

**Subpart G. DISTRIBUTION SYSTEM IMPROVEMENT CHARGE**

**Chap.** **Sec.**  
**121.** **LONG-TERM INFRASTRUCTURE IMPROVEMENT PLAN . . . . .** **121.1**

**Source**

The provisions of this Subpart G adopted December 19, 2014, effective December 20, 2014, 44 Pa.B. 7856, unless otherwise noted.

**CHAPTER 121. LONG-TERM INFRASTRUCTURE IMPROVEMENT PLAN**

**Sec.**  
121.1. Purpose.  
121.2. Definitions.  
121.3. LTIIIP.  
121.4. Filing and Commission review procedures.  
121.5. Modifications to and expiration of an LTIIIP.  
121.6. AAO plan filings.  
121.7. Periodic review of an LTIIIP.  
121.8. Enforcement of LTIIIP implementation.

**§ 121.1. Purpose.**

To be eligible to recover the reasonable and prudently incurred costs regarding the repair, improvement and replacement of eligible property from a DSIC, a utility shall submit an LTIIIP for Commission approval. See 66 Pa.C.S. § 1353 (relating to distribution system improvement charge). The LTIIIP must show the acceleration of the replacement of aging infrastructure by the utility and be sufficient to ensure and maintain adequate, efficient, safe, reliable and reasonable service to customers.

**§ 121.2. Definitions.**

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

*AAO plan—Annual asset optimization plan*—The plan and supporting documents identified in 66 Pa.C.S. § 1356 (relating to asset optimization plans) that specify the eligible property repaired, improved or replaced by a utility under its Commission-approved LTIIIP.

*DSIC—Distribution system improvement charge*—A charge imposed by a utility to recover the reasonable and prudent costs incurred to repair, improve or replace eligible property that is part of the utility’s distribution system under 66 Pa.C.S. § 1353 (relating to distribution system improvement charge).

*Eligible property*—Property that is part of a distribution system and eligible for repair, improvement and replacement of infrastructure as defined in 66 Pa.C.S. § 1351 (relating to definitions).

*LTIIIP—Long-term infrastructure improvement plan*—The plan and supporting documents identified in 66 Pa.C.S. § 1352(a) (relating to long-term infrastructure improvement plan) that shall be submitted to and approved by the Commission for a utility to be eligible to recover costs from a DSIC mechanism, which includes information regarding the utility's eligible property and its repair and replacement schedule.

*Major modification*—A change to a utility's previously approved LTIIIP which meets at least one of the following criteria:

- (i) Eliminates a category of eligible property from the LTIIIP.
- (ii) Extends the schedule for repair, improvement or replacement of a category of eligible property by more than 2 years.
- (iii) Increases the total estimated cost of the LTIIIP by more than 20%.
- (iv) Otherwise reflects a substantial change to the current Commission-approved LTIIIP.

*Qualified personnel*—An individual who, by possession of a recognized degree, certificate or professional standing, or who by extensive knowledge, training and experience, has successfully demonstrated his ability to solve or resolve problems relating to the subject matter, the work or the project as established by the United States Department of Labor, Occupational Safety and Health Administration in 29 CFR 1926.32 (relating to definitions).

*Utility*—A natural gas distribution company, electric distribution company, water utility, wastewater utility or city natural gas distribution operation subject to the jurisdiction of the Commission.

#### Cross References

This section cited in 52 Pa. Code § 121.5 (relating to modifications to and expiration of an LTIIIP).

### § 121.3. LTIIIP.

(a) A utility seeking to implement a DSIC mechanism or to continue a previously-approved DSIC mechanism shall file an LTIIIP. The LTIIIP must include the following elements:

- (1) Identification of types and age of eligible property owned and operated by the utility for which it is seeking DSIC recovery.
- (2) An initial schedule for planned repair and replacement of eligible property.
- (3) A general description of location of eligible property.
- (4) A reasonable estimate of quantity of eligible property to be improved or repaired.
- (5) Projected annual expenditures and means to finance the expenditures.

