

PROPOSED RULEMAKING

FISH AND BOAT COMMISSION

[58 PA. CODE CH. 61]

Fishing

The Fish and Boat Commission (Commission) proposes to amend Chapter 61 (relating to seasons, sizes and creel limits). The Commission is publishing this proposed rulemaking under the authority of 30 Pa.C.S. (relating to the Fish and Boat Code) (code).

A. *Effective Date*

The proposed rulemaking, if approved on final-form rulemaking, will go into effect on January 1, 2010.

B. *Contact Person*

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

C. *Statutory Authority*

The proposed amendments to §§ 61.2 and 61.8 (relating to Delaware River and River Estuary; and Lehigh River, Schuylkill River and Tributaries) are published under the statutory authority of section 2102(b) of the code (relating to rules and regulations).

D. *Purpose and Background*

The proposed rulemaking is designed to improve, enhance and update the Commission's fishing regulations. The specific purpose of the proposed amendments is described in more detail under the summary of proposal.

E. *Summary of Proposal*

(1) *American Shad on the Delaware River.* Since the mid-1980s, the daily creel limit for American shad in the Delaware River, the West Branch and the Estuary has been six fish with no minimum length limit, and there has been a year-round season. While in years past, American shad was a popular gamefish and anglers often harvested them for consumption, in more recent years it has principally become a catch-and-release fishery. A large-scale creel survey in 2002 resulted in an estimated angler catch of 35,281 shad, of which 6,627 (19%) were harvested (Versar 2003). The 2002 harvest rate was about a third of the estimated 1986 creel survey harvest rate (49%) but was close to the estimated harvest rate for the 1995 (20%) survey. Individual angler trip data voluntarily submitted to the Delaware River and Estuary Angler Logbook Program from 2002 to 2006 indicated that anglers harvested a total of 139 shad of the 1,748 caught (8%) from 496 trips. Three or more shad were harvested on only four trips.

In 2007, the Atlantic States Marine Fisheries Commission's (ASMFC's) Shad and River Herring Technical Committee and American Shad Stock Assessment Subcommittee developed a coast wide stock assessment that indicated that adult American shad stocks in the Delaware River have been declining since 1994. Nevertheless, the annual production of juvenile shad has remained stable. In some other coastal rivers, adult shad stocks have declined as well. Despite the continued depressed

abundance and documented low harvest rates of adult American shad in the Delaware River and River Estuary, the creel limit of American shad in this Commonwealth has remained at six fish per day.

The Commission therefore proposes a reduction of the daily creel limit of American shad to three fish in cooperation with the other boundary states (New Jersey, New York and Delaware). Resource managers from all four states participating in the Delaware River Fish and Wildlife Cooperative Technical Committee (DRFWCTC) have verbally agreed that this reduction in the daily creel limit will not negatively impact angler use, and it is a proactive protective measure given the declining status of shad stocks in the Delaware River and other coastal river systems.

At a recent meeting between the Commission and the New Jersey Department of Environmental Protection, Division of Fish and Wildlife (NJDEP), New Jersey staff indicated that their organization is actively pursuing a reduced daily creel limit from the current six fish to three fish in the Delaware River. Their Freshwater Fishery Council has approved the proposed reduction and will solicit public comments this summer. New Jersey staff expect to have the reduced creel limit in place by January 1, 2010; however, due to the fact that the freshwater and marine divisions of the agency have jurisdiction over different parts of the river, the proposed regulation will only pertain to the Delaware River mainstem waters from the New Jersey/New York State border, downstream to the Commodore Barry Bridge. In the remaining 2.9 river miles, from of the Commodore Barry Bridge to the Delaware State line, the creel limit will remain at six in New Jersey until at least 2011, when it is anticipated that New Jersey's Marine Fishery Council will reduce the creel limit in that section to three.

New York is moving forward with a proposed amendment to reduce the American shad creel limit to three per day in the upper Delaware River. They indicated that a 2010 date for implementation is extremely optimistic and that 2011 is more realistic.

Delaware's only recreational shad angling occurs on the Brandywine Creek, and it is extremely limited. Delaware is moving to reduce the creel limit of herring (they do not make a distinction between American shad and river herring) from 10 combined/day to six combined/day. They anticipate doing this in conjunction with a change in the commercial regulations, but they do not anticipate this change occurring for the 2010 season.

In the interest of coordination with the regulations of New Jersey and New York, the Commission proposes that effective January 1, 2010, the reduced creel limit be applied to the West Branch and the entire Delaware River mainstem from the confluence of the East and West Branches downstream to the Commodore Barry Bridge as set forth in Annex A.

The Commission further proposes that for the remaining 2.9 miles downstream of the Commodore Barry Bridge, the current daily limit of six remain in effect until such time as New Jersey's Marine Council effectuates a change. At that time, the Commission will seek public comments on an amendment that reduces the creel limit of the lower section to three, with an effective date that coincides with the Marine Council's regulation change.

(2) *River Herring on the Delaware, Lehigh and Schuylkill Rivers.* Since the mid-1980's, the daily creel limit for river herring, a term applied collectively to blueback herring and alewife, in the Delaware River, West Branch and Estuary, has been a total of 35 herring, with no minimum length limit, and the season is open year-round. River herring are popular with striped bass anglers who use them either as live or cut bait. Principally, this fishery exists during the spring when river herring and striped bass are migrating into the Delaware River and Estuarine waters. Traditionally, anglers jigged for river herring for use as bait at the onset of a trip and during the trip. However, it has been alleged that an illegal transport fishery has developed in which entrepreneurs catch river herring from the Delaware River and transport them to the New Jersey coast for sale as bait to coastal anglers.

In 2002, catch and harvest of river herring in the Delaware River and Estuary were estimated in a large-scale creel survey (Versar 2003). This survey resulted in an estimate of a total catch of 7,553 river herring of which 4,916 (65%) were harvested. Most of the fish harvested were taken from tidal waters (1,465 fish, Delaware Memorial Bridge to Trenton, NJ) and the lower reach of the nontidal Delaware River (5,105 fish, Trenton, NJ upstream to Delaware Water Gap). Field observations by the creel clerks during the course of the 2002 survey indicated that only a small number of anglers target river herring. Many of these anglers were noted to have elaborate live-wells in their vehicles for keeping river herring alive, which accounted for the relatively high estimated harvest rates.

The ASMFC's Draft Amendment 2 to the Interstate Fishery Management Plan for Shad and River Herring states that river herring abundance has declined precipitously since the mid-1990's and remains depressed along the Atlantic Coast. The Commission therefore is proposing a reduction in the daily creel limit to ten along with the other Delaware River and Estuary boundary states of New York and New Jersey. Delaware's herring creel limit is already ten per day. The proposed action will unify regulations throughout the Delaware River. Resource managers participating in the DRFWCTC from all four states have verbally agreed that a reduction of the daily creel limit would not negatively impact angler use. This creel limit reduction is designed to allow for the continued use of river herring as a bait source by the individual angler, while reducing the economic incentive for the illegal sale of the fish for bait. New Jersey researchers conducted an informal survey of the most likely impacted commercial guides fishing the Delaware River. The results of the survey indicated strong support for the proposed reduction in the daily creel limit.

At a recent meeting between the Commission and the NJDEP, New Jersey staff indicated that their organization is actively pursuing the reduced river herring creel limit. Their Freshwater Fishery Council has already approved the proposed reduction, and public comments will be solicited this summer. New Jersey staff expect to have the reduced river herring creel limit in place by January 1, 2010; however, due to the fact that the freshwater and marine divisions of the agency have jurisdiction over different parts of the river, the proposed regulation will only pertain to the Delaware River mainstem waters from the New Jersey/New York State border, downstream to the Commodore Barry Bridge. In the remaining 2.9 river miles from of the Commodore Barry Bridge to the Delaware State line, the creel limit will remain at 35 in New Jersey until at least 2011, when

it is anticipated that New Jersey's Marine Fishery Council will reduce the creel limit in that section to 10.

New York is not proposing any changes to its river herring creel limits due to the fact that they do not anticipate river herring ascending that far up the Delaware River.

Delaware's only recreational shad angling occurs on the Brandywine Creek, and it is extremely limited. Delaware is moving to reduce its creel limit of herring (they do not make a distinction between American shad and river herring) from ten combined/day to six combined/day. They anticipate doing this in conjunction with a change in the commercial regulations, but they do not anticipate this change occurring for the 2010 season.

In the interest of coordination with the regulations of New Jersey, the Commission proposes that effective January 1, 2010, the reduced creel limit be applied to the West Branch and the entire Delaware River mainstem from the confluence of the East and West Branches downstream to the Commodore Barry Bridge as set forth in Annex A. Given the anadromous fish restoration efforts on the two major tributaries to the Delaware, the Commission also proposes imposing a ten fish per day creel limit on the Lehigh and Schuylkill Rivers as set forth in Annex A.

The Commission further proposes that for the remaining 2.9 miles downstream of the Commodore Barry Bridge, the current daily limit of 35 river herring remain in effect until such time as New Jersey's Marine Council effectuates a change. At that time, the Commission will seek public comments on an amendment that reduces the creel limit of the lower section to 10, with an effective date that coincides with the Marine Council's regulation change.

