

RULES AND REGULATIONS

Title 52—PUBLIC UTILITIES

PENNSYLVANIA PUBLIC UTILITY COMMISSION

[52 PA. CODE CHS. 57 AND 59]

[L-950108]

Electric Service

The Pennsylvania Public Utility Commission (Commission) on December 17, 1998, adopted a final rulemaking to eliminate obsolete regulations regarding electric service. The rulemaking has two distinct purposes. The first is to eliminate regulations which the Commission believes are burdensome to the electric utility industry. These regulations relate to record maintenance and sales promotion practices for gas and electric utilities. The second purpose is to revise the procedure to request exemption from the application of the undergrounding requirement for electric service in new residential developments.

Executive Summary

By order entered May 23, 1995, the Commission adopted the Advance Notice of Proposed Rulemaking to Review and Rescind All Obsolete and Excessive Regulations. After a 60-day comment period, the Commission adopted the above-captioned proposed rulemaking by order entered January 25, 1996, at L-950108, which establishes a 30-day comment period. An amended proposed rulemaking order was adopted October 3, 1996, which revised the procedure for requesting exemption from the undergrounding requirement for electric service in new residential developments, and established a 30-day comment period. At 27 Pa.B. 1162 (March 8, 1997), the Commission order was published in the *Pennsylvania Bulletin*. On December 17, 1998, the Commission adopted its final rulemaking order.

This final order eliminates and revises regulations related to the electric and gas industries which the Commission believes are excessive or obsolete, or both. Specifically, the rulemaking deletes § 57.13 (relating to records) which removes the burdensome requirements that records be kept at an office of the electric public utility within its service territory and be open to the Commission's inspection. Section 57.15 (relating to system frequency), that had been proposed to be eliminated, is retained and revised based on concerns about electric system reliability. Sections 57.61—57.67 and § 59.51 are deleted to remove burdensome paperwork requirements for electric and natural gas utilities in regard to sales promotion activities. Sections 57.85 and 57.86 (relating to underground construction, specification standards; and exceptions) are revised to simplify the procedure whereby developers may be granted an exemption from the requirement that electric service in new residential developments be located underground.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on February 20, 1997, the Commission submitted a copy of the final rulemaking, which was published as proposed at 27 Pa.B. 1162, to the Independent Regulatory Review Commission (IRRC) and the Chairperson 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 comments received, as well as other documentation. In preparing these final-form regulations, the Commission has considered the comments received from IRRC, the Committees and the public.

These final-form regulations were deemed approved by the House Committee on Consumer Affairs and were deemed approved by the Senate Committee on Consumer Protection and Professional Licensure. The final-form regulations were approved by IRRC on April 8, 1999, in accordance with section 5.1(e) of the Regulatory Review Act.

Public Meeting held
December 17, 1998

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

Final Rulemaking Order

By the Commission:

By Order entered May 23, 1995 at Docket No. L-950103, we issued an Advance Notice of Proposed Rulemaking To Review And Rescind All Obsolete And Excessive Rules And Regulations. The advance notice was published in the *Pennsylvania Bulletin* at 25 Pa.B. 2188 (June 3, 1995), and 60-day comment period set. We received comments from the Pennsylvania Electric Association and our own Bureaus of Law and CEEP which were specific to the electric industry and reflected the need to eliminate two sections and revise other sections contained in Chapter 57 (relating to electric service). Accordingly, on January 25, 1996, at Docket No. L-00950108, we entered an order initiating a proposed rulemaking to revise Chapter 57. On May 22, 1996, however, we withdrew the proposed rulemaking order from consideration by the Office of the Attorney General prior to publication to allow for Commission reconsideration of specific changes proposed to the regulations. Specifically, the Commission retained §§ 57.61—57.67 that had been proposed to be eliminated. An amended proposed rulemaking order was adopted October 3, 1996. In that order, the Commission established a 30-day comment period. On March 8, 1997, the Commission's order was published at 27 Pa. B. 1162.

In the amended proposed rulemaking order we proposed the following changes to our regulations:

- § 57.13. *Records.*

Deletion of this section to remove the burdensome requirement that records be kept at an office of the public utility within its service territory and open for Commission examination. New methods of electronic and optical data storage and transmission are available which eliminate the need to maintain hard copies of records on site.

- § 57.15. *System frequency.*

Eliminated as excessive and obsolete.

- §§ 57.61—57.67 and 59.51. *Sales Promotion Practices for Gas and Electric Utilities.*

Deletion of these regulations for both electric and gas industries. These regulations which require burdensome paperwork impose a market disadvantage on utilities as compared to new entrants and other nonregulated suppliers. Deletion of these regulations will permit gas and

electric utilities to be innovative without the burden of reporting their sales activities months in advance of their implementation.

