

# STATEMENTS OF POLICY

## Title 12—COMMERCE, TRADE AND LOCAL GOVERNMENT

DEPARTMENT OF COMMUNITY AND  
ECONOMIC DEVELOPMENT

[12 PA. CODE CH. 123]

### Community Revitalization Program

The Department of Community and Economic Development (Department) amends Chapter 123 (relating to community revitalization program) to read as set forth in Annex A. The statement of policy is amended under the authority of section 209 of Act 1A of 2005, known as the General Appropriation Act of 2005 (Appropriation Act).

#### Background

The Appropriation Act requires the Department to publish Community Revitalization Program (Program) guidelines in the *Pennsylvania Bulletin* prior to the spending of the 2005-2006 moneys designated for the Program. This amended statement of policy updates the existing Program guidelines published in 2004.

#### Amendments

Section 123.1 (relating to introduction) is amended to update the reference to the Appropriation Act and to the current fiscal year.

Section 123.3 (relating to eligibility) is amended to update the reference to the Appropriation Act and to the current fiscal year.

Section 123.4 (relating to program requirements and instructions) is amended to require a financial breakdown of any amounts appearing in the following budget categories "Contingency," "Indirect Costs," "Other" or "Working Capitol." This is in addition to the current requirement that applicants provide a specific explanation of these costs.

Section 123.5 (relating to application submission and approval procedure) is amended to update the reference to the Department's current website, the current fiscal year, the grant award cycles and the proposed award dates. This section also now requires, instead of encouraging, a disclaimer from an applicant with a religious affiliation that Department funds will not be used for religious purposes.

Section 123.6 (relating to procedures) is amended to update the reference to the current fiscal year and to add a requirement that all grant recipients be registered with the Commonwealth's Central Vendor Management Unit prior to receipt of their contract.

#### Fiscal Impact

The amended statement of policy has no fiscal impact on the Commonwealth, political subdivisions or the public.

#### Paperwork Requirements

Additional paperwork requirements are not imposed as a result of the amended statement of policy.

#### Contact Person

For further information regarding the amended statement of policy, contact Richard Guinan, Director, Operations, Department of Community and Economic Development, Commonwealth Keystone Building, 400 North Street, Fourth Floor, Harrisburg, PA 17120-0225, (717) 787-3402.

#### Findings

The Department finds that:

Delay in implementing the statement of policy will have a serious adverse impact on the public interest.

#### Order

The Department, acting under the authorizing statute, orders that:

(1) The statement of policy of the Department, 12 Pa. Code Chapter 123, is amended by amending §§ 123.1 and 123.3—123.6 to read as set forth in Annex A.

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

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

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

DENNIS YABLONSKY,  
*Secretary*

**Fiscal Note:** 4-83. No fiscal impact; (8) recommends adoption.

#### Annex A

### TITLE 12. COMMERCE, TRADE AND LOCAL GOVERNMENT

#### PART V. COMMUNITY AFFAIRS AND DEVELOPMENT

#### Subpart A. STRATEGIC PLANNING AND OPERATION

#### CHAPTER 123. COMMUNITY REVITALIZATION PROGRAM—STATEMENT OF POLICY

#### § 123.1. Introduction.

(a) The CRP provides grants for community revitalization and improvement projects throughout this Commonwealth. CRP funds may be used for projects that are in accordance with Act 1A of 2005. Eligible projects are defined in § 123.3(b) (relating to eligibility).

(b) Assistance from the CRP is in the form of grants from the Commonwealth to eligible applicants for projects which, in the judgment of the Department, comply with Act 1A of 2005, are in accordance with the program guidelines in this chapter and meet all Department Single Application for Assistance criteria found in the application.

(c) Applicants should be aware that applications for other Department programs may also be considered under the CRP. This creates a large pool of applications for a limited appropriation from the General Assembly. As such, not every application can or will be funded.

(d) 2005 CRP expenditures will be charged to the State fiscal year July 1, 2005, to June 30, 2006.