After the Commission approved publication of this notice of proposed rulemaking containing proposed amendments to its regulations pertaining to river herring, ASFMC approved Amendment 2 to the Interstate Fishery Management Plan for Shad and River Herring. The amendment prohibits commercial and recreational fisheries of river herring beginning January 1, 2012, unless a state or jurisdiction develops and submits for approval a sustainable management plan by January 1, 2010. The amendment defines a sustainable fishery as "a commercial and/or recreational fishery that will not diminish the potential future stock reproduction and recruitment." Submitted plans must clearly demonstrate that the state or jurisdiction's river herring fisheries meet this new definition of sustainability through the development of sustainability targets that must be achieved and maintained.

ASMFC's approval of Amendment 2 was taken in response to widespread concern regarding the decline of river herring stocks. While many populations of blueback herring and alewife, collectively known as river herring, are in decline or remain depressed at stable levels, lack of fishery-dependent and independent data makes it difficult to ascertain the status of river herring stocks coastwide. Between 1985 and 2007, commercial landings of river herring decreased by 97% from 13.6 million pounds to 317,000 pounds.

The Commission's approach to its river herring regulations could be influenced by the recent ASMFC action. Currently, the Commission is working with other state agencies with jurisdiction that includes parts of the Delaware River or Delaware Estuary to develop a coordinated interstate approach for future regulations. This coordinated approach could result in the Commission's

final adoption of amendments that are the same as or similar to those proposed in this notice of proposed rulemaking, or it could mean more conservative regulations, up to a total moratorium on the river herring fishery.

F. *Paperwork*

The proposed rulemaking will not increase paperwork and will not create new paperwork requirements.

G. *Fiscal Impact*

The proposed rulemaking will have no adverse fiscal impact on the Commonwealth or its political subdivisions. The proposed rulemaking will impose no new costs on the private sector or the general public.

H. *Public Comments*

Interested persons are invited to submit written comments, objections or suggestions about the proposed rule-

making to the Executive Director, Fish and Boat Commission, P. O. Box 67000, Harrisburg, PA 17106-7000, within 30 days after publication of this notice in the *Pennsylvania Bulletin*. Comments submitted by facsimile will not be accepted.

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

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

Fiscal Note: 48A-212. No fiscal impact; (8) recommends adoption.

Annex A
TITLE 58. RECREATION
PART II. FISH AND BOAT COMMISSION
Subpart B. FISHING
CHAPTER 61. SEASONS, SIZES AND CREEL LIMITS

§ 61.2. Delaware River, **West Branch Delaware River** and River Estuary.

* * * * *

(d) The following seasons, sizes and creel limits apply to the Delaware River, West Branch Delaware River and [to] Delaware River tributaries, from the mouths of the tributaries upstream to the limit of the tidal influence and the Lehigh River from its mouth upstream to the first dam in Easton, Pennsylvania:

<i>SPECIES</i>	<i>SEASONS</i>	<i>MINIMUM SIZE</i>	<i>DAILY LIMIT</i>
		* * *	
AMERICAN SHAD	Open year-round	No minimum	From Pennsylvania line upstream to the Commodore Barry Bridge: 6
			From the Commodore Barry Bridge upstream: 3
		* * *	
RIVER HERRING (alewife and blueback herring)	Open year-round	No minimum	From Pennsylvania line upstream to the Commodore Barry Bridge: 35
			From the Commodore Barry Bridge upstream: 10
		* * *	

§ 61.8. Lehigh River, Schuylkill River and tributaries.

* * * * *

(d) The following seasons, sizes and creel limits apply to the Lehigh River **upstream of the first dam in Easton, Pennsylvania** and its tributaries and the Schuylkill River upstream of the I-95 Bridge and its tributaries:

<i>SPECIES</i>	<i>SEASONS</i>	<i>MINIMUM SIZE</i>	<i>DAILY LIMIT</i>
AMERICAN SHAD	Open year-round	No [Minimum]	1
RIVER HERRING (alewife and blueback herring)	Open year-round	No minimum	10
		* * *	

[Pa.B. Doc. No. 09-1220. Filed for public inspection July 10, 2009, 9:00 a.m.]

[58 PA. CODE CH. 73]
Fishing

The Fish and Boat Commission (Commission) proposes to amend Chapter 73 (relating to transportation of live fish into the Commonwealth). The Commission is publishing this proposed rulemaking under the authority of 30 Pa.C.S. (relating to the Fish and Boat Code) (code).

A. *Effective Date*

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

B. *Contact Person*

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

C. *Statutory Authority*

The proposed amendment to § 73.3 (relating to transportation and importation of VHS-susceptible species of fish) is published under the statutory authority of section 2102(c) of the code (relating to rules and regulations).

D. *Purpose and Background*

The proposed rulemaking is designed to improve, enhance and update the Commission's fishing regulations. The specific purpose of the proposed amendment is described in more detail under the summary of proposal.

E. *Summary of Proposal*

Viral hemorrhagic septicemia (VHS) is an infectious disease found in a variety of fish species. Effective January 1, 2009, the Commission adopted § 73.3 to help prevent the spread of the disease in this Commonwealth. Under § 73.3(d), it is unlawful to import or cause the importation of VHS-susceptible species of fish into this Commonwealth from a VHS-affected or VHS-at risk region, except as follows: (1) VHS-susceptible species of live fish may be imported into the United States if the requirements of 9 CFR 93.910—93.916 are met; or (2) VHS-susceptible species of dead fish may be imported into the United States if the fish are recreationally caught and are for human consumption.

At the time of adoption, the language of § 73.3(d)(1) was consistent with the interim rule of the United States Department of Agriculture's Animal and Plant Health Inspection Service (APHIS) that was slated to go into effect on January 9, 2009. However, by notice published in the (74 FR 1), the United States Department of Agriculture announced that it has delayed the effective date of the interim rule indefinitely to provide APHIS with time to make some adjustments to the interim rule that are necessary for the rule to be successfully implemented. The provisions of § 73.3(d)(1), therefore, have no effect.

Accordingly, the Commission proposes that § 73.3(d) be amended to delete paragraph (1) as set forth in Annex A. This amendment is a "housekeeping" change that is limited to the movement of live VHS-susceptible species of fish from the Canadian provinces of Ontario and Quebec. It will not affect the Commission's regulations with respect to intrastate and interstate transportation or the international movement of dead fish. Under § 73.3(d)(2), VHS-susceptible species of dead fish may be imported into the United States from Ontario and Quebec

if the fish are recreationally caught and are for human consumption. However, until such time as APHIS adopts a rule pertaining to the international movement of live fish, the Commission's regulations will be silent on the subject. Prior orders issued by APHIS regarding international movement of live VHS-susceptible species of fish will govern, but the Commission's waterways conservation officers will not be able to enforce them.

By notice published at 39 Pa.B. 1368 (March 14, 2009), the Executive Director, acting under the authority of 58 Pa. Code § 65.25 (relating to temporary changes to fishing regulations), already has taken immediate action to rescind § 73.3(d)(1). This temporary modification went into effect immediately and will remain in effect until the Commission, by appropriate action, rescinds the regulation.

F. *Paperwork*

The proposed rulemaking will not increase paperwork and will not create new paperwork requirements.

G. *Fiscal Impact*

The proposed rulemaking will have no adverse fiscal impact on the Commonwealth or its political subdivisions. The proposed rulemaking will impose no new costs on the private sector or the general public.

H. *Public Comments*

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

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

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

Fiscal Note: 48a-213. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 58. RECREATION

PART II. FISH AND BOAT COMMISSION

Subpart B. FISHING

CHAPTER 73. TRANSPORTATION OF LIVE FISH INTO THE COMMONWEALTH

§ 73.3. Transportation and importation of VHS-susceptible species of fish.

* * * * *

(d) *International movement.* It is unlawful to import or cause the importation of VHS-susceptible species of fish into this Commonwealth from a VHS-affected or VHS-at risk region, except as follows:

[(1) **VHS-susceptible species of live fish may be imported into the United States if the requirements of 9 CFR 93.910—93.916 (relating to general provisions for VHS-regulated fish) are met.**

(2)] VHS-susceptible species of dead fish may be imported into the United States if the fish are recreationally caught and are for human consumption.

[Pa.B. Doc. No. 09-1221. Filed for public inspection July 10, 2009, 9:00 a.m.]

PENNSYLVANIA GAMING CONTROL BOARD

[58 PA. CODE CHS. 401a, 435a AND 441a]

Employee Revisions and Pennsylvania Race Horse Development Fund

The Pennsylvania Gaming Control Board (Board), under the general authority in 4 Pa.C.S. § 1202(b)(30) (relating to general and specific powers) and specific authority contained in 4 Pa.C.S. §§ 1311, 1311.1, 1311.2, 1321 and 1406 proposes to amend Chapters 401a, 435a, and 441a to read as set forth in Annex A.

Purpose of the Proposed Rulemaking

This proposed rulemaking makes minor revisions to provisions related to employees to improve the clarity and effectiveness of the Board's regulations. It also revises the time frame within which distributions of funds received by Category 1 slot machine licensees from the Pennsylvania Race Horse Development Fund must be made.

Explanation of Amendments to Chapters 401a, 435a and 441a

In § 401a.3 (relating to definitions), the definition of "gaming employee" has been amended to include employees of certified vendors whose duties require the employee to be on the gaming floor or in a restricted area. This makes the definition consistent with the existing requirement pertaining to these employees in § 437a.7(b) (relating to registered and certified vendor responsibilities).