(6) A description of the manner in which infrastructure replacement will be accelerated and how repair, improvement or replacement will ensure and maintain adequate, efficient, safe, reliable and reasonable service to customers.

(7) A workforce management and training program designed to ensure that the utility will have access to a qualified workforce to perform work in a cost-effective, safe and reliable manner.

(8) A description of a utility's outreach and coordination activities with other utilities, Department of Transportation and local governments regarding the planned maintenance/construction projects and roadways that may be impacted by the LTIIIP.

(b) The LTIIIP must address only the specific property eligible for DSIC recovery.

#### Cross References

This section cited in 52 Pa. Code § 121.4 (relating to filing and Commission review procedures); and 52 Pa. Code § 121.5 (relating to modifications to and expiration of an LTIIIP).

#### § 121.4. Filing and Commission review procedures.

(a) A utility seeking to implement a DSIC mechanism or to continue a previously-approved DSIC mechanism shall file an LTIIIP for Commission approval. The LTIIIP shall be filed with the Commission's Secretary's Bureau with copies served upon the Bureau of Investigation and Enforcement, the Office of Consumer Advocate, the Office of Small Business Advocate and the parties of record in the utility's most recent base rate case. Service is evidenced by a certificate of service filed with the LTIIIP.

(b) An LTIIIP is a public document. If a utility believes that a portion of the information in the LTIIIP qualifies as confidential security information under section 2 of the Public Utility Confidential Security Information Disclosure Protection Act (35 P. S. § 2141.2) or should be afforded proprietary and confidential treatment, the utility shall request proprietary treatment of the information pursuant to a protective order. See §§ 5.365 and 102.1—102.4 (relating to orders to limit availability of proprietary information; and confidential security information). Confidential security information in the LTIIIP shall be marked confidential by the utility and excluded from the public version of the filing.

(c) LTIIIP filings are subject to a 30-day comment period. The LTIIIP will be reviewed by Commission staff. The LTIIIP will be referred to the Office of Administrative Law Judge for hearings and a decision if comments raise material factual issues.

(d) A utility has the burden of proof to demonstrate that its proposed LTIIIP and associated expenditures are reasonable, cost effective and are designed to ensure and maintain efficient, safe, adequate, reliable and reasonable service to consumers.

(e) The Commission will review the filed LTIIIP and determine if the LTIIIP:

- (1) Contains measures to ensure that the projected annual expenditures are cost-effective.
  - (2) Specifies the manner in which it accelerates or maintains an accelerated rate of infrastructure repair, improvement or replacement.
  - (3) Is sufficient to ensure and maintain adequate, efficient, safe, reliable and reasonable service.
  - (4) Meets the requirements of § 121.3(a) (relating to LTIIIP).
- (f) If the utility's LTIIIP, which has been filed for the purpose of implementing a DSIC mechanism or to continue a previously-approved DSIC mechanism, does not meet the criteria in this section or in § 121.3(a), the Commission will order the utility to file a new or revised LTIIIP.
- (g) If the Commission determines that the utility must file a new or revised LTIIIP under subsection (f), the utility may elect to withdraw its filed LTIIIP under § 1.82 or § 5.94 (relating to withdrawal or termination; and withdrawal of pleadings in a contested proceeding). If the utility elects to withdraw its LTIIIP filing, the utility is not eligible to implement its proposed DSIC mechanism or to continue its previously-approved DSIC mechanism.

#### Cross References

This section cited in 52 Pa. Code § 121.5 (relating to modifications to and expiration of an LTIIIP).

