

PROPOSED RULEMAKING

GAME COMMISSION

[58 PA. CODE CHS. 135 AND 141]

Lands and Buildings; Hunting and Trapping

To effectively manage the wildlife resources of this Commonwealth, the Game Commission (Commission) at its April 4, 2000, meeting, proposed the following amendments to 58 Pa. Code:

Amend § 135.103 (relating to registration for controlled goose hunting areas) to move the drawing back to September to give hunters a longer opportunity to apply for a blind in the Middle Creek Wildlife Management Area (MCWMA) since goose hunting during the September 2000 Canada goose season will not be open. Amend § 135.106 (relating to Pymatuning Wildlife Management Area) to address safety concerns by making some minor changes to the application process and scheduling the hunt outside of the late archery and muzzleloading seasons.

Amend § 141.4 (relating to hunting hours) to move the hunting hours of the first dove hunting season back to 12 noon to sunset. Amend § 141.25 (relating to early and late goose hunting seasons) to make the closed area during the early and late goose hunting seasons consistent. Amend §§ 141.25 and 141.26 (relating to early Canada goose hunting season on Middle Creek Wildlife Management Area) to eliminate the area closed to goose hunting surrounding the Middle Creek Wildlife Management Area.

The proposed amendments to Chapters 135 and 141 will have no adverse impact on the wildlife resources of this Commonwealth.

The authority for the proposal of these regulations is 34 Pa.C.S. (relating to Game and Wildlife Code (code)).

These proposals were made public at the April 4, 2000, meeting of the Commission, and comments on these proposals can be sent to the Executive Director of the Game Commission, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797, until June 16, 2000.

Amendments to Chapter 135

1. Introduction

To better administer the special wildlife management areas at Middle Creek and Pymatuning, the Commission at its April 4, 2000, meeting proposed making several changes to Chapter 135, Subchapter F (relating to Special Wildlife Management Areas). The amendments include a change to § 135.103 moving the deadline for submitting applications for blinds in the controlled goose hunting areas of MCWMA from the second Tuesday in August to the second Tuesday in September. The Commission is also proposing to amend § 135.106 to move the special deer hunt outside the late archery and muzzleloading seasons because of safety concerns. These proposals are made under the authority contained in section 721(a) of the code (relating to control of property).

2. Purpose and Authority

The administration of the special wildlife management areas at Middle Creek and Pymatuning is a dynamic process which sometimes requires adjustments to proce-

dures. In past years, the drawing for goose blind reservations at MCWMA has been held in August to accommodate opening the controlled area during the September Canada goose season. The controlled goose hunting area at MCWMA will not be open for the September 2000 Canada goose season. Moving the deadline back 1 month will give hunters more time to apply and will allow the Commission to advise successful applicants of the exact season, which is usually set by the United States Fish and Wildlife Service in early September.

At the same time, the special deer hunt in Pymatuning Wildlife Management Area (PWMA) has become very popular. Because it is currently held during the muzzleloader and late archery seasons, deer hunters will station themselves just outside the boundary of PWMA, in hope of harvesting a fleeing deer. This has led to at least one incident of a hunter being struck by a stray bullet, giving rise to safety concerns. To deal with these concerns, the Commission is proposing to hold the special hunt outside of other deer seasons.

3. Regulatory Requirements

For the most part, the proposals involve changes to procedures with no additional requirements. The change in the goose blind application deadline is a relaxation of a requirement. The holding of the special deer hunt in PWMA is a mere change in timing.

4. Persons Affected

Persons wishing to engage in the specified activities at PWMA and MCWMA may be affected by the proposed changes.

Amendment to § 141.4

1. Introduction

At its June 8, 1999, meeting, the Commission finally adopted a change to § 141.4 to allow the hunting of mourning doves from 1/2 hour before sunrise rather than from noon. It has been determined that this has led to conflicts with Canada goose hunters hunting during the early season. As a result and to more effectively manage the wildlife resources of this Commonwealth, the Commission at its meeting held on April 4, 2000, proposed changing § 141.4 to return the start of hunting hours for hunting mourning doves to noon. This change was proposed under sections 322(c)(1) and 2102(a) of the code (relating to powers and duties of the Commission; and regulations).

2. Purpose and Authority

The current provision of § 141.4 provides that mourning doves may be hunted all day. As was pointed out in the previous paragraph, the 1999 expansion of hunting hours has led to conflicts with Canada goose hunters hunting during the early season. To eliminate these conflicts, the Commission has proposed that shooting hours for mourning doves be returned to their noon start.

