

Additional Subsections

FSC and the Environmentalists recommended that the Commission add a new section that requests the total number of deferred payment arrangements along with the total number of unsuccessful deferred payment arrangements. The number of successful payment arrangements will be a useful performance measure. Therefore, we accept this recommendation from FSC and the Environmentalists.

Program reporting

§ 54.75(2)(i)(A)

OCA recommended that the Commission expand § 54.75(2)(i)(A) to include the filing requirements at Section P in the restructuring filings. We believe that this rulemaking includes most of the restructuring filing requirements of Section P. However, we will add the following sections to § 54.74(b): the organizational structure of staff responsible for universal service programs and the EDCs plans for using community-based organizations (CBOs) to help administer universal service programs. The act encourages EDCs to use CBOs.

§ 54.75(2)(i)(B)

OCA recommended that the Commission expand § 54.75(2)(i)(B) to include a demographic breakdown of the potential eligible population and the proportion of households who own their homes as opposed to renting them. PEA, PGA, and UGI commented that EDCs do not currently collect all the data for each universal service program component that the Commission proposes in § 54.75(2)(i)(B). They argued that collecting this data will burden EDCs and is not necessary to determine if an EDC is complying with its universal service plan. Therefore, these parties requested the Commission to remove this section. Equitable also pointed out it does not track information related to gender of head of household as proposed in § 54.75(2)(i)(B). Finally, PP&L recommended that the Commission condense the data requirements in § 54.75(2)(i)(B). PP&L suggested it is more useful to use the following categories: children under five and adults over 60. These two groups identify those customers who may be most vulnerable. Sharing the concerns of the utilities, IRRC recommended that the Commission either justify or delete the requirements relating to "age of family members" and "gender of head of household."

Under § 54.75(2)(i)(B), we will delete "gender" and amend "age of family members" to include two categories: the number of members under age 18, and the number of members age 60 or over. We will not require EDCs to provide ages for every household member unless they fall into these two categories. Reviewing demographic information helps the Commission determine that universal service programs are appropriately targeted to eligible households. We reject OCA's request to expand the reporting requirements for demographics as burdensome.

§ 54.75(2)(i)(C)

OCA recommended that the Commission require EDCs to report participation levels at § 54.75(2)(i)(C) by month for the 12 months covered by the report. We accept OCA's recommendation.

§ 54.75(2)(i)(D)

IRRC, PEA and PP&L requested the Commission to define "program benefits" at § 54.75(2)(i)(D). OCA recommended that the Commission adopt their proposed definition of "program benefits." We have adopted OCA's recommendation with modification. We will delete "program benefits" under this section and define specific benefits under the individual universal service components (CAP, LIURP and CARES).

§ 54.75(2)(ii)(A)

OCA recommended that the Commission expand the requirements at § 54.75(2)(ii)(A) to include the technical potential for energy savings in low-income households. EDCs should also report on the number of homes that need weatherization and the number that need other energy conservation measures. We reject the OCA's recommendation to expand this section. The EDCs have convinced us to focus our data requests so the requests are not excessively burdensome to collect.

Finally, we will clarify that LIURP reporting data is due by April 30. Each EDC currently voluntarily provides to the Commission actual production and spending data for the recently completed program year as well as projections for the upcoming program year by the end of February. We will include this data request in the final regulations.

§ 54.75(2)(ii)(B)

FSC recommended that to measure performance the Commission include four new categories in § 54.75(2)(ii)(B): 1) Total cash payments by CAP customers; 2) Number of full, on-time payments; 3) Percentage of CAP bill paid; and 4) Contribution to fixed costs. In part, we accept FSC's recommendation and will add the first three categories.

