

PROPOSED RULEMAKING

DEPARTMENT OF HEALTH

[28 PA. CODE CH. 6]

Drugs Which May Be Used By Qualified Optometrists

The Department of Health (Department) is proposing to amend Chapter 6 (relating to drugs which may be used by certain optometrists) by replacing the current list of drugs contained in that chapter with an updated list which may be used by certain optometrists under the stated conditions, to read as set forth in Annex A.

A. Statutory Authority

The definition of "examination and diagnosis" in section 2 of the Optometric Practice and Licensure Act (63 P. S. § 244.2) (act), permits optometrists to use pharmaceutical agents approved by the Department for certain diagnostic purposes. Amendments to the act's definition of "practice of optometry," effective in 1996, permit optometrists to administer and prescribe legend and nonlegend drugs as approved by the Secretary of Health (Secretary) for certain treatment purposes. See section 1 of the act of October 30, 1996 (P. L. 721, No. 130) (Act 130), amending 63 P. S. § 244.2. These regulations are proposed under these provisions and section 2102(g) of The Administrative Code of 1929 (71 P. S. § 532(g)), which grants the Department authority to promulgate regulations.

B. Purpose of the Regulations

The 1996 amendments to the act redefined the practice of optometry to permit the administration and prescription of legend and nonlegend drugs as approved by the Secretary for the treatment of certain areas of the visual system, and under certain conditions. These changes not only permitted the Secretary to expand the list of drugs which optometrists may use in the course of their practices, but granted the Secretary the authority to establish standards under which optometrists could administer or prescribe those drugs. After discussions with various interested parties, including the Pennsylvania Academy of Ophthalmology, the Pennsylvania Optometric Association, the Pennsylvania Medical Society, the Pennsylvania College of Optometrists, and other interested State agencies, the Department has developed a list of drugs which may be used by optometrists, as well as conditions that must be satisfied, including Department of State licensure and certification standards as required by Act 130. See 63 P. S. § 244.4a. The Department is proposing to amend Chapter 6, by restructuring § 6.1 (relating to approved drugs) to include these conditions and the newly developed list of approved drugs.

C. Summary of the Regulations

Chapter 6 contains a very limited list of drugs which optometrists may use, restricted to three types: local anesthetics, miotics (for contracting the pupil) and mydriatics or cycloplegics (for dilating the pupil or stopping the movement of the eye). This list reflects the limits placed on the practice of optometry under the act prior to 1996. With the 1996 amendments to the act, the practice of optometry was expanded, requiring the Department to expand the list of drugs approved for use by optometrists. In doing so, the Department is proposing to create a list of categories of drugs approved for use by optometrists, rather than a simple list of acceptable drugs. The pro-

posed list of categories of drugs includes categories beyond those drugs necessary for simple examination of the visual system, and reflects the expanded practice of optometry as envisioned by the 1996 amendments to the act. In developing the proposed categories and drugs, the Department has made every effort to balance that expansion with concern for the welfare of the patient.

Section 6.1(a) (relating to approved drugs).

In developing this expanded list, the Department has taken into account the conditions placed on the practice of optometry by the amendments to the act, and has included many of these conditions in proposed subsection (a). The Department has also proposed requirements which are intuitive, for example, the Department has proposed the requirement that drugs shall be approved by the Federal Drug Administration (FDA) and has proposed to permit optometrists to prescribe and administer over-the-counter medications. By allowing optometrists to prescribe and administer over-the-counter medications, the Department is recognizing the fact that an optometrist should not be precluded from providing to a patient a drug the patient could use on him or herself. In cases where the nature of individual categories of drugs warrant conditional use, the Department has included language in the specific subparagraph relating to that drug. The definition of the "practice of optometry" restricts the optometrist's use of over-the-counter drugs to the scope of optometric practice.

Section 6.1(b).

Proposed subsection (b) contains the list of categories and approved drugs under those categories. The Department has chosen not to include allowable potencies because this manner of approving drugs no longer makes sense medically. In some cases, the potencies originally listed were the only potencies available. In some cases, multiple potencies could be acceptable.

In choosing what categories of drug to approve, and whether to approve these drugs for oral use, or topical use only, the Department took into account the issue of whether or not the treatment would be systemic. The act only permits the Department to approve drugs used for therapeutic purposes, for "the treatment of the anterior segment of the eye, the eyelids, the lacrimal system and conjunctiva and the removal of superficial foreign bodies from the ocular surface and adnexa" See the definition of "practice of optometry" in 63 P. S. § 244.2. Drugs which, if used only topically, would treat the anterior of the eye with a minimal systemic effect, would be approved for treatment by the Department for topical use only (for example, autonomic drugs and nonsteroidal antiinflammatory drugs). The Department proposes, however, to approve certain drugs for oral use in cases in which failure of an optometrist to use these drugs could put the health and safety of the patient at risk. The Department proposes to list under these categories those drugs most likely to treat effectively the most common conditions seen by optometrists. Although there may be a systemic effect in these cases, treatment focuses on the limited area of the visual system permitted by the act, as amended.

To protect the patient, the Department proposes that, prior to the oral use of these categories of drugs, the treating optometrist shall obtain verbal or written concurrence from the patient's referring physician, usual primary care physician, or an ophthalmologist if the pa-

tient's condition so indicates. The Department further proposes to require that, if the patient has no continuing medical care provider, the patient shall be referred to a primary care physician or an ophthalmologist by the optometrist before the optometrist prescribes the drugs listed under these categories. It is the Department's position that this requirement, in connection with the statutory prohibition that no treatment be continued for longer than 6 weeks without the concurrence of a licensed physician, is sufficient protection for the health and safety of the patient.

In making these decisions, the Department recognizes that in some cases, patients are unaware of the differences between ophthalmologists and optometrists, or may, for other reasons, choose or find it necessary to see an optometrist rather than an ophthalmologist. To ensure that necessary treatment is begun, the Department proposes to allow the use of oral drugs. The Department, however, has included the prior concurrence requirement in all categories of oral drugs approved, including antibacterial drugs, and antiviral drugs. It is the Department's position that this requirement will permit physicians to make a decision whether or not the patient should be treated by the optometrist, or referred back to the physician, or to an ophthalmologist for further treatment. At the same time, it will remove a barrier to care.

The proposed amendment would also permit optometrists to prescribe a limited number of analgesic medications once per patient visit, for a period of no longer than 72 hours per prescription.

D. Cost and Paperwork Estimates

1. Cost

The addition of new drugs to the approved list contained in Chapter 6 will not affect the Commonwealth, local governments or the general public financially. It is possible that the expansion of the practice of optometry to include the administration and prescription of certain drugs under certain enumerated conditions may adversely affect the practice of some ophthalmologists, if individuals who would otherwise find it necessary to consult an ophthalmologist can, under the 1996 statutory amendments and the proposed amendment, consult an optometrist and chose to do so. It is not certain that this will be the case, however, and the statute does provide for consultation with a licensed physician after treatment for a 6-week period by an optometrist. See 63 P. S. § 244.2.

2. Paperwork

No changes to reporting, recordkeeping or other paperwork would be required, except to the extent that the number of drugs optometrists would be permitted to administer and prescribe under certain conditions would increase, which may require increased notations in patient records.

E. Effective Date/Sunset Date

The proposed amendment will be effective immediately upon final adoption. The regulation will be continually monitored and updated as needed. Therefore, no sunset date has been set.

G. Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on January 21, 1998, the Department submitted a copy of this proposed to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the House Health and Human Services Committee and the Senate Public Health and Welfare Committee. In

addition to submitting the proposed amendment, the Department has provided IRRC and the Committees with a copy of a detailed Regulatory Analysis Form prepared by the Department in compliance with Executive Order 1996-1, "Regulatory Review and Promulgation." A copy of this material is available to the public upon request.

If the Committees have objections to any portion of the proposed amendment, they will notify the Board within 20 days of the close of the public comment period.

If IRRC has objections to any portion of the proposed amendment, it will notify the Department within 10 days of the close of the Committees' review period. The notification shall specify the regulatory review criteria which have not been met by that portion. The Regulatory Review Act specifies detailed procedures for review prior to final publication of the amendment by the Department, the General Assembly, and the Governor of objections raised.

H. Contact Person

Interested persons are invited to submit all comments, suggestions or objections regarding the proposed amendment to Lori Gerhard, Department of Health Policy Office, P. O. Box 90, Harrisburg, PA 17108 within 30 days of publication of this notice in the *Pennsylvania Bulletin*. Persons with a disability may submit comments, suggestions or objections regarding the proposed amendment to Lori Gerhard in an alternative format, such as by audio tape, braille or by using TDD: (717) 783-6514. Persons with a disability who require a copy of the proposed amendment in an alternative format (that is, large print, audio tape, braille) should contact the Department of Health's Policy Office at (717) 787-3488 so that the necessary arrangements may be made.

DANIEL F. HOFFMANN,
Secretary

Fiscal Note: 10-152. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 28. HEALTH AND SAFETY

PART I. GENERAL HEALTH

CHAPTER 6. DRUGS WHICH MAY BE USED BY CERTAIN OPTOMETRISTS

Sec.

6.1. Approved drugs.

§ 6.1. Approved drugs.

[(a) Optometrists who are appropriately qualified under the Optometric Practice and Licensure Act (63 P. S. §§ 244.1—244.12) are permitted to utilize the following drugs in their practice of optometry:

(1) Local anesthetics. Local anesthetics shall conform with the following:

(i) Benoxinate Hydrochloride—Ophthalmic Solution (0.4%)

(ii) Proparacaine Hydrochloride—Ophthalmic Solution (0.5%)

(iii) Tetracaine Hydrochloride—Ophthalmic Solution (0.5%)

(2) Miotics. Miotics shall conform with the following:

(i) Pilocarpine Nitrate Ophthalmic Solution U.S.P. (1.0%)

(ii) Pilocarpine Hydrochloride Ophthalmic Solution U.S.P. (1.0%)

(iii) Methacholine Chloride—Ophthalmic Solution (2.5%)

(iv) Dapiprazole HCL.

(3) *Mydriatics or cycloplegics.* Mydriatics or cycloplegics shall conform with the following:

(i) Eucatropine Hydrochloride U.S.P.—Ophthalmic Solution (5.0%)

(ii) Homatropine Hydrobromide Ophthalmic Solution U.S.P. (2.0%)

(iii) Homatropine Hydrobromide Ophthalmic Solution U.S.P. (5.0%)

(iv) Hydroxyamphetamine Hydrobromide Ophthalmic Solution U.S.P. (0.5%)

(v) Hydroxyamphetamine Hydrobromide Ophthalmic Solution U.S.P. (1.0%)

(vi) Tropicamide Ophthalmic Solution U.S.P. (1.0%)

(vii) Atropine Sulfate Ophthalmic Solution U.S.P. (1.0%) Ophthalmic Ointment (1.0%)

(viii) Cyclopentolate Hydrochloride—Ophthalmic Solution (1.0%)

(ix) Cyclopentolate Hydrochloride Ophthalmic Solution U.S.P. (2.0%)

(x) Cyclopentolate Hydrochloride (0.2%)/Phenylephrine Hydrochloride (1.0%) Ophthalmic solution

(xi) Phenylephrine Hydrochloride Ophthalmic Solution U.S.P. (10%)

(xii) Scopolamine Hydrobromide U.S.P. Ophthalmic Solution U.S.P. (0.25%)

(xiii) Ephedrine Sulfate U.S.P.—Ophthalmic Solution (5.0%)

(b) Potencies listed in this section are the maximum allowable potencies.]

(a) *Administration of pharmaceutical agents.* Optometrists who are certified to prescribe and administer pharmaceutical agents for therapeutic purposes under section 4.1 of the Optometric Practice and Licensure Act (35 P. S. § 244.4a), may prescribe and administer the drugs listed in subsection (b) in their practice of optometry under the following conditions:

(1) The drugs shall be approved by the Food and Drug Administration.

(2) Over-the-counter medications (per FDA listing) are fully authorized.

(3) An optometrist may not administer any drug parenterally.

(4) The treatment undertaken by an optometrist under this section:

(i) Shall be limited to 6 weeks duration.

(ii) May not include beta-blockers or steroids.

(iii) May not be prescribed for systemic conditions except as an adjunctive therapy and shall be limited to the anterior eye structures (and adnexa).

(5) An optometrist may not treat glaucoma.

(6) An optometrist may not prescribe or administer a Schedule I or II controlled substance.

(b) *Allowable pharmaceutical products.* Optometrists may prescribe and administer the following pharmaceutical products:

(1) Topical anesthetics.

(i) Proparacaine.

(ii) Benoxinate.

(iii) Tetracaine.

(2) Topical ocular lubricants.

(3) Topical ophthalmic dyes and stains.

(i) Fluorescein.

(ii) Rose Bengal.

(iii) Fluorexen.

(4) Topical hyperosmotic agents.

(5) Autonomic drugs—topical only.

(i) Cholinergic agonists.

(A) Pilocarpine nitrate and pilocarpine hydrochloride—diagnostic use only.

(B) Physostigmine.

(C) DFP (diisopropylfluorophosphate).

(D) Echothiopate.

(ii) Cholinergic antagonists.

(A) Homatropine hydrobromide.

(B) Tropicamide.

(C) Atropine sulfate.

(D) Cyclopentolate hydrochloride.

(E) Scopolamine hydrobromide.

(iii) Adrenergic agonists.

(A) Hydroxyamphetamine hydrobromide.

(B) Phenylephrine hydrochloride.

(C) Tetrahydrazoline.

(D) Nefazoline.

(E) Oxymetazoline.

(iv) Adrenergic antagonists—diagnostic use only.

(A) Dapiprazole.

(B) Thymoxamine.

(6) Nonsteroidal antiinflammatory drugs—topical only.

(i) Diclofenac.

(ii) Ketorolac.

(iii) Flurbiprofen.

(iv) Suprofen.

(7) Antimicrobial agents—access to culture and sensitivity testing (as clinically indicated) is urged.

(i) Antibacterial—topical use only.

(A) Cell wall inhibitors.

(I) Bacitracin.

- (II) Cephalosporins.
- (III) Penicillins.
- (IV) Vancomycin.
- (B) Protein synthesis inhibitors.
- (I) Aminoglycosides.
- (II) Tetracycline.
- (III) Erythromycin.
- (IV) Chloramphenicol.
- (C) Intermediary metabolism inhibitors.
- (I) Sodium sulfacetamide and sulfisoxazole.
- (II) Trimethoprim.
- (D) DNA synthesis inhibitors.
- (I) Ciprofloxacin.
- (II) Norfloxacin.
- (III) Ofloxacin.
- (E) Cell membrane permeability.
- (I) Polymyxin B.
- (II) Gramicidin.
- (ii) Antibacterial—oral. Prior to prescribing oral antibacterial agents, the optometrist shall obtain verbal or written concurrence from the patient's referring physician or usual primary care physician or from an ophthalmologist if the patient's condition so indicates. The optometrist shall record the concurrence in the patient's medical record and on the prescription form. If the patient has no continuing medical care provider, the optometrist shall refer the patient to a primary care physician or an ophthalmologist before prescribing these agents.
 - (A) Cell wall inhibitors.
 - (I) Penicillins—including in combination with clavulanic acid.
 - (II) Cephalosporins.
 - (1) First generation—cephalexin and cefadroxil.
 - (2) Second generation—cefaclor and cefuroxime.
 - (B) Protein synthesis inhibitors.
 - (I) Tetracycline.
 - (II) Doxycycline.
 - (III) Erythromycin.
 - (IV) Azithromycin.
 - (iii) Antivirals—topical only.
 - (A) Idoxurine.
 - (B) Vidarabine.
 - (C) Trifluridine.
 - (iv) Antivirals—oral. Prior to prescribing oral antiviral agents, the optometrist shall obtain verbal or written concurrence from the patient's referring physician or usual primary care physician or from an ophthalmologist if the patient's condition so indicates. The optometrist shall record the concurrence in the patient's medical record and on the prescription form. If the patient has no continuing

medical care provider, the optometrist shall refer the patient to a primary care physician or an ophthalmologist before prescribing these agents.

- (A) Acyclovir.
- (B) Valacyclovir.
- (C) Famcyclovir.
- (v) Antifungal and antiparasitic—topical only.
 - (A) Amphotericin B, nystatin, natamycin.
 - (B) Miconazole, ketoconazole, clotrimazole.
 - (C) Thiabendazole.
 - (D) Neomycin and polymyxin B.
 - (E) Paromycin.
 - (8) Analgesic drugs—oral and topical.
 - (i) An optometrist shall only be permitted to prescribe the following drugs, either alone or in combination with acetaminophen or aspirin, for up to 72 hours per patient visit.
 - (A) Codeine.
 - (B) Hydrocodone.
 - (C) Pentazocine.
 - (D) Propoxyphene.
 - (ii) Antihistamines and mast cell stabilizers—topical only.
 - (A) Pheniramine.
 - (B) Pyrilamine.
 - (C) Antazoline.
 - (D) Levocarbastine.
 - (E) Cromolyn.
 - (F) Nedocromil.
 - (G) Lodoxamide.
 - (H) Olopatadine.

[Pa.B. Doc. No. 98-166. Filed for public inspection January 30, 1998, 9:00 a.m.]

LIQUOR CONTROL BOARD

[40 PA. CODE CH. 13]

Promotion

The Liquor Control Board (Board) under the authority of section 207(i) of the Pennsylvania Liquor Code (act) (47 P. S. § 2-207(i)) proposes to amend §§ 13.1 and 13.51 (relating to definitions; and general prohibition).

Purpose:

In accordance with Executive Order 1996-1, the Board has reviewed its regulations and determined that the regulations prohibit activities beyond those prohibited by the act and that these proposed amendments would permit Pennsylvania manufacturers and licensees to engage in business practices routinely engaged in by manufacturers and licensees in other states.

Summary of Amendments

§ 13.1. The term "routine business entertainment" is defined.

§ 13.51. Subsection (c) is proposed to be added setting forth the limitations and conditions concerning routine business entertainment engaged in by manufacturers and licensees.

Affected Parties

These regulatory amendments would affect in-State and out-of-State manufacturers, licensees of the Board and trade organizations that choose to participate in routine business entertainment.

Paperwork Requirements

The proposed amendments require that licensees and manufacturers keep complete and accurate records of all expenses incurred and all routine business entertainment received for a period of 2 years.

Fiscal Impact

The proposed amendments permit the regulated community to voluntarily engage in routine business entertainment, no compulsory spending by the regulated community is required. These proposed amendments will have no fiscal impact on the Commonwealth or local governments.

Effective Date/Sunset Date

The proposed amendments will become effective upon their publication in final form in the *Pennsylvania Bulletin*. No sunset date has been assigned.

Public Comment/Contact Person

Written comments, suggestions or objections will be accepted for 30 days after publication of the proposed amendments in the *Pennsylvania Bulletin*. Comments should be addressed to Jerry Danyluk, Regulatory Coordinator, Pennsylvania Liquor Control Board, Room 401 Northwest Office Building, Harrisburg, PA 17124-0001.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745-5(a)), on January 16, 1998, the Board submitted a copy of the proposed rulemaking to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House Committee on Liquor Control and the Senate Committee on Law and Justice. In addition to submitting the proposed amendments, the Board has provided IRRC and the Committees with a copy of a detailed regulatory analysis form prepared by the Board. A copy of this material is available to the public upon request.

If the Committees have objections to any portion of the proposed rulemaking, they will notify the Board within 20 days of the close of the public comment period.

If IRRC has objections to any portion of the proposed amendments, it will notify the Board within 10 days of the close of the Committees' review period. The notification shall specify the regulatory review criteria which have not been met by that portion. The Regulatory Review Act specifies detailed procedures for review by the Board, the Governor and the General Assembly prior to final publication of the regulations.

JOHN E. JONES, III,
Chairperson

Fiscal Note: 54-53. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 40. LIQUOR

PART I. LIQUOR CONTROL BOARD

CHAPTER 13. PROMOTION

Subchapter A. ADVERTISING

GENERAL PROVISIONS

§ 13.1. Definitions.

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

* * * * *

***Routine business entertainment*—Meals, beverages, tickets or passes to concerts, theaters, arts, sporting or charitable events provided to licensees, trade organizations or in-State manufacturers by licensees, trade organizations, in-State manufacturers or out-of-State manufacturers. For purposes of this definition, "licensee" includes all entities licensed under the Liquor Code including liquor importer licensees and vendor permittees.**

* * * * *

GIVING AND ACCEPTING THINGS OF VALUE

§ 13.51. General prohibition.

(a) Except as provided in [subsection] subsections (b), (c) and § 13.52 (relating to advertising novelties), no **in-State or out-of-State manufacturer, licensee or group of licensees, their servants, agents or employees, may directly or indirectly, in person, individually or through a trade organization, contribute to or accept from another licensee or group of licensees of a different class, their servants, agents or employees or a trade organization of licensees of a different class, anything of value by means of advertisements, contributions, purchase, sale of tickets, donations or by any device, for any purpose.**

* * * * *

(c) This section does not prohibit an in-State or out-of-State manufacturer, licensee or trade organization from providing another in-State or out-of-State manufacturer, licensee or trade organization routine business entertainment as defined in § 13.1 (relating to definitions). The routine business entertainment shall be subject to the following conditions:

(1) Routine business entertainment shall be provided without a corresponding obligation on the part of the recipient to purchase alcoholic beverages or to provide another benefit to the donor or to exclude or restrict from sale the products of any other licensee or in-State or out-of-State manufacturer.

