

PROPOSED RULEMAKING

INSURANCE DEPARTMENT

[31 PA. CODE CH. 146c]

Standards for Safeguarding Customer Information

The Insurance Department (Department) proposes to add Chapter 146c (relating to standards for safeguarding customer information) to read as set forth in Annex A. The proposed rulemaking is made under the general rulemaking authority of sections 205, 506, 1501 and 1502 of The Administrative Code of 1929 (71 P. S. §§ 66, 186, 411 and 412) and under the guidance of section 648 of the Insurance Department Act of 1921 (40 P. S. § 288). Likewise, this proposed rulemaking is made under the Department's rulemaking authority under the Unfair Insurance Practices Act (UIPA) (40 P. S. §§ 1171.1—1171.15) (the authority is further explained in *PALU v. Insurance Department*, 371 A.2d 564 (Pa. Cmwlth. 1977)), because the Insurance Commissioner (Commissioner) has determined that the improper disclosure or marketing, or both, of nonpublic personal financial and health information by members of the insurance industry constitutes an unfair method of competition and an unfair or deceptive act or practice.

Purpose

The purpose of this proposed rulemaking is to add Chapter 146c to implement the remaining privacy requirements for nonpublic financial and health information in Title V of the Gramm-Leach-Bliley Act (GLBA) (15 U.S.C.A. §§ 6801—6827) following the Department's implementation of Chapters 146a and 146b (relating to privacy of consumer financial information; and privacy of consumer health information).

Title V of the GLBA requires various state and Federal regulators of the financial services industries to promulgate regulations for their respective regulated communities. For example, state insurance authorities are required by Title V of the GLBA to establish appropriate consumer privacy standards for various entities in the insurance industry. The failure of a state to adopt privacy regulations will result in the state's inability to override the Federal insurance consumer protection regulations that were issued by the Federal banking agencies in final-form on December 4, 2000, under section 305 of the GLBA (12 U.S.C.A. § 1831x). See 65 FR 233, 75821 (to be codified at 12 CFR Parts 14, 208, 343 and 536). These regulations became effective on April 1, 2001, and they pertain generally to the sale of insurance by financial institutions and specifically to matters such as referral fees, separation of banking and insurance sales areas and disclosures regarding the nature of insurance products that are sold by banks.

The Department has already adopted Chapters 146a and 146b, which were based upon the National Association of Insurance Commissioners Model Privacy of Consumer Financial and Health Information Regulation (NAIC Model). With regard to health information, the NAIC Model generally requires that licensees of the Department obtain an authorization from a consumer prior to disclosing nonpublic personal health information unless the disclosure is specifically excluded from the requirements of the regulation. The NAIC Model requires that licensees provide consumers with notice and an opportunity to "opt out" of disclosures of their nonpublic

personal financial information prior to making disclosures. The purpose of this proposed rulemaking is to implement the remaining requirements of Title V of the GLBA regarding the internal safeguarding of customer information maintained by a licensee. Accordingly, this proposed rulemaking is based upon the NAIC Standards for Safeguarding Customer Information Model Regulation.

Explanation of Regulatory Changes and Preproposed Comments and Responses

On November 9, 2002, the Department published at 32 Pa.B. 5595 (November 9, 2002) an Advanced Notice of Proposed Rulemaking for its Standards for Safeguarding Customer Information Regulation (privacy standards regulation), soliciting comments from the insurance industry. The Department received comments from the following industry members and trade associations: the American Insurance Association (AIA); the Alliance of American Insurers (AAI); Independence Blue Cross (IBC); Capital Blue Cross (CBC); the American Council of Life Insurers (ACLI); the Insurance Federation of Pennsylvania (IFP); and Highmark, Inc. (Highmark). The following is a summary of those comments as well as the Department's reaction.

Section 146c.1 (relating to purpose) explains that the purpose is to establish standards to guide licensees of the Department in the development and implementation of administrative, technical and physical safeguards that protect the security, confidentiality and integrity of customer information and protect against any anticipated threats or hazards to the security or integrity of customer records. The standards also are intended to protect against unauthorized access to or use of records or information that could result in substantial harm or inconvenience to a customer.

Section 146c.1(3) states that one of the purposes of the privacy standards regulation is to protect against any anticipated threats or hazards to the security or integrity of customer records maintained by licensees. Highmark believes that the standard in this section is unattainable because it would be impossible for a licensee to protect against any anticipated threats or hazards to the security or integrity of customer information. Accordingly, Highmark recommends that the word "reasonably" be inserted after the word "any" in paragraph (3) to make the standard more objective and attainable. The Department has adopted Highmark's recommendations in its proposed rulemaking.

Section 146c.2 (relating to definitions) defines the terms that are relevant to this chapter.

AAI and AIA commented that the definition of "customer" in the proposed rulemaking is overly broad because it encompasses both "consumers" and "customers" as defined in the health and financial privacy regulations. AAI asserted that this requirement goes beyond the requirements of the GLBA and, therefore, the Department lacks statutory authority to extend the scope of the proposed rulemaking. See section 501(b) of the GLBA (15 U.S.C.A. § 6801(b)). The Department respectfully disagrees with the comments from AAI and AIA because the Department does not rely on the GLBA for its statutory authority for the promulgation of this proposed rulemaking. Instead, the Department relies upon its implied rulemaking authority granted by the UIPA. See *PALU v. Insurance Department*, 371 A.2d 564 (Pa. Cmwlth. 1977).

Furthermore, the GLBA merely establishes a floor for the regulation of insurance privacy and the law explicitly states that insurance regulators are permitted to be more protective of insurance information privacy. Accordingly, the comments made by AAI and AIA pertaining to the definition of "customer" in the privacy standards regulation are misplaced, and no modifications have been made to the definition in this proposed rulemaking.

Section 146c.3 (relating to information security program) requires licensees to implement a comprehensive written information security program appropriate to the size and complexity of the licensee and the nature and scope of its activities. The information security program must include administrative, technical and physical safeguards for the protection of customer information.

Section 146c.4 (relating to objectives of information security program) explains that a licensee's information security program should be designed to do the following: (1) ensure the security and confidentiality of customer information; (2) protect against any anticipated threats or hazards to the security or integrity of the information; and (3) protect against unauthorized access to or use of the information that could result in substantial harm or inconvenience to any customer.

Section 146c.4 of the privacy standards regulation identifies the objectives of the information security programs required by the regulation, one of which is to ensure the security and confidentiality of customer information. Highmark commented that the use of the word "ensure" in paragraph (1) imposes an unreasonable standard upon licensees because the term means to "promise, guarantee or pledge." Accordingly, Highmark recommends that the word "safeguard" be used instead of the word "ensure." The Department agrees with this comment and has made the appropriate change in the proposed rulemaking.

Another objective of an information security program is identified in § 146c.4(2), which states that an information security program must be designed to protect against any anticipated threats or hazards to the security or integrity of customer information. As in its comment pertaining to § 146c.1, Highmark believes that the standard in this section is unattainable because it would be impossible for a licensee to protect against any anticipated threats or hazards. Therefore, Highmark recommends that the word "reasonably" be inserted after the word "any" in paragraph (2) to make the standard more objective and attainable. The Department is in agreement with the comment provided by Highmark and has modified its proposed rulemaking to incorporate Highmark's suggestion.

Section 146c.5 (relating to examples of methods of development and implementation) explains that the actions and procedures found in §§ 146c.6—146c.9 are examples of the methods of implementation found in §§ 146c.3 and 146c.4 and are not the exclusive methods that licensees can comply within this chapter.

This provision of the privacy standards regulation states that the examples in §§ 146c.6—146c.9 of actions and procedures that comply with the information security program requirements are merely nonexclusive illustrations that licensees may follow when implementing an information security program. In their comments, AIA requested that § 146c.5 (as well as §§ 146c.6—146c.9) be deleted because they believe that the examples create the appearance of a standard that all companies must follow and this perception might result in additional litigation

against licensees. The Department has not adopted the recommendation of AIA because the compliance examples provide invaluable guidance to licensees as they develop and implement information security programs to protect the security and integrity of customer information. Furthermore, the prefatory language in § 146c.5 makes it abundantly clear that the examples in the regulation are nonexclusive and are for illustrative purposes only.