§ 54.75(2)(ii)(B)(I) and (C)(I)

IRRC and PEA also requested the Commission define "energy assistance benefits" in § 54.75(2)(ii)(B)(I) and (C)(I). OCA recommended that reports on energy assistance benefits include the following: the total gross billing deficiency, maximum dollar/percent bill reductions, mean, median and mode bill reductions ($ and %) and mean percentage of income for participants and eligible nonparticipants. OCA also recommended that energy assistance benefits include the following information: distribution and transmission revenues, program costs (CAP and LIURP separately) as a percentage of revenues, the manner of cost recovery, allocation to classes and other details regarding surcharges or cost recovery mechanisms. We will define energy assistance benefits as discussed under definitions. For the reasons stated before, we believe expanding these sections will be excessively burdensome and reject OCA's recommendation.

§ 54.75(2)(ii)(D)(IV)

IRRC and PEA requested the Commission define "outreach contacts" in § 54.75(2)(ii)(D)(IV). EDCs do not always track referrals and their outcomes. PEA commented that without a narrow definition of this section, EDCs will not be able to report this information. Finally, PEA commented that this information will not assist the Commission in determining if an EDC is in compliance with its universal service plan. PEA and PP&L requested the Commission to remove this section. We will define "outreach contacts" as follows: "Address and telephone number that a customer would call to apply for the hardship fund, specific to each county in the EDC's service territory, if applicable."

§ 54.76. Evaluation reporting requirements.

PEA and Duquesne did not disagree with the need to evaluate universal service programs or the interval the Commission proposes. However, both PEA and Duquesne strongly disagreed with the provision to hire an independent evaluator and requested the Commission to remove this section. PEA commented that evaluations are expensive ($20,000—$50,000 for an evaluation of a single universal service component) and the EDCs did not include these costs in universal service budgets in the restructuring plans. Therefore, PEA suggested that the EDCs would need to reduce program services to budget for evaluations. Finally, PEA commented the BCS should be charged with evaluating EDC's compliance with their universal service plans. UGI's comments were similar to PEA's.

However, PP&L supported the proposed timelines and the use of an independent evaluator to assess the impact of universal service programs. PP&L did not support a Statewide evaluator, and recommends that each EDC choose its own evaluator. PP&L recommended that the Commission, in collaboration with the EDCs, develop general guidelines for evaluation reporting requirements. PP&L suggested the BCS lead the work group. The group could also develop the format for submitting the annual reports electronically.

IRRC agreed with the Commission that impact evaluations are an important tool to determine if each EDC's universal service program is meeting its goals. Further, IRRC supported the time frame for evaluations being due every 6 years. However, IRRC recommended that the Commission review the evaluations to determine if there is overlap among the reports because of program similarities. If the Commission finds the results are similar, IRRC recommends that the Commission reevaluate the frequency of the impact evaluations. We believe that an independent evaluation is critical to improve the efficiency and cost-effectiveness of universal service programs and appreciate IRRC's support in this matter. To address IRRC's concern regarding costs of evaluations, we expect that as a result of recommendations from early impact evaluations that EDCs will implement cost-effective measures in their universal service programs. As programs achieve cost-efficiencies and become established, we expect that evaluations will be more narrowly focused and may be less costly. We also accept PP&L's suggestion that the BCS and EDC's develop guidelines for the evaluation. The BCS will lead this group.

Equitable commented it would be difficult for them to evaluate their low-income programs together because each program has different goals and objectives. Equitable recommended a staggered evaluation timeline for individual program components. Equitable also cautioned that there may be a shortage of qualified evaluators if all of the evaluations are due at the same time. We accept Equitable's suggestion to stagger the due dates of the evaluations, with the first evaluation due October 31, 2002. Appendix A shows the staggered schedule.