**§ 123.3. Eligibility.**

(a) *Eligible applicants.* The following applicants are eligible:

(1) General purpose units of local government, including, but not limited to, counties, cities, boroughs, townships and home rule municipalities.

(2) Municipal and redevelopment authorities and agencies.

(3) Industrial development authorities and agencies.

(4) Nonprofit corporations incorporated under the laws of the Commonwealth.

(5) Community organizations engaged in activities consistent with the program guidelines as determined by the Department.

(b) *Eligible projects.*

(1) CRP funds may be used for community revitalization and improvement projects that are consistent with Act 1A of 2005. Eligible projects include projects which must meet one or more of the following criteria:

(i) Improve the stability of the community.

(ii) Promote economic development.

(iii) Improve existing or develop new, or both, civic, cultural, recreational, industrial and other facilities.

(iv) Assist in business retention, expansion, creation or attraction.

(v) Promote the creation of jobs and employment opportunities.

(vi) Enhance the health, welfare and quality of life of citizens of this Commonwealth.

(2) Projects for the sole benefit of a for-profit entity are not eligible for program funding.

(c) *Guideline Compliance for Fiscal Year 2005-2006.* Projects that receive funding must meet one or more of the criteria listed in subsection (b).

**§ 123.4. Program requirements and instructions.**

The following requirements apply to CRP:

(1) Project applications shall be submitted using the Department's Single Application for Assistance. Applications are available from the Department's Customer Service Center, the Department's Regional Offices or the Department's website. Addresses and phone numbers are listed in § 123.5(a) (relating to application submission and approval procedure).

(2) The Department reserves the right to:

(i) Request additional information regarding proposed use of funds.

(ii) Verify non-Department funding sources.

(iii) Require explanation or revision of the project's budget.

(iv) Require clarification of the project's narrative.

(v) Consider an application ineligible in a specific funding round if the additional information requested is not received by the Department within 30 days of its request. The application may be considered in a subsequent round of the fiscal year, if the requested information is received by the Department by the established application deadlines.

(3) Incomplete applications may be rejected. An applicant shall follow the detailed instructions for completing

the Department's Single Application for Assistance when applying for CRP, especially, with regards to the completion of the Project Narrative, Project Budget and Profiles sections. The following excerpt from the Department's Single Application for Assistance provides the level of detail that the Department is seeking on a project.

A typewritten (or computer generated) Project Narrative must accompany the Single Application for Assistance. The narrative should provide a detailed and comprehensive description of the project. Applicants shall explain who they are and what they are going to do with the grant funds. The narrative must specifically address each of the cost items identified in the Project Budget section of the application. In general, the narrative should include:

- *Specific problems to be addressed or improvement to be financed.* Identify the problem that needs to be resolved. Include brief background information, including general purpose or mission, or both, of the organization.

- *Project description.* What do you plan to accomplish with this project and how do you plan to accomplish it?

- *Expected outcomes.* Examples of measurable outcomes include jobs created or retained, people trained, land or buildings acquired, park constructed, feet of road repaired, and the like.

- *Projected schedule and key milestones and dates.* A detailed project schedule must accompany the application, including key milestones and dates.

- *Documentation to support projected budget costs.* This documentation may consist of an itemized line-by-line listing of how you arrived at the specific budget items for the project, bids or cost quotations, contractor estimates, appraisals, engineer estimates. A specific explanation and financial breakdown is required for any amounts in a "Contingency," "Indirect Costs," "Other" or "Working Capital" budget category.

- Documentation of matching dollars such as commitment letters, receipts, and the like.

- *Religious disclaimer.* If an applicant has a religious affiliation, the applicant shall provide a disclaimer assuring that Department funds will not be used for religious purposes.

**§ 123.5. Application submission and approval procedure.**

(a) The application is available by calling the Customer Service Center, the Department's regional offices or at the Department's web site [www.newpa.com/programfinder.aspx](http://www.newpa.com/programfinder.aspx). Applications will be accepted throughout the fiscal year up to the March 30, 2006, submission deadline. Applications will be subject to § 123.7 (relating to limitations and penalties).

