

RULES AND REGULATIONS

Title 4—ADMINISTRATION

OFFICE OF THE BUDGET

[4 PA. CODE CH. 7]

Fiscal Notes

The Office of the Budget (OB), by this order, adopts the amendments to Chapter 7, Subchapter R (relating to fiscal notes) under section 612 of The Administrative Code of 1929 (71 P. S. § 232) (Administrative Code) to read as set forth in Annex A.

The proposed amendments were published at 30 Pa.B. 5967 (November 18, 2000). No comments were received and there are no changes to the published proposed rulemaking.

Purpose

These regulatory changes will clarify the process that agencies must follow to ensure that fiscal notes accompany every regulatory action and administrative procedure published in the *Pennsylvania Bulletin*.

The OB is updating Subchapter R so that it conforms with the present practice of writing fiscal notes.

Explanation of Regulatory Requirements

Administrative departments, boards, commissions and authorities receiving money from the State Treasury are required to provide fiscal notes with every regulatory action and administrative procedure published in the *Pennsylvania Bulletin*. The regulatory changes codify the current practice of writing fiscal notes.

Agencies that are required to submit a regulatory analysis form to the Independent Regulatory Review Commission (IRRC) shall submit to the OB one copy of the regulatory analysis form and one copy of the regulatory action or administrative procedure, or changes thereto. Agencies that are not required to submit a regulatory analysis form to IRRC for a regulatory action or administrative procedure shall submit the following information to the OB:

- (i) One copy of each regulatory action or administrative procedure.
- (ii) The designation of the fund out of which the appropriation providing for expenditures under the action or procedure shall be made and the line item, if any, of the General Appropriation Act or other appropriation act out of which expenditures or losses of Commonwealth funds will occur as a result of the action or procedures.
- (iii) The probable cost for the fiscal year the program is implemented and a projected cost estimate of the program for each of the 5 succeeding fiscal years.
- (iv) The probable loss of revenue for the fiscal year of its implementation and a projected loss of revenue from the program for each of the 5 succeeding fiscal years.
- (v) The 3 year fiscal history of the program for which expenditures are to be made.

The enumerated information is also required to be submitted for Executive Orders, statements of policy and notice of rule changes and notices related to Federally required changes and changes in fee structure.

The OB reviews the regulatory action or administrative procedure, or changes thereto, and writes a fiscal note

explaining its economic impact. The OB sends the fiscal note to the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.

Fiscal Impact

The OB has determined that the amendments will not have any additional fiscal impact on the Commonwealth.

Paperwork

The amendments will not increase paperwork for the public or the Commonwealth.

Effective Date

The amendments will become effective upon publication in the *Pennsylvania Bulletin*.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on February 8, 2001, the OB submitted a copy of the proposed rulemaking to IRRC and the Chairpersons of the Senate and House Appropriations Committees for review and comment. The OB also provided IRRC and the Committees with a copy of a detailed Regulatory Analysis Form prepared by the OB.

The OB prepared the final-form rulemaking with no comments received from IRRC, the Committees or the public.

Under section 5.1(d) of the Regulatory Review Act (71 P. S. § 745.5a(d)), on September 25, 2001, this final-form rulemaking was deemed approved by the Committees. The regulations were deemed approved by IRRC under section 5(g) of the Independent Regulatory Review Act, effective September 18, 2001.

Findings

The OB finds that:

(1) Public notice of proposed rulemaking was given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202) and regulations promulgated thereunder in 1 Pa. Code §§ 7.1 and 7.2.

(2) The adoption of these regulations in the manner provided in this order is necessary and appropriate for the administration and enforcement of the Administrative Code.

Order

The OB, acting under the authority contained in section 612 of the Administrative Code orders that:

(a) The regulations of the OB, 4 Pa. Code Chapter 7, are amended by amending §§ 7.232 and 7.234 and by deleting §§ 7.233 and 7.235 to read as set forth in Annex A.

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

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

(d) This order shall take effect upon publication in the *Pennsylvania Bulletin*.

ROBERT A. BITTENBENDER,
Secretary

(*Editor's Note:* For the text of the order of the Independent Regulatory Review Commission, relating to this document, see 31 Pa.B. 5622 (October 6, 2001).)

Fiscal Note: Fiscal Note 9-1 remains valid for the final adoption of the subject regulations.

Annex A

TITLE 4. ADMINISTRATION PART I. GOVERNOR'S OFFICE

CHAPTER 7. MISCELLANEOUS PROVISIONS

Subchapter R. FISCAL NOTES

§ 7.232. Definitions.

