

PROPOSED RULEMAKING

FISH AND BOAT COMMISSION

[58 PA. CODE CH. 63]

General Fishing Regulations

The Fish and Boat Commission (Commission) proposes to amend Chapter 63 (relating to general fishing regulations). The Commission is publishing this proposed rulemaking under the authority of 30 Pa.C.S. (relating to the Fish and Boat Code) (code). The proposed rulemaking modifies the regulation concerning the use of long bows, crossbows, spears and gigs. In addition, the proposed rulemaking updates the regulation regarding field dressing of fish and provides more detailed regulation of officially-recognized fish cleaning stations.

A. Effective Date

The proposed rulemaking, if approved on final-form, will go into effect upon publication in the *Pennsylvania Bulletin*.

B. Contact Person

For further information on the proposed rulemaking, contact Jason E. Oyler, Esq., P. O. Box 67000, Harrisburg, PA 17106-7000, (717) 705-7810. This proposed rulemaking is available on the Commission's website at www.fish.state.pa.us.

C. Statutory Authority

The proposed amendment to § 63.8 (relating to long bows, crossbows, spears and gigs) and the proposed addition of § 63.15a (relating to officially-recognized fish cleaning stations) are published under the statutory authority of section 2102 of the code (relating to rules and regulations). The proposed amendment to § 63.15 (relating to field dressing of fish) is published under the statutory authority of section 2102 of the code and section 2907.3 of the code (relating to fishing guide and charter boat permits).

D. Purpose and Background

The proposed rulemaking is designed to update, modify and improve the Commission's regulations relating to the use of long bows, crossbows, spears and gigs and fish cleaning and disposal of fish. The specific purpose of the proposed rulemaking is described in more detail under the summary of proposals.

E. Summary of Proposals

(1) *Section 63.8.* Currently, this section allows carp, gar, suckers and eels to be taken with long bows, crossbows, spears or gigs. However, spotted gar is listed as an endangered species and longnose gar is listed as a candidate species in this Commonwealth. In addition, the American eel is currently under review by the United States Fish and Wildlife Service for possible listing as a Federally endangered or threatened species. The Commission believes that to allow continued harvest of "gar" and "eels" by these gears is inconsistent with the protection of species of special concern, and the species should be eliminated from § 63.8(a). Accordingly, the Commission proposes to amend § 63.8 to read as set forth in Annex A.

(2) *Sections 63.15 and 63.15a.* During the early part of 2005, the Commission, with the assistance of a workgroup

comprised of charter boat captains and fishing guides, developed regulations pertaining to charter boat/fishing guide operations. A concern was raised during the workgroup meetings regarding the current field dressing of fish regulations in § 63.15. The workgroup, especially the charter captains, requested a change in the regulations to allow them to fully process fish caught by their customers.

Also, the Commission is aware of the development of several noncommercial official fish cleaning stations on the Lake Erie shoreline and at other locations throughout this Commonwealth. These facilities are generally open to the public for their use at no cost to process their catch. The current regulations prohibit anglers using these facilities to fully process their catch.

Accordingly, the Commission proposes to amend its regulations to address the concerns raised by the charter captains and to provide anglers with the ability to fully process their catch at an officially recognized noncommercial fish cleaning station. The proposed rulemaking also addresses the disposal of fish carcasses and parts thereof in Commonwealth waters and adjacent lands. The proposed rulemaking provides for a greater degree of uniformity in the processing of fish and carcass disposal with the current regulations in New York and Ohio.

In addition, the Commission proposes to add § 63.15a. This new section allows for two types of officially recognized fishing cleaning stations—commercial and noncommercial. Operators of commercial stations are required to give the person who receives a filleted fish a signed, dated receipt indicating the species and the number of fish dressed. Operators of noncommercial stations are not. The proposed rulemaking also clarifies that the operator of an officially-recognized fish cleaning station will allow officers authorized to enforce the code access to the station to inspect angler catches to determine compliance with seasons, sizes and creel limits. The Commission proposes to amend § 63.15 and add § 63.15a to read as set forth in Annex A.

