

RULES AND REGULATIONS

Title 19—CORPORATIONS AND BUSINESS ASSOCIATIONS

DEPARTMENT OF STATE
[19 PA. CODE CH. 41]
Nonprofit Corporations

The Department of State (Department) amends § 41.4 (relating to stated purposes) by deleting subsection (d) to read as set forth in Annex A. This subsection is being deleted because it does not accurately reflect Commonwealth law.

The first part of subsection (d) provided that a nonprofit corporation may not conduct professional services. Section 5301(a) of the Nonprofit Corporation Law of 1988, 15 Pa.C.S. § 5301(a), provides, in part, however, that a corporation may be incorporated as a nonprofit corporation for any lawful purpose including, but not limited to, a "professional" purpose. Accordingly this part of the subsection is overbroad and contrary to statute.

The second part of the subsection provided that only a professional corporation may render professional services. Many licensing acts, however, specifically provide that a business corporation may provide professional services. See 63 P. S. § 34.13(c) (relating to architectural services); 63 P. S. § 153 (relating to engineering services); 63 P. S. § 479.8 (relating to funeral services); 63 P. S. § 244.6(i) (relating to optometry); 63 P. S. § 390-4 (relating to pharmacy services); 63 P. S. § 1202 (relating to the practice of psychology); and 63 P. S. § 455.513 (relating to providing real estate services). Accordingly, this part of the subsection is also overbroad and does not reflect the current state of the law.

Additionally, many other forms of business associations, in addition to professional corporations, are statutorily permitted to provide professional services. These different forms of business associations are set forth in 15 Pa.C.S. (relating to corporations and unincorporated associations) (act) and include: general partnerships under sections 8301—8363 of the act (relating to Uniform Partnership Act); limited partnerships under sections 8501—8594 of the act (relating to Uniform Limited Partnership Act); registered limited liability partnerships under sections 8201—8221 of the act (relating to registered limited liability partnerships); and limited liability companies under sections 8901—8998 of the act (relating to Limited Liability Company Law of 1994). These statutes each permit business associations to render professional services.

The official committee comment to section 8921 of the act (relating to powers and capacity) rendered by the Pennsylvania Bar Association's Title 15 Task Force Committee (Committee) also supports the deletion of § 41.4(d). The Committee concluded that there is no policy reason to differentiate between the various forms of organization authorized by the act for purposes of determining the appropriate form for the conduct of a profession. This condemnation of the regulation is echoed in a commentary to the regulation found in W. Zeiter, *Pennsylvania Associations Code and Related Materials*. (3rd Edition West Pub. Co. 1992), at p. A-66. Accordingly,

subject to a specific limitation in a particular licensing statute on the forms of organization that may be used in that profession, a profession is permitted to be conducted in any of the forms of organization authorized by the act.

Public notice of intention to amend the regulation under the procedures specified in sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202) (CDL), has been omitted as authorized by section 204(3) of the CDL (45 P. S. § 1204(3)), because the Department finds that these procedures are, under the circumstances, unnecessary. Public comment is unnecessary and under the circumstances impractical because this rulemaking is intended merely to amend a regulation for which there is no statutory basis. Specific statutory provisions of the act permit various business associations to render professional services, and for that reason, § 41.4(d) has never been given effect. The Corporation Bureau (Bureau) has been accepting filings of documents creating associations, other than professional corporations, which provide professional services. Therefore, filers have been given actual notice that the regulation has not been enforced. Accordingly, no substantive rights of any person will be directly affected by this rulemaking.

Compliance With Executive Order 1996-1

The Department reviewed this rulemaking and considered its purpose and likely impact on the public and the regulated population under the directives of Executive Order 1996-1, Regulatory Review and Promulgation. The Department's preliminary proposal to delete the regulation was endorsed by the Committee of the Corporation, Banking and Business Law Section of the Pennsylvania Bar Association at its meeting held on May 14, 1997. Additionally, various agencies of State government, including the Department of Health, the Department of Public Welfare and the Game Commission, have shared their concerns regarding the lack of statutory basis for the subsection. Because § 41.4(d) has no clear statutory basis, the deletion of subsection (d) addresses a compelling public interest as described in this Preamble and otherwise complies with Executive Order 1996-1.