(2) The donor, its servants, agents or employees shall accompany the recipient during routine business entertainment. When items such as tickets are donated by manufacturers to importing distributors for the ultimate use of retailers, the donor is considered to be the importing distributor and it is the importing distributor, or his servants, agents or employees, who shall accompany the retailer.

(3) Routine business entertainment that requires or includes overnight stay is prohibited.

(4) No more than \$200 may be spent per occasion on any recipient. An occasion for purposes of this

section is a 24-hour time period that begins when the recipient first receives business entertainment. A recipient's spouse or guest may accompany the recipient, if no more than \$200 is spent per occasion on the recipient's spouse or guest.

(5) No recipient may be entertained on more than six separate occasions by any licensee, trade organization or manufacturer in a calendar year.

(6) Licensees, in-State manufacturers and out-of-State manufacturers shall keep complete and accurate records of all expenses incurred and all routine business entertainment received for a 2 year period. These records shall contain the name of the recipient and donor of the entertainment, the type of routine business entertainment, the date and, in the case of a donor, the amount of expenditure for each occasion.

[Pa.B. Doc. No. 98-167. Filed for public inspection January 30, 1998, 9:00 a.m.]

PENNSYLVANIA PUBLIC UTILITY COMMISSION

[52 PA. CODE CH. 54]

[L-970127]

Adjustment of Electric Distribution Company Rates for Changes in State Tax Liability

The Pennsylvania Public Utility Commission (Commission) on November 6, 1997, adopted a proposed rule-making to address the requirement of 66 Pa.C.S. § 2804(16) (relating to standards for restructuring of electric industry) that the Commission by regulation allow an electric distribution company (EDC) to recover changes in its State tax liability by establishing the time, manner, form and information content of the filings required for seeking recovery of changes in its State tax liability under 66 Pa.C.S. §§ 2801—2812 (relating to Electricity Generation Customer Choice and Competition Act) (act). The contact persons are Bob Wilson, Manager, Finance/Tariffs, Bureau of Fixed Utilities Services (717) 783-6162 and Kevin J. Moody, Assistant Counsel, Law Bureau (717) 787-2126.

Executive Summary

On December 3, 1996, Governor Tom Ridge signed into law the act which is codified as Chapter 28 (relating to restructuring of electric utility industry). The act establishes standards and procedures to create direct access by retail customers to the competitive market for electricity generation while maintaining safe and reliable electric service and tax revenue neutrality to this Commonwealth. The act includes two new taxes: a use tax on electricity to compliment the tax on gross receipts from retail sales of electricity, and a revenue-neutral reconciliation (RNR) allowing the Commonwealth to recoup State tax losses that may result from the restructuring of the electric industry and the transition thereto.

The proposed regulations address the requirement of section 2804(16) of the act that the Commission by regulation allow an EDC to recover changes in its State tax liability by establishing the time, manner, form and

information content of the filings required by an EDC seeking recovery of changes in its State tax liability under the code.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on January 16, 1998, the Commission submitted a copy of these proposed regulations to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House Committee on Consumer Affairs and the Senate Committee on Consumer Protection and Professional Licensure. In addition to submitting the proposed regulations, the Commission has provided IRRC and the Committees with a copy of a detailed Regulatory Analysis Form prepared by the agency in compliance with Executive Order 1996-1. A copy of this material is available to the public upon request.

If the Legislative Committees have objections to any portion of the proposed regulations, they will notify the Commission within 20 days of the close of the public comment period. If IRRC has objections to any portion of the proposed regulations, it will notify the Commission within 10 days of the close of the Legislative comment period. The notification shall specify the regulatory review criteria which have not been met by that portion. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the regulations, by the Commission, the General Assembly and the Governor of objections raised.

Public meeting held
November 6, 1997

Commissioners Present: John M. Quain, Chairperson;
Robert K. Bloom, Vice Chairperson; John Hanger;
David W. Rolka; Nora Mead Brownell

Order

By the Commission:

On December 3, 1996, Governor Tom Ridge signed into law 66 Pa.C.S. §§ 2801—2812 (relating to Electricity Generation Customer Choice and Competition Act) (act). The act establishes standards and procedures to create direct access by retail customers to the competitive market for electricity generation while maintaining tax revenue neutrality to the Commonwealth.

Recognizing that restructuring the electric industry would affect the State taxes associated with the production, delivery and sale of electricity in this Commonwealth, the General Assembly enacted a use tax on electricity in addition to the tax on gross receipts from retail sales of electric energy. 66 Pa.C.S. §§ 2806(g)(3)(iii) and 2809(c)(2). The Legislature also established a RNR to "recoup losses that may result from the restructuring of the electric industry and the transition thereto." 66 Pa.C.S. § 2810(a). The intent of the RNR is to maintain the proportional tax obligations among customer classes and individual EDCs.

Section 2804(16) of the act requires the Commission to issue regulations that allow an EDC to recover changes in its State tax liability to the extent that the resulting rate does not exceed the rate cap established, except as provided in the act. 66 Pa.C.S. § 2804(16)(i). The act also permits an EDC to seek recovery of State tax liability changes under the act when the recovery would produce rates above the rate cap.

Regulations to implement these provisions of the act were developed by the Electric Competition Tax Working

Group, which includes Commission staff, the Office of Consumer Advocate, the Office of Small Business Advocate, the Department of Revenue, the Pennsylvania Electric Association and its member EDCs and electricity suppliers. The proposed regulations establish the time, manner, form and information content of the filings required by an EDC seeking recovery of changes in its State tax liability under the act.

Specifically, § 54.93 (relating to manner of filing) requires proposed rate changes under Chapter 54 (relating to adjustment of electric generation customer choice) to comply with the existing Commission regulations in § 53.51(c) and (d) (relating to perfection of tariffs or tariff supplements and service of proposed rate changes).

Section 54.94 (relating to recovery of changes in State tax liability) sets forth the information that must be provided when an EDC seeks recovery of changes in its State tax liability when the resulting rates do not exceed the rate cap.

Section 54.95 (relating to recovery of RNR tax liability producing rates above the rate cap) provides information and procedures that apply when an EDC seeks recovery of changes in its RNR tax liability when the resulting rates would exceed the rate cap.

Section 54.96 (relating to recovery of sections 2806(g) and 2809(c) tax liability producing rates above the rate cap) provides information and procedures that apply when an EDC seeks recovery of changes in its tax liability under sections 2806(g) and 2809(c) of the act when the resulting rates would exceed the rate cap.

Section 54.97 (relating to State tax adjustment surcharge) provides information and procedures that apply when an EDC seeks to modify its State Tax Adjustment Surcharge (STAS) to recover new or increased taxes under the act.

Finally, § 54.98 (relating to customer notice requirements) requires proposed rate increases under Chapter 54 to comply with existing Commission regulations in §§ 53.41—53.45 (relating to posting of tariffs and notices).

Accordingly, under sections 501, 1301 and 2804(16) of the Public Utility Code, 66 Pa.C.S. §§ 501, 1301 and 2804(16), and the Commonwealth Documents Law (45 P. S. § 1201 et seq.) and the regulations promulgated thereunder in 1 Pa. Code §§ 7.1—7.4, we propose to adopt §§ 54.91—54.98 to read as set forth in Annex A. *Therefore,*

It is Ordered that:

1. A rulemaking docket be opened to implement the act to permit an EDC to recover changes in its State tax liability under the act as set forth in Annex A of this order.
2. The Secretary of the Commission submit this order and Annex A to the Office of the Attorney General for preliminary review as to form and legality.
3. The Secretary of the Commission submit a copy of this order and Annex A to the Governor's Budget Office for review of fiscal impact.
4. The Secretary of the Commission submit this order and Annex A for informal review by the designated standing committees of both Houses of the General Assembly, and for informal review and comments by IRRC.

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

6. Within 30 days of publication of this order in the *Pennsylvania Bulletin*, an original and 15 copies of any comments concerning this order be submitted to the Commission. Alternate formats of this document are available to persons with disabilities and may be obtained by contacting Shirley M. Leming, Regulatory Coordinator, Law Bureau at (717) 772-4597 or through the AT&T Relay Center at (800) 654-5988.

JAMES J. MCNULTY,
Secretary

Fiscal Note: 57-188. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 52. PUBLIC UTILITIES
PART I. PUBLIC UTILITY COMMISSION
Subpart C. FIXED SERVICE UTILITIES
CHAPTER 54. ELECTRICITY GENERATION
CUSTOMER CHOICE
Subchapter D. ADJUSTMENT OF ELECTRIC
DISTRIBUTION COMPANY RATES FOR CHANGES
IN STATE TAX LIABILITY

Sec.	Purpose.
54.91.	Purpose.
54.92.	Definitions.
54.93.	Manner of filing.
54.94.	Recovery of changes in State tax liability.
54.95.	Recovery of RNR tax liability producing rates above the rate cap.
54.96.	Recovery of sections 2806(g) and 2809(c) tax liability producing rates above the rate cap.
54.97.	State tax adjustment surcharge.
54.98.	Customer notice requirements.

§ 54.91. Purpose.

This subchapter implements Chapter 28 of the code (relating to the Electricity Generation Customer Choice and Competition Act) governing adjustments to the rates of an EDC to reflect changes in its State tax liability. This subchapter establishes the time, manner, form and information content of the filings required by an EDC seeking recovery of changes in its State tax liability. This subchapter establishes specialized procedures to supplement existing procedures relating to public utility rate changes. Finally, this subchapter establishes the effective dates of relevant EDC rate adjustments and the applicable customer notification requirements for these adjustments.

§ 54.92. Definitions.

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

Code—The Public Utility Code, 66 Pa.C.S. §§ 101—3316.

CTC—*competitive transition charge*—The competitive transition charge as defined in section 2803 of the code (relating to definitions).

Customer—A retail electric customer as defined in section 2803 of the code.

Department—The Department of Revenue of the Commonwealth.

EDC—electric distribution company—An EDC as defined in section 2803 of the code.

Electric generation supplier or electricity supplier—An electric generation supplier or an electricity supplier as defined in section 2803 of the code.

ITC—intangible transition charge—The intangible transition charge as defined in section 2812(g) of the code (relating to approval of transition bonds).

Rate cap or price cap—The limits on the allowable charges of an EDC, and the exceptions and exclusions from these limits, as prescribed by section 2804(4) of the code (relating to standards for restructuring of electric industry).

RNR—revenue neutral reconciliation—See section 2810 of the code (relating to revenue-neutral reconciliation).

STAS—State tax adjustment surcharge—The State tax adjustment surcharge as defined in § 69.51 (relating to definitions).

Transition or stranded costs—The transition or stranded costs as defined in section 2803 of the code.

§ 54.93. Manner of filing.

Each proposed change in rates in this subchapter shall be perfected in accordance with § 53.51(c) (relating to general) and shall be served in accordance with § 53.51(d).

§ 54.94. Recovery of changes in State tax liability.

(a) The Commission will permit an EDC to recover from customers changes in its State tax liability arising from sections 2806(g), 2809(c) and 2810 of the code (relating to implementation, pilot programs and performance-based rates; requirements for electric generation suppliers; and revenue-neutral reconciliation) and §§ 69.51—69.56 (relating to inclusion of State taxes and gross receipts taxes in base rates) to the extent that the resulting rates do not exceed the rate or price cap.

(b) An EDC seeking recovery of changes in its State tax liability under this section shall provide the following information to the Commission:

(1) A description of the surcharge proposed by the EDC.

(2) A statement that the surcharge becomes effective for service rendered beginning 30 days after perfection as provided in § 53.51(c) (relating to general).

(3) If applicable, the calculations supporting the amount of its tax liability arising from the RNR.

(4) If applicable, the amount of payments under section 2806(g) and 2809(c) of the code for the immediately preceding 12-month period ending on June 30, plus interest accrued at 6% per year from the time of payment until the time the payments are reflected in customer rates, supported by a copy of the notification received from the Department assessing these taxes and related interest.

§ 54.95. Recovery of RNR tax liability producing rates above the rate cap.

An EDC proposing to increase its rates above the rate cap due to the RNR shall file a single issue rate proceeding under section 1308(a) of the code (relating to voluntary changes in rates). The Commission will determine whether the EDC's filing accurately represents the amount of its tax liability arising from the RNR and whether recovery of its RNR tax liability causes the resulting rates to exceed the rate cap. Within 30 days of

receiving the Department's notice of the change in the applicable tax rate established by the RNR, an EDC proposing to increase its rates as described in this section shall provide the following information to the Commission:

(1) A statement that the reason for the proposed rate increase is to permit the EDC to recover that portion of its RNR tax liability that produces rates above the rate cap.

(2) A proof of revenue calculation by rate class demonstrating the impact of the proposed rate increase upon each class of customers.

(3) A description of the surcharge for recovering the increased tax liability.

(4) A notice that the surcharge becomes effective 60 days from the date the EDC files the proposed rate increase.

§ 54.96. Recovery of sections 2806(g) and 2809(c) tax liability producing rates above the rate cap.

(a) The Commission will permit an EDC to recover, through its State Tax Adjustment Surcharge (STAS) or other appropriate mechanism, changes in its State tax liability and related interest under sections 2806(g) and 2809(c) of the code (relating to implementation, pilot programs and performance-based rates; and requirements for electric generation suppliers) when that recovery produces rates above the rate cap, upon certification by affidavit that the following exist:

(1) The EDC has not recovered the taxes due under its tariff indemnification provisions.

(2) The Department has not collected the taxes due under the other means in sections 2806(g)(3)(iii) and 2809(c)(2) of the code.

(b) In addition to the affidavit required under subsection (a), the EDC shall file with the Commission:

(1) A statement of the amount of payments under sections 2806(g) or 2809(c) of the code for the immediately preceding 12-month period ending on June 30, plus interest accrued at 6% per year from the time of payment until the time the payments are reflected in customer rates, supported by a copy of the notification received from the Department assessing these taxes and related interest.

(2) A proof of revenue calculation by rate class demonstrating the impact of the proposed rate increase upon each class of customers.

(3) A description of the surcharge for recovering the increased tax liability.

(4) A statement that the surcharge becomes effective for service rendered beginning 30 days after perfection as provided in § 53.51(c) (relating to general).

§ 54.97. State tax adjustment surcharge.

(a) Every EDC subjected to new or increased State taxes under sections 2806(g), 2809(c) and 2810 of the code (relating to implementation, pilot programs and performance-based rates; requirements for electric generation suppliers; and revenue-neutral reconciliation) and §§ 69.51—69.56 (relating to inclusion of State taxes and gross receipts taxes in base rates) that proposes to modify its STAS to recover these taxes shall include the following information in its surcharge calculation:

(1) The amounts paid under sections 2806(g) and 2809(c) of the code for the immediately preceding 12-

month period ending on June 30, plus interest accrued at 6% per year from the time of payment until the time the payments are reflected in customer rates; the EDC shall also provide an affidavit that it has not recovered these taxes under the other means in sections 2806(g)(3)(iii) and 2809(c)(2) of the code.

(2) Adjustments to the gross receipts tax rate under to the RNR.

(3) When applicable, items 1 and 2 shall be added to any other amounts recoverable under the STAS.

(4) The total of item 3 divided by a factor which is the complement of the gross receipts tax rate, adjusted by the RNR to the extent that recovery is approved by the Commission under section 2804(16) of the code (relating to standards for restructuring of electric industry).

(5) The quotient of item 4 divided by gross intrastate operating revenues derived from service under rates subject to the jurisdiction of the Commission for the most completed calendar year, exclusive of the revenues produced by the surcharge permitted by subsection (a). This quotient shall be expressed as a percentage.

(6) If the EDC increased or decreased its rates under the Commission's jurisdiction during or after the most recently completed calendar year, it shall include in its computation the appropriate adjustments to items 1, 2, 3, 4 and 5, as if the increased or decreased rates had been in effect for all of that calendar year.

(b) For rate changes that require the STAS to be filed under this section, every EDC shall provide the following information to the Commission:

(1) For a change in an EDC's RNR tax liability contained in a notice from the Department, the information described in § 54.94(b)(3) (relating to recovery of changes in State tax liability).

(2) For amounts paid by an EDC under sections 2806(g) and 2809(c) of the code, the information described in § 54.94(b)(4).

(c) Every tariff or tariff supplement modifying an EDC's STAS under this section shall carry an effective date which is 10 days after its filing with the Commission and shall be applicable for service rendered on or after the effective date.

§ 54.98. Customer notice requirements.

(a) An EDC proposing to increase its rates under § 54.94 or § 54.96 (relating to recovery of changes in State tax liability; and recovery of sections 2806(g) and 2809(c) tax liability producing rates above the rate cap) shall provide customer notice as provided in § 53.45(g) (relating to notice of new tariffs and tariff changes).

(b) An EDC proposing to increase its rates under § 54.95 (relating to recovery of RNR tax liability producing rates above rate cap) shall provide customer notice and follow the tariff posting procedures in §§ 53.41—53.45 (relating to posting of tariffs and notices).

[Pa.B. Doc. No. 98-168. Filed for public inspection January 30, 1998, 9:00 a.m.]

[52 PA. CODE CH. 57]

[L-970128]

Advanced Meter Deployment for Electricity

The Pennsylvania Public Utility Commission (Commission) on November 21, 1997, adopted a proposed rulemaking to ensure that the level of quality regarding metering services will not deteriorate in this Commonwealth. This rulemaking will amend regulations to establish meter deployment and customer selection procedures, meter standards and education strategies for customers choosing to participate in certain generation supply programs which require advanced metering capability. The contact persons for this regulation are Charles F. Covage, Bureau of Conservation, Economics and Energy Planning, (717) 783-3835 (technical) and Stephen Gorka, Law Bureau (717) 772-8840 (legal).

Executive Summary

On November 21, 1997, the Commission adopted a proposed rulemaking order to establish uniform procedures and standards for the deployment and customer selection of qualified advanced meters or coordination with any Electric Distribution Company (EDC) installation of Advanced Meter Networks (Network).

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), the Commission submitted a copy of these proposed regulations on January 16, 1998 to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House Committee on Consumer Affairs and the Senate Committee on Consumer Protection and Professional Licensure. In addition to submitting the proposed regulations, the Commission has provided IRRC and the Committees with a copy of a detailed Regulatory Analysis Form prepared by the Commission in compliance with Executive Order 1996-1. A copy of this material is available to the public upon request.

If the Legislative Committees have objections to any portion of the proposed regulations, they will notify the Commission within 20 days of the close of the public comment period. If IRRC has objections to any portion of the proposed regulations, it will notify the Commission within 10 days after the close of the Legislative comment period. The notification shall specify the regulatory review criteria which have not been met by that portion. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the regulations, by the Commission, the General Assembly and the Governor of objections raised.

Commissioners Present: John M. Quain, Chairperson; Robert K. Bloom, Vice Chairperson; Concurring—Statement follows; John Hanger; David W. Rolka

Public Meeting held
November 21, 1997

Proposed Rulemaking Order

By the Commission:

Introduction

On December 3, 1996, Governor Tom Ridge signed into law 66 Pa.C.S. §§ 2801—2812 (relating to Electricity

Generation Customer Choice and Competition Act) (act). The act revised 66 Pa.C.S. (relating to Public Utility Code) by inter alia, adding Chapter 28 relating to restructuring of the electric utility industry.

The purpose of the act is to provide for an orderly transition of the Pennsylvania electric industry from a vertically integrated monopoly to a structure which would support the development of a competitive retail generation market. The ultimate goal is to permit all Pennsylvania retail electric customers (customers) to have direct access to a competitive generation market while simultaneously enjoying continued reliable and safe electric service.

Passage of the act will accelerate changes that are occurring in the historical methods of metering. Previously, almost all residential customers utilized a basic meter that was used to provide a monthly reading of the number of kwh used. Most commercial and industrial customers had a meter that registered demand as well. In some cases, customers worked with their utility to use a different type of meter. In most cases, however, the utility simply provided the meter that it determined was to be used. In recent years, some utilities have begun to deploy systems that can read meters automatically. Such network systems offer opportunities for much greater communication that are the first stage of advanced or specialized metering.

Now, customers will be able to select an electric generation supplier (supplier) offering a service program that meets the individualized needs of the consumer. The services can be provided with the use of a variety of advanced metering equipment. For example, real-time pricing (RTP) allows a supplier to price electricity at specified intervals based upon its cost during the time of use. Similarly, suppliers may offer and consumers may choose generation services that provide two-way communication for other purposes, load management support, or net metering to support self-generation in conjunction with generation provided by the supplier. While a customer may choose to participate in customer choice without using advanced metering, advanced meters of some form will enable the development of a wider range of generation services in the newly competitive market.

This discussion will focus on meter deployment and selection issues associated with customers choosing to participate in various advanced meter programs offered by suppliers. The purpose of this rulemaking is to establish uniform procedures and standards for the deployment and customer selection of advanced meters and coordination with any EDC installation of advanced meter networks.

Metering Provisions of the Act—66 Pa.C.S. § 2807(a), (d)

The act requires the EDC to provide customer service functions consistent with the regulations of the Commission, including meter reading, 66 Pa.C.S. § 2807(d). The services must, at a minimum, be maintained at the same level of quality under retail competition. Subject to Commission approval, the EDC may require that the customer install, at the customer's expense, enhanced metering capability sufficient to match the energy delivered by the suppliers with consumption by the customer. 66 Pa.C.S. § 2807(a). In addition, section 2804(3) of the act (relating to standards for restructuring of electric industry) permits the Commission to require the unbundling of services other than generation, transmission and distribution.