Regulatory actions and administrative procedures consist of the following:

(1) Executive orders of the Governor, except those which have no general applicability and legal effect or are effective only against Commonwealth agencies or persons in their capacity as officers, agents or employes thereof.

(2) Administrative and other regulations.

(3) Statements of policy which are general and permanent in nature.

(4) Notice of rule changes and notices related to Federally required changes and changes in fee structure.

§ 7.233. (Reserved).

§ 7.234. Responsibilities

(a) Agencies required by § 7.231 (relating to policy) to publish fiscal notes are to establish procedures to insure that fiscal notes are included with regulatory actions and administrative procedures as follows:

(1) Agencies that are required to submit a regulatory analysis form to the Independent Regulatory Review Commission under the Regulatory Review Act (71 P.S. §§ 745.1—745.14) shall submit one copy of a regulatory analysis form and one copy of the regulatory action or administrative procedure, or changes thereto, to the Office of the Budget prior to the time that the regulatory action or administrative procedure, is deposited with the Legislative Reference Bureau.

(2) Agencies that are not required to submit a regulatory analysis form to the Independent Regulatory Review Commission for a regulatory action or administrative procedure shall submit the following information to the Office of the Budget:

(i) One copy of each regulatory action or administrative procedure.

(ii) The designation of the fund out of which the appropriation providing for expenditures under the action or procedure shall be made and the line item, if any, of the General Appropriation Act or other appropriation act out of which expenditures or losses of Commonwealth funds will occur as a result of the action or procedures.

(iii) The probable cost for the fiscal year the program is implemented and a projected cost estimate of the program for each of the 5 succeeding fiscal years.

(iv) The probable loss of revenue for the fiscal year of its implementation and a projected loss of revenue from the program for each of the 5 succeeding fiscal years.

(v) The 3-year fiscal history of the program for which expenditures are to be made.

(b) The Secretary of the Budget will review or have reviewed each fiscal note before publication in the *Penn-*

sylvania Bulletin. The Secretary will, as appropriate, include recommendations and the reasons therefore.

(c) The Legislative Reference Bureau shall publish information contained in fiscal notes required by this subchapter.

§ 7.235. (Reserved).

[Pa.B. Doc. No. 01-1282-9. Filed for public inspection December 14, 2001, 9:00 a.m.]

Title 52—PUBLIC UTILITIES PENNSYLVANIA PUBLIC UTILITY COMMISSION

[L-00000151]

[52 PA. CODE CHS. 59 AND 69]

Natural Gas Emergency Plans and Emergency Actions

The Pennsylvania Public Utility Commission (Commission) on August 9, 2001, adopted a final-form rulemaking order setting forth the procedures the Commission intends to follow in managing natural gas emergencies to maintain gas service and minimize service disruptions. The contact persons are Dr. Ahmed Kaloko, Bureau of Conservation, Economics and Energy Planning (717) 787-2139 (technical); and David Screven, Law Bureau (717) 787-2126 (legal).

Executive Summary

For many years, natural gas emergency planning has been a staple of this Commonwealth's natural gas distribution companies' (NGDC) operational considerations. Given the necessity for 100% reliability on all natural gas distribution systems, NGDCs have long planned for force majeure or other unexpected events that threatened system integrity.

On June 22, 1999, Governor Tom Ridge signed into law 66 Pa.C.S. §§ 2201—2212 (relating to the Natural Gas Choice and Competition Act) (act). The act revised 66 Pa.C.S. (relating to the Public Utility Code), by inter alia, adding Chapter 22, relating to the restructuring of the natural gas utility industry. Nevertheless, the act is clear that even with the restructuring of the natural gas industry, the requirement for 100% reliability of all NGDC systems remains constant.

The natural gas emergency regulations are designed to address the management of natural gas emergencies in this new environment to maintain (or restore as quickly as possible) gas service to essential human needs customers while minimizing service disruption. The final-form regulations address a number of matters that are critical to gas emergency and gas curtailment, including: (1) emergency load shedding; (2) a call for voluntary usage reduction; (3) a call for mandatory load and usage reduction; (4) issuance of periodic reports to the media on emergency situations; (5) notice of affected customers and natural gas suppliers (NGSs); (6) customer and NGS delivery requirements that apply to emergency actions; (7) a procedure for focusing emergency measures to confined geographic areas; and (8) procedures for establishing communications. On all of these issues, the regulations provide a strong framework for addressing these issues in more detail in the context of each utility's tariff and operational procedures.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on January 31, 2001, the Commission submitted a copy of the notice of proposed rulemaking published at 31 Pa.B. 805 (February 10, 2001), to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House and Senate Committees for review and comment.

