

**CHAPTER 74. PERFECTION OF SECURITY INTERESTS IN
INTANGIBLE TRANSITION PROPERTY**

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Authority

The provisions of this Chapter 74 issued under the Public Utility Code, 66 Pa.C.S. §§ 501 and 2815(d), unless otherwise noted.

Source

The provisions of this Chapter 74 adopted October 17, 1997, effective October 18, 1997, 27 Pa.B. 5420, unless otherwise noted.

§ 74.1. Purpose.

This chapter implements the ministerial requirements of section 2812(d)(1)—(4) of the act (relating to security interests in intangible transition property) governing the perfection of a security interest in intangible transition property and the filing of notice of transfer to an assignee of an interest in intangible transition property. This chapter establishes the recordkeeping regulations and requirements and provides technical rules on administration concerning the perfection of the security interests and the filing of the notices of transfer to an assignee. This chapter also establishes how an intangible transition property notice is filed, what a filing must contain and what obligatory record retention requirements are imposed on the Commission. This chapter governs notice, amendment, effectiveness, and termination of the perfection of a security interest and notice of transfer to an assignee.

§ 74.2. Definitions.

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

Act—66 Pa.C.S. Chapter 28 (relating to restructuring of electric utility industry).

Assignee—An assignee as defined in section 2812(g) of the act (relating to approval of transition bonds).

Assignor—An electric utility or other person who transfers an interest in intangible transition property to an assignee.

Certificate—A document establishing, based upon the file number, a qualified rate order docket number and general docket number, whether there is on file with the Commission on the date and time stated a presently effective intangible transition property notice.

Commission—The Pennsylvania Public Utility Commission, including an appointed successor entity.

Continuation notice—A notice submitted to extend the effectiveness of an intangible transition property notice.

Department of State—The Corporation Bureau of the Department of State of the Commonwealth, including an appointed successor entity.

File number—A numerical sequence assigned by the Commission to identify a specific filing made under this chapter.

Filing—The submission of a completed intangible transition property notice or other document described in this chapter to the filing officer, together with the applicable filing or processing fee, and the acceptance thereof by the filing officer as evidenced by the indication of a file number and filing date thereon.

Filing date—The date and time at which a filing is accepted by the Commission as described in this chapter.

Filing officer—An authorized person in the Office of the Prothonotary of the Commission, including an appointed successor entity or office.

Filing party—A person who makes a filing under this chapter. The term does not include the Commission.

Financing party—A financing party as defined in section 2812(g) of the act.

General docket—A generic docket established by the Commission as a collective repository for all filings pertaining to the perfection of a security interest in, or the transfer to an assignee of an interest in, intangible transition property.

General docket number—The generic docket number M-00970937 established by the Commission to identify the general docket for perfection of security interests.

Grantor—An electric utility or other person who grants a security interest in intangible transition property to another person. The term does not include the Commission.

Information request—A request from a person to the Commission concerning a filing.

Intangible transition property—Intangible transition property as defined in section 2812(g) of the act.

Intangible transition property notice—A notice of a security interest in, or of a transfer to an assignee of an interest in, intangible transition property, complying with § 74.6 (relating to intangible transition property notice filing; duration; lapses; filing officer) and properly filed amendments to the notice.

Lapse—The expiration of the period of effectiveness of an intangible transition property notice.

Person—A human being, partnership, corporation, public authority or trust (including a business trust), unincorporated association, limited liability company, joint stock company or any other legal entity, whether public or private, existing under the laws of the Commonwealth, another state, the United States or a foreign country.

Qualified rate order—A qualified rate order as defined in section 2812(g) of the act.

Qualified rate order docket number—The established Commission filing number for a qualified rate order.

Release—An action taken by a filing party to alter a right, duty or obligation concerning the perfection of a security interest.

Retransfer—An action taken by an assignee to return to an assignor all or a portion of the interest of the assignee in intangible transition property.

