

RULES AND REGULATIONS

Title 25—ENVIRONMENTAL PROTECTION

ENVIRONMENTAL QUALITY BOARD

[25 PA. CODE CH. 215]

Security Rule for Radioactive Material

The Environmental Quality Board (Board) amends Chapter 215 (relating to general provisions). Chapter 215 is amended to include a reference to the new Nuclear Regulatory Commission (NRC) security regulation in 10 CFR Part 37 (relating to physical protection of category 1 and category 2 quantities of radioactive material). The Bureau of Radiation Protection incorporates by reference all applicable NRC radiation protection and control of radioactive materials regulations from 10 CFR (relating to energy).

This final-form rulemaking was adopted by the Board at its meeting on September 15, 2015.

A. *Effective Date*

This final-form rulemaking will be effective on March 18, 2016.

B. *Contact Persons*

For further information, contact Joseph Melnic, Chief, Division of Radiation Control, P. O. Box 8469, Rachel Carson State Office Building, Harrisburg, PA 17105-8469, (717) 783-9730; or Keith Salador, Assistant Counsel, Bureau of Regulatory Counsel, P. O. Box 8464, Rachel Carson State Office Building, Harrisburg, PA 17105-8464, (717) 783-8075. Persons with a disability may use the Pennsylvania AT&T Relay Service, (800) 654-5984 (TDD users) or (800) 654-5988 (voice users). This final-form rulemaking is available on the Department of Environmental Protection's (Department) web site at www.dep.state.pa.us (select "Public Participation," then select "Environmental Quality Board (EQB)").

C. *Statutory Authority*

This final-form rulemaking is authorized by the Radiation Protection Act (35 P. S. §§ 7110.301 and 7110.302) and section 1920-A of The Administrative Code of 1929 (71 P. S. § 510-20).

D. *Background and Purpose*

When then-Governor Rendell signed the Agreement with the Chairperson of the NRC in March 2008 to oversee and regulate licensure of radioactive materials for Pennsylvania entities, the Commonwealth committed to being compatible with the NRC regulations. The Department fulfills this requirement by incorporating by reference NRC regulations. Currently, licensees in this Commonwealth are following security orders issued by the NRC in November 2005 following the terrorist attacks of September 11, 2001. The orders were reissued by the Department in 2008 after the Commonwealth became an Agreement State, for security controls, also referred to as Increased Controls (IC), for these high-activity licensees. The orders were used to develop 10 CFR Part 37 as implemented by the NRC in March 2014. The orders require licensees to secure, from unauthorized removal or access, licensed materials that are stored in controlled or unrestricted areas, as well as control and maintain constant surveillance of licensed material that is in a

controlled or unrestricted area and that is not in storage. The orders also impose fingerprinting and criminal history records check requirements for unescorted access to certain radioactive material.

E. *Summary of Regulatory Requirements*

The following discussion outlines the regulatory requirements that have been affected by the final-form rulemaking and describes the basis for the amendments.

§ 215.1. *Purpose and scope*

Subsection (e) includes a reference to 10 CFR Part 37, incorporating by reference this new part.

Subsection (e)(10) designates that 10 CFR 37.3(b)(2), 37.13, 37.73(d) and (e), 37.107 and 37.109 are not incorporated. These sections are not being incorporated because they apply to the NRC only. Subsequent paragraphs are appropriately renumbered.

The amendments to subsection (h)(5) delete the transitional language that had been added in anticipation of the Commonwealth becoming an Agreement State. In addition, language has been added codifying the requirement for licensees to send criminal history records to the NRC.

F. *Summary of Comments and Responses on the Proposed Rulemaking*

Notice of proposed rulemaking was published at 45 Pa.B. 1367 (March 21, 2015). The public comment period closed on April 20, 2015, and no comments on the proposed rulemaking were received. The Independent Regulatory Review Commission (IRRC) reviewed the proposed rulemaking and did not have any objections, comments or recommendations.

G. *Benefits, Costs and Compliance*

Benefits

Codifying orders into regulation will result in optimizing compliance authority. Benefits of the final-form rulemaking are prevention of unnecessary radiation exposure to the public and radiation workers from terrorist acts using large quantities of radioactive material.

Compliance costs

No additional financial, economic or social impact will result from this final-form rulemaking.

Compliance Assistance Plan

Current IC licensees are being informed by the Department during annual inspections that the orders they are required to comply with will be codified in Pennsylvania regulation with the promulgation of this final-form rulemaking. The Department has recently notified all IC licensees through a written Information Notice that 10 CFR Part 37 is anticipated to be incorporated by March 19, 2016. In addition, a series of workshops were conducted in September 2014 in which the National Nuclear Security Administration of the United States Department of Energy participated to provide technical assistance.

Paperwork requirements

The final-form rulemaking will not revise the current paperwork requirements.

H. *Pollution Prevention*

This is not applicable to this final-form rulemaking.

I. *Sunset Review*

The regulation will be reviewed in accordance with the sunset review schedule published by the Department to determine whether the regulation effectively fulfills the goals for which it was intended.

J. *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on March 9, 2015, the Department submitted a copy of the notice of proposed rulemaking, published at 45 Pa.B. 1367, to IRRC and the Chairpersons of the House and Senate Environmental Resources and Energy Committees (House and Senate Committees) for review and comment.

Under section 5(c) of the Regulatory Review Act, the Department shall submit to IRRC and the House and Senate Committees copies of comments received during the public comment period, as well as other documents when requested.

Under section 5.1(j.2) of the Regulatory Review Act (71 P.S. § 745.5a(j.2)), on December 9, 2015, the final-form rulemaking was deemed approved by the House and Senate Committees. Under section 5(g) of the Regulatory Review Act, the final-form rulemaking was deemed approved by IRRC effective December 9, 2015.

K. *Findings*

The Board finds that:

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

(2) A public comment period was provided as required by law and no comments were submitted.

(3) This final-form rulemaking does not enlarge the purpose of the proposed rulemaking published at 45 Pa.B. 1367.

(4) This final-form rulemaking is necessary and appropriate for the administration and enforcement of the acts identified in Section C of this preamble.

L. *Order*

The Board, acting under the authorizing statutes, orders that:

(a) The regulations of the Department, 25 Pa. Code Chapter 215, are amended by amending § 215.1 to read as set forth at 45 Pa.B. 1367.

(b) The Chairperson of the Board shall submit this order and 45 Pa.B. 1367 to the Office of General Counsel and the Office of Attorney General for review and approval as to legality and form as required by law.

(c) The Chairperson of the Board shall submit this order and 45 Pa.B. 1367 to IRRC and the Senate and House Committees as required under the Regulatory Review Act (71 P.S. §§ 745.1—745.14).

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

(e) This order shall take effect on March 18, 2016.

JOHN QUIGLEY,
Chairperson

(Editor's Note: See 45 Pa.B. 7350 (December 26, 2015) for IRRC's approval order).

Fiscal Note: Fiscal Note 7-493 remains valid for the final adoption of the subject regulation.

[Pa.B. Doc. No. 16-108. Filed for public inspection January 22, 2016, 9:00 a.m.]

Title 49—PROFESSIONAL AND VOCATIONAL STANDARDS

STATE BOARD OF CERTIFIED REAL ESTATE APPRAISERS

[49 PA. CODE CH. 36]

Biennial License Fee for Licensed Appraiser Trainees

The State Board of Certified Real Estate Appraisers (Board) amends § 36.6 (relating to fees) to read as set forth in Annex A.