Under section 5(c) of the Regulatory Review Act, IRRC and the Committees were provided with copies of the comments received during the public comment period, as well as other documents when requested. In preparing this final-form rulemaking, the Commission has considered the comments received from IRRC, the Committees and the public.

Under section 5.1(d) of the Regulatory Review Act (71 P. S. § 745.5a(d)), on October 25, 2001, this final-form rulemaking was deemed approved by the House and Senate Committees. Under section 5.1(e) of the Regulatory Review Act, IRRC met on November 1, 2001, and approved the final-form rulemaking.

Public Meeting held
August 9, 2001

Commissioners Present: Glen R. Thomas, Chairperson;
Robert K. Bloom, Vice-Chairperson; Aaron Wilson, Jr.;
Terrance J. Fitzpatrick

Final Rulemaking Order

By the Commission:

Introduction

By order entered July 20, 2000, the Commission adopted a proposed rulemaking order setting forth the procedures the Commission intends to follow in managing natural gas emergencies in order to maintain gas service and minimize service disruptions. The Commission proposed to incorporate the regulations into Chapter 59 (relating to gas service), as §§ 59.71—59.75. The Commission directed that the proposed rulemaking be published in the *Pennsylvania Bulletin* for comment by interested parties. The proposed rulemaking was published in the February 10, 2001, edition of the *Pennsylvania Bulletin*. This order addresses the comments received from IRRC, the Office of Consumer Advocate (OCA) and the Energy Association of Pennsylvania (the Association).

Background

For many years, natural gas emergency planning has been a staple of this Commonwealth's NGDCs' operational considerations. Given the necessity for 100% reliability on all natural gas distribution systems, NGDCs have long planned for force majeure or other unexpected events that threatened system integrity. After the passage of the act in 1999, which restructured the natural gas utility industry, the importance of revising these requirements became apparent.

Commission staff established a collaborative working group as the appropriate vehicle to proceed with the implementation of gas emergency plans and curtailment under the act. On January 18, 2000, Commission staff convened the first meeting of the Gas Safety and Reliability Working Group (Working Group) addressing gas emergency plans and curtailment issues.

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.

Commission staff urged the parties to identify those common issues that would be addressed in the meetings. The OCA, the Office of Trial Staff (OTS), the Pennsylvania Gas Association (PGA), Texas Eastern Corporation, CNG Retail Services Corporation and TXU Energy Services (filed jointly with Statoil Energy) submitted informal comments on February 29, 2000.

The working group agreed that the requirements for gas emergency plans should be more than guidelines. As a result, the Working Group designated selected members to draft suggested regulations and this draft was delivered to the full group and considered at the meeting on May 23, 2000. The proposed regulations addressed a number of matters that are critical to gas emergency and gas curtailment, including: (1) emergency load shedding; (2) a call for voluntary usage reduction; (3) a call for mandatory load and usage reduction; (4) issuance of periodic reports to the media on emergency situations; (5) notice to affected customers and NGSs; (6) customer and NGS delivery requirements that apply to emergency actions; (7) a procedure for focusing emergency measures to confined geographic areas; and (8) procedures for establishing communications. The regulations provide a strong framework for addressing these issues in more detail in the context of each utility's tariff and operational procedures.

Since the proposed rulemaking was designed to replace the Commission Gas Curtailment Guidelines in §§ 69.21—69.27 (relating to gas curtailment), the Working Group suggested having the proposed regulations placed in Chapter 59 rather than in Chapter 69 (relating to general orders, policy statements and guidelines on fixed utilities). The Working Group agreed that the proposed regulations should be presented at a public meeting for the Commission's consideration.

By order entered July 20, 2000, the Commission adopted the proposed rulemaking, intending to add §§ 59.71—59.75, which established regulations for natural gas emergency plans and curtailment safety and reliability. The Commission directed that the proposed rulemaking be published in the *Pennsylvania Bulletin* for comment by interested parties. The proposed rulemaking was published at 31 Pa.B. 805 (February 10, 2001). Comments were received from IRRC, the OCA and the Association.

