

RULES AND REGULATIONS

Title 10—BANKS AND BANKING

DEPARTMENT OF BANKING

[10 PA. CODE CH. 46]

Proper Conduct of Lending and Brokering in the Mortgage Loan Business

The Department of Banking (Department), under its authority under 7 Pa.C.S. § 6138(a)(4) (relating to authority of department) and section 12 of the Consumer Discount Company Act (CDCA) (7 P. S. § 6212), adopts Chapter 46 (relating to the proper conduct of lending and brokering in the mortgage loan business) to read as set forth in Annex A.

Purpose of Final-Form Rulemaking

The Department is adopting these regulations because in the past decade the mortgage loan business has significantly increased in complexity and competitiveness, resulting in a drastically changed borrowing landscape. Unfortunately, because of this complexity and competitiveness, borrowers may not understand the loan products offered to them or the process of obtaining a loan. The Department also believes that there are individuals and entities in the mortgage loan business who take advantage of borrowers by placing them in loan products they are not reasonably capable of repaying. Therefore, the Department has adopted these regulations to govern the proper conduct of lending and brokering to persons and entities operating in the mortgage loan business under 7 Pa.C.S. Chapter 61 (relating to mortgage loan industry licensing and consumer protection) (Mortgage Act) and the Consumer Discount Company Act (7 P. S. §§ 6201—6219) (jointly referenced hereafter as the “acts”).

Explanation of Final Regulatory Requirements

This final-form rulemaking provides rules for the proper conduct of lending and brokering in the mortgage loan business for licensee brokers and lenders under the Mortgage Act and all licensees under the CDCA.

Section 46.2(a) (relating to proper conduct of lending and brokering in the mortgage loan business) addresses licensee conduct when advertising by specifically prohibiting false or misleading advertising.

Section 46.2(b)—(f) requires licensees to issue a one-page disclosure form prescribed by the Department within 3 business days after the application is received or prepared by the licensee. The form will disclose: (1) if the lender providing the loan will escrow the applicable taxes and hazard insurance; (2) if the licensee is a lender with the ability to directly lock-in a loan interest rate; (3) whether the loan contains a variable interest rate or balloon payment feature; (4) whether the loan includes a prepayment penalty; and (5) whether the loan has a negative amortization feature. Licensees are also required to have applicants sign and date the disclosure form, retain the disclosure form for their records and reissue the disclosure form if the licensee knows or reasonably should know the initial disclosure form is inaccurate.

Section 46.2(g) requires licensees to perform an ability to repay analysis when offering a loan to applicants. Licensees must reasonably determine, based upon the

documents and information provided, that an applicant will have the ability to repay the offered loan in accordance with the loan terms and conditions by final maturity at the fully indexed rate, assuming a fully amortized repayment schedule. Additionally, licensees: (1) are required to verify and document the income and the fixed expenses of the applicants; (2) are not permitted to primarily rely upon the sale or refinancing of the applicants' loan collateral to repay the loan; and (3) may not ignore facts or circumstances that it knows or reasonably should know would indicate that the applicant does not have the ability to repay the offered loan. Licensees are permitted to consider other factors in addition to income and fixed expenses when performing the ability to repay analysis and licensees are only required to verify and document the income that the applicant intends to rely upon in repaying the loan. Lastly, the subsection sets forth a presumption of ability to repay for certain loans and provides a framework for an analysis of loans with balloon payment features.

Section 46.2(h) exempts reverse mortgage products from certain regulation subsections that are inconsistent with the features of a reverse mortgage loan.

Section 46.2(i) addresses the continuing responsibility of licensees in performing the ability to repay analysis when there is a material change in facts or circumstances that a licensee knows or reasonably should know would substantially affect the applicant's ability to repay the offered loan.

Section 46.2(j) sets forth a series of loan transaction prohibitions addressing specific conduct of licensees that is prohibited.

Section 46.2(k) requires licensee lenders to fund closed loans and prohibits licensees from delaying or failing to fund a loan based upon postclosing underwriting or quality control. A licensee lender may refuse to fund a closed loan only if there is fraud committed by the applicant. In any administrative action brought by the Department under this subsection, a licensee may raise applicant fraud as an affirmative defense; however, the subsection does not relieve or limit the liability of a licensee against any claims of borrowers based upon a refusal or failure to fund a loan based upon an allegation of fraud.

Section 46.2(l) requires licensees, upon request, to provide an applicant or an authorized representative of the applicant with copies or originals of documents associated with the loan transaction, so long as the licensee is permitted to under State and Federal law and has the documents in its possession.

Section 46.2(m) requires a licensee that holds or services a loan to provide a borrower with pay-off statements or statements of mortgage reinstatement, as applicable, within 7 business days of a request by a borrower or authorized representative of the borrower.

Section 46.3 (relating to enforcement) provides that violations of the regulations are considered violations of the acts. The section also provides that if a loan is made in good faith in conformity with an interpretation of this chapter by the Department or the courts of the Commonwealth, no penalty for a violation shall apply, notwithstanding the relied upon interpretation may subsequently change.

Summary of Major Comments and Responses on the Proposed Rulemaking

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on July 5, 2007, the Department submitted a copy of the proposed rulemaking and a copy of the Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and the Chairperson of the House Commerce Committee and the Senate Committee on Banking and Insurance. A copy of this material is available to the public upon request. Notice of proposed rulemaking was published at 27 Pa.B. 3416 (July 21, 2007).

The Department received over 50 comments to the proposed regulations. The Department prepared a Comment and Response Document, a copy of which is available on the Department's web site at www.banking.state.pa.us. The following is a discussion of the major comments received during the public comment period.

Coverage of the Regulation Regarding Ssubsidiaries of Federal and State-chartered Banking Institutions.

Under the Mortgage Act, subsidiaries of Federal and State-chartered banks are statutorily exempted from coverage and, accordingly, from the regulation also. Under the CDCA, although the plain language does not exempt subsidiaries of Federal and State-chartered banks, the Department recognizes Federal preemption as a result of cases such as *Watters v. Wachovia Bank, N.A.*, 550 U.S. 1, 127 S.Ct. 1559, 167 L.Ed.2d 389, 75 USLW 4167 (2007). Therefore, the Department will not enforce or administer the CDCA against entities that set forth a valid claim of Federal preemption. The Department also will not enforce or administer the CDCA against subsidiaries of State-chartered banks that have availed themselves of similar treatment through the parity provisions of section 201(c) of the Banking Code of 1965 (7 P. S. § 201(c)). The Department took the same position under precursors to the Mortgage Act, Chapter 3 of the Mortgage Bankers and Brokers and Consumer Equity Protection Act (63 P. S. §§ 456.101—456.524), and 7 Pa. Code Chapter 61 (relating to mortgage loan industry licensing and consumer protection).

As to affiliates of Federal and State-chartered banks, the Mortgage Act and the CDCA do not provide exemptions for the entities and the Department is not aware of any assertion or ruling of preemption regarding these entities. Therefore, the regulation will apply to the affiliates. The Department believes that the exclusion of these entities would seriously hinder the Department's efforts to address improper lending practices in this Commonwealth by creating a significant regulatory vacuum, which would lead to risk and exposure to borrowers in this Commonwealth. The Department is also concerned that by exempting affiliates, a relatively easy method for evasion of the regulation would be created and large lending entities which provide a great deal of borrowing services in this Commonwealth would become affiliates of banks to avoid the regulation. This would also create a competitive imbalance with licensees that would not be able to affiliate themselves with banks. Lastly, since all affiliates of Federal and State chartered banks are covered by the regulations, the Department does not believe that State affiliates are at any substantial disadvantage compared with Federal affiliates based on the regulation.

Necessity of the Ability to Repay Provisions of the Regulations.

Many commentators have asserted the ability to repay provisions are not needed because market conditions in

the mortgage industry are correcting the deficiencies that the Department is primarily seeking to address, specifically, the practice of lenders and brokers providing mortgage loans to borrowers who did not have the ability to repay the loans they were given. The Department agrees that current mortgage market conditions have seriously restricted mortgage lending in the United States and, specifically, the use of stated income or no documentation loan products. The current market constrictions regarding these loan products are based in large part upon the dangerous lending and brokering practices that evolved over the last 10 years, in particular, the practice of ignoring whether borrowers have any reasonable ability to repay the loans they were offered. Indeed, the comments that market conditions are correcting for these unsound practices tacitly acknowledge that there were a great deal of imprudent decisions and improper conduct on the part of lenders, brokers and consumers in the mortgage loan arena. The past several months since the public comment period ended clearly highlight, in the most dramatic fashion, the excess and unsound practices in the mortgage industry that contributed to the current distress in the housing market and the economy as a whole.

The Department does not believe that the response to this crisis, and the harm caused, should be that of inaction. Instead, the Department believes that unless the practices of lending and brokering without regard to an applicant's ability to repay are addressed now, through responsible regulation, these practices will only return when market conditions permit. To ignore what has led up to the current crisis in the mortgage industry and hope that "market corrections" will instill in mortgage professionals a degree of prudence and responsibility in mortgage loan transactions would be unwise. In fact, it is the Department's belief that the regulations' ability to repay provisions will provide a future stabilizing force in the market by providing a degree of assurance to investors and lenders in the secondary market that licensees in this Commonwealth gave due consideration to an applicant's ability to repay the offered loan.

Effect of the Regulation on Stated Income and No Documentation Loan Products.

Many commentators have asserted that the requirement to verify income and fixed income expenses in the regulations will eliminate loan products such as stated income and no documentation loans, which are asserted to be useful and appropriate products. These commentators are correct that the verification requirements of the ability to repay provisions of the regulations will prohibit licensees from offering a loan without verifying the income and fixed expenses of applicants. The policy goal of the ability to repay provisions of the regulations is to ensure that licensees conduct a reasonable analysis of the borrower's financial situation to determine if the borrower has the ability to repay the offered loan. In drafting the provisions, two factors stood out as having the most direct impact on an applicant's ability to repay: income and fixed expenses. Because of the importance of these two factors, the regulations require their verification. As a result, a licensee's loan product that currently does not require a licensee to verify income and fixed expenses will be effectively prohibited. Therefore, although there may still be true "no-doc" and "stated income" product loans offered in this Commonwealth by entities not covered by the regulations, licensees will still be required to perform the verification requirements of the regulation which effectively eliminates the purpose of these loans. The Department believes that the convenience of these types

of loans, even for those individuals who use the products appropriately, is far outweighed by the larger potential for abuse and the catastrophic harm caused to families who end up in homes they cannot afford and face serious credit risk as well as foreclosure when they are unable to make their loan payments.

On a related note, commentators have also in various comments mentioned "low-documentation" loans, a broad type of loan product that is purported to require minimal documentation. Under the regulations, these loans will also be affected to the extent that the minimal documentation loans do not include verification of income and fixed expenses. It should also be noted that if other information in addition to income and fixed expenses is considered as part of a licensee's analysis, under § 46.2(g)(4) of the final-form regulations, the other information must be documented by the licensee in the loan file. Therefore, it is possible that the documentation of additional information other than income and fixed expenses may require more documentation than certain lenders currently require for their loan products.

Stated Income and No Documentation Products and the Reasons for Foreclosures.

Commentators also have asserted that the main reasons for foreclosures continue to be traditional reasons such as the loss of a job, medical emergencies and divorce and that stated income or no documentation loans are not a problem or that there is no certainty that stated income or no documentation loan products are responsible for increased foreclosures. The Department recognizes that much has changed in the past several months since the time of the submission of these comments. It is now clear that the proliferation of loan products that were offered without any consideration of the borrowers' ability to repay was, and is, a substantial reason for foreclosures in the United States and the single most cited factor when discussing the collapse of the subprime mortgage market, which has had a cascading effect throughout the economy. The practice of providing loans without prudent underwriting was driven by the use of products such as stated income and no documentation loans. Borrowers, lenders, brokers and investors were able to manipulate and abuse stated income and no documentation products to the detriment of the entire country. While in limited circumstances these products may have been useful for certain borrowers, the Department believes that the potential for abuse outweighs any convenience the products offer. As discussed as follows, the Department does not believe the verification of the required factors presents a significant hurdle to borrowers or licensees.

Other Factors to Consider when Performing the Ability to Repay Analysis.

One commentator has questioned what other factors licensees may consider when performing an ability to repay analysis, other than income and fixed expenses. Section 46.2(g)(4) was drafted to give licensees flexibility in considering factors other than income and fixed expenses when performing an ability to repay analysis. This provision is intended to permit licensees to document information in addition to income and fixed expenses such as: payment history, family gifts, noncollateral assets, seasonal business considerations, business history with lender/broker, new job start date, job relocations, and the like. So long as the other considerations are reasonably related to an applicant's ability to repay and documented by the licensee, so that the Department can review the analysis, licensees may consider the additional information.

As a corollary to this comment, many commentators have stated that under the ability to repay provision, certain factors now considered when offering a loan will no longer be able to be utilized, such as payment history, seasonal income and the averaging of income for seasonal or commissioned workers. To the contrary, all of those factors may be considered when assessing the applicant's reasonable ability to repay the loan being offered by the licensee. Initially, it should be noted that the new definition of "income" includes virtually any income that an applicant may receive, whether or not it is seasonal, commissioned, rent payments, and the like. The Department believes that in analyzing the income that an applicant receives, a licensee is entirely justified in also considering additional factors such as the seasonal nature of the income, debt payment history, commission history, and if used prudently, census and wage information by profession to anticipate reasonable increases of income over time. However, licensees must be able to articulate the reasoning and basis for the use of the other information to the Department and how it was used when considering the applicant's ability to repay.

Summary of Major Changes from the Proposed Rule-making

Authority:

The regulations are being promulgated under the Department's authority under 7 Pa.C.S. § 6138(a)(4) and section 12 of the CDCA. The regulations began the promulgation process under the Department's authority under section 310(a) of the Mortgage Bankers and Brokers and Consumer Equity Protection Act (63 P. S. § 456.310(a)) (MBBCEPA), section 16(1) of the Secondary Mortgage Loan Act (7 P. S. § 6616(1)) (SMLA) and section 12 of the CDCA. However, with the passage of the Mortgage Act, the provisions of Chapter 3 of the MBBCEPA were combined with the provisions of the SMLA, creating a single consolidated act that regulates the mortgage loan business in this Commonwealth. The Mortgage Act became effective on November 5, 2008, at which time Chapter 3 of the MBBCEPA and the SMLA were repealed by operation of law.

§ 46.1:

Section 46.1 was revised to include the following definitions: "balloon payment," "debt obligation," "fixed expenses," "fully amortized payment schedule," "fully indexed rate," "hazard insurance," "index rate," "material change," "Mortgage Act," "mortgage loan," "margin," "property taxes," "reverse mortgage and variable rate loan." The definitions for "first mortgage loan," "MBBCEPA," "secondary mortgage loan" and "SMLA" were deleted as a result of the passage of the Mortgage Act.

§ 46.2(b)—(d):

Section 46.2(b)—(d) sets forth the requirements for issuing a one-page disclosure form provided by the Department. These sections were revised and are now § 46.2(b)—(f) in the final-form regulation. The final-form regulation clarifies who must deliver the disclosure statement, the timing of the issuance of the disclosure by the licensee and the requirements relating to the applicant's signature. The revised scheme also clarifies that a licensee broker, who would otherwise be required to issue the disclosure form, may defer the issuance of the form to a lender, provided that the lender issues the form in accordance with the regulation.

§ 46.2(e):

The proposed regulation's ability to repay analysis requirements were revised and are now § 46.2(g)—(i) in the final-form regulation. Revisions include the following:

(1) Definitions were drafted for "balloon payment," "debt obligation," "fixed expenses," "fully amortized payment schedule," "fully indexed rate," "hazard insurance," "index rate," "material change," "margin," "property taxes," "reverse mortgage" and "variable rate loan." See § 46.1.

(2) Licensees are only required to verify the income that the applicant is going to rely upon to pay back the loan. See § 46.2(g)(3).

(3) A presumption of ability to repay was included for loans that are insured by the Federal Housing Authority, guaranteed by the United States Department of Veterans Affairs, originated or approved for purchase by the Housing Finance Agency or subject to a written finding by a United States Department of Housing and Urban Development approved counseling agency that there is a reasonable expectation of the ability to repay. See § 46.2(g)(8).

(4) Additional guidance relating to an ability to repay analysis with loans that have a balloon payment feature and reverse mortgage loans. See § 46.2(g)(9) and (h).

(5) Clarification of the licensee's continuing obligation under the ability to repay provisions. See § 46.2(i).

§ 46.2(f):

The loan transition prohibitions contained in the proposed regulation under § 46.2(f) are now set forth in § 46.2(j) in the final-form regulation. Based upon comments received, the Department removed from the final-form regulation § 46.2(f)(10) and (12), regarding to charging fees for legally required notices and the rendering of legal advice.

§ 46.2(g):

Section 46.2(g) of the proposed regulation addressed loan funding by licensee lenders. Loan funding is now addressed in § 46.2(k) in the final-form regulation. Section 46.2(k) was revised to provide an exception to the funding requirement in cases when the applicant has committed fraud upon the licensee lender. However, any claim of fraud must be raised as an affirmative defense by the licensee in any administrative action brought by the Department and claiming fraud under this subsection does not relieve the licensee of any liability from borrower claims.

§ 46.2(h):

Section 46.2(h) of the proposed regulation is now § 46.2(l) in the final-form regulation. The subsection was revised to require licensee compliance when the applicant requests the documents and if the licensee has the requested documents in its possession.

§ 46.2(i):

Section 46.2(i) of the proposed regulation is now § 46.2(m) in the final-form regulation. This subsection was revised to only cover a licensee lender who holds or services the applicant's loan.

§ 46.3:

The final-form regulation adds an additional provision to § 46.3 relating to the interpretation of the chapter. The provision provides that if a loan is made in good faith in conformity with an interpretation of this chapter by the

Department or the courts of this Commonwealth, no penalty for a violation of this chapter shall apply, notwithstanding the relied upon interpretation subsequently may change.

Entities Affected

Existing and future licensee brokers and lenders under the Mortgage Act and all licensees under the CDCA will be affected by the final-form rulemaking.

Costs and Paperwork Requirements

The final-form rulemaking will have no fiscal impact on the Department, the Commonwealth and its political subdivisions. The final-form rulemaking will fiscally impact licensees under the acts to the extent licensees may need to incur costs to alter or revise current business practices to comply with the regulations.

Effectiveness/Sunset Date

Section 46.2(b)—(i) of the final-form rulemaking will be effective March 20, 2009. All remaining provisions of the rulemaking will be effective immediately upon publication in the *Pennsylvania Bulletin*.