Security interest—An interest in intangible transition property securing the payment or performance of an obligation.

Termination notice—The notice submitted to terminate perfection of a security interest.

§ 74.3. Information, filing and hours.

(a) Information on the procedures and forms for filing under this chapter, submittals, requests and other information or instructions supplementing this chapter in special instances can be obtained upon request:

Office of the Prothonotary
Pennsylvania Public Utility Commission
Attention: Filing Officer
P. O. Box 3265
Harrisburg, Pennsylvania 17105-3265

If hand carried or delivered by courier, submittals, requests or other information shall be delivered as follows:

Office of the Prothonotary
Attention: Filing Officer
Pennsylvania Public Utility Commission
Harrisburg, Pennsylvania 17120

(b) A filing, information request concerning the procedures and forms for filing under this chapter, submittals, requests and other information or instructions supplementing this chapter in special instances shall be sent to the attention of the filing officer.

§ 74.4. Place of filing.

(a) *Place of filing.* An intangible transition property notice shall be filed with the filing officer of the Commission by the filing party and be accompanied by the payment of the filing fees established by the Commission.

(b) *Effect of successor entity on filing.* An effective intangible transition property notice continues in force and effect even though the grantor or assignor whose intangible transition property notice is (or originally was) the subject of a filing merges, consolidates or otherwise reorganizes.

§ 74.5. Intangible transition property notice requirements; amendment; forms; error; recharacterization.

(a) *General rule.* An intangible transition property notice will be deemed sufficient if it provides the following:

- (1) The name of the grantor or assignor.
- (2) The address of the grantor or assignor.
- (3) A signature of an authorized person acting on behalf of the grantor or assignor.
- (4) The name of the financing party or assignee.
- (5) The address of the financing party or assignee from which information concerning the security interest or transfer of an interest in intangible transition property may be obtained.
- (6) The signature of an authorized person acting on behalf of the financing party or assignee.
- (7) A statement setting forth whether all or a portion of the recovery permitted under the qualified rate order (from which the intangible transition property is derived) is covered by the intangible transition property notice. If the portion covered by an intangible transition property notice relates to less than all of the qualified rate order, the portion or the amount thereof to which the intangible transition property notice relates shall be stated.
- (8) A statement (subject to subsection (h)) of whether the intangible transition property notice is intended to be filed to perfect a security interest in intangible transition property or to give notice of a transfer of an interest in intangible transition property to an assignee.
- (9) The qualified rate order docket number from which the intangible transition property is derived.
- (10) The general docket number.

(b) *Filing sequence.* An intangible transition property notice may be filed before a security agreement is made or a security interest otherwise attaches or before a transfer of an interest in intangible transition property to an assignee becomes effective.

(c) *Effect of partial completion.* An intangible transition property notice which otherwise complies with this section will be deemed sufficient when it is

signed by the financing party or assignee instead of the grantor or assignor, if it is submitted to perfect a security interest in or record a transfer to an assignee of:

(1) In the case of a security interest, intangible transition property as to which the filing of an intangible transition property notice has lapsed.

(2) Intangible transition property under a security agreement or an agreement effecting a transfer to an Assignee signed by the grantor or assignor and authorizing the financing party or the assignee, to file an intangible transition property notice. The intangible transition property notice shall state that it is being submitted in accordance with a security agreement or an agreement effecting a transfer signed by the grantor or assignor that authorizes the filing of an intangible transition property notice by the financing party or the assignee.

(d) *Form.* A filing party shall submit Form A, in Appendix A, to comply with subsection (a).

(e) *Amendments.* Except when only one signature is expressly required by a provision of this chapter, an intangible transition property notice may be amended only with a written document signed by both the grantor or assignor and the financing party or assignee. An amendment does not extend the period of effectiveness of an intangible transition property notice unless it is filed as a continuation notice. If any amendment adds intangible transition property, it is effective as to the added intangible transition property only from the filing date of the amendment.