Comments

1. *Section 59.72(a) (relating to natural gas emergency planning)*

Comments

IRRC stated that § 59.72(a) had to be clarified. Subsection (a) states that an NGDC is required to file a natural gas emergency plan with the Commission "within 90 days from the effective date of this final-form rulemaking, or a later date as may be determined by the Commission. . ." IRRC questioned how the Commission would communicate this date to NGDCs. IRRC stated that the date should be specified in the final-form regulation.

Discussion

We are in agreement with IRRC's comments regarding § 59.72(a). Accordingly, the Commission deleted the language "or a later date as may be determined by the Commission" from the subsection. This deletion does not substantially affect this subsection.

2. Section 59.72(b)

Comments

IRRC, the OCA and the Energy Association submitted comments on proposed § 59.72(b). Section 59.72(b) deals with the arrangements that NGDCs make with their various customers so as to avoid or, at least, minimize the potential of natural gas supply shortfalls to the public. In its comments, IRRC noted that the proposed subsection contained language which implied that the provision was optional. IRRC stated that regulations establish binding norms and have the full force and effect of law. IRRC explained that if the subsection was intended to impose mandatory requirements on NGDCs, the word "shall" must be used in place of the phrase "are encouraged to." Conversely, IRRC stated that if § 59.72(b) was considered optional, then it should be deleted from the regulations.

The OCA also commented that the language in § 59.72(b) should be strengthened. The OCA stated that the critical nature of the proposed regulations made it necessary to frame the requirements set forth therein in clear, unambiguous and mandatory language. The OCA asserted that NGDCs should be obligated to attempt to make contractual and informal arrangements with market participants. Therefore, the OCA determined that the words "are encouraged" in subsection (b) cannot be expected to produce the best possible result for NGDCs to make preparations for emergencies and should be replaced with the phrase "shall make a reasonable effort. . ." The OCA was of the belief that this phrase strengthened the requirement substantially without making it unrealistic.

The Association's comments were essentially in response to the comments submitted by the OCA. The Association stated that because it is impossible to require a regulated party to contract with an unregulated one, § 59.72(b) should be adopted as proposed. The Association asserted that the OCA's proposed revision would require NGDCs to make a "reasonable attempt" to enter into arrangements for customers to reduce or discontinue service so that forced service reductions can be avoided or at least minimized. The Association questioned what is meant by the phrase "shall make a reasonable attempt." The Association explained that since the other parties to these potential arrangements are not subject to the Commission's jurisdiction, there is no legal mechanism to force them to do anything. The Association further asserted that NGDCs would be subject to constant regulatory second-guessing in two instances: (1) if an arrangement is not made, the NGDC could find itself having to defend whether its actions were reasonable; and (2) if an arrangement is made, the NGDC could find itself having to defend whether the quid pro quo it offered to the nonjurisdiction entity was unreasonably generous. Therefore, for these reasons, the Energy Association stated that the OCA's modified language should not be adopted.

Discussion

We are in agreement with IRRC and the OCA that regulations establish binding norms and have the full effect and force of law. See generally, *Human Relations Commission v. Norristown Area School District*, 374 A.2d 671 (Pa. 1977). The Working Group agreed that the requirements for gas emergency plans should be more than mere guidelines and proposed regulations designed to replace the Commission Gas Curtailment Guidelines in §§ 69.21—69.27. Since it was the intention of the Working Group to establish binding norms concerning the maintenance of gas service and the minimization of

service disruptions during natural gas emergencies, these proposed regulations must set forth mandatory language, not optional language. Thus, we shall replace the phrase "are encouraged" which is currently set forth in proposed § 59.72(b) with the phrase "shall attempt to make every reasonable effort."

We are not persuaded by the Association's argument that making this revision to § 59.72(b) will result in continuous regulatory second-guessing for NGDCs. We believe that the revision of this subsection fits better into the mold of a regulation. Moreover, to prevent catastrophic results in natural gas emergencies, we believe that NGDCs must make every "reasonable" effort to contract with their various customers so as to minimize the potential of supply shortfalls that threaten public health and safety. This is the essence of the entire rulemaking.

3. Section 59.72(c)

The OCA stated that the language in § 59.72(c) should be strengthened. Section 59.72(c) sets forth the make-up of a natural gas emergency plan. The OCA concluded that to make the subsection more specific and mandatory, the word "should" must be stricken and replaced with the word "shall."

In response, the Association stated that the OCA's suggestion to amend the word "should" to "shall" in § 59.72(c) is erroneous because the word "shall" already appears in the proposed subsection.