Regulatory Review

Under section 5(a) of the Regulatory Review Act, on July 5, 2007, the Department submitted a copy of the proposed rulemaking and a copy of the Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the House Committee on Commerce and the Senate Committee on Banking and Insurance (Committees). A copy of this material is available to the public upon request.

Under section 5(c) of the Regulatory Review Act, IRRC and the Committees were provided with copies of the comments received by the Department during the public comment period. In preparing the final-form rulemaking, the Department has considered all comments from IRRC, the Committees and the public.

Under section 5.1(j.2) of the Regulatory Review Act (71 P. S. § 745.5a(j.2)), on November 5, 2008, the final-form rulemaking was deemed approved by the House and Senate Committees. Under section 5.1(e) of the Regulatory Review Act (71 P. S. § 745.5a(e)), IRRC met on November 6, 2008, and approved the final-form rulemaking.

Findings

The Department finds that:

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

(2) A public comment period was provided as required by law, and all comments received during the public comment period were considered.

(3) The regulations do not enlarge the purpose of the proposed rulemaking published at 37 Pa.B. 3416.

(4) The final-form rulemaking is necessary and appropriate for the administration and enforcement of the acts.

Order

The Department, acting under the acts, orders that:

(a) The regulations of the Department, 10 Pa. Code, are amended by adding §§ 46.1—46.3 to read as set forth in Annex A.

(b) The Secretary of Banking shall submit this order and Annex A to the Office of General Counsel and the

Office of Attorney General for review and approval as to legality and form, as required by law.

(c) The Secretary of Banking shall submit this order and Annex A to IRRC and the Senate and House Committees as required by the Regulatory Review Act.

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

(e) Section 46.2(b)—(i) will be effective March 20, 2009. The remaining provisions shall take effect immediately upon publication in the *Pennsylvania Bulletin*.

STEVEN KAPLAN,
Secretary

(*Editor's Note:* For the text of the order of the Independent Regulatory Review Commission relating to this document, see 38 Pa.B. 6429 (November 22, 2008).)

Fiscal Note: Fiscal Note 3-43 remains valid for the final adoption of the subject regulations.

Annex A

TITLE 10. BANKS AND BANKING

PART IV. BUREAU OF CONSUMER CREDIT AGENCIES

CHAPTER 46. PROPER CONDUCT OF LENDING AND BROKERING IN THE MORTGAGE LOAN BUSINESS

Sec.	
46.1.	Definitions.
46.2.	Proper conduct of lending and brokering in the mortgage loan business.
46.3.	Enforcement.

§ 46.1. Definitions.

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

Advertising—As defined in 12 CFR 226.2(a)(2) (relating to definitions and rules of construction).

Applicant—A person who submits an application for a loan.

Application—As defined in 24 CFR 3500.2(b) (relating to definitions).

Balloon payment—A scheduled loan payment that is more than twice as large as the average of earlier scheduled monthly payments.

CDCA—The Consumer Discount Company Act (7 P. S. §§ 6201—6219).

Consummation—As defined in 12 CFR 226.2(a)(13).

Covered loan—A covered loan as defined in section 503 of the Mortgage Bankers and Brokers and Consumer Equity Protection Act (63 P. S. § 456.503).

Debt obligation—Any amount owed for funds borrowed including interest requirements.

Fixed expenses—Any debt obligations, revolving charge accounts, alimony payments, child support payments, payments under a separate maintenance agreement, housing association fees and property taxes and hazard insurance on the property to be mortgaged, whether or not the property taxes and hazard insurance are required to be escrowed.

Fully amortized payment schedule—An amortizing payment schedule based on the term of the loan.

Fully indexed rate—The index rate plus the margin for the offered loan.

Hazard insurance—Insurance that covers property damage caused by fire, wind, storms and other similar risks.

Income—Gross income as defined in 26 U.S.C. § 61 (relating to definitions).

Index rate—A published interest rate to which the interest rate on a variable rate loan is tied.

Licensee—A licensee broker or lender under the Mortgage Act or CDCA or a partially exempt entity under the Mortgage Act.

Loan—

(i) A mortgage loan or a loan involving a mortgage by a licensee under the CDCA, or both, as the context may require.

(ii) The term does not include a covered loan.

Material change—A change of fact or circumstance that the licensee knows or reasonably should know would substantially affect an applicant's ability to repay the offered loan, including an increase in the interest rate which would require a disclosure under 12 CFR 226.17(f)(2) (relating to general disclosure requirements).

Margin—The number of percentage points a lender adds to the index rate to calculate the interest rate at each adjustment period on variable rate loans.

Mortgage Act—7 Pa.C.S. §§ 6101—6153 (relating to mortgage loan industry licensing and consumer protection).

Mortgage loan—As defined in section 6102 of the Mortgage Act (relating to definitions).

Mortgage loan business—The mortgage loan business as defined in section 6102 of the Mortgage Act and any kind of mortgage lending or brokering activity conducted by a licensee under the CDCA.

Person—A person as defined in section 6102 of the Mortgage Act and section 2 of the CDCA (7 P. S. § 6202), as applicable.

Property taxes—The taxes assessed, or a reasonable estimate of the taxes to be assessed, on the property being mortgaged based upon the full value of the property and any improvements thereon.

Reverse mortgage—A loan that is a reverse mortgage transaction as defined in 12 CFR 226.33(a) (relating to requirements for reverse mortgages).

Variable rate loan—A loan where the interest rate varies over the term of the loan.

§ 46.2. Proper conduct of lending and brokering in the mortgage loan business.

(a) *Advertising.* A licensee may not engage in false or misleading advertising.

(b) *Disclosures to applicant.* On a form prescribed by the Department, a licensee who takes an application shall disclose the following to the applicant:

(1) If the lender providing the loan will escrow the applicable property taxes and hazard insurance.

(2) If the licensee is a lender with the ability to directly lock-in a loan interest rate.

(3) Whether the loan contains a variable interest rate or balloon payment feature.

(4) Whether the loan includes a prepayment penalty.

(5) Whether the loan has a negative amortization feature.

(c) *Timing and issuance of disclosure form.* A licensee issuing the disclosure form required by subsection (b) shall sign and date the disclosure form and deliver or place in the mail the disclosure form within 3 business days after the application is received or prepared by the licensee.

(d) *Required redisclosures.* A licensee who has issued the disclosure form required by subsection (b) shall issue an updated disclosure form at the time the licensee knows or reasonably should know that the initial disclosure form is inaccurate.

(e) *Applicant acknowledgment and retention of disclosure form.* A licensee shall require an applicant to sign and date the disclosure form required by subsections (b) and (d) within 10 business days after delivery or mailing and retain the original executed disclosure form in the applicant's loan file.

(f) *Duplication.* A licensee broker taking an application is not required to provide the disclosure form required by subsections (b) and (d) if the lender making the loan elects to provide the required disclosure form in accordance with this section.

(g) *Evaluation of applicant ability to repay.*

(1) A licensee may not offer a loan without having reasonably determined, based on the documents and information provided under this subsection, that the applicant will have the ability to repay the loan in accordance with the loan terms and conditions by final maturity at the fully indexed rate, assuming a fully amortized repayment schedule.

(2) In performing an analysis to determine whether an applicant will have the ability to repay an offered loan, a licensee shall consider, verify and document:

- (i) The income of the applicant.
- (ii) The fixed expenses of the applicant.

(3) When performing the income verification required by paragraph (2), a licensee is only required to verify the income that the applicant chooses to rely upon to repay the offered loan.

(4) In performing an evaluation of an applicant's ability to repay, a licensee may consider and document supplemental information provided by the applicant in addition to income that demonstrates that the applicant has the ability to repay the offered loan, provided that the supplemental information is reasonably related to an applicant's ability to repay.

(5) A licensee may not primarily rely upon the sale or refinancing of an applicant's collateral in determining an applicant's ability to repay an offered loan.

(6) All records, worksheets and supporting documentation used in the licensee's ability to repay analysis shall be maintained in the applicant's loan file.

(7) In determining an applicant's ability to repay an offered loan under this subsection, a licensee may not ignore facts or circumstances that it knows or reasonably should know which would indicate that an applicant does not have the ability to repay the offered loan.

(8) An applicant may be presumed to have the ability to repay an offered loan if the offered loan has one of the following characteristics:

(i) Is insured by the Federal Housing Administration.

(ii) Is guaranteed by the United States Department of Veterans Affairs.

(iii) Is originated or approved for purchase by the Pennsylvania Housing Finance Agency.

(iv) Is the subject of a written finding by a United States Department of Housing and Urban Development approved counseling agency that there is a reasonable expectation that the borrower will be able to repay the offered loan.

(9) For an offered loan with a balloon payment, a licensee:

(i) May consider the sale or refinance of the applicant's collateral when evaluating an applicant's ability to make the balloon payment.

(ii) Shall base the fully amortized payment schedule on the full term the borrower chooses when calculating the amortization period for a loan containing a borrower option for an extended amortization period.

(iii) Shall consider the due date of the balloon payment and if there is a reasonable expectation the applicant will have sufficient equity in the property to make the balloon payment through a sale or refinance of the residence.

(h) *Reverse mortgages.* A licensee offering or making a reverse mortgage to an applicant is not required to comply with subsections (b), (g), (i) and (j)(3).

(i) *Material changes and ability to repay.* If there is a material change after a licensee has performed the ability to repay calculation required by subsection (g), a licensee shall immediately:

(1) Send a notice to the applicant disclosing the material change and that the material change may affect the applicant's ability to repay the offered loan, if the licensee is a broker.

(2) Perform another ability to repay analysis in accordance with subsection (g), if the licensee is a lender.

(j) *Loan transaction prohibitions.* A licensee may not:

(1) Advise or imply to an applicant that the applicant's income is not relevant to the loan transaction.

(2) Recommend or imply that an applicant default on any existing contract or financial obligation.

(3) Advise or induce an applicant to refinance an existing loan or otherwise enter into a new financial obligation without performing the ability to repay analysis required by subsection (g).

(4) Offer to the applicant a covered loan without advising the applicant that the applicant qualifies for a loan other than a covered loan, if an applicant qualifies for a loan offered by the licensee.

(5) Advise or imply that an applicant should ignore any required disclosures or suggest that a document or the execution of any document is unimportant or of no consequence.

(6) Direct, encourage, permit or otherwise be involved with the improper execution of any document, including:

(i) Requesting or allowing an applicant to sign documents that contain blank spaces where material information regarding the loan transaction is required.

(ii) Permitting the execution of documents where signatures are required to be witnessed without the witnesses being physically present.

(iii) Permitting someone other than the required signatory to execute a document unless otherwise authorized by law.

(7) Knowingly submit or permit or encourage an applicant or third party to submit, false or misleading information, or information that the licensee reasonably should know is false or misleading, to any party to a loan transaction.

(8) Improperly influence, or attempt to improperly influence:

(i) An appraiser by committing any act or omission that is intended to:

(A) Compromise the independent judgment of an appraiser.

(B) Ensure that an appraisal matches a requested or target value.

(ii) Any other entity related to the mortgage loan business, such as notaries, title companies, real estate agents, builders and sellers of properties.

(9) Obtain hazard insurance required for a loan for an applicant at loan consummation without providing the applicant with the opportunity to secure or provide evidence of the applicant's own hazard insurance.

(10) Pay compensation to or receive compensation from, contract with, or employ any person engaged in the mortgage loan business who is not licensed or otherwise exempt from licensure.

(k) *Loan funding.*

(1) A licensee lender may not refuse or fail to fund a consummated loan, other than when an applicant rescinds the loan in accordance with 12 CFR 226.15 or 226.23 (relating to the right of rescission), as applicable except as provided in paragraph (4).

(2) A licensee lender shall fund a consummated loan in a reasonable time period after consummation of the loan or in accordance with any commitment or agreement with the applicant; provided that, if an applicant has a right of rescission under 12 CFR 226.15 or 226.23, a licensee lender is not required to fund a consummated loan in accordance with this subsection until after the applicable rescission period has ended.

(3) A licensee shall disburse loan funds to third parties in accordance with any commitment or agreement with the applicant.

(4) Any postclosing underwriting or quality control review conducted by a licensee lender after the consummation of a loan may not delay the funding of a loan or result in a failure or refusal to fund the loan in accordance with this subsection unless the applicant has committed fraud against the licensee, which may be raised as an affirmative defense in any proceeding brought by the Department based upon a violation of this subsection.

(5) Nothing in this subsection relieves or limits the liability of a licensee against a claim of a borrower based upon a licensee's refusal or failure to fund a loan based upon an allegation of consumer fraud.

(l) *Licensee responsibility to provide documents.* Upon request, a licensee shall provide to an applicant or authorized representative of an applicant, unless prohibited by Federal or State law, copies or originals of the documents associated with a loan that an applicant has paid for or signed, such as loan applications, appraisals, surveys, loan documents, disclosures and any fee agree-

ment executed by the applicant and the licensee, to the extent the documents are in the licensee's possession.

(m) *Payoff statement or statement of mortgage reinstatement.* A licensee lender that holds or services a loan shall provide a borrower with payoff statements or statements of mortgage reinstatement, as applicable, for the borrower's loan within 7 business days of receipt of a written request by a borrower or a person authorized by the borrower.

§ 46.3. Enforcement.

(a) *Violations.* Violations of this chapter shall be violations of the Mortgage Act and CDCA, as applicable.

(b) *Interpretation of chapter.* If a loan is made in good faith in conformity with an interpretation of this chapter by the Department or the courts of this Commonwealth, a penalty for a violation of this chapter will not apply, notwithstanding that after the loan is consummated, the interpretation, rule or regulation is amended, rescinded or determined by a judicial or other authority to be invalid for any reason.

[Pa.B. Doc. No. 08-2285. Filed for public inspection December 19, 2008, 9:00 a.m.]

Title 52—PUBLIC UTILITIES

PENNSYLVANIA PUBLIC UTILITY COMMISSION

[52 PA. CODE CH. 75]

[L-00060180/57-252]

Implementation of the Alternative Energy Portfolio Standards Act of 2004

The Pennsylvania Public Utility Commission (Commission) on September 25, 2008, adopted a final rulemaking order which codifies prior Commission interpretations of the Alternative Energy Portfolio Standards Act (AEPS Act (73 P. S. §§ 1648.1—1648.8)) and resolves issues relevant to its implementation.

Executive Summary

On July 20, 2006, the Commission entered an order soliciting comments on establishing regulations implementing the general requirements of the Alternative Energy Portfolio Standards Act which promotes the development and use of renewable energy resources in this Commonwealth. The regulations would apply primarily to all electric distribution companies (EDCs) and active electric generation suppliers (EGSs). Order entered July 25, 2006 at Docket No. L-00060180. The proposed order was published at 36 Pa.B. 6289 (October 14, 2006). Twenty-five comments were filed and Independent Regulatory Review Commission (IRRC) also filed comments.

Following the amendment of the act by Act 35 of 2007 (September 13, 2007), the Commission issued a Secretarial Letter reopening the comment period. Ten comments were filed on or before October 11, 2007. The Commission issued its final rulemaking order on September 29, 2008.

The regulations in 52 Pa. Code §§ 75.61—75.70 codify the compliance schedule for EDCs and EGSs which will be measured in quantities of alternative energy credits, each of which shall represent one MWh of qualified alternative electric generation or conservation, whether self-generated, purchased along with the electric commod-

ity or separately through a tradable instrument. Compliance will be measured against total sales of electricity to retail customers for the reporting period.

The regulations also set standards and processes for force majeure determinations, and their relationship to alternative compliance payments. The act requires the Commission to provide for a force majeure mechanism as part of the true-up period. This special force majeure section would only need to be used during those reporting periods when the Commission had declined to make a general force majeure determination for one or more of the compliance obligations.

Under the act, EDCs and EGSs may fully recover the reasonable and prudently incurred costs of complying with the AEPS Act from ratepayers. This includes the costs for purchases of alternative energy or alternative energy credits, payments to credit program administrators and costs levied by regional transmission organizations to ensure that alternative resources are reliable. The regulations provide for costs and revenues for alternative energy compliance to be reconciled on an annual basis as well as for the annual audit of these costs by the Commission.

Public Meeting held
September 25, 2008

Commissioners Present: James H. Cawley, Chairperson; Tyrone J. Christy, Vice Chairperson, Statement attached; Robert F. Powelson; Kim Pizzingrilli; Wayne E. Gardner

Implementation of the Alternative Energy Docket No. L-00060180 Portfolio Standards Act of 2004

Final Rulemaking Order

The Commission is required to carry out the provisions of the Alternative Energy Portfolio Standards Act of 2004 (AEPS Act), 73 P. S. § 1648.1, et seq. Pursuant to this obligation, the Commission issued proposed regulations at this docket on July 20, 2006. The initial public comment period for this rulemaking proceeding concluded on January 13, 2007. On July 19, 2007, Governor Rendell signed into law Act 35 of 2007, which amended multiple provisions of the AEPS Act. The Commission reopened the public comment period to allow interested parties to file comments regarding these amendments. This second comment period ended on October 11, 2007. The Commission has completed its review of these comments and now issues final-form regulations. This final-form regulations codifies prior Commission interpretations of the AEPS Act and resolves other issues relevant to its implementation. These final-form regulations will be effective upon publication in the *Pennsylvania Bulletin*.

Background

The AEPS Act, which became effective February 28, 2005, establishes an alternative energy portfolio standard for this Commonwealth. The Pennsylvania General Assembly charged the Commission with implementing and enforcing this mandate, with the assistance of Department of Environmental Protection (Department) 73 P. S. § 1648.7(a) and (b). The Commission determined that the Act is in pari materia with the Public Utility Code, and that it would develop the necessary regulations to be codified in Title 52. 1 Pa.C.S. § 1932.

The Commission initiated an implementation proceeding for the AEPS Act on January 7, 2005, at Docket No. M-00051865. Subsequently, the Commission established

an Alternative Energy Portfolio Standards Working Group (AEPS WG) to provide a forum for input by consumers and their advocates, electric distribution companies (EDC), electric generation suppliers (EGS), State agencies, and other interested parties. The AEPS WG held its first meeting on March 2, 2005. The Commission tasked the AEPS WG with the development of the rules necessary for the participation of customer-generators in this market, as required by the AEPS Act. 73 P. S. § 1648.5.

The Commission has completed the following tasks necessary to the implementation of the AEPS Act.