Section 322(c)(1) of the code empowers the Commission to fix daily shooting or taking hours. 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 change would be adopted under this authority.

3. *Regulatory Requirements*

The proposed change would reduce the number of hours for hunting mourning doves.

4. *Persons Affected*

Individuals wishing to hunt mourning doves would be affected by the proposed change.

Amendments to §§ 141.25 and 141.26

1. *Introduction*

The number of resident Canada geese in Southeastern Pennsylvania and number of accompanying nuisance complaints have increased dramatically in recent years. To deal with this situation, the Commission at its April 4, 2000, meeting proposed changing §§ 141.25 and 141.26 to eliminate the area closed to goose hunting surrounding the MCWMA during the early Canada goose season.

In addition, the areas closed to Canada goose hunting in the area surrounding PWMA are different during the early and late seasons. The Commission is proposing to change these sections to make the closed areas consistent in both seasons. These changes were proposed under sections 322(c)(1) and 2102(b)(1) of the code.

2. *Purpose and Authority*

The Commission is required to set hunting and furtaking seasons and bag limits on an annual basis. Section 322 of the code specifically empowers the Commission to fix seasons for any species of game or wildlife. Section 2102(b) of the code mandates that the Commission promulgate regulations relating to seasons and bag limits.

As was pointed out earlier, the population of resident Canada geese in Southeastern Pennsylvania has dramatically increased, resulting in numerous nuisance geese complaints. Given this situation, it makes little sense to restrict Canada goose hunting during the early Canada goose season, when resident populations are targeted. The Commission has therefore proposed eliminating the closed area surrounding the MCWMA during that season, by amending §§ 141.25 and 141.26.

Also, the areas of Crawford County surrounding PWMA that are closed to Canada goose hunting during the early and late seasons are different. To avoid confusion, the Commission is proposing to have one area closed to goose hunting during both seasons. The proposed changes will accomplish that purpose.

3. *Regulatory Requirements*

The proposed changes will relax current regulatory requirements.

4. *Comment and Paperwork Requirements*

Persons wishing to hunt geese at MCWMA and PWMA would be affected by the changes.

5. *Cost and Paperwork Requirements*

The proposed changes would not result in any additional cost, either to the Commission or to hunters.

6. *Effective Date*

The changes would be effective on final publication in the *Pennsylvania Bulletin* and would remain in effect until changed by the Commission.

7. *Contact Person*

For further information on the proposed changes, the contact person is William L. Hutson, Director, Bureau of

Law Enforcement, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797, (717) 783-6526.

VERNON R. ROSS,
Executive Director

Fiscal Note: 48-122. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 58. RECREATION

PART III. GAME COMMISSION

CHAPTER 135. LANDS AND BUILDINGS

**Subchapter F. SPECIAL WILDLIFE
MANAGEMENT AREAS**

§ 135.103. Registration for controlled goose hunting areas.

The following apply to reservations for controlled goose hunting areas:

* * * * *

(2) Reservation requests on official application forms shall be submitted by mail. An application shall contain requested information, including the applicant's current valid hunting license back tag number, including letter.

(i) *Middle Creek Wildlife Management Area.* Applications shall be received by the close of business on the second Tuesday in **[August] September**. Applications received later than the close of business on the second Tuesday in **[August] September** will be rejected.

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(4) Selections of mailed application forms will be made by random drawing from all eligible applications submitted. The Director will establish, no later than 20 days prior to the drawing, the number of applications to be drawn.

(i) *Middle Creek Wildlife Management Area.* The drawing will be held on the second Wednesday in **[August] September** and shall be open to the public.

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§ 135.106. Pymatuning Wildlife Management Area.

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(d) The following apply to special hunts on the controlled **[areas] area**:

(1) **[Hunting deer during the muzzleloader and late archery seasons is by permit only.**

(2) **A drawing will determine successful applicants on a date and time designated by the Director or a designee.**

(3) **Permit numbers issued daily to muzzleloader and archery hunters shall be set by the Director or a designee prior to the drawing.**

(4) **If determined by the Director or a designee that an adequate number of deer have been harvested on the area prior to the last day of the scheduled season, the Director may suspend hunting on the area and cancel remaining permits.**

(5) **A successful hunter shall submit the deer for examination at the registration center on the dates of the permit.**

(6) A hunter shall return a permit to the registration center prior to but not later than 1/2 hour after the daily closing time on the date of the permit.