Effective Date

This final-form rulemaking will be effective upon publication in the *Pennsylvania Bulletin*. It is anticipated that the biennial renewal fees for licensed appraiser trainees will be implemented with the June 30, 2017, biennial renewal.

Statutory Authority

Section 5(6) of the Real Estate Appraisers Certification Act (act) (63 P.S. § 457.5(6)) authorizes the Board to establish fees for the operation of the Board, including fees for the issuance and renewal of certificates and licenses. Section 9 of the act (63 P.S. § 457.9) provides that fees established under the act shall be fixed by the Board by regulation.

Background and Need for Amendment

The Board published a final-form rulemaking at 40 Pa.B. 3956 (July 17, 2010) establishing a regulatory scheme for the appraiser trainee license, which was added to the act by the act of July 8, 2008 (P.L. 833, No. 59) and the act of October 9, 2008 (P.L. 1380, No. 103). At that time, the Board established an initial application fee of \$75 for the appraiser trainee license. However, although an appraiser trainee license may be renewed biennially up to four times, the Board did not establish a biennial renewal fee for this class of license at that time. With this final-form rulemaking, the Board corrects that oversight by amending § 36.6 to establish a biennial renewal fee for licensed appraiser trainees at \$150.

Summary of Comments and the Board's Response

Notice of proposed rulemaking was published at 43 Pa.B. 5827 (October 5, 2013) with a 30-day public comment. On November 1, 2013, the Pennsylvania Association of Realtors (PAR) submitted a letter indicating their support of the fee of \$150 for appraiser trainees stating "[w]e believe that the fee is within reason and therefore have no concerns regarding the proposal." No other public comments were received.

On December 4, 2013, the Independent Regulatory Review Commission (IRRC) submitted comments to the Board.

IRRC noted that the Governor's Executive Order 1996-1 requires that "regulations shall be drafted and promulgated with early and meaningful input from the regulated community." IRRC asked the Board to explain how the process it used to develop the proposed rulemaking complies with Executive Order 1996-1. The Board discussed the proposed rulemaking during public meetings on December 13, 2012, and January 10, 2013, which are routinely attended by representatives of the regulated community and their professional associations. In advance of each Board meeting, the Board releases the agenda to individuals and entities who have indicated an interest in the Board's regulatory activities, including the professional associations that represent the regulated community. In addition, the Board posts the agenda on its web site. In this way, if a stakeholder or interested party wishes to be heard on a particular topic, that party can plan to attend the meeting. On both of these dates when the proposed rulemaking was discussed, a representative of the PAR attended the public Board meetings. On November 1, 2013, the PAR submitted a letter indicating their concurrence with the fee of \$150 for appraiser trainees, stating "[w]e believe that the fee is within reason and therefore have no concerns regarding the proposal." Likewise, on January 10, 2013, a representative of the Coalition of Pennsylvania Real Estate Appraisers (Coalition) attended the Board meeting, at which time the Board voted to promulgate the proposed rulemaking. Representatives of the Coalition have informally expressed verbal support of the fee. Thus, the members of the regulated community and their professional associations have had the opportunity to provide "early and meaningful input" on this final-form rulemaking.

IRRC asked generally how the addition of this fee relates to the overall revenues and expenditures of the Board. Specifically, IRRC asked the Board to establish that the revenues raised by fees, fines and civil penalties currently are not sufficient to meet expenditures over a 2-year period. The \$150 fee for trainees is new, as there was not a biennial renewal fee for trainees. This fee for biennial renewal for licensed appraiser trainees is not meant to cover the cost or balance the budget of the Board, but to have trainees participate in paying for some of the expenses of the Board. This final-form rulemaking is not to address a shortfall in revenue. However, prior to the implementation of the licensure of appraisal management companies, the Board was heading toward a general fee increase. At that time, during the biennial period of 2011-2013, the Board's fees generated revenue of \$1,056,115.98, while expenditures for the same period were \$1,174,532.83, a biennial deficit of \$118,416.85. At the conclusion of Fiscal Year (FY) 2012-2013, a renewal year when the Board receives the bulk of its biennial revenue, the Board's remaining balance in the Professional Licensure Augmentation Account was \$505,611.40. Had it not been for the issuance of initial appraisal management company licenses in FY 2013-2014, the Board would have needed to increase fees across all licensure categories.

There are currently 316 licensed appraiser trainees. If approximately 316 trainees renew their licenses on June 30, 2017, by paying a biennial renewal fee of \$150, then the total revenue generated by the fee would be \$47,400, which is approximately 3.6% of the Board's expected budgetary expenditures of \$1.315 million for combined FY 2016-2017 (\$648,000 projected) and FY 2017-2018 (\$667,000 projected). Thus, the portion of the Board's total budgetary expenditures that will be paid by appraiser trainees over the next 2 fiscal years is only a little

more than 3.6%, which is very small, and by itself would not have covered the prior shortfall in revenues. However, the Board believes that all licensees, including trainees, should be required to support the operations of the Board through biennial renewal fees, rather than having all of the costs fall on certified appraisers, certified Pennsylvania evaluators and appraisal management companies.

IRRC made a comment regarding the appraisal management company fees. Under § 36.306 (relating to fees), the initial application fee for appraisal management companies is \$2,000. IRRC asked whether this fee subsidizes the Board's other licensure classifications. The Board intends to address the application fee and a renewal fee for appraisal management companies more fully in a separate proposed rulemaking. Therefore, consideration of those fees and their effect on balancing the Board's budget is better set forth in the appraisal management company general rulemakings. As previously stated, this final-form rulemaking for the biennial renewal fee for appraiser trainees is not intended to cover the overall costs for the Board or balance the Board's budget.

IRRC's comments also dealt with the licensed appraiser trainee fee in relation to other renewal fees. IRRC asked the Board why it set the biennial renewal fee at \$150 when all other biennial renewal fees in § 36.6 are \$225. The Board's reasoning in charging trainees less than other licensees is that trainees are at the beginning of their professional careers, and trainees are not authorized to practice independently. For that reason, trainees cannot earn as much as appraisers and assessors. According to the Department of Labor and Industry, the 2013 average annual wage for appraisers and assessors was \$52,420, although salaries vary based on geographic region. This compares to the average salary for real estate appraiser trainees of \$31,328 according to the United States Bureau of Labor Statistics. The Board was taking into consideration the relative earning potential of a trainee when determining that a biennial renewal fee of \$150 was reasonable.

IRRC asked whether the fees it charges to the regulated community accurately reflect the current costs the Board incurs to perform the tasks associated with the fee. For purposes of this final-form rulemaking, the Board has not evaluated application fees for which the fee should cover the cost of providing the service. Instead, because this final-form rulemaking only concerns a renewal fee, the Board looks at only aggregate revenue and expenses. The Board uses the current budget and actual fees for prior years to determine its budget for the current fiscal year. In preparing its budget, the Board compares the Board's past and projected revenue with its past and projected costs. These figures become the basis for the Board's determination of the fees to charge its regulated community. It is significant that both of the associations representing the Board's regulated community, the PAR and the Coalition, have agreed that the biennial renewal fee of \$150 for appraiser trainees is reasonable, and neither organization has expressed opposition regarding this biennial renewal fee.

Fiscal Impact

This final-form rulemaking will impact licensed appraiser trainees who elect to renew their licenses. There are currently 316 actively licensed appraiser trainees. Small businesses will be impacted to the extent that they elect to pay the fees on behalf of their licensed employees. The final-form rulemaking should not have other fiscal

impact on the private sector, the general public or political subdivisions of this Commonwealth.