- The Commission has issued final, uniform net metering regulations for customer-generators. Final Rulemaking Re Net Metering for Customer-generators pursuant to section 5 of the Alternative Energy Portfolio Standards Act (73 P. S. § 1648.5), L-00050174 (Final-form rulemaking Order entered June 23, 2006). These regulations were approved by the Independent Regulatory Review Commission (IRRC) and became legally effective on December 16, 2006. The Commission approved revisions to all EDC customer tariffs that implemented this regulation in February and March of 2007.
- The Commission issued final, uniform interconnection regulations for customer-generators. Final Rulemaking Re Interconnection Standards for Customer-generators under section 5 of the Alternative Energy Portfolio Standards Act (73 P. S. § 1648.5), L-00050175 (final-form rulemaking Order entered August 22, 2006, as modified on Reconsideration September 19, 2006). These regulations were approved by IRRC and became legally effective on December 16, 2006.
- Identification of the fifteen year reporting period schedule. Implementation of the Alternative Energy Portfolio Standards Act, Doc. No. M-00051865 (Order entered March 23, 2005) (First Implementation Order).
- Identification of the compliance exemption period for each EDC service territory. Implementation of the Alternative Energy Portfolio Standards Act, Doc. No. M-00051865 (entered March 23, 2005); as modified in Implementation of the Alternative Energy Portfolio Standards Act, Doc. No. M-00051865 (Order entered July 18, 2005) (Second Implementation Order).
- Establishment of general standards and processes for tracking and verifying demand side management and energy efficiency measures. Implementation of the Alternative Energy Portfolio Standards Act: *Standards for the Participation of Demand Side Management Resources*, Doc. No. M-00051865 (Final Order entered September 29, 2005).
- Designation of the alternative energy credit registry. Implementation of the Alternative Energy Portfolio Standards Act: Designation of the Alternative Energy Credit Registry, Doc. No. M-00051865 (Final Order entered January 31, 2006) (Credit Registry Order). The Commission designated PJM Environmental Information Systems, Inc.'s (PJM-EIS) Generation Attribute Tracking System (GATS) as the credit registry. The Commission has executed a subscriber agreement with PJM-EIS to use GATS.
- Completion, with the Department, of an interim alternative energy system qualification process. (Secretarial Letters of December 20, 2005, and January 30, 2006). An application form developed as part of this process is available through the Commission's

web site. More than 500 alternative energy systems have been qualified and registered with GATS.

- Selected Clean Power Markets as the independent alternative energy credit program administrator on November 30, 2006. A services contract has been executed and CPM has assumed the duties of the program administrator identified in these rules.
- The Commission has resolved litigation on the ownership of alternative energy attributes for contracts entered into pursuant to the Federal Public Utility Regulatory Policies Act of 1978 (PURPA), which required electric utilities to enter into long-term contracts with independently owned electric generation facilities, some of which relied on alternative energy sources to generate electricity. The Commission held that, where the contract language was silent, the alternative energy attributes was conveyed with the energy to the purchasing EDC. Petition for Declaratory Order Regarding Ownership of Alternative Energy Credits and any Environmental Attributes Associated with Non-Utility Generation Facilities Under Contract to Pennsylvania Electric Company and Metropolitan Edison Company, Doc. No. P-00052149 (Order entered February 12, 2007). The Commission denied reconsideration of this Order, on the merits, at the Public Meeting of May 30, 2007.¹
- The Commission adopted a policy statement on the nonpublic utility status of some alternative energy systems in late 2005. Implementation of the Alternative Energy Portfolio Standards Act, Doc. No. M-00051865 (Final Order entered December 5, 2006). This policy statement became effective as of January 6, 2007, and codified at 52 Pa. Code § 69.1401.
- The Commission addressed the recovery of alternative energy costs in the context of the default service rulemaking. 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 (Final Rulemaking Order entered May 10, 2007). These regulations became effective on September 15, 2007.
- The Commission revised the net metering regulations to be consistent with the Act 35 of 2007 amendments to AEPS through a final omitted rulemaking. Implementation of Act 35 of 2007; Net Metering and Interconnection, Doc. No. L-00050174 (Final Omitted Rulemaking Order entered July 2, 2008).

Certain other matters related to the AEPS Act's implementation remain open before the Commission:

- Standards for the receipt, custody and disbursement of alternative compliance payments are in the process of being developed by the Pennsylvania Sustainable Energy Board (PASEB), which is the entity that the AEPS Act delegated primary responsibility to for managing these moneys.

The Commission commenced this rulemaking by issuing a proposed rulemaking order at its public meeting of July 20, 2006. The proposed rule was published at 36 Pa.B. 6289. Comments to the proposed rule were submitted on or before December 13, 2006, by the following parties: ARIPPA, Citizens for Pennsylvania's Future (PennFuture), Citizen Power, Clean Air Council (CAC), Community Energy, Constellation NewEnergy (Constellation), Dominion Retail, Inc. (Dominion), the Energy Association

of Pennsylvania (EAP), the Electric Power Generation Association (EPGA), FirstEnergy,² FPL Energy (FPL), LLC, Fat Spaniel Technologies, the Industrial Energy Consumers of Pennsylvania (IEC), the Mid-Atlantic Solar Industries Association (MASIA), the Office of Consumer Advocate (OCA), the Office of Small Business Advocate (OSBA), the Department the Pennsylvania Waste Industries Association (PWIA), PPM Energy, Inc. (PPM), PV Now, PECO Energy Company (PECO), Reliant Energy, Inc. (Reliant), the Reinvestment Fund, and the U.S. Steel Corporation. The IRRC submitted its comments on January 12, 2007.

On July 19, 2007, Governor Rendell signed Act 35 into law. Act 35 amended multiple provisions of the AEPS Act. As a result, this Commission issued a Secretarial Letter on September 13, 2007, reopening the public comment period at this docket to provide interested parties an opportunity to advise the Commission on how the Act 35 amendments should be reflected in the final form rule. Comments in response to this secretarial letter were submitted on or before October 11, 2007 by the following parties: ARIPPA, Citizens for Pennsylvania's Future (PennFuture), the EAP, the MASIA, OCA, OSBA, the Office of Consumer Advocate, the Office of Small Business Advocate, the Department Protection, PECO Energy Company, U.S. Steel Corporation, and the York County Solid Waste and Refuse Authority (York). Comments are available at the Commission's public internet domain.

Summary of Changes

The final-form regulation has been changed in response to comments submitted by the IRRC and interested parties, and also in response to the amendments to the AEPS Act due to Act 35. Key substantive changes include:

- Clarification of solar photovoltaic (solar pv) obligation (e.g., all sales vs. Tier I sales).
- Revision of the 15 year schedule for solar pv requirements.
- Revision of the geographic scope standard for resource eligibility.
- Revision of the alternative compliance payment standard for solar pv.
- Revision of the process and standard of review for force majeure determinations.
- Revision of the alternative energy market integrity provision.
- Revision of the alternative energy credit certification verification process.
- Deletion of certain provisions relating to alternative energy system qualification.

The Commission has made other changes based on its experience in implementing the AEPS Act over the last year and in response to comments from the IRRC and other parties that are intended to clarify or otherwise improve the final-form regulation.

Discussion

The Commission has reviewed the comments filed at each stage of this proceeding. The following sections identify changes from the proposed version of the rule and the Commission's rationale.

¹ This matter is currently on appeal at the Commonwealth Court of Pennsylvania.

² Including the Metropolitan Edison Company, the Pennsylvania Electric Company, and the Pennsylvania Power Company.

A. § 75.61. *EDC and EGS obligations.*

This section codifies the compliance schedule for EDCs and EGSs. This section acknowledges that compliance will be measured in quantities of alternative energy credits, each of which shall represent one MWh of qualified alternative electric generation or conservation, whether self-generated, purchased along with the electric commodity or separately through a tradable instrument. Compliance will be measured as a percentage of total sales of electricity to retail customers for the reporting period.

PennFuture, CAC, MASIA, Department, PV Now, and Reinvestment Fund all commented that the solar pv share requirement should be a percent of total retail sales. Section 75.61(b) (relating to EDC and EGS obligations) has been revised in two ways in regard to the solar pv requirement. The Commission agreed with the public comments that asserted that the solar pv requirement is a percentage of all sales, and not just Tier I sales. This issue was ultimately resolved by the passage of Act 35, which removed any ambiguity that the solar pv requirement was a percentage of all retail sales. Act 35 also changed the AEPS Act to increase the solar pv requirement every year, as opposed to every 4 years.

Section 75.61(b) has also been supplemented to clarify the annual alternative energy credit (AEC) obligation. When an EDC or EGS's AEC obligation is calculated for a particular reporting period, it will likely be expressed as a fraction. The AEPS Act does not provide for the creation of fractional AECs. The rule has therefore been revised to reflect that an EDC or EGS's AEC obligation for a reporting period will be rounded to the nearest whole number.

OSBA comments that § 75.61(d) appears to be inconsistent with the act's section 3(b)(1) (73 P. S. § 1648.3(b)(1)), requirement that Tier I compliance by both EDCs and EGSs based upon retail sales in the certificated service territory. OSBA specifically notes that this regulation allows EGSs to measure compliance on a Statewide basis while EDCs measure compliance only within the EDC's service territory. The Commission disagrees that such disparate treatment is inconsistent with the act. First, the section referred to by OSBA specifically states that "at least 8% of the electric energy sold by an [EDC] or [EGS] to retail electric customers in that certificated territory . . ." This section of the act does not refer to only an EDC's "service territory" as OSBA seems to assert. This section of the act in fact refers to the total Commonwealth territories of both EDCs and EGSs. In fact, these regulations do measure compliance of EDCs and EGSs on a Statewide basis, based on the territories both are certificated to serve. Second, neither the Tier II nor solar pv requirements sections reference an EDC or EGS territory. As all EDCs and EGSs have Tier II and solar pv requirements, OSBA's assertion could result in different sales figures for Tier I than for Tier II and solar pv. Lastly, there would only be minimal differences between the accounting proposed by OSBA and the method outlined in the regulations. These differences, if any, would simply be due to rounding differences.

Finally, Constellation, EAP, FirstEnergy, OCA, and PECO all expressed concern about meeting the monthly retail sales report obligations outlined in § 75.61(f) of these proposed regulations. We have deleted § 75.61(f) in its entirety. The IRRC and other commentators had questioned its need and the cost of complying with the provision. Based on our experience with verifying compliance for the first reporting period, we have developed

methods for the timely collection of sales information that do not require a regulatory provision. We will work closely with stakeholders on this issue. Accordingly, this section is unnecessary and is being deleted.

B. § 75.62. *Fuel and technology standards for alternative energy sources.*

This section was originally included to define the fuel and technology standards for alternative energy sources identified in the AEPS Act at 73 P. S. § 1648.2. IRRC questioned the Commission's authority to include this provision in its regulation. It suggested that these issues are more properly within the jurisdiction of the Department. It therefore recommended removing this provision, and addressing the matter through a Memorandum of Understanding. Other parties offered comments expressing disagreement with or asking for clarification of the proposed standards.

The Commission respectfully disagrees with IRRC's analysis. The Commission has been expressly charged with carrying out the provisions of the AEPS Act. 73 P. S. § 1648.7(a). There is no statutory language that divests the Commission of authority over the qualification of alternative energy systems. The Department is assigned some responsibility in this area, but we do not agree that they have been given the exclusive authority to determine whether a particular source qualifies for alternative energy system status.

In the interest of bringing this proceeding to a timely conclusion and producing a rule that will obtain IRRC's approval, the Commission will remove this section.³ The proposed rule would have provided a measure of regulatory certainty about the eligibility of resources for alternative energy system status. The Department has not issued any final rule or policy statement identifying uniform criteria for alternative energy system qualification. So far, the absence of a regulatory provision on this issue does not appear to have been an impediment to the effective implementation of the AEPS Act. The Department and the Commission have jointly qualified over 500 alternative energy systems since the effective date of the AEPS Act. We will continue to review applications on a case by case basis.

C. § 75.62. *Alternative energy system qualification.*

This section identifies processes and standards for alternative energy system qualification to produce Tier I nonsolar pv, Tier II and solar pv alternative energy credits.

In its initial comment on this section of the proposed rule, IRRC asked that the Commission specify in more detail the timeline and process for review of alternative energy system applications. The time for application review is specified in § 75.64(b)(5) of the final rule. The program administrator will notify the applicant of the qualification decision within 30 days of the receipt of a complete application. Accordingly, the Commission, the Department and the third party administrator must coordinate their reviews within 30 days. We believe that this is a reasonable time, and our experience over the last two years is that most qualification decisions will take substantially less than 30 days.

At IRRC's request, § 75.62(b) has been supplemented to require that the Department be copied on alternative energy system applications. Also at the request of the IRRC, the wording of § 75.62(c), (e) and (f) has been

³ The subsequent sections of the final rule have been renumbered consistent with the deletion of proposed § 75.62.

revised to more clearly reflect that these provisions are a requirement for qualification. Section 75.62(e) and (f) have been revised, and (g) and (h) deleted, consistent with IRRC's and the Department's comments.

Citizen Power, Dominion, EAP, EPGA, FirstEnergy and IEC all commented that the proposed regulations were too restrictive regarding the use of credits from alternative energy systems located in another RTO. Act 35 clarified this issue. Section 75.62(c) and (d) have been revised consistent with Act 35's amendments to 73 P. S. § 1648.4. The General Assembly, with these amendments, resolved certain issues that had arisen due to the ambiguity of the previous language of this provision. The revised wording of subsection (d) is copied almost in its entirety from Act 35, excepting a few nonsubstantive changes.

The revised 73 P. S. § 1648.4 of the AEPS Act reflects the General Assembly's preference for PJM located resources. Alternative energy systems located in the PJM control area, whether in this Commonwealth or not, may be used by all by Commonwealth EDCs for compliance purposes, even those that are not PJM members (such as, the Pennsylvania Power Company and Pike County Light & Power Company). Section 73 P. S. § 1648.4 reflects the limited availability of MISO located resources. Alternative energy systems located outside of the Commonwealth, but within MISO, may only be used in the areas of Pennsylvania that overlap MISO's service territory. This effectively limits out of state MISO resources to use by either the Pennsylvania Power Company or any EGSs operating in its service territory. A resource located in this Commonwealth can continue to be used by all EDCs and EGSs for compliance purposes.

Section 75.62(g) and (h) relate to verification of compliance with environmental regulations. EAP, OSBA, PWIA and PECO all comment that the proposed subsection (h) should be prospective in nature and should establish force majeure for any EDC or EGS that contracted with the alternative energy system that loses certification due to an environmental regulation violation. The Commission declines to establish such an automatic declaration of force majeure. As will be discussed as follows, any EDC and EGS may request that the Commission declare force majeure. Upon such a request the Commission must consider all relevant factors as outlined in the act, not just this one factor, in determining whether force majeure should be so declared.

IRRC questions whether the Commission has authority to require an alternative energy system to provide information to the Department or enforce subsection (g). IRRC also questions the Commission's authority to determine major violations of environmental regulations that cause significant harm outlined in subsection (h). IRRC further notes that this proposed subsection does not delineate when the Commission will act in relation to Department's actions and suggests that the Commission and Department cooperate in establishing their roles through a memorandum of understanding.

As with the section relating to fuel and technology standards previously, the Commission respectfully disagrees with IRRC's analysis. The Commission has been expressly charged with carrying out the provisions of the AEPS Act. 73 P. S. § 1648.7(a). There is no statutory language that divests the Commission of authority over the qualification of alternative energy systems. The Department is assigned some responsibility in this area, but we do not agree that they have been given the exclusive

authority to determine whether a particular source qualifies for alternative energy system status.

Again, in the interest of bringing this proceeding to a timely conclusion and producing a rule that will obtain IRRC's approval, the Commission will remove subsections (g) and (h). The proposed rule would have provided a measure of regulatory certainty about the continuing eligibility of resources for alternative energy system status. The Department has not issued any final rule or policy statement identifying uniform criteria for determining the applicable environmental standards that alternative energy systems must meet. So far, the absence of a regulatory provision on this issue does not appear to have been an impediment to the effective implementation of the AEPS Act. The Department and the Commission have jointly qualified over 500 alternative energy systems since the effective date of the AEPS Act. We will continue to review applications on a case by case basis.

D. § 75.63. *Alternative energy credit certification.*

This section identifies the processes and standards for alternative energy credit certification for use to meet the requirements of the Act. We have made the following changes to this section. (1) We added the phrase "demand-side management" to § 75.63(b), at the suggestion of IRRC. (2) We eliminated the requirement for consumption or delivery of electricity into this Commonwealth or an RTO that serves this Commonwealth. (3) We added language clarifying ownership rights to alternative energy credits, consistent with the Act 35 amendments. And, (4) we revised the alternative energy system meter requirements to balance the need for verifiable alternative energy production against the need to reduce barriers to the development and participation of small alternative energy systems.

The IRRC asked us to explain why credits for conservation activities may be certified beginning on November 30, 2004. This is required by the plain language of § 1648.3(e)(10) of the AEPS Act. This section addressed energy efficiency and demand-side management activities, and when discussing credit creation stated: "All verified reductions shall accrue credits starting with the passage of this act." The AEPS Act was "passed" on November 30, 2004.

Credits for generation were allowed to be banked "... after the effective date of this act." 73 P. S. § 1648.3(e)(7). The effective date of the AEPS Act was 90 days later, February 28, 2005. For whatever reason, the General Assembly provided that credits for energy efficiency and demand side management would begin to accrue at the date of the AEPS Act's "passage," rather than its "effective date." These regulations reflect this disparate treatment by the General Assembly.

EAP suggested that a reference to demand-side management be added to subsection (b). As indicated previously, the Commission agrees and has added this phrase.

Citizen Power noted that the Act speaks of where energy comes from, not where it is used. The Commission agrees. In § 75.63(d), the language relating to where the alternative energy systems electric generation is consumed or delivered has been deleted. Upon further review of the statute, the Commission has determined that there is no requirement that the energy associated with an AEC be consumed within or delivered to the distribution system of an EDC in this Commonwealth or the control area of an RTO that manages a portion of this Commonwealth's transmission system. The Commission finds it significant that 73 P. S. § 1648.3(e)(4)(ii) specifically

states that “one alternative energy credit shall represent one megawatt hour of qualified alternative electric generation, whether self-generated, purchased along with the electric commodity or separately through a tradable instrument . . .” (Emphasis added.) This definition does not delineate where the electric commodity is to be used. Requiring that the electric commodity be consumed or delivered into this Commonwealth or a specific RTO would in effect tie the AEC directly to the electric commodity, preventing the ability to trade the AEC separate from the commodity. Furthermore, it is not possible to track where the electricity is ultimately used or delivered.

In addition, 73 P. S. § 1648.4 of the AEPS Act specifically states that energy *derived* from alternative energy sources located within this Commonwealth and the service territory of an RTO that manages the transmission system within this Commonwealth shall only be eligible to meet the compliance requirements. The AEPS Act did not state that energy consumed within or delivered to this Commonwealth and the service territory of an RTO that manages the transmission system within this Commonwealth shall only be eligible to meet the compliance requirements. Therefore, we have deleted any reference to a requirement that the actual electricity from an alternative energy system be consumed in or delivered to an EDC in this Commonwealth or an RTO that manages a portion of this Commonwealth’s transmission system.

