

# Regulatory Analysis Form

(Completed by Promulgating Agency)

INDEPENDENT REGULATORY  
REVIEW COMMISSION

(All Comments submitted on this regulation will appear on IRRC's website)

(1) Agency  
Pennsylvania Public Utility Commission

(2) Agency Number: : L-2012-2317274  
Identification Number: 57-294

3032  
IRRC Number: 57-294

(3) PA Code Cite: 52 Pa. Code §§ 121.1-121.8

(4) Short Title: Review of Long Term Infrastructure Improvement Plans

(5) Agency Contacts (List Telephone Number and Email Address):

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Secondary Contact:

(6) Type of Rulemaking (check applicable box):

- Proposed Regulation  
 Final Regulation  
 Final Omitted Regulation

- Emergency Certification Regulation;  
 Certification by the Governor  
 Certification by the Attorney General

(7) Briefly explain the regulation in clear and nontechnical language. (100 words or less)

The Distribution System Improvement Charge (DSIC) mechanism now allows electric distribution companies, natural gas distribution companies, wastewater utilities, and city natural gas operations (collectively "utility companies"), like water utilities previously, to recover the reasonable and prudently incurred costs related to the repair, improvement, and replacement of the eligible property of a utility's distribution infrastructure. *See* 66 Pa. C.S. §§ 1350, 1351, 1353. However, a utility cannot implement a DSIC mechanism to recover these costs until it files a long term infrastructure improvement plan (LTIP) with the PaPUC and the LTIP is approved. *See* 66 Pa. C.S. § 1352(a). The LTIP is a necessary component of a DSIC petition. *See* 66 Pa. C.S. §§ 1352 (a), 1353(b)(3). The purpose of an LTIP filing is to ensure that utilities are planning and executing capital expenditures that will maintain and improve the efficiency, safety, adequacy and reliability of existing distribution infrastructure at a faster pace than they have done historically. The final form regulation sets forth the elements an LTIP filing must contain and outlines the procedures and process for the review of the LTIPs filed by utility companies and related pertinent filings thereto.

(8) State the statutory authority for the regulation. Include specific statutory citation.

66 Pa. C.S. §§ 501, 1352, 1353(b)(3) and 1501; Commonwealth Documents Law, Act of July 31, 1968, P.L. 769, *as amended*, 45 P.S. §§1201, *et seq.*, and the regulations promulgated thereunder, at 1 Pa. Code §§ 7.1-7.4,

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(9) Is the regulation mandated by any federal or state law or court order, or federal regulation? Are there any relevant state or federal court decisions? If yes, cite the specific law, case or regulation as well as, any deadlines for action.

66 Pa. C.S. §§ 1350, 1352(a) and (b), 1353(b)(3).

§ 1350. Scope of subchapter.

This subchapter shall provide an additional mechanism for a distribution system to recover costs related to the repair, improvement and replacement of eligible property.

§ 1352. Long-term infrastructure improvement plan.

(a) Submission.--In order to be eligible to recover costs under section 1353 (relating to distribution system improvement charge), a utility must submit a long-term infrastructure improvement plan. The plan shall include the following:

(1) Identification of the types and age of eligible property owned or operated by the utility for which the utility would seek recovery under this subchapter.

(2) An initial schedule for the planned repair and replacement of eligible property.

(3) A general description of the location of the eligible property.

(4) A reasonable estimate of the quantity of eligible property to be improved.

(5) Projected annual expenditures to implement the plan and measures taken to ensure that the plan is cost effective.

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

(7) If the plan is not adequate and sufficient to ensure and maintain adequate, efficient, safe, reliable and reasonable service, the Commission shall order a new or revised plan.

(b) Periodic review.--

(1) The Commission shall promulgate regulations for the periodic review at least once every five years of long-term infrastructure plans. The regulations may authorize a utility to revise, update or resubmit a plan as appropriate.

(2) The regulations shall ensure that a distribution system improvement charge shall terminate if the commission determines that the utility is not in compliance with the approved plan.

§ 1353. Distribution system improvement charge.

(a) Authority.--Except as provided under this subchapter, after January 1, 2013, a utility may petition the Commission for, or the Commission, after notice and hearing, may approve the establishment of a distribution system improvement charge to provide for the timely recovery of the reasonable and prudent costs incurred to repair, improve or replace eligible property in order to ensure and maintain adequate, efficient, safe, reliable and reasonable service.

(b) Petition.--a petition for Commission approval of a distribution system improvement charge shall include the following:

(1) An initial tariff that complies with a model tariff adopted by the Commission. The proposed tariff shall include the following:

(i) A description of the eligible property.

(ii) The effective date of the distribution system improvement charge.

(iii) Computation of the distribution system improvement charge.

(iv) The method by which the utility will provide quarterly updates of the distribution improvement charge.

(v) A description of consumer protections.

(2) Testimony, affidavits, exhibits or other evidence that demonstrates that a distribution improvement system charge is in the public interest and will facilitate utility compliance with the following:

(i) The provision and maintenance of adequate, efficient, safe, reliable and reasonable service consistent with section 1501 (relating to character of service and facilities).

(ii) Commission regulations and orders relating to the provision and maintenance of adequate, efficient, safe, reliable and reasonable service.

(iii) Any other requirement under federal or state law relating to the provision and maintenance of adequate, efficient, safe, reliable and reasonable service.

(3) A long-term infrastructure improvement plan under section 1352 (relating to long-term infrastructure improvement plan).

(4) Certification that a base rate case has been filed within five years prior to the date of the filing of the petition under section 1308(d) (relating to voluntary changes in rates).

(5) If a base rate case has not been filed within five years prior to the date of the filing of the petition, the utility must file a base rate case in order to be eligible for a distribution system improvement charge.

(6) Any other information required by the Commission.

#### **Summary of statutory provisions:**

**Section 1350 – Scope of Chapter** – Legislation is intended to provide an additional mechanism for a distribution system to recover costs related to the repair, improvement and replacement of “eligible property.”

**Section 1352 – Long-term Infrastructure Improvement Plan** – In order to qualify for DSIC, utility must have a filed and PUC-approved long-term infrastructure improvement plan. Legislation sets forth six (6) elements for the long-term plan:

- (1) types and age of eligible property,
- (2) schedule for its planned repair and replacement,
- (3) location of the eligible property,
- (4) quantity of property to be improved,
- (5) projected annual expenditures and measures to ensure that plan is cost effective, and
- (6) manner in which replacement of aging infrastructure will be accelerated and how repair improvement or replacement will maintain safe and reliable service.

Empowers PUC to order a new or revised plan if utility’s proposed plan is not adequate. Also provides for PUC to promulgate regulations for periodic review at least once every 5 years. DSIC will terminate if utility is not in compliance with its long-term plan.

**Section 1353 – Distribution System Improvement Charge** – On an after January 1, 2013, utilities may petition for approval to establish a Distribution System Improvement Charge (DSIC). DSIC is intended to provide for timely recovery of reasonable and prudent cost incurred to repair, improve or replace eligible property to maintain safe and reliable service. Petition for DSIC must contain these elements:

- (1) an initial tariff,
- (2) testimony, affidavits, exhibits or other support,
- (3) long-term infrastructure plan,
- (4) certification that rate case had been filed within past 5 years, and
- (5) any other information required by PUC.

Must include demonstration that grant of DSIC will accelerate rate of infrastructure replacement over utility's base line rate of replacement.

(10) State why the regulation is needed. Explain the compelling public interest that justifies the regulation. Describe who will benefit from the regulation. Quantify the benefits as completely as possible and approximate the number of people who will benefit.

While past actions of utility companies have generally demonstrated that they were pursuing a balanced course between maintenance and replacement schedules, much of the infrastructure has reached the point where repairs were having diminishing returns and significant replacement of the infrastructure was necessary and needed to be accomplished. Therefore, Act 11 of 2012 now allows electric distribution companies, natural gas distribution companies, wastewater utilities, and city natural gas operations (collectively "utility companies"), like water utilities previously, to implement a Distribution System Improvement Charge (DSIC) mechanism, which will allow them to recover the reasonable and prudently incurred costs related to the repair, improvement, and replacement of eligible property of a utility's infrastructure outside of a traditional base rate proceeding. *See* 66 Pa. C.S. §§ 1350, 1351, 1353.

An LTIP filing is a necessary component of implementing a DSIC mechanism and must be approved prior to its implementation by a utility company. 66 Pa. C.S. §§ 1352(a), 1353(b)(3). The final form regulation sets forth the elements an LTIP filing must contain and outlines the procedures and process for the review of the LTIPs filed by utility companies and related pertinent filings thereto.

The scope of the LTIP is limited to only "eligible property" (or DSIC-eligible plant), for which the utility is seeking DSIC recovery so it will not allow for "gold-plating" by utility companies. The time frame of the LTIP is also planned to be forward-looking enough for utilities to make accurate predictions and provide sufficient time for long-term planning of planned repairs and replacement of eligible property. The LTIP plan must include a schedule for the planned repair and replacement of eligible property (*See* 66 Pa. C.S. § 1352(a)(2)) and should also reflect and maintain an *acceleration* of infrastructure replacement over the utility's historic level of capital improvement. Moreover, given the age of the existing infrastructure throughout the Commonwealth, especially the natural gas distribution infrastructure with its proliferation of cast iron and bare steel pipes, an LTIP will assist a utility in prioritizing those portions of its distribution system that need to be improved for safety and reliability purposes. The final form regulation establishes a review procedure to ensure that the utility's proposed LTIP filing incorporates adequate and sufficient planning and executing capital expenditures that will maintain and improve the efficiency, safety, adequacy and reliability of eligible property of the utility companies' existing distribution infrastructure at a faster pace than they have done historically.

Additionally, the final form regulations incorporate the importance of including workforce management plans in an LTIP, ensuring that a utility will have access to a qualified workforce to perform work in a cost-effective, safe and reliable manner. Furthermore, the final form regulation provides that the LTIP filing must include a description of a utility's outreach and coordination activities with other utility companies, Pennsylvania Department of Transportation (PennDOT) and local governments regarding their planned maintenance/construction projects as roadways throughout the Commonwealth may be impacted by the plan. This will allow for utilities to coordinate their maintenance efforts so they can minimize multiple disruptions to locations where construction projects may overlap.

Having an LTIP on file allows the PaPUC to determine whether a utility's DSIC mechanism is serving its intended purpose of "maintaining, enhancing or modernizing" the utility's facilities.

The repair and improvement of the utility's infrastructure via the DSIC mechanism will provide ratepayers with improved service quality and greater rate stability as aging infrastructure is replaced at an accelerated pace, which will result in fewer main breaks, less frequent service interruptions, increased safety, and lower levels of unaccounted-for natural gas, water and wastewater utilities. Thus, all of the ratepayers of the utilities that make the business decision to file an LTIP and are subsequently approved by the Commission to implement a DSIC mechanism will benefit from this regulation. This would benefit thousands of utility customers throughout the Commonwealth.

(11) Are there any provisions that are more stringent than federal standards? If yes, identify the specific provisions and the compelling Pennsylvania interest that demands stronger regulations.

N/A

(12) How does this regulation compare with those of the other states? How will this affect Pennsylvania's ability to compete with other states?

Pennsylvania was the first state in the nation to enact and use the DSIC mechanism for its water utilities resulting in significant system improvements with no detrimental rate effects on customers. Prior to the implementation of the DSIC mechanism, water utilities projected that it would take about 225 years to upgrade their entire distribution systems. Now, with the availability of the DSIC mechanism, the projected amount of time for upgrades to their distribution system is about 117 years – a timeframe that more closely matches the expected service life of the system.

Since that time, Pennsylvania's DSIC model has become a national "best practice" and eight other states have now adopted mechanisms similar to Pennsylvania's water DSIC. Due in large part to the DSIC, the PUC was recognized by Standard & Poor's for effectively encouraging water company investment in infrastructure improvements. The DSIC has also been recognized in a resolution passed by the National Association of Regulatory Utility Commissioners (NARUC) as a national best practice regulatory tool. In addition, the Council of State Governments included DSIC in its model legislation. The DSIC is one of the most important regulatory tools of the past decade, and it was created in Pennsylvania.

The United State Department of Transportation's Pipeline and Hazardous Materials Safety Administration (PHMSA) noted that Pennsylvania does not have a formal accelerated cast iron replacement program and urged the PUC to develop and implement one. Pennsylvania is one of four states with over 50% of all cast iron pipeline miles. PHMSA asserts that it is critical for Pennsylvania to

address the risk of cast iron pipelines, especially in the wake of tragic consequences of the cast iron failures in Allentown and Philadelphia. (See July 12, 2011 PHMSA letter)

Act 11 now permits electric distribution companies, natural gas distribution companies, wastewater utilities, and city natural gas operations, like water utilities previously, to recover the reasonable and prudently incurred costs related to the repair, improvement, and replacement of eligible property like cast iron pipes of a utility's distribution infrastructure. The final form regulation ensures that LTIP filings will maintain and improve the efficiency, safety, adequacy and reliability of existing distribution infrastructure at a faster pace than they have done historically.

(13) Will the regulation affect any other regulations of the promulgating agency or other state agencies? If yes, explain and provide specific citations.

Yes. The safety, adequacy, and reliability of water, wastewater, gas, and electric utility service provided by jurisdictional utilities, as mandated by 66 Pa. Code § 1501, depend, in large measure, upon the quality, age, and reliability of the infrastructure these fixed utilities have in place. Some of this infrastructure is over 70 years old. Since the final form regulation deals with the repair and replacement of utility infrastructure, it will bolster the PaPUC's regulations addressing the safety and reliability of jurisdictional NGDCs, EDCs and water and wastewater utilities. See 52 Pa. Code §§ 57.191-57.197, 62.31-62.37, 65.1-65.23.

(14) Describe the communications with and solicitation of input from the public, any advisory council/group, small businesses and groups representing small businesses in the development and drafting of the regulation. List the specific persons and/or groups who were involved. ("Small business" is defined in Section 3 of the Regulatory Review Act, Act 76 of 2012.)

On April 5, 2012, the PaPUC held a working group meeting with stakeholders regarding implementation of Act 11. In particular, we sought input from the stakeholders on the following key topics in advance of issuing a Tentative Implementation Order:

- Elements of a model DSIC tariff, including the necessary computation, reconciliation and consumer protection provisions (audits, reconciliations, percent caps and re-set to zero);
- Elements of and standards for approval of an LTIP, ability to use previously approved plans, and subsequent periodic review parameters;
- Establishing a baseline for the current rate of infrastructure improvement;
- Examination of the relationship between the LTIP under Act 11 and the NGDC pipeline replacement and performance plans required by PaPUC order at Docket No. M-2011-2271982;
- Determination of the equity return rate when more than 2 years have elapsed between the effective date of a final order in a base rate case and the effective date of the DSIC; and
- Standards to establish and ensure that DSIC work is performed by "qualified employees" of either the utility or an independent contractor.

On May 11, 2012, the PaPUC entered a Tentative Implementation Order at Docket No. M-2012-2293611 that reflected stakeholders' concerns; set out a model draft tariff; proposed procedures and guidelines necessary to implement Act 11, including a DSIC process for investor-owned energy utilities, city natural gas distribution operations, and wastewater utilities; and set forth procedures to facilitate the transition from Section 1307(g) water DSIC procedures to Act 11 DSIC procedures.

The Tentative Implementation Order called for comments. Comments were received from various EDCs, NGDCs and water utilities. The PaPUC reviewed the comments and at its August 2, 2012 Public Meeting adopted a Final Implementation Order, which established procedures and guidelines to carry out the ratemaking provisions of Act 11 in Chapters 3 and 13.