• § 57.85. *Tariff filing.*

This section is unnecessary to the extent that it requires electric utilities to incorporate a Commission regulation on undergrounding requirements into their tariff rules. Another provision of this regulation states the obvious—that moneys received from an applicant for electrical service be credited to Contributions in Aid of Construction. The provision is surplusage that may be eliminated. Also, in subsection (c), the section was revised to identify the Bureau of Fixed Utility Services as the Commission bureau with which electrical utilities must file their undergrounding construction specification standards.

• § 57.86. *Exceptions to mandatory undergrounding of electrical service in new residential developments.*

Sections 57.81—57.88 require that electric service in new residential developments be placed underground. The existing procedure in § 57.86 for obtaining an exemption from this requirement was unnecessarily complicated, and inconsistent with other Commission procedures related to waiver of regulations. This section was revised to simplify the exemption process.

The instant order covers the same subject matter as the amended proposed rulemaking order, but with additional revisions to reflect the comments received. We believe that the revisions and deletions proposed will clarify, simplify and remove excessive and burdensome requirements from our electric service regulations.

Comments were filed by the Pennsylvania Gas Association (PGA), former State Representative William R. Lloyd Jr., National Fuel Gas Distribution Corporation (NFG), and Peoples Natural Gas Company (Peoples), and the IRRC. We will address only those regulations to which a comment was filed.

Discussion

Comments to §§ 57.61—57.67 and 59.51. Sales Promotion Practices for Gas and Electric Utilities.

Former State Representative Lloyd commented that sales practice promotion regulations should remain in place until the gas and electric industries have been fully deregulated. However, he also expressed the opinion that repeal of some of these provisions in a “deregulated” environment would appear to invite classic antitrust activities by permitting incumbent electric generators and gas suppliers to get an edge on competition by tie-ins.

In its comments, the PGA stated that the association had previously submitted the elimination of the sales promotion practices regulations for both the electric and natural gas industries, but now believes that the regulations should be retained for the electric industry. In so doing, the PGA commented that the regulations serve “a unique and constructive role” in the electric utility context in that they provide a “distinction between promotional and demand-side management (DSM) activities” so that one can evaluate “whether a claimed DSM activity falls within one of the promotional practices identified in § 57.63(a)(1)—(7) or constitutes an unapproved promotional allowance under § 57.64.”

Peoples commented that it supported the elimination of the sales promotional practices regulations. It stated that the competitive environments that utilities are in today with the unbundling of regulated services makes these

regulations additionally burdensome for utilities that must compete with unregulated companies whose promotional activities are not so restricted.

The NFG commented that it would be premature to remove restraints on the electric industry, and doing so would give an unfair advantage to electric utilities. The NFG claimed that the sales promotion practices regulations are intended to prevent grants and rebates that result in cost shifting to other electric or gas utility customers. The NFG stated that it will support the deletion of some reporting requirements but opposes the elimination of standards of conduct governing promotional practices affecting interfuel competition.

IRRC expressed no comment on our proposed deletion of these regulations.

In our amended proposed rulemaking order we stated that:

[The sales promotion practices] regulations were created at a time when there were fewer competitive forces acting upon Pennsylvania gas and electric utilities. These rules which require burdensome paperwork impose a market disadvantage on utilities as compared to new entrants and other nonregulated suppliers. Deletion of these regulations will permit gas and electric utilities to be innovative without the burden of reporting their sales activities months in advance of their implementation.

Order entered October 3, 1996, p. 3.

We have not changed our position on the elimination of these regulations. Since the enactment of the Electricity Generation Customer Choice and Competition Act (Electric Competition Act) on December 3, 1998, retail electric generation competition is a reality in this Commonwealth. The marketplace, and not the Commission, now controls the price that consumers pay for electric generation. In this climate, the continued imposition on the electric industry of the sales promotion practices regulations not only is unnecessarily burdensome, but also would tend to stifle competition and innovation in marketing, a result that would be inconsistent with the Electric Competition Act. We therefore see no justification for retaining these regulations.

As to the specific comments, we reject the NFG's notion that the elimination of these regulations will allow the offering by the electric utilities of grants and rebates to attract select customers to the detriment of other electric or gas utility customers because of cost shifting. Since the amount that consumers pay for electric generation is regulated by the marketplace, sales promotions designed to attract new customers will be a cost of doing business, and as such, will be absorbed by the supplier or passed along to consumers in the price charged for electric generation. Thus, a supplier must exercise good business sense in extending these offers, or run the risk of financial ruination, or of pricing its generation out of the market.