(7) If a successful applicant does not appear to claim a reservation by the opening hunting hour on the day assigned, the reservation may be reasigned on a first-come basis.

(8) Hunters participating in the special archery and muzzleloader hunts inside the controlled areas shall wear a minimum of 250 square inches of fluorescent orange material on the head, chest and back combined.]

Special deer hunts will be by permit only, limited to archery and muzzleloading firearms.

(2) Notwithstanding the provisions in § 135.161(2) (relating to Commission-owned or leased lands or waters), the Executive Director may designate dates for deer hunting outside of established seasons and bag limits.

(3) A drawing of applications to determine successful hunters will be held at the Pymatuning Wildlife Management Area headquarters on a date and time designated by the director or a designee.

(4) Applications will be received at the area headquarters no later than the close of business of the day prior to the date and time of the drawing.

(5) One official application per person to hunt deer on the controlled area may be submitted each license year. Anyone submitting more than one application for a permit will have all applications rejected. The application shall contain archery or muzzleloading license stamp numbers.

(6) The number of permits to be drawn shall be set by the director or a designee prior to the drawing.

(7) If a successful applicant does not appear to claim a reservation on the day assigned, prior to the opening hunting hour, the permit becomes invalid and is not transferable.

(8) A successful hunter shall submit a harvested deer for examination to the management area headquarters on the date of the permit, no later than 1 hour after the daily closing of hunting hours.

(9) Unsuccessful hunters shall return the permit to the management area headquarters on the date of the permit, no later than 1 hour after the daily closing of hunting hours.

(10) Hunters participating in the special archery and muzzleloading hunts inside the controlled area shall wear a minimum of 250 square inches of fluorescent orange material on the head, back and chest combined.

CHAPTER 141. HUNTING AND TRAPPING

Subchapter A. GENERAL

§ 141.4. Hunting hours.

During open hunting seasons, wild birds and animals may be taken 1/2 hour before sunrise to sunset unless further restricted.

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(4) Mourning doves may be hunted from 12 noon to sunset from the first season opening date through the first season closing date.

Subchapter B. SMALL GAME

§ 141.25. Early and late goose hunting seasons.

(a) *Early season and description.*

(1) Subject to approval of the United States Fish and Wildlife Service, there will be an early Canada goose hunting season starting on September 1 (except when Sunday, then September 2), and ending on September 25 (except when Sunday, then September 24) Statewide. [Geese may be taken on the Pymatuning State Park Reservoir and an area to extend 100 yards inland from the shoreline of the reservoir excluding the area east of L. R. 20006.]

(2) Geese may not be taken in that portion of Crawford County which is in the area south of [Route 6 from the Ohio line to its intersection with Route 322 in the town of Conneaut Lake and north of Route 322 west to the Ohio line, or in Lancaster/Lebanon Counties in the area east of S. R. 501 from Shaefertown to the Pa. Turnpike, north of the Pa. Turnpike to S. R. 272, west of S. R. 272 to S. R. 897, and south of S. R. 897 to Shaefertown, referred to as closed area.] S. R. 198 from the Ohio line to the intersection of S. R. 18, to the intersection of U. S. Route 322/S. R. 18, to the intersection of S. R. 3013, south to the Crawford/Mercer County line.

(3) Bag limits are as follows:

* * * * *

(ii) There is a daily bag limit of three and a possession limit of six in the remainder of the State with the exception of the closed [areas] area in Crawford [and Lancaster/Lebanon Counties.] County.

(b) *Late season and description.*

(1) *Areas.* Subject to approval of the United States Fish and Wildlife Service, there is a late Canada goose hunting season beginning on January 15 (except when Sunday, then January 16), and ending on February 15 (except when Sunday, then February 14) Statewide, with the exception of [Erie, Mercer, Butler,] that area of Crawford County south of S. R. 198 from the Ohio line to the intersection of S. R. 18, to the intersection of U. S. Route 322/S. R. 18, to the intersection of S. R. 3013, south to the Crawford/Mercer County line and the area east of I-83 from the Maryland State line to the intersection of U. S. Route 30 to the intersection of S. R. 441, east of S. R. 441 to intersection of I-283, east of I-283 to I-83, east of I-83 to intersection of I-81, east of I-81 to intersection of I-80 and south of I-80 to the New Jersey State line.