Paperwork Requirements

This final-form rulemaking requires the Board to alter some of its forms to reflect the new fees. However, the final-form rulemaking will not create additional paperwork for the regulated community because appraiser trainees are already required to file biennial renewal applications. The final-form rulemaking will not create additional paperwork for the private sector.

Sunset Date

The act requires the Board to monitor its revenue and costs on a fiscal year and biennial basis. Therefore, a sunset date has not been assigned.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on September 20, 2013, the Board submitted a copy of the notice of proposed rulemaking, published at 43 Pa.B. 5827, to IRRC and the Chairpersons of the House Professional Licensure Committee (HPLC) and the Senate Consumer Protection and Professional Licensure Committee (SCP/PLC) for review and comment.

Under section 5(c) of the Regulatory Review Act, the Board shall submit to IRRC, the HPLC and the SCP/PLC copies of comments received during the public comment period, as well as other documents when requested. In preparing the final-form rulemaking, the Board has considered all comments from IRRC, the HPLC, the SCP/PLC and the public.

Under section 5.1(j.2) of the Regulatory Review Act (71 P.S. § 745.5a(j.2)), on December 9, 2015, the final-form rulemaking was deemed approved by the HPLC and the SCP/PLC. Under section 5.1(e) of the Regulatory Review Act, IRRC met on December 10, 2015, and approved the final-form rulemaking.

Contact Person

Further information may be obtained by contacting Heidi Weirich, Board Administrator, State Board of Certified Real Estate Appraisers, P. O. Box 2649, Harrisburg, PA 17110-2649, st-appraise@pa.gov.

Findings

The Board finds that:

- (1) Public notice of proposed rulemaking was given under sections 201 and 202 of the act of July 31, 1968 (P.L. 769, No. 240) (45 P.S. §§ 1201 and 1202) and the regulations promulgated thereunder, 1 Pa. Code §§ 7.1 and 7.2.
- (2) A public comment period was provided as required by law, and one written public comment was received.
- (3) This final-form rulemaking is necessary and appropriate for administering and enforcing the authorizing act identified this preamble.

Order

The Board, acting under its authorizing statutes, orders that:

- (a) The regulations of the Board, 49 Pa. Code Chapter 36, are amended by amending § 36.6 to read as set forth in Annex A, with ellipses referring to the existing text of the regulation.

(b) The Board shall submit this order and Annex A to the Office of General Counsel and the Office of Attorney General as required by law.

(c) The Board shall certify this order and Annex A and deposit them with the Legislative Reference Bureau as required by law.

(d) This order shall take effect on publication in the *Pennsylvania Bulletin*.

D. THOMAS SMITH,
Chairperson

(*Editor's Note:* See 45 Pa.B. 7350 (December 26, 2015) for IRRC's approval order.)

Fiscal Note: Fiscal Note 16A-7020 remains valid for the final adoption of the subject regulation.

Annex A

TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS

PART I. DEPARTMENT OF STATE

Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS

CHAPTER 36. STATE BOARD OF CERTIFIED REAL ESTATE APPRAISERS

Subchapter A. GENERAL PROVISIONS

GENERAL PROVISIONS

§ 36.6. Fees.

The following is the schedule of fees charged by the Board:

* * * * *	
<i>Licensed Appraiser Trainee</i>	
Application.....	\$75
Biennial renewal	\$150

[Pa.B. Doc. No. 16-109. Filed for public inspection January 22, 2016, 9:00 a.m.]

Title 52—PUBLIC UTILITIES

PENNSYLVANIA PUBLIC UTILITY COMMISSION

[52 PA. CODE CH. 53]

[L-2013-2346923]

Recovery of Fuel Costs by Gas Utilities

The Pennsylvania Public Utility Commission (Commission), on May 7, 2015, adopted a final rulemaking order designed to simplify and streamline information and procedures small gas utilities use when submitting gas cost rate filings with the Commission.

Executive Summary

In order to evaluate the operational and financial viability of small natural gas utilities within the Pennsylvania Public Utility Commission's (Commission) jurisdiction, the Commission directed the establishment of a Small Gas Task Force (Task Force) consisting of internal staff from the Commission's Law Bureau, Bureau of Technical Utility Services, Bureau of Audits and the Bureau of Investigation and Enforcement. In its October 28, 2011 Final Order regarding a request for relief from interest charges by North East Heat and Lighting Com-

pany (NEH&L), the Commission granted NEH&L's request that the Task Force examine issues involving the Gas Cost Rate mechanism as well as interest rate issues as applicable to small gas utilities. After a period of study and discussion, the Task Force determined that the Commission should amend its regulations to streamline the information and procedures small gas utilities use when submitting Gas Cost Rate filings with the Commission.

Specifically, in this Final Rulemaking Order the Commission proposes to implement the following changes to its regulations: (1) classify all natural gas utilities not qualifying for 1307(f) treatment as small gas utilities; (2) modify the schedules included in small gas utilities' GCR filings for purposes of efficiency; (3) provide small gas utilities with uniform time schedules to allow more accurate gas cost projections as winters approach; (4) allow small gas utilities to collect interest, at the prime rate for commercial borrowing, on both net over and under collections from ratepayers; (5) eliminate the requirement that at least 90% of a small gas utility's annualized gas costs be rolled into base rates; and (6) implement a GCR interim tariff filing procedure to be effective on ten days' notice.

Public Meeting held
May 7, 2015

Commissioners Present: Gladys M. Brown, Chairperson; John F. Coleman, Jr., Vice Chairperson; James H. Cawley; Pamela A. Witmer; Robert F. Powelson

Final Rulemaking for Revision of 52 Pa. Code, Chapter 53 §§ 53.61—53.68, pertaining to the Recovery of Fuel Costs by Gas Utilities; Doc. No. L-2013-2346923

Final Rulemaking Order

By the Commission:

By Order entered May 9, 2013, the Pennsylvania Public Utility Commission (Commission) issued a Proposed Rulemaking Order to amend its regulations at 52 Pa. Code §§ 53.61 through 53.68, "Recovery of Fuel Costs by Gas Utilities." The purpose of this rulemaking is to simplify and streamline the information and procedures small gas utilities use when submitting gas cost rate filings with the Commission. Comments to the Proposed Rulemaking were filed by the Independent Regulatory Review Commission (IRRC) and the Office of Consumer Advocate (OCA), as well as Valley Energy Inc., which also filed reply comments. The Commission has reviewed those comments and reply comments and now issues this Final Rulemaking Order.

Background and Procedural History

On January 15, 2009, the Commission directed the establishment of a Small Gas Task Force (Task Force). Since its establishment, the Task Force has, among other tasks, evaluated the operational and financial viability of small natural gas utilities within the Commission's jurisdiction, met with small gas utilities operating in Pennsylvania to discuss gas safety issues, provided an overview of the standard rate case process as well as the "short form" process, and created a package of documents¹ and a webpage on the Commission's website to help meet the

¹ The package of documents created to assist small gas utilities included the following: an overview of the PUC ratemaking process; instructions and forms for filing the refined Short Form base rate case; a model tariff; a sample affiliated interest agreement; requirements and procedures for terminating service to customers; an explanation of the difference between base rates and gas cost rates; a sample press release; sample talking points for addressing consumer/media questions; information on meeting the Annual Report filing requirements; and a list of PUC contacts.

gas utilities' anticipated needs.² The webpage is meant to provide a one-stop location for small gas utilities to access the forms and information needed for regulatory compliance.