(f) *Amendment form.* A filing party shall submit Form B, in Appendix B, to comply with subsection (e).

(g) *Sufficiency of name.* An intangible transition property notice sufficiently shows the name of the grantor or assignor who is not an individual only if it gives the partnership, corporate, trust or entity name of the grantor or assignor, as the name is shown on the public records in the jurisdiction of organization in the case of persons who are required to register in the public records to organize or as the name is shown on the organizational documents of the person in the case of other persons formed under written agreements that are not required to register in the public records to organize. An intangible transition property notice that sufficiently shows the name of the grantor or assignor is not rendered ineffective by the absence of trade names or other names or names of partners, members or associates. A filed intangible transition property notice remains effective with respect to intangible transition property transferred by the grantor or assignor even though the financing party or the assignee knows of or consents to the transfer. No amendment to an intangible transition property notice is required to reflect a change in the name, identity or corporate structure of a grantor or assignor.

(h) *Effect of minor errors; recharacterization.* An intangible transition property notice substantially complying with this chapter will be sufficient even if it contains minor errors which are not seriously misleading. If an intangible transi-

tion property notice is filed to give notice of a transfer to an assignee of an interest in intangible transition property under this chapter, and the transfer is thereafter held for any reason or purpose to constitute the grant of a security interest in the intangible transition property, the intangible transition property notice will be deemed to constitute a filing with respect to a security interest under this chapter, from and as of the filing date of the original intangible transition property notice, without the necessity of any amendment of (or other action by the parties with respect to) the originally filed intangible transition property notice.

§ 74.6. Intangible transition property notice filing; duration; lapses; filing officer.

(a) *What constitutes a filing.* Presentation of an intangible transition property notice and tender of the filing or processing fee, and acceptance of the intangible transition property notice by the filing officer by indication of a file number and filing date on the intangible transition property notice, will constitute a filing under the act and this chapter. Nothing in the act or this chapter precludes the filing officer from refusing to accept for filing an intangible transition property notice not complying with this chapter.

(b) *Purposes of filing.* An intangible transition property notice shall be filed to perfect the security interest of a financing party in intangible transition property. An intangible transition property notice shall also be filed in respect of each transfer to an assignee of an interest in intangible transition property.

(c) *Duration of effectiveness of filing in general.* An intangible transition property notice filed to perfect the security interest of a financing party will be effective for 12 years from the filing date. An intangible transition property notice filed to perfect the security interest of a financing party lapses on the expiration of the 12-year period unless a continuation notice is filed prior to the lapse. An intangible transition property notice filed to record the transfer to an assignee of intangible transition property is continuously effective.

(d) *Lapse.* Upon lapse, the security interest becomes unperfected and is deemed to have been unperfected as against a person who became a purchaser or lien creditor before the lapse.

(e) *Continuation notice.* A continuation notice shall be filed by a financing party no earlier than 6 months prior to the expiration of the 12-year period specified in subsection (c). A continuation notice shall be signed by the financing party, identify the original notice by file number and state that the original intangible transition property notice is still effective. A continuation notice signed by a person other than the financing party of record shall be accompanied by a separate written statement of assignment of the security interest signed by the financing party of record and comply with this chapter, including payment of the required fees. Upon timely filing of the continuation notice, the effectiveness of the original notice is continued for 12 years after the last date to which the filing was effective whereupon it lapses in the same manner as provided in subsection

(d) unless another continuation notice is filed prior to a lapse. Succeeding continuation notices may be filed in the same manner to continue the effectiveness of the original notice.

(1) Unless a statute on disposition of public records provides otherwise, the filing officer may remove a lapsed notice from the files and destroy it if he has retained a microfilm or other photographic record or, in other cases, 1 year after the lapse.

(2) The filing officer will manage the intangible transition property notice filings to retain a filing that is continued beyond the 12-year limitation.