Statutory Authority

The general authority of the Department to amend this regulation is in section 506 of The Administrative Code of 1929 (71 P. S. § 186). Authority is also specifically granted under section 133 of the act (relating to powers of Department of State), which provides that the Department shall have the power and authority reasonably necessary to enable it to administer the act.

Fiscal Impact and Paperwork Requirements

The amendment will have no negative fiscal impact on the Commonwealth or its political subdivisions. The Department will realize a positive impact because it will no longer need to expend resources explaining to the public that § 41.4(d) has no statutory basis and does not accurately reflect the current state of the law. The public will realize a positive fiscal impact from not being confused by a regulation that has no statutory basis and does not reflect the current state of the law.

Regulatory Review

Under section 5.1(c) of the Regulatory Review Act (71 P. S. § 745.5a(c)), on November 26, 1997, the Department submitted a copy of the amendment with proposed rulemaking omitted to the Independent Regulatory Review

Commission (IRRC) and to the Chairpersons of the Senate Committee on State Government and House Committee on State Government. On the same date, the amendment was submitted to the Office of Attorney General for review and approval under the Commonwealth Attorneys Act (71 P. S. §§ 732-101—732-506) and other laws.

Under section 5.1(d) of the Regulatory Review Act, the amendment was deemed approved by the Senate Committee and by the House Committee on December 16, 1997. Under section 5.1(e) of the Regulatory Review Act, the amendment was approved by IRRC on January 13, 1998.

Additional Information

Individuals who desire information regarding this amendment are invited to submit inquiries to John T. Henderson, Jr., Deputy Chief Counsel, Department of State, Room 302 North Office Building, Harrisburg, PA 17120, (717) 787-6802.

Findings

The Department finds that:

(1) Public notice of intention to amend the regulation as adopted by this order under the procedure specified in sections 201 and 202 of the CDL, has been omitted under the authority contained in section 204(3) of the CDL, because the Department has, for good cause, found that the procedures specified in sections 201 and 202 of the CDL, are in this circumstance unnecessary. The regulation is overbroad, has no statutory basis and is contrary to other statutory provisions.

(2) Persons affected by this amendment have been or will be given actual notice of the Department's intention to amend the regulation under section 204(2) of the CDL.

(3) The adoption of the amendment in the manner provided in this order is necessary and appropriate for the administration by the Department of the act and related statutes.

Order

The Department, acting under its statutory authority, orders that:

(a) The regulations of the Department, 49 Pa. Code Chapter 41, are amended by amending § 41.4 to read as set forth in Annex A.

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

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

(d) This order shall become effective immediately upon publication in the *Pennsylvania Bulletin*.

YVETTE KANE,
Secretary of the Commonwealth

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 28 Pa.B. 588 (January 31, 1998).)

Fiscal Note: 16-16. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 19. CORPORATIONS AND BUSINESS ASSOCIATIONS

PART I. DEPARTMENT OF STATE

Subpart B. CORPORATION BUREAU

ARTICLE II. DOMESTIC CORPORATION MATTERS

CHAPTER 41. NONPROFIT CORPORATIONS GENERALLY

Subchapter A. INCORPORATION

§ 41.4. Stated purposes.

(a) Section 5301 of the code (relating to purposes) provides that a nonprofit corporation may be incorporated for a lawful purpose including one or more of the following or similar purposes:

- (1) Athletic.
- (2) A lawful business purpose to be conducted on a not-for-profit basis.
- (3) Beneficial.
- (4) Benevolent.
- (5) Cemetery.
- (6) Charitable.
- (7) Civic.
- (8) Control of fire.
- (9) Cultural.
- (10) Educational.
- (11) Encouragement of agriculture or horticulture.
- (12) Fraternal.
- (13) Health.
- (14) Literary.
- (15) Missionary.
- (16) Musical.
- (17) Mutual improvement.
- (18) Patriotic.
- (19) Political.
- (20) Prevention of cruelty to persons or animals.
- (21) Professional, commercial, industrial, trade, service or business associations.
- (22) Promotion of the arts.
- (23) Protection of natural resources.
- (24) Religious.
- (25) Research.
- (26) Scientific.
- (27) Social.

(b) The stated purposes of a nonprofit corporation may not consist of solely a statement to the effect that its corporate purpose is to engage in all lawful business for which corporations may be incorporated under 15 Pa.C.S. Subpart A (relating to nonprofit corporations). Compare with 15 Pa.C.S. § 1301 (relating to purposes).