(1) Applications may be submitted by mail to the following address:

Department of Community and Economic Development  
Customer Service Center  
Commonwealth Keystone Building  
400 North Street, Fourth Floor  
Harrisburg, PA 17120-0225  
(800) 379-7448

(2) To expedite processing, submit the application by means of the Department's on-line Single Application for Assistance found at [www.newpa.com/programfinder.aspx](http://www.newpa.com/programfinder.aspx).

(3) Applicants should utilize the online submission of applications whenever possible.

(b) CRP grant awards will be made in three funding rounds during the fiscal year. The Department will grant approximately 33% of the program appropriation in each round. These percentages are targets. The Department will make every effort to allocate program funds in accordance with these targets, but is not bound to them. Applicants should not apply in each round, and should apply only once during the 2005-2006 Fiscal Year. Grant applications not funded in a round will be rolled into the next round for consideration.

(1) The first round consideration will include all applications received between July 1, 2005, and September 30, 2005.

(2) The second round will include applications received by December 30, 2005, and applications not approved in the first round.

(3) The third round will include applications received by March 30, 2006, and applications not approved in the first and second rounds.

(4) Targeted grant announcement dates, subject to change without notice at the discretion of the Department, are as follows:

- (i) November 2005 for the first round.
- (ii) February 2006 for the second round.
- (iii) May 2006 for the third round.

(c) Any CRP funds remaining after the third round may be awarded by the Department up to the lapsing of funds for the 2005-2006 fiscal year appropriation.

(d) Letters will not be sent to applicants after each funding round advising applicants that they have not been funded.

(e) Applicants that do not receive funding during any of the rounds will be notified during or after July 2006 to reapply during the next fiscal year.

(f) Follow up information as to the status of submitted grant applications may be obtained by contacting the Department's Customer Service Center. However, calls are not encouraged. The account manager letter is confirmation of receipt of the application. Please remember that the demand for this program is very high, and staff may not be familiar with each individual application. Applicant care in preparation of the application will assist the Department in processing the application.

(g) Applicants should not submit more than one application per fiscal year. Additional applications do not enhance opportunity for funding. The Department reserves the right to reject additional applications from the same applicant, without notice to the applicant.

(h) The Department reserves the right to reject, without notification, applications received after March 30, 2006, for the 2005-2006 fiscal year appropriation.

#### **§ 123.6. Procedures.**

(a) CRP grant award notifications will be made by letter. After the award letter has been mailed, the applicant will receive a contract document and a payment requisition form that must be signed by the grantee and returned to the Department for execution on behalf of the Commonwealth; provided, the applicant is registered with the Commonwealth's Central Vendor Management Unit and has obtained a vendor number. Applicants not registered with the Commonwealth's Central Vendor Manage-

ment Unit shall submit a completed Federal W-9 Form to the Department. Grants will not be awarded without a fully executed contract.

(b) The applicant shall maintain full and accurate records with respect to the project. The Department will have free access to these records including invoices of material and other relative data and records, as well as the right to inspect all project work. The applicant shall furnish upon request of the Department all data, reports, contracts, documents and other information relevant to the project.

(c) Approved grants in the amount of \$100,000 or more require the grantee to provide an audit of the grant by a certified public accountant, prepared at the expense of the grantee, in compliance with State law. The single audit performed for Federal audit purposes will not be accepted for auditing grants funded with State moneys.

(d) Approved grants under \$100,000 require the grantee to submit a detailed financial statement and a close out report of the use of State funds consistent with the contract. An audit is recommended, although not required.

(e) Funds will be disbursed according to the provisions in the contract between the applicant and the Department.

(f) Applications from grant recipients who did not fulfill their audit or close out requirements under previous contracts will not be considered and will be placed on hold until the audit or close out requirements are met.

(g) Applications not acted on favorably will be considered to have been denied and will not be considered for the 2006-2007 fiscal year.

[Pa.B. Doc. No. 05-1775. Filed for public inspection September 23, 2005, 9:00 a.m.]