IRRC, PEA and Duquesne requested the Commission to remove § 54.76(2) and (3). PP&L recommended that the

Commission delete § 54.76(2) because it is inappropriate for the Commission to provide comments or input to a draft evaluation. IRRC commented that the Commission has no jurisdiction over evaluators and providing status reports may be burdensome to EDCs. To address the concerns the EDCs have regarding § 54.76(2) and (3), we will delete the language in those sections. We expect that the codification of the reporting requirements will ensure that evaluations will be completed in a timely manner. To address our concerns that evaluations are independent we propose to add the following language to the § 54.76: "To ensure an independent evaluation, neither the EDC or the Commission shall exercise control over content or recommendations contained in the independent evaluation report. The EDCs may provide the Commission with a companion report that expresses where they agree or disagree with the independent evaluation report content or recommendations."

The Environmentalists recommended that the Commission direct that impact evaluations begin January 1, 2001, at 2 year intervals. OCA recommended that evaluations occur every 4 years. We reject comments to conduct more frequent evaluations.

PGA commented that the Commission's Bureau of Audits has expertise in organizing and overseeing performance audits and therefore, the Bureau of Audits is the logical bureau to oversee the regulation under § 54.76. We believe that the BCS has the appropriate expertise in universal service matters and oversight of this section will remain with the BCS.

§ 54.77. Electric distribution companies with less than 55,000 residential accounts.

The OCA and the Environmentalists recommended that EDCs report to the Commission annually. OCA would support a waiver of the following sections for smaller EDCs: § 54.75(1)(ii), § 54.75(2)(i)(B) and the additional items at § 54.75 proposed by OCA. We amend this section to include EDCs with fewer than 60,000 residential accounts. Because we continue to believe reporting requirements for EDCs with fewer residential accounts may be excessively burdensome, we reject OCA and the Environmentalist's comments that these EDCs should provide the same reports as larger EDCs.

§ 54.78. Public Information.

Based on the recommendations of the Environmentalists and IRRC, we added a new section that requires the Commission to release the information collected by the reporting requirements to the public. The Environmentalists suggested that the individual EDC reports be made public, be sent to the OCA and to the Office of Small Business Advocate, and be posted on the Commission's Internet web site. We do not believe that the individual EDC reports should be released to the public for a variety of reasons, including the fact that often data needs to be verified and sometimes revised after the Commission has carefully reviewed the submissions. We also believe that individual reports will be of limited use to the public or to the specified agencies. In our opinion a report that summarizes 1) the individual reports of the EDCs; and 2) the BCS statistics will have the greatest value to those interested in the customer service performance of the EDCs. Therefore, the language of the regulation reads that the Commission will annually produce a document that summarizes and reports universal service information, by EDC. We agree that posting the document on the Commission's Internet web site is "user friendly" and we included language to that effect. The language also requires that the Commission will supply the report to any interested party, rather than limiting the recipients to OCA and OSBA. We believe that a comprehensive report produced annually will adequately satisfy the needs of the public and will accommodate the different reporting timetables of the various sections of the requirements.

Other Issues

Many parties, including IRRC, expressed concerns that these regulations duplicate existing reports that EDCs currently provide to the Commission. Developing new reports is labor intensive, and EDCs have not budgeted these expenses in their restructuring filings. These costs will draw funding from universal service programs and other operations. PEA requested the Commission to make clear that these reports will replace current reporting requirements. IRRC echoes the comments of PEA. Our intent is to streamline the reporting process. The universal service reports will eventually replace most of the universal service program reports that EDCs now provide to us. However, we believe this process will evolve with input from the EDCs rather than an abrupt elimination of existing reports. The EDCs will also need time to provide standard data, and we have pushed back the timeline when the first reports are due. Existing reports will fill the gaps until the new reports are filed. We will add language in the ordering paragraph that directs the BCS to, when appropriate, eliminate and/or consolidate existing reports that address the same content as the reporting requirements in these regulations.

The Environmentalists and PGA restate issues from the Guidelines Final Order. The Environmentalists continue to advocate that nonprofit agencies should administer universal service programs and urge the Commission to consider this option as it reviews universal service program plans, reports and evaluations. PGA continues to question whether section 2802(10) of the act means the Commonwealth or utilities are responsible for universal service policies. PGA comments that the sole purpose of proposed regulations is to implement the act. We have already addressed these issues in the Guidelines Final Order.