Section 146c.6 (relating to assess risk) provides examples where the licensee identifies reasonably foreseeable internal or external threats that could result in unauthorized disclosure, misuse, alteration or destruction of customer information or customer information systems. This section also provides examples relating to how a licensee may assess the likelihood and potential damage of these threats and assess the sufficiency of policies, procedures, customer information systems and other safeguards in place to control risks.

Section 146c.7 (relating to manage and control risk) provides examples of how a licensee may comply with this chapter by designing its information security program to: (1) control the identified risks, commensurate with the sensitivity of the information, as well as the complexity and scope of the licensee's activities; (2) train staff, as appropriate, to implement the licensee's information security program; and (3) regularly test or otherwise regularly monitor the key controls, systems and procedures of the information security program.

Section 146c.8 (relating to oversee service provider arrangements) provides examples of how a licensee may comply with this chapter by exercising appropriate due diligence in selecting its service providers, requiring its service providers to implement appropriate measures designed to meet the objectives of this proposed rulemaking and by taking appropriate steps to confirm that its service providers have satisfied these obligations.

Several comments focused on the compliance example in § 146c.8, which addresses how a licensee may comply with the regulation by including certain safeguards when a third party service provider receives or maintains customer information on behalf of a licensee. The comments are also directed towards a provision in the Department's health privacy regulation, stating that licensees may be held liable for illegal disclosures of health information by its third party service providers. See § 146b.11(d) (relating to authorization required for disclosure of nonpublic personal health information). Several commentators, including ACLI and IFP, recommended that the proposed rulemaking incorporate the standards found in the final Federal data security regulation issued by the Department of Health and Human Services under the Health Insurance Portability and Accountability Act (Pub. L. No. 104-191, 110 Stat. 1836) (HIPAA). HIPAA was adopted in final-form on February 20, 2003.

Based upon the concerns presented by the industry, the Department has adopted a standard that is similar to that found in HIPAA. However, the additional language has been included in § 146c.10(b) (relating to determined violation). The Department believes that this additional provision satisfies the concerns of the commentators, while remaining consistent with the principles of the UIPA in that it requires a pattern or practice and it utilizes the "knew or reasonably should have known" standard.

Section 146c.9 (relating to adjust the program) provides examples of compliance with this chapter when the licensee monitors, evaluates and adjusts, as appropriate,

the information security program in light of any relevant changes in technology, the sensitivity of its customer information, internal or external threats to information and the licensee's own changing business arrangements, such as mergers and acquisitions, alliances and joint ventures, outsourcing arrangements and changes to customer information systems.

Section 146c.10 describes that violations of this chapter are deemed and defined by the Commissioner to be an unfair method of competition and an unfair or deceptive act or practice and shall be subject to any applicable penalties or remedies contained in the UIPA.

Section 146c.10 provides that a violation of the privacy standards regulation is deemed and defined to be an "unfair method of competition" and an "unfair or deceptive act or practice" subject to the penalties and remedies of the UIPA. This language is taken verbatim from the Department's previous financial and health privacy regulations. See §§ 146a.43 and 146b.23 (both relating to violation). Highmark suggested that a licensee should be held liable only when it "knew or should have known" that its actions were in violation of the regulation. AAI is concerned that creating new unfair insurance practices encourages private litigation and the resulting expenses would be burdensome. AIA recommended a clarification that violations of only § 146c.3 or § 146c.4 will result in a violation of the regulation since the remaining sections are definitions and examples for compliance.

The Department has not adopted Highmark's proposed modifications because § 146c.10 is taken verbatim from the financial and health privacy regulations and a substantive modification to the violation provision in this proposed rulemaking might implicate the language in the Department's two prior privacy regulations. Likewise, the Department disagrees with AAI's comment because there is no private cause of action for violations of the UIPA. See *Smith v. Nationwide Mut. Fire Ins. Co.*, 935 F. Supp 616 (W.D. Pa. 1996); *D'Ambrosio v. Penn. Nat. Mut. Cas. Ins. Co.*, 431 A.2d 966 (Pa. 1981).

However, the recommendation of AIA might provide additional clarity to the proposed rulemaking and further reinforce that the examples in §§ 146c.5—146c.9 are only illustrative examples of compliant actions and procedures that licensees may utilize in the development and implementation of an information security program. Accordingly, the Department has amended its proposed rulemaking to adopt the suggestion provided by AIA.

Section 146c.11 (relating to effective date) gives the parameters as to when this chapter will become effective.

Highmark, IBC and CBC suggested that the effective date of the proposed rulemaking should mirror that of HIPAA—April 20, 2005, for large health plans and April 20, 2006, for small health plans. See 45 CFR 164.318(a) (relating to compliance dates for the initial implementation). AAI suggests that insurers need at least 6 months to comply with the proposed rulemaking, so the effective date should be extended in the proposed rulemaking.

The Department has not mirrored the compliance date for HIPAA in this proposed rulemaking because compliance with HIPAA will not be enforced for more than 2 years. However, because implementation of the information security programs by the licensees will likely take some time, the Department has extended the compliance date for this proposed rulemaking to 6 months after the promulgation of the final-form rulemaking.

Compliance with HIPAA

Because HIPAA includes requirements similar to those in the Department's privacy standards regulation, several commentators requested that licensees be able to comply only with HIPAA and be deemed compliant with the Department's regulation. Specifically, Highmark and CBC would like the Department to include a deemer provision similar to that in the health privacy regulation whereby if a licensee is compliant with HIPAA, then it is deemed compliant with the privacy standards regulation.

It is true that HIPAA and the Department's privacy standards regulation have some overlapping requirements and it is further true that the requirements of the Department's regulation are consistent with those in HIPAA. Therefore, if a licensee satisfies the requirements of HIPAA, the licensee would also likely satisfy many of the requirements of the Department's regulation. However, compliance with HIPAA will not satisfy all of the requirements of the Department's regulation because HIPAA only addresses health information and not financial information. Therefore, if a deemer provision is included and a licensee complies with HIPAA, that licensee would be able to avoid the information security requirements for financial information. Accordingly, the requested deemer provision has not been included in the proposed rulemaking.

Fiscal Impact

There is no anticipated fiscal impact as a result of the proposed rulemaking. Insurers need to comply with the GLBA and Chapters 146a and 146b. Therefore, most, if not all, of the methods should be in place. This chapter bridges any gaps in those regulations and the privacy of consumer information.

Paperwork

There is no anticipated additional paperwork expected as a result of this proposed rulemaking.

Affected Parties

The proposed rulemaking will affect all licensed insurers doing the business of insurance in this Commonwealth.

Effectiveness/Sunset Date

The proposed rulemaking will become effective 6 months after final adoption of this proposed rulemaking.

Contact Person

Questions or comments regarding the proposed rulemaking should be addressed in writing to Peter J. Salvatore, Regulatory Coordinator, Insurance Department, 1326 Strawberry Square, Harrisburg, PA 17120, fax (717) 772-1969, psalvatore@state.pa.us within 30 days following the publication of this notice in the *Pennsylvania Bulletin*.

Under the Regulatory Review Act, the Department is required to write to all commentators requesting whether or not they wish to receive a copy of the final-form rulemaking. To better serve stakeholders, the Department has made a determination that all commentators will receive a copy of the final-form rulemaking when it is made available to the Independent Regulatory Review Commission (IRRC) and the Legislative Standing Committees.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on September 23, 2003, the Department submitted a copy of this proposed rulemaking and a copy

of a Regulatory Analysis Form to IRRC and to the Chairpersons of the Senate Banking and Insurance Committee and the House Insurance Committee. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey any comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections shall specify the regulatory review criteria which have not been met. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the rulemaking, by the Department, the General Assembly and the Governor of comments, recommendations or objections raised.

M. DIANE KOKEN,
Insurance Commissioner

Fiscal Note: 11-215. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 31. INSURANCE

PART VIII. MISCELLANEOUS PROVISIONS

CHAPTER 146c. STANDARDS FOR SAFEGUARDING CUSTOMER INFORMATION

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§ 146c.1. Purpose.