PennFuture, CAC, Community Energy, Native Energy, Department and the Reinvestment Fund suggest that language be added to subsection (c) noting that an AEC may not be certified if it has already been used to satisfy a voluntary alternative energy purchase. The Commission agrees to the extent that they cannot be certified if they are not sold to an EDC or EGS. New language has been added to § 75.63(d) regarding EDCs or EGSs use of AECs already purchased by individuals, businesses or government bodies. This language is consistent with Act 35’s amendment to 73 P. S. § 1648.4 of the AEPS Act.

Section 75.63(f) has been revised in response to a comment by IRRRC as well as the Commission staff’s experience in implementing the act. We recognize that IRRRC has a standing objection to the use of words like “standards,” where the standards are not detailed in the body of the regulation or otherwise referenced. Accordingly, the reference to “standards” developed by the Commission will be dropped from this subsection. In practice, the Commission will largely be relying on PJM market settlement data to verify cumulative electric production of alternative energy systems.

Fat Spaniel Technologies suggests that specific metering requirements must be established in the regulations for all types and sizes of qualifying alternative energy systems. PV Now supports the use of metered data or other approved technology for all solar applications regardless of size. PV Now also suggests that there should be two separate processes for small and large solar systems. The Commission declines to follow Fat Spaniel Technologies suggestion. As the verification data may come from an RTO, the credits registry or the program administrator, the metering requirements of these different sources will control. This metered data is recorded in PJM Environmental Information Services, Inc.’s GATS, which the Commission has designated to serve as the credits registry.

The Commission agrees with PV Now, to the extent that there should be separate processes for small and large solar applications. Experience in implementing the

AEPS Act has revealed that requiring separate metering of small behind-the-meter solar pv alternative energy systems may pose a financial impediment to the development and deployment of these systems. As there are other reasonably reliable methods for verifying solar pv system output, such as inspections, self-certification, and the like, the Commission will not require metered verification of solar pv systems with a nameplate capacity of 15 kilowatts or less. Accordingly, subsection (f) was revised to delineate what systems must be metered and where the metered data can be obtained. In addition, a new subsection (g) was inserted to address verification of solar pv systems with a nameplate capacity of 15 kilowatts or less.

York suggests that language should be added noting that ownership of AECs are vested with the alternative energy system owner. We agree only to the extent that this clarification of ownership rights does not conflict with this Commission’s decision in Petition for Declaratory Order Regarding Ownership of Alternative Energy Credits Associated with Non-Utility Generating Facilities Under Contract to Pennsylvania Electric Company and Metropolitan Edison Company at Doc. No. P-00052149, per section 3.1 of Act 35. As such, previous subsection (g) has been redesignated as subsection (h) and revised consistent with Act 35’s amendment to the definition of “alternative energy credit” in § 1648.2 of the AEPS Act. This subsection now states that the alternative energy credit is the property of the alternative energy system owner until it is voluntarily transferred. Moreover, we are also aware that ARIPPA has sought judicial review of our decision in that docket. *ARIPPA v. Public Utility Commission*, Case No. 1198 C.D. 2007. That appeal is currently pending before the Commonwealth Court.

E. § 75.64. Alternative energy credit program administrator.

This section identifies the powers and duties of the program administrator under 73 P. S. § 1648.3(e)(2). We had previously designated Clean Power Markets as the program administrator.

EPGA, IEC, PWIA, PECO and U.S. Steel Corporation all comment that while Department has a role in identifying systems not in compliance with environmental regulations, the Commission has the ultimate responsibility and authority to make to determine whether the system should be qualified under the act. The Department commented that the program administrator should only refer system applications to Department for environmental regulation compliance determination if the administrator believes that the applicant does not meet the standards. The Department also noted its role of determining environmental regulation compliance through the Environmental Hearing Board.

This section has been revised consistent with IRRRC’s general objection on the proposed rule’s treatment of the qualification process, and the Department’s role in it. The Commission maintains that its proposed rule was a reasonable, lawful approach for resource qualification that provided a measure of regulatory certainty. As IRRRC notes, the proposed rule was criticized by some for providing for too much involvement by the Department, and alternatively by the IRRRC as providing for too little or incorrect levels of involvement. That the successful, timely completion of this rulemaking not be delayed by this issue, we will delete § 75.64(b)(4)—(6) that IRRRC and others have expressed a concern about.⁴ The Commission, the Department, and the Commission’s third party ad-

⁴ The subsequent subsections have been renumbered as § 75.64(b)(4) and (5).

ministrator will continue to manage the resource qualification process. As stated previously, several hundred alternative energy systems have already been qualified without the benefit of a rule on this issue.

EAP and PECO comment that the reporting periods contained in § 75.64(c) should be revised. The Commission declines to make the revisions requested because the driving force for the periods is the act's requirement that there must be a final determination of compliance by the end of the true-up period. Language was added to subsection (c)(1) and (2) regarding their application to an initial assessment and a final assessment.

As with § 75.63(d) the language in § 75.64(d)(1), relating to where an alternative energy systems electric generation is consumed or delivered, has been deleted for the same reasons stated previously.

As in the previous section, PennFuture, CAC, Community Energy, FPL, Native Energy, OCA, Department and the Reinvestment Fund suggest that language be added to this section noting that an AEC may not be certified if it has already been used to satisfy a voluntary alternative energy purchase. The Commission agrees to the extent that AECs cannot be certified if they are not sold to an EDC or EGS. New language has been added to § 75.64(d)(1) regarding EDCs or EGSs use of AECs already purchased by individuals, businesses or government bodies. This language is consistent with the Act 35's amendment to 73 P. S. § 1648.4 of the AEPS Act. This language also addresses IRRC's comment on § 75.65(d) regarding a response to commenters' concerns about double counting of AECs purchased in the voluntary market.

F. § 75.65. Alternative compliance payments.

This section identifies standards for determining alternative compliance payments, consistent with the provisions of the act, as amended. 73 P. S. § 1648.3(f) and (g).

PennFuture, EAP, FPL, MASIA, Department, PV Now and the Reinvestment Fund all comment that the solar pv ACP should include the levelized value of the up-front rebates given in other states for installing solar pv systems. EAP and PECO comment that any such levelized value must be spread out over the useful life of the solar energy system. PV Now proposed a sample calculation for determining the levelized value that spread the up-front rebates over the 20 year life span of a solar energy system.

The formula for calculating the solar pv alternative compliance payment in § 75.65(b)(1) was modified to include the levelized up-front rebates provided to sellers of solar renewable energy credits in PJM, as required by the Act 35 amendments. While most of those providing supplemental comments in response to the September 13, 2007, Secretarial letter acknowledged that the solar photovoltaic ACP must include a levelized value of up-front rebates, several noted that the rebates should be spread out over the useful life of the average solar energy system. This Commission agrees. Up-front rebates provide an incentive that increases the number of installations that, in turn, affects the price of solar alternative energy credits over the useful life of that system. Current industry standards show that solar pv panels lose on average 0.05% of production each year such that the cumulative loss is 10% of production after 20 years. While the solar pv panels may continue to produce electricity for an additional 5 to 10 years, the loss of productivity makes them significantly less useful, especially in systems designed primarily to offset a significant portion of annual

usage. This Commission is also cognizant of the fact that not all states within the PJM service territory provide up-front rebates. Therefore, we believe it prudent to only apply the levelized value to the percentage of total solar AECs sold during the reporting period, equal to the percentage of solar AECs used that were generated within the jurisdictions that provide rebates.

The OSBA and PECO suggested that the third party administrator be compensated under a fee system as authorized by 73 P. S. § 1648.3(e)(9) of the AEPS Act. It expressed concern that EGSs would not share in the costs of the program administrator if the Commission recovers administration costs through its utility assessment mechanism under 66 Pa.C.S. § 510(a). IRRC asked why the Commission did not elect to use a fee based system. This section provides:

The commission may impose an administrative fee on an alternative energy credit transaction. The amount of this fee may not exceed the actual direct cost of processing the transaction by the alternative energy credits administrator. The commission is authorized to utilize up to 5% of the alternative compliance fees generated under subsection (f) for administrative expenses directly associated with this act.

73 P. S. § 1648.3(e)(9)

This section identifies two ways for the Commission to collect fees, at its discretion, to recover the costs of administrative expenses. The first involves an administrative fee on an "alternative energy credit transaction." The second involves the Commission retaining 5% of the ACPs made by EDCs and EGSs. Initially, we note that language in this section allows the Commission to utilize these mechanisms, but does not mandate it. The Commission "may" or is "authorized" to assess fees, but is not required to do so. Given the manner in which the Commission has decided to implement the AEPS Act, and the way this section is written, the fee option is not an appropriate model to use at this time.

The Commission finds it significant that the first two sentences of this section envision a credit program model in which the Commission or its administrator is providing a trading platform or credit transaction services to EDCs or EGSs. In such a model, the Commission could attempt to assess a fee for the "direct cost" of these credit transactions. The Commission has not adopted this approach to administer the program. Rather, alternative energy credit creation and transactions are managed through the PJM Environmental Information Services, Inc. GATS, which the Commission has designated to serve as the alternative energy credit registry required by 73 P.S. § 1648.3(e)(8) of the AEPS Act, and § 75.70 of the final rule. The use of GATS is free to nontransacting governmental agencies such as the Commission and its designated agents.

Qualified alternative energy systems, EDCs and EGSs are required to have GATS accounts, consistent with a prior Commission order and § 75.70 of the final-form regulations. GATS will create one certificate for each MWh of generation from a qualified alternative energy system, based upon PJM market settlement data. This certificate will be considered the equivalent of an alternative energy credit by the Commission and its administrator. Certificates will be transferred from the accounts of alternative energy systems to the accounts of EDCs and EGSs when credit transactions occur. Because the Commission and its administrator are not a party and do not process these transactions, the Commission does not have

the legal authority to assess a fee on them. The Commission does not see itself taking on this role in the foreseeable future, so the final rule does not incorporate this power.

The final regulations do reflect the fact that the Commission may retain up to 5% of the ACPs collected from EDCs and EGSs to recover its administrative costs, consistent with 73 P.S. § 1648.3(e)(9). However, the Commission does not plan on using this provision to recover its program administrator costs at this time. The primary reason is that there is no way to predict what the level of ACPs will be, if any, for a given reporting period. If there were no ACPs, or relatively few, the Commission would be unable to pay the program administrator. Accordingly, the Commission cannot reasonably rely on the use of ACPs to recover its administrative costs. We would also prefer, for policy reasons, that all ACPs be used to fund new alternative energy development.

At the request of IRRC, we have added a cross-reference to the Commission docket for the Pennsylvania Sustainable Energy Board (PASEB) at § 75.65(e). This docket, M-00031715, is directly referenced in 73 P.S. § 1648.3(g)(1) of the AEPS Act. The AEPS Act requires that the ACPs be made available "under procedures and guidelines approved" by this board. The Commission issues orders relating to the duties of the PASEB at this docket. For example, On March 1, 2007, the Commission approved best practices for the sustainable energy funds that will be the recipient of the ACPs.⁵ These guidelines address issues that will have bearing on how ACPs will be used, and included topics relating to applications for funding and the process for reconsidering the denials of funding requests. Any additional policies or orders that are adopted by the Commission on this topic will be issued at this docket, as required by 73 P.S. § 1648.3(g)(1) of the AEPS Act.

IRRC also asked whether the ACP funds will be used to comply with 73 P.S. § 1648.3(g). This question was prompted by comments suggesting that the ACPs be used to subsidize projects relating to the Tier for which the ACP was assessed. The Commission declines to establish such a restriction. The reasons for assessing ACPs are retrospective in nature. They only indicate that, for whatever reason, a particular EDC or EGS did not meet one or more of the Act's mandates during the prior reporting period. Whereas, projects funded by ACPs should be prospective in nature and subsidize projects that will assist in alleviating more substantial future shortcomings. For example, assume that ACPs were assessed in a reporting period on an EDC for failure to meet its Tier I requirement. Also assume that the reason the EDC failed to meet this requirement was due to a 1 year delay in the completion of a wind farm that the EDC contracted with to provide Tier I credits. Finally, assume that there is a projected shortfall of solar pv AECs within 3 years. The restriction that some commentators would like imposed would force the utilization of sustainable energy funds to fund Tier I related projects at the expense of solar pv projects. The funding would alleviate a Tier I shortfall that is already anticipated to be resolved through a previously funded program at the expense of an under-funded solar pv project. This Commission believes it would be more prudent to allow the sustainable energy funds to use the ACP funds to subsidize projects that would alleviate projected shortfalls that are under-funded, regardless of the Tier.

⁵ Order entered on March 6, 2007.

G. § 75.66. General force majeure and § 75.67. Special force majeure.

This section establishes the processes and standards for force majeure determinations, and their relationship to alternative compliance payments. The Commission is combining §§ 75.66 and 75.67 (relating to general force majeure; and special force majeure) into one section titled force majeure.⁶

This is being done in response to IRRC's observation that the proposed regulations imposed limitations on the Commission that are not contained in the act. As written, the proposed regulations only permitted the Commission to declare force majeure during two brief periods before and after the conclusion of a reporting period. In addition, while the intent of the special force majeure section was to provide an opportunity for force majeure during the true-up period, no separate type of force majeure is required, as the factors to be considered are identical.

PennFuture, FPL, Community Energy and the Reinvestment Fund comment that the Commission should not declare force majeure on its own initiative. But, as IRRC points out, per the act's definition of force majeure, 73 P.S. § 1648.2, the Commission, an EDC or EGS may begin the process for declaring force majeure for any reporting and true-up period. The only limitation contained in the Act is that the Commission must make its determination within 60 days. Id. It is apparent from this short time limitation that the General Assembly recognized that the AEC market is a relatively fast moving and evolving market, such that any delayed action could frustrate or complicate future compliance efforts. As such, the commission has limited the period for declaring force majeure for any particular compliance period from 60 days prior to the beginning of the compliance period to 60 days after the end of the true-up period. This window will allow EDCs and EGSs ample opportunity to request a declaration for force majeure, but, also limits the period such that it requires proactive action by EDCs and EGSs. In addition, by preventing a determination earlier than 60 days prior to the beginning of a compliance period and no later than 60 days after the true-up period, any determination will be based on the current state of the market.

EAP and PECO comment that the ability of the Commission to modify compliance requirements should not be limited to solar pv requirements. The Commission agrees and is adding language to § 75.66(e)(1) that provides the Commission with the option of reducing the required level of Tier I nonsolar pv and Tier II credits for a particular compliance period. The proposed regulations had given the Commission this option for solar pv requirements only. As the act did not limit this option to solar photovoltaic requirements, the Commission declines to impose such a limit.

Citizen Power commented that EDCs and EGSs should be required to bank credits during a period when force majeure is declared equivalent to the compliance requirements, for future use. The Commission notes that it has added § 75.66(e)(5), which allows the Commission to increase future compliance requirements whenever it modifies a requirement. This section is being added to make the regulations consistent with the Act 35 amendments. This new section permits the Commission to increase future compliance requirements by an equivalent type (Tier I nonsolar photovoltaic, Tier II or solar pv) and

⁶ The subsequent sections of the final rule have been renumbered consistent with the deletion of proposed § 75.67.

equivalent amount, if it determines, in a subsequent year, that there are sufficient AECs available.

IRRC noted that commentators had concerns about the effect force majeure declarations will have on long-term contracts and recoverability of costs associated with AECs purchased prior to any declaration. The Commission does not believe that a declaration of force majeure will have a negative impact on long-term contracts or cost recovery. First, the Commission notes that per § 75.66(e)(4), an EDC or EGS with sufficient AECs must use those AECs, for which they will be able to recover costs. Second, per § 75.66(e)(3), an EDC or EGS must verify that it was unable to acquire sufficient AECs to meet its obligations. Third, an EDC and EGS may bank AECs created in 1 year for use in the 2 subsequent years. 73 P. S. § 1648.3(e)(6). Finally, an EDC or EGS may be able to sell any excess AECs for use by other EDCs or EGSs for future Pennsylvania compliance or another State's compliance. Thus, depending on the circumstances, the EDC or EGS may be required to use, bank or sell any AECs during a force majeure declaration. In any case, a force majeure determination should not affect the ability of EDCs or EGSs to enter into long-term contracts or recover the costs associated with previously purchased AECs.

The Commission also added language to § 75.66(e)(3) and (g) referencing the definition of force majeure contained in § 75.1.⁷ This definition of force majeure contains factors the Commission must consider in determining whether force majeure should be declared. These factors are consistent with those contained in the Act 35 amendments.

The Commission declines to set forth additional, more specific factors at this time. Those commentators advocating for a more specific list of factors for declaring force majeure are in essence asking this Commission to assume facts and circumstances that may or may not materialize. For example, PV Now comments that “[g]iven the realities of developing a new industry and market in the state, and especially given the prudent long-term contracting mechanism we have proposed, failure of the spot or short-term market to supply a party with the allocated number of SRECs should not be considered an event outside the default provider's reasonable control.” This comment essentially asks this Commission to assume that long-term contracts will always be available at reasonable prices. It also assumes that long-term contracts will always be available and provide for all of an EDC's or EGS's AEPS requirements. With that said, per the Act 35 amendments, this Commission must consider an EDC's and EGS's efforts in seeking to purchase AECs through long-term contracts prior to granting force majeure.

Other commentators, such as PennFuture, Community Energy, MASIA, FPL, DEP, PPM, PV Now and the Reinvestment Fund advocate for the application of very narrow and specific circumstances to be met before force majeure is declared. Specifically, PennFuture, proposed a list of more than 25 items that must be met prior to determining whether force majeure is to be declared. All of these comments assume that the AEC market will develop in a certain way. The Commission declines to make these assumptions at this time without additional facts. With that said, the concerns raised by these commenters can be addressed during any on the record proceeding regarding a declaration of force majeure.

⁷ This references the definition of force majeure in 52 Pa. Code § 75.1 as modified by the Final Omitted Rulemaking Order at Docket No. L-00050174, adopted on May 22, 2008 and entered on July 2, 2008.

PennFuture, Citizen Power, CAC, Community Energy, FPL, and the Reinvestment Fund comment in opposition to the Commission using the \$45 ACP payment figure for nonsolar photovoltaic Tier I and Tier II AECs as a trigger for force majeure. This Commission disagrees with their assessment of such a regulation. PennFuture comments that “[f]ree enterprise markets operate according to the laws of supply and demand.” PennFuture goes on to comment that to cap the AEC price at \$45 would “thwart” the market signal for more supply. PennFuture seems to be referring to Adam Smith's invisible hand theory of the free market.⁸ What PennFuture fails to acknowledge is that the hand moving this market is not invisible. The hand moving this market is that of the very visible General Assembly. Without this visible hand, the market would not likely have materialized. The General Assembly, for very prudent policy reasons, created an artificial demand for these alternative energy sources. The General Assembly also recognized that due to this artificial demand, there was an opportunity for those on the supply side to take advantage of that artificial demand. Thus, the General Assembly determined that it would be equally prudent to establish a reasonable limit to the market price for AECs by setting the ACP at \$45.