On October 2, 2009, the North East Heat and Light Company (NEH&L) submitted its 2009/2010 annual gas cost rate (GCR) filing, pursuant to 52 Pa. Code § 53.66 (related to filing requirements), to become effective November 1, 2009. NEH&L sought relief from interest charges, pursuant to section 53.66(d) (related to overcollections), for the twelve-month GCR reconciliation period that ended August 31, 2009. NEH&L's overcollections were the result of its purchasing strategy which allowed the company to take advantage of rapidly falling natural gas prices and to pass those savings on to its customers. NEH&L filed an interim GCR when it realized that there would be significant overcollections, thereby seeking to minimize their accrual.

The Commission granted equitable relief to NEH&L in the form of reduced interest rates on its overcollections, but emphasized that NEH&L's situation was unique in that it was a one-time partial waiver of the interest rate. See Commission Docket No. M-2009-2134358, (Order entered December 17, 2009).

The following year, on November 24, 2010, NEH&L similarly requested relief and exemption from interest charges on overcollections that accrued during the 2009/2010 GCR year. However, this time the Commission entered a Final Order denying NEH&L's request for relief. See Commission Docket No. P-2010-2214432 (Final Order entered October 28, 2011). The Commission reasoned that (1) the amount of interest was markedly different from the previous GCR year in which relief was granted; (2) the extraordinary circumstances such as the unusually low gas prices in the winter of 2008/2009 were not clearly evident in this year's request; and (3) NEH&L did not file an interim GCR to mitigate overcollections as it had done previously. NEH&L argued that interest rates on overcollections were harmful because NEH&L was punished by an excessive interest rate even though it engaged in prudent business practices to procure low cost fuel below the GCR cost. Despite denying NEH&L's requested exemption, the Commission did grant NEH&L's request for the Task Force to examine issues involving the GCR mechanism and to review interest rate issues raised by NEH&L, as applicable to small gas utilities.

The recommendations of the Task Force are the subject of the instant rulemaking proceeding. The Commission entered its May 9, 2013 Proposed Rulemaking Order to proffer changes that would streamline small gas utilities' GCR filings and better accommodate and consider the limited resources of these utilities in comparison to large gas utilities. Also, the Commission advanced changes to interest rate assessments to reflect industry standards and the current natural gas market, and to create consistency between large and small gas utilities.

Specifically, the Commission proposed the following: (1) classifying all natural gas utilities not presently qualifying for 1307(f) treatment as small gas utilities; (2) modifying the schedules included in small gas utilities' GCR filings by eliminating redundant and unnecessary schedules, and consolidating others for purposes of efficiency; (3) providing small gas utilities with uniform time schedules to allow more accurate gas cost projections as winters approach; (4) eliminating the requirement that at least 90% of a small gas utility's annualized gas costs be

² See webpage at: http://www.puc.pa.gov/utility_industry/natural_gas/committees_and_working_groups/small_gas_task_force_.aspx.

rolled into base rates; (5) implementing a GCR interim tariff filing procedure to be effective on one day's notice; and (6) allowing small gas utilities to collect interest, at the interest rate specified at 66 Pa.C.S. § 1307(f)(5), on both net over and under collections from ratepayers. The Commission specifically invited comments on its proposed use of the same interest rate that regulates large gas utilities, 66 Pa.C.S. § 1307(f)(5), or, in the alternative, other interest rates with evidence supporting their use.

The Commission received comments to its proposed revisions from IRRC and the OCA, and both comments and reply comments from Valley Energy, Inc. Those comments are summarized below.

Comments to the Proposed Rulemaking Order

IRRC's Comments

In its comments, IRRC acknowledges that the Commission specifically invited interested parties to comment on what they believe is the optimal interest rate to be applied to over and under collections. The Commission, in its Proposed Rulemaking Order, proposed that interest rates should be calculated as specified at 66 Pa.C.S. § 1307(f)(5). IRRC also recognizes that the Commission and commentators noted that pending legislation (House Bill 1188) may modify the applicable interest rate for 1307(f) gas utilities, but stated that passage of this legislation is not guaranteed. Therefore, IRRC specifies that the Commission should explain how the interest rates included in its final regulation are consistent with the current statute and are reasonable for both utilities and their customers.

IRRC also comments that the Commission should revise its response to Question 15 of the Regulatory Analysis Form it completed in conjunction with its Proposed Rulemaking Order to ensure that the new criteria required by Act 76 of 2012, intended to improve State rulemaking by creating procedures to analyze the availability of more flexible regulatory approaches for small businesses, are met.

With respect to IRRC's latter comment that the Commission revise its Regulatory Analysis Form, we will appropriately amend our answer to Question 15 when we submit our final Regulatory Analysis Form. As to IRRC's other comments, they will be addressed in the Discussion section of this Final Rulemaking Order.

Valley Energy Inc.'s (Valley) Comments

In its comments, Valley commends the Commission for addressing the burdens that current regulations have on small gas utilities, and encourages the Commission to adopt revised regulations that eliminate unnecessary differential treatment between small and large gas utilities, while also recognizing the operational and staffing limitations small utilities face. Valley agrees with the Commission's proposed revisions to 52 Pa. Code § 53.66 to eliminate redundancies and excess schedules. Valley also supports the Commission's proposal to eliminate the distinction between Group I and Group II gas utilities and to implement a universal filing schedule for small gas utilities to make their annual GCR filings. Valley has no objection to the Commission's proposal to eliminate its current requirement that 90% of small gas utilities' annualized costs be rolled into base rates. The Commission proposed this elimination to ensure that the GCR line charge of customers' bills represents 100% of gas costs.

As the Commission's proposed amendment to 52 Pa. Code § 53.66(c) would require all small gas utilities to

file reconciliation statements under 66 Pa.C.S. § 1307(e) by October 1 of each year, for the twelve month period running September 1 through August 31, Valley requests guidance from the Commission regarding the implementation and intended procedure to be used during the transition year. Valley seeks guidance because it, and all other Group I gas utilities, must currently file reconciliation statements by July 31 for the period of July 1 through June 30. This transition would cause Valley's rates to be in effect for 14 months rather than a 12-month period.

Finally, while Valley supports the Commission's proposal to allow small gas utilities to collect interest from ratepayers on net under collections consistent with practices allowed for large gas utilities, it questions the proposal to utilize the interest rate specified at 66 Pa.C.S. § 1307(f)(5). Valley recommends the prime rate for commercial borrowing as the most optimal rate to apply to both over and under collections because it accurately reflects the cost of service associated with such collections more than the residential mortgage rate or the methodology in section 1307(f)(5). Valley notes that the prime rate for commercial borrowing more closely reflects the interest conditions faced by NGDCs.

OCA Comments

The OCA, in its comments, generally supports the Commission's efforts to improve GCR procedures and reporting requirements for small gas utilities. The OCA submits that the interest rate applied to over and under collections for small gas utilities should be examined independently of what large gas utilities use. The OCA recommends an asymmetric interest mechanism, meaning a different rate should be used for over collections than under collections.³ The OCA suggests that the interest rate used for either over or under collections should be tied to actual market conditions and noted that interest rates should not impede a company's ability to procure lower cost supplies when available.

The OCA supports the Commission's proposed amendment that would require 100% of gas costs to appear in the GCR rather than having a large percentage rolled into base rates. The OCA states that this revision will provide added stability to delivery rates, the area the gas company has greater control over. The OCA encourages all gas utilities to take opportunities to reduce gas supply costs when possible, even if those benefits would not result immediately.