In § 435a.1 (relating to general provisions), a new subsection (n) has been added which requires slot machine licensees to contact the Bureau of Licensing to verify that the license, permit or registration of an individual who currently holds a license, permit or registration is still valid before the slot machine licensee allows them to work in the licensed facility. Licenses, permits and registrations are not licensed facility specific. This allows the individuals to seek employment at other licensed facilities without having to obtain a new license, permit or registration. Requiring the slot machine licensee to contact the Bureau of Licensing will insure that an individual's license, permit or registration is in good standing.

In § 441a.18 (relating to employee status report), subsection (b) is being amended to require that the monthly status report prepared by the slot machine licensee also include the expiration date of employees who hold a license or a permit. This is being done so that the slot machine licensees can more easily track when renewal applications should be filed by these employees.

In § 441a.19 (relating to notice of employee misconduct and offenses and employee resignations), is being amended to simplify the process for reporting terminations of slot machine licensee employees. Currently, slot machine licensees must report terminations within 5 days. This has resulted in slot machine licensees having

to file multiple reports throughout any given week. By changing to weekly reporting, slot machine licensees will have to make fewer filings and will be less likely to inadvertently fail to report a termination.

In § 441a.22 (relating to Category 1 slot machine licensees), subparagraphs (i) and (ii) in subsection (b)(3) are being amended. Currently, these subparagraphs require the transfer of funds received for purses or health and pension benefits to occur within 36 hours of receipt. However, if the funds are received late in the day prior to a weekend or holiday, slot machine licensees have sometimes not been able to comply with the 36-hour requirement. To remedy this problem, the language in both of these subparagraphs is being changed to require that the transfer of funds be completed by the close of the next business day.

Affected Parties

This proposed rulemaking will affect slot machine licensees, manufacturers, manufacturer designees, suppliers and certified vendors.

Fiscal Impact

Commonwealth

Under this proposed rulemaking, the Bureau of Licensing will have to respond to additional inquiries from slot machine licensees seeking to confirm the status of individuals who were employed at another licensed facility. The Bureau of Licensing will also receive fewer employee termination reports. Neither of these changes is anticipated to have any significant fiscal impact on the Board.

Political Subdivisions

This proposed rulemaking will have no direct fiscal impact on political subdivisions of this Commonwealth.

Private Sector

Slot machine licensees, manufacturers, manufacturer designees, suppliers and certified vendors will have to verify the status of new employees that hold a license, permit or registration. However, the Board intends to allow the verification to be done by telephone or e-mail, so the costs associated with completing these verifications should be minimal.

The change in the timing for slot machine licensees to transfer funds received for purses or health and pension benefits will eliminate the potential for any sanctions related to noncompliance with the existing requirement.

General Public

This proposed rulemaking will have no fiscal impact on the general public.

Paperwork requirements

There will be some reduction in the number of termination reports that will have to be filed by slot machine licensees and reviewed by the Bureau of Licensing.

Effective Date

The proposed rulemaking will become effective upon final-form publication in the *Pennsylvania Bulletin*.

Public Comments

Interested persons are invited to submit written comments, suggestions or objections regarding the proposed rulemaking, within 30 days after the date of publication in the *Pennsylvania Bulletin* to Richard Sandusky, Director of Regulatory Review, Pennsylvania Gaming Control Board, P. O. Box 69060, Harrisburg, PA 17106-9060, Attention: Public Comment on Regulation No. 125-104.

Contact Person

The contact person for questions about this proposed rulemaking is Richard Sandusky, Director of Regulatory Review at (717) 214-8111.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on June 30, 2009, the Board submitted a copy of this proposed rulemaking and a copy of the Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House Gaming Oversight Committee and the Senate Community, Economic and Recreational Development Committee. A copy of this material is available to the public upon request and is available on the Board's web site at www.pgcb.state.pa.us.

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

GREGORY C. FAJT,
Chairperson

Fiscal Note: 125-104. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 58. RECREATION

PART VII. GAMING CONTROL BOARD

Subpart A. GENERAL PROVISIONS

CHAPTER 401a. PRELIMINARY PROVISIONS

§ 401a.3. Definitions.

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

* * * * *

Gaming employee—

* * * * *

(iii) Employees of a certified vendor, licensed manufacturer or manufacturer designee whose duties require the employee's presence on the gaming floor or in a restricted area of a licensed facility.

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Subpart B. LICENSING, PERMITTING, CERTIFICATION AND REGISTRATION

CHAPTER 435a. EMPLOYEES

§ 435a.1. General provisions.

* * * * *

(n) Slot machine licensees, manufacturers, manufacturer designees, suppliers and certified vendors who hire an individual who holds a license, permit or registration issued by the Board shall contact the Bureau of Licensing to confirm that the individual's license, permit or registration is in good standing prior to allowing the individual to work in the licensed facility.

Subpart C. SLOT MACHINE LICENSING

CHAPTER 441a. SLOT MACHINE LICENSES

§ 441a.18. Employee status report.

* * * * *

(b) Each month each slot machine licensee shall generate a monthly employee status report of the slot machine licensee's and management company's employees. The report shall be submitted to the Bureau of Licensing no later than the 15th calendar day of the following month. The report must include the following information:

(1) An alphabetical listing of the individuals currently employed by the slot machine licensee and the management company and the following information with respect to each employee listed:

* * * * *

(iii) The employee's license, permit or registration number and expiration date, if applicable.

* * * * *

§ 441a.19. Notice of employee misconduct and offenses and employee resignations.

(a) A slot machine licensee or management company shall [notify] submit a weekly report to the Bureau of Licensing [, within 5 days] of the [termination] terminations of [an employee] any employees [, of information surrounding the termination of the employee that could be cause for suspension or revocation of the employee's license, permit or registration or enforcement action related thereto].

(b) The [notice] weekly report must include the following information:

* * * * *

§ 441a.22. Category 1 slot machine licensees.

* * * * *

(b) If a Category 1 license is issued to a legal business entity in an organization, any legal business entity within the organization that has been approved or issued a Category 1 license shall be responsible for, in particular, but not limited to, complying with:

* * * * *

(3) Distribution allocations received from the Pennsylvania Race Horse Development Fund under section 1406 of the act (relating to distributions from Pennsylvania Race Horse Development Fund).

(i) Funds designated for purses under section 1406(a)(1)(i) of the act shall be deposited into an account established by and for the benefit of the horsemen [within 36 hours of] by the close of the next business day following the receipt of the funds from the Commonwealth.

(ii) Funds designated for health and pension benefits under section 1406(a)(1)(iii) of the act shall be deposited into an account established under the rules and regulations of the horsemen's organization [within 36 hours

of] by the close of the next business day following the receipt of the funds from the Commonwealth.

Public Meeting held
March 26, 2009

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[Pa.B. Doc. No. 09-1222. Filed for public inspection July 10, 2009, 9:00 a.m.]

PENNSYLVANIA PUBLIC UTILITY COMMISSION

[52 PA. CODE CH. 62]

[L-2008-2069114/57-269]

Natural Gas Distribution Companies and the Promotion of Competitive Retail Markets

The Pennsylvania Public Utility Commission (Commission) on March 26, 2009, adopted a proposed rulemaking order which ensures that consumers of natural gas will be able to shop for gas that is marketed on a level playing field for all market participants.

Executive Summary

The purpose of this proposed rulemaking order is to remove barriers to retail competition in the market for natural gas supplies in this Commonwealth. To facilitate the completion of our responsibility under the Natural Gas Choice and Competition Act (Competition Act), 66 Pa.C.S. §§ 2201—2212, the Commission is undertaking this rulemaking proceeding. Section 2204(g) of the Competition Act required the Commission to investigate as to whether there is “effective competition for natural gas supply” 5 years after passage of the Competition Act. If the Commission found there is no effective competition, the Competition Act required it to explore avenues for encouraging increased competition in the Commonwealth. Having found that there is no effective competition in the Commonwealth, the Commission is initiating three different rulemaking proceedings to encourage competition.

This rulemaking addresses issues pertaining to natural gas distribution companies (NGDCs). It does this by requiring NGDCs to remove the effect of certain costs from base rates and to record them as if they were recovered through fuel acquisition costs so that there will be a more accurate price to compare for shoppers. Moreover, the proposed regulations require that NGDCs record and report gas supply costs on a monthly basis so as to provide consumers with more accurate price signals. Rules for programs by which NGDCs purchase the accounts receivables of electric generation suppliers are also included as are rules requiring that the release of interstate pipeline capacity held by NGDCs be nondiscriminatory and at the applicable pipeline rate. NGDCs are also given the opportunity to recover their incremental costs of implementing these rules as well as a direct recovery of the Commissions annual assessments from customers.

The contact persons for this proposed rulemaking are Assistant Counsel Lawrence F. Barth, Law Bureau (717) 772-8579, lbarth@state.pa.us (legal) and Richard Wallace, Bureau of Audits, (717) 787-7236, riwallace@state.pa.us (technical).

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

Natural Gas Distribution Companies and the Promotion of Competitive Retail Markets; Doc. No. L-2008-2069114

Proposed Rulemaking Order

By the Commission:

The Competition Act was enacted by the Legislature in 1999 with the purpose of restructuring the natural gas industry to allow the retail sale of natural gas in an open market. Based upon our experience to date, we are initiating a rulemaking proceeding to adopt regulations governing the relationships between NGDCs and the Natural Gas Suppliers (NGSs) which sell, or seek to sell natural gas to end users on the NGDC distribution systems. We initiated this rulemaking to comply with the Legislature’s directive, explained below, and to ensure that consumers of natural gas will be able to shop for gas that is marketed on a level playing field for all market participants.