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[(3) *Map.* See map of Late Canada Goose Areas in Appendix E.]

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§ 141.26. Early Canada goose hunting season on Middle Creek Wildlife Management Area.

During an early Canada goose season, the following apply:

(1) *Opening of controlled hunting area.* In years when the United States Fish and Wildlife Services authorizes a regular fall Canada goose hunting season, and an early Canada goose hunting season, the Director may open the

controlled hunting area at Middle Creek Wildlife Management Area for early Canada goose hunting. **[When the controlled hunting area is open during an early Canada goose hunting season, the closed areas in Lebanon and Lancaster Counties, as defined in § 141.25(a)(2) (relating to early and late goose hunting seasons) do not apply.]**

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(Editor's Note: As part of this proposal, the Commission proposes to delete the map which appears in Appendix E in 58 Pa. Code page 141-23, serial page (227707).)

[Pa.B. Doc. No. 00-984. Filed for public inspection June 9, 2000, 9:00 a.m.]

PENNSYLVANIA PUBLIC UTILITY COMMISSION

[52 PA. CODE CH. 69]

[M-00001351]

Maintaining Safety and Reliability for Natural Gas Supply and Distribution Service

The Pennsylvania Public Utility Commission (Commission) on April 27, 2000, adopted a proposed policy statement order setting forth procedures the Commission intends to follow in executing its responsibilities under the Natural Gas Choice and Competition Act related to safety and reliability for natural gas supply and distribution service. The contact persons are William Hall, Bureau of Conservation, Economics and Energy Planning, (717) 783-1547 and David Screven, Law Bureau, (717) 787-2126.

Commissioners Present: John M. Quain, Chairperson; Robert K. Bloom, Vice Chairperson; Nora Mead Brownell; Aaron Wilson, Jr.; Terrance J. Fitzpatrick

Public Meeting held
April 27, 2000

Proposed Policy Statement

By the Commission:

On June 22, 1999, Governor Tom Ridge signed into law the Natural Gas Choice and Competition Act, 66 Pa.C.S. §§ 2201—2212 (act). The act revised the Public Utility Code, 66 Pa.C.S. §§ 101—3316 (code) adding Chapter 22, relating to restructuring of the natural gas utility industry. The Commission is the agency charged with implementing the act.

This policy statement sets forth the procedures the Commission intends to follow in executing its responsibilities under section 2203(1) of the act (relating to standards for restructuring of natural gas utility industry).

(1) The Commission shall enforce standards as necessary to ensure continuation of the safety and reliability of the natural gas supply and distribution service to all retail customers. In adopting the standards, the Commission shall consider the absence of any applicable industry standards and practices or adopt standards in conformity with industry standards and practices meeting the standards of this chapter. The application of such standards shall be in

such a manner that incorporates the operational requirements of the different natural gas distribution companies.

Also in section 2203(12) of the act:

(12) The Commission shall make its determinations pursuant to this chapter and shall adopt such orders or regulations as necessary and appropriate to ensure that natural gas suppliers meet their supply and reliability obligations, including but not limited to, establishing penalties for failure to deliver natural gas and revoking licenses. Any affected entity may at any time petition the Commission to amend or rescind any such order or regulation issued or promulgated under this chapter.

Commission staff established a Collaborative Working Group as the appropriate vehicle to proceed with the implementation of section 2203(1) and (12) of the act. On July 7, 1999, Commission staff convened the first meeting of the Gas Safety and Reliability Working Group to address safety and reliability issues presented by the implementation of the act.

At the initial meeting of the working group, Commission staff identified statutory directives that applied to the working group, framed a tentative list of issues that should be addressed by the working group, and established a date for the submission of informal comments. A second meeting of the working group was held on August 11, 1999, and a schedule for the further work of the group was established.

The group agreed that section 2203(1) of the act, recognizes the different operational characteristics of Natural Gas Distribution Companies and that this allows certain issues to be addressed in tariffs. Regulations or policies containing detailed uniform rules for all companies may be inappropriate and unworkable. Commission staff urged the parties to identify those common issues, which could be addressed in a policy statement.

The Office of the Consumer Advocate, the Office of Trial Staff, the Pennsylvania Gas Association, Texas Eastern Transmission Corporation, CNG Retail Services Corporation and TXU Energy Services (filed jointly with Statoil Energy) submitted informal comments on August 18, 1999.