(c) Under section 5108 of the code (relating to limitation on incorporation), a corporation which might be incorporated under the code may not be incorporated under another statute. Accordingly, domestic corporations not-for-profit shall be incorporated under the code, except:

(1) Electric cooperative corporations, which are incorporated under Chapter 73 of the code (relating to the Electric Cooperative Law of 1990).

(2) Fraternal benefit societies, which continue to be incorporated under the Fraternal Benefit Society Code (40 P. S. §§ 1141-101—1141-1001).

[Pa.B. Doc. No. 98-251. Filed for public inspection February 13, 1998, 9:00 a.m.]

Title 25—ENVIRONMENTAL PROTECTION

ENVIRONMENTAL QUALITY BOARD [25 PA. CODE CH. 77]

[Correction]

Noncoal Mining

An error appeared in § 77.144(c)(1) (relating to transfer of permit) at 28 Pa.B. 619, 629 (January 31, 1998). The correct version of subsection (c)(1) appears in Annex A.

Annex A

TITLE 25. ENVIRONMENTAL PROTECTION PART I. DEPARTMENT OF ENVIRONMENTAL PROTECTION

Subpart C. PROTECTION OF NATURAL RESOURCES

ARTICLE I. LAND RESOURCES CHAPTER 77. NONCOAL MINING

Subchapter C. PERMITS AND PERMIT APPLICATIONS

PERMIT REVIEWS, RENEWALS, REVISIONS AND TRANSFERS

§ 77.144. Transfer of permit.

* * * * *

(c) The Department may allow a permittee to transfer a permit to another operator if the successor operator:

(1) Meets the requirements of § 77.126(a)(6)—(9) (relating to criteria for permit approval or denial).

* * * * *

[Pa.B. Doc. No. 98-208. Filed for public inspection January 30, 1998, 9:00 a.m.]

Title 52—PUBLIC UTILITIES

PENNSYLVANIA PUBLIC UTILITY COMMISSION

[52 PA. CODE CHS. 5, 37, 53, 55, 56, 65, 69 AND 71]

[L-00950112]

Wastewater Utilities

Executive Summary

On September 12, 1997, the Pennsylvania Public Utility Commission (Commission) adopted a final rulemaking to amend relevant sections of Title 52 regarding sewer

utilities and the provision of sewer service to reflect the current industry standard terminology.

The contact persons are Stanley E. Brown, Assistant Counsel, Law Bureau, (717) 783-3968 and Shirley M. Leming, Regulatory Coordinator, Law Bureau, (717) 772-4597.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), the Commission submitted a copy of the final rulemaking, which was published as proposed at 26 Pa.B. 2325 (May 18, 1996), and served on April 30, 1996, 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.

This final-form regulation was deemed approved by the House Committee on Consumer Affairs and was approved on October 28, 1997 by the Senate Committee on Consumer Protection and Professional Licensure, and was approved by IRRC on November 6, 1997, in accordance with section 5(c) of the Regulatory Review Act.

Public Meeting held
September 12, 1997

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:

The Public Utility Code gives the Commission broad authority to regulate public utilities doing business within this Commonwealth. The Commission for many years has promulgated regulations to respond to changes in Legislation, technology and the economy in order to meet the essential needs of the public and the utilities it regulates.

The Commission adopted an order on April 27, 1995 to proceed with an advance notice of proposed rulemaking to review regulations identifying obsolete and excessive requirements for the purpose of amending or deleting these regulations. A notice was published in the *Pennsylvania Bulletin* on June 3, 1995, at 25 Pa.B. 2188. Comments were received from jurisdictional utilities, utility associations and the Office of Consumer Advocate. As a result of this action, a number of proposed amendments were adopted by the Commission.

Also, a direct result of the above actions is the amendments to relevant sections regarding sewer utilities and the provision of sewer service. The words "sewer" and "sewerage" shall be changed to "wastewater" as in wastewater service or wastewater facility. These amendments will update these industry terms in the *Pennsylvania Code* to current industry standard terminology.

The proposed amendments were published May 18, 1996 at 26 Pa.B. 2325 for a 30-day comment period. The only comments received were from IRRC supporting the Commission's efforts to update existing regulations. IRRC also pointed out that terms in other sections of 52 Pa.