Furthermore, as PennFuture points out, the definition of force majeure specifically requires this Commission to determine if “alternative energy resources are *reasonably available* in the marketplace in sufficient quantities” 73 P. S. § 1648.2 (emphasis added). Contrary to PennFuture's assertion, this Commission believes that price is a factor in determining reasonableness, especially when the costs associated with the purchase of AECs are passed on to the consumers of this Commonwealth. While the General Assembly determined that it was prudent to establish this market, it did not state that it was prudent to create it at all costs. Therefore, as this Commission must always balance the needs of the consumers and the utilities to ensure safe and reliable service at reasonable rates and protect the public interest, the Commission declines to modify section 75.66(d).

H. § 75.67. *Alternative energy cost-recovery.*

As we noted in our order commencing this proceeding, EDCs⁹ may fully recover the reasonable and prudently incurred costs of complying with Act 213 from ratepayers. This includes the costs for purchases of alternative energy or alternative energy credits, payments to credit program administrators, and costs levied by regional transmission organizations to ensure that alternative resources are reliable. 73 P. S. § 1648.3(a)(3). These costs are to be recovered “pursuant to an automatic energy adjustment clause under 66 Pa.C.S. § 1307” and are considered “a cost of generation supply under 66 Pa.C.S. § 2807.” 73 P. S. § 1648.3(a)(3). Section 2807(3) of the Public Utility Code includes the legal standard governing the acquisition of and recovery for costs for electricity provided to an EDC's retail electric customers at the conclusion of the transition period. 66 Pa.C.S. § 2807(e)(3). We found that the alternative energy delivered to retail customers after the conclusion of the stranded cost recovery period is a component of the default service provided by EDCs. This section sets forth the standards for such recovery.

Both OCA and IRRC urge us to ensure that there be consistency between the cost recovery mechanisms used for alternative and traditional sources of energy pur-

⁸ Adam Smith, *An Inquiry into the Nature and Causes of the Wealth of Nations* (Methuen and Co., Ltd., ed. Edwin Cannan, 1904) (1776).

⁹ In this section, we substitute the term “default service provider” for EDC. The proposed default service regulations use this term for any party, EDC or otherwise, that provides default service after the conclusion of the transition period.

chased to meet the default service load. They state that this will avoid complication and ensure that the cost procurement processes are not conducted along separate tracks. They ask that we make these cost recovery mechanisms comparable.

We agree with both comments and have inserted a reference to 52 Pa. Code § 54.187; our regulation governing default service rate design and the recovery of reasonable costs. However, we must note that these regulations must currently be used by EDCs which are still under generation rate caps. Insofar as this affects the recovery of costs for energy, whether traditional or alternative, our rules must reflect the current reality and can be revisited in the future when rate caps have expired. PECO urges us to more closely follow the language of the act with respect to the nature of costs to be recovered. PECO Comments, p. 23. We believe that the regulation as proposed is adequate in that regard, but, in the event of a conflict, the language of the law itself shall control what costs may be recovered.

I. *§ 75.68. Alternative energy market integrity.*

This section is intended to preserve the viability of the voluntary market for alternative or renewable energy in this Commonwealth. This section proposes certain requirements for the marketing of alternative energy sources by EDCs and EGSs. These restrictions are similar to the requirements for green energy marketing found at 52 Pa. Code § 54.6(c).

A number of commentators, MASIA, EAP and PECO, among others, have pointed out that AECs that are purchased by customers should not automatically be included in the EDC's or EGS's AEPS compliance unless those AECs have been sold to the EDC or EGS. We agree that this change brought about through Act 35 should be recognized in our regulation. Therefore, we have amended the regulation to provide that sales of electricity by EDCs and EGSs to retail electric customers marketed as deriving from alternative energy sources shall be tracked and counted separately from AECs used to support compliance with the requirements of § 75.61 (relating to EDC and EGS obligations).

J. *§ 75.69. Banking of alternative energy credits.*

This section codifies prior interpretations of the AEC banking provisions of the act from the First and Second Implementation Orders. PennFuture suggests that we allow all market participants to bank AECs as do EDCs and EGSs.¹⁰ Penn Future comments, pp. 21-22. Penn Future also stated that providing for this through a regulation would improve cost effectiveness and efficiency for consumers.

We understand Penn Future's concern, but do not believe it is necessary to amend the proposed regulation as requested. The AECs were created as a means of measuring EDC and EGS compliance with the AEPS Act. No other entity is required to comply with the act. Therefore, the AECs are only of value to the EDCs and EGSs for compliance with the act. The act and these regulations permit EDCs and EGSs to bank AECs created in one reporting year for use in either or both of the two subsequent reporting periods. 73 P. S. § 1648.3(e)(6). In essence, this provision of the act creates a 3 year useful life span for an AEC, the compliance year in which it was produced and the 2 subsequent reporting years. For example, per the act, an EDC or EGS can purchase an AEC created in the prior or current reporting year and

use it in either the current or subsequent reporting year, provided that the EDC or EGS met its compliance requirements in the year the AEC was generated and it was not previously used for compliance with the AEPS Act or in another state. Thus, once an EDC or EGS can no longer use the AECs they would have no value to the EDC or EGS, as they would not be able to recover the cost of purchasing the AEC. In short, the value of an AEC is based on its ultimate sale to an EDC or EGS for compliance with the act. There is no need for any one else to bank an AEC since it can be sold at any time by its owner prior to it being retired.

PennFuture has also asked that we extend the life of AECs associated with the generation of power through solar energy. *Id.* It states that it makes this suggestion because it anticipates that EDCs and EGSs will have difficulty meeting their requirements relating to solar power as the solar share ramps up. Again, we are sympathetic to PennFuture's concern; however, the AEPS act leaves us no room to make such an allowance. The act is clear that AECs created in 1 reporting year may be banked for use in the reporting year it was created and in the 2 succeeding reporting years. 73 P. S. § 1648.3(e)(6). The act makes no differentiation among the various means by which alternative power is generated. Therefore, neither can the Commission.

IRRC and some other parties, including OSBA, have sought clarification of how generation from periods immediately prior to passage of the AEPS Act should be accounted for with regard to banking during the cost recovery period. We shall decline to do that here. By and large, the question became moot for EDCs and EGSs with the passage of time. Also, after the comments were filed, this Commission addressed this issue in some detail in the matter of the *Petition of PECO Energy Company for Approval Of (1) A Process to Procure Alternative Energy Credits during the AEPS Banking Period and (2) A Section 1307 Surcharge and Tariff to Recover AEPS Costs*, Docket No. P-00072260. See the Tentative Opinion and Order entered December 6, 2006, at 11. Furthermore, the need for any regulations addressing this particular issue will dissolve in the near future as the cost-recovery period for the last EDCs and EGSs will expire on December 31, 2010. Given the limited scope of this issue, we feel it is best addressed on a case-by-case basis.

On a related matter, the Commission has eliminated subsection (b)(1) and (2). Subsection (b)(1) was incorporated into subsection (b). Subsection (b)(2) was eliminated in its entirety. Subsection (b)(2) was originally proposed to deal with a situation where an EDC or EGS exited its cost-recovery period prior to having any AEPS requirements. As the Act's initial compliance requirements have already begun, all EDCs and EGSs exiting cost-recovery will have immediate compliance requirements. Therefore, it is not necessary to reference the precompliance requirement period, and we have eliminated subsection (b)(2) as we believe its retention would cause unnecessary confusion.

Finally, PECO asks us to be more specific with respect to the life of the AEC. PECO Comments, pp. 27-29. We believe that the regulation is sufficiently detailed and complies with the act. A credit is valid and is not retired unless used in the compliance period in which it is generated or in the two succeeding compliance periods. This is adequately stated within the regulations.

K. *§ 75.70. Alternative energy credit registry.*

This section codifies the Commission's authority to designate a credit registry. 73 P. S. § 1648.3(e)(8). We

¹⁰ Community Energy makes a similar suggestion. Community Energy Comments, p. 3.

have designated PJM-EIS's GATS as the credit registry required by the act. Some commentators, such as the EAP and Constellation, are in agreement with this.

The Commission does not plan to permanently designate GATS as the credits registry, as the Commonwealth's needs may change over time, and better credit registry options may become available. IRRC requested clarification of the subsection (b), which requires compliance with the registry's . . . rules, policies, and procedures. As stated earlier in this order, the Commission has designated PJM-EIS's GATS system to serve as the credits registry. EDCs and EGSs have been directed to obtain GATS accounts so that the Commission can track credit transaction and verify compliance with the AEPS Act. Subscribers must agree to abide by the GATS "Terms of Use" and "Operating Rules."¹¹ Accordingly, the Commission has declined to use this rule to specifically name the GATS as the registry, or directly reference its rules. We have attempted to clarify this regulation at the suggestion of IRRC by adding a reference to subscriber agreements or terms of use.

EDCs and EGSs are required to make all information within the registry available to the Commission and the program administrator so that they can carry out their responsibilities under the act, including verification of compliance and the tracking of credit prices. As the needs of the Commission in regards to implementing the act may change over time, as will available technologies, we will not permanently designate any particular party or technology as the credit registry in this rulemaking.

Regulatory Review

Under section 5.1 of the Regulatory Review Act (71 P. S. § 745.5a), the agency submitted a copy of the final rulemaking, which was published as proposed at 36 Pa.B. 6289 (October 14, 2006), to IRRC and the Chairperson of the House Committee on Consumer Affairs and the Senate Committee on Consumer Protection and Professional Licensure for review and comment. In compliance with section 5(c) of the Regulatory Review Act (71 P. S. § 745.5(c)), the agency also provided the Commission and the Committees with copies of all comments received, as well as other documentation.

These final-form regulations were deemed approved by the Committees and was approved by IRRC on November 6, 2008, in accordance with section 5.1(e) of the Regulatory Review Act.

Conclusion

Accordingly, under 66 Pa.C.S. §§ 501 and 2807(e), sections 7(a) and 8.3(e)(2) of the Alternative Energy Portfolio Standards Act of 2004 (73 P. S. §§ 1648.7(a) and 1648.3(e)(2)); sections 201 and 202 of the act of July 31, 1969 (45 P. S. §§ 1201 and 1202) and the regulations promulgated hereunder at 1 Pa. Code §§ 7.1, 7.2 and 7.5, the Commission proposes adoption of the final-form regulations pertaining to the obligations of EDCs and EGSs to comply with the alternative energy portfolio standard obligation, as noted and set forth in Annex A; *therefore*,

Statement of Vice Chairperson Tyrone J. Christy

I first would like to commend the Law Bureau for its excellent work product in this proceeding. The final regulations presented to us for consideration reflect sound judgment and legal analysis, and sensitivity to the cost of these requirements that will be borne by Pennsylvania's customers.

Although I am voting today to approve these final regulations, I do so somewhat reluctantly due to concern that rest more with the AEPS¹² Act itself, as opposed to our implementing regulations. Specifically, my concern lies with the broad geographic area encompassed by the 13-state PJM control area, and the ability of an alternative energy project located hundreds of miles from Pennsylvania to qualify under our AEPS and receive revenues from Pennsylvania. I believe that it is incumbent upon us to ensure, as best we are able, that the benefits provided by alternative energy projects inure to the benefit of the Pennsylvania customers that are bearing the substantial costs that have been created by the AEPS. Since it is unlikely that Pennsylvania customers will realize any significant economic or environmental benefits from an alternative energy project located outside of the Commonwealth, I believe that this Commission should support a legislative amendment to the AEPS Act to add a reciprocity requirement for out-of-State projects.

If a reciprocity requirement were added to the AEPS Act, the AECs produced by an alternative energy facility located in, for example, Illinois, would qualify in Pennsylvania only if credits produced by a similar facility in Pennsylvania, using the same fuel source, would qualify in Illinois. Such reciprocity requirement would help ensure that Pennsylvania receives the benefits for which it is paying, and would encourage other states within PJM to enact their own renewable/alternative energy portfolio standard, and to open their borders to Pennsylvania. This would encourage the development of alternative energy in PJM states other than Pennsylvania.

I note with interest a letter dated 2/28/06 to the Commission from three of the prime sponsors of the AEPS Act in the General Assembly. The purpose of this letter was to clarify the legislative intent underlying the Act. A portion of this letter stated the follows:

The General Assembly passed Act 213 to diversify the electric generation technologies and fuels that serve electricity customers located *in Pennsylvania*; to increase economic development *within Pennsylvania* by attracting investment *to Pennsylvania* to build alternative energy projects; to speed the commercialization *within Pennsylvania* of the technologies listed in Tier 1 and Tier 2 of the AEPS; and to reduce the pollution of *Pennsylvania air; water and land resources* caused by electronic generation.

TYRONE J. CHIRSTY,
Vice Chairperson

Letter of February 28, 2006 (emphasis supplied).

There is an element of fairness in a reciprocity requirement that I believe is important and that should be incorporated into the AEPS Act. Pennsylvania should not be in the position of being required to export its dollars to other states and getting nothing in return. As things stand, Pennsylvania's electric costumers are required to subsidize the development of alternative energy projects in states that either do not have an alternative energy portfolio, or that have a portfolio but have restricted eligibility in such a way that projects in Pennsylvania cannot participate. I would ask my fellow commissioners to support such a legislative amendment to the AEPS Act, which I believe would further promote its legislative intent as described above in the letter of 2/28/06 from three of its prime sponsors.

¹¹ Available at www.pjm-eis.com/documents/documents.html.

¹² The Alternative Energy Portfolio Standards Act of 2004, 73 P. S. §§ 1648.1 et seq.

It Is Ordered that:

1. The Commission hereby adopts final regulations, 52 Pa. Code Chapter 75, by adding §§ 75.61—75.70 to read as set forth in Annex A.

2. The Secretary shall submit this order and Annex A to the Office of Attorney General for approval as to legality.

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

4. The Secretary shall submit this order and Annex A for review by the designated standing committees of both houses of the General Assembly, and for review and approval by IRRC.

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

6. Regulations embodied in Annex A shall become effective upon publication in the *Pennsylvania Bulletin*.

7. The contact person for technical issues related to this rulemaking is Calvin Birge, Supervisor, Conservation, Economics and Energy Planning, (717) 787-2139. That the contact person for legal issues related to this rulemaking is Kriss Brown, Assistant Counsel, Law Bureau, (717) 787-4518. Alternate formats of this document are available to persons with disabilities and may be obtained by contacting Sherri Delbiondo, Regulatory Coordinator, Law Bureau, (717) 772-4597.

By the Commission

JAMES J. MCNULTY,
Secretary

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 38 Pa.B. 6429 (November 22, 2008).)

Fiscal Note: 57-252. (1) General Fund; (2) Implementing Year 2008-09 is \$552,000; (3) 1st Succeeding Year 2009-10 is \$640,000; 2nd Succeeding Year 2010-11 is \$777,000; 3rd Succeeding Year 2011-12 is \$1,100,000; 4th Succeeding Year 2012-13 is \$1,100,000; 5th Succeeding Year 2013-14 is \$1,100,000; (4) 2007-08 Program—\$311,000; 2006-07 Program—\$41,000; 2005-06 Program—\$0; (7) General Government Operations; (8) recommends adoption.

Annex A

TITLE 52. PUBLIC UTILITIES

PART I. PUBLIC UTILITY COMMISSION

Subpart C. FIXED SERVICE UTILITIES

CHAPTER 75. ALTERNATIVE ENERGY PORTFOLIO STANDARDS

Subchapter D: ALTERNATIVE ENERGY PORTFOLIO REQUIREMENT

Sec.	
75.61.	EDC and EGS obligations.
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§ 75.61. EDC and EGS obligations.

(a) EDCs and EGSs shall comply with the act through the acquisition of certified alternative energy credits, each of which shall represent one MWh of qualified alternative electric generation or conservation, whether self-generated, purchased along with the electric commodity or separately through a tradable instrument.

(b) For each reporting period, EDCs and EGSs shall acquire alternative energy credits in quantities equal to a percentage of their total retail sales of electricity to all retail electric customers for that reporting period, as measured in MWh. The credit obligation for a reporting period shall be rounded to the nearest whole number. The required quantities of alternative energy credits for each reporting period are identified in the following schedule:

(1) For June 1, 2006, through May 31, 2007: The Tier I requirement is 1.5% of all retail sales, of which at least 0.0013% of all retail sales are to come from solar photovoltaic sources and the remaining from nonsolar photovoltaic Tier I sources, and the Tier II requirement is 4.2% of all retail sales.

(2) For June 1, 2007, through May 31, 2008: The Tier I requirement is 1.5% of all retail sales, of which at least 0.0030% of all retail sales are to come from solar photovoltaic sources and the remaining from nonsolar photovoltaic Tier I sources, and the Tier II requirement is 4.2% of all retail sales.

(3) For June 1, 2008, through May 31, 2009: The Tier I requirement is 2% of all retail sales, of which at least 0.0063% of all retail sales are to come from solar photovoltaic sources and the remaining from nonsolar photovoltaic Tier I sources, and the Tier II requirement is 4.2% of all retail sales.

(4) For June 1, 2009, through May 31, 2010: The Tier I requirement is 2.5% of all retail sales, of which at least 0.0120% of all retail sales are to come from solar photovoltaic sources and the remaining from nonsolar photovoltaic Tier I sources, and the Tier II requirement is 4.2% of all retail sales.

(5) For June 1, 2010, through May 31, 2011: The Tier I requirement is 3% of all retail sales, of which at least 0.0203% of all retail sales are to come from solar photovoltaic sources and the remaining from nonsolar photovoltaic Tier I sources, and the Tier II requirement is 6.2% of all retail sales.

(6) For June 1, 2011, through May 31, 2012: The Tier I requirement is 3.5% of all retail sales, of which at least 0.0325% of all retail sales are to come from solar photovoltaic sources and the remaining from nonsolar photovoltaic Tier I sources, and the Tier II requirement is 6.2% of all retail sales.

(7) For June 1, 2012, through May 31, 2013: The Tier I requirement is 4% of all retail sales, of which at least 0.0510% of all retail sales are to come from solar photovoltaic sources and the rest from nonsolar photovoltaic Tier I sources, and the Tier II requirement is 6.2% of all retail sales.

(8) For June 1, 2013, through May 31, 2014: The Tier I requirement is 4.5% of all retail sales, of which at least 0.0840% of all retail sales are to come from solar photovoltaic sources and the remaining from nonsolar photovoltaic Tier I sources, and the Tier II requirement is 6.2% of all retail sales.