Accordingly, under section 501 of the Public Utility Code, and the Commonwealth Documents Law (45 P. S. §§ 1201 et seq.) and regulations promulgated thereunder at 1 Pa. Code §§ 7.1—7.4, we adopted §§ 54.71— 54.76 as noted above and as set forth in Annex A; *Therefore,*

It is Ordered that:

1. The Commission's regulations, 52 Pa. Code Chapter 54 are hereby amended by adding §§ 54.71—54.76 to read as set forth in Annex A.

2. The Bureau of Consumer Services is directed, when appropriate, to eliminate and/or consolidate existing universal service program reports that address the same content as the reporting requirements in these regulations to comply with the Commission's intent to streamline universal service reporting requirements.

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

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

5. The Secretary shall submit this order and Annex A for formal review by the designated standing committees

of both Houses of the General Assembly, and for formal review and approval by the Independent Regulatory Review Commission.

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

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

8. A copy of this Order, Annex A and the Appendix shall be served upon all persons who submitted comments in this rulemaking proceeding.

9. The contact persons for this matter are Janice K. Hummel, Bureau of Consumer Services (717) 783-9088 and Kathryn G. Sophy, Law Bureau (717) 782-8839.

JAMES J. MCNULTY,
Secretary

Appendix

Universal service and Energy Conservation Programs

	Due Date	
EDC	*Plan*	*Evaluation*
PECO	2/28/2000	10/31/2002
PP&L	2/28/2000	10/31/2002
Duquesne	2/28/2001	10/31/2003
West Penn	2/28/2001	10/31/2003
GPU Energy	2/28/2002	10/31/2004
Penn Power	2/28/2002	10/31/2004

(*Editor's Note:* For the text of the order of the Independent Regulatory Review Commission relating to this document, see 28 Pa.B. 3338 (July 11, 1998).)

Fiscal Note: Fiscal Note 57-193 remains valid for the final adoption of the subject regulations.

Annex A

TITLE 52. PUBLIC UTILITIES

PART I. PENNSYLVANIA PUBLIC UTILITY COMMISSION

Subpart C. FIXED UTILITIES

CHAPTER 54. ELECTRICITY GENERATION CUSTOMER CHOICE

Subchapter C. UNIVERSAL SERVICE AND ENERGY CONSERVATION REPORTING REQUIREMENTS

Sec.

§ 54.71. Statement of purpose and policy.

Section 2804(9) of the code (relating to standards for restructing of electric industry) mandates that the Commission ensure universal service and energy conservation policies, activities and services for residential electric customers are appropriately funded and available in each EDC territory. This subchapter requires covered EDCs to establish uniform reporting requirements for universal service and energy conservation policies, programs and protections and to report this information to the Commission.

§ 54.72. Definitions.

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

CAP—Customer Assistance Program—An alternative collection method that provides payment assistance to low-income, payment troubled utility customers. CAP participants agree to make regular monthly payments that may be for an amount that is less than the current bill in exchange for continued provision of electric utility services.

CAP benefits—The average CAP bill, average CAP credits and average arrearage forgiveness.

CARES—A program that provides a cost-effective service that helps selected, payment-troubled customers maximize their ability to pay utility bills. A CARES program provides a casework approach to help customers secure energy assistance funds and other needed services.

CARES benefits—The number and kinds of referrals to CARES.

Classification of accounts—Accounts are classified by the following categories: all residential accounts and confirmed low-income residential accounts.

Code—The Public Utility Code, 66 Pa.C.S. §§ 101—3316.

Collection operating expenses—Expenses directly associated with collection of payments due for residential accounts.

Confirmed low-income residential account—Accounts where the EDC has obtained information that would reasonably place the customer in a low-income designation.