The Competition Act allows individual customers to choose from independent suppliers of gas which are not necessarily affiliated with the local gas utility. Additionally, the Competition Act in section 2204(g), required the Pennsylvania Public Utility Commission (Commission) to initiate a look-back appraisal of how retail competition is progressing after passage of the Competition Act. This investigation was to include participation of all interested parties so that a thorough examination of retail competition might be completed. *Id.*

In October 2006, we issued our *Report to the General Assembly on Pennsylvania’s Retail Natural Gas Supply Market (Report to the General Assembly)*,¹ in which we determined that effective competition did not exist in Pennsylvania’s retail natural gas market. If the Commission found that “effective competition” did not exist, it was to reconvene the stakeholders in the natural gas industry to “explore avenues . . . for encouraging increased competition in this Commonwealth.” *Id.* As the Report to the General Assembly noted:

Based on the factors we have adopted to consider whether “effective competition” exists for purposes of Section 2204(g), these findings support the ultimate conclusion that there is a lack of “effective competition” in Pennsylvania’s retail natural gas supply market at this time.

Report to the General Assembly at 67. We, therefore, convened the Natural Gas Stakeholders Group to explore avenues for increasing competition.

The work and report of that stakeholders’ working group is detailed in our Final Order and Action Plan² (*Action Plan*) issued in September 2008. We concluded that there were a number of steps which we could take to help promote the development of competition in the retail markets for natural gas supply in the Commonwealth. There were three areas in which we believed it was

¹ *The Report to the General Assembly* was released in October 2006 at Docket No. L-00040103 and may be accessed at <http://www.puc.state.pa.us/PeDocs/570097.pdf>.

² *Investigation into the Natural Gas Supply Market: Report on Stakeholders’ Working Group (SEARCH); Action Plan for Increasing Effective Competition in Pennsylvania’s Retail Natural Gas Supply Services Market*, Docket No. L-00040103F0002, Final Order and Action Plan entered September 11, 2008.

appropriate to commence rulemakings to adopt regulations which were consistent with the goal of nurturing a robust retail market for natural gas. *Action Plan* at 7.

Today we address the first of those areas, that relating to NGDCs and their relation to the retail supply market. *Action Plan* at 13-23. There are five issues which address the duties, rights and obligations of NGDCs. They are set forth in Annex A and discussed immediately as follows.

1. Reformulation of the Price to Compare

The Price to Compare (PTC) lies at the heart of retail choice. It is the means by which consumers can judge whether the price offered by an NGS is more or less than the default service rate. We have found that there are two obstacles to market entry, originally identified by suppliers, which impede the growth of the market:

The first barrier involved the costs that are incurred in the acquisition of natural gas supply, but that were excluded from the NGDC's PTC. Because the NGDC's PTC does not include all of the costs of gas supply acquisition, the PTC may present an artificially low price, making it difficult for the NGSs to compete against the NGDCs for customers. *Report to the General Assembly*, p. 60.

The second barrier identified by suppliers was the quarterly adjustment of the PTC pursuant to Section 1307(f). 66 Pa.C.S. § 1307(f). This adjustment creates a lag in recognizing increased gas costs so that consumers are confused as to the actual cost of the natural gas over time, and are lulled into thinking that the PTC is an annual fixed rate. In actuality, the NGDC's PTC represents a variable price with quarterly true-ups. *Report to the General Assembly*, p. 61.

Action Plan at 14.

The proposed regulation in § 62.223 is intended to remove the effect of those natural gas procurement costs now included in NGDC base rates which mask and understate the true cost of the commodity. Eventually, as NGDCs file base rate proceedings under 66 Pa.C.S. § 1308(d), these procurement costs will permanently be removed from base rates. The purpose of this regulation is to make the PTC rate reflect the same type of commodity costs which are incurred and charged to their customers by the NGSs. The more commonality between the elements of the NGDC and NGS natural gas supply costs, the easier it will be for consumers to compare prices and make choices among those offers of natural gas for sale. As much as possible that comparison should be one of apples to apples. This change should help make that so.

Generally, purchase gas cost (PGC) expenses include the cost of the natural gas itself as well as everything spent to get the gas through the interstate pipeline system to the city gate:

[T]he terms "natural gas costs" and "gas costs" include the direct costs paid by a natural gas distribution company for the purchase and the delivery of natural gas to its system in order to supply its customers. Such costs may include costs paid under agreements to purchase natural gas from sellers; costs paid for transporting natural gas to its system; costs paid for natural gas storage service from others, including the costs of injecting and withdrawing natural gas from storage; all charges, fees, taxes and rates paid in connection with such purchases, pipeline gathering, storage and transportation; and costs paid for employing futures, options and other risk

management tools. "Natural gas" and "gas" include natural gas, liquified natural gas, synthetic natural gas and any natural gas substitutes.

66 Pa.C.S. § 1307(h). However, there are elements of gas procurement expense which remain in base rates. We are not going to specify every individual cost which should be removed from base rates. Differences in operations and nomenclature would make such a task unwieldy and risk missing some costs because the specific name was not included. However, it should be obvious that this will apply to all fuel procurement-related costs. This includes, for example, operation and maintenance expense, any procurement-related investment costs, and payroll costs for employees involved in supply acquisition.

By creating the net gas procurement adjustment tariff rider to recognize the amount of procurement costs currently in base rates and moving the impact of these costs along with the PGC costs to the PTC, there will be a more valid comparison between NGDC and NGS rates and, therefore, an accurate PTC. We believe these can be adjusted annually within the context of the section 1307(f) process. Nonetheless, we recognize that these proceedings may require more time, at least initially. Therefore, we will direct that it be filed contemporaneously with the NGDC's section 1307(f) filing, but docketed separately. The two cases may be consolidated for litigation purposes, but the 1307(f) rate, which must be implemented based upon a firm schedule, can go into effect when scheduled without waiting for the conclusion of the determination of the tariff rider.

We shall also require NGDCs to adjust their PGC gas cost monthly, instead of quarterly. We have noted that under the present approach the NGDC gas price does not reflect actual market fluctuations which may be due to changes in weather, the seasons and other factors. *Action Plan* at 16. As a result, it operates as an impediment to making valid comparisons between offers from NGSs and NGDCs. For the PTC to become a meaningful price indicator, it must be adjusted on a timely basis. Monthly adjustments should accomplish this. Therefore, we will suspend and waive the requirement in 52 Pa. Code § 53.64(i)(5) that the PGC be adjusted quarterly and require that it be adjusted on a monthly basis.

This waiver shall be effective for a period of 3 years from the date each NGDC files rates in its first proceeding under 66 Pa.C.S. § 1307(f) after this rule becomes effective. Two years after the rule becomes effective, the Commission shall conduct a review of the retail markets in order to gauge the success of the waiver. This will also allow time to take appropriate action based upon the results of that review before the waiver expires.

2. Purchase of Receivables

NGS commentators have stated that the use of purchase of receivables (POR) "programs can promote efficiencies, reduce costs to consumers and reduce barriers to market entry by alternative natural gas suppliers." *Action Plan* at 17. Some Pennsylvania utilities have POR programs now.³ Moreover, we have recently adopted interim guidelines for voluntary POR programs.⁴ The guidelines were drafted to be consistent with the law and the Commission's policy to promote the use of POR programs to increase supplier participation in the retail natural gas supply market.

³ Columbia Gas of Pennsylvania, PECO Energy Company and Duquesne Light Company.

⁴ *Establishment of Interim Guidelines for Purchase of Receivables (POR) Programs*, Docket Nos. Docket No. M-2008-2068982 and I-00040103F0002, Order entered December 19, 2008.

We are now proposing a regulation in § 62.224 to make permanent rules for the establishment of POR programs. We have substantially adopted the interim guidelines with a few modifications. The programs appear to have worked well for those utilities that are using them now and we are aware it will be some time before these rules reach final approval. As new programs come on line through the guidelines the industry will gain new experience. If need be, we can modify these proposed rules as we find appropriate.

Under the rules, we will require the NGDCs and NGSs to negotiate the parameters of any discount arrangements. We are not going to impose such strictures at this time. Additionally, we will allow NGDCs which agree to share their gains or losses with their customers to include losses, after an appropriate period of time, as part of their uncollectible expense when they next file a base rate case. In the *Action Plan* order, we recognized that POR programs can be beneficial for NGSs and their customers. *Action Plan* at 11-13. The efficiencies created by such programs can be helpful for NGDCs too. Moreover, we are proposing to allow NGDCs to share losses and gains from these programs with their customers. This will make the benefits of the POR programs evident to all participants.

In a departure from the interim guidelines, we will not require NGSs participating in POR programs to use only NGDC consolidated billing services. By forcing NGSs to use the utility's billing system we forbid them to build other nonsupply value added services into the billing program. This could have the effect of stifling innovative products such as demand response, efficiency or green products. Moreover, we are not convinced that more advanced supply products can be billed through existing NGDC billing systems. If that is so, it could stifle innovative supply products.

3. Mandatory Capacity Assignment

We have noted in our *Action Plan* that it might be helpful to the development of the retail markets if the ability of NGDCs to control their capacity on interstate natural gas pipelines were not as strong. *Action Plan* at 18-20. We also were aware that such a change would require a change in the existing law found at 66 Pa.C.S. § 2204(d)—(f). *Id.* Until such a change is made, we have decided to formalize our regulations in harmony with the existing law in order to give both NGDCs and NGSs some guidance and to ensure that requirements that the release, assignment or transfer of capacity by a NGDC shall be on a nondiscriminatory basis and shall be at the applicable contract rate for such capacity. This regulation will be found in § 62.225.