This chapter establishes standards:

(1) For developing and implementing administrative, technical and physical safeguards to protect the security, confidentiality and integrity of customer information, under sections 501, 505(b) and 507 of the Gramm-Leach-Bliley Act (15 U.S.C.A. §§ 6801, 6805(b) and 6807).

(2) For ensuring the security and confidentiality of customer records and information.

(3) To protect against any reasonably anticipated threats or hazards to the security or integrity of the records.

(4) To protect against unauthorized access to or use of records or information that could result in substantial harm or inconvenience to a customer.

(5) That apply to nonpublic personal information, including nonpublic personal financial information and nonpublic personal health information.

§ 146c.2. Definitions.

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

Act—The Insurance Department Act of 1921 (40 P. S. §§ 1—321).

Commissioner—The Insurance Commissioner of the Commonwealth.

Customer—Either a “consumer” or “customer” as defined in § 146a.2 (relating to definitions) or a “consumer” as defined in § 146b.2 (relating to definitions).

Customer information—Either “nonpublic personal financial information” as defined in § 146a.2 or “nonpublic personal health information” as defined in § 146b.2 about a customer, whether in paper, electronic or other form that is maintained by or on behalf of the licensee.

Customer information systems—The electronic or physical methods used to access, collect, store, use, transmit, protect or dispose of customer information.

Department—The Insurance Department of the Commonwealth.

Licensee—As defined in either § 146a.2 or § 146b.2. The term does not include a purchasing group or a nonadmitted insurer in regard to the surplus lines business conducted under Article XVI of the Insurance Company Law of 1921 (40 P. S. §§ 991.1601—991.1625).

Service provider—A person that maintains, processes or otherwise is permitted access to customer information through its provision of services directly to the licensee.

§ 146c.3. Information security program.

A licensee shall implement a comprehensive written information security program that includes administrative, technical and physical safeguards for the protection of customer information. The administrative, technical and physical safeguards included in the information security program shall be appropriate to the size and complexity of the licensee and the nature and scope of its activities.

§ 146c.4. Objectives of information security program.

A licensee’s information security program shall be designed to do the following:

(1) Safeguard the security and confidentiality of customer information.

(2) Protect against any reasonably anticipated threats or hazards to the security or integrity of the information.

(3) Protect against unauthorized access to or use of the information that could result in substantial harm or inconvenience to any customer.

§ 146c.5. Examples of methods of development and implementation.

The actions and procedures described in §§ 146c.6—146c.9 are examples of methods of implementation of the requirements of §§ 146c.3 and 146c.4 (relating to information security program; and objectives of information security program). These examples are nonexclusive illustrations of actions and procedures that licensees may follow to implement §§ 146c.3 and 146c.4.

§ 146c.6. Assess risk.

The licensee:

(1) Identifies reasonably foreseeable internal or external threats that could result in unauthorized disclosure, misuse, alteration or destruction of customer information or customer information systems.

(2) Assesses the likelihood and potential damage of these threats, taking into consideration the sensitivity of customer information.

(3) Assesses the sufficiency of policies, procedures, customer information systems and other safeguards in place to control risks.

§ 146c.7. Manage and control risk.

The licensee:

(1) Designs its information security program to control the identified risks, commensurate with the sensitivity of the information, as well as the complexity and scope of the licensee's activities.

(2) Trains staff, as appropriate, to implement the licensee's information security program.

(3) Regularly tests or otherwise regularly monitors the key controls, systems and procedures of the information security program. The frequency and nature of these tests or other monitoring practices are determined by the licensee's risk assessment.

§ 146c.8. Oversee service provider arrangements.

The licensee:

(1) Exercises appropriate due diligence in selecting its service providers.

(2) Requires its service providers to implement appropriate measures designed to meet the objectives of this chapter, and, when indicated by the licensee's risk assessment, takes appropriate steps to confirm that its service providers have satisfied these obligations.

§ 146c.9. Adjust the program.

The licensee monitors, evaluates and adjusts, as appropriate, the information security program in light of any relevant changes in technology, the sensitivity of its customer information, internal or external threats to information, and the licensee's own changing business arrangements, such as mergers and acquisitions, alliances and joint ventures, outsourcing arrangements and changes to customer information systems.

§ 146c.10. Determined violation.

(a) Violations of §§ 146c.3 and 146c.4 (relating to information security program; and objectives of information security program) are deemed and defined by the Commissioner to be an unfair method of competition and an unfair or deceptive act or practice and shall be subject to any applicable penalties or remedies contained in the Unfair Insurance Practices Act (40 P.S. §§ 1171.1—1171.15).

(b) A licensee has violated this chapter when the licensee knew or reasonably should have known of a pattern of activity or a practice of a service provider that constitutes either a violation of Chapter 146a (relating to privacy of consumer financial information), Chapter 146b (relating to privacy of consumer health information) or this chapter or a material breach of the contract or other arrangement between the licensee and the service provider, unless the licensee took reasonable steps to cure the breach or end the violation, as applicable, and, if the steps were unsuccessful, did the following:

(1) Terminated the contract or arrangement with the service provider, if feasible.

(2) If termination is not feasible, reported the violation or breach to the Department.

§ 146c.11. Effective date.

Each licensee shall establish and implement an information security program, including appropriate policies and systems under this chapter by _____ (*Editor's*

Note: The blank refers to a date 6 months after final adoption of this proposed rulemaking.).

[Pa.B. Doc. No. 03-1934. Filed for public inspection October 3, 2003, 9:00 a.m.]

PENNSYLVANIA PUBLIC UTILITY COMMISSION

[52 PA. CODE CH. 57]

[L-00030161]

Electric Service Reliability

The Pennsylvania Public Utility Commission (Commission), on July 26, 2003, adopted a proposed rulemaking order which amends existing regulations by establishing performance and benchmark standards designed to ensure electric distribution companies (EDCs) performances do not deteriorate since passage of 66 Pa.C.S. Chapter 28 (relating to Electricity Generation Customer Choice and Competition Act) (act).

Executive Summary

The act became effective January 1, 1997. The act amends 66 Pa.C.S. (relating to public utilities) by adding Chapter 28 to establish standards and procedures to create direct access by retail customers to the competitive market for the generation of electricity, while maintaining the safety and reliability of the electric system. Specifically, the Commission was given a legislative mandate to ensure that levels of reliability that were present prior to the restructuring of the electric utility industry would continue in the new competitive markets.

In response to this legislative mandate, the Commission adopted a final-form rulemaking order on April 23, 1998, at Doc. No. L-00970120, setting forth various reporting requirements designed to ensure the continuing safety, adequacy and reliability of the generation, transmission and distribution of electricity in this Commonwealth. See Chapter 57, Subchapter N (relating to electric reliability standards). The final-form rulemaking order also suggested that the Commission could reevaluate its monitoring efforts at a later time as deemed appropriate.

On June 12, 2002, the Legislative Budget and Finance Committee (LB&FC) issued a Report entitled *Assessing the Reliability of Pennsylvania's Electric Transmission and Distribution Systems*. The LB&FC Report made several recommendations regarding the issue of reliability.

Shortly thereafter, on July 18, 2002, at M-00021619, the Commission adopted its Bureau of Conservation Economics and Energy Planning's (CEEP) *Inspection and Maintenance Study of Electric Distribution Systems*, dated July 3, 2002. CEEP, in part, recommended that the annual reliability reporting requirements be revised to include the causes of outages and percentages categorized by type as well as the annual reporting of each company's plans for the upcoming year's inspection and maintenance of transmission systems including: (1) vegetation management; (2) distribution and substation maintenance activity; and (3) capital improvement projects. The Commission agreed with CEEP's recommendations in this regard.

The Commission created a Staff Internal Working Group on Electric Service Reliability (Staff Internal Working Group) to conduct a reevaluation of its electric service

Public Meeting held
June 26, 2003

reliability efforts. The Staff Internal Working Group was comprised of members of Commission bureaus with either direct or indirect responsibility for monitoring electric service reliability. The Staff Internal Working Group prepared a report, entitled *Review of the Commission's Monitoring Process for Electric Distribution Service Reliability*, dated July 18, 2002, which reviewed the Commission's monitoring process for electric distribution service reliability and provided comments on recommendations from the LB&FC Report. The Staff Internal Working Group report also offered recommendations for tightening the standards for reliability performance and establishing additional reporting requirements by EDCs.