Direct dollars—Dollars which are applied to a CARES customer's electric utility account, including all sources of energy assistance applied to utility bills such as LIHEAP, hardship fund grants and local agencies' grants.

EDC—Electric distribution company—The 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.

Energy assistance benefits—The total number and dollar amount of LIHEAP grants.

Hardship fund—A fund that provides cash assistance to utility customers to help them pay their utility bills.

Hardship fund benefits—The total number and dollar amount of cash benefits or bill credits.

Impact evaluation—An evaluation that focuses on the degree to which a program achieves the continuation of utility service to program participants at a reasonable cost level and otherwise meets program goals.

LIURP—Low-income usage reduction program—An energy usage reduction program that assists low-income customers conserve energy and reduce residential energy bills.

Low-income customer—A residential utility customer whose household income is at or below 150% of the Federal poverty guidelines.

Outreach referral contacts—Addresses and telephone numbers that a customer would call or write to apply for

the hardship fund. Contact information should be specific to each county in the EDC's service territory, if applicable.

Payment rate—Payment rate is the total number of full monthly payments received from CAP participants in a given period divided by the total number of monthly bills issued to CAP participants.

Payment troubled—A household that has failed to maintain one or more payment arrangements in a 1-year period.

Residential account in arrears—A residential account that is at least 30 days overdue. This classification includes all customer accounts which have payment arrangements.

Successful payment arrangements—A payment arrangement in which the agreed upon number of payments have been made in full in the preceeding 12 months.

Universal service and energy conservation—Policies, protections and services that help low-income customers to maintain electric service. The term includes customer assistance programs, termination of service protection and policies and services that help low-income customers to reduce or manage energy consumption in a cost-effective manner, such as the low-income usage reduction programs, application of renewable resources and consumer education.

§ 54.73. Universal service and energy conservation program goals.

(a) The Commission will determine if the EDC meets the goals of universal service and energy conservation programs.

(b) The general goals of universal service and energy conservation programs include the following:

(1) To protect consumers' health and safety by helping low-income customers maintain electric service.

(2) To provide for affordable electric service by making available payment assistance to low-income customers.

(3) To assist low-income customers conserve energy and reduce residential utility bills.

(4) To establish universal service and energy conservation programs are operated in a cost-effective and efficient manner.

§ 54.74. Universal service and energy conservation plans.

(a) *Plan submission.*

(1) Each EDC shall submit to the Commission for approval an updated universal service and energy conservation plan every 3 years beginning February 28, 2000, on a staggered schedule.

(2) The plan should cover the next 3-calendar years.

(3) The plan should state how it differs from the previously approved plan.

(4) The plan should include revisions based on analysis of program experiences and evaluations.

(5) If the Commission rejects the plan, the EDC shall submit a revised plan under the order rejecting or directing modification of the plan as previously filed. If the order rejecting the plan does not state a timeline, the EDC shall file its revised plan within 45 days of the entry of the order.

(6) The Commission will act on the plans within 90 days of the EDC filing date.

(b) *Plan contents.* The components of universal service and energy conservation may include the following: CAP, LIURP, CARES, Hardship Funds and other programs, policies and protections. For each component of universal service and energy conservation, the plan shall include, but not be limited to, the following:

(1) Program description.

(2) Eligibility criteria.

(3) Projected needs assessment.

(4) Projected enrollment levels.

(5) Program budget.

(6) Plans to use community-based organizations.

(7) Organizational structure of staff responsible for universal service programs.

(8) Explanation of any differences between the EDC's approved plan and the implementation of that plan. The EDC should include a plan to address those differences.

§ 54.75. Annual residential collection and universal service and energy conservation program reporting requirements.