Discussion

We note that § 59.72(c) already includes the word "shall" and, therefore, we disregard the OCA's comments regarding this subsection.

4. Section 59.72(d)

Comments

In its comments, IRRC noted that subsection (d) provides that each natural gas emergency plan "should specify the procedures the NGDC shall use to provide notices to affected customers." IRRC stated that this subsection should include language that requires notice to be issued by the NGDC within a specified time period and should also use more binding language.

Similarly, the OCA commented that language should be added to subsection (d) which specified that the notice procedures set forth therein would be initiated as quickly as is reasonably possible. The OCA stated that timely notification will insure that customers have the greatest opportunity to respond to expected or potential curtailment. Therefore, the OCA proposed the inclusion of the following language in subsection (d): "Notice shall be given as quickly as is reasonably possible after the existence of emergency conditions and the appropriate responses are determined by the NGDC."

Additionally, the OCA stated that clarity is a fundamental element of effective communication; thus, the OCA proposed that subsection (d) also should be modified to require that notice be consistent with the Commission's existing Plain Language Policy. The OCA suggested the following language for inclusion in subsection (d): "All notices shall be prepared consistent with the Commission's Plain Language Policy."

In response, the Association argued that OCA's suggested changes to proposed § 59.72(d) should be rejected as an inappropriate attempt to prescribe the method, timing and wording of customer notices to a level of detail beyond that agreed to by the members of the Working

Group. The Association asserted that proposed § 59.72(d) read the way it was intended to by the members of the Working Group because they recognized that there were (1) diverse (and ever changing) means that could be used to notify customers; (2) that different means of notification may be appropriate under different circumstances; and (3) the impossibility of predetermining which means would be appropriate in the throes of a specific emergency situation.

Moreover, the Association noted that the notices would, to a significant extent, be governed by the individual NGDC's emergency plan. The Energy Association further asserted that since the members of the Working Group did not approve the level of micro-management that the OCA suggests for this subsection, the modification should be rejected accordingly.

Discussion

We are in agreement with the OCA that timely notification of natural gas emergencies will insure that customers have the greatest opportunity to respond to expected or potential curtailment. Therefore, in response to the OCA's and IRRC's comments regarding the inclusion of a specific time period in § 59.72(d), we shall add the sentence "After the NGDC determines the appropriate response, the NGDC shall issue notices to affected customers, their NGSs and NGDCs as soon as reasonably possible." This sentence also incorporates IRRC's concerns regarding using binding and more mandatory language.

We also agree with the OCA that the notice must be specific and clear. Therefore, we adopt the OCA's suggestion that the following language be placed within § 59.72(d): "All notices shall be prepared consistent with the Commission's Plain Language Policy."

5. Section 59.73 (relating to emergency action)

Comments

In its comments, IRRC noted that § 59.73(a) appeared to contain a typographical error. The subsection states that the definition of "Priority 1 customers" is set forth in subsection (j). Nevertheless, the definition of "Priority 1 customers" is contained in subsection (i).

Additionally, IRRC commented that subsections (b), (c)(3),¹ (h)(1) and (h)(3) of § 59.73 use the term "will" to describe actions that the NGDC must take. All of these subsections deal with the actions the NGDC is required to perform in responding to a natural gas emergency. IRRC explained that according to the *Pennsylvania Code & Bulletin Style Manual*, the term "will" is used to describe actions that an agency will undertake. IRRC stated that the term "shall" is to be used whenever anyone else has a duty to act.

IRRC also commented that § 59.73(h) and (h)(2) appear to set forth language which implied that the provisions were optional. IRRC stated that because regulations establish binding norms, the language therein must be mandatory.

Furthermore, the OCA stated that it generally agrees that the proration hierarchy specified in § 59.73(h) is reasonable and provides adequate flexibility for operating contingencies. The OCA, however, determined that the language must be mandatory and the word "should" set forth therein must be replaced with the word "shall."

¹ IRRC inadvertently referred to this section as § 59.73(b)(3) in its comments.

The OCA also stated the definition of Priority 1 in § 59.73(h)(3)(i)(1)² should be modified so as to be consistent with the consensus achieved in the Interim Guidelines Working Group. The OCA proposed that the definition be modified to "Service for essential human needs and any other residential use." The OCA was of the opinion that this modification ensured that all residential customers are on par with other essential human needs customers.