(15) Identify the types and number of persons, businesses, small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012) and organizations which will be affected by the regulation. How are they affected?

Jurisdictional EDCs, NGDCs and city natural gas distribution operations, which make the business decision to seek to implement a DSIC mechanism must first file an LTIP with the PaPUC. Water and wastewater utilities must also file an LTIP with the PaPUC in the future.

The Commission believes that this final regulation will enhance the safety and reliability of jurisdictional NGDCs, EDCs and water and wastewater utilities without imposing unnecessary burdens on small business. The ramping of infrastructure improvement projects by utilities that have an approved LTIP and are implementing their DSIC mechanism will require utility companies to hire more qualified workers to complete the work. Additionally, this final regulation will benefit small businesses as the work set forth in the LTIPs will require large amounts of new materials from suppliers and benefit contractors, construction firms and equipment vendors and provide an economic boon to these small businesses.

(16) List the persons, groups or entities, including small businesses that will be required to comply with the regulation. Approximate the number that will be required to comply.

The filing of a LTIP and seeking to implement a DSIC mechanism is a voluntary business decision of a jurisdictional utility. It is not mandatory. Nevertheless, the following is a list of the utilities by sector that may choose to file an LTIP with the Commission and comply with the final regulation:

**Electric Distribution Companies:** Citizens Electric Of Lewisburg, Duquesne Light Company, Pennsylvania Power Company, Metropolitan Edison Company, Pennsylvania Electric Company, PPL Electric Utilities, PECO Energy Company, Pike County Light & Power Company, UGI Utilities Inc., Wellsboro Electric Company, West Penn Power

**Natural Gas Distribution Companies:** Chartiers Natural Gas Company, Inc., Columbia Gas Of Pennsylvania, Inc., Peoples Natural Gas Company—Equitable Gas Company, North East Heat & Light Company, National Fuel Gas Distribution Corporation, PECO Gas, Peoples Natural Gas Company LLC, Peoples TWP LLC, Philadelphia Gas Works, Pike County Light & Power Company (Gas), UGI Central Penn Gas, UGI Penn Natural Gas, UGI Utilities Inc., Valley Energy

Approximately 87 water utilities and 55 wastewater utilities. Most of the Commission's jurisdictional water and wastewater companies could be considered small businesses as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012.

(17) Identify the financial, economic and social impact of the regulation on individuals, small businesses, businesses and labor communities and other public and private organizations. Evaluate the benefits expected as a result of the regulation.

The aging infrastructure has reached the point where the balance between repair and replacement is now tipped in the direction of replacement. An LTIP will assist a utility in prioritizing those portions of its system that need to be improved for safety and reliability purposes. This will provide ratepayers with improved service quality and greater rate stability as aging infrastructure is replaced at an accelerated pace, which will result in fewer main breaks, less frequent service interruptions, increased safety, and lower levels of unaccounted-for natural gas, water and wastewater and address infiltration and inflow issues with wastewater and other environmental issues associated with water and wastewater utilities. The Commission expects that this program will benefit individuals, small businesses and the public in general by avoiding future service problems and maintaining reasonable and adequate service, as required by Section 1501 of the Public Utility Code.

The infrastructure replacement will also help create hundreds of jobs — utility positions and pipeline contractors — needed to support the infrastructure replacement program. The LTIP directs that the utility utilize qualified workforce to perform the work in a cost-effective, safe and reliable manner. Based on the LTIPs filed to date, the Commission has approved nearly \$1 billion in infrastructure replacement projects over the next 5 years.

(18) Explain how the benefits of the regulation outweigh any cost and adverse effects.

Utilities have been making infrastructure investment between rate cases. Generally, there was a lag between when a utility made the investment in infrastructure and when it was authorized to collect rates designed to recover its capital investment, which was only after the rate case was completed. However, with the implementation of the DSIC mechanism, a utility can now recover its prudently incurred capital expenditures between rate cases, as the individual projects are completed and in service.

Additionally, the LTIP ensures that utilities are planning and executing capital expenditures that will maintain and improve the efficiency, safety, adequacy and reliability of existing distribution infrastructure at a faster pace than they have done historically. Given the age of the existing infrastructure throughout the Commonwealth, an LTIP will assist a utility in prioritizing those portions of its system that truly need to be improved for safety and reliability purposes. The scope of the LTIP is limited to only “eligible property” (or DSIC-eligible plant), for which the utility is seeking DSIC recovery so it will not allow for “gold-plating” by utilities. This will provide ratepayers with improved service quality and greater rate stability as aging infrastructure is replaced at an accelerated pace, which will result in fewer main breaks, less frequent service interruptions, increased safety, and lower levels of unaccounted-for natural gas, water and wastewater and address infiltration and inflow issues with wastewater and other environmental issues associated with water and wastewater utilities. The coordination efforts amongst the utilities, PennDOT and local municipalities, which is set forth in the LTIP, will lessen the disruption to residents and the traveling public.

The LTIP and associated DSIC will allow utilities to remove deteriorating portions of their systems and enhance the safety of their systems by ensuring replacement of facilities with newer, longer-lasting and safer materials. As a result, the public will receive better, more reliable service with fewer interruptions.



(19) Provide a specific estimate of the costs and/or savings to the **regulated community** associated with compliance, including any legal, accounting or consulting procedures which may be required. Explain how the dollar estimates were derived.

While it is difficult to predict the potential savings from the LTIP due to varying conditions of each utilities' facilities, one natural gas distribution company has estimated avoided costs of avoided repairs at over \$37,500 annually or \$187,500 for the five-year term of their LTTIP. These are only the material costs and simple repair costs and do not include the potential savings in lost property damages or prevention of fatalities that could occur from explosions from natural gas leaks.

The decision to implement a DSIC mechanism and the correlating LTIP is a voluntary business decision of the utility. The PaPUC does not charge a utility a fee for filing the LTIP petition or the DSIC mechanism petition. Thus the cost for a utility to seek to implement a DSIC mechanism is minimal

As mentioned above, with the implementation of a DSIC mechanism, a utility can now recover its prudently incurred capital expenditures between rate cases. Thus, a DSIC mechanism results in the reduction of frequent rate base case filings and helps reduce the rate case expenses incurred by utilities in a full-blown litigated base rate case before the PaPUC. Rate cases are costly, time-consuming, adversarial, on-the-record proceedings that cover all potential issues regarding revenue requirements and rate structure and, as such, do not focus exclusively on infrastructure replacement needs and the associated costs. The cost to a utility to prepare for a traditional base rate case are extensive and often requires significant pre-filing preparation that can at times take almost a year to complete. Compared to the cost of filing to initiate a traditional base rate case, the cost to go through the LTIP review and approval process and the associated DSIC implementation is certainly de minimis.

Consequently, a utility is able to recover its prudently incurred capital expenditures while avoiding the base rate case expenses. As it pertains to potential rate case expense savings, the following is information on a couple of recent rate cases that were before the PaPUC:

Columbia Gas (R-2012-2321748) claimed a total rate case expense of \$556,380.

PPL (R-2012-2290597) claimed a total rate case expense of \$2.025 million.

The PaPUC is not able to adequately quantify or estimate these savings over a large array of utilities and an extended time period; but we believe that utilities will have to file one less rate case every five years as a result of DSIC implementation and we expect them to save an average of \$1 million over that time period in the form of reduced rate case expense.

(20) Provide a specific estimate of the costs and/or savings to the **local governments** associated with compliance, including any legal, accounting or consulting procedures which may be required. Explain how the dollar estimates were derived.

In addition to avoiding the direct and indirect costs of any service outages that could occur if the LTIP and DSIC programs were not in effect, replacing aging facilities in coordination with planned municipal paving projects could reduce the costs of these projects and avoid multiple construction disruptions to the residents of the municipality.

(21) Provide a specific estimate of the costs and/or savings to the **state government** associated with the implementation of the regulation, including any legal, accounting, or consulting procedures which may be required. Explain how the dollar estimates were derived.

Likewise, the utilities' coordination efforts with DOT on construction projects will help lessen the costs expended by PennDOT for the project when underground facilities have to be relocated.

(22) For each of the groups and entities identified in items (19)-(21) above, submit a statement of legal, accounting or consulting procedures and additional reporting, recordkeeping or other paperwork, including copies of forms or reports, which will be required for implementation of the regulation and an explanation of measures which have been taken to minimize these requirements.

Here are the Docket Nos. to the LTIPs before the PaPUC:

P-2013-2342745  
P-2013-2347340  
P-2013-2344595  
P-2013-2344596  
P-2012-2337377  
P-2012-2338282  
P-2011-2325034

These can be found on the PaPUC's website <http://www.puc.state.pa.us/> under the Search for Documents tab.

A utility that has a functional DSIC mechanism will have to file a new report referred to as an Annual Asset Optimization Plan (AAO Plan) with the Commission over the term of its LTIP. *See* 66 Pa. C.S. §1356.

§ 1356. Asset optimization plans.

A utility with an approved distribution system charge and long-term infrastructure plan shall file annual asset optimization plans. The plan shall include the following:

- (1) A description that specifies all eligible property repaired, improved and replaced in the immediately preceding 12-month period pursuant to the utility's long-term infrastructure improvement plan and prior year's asset optimization plan.
- (2) A detailed description of all the facilities to be improved in the upcoming 12-month period.

(23) In the table below, provide an estimate of the fiscal savings and costs associated with implementation and compliance for the regulated community, local government, and state government for the current year and five subsequent years.

**As stated above, in response to Question # 19, the PaPUC is not able to adequately quantify or estimate these savings over a large array of utilities and an extended time period; but we believe that utilities will have to file one less rate case every five years as a result of DSIC implementation and we expect them to save an average of \$1 million over that time period in the form of reduced**

rate case expense. In addition, there are direct and indirect cost savings associated with avoiding service outages which the regulation designed to address; however, estimates of the public's future avoided costs due to an improved utility infrastructure are not susceptible to precise quantification.

	Current FY Year	FY +1 Year	FY +2 Year	FY +3 Year	FY +4 Year	FY +5 Year
<b>SAVINGS:</b>	\$	\$	\$	\$	\$	\$
Regulated Community						
Local Government						
State Government						
Total Savings						
<b>COSTS:</b>						
Regulated Community						
Local Government						
State Government						
Total Costs						
<b>REVENUE LOSSES:</b>						
Regulated Community						
Local Government						
State Government						
Total Revenue Losses						

(23a) Provide the past three year expenditure history for programs affected by the regulation. **This question is not applicable to this regulation because the Commission cannot quantify the expenditure history for maintenance and repair programs for its jurisdictional utilities as each utility has expended various amounts for their individual maintenance and repair programs for the past three years.**

Program	FY -3	FY -2	FY -1	Current FY
N/A	N/A	N/A	N/A	N/A


(24) For any regulation that may have an adverse impact on small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012), provide an economic impact statement that includes the following:

- (a) An identification and estimate of the number of small businesses subject to the regulation.
- (b) The projected reporting, recordkeeping and other administrative costs required for compliance with the proposed regulation, including the type of professional skills necessary for preparation of the report or record.
- (c) A statement of probable effect on impacted small businesses.
- (d) A description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation.

N/A because the Commission expects the regulation to have a positive effect on small businesses.

(25) List any special provisions which have been developed to meet the particular needs of affected groups or persons including, but not limited to, minorities, the elderly, small businesses, and farmers.

The final regulations do not contain any special provisions to meet the particular needs of the affected groups or persons including, but not limited to, minorities, the elderly, small businesses and farmers. The Commission believes that the final regulation will have a positive benefit and impact on those small water and wastewater companies that make the voluntary business decision to file and LTIP and seek to implement a DSIC mechanism.

(26) Include a description of any alternative regulatory provisions which have been considered and rejected and a statement that the least burdensome acceptable alternative has been selected.

N/A since the DSIC and LTIP programs are mandated by Pennsylvania law.

(27) In conducting a regulatory flexibility analysis, explain whether regulatory methods were considered that will minimize any adverse impact on small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012), including:

- a) The establishment of less stringent compliance or reporting requirements for small businesses;
- b) The establishment of less stringent schedules or deadlines for compliance or reporting requirements for small businesses;
- c) The consolidation or simplification of compliance or reporting requirements for small businesses;
- d) The establishment of performing standards for small businesses to replace design or operational standards required in the regulation; and
- e) The exemption of small businesses from all or any part of the requirements contained in the regulation.

See response to # 25 above.

(28) If data is the basis for this regulation, please provide a description of the data, explain in detail how the data was obtained, and how it meets the acceptability standard for empirical, replicable and testable data that is supported by documentation, statistics, reports, studies or research. Please submit data or supporting materials with the regulatory package. If the material exceeds 50 pages, please provide it in a searchable electronic format or provide a list of citations and internet links that, where possible, can be accessed in a searchable format in lieu of the actual material. If other data was considered but not used, please explain why that data was determined not to be acceptable.

N/A

(29) Include a schedule for review of the regulation including:

- |   |                         |
|---|-------------------------|
| A. The date by which the agency must receive public comments:                               | <u>N/A</u>              |
| B. The date or dates on which public meetings or hearings will be held:                     | <u>N/A</u>              |
| C. The expected date of promulgation of the proposed regulation as a final-form regulation: | <u>May 22, 2014</u>     |
| D. The expected effective date of the final-form regulation:                                | <u>Upon publication</u> |
| E. The date by which compliance with the final-form regulation will be required:            | <u>TBD</u>              |
| F. The date by which required permits, licenses or other approvals must be obtained:        | <u>N/A</u>              |

(30) Describe the plan developed for evaluating the continuing effectiveness of the regulations after its implementation.

The proposed regulation itself provides for a periodic review of a PaPUC-approved LTIP. Accordingly, the regulation will be reviewed on an on-going basis or as-needed basis so that the periodic review and the information required to be set forth in the LTIP is effective.

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(DEPUTY ATTORNEY GENERAL)

\_\_\_\_\_  
DATE OF APPROVAL

Check if applicable  
Copy not approved. Objections attached

Copy below is hereby certified to be true and correct copy of a document issued, prescribed or promulgated by:

Pennsylvania Public Utility Commission  
(AGENCY)

DOCUMENT/FISCAL NOTE NO. L-2012-2317274/57-294

DATE OF ADOPTION May 22, 2014  
*Rosemary Chiavetta*

BY \_\_\_\_\_  
Rosemary Chiavetta

TITLE Secretary  
(SECRETARY)

Copy below is hereby approved as to form and legality. Executive or independent Agencies.

*Bohdan R. Pankiw*  
BY \_\_\_\_\_  
Bohdan R. Pankiw  
Chief Counsel

5-22-14  
DATE OF APPROVAL

Check if applicable. No Attorney General approval or objection within 30 days after submission.

L-2012-2317274/57-294  
Final Rulemaking  
Review of Long-Term Infrastructure  
Improvement Plan  
52 Pa Code, Chapter 121

The Pennsylvania Public Utility Commission on May 22, 2014, adopted a final rulemaking order which sets forth regulations for filing a Long-Term Infrastructure Improvement Plan to ensure that utilities are planning and executing expenditures that will maintain and improve safety, adequacy and reliability of existing distribution infrastructure. The contact person is Assistant Counsel David Screven, Law Bureau, 717 787-2126.