Present Metering Standards

Commission regulations and statutes address metering operation standards and testing, billing based on meter readings and dispute resolution. 52 Pa. Code §§ 57.20—57.25 and 66 Pa.C.S. §§ 1501—1511. Section 1509 of the Public Utility Code, 66 Pa.C.S. § 1509, also contains certain billing requirements. In addition, National standards for metering exist. For example, the American National Standards Institute (ANSI) has published a number of standards covering electrical metering, time-of-use metering and watt-hour meters.

Procedural Background

In order to facilitate the eventual establishment of a Preliminary Rulemaking Docket, the Commission staff prepared a *Discussion Document on Metering Issues* (Document) which was distributed to the Electric Competition Stakeholders (Stakeholders) on March 10, 1997. The Document presented questions which explored the various alternatives associated with metering.

In addition, to initiate a dialogue with the Stakeholders, a Metering Working Group (Working Group) was established and a public forum was held on March 21, 1997 for all interested parties. Over 90 individuals attended the conference. Presentations were made by QST Energy; Sustainable Systems Research; ENRON Power Marketing, Inc. (ENRON); International Brotherhood of Electrical Workers' Pennsylvania Utility Caucus (IBEW); Clean Air Council; Pennsylvania Electric Association (PEA); and Strategic Energy Limited (SEL). Another meeting was held on April 23, 1997 for members of a working group comprised of various Stakeholders. This meeting focused on presentations by advanced metering companies such as CellNet Data Systems, Inc. (CellNet), Hunt Technologies, ITRON, Inc. (ITRON) and Schlumberger.

By order, entered April 25, 1997, at Docket M-00960890.F0009, we requested comments concerning certain outlined metering questions. The order was distributed to all jurisdictional EDCs, the Office of Consumer Advocate (OCA), Office of Small Business Advocate and Electric Competition Legislative Stakeholders with a 30-day comment period.

Written comments were received from 18 parties including: CellNet; Dale Dix (individual member of IBEW); ENRON; Environmentalists; GPU Energy (GPU); IBEW; Industrial Energy Consumers of Pennsylvania (IECPA); ITRON; OCA; Office of Trial Staff (OTS); PEA; PECO Energy (PECO); Pennsylvania Power and Light Company (PP&L); Pennsylvania Power Company (Penn Power); Pennsylvania Retailers' Association (PRA); Pennsylvania Solar Energy Industries Association (PennSEIA); SEL; and Thomas Tamski (private citizen).

Summary of Comments

Issues surrounding metering in a restructured electric industry present polarized arguments with minimal agreement in certain areas. These issues involve (1) bundling vs. unbundling; (2) the role of the EDC; (3) advanced meter standards; and (4) customer education. While there is substantial disagreement regarding the unbundling of metering, those commenting generally agreed on (1) the Legislative intent of the act; (2) the need for meter standards; (3) the requirement that customers elect to have enhanced metering; and (4) the need for customer education.

Bundling vs. Unbundling of Advanced Metering

ITRON, PEA, Penn Power, PECO, GPU, PP&L, IBEW, Dale Dix and Thomas Tamski are opposed to the unbundling of metering. Environmentalists, ENRON, PRA, IECPA, SEL and OTS support the unbundling of metering. ITRON, PEA, CellNet and IECPA indicate that the intent of the act is in its title. Transmission and distribution should remain regulated and only generation should be deregulated. IECPA notes, however, that metering should be unbundled only to the extent practicable without endangering safety and reliability. ENRON believes that metering is not part of the utility energy delivery system and accordingly should be subjected to competition.

CellNet is neutral and indicates that the unbundling of metering is a potential consideration, but is not a necessary means to implement customer choice of alternate services. OCA states that the act does not specifically require that metering services performed by EDCs be unbundled and subjected to competition. Both CellNet and OCA suggest that the Commission could explore unbundling options. OCA emphasizes that the Commission is mandated to maintain the same level of quality of service under retail competition. IBEW pointed out that the act should not be read without taking other statutory provisions into consideration and noted that public utilities have duties relating to services and facilities under Chapter 15 of the Public Utility Code.

Advanced Meter Deployment

ITRON cautions that an assessment of information requirements for direct access must be made by the EDC prior to implementation of any advanced meter network system. ITRON believes that advanced meter network systems are the most effective solutions to meeting the requirements of direct access. ITRON and CellNet believe that EDCs should be encouraged to offer these types of systems. CellNet and OCA note, however, that any incremental costs should be borne by those who benefit from advanced metering directly, and not spread across the entire ratebase. PEA indicates that advanced metering services are currently available from the EDC.

Regarding advanced meters, all commenters agree that only customers desiring the technologies in order to participate in certain programs offered by suppliers should be required to pay any associated incremental costs. Customers who do not desire advanced meters should not be required to undertake this activity. IBEW notes that the act does not authorize customers to purchase their own meters. Rather, IBEW asserts that the act merely authorizes EDCs to charge customers for the installation of special metering equipment.

Advanced Meter Standards

All commenters agree that standards for advanced meters are essential regardless of the decision to unbundle metering or to maintain the status quo. All agree that Chapters 56 and 57 of our regulations should remain, §§ 56.1—56.231, 57.1—57.141, and that ANSI C12 Standards should be followed for hardware and performance specifics.

CellNet adds that advanced meters must be capable of supporting the expected minimum market requirement of hourly usage collected daily. Standards are needed to require all advanced meters to deliver the minimum level of functionality or to have the capability of being upgraded to perform these functions without requiring the replacement of the meter.

SEL suggests that the Commission should support both: (1) performance standards, in the form of minimum functional requirements; and (2) product specifications in the form of accuracy requirements. SEL maintains that minimum accuracy requirements already exist and minimum functional requirements for advanced meters could include the ability to (1) record and save profiles; (2) modify profile intervals; (3) provide open communications; (4) provide a standard data format; (5) provide a communications port for the customer to monitor electric usage; (6) provide a pulse output to allow for usage monitoring; (7) provide password protection; and (8) provide multiple callout capability.

EDC Responsibilities Regarding Advanced Metering

As previously discussed, both the act and other provisions of the Public Utility Code place responsibilities on the EDC or the jurisdictional public utility with regard to metering and metering services. ITRON, PEA, PECO, GPU, PP&L and IBEW indicate that EDCs should retain control of all metering services as envisioned in the act.

PEA cites numerous reasons for EDC control including equal access to low-cost metering; consistency from customer to customer; direct control and responsibility for reliability, accuracy and maintenance standards; regulatory protection; expertise in metering; public safety; and scale economies in providing various meter services. In addition, EDCs will be the only constant in an environment where suppliers will enter and exit the marketplace as conditions dictate. ITRON indicates that EDCs should continue to play the same role as they now perform regarding meter acquisition, meter installation, meter reading, meter repair and determination of meter accuracy. Likewise, IBEW argues that EDCs are the only entities authorized to provide metering services under the act and Public Utility Code. OCA advocates that the Commission must set forth minimum and continuing obligations of the EDCs.

Conversely, IECPA, ENRON and PRA indicate that metering should be unbundled. ENRON states that EDCs' responsibilities should: (1) establish minimum data elements, data flows, in collaboration with other interests for planning and operating the distribution system; and (2) compete in the marketplace to provide advanced metering services. Many parties indicate that the EDC should be encouraged to offer advanced metering services but condition that recommendation with the caveat that only parties that benefit from advanced metering should be required to pay for the advanced metering.

Advanced Metering Agreements

PEA, PECO, PP&L, Thomas Tamski, CellNet, SEL, ENRON, Environmentalists and OTS support advanced metering agreements to ensure the fulfillment of procedures and standards. PEA maintains that the EDC has ultimate responsibility to ensure that standards are met. CellNet and Environmentalists add that the Commission should be the party to hear appeals and resolve disputes.

Informal Complaint Procedures

Several commenters including PEA, OCA, IECPA, CellNet, OTS and Environmentalists, indicate that metering should be maintained at the same level of quality under retail competition. CellNet believes that the Commission should be the party to hear appeals and resolve disputes. Environmentalists indicate that a mechanism should be developed to settle discrepancies. OTS notes that the Commission must ensure that suppliers do not take advantage of customers.

Customer Education on Advanced Meters

All commentators agree that customer education on advanced metering is essential. PEA states that EDC programs will address customer education needs. GPU notes that EDCs will likely use bill inserts, brochures, radio spots and similar approaches. PP&L will likely use a consumer handbook, workshops, adult education workshops and audiotapes. OCA agrees that the EDC should inform customers that they have an option to purchase or lease an alternative meter if the meter meets Commission standards.

CellNet, SEL and Environmentalists agree that the Commission should develop a general education effort as an independent source. SEL believes that the Commission should review and monitor the activities of EDCs and suppliers. ENRON argues that meter companies should educate customers about service programs.

Conclusions

The Commission concludes that the commencement of generation competition offers substantial opportunities for expanded generation products that may require the use of specialized metering equipment, and that it is necessary at this time to facilitate the expanded use of specialized metering. However, the Commission also concludes that advanced metering is not an essential requirement for all customers to participate in the competitive generation market at this time. Different consumers will require the use of different types of advanced metering equipment to meet their needs. For these reasons, it is inappropriate and unnecessary to require the universal deployment of any particular type of advanced metering equipment or networks. Those consumers and suppliers choosing to use advanced metering equipment should pay for any incremental cost thereby incurred.

The Commission does not believe that it is necessary at this early stage of electric generation competition to unbundle metering from distribution services in order to facilitate the availability of advanced metering to meet consumer needs. Perhaps unbundling of metering services will be appropriate in the future, after market participants have had an opportunity to gain experience in the primary industry change to competitive generation markets.

Instead, the Commission concludes that metering should remain a regulated function of the EDC at this time. Metering can remain a regulated function of the electric distribution utility, retaining all existing requirements and procedures for meter installation, reliability, safety, accuracy and the like. However, the choice of generation supplier is inherently connected with the opportunity for customers and suppliers to choose any type of advanced metering equipment that is necessary to support new generation services that will be available in the market.

We conclude that this approach is consistent with the expectations in the act that the Commission support the development of competitive markets and the availability of resulting consumer benefits while retaining customer service in general, and metering in particular, commensurate with existing service quality as a local distribution function.

Bundling vs. Unbundling of Advanced Metering

It is clear that viewpoints on whether metering should be unbundled remain polarized. Opponents of unbundling argue that EDCs should continue to control all meter services due to the language and Legislative intent of the

act, safety/reliability concerns and other provisions of the Public Utility Code. They assert that the act mandates that EDCs and the Commission ensure that service will not deteriorate. Proponents of unbundling indicate that metering should be open in order to promote development of the competitive market at this time.

We cannot accept either view. The purpose of the act is to permit all Pennsylvania retail electric customers to have direct access to a competitive generation market while obtaining the benefits of expanded services and simultaneously enjoying continued reliable and safe electric distribution service. The act does not require unbundling of metering at this time, but certainly anticipates that unbundling may occur in the future.

We, therefore, conclude that metering can remain a regulated local distribution function at this time while providing substantial opportunities for customer and supplier introduction of advanced metering equipment and the associated expansion of generation services. This proposed rulemaking is intended to establish a set of uniform standards, procedures and requirements that can evolve over time as the competitive market develops: Thus, at this time, (1) customers should be permitted to choose an advanced meter provider while (2) all physical activity related to the advanced meter must be the responsibility of EDC employees as a local distribution function. Given these basic premises, we envision the following regulations:

Advanced Meter Deployment § 57.253

The EDC shall retain all existing functions related to metering, including selection and deployment of basic meters for all customers not selecting an advanced meter. If an EDC seeks to deploy network equipment, procedures must be adopted to ensure coordination with the need for and use of advanced metering equipment in the market. We encourage the integration of new technologies into the marketplace and will monitor the trends.

Advanced meters must meet appropriate standards and be compatible with other functional requirements of EDCs or suppliers. A network for automated meter reading capability, to be deployed by the EDC, must meet the same concerns. A network should be qualified as discussed in the next section. If an EDC seeks to collect a supplemental charge under section 2807(a) of the act, the Commission must approve a tariff change. The following information should be provided through the tariff filing and/or the qualification recommendation: a description of the network system; implementation timeframe; demonstration of compliance with applicable standards; implementation costs; impacts on customer bills and other existing and anticipated customer metering equipment and generation services; educational materials introducing the new metering technology; and the proposed tariffs concerning any charges for deployment of the network.

In addition, a customer shall have the opportunity to choose a qualified advanced meter to support the generation services provided by its chosen supplier. In order to facilitate the deployment of advanced meters and to avoid the time and expense of multiple decisions and negotiations concerning advanced metering, the Commission will establish a Metering Committee (Committee) to assist the Commission in identifying qualified advanced meters and to establish procedures for implementation. The Committee shall be appointed and chaired by the Office of the Executive Director and comprised of representatives of EDCs and suppliers, as well as consumer and environmental interests. The Committee shall submit a Report to

the Commission on or before September 1, 1998, and at least annually thereafter with its considerations and recommendations to the Commission.

The Committee shall seek to develop a catalog of qualified advanced meters, including networks as applicable that include a variety of technologies to support the demands of consumers and the services of suppliers expected in the market. While we expect that these technologies primarily will concern automated meter reading and advanced communication capabilities, they also should include other technologies as appropriate for load management, net metering for self-generation and other services.

Since not all consumers will use advanced meters at this time, and different advanced meters impose different costs and benefits, we do not believe that it is appropriate at this time to fund advanced metering through regulated rates paid by all customers. Instead, the EDC should be reimbursed for any net incremental costs incurred to provide the advanced metering. We note that the initial acquisition of an advanced meter certainly involves an additional expense, but that the expenses may be at least in part offset by reduced EDC expenses for meter reading, billing, normal change out and similar avoided EDC functions. We do not envision authorizing advanced meter surcharges that do not consider the offsetting costs.

Since the EDC will continue to be responsible for all metering services other than the selection of the meter, there is no reason to consider at this time issues as who should own the meter or pay an acquisition cost. The EDC shall own and pay the acquisition cost, although the customer and/or supplier shall be responsible for any net incremental costs incurred by the EDC. The customer and supplier may agree to share these costs as they deem appropriate. If the customer is to pay the costs directly, we assume that the basic method shall be in the form of a monthly bill surcharge. If the supplier is to pay the cost, perhaps a single payment would be preferable. The Committee should consider and recommend EDC reimbursement procedures that will be resolved by the Commission when it considers the applicable tariff of each EDC.

We believe that these provisions will ensure that customers will have the flexibility to choose an advanced meter while retaining metering as a regulated local distribution function and assuring EDC accountability for the safety and reliability of the distribution system without deterioration.

Advanced Meter Standards § 57.254

Advanced meters and network systems shall, at minimum, conform to existing standards for accuracy and safety including all existing Commission regulations, and ANSI C12 Standards or as these standards may be amended.

It is not appropriate for the Commission to adopt rigid standards for advanced metering at this time, as the market and available technologies are certain to evolve considerably in the coming years. Instead, the proposed regulations are designed to adopt a flexible set of standards that will be adopted by the Commission from time to time as requirements based on the recommendations of a working Meter Committee composed of representatives of interested groups. We believe that an advanced meter or network must possess, at minimum, open, nonproprietary communications capabilities, which allow both a supplier and EDC to access the information in a standard data format with multiple callout capability,

unless the qualified advanced meter is to be used in conjunction with a second meter. In addition, a qualified advanced meter must be capable of supporting the expected minimum market requirement of hourly usage and may support one or more other functional requirements such as the ability to: (1) modify profile intervals; (2) provide a communications port for the customer to monitor usage; (3) provide a pulse output to allow for usage monitoring; (4) provide password protection; and (5) operate in two directions for net metering.

For purposes of this proposed rulemaking, we believe that a meter which meets these minimum requirements shall be considered a qualified advanced meter subject to applicable surcharges and requirements of this subchapter.

We will periodically review and revise these requirements, as necessary, to reflect changes in technology and infrastructure that may occur in the restructuring of electric utility service in general. For purposes of this proposed rulemaking, we request comments on these general standards.

EDC Responsibilities Regarding Advanced Metering § 57.255

Because we conclude that it is not necessary to unbundle metering at this time, an employe of the EDC shall continue to be responsible for all activity relating to metering such as setting meters, testing, calibrating, change-out, energizing and the like.

An employe of the EDC must install and make operational a qualified advanced meter within 15 business days of the request to do so. The EDC must develop a procedure for ensuring the availability of qualified advanced meters as required. For example, an EDC could keep an inventory of meters as it does for other equipment or arrange with other suppliers and EDCs for more economic and efficient ways to ensure availability.

Since most forms of advanced metering provide opportunities for advanced generation services, the supplier must have complete access to automated meter reading. A supplier must be permitted directly to obtain automated meter readings as it requires, either in addition to or instead of the EDC reading. However, physical meter reading must be provided by an employe of the EDC as part of its local distribution service. The EDC shall comply with § 56.12(5)(ii) concerning physical readings to verify the accuracy of automated meter readings.

In order to encourage the deployment of advanced technologies on a systemwide basis, we may, at an appropriate time in the future, require EDCs to install advanced meters or networks. The Commission will remain flexible to address situations as they develop in the marketplace.

We believe these provisions to be consistent with the Legislative intent of the act to ensure that meter services are maintained at the same level of quality under a competitive generation supply environment.

Disputes Concerning Advanced Meters § 57.256

Disputes and operational issues concerning advanced metering are likely to develop in the early years and diminish over time. The Meter Committee provides an ideal forum for addressing these issues in the first instance.

Unresolved disputes or operational problems concerning advanced metering between an EDC and a supplier may be referred to the Office of Administrative Law Judge for

resolution using alternative dispute resolution, if possible, or through other proceedings as may be necessary. Upon the request of the Office of Administrative Law Judge, technical staff shall provide the technical expertise as is necessary to resolve disputes related to advanced metering. Disputes between an EDC and a residential or small commercial customer, or between a supplier and a residential or small commercial customer, may be filed with the Bureau of Consumer Services for mediation and dispute resolution consistent with existing Commission regulations.

If a customer, applicant or other interested party expresses dissatisfaction with an EDC or supplier response regarding advanced metering, the EDC or supplier must inform that person of the right to have the problem considered and reviewed by the Commission as an informal or formal complaint. The EDC or supplier shall explain how to file a complaint and otherwise comply with applicable regulations.

Record Retention and Reporting Requirements § 57.257

We will monitor deployment of all advanced meters or networks. In order to fulfill our statutory responsibility to ensure that service quality does not deteriorate and to hold EDCs accountable for their activities in this regard, we propose in these regulations that EDCs retain certain records and submit summary reports to us by April 1 of each year. We specifically seek comments concerning the content of these records and reports and whether there are other ways to address the Commission's responsibilities in this regard.

For the purpose of this proposed rulemaking and comments thereon, we propose that EDCs retain the following information in summary form for Commission staff review:

- (1) Updated lists of all qualified advanced meters;
- (2) General summary of procedures for advanced meter acquisition and installation;
- (3) Date of advanced meter purchase request by customers or suppliers and date of installation;
- (4) Summary of qualified advanced meters deployed, including the name of manufacturer and serial numbers;
- (5) Summary of characteristics and capabilities of each qualified advanced meter;
- (6) Summary of operational problems experienced and how resolved;
- (7) Summary of educational activities concerning advanced metering in general and specific qualified advanced meters;
- (8) Summary of advanced meter network activity; and
- (9) Any other information deemed appropriate.

The proposed regulations would require that EDCs file a report including the above information by April 1 of each calendar year. EDCs should also retain customer terms of service disclosure statements which include advanced metering provisions as provided in § 57.258.

The summary information will assist us to fulfill our statutory obligation to protect the customer and ensure that service quality does not deteriorate. This requirement will hold EDCs accountable for all metering activities including: advanced metering development; advanced meter selection and installation; advanced meter network deployment; and appropriate customer education. We will provide oversight to ensure that barriers to technological advances do not develop in the future.

Customer Education on Advanced Metering § 57.258

The manner in which customers perceive the changes to a competitive market will determine whether they choose to exercise choice. Customers will be required to choose whether to keep their current spinning disk meter or opt for an advanced metering system.

In general, residential customers now pay little attention to the function of their electric meter. In order to make an informed decision to keep the standard meter or change to an advanced meter, customers will have to compare advantages and disadvantages. For customers to understand and have confidence in their choices, customers must have the skills and knowledge to gather and use information wisely, and to track their electric usage effectively. Customers should have knowledge before installation of an advanced meter or participation in a specialized generation services program offered by a supplier.

To help ensure that prospective customers are aware of these implications, EDCs and suppliers must ensure that customers are informed as to the capabilities, advantages and disadvantages of an advanced meter prior to installation or participation in a generation service program utilizing advanced metering.

The terms of service disclosure statement anticipated to be required under the Customer Information Disclosure for Electricity Providers Proposed Rulemaking Order entered on November 7, 1997 at Docket No. L-00970126 is an ideal method for ensuring that the information is provided. An EDC or supplier must provide terms of service disclosure statements in compliance with the final rules adopted in that docket. Including metering information in the disclosure statement can help ensure that customers were provided all applicable information pertaining to advanced metering service and fees.

As part of its customer education responsibilities, an EDC must provide educational materials to all customers addressing the capabilities, advantages, disadvantages and fees of an advanced meter including how to obtain more information, and dispute procedures.