Code should be included, as well, to wit: Chapter 55. Noncarrier Rates and Practices, Chapter 69. General Orders, Policy Statements and Guidelines on Fixed Utilities and Chapter 71. Financial Reports. The Commission agrees these sections should be included to bring the *Pennsylvania Code* current with industry standards using the term wastewater to read as set forth in Annex A.

Accordingly, under section 501 of the Public Utility Code, 66 Pa.C.S. § 501, and the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202) and regulations promulgated thereunder at 1 Pa. Code 7.1—7.4, the Commission amends the regulations to read as set forth in Annex A. *Therefore*,

It Is Ordered That:

1. A final rulemaking is amending, 52 Pa. Code Chapters 5, 37, 53, 55, 56, 65, 69 and 71, by amending §§ 5.14, 37.202, 53.52, 55.1, 56.2, 65.1, 71.1 and 71.3 and by amending statements of policy in §§ 69.361—69.363 and 69.711 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 Attorney General for preliminary 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 and comment by the designated standing committees of both Houses of the General Assembly, and for formal review and comment by the Independent Regulatory Review Commission.

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

6. The final rulemaking shall become effective upon publication in the *Pennsylvania Bulletin*.

JAMES J. MCNULTY,
Secretary

(Editor's Note: The amendment of §§ 55.1, 69.711 and 71.3 was not included in the proposal at 26 Pa.B. 2325 (May 18, 1996).)

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 27 Pa.B. 6128 (November 22, 1997).)

Fiscal Note: Fiscal Note 57-168 remains valid for the final adoption of the subject regulations.

Annex A

TITLE 52. PUBLIC UTILITIES

PART I. PUBLIC UTILITY COMMISSION

SUBPART A. GENERAL PROVISIONS

CHAPTER 5. FORMAL PROCEEDINGS

§ 5.14. Applications requiring notice.

(a) An application to the Commission for authority under sections 1101, 1102, 2503 and 2505 of the act or as otherwise provided by the act, is subject to one or more of the following notice requirements as directed by the Secretary under § 1.51 (relating to instructions for service and notice):

(1) Publication in the *Pennsylvania Bulletin*.

(2) Publication in a newspaper of general circulation serving the geographical territory affected by the application.

(3) Actual notification to the parties affected by the application.

(4) Another form of actual or constructive notification as may be required by the Secretary.

(b) Except as set forth in §§ 3.361—3.363, 3.381, 3.501(f), as relating to the 60 day protest period, and §§ 57.71, 57.72 and 57.74—57.77 or as otherwise provided by the Secretary, application to the Commission for the following types of authority shall be published in the *Pennsylvania Bulletin* and, as directed by the Secretary, in a newspaper of general circulation serving the geographical territory affected by the application and shall be subject to a 15 day protest period.

(1) To initiate fixed utility service to the public, including the following:

- (i) Electric.
- (ii) Gas.
- (iii) Telephone.
- (iv) Water.
- (v) Wastewater.
- (vi) Pipeline.
- (vii) Radio-telephone common carrier service.

(2) To initiate, in a different nature or to a different territory than is currently authorized, fixed utility service to the public, including the following:

- (i) Electric.
- (ii) Gas.
- (iii) Telephone.
- (iv) Water.
- (v) Wastewater.
- (vi) Pipeline.
- (vii) Radio-telephone common carrier service.

(3) To abandon, in whole or in part, fixed utility service to the public, including to the following:

- (i) Electric.
- (ii) Gas.
- (iii) Telephone.
- (iv) Water.
- (v) Wastewater.
- (vi) Pipeline.
- (vii) Radio-telephone common carrier service.

(4) To initiate rail utility service to the public.

(5) To initiate, in a different nature or to a different territory than is currently authorized, rail utility service to the public.

(6) To abandon, in whole or in part, rail utility service to the public.

(7) To acquire or transfer tangible or intangible utility property through sale, merger, consolidation, lease or transfer of stock.

(8) To acquire 5% or more of the voting stock of another corporation.

(9) To secure exemption under section 619 of the Pennsylvania Municipalities Planning Code (53 P. S. § 10619).

(10) To construct, alter or abandon, in whole or in part, or to change the status of a rail utility agency station or team track.