## EXECUTIVE SUMMARY

L-2012-2317274/57-294

Final Rulemaking  
Establishing Review of Long-Term Infrastructure Improvement Plans

52 Pa. Code §§ 121.1-121.8

On February 14, 2012, Governor Corbett signed into law Act 11 of 2012 (Act 11), which, *inter alia*, authorizes water and wastewater utilities, electric distribution companies (EDCs), and natural gas distribution companies (NGDCs) or a city natural gas distribution operation to petition for a distribution system improvement charge (DSIC). *See* 66 Pa. C.S. §1353.

The DSIC is a ratemaking mechanism that allows for the recovery of prudently incurred costs related to the repair, improvement and replacement of eligible utility infrastructure through a surcharge that is subject to reconciliation, audit and other consumer protections. A precondition to obtaining approval of a DSIC mechanism is the filing and approval of a long-term infrastructure improvement plan (LTIIP). 66 Pa. C.S. §§ 1352 and 1353(b)(3). The purpose of a LTIIP is to ensure that utilities are planning and executing capital expenditures that will maintain and improve the efficiency, safety, adequacy and reliability of existing distribution infrastructure at a faster pace than they have done historically.

By Order entered March 14, 2013, the Commission issued a *Proposed Rulemaking Order* on Act 11 of 2012, which, *inter alia*, incorporated many of the proposed procedures set forth in the Commission's *Final Implementation Order* at Docket No. M-2012-2293611 (August 2, 2012) for filing and obtaining approval of an LTIIP, including, but not limited to, the elements to be incorporated therein, the standard of review for approval of the LTIIP and the procedures for the subsequent periodic review of the LTIIP. The Commission reviewed the comments to the *Proposed Rulemaking Order* and at its May 22, 2014 Public Meeting adopted a *Final Rulemaking Order*. Specifically, the *Final Rulemaking Order*, entered May 23, 2014, sets forth the elements a LTIIP must contain and outlines the procedures and process for the filing and review of LTIIPs.

The contact person for this proposed rulemaking is David E. Screven, 717-787-5000 (legal).

**PENNSYLVANIA  
PUBLIC UTILITY COMMISSION  
Harrisburg, PA 17105-3265**

Public Meeting held May 22, 2014

Commissioners Present:

Robert F. Powelson, Chairman  
John F. Coleman, Jr., Vice Chairman  
James H. Cawley  
Pamela A. Witmer  
Gladys M. Brown

Review of Long-Term Infrastructure  
Improvement Plan

L-2012-2317274

**FINAL RULEMAKING ORDER**

**BY THE COMMISSION:**

By Order entered March 14, 2013, the Commission issued a *Proposed Rulemaking Order* on Act 11 of 2012, which, *inter alia*, authorizes water and wastewater utilities, electric distribution companies (EDCs), and natural gas distribution companies (NGDCs) or a city natural gas distribution operation to petition for a distribution system improvement charge (DSIC). *See* 66 Pa. C.S. §1353. The DSIC is a ratemaking mechanism that allows for the recovery of prudently incurred costs related to the repair, improvement and replacement of eligible utility infrastructure through a surcharge that is subject to reconciliation, audit and other consumer protections. A precondition to obtaining approval of a DSIC is the filing and approval of a long-term infrastructure improvement plan (LTIIP). 66 Pa. C.S. § 1352. This order constitutes a final rulemaking to establish the procedures and criteria for the filing and subsequent periodic review of LTIIPs.



## **Background**

On February 14, 2012, Governor Corbett signed into law Act 11 of 2012 (Act 11), which amends Chapters 3, 13 and 33 of the Pennsylvania Public Utility Code (Code). 66 Pa. C.S. §§ 308, 1307, 1311, 1327 and 1350-1360. Act 11 authorizes water and wastewater utilities, EDCs, and NGDCs or a city natural gas distribution operation to petition for a DSIC.

On April 5, 2012, the Commission held a working group meeting with stakeholders regarding implementation of Act 11. In particular, we sought input from stakeholders on the following key topics in advance of issuing a Tentative Implementation Order:

- Elements of a model DSIC tariff, including the necessary computation, reconciliation and consumer protection provisions (audits, reconciliations, percent caps and re-set to zero);
- Elements of and standards for approval of an LTIP, ability to use previously approved plans, and subsequent periodic review parameters;
- Establishing a baseline for the current rate of infrastructure improvement;
- Examination of the relationship between the LTIP under Act 11 and the NGDC pipeline replacement and performance plans required by Commission order at Docket No. M-2011-2271982;
- Determination of the equity return rate when more than 2 years have elapsed between the effective date of a final order in a base rate case and the effective date of the DSIC; and

- Standards to establish and ensure that DSIC work is performed by “qualified employees” of either the utility or an independent contractor.

On May 11, 2012, the Commission entered a *Tentative Implementation Order* at Docket No. M-2012-2293611 that reflected stakeholders’ concerns; set out a model draft tariff; proposed procedures and guidelines necessary to implement Act 11, including a DSIC process for investor-owned energy utilities, city natural gas distribution operations, and wastewater utilities; and set forth procedures to facilitate the transition from Section 1307(g) water DSIC procedures to Act 11 DSIC procedures.

The *Tentative Implementation Order* called for comments. Comments were received from various EDCs, NGDCs and water utilities. The Commission reviewed the comments and at its August 2, 2012 Public Meeting adopted a *Final Implementation Order*, which established procedures and guidelines to carry out the ratemaking provisions of Act 11 in Chapters 3 and 13 of the Code.

The *Proposed Rulemaking Order* took elements from the *Final Implementation Order* in establishing proposed procedures and criteria for the filing and subsequent periodic review of LTIIPs. The *Proposed Rulemaking Order* was published in the Pennsylvania Bulletin on October 19, 2013. See 43 Pa.B. 6206. Comments were filed by the Independent Regulatory Review Commission (IRRC), the Pennsylvania Office of Consumer Advocate (OCA), PECO Energy Company (PECO), jointly by Peoples Natural Gas LLC and Peoples TWP LLC (collectively, “Peoples”), jointly by Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company (collectively, “the FirstEnergy Companies”), the Energy Association of Pennsylvania (EAP) and Duquesne Light Company (Duquesne).

## **Discussion**

The DSIC mechanism, enacted via Act 11, allows EDCs, NGDCs, wastewater utilities, and city natural gas operations, like water utilities previously, to recover the reasonable and prudently incurred costs related to the repair, improvement, and replacement of utility infrastructure. The filing of an LTIIP is a necessary component of a DSIC petition. 66 Pa. C.S. § 1353(b)(3). However, water utilities with a previously-approved DSIC were not required to file an LTIIP until otherwise directed by the Commission. *See* 66 Pa. C.S. § 1360.

The purpose of an LTIIP is to ensure that utilities are planning and executing capital expenditures that will maintain and improve the efficiency, safety, adequacy and reliability of existing distribution infrastructure at a faster pace than they have done historically. The scope of the proposed regulations was to set forth the elements an LTIIP must contain and to outline the procedures and process for the filing and review of LTIIPs. We appreciate the comments that were filed in response to the proposed regulations. We will proceed section by section of the proposed regulations in addressing the comments.

## **Water Utilities**

### **Comments**

The OCA submits that the Commission should now require water utilities with existing DSIC mechanisms to file an LTIIP on a schedule established by the Commission. Additionally, the OCA states that the Commission should make clear that, once the initial LTIIP for the water utility has been filed and approved by the Commission, the water utility must adhere to the regulations going forward. In its comments, we note that IRRC referenced the OCA comments and directed that we explain what effect the rulemaking

will have on water and wastewater utilities with a pre-approved DSIC mechanism in place.

### **Resolution**

The Commission takes note of the OCA’s concern, and IRRC’s reference thereto, regarding providing clarification that utilities with existing DSIC mechanisms that predate Act 11, namely water utilities, should comply with requirements set forth in Act 11. We agree that water utilities should also comply with the requirements of Act 11. Pursuant to Section 1360(b), water utilities with a previously-approved DSIC are not required to file and obtain approval of their LTIIP unless and until directed by the Commission.

Given that this legislation has been in effect for over 2 years and that the Commission has reviewed and approved LTIIPs filed by natural gas and electric utilities, the Commission believes it is now appropriate to require each water utility with a DSIC tariff in place to file a LTIIP as well. The LTIIP filing and review process will ensure that the DSIC funds collected by pre-Act 11 water companies from consumers are properly allocated to eligible projects that will now conform to the standards and requirements of Act 11. Accordingly, the Commission will issue a Secretarial Letter that sets forth a date certain by which water utilities with DSIC tariffs in place will be required to file an LTIIP with the Commission.

### **Section 121.2. Definitions.**

#### **Comments**

IRRC comments that the definition of “eligible property” set forth in the subsection of the proposed regulation should be amended to more accurately track the statute. *IRRC Comments* at 1. Additionally, IRRC had concerns regarding the definition

of “major modification.” IRRC questions whether, in order for a modification to be considered a “major modification,” does it have to meet all four of the criteria set forth in the definition. IRRC states the Commission should clarify by either inserting the word “or” or “and” at the subparagraph (iii). *Id.* at 2. Likewise, Duquesne makes a similar statement in its comments. *Duquesne Comments* at 3.

Conversely, the FirstEnergy Companies suggest that the Commission should eliminate the first two criteria contained in subparagraphs (i) and (ii) set forth in the definition of “major modification.” *FirstEnergy Companies Comments* at 2. The FirstEnergy Companies state that criteria in subparagraphs (i) and (ii) about eliminating or changing the schedule for “a category of eligible property” could be a relatively insignificant category of property but, under the proposed regulation, would nevertheless constitute a “major” modification. *Id.* at 2-3. They suggest that the final two criteria, subparagraphs (iii) and (iv), would cover other circumstances which the Commission may view as major modifications. *Id.* at 3.

In its comments, EAP suggests that the Commission consider adjusting the proposed definition of “major modification” by eliminating criterion one and the reference to “category of eligible property” in criterion two. *EAP Comments* at 4. EAP states that with respect to the first criterion, the elimination of a category of eligible property from an LTIIP may not comprise a major modification depending on whether the repair, improvement or replacement is actually a substantial portion of the work to be achieved under the LTIIP or is a substantial percentage of the projected expenditures. *EAP Comments* 3-4. Further, EAP states that extending the schedule by more than two years for a specific category of eligible property may not be a major modification depending on whether the particular category of property represents a substantial portion of the work under the LTIIP. *Id.*

In its comments, PECO states that the Commission should revise the first criterion for the definition of “major modification.” PECO states that rather than including a specific time period, the Commission should consider a major modification to include any extension which increases the schedule by more than 15%. PECO asserts that this revision to the criterion would capture more impactful schedule extensions on a total project plan basis. PECO Comments at 2. Additionally, PECO states that the 15% cost increase in the total estimated cost of the LTIIIP set forth in criterion three of the proposed definition of “major modification” is a low hurdle. PECO asserts that the cost estimates included in the LTIIIP are preliminary, as the work described therein may not be performed for a number of years. *Id.* PECO further states that estimates prior to completion of engineering and design work could easily be later revised by a factor of 25% or more. Accordingly, PECO recommends that the percentage in criterion three be increased to 25% to account for this, as well as the impact of inflation. *Id.* at 3.

Lastly, Duquesne recommends the elimination of criterion four set forth in the proposed definition of “major modification.” *Duquesne Comments* at 3. Alternatively, Duquesne suggests that if this criterion were to remain, that an additional definition of “substantial change” is necessary in the final regulations. *Id.*

The OCA suggested that the proposed definition of “long term infrastructure improvement plan” should be clarified so that it is clear that the LTIIIP must be filed to demonstrate continuing eligibility to impose a DSIC surcharge. *OCA Comments* at 5.

## **Resolution**

This section of the proposed regulations sets forth the definitions of the key terms that will be used throughout the regulations. We note IRRC’s comments regarding the proposed definition of “eligible property” and we amend the final form regulation to more accurately track the statute. The Commission also takes note of the comments regarding

the proposed definition of “major modification.” The commentators suggest that the elimination of a category of eligible property or the extension of the repair, improvement or replacement of a category of eligible property by more than two years may not comprise a major modification. However, we do not agree with the substance of those comments, nor with the commentators’ suggestion that we delete subparagraphs (i) and (ii) of the proposed definition, for the reasons articulated below.

First, the Commission notes that the LTIIP is limited to only “eligible property” as we determined that it was unnecessary for a utility to provide extensive data regarding components of its distribution system for which it is not seeking DSIC recovery. Hence, the LTIIP filed by a utility need only identify the specific eligible distribution plant property, as defined in 66 Pa. C.S. § 1351, for which the utility has determined it will repair, improve or replace based upon the age, functionalities, reliability and performance of such property and for which it will seek DISC recovery. Accordingly, if a statutory category of property that the Commission has approved is proposed to be eliminated from the LTIIP by the utility, in the Commission’s judgment, this qualifies as a major modification to the LTIIP that necessitates Commission review.

Second, the Commission acknowledges that while the LTIIP is a prospective document, nevertheless, it is incumbent for a utility to be as specific as possible in identifying which category of eligible property it will prioritize in regard to repairing, improving or replacing in order to maintain and ensure the safety, adequacy and reliability of its existing distribution system. *See* 66 Pa. C.S § 1352. Hence, in its filed LTIIP, the utility should have carefully examined its current distribution infrastructure, including its elements, age, and performance and established a plan that reflects reasonable and prudent planning of expenditures over the course of many years to replace and improve aging infrastructure in order to maintain the safe, adequate, and reliable service required by law. *See generally* 66 Pa. C.S. § 1501. Additionally, we are cognizant of the fact that

the utility must show in its corresponding LTIP, the acceleration of the replacement of aging infrastructure and should establish an accurate proposed schedule to complete the work that reflects an acceleration of the replacement of aging infrastructure or maintains the accelerated pace already accomplished by the utility. *Id.* Thus, the Commission believes that any proposal by the utility to extend the schedule for repair, improvement or replacement of a category of eligible property by two or more years qualifies as a major modification. Accordingly, we believe that the subparagraphs (i) and (ii) set forth in the final form regulation accurately address some types of “major” modifications to an LTIP. As a result, we will not delete these subparagraphs from the definition of major modification in the final form regulation.

The Commission takes note of PECO’s comments regarding subparagraph (iii) of the proposed definition of “major modification.” This subparagraph deals with a change in the total estimated costs for the work identified in the LTIP. We understand PECO’s position that cost estimates included in the LTIP are preliminary figures and that the estimates prior to the completion of engineering and design work could later be revised by a factor of 25% or more. We acknowledge that cost estimates for the work set forth in the LTIP are preliminary and may vary; however, we will only adopt PECO’s suggestion in part as we determine that an increase of 25% or more to the total cost estimate may be exorbitantly high given that the cost estimate is applicable to the total plan and not just a year-to-year fluctuations in spending. Therefore, we determine that an increase of 20% or more to the total cost estimate will be considered a major modification. The final form regulation incorporates this revision.

Further, the Commission takes note of IRRC’s comments regarding the proposed definition of “major modification” and will insert language to indicate a major modification is a change “which meets at least one of the following criteria.”



Lastly, the Commission notes Duquesne’s comments regarding subparagraph (iv) of the proposed definition of “major modification.” The Commission intended this subparagraph to be a miscellaneous or catch-all provision for any other “major” modifications it could not possibly foresee or list at this time. Therefore, it is necessary that this subparagraph be broad enough to allow the Commission to require an approval process for a change, not presently listed, that substantially alters the previously approved LTIIP. Therefore, the Commission rejects Duquesne’s recommendation of revising this “catch-all” provision in the final form regulation.