On August 29, 2002, the Commission issued an Order at Doc. No. D-02SPS021 that tentatively approved these recommendations and directed the Commission staff to undertake the preparation of orders, policy statements and proposed rulemakings as may be necessary to implement the recommendations contained in the Staff Internal Working Group's report. The Staff Internal Working Group was assigned the responsibility to implement the recommendations. The Staff Internal Working Group, with the legal assistance of the Law Bureau, determined which implementation actions could be accomplished internally (with or without a formal Commission Order), and which actions will require changes to regulations.

The Staff Internal Working Group conducted field visits to EDCs to identify the current capabilities of each EDC for measuring and reporting reliability performance. These field visits began in October 2002 and continued intermittently through March 2003. As a result of the field visits, various forms of reliability reports and reliability data were received from the EDCs and analyzed by the Staff Internal Working Group to determine the most effective and reasonable approach for the Commission to monitor electric distribution service reliability.

This proposed rulemaking order seeks to implement the Staff Internal Working Group's recommendations and sets forth proposed amendments to better govern the reliability of electric service in this Commonwealth and assure that service does not deteriorate after the act. Specifically, we propose to substitute the term "operating area" with "service territory" thus altering the definition of a "major event." Additionally, we want to require the EDCs to file quarterly reports as well as the currently required annual reports. We wish the EDCs to report additional information on their reports, that is, worst circuit information as well as their standards and plans for inspection and maintenance of their distribution systems.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on September 19, 2003, the Department submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House and Senate Committees on September 19, 2003. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey any comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections shall specify the regulatory review criteria which have not been met. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the rulemaking, by the Department, the General Assembly and the Governor of comments, recommendations or objections raised.

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

Proposed Rulemaking Order

By the Commission

Today, in conjunction with our Tentative Order at M-00991220, we reexamine our regulations and seek to significantly improve the monitoring of reliability performance in the electric distribution industry.

Procedural History

The act added 66 Pa.C.S. Chapter 28 to establish standards and procedures to create direct access by retail customers to the competitive market for the generation of electricity, while maintaining the safety and reliability of the electric system. Specifically, the Commission was given a legislative mandate to ensure that levels of reliability that were present prior to the restructuring of the electric utility industry would continue in the new competitive markets.

In response to this legislative mandate, the Commission adopted a final rulemaking order on April 23, 1998, at Doc. No. L-00970120, setting forth various reporting requirements designed to ensure the continuing safety, adequacy and reliability of the generation, transmission and distribution of electricity in this Commonwealth. See Chapter 57, Subchapter N. The final rulemaking order also suggested that the Commission could reevaluate its monitoring efforts at a later time as deemed appropriate.

On June 12, 2002, the LB&FC issued a Report entitled *Assessing the Reliability of Pennsylvania's Electric Transmission and Distribution Systems*. The LB&FC Report made several recommendations regarding the issue of reliability.

Shortly thereafter, on July 18, 2002, at M-00021619, the Commission adopted its CEEP's *Inspection and Maintenance Study of Electric Distribution Systems* dated July 3, 2002. CEEP, in part, recommended that the annual reliability reporting requirements be revised to include the causes of outages and percentages categorized by type as well as the annual reporting of each company's plans for the upcoming year's inspection and maintenance of transmission systems including: (1) vegetation management; (2) distribution and substation maintenance activity; and (3) capital improvement projects. The Commission agreed with CEEP's recommendations in this regard.

The Commission created a Staff Internal Working Group to conduct a reevaluation of its electric service reliability efforts. The Staff Internal Working Group was comprised of members of Commission bureaus with either direct or indirect responsibility for monitoring electric service reliability.

The Staff Internal Working Group prepared a report, entitled *Review of the Commission's Monitoring Process for Electric Distribution Service Reliability*, dated July 18, 2002, which reviewed the Commission's monitoring process for electric distribution service reliability and provided comments on recommendations from the LB&FC report. The Staff Internal Working Group report also offered recommendations for tightening the standards for reliability performance and establishing additional reporting requirements by EDCs.

On August 29, 2002, the Commission issued an Order at Doc. No. D-02SPS021 that tentatively approved these

recommendations and directed the Commission staff to undertake the preparation of orders, policy statements and proposed rulemakings as may be necessary to implement the recommendations contained in the Staff Internal Working Group's report. The Staff Internal Working Group was assigned the responsibility to implement the recommendations. The Staff Internal Working Group, with the legal assistance of the Law Bureau, determined which implementation actions could be accomplished internally (with or without a formal Commission Order), and which actions will require changes to regulations.

The Staff Internal Working Group conducted field visits to EDCs to identify the current capabilities of each EDC for measuring and reporting reliability performance. These field visits began in October 2002 and continued intermittently through March 2003. As a result of the field visits, various forms of reliability reports and reliability data were received from the EDCs and analyzed by the Staff Internal Working Group to determine the most effective and reasonable approach for the Commission to monitor electric distribution service reliability.

Discussion

Based upon our review of each EDC's capabilities for measuring and monitoring reliability performance, the Commission implements the following actions to address the recommendations cited in the Inspection and Maintenance of Electric Distribution Systems Study and the Review of the Commission's Monitoring Process for Electric Distribution Service Reliability.

Proposed amendments to §§ 57.191—57.197

§ 57.191 Purpose.

No changes.

§ 57.192. Definitions.

"Operating area" definition

This definition has been deleted since the concept of operating areas will no longer be used under the proposed changes. An "operating area" was defined by § 57.192 as being, "A geographical area, as defined by an electric distribution company, of its franchise service territory for its transmission and distribution operations." Prior to issuing its Reliability Report, the Staff Internal Working Group discovered that, in some cases, the companies internally had different operating areas than those that were reported to the Commission for the purposes of reporting reliability statistics.

In Recommendation No. IV-3 of the July 18, 2002 Reliability Report, the Staff Internal Working Group suggested that the Commission require the EDCs to provide reliability indices based on the same operating configurations used to manage their daily operations.

To establish electric reliability benchmarks and standards after passage of the act, each EDC was asked to provide historical service reliability performance indicators (reliability indices) for its operating areas and system as a whole. Each EDC was given the discretion to define its operating areas according to § 57.192, which defines "operating area" as follows:

A geographical area, as defined by an electric distribution company, of its franchise service territory for its transmission and distribution operations.

Some EDCs designated multiple operating areas in their system while others designated their entire system as the sole operating area. On December 16, 1999, the Commission ordered the establishment of permanent electric service reliability performance benchmarks and stan-

dards for each EDC under § 57.194(h)(1) (relating to distribution system reliability). These benchmarks and standards are based on the historical reliability indices for the operating areas designated by each EDC. Likewise, the electric service reliability performance reported by each EDC to the Commission under § 57.195 (relating to reporting requirements) is based on the same operating areas designated by each EDC.

The Staff Internal Working Group found that some EDCs internally report and monitor their electric service reliability performance by areas different than those areas designated for the establishment of electric reliability performance benchmarks and standards, and reporting purposes to the Commission. Another concern is that there is the potential for an EDC to define its operating areas to serve a small number of customers that most service interruptions in an operating area could (by definition under § 57.192) be considered a major event, and any related outage data would be excludable from any reported reliability performance. As noted previously, the Staff Internal Working Group recommended that the Commission require EDCs to provide reliability indices based on the same operating area configurations used to manage the daily operations of their systems.

However, since its July 2002 Reliability Report, and after further discussion with industry representatives, the Staff Internal Working Group now recommends to the Commission that the EDCs do not use the designated operating areas reported to the Commission for monitoring their electric service reliability performance. The exception would be any EDC that has designated its entire service territory as its sole operating area. In fact, the EDCs have informed the Staff Internal Working Group that they often have to perform additional calculations at the end of the year to report their electric service reliability performance based on these previously designated operating areas. The only use of these operating areas is to report annual performance to the Commission. The EDCs have indicated that they manage their daily operations on a system-wide basis, and therefore, measure and monitor their reliability performance on a system-wide basis.

To avoid the potential for masking problems in small pockets of an EDC's service territory, circuit reliability will be analyzed. The EDCs will be required to report by circuit¹ instead of by operating areas. Specifically, the EDCs will be required to report on a quarterly basis their 5% worst performing circuits as calculated based upon the reliability indices and other relevant factors (for example, lockouts).