In order to fulfill our Legislative mandate to ensure that the level of quality regarding metering services will not deteriorate in this Commonwealth, we propose to amend our regulations to read as set forth in Annex A, and establish metering deployment and customer selection procedures, meter standards and education strategies for customers choosing to participate in certain generation supply programs which require advanced metering capability. Accordingly, under sections 501 and 2807(a) and (d) of the Public Utility Code, 66 Pa.C.S §§ 501 and 2807(a) and (d), and the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. § 1201, et seq.) and the regulations promulgated thereunder at 1 Pa. Code §§ 7.1—7.4, we propose to amend the regulations at 52 Pa. Code Chapter 57, as noted above and to read as set forth in Annex A; *Therefore,*

It Is Ordered That:

1. A rulemaking docket shall be opened pertaining to advanced meters for electricity providers to read as set forth in Annex A.
2. The Secretary shall certify this order and Annex A and deposit them with the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.
3. Interested parties may submit written comments, an original and 15 copies to the Office of Prothonotary, Pennsylvania Public Utility Commission, P. O. Box 3265,

Harrisburg, PA 17105-3265, within 30 days from the date this order is published in the *Pennsylvania Bulletin*. A copy of written comments shall also be served upon the Commission's Bureau of Conservation, Economics and Energy Planning.

4. The Secretary shall submit this order and Annex A to the Office of Attorney General for preliminary review as to form and legality.

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

6. The Secretary shall submit this order and Annex A for review by designated standing committees of both Houses of the General Assembly, and for review and comments by IRRC.

8. That the contact persons for this matter are Charles F. Covage, Bureau of Conservation, Economics, and Energy Planning, (717) 783-3835 (technical) and Stephen Gorka, Law Bureau (717) 772-8840 (legal).

JAMES J. MCNULTY,
Secretary

Statement of Vice Chairperson Robert K. Bloom

Before the Commission for consideration is a proposed rulemaking on Advanced Meter Deployment for Electricity Providers which proposes amendments to 52 Pa. Code Chapter 57. The purpose of this proposed rulemaking is to establish uniform procedures and standards for the deployment and customer selection of advanced meters and electric distribution company installation of advanced meter networks which may be required under the Electricity Generation Customer Choice and Competition Act ("Act"). Comments from interested parties addressing the various proposals within these regulations are requested and are due within 30 days from the date this order is published in the *Pennsylvania Bulletin*. I encourage parties to comment on this proposal and specifically request that commentators consider my concerns with this rulemaking as delineated below.

The issue of whether the function of metering should be unbundled and performed on a competitive basis is a threshold issue of the transition to a competitive electric generation market that has yet to be considered by this Commission. The Act neither specifies that metering should be unbundled or that it should remain a regulated distribution function. Section 2804(3) of the Act specifies that the Commission shall require unbundling to separate the charges for generation, transmission and distribution, and that "The Commission may require the unbundling of other services." Pursuant to Section 2807(a) of the Act, subject to Commission approval, the Electric Distribution Company ("EDC") may require that the customer install, at the customer's expense, enhanced metering capability sufficient to match the energy delivered by the suppliers with consumption by the customer.

The proposed Order states that the Commission concludes that metering should remain a regulated function of the EDC at this time, that the choice of generation supplier is inherently connected with the opportunity for customers and suppliers to choose any type of advanced metering equipment that is necessary to support new generation services, and that those consumers and suppliers choosing to use advanced metering equipment should pay for any incremental cost thereby incurred. This recommendation proposes that the EDC shall own and pay the acquisition cost of advanced meters, but sets up a tariffed surcharge mechanism which the EDC could

implement to be compensated for any net incremental costs. I request commenter's opinions on whether this approach is consistent with the Act, consistent with a competitive generation market and the most administratively efficient procedure to accomplish advanced metering.

I am also concerned about the significance of the language contained in several sections of the proposed regulations. Specifically, Section 57.252. Advanced meter deployment and Section 57.254. EDC responsibilities regarding advanced metering contain language whereby employees of the EDC are responsible to install, calibrate, maintain, test and physically read advanced meters. However, no definition of an EDC employee is contained in the proposed regulations. While I do not believe that this rulemaking docket is the proper place to address this issue, a majority of the Commissioners have decided otherwise. I request commentators opinions on the ramifications of this language and whether such restrictions are consistent with a competitive generation market.

Because of the above concerns, I vote to concur in the result only of this rulemaking strictly for the purpose of soliciting comments on the proposed regulations.

Fiscal Note: 57-190. No fiscal impact; (8) recommends adoption.

Annex A

**TITLE 52. PUBLIC UTILITIES
PART I. PUBLIC UTILITY COMMISSION
CHAPTER 57. ELECTRIC SERVICE**

Subchapter O. ADVANCED METER DEPLOYMENT

Sec.	Purpose.
57.251.	Definitions.
57.252.	Advanced meter deployment.
57.253.	Advanced meter standards.
57.254.	EDC responsibilities regarding advanced metering.
57.255.	Disputes concerning advanced metering.
57.256.	Record retention and reporting requirements.
57.257.	Customer education on advanced metering.

§ 57.251. Purpose.

The purpose of this subchapter is to facilitate the deployment of advanced metering equipment and the associated development of generation services based on these technologies. This subchapter will establish a procedure for identifying and providing for customer selection of qualified advanced meters and deployment of automatic meter reading network equipment from the electric distribution company while maintaining the safety and reliability of the electric system in this Commonwealth.

§ 57.252. Definitions.

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

Advanced meter network or network—A communications infrastructure installed in conjunction with an existing electronic watt-hour meter which allows for automated meter reading and other services.

Advanced meter standards—A set of general guidelines which define minimum compatibility, accuracy and functional requirements for an advanced meter.

Commission—The Pennsylvania Public Utility Commission.

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

Electric generation supplier or electricity supplier—An electricity supplier as defined by 66 Pa.C.S. § 2803.

Multiple callout capability—A function which permits advanced meters to call more than one telephone number to report electric usage information.

Qualified advanced meter—An electronic watt-hour meter identified through the process established under this subchapter that supports the provision of generation services in a competitive market and meets certain advanced meter standards.

Retail electric customer or customer—A direct user of electric power as defined by 66 Pa.C.S. § 2803.

Small commercial customer—An individual, partnership, corporation, association or other business entity which employs fewer than 250 employees and which receives public utility service under a small commercial, small industrial or small business rate classification.

§ 57.253. Advanced meter deployment.

(a) Upon written request from both a customer and the generation supplier of that customer, an employe of the EDC shall install and make available for use any qualified advanced meter.

(b) A qualified advanced meter shall be one approved by the Commission according to the following process:

(1) The Office of the Executive Director shall appoint and chair a Metering Committee (Committee) composed of representatives of EDCs and suppliers, as well as representatives of consumer and environmental interests.

(2) The Committee shall meet as necessary in order to establish and modify from time to time recommendations to the Commission for a catalog of qualified advanced meters. The Committee shall seek to include in the catalog a variety of technologies that support the demands of customers and the services of suppliers expected in the market. These technologies may include: networks, two-way communication, time of use capabilities, load management, net metering for self-generation and similar services. Qualified advanced meters shall meet the standards in § 57.254 (relating to advanced meter standards).

(3) The Committee shall submit a report to the Commission by September 1, 1998, and at least annually thereafter, with its considerations and recommendations.

(c) Consumers and suppliers shall be responsible for any net incremental costs incurred by the EDC as a result of using a qualified advanced meter.

(1) Consumers using a qualified advanced meter may be assessed a bill surcharge by the EDC to cover net incremental costs associated with the choice to use an advanced meter, such as physical installation, meter reading and maintenance.

(2) In lieu of a customer surcharge, the supplier may pay the EDC for net incremental costs.

(3) The customer and supplier may mutually agree to allocate these charges between them.

(d) The Committee shall include in its reports to the Commission facts concerning the anticipated net incremental costs of any qualified advanced meters and any recommendations concerning the appropriate level and manner of payment of these charges.

(e) A customer surcharge or supplier payment for qualified advanced meters shall be incorporated in a tariff of each EDC approved by the Commission.

(f) An EDC may deploy a network for automatic meter reading capability provided that the following conditions apply:

(1) The network is compatible with market requirements as a qualified advanced meter based on the Metering Committee review and recommendations as adopted by the Commission.

(2) The application includes proposed tariffs concerning any charges for deployment of the network.

(3) The application includes, at a minimum:

(i) A description of the system.

(ii) Implementation time frame.

(iii) Certification on compliance with applicable standards.

(iv) Implementation costs.

(v) Summary of educational materials on the new technologies.

(vi) Impacts on customer electric bills.

(vii) Impacts on existing and anticipated advanced metering equipment and generation services.

§ 57.254. Advanced meter standards.

(a) An advanced meter and a network shall conform to existing regulations contained in §§ 57.20—57.25 and American National Standards Institute Standard C12 or as these standards may be amended.

(b) A qualified advanced meter and a network shall meet standards adopted by the Commission from time to time after consideration of the recommendations of the Metering Committee. All qualified advanced meters or networks should possess open, nonproprietary communications capabilities which allow both a supplier and EDC to access information in a standard data format, with multiple call-out capability, unless the qualified advanced meter is to be used in conjunction with a second meter. In addition, a qualified advanced meter shall be capable of measuring hourly usage, and may support one or more functional requirements, such as the ability to do one or more of the following:

(1) Modify a profile interval.

(2) Provide a communications port for a customer to monitor usage.

(3) Provide a pulse output to allow for usage monitoring.

(4) Provide password protection.

(5) Operate in two directions.

(c) A meter that meets requirements provided in subsections (a) and (b) shall be considered a qualified advanced meter and subject to applicable surcharges and other requirements of this subchapter. The Commission will periodically review and revise these requirements as necessary.

§ 57.255. EDC responsibilities regarding advanced metering.

(a) A qualified advanced meter shall be owned and operated by the EDC as part of its regulated local distribution function. An employe of the EDC shall be responsible for compliance with all applicable requirements related to installation, calibration, maintenance, testing, physical reading, safety and reliability.

(b) A supplier serving the customer may perform automated meter reading activities.

(c) An employe of the EDC shall install and make operational a qualified advanced meter within 15 business days from the date the request is received by an EDC.

(d) An employe of the EDC shall physically read an automated meter in compliance with § 56.12(5)(ii) (relating to meter reading; estimated billing; ratepayer readings).

(e) The EDC shall develop a protocol that ensures that qualified advanced meters are available for installation as required in this subchapter. The EDC may purchase and stock the meters, or may otherwise arrange with suppliers and other EDCs for the most economical way to ensure availability.

§ 57.256. Disputes concerning advanced metering.

(a) Disputes or operational problems between suppliers and EDCs concerning the use of advanced metering shall in the first instance be brought forward for review and resolution, to the extent possible, by the Metering Committee.

(b) An unresolved dispute or operational problem concerning advanced metering between an EDC and a supplier may be referred to the Office of Administrative Law Judge for resolution using alternative dispute resolution, if possible, or through other proceedings as may be necessary. Upon the request of the Office of Administrative Law Judge, Commission staff will provide technical expertise as is necessary to resolve a dispute related to advanced metering.

(c) A dispute between an EDC and a residential or small commercial customer, or between a supplier and a residential or small commercial customer, may be filed as an Informal Complaint with the Bureau of Consumer Services for mediation and dispute resolution consistent with this title.

(d) When a customer, applicant or other interested party expresses dissatisfaction with an EDC or supplier decision or explanation of its actions covered by this subchapter, the EDC or supplier shall inform the customer, applicant or other interested party of the right to have the problem considered and reviewed by the Commission as an informal or formal complaint. The EDC or supplier shall explain how to file the complaint and otherwise comply with §§ 3.111, 3.112 and §§ 56.161—56.224.

§ 57.257. Record retention and reporting requirements.

(a) An EDC shall maintain the following records:

(1) Updated lists of all qualified advanced meters.

(2) General summary of procedures for advanced meter acquisition and installation.

(3) The date of advanced meter purchase request by customer and supplier and date of installation.

(4) The summary of qualified advanced meters deployed, including name of manufacturer and serial numbers.

(5) The summary of characteristics and capabilities of each qualified advanced meter.

(6) The summary of operational problems experienced.

(7) The summary of educational activities concerning advanced metering in general and specific qualified advanced meters.

(8) The summary of advanced meter network activity under this subchapter.

(9) Other information deemed appropriate.

(b) An EDC shall submit to the Commission an annual Report by April 1 of each year including the information required under subsection (a).

(c) An EDC and supplier shall retain an executed customer terms of service disclosure statement which includes advanced metering provisions as provided in § 57.258 (relating to customer education on advanced metering) and shall be available for Commission review upon request.

§ 57.258. Customer education on advanced metering.

(a) The supplier shall ensure that a customer is informed as to the capabilities, advantages and disadvantages of a qualified advanced meter prior to installation or participation in a generation service program utilizing advanced metering.

(b) An EDC and supplier shall provide a terms of service disclosure statement that covers advanced metering.

(c) An EDC shall provide consumer education as part of its consumer information program addressing the capabilities, advantages and disadvantages of advanced metering, including qualified advanced meter options, applicable costs/surcharges, meter operations and capabilities, how to obtain more information, and dispute procedures.

(d) An EDC shall comply with § 57.257 (relating to record retention and reporting requirements).

[Pa.B. Doc. No. 98-169. Filed for public inspection January 30, 1998, 9:00 a.m.]

[52 PA. CODE CH. 54]

[L-970126]

Customer Information Disclosure for Electricity Providers

The Pennsylvania Public Utility Commission (Commission) on November 6, 1997, adopted a proposed rulemaking to enable customers to make informed choices regarding the purchase of all electricity services offered by that electricity providers. The rulemaking will implement and codify this provision of the act. The contact persons are Annunciata E. Marino (717) 772-2152 and Terrence J. Buda, Assistant Counsel, Law Bureau (717) 787-5755.

Executive Summary

On December 3, 1996, Governor Tom Ridge signed into law 66 Pa.C.S. §§ 2801—2812 (relating to Electricity Generation Customer Choice and Competition Act) (act). The act revised the 66 Pa.C.S. (relating to Public Utility Code) by inter alia, adding Chapter 28, relating to

restructuring of the electric utility industry. The purpose of the act is to permit customers their choice of electricity generation suppliers while maintaining reliable and safe electric service.

Section 2807(d)(2) of the act (relating to duties of electric distribution companies) requires the establishment of regulations ensuring that each electric distribution company, electricity supplier, marketer, aggregator and broker provide adequate and accurate customer information to enable customers to make informed choices regarding the purchase of all electricity services offered by that provider. The purpose of the regulation is to implement and codify this provision of the act.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on January 16, 1998, the Commission submitted a copy of these proposed regulations to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House Committee on Consumer Affairs and the Senate Committee on Consumer Protection and Professional Licensure. In addition to submitting the proposed regulations, the Commission has provided IRRC and the Committees with a copy of a detailed Regulatory Analysis Form prepared by the Commission in compliance with Executive Order 1996-1. A copy of this material is available to the public upon request.

If the Legislative Committees have objection to any portion of the proposed regulations, they will notify the Commission within 20 days of the close of the public comment period. If IRRC has objections to any portion of the proposed regulations, it will notify the Commission within 10 days of the close of the Legislative comment period. The notification shall specify the regulatory review criteria which have not been met by that portion. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the regulations, by the Commission, the General Assembly and the Governor of any objections raised.

Public meeting held
November 6, 1997

Commissioners Present: John M. Quain, Chairperson; Robert K. Bloom, Vice Chairperson; John Hanger; Statement follows; David W. Rolka; Nora Mead Brownell, Statement follows

Proposed Rulemaking Order

By the Commission:

Introduction

On December 3, 1996, Governor Tom Ridge signed into law the "Electricity Generation Customer Choice and Competition Act" (act). The act revised the Public Utility Code, 66 Pa.C.S. §§ 101, et seq., by inter alia, adding Chapter 28, relating to restructuring of the electric utility industry. The purpose of the act is to permit customers their choice of electricity generation suppliers while maintaining reliable and safe electric service. See 66 Pa. C.S. §§ 2801—2812. The purpose of this rulemaking is to establish uniform procedures and standards for the provision of clear and adequate disclosure of customer information in the retail electricity industry.

Under section 2807(d)(2) of the act, Customer Information Provisions of the act, the Commission is required to establish regulations for each electric distribution company (EDC), electricity supplier, marketer, aggregator and broker (suppliers) to provide adequate and accurate cus-

tom information to enable customers to make informed choices regarding the purchase of all electricity services offered by that provider. The act states that "information shall be provided to consumers in a clear and understandable format that enables consumers to compare prices and services on a uniform basis." See 66 Pa.C.S. § 2807(d)(2).

The elements addressed by this rulemaking are interrelated and are important aspects of communications between the EDC/supplier and customers, such as billing format, disclosure of terms of service and pricing practices, which are necessary to meet the requirements of the act. Decisions regarding utility and supplier interactions are being addressed in Commission Docket No. M-00960890.F0011, and those decisions regarding advanced meter deployment are being addressed in Commission Docket No. M-00960890.F0009.

Procedural Background

To facilitate the establishment of interim requirements prior to the promulgation of regulations, the Commission staff prepared the Discussion Document on Customer Information (Document) that was distributed to Electric Competition Stakeholders (stakeholders) on February 3, 1997. The Document presented questions which explored the various alternatives associated with customer information. Fourteen written comments were received in response to the Document, including: Patricia L. Bourne (private citizen); Enron Capital & Trade Resources (ENRON); the Environmentalists; Green Mountain Resources, Inc.; Industrial Energy Consumers of Pennsylvania (IECPA); Mid-Atlantic Independent Power Producers (MAIPP); New Energy Ventures (comments and supplement); Office of Consumer Advocate (OCA); Pennsylvania Coal Association; Pennsylvania Weatherization Task Force; QST Energy; Strategic Energy LTD.; University of Delaware; and Fred Wooley (PP&L Customer Service Representative and IBEW Local 1600 member).

In addition, to initiate a dialogue with the Stakeholders, a public forum was held on February 14, 1997. Over 65 individuals attended the forum. Presentations were delivered by Commission staff, the Office of Attorney General, ENRON, International Brotherhood of Electrical Workers' (IBEW) Local 1600, Pennsylvania Electric Association (PEA), New Energy Ventures Mid-Atlantic and the University of Delaware. At the forum, a Customer Information Working Group (Working Group) was established.

By order entered April 1, 1997, at Docket No. M-00960890.F0008, we requested comments concerning four primary customer information issues: (1) standards and pricing practices for retail electricity service; (2) data sharing; (3) marketing/sales activities; and (4) complaint process and dispute resolution. Twenty-seven additional outstanding issues for comment were also listed in this order. The order was distributed to all jurisdictional EDCs, the Office of Consumer Advocate, Office of Small Business Advocate and Electric Competition Legislative Stakeholders with a 31-day comment period. At the request of Stakeholders, the comment period was extended another 7 days, with a deadline of May 8, 1997. Written comments were received from 19 parties including: Appalachian-Pacific Coal Mine Methane Power Company LLC; Energy Coordinating Agency of Philadelphia, Inc.; ENRON; the Environmentalists; GPU Energy and GPU Advanced Resources; Green Mountain Energy Partners, L.L.C.; International Brotherhood of Electrical Workers' Pennsylvania Utility Caucus; Lebanon Methane Recovery, Inc.; New Energy Ventures-Mid Atlantic; Office of the Attorney General; Office of Consumer Advocate;

Office of Trial Staff; PECO Energy; PEA; Pennsylvania Power Company; Pennsylvania Power & Light Company; QST Energy Inc.; UGI-Electric; and United States Environmental Protection Agency.

On April 16, 1997, the Working Group met to further clarify and discuss the outstanding issues listed in the April 1, 1997, order, as well as the additional issues raised in Commissioners Hanger and Rolka's statements attached to that order. Special presentations were also delivered on customer information needs by Ed Holt & Associates and American Energy Solutions, Inc. More than 35 individuals attended this Working Group meeting.

Considering the written comments of all parties and discussions of the Working Group, consensus was reached on most issues surrounding customer information needs in a restructured electric industry. These issues concerned standards and pricing practices for all customers, with more stringent requirements targeting only residential and small commercial customers. The requirements for residential and small commercial customers addressed the following: billing; terms of service/disclosure statement; energy use and efficiency information; supplier disclosure for pricing; marketing/sales activities; privacy of customer information; and the process for handling complaints. By order entered July 11, 1997, at Docket No. M-00960890.F0008, we issued Customer Information Interim Requirements, which outlines all of the above-named issues and summarizes the written comments received from our Request for Comments Order, entered April 1, 1997, at Docket No. M-00960890.F0008.

The Commission is particularly interested in receiving comments on certain issues. We recognize that transmission services provided by the EDC may be billed to the generation supplier under to the Federal Energy Regulatory Commission (FERC) practice. We are specifically interested in comments regarding transmission billing under § 54.4(b)(2)(ii) (relating to bill format—residential and small commercial customers) being applicable to suppliers.

We are interested in comments regarding information about renewable resources under § 54.5(e)(6)(v) (relating to terms of service—residential and small commercial customers) and whether use of general terms such as "green" can provide customers clear information. In addition, we are interested in receiving comments with respect to the appropriateness of the Federal Trade Commission (FTC) Guides for the Use of Environmental Marketing Claims. (See 16 CFR Part 260 (relating to guides for the use of environmental marketing claims)).

We are also interested in comments on the Commission's "Consumer's Dictionary for Electric Competition" (Dictionary) and "A Short Glossary of Standard Terms for Customer Communications" (Glossary). Commentators can request a copy of the Dictionary and Glossary from the Commission's Office of Communications.