### **Section 121.3. LTIIP.**

#### **Comments**

IRRC states that it has two concerns about this section of the proposed regulations. First, IRRC requests that the Commission explain the need for including three additional elements in a utility’s LTIIP that are not included in the statute and why it believes these additional elements are consistent with the intent of the General Assembly and Act 11. *IRRC Comments* at 2. The three additional elements cited by IRRC relate to the establishment of a workforce management and training program, a description of the utility’s outreach and coordination activities with other utilities and other entities regarding their planned maintenance/construction projects and roadways and a description by NGDCs of their individual plans to address damage prevention, corrosion control, emergency response times, and identification of their critical valves. Secondly, IRRC suggests that this proposed section be clarified to state that the filing of an LTIIP is not mandatory for all utilities and applies only to those utilities seeking to impose a DSIC. *Id.*

Likewise, EAP, PECO and Peoples state that the word “shall” when referring generally to the filing of an LTIIP should be replaced with the word “may” so as not to

infer that all utilities are required to file an LTIIIP. *EAP Comments* at 4; *PECO Comments* at 3; *Peoples Comments* at 4.

EAP states that proposed subsection 121.3(a)(6) should be modified to include “a description either of the manner in which infrastructure replacement will be accelerated or the manner in which previously accelerated infrastructure replacement will be maintained...” *EAP Comments* at 5. EAP asserts that the additional language would account for utilities that have already engaged in such accelerated infrastructure replacement and is consistent with proposed subsection 121.4(e), under which the Commission will determine whether an LTIIIP “accelerates or maintains an accelerated rate of infrastructure replacement.” *Id.*

EAP and PECO both expressed concerns about proposed subsection 121.3(a)(8). Proposed section 121.3(a)(8) requires that utilities include a description of planned outreach and coordination efforts with other utilities, the Pennsylvania Department of Transportation (PennDOT) and local governments regarding the work outlined in the LTIIIP. EAP states that it believes this concept is better suited to a guideline or a policy statement and suggests that this subsection be eliminated from the proposed regulation. *EAP Comments* at 5. EAP asserts that attempting to delineate this type of activity in a forward-looking plan is difficult and may not in the course of LTIIIP implementation provide to be a reliable depiction of the actual practice as the very nature of such coordination involves numerous moving parts that continually evolve and change. *Id.* EAP states that it is concerned that a deviation from a described outreach and coordination plan as set forth in a utility’s LTIIIP not be a ground for termination of a DSIC under 66 Pa. C.S. § 1352(b)(2). *Id.* at 5-6. PECO requests that the Commission remove the proposed subsection of the regulation since it was not contained in Act 11 and goes beyond the intended scope for LTIIPs. *PECO Comments* at 3.

Also, EAP, PECO and Peoples expressed concerns about proposed subsection 121.3(a)(9). EAP states that this requirement is not enumerated in the statute and should not be the basis of an order disapproving an LTIIP. *EAP Comments* at 6. EAP further states that such information is evaluated in the context of the Distribution Integrity Management Program (DIMP) Plan that is required to be prepared and available under federal regulations to both federal authorities and state regulatory agencies. *Id.* EAP asserts that requiring such information to be included in an LTIIP filed only by NGDCs exceeds the parameters set forth in Act 11 and should not be the basis for a termination of a DSIC under 66 Pa. C.S. § 1352(b)(2) without specific statutory authority.

Similarly, Peoples states that there is no current Commission requirement for an NGDC to prepare a plan to address damage prevention, corrosion control, emergency response times, and identification of the NGDC's critical valves. *Peoples Comments* at 5-6. Peoples notes that this matter may be addressed in an NGDC's DIMP Plan, but even in the DIMP, if each of these matters is addressed, it is as a part of the overall DIMP, and not a separate plan within the DIMP. *Peoples Comments* at 6. Peoples asserts that if NGDCs are required to prepare such plans, that proposal should be the subject of its own rulemaking proceeding and not "shoehorned" into this instant rulemaking. *Id.* Peoples further asserts that one of the main issues with these requirements when they were proposed in the abandoned rulemaking at Docket No. M-2011-2271982, was that the requirements were vague and without factual support. *Id.* Furthermore, PECO asserts that the requested information is not duplicative of the LTIIP but rather is beyond the scope of an NGDC's LTIIP and should be deleted. *Id.* Likewise, PECO states this proposed subsection has nothing to do with main replacement and is not relevant to an LTIIP. *PECO Comments* at 3.

The OCA states that proposed section 121.3(a) should be modified to make clear that an LTIIP must be filed to both implement and continue a DSIC mechanism. *OCA*

*Comments* at 5. The OCA adds that this modification will also make clear that water utilities with existing DSIC mechanisms at the time of the enactment of Act 11 must also file an LTIIP to ensure that they are in compliance with the requirements of Act 11. *Id.* at 6. Additionally, the OCA recommends that the Commission publish a schedule in the Pennsylvania Bulletin that allows for the phased filing of LTIIPs. *Id.* at 7. Specifically, the OCA suggests that the Commission modify Section 121.3(a) to address the point that after the approval of the initial LTIIP, subsequent LTIIPs must be filed in accordance with the Commission's phased filing schedule. *Id.* In its comments, IRRC references the OCA's suggestion for the phased filing of LTIIPs and asks the Commission why it did not consider adopting a phased filing schedule for submissions by utilities seeking to implement a DSIC mechanism. *IRRC Comments* at 1.

### **Resolution**

This section of the proposed regulations sets forth the specific elements that must be contained in a utility's LTIIP. The Commission takes note of the comments requesting that this proposed section be clarified to state that the filing of an LTIIP is not mandatory for all utilities and applies only to those utilities seeking to impose a DSIC. We agree with this position. Accordingly, in the final form regulation, the Commission revises subsection 121.3(a) to state that only those utilities seeking to implement a DSIC are required to file an LTIIP, so as not to imply that all jurisdictional utilities are required to file an LTIIP. Additionally, the Commission modifies subsection 121.3(a) to make clear that an LTIIP must be filed to both implement and continue a DSIC mechanism. We agree with the OCA that adding this modification will make clear that all utilities, including water utilities with existing DSIC mechanisms at the time of the enactment of Act 11, are to be in compliance with the requirements of Act 11 and must file an LTIIP to implement or continue to a DSIC mechanism.

However, the Commission disagrees with the OCA's recommendation that we publish a schedule in the Pennsylvania Bulletin that allows for the phased filing of LTIIPs. The Commission notes that many of the non-water utilities seeking to implement a DSIC recovery mechanism have already filed individual initial LTIIPs; therefore, it is unnecessary at this time to incorporate this suggestion. Furthermore, we also do not believe it is necessary to establish a phased filing schedule for water utilities to file their individual LTIIPs. The Commission will issue a Secretarial letter establishing the end date that water utilities must have filed their LTIIPs and start complying with the other requirements of Act 11. Just as we did for the non-water utilities, the Commission will leave it up to the discretion of each affected water utility as to when it determines it should file its LTIIP in order to meet this deadline. Thus, the Commission will not incorporate this OCA recommendation in the final form regulation.

As noted above, IRRC requests the Commission to explain the need for including three additional elements in a utility's LTIIP that are not included in the statute and why it believes these additional elements are consistent with the intent of the General Assembly and Act 11. Those three additional elements relate to the establishment of a workforce management and training program, a description of the utility's outreach and coordination activities with other utilities and other entities regarding their planned maintenance/construction projects and roadways and a description by NGDCs of their individual plans to address damage prevention, corrosion control, emergency response times, and identification of their critical valves.

With regard to the importance for including workforce management plans in an LTIIP as set forth in proposed subsection 121.3(a)(7), the Commission points to Section 1359 of the Code, 66 Pa. C.S. § 1359, which requires the Commission to set standards to ensure that DSIC-eligible work is performed and inspected by qualified personnel. *See* 66 Pa. C.S. § 1359(a) and (b). Clearly, with the inclusion of this statutory provision, Act

11 contemplates that the utilization of qualified personnel is essential to the successful implementation of any long-term plan to improve infrastructure. In order for the Commission to ensure that the utility is in compliance with 66 Pa. C.S. § 1359(a) and (b), the Commission determined that a workforce management and training plan designed to ensure that a utility will have access to a qualified workforce to perform work in a cost-effective, safe and reliable manner should be a necessary element of an LTIIP. Therefore, the Commission will retain this requirement in the final form regulations. Also, the Commission will incorporate a definition of “qualified personnel” in the definitions section of the final form regulation. The Commission will adopt the general definition of a “qualified” person, as established by the U.S. Department of Labor, Occupational Safety and Health Administration, in its regulations at 29 C.F.R. § 1926.32.

With regard to the requirement set forth in proposed subsection 121.3(a)(8) that a utility include the description of planned outreach and coordination efforts with other utilities, PennDOT and local governments regarding the work outlined in its LTIIP, the Commission believes this is a necessary requirement in an LTIIP in order to ensure that LTIIP projects are properly planned, coordinated with other stakeholders, and executed in an efficient and cost-effective manner. *See generally Application of the Department of Transportation of the Commonwealth of Pennsylvania for the Approval to Replace the Existing Superstructure of the Bridge Carrying SR0462 Over the Single Track of the Norfolk Southern Railway Company (DOT #517 596 W) in Mountville Borough, Lancaster County; And the allocation of Costs Incident Thereto, Docket No. A-2009-2132946 (Order entered April 10, 2014).* Hence, the Commission is not persuaded by the concerns of EAP and PECO regarding this requirement and disagrees with their suggestion that we should remove this requirement from being included as part of the LTIIP. This is an essential element of good project planning for the success of their infrastructure improvement plans.

Furthermore, the implementation of a DSIC mechanism to non-water utilities will result in the initiation of numerous maintenance and construction projects throughout various parts of the state by those utilities. The Commission acknowledges that this may lead to significant disruptions as utilities perform work in the rights of way of the roadways and streets across the Commonwealth in order to replace or repair their infrastructure. It is incumbent for utilities to coordinate with other utilities, PennDOT and local governments that may work near their facilities. The Commission notes that the number one cause of damage to underground utility infrastructure is excavation and not necessarily by the utility that owns the equipment, but by independent contractors or other utilities performing excavation work. Also, the Commission believes that coordinated efforts for the replacement or repair of infrastructure will result in cost-effective budgets and the ability of the utilities to keep their projected construction schedules.

Accordingly, the Commission believes it is imperative for utilities to coordinate and develop systematic procedures for centrally reporting, documenting, and exchanging information and that it is prudent for utilities to identify and maintain their coordination efforts so they can minimize multiple disruptions to locations where projects may overlap.

For these reasons, the Commission retains the requirement for a utility to provide a description of its outreach and coordination activities with other utilities, PennDOT and local governments regarding their planned maintenance/construction projects and roadways that may be impacted by the plan in the final form regulation.

IRRC also asked us to explain the reason for directing NGDCs to include additional information regarding damage prevention, corrosion control, emergency response times and identification of critical valves as set forth in proposed subsection 121.3(a)(9). As detailed above, EAP, PECO and Peoples strongly object to this requirement.

In response to IRRC, the Commission explains that it had decided against establishing a separate Pipeline Replacement and Performance Plan filing process at Docket M-2011-2271982,<sup>1</sup> as we believed it would be duplicative of the Act 11 DSIC regulatory process, specifically, the information contained in LTIPs. Nevertheless, given the age of the existing natural gas distribution infrastructure throughout the Commonwealth and in order to safeguard the public, we initially determined that it was necessary for NGDCs to submit this information and indicate how their LTIPs prioritize gas system safety and reliability. However, we understand their concerns, are persuaded by them in part and, therefore, have reconsidered the need to have this requirement in the LTIP final form regulations, for the reasons expressed below.

The commentators assert that much of this same information is evaluated in the context of the DIMP plans filed by the NGDCs under federal regulations to both federal authorities and state regulatory agencies. Consequently, they assert that it would be duplicative and redundant for an NGDC to file this information in its LTIP. Moreover, Peoples states that while these matters are addressed in the DIMP plans, the matters are not addressed as a separate plan but as items in the overall DIMP. The Commission notes that pursuant to Federal pipeline safety laws, NGDCs were required to implement, by August 2, 2011, a DIMP plan. *See* 49 C.F.R. § 192.1005. The DIMP was instituted to assure pipeline integrity for gas distribution pipelines similar to the integrity management regulations for hazardous liquid and gas transmission pipelines and is filed with the U.S. Department of Transportation (US DOT). The plan elements must include, *inter alia*, risk evaluation and ranking, performance measurement and monitoring, and periodic evaluation and improvement. *See* 49 C.F.R. § 192.1007. Accordingly, we determine that information regarding damage prevention, corrosion control and emergency response times is outside the scope of the information that needs to be included in the LTIP. Also,

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<sup>1</sup> Natural Gas Pipeline Replacement and Performance Plans, Docket No. M-2011-2271982 (Order entered February 28, 2013).



much of this information is included in the DIMP plans which are already filed by NGDCs with the Commission under separate regulatory action. Thus, it would be redundant to request an NGDC to file this same information in an LTIIP.

However, the Commission believes that its directive that NGDCs file information concerning identification of critical valves is within the spirit and scope of Act 11. If a NGDC identifies a critical valve that it will repair, improve upon or replace and for which it will seek DSIC recovery, then it must include such information its LTIIP. Nonetheless, beyond that particular element, we believe it is prudent to delete the other additional elements for NGDCs from inclusion in the LTTIP. Accordingly, section 121.3(a)(9) of the final form regulation has been revised.

#### **Section 121.4. Filing and Commission review procedures.**

##### **Comments**

In its comments, EAP requests clarification of the term “parties” as used in proposed subsection 121.4(a) and throughout the proposed regulations in the context of effectuating service. *EAP Comments* at 6. EAP states the term “parties” should include the statutory advocates and those persons who formally intervened and participated in the most recent base rate case proceeding so as to reduce the burden and unnecessary cost of providing copies to persons who might have commented or provided input in the most recent base but were not litigants. *Id.* Likewise, PECO states that given the large number of parties that may intervene in a base rate case, many of whom are not active participants in the litigation process, PECO suggests amending the language in the proposed subsection to include only parties that are included in the official service list. *PECO Comments* at 3-4. Furthermore, Peoples asserts that since an LTIIP is not related to a utility’s most recent base rate case, a requirement to serve a copy of an LTIIP filing on parties to the most recent base rate case appears to be without reason, would create

inconvenience if those parties have no interest in the LTIIP and would create unnecessary work and expense for the utility in that case. *Peoples Comment* at 6. Peoples states that if a party to the most recent base rate case has a legal interest in the LTIIP filing, it can intervene in the LTIIP proceeding and obtain a copy of the filing from the utility. *Id.* IRRC notes the above comments and asks the Commission to clarify what is meant by the term “parties” in this proposed subsection. *IRRC Comments* at 2.

In its comments, the OCA states that proposed subsection 121.4(b) does not specify the time frame in which proprietary treatment should be sought for the LTIIP filing. *OCA Comments* at 8. The OCA asserts that given the short time frames for review and comment of an LTIIP, the regulations should make clear that proprietary treatment must be sought and received by the utility prior to the filing of the LTIIP with the Commission. *Id.* IRRC notes the OCA’s concern and asks the Commission to explain when a utility is required to obtain the aforementioned approval and clarify the regulation accordingly. *IRRC Comments* at 2.

Additionally, the OCA states that proposed subsection 121.4(c) allows for only a twenty-day comment period following the submission of the LTIIP. The OCA asserts that a twenty-day comment period is an insufficient amount of time to allow for thorough review and comment by interested parties. *OCA Comments* at 6. The OCA proposes that interested parties should have at least sixty days to review the LTIIP itself, rather than twenty. *Id.* IRRC notes the OCA’s proposal and asks the Commission what factors did it consider when determining that a twenty-day comment period was appropriate for reviewing LTIIPs. *IRRC Comments* at 3.