The Working Group designated selected members to draft a suggested policy statement and this draft was delivered to the full group and considered at the meeting on September 21, 1999. The working group agreed that the policy should be presented to the Commission for consideration as Interim Safety and Reliability Guidelines.

The Commission approved the Interim Guidelines at its public meeting on October 15, 1999, at Docket No. L-00990144. The Commission stated:

After a review of the suggested policy statement, we agree that the policy statement appropriately addresses those issues that can be determined to be generic guidelines applicable to all NGDC systems in Pennsylvania and is consistent with the reliability provisions of the Act. We believe that the proposed guidelines are appropriate to ensure that safety and reliability are maintained, while recognizing that the details of these requirements need to be further developed in each NGDC's restructuring proceeding. We also believe that these requirements fairly balance the obligations of NGDCs, NGSS and end-users in the process of ensuring system reliability.

The Commission ordered that these guidelines be incorporated into the Commission's regulations in Chapter 69 (relating to policy statements).

The guidelines address a number of matters that are critical to reliability, including (1) delivery standards for natural gas suppliers; (2) the definition, use, and verification of "comparable capacity" for supplying firm service; (3) the distinctions between firm and interruptible service; (4) the roles of the supplier of last resort and the NGDC's role as system operator; (5) requirements to ensure that sufficient firm capacity remains committed to NGDC firm service customers; (6) appropriate guidelines for the establishment of penalties; (7) critical day procedures necessary to maintain system safety and reliability; (8) the establishment of communication protocols on all matters which may affect system reliability; and (9) the establishment of Operational and Capacity Councils to meet the requirements of section 2204(f) of the act (relating to implementation). On all of these issues, the guidelines provide a strong framework for addressing these issues in more detail in the context of each utility's tariff and operational procedures.

We propose to continue to monitor issues that are crucial to maintaining reliability and safety. We also propose to impose penalties or revoke the license of a Natural Gas Supplier if an investigation shows that a supplier is in noncompliance with Tariff rules or Commission requirements and no corrective action has been taken.

To ensure the continued safety and reliability of natural gas service in this Commonwealth, the Commission proposes to amend Chapter 69 by adding §§ 69.11—69.19, to read as set forth in Annex A, which establishes guidelines for natural gas safety and reliability. Accordingly, under section 501 of the code 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 in Chapter 69 as noted and to read as set forth in Annex A; *Therefore, It Is Ordered That*:

1. The proposed amendments to Chapter 69, as set forth in Annex A, are issued for comment.

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

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

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

5. A copy of this order and Annex A shall be served upon the Office of Consumer Advocate, the Office of Small Business Advocate, the Office of Trial Staff, all jurisdictional Natural Gas Distribution Companies and all Licensed Natural Gas Suppliers.

JAMES J. MCNULTY,
Secretary

Fiscal Note: 57-216. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 52. PUBLIC UTILITIES

PART I. PENNSYLVANIA PUBLIC UTILITY COMMISSION

Subpart C. FIXED SERVICE UTILITIES

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

SAFETY AND RELIABILITY GUIDELINES

§ 69.11. Definitions.

The following words and terms, when used in this section and §§ 69.12—69.19, have the following meanings, unless the context clearly indicates otherwise:

Act—66 Pa.C.S. §§ 2201—2212 (relating to natural gas competition).

Design day conditions—The extreme weather conditions that an NGDC uses to project customer requirements.

Essential human needs retail gas customer—Customers consuming gas service in buildings where persons normally dwell including apartment houses, dormitories, hotels, hospitals and nursing homes, as well as the use of natural gas by sewage plants. (See § 69.22 (relating to definitions).)

Firm capacity—Assigned capacity or comparable capacity that can be called upon to serve customer requirements on a reliable basis even under design day conditions

Gas supply assets—Includes all sources and components associated with the acquisition and delivery of natural gas.

Interruptible gas service—Indicates that natural gas service may be interrupted consistent with the terms and conditions of the NGDC tariff.

Interstate capacity—Services provided by a Federal Energy Regulatory Commission-regulated entity, including pipeline transportation, storage, peaking, balancing and no-notice services.

NGDC—Natural gas distribution company.

NGS—Natural gas supplier.

Operational flow order—An order issued by an NGDC to protect the safe and reliable operation of its gas system, either by restricting service or requiring affirmative action by shippers.

Reliability plan—A plan provided for in 66 Pa.C.S. § 1317(c) (relating to regulation of natural gas costs).