Finally, we recognize the different viewpoints regarding the restriction of customer information. We are, therefore, interested in comments regarding privacy of customer information under § 54.9(a) (relating to privacy of customer service).

To fulfill our Legislative mandate to establish regulations for the provision of adequate and accurate customer information concerning the purchase of all electricity services in a competitive generation market, we propose to create regulations as set forth in Annex A, and establish customer information disclosure requirements

for electricity providers. Accordingly, under 66 Pa.C.S. §§ 501, 504—506, 701, 1301, 1501 and 2807, and the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201—1208) and the regulations promulgated thereunder in 1 Pa. Code §§ 7.1—7.4, we shall issue for comment proposed Chapter 54; *Therefore,*

It Is Ordered that:

1. The proposed regulations for Chapter 54, Electricity Generation Customer Choice, as set forth in Annex A hereto, are issued for comment.

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

3. Interested persons may submit an original and 15 copies of written comments to the Office of Prothonotary, Pennsylvania Public Utility Commission, P. O. Box 3265, Harrisburg, PA 17105-3265, within 30 days from the date this order is published in the *Pennsylvania Bulletin*. A copy of written comments shall also be served on the Commission's Bureau of Conservation, Economics, and Energy Planning.

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

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

6. The Secretary shall submit this order and Annex A for review by the designated standing committees of both Houses of the General Assembly, and for review and comment by IRRC.

7. A copy of this order and Annex A shall be served upon the Office of Consumer Advocate, the Office of Small Business Advocate, the Office of Trial Staff, all jurisdictional electric utilities, all parties of record and all Electric Competition Stakeholders.

JAMES J. MCNULTY
Acting Secretary

Statement of Commissioner John Hanger

This important rulemaking is designed to help assure that customers have available the information necessary to make informed decisions concerning competitive generation.

The proposal requires that terms of service disclosure statements (provided after a customer has chosen the supplier) and customer bills for residential and small commercial customers contain a standard pricing unit for electricity in cents per kwh, kW or other Commission approved standard pricing unit. However, the proposed regulations do not require any particular equivalent disclosure of simple pricing units while a customer is still shopping for a supplier.

During the pilot programs, the Commission has encouraged suppliers to communicate prices in simple cents per kwh, but many suppliers have either not been willing or able to do so. At the same time, the Commission has received numerous questions and concerns about the usefulness of the pricing information provided. Certainly, residential and small commercial customers must have clear price information available.

Should the regulations require simple price per kwh or similar standard ways to market prices to the shopping customer? If so, should such information only be available

upon request, or should it be required in certain listings, such as a webpage, or in any or all marketing materials?

I look forward to reading your comments on this issue.

Statement of Commissioner Nora Mead Brownell

As we move forward with the restructuring of the electric industry into a competitive market place, we cannot forget that the goal of this change is improved service to the consumer. By service, I mean much more than price. Customer relations, as well as price, will be a determining factor in attracting new business.

One of the most crucial aspects of customer relations is the timely and effective provision of accurate information. The success, or failure, of all participants to convey accurate and understandable information to the public will have an immediate and direct impact on the public trust. It is that public trust which will judge how well all of the participants have met our commitments to this process.

It is also axiomatic that confusing or poor information will be bad for business. A consumer who receives confusing or poor information from a new supplier will more likely opt for the status quo rather than engage in the decision making process which will be required under competition. Similarly, a consumer who receives poor or confusing information from a current supplier will likely switch to a more customer friendly supplier.

I urge all concerned to carefully review these proposed regulations from the foregoing perspective and provide us with comments. I am specifically interested in comments regarding whether we should provide more stringent requirements for standard product/price comparisons to aid in consumer shopping. Examples such as a required price per kilowatt hour comparison should be discussed. In addition, I would like the parties to comment on whether there should be a specific provision for Commission review of marketing plans for generation suppliers.

The tremendous public response to the pilot programs has laid to rest any question of whether the public is interested in electric competition. Our task in this rule-making is to ensure that information is conveyed to the public effectively and in a fashion that preserves the public trust as we move into the new era of competition.

Fiscal Note: 57-187. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 52. PUBLIC UTILITIES

PART I. PUBLIC UTILITY COMMISSION

Subpart C. FIXED SERVICE UTILITIES

**CHAPTER 54. ELECTRICITY GENERATION
CUSTOMER CHOICE**

Subchapter A. CUSTOMER INFORMATION

Sec.	
54.1.	Purpose.
54.2.	Definitions.
54.3.	Standards and pricing practices for retail electricity service.
54.4.	Bill format—residential and small commercial customers.
54.5.	Terms of service—residential and small commercial customers.
54.6.	Energy use and efficiency information.
54.7.	Supplier disclosure for pricing.
54.8.	Marketing/sales activities.
54.9.	Privacy of customer service.
54.10.	Complaint handling process.

§ 54.1. Purpose.

The purpose of this subchapter is to require each EDC, electricity supplier, marketer, aggregator and broker to

provide adequate and accurate customer information to enable customers to make informed choices regarding the purchase of all electricity services offered by that provider. Information shall be provided to customers in an understandable format that enables customers to compare prices and services on a uniform basis.

§ 54.2. Definitions.

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

Basic services—Services necessary for the physical delivery of service, including generation, transmission and distribution. Transition services, although temporary in scope, are basic services (see the definition of transition charges).

CTC—competitive transition charge—The competitive transition charge as defined in 66 Pa.C.S. § 2803 (relating to definitions).

Commission—The Pennsylvania Public Utility Commission.

Customer—A customer as defined in 66 Pa.C.S. § 2803.

Customer information—Verbal or electronic formats used by EDCs or suppliers to communicate services and prices to customers.

Distribution charges—Basic service charges for delivering electricity to the home or business. These charges include basic service under § 56.15(4) (relating to billing information) and universal service.

EDIC—electric distribution company—The electric distribution company as defined in 66 Pa.C.S. § 2803.

Electricity supplier or supplier—Electricity supplier as defined in 66 Pa.C.S. § 2812(g) (relating to approval of transition bonds).

Generation charges—Basic service charges for the cost of electricity supply.

ITC—intangible transition charge—Charges designed to recover an EDC's transition or stranded costs, which are subject to special-purpose financing.

Nonbasic services—Recurring services which are distinctly separate and clearly not required for the physical delivery of electric service.

Renewable resources—Renewable resources as defined in 66 Pa.C.S. § 2803.

Small commercial—This term refers to a person, sole proprietorship, partnership, corporation, association or other business entity which employs fewer than 250 employees and which receives public utility service under a small commercial, small industrial or small business rate classification. See section 2 of the Small Business Advocate Act (73 P. S. § 399.42).

Terms of service—An agreement between a customer and a supplier.

Transition charges—Basic service charges comprised of a CTC and an ITC, designed to recover an electric utility's transition or stranded costs as approved by the Commission.

Transmission charges—Basic service charges for the cost of transporting electricity over high voltage wires from the generator to the distribution system of an EDC.

§ 54.3. Standards and pricing practices for retail electricity service.

In furnishing retail electricity service, EDCs and suppliers or any entity that otherwise provides retail electricity service information to customers, shall comply with the following:

(1) Use common and consistent terminology in customer communications, including marketing, billing and terms of service.

(i) Use the term "EDC" as defined in § 54.2 (relating to definition) as a standard term.

(ii) Use the terms as defined in the Commission's "Consumer's Dictionary for Electric Competition" (Dictionary), maintained on file in the Commission's Office of Communications. EDCs shall provide this Dictionary upon customer request, and the bill insert described in subparagraph (iii) shall indicate the phone number and address to request the Dictionary.

(iii) As long as an EDC is collecting transition charges, the EDC shall distribute as a bill insert at least once every 6 months, the Commission's "A Short Glossary of Standard Terms for Customer Communications" (Glossary). The Glossary will be maintained on file in the Commission's Office of Communications.

(2) Provide adequate disclosure of terms of service.

(3) Provide accurate pricing information that reflects the customer's true cost for service. Prices billed shall match advertised, promotional or agreed upon prices.

(4) Respond fully, accurately and promptly to customer inquiries and complaints.

(5) Comply with Commission regulations regarding standards for changing an electricity supplier.

§ 54.4. Bill format—residential and small commercial customers.

(a) Customer bills shall contain a standard pricing unit for electricity in cents per kWh, kW or other Commission approved standard pricing unit.

(b) The following requirements apply only to the extent to which an entity has responsibility for billing customers:

(1) Charges for basic services, nonbasic services and the overall billing total are permitted in the same bill, and each shall be distinctly separate and clearly labeled in the customer's bill.

(2) Basic services shall be unbundled as itemized charges:

(i) Generation charges.

(A) Charges for generation shall be first among the itemized service charges.

(B) Generation charges are a component of basic service, and customer choices for generation pricing options are permitted, for example, fixed price per kWh, time of day, demand, peak, offpeak, real time, and the like.

(ii) Transmission charges, if applicable.

(iii) Distribution charges.

(iv) Transition charges, if applicable.

(v) Total basic charges.

(3) The basic service charges in paragraph (2) shall appear on the first page of the customer bill.

(4) The basic service charges in paragraph (2) may not be further unbundled on the first page of the customer bill.

(5) The basic service charges listed in paragraph (2) may be itemized in a distinctly separate section of the bill.

(6) Nonbasic service charges are not listed in paragraph (2) and do not fit into the definition of "charges" as specified in § 56.13 (relating to separate billings for merchandise, appliances and nonrecurring services).

(7) Identical nonbasic services offered by different providers of nonbasic services are not required to have the same name. Providers of identical nonbasic services shall use similar definitions for these services as specified in paragraph (12) and § 54.5(f) (relating to terms of service—residential and small commercial customers).

(8) Charges for nonbasic services shall include a monthly total charge.

(9) Charges for nonbasic services shall be itemized on a customer's bill on a quarterly basis, at a minimum.

(10) The customer's bill for generation charges shall include the following electricity use data figures:

(i) The total annual electricity use for the past 12 months, including the current billing cycle, in kWh or kW or in another Commission approved standard pricing unit, which is a single cumulative number and not a graph such as a bar chart.

(ii) The average monthly electricity use for the past 12 months in kWh or kW or in another Commission approved standard pricing unit, which is simply the single cumulative number as determined in subparagraph (i) divided by 12 months.

(11) The requirements of § 56.15 (relating to billing information) shall be incorporated in customers' bills to the extent that they are applicable.

(12) Definitions for basic and nonbasic service charges and terms are required in a customer's bill and shall be distinctly separate and clearly labeled.

(13) The entity responsible for the billing of generation supply shall include a statement in the customer's bill whenever a change occurs in the terms of service or expiration date. That statement is:

"Your current electric generation terms of service expires on (expiration date). If you do not choose a new supplier, your current supplier shall continue to serve you. You shall receive new terms of service from your supplier."

This statement shall be provided to customers at intervals of 3, 2 and 1 billing cycles preceding the change or expiration date.

(14) "For general information" is the required title for customer contact information in a customer's bill.

(i) This information shall be clearly separate and distinctly labeled in the customer's bill.

(ii) The name, address, telephone number, Commission license number (supplier only) and internet address, if available, for the supplier and EDC shall be included.

(iii) The billing entity's information shall appear first and be clearly noticeable.

(15) The customer's bill shall include the following statements:

(i) "Generation prices and charges are set by the electric generation supplier you have chosen."

(ii) "The Public Utility Commission regulates retail transmission and distribution prices and services."

(16) If a customer chooses the option to receive two separate bills, the EDC shall include in a customer's bill the following information where the supplier charges would normally appear:

(i) The supplier's name.

(ii) A statement that the customer's electric generation supplier is responsible for the billing of supplier charges.

(17) If a customer chooses the option to receive a single bill from the EDC, the EDC shall include in the customer's bill the name of the supplier where the supplier charges appear.

(c) The Commission's Bureau of Consumer Services will review bill format for compliance with Chapter 56 (relating to standards and billing practices for residential utility service) upon the request of the billing entity and as part of its complaint and investigation process, when appropriate. In addition, the Commission may review bill format consistent with the plain language policy in § 69.251 (relating to plain language—statement of policy).

§ 54.5. Terms of service—residential and small commercial customers.

(a) The supplier shall provide the customer written disclosure of the terms of service whenever:

(1) The customer initiates service with the supplier.

(2) The customer receives service from a supplier of last resort at market rates.

(3) The terms of service change.

(b) Terms of service shall disclose material terms and conditions, including the following:

(1) The standard pricing unit in cents per kwh, kW or other Commission approved standard pricing unit.

(2) The variable pricing statement (if applicable) shall include:

(i) Conditions of variability (state on what basis prices will vary).

(ii) Limits on price variability.

(3) An itemization of basic and nonbasic charges distinctly separate and clearly labeled.

(4) The length of the agreement, which includes:

(i) Starting date.

(ii) Expiration date (if applicable).

(5) The clear explanation of sign-up bonuses, add-ons, limited time offers and exclusions (if applicable).

(6) The clear explanation of prices, terms and conditions for special services, such as advanced metering deployment (if applicable).

(7) The cancellation provisions (if applicable).

(8) The renewal provisions (if applicable).

(9) The name and telephone number of supplier of last resort.

(10) A statement that if the supplier of last resort changes, the customer shall be notified by the supplier of that change and the name, address and telephone number of the new supplier of last resort.

(11) A clear explanation of penalties, fees or exceptions, printed in type size larger than the type size appearing in the terms of service.

(12) Customer contact information that includes the name of the EDC and supplier, and the supplier's address, telephone number, Commission license number and internet address (if available). The supplier's information shall appear first and be noticeable.

(13) A statement that directs a customer to the Commission if the customer is not satisfied after discussing the terms of service with the supplier in paragraph (12).

(14) The name and telephone number for universal service program information.

(c) Customers shall be provided a 3-day right of rescission period following receipt of the disclosure statement.

(d) A supplier shall comply with § 54.10 (relating to complaint handling process). This requirement shall also be applicable for a supplier of last resort.

(e) Suppliers shall provide a written disclosure statement of energy sources, as follows:

(1) A graph of the most recent annual average percentage of electricity supplied or the anticipated mix, for example, coal 50%, natural gas 10%, oil 25%, nuclear 15%. If the supplier demonstrates to the Commission that providing customers with a graph of energy sources causes financial harm, a table shall be acceptable.

(2) A statement that the data is historic (if applicable) and future percentages may vary.

(3) If the supplier cannot identify the energy source of its supply, for example, the supply is purchased from a power pool, the supplier shall disclose the average energy mix or equivalent information from the relevant market and identify that market by name.

(4) If the supplier cannot identify or approximate the energy source, the supplier shall disclose this fact.

(5) Disclosure of energy sources shall be made upon customer inquiry, upon entering into agreements with new customers and as soon as possible when a significant change occurs in energy sources as specified in the terms of service with existing customers.

(6) In addition to paragraphs (1)—(5), suppliers shall comply with the following provisions whenever energy sources are marketed with special characteristics, such as "produced in Pennsylvania" or "environmentally friendly," and the like:

(i) Claims shall be factually supported upon customer inquiry and in the terms of service.

(ii) The Commission shall be notified as soon as possible when a significant change occurs in energy sources as specified in the terms of service with existing customers or when representations cannot be met.

(iii) The terms of service shall indicate that the customer's electricity is mixed with electricity from other energy sources in the transmission and distribution systems.

(iv) Accounting for electricity supply shall match the supplier's claims to customers, and the supplier may not sell the designated energy sources multiple times.

(v) Reference shall be made to "renewable resources" as defined in 66 Pa.C.S. § 2803 (relating to definitions) in lieu of "green" or any representations to customers that

energy sources benefit the environment. Terms of service shall state the specific renewable resource technology.

(f) Definitions for "basic" and "nonbasic service" charges and terms are required in a customer's terms of service and shall be distinctly separate and clearly labeled.

(g) If the supplier initiates a cancellation of a customer's open-ended terms of service, the supplier shall comply with the following for customer notification:

(1) Customers shall receive a 45-day advance written notice.

(2) The EDC shall receive a 45-day advance written notice.

(3) Notice shall include the ending date for supplier service.

(h) The supplier shall include in the customer's terms of service, the following statements:

(1) "Generation prices and charges are set by the electric generation supplier you have chosen."

(2) "The Public Utility Commission regulates retail transmission and distribution prices and services."

(i) Disclosure statements shall include the following customer notification:

"If a fixed term agreement (if applicable) expires or whenever we change your terms of service, you will be notified by us on your bill for supply charges at intervals of 3, 2 and 1 billing cycles preceding the expiration date (if applicable) or effective date of the proposed changes."

§ 54.6. Energy use and efficiency information.

(a) At least twice annually EDCs shall provide residential and small commercial customers with information on specific means of using electricity more effectively and efficiently. Topics shall include insulation, lighting efficiency, appliance efficiency, conservation practices, load management techniques or other relevant technologies to advance customer understanding of cost-effective use of electricity.

(b) A Commission review will be conducted of the EDC's efforts to provide residential and small commercial customers with information to enable them to make informed decisions about the cost-effective, efficient use of electricity.

§ 54.7. Supplier disclosure for pricing.

(a) Residential and small commercial customers shall receive from suppliers, a written disclosure statement relating their current monthly cost for basic generation service to any new pricing agreement. The current monthly cost may be based on the customer's actual use, on an estimation of the customer's average monthly use or on another basis that reasonably compares the customer's current service to the actual terms of service being offered by the supplier.

(b) This pricing disclosure shall be required of suppliers prior to entering into agreements with new customers and at regular intervals preceding a proposed price change for existing customers, as specified in § 54.4(b)(13) (relating to bill format—residential and small commercial customers).

§ 54.8. Marketing/sales activities.

(a) Suppliers shall use plain language in compliance with § 69.251 (relating to plain language—statement of policy) in communications with residential and small commercial customers.

(b) Materials and marketing plans for residential and small commercial sales shall be made available upon request of the Commission.

(c) Suppliers shall comply with other provisions of this subchapter with respect to marketing and sales activities.

§ 54.9. Privacy of customer information.

(a) Residential and small commercial customers shall be notified and given the opportunity by suppliers and EDCs to restrict the release of private information. Specifically, a customer may restrict the release of either the following:

(1) The customer name, address and telephone number.

(2) The customer telephone number only.

(b) Customers shall be permitted to restrict information as specified in subsection (a) by returning a signed form or by telephone.

(c) Information pertaining to individual residential and small commercial customer load or usage profiles may not be released to a third party by the supplier or EDC without the express written consent of the customer.

(d) Residential and small commercial customers are entitled to request and receive at least one load profile a year from their EDC without cost. The load profile shall contain that information and analysis necessary to perform the scheduling and supply functions for the customer. Information and analysis beyond that necessary to perform scheduling and supply functions shall be made available to the customer at cost.

§ 54.10. Complaint handling process.

EDCs and suppliers shall implement the following with respect to the rights of consumers in the handling and resolution of complaints:

(1) Residential and small commercial customers shall directly contact the party responsible for the service in question as an initial step for complaint and problem resolution. If the customer contacts the supplier or EDC in error, the customer shall be promptly referred to the appropriate contact, if known. In the event of a power outage, the customer shall be directed to the EDC.

(2) Complaints that pertain to Chapter 56 (relating to standards and billing practices for residential utility service) matters shall be handled and resolved in accordance with the applicable standards in Chapter 56.

(3) EDCs and suppliers shall give the Commission access to terms of service, billing and other customer information resources for compliance reviews as deemed necessary by the Commission. When complaints arise and are brought before the Commission for resolution, the obligation of the supplier shall be extended to the provision of pricing information.

[Pa.B. Doc. No. 98-170. Filed for public inspection January 30, 1998, 9:00 a.m.]

[52 PA. CODE CHS. 53a AND 54]**Electric Utility Filing Requirements; Gas Utility Filing Requirements**

The Pennsylvania Public Utility Commission (Commission) proposed to add a new Chapter 54, Subchapters A—C at 27 Pa.B. 1012 and 1027 (March 1, 1997). When this proposed new text is adopted, it will be redesignated Chapter 53a (relating to tariff filing information for noncommon carriers).

JAMES J. McNULTY,
Secretary

[Pa.B. Doc. No. 98-171. Filed for public inspection January 30, 1998, 9:00 a.m.]

[52 PA. CODE CHS. 3 AND 54]

[L-970129]

Licensing Requirements for Electric Generation Suppliers

The Pennsylvania Public Utility Commission (Commission) on November 21, 1997, adopted a proposed rulemaking to provide for an orderly transition of the Pennsylvania electric industry from a vertically integrated monopoly to a structure which would support the development of a competitive retail market. The Commission believes that through application of the proposed licensing regulations the nature and quantity of financial and technical fitness documentation required to be submitted in applying for a license, and the reporting, bonding and other administrative requirements for maintaining a license, are directly related to the scope of activities proposed to be licensed. The contact persons are Patricia Krise Burket (717) 787-3464 (legal) and Robert Bennett (717) 787-5553 (technical).

Executive Summary

On December 3, 1996, Governor Tom Ridge signed into law, 66 Pa.C.S. §§ 2801—2812 (relating to Electricity Generation Customer Choice and Competition Act) (act). The act revised 66 Pa.C.S. (relating to Public Utility Code), by adding Chapter 28 relating to restructuring of the electric utility industry. The purpose of the act is to permit customers their choice of electricity generation suppliers while maintaining reliable and safe electric service.