CHAPTER 37. SAFETY CODE FOR TRANSPORTATION OF PROPERTY AND PASSENGERS

§ 37.202. Definitions.

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

* * * * *

Direct assistance—Transportation and other relief services provided by a motor carrier or its drivers incident to the immediate restoration of essential services—such as, electricity, medical care, wastewater, water, telecommunications and telecommunication transmissions—or essential supplies—such as, food and fuel. The term does not include transportation related to long term rehabilitation of damaged physical infrastructure or routine commercial deliveries after the initial threat to life and property has passed.

* * * * *

CHAPTER 53. TARIFFS FOR NONCOMMON CARRIERS

§ 53.52. Applicability; public utilities other than canal, turnpike, tunnel, bridge and wharf companies.

* * * * *

(b) Whenever a public utility other than a canal, turnpike, tunnel, bridge or wharf company files a tariff, revision or supplement which will increase or decrease the bills to its customers, it shall submit in addition to the requirements of subsection (a), to the Commission, with the tariff, revision or supplement, statements showing the following:

* * * * *

(2) The operating income statement of the utility for a 12-month period, the end of which may not be more than 120 days prior to the filing. Water and wastewater utilities with annual revenues under \$100,000 and municipal corporations subject to Commission jurisdiction may provide operating income statements for a 12-month period, the end of which may not be more than 180 days prior to the filing.

* * * * *

CHAPTER 55. NONCARRIER RATES AND PRACTICES

Subchapter A. DISCONTINUATION OF SERVICE

§ 55.1. Definitions.

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

Emergency—An unforeseen combination of circumstances requiring temporary discontinuances of service in order to effect repairs or maintenance, or to eliminate an imminent threat to life, health, safety or property.

Personal contact—Personal contact means any of the following:

(i) Contacting the customer in person or by telephone.

(ii) Contacting in writing another person whom the customer has designated to receive a copy of any notice of disconnection, other than a member or employe of the Commission.

(iii) If the customer has not made a designation, contacting in writing a community interest group or other entity, including local police departments, which previously agreed to receive a copy of the notice of disconnection and to attempt to contact the customer.

(iv) If the customer has not made a designation and a community interest group or other entity has not previously agreed to receive a copy of the notice of disconnection, contacting in writing the Commission's Harrisburg office.

Public utility—Persons or corporations now or hereafter owning or operating in this Commonwealth, equipment or facilities for any of the following:

(i) Producing, generating, transmitting, distributing or furnishing natural or artificial gas, electricity or steam for the production of light, heat or power to or for the public for compensation.

(ii) Diverting, developing, pumping, impounding, distributing or furnishing water to or for the public for compensation.

(iii) Transporting or conveying natural or artificial gas, crude oil, gasoline or petroleum products, materials for refrigeration, or oxygen or nitrogen or other fluid substance, by pipe line or conduit, for the public for compensation.

(iv) Wastewater collection, treatment or disposal for the public for compensation.

CHAPTER 56. STANDARDS AND BILLING PRACTICES FOR RESIDENTIAL UTILITY SERVICE

§ 56.2. Definitions.

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

* * * * *

Billing period—In the case of public utilities supplying gas, electric and steam heating service, the billing period shall conform to the definition of a billing month; in the case of water and wastewater service, a billing period may be monthly, bimonthly or quarterly as provided in the tariff of the utility. Ratepayers shall be permitted to receive bills monthly and shall be notified of their rights thereto.

* * * * *

Utility—A public utility or a municipality, subject to Commission jurisdiction, which provides electric, gas, steam heat, wastewater or water service.

CHAPTER 65. WATER SERVICE

§ 65.1. Definitions.

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

* * * * *

Nonessential uses of water—Nonessential uses of water include:

* * * * *

(viii) The use of water to flush a wastewater line or wastewater manhole.

* * * * *

CHAPTER 69. GENERAL ORDERS, POLICY STATEMENTS AND GUIDELINES ON FIXED UTILITIES

PENNVEST LOAN OBLIGATIONS FOR WATER AND WASTEWATER COMPANIES—STATEMENT OF POLICY

§ 69.361. General.