Duquesne requests the Commission to consider revising the language of proposed subsection 121.4(e)(1) so that the LTIIP does not limit the requirement of reflecting or acknowledging acceleration to replacement of infrastructure alone. *Duquesne Comments*

at 4. Duquesne states the LTIP should state how it will reflect the acceleration or how it will maintain the accelerated rate of infrastructure “repair, improvement and replacement.” *Id.*

In their comments, EAP, PECO and Peoples raise concerns about proposed subsection 121.4(f). EAP states that this proposed subsection implies that if an LTIP is filed, the Commission has the authority to direct a particular work plan or schedule whereas the statute delineates specific criteria which the Commission should consider in determining whether to approve or disapprove the LTIP. *EAP Comments at 7.* EAP asserts that it remains a utility’s option either to amend the proposed LTIP to meet the statutory requirements or withdraw the plan and forego the opportunity to use a DSIC. *Id.* PECO states it believes that this subsection should be clarified to make it clear that if the Commission does not find an LTIP to be sufficient to ensure and maintain service, then the utility has the right to withdraw its LTIP foregoing recovery of any additional amounts under its DSIC. *PECO Comments at 4.* PECO asserts that because filing an LTIP is voluntary, there should be no requirement to file a new or revised LTIP if the utility does not desire to do so. *Id.* Peoples has similar concerns regarding proposed subsection 121.4(f). Peoples suggest that it would be reasonable that the utility also have the option to withdraw the LTIP and not go forward with implementation or continuance of a DSIC. *Peoples Comments at 7.*

IRRC states that the proposed subsection should reference both sections 121.3 and 121.4 since the elements of an LTIP are found in the preceding section of the proposed regulation. *IRRC Comments at 3.* Additionally, based upon the above comments, IRRC asks the Commission whether it can direct a particular work plan or schedule and under what statutory authority this can be accomplished. *Id.* Furthermore, IRRC states that the Commission should consider adding a provision that specifically states a utility has the right to withdraw an LTIP. *Id.*

## Resolution

This section of the proposed regulations sets forth the filing procedures for LTIPs, the public comment period, and the manner in which the Commission will review a utility's LTIP filing in order to implement a new DSIC mechanism or continue a previously-approved DSIC mechanism. The Commission takes note of the comments requesting clarification of the term "parties" in the context of effectuating service of the filed LTIP as set forth in proposed subsection 121.4(a). We agree with the commentators that a requirement to serve a copy of the LTIP filing on all parties, including those who may have only filed comments and not participated in the litigation process, may create unnecessary work and extra expense for the utility. Consequently, the Commission revises the regulation to provide that a utility only has to file a copy of its LTIP on the statutory advocates, the Commission's Bureau of Investigation and Enforcement (BI&E), and parties of record in its most recent base rate case proceeding. We incorporate this revision to subsection 121.4(a) in the final form regulation.

The OCA states that proposed subsection 121.4(b) does not specify the time frame in which proprietary treatment should be sought for the LTIP filing and requests that given the short time frames for review and comment of an LTIP, the regulations should make clear that proprietary treatment must be sought and received by the utility prior to the filing of the LTIP with the Commission. We decline to adopt this suggestion. Section 5.365 of our regulations governs the issuance of a protective order. 52 Pa. Code § 5.365. We note that section 5.365(c)(4) states that a party *may not* refuse to provide information which a party reasonably believes to be proprietary to a party who agrees to treat the information as if it were covered by a protective order until the request for protective order is issued or denied. *See* 52 Pa. Code § 5.365(c)(4). Thus, the Commission is of the opinion that it is unnecessary to require a utility to obtain a protective order prior to the filing of its LTIP as the party seeking to obtain the protective order still has to furnish the information.

Similarly, OCA asserts that a twenty-day comment period set forth in proposed subsection 121.4(c) is an insufficient amount of time to allow for thorough review and comment by interested parties and requests a sixty-day review period. We decline to adopt OCA's suggestion for a sixty-day review period, but agree that the comment period should be lengthened. Accordingly, in order to give interested parties sufficient time to comprehensively and thoroughly review the filed LTIIP, we will extend the time for interested parties to respond to the LTIIP to 30 days. Subsection 121.4(c) of the final form regulation incorporates this extended responsive time period. Additionally, this subsection of the final form regulation indicates that, if the response or answer to the LTIIP petition raises material factual issues, the Commission may refer the petition to the Office of Administrative Law Judge (OALJ) for hearing and decision.

The Commission takes note of Duquesne's request that we consider revising the language of proposed subsection 121.4(e)(1) so that the LTIIP does not limit the requirement of reflecting or acknowledging acceleration to replacement of infrastructure alone. We agree with Duquesne's suggestion and will adopt it. In its *Final Implementation Order*, the Commission previously stated that the LTIIP should reflect and maintain an acceleration of the infrastructure replacement over the utility's historic level of capital improvement. This is consistent with the language of the Act. *See* 66 Pa. C.S. § 1352(a)(6). Additionally, the Commission also agrees that the LTIIP should state both how it will reflect the acceleration and/or how it will maintain the accelerated rate of the "improvement and replacement" of infrastructure. Thus, we incorporate this requirement into subsection 121.4(e)(2) of the final form regulation. Furthermore, the Commission notes that we inadvertently did not include as an element of the LTIIP that the filing contain measures to ensure that the projected annual expenditures are cost effective. To be consistent with the statute, we have incorporated this element into subsection 121.4(e)(1) of the final form regulation.

The Commission takes note of the comments regarding proposed subsection 121.4(f). This proposed subsection states that the Commission will order the utility to file a new or revised LTIP if the filed LTIP does not meet the statutory criteria of being sufficient to ensure and maintain adequate, efficient, safe and reliable and reasonable service. EAP states that clarification is necessary regarding this proposed subsection as it implies that if an LTIP is filed, the Commission has the authority to direct a particular work plan or schedule whereas the statute delineates specific criteria which the Commission should consider in determining whether to approve or disapprove the LTIP.

We disagree with EAP's position. The statute provides that if the LTIP is "not adequate to maintain adequate, efficient, safe, reliable and reasonable service, the Commission *shall* order a new or revised plan." See 66 Pa. C.S. § 1352(a)(7)(emphasis added). Clearly, if the Commission determines that a utility's filed LTIP does not meet this statutory criteria, Act 11 expressly grants the Commission the authority to order a utility to file a new or revised LTIP. It makes little sense for the Commission to order a "new or revised plan" with no further guidance on the necessary parameters of the plan. Thus, the Commission believes that Section 1352(a)(7) implies that the Commission can specifically direct a utility to incorporate a particular infrastructure improvement project in the new or revised plan for which it has deemed is necessary and in the public interest. Moreover, the Commission retains a fundamental duty under the Code to ensure that each public utility, including those covered by Act 11, "shall make all such repairs, changes, alterations, substitutions, extensions, and improvements in or to such service and facilities as shall be necessary or proper for the accommodation, convenience, and safety of the public." 66 Pa. C.S. § 1501. Therefore, both preexisting Section 1501 and the recently added Section 1352(a)(7) of the Code authorize the Commission to direct, after notice and opportunity to be heard and with an appropriate mechanism for cost recovery, the implementation of infrastructure maintenance and improvement projects deemed necessary to ensure safe and reliable service. By providing parameters for the "new or

revised plan” in sufficient detail to bring the utility into compliance with Act 11, the Commission is fulfilling this statutory duty. Accordingly, this subsection is consistent with the Act 11 and the Commission’s duties under Section 1501 in this regard and will remain the same in the final form regulation.

Additionally, EAP, PECO and Peoples assert that if the LTIIP does not meet the Act 11 statutory requirements, it remains the utility’s option either to amend the proposed LTIIP in order to meet those statutory requirements or withdraw the plan and forego the opportunity to use a DSIC. We agree with this position in part. The Commission acknowledges that the filing of an LTIIP is voluntary. The Commission will not approve an LTIIP filing that will result in sub-standard service or sub-standard reliability from the utility. When the Commission finds that a public utility’s proposed LTIIP that has been filed in order to initiate a DSIC mechanism or to continue a previously-approved DSIC mechanism is not adequate and sufficient to ensure and maintain adequate service to the public, the Commission will order the public utility to modify its LTIIP and resubmit a new and revised LTIIP incorporating the suggested modifications.

However, upon such a finding of inadequacy or insufficiency and the issuance of a Commission order to file a revised LTIIP, a utility may opt to withdraw its proposed LTIIP filing pursuant to sections 1.82 or 5.94 of the Commission regulations, 52 Pa. Code §§ 1.82 and 5.94. Subsection 121.4(g) of the final form regulation incorporates this concept. However, at that point, the utility will no longer qualify for the DSIC mechanism and the utility will no longer be afforded the benefit of obtaining accelerated cost recovery for its repairs, improvements and replacements.

Nonetheless, as we mentioned above, in accordance with Sections 1501 of the Code, 66 Pa. C.S. § 1501, the Commission is under the duty to ensure that each public utility provides adequate, efficient, safe and reliable service. Thus, where the lack of

adequate infrastructure planning and construction threaten the public welfare, the Commission may, after notice and opportunity to be heard via a separate proceeding, nevertheless order the infrastructure improvements that it deems necessary and in the public interest. Under this scenario, the utility would only be able to seek cost recovery for these Commission-mandated repairs and replacements through the traditional manner of filing a base rate proceeding, not through the DSIC process.

IRRC states the proposed subsection should reference both sections 121.3 and 121.4 since the elements of an LTIP are found in the preceding section of the proposed regulation. We agree with this position and revise subsection 121.4(f) accordingly in the final form regulations.

Finally, IRRC notes that that the citation to 5.423 in subsection 121.4(b) is not accurate. The Commission has made this correction in the final form regulation to accurately reference § 5.365 of our regulations.

### **Section 121.5. Modifications to and expiration of an LTIP.**

#### **Comments**

As above, the OCA states that the proposed subsection 121.5(a) allows for only a twenty-day comment period following the submission of a petition for modification of an LTIP. The OCA asserts that a twenty-day comment period is an insufficient amount of time to allow for review of such modifications to the LTIP. *OCA Comments* at 6. Accordingly, the OCA recommends that this proposed subsection be modified to allow interested parties to have at least thirty days to review a petition for modification of an LTIP. *Id.* IRRC notes the OCA's proposal and requests the Commission to detail the factors it considered when determining that a twenty-day comment period was appropriate. *IRRC Comments* at 3.



In its comments, PECO notes proposed subsection 121.5(b) refers to “major changes.” PECO states that the correct reference should be to “major modifications,” which is defined in proposed Section 121.2. *PECO Comments* at 4. Additionally, PECO notes that “minor modifications” are to be addressed concurrent with Commission staff’s review of the AAO Plan. PECO asserts that a utility is not required to file an AAO Plan unless it has an approved DSIC. *Id.* Accordingly, PECO states if a utility desires to make a minor modification to its LTIP, but does not have an approved DSIC, there is no process in the current proposed regulation for this to be handled. *Id.* IRRC notes PECO’s comment about the concurrent review of minor modifications with the AAO Plan and asks the Commission to explain how this provision will be implemented. *IRRC Comments* at 3.

In their comments, EAP, Peoples, the FirstEnergy Companies and PECO all state that proposed subsection 121.5(c) should be revised to make it clear that a utility may choose not to file a new LTIP. *EAP Comments* at 7; *Peoples Comments* at 7; *FirstEnergy Companies Comments* at 3-4; *PECO Comments* at 5. The FirstEnergy Companies assert that the proposed subsection, as currently drafted, implies that an LTIP must always be in place regardless of whether the utility determines to continue or discontinue a DSIC mechanism. *FirstEnergy Companies Comments* at 3. Likewise, EAP and PECO express a similar concern about this proposed subsection. *EAP Comments* at 7; *PECO Comments* at 5. EAP requests that this proposed subsection be amended to clarify that the filing of an LTIP is required only in conjunction with the DSIC. *Id.* EAP, PECO and the FirstEnergy Companies assert that the business decision to utilize a DSIC which requires the filing of an LTIP remains with the utility and it may choose to withdraw its LTIP at some point in the future. *Id.* at 7; *PECO Comments* at 5; *FirstEnergy Companies Comments* at 4. Additionally, Peoples states that such a revision to the proposed subsection would affect the voluntariness of both the filing of an LTIP and the utilization of a DSIC for future cost recovery by a utility. *Id.* Peoples further

states that the revision should allow a utility to continue to recover through its DSIC the investment costs related to infrastructure improvements made during the term of the expiring LTIP but would not allow a utility to recover future investment costs related to future infrastructure improvements if it does not file a new LTIP. *Peoples Comments* at 8.

In its comments, the OCA states that proposed subsection 121.5(c) be modified to include references to the five-year interval for filing a new LTIP. *OCA Comments* at 9. Additionally, the OCA states that this proposed subsection should include language indicating that the filing time frames will be in accordance with the phased schedule it requested that the Commission implement above. *Id.*

### **Resolution**

This section of the proposed regulations sets forth the procedures for modifying a Commission-approved LTIP to reflect any major modifications thereto during its term and for filing a new LTIP prior to the expiration of a previously filed plan. Proposed subsection 121.5(a) essentially states that major modifications to the LTIP will require the filing of a separate petition that is subject to comment from interested parties, while minor modifications will be considered along with the AAO Plan and disposed of via Staff action.

The Commission notes that the OCA states that proposed subsection 121.5(a) allows for only a twenty-day comment period following the submission of a petition for modification of an LTIP which it believes is an insufficient amount of time to allow for review of such modifications to the LTIP. The OCA recommends that this proposed subsection be modified to allow interested parties to have at least thirty days to respond to a petition for modification. We agree with the OCA's suggestion. The petition will set forth major modifications to the LTIP; therefore, we believe that there is a compelling

reason to extend the response time. Accordingly, the period to respond to a petition for modification of an LTIP is extended to thirty days. Subsection 121.5(a) of the final form regulation incorporates this revision.

The Commission agrees with PECO's comments regarding proposed subsection 121.5(b) and will revise the term "major changes" to "major modifications" as defined in Section 121.2. The final form regulations will incorporate this revision.

The Commission notes the comments of EAP, Peoples, the FirstEnergy Companies and PECO stating that proposed subsection 121.5(c) should be revised to make it clear that a utility may choose not to file a new LTIP before the expiration of the prior LTIP. The commentators assert that the proposed subsection, as currently drafted, implies that an LTIP must always be in place regardless of whether the utility determines to continue or discontinue a DSIC mechanism. *FirstEnergy Companies Comments* at 3. We agree with this assertion only in part.

The Commission believes that the decision to file a new LTIP before the expiration of the prior LTIP in order to continue with an approved DSIC mechanism, or even after the expiration of an LTIP in order to re-qualify for implementing a DSIC mechanism, to some degree, is a voluntary business decision by the utility. Thus, if a utility allows its LTIP to expire and chooses not to file a new LTIP the Commission believes that the utility has that option. Subsection 121.5(c) of the final form regulation incorporates this concept.