Sections 2806(g)(3) and 2809 of the act (relating to implementation, pilot programs and performance-based rates; and requirements for electric generation suppliers) require the licensing of electric generation suppliers including brokers, aggregators and marketers. The purpose of this proposed rulemaking is to institute a process for licensing electric generation suppliers, and to establish reporting and bonding requirements for the maintenance of a license.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on January 16, 1998, the Commission submitted a copy of this proposed rulemaking to the Independent Regulatory Review Commission (IRRC) and

to the Chairpersons of the House Committee on Consumer Affairs and the Senate Committee on Consumer Protection and Professional Licensure. In addition to submitting the proposed rulemaking, the Commission has provided IRRC and the Committees with a copy of a detailed Regulatory Analysis Form prepared by the agency in compliance with Executive Order 1996-1. A copy of this material is available to the public upon request.

If the Legislative Committees have objections to any portion of this proposed rulemaking, they will notify the Commission within 20 days of the close of the public comment period. If IRRC has objections to any portion of the proposed rulemaking, it will notify the Commission within 10 days of the close of the Legislative comment period. The notification shall specify the regulatory review criteria which have not been met by that portion. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the proposed rulemaking, by the Commission, the General Assembly and the Governor of objections raised.

Public meeting held
November 21, 1997

Commissioners present: John M. Quain, Chairperson; Robert K. Bloom, Vice Chairperson, Concurring in result; John Hanger, Statement follows; David W. Rolka

Proposed Rulemaking Order

The purpose of Chapter 28 of the act is to provide for an orderly transition of the Pennsylvania electric industry from a vertically integrated monopoly to a structure which would support the development of a competitive retail electric generation market. The ultimate goal is to permit all Pennsylvania retail electricity customers to have direct access to a competitive generation market while at the same time enjoying the continued reliability, and safety of existing transmission and distribution services.

Two initial tasks that needed to be accomplished under the act by the Commission were the initiation of retail access pilot programs, section 2806(g) of the act, and the licensing of electric generation suppliers to participate in the pilot programs, sections 2806(g)(3) and 2809 of the act. Section 2809 of the act provides in pertinent part that:

[n]o person or corporation, including municipal corporations which choose to provide service outside their municipal limits except to the extent provided prior to the effective date of this chapter, brokers and marketers, aggregators and other entities, shall engage in the business of an electric generation supplier in this Commonwealth unless the person or corporation holds a license issued by the Commission. 66 Pa. C.S. § 2809.

An electric generation supplier is defined as:

[a] person or corporation, including municipal corporations which choose to provide service outside their municipal limits except to the extent provided prior to the effective date of this chapter, brokers and marketers, aggregators or any other entities, that sells to end-use customers electricity or related services utilizing the jurisdictional transmission and

distribution facilities of an electric distribution company, or that purchases, brokers, arranges or markets electricity or related services for sale to end-use customers utilizing the jurisdictional transmission and distribution facilities of an electric distribution company. 66 Pa. C.S. § 2803.

Moreover, an "aggregator" or "market aggregator" is defined as "[a]n entity, licensed by the commission, that purchases electric energy and takes title to electric energy as an intermediary for sale to retail customers." 66 Pa. C.S. § 2803. A "broker" or "marketer" is defined as "[a]n entity, licensed by the commission, that acts as an agent or intermediary in the sale and purchase of electric energy but that does not take title to electric energy." 66 Pa.C.S. § 2803.

On January 16, 1997, the Commission issued a tentative order and draft licensing application for interim licensing of electric generation suppliers pending the promulgation of regulations. The tentative order established a comment period ending January 31, 1997, and was served on well over 200 persons including the Office of Consumer Advocate, the Office of Small Business Advocate, Pennsylvania jurisdictional electric utilities and members of the Electric Stakeholders Group. The Commission order was also posted on the Commission's electronic bulletin board. Comments were received from numerous parties. On February 13, 1997, the Commission issued a final order which adopted interim licensing procedures and a license application.

In its February 13, 1997, order, the Commission recognized that the interim licensing procedures were to be temporary in nature, and that they would be replaced by regulations. As the first step in promulgating these regulations, the Commission has revised its interim licensing procedures and has redrafted them as proposed regulations.

The Commission seeks general comments on the proposed regulations. Persons submitting comments are requested to provide supporting justification for requested revisions, and propose suggested regulatory language for incorporation into the final-form regulations.

The Commission also seeks comment on the proposed licensing procedure and the bonding, reporting and other licensing requirements as applied to community-based organizations, civic, fraternal or business associations, fraternal, common interest groups and other entities that work with a licensed supplier to "market" aggregated services to their members or constituents. The definition of "electric generation supplier" of the act is very broad, and our interpretation of this definition is that every entity that engages in an activity listed as that undertaken by an electric generation supplier must be licensed. However, the Commission recognizes that some of these activities may be undertaken by "nontraditional marketers" who will not have any direct physical or financial responsibility for the customer's electricity. Under these circumstances, the general licensing requirements may be unnecessary and exclusionary.

Inherent in the proposed licensing regulations is the concept that the licensing requirements, that is the nature and quantity of financial and technical fitness documentation required to be submitted in applying for a license, and the reporting, bonding and other administrative requirements for maintaining a license, are directly related to the scope of activities proposed to be licensed. The Commission believes that through application of this concept the proposed licensing regulations will not impose

unreasonable burdens on "non-traditional marketers" in applying or maintaining a license. Accordingly, the Commission requests comments on how best to apply the proposed licensing requirements to nontraditional marketers. Comments should particularly address whether the Commission should adopt specific guidelines for non-traditional marketers, or whether these matters should be addressed through less formal interaction between the applicant and Commission staff. Comments regarding the approach proposed herein and more specific proposals addressing the licensing of nontraditional marketers are encouraged.

Accordingly, under section 501 of the Public Utility Code, 66 Pa.C.S. § 501, the act 66 Pa.C.S. § 2801 et seq., and the Commonwealth Documents Law (45 P.S. § 1201 et seq.) and regulations promulgated thereunder at 1 Pa. Code §§ 7.1—7.4, we propose to amend our regulations by adding §§ 54.31—54.43, and amending § 3.551 to read as set forth in Annex A;

Therefore,

It is Ordered that:

1. A rulemaking docket shall be opened to promulgate regulations for the licensing of electric generation suppliers as set forth in Annex A of this order.
2. The Secretary shall submit this order and Annex A to the Office of the Attorney General for preliminary review as to form and legality.
3. The Secretary shall submit a copy of this order, together with Annex A, to the Governor's Budget Office for review of fiscal impact.
4. The Secretary shall submit this order and Annex A for review and comments by the designated standing committees of both Houses of the General Assembly, and for informal review and comments by IRRC.
5. The Secretary shall certify this order and Annex A and deposit them with the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.
6. Within 30 days of this order's publication in the *Pennsylvania Bulletin*, an original and 15 copies of any comments concerning this order shall be submitted to the Commission. One copy of a diskette containing the comments in electronic format should also be submitted. Alternate formats of this document are available to persons with disabilities and may be obtained by contacting Shirley M. Leming, Regulatory Coordinator, Law Bureau at (717) 772-4597.
7. A copy of this order and Annex A be served on the Office of Consumer Advocate, the Office of Small Business Advocate, the Department of Revenue, the Department of State and all licensed electric generation suppliers.

JAMES J. MCNULTY,
Secretary

Statement of Commissioner John Hanger

These proposed permanent licensing regulations attempt to balance two considerations based on our experience with the Interim Licensing Requirements that they will replace. On the one hand, the Commission must ensure that only technically and financially fit suppliers receive licenses and that the Commission has the ability to enforce compliance with all applicable requirements. On the other hand, the licensing requirements must not unnecessarily create barriers to market entry by a wide variety of potential competitive suppliers.

I encourage comments from interested parties, especially on the following issues:

1. Section 54.35 continues the practice required under the Interim Licensing Requirements to advertise notice of an Application in newspapers covering every county in which the Applicant proposes to serve and to provide proof of publication. This requirement appears to have been an administrative burden both for applicants and the Commission. To my knowledge, not a single protest was filed concerning any Interim License Application. Is there an easier and more effective way to let the public know of an Application?

2. Section 54.37(b) provides that fully documented, unprotested Applications will be deemed approved if not processed within 45 days. I support the concept of prompt Commission response, but I am concerned that failure of the Commission to respond as required, or disagreements over whether an Application has been fully documented, could result in market activity by suppliers not found to be financially and technically fit. Should the "deemed approved" language be deleted?

3. The NOPR expressly requests comments concerning licensing nontraditional marketers such as community based organizations. For example, such an organization working with a licensed supplier might only provide marketing and educational materials to its constituency. Should a license be granted upon demonstration of working knowledge of generation products and services to be offered and the skills to communicate them effectively to the target audience?

Fiscal Note: 57-91. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 52. PUBLIC UTILITIES

PART I. PUBLIC UTILITY COMMISSION

Subpart A. GENERAL PROVISIONS

CHAPTER 3. SPECIAL PROVISIONS

Subchapter H. FORMS

§ 3.551. Official forms.

The following is a list of forms which can be obtained from the Office of the Secretary of the Commission:

* * * * *

(15) Application for electricity or electric generation supplier license.

* * * * *

Subpart C. FIXED SERVICE UTILITIES

CHAPTER 54. ELECTRICITY GENERATION CUSTOMER CHOICE AND COMPETITION

Subchapter B. ELECTRICITY GENERATION SUPPLIER LICENSING

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§ 54.31. Definitions.

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

Applicant—A person or entity seeking to obtain a license to supply retail electricity or electric generation service.

Code—The Public Utility Code, 66 Pa.C.S. §§ 101—3316.

Commission—The Pennsylvania Public Utility Commission.

Default supplier—A supplier approved by the Commission under section 2807(e)(3) of the code (relating to duties of electric distribution companies) to provide generation service to customers who contracted for electricity that was not delivered, or who did not select an alternative electric generation supplier.

Department—The Department of Revenue of the Commonwealth.

Electric generation supplier—An electricity or electric generation supplier, as defined in section 2803 of the code (relating to definitions).

Interim license—A temporary license granted to an electric generation supplier under interim standards adopted by Commission order.

License—A license granted to an electric generation supplier under this subchapter.

Licensee—A person or entity which has obtained a license to provide retail electricity or electric generation service.

Marketing—The publication, dissemination or distribution of informational and advertising materials regarding the electric generation supplier's services and products to the public by print, broadcast, electronic media, direct mail or by telecommunication.

Offer to provide service—The extension of an offer to provide services or products communicated orally, or in writing to a customer.

Renewable resource—Renewable resource as defined in section 2803 of the code.

§ 54.32. Application process.

(a) An electric generation supplier may not engage in marketing, or may not offer to provide, or provide retail electricity or electric generation service until it is granted a license by the Commission.

(b) An application for a license shall be made on the form provided by the Commission. A copy of the application may be obtained from the Commission's Secretary. An application shall be verified by an oath or affirmation as required in § 1.36 (relating to verification). See section 2809(b) of the code (relating to requirements for electric generation suppliers).

(c) An original and eight copies of the completed application and supporting attachments shall be filed. An application for a license shall be accompanied by the application fee as established in § 1.43 (relating to schedule of fees payable to the Commission).

(d) Copies of the completed application with supporting documentation shall be served on the following offices: the Office of Consumer Advocate, the Office of Small Business Advocate, the Department and the Office of the Attorney General.

(e) Incomplete applications and those without supporting attachments, when needed, will be rejected without prejudice. The license application, with supporting attachments, shall be completed in its entirety.

(f) An applicant may request that information contained in the application be kept confidential by filing a petition under § 5.423 (relating to orders to limit availability of proprietary information).

(g) An electric generation supplier who has been granted an interim license shall apply for a license under this subchapter by amending its prior license application to include additional and updated information as required by § 54.33 (relating to application form). An amended application shall be submitted by _____. (*Editors Note:* The blank refers to a date 120 days after the effective date of adoption of this proposal.)

§ 54.33. Application form.

(a) The application form includes information that will be used in the evaluation of the financial fitness and technical fitness to render service. Information includes the following:

- (1) Identification of the geographic area that the applicant proposes to serve.
- (2) Identification of the type of service that the applicant proposes to furnish.
- (3) Identification of the class of customers to which the applicant proposes to provide these services.
- (4) The identification of the applicant's utility affiliates.
- (5) Designation of the applicant's business structure.
- (6) Financial information regarding credit ratings and history, and insurance pertinent to the conduct of the applicant's business as an electric generation supplier.
- (7) Evidence of the applicant's membership in the East Central Area Reliability Coordination Agreement (ECAR), the Mid Atlantic Area Council (MAAC) or other regional reliability councils.
- (8) Evidence of the applicant's ability to comply with Commission's requirements concerning customer billing, customer education, billing and terms of service, and customer information.

(b) The application also directs under sections 2806(g)(3)(i), 2809(c)(1) and 2810(c)(6) of the code (relating to implementation, pilot programs and performance-based rates; requirements for electric generation suppliers; and revenue-neutral reconciliation), that the applicant provide tax information. This tax information includes:

- (1) The name, address, telephone number, electronic numbers and addresses used to transmit tax and related information of the person responsible for preparing and filing the applicant's Pennsylvania tax returns.
- (2) Trade names or fictitious names used by the applicant.
- (3) The type of business association (for example, sole proprietor, partnership, corporation).
- (4) The names of the owners, general partners, or corporate officers and their Social Security numbers.
- (5) The number of the applicant's current and anticipated employees working in this Commonwealth.
- (6) Identification of the applicant's assets in this Commonwealth.

(7) The location or address of the principal office in this Commonwealth or of its registered agent.

(8) The applicant's Department tax identification numbers including Sales Tax license number, employer identification number and corporate box number. If tax numbers have not yet been obtained, an applicant shall provide the filing date of its application for these numbers.

(c) Tax information provided under subsection (b) shall be filed with the Secretary of the Department at the time that application is made with the Commission.

§ 54.34. Change in organizational structure or operational status.

(a) The applicant shall inform the Commission of a change in the information provided in the application during the pendency of the application, or while the licensee is operating in this Commonwealth.

(b) A change in the organizational structure or operation that affects an applicant's or a licensee's operation in this Commonwealth shall be reported to the Commission within 30 days of the date of the change. Specifically, notification shall be given to the Commission of a change in the following:

- (1) Ownership of generation or transmission facilities or other inputs to electric power production.
- (2) Affiliation with an electric distribution company, or an entity which owns generation or transmission facilities or other inputs to electric power production.
- (3) Affiliation with an entity that has a franchised service area.

§ 54.35. Publication of notice of filing.

(a) Notice of filing an application shall be published in newspapers of general circulation covering each county in which the applicant intends to provide service as required by § 5.14(a)(2) (relating to applications requiring notice). Applicants may contact the Commission's press secretary to confirm the identity of the newspapers of general circulation in which notice shall be published.

(b) The notice shall be written in plain language and include the name, address and telephone number of the applicant, a description of the proposed service to be provided and the geographic area to be served. The notice shall include the application docket number and a statement that protests related to the technical or financial fitness of the applicant shall be filed within 15 days of the publication date of the notice with the Commission's Secretary, Public Utility Commission, Post Office Box 3265, Harrisburg, Pennsylvania 17105-3265. The notice in an acceptable electronic format shall be submitted to the Commission's Secretary for posting on the Commission's electronic bulletin board.

(c) Proof of publication of the notice shall be filed with the Commission's Secretary. An application will not be considered complete for Commission review without the proof of publication.

§ 54.36. Protests to applications.

(a) Consistent with § 5.14(b) (relating to applications requiring notice), a 15-day protest period commences on the date notice of the application filing is published in newspapers as set forth in § 54.35 (relating to publication of notice of filing). An interested party may file a protest to an application in compliance with § 5.52(a) (relating to content of a protest to an application) and shall set out clearly and concisely the facts of the challenge to the fitness of the applicant is based. An applicant may file an

answer to the protest within 10 days of when the protest is filed. Protests which do not fully comply with § 5.52(a) will be rejected.

(b) Protests may challenge only the applicant's financial and technical fitness to provide the service for which a license is requested. Competitive protests or protests opposing other aspects of the applicant's provision of service may not be filed and, if submitted, will be rejected by the Commission. Sanctions may be imposed on parties who intentionally misuse the protest process.

(c) A protest to the applicant's technical or financial fitness to provide service will be assigned to Commission staff for review. Staff will determine if the protest fully complies with § 5.52(a) and sets out clearly and concisely the facts upon which the challenge to the fitness of the applicant is based. Staff will determine if the protest is sufficiently documented. If a protest is not sufficiently documented, Commission staff will prepare a recommendation for Commission consideration dismissing the protest and granting the application. If a protest is sufficiently documented, the application will be transferred to the Office of Administrative Law Judge for hearings or mediation as deemed appropriate.

§ 54.37. Approval.

(a) A license will be issued, authorizing the whole or any part of service requested, if the Commission finds that:

(1) The applicant is fit, willing and able to properly perform the service proposed in conformance with applicable provisions of code and the lawful Commission orders and regulations, specifically including Chapter 56 (relating to standards and billing practices for residential utility service).

(2) The proposed service is consistent with the public interest and the policy declared in Chapter 28 of the code (relating to Electricity Generation Customer Choice and Competition Act). See section 2809(b) of the code (relating to requirements for electric generation suppliers).

(b) Completed applications, with all supporting documentation, including documentation or clarifying information requested by Commission staff, if unprotested, will be processed within 45 days after acceptance by the Commission. If the application is not processed within the time period, the application will be deemed approved. The review period may be extended for a reasonable period of time by Secretarial Letter.

§ 54.38. Regulatory assessments.

(a) A licensee shall be required to pay assessments to be used to defray regulatory costs. See section 510 of the code (relating to assessment for regulatory expenses upon public utilities). Assessments will be based upon the administrative costs incurred by the Commission related to generation suppliers. These costs include: maintaining records related to licensees, and administering other provisions of the code related to maintenance of adequate reserve margins, compliance with Chapter 56 (relating to standards and billing practices for residential utility service), and fulfilling consumer information and education obligations.

(b) Yearly assessments shall be paid by the licensee within 30 days of receipt of notice of the amount lawfully charged against it as a condition of maintaining a license to supply electricity or electric generation. See section 510(c) of the code.

§ 54.39. Reporting requirements

(a) A licensee shall report its level of gross receipts to the Commission on a quarterly basis. Gross receipt information shall be filed with the Commission no later than 30 days following the end of the first full quarter, and of each subsequent quarter that the license is in effect.

(b) A licensee shall file an annual report on or before April 30 of each year, for the previous calendar year. The annual report shall contain the following information (See section 2810(c)(6)) of the code (relating to revenue—neutral reconciliation):

(1) Updates to the tax information requested in the application in § 54.33(b) (relating to application form).

(2) The total amount of gross receipts from the sales of electricity for the preceding calendar year.

(3) The total amount of electricity sold, stated in kilowatt hours, during the preceding calendar year.

(4) The percentage of total electricity supplied by each energy source, including a detailed breakdown of renewable resources as defined in section 2803 of the code (relating to definitions).

(c) A licensee shall be required to meet periodic reporting requirements as may be issued by the Commission to fulfill the Commission's duty under Chapter 28 of the code (relating to the Electricity Generation Customer Choice and Competition Act) pertaining to reliability and to inform the Governor and Legislature of the progress of the transition to a fully competitive electric market.

(d) Information requested under this section will be made available for public review upon request to the Commission subject to any rulings on confidentiality made by the Commission.

§ 54.40. Bonds or other security.

(a) A license will not be issued or remain in force until the licensee furnishes a bond or other security approved by the Commission. See section 2809(c) of the code (relating to requirements for electric generation suppliers).

(b) The purpose of the security requirement is to ensure the licensee's financial responsibility, the payment of Gross Receipts tax as required by section 2810 of the code (relating to revenue—neutral reconciliation), other taxes and the supply of electricity at retail in accordance with contracts, agreements or arrangement. See section 2809(c) of the code.

(c) The initial security level required from each applicant is \$250,000. Modifications of this amount commensurate with the amount of business anticipated to be conducted in this Commonwealth will be granted when substantial evidence is submitted in support of the modification. A request for modification of this initial security level may be made in conjunction with the filing of the application. The license will be issued contingent on the submission of proof that the applicant has obtained a bond, or other approved security in the amount directed by the Commission.

(d) After the first year that the license is in effect, the security level for each licensee will be reviewed annually and modified based on the licensee's reported quarterly gross receipts information. The security level will be 10% of the licensee's reported gross receipts. See section 2809(c)(1)(i) of the code. Maintenance of a license will be contingent on the licensee providing proof to the Commis-

sion that a bond or other approved security in the amount directed by the Commission has been obtained.

(e) Payments under the security may result from the licensee's failure to pay the full amount of taxes or assessments due, or failure to supply electricity or other services in accordance with contracts, agreements or arrangements. Language shall be incorporated in the security that prioritizes the claims for payment of the Commonwealth over claims filed by private persons.

(f) The Commission may approve the use of a security other than a bond. See section 2809 (c)(1)(i) of the code. Approval of use of other security instruments will be made by the Commission on an ad hoc basis.

(g) Licensee liability for unreasonable service, or for violations of the code and Commission orders and regulations is not limited by these security requirements.

§ 54.41. Transfer or abandonment of license.

(a) A license may not be transferred without prior Commission approval. See section 2809(d) of the code (relating to requirements for electric generation suppliers). Approval for transfer shall be obtained by petition to the Commission. The granting of the petition will not eliminate the need for the transferee to complete and file with the Commission an application that demonstrates the transferee's financial and technical fitness to render service under the transferred license.