(f) *Establishment and duties of filing officer.*

(1) The Commission will establish and appoint a filing officer to maintain the records and to take other necessary action. The filing officer will place copies of filings made under this chapter in the appropriate dockets for future reference and manage the filings.

(2) The filing officer will also mark each intangible transition property notice and each subsequent related filing with a consecutive file number and with the date and time of filing and will hold the intangible transition property notice and each subsequent related filing or microfilm or other photographic or electronic copy thereof for public inspection. Consecutive file numbers for intangible transition property notices and subsequent related notices filed in each calendar year will begin with the number one preceded by the last two digits of the calendar year in which the filing occurs. In addition, the filing officer will index the intangible transition property notices according to the name of the grantor or assignor and will mark in the index the file number and the address of the grantor or assignor.

(g) *Legible papers.* The duties of the filing officer prescribed in this chapter relate only to clearly legible papers submitted to the filing officer. The filing officer will accept only clearly legible papers. No intangible transition property notice or other related notice will be accepted unless it is typed or printed in black ink and, in the determination of the filing officer, can be interpreted or reproduced using the technology employed by the Commission.

Cross References

This section cited in 52 Pa. Code § 74.2 (relating to definitions).

§ 74.7. Termination notice; filing officer.

(a) *General rule.* Whenever there is no outstanding secured obligation and no commitment to make advances, incur obligations or otherwise give value, the financing party shall on written demand by the grantor send the grantor a termination notice to the effect that it no longer claims a security interest under the applicable intangible transition property notice, which shall be identified by its file number. A termination notice signed by a person other than the financing party of record shall be accompanied by a separate written notice of assignment

of the security interest signed by the financing party of record and complying with this chapter, including payment of the required fee. If the affected financing party fails to file a termination notice or send a termination notice within 10 days after proper demand therefor, the financing party shall be liable for the loss caused to the grantor by reason of the failure.

(b) *Duties of filing officer.* On presentation to the filing officer of a termination notice, the filing officer shall mark the date and time of filing on the termination notice. If the filing officer has received the termination notice in duplicate, the filing officer will return one copy of the termination notice to the financing party marked to show the date and time of filing thereof. The filing officer may remove the original, microfilm or other photographic record from the file no sooner than 1 year after receipt of the termination notice.

§ 74.8. Assignment of security interest or interest of an assignee; filing officer.

(a) *Assignment disclosed in intangible transition property notice.* An intangible transition property notice may disclose an assignment of a security interest of a financing party or of the interest of an assignee in the intangible transition property described in a filed intangible transition property notice by indication in the notice of the name and address of the transferee. Either the original financing party or assignee or the transferee may sign this statement as the financing party or assignee. On presentation to the filing officer of an intangible transition property notice, the filing officer will mark it as provided for in this chapter.

(b) *Separate notice of assignment.* A financing party or assignee of record may assign all or a part of its rights under an intangible transition property notice by submitting a separate written notice of assignment signed by the financing party or assignee of record and setting forth the name of the financing party or assignee of record, the grantor or assignor, the file number and the filing date of the intangible transition property notice and the name and address of the transferee, a description of the interest in the intangible transition property assigned, the qualified rate order docket number for the qualified rate order from which the intangible transition property is derived, and the general docket number. A copy of the assignment is sufficient as a separate notice if it complies with the preceding sentence. On presentation to the filing officer of a separate notice which complies with this section, the filing officer will mark a separate notice with the date and time of the filing. The filing officer will mark the assignment on the indices of the intangible transition property notice or enter the assignment information into the computerized system for intangible transition property notices.

(c) *Status of transferee.* After the filing of an assignment under this section, the transferee becomes the financing party or assignee of record as to the interest assigned.

§ 74.9. Release or retransfer; filing officer.

(a) A financing party or assignee of record may by its signed notice release or retransfer all or a part of its interest in intangible transition property described in a filed intangible transition property notice.