(9) For June 1, 2014, through May 31, 2015: The Tier I requirement is 5% of all retail sales, of which at least

0.1440% of all retail sales are to come from solar photovoltaic sources and the rest from nonsolar photovoltaic Tier I sources, and the Tier II requirement is 6.2% of all retail sales.

(10) For June 1, 2015, through May 31, 2016: The Tier I requirement is 5.5% of all retail sales, of which at least 0.25% of all retail sales are to come from solar photovoltaic sources and the remaining from nonsolar photovoltaic Tier I sources, and the Tier II requirement is 8.2% of all retail sales.

(11) For June 1, 2016, through May 31, 2017: The Tier I requirement is 6% of all retail sales, of which at least 0.2933% of all retail sales are to come from solar photovoltaic sources and the remaining from nonsolar photovoltaic Tier I sources, and the Tier II requirement is 8.2% of all retail sales.

(12) For June 1, 2017, through May 31, 2018: The Tier I requirement is 6.5% of all retail sales, of which at least 0.3400% of all retail sales are to come from solar photovoltaic sources and the remaining from nonsolar photovoltaic Tier I sources, and the Tier II requirement is 8.2% of all retail sales.

(13) For June 1, 2018, through May 31, 2019: The Tier I requirement is 7% of all retail sales, of which at least 0.3900% of all retail sales are to come from solar photovoltaic sources and the remaining from nonsolar photovoltaic Tier I sources, and the Tier II requirement is 8.2% of all retail sales.

(14) For June 1, 2019, through May 31, 2020: The Tier I requirement is 7.5% of all retail sales, of which at least 0.4433% of all retail sales are to come from solar photovoltaic sources and the remaining from nonsolar photovoltaic Tier I sources, and the Tier II requirement is 8.2% of all retail sales.

(15) For June 1, 2020, through May 31, 2021, and each successive 12 month period thereafter: The Tier I requirement is 8% of all retail sales, of which at least 0.5% of all retail sales are to come from solar photovoltaic sources and the remaining from nonsolar photovoltaic Tier I sources, and the Tier II requirement is 10% of all retail sales.

(c) EDCs are exempt from these requirements for the duration of their cost-recovery period. An EDC shall be required to comply with the requirements in effect during the reporting period, as identified in subsection (b), in which its exemption expires.

(d) EGSs are exempt from these requirements in the service territories of EDCs in their cost-recovery period. EGS compliance shall be measured against their total MWh sales to all retail electric customers in all EDC service territories that have exited their cost-recovery periods.

(e) A 90-day true-up period shall commence at the end of each reporting period. EDCs and EGSs not in compliance with this chapter at the end of a reporting period, as determined by the program administrator under § 75.64(c)(2) (relating to alternative energy credit program administrator), may acquire additional alternative energy credits during the true-up period to satisfy the requirements of this chapter.

§ 75.62. Alternative energy system qualification.

(a) An application for alternative energy system status shall be submitted on a form developed and made available by the Commission. A copy of the application form will be made available on the Commission's public

internet domain. An application shall be verified by oath or affirmation as required in § 1.36 (relating to verification).

(b) A completed application and supporting attachments shall be filed with the alternative energy credit program administrator, the Department of Environmental Protection and any other parties that may be designated by the Commission.

(c) A facility, to be qualified for alternative energy system status, shall demonstrate that it is physically located in either:

(1) This Commonwealth.

(2) The control area of an RTO that manages a portion of the electric transmission system in this Commonwealth.

(d) Alternative energy credits derived from alternative energy sources located outside the geographical boundaries of this Commonwealth but within the control area of an RTO that manages the transmission system in any part of this Commonwealth shall only be eligible to meet the compliance requirements of EDCs or EGSs located within the service territory of the same RTO. For purposes of compliance with the act, alternative energy sources located in the control area of the PJM Interconnection, LLC RTO or its successor shall be eligible to fulfill compliance obligations of all Pennsylvania EDCs and EGSs.

(e) A facility, to be qualified for alternative energy system status, shall demonstrate that it generates electricity from or conserves electricity through a Tier I or Tier II alternative energy source.

(f) A facility may not be qualified unless the Department has verified compliance with applicable environmental regulations, and the standards set forth in section 2 of the act (73 P. S. § 1648.2).

§ 75.63. Alternative energy credit certification.

(a) An alternative energy credit may be certified by the Commission for each MWh of electricity generated by qualified alternative energy systems on or after February 28, 2005.

(b) An alternative energy credit may be certified by the Commission for each MWh of electricity conserved by qualified alternative energy systems or demand side management on or after November 30, 2004.

(c) An alternative energy credit may not be certified for a MWh of electricity generation or electricity conservation that has already been used to satisfy another state's renewable energy portfolio standard, alternative energy portfolio standard or other comparable standard.

(d) An alternative energy credit already purchased by individuals, businesses or government bodies that do not have a compliance obligation under the act may not be certified for a MWh of electricity generation or electricity conservation unless the individual, business or government body sells those credits to the EDC or EGS.

(e) When an alternative energy system relies on more than one fuel source or technology, alternative energy credits shall be certified for that portion of the electric generation that is derived from an alternative energy fuel source or technology.

(f) For all alternative energy systems except solar photovoltaic systems with a nameplate capacity of 15

kilowatts or less, alternative energy credit certification shall be verified by metered data obtained from or by one of the following:

- (1) An RTO.
- (2) The credits registry designated under § 75.71 (relating to alternative energy credit registry).
- (3) The administrator designated under § 75.64 (relating to alternative energy credit program administrator).
- (g) For solar photovoltaic alternative energy systems with a nameplate capacity of 15 kilowatts or less, alternative energy credit certification shall be verified by the administrator designated under § 75.64.

(h) An alternative energy credit represents the attributes of 1 MWh of electric generation that may be used to satisfy the requirements of § 75.61 (relating to EDC and EGS obligations). The alternative energy credit shall remain the property of the alternative energy system until voluntarily transferred. A certified alternative energy credit does not automatically include environmental, emissions or other attributes associated with 1 MWh of electric generation. Parties may bundle the attributes unrelated to compliance with § 75.61 with an alternative energy credit, or, alternatively, sell, assign, or trade them separately.

§ 75.64. Alternative energy credit program administrator.

(a) The Commission may select an independent entity to act as a program administrator and perform administrative functions necessary to the implementation of this chapter. If an independent entity is not selected to act as a program administrator, the Commission will perform the functions identified in this section.

(b) The program administrator will have the following powers and duties in regard to alternative energy system qualification:

- (1) Distribute, receive and review applications for alternative energy system qualification.
- (2) Reject applications that are incomplete or do not adhere to the application instructions.
- (3) Determine whether an application satisfies the geographic eligibility standard in § 75.62(c) (relating to alternative energy system qualification) and reject applications that fail this standard.
- (4) Qualify applicants for alternative energy system status who have filed a complete application, adhered to application instructions, satisfied the geographic eligibility standard, complied with environmental regulations and utilized an alternative energy fuel source or technology.

(5) The program administrator will provide written notice to applicants of its qualification decision within 30 days of receipt of a complete application form.

(c) The program administrator shall have the following powers and duties regarding the verification of compliance with this chapter:

- (1) At the end of each reporting period, the program administrator shall verify EDC and EGS compliance with § 75.61 (relating to EDC and EGS obligations), and provide written notice to each EDC and EGS of an initial assessment of their compliance status within 45 days of the end of the reporting period.
- (2) At the end of each true-up period, the administrator shall verify compliance with § 75.61 for EDCs and EGS

who were in violation of § 75.61 at the end of the reporting period. The administrator will provide written notice to each EDC and EGS of a final assessment of their compliance status within 15 days of the end of the true-up period.

(3) EDCs and EGSs shall provide all information to the program administrator necessary to verify compliance with § 75.61.

(4) The program administrator shall provide a report to the Commission within 45 days of the end of each reporting period and true-up period that identifies the compliance status of all EDCs and EGSs. The report provided after the end of the true-up period shall propose alternative compliance payment amounts for each EDC and EGS that is noncompliant with § 75.61 for that reporting period. As part of this report, the administrator shall identify the average market value of alternative energy credits derived from solar photovoltaic energy sold in the reporting period for each RTO that manages a portion of this Commonwealth's transmission system.

(d) The program administrator shall have the following powers and duties relating to alternative energy credit certification:

(1) The program administrator may not certify an alternative energy credit already purchased by individuals, businesses or government bodies that do not have a compliance obligation under the act unless the individual, business or government body sells those credits to the EDC or EGS.

(2) The program administrator may not certify an alternative energy credit for a MWh of electricity generation or electricity conservation that has already been used to satisfy another state's renewable energy portfolio standard, alternative energy portfolio standard or other comparable standard.

(e) A decision of the program administrator may be appealed consistent with § 5.44 (relating to petitions for appeal from actions of the staff).

(f) The Commission may delegate other responsibilities to the program administrator as may be necessary for the implementation of the act.

§ 75.65. Alternative compliance payments.

(a) Within 15 days of receipt of the report identified in § 75.64(c)(4) (relating to alternative energy credit program administrator), the Commission will provide written notice to each EDC and EGS that was noncompliant with § 75.61 (relating to EDC and EGS obligations) of their alternative compliance payment for that reporting period.

(b) Each EDC and EGS shall be assessed an alternative compliance payment according to the following formula:

(1) For noncompliance with the solar photovoltaic requirements identified in § 75.61, an EDC and EGS shall make an alternative compliance payment equal to the following:

(i) The average market value for solar photovoltaic alternative energy credits sold during the reporting period in the RTO control area where the noncompliance occurred.

(ii) Add to value in subparagraph (i), the levelized up-front rebates received by sellers of solar renewable energy credits, (calculated as follows: total amount of rebates paid within the previous 20 years, divided by the total kilowatt capacity for which rebates were given in the previous 20 years, divided by 20 (the useful life of a

solar photovoltaic system), multiplied by the percentage of alternative energy used during the reporting period originating from jurisdictions where rebates were given.

(iii) Multiply the value in subparagraph (ii) by 200%.

(2) For noncompliance with all other requirements identified in § 75.61, an EDC and EGS shall make an alternative compliance payment equal to \$45 times the number of additional alternative energy credits necessary for compliance in that reporting period.

(3) The costs of alternative compliance payments made under this section may not be recoverable from ratepayers.

(c) EDCs and EGSs shall advise the Commission in writing within 15 days of the issuance of this notice of their acceptance of the alternative compliance payment determination or, if they wish to contest the determination, file a petition to modify the level of the alternative compliance payment. The petition must include documentation supporting the proposed modification. The Commission will refer the petition to the Office of Administrative Law Judge for further proceedings as may be necessary. Failure of an EDC or EGS to respond to the Commission within 15 days of the issuance of this notice shall be deemed an acceptance of the alternative compliance payment determination.

(d) EDCs and EGSs shall send their alternative compliance payments to a special fund designated by the Commission within 30 days of acceptance of their payment determination, or the conclusion of proceedings before the Commission regarding the modification of the level of payment.

(e) Alternative compliance payments shall be made available to the sustainable energy funds established through the Commission's orders entered under 66 Pa.C.S. § 2806(f) (relating to Commission review of restructuring filings), under procedures and standards proposed by the Pennsylvania Sustainable Energy Board and approved by the Commission at Docket M-00031715. See 33 Pa.B. 4263 (August 23, 2003).

(f) Alternative compliance payments made available to the sustainable energy funds shall be utilized solely for projects that increase the amount of electric energy generated from alternative energy resources for purposes of compliance with § 75.61.

(g) The Commission may utilize up to 5% of alternative compliance payments made by EDCs and EGSs for administrative expenses directly associated with the implementation of this chapter, including the costs of the program administrator.

§ 75.66. Force majeure.

(a) No earlier than 60 days prior to the beginning of a reporting period and no more than 60 days after the conclusion of the true-up period, the Commission, upon its own initiative or upon the request of an EDC or EGS, may issue an order declaring that force majeure exists for some or all EDCs and EGSs for that reporting period. The order will include separate force majeure determinations for the Tier I alternative energy source, Tier II alternative energy source and solar photovoltaic requirements of § 75.61 (relating to EDC and EGS obligations).

(b) The Commission will provide public notice of all requests for force majeure determination.

(c) The Commission may find that force majeure exists if there are insufficient alternative energy credits to satisfy the aggregate Tier I alternative energy source,

Tier II alternative energy source or solar photovoltaic obligation for all EDCs and EGSs under § 75.61 for that reporting period.

(d) The Commission may find that force majeure exists for the nonsolar photovoltaic requirement of § 75.61 if the average price for a nonsolar photovoltaic alternative energy credit purchased by a Pennsylvania EDC and EGS exceeds \$45 in the 6-month period preceding the issuance of the order referenced in subsection (a).

(e) If the Commission determines that force majeure exists for a reporting period, EDCs and EGSs shall have the option of making alternative compliance payments in lieu of compliance with § 75.61 for that reporting period.

(1) This payment must equal \$45 for each alternative energy credit needed to satisfy the Tier I nonsolar photovoltaic and Tier II requirements of § 75.61 or the Commission may choose to reduce the required level of Tier I nonsolar photovoltaic and Tier II compliance for the reporting period.

(2) For the solar photovoltaic requirement, EDCs and EGSs shall have the option of making an alternative compliance payment equal to the market value of solar photovoltaic credits in the applicable RTO service territory, or the Commission may choose to reduce the required level of solar photovoltaic compliance for that reporting period.

(3) A payment shall be accompanied by a statement with supporting facts, filed with the Commission and verified by oath or affirmation, consistent with § 1.36 (relating to verification), that the EDC or EGS has made a good faith effort to comply with this chapter as outlined in subparagraph (i) of the definition of "force majeure" in § 75.1 (relating to definitions), that they are unable to acquire a sufficient quantity of alternative energy credits to meet their obligations under § 75.61 as outlined in subparagraph (ii) of the definition of "force majeure" in § 75.1, and that an alternative compliance payment is the least cost method of compliance.

(4) The option to make an alternative compliance payment in lieu of compliance with § 75.61 may not be available to EDCs and EGSs that have already acquired sufficient alternative energy credits for compliance with the requirements of that reporting period.

(5) If the Commission modifies any compliance requirements, the Commission may increase the compliance requirements of an equivalent type and amount in subsequent years when the Commission determines that sufficient alternative energy credits of an equivalent type exist in the marketplace.

(f) Alternative compliance payments made by EDCs under subsection (e) shall be deemed a cost of compliance with this chapter and may be recovered under § 75.67 (relating to alternative energy cost-recovery).

(g) EDCs and EGSs shall provide the Commission all information necessary for it to render a force majeure determination, as outlined in the definition of "force majeure" in § 75.1.

§ 75.67. Alternative energy cost-recovery.

(a) A default service provider may recover from default service customers the following reasonable and prudently incurred costs for compliance with the act:

(1) The costs of electricity generated by an alternative energy system, purchased by a default service provider,

and delivered to default service customers for purposes of compliance with § 75.61 (relating to EDC and EGS obligations).

(2) The costs of alternative energy credits purchased and used within the same reporting period for purposes of compliance with § 75.61.

(3) The costs of alternative energy credits purchased in one reporting period and banked for use in later reporting periods, consistent with § 75.69 (relating to banking of alternative energy credits).

(4) The costs of alternative energy credits purchased in the true-up period to satisfy compliance obligations for the most recently concluded reporting period, consistent with § 75.61(e).

(5) Payments to the alternative energy credits program administrator for its costs of administering an alternative energy credits program, consistent with § 75.64 (relating to alternative energy credit program administrator).

(6) Payments to a third party for its costs in operating an alternative energy credits registry, consistent with § 75.70 (relating to the alternative energy credit registry).

(7) The costs levied by a regional transmission organization to ensure that alternative energy sources are reliable.

(8) The costs of alternative compliance payments made under § 75.66 (relating to force majeure).

(b) A default service provider shall demonstrate compliance with the requirements of § 75.61 and the default service provisions of Chapter 54 (relating to electricity generation customer choice) by identifying a competitive procurement process for acquiring alternative energy credits in default service implementation plans filed with the Commission.

(c) A competitive procurement process for alternative energy and alternative energy credits shall comply with the standards for competitive procurement processes identified in the default service provisions in Chapter 54.

(d) The costs of compliance with the alternative energy portfolio standards act shall be recovered through an automatic adjustment clause within the meaning of 66 Pa.C.S. § 1307 (relating to sliding scale of rates; adjustments) and consistent with § 54.187 (relating to default service rate design and the recovery of reasonable costs) according to the following standards:

(1) Costs incurred by a default service provider during the cost-recovery period shall be deferred as a regulatory asset and fully recovered with a return on the unamortized balance during the first full 12-month reporting period after the expiration of the cost-recovery period in the EDC service territory where it is acting as the default service provider.

(2) Costs incurred by a default service provider after the expiration of a cost-recovery period shall be recovered during the reporting period in which they are incurred, except as provided for in paragraph (7).

(3) The default service implementation plan shall include a schedule of rates for the recovery of these costs as required under 66 Pa.C.S. § 1307(a).

(4) A default service provider shall file a report with the Commission within 30 days of the conclusion of each reporting period that includes the information identified in 66 Pa.C.S. § 1307(e)(1).

(5) The Commission will hold public hearings on the substance of these reports, and other matters pertaining to this subject, as required by 66 Pa.C.S. § 1307(e)(2).

(6) The Commission will order the default service provider to provide refunds to or recover additional costs from default service customers consistent with 66 Pa.C.S. § 1307(e)(3).

(7) The costs of alternative energy credits purchased by the default service provider during the true-up period under section 3(e)(5) of the act (73 P.S. § 1648.3(e)(5)) shall be recovered during the reporting period in which these costs are incurred.

(e) The Commission will perform fuel costs audits, on at least an annual basis, of each default service provider that recovers costs using the automatic adjustment clause provided for under this section.

§ 75.68. Alternative energy market integrity.

(a) Sales of electricity by EDCs and EGSs to retail electric customers marketed as deriving from alternative energy sources shall be tracked and counted separately from alternative energy credits used to support compliance with § 75.61 (relating to EDC and EGS obligations).

(b) When EDCs and EGSs market their generation as deriving from alternative energy sources, they shall include information to substantiate their claims. Disclosure of alternative energy sources shall be traceable to specific alternative energy sources by an auditable contract trail or equivalent, such as a tradable commodity system, that provides verification that the alternative energy source claimed has been sold only once to a retail customer.

§ 75.69. Banking of alternative energy credits.

(a) An EDC and EGS may bank alternative energy credits certified in one reporting period for use in either or both of the two immediately following reporting periods.