Additionally, Codes of Conduct established in the electric utility restructuring cases¹ prohibit cross-subsidizations between an electric utility and its supplier affiliates. This prohibition protects customers receiving “provider of last resort” generation service, under 66

¹ Allegheny Power Co., PUC Docket No. R-0097398I; Duquesne Light Co., PUC Docket No. R-00974104; Pennsylvania Power & Light Co., PUC Docket No. R-00973954; Metropolitan Edison Co., PUC Docket No. R-00974008; Pennsylvania Electric Co., PUC Docket No. R-00974009; UGI, Inc., PUC Docket No. R-00973975; Wellsboro Electric Co. PUC Docket No. R-00974046; Citizens Electric Co. PUC Docket No. R-00974047; Pennsylvania Power Co. PUC Docket No. R-00974149; and Pike County Light & Power Co. PUC Docket No. R-00974150.

Pa.C.S. § 2807(e), and transmission and distribution services from the electric utility (now called electric distribution company). Thus, the functioning of a competitive generation market in conjunction with the competitive safeguards imposed on each electric utility provide sufficient protection from cost shifting among customers and thus, eliminate the need for these regulations.

As to the PGA's contention that the retention of the definition of "DSM activities" in the regulation would be useful in helping to distinguish between approved and prohibited activities, the Commission notes again that the cost of electric generation is controlled by the marketplace, and not the Commission. Thus such a distinction is no longer useful in the context of the Commission's regulatory activities. For this reason, we reject this comment.

Finally, the Commission notes that a number of the 90 electric generation suppliers licensed to provide generation service in this Commonwealth are affiliates of Pennsylvania and non-Pennsylvania natural gas utilities and pipeline companies. This convergence of the electric and natural gas industries mandates the simultaneous elimination of these regulations for both industries to ensure fairness to all customers, and market participants. We thus reject comments that call for the retention of these regulations in whole, or in part for the electric and natural gas industries.

Comments to § 57.86. Exceptions to mandatory undergrounding of electrical service in new residential developments.

In his comments, former State Representative Lloyd was concerned that language would be removed from § 57.86 (b) that places a time limit on Commission action on a petition for exemption. In light of this comment, the Commission will retain the 180-day time limit within which a petition for exemption from undergrounding must be processed. IRRC also expressed concern about eliminating this provision, and recommended its retention, but recommended that the time period should not apply in those cases where additional information requested from the petitioner has not been supplied within the 180-day time frame. Appropriate language has been added to § 57.68(b) to retain this requirement.

IRRC agreed with the deletions proposed by the Commission but suggested further revisions to §§ 57.85 and 57.86: In regard to § 57.85, IRRC suggests (1) updating the term "public utility," and (2) establishing a time frame in which undergrounding specification standards for constructions and revisions should be made with the Commission (such as, within 10, 20 or 30 days of the EDC adopting standards or revisions thereto.) IRRC also proposed that the following language revisions be made to § 57.85:

"... file their undergrounding [construction,] specification standards and revisions for construction with the Commission Bureau of Fixed Utility Services."

We believe that IRRC's recommendation to establish a time period in which new or revised construction standards must be filed with the Commission has merit and have amended § 57.85 accordingly. We decline to accept IRRC's recommendation to update the term "public utility" to "electric distribution company" at this time. In our amended proposed rulemaking, we did not revise all the sections of Subchapter H (relating to underground electrical service in new residential developments), and making the change only in sections involved in this rulemaking will create discrepancies in language and create unneces-

sary confusion. We recognize the necessity of updating terminology to comport with the realities of the electric industry delivery system and will do so in a future housekeeping rulemaking that will revise language throughout 52 Pa. Code (relating to public utilities).

For § 57.86, IRRC recommended that the reference to "tariff rule" be deleted and replaced with the term "construction standards." IRRC also recommended that if any notices related to the exception petition filings or the Commission determinations thereon are published in the *Pennsylvania Bulletin*, § 57.86 should reference that as appropriate.

The Commission has adopted the language change recommended by IRRC. As petitions for exception from undergrounding and Commission orders on those petitions are not published in the *Pennsylvania Bulletin*, it is unnecessary to adopt IRRC's latter recommendation in regard to this section.

IRRC noted that § 57.86(b) has been amended to require that a copy of the exception petition be mailed to all appropriate local government authorities and to all other affected persons and utilities, but comments that there is no reference as to the entity responsible to make this mailing. IRRC recommended that § 57.86(b) be revised to identify the party responsible for the mailing and to require that the mailing be done at the same time as it is filed with the Commission.

The Commission adopts IRRC's recommendations and has amended subsection (b) consistent with these recommendations.