(b) The notice of a release or retransfer is sufficient if it contains the following:

- (1) A description of the intangible transition property being released or retransferred.
- (2) The name and address of the grantor or assignor.
- (3) The name and address of the financing party or assignee.
- (4) The file number of the intangible transition property notice.
- (5) The qualified rate order docket number for the qualified rate order from which the intangible transition property is derived.
- (6) The general docket number.

(c) A notice of release or retransfer signed by a person other than the financing party or assignee of record shall be accompanied by a separate written statement of assignment of the interest in intangible transition property signed by the financing party or assignee of record and comply with this chapter, including payment of the required fee.

(d) Upon presentation of a notice of release or retransfer to the filing officer, the filing officer will mark the notice with the date and time of filing and will mark the same on the indices of the intangible transition property notice or enter the release or retransfer information into the computerized system for intangible transition property notices.

§ 74.10. Information requests; filing officer.

(a) *Marking copy of intangible transition property notice filed.* If the filing party submitting an intangible transition property notice, continuation notice, termination notice, notice of assignment, notice of release or notice of retransfer, furnishes the filing officer with a copy, the filing officer will upon request mark upon the copy the file number and date and time of the filing of the original and deliver or send the copy to the filing party.

(b) *Furnishing certificates and copies.* Upon request of a person, the filing officer will issue a certificate showing whether there is on file on the date and time stated therein, a presently effective intangible transition property notice naming a particular grantor or assignor and a notice of assignment and, if there is, giving the date and time of filing of each notice and the names and addresses of each financing party or assignee named therein. A certificate will also show whether there is on file on the date and time stated therein, a notice affecting intangible transition property of the grantor or assignor, and if there is, giving the date and time of filing of each notice. Upon request, the filing officer will furnish, upon payment of the requisite fee, a copy of a filed intangible transition

property notice, or notice affecting intangible transition property of a grantor or assignor, or a continuation notice, termination notice, notice of assignment, notice of release or notice of retransfer respecting an intangible transition property notice.

§ 74.11. Record retention; admissibility; filing officer.

In lieu of retaining the original of a filing, a filing officer may make microfilm, photographic, photostat, electronic or other copies which accurately reproduce an original and may thereafter dispose of the originals so copied, and the copy will be admissible in evidence in a proceeding with the same effect as though it were an original. If a filing officer upon making a copy of a paper disposes of the original, then upon the filing of a termination notice the filing officer will be relieved of the duties imposed regarding the underlying intangible transition property notice, and instead will mark the termination notice on the index and will send to the financing party an acknowledgement of the filing of the termination notice.

§ 74.12. Fees.

(a) The fees are those in § 1.43(a) (relating to schedule of fees payable to the Commission) for services. The fees in § 1.43(a) governing this chapter are based on the total direct and indirect administrative cost of providing the service, including staffing and infrastructure support, necessary to effectuate the perfection of a security interest under the act and as required by 66 Pa. Code § 317(a) (relating to fees for services rendered by Commission).

(b) The initial filing fee will be that in § 1.43 for the filing of Form A. The fee for changes and other actions with respect to an intangible transition property notice in connection with an amendment, assignment, continuation, release, retransfer or termination will be that in § 1.43 for the filing of Form B. The forms will be available from the filing officer of the Commission. The fee for information requests relating to this chapter is the fee in § 1.43 for Chapter 74 related public information requests.

§ 74.13. Forms officer.

The filing officer shall also be the forms officer responsible for providing Forms to the public. The forms will include, at a minimum, the following:

- (1) Form A, in Appendix A, for intangible transition property notice.
- (2) Form B, in Appendix B, for any amendment, assignment, continuation, release, retransfer or termination of interest in an intangible transition property notice.
- (3) An established fee schedule.
- (4) Other forms as may be necessary to effectuate the perfection of a security interest under the act and this chapter.