Nevertheless, the Commission cautions all utilities that simply electing not to file a new LTIP upon the expiration of the prior LTIP filing does not grant them the discretion or authority to forego necessary infrastructure improvements. As we stated above, a utility is under a statutory directive to provide reasonable, safe and reliable service. *See*

66 Pa. C.S. § 1501. If the Commission determines, after notice and opportunity to be heard, that infrastructure improvements are necessary for safe and reliable service, the public utility may not forgo performing these repairs. Act 11 was implemented to allow a utility to recover reasonable and prudently incurred costs related to the repair, improvement, and replacement of utility infrastructure outside of the traditional manner of filing a base rate case, not to give utilities the discretion to ignore making necessary repairs, replacements and improvements to aging distribution infrastructure. Accordingly, a utility has continuing statutory responsibility to repair and upgrade its distribution infrastructure in order to maintain adequate, efficient, safe and reliable service, regardless of the manner in which it can obtain cost recovery for the repairs, replacements and improvements to distribution infrastructure it has performed. 66 Pa. C.S. § 1501.

In its comments, the OCA requests that proposed subsection 121.5(c) be modified to include references to the five-year interval for filing a new LTIIP. Additionally, the OCA states that this proposed subsection should include language indicating that the filing time frames will be in accordance with the phased schedule it requested that the Commission implement above. We did not establish a standard term for an LTIIP *per se*, as we left it to the discretion of the utility whether to go with a five- or ten-year term for its individual LTIIP. A utility is required to file a new LTIIP within five years, only if the term of its prior LTIIP is for five years. Thus, we will not revise this section of the regulations to include a reference to the five-year interval for filing a new LTIIP. It is only incumbent for the utility to file its new LTIIP 120 days before the expiration of the term [5 or 10 ten years] of its prior LTIIP, if the utility desires to do so. Additionally, as we stated above, we also are not establishing a phased filing schedule for filing LTIIPs. Thus, this subsection of the final form regulation will not incorporate OCA's requested revisions.

Lastly, the Commission takes note of PECO's comments concerning the absence of the process in the current proposed regulation for when a utility desires to make a minor modification to its LTIP, but does not have an approved DSIC. In the proposed regulations, we state that "minor" modifications to an LTIP will be addressed concurrent with the review of the filed AAO Plan. However, a utility that does not have a DSIC mechanism does not need to file an AAO Plan. Consequently, if a utility has an approved LTIP, but has not filed a DSIC, the utility need only file a revised, black-lined LTIP incorporating its minor modifications. In the alternative, the Commission strongly recommends that a utility file for a DSIC mechanism shortly after receiving approval of its LTIP, so the utility can promptly commence the repairs, replacements and improvements to its infrastructure that will ensure and maintain reliability and for which it can seek cost recovery. Therefore, we will not incorporate this concept into the final form regulation.

#### **Section 121.6. Asset Optimization Plan Filings.**

##### **Comments**

In their comments, both EAP and the FirstEnergy Companies seek clarification of the term "interested parties" as used in proposed subsection 121.6.(a). *EAP Comments* at 7-8. *FirstEnergy Companies Comments* at 4. EAP states that a liberal construction of this term to include all parties involved in most recent base rate filings would be unwieldy. *EAP Comments* at 8. EAP and the FirstEnergy Companies recommend that the language of the proposed subsection be modified so that "interested parties" includes the statutory advocates or those persons who formally intervened and participated in the most recent base case proceeding. *Id.* at 8; *FirstEnergy Companies Comments* at 4.

The OCA states that proposed subsection 121.6(a) does not specify a time frame for comment regarding the annual filing of the AAO Plan. *OCA Comments* at 6. The

OCA suggests that interested parties should be given forty-five days to review and comment on an AAO Plan. Additionally, the OCA further requests that the Commission establish a phased filing approach to ensure that Commission staff and interested parties have sufficient time to properly review the AAO Plans. *Id.* at 8.

In similar fashion, both EAP and PECO request that the Commission consider moving the March 1<sup>st</sup> deadline to submit the AAO Plan to April 1<sup>st</sup> since NGDCs are already obligated to file an annual report by March 15<sup>th</sup> with the United States Department of Transportation, which includes much of the relevant information requested to be included in the AAO Plan. PECO states that this will provide utilities with some additional time in order to comply with this new regulatory filing requirement, but will not create a material delay for other parties to review. *PECO Comments* at 5. IRRC notes the concerns regarding the deadline to file the AAO Plan and the subsequent time frame for interested parties to file comments thereto and asks the Commission to consider the recommendations so that it can be provided with more accurate information and also provide interested parties with a more meaningful time frame for reviewing AAO Plans on a staggered basis. *IRRC Comments* at 3.

Both EAP and PECO request clarification is needed as to whether the 12-month period in proposed subsection 121.6(b)(2) is a calendar year, a fiscal year or the twelve months beginning with the approval date of the DSIC. *EAP Comments* at 8; *PECO Comments* at 6. PECO recommends that the 12-month period be based on the utility's fiscal year as this would align the annual utility budget and construction plans with the AAO Plan. *Id.* PPL recommends that the filing date for the AAO Plan be set three months after the end of the 12-month period used by the utility in its LTIIP. *PPL Comments* at 5.

In their comments, EAP, PECO, Peoples and the FirstEnergy Companies all express concern about the requirement to include system reliability data for the prior five years set forth in proposed subsection 121.6(b)(3). EAP, PECO and the FirstEnergy Companies all note that Commission regulations covering electric service reliability at 52 Pa. Code § 57.191(a)(3) already require EDCs to file an annual report addressing each of the electric reliability indices (SAIFI, CAIDI and SAIDI) for the EDCs' individual service territories for each of the preceding three years. *EAP Comments* at 8; *PECO Comments* at 6; *FirstEnergy Companies Comments* at 4. EAP states it believes that a referral to the annual reliability reports will meet this requirement for EDCs inasmuch as Act 11 does not refer to reliability data as a separate component of an AAO. *EAP Comments* at 8. Similarly, PECO asserts that there should be no need to refile this information in a second report. *PECO Comments* at 6. The FirstEnergy Companies assert that this requirement is redundant of other Commission regulations. *FirstEnergy Companies Comments* at 4. Further, EAP states that clarification is needed how this requirement to include system reliability data affects NGDCs and whether the Commission would accept the type of information supplied annually by NGDCs in the context of the Winter Reliability Meeting. *EAP Comments* at 8.

Conversely, PECO states that if this requirement only relates to electric utilities, since they already furnish this same information in another report filed with the Commission, the requirement should be removed from the AAO Plan. *PECO Comments* at 6. Peoples asserts that system reliability data is not mentioned anywhere in Act 11, nor is an explanation given for its inclusion in the proposed regulation. *Peoples Comments* at 8. Peoples states that there is no apparent reason for the five-year system reliability requirement to be set forth in proposed paragraph 121.6(b)(3), and it is beyond the scope of Act 11. *Id.* Peoples states that, at a minimum, the Commission should explain how system reliability data relates to the AAO Plan and then clarify what system reliability data should be included with the AAO Plan filing. *Id.* Accordingly, Peoples states that

the requirement should be deleted from the proposed regulation. *Id.* As an alternative, EAP also agrees with the suggestion to remove the requirement from the proposed regulation.

IRRC notes the above comments and asks the Commission to explain how the five-year system reliability requirement is consistent with Act 11, the relevancy of this type of information for utilities other than electric utilities and why the information is needed. *IRRC Comments* at 4.

PPL, PECO, Duquesne, EAP and the FirstEnergy Companies all express concerns with the entirety of the process associated with the review of the AAO Plan set forth in proposed subsections 121.6(d) and (e). Specifically, PPL states that the AAO Plan could subject the LTIP to detailed review and scrutiny on an annual basis. *PPL Comments* at 4. PPL notes that depending on the Commission's final definition of the term "major modification," pursuant to proposed subsection 121.6(d), a utility may need to file for major modifications on a regular basis, which would mean that the LTIP would be subject to intense review on an annual or more than annual basis. *Id.* PPL asserts that the proposed review process for AAO Plans would be administratively burdensome, potentially redundant and a burden on limited Commission resources. *Id.*

Additionally, Duquesne states that the Commission's review of an AAO Plan should be limited to whether the utility adhered to its LTIP, as it may not have sufficient information to make the determination that an additional major modification is necessary to ensure reliable service. *Duquesne Comments* at 5.

Similarly, PECO states that it believes that the intent of the AAO Plan filing requirement was to provide the Commission a means to determine if the utility was following its approved LTIP. PECO asserts that if a utility is not in compliance with its



approved LTIIP, it should not be required to modify its LTIIP, rather it should be required to conform to the provisions of its approved plan. *PECO Comments* at 6. PECO further asserts that if the LTIIP requires modifications because it is not in conformity with the law or Commission requirements, it should be handled separately in proposed Section 121.7 in connection with the periodic review of the LTIIP. *Id.*

PPL states that AAO Plan filings should be treated as informational, rather than subjecting the utility to a mandatory review process. PPL proposes that the AAO Plan be treated as informational in the first instance, with no automatic opportunity for parties to comment and without the requirement of Commission approval within 60 days. *PPL Comments* at 4. Accordingly, PPL recommends that the AAO Plan be treated in a manner similar to a utility's annual maintenance filings pursuant to 52 Pa. Code § 57.198. *Id.* PPL states that this modification will not deprive the Commission of its opportunity to review the LTIIP at any time, but will reduce potential redundancy in the filing and review process for the Commission without compromising the purpose of the AAO Plan. *Id.* at 5.

Furthermore, PECO states that it is unclear what would constitute an “adverse comment” as set forth in proposed subsection 121.6(e). *PECO Comments* at 7. PECO states that there is no definition provided for the term “adverse comment,” and that it could be difficult to determine whether a comment is truly “adverse” based on its technical drafting. *Id.* Accordingly, PECO requests that the phrase be removed from the proposed subsection. *Id.* Additionally, PECO states that the intent of the AAO Plan is to provide a “check” for the Commission and other interested parties to ensure that the utility is operating in compliance with its LTIIP. PECO states that there is no requirement in Act 11 for an AAO Plan to be approved as there is for the LTIIP.

Likewise, EAP also requests that the term “adverse comments” be eliminated from proposed subsection 121.6(e). *EAP Comments* at 9. EAP states that the AAO Plan is an annual report to the Commission providing information and is not subject to public comment or approval. *Id.* EAP states that while the information in the AAO Plan may form the basis for an inquiry into whether the DSIC should be terminated, the AAO Plan filing itself is informational and not an adversarial or formal proceeding. EAP asserts that the use of the term “adverse comments” blurs that distinction, causes confusion and is not necessary. *Id.*

The FirstEnergy Companies also agree with PECO and EAP’s suggestion that the term “adverse comments” be removed from proposed subsection 121.6(e). *FirstEnergy Companies Comments* at 4. Similar to EAP, the Companies assert state that the AAO Plan filing is not an adversarial or formal proceeding, but rather is an annual informational report to the Commission and is not subject to public comment. *Id.*

Based upon the above comments, IRRC asks the Commission to explain the rationale for proposed subsection 121.6(e) and why it is appropriate that the filing of “adverse comments” could delay the approval of an AAO Plan. *IRRC Comments* at 4.

### **Resolution**

This section of the proposed regulations sets forth the procedures for filing the AAO Plan and the elements for such a plan. This section also states that the AAO plan will be reviewed to determine whether the utility has adhered to its LTIP and whether any changes to the initial LTIP are necessary in order to maintain and improve the safety, adequacy and reliability of its existing distribution infrastructure. Absent any major modifications or changes, adverse comments or Commission action within 60 days, the filing will be deemed approved.

The Commission takes note of the commentators who express concern with the entirety of the process associated with the review of the AAO Plan. It is the position of the commentators that there is no corresponding requirement in Act 11 for an AAO Plan to be approved, or for a detailed review of the sufficiency of the LTIIIP. The commentators suggest that since the AAO Plan is simply an informational filing or nothing more than a status report to reflect the utility's progress in making the infrastructure improvements set forth in its approved LTIIIP, there is no need to have an automatic opportunity for parties to comment and they also request the elimination of the requirement that the Commission give its approval of the Plan within 60 days. The Commission agrees with the commentators' assertions only in part.

The public utility's filed LTIIIP indicates that it has carefully examined its current distribution infrastructure, including its elements, age, and performance, and established a reasonable and prudent schedule and planning of expenditures in order to accelerate the repair, improvement and replacement of this eligible property needed to maintain the safe, adequate, and reliable service over the term of the LTIIIP. The Commission acknowledges that the sole purpose of the AAO Plan is to subject the LTIIIP to a compliance review on an annual basis so as to track the utility's progress with performing the requisite repairs, replacements and improvement for the corresponding 12-month timeframe. It is the Commission's duty to determine whether the utility has fully complied with its LTIIIP and a review and approval of the filed AAO plan will ensure that the utility is operating in compliance with its LTIIIP.

However, the Commission believes that the review of an AAO Plan should be solely limited to whether the utility has complied with the work schedule and made the capital improvements set forth in the approved LTIIIP for the preceding 12-month period. The Commission is persuaded by PPL's recommendation that the review of the AAO Plan should be treated in a manner similar to a utility's annual inspection and

maintenance filings pursuant to 52 Pa. Code § 57.198. Accordingly, the Commission will incorporate the concept that the AAO Plan will be treated in a similar fashion to a utility's annual inspection and maintenance filing in subsection 121.6(a) of the final form regulation.

With this determination to treat the AAO Plan similar to the maintenance reports filed under section 57.198 of our regulations, the commentators' concerns regarding the term "interested parties" as used in proposed subsection 121.6(a) and what constitutes an "adverse comment" to the AAO Plan in proposed subsection 121.6(e) are now moot. Therefore, the Commission deletes those provisions from the final form regulation. Additionally, for the reasons stated above, the Commission will not adopt the OCA's suggestion that "interested" parties be given forty-five days to comment on a filed AAO Plan as these plans do not require public comment.

The Commission takes note of the various recommendations regarding the filing date of the AAO Plan. The OCA requests that the Commission establish a phased filing approach to ensure that Commission staff and interested parties have sufficient time to properly review the AAO Plans. Similarly, PPL recommends that the filing date for the AAO Plan be set three months after the end of the 12-month period used by the utility in its LTIP. In regard to the filing date of the AAO Plan, both EAP and PECO request that the Commission consider moving the March 1<sup>st</sup> deadline to submit the AAO Plan to April 1<sup>st</sup> since NGDCs are already obligated to file an annual report by March 15<sup>th</sup> with the United States Department of Transportation, which includes much of the relevant information requested to be included in the AAO Plan.

The Commission agrees with the OCA that a phased filing schedule for the AAO Plan is necessary so that the Commission and interested parties are not inundated all at once with AAO plans from each utility that has an approved DSIC mechanism.

Therefore, we will adopt in part PPL's recommendation that the AAO Plan be filed in a specified time frame after the end date of the 12-month period used by the utility in its LTIP. The Commission revises subsection 121.6(a) so that the filing date for a utility to file its AAO Plan is 60 days after the 12-month period used by the utility in its LTIP. The final form regulation incorporates this revision.

Both EAP and PECO suggest that clarification is needed as to whether the 12-month period in proposed subsection 121.6(b)(2) is a calendar year, a fiscal year or the twelve months beginning with the approval date of the DSIC. Section 1356 of the Code states that the AAO Plan shall include a description that specifies all eligible property repaired, improved and replaced in the immediately preceding 12-month period pursuant to the utility's LTIP and prior year's AAO Plan (if applicable). 66 Pa. C.S. § 1356. Thus, the Commission opines that if the utility's filed LTIP was based on a fiscal year or reflected a calendar year, then the 12-month time frame reflected in the subsequently filed AAO Plan should correspond to that same specific 12-month time frame used in the LTIP. Accordingly, we decline to specify in the final form regulation whether the 12-month time frame in an AAO Plan set forth in subsections 121.6(b)(1) and (2) is a fiscal year, calendar year or the anniversary date of the approval of the LTIP.