## **PENNSYLVANIA PUBLIC UTILITY COMMISSION**

[52 PA. CODE CH. 69]

[L-00051875]

### **Litigation and Settlement Proceedings Involving Violations of the Public Utility Code and Com- mission Regulations**

Public Meeting held  
August 11, 2005

*Commissioners Present:* Wendell F. Holland, Chairperson;  
James H. Cawley, Vice Chairperson; Bill Shane; Kim  
Pizzigrilli; Terrance J. Fitzpatrick

*Proposed Policy Statement for Litigated and Settled  
Proceedings Involving Violations of the Public Utility Code  
and Commission Regulations; Doc. No. M-00051875*

#### **Order**

*By the Commission:*

#### **A. Introduction**

The Commission proposes to establish a policy statement that will address the factors/standards for evaluating litigated and settled cases involving violations of the Public Utility Code (Code) and Commission regulations.

The Commission currently evaluates litigated and settled cases involving such violations according to the standards established in *Rosi v. Bell Atlantic-Pennsylvania, Inc. and Sprint Communications Company, L.P.*, C-00992409 (Order entered March 16, 2000). The Commission initially adopted the standards in *Rosi* in order to determine the amount of civil penalties to be assessed in slamming cases, as well as to evaluate settlement agreements in slamming cases. See *Pennsylvania Pub. Util. Comm'n v. PEPCO Energy Serv.*, M-00001432 (Order entered Nov. 9, 2000).

*Rosi* was a litigated case, in which a hearing was held before an Administrative Law Judge (ALJ). The ALJ made determinations, including that Sprint Communications Company (Sprint) should pay a civil fine of \$64,000 for slamming. Sprint appealed as to the amount of the fine, and the Commission issued an order which set forth the following standards the Commission would apply when determining the amount of a civil penalty in slamming cases:

1. Whether the violation was intentional or negligent. If the violation is intentional, the Commission should start with the presumption that the penalty will be in the range of \$500 to \$1,000 per day. If the violation is negligent, the Commission should start with the presumption that the penalty will be in the range of zero dollars to \$500 per day. The precise penalty amount per day will be arrived at by applying the following additional standards, while recognizing that the Commission retains broad discretion in determining a total civil penalty amount that is reasonable on an individual case basis.
2. Whether the regulated entity promptly and voluntarily took steps to return the customer to the appropriate carrier and credited the customer's account.
3. Whether the regulated entity initiated procedures to prevent future slamming.
4. The number of customers affected and the duration of the violation.
5. Whether the penalty arises from a settlement or a litigated proceeding.
6. The compliance history of the regulated entity which committed the violation.
7. Whether the regulated entity cooperated with the Commission.
8. The amount necessary to deter future violations.
9. Past Commission decisions in similar situations.
10. Other relevant factors.

Subsequently, the Commission determined that all violations of the Code and the Commission's regulations would be subject to review under the standards set forth in *Rosi. Pennsylvania Pub. Util. Comm'n v. NCIC Operator Serv.*, M-00001440 (Order entered Dec. 21, 2000). In reference to the Commission's review under the *Rosi* standards, the *NCIC Operator Services* case states,

This review is conducted with the purpose of developing or, in cases of settlement agreements, reviewing the appropriate penalty to be applied for all types of violations for all categories of public utilities. Clearly, the factors we consider pursuant to our decision in *Rosi* are generic in nature and can be applied in all cases. The nature of the violation (intentional or negligent), impact (customers affected and duration), extent of cooperation by the regulated entity, and compliance history are, inter alia, examples of factors that can be reviewed for all types of violations for all types of utilities.

These factors, particularly the extent of cooperation by the regulated entity and measures taken to improve compliance, have been viewed as key mitigating factors under *Rosi*, and the Commission has examined such factors to determine whether settlement agreements are in the public interest.