In response to the OCA's comments, the Association stated that the OCA's comments were nothing more than a reargument on the matters that were previously settled in the collaborative process and, therefore, should be wholly rejected. The Association argued that the OCA's suggestion to reword § 59.73(h) contradicts the Working Group's consensus and incorrectly presumes that a pro rata allocation of methane molecules on a customer-by-customer basis can be accomplished as a practical matter.

The Association asserted that permitting OCA's rewording would, in effect, make pro rata curtailment mandatory. The Association explained that while pro rata curtailment is desirable as an objective, it is impossible to achieve as a practical matter. The Association further explained that given present technology, there is simply no way to ensure that every member of a curtailment priority category (or subcategory) will in fact receive only its pro rated share of available natural gas molecules. Therefore, the Association supports keeping the Working Group language as proposed.

In the alternative, the Association stated that if the Commission believed that some revisions to § 59.73(h) are necessary, the Association suggested the following language:

(h) Upon issuance of an order to initiate priority-based curtailments, [the available gas supplies to] the NGDC should [be prorated among its customers in accordance with] *deliver available supplies to its customers according to the following priorities of use:*

(1) Customers in a higher priority *category* will not be curtailed until all customers falling into a lower *priority* category have been restricted to plant protection use levels, unless operational circumstances or physical limitations warrant a different result.

(2) Where only a partial restriction of a classification is required, implementation should be pro rata *to the extent practical under the circumstances, as set forth in the NGDC's tariff.*

[(3) The pro rata rationing, to the extent practical under the circumstances, will be based on a method set forth in the NGDC's tariff.] (additions in italic, deletions in brackets)

The Association asserted that its previously-referenced changes better reflect the operating realities that motivated the Working Group to draft initially § 59.73(h) as it appears in the proposed rulemaking order, rather than the OCA's proposed revisions.

The Association also asserted that the inclusion of the term "residential use" in the definition of Priority 1 customers, may not be the kind of change that would have been unanimously adopted by the members of the collaborative. The Association further maintained that the OCA failed to explain fully the substantive effect of such

² The OCA inadvertently referred to this section as § 59.73(h)(3)(1) when it appears it should have been referred to as § 59.73(i)(1). We shall refer to this section as § 59.73(i)(1) in the remainder of this document.

an inclusion given the types of consumption already falling within the definition of "essential human needs use."

Discussion

We note the typographical error in § 59.73(a), and will make the appropriate revision to this subsection. Additionally, in accordance with the *Pennsylvania Code & Bulletin Style Manual*, we will replace the term "will" currently in § 59.73(b), (c)(3) and (h)(1) with the term "shall." Subsection 59.73(h)(3) has been deleted from the final-form regulations.

We also conclude that to make the proposed regulations meet the criteria for "binding" regulations, we will replace the word "should" set forth in proposed § 59.73(h) and (h)(2) with the word "shall." Regulations establish "binding" norms and must set forth mandatory language. We, however, take note of the Association's argument that given the present state of technology, pro rata curtailment may be impossible to achieve as a practical matter. Therefore, to reflect accurately the operating realities of NGDCs in today's environment, we adopt the Association's proposed amendment for § 59.73(h) with slight revisions.

Lastly, we decline to adopt the OCA's suggestion to modify § 59.73(i)(1) to read "Service for essential human needs and any other residential use." The definition of "essential human needs" set forth in the proposed regulations already incorporates "residential use." We agree with the Association's statement in its comments that, "OCA does not explain why its suggested wording would add anything to the regulations given the types of consumption already falling within the definition of 'essential human needs use'."

6. Section 59.74 (relating to utility liability)

Proposed § 59.74 deals with the scope of an NGDC's liability for the actions it has taken to respond to a natural gas emergency. IRRC commented that § 59.74(b)(1) also uses the term "will" to describe a required NGDC action. Proposed § 59.74 (b)(1) deals with the compensation an NGDC may have to pay a customer for the loss of firm service during a natural gas emergency. As mentioned earlier, IRRC explained that the *Pennsylvania Code & Bulletin Style Manual* establishes that the term "will" is to be used to describe the actions that an agency undertakes. The term "shall" is used whenever anyone else has a duty.

Additionally, IRRC commented that § 59.74(b)(2) uses the phrase "will have a right to" in describing the NGDC's discretionary authority to discontinue service. Proposed § 59.74(b)(2) deals with the NGDC's ability to discontinue service, during an emergency, to a customer that takes gas in violation of the rules of the subchapter. IRRC explained that according to the *Pennsylvania Code & Bulletin Style Manual*, the term "may" is used to express a right, power, or privilege. Therefore, the phrase "will have a right to" should be replaced with "may."