To effectively compare and trend the EDCs' current reliability performance to historical performance, the benchmarks will be recomputed to reflect the replacing of the term "operating areas" with "service territory" in our regulations. This change in definition causes a change in the criterion used to exclude major outages. Thus, the benchmark must be recomputed. The recomputed benchmarks and standards for each individual EDC are further discussed in our Tentative Order at M-00991220, Amended Reliability Benchmarks and Standards for the Electric Distribution Companies.

It must be made clear that the proposed phrase "the electric distribution company's service territory" means an individual EDC's service territory, regardless of whether the EDC is part of a larger system or has merged with another entity.

¹ Circuit is defined as a number of electrical components connected together in a closed loop.

"Major event" definition

All references to "operating areas" are replaced with the term "service territory" in the "major event" definition for the reasons previously outlined.

Additionally, as noted in our companion Amended Reliability Benchmarks and Standards Tentative Order at M-0099120, we require a formal process to request the exclusion of service interruptions for reporting purposes by proving a service interruption qualifies as a major event as defined by regulations. The Commission is providing provided EDCs with a form for requesting exclusion of data due to a major event.

§ 57.193. Transmission system reliability.

No changes.

§ 57.194. Distribution system reliability.

Through regulations and orders, the Commission has established reporting requirements, benchmarks and standards for EDC reliability performance. Currently, EDCs report their performance on the CAIDI, SAIFI, SAIDI and (as available) MAIFI² indices to the Commission on an annual basis. These indices are generally accepted indices of EDC reliability that measure the frequency and duration of outages at the system or customer level.

The existing regulations in Chapter 57 did not establish the benchmarks or the standards for CAIDI, SAIFI, SAIDI or MAIFI for each company. Instead, the benchmarks and standards were set by Commission Order on December 16, 1999, at Docket No. M-00991220.

Revisions to the language in § 57.194(e) and (h)(2)–(4) are proposed to clarify the Commission's expectations for reliability performance in relation to performance benchmarks and performance standards. The Commission's expectations for EDC reliability are based on language found in sections 2802(12) and 2804(1) of the act (relating to declaration of policy; and standards for restructuring of electric industry). Section 2802(12) of the act notes that the purpose, in part, is:

[T]o create direct access by retail customers to the competitive market for the generation of electricity while maintaining the safety and reliability of the electric system for all parties. Reliable electric service is of the utmost importance to the health, safety and welfare of the citizens of the Commonwealth. Electric industry restructuring should ensure the reliability of the interconnected electric system by maintaining the efficiency of the transmission and distribution system.

Section 2804(1) of the act sets forth standards for restructuring the electric industry. This section states, "The Commission shall ensure continuation of safe and reliable electric service to all customers in the Commonwealth . . ."

Consistent with the act, the Commission's policy is to ensure that EDC reliability performance after the imple-

mentation of the act be equal to the level achieved prior to the introduction of electric competition. In a series of orders at Doc. No. M-00991220, the Commission established reliability benchmarks and standards for each EDC. The benchmarks were based on each EDC's historic performance from 1994–1998. The benchmarks, therefore, represented each EDC's historical reliability performance level prior to the implementation of electric choice in 1999. The Commission also established performance standards which took into account the variability in each EDC's reliability performance during the 1994–1998 period. The performance standards were set two standard deviations higher than the benchmarks (lower metric scores equal better performance) to allow for a degree of variability that inevitably occurs in reliability performance from year to year.

In the Commission's review of the language in § 57.194 pertaining to benchmarks and standards for distribution system reliability, we determined that the language needs clarification to specify the roles that benchmarks and standards have in relationship to the Commission's expectation for EDC reliability performance. We do not want to send the message that long-term reliability performance that just meets the performance standard is acceptable. Long-term performance that only meets the standard could be significantly worse than the benchmark and thus worse than the historical performance level that existed prior to the introduction of electric choice. The performance would clearly not be consistent with the intent or language of the act and the Commission's policy objective for maintaining reliability performance after the introduction of electric choice at least as good as it was prior to electric choice. Therefore, the Commission emphasizes that long-term reliability performance should be at least equal to the benchmark performance.

To clarify language in § 57.194, we have revised the wording in subsection (h) to indicate that EDCs shall take measures to meet the reliability "performance benchmark" in the long term, in addition to meeting the performance standards in the shorter term. In § 57.194(h)(2), we have inserted language clarifying that the benchmark represents the Commission's expectation of future, long-term reliability performance. Section 57.194(h)(4) is modified to state that an EDC shall inspect, maintain and operate its distribution system as well as analyze "reliability results" and take corrective measures as necessary to ultimately achieve "benchmark performance" rather than the performance standard.

While clarifying our language to emphasize long-term performance at the benchmark level, we acknowledge that performance in a given year or so may vary from the benchmark. Therefore, we continue to find the concept of a performance standard to be a useful tool for monitoring performance in the near term. When performance on any measure falls outside the standard, Commission staff will engage in an additional review with the EDC to determine whether reliability performance is deteriorating, which could contribute to an EDC not maintaining benchmark performance in the long term.

We have also made a revision to the language in § 57.194(h)(2) stating that the benchmark will be based on a company's historic "system-wide" performance for that measure versus performance for each EDC operating area. This revision is consistent with changes to the definition of a "major event" that is revised to reflect an interruption which affects at least 10% of the customers in the EDC's "service territory" versus a designated operating area (refer to § 57.192). Together, these

² CAIDI is Customer Average Interruption Duration Index. It is the average interruption duration of sustained interruptions for those customers who experience interruptions during the analysis period. CAIDI represents the average time required to restore service to the average customer per sustained interruption. It is determined by dividing the sum of all sustained customer interruption durations, in minutes, by the total number of interrupted customers. SAIFI is System Average Interruption Frequency Index. SAIFI measures the average frequency of sustained interruptions per customer occurring during the analysis period. SAIDI is System Average Interruption Duration Index. SAIDI measures the average duration of sustained customer interruptions per customer occurring during the analysis period. MAIFI (Momentary Average Interruption Frequency Index) measures the average frequency of momentary interruptions per customer occurring during the analysis period. These indices are accepted national reliability performance indices as adopted by the Institute of Electrical and Electronics Engineers, Inc. (IEEE), and are defined with formulas in § 57.192.

changes will result in all EDCs calculating and reporting reliability performance based on the entire service territory.

§ 57.195. Reporting requirements.

Under subsection (a), we propose that the annual reliability report be submitted by March 31 of each year. Currently, the EDCs annually submit reliability performance reports by May 31 following the year being reported on. If an EDC experiences poor performance in the year being reported on, 5 or more months will pass before the Commission has the ability to determine if the EDC has sufficient corrective measures in place. At the time of receiving the report, it is too late in the year for the EDC to effectively revise its reliability program to address the concerns of the Commission. The EDCs have agreed that an annual report could be submitted by March 31. Under paragraph (1), we are requiring EDCs to submit six instead of five reports, so that all interested parties within the Commission will receive a copy.

Under subsection (b), we propose, at a minimum, that certain elements be included in the annual reliability report for the larger EDCs. To clarify which EDCs qualify as a larger electric distribution company, we propose that those companies with 100,000 or more customers be considered a larger EDC.³ This would include the current set of EDCs that have been considered to be the larger EDCs for reliability monitoring purposes. At a minimum, the following elements are to be reported by the larger EDCs: (The numbering below corresponds with the proposed rulemaking.)

(1) An overall current assessment of the state of system reliability in the EDC's service territory, including a discussion of the EDC's current programs and procedures for providing reliable electric service. This was previously part (i). The additional language is intended to emphasize that a "current" (not dated) assessment of the overall state of system reliability is to be provided and that "current" programs and procedures are to be the focus of discussion.

(2) Revised to clarify that the major events to be reported are those that occurred during the reporting year.

(3) This revision specifically identifies which reliability indices should be reported, and provides that the indices should be reflective of measuring performance based on excluding major event data using the entire service territory criterion. This is consistent with the proposed change in the definition of a "major event." Also, it is being proposed that the EDCs report reliability values for the preceding 3 years instead of the preceding 5 years to be consistent with the Commission's proposal to establish rolling 3-year average standards. This revision also specifically requires that the raw data used to calculate the reliability indices be provided to understand what factors are driving the reported performance.