(b) A licensee that wishes to abandon service shall notify the Commission, the licensee's customers, the affected distribution utilities and default suppliers prior to the abandonment of service. Notice shall be provided at intervals of 3, 2, 1 billing cycles preceding the affected date of the proposed abandonment in accordance with § 54.5(i) (relating to customer notification). (*Editor's Note:* See 28 Pa.B. 501 (January 31, 1998) for the proposed version of § 54.5).

§ 54.42. License suspension; license revocation.

(a) A licensee shall comply with all applicable requirements of Code and Commission regulations and orders. Consistent with due process, a license may be suspended or revoked, and fines may be imposed against the licensee for:

- (1) Failure to pay the yearly assessment.
- (2) Failure to furnish and maintain a bond or other security approved by the Commission in the amount directed by the Commission.
- (3) Nonpayment of taxes under section 201 of the Tax Reform Code of 1971 (72 P. S. § 7201), relating to tax for education, and Article XI of the Tax Reform Code of 1971 (72 P. S. §§ 8101—8104), relating to utilities gross receipts tax), and taxes imposed by Chapter 28 of the code (relating to Electricity Generation Customer Choice and Competition Act). See sections 2806(g)(3) and 2809(c)(1) of the code (relating to implementation, pilot program and performance based rates; and requirements for electric generation suppliers).
- (4) Failure to waive confidentiality with respect to tax information in the possession of the Department. See section 2810(c)(6)(iv) of the code (relating to revenue-neutral reconciliation).
- (5) Failure to provide the address of its principal office in this Commonwealth or of its registered agent.

(6) Failure to follow the principles in § 54.43 (relating to standards of conduct and disclosure for licensees).

(7) Violation of applicable provisions of the code, this title and lawful Commission orders. See section 2809(b) of the code.

(b) The unauthorized transfer by an electric distribution company, or its affiliate, of a customer's electric generation supplier without the consumer's express consent will result in a fine, or the suspension, or the revocation of the license of that electric distribution company's affiliated electric generation supplier. See section 2807(d)(1) of the code (relating to duties of electric distribution companies).

(c) The unauthorized transfer by an electric generation supplier, or its affiliate, of a customer's electric supplier without the consumer's express consent will result in a fine, or the suspension, or the revocation of the license of that electric generation supplier. Section 57.171 (relating to standards for changing a customer's electric supplier). See section 2807(d)(1) of the code.

§ 54.43. Standards of conduct and disclosure for licensees.

To protect Pennsylvania consumers, licensees shall adhere to the following principles in the provision of electric generation service:

- (1) A licensee shall provide accurate information about its electric generation services using plain language and common terms in communications with consumers. When new terms are used, the terms shall be defined again using plain language. Information shall be provided in a format that enables customers to compare the various electric generation services offered and the prices charged for each type of service.
- (2) A licensee shall provide, upon the request of a customer or the Commission, information regarding energy sources by percentage, including a breakdown of renewable resources, and environmental characteristics of its electric generation purchases.
- (3) A licensee shall provide notification of change in conditions of service, intent to cease operation as an electric generation supplier, explanation of denial of service, proper handling of deposits and proper handling of complaints in accordance with this title.
- (4) A licensee shall maintain the confidentiality of a consumer's personal information, including name, address and telephone number, and historic payment information, and the right of access by the consumer to his own load and billing information.
- (5) A licensee may not discriminate in the provision of electricity as to availability and terms of service based on race, color, religion, national origin, sex, marital status, age, receipt of public assistance income and exercise of rights under the Consumer Credit Protection Act (15 U.S.C.A. §§ 1601—1693r) relating to Equal Credit Opportunity. See 15 U.S.C.A. §§ 1691—1691f (relating to equal credit opportunity); 12 CFR Part 202 (relating to equal credit opportunity (Regulation B)).
- (6) A licensee is responsible for fraudulent, deceptive or other unlawful marketing or billing acts performed by its agents or representatives. A licensee shall inform consumers of State consumer protection laws that govern the cancellation or rescission of electric generation supply contracts. See 73 P. S. § 201-7.

(7) A licensee shall comply with the relevant Commission regulations, orders and directives that may be adopted

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[52 PA. CODE CH. 54]

[L-970131]

Reporting Requirements for Quality of Service Benchmarks and Standards

The Pennsylvania Public Utility Commission (Commission) on December 4, 1997, adopted a proposed rulemaking to establish uniform measurements and reporting requirements to allow the Commission to monitor the level of the electric distribution companies' (EDCs) customer service performance. After the Commission has received and analyzed an adequate supply of data from the proposed uniform measurements, it will develop quality of service benchmarks and standards which will be the subject of the future rulemaking. The contact persons are Mary Frymoyer (717) 783-1628 and Stephen Gorka, Assistant Counsel, Law Bureau (717) 772-8840.

On December 3, 1996, Governor Tom Ridge signed into law, 66 Pa.C.S. §§ 2801—2812 (relating to Electricity Generation Customer Choice and Competition Act) (act). Section 2807(d) of the act (relating to duties of electric distribution companies) is clear in its intent that utilities are to maintain, at a minimum, the current levels of reliability and customer service to their customers as they move toward competition. The purpose of the proposed regulations is to establish uniform measurements and reporting requirements to allow the Commission to monitor the level of the EDCs' customer service performance. After the Commission has received and analyzed an adequate supply of data from the proposed uniform measurements, it will develop quality of service benchmarks and standards which will be the subject of a future rulemaking.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on January 16, 1998, the Commission submitted a copy of this proposed rulemaking to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House Committee on Consumer Affairs and the Senate Committee on Consumer Protection and Professional Licensure. In addition to submitting the proposed rulemaking, the Commission has provided IRRC and the Committees with a copy of a detailed Regulatory Analysis Form prepared by the Commission in compliance with Executive Order 1996-1. A copy of this material is available to the public upon request.

If the Legislative Committees have objections to any portion of the proposed regulations, they will notify the Commission within 20 days of the close of the public comment period. If IRRC has objections to any portion of the proposed regulations, it will notify the Commission within 10 days of the close of the Legislative comment period. The notification shall specify the regulatory review criteria which have not been met by that portion. The Regulatory Review Act specifies detailed procedures

for review, prior to final publication of the regulations, by the Commission, the General Assembly and the Governor of any objections raised.

Public meeting held
December 4, 1997

Commissioners present: John M. Quain, Chairperson; Robert K. Bloom, Vice-Chairperson, Concurring in result; John Hanger; David W. Rolka; Nora Mead Brownell

Proposed Rulemaking Order

By the Commission:

On December 3, 1996, Governor Tom Ridge signed into law the act. The code revised 66 Pa.C.S. (relating to Public Utility Code), by inter alia, adding Chapter 28 relating to restructuring of the electric utility industry. The Public Utility Commission is the agency charged with implementing the act. The purpose of this rulemaking is to establish uniform measurement and reporting of customer service performance by the electric distribution companies to the Commission.

The act is clear in its intent that the level of customer service provided by the EDCs is to remain at the same level of reliability and quality under competition as was provided prior to competition. Under section 2807(d) of the act, customer services shall, at a minimum, be maintained at the same level of quality under retail competition. Section 2802(12) of the act (relating to declaration of policy) states that reliable electric service is of utmost importance to the health, safety and welfare of the citizens of the Commonwealth. Thus the elements addressed by this rulemaking are presented to allow the Commission to ensure that the customer service and service reliability of Pennsylvania's EDCs remain at an adequate level.

This rulemaking addresses components of customer service such as telephone access, billing frequency, meter reading, timely response to customer disputes, the proper response to customer disputes and payment arrangement requests, compliance with customer service rules and regulations, and interacting with customers in a prompt, courteous and satisfactory manner. These components are interrelated and are important aspects of EDC customer service. Service reliability is also a very important aspect of the quality of customer service. However, the Electric Service Reliability Rulemaking at Docket No. L-100970120 contains provisions for the EDCs to report data that measure reliability performance and thus we do not address reliability reporting in this rulemaking. However, the Commission intends to use the reporting at Docket No. L-100970120 to monitor the reliability of each EDC's distribution system along with the other measures specifically addressed in this rulemaking.

Only after the Commission has received and analyzed an adequate supply of data from the proposed uniform measurements will it develop quality of service benchmarks and standards for the EDCs. The establishment of benchmarks and standards will be the subject of a future rulemaking. The Commission also intends to measure and monitor the customer service performance of the electric generation suppliers and will take the appropriate steps to obtain uniform measurement from these entities at a later time.

Background

By order adopted March 13, 1997, at Docket No. M-00960890F0007 (March Order), the Commission solicited comments on a variety of potential quality of service measures such as business office access, complaint resolution, posting payments, billing adjustments, installation of service, investigations and repairs, appointments kept with customers, meter reading, service reliability indices and customer satisfaction surveys. Through the order, the Commission also asked the EDCs to describe their present monitoring of customer service performance, what performance standards they have set for themselves and what their performance history has been.

Each of the ten EDCs (Allegheny Power, Citizens' Electric Company, Duquesne Light Company, GPU Energy, PECO Energy Company, Pennsylvania Power Company, Pennsylvania Power & Light Company, Pike County Light & Power Company, UGI Utilities, Inc. (Electric Division), Wellsboro Electric Company, the Pennsylvania Electric Association (PEA), Office of Consumer Advocate (OCA), International Brotherhood of Electrical Workers' Pennsylvania Utility Caucus and Lebanon Methane Recovery, Inc. responded to the tentative order. Reply comments were filed by Duquesne Light Company, and Enron Power Marketing, Inc.

A review of the responses to the data requests outlined by the March order revealed that the EDCs have not measured their level of customer service quality with any degree of uniformity. On November 5, 1997, the Bureau of Consumer Services (BCS) held a meeting with representative of the EDCs. This meeting was to identify the benchmarks currently used by the EDCs to judge their own performance in the area of customer service and to clarify the information provided by the EDCs in response to the March Order. Representatives from the EDCs, the Bureau of Conservation, Economics and Energy Planning (CEEP), the BCS and Commission staff attended this meeting.

The discussion with the EDC representatives confirmed that existing EDC measurement of the quality of service components as outlined in the March order is non-uniform. Each EDC measures some of the components raised in the order, but no EDC measures all the components. Further, there are almost no standard methods of measurement that are used by all EDCs. The only exceptions are two of the reliability indices. All the major EDCs use the System Average Interruption Frequency Index (SAIFI) and Customer Average Interruption Duration Index (CAIDI) to monitor the reliability of their distribution systems and are able to supply historical data derived from these two reliability indices.

Because of the lack of uniform measurement by the EDCs, the Commission proposes to establish regulations to read as set forth in Annex A to develop uniform measurement and reporting on a select set of quality of service components. We agree with the comments of GPU Energy to the March order that uniform data will provide the Commission with the means to compare performance easily and quickly and that divergent data sets would require the Commission to compare "apples and oranges," and would not present a true picture of performance.

The EDCs' lack of historical, uniform measurement and inability to report uniform data on many of the measures presented in the March order led us to revise our original proposal regarding the appropriate components to measure customer service quality. We have narrowed the scope of the quality of service reporting and measurement to

the areas listed as follows. We believe that these components are fair indicators of the quality of an EDC's service to customers: Telephone Access to the Company, Billing, Meter Reading, Prompt Response to Customer Disputes, Customer Surveys, Regulatory Performance and the Reliability of Electric Service.

Many of the measures presented in the proposed requirements are directly related to Chapter 56 (relating to standards and billing practices for residential utility service), and should not require further data collection by the EDCs. The use of available data should also alleviate the EDCs' concern about their current financial constraints. We propose that the EDCs report to the Commission the number of customer disputes, as defined in § 56.2 (relating to definitions), for which the EDC did not render a utility report within 30 days of the filing of the dispute as required by § 56.151(5) (relating to general rule). Since § 56.202 (relating to record maintenance) requires utilities to preserve records of all customer disputes and complaints, this information should be available. We believe this statistic is preferable to a simple tally of the total number of customer complaints because it will indicate instances in which the EDC has not complied with the customer service regulations by not responding promptly to a customer's complaint. A complaint or dispute filed with a company is not necessarily a negative indicator of service quality. However, a company's timely response to a complaint is an important measure of customer service quality.

Similarly, to measure metering performance, we propose that the EDCs report information under § 56.12(4)(ii) and (iii) and (5) (relating to meter reading). We believe that these regulations represent the minimal criteria of meter reading performance. Further, this addresses differing viewpoints expressed by the EDCs about whether the percent of meters read or the number of meter reading errors is the most appropriate way to measure meter reading performance. Again, the use of reporting related to Chapter 56 mitigates any additional financial burdens on the EDCs.

Several measures which were presented for comment in the March order concerned aspects of service quality that the EDCs agree are important indicators of customer service performance. Among these were service installation, kept appointments, complaint resolution and nonemergency investigations and repairs. However, most of the EDCs have not necessarily measured performance in these areas and they believe that the measurement methodology suggested in the March order would be burdensome. Rather than measure several of these discreet activities, another option would be to measure customers' experience with these activities. Several EDCs noted that the use of customer surveys would be a more appropriate way to assess EDC performance in these areas.

Regarding the issue of survey uniformity, we agree with the EDCs that transactional customer surveys can measure many of these areas of customer service. Therefore, we have proposed specific customer survey reporting requirements using both transactional surveys of customers who had recent interactions with their EDC and general surveys of a cross section of each EDC's customer population. We agree with the comments of PEA and various EDCs to the March order that such surveys must be uniform in content, administration and analysis. Therefore, we propose that each EDC's customers be surveyed with the same survey questionnaires, using identical sampling and analysis procedures. In addition,

we propose that an independent third party administer the surveys to the customers of each EDC and analyze and report the survey results to the Commission in a uniform manner.

We propose to measure the regulatory performance of the EDCs by using justified consumer complaint rate, justified payment arrangement request rate, the number of informally verified infractions and infraction rate. In response to the March order, most of the EDC's indicated that they believe that "justified" complaints and "justified" payment arrangement requests were more appropriate measures of regulatory customer service performance than "volume" of informal consumer complaints and payment arrangement requests. Under § 56.211 (relating to informal complaints), the BCS has established procedures for handling consumer disputes and payment arrangement requests as well as rules for determining on a case-by-case basis whether or not a customer is "justified" in coming to the Commission. "Justified" informal consumer complaints and payment arrangement requests are those cases in which, in the judgement of the BCS, the company did not comply with Commission regulations, reports, Secretarial Letters, tariffs or guidelines prior to BCS intervention. The procedures and rules are available from the Director of the BCS or from the Secretary of the Commission.

Under 66 Pa.C.S. § 308(d) (relating to bureaus), the BCS developed the justified informal consumer complaint rate and the justified payment arrangement request rate as two measures by which it can uniformly judge and report to the Commission the complaint handling performance of utilities. For the past number of years, the BCS has calculated and reported these rates in its annual report; thus the EDCs are familiar with them and what they represent.

Regarding infractions and the infraction rate, the Commission has procedures to ensure that EDCs and other public utilities conform to the standards of conduct for residential service established by statute and regulation. Through informal consumer complaints and payment arrangement requests the Commission is able to identify, document and notify utilities of instances where the utilities have violated a particular section of the regulations. The BCS tallies the number of informally verified infractions and reports them annually to the Commission. Beginning in 1997, the BCS has also calculated an infraction rate that compares a utility's number of infractions with its number of residential customers. We believe that an EDC's commitment to compliance with rules and regulations is an important indicator of good service quality to customers. Thus, we have proposed the addition of the number of infractions and the infraction rate as measures of EDC customer performance.

Additionally, we invite comments on the development of uniform questionnaires and on the use of an independent third party to administer the surveys. Specifically, we solicit comments on: (1) what process should be used to develop uniform questionnaires; (2) what parties should be involved in the survey development process; and (3) who should facilitate or provide leadership for this process. Similarly, we solicit comments on a process to secure a third party contract to administer the surveys and how contract expenses can be equitably shared among the EDCs. If any party has an alternative proposal to achieve uniform survey administration by a means other than the use of an independent third party, we would welcome comments regarding this alternative proposal, along with proposed regulatory language.

We are also interested in comments regarding the reporting format for both the EDCs and the survey administrators. We believe that all reporting should be uniform and by electronic submission and would appreciate comments in this regard.

The Commission reserves the right to waive any or all requirements of these regulations upon petition by an affected party under § 5.43 (relating to petitions for issuance, amendment, waiver or repeal of regulations).

Accordingly, under sections 2802(12) and 2807(d) of the Public Utility Code, 66 Pa.C.S. §§ 2802(12) and 2807(d), and the Commonwealth Documents Law (45 P.S. § 1201 et seq.), and the regulations promulgated thereunder, we shall institute a rulemaking proceeding to accomplish the objective described in the body of this order.

Therefore,

It is Ordered that:

1. A rulemaking docket shall be opened to consider the regulations set forth in Annex A.
2. The Secretary shall submit a copy of this order and Annex A to the Office of Attorney General for review as to form and legality.
3. The Secretary shall submit a copy of this order and Annex A to the Governor's Budget Office for review of fiscal impact.
4. The Secretary shall submit this order and Annex A for review by the designated standing committees of both Houses of the General Assembly, and for review and comments by IRRC.
5. The Secretary shall certify this order and Annex A and deposit them with the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.
6. A copy of this final opinion and order and any accompanying statements of the Commissioners be served upon all jurisdictional electric companies, the Office of Consumer Advocate, the Office of Small Business Advocate, participants in the Commission's electric competition investigation at Docket No. I-00940032, the Electric Competition Legislative Stakeholders, all parties of record and the Universal Service and Energy Conservation Work Group.
7. Within 30 days of this order's publication in the *Pennsylvania Bulletin*, an original and 15 copies of any comments concerning this order and Annex A should be submitted to the Pennsylvania Public Utility Commission, P. O. Box 3265, Harrisburg, PA 17105-3265.

JAMES J. MCNULTY,
Secretary

Fiscal Note: 57-192. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 52. PUBLIC UTILITIES

PART I. PENNSYLVANIA PUBLIC UTILITY COMMISSION

Subpart C. FIXED SERVICE UTILITIES

Chapter 54. ELECTRICITY GENERATION CUSTOMER CHOICE

Subchapter F. REPORTING REQUIREMENTS FOR QUALITY OF SERVICE BENCHMARKS AND STANDARDS

- Sec.
54.151. Purpose.
54.152. Definitions.

- 54.153. Reporting requirements.
- 54.154. Customer surveys.
- 54.155. Regulatory performance.

§ 54.151. Purpose.

This subchapter establishes a means by which the Commission can develop uniform measurement and reporting to assure that the customer services of the EDCs are maintained, at a minimum, at the same level of quality under retail competition. This subchapter sets forth uniform measurements and reporting requirements for monitoring the level of the EDCs' customer service performance. This subchapter also establishes the effective dates of the reporting requirements.

§ 54.152. Definitions.

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

BCS—The Bureau of Consumer Services of the Commission.

Busy-out rate—The number of calls to an EDC's call center or business office that received a busy signal divided by the number of calls that were completed.

Call center—A centralized facility established by a utility for the regular transaction of business between customers and supervised utility customer service representatives.

Call abandonment rate—The number of calls to an EDC's call center or business office that were abandoned divided by the total number of calls received at the EDC's telephone call center or business office.

Code—The Public Utility Code, 66 Pa.C.S. §§ 101—3316.

Commission—The Pennsylvania Public Utility Commission.

Customer—A retail electric customer as defined in 2803 of the code (relating to definitions).

EDC—electric distribution company—An electric distribution company as defined in section 2803 of the code.

General survey—A survey of a cross section of the customers of a utility to include an evaluation of overall satisfaction with the EDC, the clarity and accuracy of EDC bills, perceived reliability of service and customer problem perception.

Informal consumer complaint—An appeal by a consumer to the BCS about a utility's proposed resolution of a dispute related to billing, service delivery, repairs and all other issues not related to requests for payment arrangements.

Informally verified infraction—An apparent misapplication of Commission regulations as determined by the BCS through its examination of information obtained as part of its review of informal consumer complaints and payment arrangement requests. The informal verification process implemented by the BCS notifies a utility of the information which forms the basis of an alleged infraction, affords the utility the opportunity to affirm or deny the accuracy of the information and concludes with a BCS determination regarding the alleged infraction. An informally verified infraction is not equivalent to a formal violation under section 3301 of the code (relating to civil penalties for violations) unless otherwise determined through applicable Commission procedures.

Infraction—A misapplication of a Commission regulation, particularly the standards and billing practices for residential service.

Infraction rate—The number of informally verified infractions per 1,000 residential customers.

Justified informal consumer complaint—A complaint where the BCS has determined that an EDC did not follow Commission procedures or regulations.

Justified informal consumer complaint rate—The number of justified informal consumer complaints per 1,000 residential customers.

Justified payment arrangement request—A payment arrangement request where an EDC did not follow Commission negotiation procedures or regulations.

Justified payment arrangement request rate—The number of justified payment arrangement requests per 1,000 residential customers.

Payment arrangement request—A customer request for payment terms to the BCS.

Small commercial—A person, sole proprietorship, partnership, corporation, association or other business entity which employs fewer than 250 employees and which receives public utility service under a small commercial, small industrial or small business rate classification. See section 22 of the Small Business Advocate Act (73 P. S. § 399.42).

Transaction survey—A survey targeted toward individuals that have had a recent interaction with an EDC. A transaction includes filing a complaint, inquiring about a bill, having a repair completed, installation of service or an appointment for a special meter reading.

§ 54.153. Reporting requirements.