Discussion

We are in agreement with IRRC's reading of the *Pennsylvania Code & Bulletin Style Manual* and, thus, we will make the appropriate revisions to § 59.74(b)(1) and (2).

Conclusion

Accordingly, under sections 501, 2203 (12) and 2208 of the Public Utility Code, 66 Pa.C.S §§ 501, 2203(12) and 2208, and the Commonwealth Documents Law (45 P. S.

§ 1201 et seq.), and regulations promulgated thereunder in 1 Pa. Code §§ 7.1—7.4, we amend the regulations in Chapter 59 as noted in this Preamble as set forth in Annex A; *Therefore,*

It Is Ordered That:

(1) The regulations of the Commission, 52 Pa. Code Chapters 59 and 69, are amended by amending § 59.63; deleting §§ 69.21—69.27; and adding §§ 59.71 and 59.75 to read as set forth at 31 Pa.B. 805; and by adding §§ 59.72—59.74 to read as set forth in Annex A.

(2) The Secretary shall submit this order, 31 Pa.B. 805 and Annex A to the Office of Attorney General for approval as to form and legality.

(3) The Secretary shall submit a copy of this order, 31 Pa.B. 805 and Annex A, to the Governor's Office of Budget for review of fiscal impact.

(4) The Secretary shall submit this order, 31 Pa.B. 805 and Annex A for formal review by the designated standing committees of both Houses of the General Assembly, and for formal review and approval by the IRRC.

(5) The Secretary shall certify this order, 31 Pa.B. 805 and Annex A and deposit them with the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.

(6) This final rulemaking shall be come effective upon publication in the *Pennsylvania Bulletin*.

(7) Alternate forms of the this document are available to persons with disabilities and may be obtained by contacting Sherri DelBiondo, Regulatory Review 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 31 Pa.B. 6358 (November 17, 2001).)

Fiscal Note: Fiscal Note 57-218 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 59. GAS SERVICE

GAS EMERGENCY PLANS

§ 59.72. Natural gas emergency planning.

(a) By March 15, 2002, each NGDC shall file with the Commission a natural gas emergency plan reflecting its unique operational characteristics and design criteria. Each plan shall contain simplified and understandable rules and regulations so that all of the NGDC's customers and all NGSs licensed to provide services to their customers can have a responsive action plan in place to protect themselves and their property in the event of a crisis. NGDCs shall file revisions to their plans when and as appropriate, or as directed by the Commission.

(b) As part of their emergency planning, NGDCs shall attempt to make every reasonable effort to make contractual or informal arrangements with their transportation customers, sales customers and others to obtain supplies or, as an alternative, to implement usage reductions, so that resorting to firm service reductions under § 59.73 (relating to emergency action) can be avoided, or the severity of supply or capacity disruption can be mitigated.

The purpose of these arrangements is to provide a means to minimize the potential of supply shortfalls that threaten public health and safety, and not to make up for inadequate performance by individual parties.

(c) Each natural gas emergency plan shall include provisions addressing:

- (1) Emergency load shedding.
- (2) Voluntary usage reductions, for example, reducing space or water heating temperatures to levels specified by the NGDC.
- (3) Mandatory usage reductions for certain customers consistent with § 59.73(c).
- (4) Issuance of periodic reports to the media concerning the existing natural gas emergency.
- (5) Notice to affected customers and NGSs of the expected initiation of emergency actions under § 59.73.
- (6) Customer and NGS delivery requirements that apply during the term of emergency action under § 59.73, regardless of customer-specific usage reductions that arise or may arise from end-use curtailments.
- (7) A procedure for focusing emergency measures to confined geographic or operational portions, segments or zones of the NGDC system where a natural gas emergency exists.
- (8) Procedures for establishing communications with electric system control area operators, if the NGDC provides gas service to electric generation stations.

(d) Each natural gas emergency plan shall specify the procedures the NGDC shall use to provide notices to affected customers, their NGSs and NGDCs. After the NGDC determines the appropriate response, the NGDC shall issue notices to affected customers, their NGSs and NGDCs as soon as reasonably possible. All notices shall be prepared consistent with the Commission's plain language policy. Notice to the public concerning usage reductions shall be designed to avoid confusion in geographical areas served by more than one NGDC.

§ 59.73. Emergency action.