4. NGDC Costs of Competition Related Activities

In our *Action Plan*, we concluded that the NGDCs "should be able to recover *reasonable* costs that are *prudently* incurred in connection with the implementation of any changes designed to promote the development of effective competition in the retail market." *Action Plan* at 21. Such costs also include expenses associated with increasing customer participation in the market such as modifications to NGDC billing systems or increased consumer education activities. *Id.* We determined that we would allow NGDCs to recover these costs through a surcharge with an automatic adjustment mechanism. We are proposing such a mechanism today in § 62.226. However, we note that to the extent it helps promote competition, the surcharge for competition related activities benefits all customers and, therefore, it should be paid by all customers, shoppers and non-shoppers alike.

Because of that, this surcharge should not be considered in the calculation of the price to compare.

5. Regulatory Assessments

We are also creating a surcharge (§ 62.227) to allow NGDCs to recover the cost of their annual regulatory assessments to fund the Commission, Office of Consumer Advocate and Office of Small Business Advocate. *See*, 66 Pa.C.S. § 510, 71 P.S. § 309-4 and 73 P.S. § 399.46. The surcharge would be calculated and adjusted annually. This is similar to how NGDCs recover the state taxes they pay each year. Insofar as the costs of the annual assessments have been collected in base rates in the past, we are directing that the effect of those costs be removed from base rates until such time as the NGDC again files a rate case under 66 Pa.C.S. § 1308(d).⁵

Insofar as all customers have paid these costs in the past, all customers should continue to pay them through the new surcharge. Therefore, it is to be applied to shoppers, non-shoppers and all classes of customers alike. Because of that, this surcharge should not be considered in the calculation of the price to compare.

As we stated in the *Action Plan*:

The Commission is very much aware of consumer concerns about a company's recovery of costs outside of a base rate case. However, the establishment of a surcharge with an automatic adjustment clause that allows for the timely recovery of regulatory assessments which will include costs of the Commission actions to promote and facilitate natural gas competition can be a fair and efficient means to recover costs from stakeholders.

Action Plan at 23.

Accordingly, under section 501 of the Public Utility Code, 66 Pa.C.S. § 501, and the Commonwealth Documents Law, Act of July 31, 1968, P.L. 769, *as amended*, 45 P.S. §§ 1201, *et seq.*, and regulations promulgated thereunder at 1 Pa. Code §§ 7.1—7.4, we propose to add the regulations in §§ 62.221—62.227 as noted previously and as set forth in Annex A; *Therefore*,

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on June 26, 2009, the Commission submitted a copy of this proposed rulemaking to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the House and Senate Committees (Committees). In addition to submitting the proposed rulemaking, the Commission provided IRRC and the Committees with a copy of a detailed Regulatory Analysis Form prepared by the Commission. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, if IRRC has objections to any portion of the proposed rulemaking, it will notify the Commonwealth within 30 days of the close of the public comment period. The notification shall specify the regulatory review criteria that has not been met by the portion of the proposed rulemaking to which an objection is made. The Regulatory Review Act specified detailed procedures for review, prior to final publication of the amendments, by the Commission, the General Assembly and the Governor of objections raised.

It Is Ordered That:

1. The proposed rulemaking at the previous-captioned docket will consider the regulations set forth in Annex A.

⁵ We are making such a requirement for all costs which had been embed in base rates, but will now be collected through a surcharge mechanism as a result of this order.

2. The Secretary shall submit this order and Annex A to the Office of Attorney General for review as to form and legality and to the Governor's Budget Office for review of fiscal impact.

3. The Secretary shall submit this order and Annex A for review and comment to IRRC Review Commission and Legislative Standing Committees.

4. The Secretary shall certify this order and Annex A, and deposit them with the Legislative Reference Bureau to be published in the *Pennsylvania Bulletin*.

5. An original and 15 copies of any comments referencing the docket number of the proposed regulations be submitted within 45 days of publication in the *Pennsylvania Bulletin* to the Pennsylvania Public Utility Commission, Attn: Secretary, P. O. Box 3265, Harrisburg, PA 17105-3265.

6. A copy of this order and Annex A shall be served upon the Energy Association of Pennsylvania, all jurisdictional natural gas utilities, the Office of Trial Staff, the Office of Consumer Advocate and the Office of Small Business Advocate.

By the Commission

JAMES J. MCNULTY,
Secretary

Statement of Chairperson Cawley

The *Natural Gas Choice and Competition Act*, 66 Pa.C.S. §§ 2201—2212 (Competition Act), was enacted by the Legislature in 1999 with the purpose of restructuring the natural gas industry to allow the retail sale of natural gas in an open market. Based upon our experience to date, this Commission is initiating a rulemaking proceeding to adopt regulations governing the relationships between Natural Gas Distribution Companies (NGDCs) and the Natural Gas Suppliers (NGSs) which sell, or seek to sell, natural gas to end users on the NGDCs' distribution systems. This rulemaking is being initiated to comply with the Legislature's directive to ensure that consumers of natural gas will be able to shop for gas that is marketed on a level playing field for all market participants.

As part of this rulemaking, we are advancing some relatively broad provisions with regard to capacity release. Being very broad, these regulations may not be sufficiently specific to address every alleged inequity in the allocation of upstream transportation and storage capacity and the costs of this capacity assigned to NGSs that assume the firm service obligations of their retail customers. For this reason, I strongly encourage NGSs that regard existing release capacity provisions in NGDC tariffs as a barrier to retail natural gas competition: (1) to provide specific examples of these barriers in the Pennsylvania retail market; and (2) to suggest alternative regulatory language (to that set forth in Annex A to the Commission's Order) that would resolve these barriers within the bounds of existing legislation, and that would reasonably accommodate the operational constraints of NGDCs.

JAMES H. CAWLEY,
Chairperson

Statement of Vice Chairperson Tyrone J. Christy

Before the Commission for consideration is the initiation of a proposed rulemaking proceeding to promulgate regulations that are designed to encourage increased natural gas supply competition among our jurisdictional Natural Gas Distribution Companies (NGDCs) and li-

censed Natural Gas Suppliers (NGSs). The genesis of this rulemaking is the Commission's *Report to the General Assembly on Pennsylvania's Retail Natural Gas Supply Market* that was released in October 2005. In that report, the Commission determined that effective competition did not exist in Pennsylvania's retail natural gas market, and reconvened the stakeholders in the natural gas industry to identify existing barriers to competition. In our SEARCH Final Order and Action Plan issued on September 11, 2008, the Commission identified several initiatives to eliminate these barriers to competition. The rulemaking before us today, which addresses five specific issues regarding the NGDCs, is the first of these pre-identified initiatives.

I have some specific concerns with certain aspects of this proposed rulemaking that I request parties to consider addressing in their comments, which are due within 45 days of publication in the *Pennsylvania Bulletin*. First, with regard to the Price to Compare, the proposed rulemaking intends to remove natural gas procurement related costs from NGDC base rates and include them within the Price to Compare. The amount of these embedded gas procurement costs would be determined in individual NGDC proceedings held in conjunction with the first purchased gas cost proceeding after the regulations become final. At this time, the Commission is not attempting to identify every individual gas cost that should be removed from base rates. These costs likely will vary from NGDC to NGDC and it may be difficult to reach consensus on this issue. Also, if these costs are not avoidable and are included within the Price to Compare, then they may not be recovered by the NGDCs, potentially resulting in stranded costs. Under this scenario, consumers of the NGDCs who choose not to shop will be paying higher costs to support those customers who do choose to shop.

Furthermore, once the amount of these costs are identified and included within the Price to Compare, the proposed regulations require NGDCs to adjust their Price to Compare on a monthly basis, instead of quarterly. The alleged purpose of the monthly adjustment requirement is that the present approach does not reflect actual market prices and does not allow for meaningful price comparisons between offers from NGSs and the NGDC Price to Compare.

I am inclined to disagree with the proposed requirement to implement monthly NGDC pricing as I question whether it is sound public policy to make SOLR service volatile or "ugly" simply to encourage fixed price offers from competitive natural gas suppliers. I believe that the existing quarterly adjustment process represents a fair compromise between annual and monthly adjustments and should be retained. This allows natural gas consumers to have some period of stability in their gas costs.

However, I have an overriding concern regarding the entire Price to Compare concept, whether it will be adjusted quarterly or monthly. Today, when natural gas customers decide to switch to an alternative supplier, many of these customers have no idea if the offered price will continue to be more attractive than the NGDC's Price to Compare. Simply providing the currently effective Price to Compare does not allow consumers to make informed decisions when considering offers from competitive suppliers. More information is necessary, especially if natural gas customers are exposed to NGS proposals

which require a long term commitment. Consumers need to be provided projected natural gas price forecasts to make informed, educated choices. I request that commenters address whether the Commission should develop a monthly projection of natural gas prices for the ensuing twelve months based upon the best available market information. This information could be posted on our web site and the Commission could require each NGDC to provide this information to its customers on a regular basis. Without this type of information being readily available, consumers will be unaware if the choice they are making today will continue to be the right choice two, four or six months down the road.