Finally, the OCA comments that the proposed revision allowing small gas utilities to update the GCR on one day's notice at any time that realized gas costs would result in a rate change of greater than two percent may create customer confusion. The OCA notes that rates could change multiple times in short periods and make budgeting particularly difficult for customers. To counter this concern, the OCA suggests that it may be beneficial to limit the number of such interim updates to two updates per annual GCR period.

Valley Reply Comments

In its reply comments, Valley responds to the comments of the OCA by recommending that the Commission forego the OCA's suggestion to use an asymmetric interest treatment for small gas utilities. Valley opposes the recommendation to impose any additional interest per-

³ Currently, 66 Pa.C.S. § 1307(f)(5) requires interest charged to ratepayers for net under collections to be applied at the legal rate of interest, while the interest charged to large gas utilities for net overcollections are credited at the legal rate plus two percent.

centage for net overcollections to the interest rate the Commission ultimately adopts. Finally, Valley opposes the OCA's recommendation to restrict the number of interim GCR filings to two per annual GCR period. Valley contends that this limit is contrary to the Commission's intent to "provide small gas utilities with a means to better manage their operation while remaining aware of their limited capabilities and resources." Valley states that allowing small gas utilities to regularly file interim rate changes will limit variances between actual costs and billed GCR rates.

Discussion

Interest Rate

In its comments, IRRC requests that the Commission explain how the interest rates included in its final regulation are: (1) consistent with the current statute; and (2) are reasonable for utilities and their customers.

In response to IRRC's first inquiry regarding how the interest rate proffered by the Commission is consistent with our current statutory mandate, the Commission retains authority and discretion of interest rate impositions on over and under collections for small gas utilities. See 66 Pa.C.S. § 1307(b).⁴ Prior to the passage of the Natural Gas Choice and Competition Act (Act) in 1999, section 1307(f) required large gas utilities to refund to their customers natural gas revenues that exceeded the amount of actual natural gas costs incurred with interest at the residential mortgage rate. Section 1307(f) also directed large gas utilities to recover from their customers any amount by which the actual gas expenses incurred exceeded the revenues collected. However, at the time, large gas utilities were not able to collect interest from customers on these under collections. Pursuant to the Act, 66 Pa.C.S. § 1307(f) was amended to require that refunds to customers be made, with interest at the legal rate of interest plus two percent, and that recoveries from customers include interest at the legal rate of interest.

However, no similar detailed framework was mandated for small gas utilities either prior to or following the passage of the Act. The General Assembly has instead chosen to keep small gas utilities under the broader statutory provisions of section 1307(a) and (b) which: (1) has no legislative proscription regarding the issue of interest on over and under collections; and (2) leaves authority with the Commission to permit small gas utilities to collect interest on net under collections. Thus, the Commission has now chosen to permit small gas utilities to calculate and collect interest at the prime rate for commercial borrowing on net over and under collections. This decision by the Commission is consistent with its statutory authority.

IRRC's second inquiry requests that the Commission explain how the interest rate it chooses to implement is reasonable for both utilities and consumers. As stated in the Proposed Rulemaking Order, allowing small gas utilities to collect interest on net under collections represents a departure from prior Commission policy. The Commission determined that its prior position disallowing the collection of interest on under collections placed an unfair burden on small gas utilities because it required projecting, without error, volatile annual gas supply costs and

sales volumes. No justification exists for differential treatment between large and small gas utilities on the recovery of interest on net under collections.

In its comments, the OCA states that the interest rate applied to over and under collections for small gas utilities should be examined independently of what large gas utilities use, and recommends that the interest rate be tied to market conditions. Valley's comments propose the prime rate for commercial borrowing as the optimal interest rate.

After reviewing the comments filed, the Commission will amend the language presented in its Proposed Rulemaking Order, which would have tied the interest rate applied to both over and under collections by small gas utilities to 66 Pa.C.S. § 1307(f)(5) ("Refunds to customers shall be made with interest, at the legal rate of interest plus two percent, during the period or period for which the commission orders refunds, and recoveries from customers shall include interest at the legal rate of interest . . ."). The Commission agrees with the comments of the OCA that the interest rate applied to over and under collections for small gas utilities should be examined independently of what large gas utilities use to determine which model best serves the public interest. We also agree with the comments of the OCA and Valley respectively that advocate that the interest rate applied should be tied to actual market conditions. Specifically, Valley recommends that the Commission use the prime rate for commercial borrowing, which is lower than the legal rate of interest,⁵ as well as publicly known and available, and transparent. This particular market based approach will result in immediate benefits for customers and utilities. If significant, fundamental changes that affect interest rates occur in the markets in the future, the methodology we adopt today may be revisited.

As the OCA acknowledges in its comments, interest rates should not impede a company's ability to procure lower gas cost supplies when available. This rulemaking stemmed from a situation involving North East Heat and Lighting Company (NEH&L); its purchasing strategy allowed it to take advantage of rapidly falling natural gas prices and to pass those savings along to customers. The Commission's policy prior to this rulemaking punished NEH&L by assessing an excessive interest rate even though the company engaged in prudent business practices. The cost of capital for purchasing natural gas in advance of the time customers will pay for the gas is a legitimate cost of service and should be recoverable in rates. Allowing small gas utilities to collect interest at the prime rate for commercial borrowing is reasonable because it enables utilities to take advantage of lower gas supply prices and pass those benefits onto customers.

In its comments, IRRC explicitly mentions pending legislation (House Bill 1188) that the Commission acknowledged in its Proposed Rulemaking Order and that other commenters noted. House Bill 1188 may modify the applicable interest rate for large gas utilities from the legal rate of interest to the prime rate for commercial borrowing. By directing small gas utilities to apply the prime rate for commercial borrowing at this juncture rather than the legal rate as currently applied to large gas utilities, the Commission acknowledges that it would not be in the public interest to require customers and utilities to incur higher interest rate costs merely because the General Assembly adopted a different standard for large utilities during an era of higher interest rates.

⁴ 66 Pa.C.S. § 1307(b) states that "The commission, by regulation or order, upon reasonable notice and after hearing, may prescribe for any class of public utilities, except common carriers and [large gas utilities], a mandatory system for the automatic adjustment of their rates, by means of a sliding scale of rates or other method, on the same basis as provided in subsection (a), to become effective when and in the manner prescribed in such regulation or order." By Commission Order entered on May 21, 1978, at Commission Docket No. M-78050055, the Commission established a constant and uniform adjustment rate for gas cost charges.

⁵ The prime rate for commercial borrowing has been set at 3.25% since 2008.

Additionally, as currently implemented, section 1307(f)(5) applies an asymmetric interest rate to collections for large gas utilities. In its comments, the OCA advocates that the interest rate adopted by the Commission should continue in this fashion. The OCA argues that asymmetric interest treatment provides for the reasonable recovery of costs to the company while providing appropriate incentives to provide as accurate rates as possible. In contrast, Valley contends that an asymmetric rate creates an additional obstacle to achieving equitable regulatory treatment for small gas utilities.

The Commission does not find the rationale for an asymmetric interest rate compelling. No data has been provided to demonstrate that an asymmetric interest rate results in more accurate gas projection. In fact, an asymmetric rate may unjustly penalize small gas companies in years they underestimate their costs and may create an unintended incentive to underestimate gas costs every year, resulting in unnecessarily higher interest expenses in the long term.