Each EDC shall report annually to the Commission on the degree to which universal service and energy conservation programs within its service territory are available and appropriately funded. Annual EDC reports shall contain information on programs and collections for the prior calendar year. Unless otherwise stated, the report shall be due April 1 each year, beginning April 1, 2001. Where noted, the data shall be reported by classification of accounts. Each EDC's report shall contain the following information:

(1) Collection reporting shall be categorized as follows:

(i) The total number of payment arrangements and the total number of successful payment arrangements. To ensure that successful payment arrangements are not overstated, EDCs should report on the calendar year prior to the reporting year.

(ii) Annual collection operating expenses by classification of accounts. Collection operating expenses include administrative expenses associated with termination activity, negotiating payment arrangements, budget counseling, investigation and resolving informal and formal complaints associated with payment arrangements, securing and maintaining deposits, tracking delinquent accounts, collection agencies' expenses, litigation expenses other than Commission related, dunning expenses and winter survey expenses.

(iii) The total dollar amount of the gross residential write-offs and total dollar amount of the net residential write-offs, by classification of accounts.

(iv) The total number of residential customers by month for the 12 months covered by the report, by classification of accounts.

(v) The total number of residential accounts in arrears by month for the 12 months covered by the report, by classification of accounts.

(vi) The total dollar amount of residential accounts in arrears by month for the 12 months covered by the report, by classification of accounts.

(vii) The total number of residential customers who are payment troubled by month for the 12 months covered by the report, by classification of accounts.

(viii) The total number of terminations completed by month for the 12 months covered by the report, by classification of accounts.

(ix) The total number of reconnections by month for the 12 months covered by the report, by classification of accounts.

(x) The total number of low-income households. EDCs may estimate this number using census data or other information the EDC finds appropriate.

(2) Program reporting shall be categorized as follows:

(i) For each universal service and energy conservation component, program data shall include information on the following:

(A) Program costs.

(B) Program recipient demographics, including the number of family members under age 18 and over age 62, family size, income and source of income.

(C) Participation levels by month for the 12 months covered by the report.

(ii) Additional program data for individual universal service and energy conservation components shall include the following information:

(A) *LIURP.* Reporting requirements as established at § 58.15 (relating to program evaluation).

(I) LIURP reporting data shall be due by April 30.

(II) Actual production and spending data for the recently completed program year and projections for the current year shall be due annually by the end of February.

(B) *CAP.*

(I) Energy assistance benefits.

(II) Average CAP bills.

(III) Payment rate.

(IV) CAP benefits.

(V) Total cash payments by CAP customers.

(VI) Number of full, on-time payments

(VII) Percentage of CAP bill paid by customer.

(C) *CARES.*

(I) Energy assistance benefits.

(II) Direct dollars applied to CARES accounts.

(III) CARES benefits.

(D) *Hardship funds.*

(I) Ratepayer contributions.

(II) Special contributions.

(III) Utility contributions.

(IV) Outreach contacts.

(V) Hardship fund benefits.

§ 54.76. Evaluation reporting requirements.

(a) Each EDC shall have an independent third-party conduct an impact evaluation of its universal service and energy conservation programs and provide a report of findings and recommendations to the Commission and EDC.

(b) The first impact evaluation will be due beginning October 31, 2002, on a staggered schedule. Subsequent evaluation reports shall be presented to the EDC and the Commission at no more than 6 year intervals.

(c) To ensure an independent evaluation, neither the EDC nor the Commission shall exercise control over content or recommendations contained in the independent evaluation report. The EDCs may provide the Commission with a companion report that expresses where they agree or disagree with independent evaluation report content or recommendations.

(d) An independent third-party evaluator shall conduct the impact evaluation.

§ 54.77. Electric distribution companies with less than 60,000 residential accounts.

Beginning March 1, 2000, each EDC with less than 60,000 accounts shall report to the Commission every 3 years the following information in lieu of §§ 54.74—54.76 (relating to universal service and energy conservation plans; annual residential collection and universal service and energy conservation program reporting requirements; and evaluation reporting requirements):

(1) The universal service and energy conservation plan.

(2) Expenses associated with low-income customers.