F. Paperwork

The proposed rulemaking will create no new paperwork requirements because the Commission's current regulations allow for operators of fish cleaning stations to apply for official recognition. Paperwork may increase slightly because the Commission anticipates that more operators of noncommercial stations will apply for official recognition status.

G. Fiscal Impact

The proposed rulemaking will have no adverse fiscal impact on the Commonwealth or its political subdivisions. The proposed rulemaking will impose no new costs on the private sector or the general public. There is no fee to apply for recognition as an officially recognized fish cleaning station.

H. Public Comments

Interested persons are invited to submit written comments, objections or suggestions about the proposed rulemaking to the Executive Director, Fish and Boat Commission, P. O. Box 67000, Harrisburg, PA 17106-7000 within 30 days after publication of this proposed rulemaking in the *Pennsylvania Bulletin*. Comments submitted by facsimile will not be accepted.

Comments also may be submitted electronically by completing the form at www.state.pa.us/Fish/regcomments. If an acknowledgment of electronic comments is not received by the sender within 2 working days, the comments should be retransmitted to ensure receipt. Electronic comments submitted in any other manner will not be accepted.

DOUGLAS J. AUSTEN, Ph.D.,
Executive Director

Fiscal Note: 48A-178. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 58. RECREATION

PART II. FISH AND BOAT COMMISSION

Subpart B. FISHING

CHAPTER 63. GENERAL FISHING REGULATIONS

§ 63.8. Long bows, crossbows, spears and gigs.

(a) *General.* Except as otherwise provided in this part, carp [, gar,] and suckers [and eels] may be taken with long bows and arrow, including compound bows, crossbows, spears or gigs at any hour of the day or night aided by a light at night if so desired, in Commonwealth waters and waters bounding and adjacent thereto.

* * * * *

§ 63.15. Field dressing and disposal of fish.

[(a) It is unlawful to fillet fish having a minimum size limit or closed season until the fish have arrived at the place of consumption. Fish may be field dressed but the head and tail shall remain intact.

(b) Fish without minimum size limits or closed season may be filleted but the skin shall remain on the fillet until it has arrived at the place of consumption.

(c) This section does not apply to fish caught or sold in compliance with Chapter 31 of the code (relating to regulated fishing lakes). This section applies to catches of fish caught under a Lake Erie commercial license under Chapter 29 of the code (relating to special licenses and permits) only until the fish reach established retail or wholesale markets.

(d) This section does not apply to fish filleted or dressed at an officially-recognized fish cleaning station. The skin shall remain attached to the fillet for species, other than yellow perch, subject to a minimum size limit and the size of the fillet for a fish subject to a minimum size limit, including yellow perch, shall be at least 75% of the minimum size limit for that species. The operator of the fish cleaning station shall give the person who receives the filleted fish a signed, dated receipt indicating the species and the number of fish dressed. Operators of fish cleaning stations may apply for official recognition to:

Director, Bureau of Law Enforcement
Pennsylvania Fish and Boat Commission
Post Office Box 67000
Harrisburg, Pennsylvania 17106-7000]

(a) Except as otherwise provided in this section, it is unlawful to possess a fish in any form or condition other than in the whole or having the

entrails removed while on shore, along the waters of this Commonwealth, onboard a boat or on a dock, pier, launch area or a parking lot adjacent thereto.

(b) Fish may be processed fully if they are being prepared for immediate consumption.

(c) This section does not apply to fish processed at a fish cleaning station officially recognized under § 63.15a (relating to officially-recognized fish cleaning stations).

(d) Provided that the requirements of this subsection are met, this section does not apply to fish processed by a permitted charter boat/fishing guide operation. The charter boat operator or fishing guide may fully process the fish at any time provided the charter boat operator or fishing guide retains the carcass until possession of the fish is transferred to the customer on shore. The charter boat operator or fishing guide shall give the customer who receives the processed fish a signed, dated receipt on the form prescribed by the Commission.

(e) This section does not apply to fish caught or sold in compliance with Chapter 31 of the code (relating to regulated fishing lakes).