(a) An emergency exists whenever the aggregate demand of firm service customers on an NGDC's system or confined segment of the system exceeds or threatens to exceed the gas supply or capacity that is actually and lawfully available to the NGDC to meet the demands, and the actual or threatened excess creates an immediate threat to the NGDC's system operating integrity with respect to Priority 1 customers as defined in subsection (i).

(b) If, in the sole judgement of the NGDC, there is sufficient time, the NGDC shall use reasonable business and operational efforts to: interrupt all interruptible services, issue operational flow orders, and call for voluntary usage reductions by all customers before taking any action under subsection (c). The NGDC shall take these three actions sequentially to the extent feasible.

(c) In the event of an emergency under subsection (a), the NGDC may require each commercial and industrial retail and transportation customer that is not a Priority 1 customer under subsection (i) to reduce its consumption of gas.

(1) The reduction required shall be determined by the utility without regard to priorities of use, as necessary to minimize the potential threat to public health and safety.

(2) The minimum authorized usage may not be lower than the minimum usage of firm service necessary for plant protection use.

(3) When all other service has been curtailed except for Priority 1 service and the NGDC continues to be unable to meet Priority 1 requirements, the NGDC shall exercise its judgment as to any further curtailment that may be necessary and shall utilize measures designed to minimize harm to customers if curtailments to plant protection use are found to be necessary.

(4) Consistent with its responsibility to maintain system integrity at all times, the NGDC shall restore service as soon as practicable to any gas-fired electric generation facility that is deemed critical to electric system reliability by the electrical system's control area operator.

(d) Mandatory reductions under subsection (c) shall be for a period specified by the NGDC until further notice. The NGDC may change a customer's authorized usage, upon notice, at any time during an emergency.

(e) Mandatory reductions under subsection (c) shall be for a maximum duration of 5 business days unless extended by Commission order. As an alternative to extending mandatory reductions under subsection (c), the Commission may order the NGDC to initiate priority-based curtailments under subsection (f).

(f) In determining whether to order the NGDC to initiate priority-based curtailments, the Commission will examine whether the NGDC did the following:

- (1) Interrupted all interruptible services.
- (2) Issued operational flow orders.
- (3) Called for voluntary usage reductions by all customers.

(g) Upon issuance of an order to initiate priority-based curtailments, the NGDC shall provide all affected customers the maximum notice possible, by means of telephone, fax or electronic data interchange, specifying the curtailment percentage of the customer's firm gas service and resulting allowance as may be the case.

(h) Upon issuance of an order to initiate priority-based curtailments, the available gas supplies to the NGDC shall be prorated, if practicable, among its customers according to the following priorities of use:

- (1) Customers in a higher priority category will not be curtailed until all customers falling into a lower priority category have been restricted to plant protection use levels, unless operational circumstances or physical limitations warrant a different result.
- (2) Where only a partial restriction of a classification is required, implementation shall be pro rata, to the extent practical under the circumstances, as set forth in the NGDC's tariff.

(i) Following are the priority categories, listed in descending order, pertaining to the curtailment of firm services:

- (1) *Priority 1.* Service for essential human needs use.
- (2) *Priority 2.* Firm services not included in essential human needs use.

(j) As part of its natural gas emergency plan, an NGDC may divide any or all of the priority of use categories in subsection (i) into subcategories.

§ 59.74. Utility liability.

(a) Each NGDC may restrict or discontinue service in accordance with this section and §§ 59.71—59.73 and

59.75 without thereby incurring any penalty or liability for any loss, injury or expense that may be sustained by the customer except when the restriction or discontinuation of service is as a result of the NGDC's willful or wanton misconduct.

(b) NGDC liability for actions taken under § 59.73 (relating to emergency action), or to a regulation, policy statement, directive or order issued by the Commission or an emergency order issued by the Governor shall be governed by the following principles:

(1) If an NGDC appropriates natural gas during an emergency action, the NGDC shall compensate the applicable entity, whether the customer or the customer's NGS, for the cost of lost, firm gas service. The compensa-

tion, in the aggregate, shall equal but not exceed the greater of: the city gate cost of the appropriated natural gas, including transportation charges up to the NGDC's city gate, or the reasonable cost actually paid by the customer for delivered substitute energy, as documented to the NGDC. NGDCs may provide compensation in kind only at the discretion of the affected customer or NGS.

(2) The NGDC may discontinue service, for the duration of an emergency, to a customer that continues to take gas in violation of the rules found in this subchapter.

[Pa.B. Doc. No. 01-1282-7. Filed for public inspection December 14, 2001, 9:00 a.m.]