(3) A description of the universal service and energy conservation services provided to low-income residential customers.

(4) The number of services or benefits provided to low-income residential customers.

(5) The dollar amount of services or benefits provided to low-income residential customers.

§ 54.78. Public information.

The Commission will annually produce a summary report on the universal service performance of each EDC using the statistics collected as a result of these reporting requirements. The reports will be public information. The Commission will provide the reports to any interested party and post the reports on the Commission's Internet Website.

[Pa.B. Doc. No. 98-1273. Filed for public inspection August 7, 1998, 9:00 a.m.]

Title 58—RECREATION

GAME COMMISSION

[58 PA. CODE CHS. 141 AND 143]

Hunting and Trapping; Hunting and Furtaker Licenses

To effectively manage the wildlife resources of this Commonwealth, the Game Commission (Commission), at its July 14, 1998 meeting, adopted the following changes:

Amend § 141.6 (relating to illegal devices) to permit the use of snares in addition to using leg hold and body gripping traps for the taking of beaver; and amend §§ 141.62 and 141.63 (relating to beaver trapping; and definitions) to further define tagging requirements of traps; provide for additional beaver taking opportunities by expanding the counties where beaver restrictions are relaxed; rearrange the unlawful acts portion and provide a definition for the type of snare to be used.

Amend § 143.45 (relating to completing and submitting applications) to provide for over the counter sales of unsold antlerless deer licenses beginning on the first Monday in November as well as by United States mail.

These amendments are hereby adopted under the authority of 34 Pa.C.S. (relating to the Game and Wildlife Code) (code).

Amendment to Chapter 141

1. *Introduction*

To effectively manage the wildlife resources of this Commonwealth, the Commission at its April 21, 1998, meeting proposed, and at its July 14, 1998, meeting finally adopted, changes to §§ 141.6, 141.62 and 141.63 to allow the trapping of beaver using snares. These changes were adopted under sections 322(c)(5) and 2102(a) of the code (relating to powers and duties of commission; and regulations).

2. *Purpose and Authority*

Snares previously could not lawfully be used to trap furbearers in this Commonwealth. Snares, however, are less expensive, easier to use, and, if properly used, can be very effective. The Commission has therefore adopted changes to §§ 141.6, 141.62 and 141.63 to authorize the use of snares, on a limited basis, to trap beavers. The snares must be completely submerged under water.

Section 322(c)(5) of the code empowers the Commission to fix the type and number of devices which may be used to take game or wildlife. Section 2102(a) of the code authorizes the Commission to promulgate regulations relating to the hunting of game or wildlife in this Commonwealth. The proposed changes were adopted under this authority.

3. *Regulatory Requirements*

The adopted changes authorize what was not permitted.

4. *Persons Affected*

Individuals wishing to trap beavers in this Commonwealth are affected by the changes.

5. *Comment and Response Summary*

No comments were received with regard to the proposed changes.

6. *Cost and Paperwork Requirements*

The changes will not result in any additional cost or paperwork requirements.

Amendment to Chapter 143, Subchapter C

1. *Introduction*

To effectively manage the wildlife resources of this Commonwealth, the Commission at its April 21, 1998, meeting proposed changes to Chapter 143, Subchapter C (relating to antlerless deer licenses) to modify provisions and procedures for issuing surplus antlerless deer licenses. At its July 14, 1998, meeting, the Commission finally adopted only a change to § 143.45 (relating to completing and submitting applications) to allow over the counter issuance of unsold antlerless deer licenses starting on the first Monday in November. This change was adopted under the authority contained in section 2722(g) of the code (relating to authorized license-issuing agents).