### § 121.5. Modifications to and expiration of an LTIIIP.

- (a) If a utility elects to modify a Commission-approved LTIIIP during its term to incorporate a major modification to any of the elements in § 121.3(a) (relating to LTIIIP), the utility shall file a separate petition for modification. The utility shall clearly identify the change and explain the operational, financial or other justification for the change in its petition. The petition will be subject to notice and an opportunity to be heard by interested parties. Parties shall have 30 days to file comments to the petition.
- (b) Minor modifications to an LTIIIP that are changes that do not qualify as major modifications as defined in § 121.2 (relating to definitions) will be addressed concurrent with Commission staff's review of the utility's AAO plan, if applicable.
- (c) A utility seeking to continue its DSIC mechanism after expiration of its LTIIIP shall file a new LTIIIP with the Commission at least 120 days prior to the expiration of a currently-effective LTIIIP. The new LTIIIP must contain the elements in § 121.3(a) and is subject to the review under § 121.4 (relating to filing and Commission review procedures). If the utility fails to file a new LTIIIP before the expiration of its prior LTIIIP, the approved DSIC mechanism will terminate upon expiration of the prior LTIIIP.

#### Cross References

This section cited in 52 Pa. Code § 121.6 (relating to AAO plan filings).

**§ 121.6. AAO plan filings.**

(a) A utility with an approved DSIC shall file with the Commission, for informational purposes, an AAO plan. The AAO plan shall be filed annually with the Commission 60 days after the 12 months of its LTIP has expired and under this time frame for each successive year of the term of the LTIP.

(b) An AAO plan must include:

(1) A description that specifies all the eligible property repaired, improved and replaced in the prior 12-month period under its LTIP and prior year's AAO plan.

(2) A description of the eligible property to be repaired, improved and replaced in the upcoming 12-month period.

(c) If a utility determines that a major modification to its LTIP is necessary once it has finalized its AAO plan, it shall submit a separate petition for modification as set forth in § 121.5(a) (relating to modifications to and expiration of an LTIP) to the Commission.

(d) An AAO plan will be reviewed by the Commission only to determine whether the utility is in substantial compliance with the repairs, improvements or replacements of the specific eligible property in its approved LTIP for the corresponding 12-month time frames.

(e) Absent any major modifications to the LTIP or Commission action to reject an AAO plan within 60 days of its submission to the Commission, the AAO plan will be deemed approved. The Commission may extend its consideration period if necessary.

(f) If an AAO plan is rejected by the Commission, the utility will be notified of the plan's deficiencies and actions needed to repair, improve or replace eligible property to bring the utility into compliance with the work schedule in its approved LTIP. If the utility concludes that it needs to revise its LTIP to comply with the Commission's determinations, it shall file a petition for modification under § 121.5.

**§ 121.7. Periodic review of an LTIP.**

(a) The Commission will review a utility's LTIP at least once every 5 years or more frequently if deemed necessary to address safety, reliability or other issues related to the approved LTIP.

(b) The Commission's review will determine:

(1) If the utility has adhered to its LTIP.

(2) If changes to the LTIP are necessary to maintain and improve the efficiency, safety, adequacy and reliability of its existing distribution infrastructure.

(c) Unless otherwise directed, the Commission's periodic review will begin at the midpoint of the term of the current LTIP. The Commission will, by means of a Secretarial Letter, establish a schedule for comments and reply comments to aid in its periodic review.

(d) If the Commission determines during this periodic review that a utility's approved LTIP is no longer adequate to ensure and maintain efficient, adequate, safe, reliable and reasonable service, the Commission will direct the utility to revise, update or resubmit its LTIP as appropriate. If the utility elects to withdraw its LTIP filing under § 5.94 (relating to withdrawal of pleadings in a contested proceeding), the utility's approved DSIC mechanism will immediately terminate and the utility may not recover the expenses for the work it has performed until it files a base rate proceeding.

**§ 121.8. Enforcement of LTIP implementation.**

(a) A utility with a Commission-approved LTIP is obligated to comply with the infrastructure replacement schedule and elements of that LTIP. Compliance with the LTIP will be evaluated on a multiyear basis over the life of the LTIP. Construction expenditure variations in individual years and minor changes or deviations from the Commission-approved LTIP may not be the basis for an enforcement complaint.

(b) A Commission-approved LTIP may be subject to enforcement complaints brought by statutory advocates and other interested persons. Enforcement complaints may be referred to the Office of Administrative Law Judge for hearings and a decision, as appropriate.

(c) The remedy for noncompliance with an approved LTIP is the termination of the utility's approved DSIC mechanism.

[Next page is 1001-1].