(b) An EDC and EGS may bank alternative energy credits certified during a cost-recovery period for use in the reporting period in which the cost-recovery period expires, and the reporting period that immediately follows.

(c) Alternative energy credits acquired by EDCs and EGSs not used within the time limits identified in subsections (a) and (b) shall be retired within the alternative energy credits registry and not available for the compliance requirements of this chapter.

(d) EDCs and EGSs shall satisfy the requirements of this chapter for the present reporting period before banking alternative energy credits produced in that same reporting period for use in either or both of the two subsequent reporting periods.

(e) The Commission will determine the volume of sales, measured in MWh, by EDCs and EGSs to retail customers in the 12-month period that immediately preceded the effective date of the act derived from specific alternative energy systems. EDCs and EGSs may bank credits during the cost-recovery period for the generation output of qualified alternative energy systems that exceed their volume of alternative energy sales to retail customers during this 12-month period.

§ 75.70. Alternative energy credit registry.

(a) The Commission will designate an alternative energy credit registry to track the creation and transfer of certified alternative energy credits among qualified alternative energy systems, EDCs, and EGSs. EDCs and EGSs

shall record the price paid for each alternative energy credit in the alternative energy credit registry.

(b) The Commission may direct EDCs and EGSs to enter into agreements with an alternative energy credit registry to verify compliance with this chapter and for compliance with section 3(e)(8) of the act (73 P.S. § 1648.3(e)(8)). EDCs and EGSs shall comply with the rules, policies and procedures of the designated alternative energy credit registry identified in the registry's terms of use, subscriber agreement or other comparable document.

(c) EDCs and EGSs shall provide the Commission and the program administrator with access to information in this registry necessary to verify compliance with this chapter and for compliance with section 3(e)(8) of the act.

(d) The prices paid for individual credits will be treated as confidential information by the Commission. Aggregate pricing data on alternative energy credits will be made available to the public by the Commission or the program administrator on a regular basis.

[Pa.B. Doc. No. 08-2286. Filed for public inspection December 19, 2008, 9:00 a.m.]

PENNSYLVANIA PUBLIC UTILITY COMMISSION [52 PA. CODE CH. 63]

[L-2008-2020165/57-261]

Telecommunications Relay Service System and Relay Service Fund

The Pennsylvania Public Utility Commission (Commission) on August 21, 2008, adopted a final-form regulation order which ensures adequate Telecommunications Relay Service (TRS) Fund balances, timely remittance of TRS Fund revenues and cooperation with TRS Fund audits.

Executive Summary

On January 25, 2008, at Docket No. L-2008-2020165, the Commission entered a proposed rulemaking order soliciting comments on changing, clarifying and codifying provisions of the existing policy statements in 52 Pa. Code §§ 69.511—69.513 relating to the operation of the TRS-System and the Relay Service Fund. Interested persons were provided with 30 days from the date the order was published in the *Pennsylvania Bulletin* to submit comments regarding the proposed regulation.

The Commission is codifying existing reporting and remitting obligations of the wireline carriers, which have been the operative norm for a number of years, under both the Commission's 1990 orders at M-00900239 and the existing policy statements. Voluntary compliance with the policy statements have been spotty, leading to extended collection efforts, estimated surcharges and inequitable allocations of the costs of the funded programs. The regulation will not create any significant new burdens on affected wireline carriers. The reporting and remitting forms will stay the same, but the filing dates and filing destinations will change. The Annual Access Line Summary Report (number of lines in service as of a particular day) will be due 2 months earlier than under the existing policy statements. The Annual Tracking Report (list of monthly remittances for a prior 12-month period) will be due 1 month earlier than under the existing policy statements. Both forms would be filed with the Commission's Secretary's Bureau.

The Commission views the regulation as a tool to ensure timely, accurate and equitable funding of the programs mandated by the Universal Telecommunications and Print Media Access Act (35 P.S. §§ 6701.1—6701.4).

Public Meeting held
August 21, 2008

Commissioners Present: James H. Cawley, Chairperson; Robert F. Powelson; Tyrone J. Christy; Kim Pizzingrilli; Wayne E. Gardner

Rulemaking to Amend 52 Pa. Code Chapter 63 (relating to Telephone Service) regarding Operation of Telecommunications Relay Service System and Relay Service Fund; Doc. No. L-2008-2020165

Final Rulemaking Order

By the Commission:

On January 25, 2008, the Commission entered a Proposed Rulemaking Order to codify provisions of existing policy statements¹ so as to ensure adequate Telephone Relay Service (TRS) fund balances, timely remittance of TRS fund revenues, and cooperation with TRS fund audits. The January 25, 2008, Order was served on all local exchange carriers (LECs) in this Commonwealth and the Pennsylvania Telephone Association, was published at 38 Pa.B. 2056 (May 3, 2008), and provided for a 30-day comment period. No comments from parties affected by the regulation were received. On July 2, 2008, the Commission received written confirmation from the Independent Regulatory Review Commission (IRRC) that IRRC had no objections, comments or recommendation to offer and that if the IRRC were to deliver the final-form regulation without revision and the committees take no action, the regulation will be deemed approved. This final-form regulation order delivers the final-form regulation without revision as set forth in Annex A.

Background

On May 24, 1990, at Docket No. M-00900239, the Commission approved the implementation of the Pennsylvania TRS² and established a funding mechanism. The TRS assists people with hearing and/or speech disabilities to use the telephone and seeks to ensure equivalent access to telecommunications services. In 1996, the Telecommunications Device Distribution Program (TDDP) was implemented to provide assistive customer premises equipment based upon income-level criteria. In 2005, the Print Media Access System Program (PMASP) was added to provide newspaper reading services for persons who are blind. These three programs are now collectively codified in the Universal Telecommunications and Print Media Access Act.

Costs associated with the intrastate operations of the three programs are recovered from residential and business wireline access line end-users by a monthly surcharge (TRS Surcharge) on local service telephone bills. The TRS Surcharge is recalculated annually and adjusted as necessary, effective July 1, based upon projected costs of the various programs and the number of wireline access lines in service as of December 31 of the preceding year. LECs remit the TRS Surcharge collection revenues monthly to the TRS Fund Administrator. See annual orders at TRS, Docket No. M-00900239.

In 1999, to ensure the successful operation of the TRS fund, the Commission, at Docket No. M-00900239,

¹ The Commission's Policy Statement at 52 Pa. Code §§ 69.511—69.513 became effective on April 17, 1999, upon publication at 29 Pa.B. 2034. The Policy Statement establishes parameters for collecting information necessary to manage the TRS fund.

² See http://www.puc.state.pa.us/telecom/telecom_relay_service.aspx for complete information on TRS. The traditional TRS program is also known as PA Relay.

adopted the existing policy statements. The intent of the policy statement was to address the difficulties that the Commission was experiencing in collecting the surcharge revenues and to foster cooperation from the LECs in submitting the documentation required to conduct annual audits of the TRS fund.

The existing policy statements provide that LECs submit their annual access line summary reports³ to the Bureau of Fixed Utility Services (FUS) by April 30. The Commission uses the annual summary line count information to establish adjustments to the TRS Surcharge by June 1, and the LECs implement any required TRS Surcharge changes by July 1. The existing policy statements also provide that the LECs submit their annual tracking reports to FUS by April 30, tallying the monthly collected TRS surcharge revenues. The tracking reports cover a 12-month period from April through March. The tracking information is used by the Commission to reconcile the TRS Fund. 52 Pa. Code §§ 69.511—69.513.⁴

Under 66 Pa.C.S. § 3015(e)(3) and (6), the Commission is expressly authorized to require the submission of annual access line summary reports and annual tracking reports.

³ The Annual Access Line Summary Report and the Annual Tracking Report forms may be downloaded from the Commission's web site at: <http://www.puc.state.pa.us/general/onlineforms.aspx#Telecommunications%20Forms>.

⁴ The Policy Statement may be found online at <http://www.pacode.com/secure/data/052/chapter69/s69.511.html>; <http://www.pacode.com/secure/data/052/chapter69/s69.512.html>, and <http://www.pacode.com/secure/data/052/chapter69/s69.513.html>. It provides as follows: **§ 69.511. General.**

(a) On May 24, 1990, at Docket M-900239, entitled "Pennsylvania Telecommunications Relay Services," the Commission granted approval of the implementation of the Pennsylvania Telecommunications Relay Service (TRS) for people with hearing or speech, or both, disabilities. A Relay Service Fund (Fund) was established to recover charges associated with the operation of the TRS. The Commission established a mechanism to adequately compensate the Fund through a monthly end-user billing surcharge, based on access lines, collected by Pennsylvania's Incumbent Local Exchange Carriers (ILECs) and Competitive Local Exchange Carriers (CLECs). These revenues are to be remitted on a monthly basis.

(b) To effectively monitor and evaluate the revenue data, the Commission established a tracking schedule for the filing of tracking reports. All ILECs and CLECs are required to file an Annual Tracking Report and an Annual Access Line Summary Report by April 30th. These reports require that the ILECs and CLECs break out the requisite data consistent with the current report forms. Further, the Annual Tracking Report requires that the data be broken out on a monthly basis beginning with April of the previous year and ending with March of the current year. The surcharge revenue collections data for each month includes the actual surcharge revenues collected from a company's end-users that month and remitted to the Fund by the 20th of the following month. The Commission directed the Bureau of Audits to conduct an annual audit of the TRS in its order dated September 3, 1992.

§ 69.512. Timely remittance of revenues.

(a) Under existing Commission Orders, Incumbent Local Exchange Carriers (ILECs) and Competitive Local Exchange Carriers (CLECs) which collect revenues owed to the Relay Service Fund (Fund) are to remit these revenues to the Fund by the 20th of each month for revenues collected during the prior month. Delays in remitting revenues to the Fund result in lost earnings. The Commission intends to ensure that the Fund is properly funded through a reimbursement by the companies which fail to timely remit revenues.

(b) To properly reimburse the Fund, each company which is late in remitting surcharge revenues will be required to calculate for lost earnings based upon the base rate on corporate loans posted by at least 75% of the Nation's 30 largest banks, also known as the "prime rate," beginning at the date of the occurrence of the error and continue until the revenues are properly remitted to the Fund.

§ 69.513. Filing of Telecommunications Relay Service (TRS) reports.

(a) *Annual tracking report.* Incumbent Local Exchange Carriers (ILECs) and Competitive Local Exchange Carriers (CLECs) are currently required to submit an Annual Tracking Report to the Bureau of Fixed Utility Services by April 30th which delineates the monthly revenues collected based upon the number of each company's access lines. A company's failure to submit its Annual Tracking Report by April 30th impairs the Bureau of Audits' ability to complete the required annual audit of the Fund. The Annual Tracking Reports effectively include revenues actually collected during the prior 12-month period. The timely filing of the tracking reports is essential to avoid underfunding the Relay Service Fund (Fund) by the surcharge revenue and related investment income which the revenues would have earned.

(b) *Annual Access Line Summary Report.* ILECs and CLECs are currently required to submit an Annual Access Line Summary Report to the Bureau of Fixed Utility Services by April 30th detailing each company's access line count. A company's failure to submit its Annual Access Line Summary Report or to correctly report its access line information, [sic] impairs the ability of the Bureau of Fixed Utility Services to establish the proper TRS surcharge rates. The receipt of a timely and correct Annual Access Line Summary Report is essential to avoid underfunding the TRS Fund.

(c) An ILEC or CLEC which fails to timely remit an Annual Tracking Report may need to reimburse the Fund under § 69.512 (relating to timely remittance of revenues). The Commission may also utilize all available remedies to ensure reporting and remittance compliance including fines and the revocation of Certificates of Public Convenience.

Discussion

Our policy statements addressing filing dates, payment obligations and enforcement procedures have been in effect since 1999. This final-form regulation order will codify portions of the policy statements as a regulation in § 63.37 (relating to operation of the Telecommunications Relay Service System and Relay Service Fund). Specifically, the new regulations: (1) establish the due date for filing annual access line summary reports as March 1; (2) establish the due date for filing annual tracking reports as March 31;⁵ (3) direct that both reports be filed with the Commission's Secretary's Bureau; and (4) establish enforcement procedures for inaccurate, late, or missing TRS reports and for inaccurate, late, or missing TRS fund payments.

Promulgating parameters for the annual reporting and monthly payments in our regulations ensures that all LECs are held to the same standards for compliance and ensure that the binding norms are properly imposed in compliance with the Regulatory Review Act (71 P. S. §§ 745.1—745.14).

The purpose for the policy statements was to ensure accurate TRS Surcharge calculations, accurate and timely remittance of TRS Surcharge revenues, and cooperation with audit procedures. These goals remain equally valid today and will be adequately served by the new regulation. The Bureau of Audits (Audits) uses the tracking report data to conduct periodic audits of the TRS fund. A LEC's failure to submit its annual tracking report on a timely and accurate basis impairs Audits' ability to complete the required audits of the Fund. Timely and accurate remittance of the TRS revenues and timely and accurate filing of the tracking reports are essential to properly capitalize the Fund by the surcharge revenue and the related investment income that the revenues would have earned.

Similarly, FUS uses the access line counts to calculate the next years' TRS surcharge. A LEC's failure to timely submit its annual access line summary report or to accurately report its access line information impairs FUS' ability to calculate the proper TRS surcharge rates. Receipt of timely and accurate annual access line summary reports is essential to avoid underfunding (or overfunding) the TRS Fund.

The new regulation addresses LEC failures to submit accurate and timely access line count reports, annual tracking reports, and payments. Under the new regulation, LECs that fail to comply with the payment obligations will be subject to reimbursement obligations.⁶ Under 66 Pa.C.S. §§ 3301 and 3302 (relating to civil penalties for violations; and criminal penalties for violations), the Commission will utilize all available remedies to ensure compliance with the payment and reporting requirements, including interest on late payments, fines, and/or the revocation of certificates of public.

Regulatory Review

Under section 5.1(j.2) of the Regulatory Review Act (71 P. S. § 745.1(j.2)), the Commission submitted a copy of the final-form regulation, which was published as proposed at 38 Pa.B. 2056 (May 3, 2008), and served on April 17, 2008, to IRRC and the Chairpersons of the House

⁵ Section 63.37(a)(2) provides that the annual tracking report "delineat[es] monthly revenues collected and remittances for late payments for the preceding 12-month year." Absent further notice, the reporting year will be March through February.

⁶ Specifically, § 63.37(b)(2) provides that LECs who are late in remitting surcharge revenues to the Fund must remit additional contributions to make up for lost Fund earnings due to the late remittance. Section 63.37(d) provides that LECs who do not comply with the reporting and payment requirements will be required to reimburse the Fund if the Fund experiences a loss due to their failure to comply.

Committee on Consumer Affairs and Senate Committee on Consumer Protection and Professional Licensure (Committees) for review and comment. In compliance with section 5(c) of the Regulatory Review Act (71 P. S. § 745.5(c)), the Commonwealth also provided the Committees with copies of all comments received, as well as other documentation.

This final-form regulation was deemed approved by the Committees on November 5, 2008, and was deemed approved by IRRC on November 6, 2008, in accordance with section 5(g) Regulatory Review Act.

Conclusion

Accordingly, under sections 501, 1501, 3015 and 3019 of the Public Utility Code, 66 Pa.C.S. §§ 501, 1501, 3015 and 3019; sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202), and the associated regulations in 1 Pa. Code §§ 7.1, 7.1 and 7.5; section 204(b) of the Commonwealth Attorneys Act (71 P. S. § 732.204(b)); section 5 of the Regulatory Review Act; and section 612 of The Administrative Code of 1929 (71 P. S. § 232) and the associated regulations in 4 Pa. Code §§ 7.231—7.234, the Commission finds that the regulation to be codified in 52 Pa. Code § 63.37 should be approved as set forth in Annex A,⁷ as follows. The Commission further find that the policy statements in §§ 69.511—69.513 should be withdrawn as of the date the regulation in § 63.37 becomes effective, which will be accomplished by a separate order entered at Doc. No. M-00900249; *Therefore*,

It is ordered that:

1. The regulations of the Commission, 52 Pa. Code Chapter 63, are amended by adding § 63.37 regarding the operation of the Telecommunications Relay Service System and Relay Service Fund, to read as set forth in Annex A.

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

3. The Secretary shall submit this order and Annex A to the Office of Attorney General for approval as to legality.

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

5. The Secretary shall submit this order and Annex A for review by the designated standing committees of both houses of the General Assembly, and for review and approval by IRRC.

6. A copy of this order and Annex A shall be served upon the Pennsylvania Telephone Association and all local exchange carriers in this Commonwealth.

7. A copy of this order be filed at Docket No. M-00900239.

8. The contact persons for this rulemaking are Christopher Hepburn, Bureau of Fixed Utility Services, (717) 214-9115 (technical) and Louise Fink Smith, Assistant Counsel, Law Bureau, (717) 787-8866 (legal). Alternate formats of this document are available to persons with disabilities and may be obtained by contacting Sherri DelBiondo, Regulatory Coordinator, Law Bureau, (717) 772-4597.

⁷ The Annex A attached hereto reflects the minor editorial changes made by the *Pennsylvania Bulletin* upon initial publication and no other changes from the originally published Annex A.

9. The final-form regulation embodied in Annex A shall become effective upon publication in the *Pennsylvania Bulletin*.

By the Commission

JAMES J. MCNULTY,
Secretary

(Editor's Note: For a document rescinding statements of policy which relates to this final rulemaking, see 38 Pa.B. 6961 (December 20, 2008).)

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 38 Pa.B. 6429 (November 22, 2008).)

Fiscal Note: Fiscal Note 57-261 remains valid for the final adoption of the subject regulation.

Annex A

TITLE 52. PUBLIC UTILITIES

PART I. PUBLIC UTILITY COMMISSION

Subpart C. FIXED SERVICE UTILITIES

CHAPTER 63. TELEPHONE SERVICE

Subchapter C. ACCOUNTS AND RECORDS

§ 63.37. Operation of the Telecommunications Relay Service System and Relay Service Fund.

(a) *General.*

(1) The Pennsylvania Telecommunications Relay Service (TRS), the Telecommunications Devices for the Deaf Program and the Print Media Access System Program are codified in the Universal Telecommunications and Print Media Access Act (35 P. S. §§ 6701.1—6701.4). The Relay Service Fund (Fund) covers eligible intrastate costs associated with the operation of the three programs. The costs are recovered from residential and business wireline access line end-users by a monthly surcharge on local service telephone bills.

(2) To permit the Commission to effectively monitor and evaluate the revenue and cost data associated with the Fund, each local exchange carrier (LEC) shall file an annual tracking report delineating monthly revenues collected and remittances for late payments for the preceding 12-month year and an annual access line summary report detailing its access line count as of December 31 of the preceding year. The tracking data are used for periodic audits of the Fund. The access line counts are used to calculate the next year's TRS surcharge.