(4) Monitoring of the causes of service outages will enable the Commission to identify trends, and will form a basis for further discussion with the EDCs as well as analysis of service problems.

(5) Since the Commission proposes to examine electric service reliability on a service territory basis, rather than on an operating area basis, we have determined that a review of worst performing circuits will be an appropriate approach to monitoring the efforts of the EDCs to im-

prove service performance in specific areas of the service territory. It is being proposed in § 57.195(e)(3) for EDCs to report the worst performing 5% of circuits in the system on a quarterly basis. In addition, we are requiring that the EDCs include in their annual reliability report to the Commission a list of the remedial efforts that have been taken or are being planned for the circuits that have been on the list of worst performing circuits for a year or more. This information will enable the Commission to determine if sufficient remedial efforts have been implemented for circuits that continue to be problematic and/or understand the problems being encountered by the EDC in its attempts to remediate poor performing circuits.

(6)—(12) In the Commission's final rulemaking order of April 23, 1998 (Doc. No. L-00970120), setting forth reporting requirements relating to electric service reliability, CEEP was directed to conduct a study of the issue of whether specific inspection and maintenance standards should be developed for electric distribution systems. The staff study recommended that, in lieu of standards, the EDCs be required to submit documentation on inspection and maintenance activities. Further reporting requirements in this area will assist the Commission in assuring that the EDCs are carrying out their own plans for maintaining electric service reliability.

We therefore propose that the EDCs provide in their annual report, a comparison of the previous year's inspection and maintenance goals to the actual results achieved. Most of this information can be easily reported in a one-page format. (See Attachment A for an example.) We also propose the submission of comparisons of the previous year's budgeted versus actual transmission and distribution operation and maintenance expenses, and capital expenditures. Since the EDCs are already monitoring their inspection/maintenance goals and operating/capital budgets, this information should be readily available. In addition to the previous year budgeted/actual comparisons, budgeted goals and expenditures for the current year are being requested. Finally, a discussion of significant changes to the transmission and distribution inspection and maintenance programs would also be required.

Under subsection (c), we propose to require the small EDCs (those with less than 100,000 customers) to annually provide the same information as in subsection (b) except for requirement (5). These smaller EDCs, Citizens' Electric Company, Pike County Light and Power Company and Wellsboro Electric Company, have a small number of circuits in their system configurations. Thus, they are constantly aware of the condition of all of the circuits and there is no need for them to report on the 5% worst performing circuits.

In addition to the annual report, proposed subsections (d)—(f) require the submission of a quarterly reliability report. This report will include a rolling 12-month computation of the reliability indices, a rolling 12-month analysis of circuit reliability and a description of any remedial action taken to correct problems. The purpose of requiring a quarterly report is to provide more frequent information to the Commission about service reliability. This will enable the Commission to identify potential problems in a timely manner and monitor the EDC's response to problems which may arise between annual reports. The quarterly report requires a description of each major event occurring during the preceding quarter that the EDC has excluded from its reported data.

The quarterly report will also require the submittal of rolling 12-month reliability indices values for the entire service territory and for the worst performing 5% of the

³ Large EDCs currently include: Allegheny Power, Duquesne Light, Met-Ed, Penelec, Penn Power, PECO and PPL.

system's circuits. The worst performing 5% of circuits means the worst 5% of the total circuits on the system. While the methodology used to identify these circuits may vary among the EDCs, most EDCs use the reliability indices and other related factors. The EDCs already perform this type of analysis and agree that this information will be able the Commission to detect any adverse performance trends in specific segments of the system and track the progress of any corrective measures the EDC has undertaken. Also, a discussion of specific remedial efforts taken or planned for the worst performing circuits will be required.

As with the annual report, we are proposing to require documentation on inspection and maintenance goals and expenses. However, this information will consist mainly of quarterly and year-to-date budget versus actual comparisons. We also propose to require information on staffing levels for transmission and distribution operation and maintenance as well as information on contractor hours and expenses. Again, we expect to continually monitor these activities, expenses and staffing levels on a timely basis to ensure that sufficient resources are being devoted to the reliability of electric service.

We are also interested in receiving information on monthly call-out acceptance rates for transmission and distribution maintenance workers. There are times when, during a storm which causes numerous customer outages, the acceptance rate of line crews (the percentage of time that the maintenance workers accept a call for repairing equipment and restoring service) is low. The monthly call-out acceptance rates may provide some perspective on reliability performance.

Proposed subsection (f) limits the quarterly reporting requirements for the smaller EDCs to subsection (e)(1), (2) and (5). This is to reduce the reporting burden of these companies, reflecting the size, configuration and operational aspects of their systems.

Language has been revised in subsection (g), which was formerly subsection (d), to make it clear that performance which does not meet the Commission's established performance standards is not necessarily indicative of unacceptable performance. Only after further review of the circumstances can it be determined whether any performance is problematic. A revision has also been made so that the Commission will determine, in each circumstance, whether or not to require the reporting of additional information. Depending on the factual information provided by the EDC, the situation may or may not suggest a further examination of the reasons for not meeting the standards.

Proposed subsection (h) requires an EDC to timely report any problems it is having with its data gathering system. This will alert the Commission of the problem and permit the Commission to monitor the EDC's attempt to resolve the matter.

Proposed subsection (i) states that the Commission will prepare an annual reliability report and make it available

to the public. Electric service reliability is important to the citizens of this Commonwealth and they have a right to know the status of reliability in their area.

§ 57.196. Generation reliability

No changes.

§ 57.197. Reliability investigations and enforcement

No changes.

Accordingly, under the act and the regulations promulgated thereunder at Chapter 57, Subchapter N; sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202) and the regulations promulgated thereunder at 1 Pa. Code §§ 7.1, 7.2 and 7.5; section 204(b) of the Commonwealth Attorneys Act (71 P. S. § 732.204(b)); section 5 of the Regulatory Review Act (71 P. S. § 732.204(b)); and section 612 of The Administrative Code of 1929 (71 P. S. § 232) and the regulations promulgated thereunder at 4 Pa. Code §§ 7.231—7.235 (relating to fiscal notes), we are considering adopting the proposed rulemaking to read as set forth in Annex A; *Therefore,*

It Is Ordered That:

1. The proposed rulemaking be opened to consider the rulemaking set forth in Annex A.
2. The Secretary submit this order and Annex A to the Office of Attorney General for review as to form and legality and to the Governor's Budget Office for review of fiscal impact.
3. The Secretary certify this order and Annex A and deposit them with the Legislative Reference Bureau to be published in the *Pennsylvania Bulletin*.
4. An original and 15 copies of any comments referencing the docket number of the proposed rulemaking be submitted within 60 days of publication in the *Pennsylvania Bulletin* to the Pennsylvania Public Utility Commission, Attention: Secretary, P. O. Box 3265, Harrisburg, PA 17105-3265.
5. A copy of any comments be filed electronically to contact person Elizabeth H. Barnes at ebarnes@state.pa.us.
6. The contact persons for this rulemaking are (technical) Thomas Sheets, Director of Bureau of Audits, (717) 783-5000 and (legal) Elizabeth H. Barnes, Law Bureau, (717) 772-5408.
7. A copy of this Order and Annex A be filed at Doc. No. M-00991220.
8. A copy of this order and Annex A be served upon all EDCs operating in this Commonwealth, the Office of Consumer Advocate and the Office of Small Business Advocate.

JAMES J. MCNULTY,
Secretary

Fiscal Note: 57-228. No fiscal impact; (8) recommends adoption.