Moreover, the Commission has (1) supported House Bill 1188 to eliminate the asymmetric, non-market based interest rate standard in the Public Utility Code for large gas utilities; and (2) proposed eliminating the asymmetric interest rate standard used in automatic adjustment clauses for default service in its Proposed Rulemaking Order at Docket No. L-2014-2421001.⁶ In the Proposed Rulemaking Order regarding Automatic Adjustment Clauses Related to Electric Default Service, the Commission proposes to use symmetric rates, the prime interest rate, for both over and under collections. The Commission stated that the prime interest rate was most appropriate because that rate was most commensurate with market rates. The same rationale applies to the instant rulemaking.

Through these measures, the Commission has addressed the interest rate concerns expressed by small gas utilities that made this rulemaking necessary.

GCR Filings and Reconciliation Statements for Group I Gas Utilities

The Commission's rulemaking implements a universal filing schedule for all small gas utilities. This constitutes a change for Group I gas utilities (those utilities with annual operating revenues between \$2.5 million and \$40 million), which are currently required to make Gas Cost Rate (GCR) filings and reconciliation statement filings earlier in the year than their Group II gas utility counterparts. In its comments, Valley agrees that it is more advantageous for small gas utilities to file initial GCR filings in September, and final filings in October, to more accurately project winter gas costs. Valley also recognizes that the revised regulations will require reconciliation statements, pursuant to 52 Pa. Code § 53.66(c), to be filed by October 1 rather than July 31 each year. Valley seeks guidance from the Commission regarding the intended procedure for these filings during the transition year.

Currently, Group I gas utilities submit an annual GCR filing effective September 1 that includes a reconciliation statement for the 12 months ended June 30 of the same year.

In order to transition to a filing effective November 1, Group I utilities should submit a one-time reconciliation statement for the 14 months ended August 31, 2016, by

October 1, 2016. Any additional questions regarding the transition should be made directly to the Commission's Bureau of Audits.

Interim GCR Filings

In the Proposed Rulemaking Order, the Commission proposed amending 52 Pa. Code § 53.66(g) to permit interim tariff filings effective on one day's notice at any time realized gas costs would result in a rate change greater than two percent. On further review, the Commission has determined that, unless otherwise provided for in its tariff,⁷ a small gas utility's interim GCR filing should become effective on ten days' notice. Providing for ten days' notice allows our Bureau of Audits adequate time to review the interim filing before it becomes effective. This change still enables small gas utilities to support their least-cost purchasing strategies and to quickly address fluctuations in over/under collections. This change is reflected in Annex A of this Order.

A final point of contention arises in the comments when the OCA recommends that the Commission limit the number of interim GCR filings to two updates per annual GCR period. The OCA reasons that too much flexibility might create customer confusion because rates could change multiple times in short periods and might make budgeting particularly difficult for customers.

In its reply comments, Valley counters that the OCA's proposal may achieve the result it attempts to avoid: greater fluctuation in over and under collections and larger swings in gas rates to customers. Valley argues that allowing small gas utilities to submit interim rate changes regularly will reduce the variance between actual costs and billed GCR rates.

After weighing the merits of these comments, the Commission has decided not to limit the number of interim GCR filings to two per annual GCR period. Our amendment to allow interim tariff filings to become effective on ten days' notice should alleviate some of the OCA's concerns because rates will not be able to change as frequently in short periods of time. Small gas utilities will be allowed to file interim updates to be effective on ten days' notice, as needed. While the OCA's argument regarding potential customer confusion is valid, this limitation would undermine the goals of the Commission's rulemaking. As the Commission stated previously in our Proposed Rulemaking Order, our intent is provide small gas utilities with a means to better manage their operations by remaining aware of their limited capabilities and resources. Minimizing variances between actual gas costs and billed GCR rates is of paramount importance to this rulemaking and is in the public's interest. Limiting the number of annual interim filings is contrary to the Commission's purpose.

Finally, the Commission reiterates that interim GCR filings are not mandatory pursuant to this rulemaking; this policy is meant to encourage and facilitate regular monitoring of GCR activity as a good business practice.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on October 17, 2013, the Commission submitted a copy of the notice of proposed rulemaking, published at 43 Pa.B. 6503 (November 2, 2013), to IRRC and the Chairpersons of the House Consumer Affairs Committee and the Senate Consumer Protection and

⁷ See Commission Docket No. R-2011-2229836, (Order entered April 28, 2011) (The Commission approved North East Heat & Light Company's Supplement No. 128 to Tariff Gas—Pa. P.U.C. No. 12 that, inter alia, reduced the notice period for interim GCR filings from thirty days to one.)

⁶ See Commission Docket No. L-2014-2421001, (Order entered October 2, 2014).

Professional Licensure Committee (House and Senate Committees) for review and comment.

Under section 5(c) of the Regulatory Review Act, the Commission shall submit to IRRC and the House and Senate Committees copies of comments received during the public comment period, as well as other documents when requested. In preparing the final-form rulemaking, the Commission has considered all comments from IRRC, the House and Senate Committees and the public.

Under section 5.1(j.2) of the Regulatory Review Act (71 P. S. § 745.5a(j.2)), on December 9, 2015, the final-form rulemaking was deemed approved by the House and Senate Committees. Under section 5.1(e) of the Regulatory Review Act, IRRC met on December 10, 2015, and approved the final-form rulemaking.

Conclusion

This Order sets forth final-form regulations concerning the recovery of fuel costs by small gas utilities that, inter alia: (1) allow small gas utilities to collect interest from ratepayers on net under collections so as to be consistent with the rules applicable to their large gas utility counterparts; (2) amend the interest rate currently used with small gas utilities' GCR to the prime rate for commercial borrowing; (3) eliminate the requirement that 90% of small gas utilities' annualized gas costs be rolled into base rates so that the GCR in the line charge of customers' bills reflects 100% of their gas costs; and (4) allow interim GCR filings to become effective on ten days' notice. Consistent with our authority and obligations under Chapter 13 of the Public Utility Code, 66 Pa.C.S. § 1301 et seq., and particularly section 1307, the Commission is establishing rules and regulations that will benefit both small gas utilities and their retail customers. The purposes of the regulations are to simplify and streamline the information and procedures small gas utilities use when submitting GCR filings with the Commission.

Accordingly, under sections 501 and 1501 of the Public Utility Code (66 Pa.C.S. §§ 501 and 1501); sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202) and the regulations promulgated thereunder, 1 Pa. Code §§ 7.1, 7.2 and 7.5; section 204(b) of the Commonwealth Attorneys Act (71 P. S. § 732.204(b)); section 5 of the Regulatory Review Act (71 P. S. § 745.5); and section 612 of The Administrative Code of 1929 (71 P. S. § 232) and the regulations promulgated thereunder, 4 Pa. Code §§ 7.231—7.235, we find that the regulations revising the recovery of fuel costs by small gas utilities as set forth in Annex A should be approved; *Therefore,*

It Is Ordered That:

1. The regulations of the Commission, 52 Pa. Code Chapter 53, are amended by deleting § 53.67 and by amending §§ 53.61, 53.63, 53.64, 53.66 and 53.68 to read as set forth in Annex A, with ellipses referring to the existing text of the regulations.

2. The Secretary shall serve a copy of this order and Annex A on the Bureau of Audits, the Bureau of Investigation and Enforcement, the Office of Consumer Advocate, the Office of Small Business Advocate and all jurisdictional natural gas distribution companies.

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

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 approval by IRRC.

7. The final regulations become effective upon publication in the *Pennsylvania Bulletin*.

8. A copy of this order and Annex A shall be posted on the Commission's website at the Small Gas Task Force's web page.

9. The contact person for legal matters for this Final Rulemaking is Colin W. Scott, Assistant Counsel, Law Bureau (717) 783-5949. The contact persons for technical matters for this proposed rulemaking are Richard Layton, Bureau of Technical Utility Services (717) 214-9117, or Barbara Sidor, Bureau of Audits (412) 423-9301. Alternate formats of this document are available to persons with disabilities and may be obtained by contacting Alyson Zerbe, Regulatory Coordinator, Law Bureau (717) 772-4597.