Natural gas consumers need to be informed as much as possible in order to make reasoned decisions if the competitive gas market is to succeed. In my opinion, the development of gas price forecasts will help reduce the number of cases where marketers take advantage of uninformed consumers with price offers that in reality cost consumers more than if they simply not had shopped. These gas price forecasts are readily available and should be made available to all natural gas customers.

Another area of concern is the currently effective migration riders, which are not made easily available to consumers. Again, without the knowledge of what it will cost a customer to switch to an alternative supplier, that customer is literally gambling as to what decision to make.

Therefore, I request that commentators address my proposal, or offer other proposals that would better educate and inform Pennsylvania consumers. Because of my disagreement with the proposed monthly adjustments, I will concur in the result only of this proceeding for the purpose of seeking comments from interested parties.

TYRONE J. CHRISTY,
Vice Chairperson

Fiscal Note: 57-269. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 52. PUBLIC UTILITIES

PART I. PUBLIC UTILITY COMMISSION

Subpart C. FIXED SERVICE UTILITIES

CHAPTER 62. NATURAL GAS SUPPLY CUSTOMER CHOICE

Subchapter G. NATURAL GAS DISTRIBUTION COMPANIES AND COMPETITION

§ 62.221. Purpose.

To foster a competitive retail marketplace for natural gas service to residential and small commercial customers, it is essential that consumers be able to compare the price of gas purchased from their incumbent NGDCs with that offered for sale by NGSs. This subchapter sets forth a number of regulatory changes which will provide a more level playing field between NGDCs and NGSs and, therefore, promote competition for natural gas supplies.

§ 62.222. Definitions.

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

Act—66 Pa.C.S. §§ 2201—2212 (relating to Natural Gas Choice and Competition Act).

GPC—*Gas procurement charge*—A mechanism by which the effect of natural gas procurement costs removed from an NGDC’s base rates are recovered.

GPRR—*Gas procurement reduction rate*—An equal off-setting credit to the GPC, billed to all residential and small commercial customers.

NGDC—*Natural gas distribution company*—As defined in section 2202 of the act (relating to definitions).

NGPA—*Net gas procurement adjustment*—A tariff rider designed to create a rate neutral adjustment to currently existing base rates and the PGC rate to develop a reasonable PTC by shifting SOLR costs related to procurement from the base rate cost of distribution to the PTC.

NGS—*Natural gas supplier*—As defined in section 2202 of the act.

Natural gas supply service—The provision of natural gas to end users as defined in § 62.72 (relating to definitions).

PGC—*Purchase gas cost*—Natural gas costs which are collected, with adjustments, by NGDCs from their customers under 66 Pa.C.S. § 1307(f) (relating to sliding scale of rates; adjustments).

POR—*Purchase of receivables*—Program by which an NGDC purchases the accounts receivable of NGSs.

PTC—*Price to compare*—A line item that appears on a retail customer’s monthly bill for SOLR service. The PTC is equal to the sum of all unbundled natural gas costs and natural gas procurement costs-related charges to a default service customer for that month of service.

SOLR—*Supplier of last resort*—A supplier approved by the Commission under section 2207(a) of the act (relating to obligation to serve) to provide natural gas supply services to customers who:

- (i) Contracted for natural gas that was not delivered.
- (ii) Did not select an alternative NGS.
- (iii) Are not eligible to obtain competitive natural gas supply.
- (iv) Return to the supplier of last resort after having obtained competitive natural gas supply.

Small business customer—As defined in § 62.72.

§ 62.223. PTC.

(a) An NGDC shall establish a GPC. The GPC shall be added to the cost of supply rate developed under 66 Pa.C.S. § 1307(f) (relating to sliding scale of rates; adjustments) to create a comparable PTC. The GPC shall be adjusted and reconciled annually in conjunction with the § 1307(f) process to become effective with new PGC rates.

(b) An NGDC shall remove all natural gas procurement costs from its base rates as part of its next filing under 66 Pa.C.S. § 1308(d) (relating to voluntary changes in rates). The expenses shall be recovered through a separate GPC surcharge. The NGDC shall include a proposed tariff rider to establish a GPC within the requirements of 66 Pa.C.S. § 1307 (relating to sliding scale of rates; adjustments).

(c) An NGDC, in its next purchased gas cost filing under 66 Pa.C.S. § 1307(f), shall submit a proposed tariff rider to establish a NGPA within the requirements of 66 Pa.C.S. § 1307.

(d) The NGPA shall be designed to create a rate neutral adjustment to currently existing base rates and

the PGC rate to develop a reasonable PTC by shifting SOLR costs related to procurement from the base rate cost of distribution to the PTC.

(e) The proposed NGPA tariff rider shall establish a GPC on a per MCF/DTH basis to be applied to customers' bills receiving SOLR service for the recovery of gas procurement costs currently recovered through base rates, and a GPRR on a per MCF/DTH basis, as an equal offsetting credit to the GPC, billed to all residential and small commercial customers.

(f) The GPC and NGPA riders must identify:

- (1) How the surcharge will be calculated.
- (2) Which costs will be recovered through the surcharge by:
 - (i) Customer class and cost category
 - (ii) Federal Energy Regulatory Commission account number including the specific sub-accounts used to recover eligible procurement costs.

(g) The NGPA rider shall remain in effect until establishment of new base rates and a PGC rider following a base rate proceeding under 66 Pa.C.S. § 1308(d).

(h) The GPC shall be adjusted monthly.

(i) The GPC shall be subject to audit.

(j) An NGDC shall adjust its PGC monthly.

§ 62.224. POR programs.

(a) *Program design.*

(1) An NGDC may purchase accounts receivable from licensed NGSs which operate on the NGDC system and who wish to sell the receivables.

(2) An NGDC may purchase receivables associated with natural gas supply service charges and may not purchase other receivables that may be incurred by NGSs. The NGS shall certify that charges do not include receivables for any other products or services.

(3) An NGDC may voluntarily purchase NGS accounts receivable at a discount to recover incremental costs associated with POR program development, implementation and administration.

(4) When an NGDC chooses to purchase accounts receivable at a discount, it shall negotiate the discount rate with the NGS on its distribution system.

(i) It shall give fair notice to the NGSs of the time and place of negotiation.

(ii) It shall apply the same discount rate to all accounts receivable it purchases on its system.

(iii) It shall renegotiate the discount rate not less than once every 5 years.

(5) POR programs must include only receivables on residential and small business customer accounts.

(6) When an NGDC purchases accounts receivable from an NGS through a Commission-approved POR program and the accounts receivable are comprised only of charges for basic natural gas supply, the NGDC may terminate service to customers for failure to pay NGS supply charges.

(7) To ensure that an NGDC's affiliated suppliers do not receive an advantage over nonaffiliated suppliers, a POR program shall be designed and implemented in accordance with §§ 62.141 and 62.142 (relating to standards of conduct).

(8) An NGDC POR program shall be included in a supplier coordination tariff, as defined by Commission rules, regulations and orders, and approved by the Commission prior to implementation.

(9) An NGDC may include the difference between its cost of the purchased receivables and the amounts it has actually collected as part of its uncollectible expense in its next base rate case when it agrees to share with its customers the losses or gains associated with POR program collections.

(10) The NGDC shall track its POR program purchases and collections.

(b) *Customer care.*

(1) An NGS shall follow Commission regulations relating to customer service including Chapter 56 (relating to standards and billing standards), §§ 62.71—62.80 (relating to customer information disclosure) and § 62.114 (relating to standards of conduct and disclosure for licensees).

(2) An NGS shall respond to customer complaints regarding rate disputes in not more than 30 days consistent with §§ 56.141, 56.151 and 62.79 (relating to dispute procedures; general rule; and complaint handling process).

(3) An NGDC shall follow 66 Pa.C.S. Chapter 14 (relating to responsible utility customer protection) and Chapter 56 when terminating service to a customer for failure to pay NGS natural gas supply charges purchased under the POR program.

(4) Reconnection of service to NGS customers following termination shall be made in accordance with 66 Pa.C.S. Chapter 14 and applicable regulations in Chapter 56.

(5) An NGDC shall agree to inform all customers that service may be terminated for failure to pay NGS supply charges by a separate bill insert that specifically describes the policy for termination of service.

(6) An enrollment letter issued by an NGDC at the time of selection of the NGS must inform customers that service may be terminated for failure to pay NGS supply charges.

(c) *Satisfaction of the security requirements for licensing.* An NGS's accounts receivable may be used to satisfy in full or in part the security required for licensing as a natural gas supplier.

§ 62.225. Release, assignment or transfer of capacity.

(a) An NGDC holding contracts for firm storage or transportation capacity, including gas supply contracts with Commonwealth producers, or a city natural gas distribution operation, may release, assign or transfer the capacity or Commonwealth supply, in whole or in part, associated with those contracts to licensed NGSs or large commercial or industrial customers on its system.

(1) A release, assignment or transfer shall be made on a nondiscriminatory basis.

(2) A release, assignment or transfer shall be at the applicable contract rate for capacity or Pennsylvania supply and be subject to applicable contractual arrangements and tariffs.

(3) The amount released, assigned or transferred shall be sufficient to serve the level of the customers' requirements for which the NGDC has procured the capacity determined in accordance with the NGDC's tariff or procedures approved in its restructuring proceedings.

§ 62.226. NGDC costs of competition related activities.

(a) As part of its next annual filing under 66 Pa.C.S. § 1307(f) (relating to sliding scale of rates; adjustments), an NGDC may include a proposed tariff rider to establish a nonbypassable reconcilable surcharge filed within the requirements of 66 Pa.C.S. § 1307 designed to recover the reasonable and prudently incurred costs of implementing and promoting natural gas competition within this Commonwealth.