## B. Policy Statement

The Commission finds that many of the *Rosi* standards work well in evaluating litigated and settled cases involving violations of the Code and the Commission's regulations. However, all of the *Rosi* standards do not apply equally well to all utility cases, particularly those that do not deal with slamming issues. This is due to the wide variety of matters that come before the Commission, including the Commission's Bureau of Consumer Services matters, Gas Safety Division matters, the Bureau of Transportation and Safety matters, and other complaint matters before the Commission. Moreover, strict compliance with the *Rosi* standards does not allow parties adequate flexibility in reaching settlements. As such, this proposed policy statement will set forth new factors/standards for evaluating litigated and settled cases involving violations of the Code and the Commission's regulations. The factors may be considered by the Commission in determining if a fine/civil penalty for violating a Commission order, regulation, or statute is appropriate, and if a proposed settlement for a violation is reasonable and approval of the settlement agreement is in the public interest.

### 1. Litigated Cases

In adjudicating litigated cases where the Commission must weigh the evidence, determine culpability and, where appropriate, assess a fine or other penalty, the Commission proposes in Annex A that its first factor will retain considerations regarding intentional or negligent conduct as it did in *Rosi*. In addition, the Commission will consider the seriousness of the conduct at issue. Under the Commission's proposal, when conduct of a serious nature is involved, such as property damage, personal injury, and willful fraud or misrepresentation, the conduct could warrant a higher/more significant penalty. When the conduct is less egregious, such as administrative filing/technical errors, it could warrant a lower/less significant penalty.

For its second factor, the Commission will consider the regulated entity's efforts to modify its internal practices/procedures in order to address the conduct at issue and prevent similar conduct in the future. These modifications may include activities such as training and improving company techniques and supervision.

The rest of the factors the Commission will consider in its policy statement are those it has retained from *Rosi*, including the following: the number of customers affected and the duration of the violation, the compliance history of the regulated entity which committed the violation, whether the regulated entity cooperated with the Commission's investigation, the amount of the civil penalty necessary to deter future violations, past Commission decisions in similar situations, and other relevant factors.

### 2. Settled Cases

With regard to settled cases the parties should be afforded more flexibility in determining the amount of a fine, penalty, or other resolution. Though many of the *Rosi* standards may be taken into consideration, the standards will not be applied in such a restrictive fashion.

The first factor to be considered will focus solely on the seriousness of the conduct at issue. This includes a

determination of whether public safety and/or property damage are at issue. This factor is distinguished from that applied in litigated cases by the lack of a finding of intentional or negligent conduct on the part of the regulated entity.

The second factor, like that in litigated cases, focuses on the actions taken or proposed by the regulated entity to correct the conduct involved in the proceeding. Numerous other factors may also be taken into consideration in settled cases. These factors may include, but not be limited to, the number of customers affected, the duration of the incident, whether the regulated entity cooperated with the Commission's investigation, and other relevant factors.

We encourage settlements and intend to allow the parties flexibility in reaching amicable resolutions to complaints and other matters before us so long as the settlement is in the public interest. To this end the parties to a settlement should include in the settlement agreement a statement in support of settlement explaining how the settlement is in the public interest. The statement may be filed jointly by the parties or separately by each individual party. Accordingly, while some of the standards for settlements may reflect those to be applied in litigated cases, parties will be free to propose innovative provisions that address the issues at hand but which may not strictly adhere to specific guidelines. As always, our overriding concern in these matters is that any proposed agreement reflect the public interest.

All interested parties are invited to submit comments on the proposal set forth in Annex A. We propose to amend Chapter 69 of our regulations by adding 52 Pa. Code § 69.1201 as set forth in Annex A, which establishes a policy statement for litigated and settled proceedings involving violations of the Public Utility Code and Commission regulations. Accordingly, pursuant to section 501 of the Public Utility Code, 66 Pa.C.S. § 501, and the Commonwealth Documents Law, 45 P. S. §§ 1201 et seq., and regulations promulgated thereunder at 1 Pa. Code §§ 7.1—7.4, we amend the regulations at 52 Pa. Code Chapter 69 as previously noted and as set forth in Annex A; *Therefore,*