(b) *Timely remittance of revenues.*

(1) LECs shall remit the TRS surcharge revenues to the Fund administrator by the 20th of each month for revenues collected during the prior month.

(2) Delays or inaccuracies in remitting revenues to the Fund result in lost earnings by the Fund. An LEC that is late in remitting surcharge revenues shall remit an additional contribution to the Fund to make up for lost Fund earnings. The additional contribution shall be based upon the published prime rate in effect at the time of the missed due date and shall cover the period beginning at the date of the occurrence of the failure to remit and continue until the surcharge revenues are properly remitted to the Fund.

(c) *Filing of TRS reports.*

(1) *Annual tracking report.* An LEC shall submit its annual tracking report to the Secretary's Bureau by

March 31 of each year, in the format and detail specified on the Commission's web site (www.puc.state.pa.us).

(2) *Annual access line summary report.* An LEC shall submit its annual access line summary report to the Secretary's Bureau by March 1 of each year, in the format and detail specified on the Commission's web site.

(d) *Failure to remit TRS revenues or to file TRS reports.* An LEC that fails to timely and accurately submit a tracking report or an access line summary report or that fails to timely and accurately submit TRS surcharge revenues may need to reimburse the Fund under subsection (b). The Commission will utilize all available remedies to ensure reporting and remittance compliance including fines and the revocation of Certificates of Public Convenience.

[Pa.B. Doc. No. 08-2287. Filed for public inspection December 19, 2008, 9:00 a.m.]

Title 58—RECREATION

GAME COMMISSION

[58 PA. CODE CH. 143]

Hunting and Furtaker Licenses

To effectively manage the wildlife resources of this Commonwealth, the Game Commission (Commission), at its October 24, 2008, meeting, adopted the following rulemaking:

Amend § 143.243 (relating to general) to expand the list of species that mentored youth are eligible to pursue to include coyotes.

The final-form regulation will have no adverse impact on the wildlife resources of this Commonwealth.

The authority for the final-form regulation is 34 Pa.C.S. (relating to Game and Wildlife Code) (code).

Notice of proposed rulemaking was published at 38 Pa.B. 4520 (August 16, 2008).

1. Purpose and Authority

Since the successful implementation of the Mentored Youth Hunting Program in the fall of 2006, the Commission has been seeking input from sportsmen and sporting organizations on ways to improve this innovative new program. Towards this end, two organizations, the Governor's Youth Council for Hunting, Fishing and Conservation and the PA Fox and Coyote Hunters Association, have organized to recommend that the program could be improved with the addition of coyotes to the list of species that may be lawfully pursued by mentored youth. In its continuing interest to find new opportunities to expose youth to this State's wildlife resources and enduring hunting heritage, the Commission amended § 143.243 by expanding the list of species that mentored youth are eligible to pursue to include coyotes. On October 24, 2008, the Commission made a floor amendment to its June 24, 2008 proposal to strike its proposed replacement of the word "eligibility" with the word "ability," thus maintaining the original language.

Section 2722(g)(2) of the code (relating to authorized license-issuing agents) provides that the Commission shall adopt regulations for "The administration, control and performance of activities conducted pursuant to the provisions of this chapter." Section 2102(a) of the code

(relating to regulations) provides that "The commission shall promulgate such regulations as it deems necessary and appropriate concerning game or wildlife and hunting or furtaking in this Commonwealth, including regulations relating to the protection, preservation and management of game or wildlife and game or wildlife habitat, permitting or prohibiting hunting or furtaking, the ways, manner, methods and means of hunting or furtaking, and the health and safety of persons who hunt or take wildlife or may be in the vicinity of persons who hunt or take game or wildlife in this Commonwealth." The amendments to § 143.243 were adopted under this authority.

2. Regulatory Requirements

The final-form regulation will amend § 143.243 to expand the list of species that mentored youth are eligible to pursue to include coyotes.

3. Persons Affected

Mentored Youth wishing to hunt or trap within this Commonwealth may be affected by the final-form regulation.

4. Comment and Response Summary

There were no official written comments received regarding this final-form regulation.

5. Cost and Paperwork Requirements

The final-form regulation should not result in any additional cost or paperwork.

6. Effective Date

The final-form regulation will be effective upon final-form publication in the *Pennsylvania Bulletin* and will remain in effect until changed by the Commission.

7. Contact Person

For further information regarding the final-form rulemaking, contact Richard A. Palmer, Director, Bureau of Wildlife Protection, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797, (717) 783-6526.

Findings

The Commission finds that:

(1) Public notice of intention to adopt the administrative amendments adopted by this order has been given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202) and the regulations thereunder, 1 Pa. Code §§ 7.1 and 7.2.

(2) The adoption of these amendments of the Commission in the manner provided in this order is necessary and appropriate for the administration and enforcement of the authorizing statute.

Order

The Commission, acting under authorizing statute, orders that:

(a) The regulations of the Commission, 58 Pa. Code Chapter 143, are amended by amending § 143.243 to read as set forth in Annex A.

(b) The Executive Director of the Commission shall certify this order, and Annex A and deposit them with the Legislative Reference Bureau as required by law.

(c) This order shall become effective upon final-form publication in the *Pennsylvania Bulletin*.

CARL G. ROE,
Executive Director

Fiscal Note: Fiscal Note 48-273 remains valid to the final adoption of the subject regulation.

Annex A

TITLE 58. RECREATION

PART III. GAME COMMISSION

**CHAPTER 143. HUNTING AND FURTKER
LICENSES**

**Subchapter M. MENTORED YOUTH HUNTING
PROGRAM LICENSE EXEMPTION**

§ 143.243. General.

(a) A mentor shall possess a valid Pennsylvania hunting license or qualify for license and fee exemptions under section 2706 of the act (relating to resident license and fee exemptions) prior to engaging in any mentored youth hunting activities.

(b) A mentored youth's hunting eligibility is restricted to the following species: squirrel, woodchuck, coyote, deer and wild turkey. A mentored youth's hunting eligibility is further limited to:

(1) Spring gobbler season only for turkey.

(2) Antlered deer only during any applicable deer seasons. However, mentored youth hunters shall be eligible for the same antler restrictions that apply to junior license holders as provided in § 131.2 (relating to definitions).

(c) A mentored youth's hunting eligibility is further constrained by all applicable hunting seasons, daily limits, field possession limits and season limits provided in § 139.4 (relating to seasons and bag limits for the license year).

(d) A mentored youth is eligible to hunt during any special youth hunting seasons that apply to any species specified in subsection (b).

(e) A mentored youth shall tag and report all big game harvested in the manner provided for in section 2323(b) of the act (relating to killings by persons without license).

[Pa.B. Doc. No. 08-2288. Filed for public inspection December 19, 2008, 9:00 a.m.]

**GAME COMMISSION
[58 PA. CODE CH. 147]**

Special Permits

To effectively manage the wildlife resources of this Commonwealth, the Game Commission (Commission), at its October 24, 2008, meeting, adopted the following rulemaking:

Amend §§ 147.301—147.307 and 147.309 to update and expand wildlife rehabilitation standards.

The final-form regulation will have no adverse impact on the wildlife resources of this Commonwealth.

The authority for the final-form regulation is 34 Pa.C.S. (relating to Game and Wildlife Code) (code).

Notice of proposed rulemaking was published at 38 Pa.B. 4523 (August 16, 2008).

1. Purpose and Authority

The Commission has been working in consultation with the Wildlife Rehabilitation Council (Council) to update

and amend the wildlife rehabilitation regulations in an effort to redress concerns the Commission and Council share respecting the inadequacy of current permitting standards. Some notable recommendations generated include the creation of new rehabilitation facility caging and sanitation requirements for all wildlife, new requirements for the rehabilitation of rabies vector species and, finally, new application, qualification and testing standards for permit applicants. Therefore, the Commission amended §§ 147.301—147.307 and 147.309 to update and expand wildlife rehabilitation standards.

Section 2901(b) of the code (relating to authority to issue permits) provides "the commission may, as deemed necessary to properly manage the game or wildlife resources, promulgate regulations for the issuance of any permit and promulgate regulations to control the activities which may be performed under authority of any permit issued." Section 2102(a) of the code (relating to regulations) provides that "The commission shall promulgate such regulations as it deems necessary and appropriate concerning game or wildlife and hunting or furtaking in this Commonwealth, including regulations relating to the protection, preservation and management of game or wildlife and game or wildlife habitat, permitting or prohibiting hunting or furtaking, the ways, manner, methods and means of hunting or furtaking, and the health and safety of persons who hunt or take wildlife or may be in the vicinity of persons who hunt or take game or wildlife in this Commonwealth." The amendments to §§ 147.301—147.307 and 147.309 were adopted under this authority.

2. Regulatory Requirements

The final-form regulations will amend §§ 147.301—147.307 and 147.309 to update and expand wildlife rehabilitation standards.

3. Persons Affected

Persons wishing to rehabilitate game or wildlife within this Commonwealth will be affected by the final-form regulations.

4. Comment and Response Summary

There were no official written comments received regarding these final-form regulations.

5. Cost and Paperwork Requirements

The final-form regulations should not result in any additional cost or paperwork.

6. Effective Date

The final-form regulations will be effective upon final publication in the *Pennsylvania Bulletin* and will remain in effect until changed by the Commission.

7. Contact Person

For further information regarding the final-form regulations, contact Richard A. Palmer, Director, Bureau of Wildlife Protection, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797, (717) 783-6526.

Findings

The Commission finds that:

(1) Public notice of intention to adopt the administrative amendments adopted by this order has been given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202) and the regulations thereunder, 1 Pa. Code §§ 7.1 and 7.2.

(2) The adoption of these amendments of the Commission in the manner provided in this order is necessary and appropriate for the administration and enforcement of the authorizing statute.

Order

The Commission, acting under authorizing statute, orders that:

(a) The regulations of the Commission, 58 Pa. Code Chapter 147, are amended by amending §§ 147.301—147.307 and 147.309 to read as set forth at 38 Pa.B. 4523.

(b) The Executive Director of the Commission shall certify this order, 38 Pa.B. 4523 and Annex A and deposit them with the Legislative Reference Bureau as required by law.

(c) This order shall become effective upon final-form publication in the *Pennsylvania Bulletin*.

CARL G. ROE,
Executive Director

Fiscal Note: Fiscal Note 48-274 remains valid for the final adoption of the subject regulations.

[Pa.B. Doc. No. 08-2289. Filed for public inspection December 19, 2008, 9:00 a.m.]

GAME COMMISSION
[58 PA. CODE CH. 147]
Special Permits

To effectively manage the wildlife resources of this Commonwealth, the Game Commission (Commission), at its October 24, 2008, meeting, adopted the following rulemaking:

Amend §§ 147.322, 147.324 and 147.325 (relating to application for deer control permit; privileges authorized under the permit; and special conditions of permit) to expand the list of authorized applicants to also include homeowners associations and nonprofit land-holding organizations.

The final-form regulations will have no adverse impact on the wildlife resources of this Commonwealth.

The authority for the final-form regulation is 34 Pa.C.S. (relating to Game and Wildlife Code) (code).

Notice of proposed rulemaking was published at 38 Pa.B. 4526 (August 16, 2008).

1. *Purpose and Authority*

In developed landscapes, lower deer populations result in fewer deer/human conflicts. Therefore, alternative herd reduction tools are necessary for communities to address growing deer populations. Although the Commission is directed by law to use hunting in managing white-tailed deer, hunting is not always feasible in an urbanized setting. Formerly, only political subdivisions could apply for a Deer Control Permit. Recognizing that urban deer issues do not always involve an entire township or borough, the Commission amended §§ 147.322, 147.324 and 147.325 to expand the list of authorized applicants to also include homeowners associations and nonprofit land-holding organizations. This does not change the requirements or review process of an application for permits. It merely makes this tool available to more groups experiencing unacceptable levels of deer/human conflicts in a developed area.

Section 2901(b) of the code (relating to authority to issue permits) provides “the commission may, as deemed

necessary to properly manage the game or wildlife resources, promulgate regulations for the issuance of any permit and promulgate regulations to control the activities which may be performed under authority of any permit issued.” Section 2102(a) of the code (relating to regulations) provides that “The commission shall promulgate such regulations as it deems necessary and appropriate concerning game or wildlife and hunting or furtaking in this Commonwealth, including regulations relating to the protection, preservation and management of game or wildlife and game or wildlife habitat, permitting or prohibiting hunting or furtaking, the ways, manner, methods and means of hunting or furtaking, and the health and safety of persons who hunt or take wildlife or may be in the vicinity of persons who hunt or take game or wildlife in this Commonwealth.” The amendments to §§ 147.322, 147.324 and 147.325 were adopted under this authority.

2. *Regulatory Requirements*

The final-form regulations will amend §§ 147.322, 147.324 and 147.325 to expand the list of authorized applicants to also include homeowners associations and nonprofit land-holding organizations.

3. *Persons Affected*

Homeowners associations and nonprofit land-holding organizations wishing to engage in deer control activities within this Commonwealth may be affected by the final-form regulations.

4. *Comment and Response Summary*

The Commission received one official written comment concerning the final-form regulations. The comment was in support of making homeowner’s associations eligible to apply for and receive deer control permits from the Commission.

5. *Cost and Paperwork Requirements*

The final-form regulations should not result in any additional cost or paperwork.

6. *Effective Date*

The final-form regulations will be effective upon final publication in the *Pennsylvania Bulletin* and will remain in effect until changed by the Commission.

7. *Contact Person*

For further information regarding the final-form regulations, contact Richard A. Palmer, Director, Bureau of Wildlife Protection, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797, (717) 783-6526.

Findings

The Commission finds that:

(1) Public notice of intention to adopt the administrative amendments adopted by this order has been given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202) and the regulations thereunder, 1 Pa. Code §§ 7.1 and 7.2.

(2) The adoption of these amendments of the Commission in the manner provided in this order is necessary and appropriate for the administration and enforcement of the authorizing statute.

Order

The Commission, acting under authorizing statute, orders that:

(a) The regulations of the Commission, 58 Pa. Code Chapter 147, are amended by amending §§ 147.322, 147.324 and 147.325 to read as set forth at 38 Pa.B. 4526.

(b) The Executive Director of the Commission shall certify this order and 38 Pa.B. 4526 and deposit them with the Legislative Reference Bureau as required by law.

(c) This order shall become effective upon final-form publication in the *Pennsylvania Bulletin*.

CARL G. ROE,
Executive Director

Fiscal Note: Fiscal Note 48-272 remains valid for the final adoption of the subject regulations.

[Pa.B. Doc. No. 08-2290. Filed for public inspection December 19, 2008, 9:00 a.m.]

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GAME COMMISSION
[58 PA. CODE CH. 147]
Special Permits

To effectively manage the wildlife resources of this Commonwealth, the Game Commission (Commission), at its October 24, 2008, meeting, adopted the following rulemaking:

Amend §§ 147.721—147.726, 147.728 and 147.729 to update and expand nuisance wildlife control operator standards.

The final-form rulemaking will have no adverse impact on the wildlife resources of this Commonwealth.

The authority for the final-rulemaking is 34 Pa.C.S. (relating to Game and Wildlife Code) (code).

Notice of proposed rulemaking was published at 38 Pa.B. 4521 (August 16, 2008).

1. *Purpose and Authority*

Chapter 147, Subchapter T (relating to commercial wildlife pest control) provides the regulatory structure for the Commission to authorize persons to engage in nuisance wildlife control activities. The Commission has identified that these regulations have over time become inadequate to address the needs of the Commission and the public concerning the persistent problem of nuisance wildlife and therefore needed to be amended. Some notable recommendations generated by the Commission include the renaming of permit holders as “nuisance wildlife control operators” rather than the current “wildlife pest control agents,” the expansion of applicant eligibility standards to permit application from nonresidents, new requirements for the control of rabies vector species and, finally, new testing standards for permittees working in deer control. Therefore, the Commission has amended §§ 147.721—147.726 and 147.728 and 47.729 to update and expand nuisance wildlife control operator standards.

Section 2901(b) of the code (relating to authority to issue permits) provides “the commission may, as deemed necessary to properly manage the game or wildlife resources, promulgate regulations for the issuance of any permit and promulgate regulations to control the activities which may be performed under authority of any permit issued.” Section 2102(a) of the code (relating to regulations) provides that “The commission shall promulgate such regulations as it deems necessary and appropriate concerning game or wildlife and hunting or furtaking in this Commonwealth, including regulations relating to the protection, preservation and management of game or wildlife and game or wildlife habitat, permitting or prohibiting hunting or furtaking, the ways, manner,

methods and means of hunting or furtaking, and the health and safety of persons who hunt or take wildlife or may be in the vicinity of persons who hunt or take game or wildlife in this Commonwealth.” The amendments to §§ 147.721—147.726 and 147.728 and 147.729 were adopted under this authority.

2. *Regulatory Requirements*

The final rulemaking will amend §§ 147.721—147.726 and 147.728 and 147.729 and 147.728—147.72 to update and expand nuisance wildlife control operator standards.

3. *Persons Affected*

Persons wishing to engage in nuisance wildlife control activities within this Commonwealth will be affected by the final-form rulemaking.

4. *Comment and Response Summary*

There were no official written comments received regarding this final-form rulemaking.

5. *Cost and Paperwork Requirements*

The final-form rulemaking should not result in any additional cost or paperwork.

6. *Effective Date*

The final-form rulemaking will be effective upon final-form publication in the *Pennsylvania Bulletin* and will remain in effect until changed by the Commission.

7. *Contact Person*

For further information regarding the final rulemaking, contact Richard A. Palmer, Director, Bureau of Wildlife Protection, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797, (717) 783-6526.

Findings

The Commission finds that:

(1) Public notice of intention to adopt the administrative amendments adopted by this order has been given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202) and the regulations thereunder, 1 Pa. Code §§ 7.1 and 7.2.

(2) The adoption of these amendments of the Commission in the manner provided in this order is necessary and appropriate for the administration and enforcement of the authorizing statute.

Order

The Commission, acting under authorizing statute, orders that:

(a) The regulations of the Commission, 58 Pa. Code Chapter 147, are amended by amending §§ 147.721—147.726 and 147.728; and by adding §§ 147.724a and 147.729 to read as set forth at 38 Pa.B. 4521.

(b) The Executive Director of the Commission shall certify this order, 38 Pa.B. 4521 and Annex A and deposit them with the Legislative Reference Bureau as required by law.

(c) This order shall become effective upon final-form publication in the *Pennsylvania Bulletin*.

CARL G. ROE,
Executive Director

Fiscal Note: Fiscal Note 48-275 remains valid for the final adoption of the subject regulation.

[Pa.B. Doc. No. 08-2291. Filed for public inspection December 19, 2008, 9:00 a.m.]