Finally IRRC recommended that subsection (c) be clarified to be consistent, making the appropriate substitution for the term "applicant." IRRC also recommended that the Commission regulations cross reference procedural rules that would be applicable to exemption petitions.

Section 57.86 allows a person other than an applicant for electric service to file a petition for exception to undergrounding the utility facilities. The applicant for electric service is defined in § 57.81 as "the developer of the recorded plot plan." As the developer of the property is entitled to change plans and install the electric facilities underground even if an exception was granted by the Commission, the use of the term "applicant for electric service" in subsection (c), as amended in this rulemaking, is proper. Therefore, we will not make IRRC's suggested change.

As to IRRC's suggestion to cross reference procedural rules relating to petitions, we have revised § 57.86(a) to reference § 5.41 (relating to petitions generally). Although additional procedural regulations relating to the verification and filing of the petition may also be applicable, we do not believe that it is necessary to cross reference them all in this regulation.

Accordingly, under sections 501, 504—506, 1301 and 1501 of the Public Utility Code, 66 Pa.C.S. §§ 501, 504—506, 1301 and 1501, and the Commonwealth Documents Law (45 P.S. § 1201 et seq.), and the regulations promulgated thereunder, we shall revise our amended proposed rulemaking order to accomplish the objectives described in the body of this order; *Therefore*,

It Is Ordered that:

1. The regulations of the Commission, 52 Pa. Code Chapter 57, are amended by deleting §§ 57.13, 57.61—57.67 and 59.51 and by amending §§ 57.85 and 57.86 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 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 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 on the Office of Consumer Advocate, the Office of Small Business Advocate and all persons who submitted comments in the rulemaking proceeding.

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

8. The contact person is Assistant Counsel Patricia Krise Burket (717) 787-3464. Alternate formats of this document are available to persons with disabilities and may be obtained by contacting Sherri Del Biondo, 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 29 Pa.B. 2195 (April 24, 1999).)

Fiscal Note: Fiscal Note 57-163 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 57. ELECTRIC SERVICE

Subchapter B. SERVICE AND FACILITIES

§ 57.13. (Reserved).

§ 57.15. System frequency.

(a) *Standard frequency.* An electric distribution company supplying alternating current service shall adopt and file with the Commission a standard frequency or frequencies for its system, the suitability of which may at any time be determined by the Commission.

(b) *Allowable variation.* An electric distribution company shall maintain the system frequency within 3% of the standard frequency adopted. Momentary variations of frequency of more than 3%, which are clearly not due to lack of proper equipment or reasonable care on the part of the electric distribution company will not be considered as violations of this section.

(c) *Records.* An electric distribution company shall continuously monitor and record system frequency variations. The records shall be provided to the Commission on request.

Subchapter F. (Reserved)

§§ 57.61—57.67. (Reserved).

Subchapter H. UNDERGROUND ELECTRICAL SERVICE IN NEW RESIDENTIAL DEVELOPMENTS

§ 57.85. Underground construction, specification standards.

Public utilities furnishing electric service to the public shall file their underground construction, specification standards and revisions thereto with the Commission's Bureau of Fixed Utility Services. These standards shall be filed within 20 working days from their date of adoption or revision.

§ 57.86. Exceptions.

(a) *Request for exception.*

(1) Whenever a public utility or an affected person believes that the application of the requirements in § 57.83 (relating to applicants for electric service) works an undue hardship, involves a physical impossibility, or is otherwise inappropriate, the utility or persons may request an exception from the underground requirements by providing the Commission with the following:

(i) A copy of the recorded plot plan of the development for which the exception is sought.

(ii) A petition setting forth:

(A) The name of the applicant.

(B) The location and the size of the development involved.

(C) The names of the electric utility and telephone utility which will provide service to the development.

(D) The date on which the construction began or will begin; whether the development is a new development or one phase in a development to be completed in several phases; and whether facilities in the area surrounding the development have been installed underground or overhead.

(2) The petition shall comply with the Commission regulations governing petitions in § 5.41 (relating to petitions generally).

(b) *Additional requirement of petitioner.* At the same time that the petition is filed with the Commission, a copy of the petition shall be mailed to the appropriate local government authorities, and to other affected persons and utilities by the person requesting the exception. The Commission will issue a decision on the petition within 180 days of the date of its filing, if sufficient data upon which the exception can be granted has been provided in the petition.

(c) *Grant of exception.* If an exception request initiated by an applicant for electric service is granted, and the applicant thereafter desires underground electric service, this subchapter applies as if no exception has been granted.

CHAPTER 59. GAS SERVICE

§ 59.51. (Reserved).

[Pa.B. Doc. No. 99-817. Filed for public inspection May 21, 1999, 9:00 a.m.]