PENNVEST loans were established to provide funding to water and wastewater companies for improvements of drinking water and wastewater treatment facilities in this Commonwealth. The Commission is required to establish expedited practices, procedures and policies to facilitate and accomplish repayment of the loan obligations. See section 14 of the PENNVEST Act (35 P.S. § 751.14). Companies with outstanding PENNVEST loans not currently reflected in rates and companies that will receive PENNVEST loans in the future are encouraged to establish under 66 Pa.C.S. § 1307(a) (relating to sliding scale of rates; adjustments) and subject to Commission approval, an automatic adjustment by means of a sliding scale of rates limited solely to the recovery of PENNVEST principal and interest obligations, instead of seeking recovery of these amounts under 66 Pa.C.S. § 1308 (relating to voluntary changes in rates) base rate filing.

§ 69.362. Definitions.

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

DEP—The Department of Environmental Protection of the Commonwealth.

* * * * *

§ 69.363. Treatment of PENNVEST obligations.

(a) Water and wastewater companies with outstanding PENNVEST obligations that have not been reflected in rates or future PENNVEST obligations, may establish under 66 Pa.C.S. § 1307(a) (relating to sliding scale of rates; adjustments) an automatic adjustment by means of a sliding scale of rates or other method limited solely to recovery of the company's PENNVEST principal and interest obligations.

* * * * *

(d) Rate recovery under a 66 Pa.C.S. § 1307(a) PENNVEST automatic adjustment by means of a sliding scale of rates or other method may be approved only after the receipt of the following:

(i) DEP inspection.

* * * * *

SMALL NONVIABLE WATER AND WASTEWATER SYSTEMS—STATEMENT OF POLICY

§ 69.711. Acquisition incentives.

* * * * *

(b) *Acquisition incentives.* In its efforts to foster acquisition of suitable water and wastewater systems by viable utilities when the acquisitions are in the public interest, the Commission seeks to assist these acquisitions by permitting the use of a number of regulatory incentives. Accordingly, the Commission will consider the following acquisitions incentives:

* * * * *

CHAPTER 71. FINANCIAL REPORTS

§ 71.1. Statement of purpose.

This chapter establishes uniform and industry-wide financial reporting requirements designed to improve the Commission's ability to monitor on a regular basis the financial performance and earnings of the electric, gas, telephone, water and wastewater public utilities subject to Commission jurisdiction.

§ 71.3. Filing requirements.

(a) The following public utilities shall file a financial report for the 12-month period ending each March 31, June 30, September 30 and December 31:

(1) The major electric utilities (Philadelphia Electric Company, Pennsylvania Power and Light Company, Duquesne Light Company, West Penn Power Company, Pennsylvania Power Company, UGI Corporation—Luzerne Electric Division, Pennsylvania Electric Company and Metropolitan Edison Company).

(2) Local exchange telecommunications utilities with annual intraState gross revenues in excess of \$10 million.

(3) Gas distribution utilities having annual intraState gross revenues in excess of \$10 million.

(4) Water and wastewater utilities with annual intraState gross revenues in excess of \$10 million.

(b) The following public utilities shall file a financial report for the 12-month period ending each December 31:

(1) Electric utilities with annual intraState gross revenues in excess of \$1 million.

(2) Local exchange telecommunications utilities with annual intraState gross revenues in excess of \$1 million but which do not exceed \$10 million.

(3) Gas distribution utilities having annual intraState gross revenues in excess of \$1 million but which do not exceed \$10 million.

(4) Water and wastewater utilities with annual intraState gross revenues in excess of \$1 million but which do not exceed \$10 million.

(c) Annualization, normalization and ratemaking adjustments are required only with the financial report for the 12-month period ending December 31 of each year. These adjustments are not required for financial reports for the 12-month period ending March 31, June 30 and September 30.

(d) For the 12-month period ending each December 31, the actual per books amounts in the financial report shall reflect the public utility's independently audited results of operations.

[Pa.B. Doc. No. 98-252. Filed for public inspection February 13, 1998, 9:00 a.m.]

PENNSYLVANIA PUBLIC UTILITY COMMISSION

[52 PA. CODE CH. 65]

[L-950110]

Water Service

Executive Summary

The Pennsylvania Public Utility Commission (Commission) on July 31, 1997, adopted an order at its public

meeting to promulgate final-form regulations regarding obsolete and excessive regulations regarding water service. The amendments will update and amend two sections.