Residential retail gas customer—As defined in the tariff of each NGDC.

SOLR—Supplier of last resort.

§ 69.12. Delivery standards for NGSs.

(a) NGSs should deliver natural gas supplies under the terms of service specified in NGDC tariffs. Failure to deliver natural gas supplies in accordance with the tariffs may subject NGSs to penalties under procedures specified in the tariffs or revocation of licenses, or both. (See section 2203(12) of the act (relating to standards for restructuring of natural gas utility industry).) The NGSs may serve customers with different quality of service requirements, as permitted under the act and applicable NGDC tariffs.

(b) NGSs should utilize firm capacity sufficient to meet the requirements of their firm service customers except to the extent otherwise provided in each NGDC's reliability plan. Service to any essential human needs retail gas customer lacking installed and operable alternative fuel capability and any residential retail gas customer should be firm service.

(c) NGSs should warrant to the NGDC that they have sufficient firm capacity to meet the requirements of the essential human needs retail gas customers, as defined in § 69.11 (relating to definitions), and should describe the characteristics of any firm capacity to the NGDC. The NGDC should take commercially reasonable steps to attempt to verify that the firm capacity contract rights exist. The failure or inability of an NGDC to verify the existence of the contract rights using commercially reasonable steps does not relieve an NGS from any liability for failing to deliver gas, or subject the NGDC to any liability resulting from the NGS's failure to deliver.

(d) Natural gas service to interruptible gas service customers should be interrupted, pursuant to the terms and conditions of the NGDC's tariff, if the safety and reliability of firm service would be impeded by the interruptible customer's continued use of natural gas.

§ 69.13. Service obligations of the supplier of last resort.

(a) The SOLR is the NGDC or an NGS, which has been designated by the Commission under section 2207 of the act (relating to obligations to serve) to provide SOLR service. Each of the following services will be provided by an SOLR:

(1) Natural gas supply services to those customers who have not chosen an alternative NGS or who choose to be serviced by their SOLR.

(2) Natural gas supply services to those customers who are refused supply service from an NGS.

(3) Natural gas supply services to those customers whose NGS has failed to deliver its requirements.

(b) A customer should not have more than one SOLR designated for any of the services in subsection (a).

(c) An SOLR under subsection (a)(3) should provide sufficient supplies as to quantity, quality, pressure and location to meet the operational reliability requirements of the NGDC's system including a failure of one or more NGSs to do one of the following:

(1) Supply natural gas to their retail gas customers in conformance with their contractual obligations to the customers.

(2) Satisfy applicable reliability standards and obligations.

§ 69.14. Obligations of the system operator.

An NGDC should, in addition to performing any other roles such as selling natural gas, function as the system operator in ensuring that its distribution system is designed, constructed, managed and operated to safely and reliably receive and deliver natural gas throughout its facilities to customers connected to them. An NGDC, in performing its responsibilities as a system operator, may retain or acquire gas supply assets as required to perform its system operator functions in a manner which permits it to operate its system in a safe and reliable manner. The identity of the gas supply assets utilized by the NGDC to perform its system operator function should

be reviewed by the Commission annually in the NGDC's Section 1307(f) proceeding as part of the NGDC's reliability plan.

§ 69.15. Ensuring sufficient firm capacity availability.

(a) NGSs using firm gas supply contracts with Pennsylvania producers or storage or transportation capacity contracts acquired through assignment or release by NGDCs or acquired as the result of the nonrenewal of a storage or transportation capacity contract previously held by the NGDC should offer the SOLR, or the successor NGS, a right of first refusal to utilize the contracts at the NGS's contract cost as long as needed to serve retail gas customers being relinquished by the NGS.

(b) NGSs using storage or transportation capacity contracts acquired in a manner other than through assignment, release or nonrenewal by the NGDC should provide the SOLR a right of first refusal to use the capacity at contract cost if the NGS failed to give the SOLR and the NGDC sufficient notice or if there is insufficient alternative capacity available to serve the market being relinquished by the NGS.

(1) The SOLR may retain the right to use the capacity at cost until the SOLR, through reasonable and diligent efforts, is able to acquire replacement capacity sufficient to serve the customers being relinquished by the NGS.

(2) The NGDC or the SOLR should acquire the replacement capacity in a manner consistent with the Commission's least cost fuel procurement policy.

§ 69.16. Penalties.