(b) The surcharge shall be calculated annually and adjusted to account for past over- or under-collections in conjunction with the § 1307(f) process to become effective with new PGC rates.

(c) The surcharge shall be recovered on a per unit basis on each unit of commodity which is sold or transported over its distribution system without regard to the customer class of the end user.

(d) Before instituting the surcharge, an NGDC shall remove the amounts attributable to promoting retail competition from its base rates. This may be done through a 66 Pa.C.S. § 1308 (relating to voluntary changes in rates) rate case filed at least 5 years after first seeking recovery through a 66 Pa.C.S. § 1307 nonbypassable mechanism.

(e) Until an NGDC which seeks a nonbypassable recovery of its costs of promoting retail competition files a base rate case under 66 Pa.C.S. § 1308(d), the NGDC shall eliminate the effect of recovery of these costs in base rates though the filing of a credit to its base rates equal to the amount in base rates. This may be established through the filing of a fully allocated cost of service study and a proposed tariff rider in the NGDC's proceeding under 66 Pa.C.S. § 1307(f) to establish a revenue neutral adjustment clause to credit base rates for the costs associated with promoting retail competition that are currently reflected in base rates and to recover fully those costs through a nonbypassable reconcilable surcharge. The credit and surcharge shall be adjusted at least annually through the 66 Pa.C.S. § 1307(f) process.

(f) The revenue neutral adjustment clause rider shall remain in effect until establishment of new base rates under 66 Pa.C.S. § 1308(d) which include a fully allocated cost of service study to remove these costs from base rates.

(g) The surcharge shall be subject to audit.

§ 62.227. Regulatory assessments.

(a) As part of its next annual filing under 66 Pa.C.S. § 1307(f) (relating to sliding scale of rates; adjustments), an NGDC shall include a proposed tariff rider to establish a nonbypassable reconcilable surcharge filed within the requirements of 66 Pa.C.S. § 1307 designed to recover the NGDC regulatory assessment payments made under to 66 Pa.C.S. § 510 (relating to assessment for regulatory expenses upon public utilities).

(b) The surcharge shall be calculated annually and include costs associated with regulatory assessments for the Commission in 66 Pa.C.S. § 510, the Office of Consumer Advocate under section 904-A.1 of The Administrative Code of 1929 (71 P.S. § 309-4.1) regarding assessment upon public utilities, disposition, appropriation and disbursement of the assessments, and the Office of Small Business Advocate under section 6 of the Small Business Advocate Act (73 P.S. § 399.46) regarding assessment upon public utilities; disposition, appropriation and dis-

bursement of the assessments. The NGDC shall include the following in its annual filing:

(1) Copies of its most recent annual bills for the Commission for each assessment.

(2) Copies of adjusted bills or refunds received since its prior filing.

(3) Proof of payment of each bill.

(c) The surcharge shall be recovered on a per unit basis on each unit of commodity which is sold or transported over its distribution system without regard to the customer class of the end user.

(d) The surcharge shall be adjusted annually to account for past over- or under-collections in conjunction with the § 1307(f) process to become effective with new PGC rates.

(e) Before instituting the surcharge, an NGDC shall remove the amounts attributable to the regulatory assessments from its base rates. This may be done through a 66 Pa.C.S. § 1308 (relating to voluntary changes in rates) rate case filed at least 5 years after first seeking recovery through a 66 Pa.C.S. § 1307 nonbypassable mechanism.

(f) Until an NGDC which seeks a nonbypassable recovery of its regulatory assessments files a base rate case under 66 Pa.C.S. § 1308(d), the NGDC shall eliminate the effect of recovery of assessment payments in base rates though the filing of a credit to its base rates equal to the amount of assessment costs in base rates. This may be established through a fully allocated cost of service study and a proposed tariff rider in the NGDC's next proceeding under 66 Pa.C.S. § 1307(f) to establish a revenue neutral adjustment clause to credit base rates for the assessment costs reflected in rates and to recover fully those assessment costs through a nonbypassable reconcilable surcharge. The credit and surcharge shall be adjusted at least annually through the 66 Pa.C.S. § 1307(f) process.

(g) The revenue neutral adjustment clause rider shall remain in effect until establishment of new base rates under 66 Pa.C.S. § 1308(d) which include a fully allocated cost of service study to remove these costs from base rates.

(h) The surcharge shall be subject to audit.

[Pa.B. Doc. No. 09-1223. Filed for public inspection July 10, 2009, 9:00 a.m.]

SUSQUEHANNA RIVER BASIN COMMISSION

[25 PA. CODE CHS. 806 AND 808]

Amendments to Project Review Regulations

Summary: This document contains proposed rules that would amend project review regulations to include provisions specifically requiring Susquehanna River Basin Commission (Commission) approval of projects undergoing Federal Energy Regulatory Commission (FERC) and Nuclear Regulatory Commission (NRC) licensing actions that affect the basin's water resources; restricting the use of docket reopening petitions to avoid abuses of process; amending the "Approval by Rule" (ABR) process to standardize ABR notice procedures and allow for project sponsors to utilize approved water sources at approved

drilling pad sites without the need for modification of the ABR; clarifying that the public hearing requirement for rulemaking shall be applicable to the proposed rule-making stage of that process; and further providing for the time period within which administrative appeals must be filed.

Dates: Comments on these proposed rules may be submitted to the Commission on or before August 15, 2009. The Commission has scheduled two public hearings on the proposed rules, to be held August 4, 2009, in Harrisburg, PA, and August 5, 2009, in Elmira, NY. The locations of the public hearings are listed in the addresses section of this document. Additionally, individuals wishing to testify are asked to notify the Commission in advance, if possible, at the regular or electronic addresses given.

Addresses: Comments may be mailed to Richard A. Cairo, Susquehanna River Basin Commission, 1721 North Front Street, Harrisburg, PA 17102-2391 or email to rcairo@srbc.net.

The public hearings will be held on Tuesday, August 4, 2009, at 10 a.m., at the Rachel Carson State Office Building, 400 Market Street, Harrisburg, PA 17101, and Wednesday, August 5, 2009, at 7 p.m., at the Holiday Inn—Elmira Riverview, 760 East Water Street, Elmira, NY 14901. Those wishing to testify are asked to notify the Commission in advance, if possible, at the regular or electronic addresses given.

For Further Information Contact: Richard A. Cairo, General Counsel, (717) 238-0423, Ext. 306, fax (717) 238-2436, rcairo@srbc.net. Also, for further information on the proposed rulemaking, visit the Commission’s web site at www.srbc.net.

Supplementary information:

Background and Purpose of Amendments:

The Commission adopted final-form rulemaking on December 5, 2006, published at 71 FR 78570, December 29, 2006, establishing: (1) the scope and procedures for review and approval of projects under section 3.10 of the Susquehanna River Basin Compact, Pub. L. No. 91-575; 83 Stat. 1509 et seq. (the compact); (2) special standards under section 3.4(2) of the compact governing water withdrawals, consumptive use of water; diversions of the basin’s waters, water conservation and water use registration; and (3) procedures for hearings, administrative appeals, and enforcement actions.

18 CFR 806.4(a) contains broad authority for the review and approval of water resources projects by the Commission, including projects on or crossing the boundary between two member states, projects in a member state having a significant effect on the water resources in another member state, and projects affecting the Commission’s comprehensive plan. Nevertheless, there is no express provision in § 806.4 specifically requiring that projects affecting the water resources of the basin and undergoing licensing actions by the FERC or the NRC be approved by the Commission, although that is its current practice. To remove any uncertainty regarding the need for approval of such projects, the Commission proposes to insert language covering certain projects involved in FERC and NRC licensing procedures.

18 CFR 806.22(f), which was adopted by the Commission as a final rule on December 4, 2008, and published in the *Federal Register* on December 23, 2008, at p. 78618, provides an ABR procedure for consumptive use related to natural gas well development that is separate from the pre-existing ABR process for projects supplied by

public water systems, which is contained in 18 CFR 806.22(e). The Commission proposes to modify the public notice provisions related to both ABR provisions to make them consistent, and simplify the administration of the natural gas ABR procedure to allow project sponsors to utilize all approved sources at any approved drilling pad site without the need to register its own water source approvals or the need to modify each ABR issued for subsequently issued approvals. It also would allow for registration of other approved sources to allow for use at the project sponsor’s approved drilling pad sites.

18 CFR 806.32 allows for the reopening of a project approval upon the motion of the Commission, or upon application of the project sponsor or any interested party for the purpose of making additional orders that may be necessary to mitigate or avoid adverse impacts or otherwise protect the public health, safety and welfare or water resources. In two recent cases, interested parties whose § 808.2 administrative appeals were denied, then attempted to use § 806.32 to obtain administrative review of the same matter. The Commission believes that one administrative proceeding seeking relief on a particular issue is sufficient. Therefore the Commission proposes to amend § 806.32 to limit the filing of a petition to reopen where the matter has already been considered by the Commission in an administrative appeal proceeding under § 808.2.

18 CFR 808.1 sets forth the public hearing requirements for various commission actions, including rulemaking. It is the practice of the Commission to meet this public hearing requirement at the proposed rulemaking stage. However, the current regulation does not make this intent clear, referring only to “rulemaking.” To clarify the rule and make it consistent with the Commission’s current practice, new language is added to § 808.1(a)(2) and (c).