(a) Unless otherwise specified in this subchapter, each EDC shall file reports biannually with the Commission on or before August 1 and February 1 of each year beginning August 1, 1999. Each August report shall contain data from the first 6 months of the calendar year. Each February report shall contain data from the second 6 months of the year as well as data for the entire preceding calendar year. The report shall be filed with the Secretary of the Commission. Each report shall include the name and telephone number of the person to whom inquiries should be addressed.

(b) Each EDC shall take measures necessary and keep sufficient records to report the following data to the Commission:

(1) *Telephone access.*

(i) The percent of calls answered at the EDC's call center or business office within 30 seconds with the EDC representative ready to render assistance and to accept information necessary to process the call. An acknowledgment that the customer or applicant is waiting on the line does not constitute an answer.

(ii) The average busy-out rate.

(iii) The call abandonment rate.

(2) *Billing.*

(i) The average number and percent of residential bills that the EDC failed to render once every billing period to residential ratepayers in accordance with § 56.11 (relating to billing frequency).

(ii) The average number and percent of small commercial bills that the EDC failed to render once every billing period to small commercial ratepayers.

(3) *Meter reading.*

(i) The number and percent of residential meters for which the company has failed to obtain an actual or ratepayer supplied reading within the past 6 months to verify the accuracy of estimated readings in accordance with § 56.12(4)(ii) (relating to meter reading; estimated billing; ratepayer readings).

(ii) The number and percent of residential meters for which the company has failed to obtain an actual meter reading within the past 12 months to verify the accuracy of the readings, either estimated or ratepayer read in accordance with § 56.12(4)(iii).

(iii) The number and percent of residential remote meters for which it has failed to obtain an actual meter reading under the time frame in § 56.12(5)(ii).

(4) *Response to disputes.* The actual number of disputes as described in Chapter 56, Subchapter F (relating to disputes; termination disputes; informal and formal complaints) for which the company failed to issue its report to the complaining party within 30 days of the initiation of the dispute under § 56.151(5) (relating to purpose).

§ 54.154. Customer surveys.

(a) *General survey.* Each EDC shall arrange for an independent third party to submit to the Commission the results of a general telephone survey of a cross-section of all classes of the EDC's customer population.

(1) The purpose of the general survey shall be to evaluate customer perceptions about the accuracy of bills, the clarity of bills and other communications from the EDC, the reliability of the EDCs service, problems with the EDC and overall customer satisfaction.

(2) The survey instrument shall be a uniform questionnaire developed for use by all EDC's.

(3) The survey sample selection procedure shall be based on a uniform procedure applicable to all EDCs.

(4) Using uniform methodology, a single, independent third party shall conduct the survey for all EDCs, analyze each EDC's survey results and report each EDCs survey results to the Commission. Each EDC shall also receive the results obtained from its own customers.

(b) *Transaction survey.* Each EDC shall arrange for an independent third party to submit to the Commission the results of telephone transaction surveys of customers who have had recent interactions with the EDC.

(1) The purpose of the transaction surveys shall be to assess the customer perception regarding the most recent interaction with the EDC. Survey questions shall measure access to the utility, employee courtesy, employee knowledge, the keeping of scheduled appointments, promptness of response or visit and satisfaction with the outcome of the interaction.

(2) The transaction survey questions shall specifically address the circumstances that generated the most recent transaction. Interaction categories shall include the following: service installation, premise visit by company field personnel for an activity other than service installation, service interruption, billing balance inquiry or dispute, request for discontinuance of service, application for service and other similar interactions.

(3) The survey instrument shall be a uniform questionnaire developed for use by all EDC's.

(4) The survey sample selection procedure shall be based on a uniform procedure applicable to all EDCs.

(5) A single, independent third party shall use a uniform methodology to conduct the survey for all EDCs,

analyze each EDCs survey results and report the survey results by EDC to the Commission. Each EDC shall also receive the results obtained from its own customers.

(c) *Commission approval.* The questionnaires and the survey procedures shall be subject to the approval of the Commission.

(d) *Timetable.* Survey results shall be reported to the Commission as follows:

(1) General survey results shall be reported annually, on or before April 1 of each year, beginning April 1, 2001.

(2) Transaction survey results shall be submitted biannually, on or before October 1 and April 1 of each year beginning October 1, 2000. Each October report shall contain survey results from the first 6 months of the calendar year. Each April report shall contain results from the second 6 months of the year as well as a 12-month total of survey results.

§ 54.155. Regulatory performance.

(a) The BCS will review and analyze residential informal consumer complaints and payment arrangement requests filed with the Commission and will report the justified consumer complaint rate and the justified payment arrangement request rate to the Commission on an annual basis.

(b) The BCS will report to the Commission the number of informally verified infractions of applicable statutes and regulations relating to the treatment of residential accounts by each EDC. The BCS will calculate and report to the Commission an "infraction rate" for each EDC.

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[52 PA. CODE CH. 54]

[L-970130]

Reporting Requirements for Universal Service and Energy Conservation Programs

The Pennsylvania Public Utility Commission (Commission) on December 4, 1997, adopted a proposed rulemaking to establish standard reporting requirements for universal service and energy conservation programs. The data collected as a result of the reporting requirements will assist the Commission in monitoring the progress of the electric distribution companies (EDC) in achieving universal service in its service territory. The reporting requirements will ensure that the data is reported uniformly and consistently. The contact persons are Janice K. Hummel, Bureau of Consumer Services (technical) (717) 783-9088 and Kathryn G. Sophy, Law Bureau (legal) (717) 772-8839.

Executive Summary

On December 3, 1996, Governor Tom Ridge signed into law 66 Pa.C.S. §§ 2801—2812 (relating to Electricity Generation Customer Choice and Competition Act) (act). The act revised 66 Pa.C.S. (relating to Public Utility Code), by inter alia, adding Chapter 28, relating to restructuring of the electric utility industry. The act is

clear in its intent that the EDCs are to continue, at a minimum, the protections, policies and services that now assist customers who are low-income to afford electric service. Section 2804(9) of the act (relating to standards for restructuring of electric industry) requires the Commission to ensure that universal service and energy conservation policies, activities and services are appropriately funded and available in each electric distribution territory.

The purpose of this proposed rulemaking is to establish standard reporting requirements for universal service and energy conservation programs. The data collected as a result of the reporting requirements will assist the Commission in monitoring the progress of the EDCs in achieving universal service in their service territories. The reporting requirements will also ensure that the data is reported uniformly and consistently.

This proposal establishes that the EDCs will report the following information to the Commission: 1) annual reports on residential low-income collections and universal service and energy conservation programs; 2) biennial (every 2 years) plans for universal service and energy conservation programs; 3) every 6 years an independent third-party evaluation that measures the degree that an EDC's universal service and energy conservation programs are working to provide affordable utility service at reasonable rates.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on January 16, 1998, the Commission submitted a copy of this proposed rulemaking to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House Committee on Consumer Affairs and the Senate Committee on Consumer Protection and Professional Licensure. In addition to submitting this proposed rulemaking, the Commission has provided IRRC and the Committees with a copy of a detailed Regulatory Analysis Form prepared by the Commission in compliance with Executive Order 1996-1. A copy of this material is available to the public upon request.

If the Legislative Committees have objections to any portion of the proposed rulemaking, they will notify the Commission within 20 days of the close of the public comment period. If IRRC has objections to any portion of the proposed regulations, it will notify the Commission within 10 days of the close of the Legislative comment period. The notification shall specify the regulatory review criteria which have not been met by that portion. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the regulations, by the Commission, the General Assembly and the Governor of any objections raised.

Public meeting held
December 4, 1997

Commissioners present: John M. Quain, Chairperson; Robert K. Bloom, Vice-Chairperson; Concurring in result; John Hanger; David W. Rolka; Nora Mead Brownell

Proposed Rulemaking Order

By the Commission:

On July 10, 1997, the Commission issued a final order that established guidelines for universal service and energy conservation programs. As part of that order, the Commission issued temporary reporting requirements un-

til we developed formal regulations through our normal rulemaking process. This order initiates the formal rulemaking process. The purpose of this rulemaking is to establish standard reporting requirements for universal service and energy conservation programs. The data collected as a result of the reporting requirements will assist the Commission in monitoring the progress of the EDCs in achieving universal service in their service territories. The reporting requirements will also ensure that the data is reported uniformly and consistently. The proposed reporting requirements are set forth in Annex A.

Parties have had several opportunities to comment on the reporting requirements. At Docket M-00960890F003, the Commission established a universal service and energy conservation work group to provide the Commission with recommendations on universal service and energy conservation matters relating to electric restructuring. Over a 6-week period, 70 different parties participated in five work group meetings. The work group submitted a final report on universal service and energy conservation programs to the Commission. The work group reached consensus on limited items for seven principles, including reporting requirements.

On April 25, 1997, the Commission issued a tentative order that proposed guidelines for universal service and energy conservation programs, including reporting requirements. The Commission received comments to the tentative order from 52 parties. Considering these comments, the Commission made changes to the guidelines including the reporting requirements in its final order adopted on July 10, 1997.

Information from the EDCs about universal service programs and low-income customers is more critical now so the Commission can determine if universal service and energy conservation programs comply with the act. The act requires that programs be appropriately funded and available to low-income customers. In their comments to the reporting requirements outlined in the Commission's tentative order regarding guidelines for universal service and energy conservation programs, Pennsylvania Electric Association and the individual EDCs commented that they could not currently provide all the data requested in this section. The Commission is not insensitive to the problems that EDCs will encounter in gathering and reporting the data required as a result of these regulations. The EDCs currently provide much of the program related data we are requesting in these regulations. However, the EDCs report the data at various times throughout the year in different reports. These regulations will establish a uniform and standard reporting format and time schedule. The reporting requirements of these regulations will replace certain program related reports, such as hardship fund and CARES reports, that the EDCs provide to the Commission.

These proposed regulations introduce new collection reporting requirements that identify costs specifically associated with low-income customers. The Commission acknowledges that the EDCs will need time to make programming changes to collect this data. Therefore, the Commission proposes that each EDC should be able to report complete data to the Commission no later than April 1, 2000. For the purposes of low-income collections reporting the Commission requests information on two low-income groups: confirmed low-income accounts and nonconfirmed low-income accounts. Confirmed low-income accounts are those accounts where the EDC has obtained information that would reasonably place the customer in a low-income designation. Examples of this information

are receipt of Low-Income Home Energy Assistance Program (LIHEAP) grants, income source noted as TANF or General Assistance on an application for service; or the customer's self-report of income in conjunction with establishing a payment arrangement or application for a utility low-income program.

The nonconfirmed low-income group is comprised of an estimated number of accounts that are believed to be low-income but for which the EDC has no specific confirming information about the account to designate it as low-income. The EDC's belief about the number of nonconfirmed low-income accounts may be based on the disparity between census data reports on the number of low-income households in a service territory versus the number of confirmed low-income accounts in the same area. It is important to consider the nonconfirmed low-income designation for two reasons. First, the EDCs should seek to identify and confirm low-income customers so that they can be apprised of the availability of special programs such as LIHEAP and universal service programs that could help them maintain their utility service. Second, some collection expenses will be attributable to nonconfirmed low-income, payment-troubled customers. These expenses are not appropriately attributed to the nonlow-income residential customer group. Therefore, it is necessary to consider both the confirmed and nonconfirmed low-income accounts when reporting on the collection costs attributable to the "universal service" group defined as low-income. When reporting collection figures for the nonconfirmed low-income group, the EDCs are asked to provide a best guess estimate for the expenses associated with this group.

We are also interested in comments regarding the reporting format for the EDCs. We believe that all reporting should be uniform and by electronic submission and would appreciate comments in this regard.

The Commission reserves the right to waive any or all requirements of these regulations upon petition by an affected party under § 5.43 (relating to petitions for issuance, amendment, waiver or repeal of regulations).

Accordingly, under section 501 of the Public Utility Code, and the Commonwealth Documents Law (45 P. S. § 1201 et seq.) and regulations promulgated thereunder at 1 Pa. Code §§ 7.1—7.4, we propose to add the regulations at 52 Pa. Code §§ 54.71—54.76 to read as set forth in Annex A; *Therefore,*

It Is Ordered that:

1. A Rulemaking Docket shall be opened to consider regulations in Annex A.
2. The Secretary shall submit a copy of this order and Annex A to the Office of Attorney General for review as to form and legality.
3. The Secretary shall submit a copy of this order and Annex A to the Governor's Budget Office for review of fiscal impact.
4. The Secretary shall submit this order and Annex A for review by the designated standing committees of both Houses of the General Assembly, and for formal review and comments by IRRC.
5. The Secretary shall certify this order and Annex A and deposit them with the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.
6. A copy of this final opinion and order and any accompanying statements of the Commissioners be served upon all jurisdictional electric companies, the Office of

Consumer Advocate, the Office of Small Business Advocate, other parties who participated in the Commission's electric competition investigation at Docket No. I-00940032, the Electric Competition Legislative Stakeholders, and the Universal Service and Energy Conservation Work Group.

7. Within 45 days of this order's publication in the *Pennsylvania Bulletin*, an original and 15 copies of any comments concerning this order and Annex A should be submitted to the Pennsylvania Public Utility Commission, P. O. Box 3265, Harrisburg, PA 17105-3265.

JAMES J. MCNULTY,
Secretary

Fiscal Note: 57-193. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 52. PUBLIC UTILITIES

PART I. PENNSYLVANIA PUBLIC UTILITY COMMISSION

Subpart C. FIXED UTILITIES

CHAPTER 54. ELECTRICITY GENERATION CUSTOMER CHOICE

Subchapter C. UNIVERSAL SERVICE AND ENERGY CONSERVATION REPORTING REQUIREMENTS

Sec.	
54.71	Statement of purpose and policy.
54.72	Definitions.
54.73	Universal service and energy conservation goals.
54.74	Universal service and energy conservation plans.
54.75	Annual residential collection and universal service and energy conservation program reporting requirements.
54.76	Evaluation reporting requirements.
54.77	Electric distribution companies with less than 55,000 residential accounts.

§ 54.71. Statement of purpose and policy.

Section 2804(9) of the code (relating to standards for restructuring of electric industry) mandates that the Commission ensure universal service and energy conservation policies, activities and services for residential electric customers are appropriately funded and available in each EDC territory. This subchapter requires covered EDCs to establish uniform reporting requirements for universal service and energy conservation policies, programs and protections and to report this information to the Commission. The reports are necessary to determine each EDC's progress in achieving universal service within its service territory. This chapter also requires each covered EDC to have a third-party evaluation conducted on its universal service and energy conservation programs every 6 years. The independent evaluator's reports shall be presented to the EDC and to the Commission.

§ 54.72. Definitions.

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

CAP—Customer assistance program—An alternative collection method that provides payment assistance to low-income, payment troubled utility customers. CAP participants agree to make affordable monthly payments that are less than the current bill in exchange for continued provision of electric utility services.

CARES—A program that provides a cost-effective service that helps selected, payment-troubled customers maximize their ability to pay utility bills. A CARES

program provides a casework approach to help customers secure energy assistance funds and other needed services.

Classification of accounts—Accounts are classified by the following categories: all residential accounts, confirmed low-income residential accounts and nonconfirmed low-income residential accounts.

Code—The Public Utility Code, 66 Pa.C.S. §§ 101—3316.

Collection operating expenses—Expenses directly associated with collection of payments due.

Direct dollars—Dollars which are applied to a CARES customer's electric utility account, including all sources of cash assistance applied to utility bills such as LIHEAP, hardship fund grants, and local agencies' grants.

EDC—Electric distribution company—The electric distribution company as defined in section 2803 of the code (relating to definitions).

Hardship Fund—A fund that provides cash assistance to utility customers to help them pay their utility bills.

Impact evaluation—An evaluation that focuses on the degree to which a program achieves the continuation of utility service to program participants at a reasonable cost level and otherwise meets program goals.

Indirect dollars—Cash or goods donated to a CARES household that are not directly applied to a CARES customer's electric utility account. The term includes cash assistance, weatherization services, other donations, and assistance from effective referrals to government programs.

LIURP—Low-income usage reduction program—An energy usage reduction program, that assists low-income customers conserve energy and reduce residential energy bills.

Low-income customer—A residential utility customer whose household income is at or below 150% of the Federal poverty guidelines.

Payment rate—The total number of monthly payments received from CAP participants in a given period divided by the total number of monthly bills issued to CAP participants.

Payment troubled—A household that has failed to maintain one or more payment arrangements in a 2-year period.

Process evaluation—An evaluation that focuses on whether a program meets the level of need, conforms to the program design and operates efficiently.

Residential account in arrears—A residential account that is at least 1 day overdue. This classification includes all customer accounts which have payment arrangements.

Universal service and energy conservation—Universal service and energy conservation as defined in section 2803 of the code.

§ 54.73. Universal service and energy conservation program goals.

(a) The Commission will determine if the EDC meets the goals of universal service and energy conservation programs.

(b) The general goals of universal service and energy conservation programs include the following:

(1) To protect consumers' health and safety by helping low-income customers maintain electric service.

(2) To provide for affordable electric service by making available payment assistance to low-income customers.

(3) To assist low-income customers conserve energy and reduce residential utility bills.

(4) To provide that universal service and energy conservation programs are operated in a cost-effective and efficient manner.

§ 54.74. Universal service and energy conservation plans.

(a) *Plan submission*. Each EDC shall submit to the Commission for approval an updated universal service and energy conservation plan on a biennial basis beginning April 1, 1999. The plan shall cover the next 2 calendar years. The plan shall state how it differs from the previously approved plan. The plan shall include revisions based on analysis of program experiences and evaluations. If the Commission rejects the plan, the EDC shall submit a revised plan under the order rejecting or directing modification of the plan as previously filed. If the order rejecting the plan does not state a timeline, the EDC shall file its revised plan within 30 days of the entry of the order.

(b) *Plan contents*. The components of universal service and energy conservation include the following: CAP, LIURP, CARES, Hardship Funds and other programs, policies and protections. For each component of universal service and energy conservation, the plan shall include the following:

- (1) Program description.
- (2) Eligibility criteria.
- (3) Projected needs assessment.
- (4) Projected enrollment levels.
- (5) Program budget.

(c) *Cost-effectiveness*. An EDC shall annually assess the cost-effectiveness of its universal service and energy conservation programs.

§ 54.75. Annual residential collection and universal service and energy conservation program reporting requirements.

Each EDC shall report annually to the Commission on its progress in achieving universal service within its service territory. Annual EDC reports shall contain information on programs and collections for the prior calendar year. The report is due April 1 each year, beginning April 1, 2000. When noted, the data shall be reported by classification of accounts. Each EDC's report shall contain the following information:

(1) Collection reporting is categorized as follows:

(i) The criteria used by the EDC to categorize residential customers as low-income.

(ii) Annual collection operating expenses by classification of accounts. Collection operating expenses include administrative expenses associated with termination activity, negotiating payment arrangements, budget counseling, investigation and resolving informal and formal complaints associated with payment arrangements, securing and maintaining deposits, tracking delinquent accounts, collection agencies' expenses, litigation expenses other than Commission related, dunning expenses and winter survey expenses.

(iii) The total dollar amount of the gross residential write-offs, by classification of accounts.

(iv) The total number of residential customers, by classification of accounts.

(v) The total number of residential accounts in arrears, by classification of accounts.

(vi) The total dollar amount of residential accounts in arrears, by classification of accounts.

(vii) The total number of residential customers who are payment troubled, by classification of accounts.

(viii) The total number of terminations completed, by classification of accounts.

(ix) The total number of reconnections, by classification of accounts.

(2) Program reporting is categorized as follows:

(i) For each universal service and energy conservation component, program data shall include information on the following:

(A) Program costs.

(B) Program recipient demographics, including age of family members, family size, gender of head of household, income and source of income.

(C) Participation levels.

(D) Program benefits.

(ii) Additional program data for individual universal service and energy conservation components shall include the following information:

(A) LIURP. Reporting requirements as established in § 58.15 (relating to program evaluation).

(B) CAP.

(I) Energy assistance benefits.

(II) Average CAP bills.

(III) Payment rate.

(C) CARES.

(I) Energy assistance benefits.

(II) Direct dollars applied to CARES accounts.

(III) Indirect dollars applied to CARES accounts.

(D) Hardship funds.

(I) Ratepayer contributions.

(II) Special contributions.

(III) Utility contributions.

(IV) Outreach contacts.

§ 54.76. Evaluation reporting requirements.

Each EDC shall have a third-party conduct an impact evaluation of its universal service and energy conservation programs. The first impact evaluation will be due January 1, 2003. Subsequent evaluation reports shall be presented to the EDC and the Commission at no more than 6-year intervals.

(1) An independent third-party evaluator shall conduct the impact evaluation.

(2) The Commission may request periodic status reports from the EDC or the evaluator.

(3) The evaluator shall submit a copy of the initial draft and final evaluation report to both the Commission's Bureau of Consumer Services and to the EDC.

§ 54.77. Electric distribution companies with less than 55,000 residential accounts.

Beginning March 1, 1999, each EDC with less than 55,000 accounts shall report to the Commission on a biennial basis the following information in lieu of §§ 54.74—54.76 (relating to universal service and energy conservation plans; annual residential collection and universal service and energy conservation program reporting requirements; and evaluation reporting requirements):

(1) The universal service and energy conservation plan.

(2) Expenses associated with low-income customers.

(3) A description of the universal service and energy conservation services provided to low-income residential customers.

(4) Number of services or benefits provided to low-income residential customers.

(5) Dollar amount of services or benefits provided to low-income residential customers.

(6) Other reports requested by the Commission.

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