ROSEMARY CHIAVETTA,
Secretary

(*Editor's Note:* See 45 Pa.B. 7350 (December 26, 2015) for IRRC's approval order.)

Fiscal Note: Fiscal Note 57-297 remains valid for the final adoption of the subject regulations.

Annex A

TITLE 52. PUBLIC UTILITIES

PART I. PUBLIC UTILITY COMMISSION

Subpart C. FIXED SERVICE UTILITIES

CHAPTER 53. TARIFFS FOR NONCOMMON CARRIERS

RECOVERY OF FUEL COSTS BY GAS UTILITIES

§ 53.61. Purpose.

(a) The purpose of this section and §§ 53.62—53.68 (relating to recovery of fuel costs by gas utilities) is to establish procedures under which the Commission will review requests by gas utilities for recovery of purchased gas costs and to specify data which utilities shall file to assist the Commission in determining whether gas utilities are pursuing a least cost fuel procurement policy consistent with the need to provide safe and adequate service. For purposes of this section and §§ 53.62—53.68, natural gas includes: natural gas, propane, liquefied natural gas, synthetic natural gas and natural gas substitutes. (See 66 Pa.C.S. § 1307(g) (relating to sliding scale of rates; adjustments).)

(b) This section and §§ 53.62—53.68 classify gas utilities into two categories and set forth the filing requirements and procedures to be followed in reviewing requests for recovery of purchased gas costs in proceedings under 66 Pa.C.S. § 1307 and § 1308 (relating to voluntary changes in rates). The inclusion of this section and §§ 53.62—53.68 has been necessitated by passage of the act of May 31, 1984 (P. L. 370, No. 74), 66 Pa.C.S. §§ 514, 1307, 1317, 1318 and 2107. These sections provide for a transition from existing procedures to the new procedures.

(c) Questions mandated by the act of May 31, 1984 (P. L. 370, No. 74), 66 Pa.C.S. §§ 1307, 1318 and 2107, are to be examined both in 66 Pa.C.S. § 1307(f) proceed-

ings and in base rate proceedings. In rate proceedings not under 66 Pa.C.S. § 1307(f) when purchased gas costs are at issue, a natural gas utility may incorporate by reference those materials previously filed by the utility in its most recent 66 Pa.C.S. § 1307(f) proceedings if copies are distributed upon request to active parties of record.

§ 53.63. Categories of gas utilities.

The following categories of jurisdictional gas utilities shall be applicable for the purposes of this section and §§ 53.61, 53.62 and 53.64—53.68 (relating to recovery of fuel costs by gas utilities) but shall not modify the categories of gas utilities established for other purposes, such as to prescribe proper accounting methods:

(1) *Section 1307(f) gas utility or large gas utility.* A natural gas distributor with gross intrastate annual operating revenues in excess of \$40 million, in the preceding calendar year, shall be categorized as a Section 1307(f) gas utility.

(2) *Small gas utility.* A natural gas utility with gross intrastate annual operating revenues of \$40 million or less, in the preceding calendar year, shall be categorized as a small gas utility.

(3) *Periodic orders.* The Commission shall periodically enter an order designating the category of each gas utility for the purposes of §§ 53.61, 53.62 and 53.64—53.68.

§ 53.64. Filing requirements for natural gas distributors with gross intrastate annual operating revenues in excess of \$40 million.

* * * * *

(i) Utilities shall comply with the following:

(1) Thirty days prior to the filing of a tariff reflecting increases or decreases in purchased gas expenses, gas utilities under 66 Pa.C.S. § 1307(f) recovering expenses under that section shall file a statement for the 12-month period ending 2 months prior to the filing date under 66 Pa.C.S. § 1307(f) as published in accordance with subsection (b) which shall specify:

(i) The total revenues received under 66 Pa.C.S. § 1307(a), (b) or (f), including fuel revenues received, whether shown on the bill as 66 Pa.C.S. § 1307(a), (b) or (f) charges or rolled in as base rates.

(ii) The total gas expenses incurred.

(iii) The difference between the amounts in subparagraphs (i) and (ii).

(iv) Evidence explaining how actual costs incurred differ from the costs allowed under subparagraph (ii).

(v) How these costs are consistent with a least cost fuel procurement policy, as required under 66 Pa.C.S. § 1318 (relating to determination of just and reasonable gas cost rates).

(2) During the period of transition from the current gas cost rate mechanism to the procedure under 66 Pa.C.S. § 1307(f) in lieu of the statement in paragraph (1), utilities shall file a reconciliation plan subject to Commission approval for the treatment of over/under collections during the period. The plan shall be filed concurrently with the utility's tariff under 66 Pa.C.S. § 1307(f) and shall include a minimum of 6 months actual over/under collection data.

(3) A hearing will be held on these matters, and after completion of the hearing the Commission will issue an order within 6 months following the filing of the statements directing payment to ratepayers of overcollections

received, plus interest calculated in the manner specified under 66 Pa.C.S. § 1308(d), or recovery, when appropriate, of undercollections. Interest will not be permitted on net undercollections caused by the setting of rates under 66 Pa.C.S. § 1307(f).

(4) The proceedings on reconciliation shall be consolidated, for purposes of hearing, with pending hearings on the utility's latest 66 Pa.C.S. § 1307(f) tariff filing, except for good reason shown.

(5) A Section 1307(f) utility which files tariffs reflecting increases and decreases in gas costs in accordance with 66 Pa.C.S. § 1307(f) shall make quarterly filings in accordance with the following provisions:

(i) Quarterly filings shall be made 3 months, 6 months, 9 months and 12 months after the effective date of the Section 1307(f) tariff. Each filing shall be based upon a recalculation and reconciliation of gas costs for a quarterly period commencing 4 months prior to the filing date.

(ii) The utility shall recalculate its rates to reflect actual gas costs. The recalculation shall include a reconciliation of undercollections or overcollections resulting from a change in natural gas costs from original projections for the period and any changes in sales volumes from original projections for the period, but may not include consideration of interest due to over or under collections of gas costs. Interest calculations shall be based upon over and under collections netted through the end of the current annual purchased gas cost rate period, and shall be included only in the annual Section 1307(f) tariff filing.

(iii) If the recalculated rate does not differ by more than 2% from the currently effective rate, the utility shall file a letter with the Commission to that effect, with copies to the Office of Consumer Advocate, the Bureau of Investigation and Enforcement, and the Office of Small Business Advocate. If the recalculated rate differs from the currently effective rate by more than 2%, the utility shall file a tariff incorporating the recalculated rate in accordance with this section. If the recalculated rate results in an increase that is reasonably expected to have an immaterial effect on the utility's annual gas costs, the utility shall file a letter and supporting data to that effect in lieu of a tariff rate change. Notwithstanding the letter and supporting data, the Commission may nevertheless direct the utility to file a tariff rate change. For the final 3-month period (being the 3-month period ending 1 month before the effective date of the utility's next annual Section 1307(f) tariff filing), the utility shall recalculate the rate as described in this paragraph and adjust the rate as part of its tariff filing in compliance with the Commission's final order resolving the utility's next annual Section 1307(f) proceeding.