2. *Purpose and Authority*

As a result of the elimination of bonus antlerless deer licenses and their replacement by very limited surplus licenses, which involved issuance only by mail, many of the allocated antlerless deer licenses were not sold in 1997. This fact could severely impact the Commission's ability to manage deer populations in this Commonwealth. Although the Commission originally proposed changes to the surplus antlerless deer license system and to allow over the counter issuance, because of continued public concern over deer populations, it decided to only allow over the counter issuance beginning the first Monday in November. This measure should reduce the large discrepancy between antlerless licenses allocated and those sold.

Section 2722(g) of the code directs the Commission to adopt regulations for the administration, control and performance of license issuance. The change is made under this authority.

3. *Regulatory Requirements*

The change will relax current regulatory requirements.

4. *Persons Affected*

County Treasurers and their employes and persons wishing to hunt antlerless deer in this Commonwealth will be affected by the changes.

5. *Comment and Response Summary*

No official comments were received with regard to the proposed changes but the Commission has continued to receive expressions of concern about deer populations in parts of this Commonwealth.

6. *Cost and Paperwork Requirements*

The changes will not result in any additional cost or paperwork.

Effective Dates

The changes are effective on final publication in the *Pennsylvania Bulletin* and remain in effect until changed by the Commission.

Contact Person

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

Findings

The Commission finds that:

(1) Public notice of intention to adopt the administrative amendments adopted by this order has been given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202) and the regulations thereunder, 1 Pa. Code §§ 7.1 and 7.2.

(2) The adoption of the amendments of the Commission in the manner provided in this order is necessary and appropriate for the administration and enforcement of the authorizing statute.

Order

The Commission, acting under authorizing statute, orders that:

(a) The regulations of the Commission, 58 Pa. Code Chapters 141 and 143, are amended by amending §§ 141.6, 141.62 and 141.63 to read as set forth at 28 Pa.B. 2814 (June 20, 1998), and by amending § 143.45 to read as set forth in Annex A.

(b) The Executive Director of the Commission shall submit this order, 28 Pa.B. 2814 and Annex A and deposit them with the Legislative Reference Bureau as required by law.

(c) This order amending §§ 141.6, 141.62, 141.63 and 143.45, shall become effective upon final publication in the *Pennsylvania Bulletin*.

DONALD C. MADL,
Executive Director

(*Editor's Note*: Proposed amendments to §§ 143.42, 143.51, 143.52 and 143.55, included in the proposal at 28 Pa.B. 2814, were not included in these final-form regulations.)

Fiscal Note: Fiscal Note 48-103 remains valid for the final adoption of the subject regulations.

Annex A

TITLE 58. RECREATION

PART III. GAME COMMISSION

CHAPTER 143. HUNTING AND FURTAKER LICENSES

Subchapter C. ANTLERLESS DEER LICENSES

§ 143.45. Completing and submitting applications.

(a) Except as otherwise provided in § 143.52 (relating to procedure for unlimited antlerless licenses) and for those applications submitted by qualified landowners, it is unlawful for a county treasurer to accept an application in a manner other than by standard mail delivery through and by the United States Postal Service. County treasurers with unsold antlerless deer licenses shall accept applications over the counter and may immediately issue licenses beginning on the first Monday in November.

(b) Except for qualified landowners, an application may not be accepted by a county treasurer prior to the start of the normal business day on the first Monday in August.

(c) The application shall be legibly completed, in its entirety, in accordance with instructions on the application.

(d) The application shall be mailed only in the envelope provided.

(e) Applications are limited to not more than three per envelope.

(f) The appropriate preprinted number on the outside of the envelope shall be circled indicating the number of applications enclosed.

(g) The envelope shall contain return first class postage and be self-addressed. If requirements of this subsection are not met, applications shall be placed in a dead letter file and may be reclaimed by the applicant upon contacting the county treasurer. Postage, both forward and return, is the responsibility of the applicant.

(h) Unless otherwise ordered by the Director, remittance shall be in the form of a negotiable check or money order payable to "County Treasurer" for applications enclosed, and in the total amount specified in the act for each license. Cash may be accepted by county treasurers for over the counter sales.

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