§ 74.14. Additional Commission filings; Commission informational filing.

(a) *Commission filing.* The filing officer may place a copy of any filing in the Commission's general docket and in the qualified rate order docket related to the intangible transition property covered by any intangible transition property notice.

(b) *Informational filing.* The filing officer will forward to the Department of State, for informational purposes only, a copy of any filing in accordance with the procedures and fees as determined to be necessary by the Department of State. Any failure of the Commission to make such an informational filing shall have no effect whatsoever on the perfection of a security interest in or transfer of an interest in intangible transition property under section 2812(d) of the act (relating primarily to perfection of security interests in intangible transition property). The Commission is not liable in law or equity for failure to make the informational filing.

APPENDIX A

For Filing Officer Only
File Number:
Filing Date:

**Form A
Intangible Transition Property Notice**

General Docket Number: M-00970937

Name of Grantor or Assignor:

Address of Grantor or Assignor:

Name of Financing Party or Assignee:

Address of Financing Party or Assignee from which Information concerning the Security Interest or Transfer in Interest Intangible Transition Property may be obtained:

This Intangible Transition Property Notice covers the Intangible Transition Property arising from the following Qualified Rate Order:

Commission Docket Number:

Date of Entry:

State whether the Intangible Transition Property Notice relates to all the above Qualified Rate Order and the amount of Intangible Transition Property arising therefrom, or only to a portion of such Order or Amount:

_____ All _____ Portion

If "Portion" is checked, state either:

The Portion of the Qualified Rate Order to which this Notice relates (by reference to the applicable section(s) or paragraphs(s) of the Order:

OR

The Amount of the Intangible Transition Property to which this Notice relates (in comparison to the Total Amount of such property):

\$ _____ of a Total of \$ _____

Check one:

_____ This Form A is filed to Perfect a Security Interest in Intangible Transition Property.

_____ This Form A is filed to give notice of a Transfer of an Interest in Intangible Transition Property to an Assignee.

Signature of Grantor
or Assignor

Signature of Financing
Party or Assignor

APPENDIX B**Form B****Intangible Transition Property Notice Changes**

This Intangible Transition Property Notice filing relates to an Intangible Transition Property Notice originally filed at _____ (File Number). The P.U.C. General Docket relating to such filing is Docket No. M-00970937 and the Qualified Rate Order Docket No. is _____ .

Name of Grantor or Assignor:

Address:

Name of Financing Party or Assignee of Record:

Address:

The following change in the intangible transition property notice is contemplated by this filing: (Check One):

- Amendment: The original Intangible Transition Property Notice identified above is amended as set forth below.
- Assignment: The Financing Party or Assignee of record has assigned to the transferee, whose name and address is set forth below, rights in the Intangible Transition Property described above under the original Intangible Transition Property Notice identified above.
- Certificate: Request showing whether there is on file on the date and hour stated therein, a presently effective Intangible Transition Property Notice based on information provided to the Filing Officer.
- Continuation: The original Intangible Property Notice identified above is still effective.
- Release: The Financing Party of record has released the Intangible Transition Property described below from the Intangible Transition Property covered by the original Intangible Transition Property Notice identified above.
- Retransfer: The Assignee of record has retransferred the Intangible Transition Property described below from the Intangible Transition Property covered by the original Intangible Transition Property Notice identified above.
- Termination: The Financing Party of record is no longer claiming a security interest in the Intangible Transition Property described in the original Intangible Transition Property Notice identified above.

Description

The following describes the Intangible Transition Property added by amendment, assigned, released, retransferred, terminated, or describing any other amendment to the Intangible Transition Property Notice:

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Transferee Name:

Transferee Address:

Description of the Intangible Transition Property added by amendment, assigned, released, retransferred, terminated, or describing any other amendment to the Intangible Transition Property Notice:

Signature of Financing Party or
Assignee of record

Signature of Grantor or Assignor

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