In § 65.8(d)(2) (relating to meters), the Commission removed the requirement that water utilities test those meters which have been removed from service when being replaced with new meters utilizing remote reading devices. Since granting a temporary waiver of the out-testing requirement, the Pennsylvania Chapter of the National Association of Water Companies (PA-NAWC) has filed monthly reports showing almost no complaints regarding the accuracy of the meters with remote reading devices. This eliminates the need to test meters being removed from service.

The Commission amended § 65.16 (relating to systems of accounts), by requiring water utilities to switch their books to the National Association of Regulatory Utility Commissioners (NARUC) Uniform System of Accounts for Class A, B or C water utilities from the present system, which is antiquated and difficult for the lay person to interpret.

The contact persons are Susan D. Colwell, Assistant Counsel, Law Bureau (717) 783-3459, and Judith Koch Carlson, Fixed Utility Services, (717) 783-5392.

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 26 Pa.B. 2211 (May 11, 1996), and served on April 30, 1996, to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the House on 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 on October 30, 1997, and were approved on October 28, 1997, by the Senate Committee on Consumer Protection and Professional Licensure, and were approved by IRRC on November 6, 1997, in accordance with section 5(c) of the Regulatory Review Act.

Public Meeting held
July 31, 1997

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

Final-Form Rulemaking Order

By the Commission:

This rulemaking began with our Order entered May 23, 1995, when we issued an advance notice of proposed rulemaking to review and rescind all obsolete and excessive rules and regulations at Docket No. L-00950103. The advance notice was published on June 3, 1995 at 25 Pa.B. 2188, and a 60-day comment period was set.

After receiving comments from the Office of Consumer Advocate and internal input which reflected the need to update two sections contained in Chapter 65, we issued a Proposed Rulemaking Order at the above docket on

December 27, 1995, in which we set forth proposed changes for both sections. We proposed these changes to clarify, simplify and remove excessive and burdensome requirements from our water service regulations.

We proposed changes to two sections. In § 65.8(d)(2), we proposed to eliminate the necessity to test meters which have been removed from service when replaced by new meters utilizing remote reading devices. In § 65.16, we proposed changing to the NARUC Uniform System of Accounts for Water Utilities for greater consistency.

Comments on the proposals were filed by the PA-NAWC, the Office of Consumer Advocate and IRRC.

The idea for revision of § 65.8(d)(2) is not a new one. By petition docketed at P-00890380, ten jurisdictional water companies,¹ under the auspices of the PA-NAWC sought waiver of the provision as it applies to meters permanently removed from service and replaced by new meters utilizing remote reading devices. At that time, petitioners alleged that the cost of testing was \$101.15 for every \$1 refunded to ratepayers as a result of fast-meter overcharges. We were unwilling to grant a permanent waiver at that time, and instead granted a temporary waiver to develop a record of empirical data.

The NAWC has filed monthly reports since that time, and the numbers fully support the permanent change which we enacted here. Since 1990, records reveal 15 fast reads for 298,842 meters, or 0.005%. Monthly records submitted for the last 2 years reveal that none of the replaced meters resulted in a complaint regarding fast running meters. Clearly, this data supports removing the requirement that the meters being taken out of service for upgrade to remote capability be tested for accuracy.

The PA-NAWC supports the change in § 65.8(d)(2) since the result will be that far fewer meters will need to be out-tested, generating cost savings or operating efficiencies, or both. "PA-NAWC applauds the efforts of the Commission to streamline this regulation." Comments of PA-NAWC, p. 2. Further, "[T]he OCA concurs in the comments of PA-NAWC in that this appears to be a desirable change in the regulations." Comments of OCA, p. 1.

IRRC suggests that we take this approach one step further and amend the regulation to provide that only those meters that are removed and will be reused be tested for accuracy. We decline to take that step at this time. We believe that the high levels of reading efficiency and customer convenience of the new meters justifies the change we are making; however, we are continuing the express purpose of upgrading to remote-read units. Except where changed-out for the purpose of system upgrades to remote metering, older meters should be tested so that their results will be available for those customers who believe that their bills reflect a fast meter.