ATTACHMENT A

2003 Goals - Complete Planned Work for Ensuring Reliability - Pennsylvania Operations Only
Results as of: May 1

Program/Project	Unit of Measurement	Target for 2003	Actual Completed YTD	% Completed	% of Total Goal	% Earned of Total Goal
Forestry Goals						
Transmission Herbicide Application	# Transmission Lines	12	0	0.0%	3.1%	0.0%
Transmission Lines Trimming and Clearing	# Transmission Lines	52	6	11.5%	3.2%	0.4%
Subtransmission Herbicide Application	# of Subtransmission Lines	73	4	5.5%	3.1%	0.2%
Subtransmission Line Trimming and Clearing	# of Subtransmission Lines	98	12	12.2%	3.1%	0.4%
Distribution Line Trimming, Clearing & Herbicide Applic.	# of Distribution Line Miles	7,577	1,198	15.8%	25.0%	4.0%
Subtotal - Forestry Goals				13.0%	37.5%	4.9%
Transmission Lines ERS Goals						
Major Projects (Capital) for Reliability	Budget Dollars	\$ 3,847,000	\$ 2,689,954	69.9%	15.7%	11.0%
Transmission Comprehensive Patrol	# Transmission Lines	1	1	100.0%	0.9%	0.9%
Transmission General Patrol	# Transmission Lines	117	0	0.0%	0.7%	0.0%
Ground & Footer Inspections	# Transmission Lines	1	0	0.0%	0.3%	0.0%
Pole Inspection	# Transmission Lines	0	0	0.0%		0.0%
Pole Reinforcements	# Transmission Line Poles	0	0	0.0%		0.0%
Pole Replacements	# Poles	0	0	0.0%		0.0%
Critical Transmission Repairs	# Critical Items	2	2	100.0%	0.5%	0.5%
Priority Transmission Repairs	# Critical Items	7	2	28.6%	0.5%	0.1%
Non-Critical Transmission Repairs	# Non-Critical Items (identified in 2001 & before)	47	0	0.0%		0.0%
Transmission Tower Painting	# Towers	0	0	0.0%		0.0%
Subtotal - Transmission Lines Goals				59.9%	20.9%	12.5%
Substation Goals						
SS Work (Includes Capital, Planned, & Preventative)	Man-Hours	67,088	18,800	28.0%	11.4%	3.2%
SS Spraying	Budget Dollars	\$ 70,200	\$ 18,800	26.8%	0.2%	0.1%

Controls Work (Includes Cap., Planned, & Preventative)	Man-Hours	13,916	2,374	17.1%	2.5%	0.4%
Subtotal - Substation Goals				26.1%	14.1%	3.7%

OH Distribution Lines Goals						
Subtransmission General Patrol	# Subtransmission Lines	333	0	0.0%	0.2%	0.0%
Individual Budget Projects for Reliability	Man-Hours	12,109	2,137	17.6%	3.0%	0.5%
Small Planning Projects	Man-Hours	27,386	6,025	22.0%	9.2%	2.0%
Steel Wire Replacement	Line Miles	0	0	0.0%		0.0%
Pole Inspection	# of Circuits	84	29	34.5%	3.3%	1.1%
Pole Reinforcement	# of Poles	0	0	0.0%	0.3%	0.0%
Danger Poles	# Danger Poles	0	0	0.0%	0.7%	0.0%
Reject Poles	# Reject Poles	0	0	0.0%	1.4%	0.0%
Annual Inspection & Maintenance Work	Points Completed	2,669	1,079	40.4%	0.3%	0.1%
Reliability Improvement Program	\$ Spent	1,110,000	28,160	2.5%	3.3%	0.1%
UG Equipment Inspections	# Locations	6,673	3,967	59.4%	0.3%	0.2%
Regulator Inspections	# Regulators	134	53	39.6%	0.3%	0.1%
Capacitors Inspections	# Capacitors	1,218.0	899.0	73.8%	0.3%	0.2%
Recloser Replacements	# Reclosers	192	81	42.2%	0.3%	0.1%
Structured Maintenance - Street Lights	# Street Lights	20,635	7,218	35.0%	3.0%	1.0%
Subtotal - Overhead Distribution Lines Goals				21.6%	25.9%	5.6%

UGD Distribution Lines Goals						
Pad Mount Transformer Painting	# Pad Mount Transformers	0	0	0.0%		0.0%
UG Equipment Inspections	# Locations	6,673	3,967	59.4%	0.3%	0.2%
UGD Cable Replacement	Budget Dollars	\$ 130,000	\$0	0.0%	0.4%	0.0%
Cable Injection	Budget Dollars	\$ 201,000	\$0	0.0%	0.6%	0.0%
Subtotal - Underground Distribution Lines Goals				13.7%	1.3%	0.2%

% Planned Work Completed YTD:						26.8%
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Annex A
TITLE 52. PUBLIC UTILITIES
PART I. PUBLIC UTILITY COMMISSION
Subpart C. FIXED SERVICE UTILITIES
CHAPTER 57. ELECTRIC SERVICE
Subchapter N. ELECTRIC RELIABILITY STANDARDS

§ 57.192. Definitions.

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

* * * * *

EDC—Electric distribution company. An electric distribution company as defined in 66 Pa.C.S. § 2803 (relating to definitions).

* * * * *

FERC—Federal Energy Regulatory Commission.

* * * * *

Major event—

(i) Either of the following:

(A) An interruption of electric service resulting from conditions beyond the control of the [electric distribution company] EDC which affects at least 10% of the customers in [an operating area] the EDC's service territory during the course of the event for a duration of 5 minutes each or greater. The event begins when notification of the first interruption is received and ends when service to all customers affected by the event is restored. [When one operating area experiences a major event, the major event shall be deemed to extend to all other affected operating areas of that electric distribution company.]

* * * * *

[Operating area—A geographical area, as defined by an electric distribution company, of its franchise service territory for its transmission and distribution operations.]

Performance benchmark—The average historical performance.

Performance standard—Minimum performance allowed.

* * * * *

§ 57.194. Distribution system reliability.

* * * * *

(e) An [electric distribution company] EDC shall design and maintain procedures to achieve the reliability performance benchmarks and performance standards established under subsection (h).

* * * * *

(h) An [electric distribution company] EDC shall take measures necessary to meet the reliability performance benchmarks and performance standards adopted under this subsection.

* * * * *

(2) The benchmark will be based on an [electric distribution company's] EDC's historic system-wide

performance [for each operating area] for that measure. In establishing the benchmark, the Commission may consider historic superior or inferior performance [or system-wide performance].

(3) The performance standard shall be the short term, minimal level of performance for each measure for all [electric distribution companies, regardless of the benchmark established] EDCs. Performance that does not meet the standard for any reliability measure shall be the threshold for triggering additional scrutiny by Commission staff. When performance does not meet the standard, Commission staff will contact the EDC regarding possible remedial review and reporting activities.

(4) An [electric distribution company] EDC shall inspect, maintain and operate its distribution system, analyze [performance] reliability results, and take corrective measures as necessary to achieve [the performance standard] benchmark performance. [An electric distribution company with a benchmark establishing performance superior to the performance standard shall maintain benchmark performance, except as otherwise directed by the Commission.]

§ 57.195. Reporting requirements.

(a) An [electric distribution company] EDC shall submit an annual reliability report to the Commission, on or before [May] March 31 [,1999, and May 31] of each [succeeding] year [, a reliability report which includes, at a minimum, the information prescribed in this section].

(1) An original and [5] six copies of the report shall be filed with the Commission's Secretary and one copy shall also be submitted to the Office of Consumer Advocate and the Office of Small Business Advocate.

(2) The name [and telephone number], title, telephone number and e-mail address of the persons [having] who have knowledge of the matters, and [to whom inquiries should be addressed] can respond to inquiries, shall be included.

(b) The annual reliability report for larger EDCs (those with 100,000 or more customers) shall include [an assessment of electric service reliability in the electric distribution company's service territory, by operating area and system-wide.], at a minimum, the following elements:

(1) [The] An overall current assessment [shall include] of the state of the system reliability in the EDC's service territory including a discussion of the [electric distribution company's] EDC's current programs and procedures for providing reliable electric service.

(2) [The assessment shall include a] A description of each major event that occurred during the year being reported on, including the time and duration of the event, the number of customers affected, the cause of the event and any modified procedures adopted to avoid or minimize the impact of similar events in the future.

[(c) The report shall include a] (3) A table showing the actual values of each of the reliability indices [,

and other performance measures required by this subchapter or Commission order, for each operating area and] (SAIFI, CAIDI, SAIDI, and if available, MAIFI) for the [electric distribution company as a whole] EDC's service territory for each of the preceding [5] 3 calendar years. The report shall include the data used in calculating the indices, namely the average number of customers served, the number of sustained customer minutes interruptions, the number of customers affected and the minutes of interruption. If MAIFI values are provided, the number of customer momentary interruptions shall also be reported.