Nonperformance penalties should be established at levels sufficiently high to deter NGSs from failing to comply with their delivery obligations.

(1) The penalties should be independent of and in addition to the costs incurred by the NGDC, or, in the alternative, the supplier of last resort, for replacement gas supplies, including pipeline penalties.

(2) NGDCs may take into consideration the operational costs and other liabilities NGDCs may be exposed to by virtue of an NGS's failure to deliver in establishing penalties.

(3) Failure of an NGS to honor delivery obligations may lead to disqualification from NGDC programs, suspension or revocation of the NGSs license.

(4) The disqualification, suspension or revocation should not relieve the NGS of its obligations to pay all penalties and costs incurred by the NGDC as a result of the NGS's failure to deliver.

§ 69.17. Critical period procedures.

(a) A critical period exists when the NGDC declares an Operational Flow Order (OFO). A critical period implies the need for heightened awareness and attention by all parties.

(1) OFOs are issued to alleviate stress, or potential stress, to the NGDC system that threatens safety or reliability, or both.

(2) OFOs are an action of last resort, are never issued lightly, and are only issued for safety or reliability reasons.

(3) OFOs are distinct from, and do not preclude, other types of flow orders which an NGDC may issue to satisfy other obligations of the NGDC or the SOLR under the code or this title, such as the obligation to fulfill the least

cost fuel procurement requirements of section 1318 of the act (relating to determination of just and reasonable gas cost rates).

(b) The NGDC should describe in detail, in its tariff, the actions it will take in advance of, and during a critical period. At a minimum, those actions should include the following:

(1) Exercises wherein critical period communications between, and the required responses of, the parties can be tested.

(2) A protocol for issuing and communicating system alerts that announce actual or pending events that, if unchecked, may result in a critical period, and call for voluntary actions or responses from NGSs and customers.

(3) A protocol for issuing and communicating OFOs. The protocol should address how and when the OFOs will be announced, and provide for disseminating periodic status reports during the period an OFO is in effect. OFOs should state the actions required and the reasons for the actions, be as localized as possible and be applied in a nondiscriminatory manner.

§ 69.18. Communications protocols.

Communications protocols are tools by which NGDCs, NGSs and other parties, define and describe the type, form and frequency of communications necessary to successfully fulfill customer requirements in an operating environment of increased retail choice. Effective and consistent communications are critical to reduce errors, and provide all entities with the information necessary to properly fulfill their respective responsibilities, both in normal and emergency circumstances. A communications protocol should include at minimum, in addition to the specific requirements in § 69.17(b)(2) and (3) (relating to critical period procedures) the following:

(1) A detailing of contact data for both NGDC and NGS personnel responsible for the various aspects of customer contact, gas deliveries and distribution, including mechanisms for ensuring that the data is kept current for all parties.

(2) The specification that regular meetings will be held, with joint agenda development responsibilities, including the potential scheduling of operational conference calls.

(3) Communications, to the extent not otherwise set forth in the NGDC's tariff, associated with the NGDC's procedures for customer enrollment, billing arrangements, daily or monthly delivery quantity determination, nominations (monthly, daily, intra-day, and weekend), balancing options, reconciliation or true-ups, cash-outs and electronic data exchange requirements.

(d) Procedures utilized by NGDCs to inform NGSs of changes to NGS delivered supplies or customer demand, or both, required to assure system reliability, both daily and seasonal, and to avoid pipeline penalties.

§ 69.19. Operational and capacity councils.

(a) Each NGDC should create an operational and capacity council for parties referred to in section 2204(f) of the act (relating to implementation) to discuss and attempt to resolve operational and capacity issues related to customer choice, including the reliability effects of those operational and capacity issues related to customer choice and the ongoing implementation of this section and §§ 69.11—69.18 (relating to safety and reliability guidelines). The intent of these councils is to explore the possibility of building consensus among council participants relating to operational, capacity and operational and capacity-related safety and reliability issues in a fair and nondiscriminatory manner.

(b) Each NGDC's operational and capacity council should, at a minimum, establish, in consultation with council participants, the following:

- (1) A regular meeting schedule.
- (2) An agenda for each meeting.

(c) The final determination of operational and reliability issues resides with the NGDC, subject to Commission review.

(d) The fact that statements were made, or positions were taken and were not considered or accepted, in operational and capacity council meetings should not be considered, or entered into evidence, in any formal proceeding before the Commission relating to any matter addressed in the council meetings.

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