Finally, 18 CFR 808.2 9(a) specifies that an administrative appeal shall be filed within 30 days of the action or decision of the Commission or Executive Director. In the case of appeals of project approvals, however, the Commission believes that due process safeguards require that the appeal period run from the time constructive notice of the action is given by the Commission for aggrieved persons other than the project sponsor. Therefore, the Commission proposes to amend this provision to allow an appeal period of 30 days from the date a notice of a project approval appears in the *Federal Register*. For project sponsors, the 30 day appeal period would run from the date of receipt of actual notice.

List of subjects in 18 CFR Parts 806 and 808: Administrative practice and procedure, Water resources.

Accordingly, for the reasons set forth in the preamble, the Susquehanna River Basin Commission proposes to amend 18 CFR Parts 806 and 808 as follows:

PART 806—REVIEW AND APPROVAL OF PROJECTS

Subpart C—Standards for Review and Approval

1. The authority citation for Part 806 continues to read as follows:

Authority: Secs. 3.4, 3.5(5), 3.8, 3.10 and 15.2, Pub. L. No. 91-575, 84 Stat. 1509 et seq.

2. In § 806.4, revise paragraph (a) to read as follows:

§ 806.4—Projects requiring review and approval.

(a) * * *

* * * * *

(7) Any hydroelectric project regulated by the United States Federal Energy Regulatory Commission and initiating a licensing or license amendment process pursuant to 18 CFR Part 4 that may affect the water resources of the basin.

(8) Any nuclear power project regulated by the United States Nuclear Regulatory Commission and initiating a licensing, renewal, license amendment or license uprate process pursuant to 10 CFR Part 55 that may affect the water resources of the basin.

(9) Any other project so determined by the Commissioners or Executive Director pursuant to § 806.5 or 18 CFR part 801. Such project sponsors shall be notified in writing by the Executive Director.

* * * * *

2. In § 806.22, revise paragraphs (e) and (f) to read as follows:

§ 806.22—Standards for consumptive use of water.

* * * * *

(e) * * *

(1) * * *

(i) * * *

(B) Send a copy of the NOI to the appropriate agencies of the member state, and to each municipality and county in which the project is located. The project sponsor shall submit a copy of the United States Postal Service return receipt, or other proof of service acceptable to the Commission, for such notifications within 10 days of submittal of the NOL.

(ii) Within 10 days after submittal of an NOI under paragraph (e)(1)(i) of this section, the project sponsor shall submit to the Commission proof of publication in a newspaper of general circulation in the location of the project, a display ad notice of its intent to operate under an approval by rule, which contains a sufficient description of the project, its purpose, the proposed public water supply source(s), the requested consumptive use amount and its location. This notice shall also contain the address, electronic mail address and telephone number of the Commission. The Commission may further prescribe the form and manner of such notice.

* * * * *

(f) * * *

(2) Notification of Intent: Prior to undertaking a project or increasing a previously approved quantity of consumptive use, the project sponsor shall submit a Notice of Intent (NOI) on forms prescribed by the Commission, and the appropriate fee, along with any required attachments. The project sponsor shall send a copy of the NOI to the appropriate agencies of the member state, and to each municipality and county in which the project is located. The project sponsor shall submit a copy of the United States Postal Service return receipt, or other proof of service acceptable to the Commission, for such notifications within 10 days of submittal of the NOI.

(3) Within 10 days after submittal of an NOI under paragraph (f)(2) of this section, the project sponsor shall submit to the Commission proof of publication in a newspaper of general circulation in the location of the project of a display ad notice of its intent to operate under an approval by rule, which contains a sufficient description of the project, its purpose, any new proposed water source(s), the requested consumptive use amount and its location. This notice shall also contain the address,

electronic mail address and telephone number of the Commission. The Commission may further prescribe the form and manner of such notice.

* * * * *

(11) A project sponsor issued an approval by rule pursuant to paragraph (f)(9) of this section may utilize any water source approved for use by the project sponsor for natural gas well development pursuant to § 806.4 or this section, at the applicable drilling pad site subject to any approval or authorization required by the member state to utilize such source(s).

(12) The following additional sources of water may be utilized by a project sponsor in conjunction with an approval by rule issued pursuant to paragraph (f)(9) of this section:

(i) Water withdrawals or diversions approved by the Commission pursuant to § 806.4 (a) and issued to persons other than the project sponsor, provided any such source is approved for use in natural gas well development, the project sponsor has an agreement for its use, and at least 10 days prior to use, the project sponsor registers such source with the Commission on a form and in a manner as prescribed by the Commission, and provides a copy of same to the appropriate agency of the member state.

(ii) Sources of water other than those subject to paragraph (f)(12)(i) of this section, including, but not limited to, public water supply, wastewater discharge or other reclaimed waters, provided such sources are first approved by the Executive Director pursuant to this section. Any request to utilize such source(s) shall be submitted on a form and in a manner as prescribed by the Commission, and shall be subject to review pursuant to the standards set forth in subpart C of this part. Any approval issued hereunder shall be further subject to any approval or authorization required by the member state to utilize such source(s). The notice requirements related to agencies of member states, municipalities and counties contained in paragraph (f)(2) of this section, and the notice requirements contained in paragraph (f)(3) of this section, shall likewise be applicable to any request submitted hereunder.

Subpart D—Terms and Conditions of Approval

3. In § 806.32, revise paragraph (a) to read as follows:

§ 806.32—Reopening/modification.

(a) Once a project is approved, the Commission, upon its own motion, or upon petition of the project sponsor or any interested party, may at any time reopen any project approval and make additional orders or otherwise modify or impose such additional conditions that may be necessary to mitigate or avoid adverse impacts or to otherwise protect the public health, safety, and welfare or water resources. Whenever a petition for reopening is filed by an interested party, the burden shall be upon that interested party to show, by a preponderance of the evidence, that a significant adverse impact or a threat to the public health, safety and welfare or water resources exists that warrants reopening of the docket. Notwithstanding the foregoing, any petition filed by a party who previously sought the same or similar relief identified in the petition pursuant to the administrative appeals process under § 808.2 will not be eligible for consideration by the Commission absent new facts not known or readily discernable at the time of consideration of the petitioner's previous request for administrative appeal filed pursuant to § 808.2.

* * * * *

PART 808—HEARINGS AND ENFORCEMENT ACTIONS

Subpart A—Conduct of Hearings

4. The authority citation for Part 808 continues to read as follows:

Authority: Secs. 3.4, 3.5(5), 3.8, 3.10 and 15.2, Pub. L. No. 91-575, 84 Stat. 1509 et seq.

5. In § 808.1, revise paragraphs (a) and (c) to read as follows:

§ 808.1—Public hearings.

(a) * * *

(2) Proposed rulemaking.

* * * * *

(c) Notice of public hearing. At least 20 days before any public hearing required by the compact, notices stating the date, time, place and purpose of the hearing including issues of interest to the Commission shall be published at least once in a newspaper of general circulation in the area affected. Occasions when public hearings are required by the compact include, but are not limited to, amendments to the comprehensive plan, drought emergency declarations, and review and approval of diversions. In all other cases, at least 10 days prior to the hearing, notice shall be posted at the office of the Commission (or on the Commission web site), mailed by first class mail to the parties who, to the Commission's knowledge, will participate in the hearing, and mailed by first class mail to persons, organizations and news media who have made requests to the Commission for notices of hearings or of a particular hearing. With regard to rulemaking, the Commission shall convene at least one public hearing on any proposed rulemaking it approves for public review and comment. For any such hearing(s), notices need only be forwarded to the directors of the *New York Register*, the *Pennsylvania Bulletin*, the *Maryland Register* and the *Federal Register*, and it is sufficient that this notice appear only in the *Federal Register* at least 20 days prior to the hearing and in each individual state publication at least 10 days prior to any hearing scheduled in that state.

6. In § 808.2, revise paragraph (a) to read as follows:
§ 808.2—Administrative appeals.

(a) A project sponsor or other person aggrieved by any action or decision of the Commission or Executive Director may file a written appeal requesting a hearing. Except with respect to project approvals or denials, such appeal shall be filed with the Commission within 30 days of the action or decision. In the case of a project approval or denial, such appeal shall be filed by a project sponsor within 30 days of receipt of actual notice, and by all others within 30 days of publication of notice of the action taken on the project in the *Federal Register*.

Dated: June 18, 2009.

PAUL O. SWARTZ,
Executive Director

Fiscal Note: 72-7. No fiscal impact; (8) recommends adoption.

Annex A

**TITLE 25. ENVIRONMENTAL PROTECTION
PART IV. SUSQUEHANNA RIVER BASIN
COMMISSION**

**CHAPTER 806. REVIEW AND APPROVAL OF
PROJECTS**

§ 806.1. Incorporation by reference.

The regulations and procedures for review of projects as set forth in 18 CFR Part 806 [(2007)] (2009) (relating to review and approval of projects) are incorporated by reference and made part of this title.

**CHAPTER 808. HEARINGS AND ENFORCEMENT
ACTIONS**

§ 808.1. Incorporation by reference.

The regulations and procedures for hearings/enforcement actions as set forth in 18 CFR Part 808 [(2007)] (2009) (relating to hearings and enforcement actions) are incorporated by reference and made part of this title.

[Pa.B. Doc. No. 09-1224. Filed for public inspection July 10, 2009, 9:00 a.m.]