(4) A breakdown and analysis of outage causes during the year being reported on, including the number and percentage of service outages and customer interruption minutes categorized by outage cause such as equipment failure, animal contact, tree related, and so forth. Proposed solutions to identified service problems shall be reported.

(5) A list of remedial efforts taken to date and planned for circuits that have been on the worst performing 5% of circuits list for a year or more.

(6) A comparison of established transmission and distribution inspection and maintenance goals/objectives versus actual results achieved during the year being reported on. Explanations of any significant variances shall be included.

(7) A comparison of budgeted versus actual transmission and distribution operation and maintenance expenses for the year being reported on. Explanations of any significant variances shall be included.

(8) A comparison of budgeted versus actual transmission and distribution capital expenditures for the year being reported on. Explanations of any significant variances shall be included.

(9) Quantified transmission and distribution inspection and maintenance goals/objectives for the current year detailed by system area (that is, transmission, substation and distribution).

(10) Budgeted transmission and distribution operation and maintenance expenses for the current year in total and detailed by FERC account.

(11) Budgeted transmission and distribution capital expenditures for the current year in total and detailed by FERC account.

(12) Significant changes, if any, to the transmission and distribution inspection and maintenance programs previously submitted to the Commission.

(c) The annual reliability report for smaller EDCs (those with less than 100,000 customers) shall include all items in subsection (b) except for the requirement in paragraph (5).

(d) An EDC shall submit a quarterly reliability report to the Commission, on or before May 1, August 1, November 1 and February 1.

(1) An original and six copies of the report shall be filed with the Commission's Secretary and one copy shall also be submitted to the Office of Consumer Advocate and the Office of Small Business Advocate.

(2) The name, title, telephone number and e-mail address of the persons who have knowledge of the matters, and can respond to inquiries, shall be included.

(e) The quarterly reliability report for larger companies (those with 100,000 or more customers) shall, at a minimum, include the following elements:

(1) A description of each major event that occurred during the preceding quarter, including the time and duration of the event, the number of customers affected, the cause of the event and any modified procedures adopted in order to avoid or minimize the impact of similar events in the future.

(2) Rolling 12-month reliability index values (SAIFI, CAIDI, SAIDI, and if available, MAIFI) for the EDC's service territory for the preceding quarter. The report shall include the data used in calculating the indices, namely the average number of customers served, the number of sustained customer interruptions, the number of customers affected, and the customer minutes of interruption. If MAIFI values are provided, the report shall also include the number of customer momentary interruptions.

(3) Rolling 12-month reliability index values (SAIFI, CAIDI, SAIDI, and if available, MAIFI) and other pertinent information such as customers served, number of interruptions, customer minutes interrupted, number of lockouts, and so forth, for the worst performing 5% of the circuits in the system. An explanation of how the EDC defines its worst performing circuits shall be included.

(4) Specific remedial efforts taken and planned for the worst performing 5% of the circuits as identified in paragraph (3).

(5) A breakdown and analysis of outage causes during the preceding quarter, including the number and percentage of service outages and customer interruption minutes categorized by outage cause such as equipment failure, animal contact, tree related, and so forth. Proposed solutions to identified service problems shall be reported.

(6) Quarterly and year-to-date information on progress toward meeting transmission and distribution inspection and maintenance goals/objectives.

(7) Quarterly and year-to-date information on budgeted versus actual transmission and distribution operation and maintenance expenditures. (For first, second and third quarter reports only)

(8) Quarterly and year-to-date information on budgeted versus actual transmission and distribution capital expenditures. (For first, second and third quarter reports only)

(9) Dedicated staffing levels for transmission and distribution operation and maintenance at the end of the quarter, in total and by specific category (for example, linemen, technician and electrician).

(10) Quarterly and year-to-date information on contractor hours and dollars for transmission and distribution operation and maintenance.

(11) Monthly call-out acceptance rate for transmission and distribution maintenance workers.

(f) The quarterly reliability report for smaller companies (those with less than 100,000 customers)

shall, at a minimum, include paragraphs (1), (2) and (5) identified in subsection (e).

[(d) (g) When an [electric distribution company's] EDC's reliability performance [within an operating area] is found to [be unacceptable] not meet the Commission's established performance standards, as defined in § 57.194(h) (relating to distribution system reliability), the Commission may require a report [shall] to include the following:

(1) [An analysis of the service interruption patterns and trends.] The underlying reasons for not meeting the established standards.

(2) [An analysis of the operational and maintenance history of the affected operating area.

(3) A description of the causes of the unacceptable performance.

(4)] A description of the corrective measures the [electric distribution company] EDC is taking and target dates for completion.

(h) An EDC shall, within 30 calendar days, report to the Commission any problems it is having with its data gathering system used to report reliability performance.

(i) The Commission will prepare an annual reliability report and make it available to the public.

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[Pa.B. Doc. No. 03-1935. Filed for public inspection October 3, 2003, 9:00 a.m.]

STATE CIVIL SERVICE COMMISSION

Advanced Notice of Final-Omitted Rulemaking

The State Civil Service Commission (Commission) intends to adopt a final-form rulemaking. The Commission is publishing the draft final amendments under the authority of section 208 of the Civil Service Act (act) (71 P. S. § 741.208). Notice of proposed rulemaking will be omitted under section 204 of the act of July 31, 1968 (P. L. 769, No. 240), known as the Commonwealth Documents Law, because the amendments relate to agency practice and procedure, or incorporate changes required to conform with the act of November 27, 2002 (P. L. 1129, No. 140) (Act 140) amending the act, or both

A. Effective Date

The draft final amendments, if approved on final-form rulemaking, will go into effect upon publication of an order adopting the amendments in the *Pennsylvania Bulletin*.

B. Contact Person

For further information on the draft final amendments, contact Randall C. Breon, Deputy for Operations, State Civil Service Commission, (717) 787-5343, (717) 772-2685 (TT), fax (717) 783-8736.

The draft final amendments are available electronically though the Commission's website (<http://www.scsc.state.pa.us>).

C. Statutory Authority

The statutory authority for the draft final amendments is section 203(1) of the act (71 P. S. § 741.203(1)).

D. Purpose and Background

The act was amended by Act 140. The draft final amendments will bring them into conformity with the amendments to the act.

E. Summary of Amendments

The draft final amendments are designed to bring the regulations into conformity with the act. They are also designed to bring the regulations governing civil service hearing procedures into conformity with current hearing practices. They are further designed to clarify existing regulations.

F. Paperwork

The draft final amendments will not add to existing paperwork requirements. Many of the proposed amendments will reduce current paperwork requirements.

G. Fiscal Impact

The draft final amendments will have no adverse fiscal impact on the Commonwealth or its appointing authorities.

H. Public Comments

The Commission invites comments from interested persons, agencies and organizations at its public hearings on the draft amendments to be held as follows:

Public Hearing Room, Commission's Main Office
Strawberry Square Complex, 4th Floor
Bowman Worth Building
320 Market Street
Harrisburg, PA 17108-0569
October 14, 2003, 8:30 a.m.

Western Regional Office
1503 State Office Building
300 Liberty Avenue
Pittsburgh, PA 15222-1210
October 20, 2003, 12 p.m.

Eastern Regional Office
10 South 11th Street, 2nd Floor
Philadelphia, PA 19107-3618
November 3, 2003, 12 p.m.

Persons who wish to present views on the draft final amendments or receive a copy shall notify Randall C. Breon, Deputy for Operations, State Civil Service Commission, whose contact information appears in Part B of this preamble. Notification of intent to speak shall be made by 4:30 p.m. at least 2 working days prior to the scheduled hearing date. Speakers will be required to identify themselves and the organization they represent, if any. Persons with a disability who wish to attend a public hearing and require an auxiliary aid or other service to participate should contact Randall C. Breon at the previous numbers to discuss possible accommodation of needs.

RONALD K. ROWE,
Executive Director

[Pa.B. Doc. No. 03-1936. Filed for public inspection October 3, 2003, 9:00 a.m.]