The changes to § 65.16 require that water utilities keep their books of account in conformity with the Uniform System of Accounts for Class A, B or C water utilities as prescribed by the NARUC. "PA-NAWC acknowledges the long-term benefits and improvements made available by this change but cautions that the Commission must consider the complexity of this change on those utilities and allow appropriate time for implementation of this requirement. These considerations must include impacts on year-to-year analysis, needed financial

information system conversions and impacts on corporate consolidations. As such, the PA-NAWC recommends that the Commission provide water utilities with significant flexibility in the time table within which this change must be implemented." PA-NAWC Comments, p.2. PA-NAWC recommends that the utilities be given until January 1, 2000 to effect the necessary changes in their accounting systems. The OCA does not object to this recommendation.

IRRC suggests that the implementation period be 3 years from the adoption of these amendments because small water companies with limited financial resources and experience may need more time to convert all of their accounts to this new system. Since the industry has indicated that the change-over can be accomplished by January 1, 2000, we have decided to set that date as the deadline. Although companies may make the necessary conversion prior to that date, all conversions must be completed by January 1, 2000.

In adopting these changes, we are eliminating a section to expedite the conversion to remote metering, and we are modifying another to eliminate an antiquated system of accounts and replace it with a modern one. This will result in a more useful format for annual reports as well. We thank the PA-NAWC and OCA for their helpful comments. We are confident that our duty to ensure the reasonableness and reliability of utility service is well-served by the changes which we adopt today.

Accordingly, under sections 501, 504, 505, 506, 1301 and 1501 of the Public Utility Code, 66 Pa.C.S. §§ 501, 504, 505, 506, 1301 and 1501, and the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202) and the regulations promulgated thereunder, we adopt those changes to read as set forth in Annex A as described in the body of this order. *Therefore,*

It Is Ordered that:

1. The Commission's regulations, 52 Pa. Code Chapter 65, are amended by amending §§ 65.8 and 65.16 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 Attorney General for approval as to legality.
3. The Secretary shall submit this order and Annex A to the Governor's Budget Office for review of fiscal impact.
4. The Secretary shall submit this order and Annex A for 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 this order and Annex A with the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*, effective upon publication.
6. A copy of this order shall be served upon all persons who submitted comments in this rulemaking proceeding.

JAMES J. MCNULTY,
Secretary

Fiscal Note: Fiscal Note 57-169 remains valid for the final adoption of the subject regulations.

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 27 Pa.B. 6128 (November 22, 1997).)

Annex A

TITLE 52. PUBLIC UTILITIES

PART I. PUBLIC UTILITY COMMISSION

Subpart C. FIXED UTILITIES

CHAPTER 65. WATER SERVICE

§ 65.8. Meters.

* * * * *

(d) *Installation and removal of meters.*

* * * * *

(2) *Removal of meters.* A water meter which is removed from service shall be tested within 30 days for accuracy to complete that meter's test history. When a meter is removed from service, it shall be properly sealed to secure registers and measuring devices until it can be properly tested for accuracy. Meters permanently removed from service and replaced by new meters utilizing remote reading devices are exempt from this provision.

* * * * *

§ 65.16. System of accounts.

(a) A public utility having annual operating revenue of \$750,000 or more (average of the last 3 consecutive years) shall keep its accounts in conformity with the most recent *Uniform System of Accounts for Class A Water Utilities* prescribed by the National Association of Regulatory Utility Commissioners (N.A.R.U.C.).

(b) A public utility having annual operating revenues of \$150,000 or more but less than \$750,000 (average of the last 3 consecutive years) shall keep its accounts in conformity with the *Uniform System of Accounts for Class B Water Utilities* prescribed by N.A.R.U.C.

(c) A public utility having annual operating revenues of less than \$150,000 (average of the last 3 consecutive years) shall keep its accounts in conformity with the most recent *Uniform System of Accounts for Class C Water Companies* prescribed by N.A.R.U.C.

(d) Public utilities subject to this section shall have until January 1, 2000, to convert to the most recent *Uniform System of Accounts for Class A, Class B or Class C Water Utilities* prescribed by N.A.R.U.C.

* * * * *

¹Bloomsburg Water Co., Dallas Water Co., Dauphin Consolidated Water Supply Co., Mechanicsburg Water Co., Pennsylvania- American Water Co., Pennsylvania Gas and Water Co., Philadelphia Suburban Water Co., Shavertown Water Co., Wrightsville Water Supply Co., and York Water Co.

[Pa.B. Doc. No. 98-253. Filed for public inspection February 13, 1998, 9:00 a.m.]