(f) This section does not apply to fish caught under a Lake Erie commercial license issued consistent with Chapter 29 of the code (relating to special licenses and permits) after the fish reach established retail or wholesale markets.

(g) It is unlawful to discard any fish carcass or parts thereof into the waters of this Commonwealth within 100 feet of shore, a dock or launch ramp or upon any public or private lands contiguous to and within 100 feet of the water except for the following:

(1) On lands with the permission of the landowner.

(2) When fish are properly disposed into suitable garbage or refuse collection systems or at officially recognized fish cleaning stations.

§ 63.15a. Officially-recognized fish cleaning stations.

(a) *Types.*

(1) *Commercial.* An operator of a fish cleaning station that provides services to the public for a fee may apply for recognition as an official commercial fish cleaning station.

(2) *Noncommercial.* An operator of a fishing cleaning station that provides services at no cost may apply for recognition as an official noncommercial fish cleaning station.

(b) *Receipts.* Except as provided in this subsection, the operator of an officially-recognized fish cleaning station shall give the person who receives the filleted fish a signed, dated receipt on the form prescribed by the Commission. This subsection does not apply to the operator of a noncommercial fish cleaning station.

(c) *Inspection.* The operator of an officially-recognized fish cleaning station shall allow officers authorized to enforce the code unrestricted access to the station to inspect angler catches for compliance with seasons, sizes and creel limits.

(d) Application. An operator of a fish cleaning station may apply for official recognition to:

**Director, Bureau of Law Enforcement
Pennsylvania Fish and Boat Commission
Post Office Box 67000
Harrisburg, Pennsylvania 17106-7000**

[Pa.B. Doc. No. 05-2208. Filed for public inspection December 2, 2005, 9:00 a.m.]

PENNSYLVANIA PUBLIC UTILITY COMMISSION

Provisions of Default Service; Reopening of the Public Comment Period

Public Meeting held
November 10, 2005

Commissioners Present: Wendell F. Holland, Chairperson;
James H. Cawley, Vice Chairperson; Bill Shane; Kim
Pizzingrilli; Terrance J. Fitzpatrick, dissenting state-
ment follows

*Rulemaking Re Electric Distribution Companies'
Obligation to Serve Retail Customers at the Conclusion of
the Transition Period Pursuant to 66 Pa.C.S. § 2807(e)(2);
Doc. No. L-00040169*

*Petition of Direct Energy Services, LLC to Reopen the
Comment Period; Doc. No. L-00040169*

*Implementation of the Alternative Energy Portfolio
Standards Act of 2004; Doc. No. M-00051865*

Order

By the Commission:

This Order will serve to reopen the public comment period for the Commission's proposed default service regulations. The Commission takes this action as part of its implementation of the Alternative Energy Portfolio Standards Act of 2004 ("Act 213"), 73 P. S. §§ 1648.1—1648.8, its consideration of the mandates of the Energy Policy Act of 2005 ("EPAAct 2005"), and to more fully examine the issues raised in the comments of the Independent Regulatory Review Commission. The Commission will provide separate notice to all interested parties of the schedule and format for this additional comment period.

DISCUSSION

The Electricity Generation Customer Choice and Competition Act ("Competition Act"), 66 Pa.C.S. §§ 2801—2812, requires the Commission to promulgate regulations defining the obligation of electric distribution companies to serve retail customers at the end of the restructuring transition period. 66 Pa.C.S. § 2807(e)(2). The Commission commenced this formal rulemaking process in late 2004. *Rulemaking Re Electric Distribution Companies' Obligation to Serve Retail Customers at the Conclusion of the Transition Period Pursuant To 66 Pa.C.S. § 2807(e)(2)*, Docket No. L-00040169 (Order entered December 16, 2004). The public comment period for these proposed regulations concluded on June 27, 2005.¹ The

¹ Direct Energy Services, LLC filed a Petition at this docket on October 19, 2005, requesting that the comment period be reopened. The period for Answers and Replies provided for under our regulations had yet to expire as of the time of this Public Meeting. 52 Pa. Code §§ 5.61—5.63. We note that our decision to reopen this proceeding is at least partially based on reasons additional to those cited in this Petition.