*It Is Ordered That:*

1. The proposed amendments to 52 Pa. Code Chapter 69, as set forth in Annex A, are issued for comment.
2. The Secretary shall submit this order and Annex A to the Governor's Budget Office for review of fiscal impact.
3. The Secretary shall certify this order and Annex A and deposit them with the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.
4. Interested persons may submit an original and 15 copies of written comments to the Office of the Secretary, Pennsylvania Public Utility Commission, P. O. Box 3265, Harrisburg, PA 17105-3265 within 30 days from the date this order is published in the *Pennsylvania Bulletin*.
5. A copy of this Order shall be posted on the Commission's website.
6. The contact person for this matter is Wayne T. Scott, Law Bureau, (717) 783-6150 (legal).

JAMES J. MCNULTY,  
*Secretary*

**Fiscal Note:** 57-241. No fiscal impact; (8) recommends adoption.

## Annex A

### TITLE 52. PUBLIC UTILITIES

#### PART I. PUBLIC UTILITY COMMISSION

##### Subpart C. FIXED SERVICE UTILITIES

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

#### FACTORS AND STANDARDS FOR EVALUATING LITIGATED AND SETTLED PROCEEDINGS

#### § 69.1201. Factors and standards for evaluating litigated and settled proceedings involving violations of the Public Utility Code and Commission regulations.

The Commission will consider specific factors and standards in evaluating litigated and settled cases involving violations of 66 Pa.C.S. (relating to Public Utility Code) and this title. These factors and standards will be utilized by the Commission in determining if a fine for violating a Commission order, regulation or statute is appropriate, as well as if a proposed settlement for a violation is reasonable and approval of the settlement agreement is in the public interest. The factors and standards that will be considered by the Commission include the following:

(1) *Standards for litigated cases.*

(i) Whether the conduct at issue was deemed intentional or negligent in nature. When conduct has been deemed intentional, the conduct may result in a higher penalty.

(ii) Whether the conduct at issue was of a serious nature. When conduct of a serious nature is involved, such as property damage, personal injury, and willful fraud or misrepresentation, the conduct may warrant a higher penalty. When the conduct is less egregious, such as administrative filing or technical errors, it may warrant a lower penalty.

(iii) Whether the regulated entity made efforts to modify internal practices and procedures to address the conduct at issue and prevent similar conduct in the future. These modifications may include activities such as training and improving company techniques and supervision.

(iv) The number of customers affected and the duration of the violation.

(v) The compliance history of the regulated entity which committed the violation.

(vi) Whether the regulated entity cooperated with the Commission's investigation.

(vii) The amount of the civil penalty or fine necessary to deter future violations.

(viii) Past Commission decisions in similar situations.

(ix) Other relevant factors.

(2) *Standards for settled cases.* Though the following standards may be taken into consideration in the evaluation of a proposed settlement, these standards, when applied, will not be applied in as strict a fashion as in a litigated proceeding. The parties in settled cases shall be afforded flexibility in reaching amicable resolutions to complaints and other matters so long as the settlement is

in the public interest. The parties to a settlement should include in the settlement agreement a statement in support of settlement explaining how the settlement is in the public interest. The statement may be filed jointly by the parties or separately by each individual party.

(i) Whether the conduct at issue was of a serious nature. When conduct of a serious nature is involved, such as property damage, personal injury, and willful fraud or misrepresentation, the conduct may warrant a higher penalty. When the conduct is less egregious, such as administrative filing or technical errors, it may warrant a lower penalty.

(ii) Whether the regulated entity made efforts to modify internal practices and procedures to address the conduct at issue and prevent similar conduct in the future. These modifications may include activities such as training and improving company techniques and supervision.

(iii) The number of customers affected and the duration of the violation.

(iv) The compliance history of the regulated entity which committed the violation.

(v) Whether the regulated entity cooperated with the Commission's investigation.

(vi) Other relevant factors.

[Pa.B. Doc. No. 05-1776. Filed for public inspection September 23, 2005, 9:00 a.m.]