(iv) Quarterly filings shall be accompanied by supporting information reflecting actual gas costs for the applicable period. The supporting information shall follow the same format used by the utility in support of projected natural gas costs in its annual Section 1307(f) proceeding. Quarterly filings shall become effective on 1 day's notice and, unless otherwise ordered by the Commission, shall be subject to review by the Commission and challenge by interested parties only on the utility's next annual Section 1307(f) proceeding.

(v) A utility making quarterly filings shall give notice of the filing in accordance with § 53.68.

(j) Utilities under 66 Pa.C.S. § 1307(f) shall also file quarterly reports with the Commission, with a copy to the Office of Consumer Advocate, the Bureau of Investigation

and Enforcement and the Office of Small Business Advocate concerning monthly gas costs incurred by the utility. The quarterly reports shall include by month change in supply source, supplier refunds received, change in supplier rates and comparison between actual costs and projected gas costs.

§ 53.66. Filing requirements for small gas utilities.

(a) A small gas utility seeking recovery of purchased gas costs under 66 Pa.C.S. § 1307(a) or (b) (relating to sliding scale of rates; adjustments) shall comply with the following procedures:

(1) Gas cost rate (GCR) tariffs filed by small gas utilities for the purpose of recovery of gas costs under 66 Pa.C.S. § 1307 include the following schedules:

- (i) Schedule 1: Calculation of the GCR.
- (ii) Schedule 2: Projected Supply and Sales Volumes.
- (iii) Schedule 3: Projected Supplier Rates.
- (iv) Schedule 4: Calculated Projected Gas Cost.
- (v) Schedule 5: Summary of E-Factor.
- (vi) Schedule 6: 1307(e) Statement of Over/Under Collections.
- (vii) Schedule 7: Actual Supply Volumes.
- (viii) Schedule 8: Actual Supply Rates.
- (ix) Schedule 9: Actual Supply Costs.
- (x) Schedule 10: Reconciliation of E-Factor.
- (xi) Schedule 11: Effect of Rate Changes on Residential Customer.

(2) A small gas utility seeking recovery of its gas costs under 66 Pa.C.S. § 1307(a) or (b) shall annually submit a preliminary and a final GCR filing to the Commission to be effective November 1, with notice to the public at the time of its initial filing as required under § 53.68 (relating to notice requirements). The preliminary filing is to be made by September 2, and shall contain as much actual data as is then available. The final filing shall be made on October 2 and shall contain actual data and any updates or corrections to the data contained in the initial filing. Both the preliminary and the final filings shall be based on forecasted costs for the subsequent 12-month period ending August 31. The GCR computation is to follow a formula designated by the Commission. Upon Commission approval, a tariff shall be filed reflecting rates as approved.

(3) The provision of information required by this section does not preclude use of discovery to obtain additional information.

(4) No GCR rates are to be implemented without express prior Commission approval. The approval shall constitute only tentative approval for collection of the GCR charges from ratepayers and not a final approval of the as yet unaudited projections of the utility, which have not yet been subjected to scrutiny concerning the reasonableness of underlying transactions.

(5) Utilities have the burden of pursuing a least cost purchasing policy consistent with 66 Pa.C.S. §§ 1316 and 1317 (relating to recovery of advertising expenses; and regulation of natural gas costs) and shall be accountable for failure to comply with these standards and those of 66 Pa.C.S. § 1301 (relating to rates to be just and reasonable).

(b) In addition to the statements and supporting data filed as required under 66 Pa.C.S. § 1307(e), small gas

utilities shall file the information and data as may be required by the Bureau of Audits or other bureau as the Commission may direct. Both the preliminary and the final filing shall be served upon the Office of Consumer Advocate, the Bureau of Investigation and Enforcement, and the Office of Small Business Advocate and shall be provided to intervenors, upon request. This evidence will be considered by the Commission in formulating its audit review under 66 Pa.C.S. § 1307(d) or in other proceedings as described in subsection (c) and may be supplemented by submissions from interested persons. The audit under 66 Pa.C.S. § 1307(d) and the review of procurement policies will not be the subject of the Commission's statutorily required reconciliation hearings under 66 Pa.C.S. § 1307(e), which are governed by strict time limits.

(c) Small gas utilities shall file a reconciliation statement under 66 Pa.C.S. § 1307(e) for the 12-month period running from September 1 through August 31 by October 1. Questions on the underlying propriety of a utility's procurement policies, and the like, can be raised in a separately docketed complaint proceeding filed by a party, by Commission investigation or in a proceeding arising from audit findings under 66 Pa.C.S. § 1307(d).

(d) Overcollections are subject to refund with interest applied at the prime rate for commercial borrowing. Undercollections may be recovered from ratepayers. When undercollections are recovered, interest shall be applied at the prime rate for commercial borrowing. Adjustments to the E-Factor for correction of prior reported over/under collections or as recommended by the Bureau of Audits may include interest. Unless directed otherwise by the Commission, the adjustment for interest is the difference between the amount of interest originally reported on the applicable over/under collection and the amount of interest applicable to the adjusted over/under collection.

(e) Utilities recovering fuel costs under the GCR shall state the following information about fuel costs on customer's bills:

"This bill includes _____ per MCF which is our average cost of gas acquired for your use."

The cost of gas shall be calculated exclusive of taxes and current base costs-nonfuel costs. The cost of gas must include the direct costs paid by the natural gas distribution company for the purchase and delivery of natural gas to its system to supply its customers. The GCR must include 100% of the gas costs and be shown as a separate line item on the customer bill. Gas costs included in the GCR are subject to refund and reconciliation under 66 Pa.C.S. § 1307(e). The E-Factor of Gas Adjustment Charge is a mechanism to refund or recoup over/under collected amounts under 66 Pa.C.S. § 1307(e). The E-Factor rate or Gas Adjustment Charge may be combined with the GCR or shown as a separate rate.

(f) Small gas utilities shall pay interest on pipeline refunds from the time received until disbursed at a 6% annual interest rate. The refunds are to be refunded through recomputation of the E-factor of the GCR formula.

(g) Small gas utilities should monitor GCR activity to avoid becoming materially over/under collected. In the event a small gas utility anticipates a material over/under collection that would result in a change in the current GCR greater than 2%, the small gas utility may submit an interim GCR tariff filing to become effective, unless otherwise provided for in its tariff, on 10 days' notice. The interim filing shall be subject to audit in accordance with 66 Pa.C.S. § 1307(d).

§ 53.67. (Reserved).

§ 53.68. Notice requirements.

(a) Within the 30 days prior to the filing of a tariff reflecting an annual increase or decrease in natural gas costs, each 66 Pa.C.S. § 1307(f) (relating to sliding scale of rates; adjustments) gas utility shall provide public notice and posting of tariffs as provided in §§ 53.41—53.45 (relating to posting of tariffs and notices). The notice shall include notice of the quarterly filing procedure required under § 53.64(i)(5) (relating to filing requirements for natural gas distributors with gross intrastate annual operating revenues in excess of \$40 million). Simultaneously, notice shall be published in major newspapers serving the utility's service area informing the

public of new or revised tariff filings, where the filing can be inspected and how comments or complaints should be filed. Unless the Commission directs otherwise, no separate notice to the public is required for quarterly filings made under § 53.64(i)(5).

(b) Small gas utilities filing a gas cost rate shall provide public notice within 5 days of the preliminary filing by publishing a notice in major newspapers within the utility's service area. The notice shall inform the public of new or revised tariff filings, where the filing can be inspected and how comments or complaints should be filed.

[Pa.B. Doc. No. 16-110. Filed for public inspection January 22, 2016, 9:00 a.m.]