Independent Regulatory Review Commission ("IRRC") issued its comments on the proposed regulations on July 27, 2005. The Commission must either withdraw the proposed regulation or deliver a final-form regulation to IRRC within two years of the close of the public comment period on June 27, 2007. 73 P. S. § 745.5a.

Cost-recovery for electric distribution company ("EDC") compliance with Act 213 is one of the key issues that must be addressed in this rulemaking. Act 213 costs are identified "... as a cost of generation supply under 66 Pa.C.S. § 2807." 73 P. S. § 1648.3(a)(3). The Commission briefly noted in the proposed default service regulations that alternative energy costs would be recovered consistent with the provisions of Act 213. The Commission chose to defer the inclusion of greater detail on this issue until after it had the opportunity to fully study all the implications of Act 213. The Commission also wished to avail itself of the input of interested parties on this issue before it prepared a final-form default service regulation. We have previously announced that this issue would be referred to the Alternative Energy Portfolio Standards Working Group for consideration. *Implementation of the Alternative Energy Portfolio Standards Act of 2004*, Docket No. M-00051865 (Order entered July 18, 2005).

The Commission recognizes that the successful implementation of Act 213 will require significant investments by the private sector in new alternative energy projects. It is the nature of many of these projects that they may require long-term contracts to be economically viable. The Commission acknowledges that the private sector seeks some assurance that long-term alternative energy contracts between EDCs and generators are not contrary to either the Competition Act or Act 213 before making these investments. Because the alternative energy market is a new and emerging marketplace, in contrast to more mature, conventional energy markets, it appears that competitively procured, long-term generation contracts may be the prevailing market instrument for EDCs to comply with Act 213. As such, these costs would qualify as reasonable costs fully recoverable under Section 2807(e)(3) of the Public Utility Code, 66 Pa.C.S. § 2807(e)(3). We note that Act 213 mandates the recovery of EDCs compliance costs pursuant to an automatic adjustment clause under Section 1307 of the Public Utility Code, 66 Pa.C.S. § 1307. 73 P. S. § 1648.3(a)(3).

Several other factors contribute to our decision to reopen the default service rulemaking. One, IRRC's comments identified several issues on which parties may desire the opportunity to file comments with the Commission. These issues include comments on the need of issuing default service regulations in the immediate future, as opposed to a time closer to the end of the transition period for all EDCs. Two, the Commission must consider and address the mandates of EPAAct 2005. For example, EPAAct 2005 amends the Public Utility Regulatory Policies Act of 1978 to require that electric utilities offer time-based rate schedules to all retail electric customers. 16 U.S.C. § 2621(d)(14). The Commission is instructed to consider and render a decision on the adoption of this standard. 16 U.S.C. § 2622(b)(4). Some parties may desire to comment upon the provisions of EPAAct 2005 with regard to this rulemaking process.

Accordingly, the Commission finds it to be in the public interest to reopen the comment period for this rulemaking so that these issues may be fully considered. We expect that those parties who have previously commented on these proposed regulations and the members of the Alternative Energy Portfolio Standards Working Group

will participate in this process and be ready to assist the Commission in the examination of these subjects. At a minimum, parties will be asked to consider the following questions:

- Should Act 213 cost recovery be addressed in the Default Service regulations as opposed to a separate rulemaking? Is it necessary to consider Act 213 cost recovery regulations on a different time frame in order to encourage development of alternative energy resources during the “cost recovery period”?
- Do the prevailing market conditions require long-term contracts to initiate development of alternative energy resources? May Default Service Providers employ long-term fixed price contracts to acquire alternative energy resources? What competitive procurement process may be employed if the Default Services Provider acquires alternative energy resources through a long-term fixed price contract?
- Should the force majeure provisions of Act 213 be integrated into the Default Service procurement process? Should Default Service Providers be required to make force majeure claims in their Default Service implementation filing? What criteria should the Commission consider in evaluating a force majeure claim? How may the Commission resolve a claim of force majeure by an EGS?
- Given that Act 213 includes a minimum solar photovoltaic requirement as part of Tier I, should these resources be treated differently from other alternative energy resources in terms of procurement and cost recovery?
- Should the Commission integrate the costs determined through a § 1307 process for alternative energy resources with the energy costs identified through the Default Service Provider regulations? How could these costs be blended into the Default Service Providers Tariff rate schedules?
- May a Default Service Provider enter into a long-term fixed price contract for the energy supplies produced by coal gasification based generation if the resulting energy costs reflected in the tariff rate schedules are limited to the prevailing market prices determined through a competitive procurement process approved by the Commission?

The Commission will provide separate notice of the schedule, scope and format of this additional comment period to all interested parties; *Therefore,*

It Is Ordered That:

1. The public comment period for the rulemaking proceeding at Docket No. L-00040169 is reopened consistent with this Order.
2. The Petition of Direct Energy Services, LLC, is granted consistent with this Order.
3. The Law Bureau will draft a Secretarial Letter identifying the schedule, format and list of suggested topics for this additional comment period.
4. This Order be published in the *Pennsylvania Bulletin* and served on all jurisdictional electric distribution companies, all licensed electric generation suppliers, the Office of Trial Staff, the Office of Consumer Advocate, the Office of Small Business Advocate, and the Pennsylvania Department of Environmental Protection.

JAMES J. MCNULTY,
Secretary

Dissenting Statement of Commissioner Terrance J. Fitzpatrick

*Public Meeting November 10, 2005; NOV-2005-L-0117**

Rulemaking Re: Electric Distribution Companies’ Obligations to Serve Retail Customers

The Commission’s action today reopens the public comment period in the proceeding to develop regulations regarding default service by electric utilities, and lists several questions for comment by interested parties. Because it appears to me that a Majority of the Commission is moving in a direction that is contrary to existing law, I respectfully dissent.

Both the staff recommendation and the Motion adopted by the Majority support the concept of electric utilities entering into 20 year fixed price contracts with alternative energy developers in order to ensure the economic viability of the developers. The Alternative Energy Portfolio Standards Act, 73 P. S. § 1648.1, neither compels nor authorizes electric utilities to enter into such contracts.

In addition, the propriety of these contracts must be examined in light of another law administered by this Commission—the Electricity Generation Customer Choice and Competition Act (Competition Act), 66 Pa.C.S. § 2801, et seq. Section 2807(e)(3) of the Competition Act states that if a customer does not choose a competitive supplier, then the utility “shall acquire electric energy at prevailing market prices to serve that customer and shall recover fully all reasonable costs.” 66 Pa.C.S. § 2807(e)(3).

In my view, it is impossible for a utility to sign a 20 year fixed price supply contract and still comply with the statutory requirement to purchase energy at “prevailing market prices” for non-shopping customers. The price that electric utilities pay for electricity must maintain some reasonable relationship to wholesale prices at any given time to satisfy the “prevailing market price” test, because customers can decide to enter or exit the market at any time. With a 20 year fixed price contract, it would be pure coincidence if the price of the contract in, say, year 12 reflected conditions in the wholesale market at that time.

In the Duquesne Light decision last year, the Commission concluded that a six-year fixed price was inconsistent with the “prevailing market price” test. *Petition of Duquesne Light Co.*, Dkt. No. P-00032071, Order adopted August 19, 2004. In addition, the Independent Regulatory Review Commission recently commented that supply contracts for default service should not exceed 3 years in order to remain in touch with prevailing conditions in wholesale markets. *Comments of IRRC*, No. 57-237 (IRRC #2463), p. 5. It is clear that authorizing utilities to sign 20 year fixed price contracts with alternative energy developers would represent a significant shift in policy in the Commonwealth.

For these reasons, I respectfully dissent.

[Pa.B. Doc. No. 05-2209. Filed for public inspection December 2, 2005, 9:00 a.m.]