The Commission takes note of the comments of EAP, PECO, and Peoples, which all express concern about the requirement set forth in proposed subsection 121.6(b)(3) to include system reliability data for the prior five years in the AAO Plan. Peoples asserts that system reliability data is not mentioned anywhere in the Act 11, nor is an explanation given for its inclusion in the proposed regulation. Furthermore, EAP, PECO and the FirstEnergy Companies all note that Commission regulations covering electric service reliability at 52 Pa. Code § 57.191(a)(3) already require EDCs to file an annual report of each of the electric reliability indices (SAIFI, CAIDI and SAIDI) for the EDCs' individual service territories for each of the preceding three years. EAP also states it

believes that a referral to the annual reliability reports will meet this requirement for EDCs inasmuch as Act 11 does not refer to reliability data as a separate component of an AAO Plan. We agree with this position.

The Commission determines that there is no need to include system reliability data for the prior five years in the AAO Plan. First, we determine that requesting this information is beyond the scope of the AA&O Plan review. Section 1356(a) only requires that the AA&O Plan include the following: (1) a description that specifies all eligible property repaired, improved and replaced in the immediately preceding 12-month period pursuant to the utility's long term infrastructure improvement plan and (2) a detailed description of all the facilities to be improved in the upcoming year. 66 Pa. C.S. §§ 1356(a) (1) and (2). Secondly, the Commission notes that water, wastewater companies and NGDCS are not required to file any system reliability or performance data with us. NGDCs file this information in their annual reports filed to US DOT as per 49 CFR Part 191. Additionally, water and wastewater companies are not required to file system reliability data with the Commission but rather with the Pennsylvania Department of Environmental Protections and the U.S. Environmental Protection Agency. As such, there is no need to request this information in the AAO Plans submitted by NDGCs, water and wastewater companies. Additionally, the Commission's regulations already require EDCs to report annually their electric service reliability indices for their individual service territory for each of the preceding three years, it would be redundant to require the filing of this same or similar information in the AAO Plan. In any event, as we determine below, the Commission can review this reliability information when it conducts the periodic review of the LTIIP to determine if the plan is sufficient to ensure and maintain adequate, efficient, safe, reliable and reasonable service. During that review, EDCs can supply a reference to their reliability reports filed subject to another section of our regulations. Accordingly, there is no need to have this as a separate detailed component of the AAO Plan since this information is not filed with us in the first instance or is

already required to be filed pursuant to another section of our regulations and more appropriately reviewed in the periodic review of the LTIIIP. Thus, this requirement is removed from the final form regulation.

The Commission also notes PECO's comments that if a utility is not in compliance with its approved LTIIIP, it should not be required to modify its LTIIIP but rather should be required to conform to the provisions of its approved plan. However, if a review of the utility's AAO Plan indicates that it was unable to comply with its own schedule as it may have been ambitious in first developing it or because extraneous circumstances may have arose that have impacted its planned schedule, we believe it appropriate that the utility be given the option to file a petition for modification to the LTIIIP. For unforeseen reasons, a utility may need to file for major modifications, but we do not believe that this would be administratively burdensome, potentially redundant or a burden on limited Commission resources. Nonetheless, if an AAO Plan indicates that a utility has a pattern of non-compliance with its filed LTIIIP, then that will be addressed by the Commission separately in proposed Section 121.7 in connection with the periodic review of the LTIIIP.

### **Section 121.7. Periodic Review of LTIIIP**

PECO states it is unclear why the periodic review of the LTIIIP at least once every five years is necessary as set forth in proposed subsection 121.7(a), if the LTIIIP is already reviewed annually as set forth in proposed Section 121.6 in connection with the filing of the AAO Plan. *PECO Comments* at 7. PECO asserts that since the Commission will already be checking the adequacy and reliability of the LTIIIP annually as part of the AAO Plan review process, it believes that there is no additional need for further review every five years, unless the proposed AAO Plan review process is revised to determine only whether a utility is in compliance with its LTIIIP and not as a tool to analyze the appropriateness of the LTIIIP. *Id.* at 8. PPL also recommends that this proposed

subsection be modified to provide that the five year review requirement might be satisfied by the review of a proposed LTIIIP which replaces an expiring five-year LTIIIP. *Id.*

Duquesne requests the Commission to consider modifying the language contained in proposed subsection 121.7(b)(2) to limit the review to a determination of whether the utility has adhered to its LTIIIP. Duquesne states that it is concerned that the Commission may not have sufficient information to make the determination that changes to the LTIIIP are necessary to maintain the efficiency, safety, adequacy and reliability of the utility's existing distribution infrastructure.

Additionally, PECO states the proposed subsection 121.7(d) should be modified so that the utility may have the ability to withdraw its LTIIIP if found to be inadequate or if the utility does not wish to continue with it. *Id.*

Lastly, Duquesne states that it believes that the proposed regulation does not address how previously-approved DSIC charges would be treated while awaiting the Commission's action to approve a refiled LTIIIP. *Duquesne Comments* at 4. Duquesne suggests the Commission add language stating the following, "DSIC charges currently in effect pursuant to a previously-approved LTIIIP may continue to be charged if the Commission does not approve the new LTIIIP within the 120 days or rejects the new LTIIIP." *Id.*

IRRC references these suggestions in its comments and asks the Commission to explain why the language of this section is reasonable. *IRRC Comments* at 4.

### **Resolution**

This section of the proposed regulations sets forth the procedures for the periodic review of the LTIIIP, as required by Act 11. 66 Pa. C.S. § 1352(b)(1). The proposed



section states that a periodic review shall be conducted “at least once every five years” or more frequently if deemed necessary and, upon such review, the utility may have to revise or update its LTIIIP.

The Commission acknowledges those comments that state that the periodic review of the LTIIIP at least once every five years is unnecessary as set forth in proposed subsection 121.7(a), if the LTIIIP is already extensively reviewed annually as has been set forth in proposed Section 121.6 in connection with the filing of the AAO Plan. However, we have revised and limited the scope of the entire AAO Plan review, so that now the periodic review of the LTIIIP remains a necessary and integral part of the entire DSIC process. The Commission determines that during this periodic review, the utility’s LTIIIP will be subject to a determination of whether it has remained adequate and sufficient to ensure reliable and reasonable service during its term. *See generally* 66 Pa. C.S. § 1352(a)(7).

The Commission determines that the periodic review of the LTIIIP process will include (1) whether the utility has adhered to the parameters of its LTIIIP and (2) whether changes to the LTIIIP are necessary to continue to maintain the efficiency, safety, adequacy and reliability of the utility’s existing distribution infrastructure. However, the Commission is of the opinion that this periodic review can be a rather streamlined process. While the periodic review of the LTIIIP will entail a thorough, comprehensive and detailed review of the utility’s LTIIIP, the Commission notes that most of the information the utility would have to submit in order to meet the threshold determinations above are already being filed or prepared by it under different regulations. For example, the utility would have already filed AAO Plans that indicate that it is in compliance with the work schedule and capital expenditures set forth in the LTIIIP. Additionally, as of the result of the accelerated work that has been performed by the utility, the reliability of the

utility's distribution infrastructure should have increased and the risk of outages should have been reduced.

Thus, during this periodic review, the Commission foresees EDCs supplying a reference to the reliability reports they already file with us subject to another section of our regulations. *See generally* 52 Pa. Code §§ 57.191- 57.198. Furthermore, we also expect NGDCs to include a reference to system leak data that is required by the annual US DOT 7100 filed pursuant to 49 CFR Part 191. Moreover, we state that the Commission would also accept a reference to the type of information supplied by NGDCs in the context of the Winter Reliability Meeting. The Commission believes that this information is necessary in order to determine whether the repairs, improvements or replacements performed by the utility at the time of the periodic review have resulted in increased reliability. *See generally* 66 Pa. C.S. §1352(a)(6).

Furthermore, we decline to adopt PPL's recommendation that the five year review requirement might be satisfied by the review of a proposed LTIIP which replaces an expiring five-year LTIIP. In order to be truly effective, the periodic review must be done during the term of the LTIIP, not when it is set to expire.

The Commission takes note of the comments that state proposed subsection 121.7(d) should be modified so that the utility may have the ability to withdraw its LTIIP if found to be inadequate, or if the utility does not wish to continue with it. We agree with this suggestion. If during the periodic review, the Commission determines that the LTIIP has not increased the reliability of a utility's infrastructure or is no longer sufficient or adequate to ensure or maintain efficient, adequate, safe and reliable service, the Commission shall direct the utility to revise its LTIIP, update or re-submit its LTIIP. *See* 66 Pa. C.S. § 1352(a)(7).

Notwithstanding this statutory provision, consistent with our statements above, the utility may also elect to withdraw its LTIP pursuant to the pertinent Commission regulations. *See generally* 52 Pa. Code §§ 1.82 and 5.94. However, if the utility determines to withdraw its LTIP, the utility will risk not being able to recover any future expenses under its DSIC mechanism. Conversely, if the utility decides to resubmit or refile a revised plan, the utility may recover the previously-approved DSIC charges for the remaining term of the LTIP if the necessary future repair and replacement work is performed by the utility. The Commission incorporates this position in the final form regulation.

### **Section 121.8. Enforcement of LTIP Implementation.**

#### **Comments**

In its comments, EAP contends that an LTIP is not a stand-alone obligation but rather a detailed infrastructure replacement plan filed by a utility seeking approval of a DSIC. *EAP Comments* at 9. Accordingly, EAP states that Act 11 provides a specific and suitable remedy for failure for a utility to comply to the LTIP, which is revocation of, and zeroing-out of, the DSIC. *Id.* EAP suggests that the reference to civil penalties and “other remedies” is not in accord with the statutory language and should be removed from the proposed enforcement actions identified in proposed subsection 121.8(c).

Likewise, PECO states that it does not believe that a remedy for non-compliance with an approved LTIP should include “civil penalties.” *PECO Comments* at 8. PECO states that the non-compliance standard is too indefinite to provide any meaningful assurance that a utility will not find itself subject to a civil penalty for a deviation that is not deemed after the fact to be “minor.” Additionally, PECO asserts that if a utility is not in compliance with its LTIP, the appropriate remedy is for the utility to cease being permitted to use its DSIC and the ability to collect thereunder. *Id.*

Furthermore, the FirstEnergy Companies state that proposed subsection 121.8(c) implies that Act 11 creates separate, identifiable penalty provisions outside the pre-existing statutory framework of the Code. *FirstEnergy Comments* at 4. The FirstEnergy Companies assert that the existing penalty provisions of Chapter 33 of the Code provide adequate penalty measures for violations of the Code, including Act 11, and should not be augmented by Commission regulations not anticipated in Act 11. *FirstEnergy Comments* at 5. The FirstEnergy Companies state the only measure specifically identified in Act 11 that can remotely be considered a penalty is provided at 66 Pa. C.S. § 1352(b), and that is the termination of the utility's DSIC if the utility is found to be noncompliant with its LTIIP. *Id.*

The OCA states that proposed subsection 121.8(c) is not consistent with Act 11. *OCA Comments* at 10. The OCA states that clearly the legislative language concerning termination of the DSIC is mandatory, not optional, in instances where the Commission determines that the utility is not in compliance with the approved LTIIP. *Id.* Accordingly, the OCA asserts that this proposed subsection should be changed to bring the regulation into conformity with the requirement of the statute that the DSIC mechanism terminate if the Commission finds that a utility is not in compliance with its plan. *Id.*

In light of the above comments regarding proposed subsection 121.8(c), IRRC asks the Commission to explain why the imposition of penalties is reasonable.

### **Resolution**

This section of the proposed regulations addresses the enforcement of Act 11 and the remedies the Commission may prescribe for a utility's noncompliance with its Commission-approved LTIIP. The section also provides that variations in individual years and non-material changes from the Commission-approved LTIIP will not be a basis

for an enforcement action. Any enforcement actions filed will be referred to the Office of Administrative Law Judge (OALJ) for hearing and decision.

The Commission takes note of the comments regarding the inclusion of civil penalties as a remedy for non-compliance with an approved LTIIP. We agree that Act 11 expressly provides one remedy for failure for a utility to comply with the LTIIP, which is the termination of the utility's DSIC mechanism. When the Commission has determined, after notice and opportunity to be heard, that certain infrastructure improvements, as set forth in the utility's LTIIP, are necessary to maintain safe and adequate service to consumers and where the utility nevertheless, and without adequate justification, fails to adhere to its LTIIP, the appropriate remedy in the instant LTIIP enforcement proceeding is termination of the utility's approved DSIC mechanism.

However, by not being in compliance with its LTIIP, the utility will have raised a substantial question as to whether it is in compliance with the statutory directive set forth in section 1501 of the Code of providing adequate, efficient, safe and reasonable service and facilities, and civil penalties may also be applicable in a separate proceeding.

As explained earlier herein, the utility is obligated to make the repairs and improvements necessary to ensure safe and reliable service. Failure to do so is a violation of Section 1501 of the Code. 66 Pa. C.S. § 1501. And, both civil penalties under Section 3301 and specific performance are potential remedies for failure to adhere to a Commission-approved LTIIP. Accordingly, the Commission retains separate statutory authority to impose *other remedies* for the failure of a utility to perform the necessary infrastructure improvements to ensure and maintain reasonable service. 66 Pa. C.S. §§ 1501 and 3301. Whether any such remedies are appropriate would be determined, on a case by case basis, after notice and opportunity to be heard in a separate enforcement proceeding, not in the LTIIP enforcement proceeding.

Therefore, for purposes of these regulations under Act 11, the Commission removes the reference to imposing “civil penalties” and “other remedies” in an enforcement action identified in subsection 121.8(c) of the final form regulation.

## **Conclusion**

We again thank those interested parties who filed comments on the proposed subsections of the regulation. We find that the regulations to establish procedures for the implementation and review of a long term infrastructure improvement plan as set forth in Annex A should be approved. Accordingly, under sections 501, 1350-1360 and 1501 of the Public Utility Code, (66 Pa. C.S. §§ 501, 1350-1360 and 1501) and the Commonwealth Documents Law, sections 1201 and 1202 of the Act of July 31, 1968, P.L. 769, No. 240, *as amended*, (45 P.S. §§1201, *et seq.*) and the regulations promulgated thereunder, at 1 Pa. Code §§ 7.1-7.5, section 204(b) of the Commonwealth Attorneys Act (71 P. S. § 732.204(b)); section 745.5 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 at 4 Pa. Code §§ 7.231--7.235, we add the regulations at 52 Pa. Code §§ 121.1-121.7 as noted above and as set forth in Annex A; **THEREFORE,**

### **IT IS ORDERED:**

1. That a copy of this Order and Annex A shall be served upon the Energy Association of Pennsylvania, all jurisdictional electric distribution companies, natural gas utilities, all water and wastewater utilities, the Bureau of Investigation and Enforcement, the Office of Consumer Advocate, and the Office of Small Business Advocate.
2. That the Secretary shall certify this Order and Annex A and deposit them with the Legislative Bureau for publication in the *Pennsylvania Bulletin*.

3. That the Secretary shall submit this Order and Annex A to the Office of Attorney General for approval as to legality.

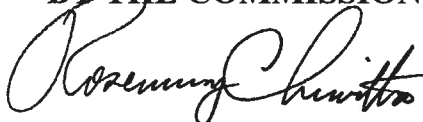
4. That the Secretary shall submit this Order and Annex A to the Governor's Budget Office for review of fiscal impact.

5. That 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 the Independent Regulatory Review Commission.

6. That the final regulations become effective upon publication in the *Pennsylvania Bulletin*.

7. That the contact person for this rulemaking is Assistant Counsel David E. Screven, Law Bureau (717) 787-2126, [dscreven@pa.gov](mailto:dscreven@pa.gov). Alternate formats of this document are available for persons with disabilities and may be obtained by contacting Sherri DelBiondo, Regulatory Coordinator, (717) 772-4597.

**BY THE COMMISSION**



Rosemary Chiavetta  
Secretary

(SEAL)

ORDER ADOPTED: May 22, 2014

ORDER ENTERED: May 23, 2014

## Annex A

### TITLE 52. PUBLIC UTILITIES PART I. PUBLIC UTILITY COMMISSION Subpart G. DISTRIBUTION SYSTEM IMPROVEMENT CHARGE CHAPTER 121. LONG TERM INFRASTRUCTURE IMPROVEMENT PLAN

#### § 121.1. Purpose.

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

#### § 121.2. Definitions.

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

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

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

*Eligible property*—"**Property**" PROPERTY THAT IS PART OF A DISTRIBUTION SYSTEM AND ELIGIBLE FOR REPAIR, IMPROVEMENT AND REPLACEMENT OF INFRASTRUCTURE as defined in 66 Pa.C.S. § 1351 (relating to definitions).

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



Major modification—A change or deviation to a utility's previously approved LTIIIP which MEETS AT LEAST ONE OF THE FOLLOWING CRITERIA:

- (i) Eliminates a category of eligible property from the LTIIIP.
- (ii) Extends the schedule for repair, improvement or replacement of a category of eligible property by more than 2 years.
- (iii) Increases the total estimated cost of the LTIIIP by more than 15%-20%.
- (iv) Otherwise reflects a substantial change to the current Commission-approved LTIIIP.

QUALIFIED PERSONNEL—ONE WHO, BY POSSESSION OF A RECOGNIZED DEGREE, CERTIFICATE, OR PROFESSIONAL STANDING, OR WHO BY EXTENSIVE KNOWLEDGE, TRAINING, AND EXPERIENCE, HAS SUCCESSFULLY DEMONSTRATED HIS ABILITY TO SOLVE OR RESOLVE PROBLEMS RELATING TO THE SUBJECT MATTER, THE WORK, OR THE PROJECT AS ESTABLISHED BY THE U.S. DEPARTMENT OF LABOR, OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION IN 29 C.F.R. § 1926.32.

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

### **§ 121.3. LTIIIP.**

(a) A UTILITY SEEKING TO IMPLEMENT A DSIC MECHANISM OR TO CONTINUE A PREVIOUSLY-APPROVED DSIC MECHANISM SHALL FILE AN ~~An~~ LTIIIP. ~~shall be filed by a utility and~~ THE LTIIIP SHALL include the following elements:

- (1) Identification of types and age of eligible property owned and operated by the utility for which it is seeking DSIC recovery.
- (2) An initial schedule for planned repair and replacement of eligible property.
- (3) A general description of location of eligible property.
- (4) A reasonable estimate of quantity of eligible property to be improved or repaired.
- (5) Projected annual expenditures and means to finance the expenditures.
- (6) A description of the manner in which infrastructure replacement will be accelerated and how repair, improvement or replacement will ensure and maintain adequate, efficient, safe, reliable and reasonable service to customers.

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

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

~~(9) For a natural gas distribution company, a description of the LTIIIP to address damage prevention, corrosion control, emergency response times and identification of the natural gas distribution company's critical valves.~~

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

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

(a) A UTILITY SEEKING TO IMPLEMENT A DSIC MECHANISM OR TO CONTINUE A PREVIOUSLY-APPROVED DSIC MECHANISM SHALL FILE AN LTIIIP FOR COMMISSION APPROVAL. ~~AN~~ THE LTIIIP shall be filed with the Commission's Secretary's Bureau with copies served upon the Bureau of Investigation and Enforcement, the Office of Consumer Advocate, the Office of Small Business Advocate and the parties OF RECORD in the utility's most recent base rate case. Service is evidenced by a certificate of service filed with the LTIIIP.

(b) An LTIIIP is a public document. If a utility believes that a portion of the information in the LTIIIP qualifies as confidential security information under section 2 of the Public Utility Confidential Security Information Disclosure Protection Act (35 P. S. § 2141.2) or should be afforded proprietary and confidential treatment, the utility shall request proprietary treatment of the information pursuant to a protective order. See §§ ~~5.423~~ 5.365 and 102.1—102.4 (relating to orders to limit availability of proprietary information; and confidential security information). Confidential security information in the LTIIIP shall be marked confidential by the utility and excluded from the public version of the filing.

(c) LTIIIP filings are subject to a ~~20-day~~ 30-DAY comment period. The LTIIIP will be reviewed by Commission staff. The LTIIIP will be referred to the Office of Administrative Law Judge for hearings and a decision if comments raise material factual issues.

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

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

(1) CONTAINS MEASURES TO ENSURE THAT THE PROJECTED ANNUAL EXPENDITURES ARE COST-EFFECTIVE. Accelerates or maintains an accelerated rate of infrastructure REPAIR, replacement AND IMPROVEMENT.

(2) SPECIFIES THE MANNER IN WHICH IT ACCLERATES OR MAINTAINS AN ACCLERATED RATE OF INFRASTRUCTURE REPAIR, IMPROVEMENT OR REPLACEMENT Is sufficient to ensure and maintain adequate, efficient, safe, reliable and reasonable service.

(3) IS SUFFICIENT TO ENSURE AND MAINTAIN ADEQUATE, EFFICIENT SAFE, RELIABLE AND REASONABLE SERVICE.

(4) MEETS THE REQUIREMENTS OF § 121.3 (A) (RELATING TO ELEMENTS OF A LTIIP).

(f) IF THE UTILITY'S LTIIP, WHICH HAS BEEN FILED FOR THE PURPOSE OF IMPLEMENTING A DSIC MECHANISM OR TO CONTINUE A PREVIOUSLY-APPROVED DSIC MECHANISM, DOES NOT MEET THE CRITERIA IN THIS SECTION OR IN § 121.3(A) (RELATING TO ELEMENTS OF A LTIIP), THE ~~The~~ Commission will order the utility to file a new or revised LTIIP if the LTIIP does not meet the criteria in this section.

(G) IF THE COMMISSION DETERMINES THAT THE UTILITY MUST FILE A NEW OR REVISED LTIIP UNDER SUBSECTION (F), THE UTILITY MAY ELECT TO WITHDRAW ITS FILED LTIIP UNDER § 1.82 (RELATING TO WITHDRAWAL OR TERMINATION OF AN UNCONTESTED MATTER) OR § 5.94 (RELATING TO WITHDRAWAL OF PLEADINGS IN A CONTESTED PROCEEDING). IF THE UTILITY ELECTS TO WITHDRAW ITS LTIIP FILING, THE UTILITY IS NOT ELIGIBLE TO IMPLEMENT ITS PROPOSED DSIC MECHANISM OR TO CONTINUE ITS PREVIOUSLY-APPROVED DSIC MECHANISM.

#### **§ 121.5. Modifications to and expiration of an LTIIP.**

(a) If a utility ELECTS seeks to modify a Commission-approved LTIIP during its term to incorporate a major modification to any of the elements in § 121.3(a)(relating to LTIIP), the utility shall file a separate petition for modification. The utility shall clearly identify the change and explain the operational, financial or other justification for the change in its petition. The petition will be subject to notice and an opportunity to be heard by interested parties. Parties shall have ~~20~~ 30 days to file comments to the petition.

(b) Minor modifications to an LTIIP that are changes that do not qualify as major changes MODIFICATIONS as defined in § 121.2 (relating to definitions) will be addressed concurrent with Commission staff's review of the utility's AAO plan, IF APPLICABLE.

(c) A utility SEEKING TO CONTINUE ITS DSIC MECHANISM AFTER EXPIRATION OF ITS LTIP shall file a new LTIP with the Commission at least 120 days prior to the expiration of a currently-effective LTIP. The new LTIP must contain the elements in § 121.3(a) AND BE SUBJECT TO THE REVIEW UNDER § 121.4 (RELATING TO FILING AND COMMISSION REVIEW PROCEDURES). IF THE UTILITY FAILS TO FILE A NEW LTIP BEFORE THE EXPIRATION OF ITS PRIOR LTIP, THE APPROVED DSIC MECHANISM SHALL TERMINATE UPON EXPIRATION OF THE PRIOR LTIP.

**§ 121.6. AAO plan filings.**

(a) A utility with an approved DSIC shall file with the Commission, for informational purposes, an AAO plan. The AAO plan shall be filed ANNUALLY ~~on or before March 1st of each year following the implementation of the utility's DSIC mechanism~~ WITH THE COMMISSION 60 DAYS AFTER THE 12 MONTHS OF ITS LTIP HAS EXPIRED AND PURSUANT TO THIS TIMEFRAME FOR EACH SUCCESSIVE YEAR OF THE TERM OF THE LTIP. ~~The utility shall file copies of the AAO plan with the Commission's Bureau of Investigation and Enforcement, the Office of Consumer Advocate, the Office of Small Business Advocate and the interested parties that were a part of the proceeding in which the initial LTIP was approved.~~

(b) An AAO plan must include:

(1) A description THAT SPECIFIES ALL of the eligible property repaired, improved and replaced in the prior 12-month period under its LTIP AND PRIOR YEAR'S AAO PLAN.

(2) A description of the eligible property to be REPAIRED, IMPROVED AND REPLACED ~~improved~~ in the upcoming 12-month period.

~~(3) System reliability data for the prior 5 years.~~

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

(d) An AAO plan will be reviewed by the Commission ONLY to determine whether the utility IS IN SUBSTANTIAL COMPLIANCE ~~has adhered to~~ WITH THE REPAIRS, IMPROVEMENTS OR REPLACEMENTS OF THE SPECIFIC ELIGIBLE PROPERTY IN its approved LTIP, FOR THE CORRESPONDING 12-MONTH TIMEFRAMES. ~~If the Commission determines that a major modification to the LTIP is necessary to maintain and improve the safety, adequacy and reliability of its existing distribution infrastructure, the Commission will direct the utility to file a petition for modification as outlined in § 121.5(a).~~

(e) Absent any major modifications TO THE LTIP, ~~adverse comments or Commission action~~ TO REJECT AN AAO PLAN within 60 days OF ITS SUBMISSION TO THE COMMISSION, the AAO plan will be deemed approved. The Commission may extend its consideration period if necessary.

(F) IF AN AAO PLAN IS REJECTED BY THE COMMISSION, THE UTILITY SHALL BE NOTIFIED OF THE PLAN'S DEFICIENCIES AND ACTIONS NEEDED TO REPAIR, IMPROVE OR REPLACE ELIGIBLE PROPERTY TO BRING THE UTILITY INTO COMPLIANCE WITH THE WORK SCHEDULE SET FORTH IN ITS APPROVED LTIP. IF THE UTILITY CONCLUDES THAT IT NEEDS TO REVISE ITS LTIP TO COMPLY WITH THE COMMISSION'S DETERMINATIONS, IT SHALL FILE A PETITION FOR MODIFICATION UNDER § 121.5.

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

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

(b) The Commission's review will determine:

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

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

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

(d) If the Commission determines, ~~based upon its~~ DURING THIS PERIODIC review, that a utility's approved LTIP is no longer adequate to ensure and maintain efficient, adequate, safe, reliable and reasonable service, the Commission will direct the utility to revise, update or resubmit its LTIP as appropriate. IF THE UTILITY ELECTS TO WITHDRAW ITS LTIP FILING UNDER § 5.94 (RELATING TO WITHDRAWAL OF PLEADINGS IN A CONTESTED PROCEEDING), THE UTILITY'S APPROVED DSIC MECHANISM SHALL IMMEDIATELY TERMINATE AND THE UTILITY MAY NOT RECOVER THE EXPENSES FOR THE WORK IT HAS PERFORMED UNTIL IT FILES A BASE RATE PROCEEDING.

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

(a) A utility with a Commission-approved LTIP is obligated to comply with the infrastructure replacement schedule and elements of that LTIP. Compliance with the

LTIIIP will be evaluated on a multiyear basis over the life of the LTIIIP. Construction expenditure variations in individual years and minor changes or deviations from the Commission-approved LTIIIP may not be the basis for an enforcement complaint.

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

(c) The ~~remedies~~ REMEDY for noncompliance with an approved LTIIIP ~~may include civil penalties, revocation~~ IS THE TERMINATION of the UTILITY'S APPROVED DSIC MECHANISM ~~and other remedies as may be appropriate based on the record developed in the enforcement proceeding.~~

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ROBERT F. POWELSON  
CHAIRMAN

October 1, 2014

The Honorable John F. Mizner  
Chairman  
Independent Regulatory Review Commission  
14th Floor, Harristown II  
333 Market Street  
Harrisburg, PA 17101

**Re: L-2012-2317274/57-294: Final Rulemaking - Review of Long-Term Infrastructure Improvement Plan, 52 Pa. Code, Chapter 121**

Dear Chairman Mizner:

Enclosed please find one (1) copy of the regulatory documents concerning the above-captioned rulemaking. Under Section 745.5(a) of the Regulatory Review Act, the Act of June 30, 1989 (P.L. 73, No. 19) (71 P.S. §§745.1-745.15) the Commission, on October 3, 2013, submitted a copy of the Notice of Proposed Rulemaking to your Committee, the House Committee on Consumer Affairs and the Independent Regulatory Review Commission (IRRC). This notice was published at 43 *Pa.B.* 6206 on October 19, 2013. The Commission also provided the Committees and IRRC with copies of all comments received in compliance with Section 745.5(b.1).

In preparing this final form rulemaking, the Commission has considered all comments received from the Committees, IRRC and the public.

Sincerely,

A handwritten signature in black ink that reads "Robert F. Powelson".

Robert F. Powelson

Enclosures

cc: The Honorable Robert M. Tomlinson  
The Honorable Lisa Boscola  
The Honorable Robert Godshall  
The Honorable Peter J. Daley, II  
Commissioner Witmer  
Legislative Affairs Director Perry  
Chief Counsel Pankiw  
Assistant Counsel Screven  
Regulatory Coordinator DelBiondo



TRANSMITTAL SHEET FOR REGULATIONS SUBJECT  
TO THE REGULATORY REVIEW ACT

ID Number: L-2012-2317274/57-294

Subject: Proposed Rulemaking Re Review of Long-Term Infrastructure  
Improvement Plan

Pennsylvania Public Utility Commission

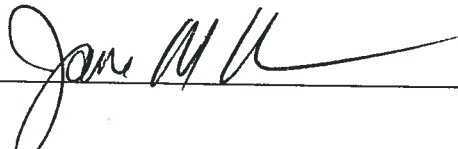
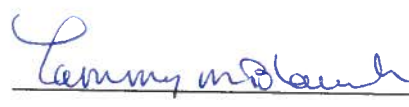

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IRRC

TYPE OF REGULATION

- Proposed Regulation
- Final Regulation with Notice of Proposed Rulemaking Omitted.
- Final Regulation
- 120-day Emergency Certification of the Attorney General
- 120-day Emergency Certification of the Governor

FILING OF REPORT

<u>Date</u>	<u>Signature</u>	<u>Designation</u>
10-1-14		HOUSE COMMITTEE (Godshall) Consumer Affairs
10-1-14		SENATE COMMITTEE (Tomlinson) Consumer Protection and Professional Licensure
10/1/14		Independent Regulatory Review Commission
		Attorney General
		Legislative Reference Bureau