

PROPOSED RULEMAKING

PENNSYLVANIA PUBLIC UTILITY COMMISSION

[52 PA. CODE CH. 29]

[L-2013-2349042]

Motor Carrier Vehicle List and Vehicle Age Requirements

The Pennsylvania Public Utility Commission (Commission), on April 4, 2013, adopted a proposed rulemaking order amending its current motor carrier passenger regulations to eliminate the vehicle list requirements for taxis and limousines, eliminate the waiver exception for vehicle age limitation for taxis and replace the vehicle age limitation for limousines with a vehicle mileage requirement.

Executive Summary

Section 1501 of the Public Utility Code requires every public utility in Pennsylvania to “maintain adequate, efficient, safe, and reasonable service and facilities” and to “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 its patrons, employees, and the public.” 66 Pa.C.S. § 1501. Pursuant to that authority and Section 501 of the Public Utility Code, the Commission enacted the regulations at Sections 29.314(c)—(d) and 29.333(d)—(e) to ensure a safe and practical taxi and limousine fleet for the public by requiring motor carriers of passengers to provide vehicle lists and to upgrade vehicles older than eight model years. The correlation between a vehicle’s age and mileage and its reliability and safety is a matter of common sense and practical experience. *Keystone Cab Serv. v. Pa. Public Utility Commission*, 54 A.3d 126, 129 (Pa. Cmwlth. 2012) (observing that the Commission carefully considered comments from the industry during the rulemaking process).

Since the vehicle list regulations do not effectively aid in Commission enforcement efforts, the Commission proposes to eliminate the vehicle list requirements for taxis and limousines in Sections 29.314(c) and 29.333(d). The Commission has also determined that the waiver exception is no longer in the public interest since reviewing applications for waiver exceptions for taxis that are older than eight model years consumes limited Commission resources that could be more effectively and efficiently utilized in other areas of motor carrier enforcement. Accordingly, the Commission proposes to eliminate the waiver exception in Section 29.314(d). Since limousines tend to accumulate mileage and incur wear and tear at a slower rate than taxis, the Commission proposes to replace the vehicle age limitation for limousines in Section 29.333(e) with a vehicle mileage requirement.

Public Meeting held
April 4, 2013

Commissioners Present: Robert F. Powelson, Chairperson; John F. Coleman, Jr., Vice Chairperson; Wayne E. Gardner; James H. Cawley; Pamela A. Witmer

Motor Carrier Vehicle List and Vehicle Age Requirements;
Doc. No. L-2013-2349042

Proposed Rulemaking Order

By the Commission:

The Pennsylvania Public Utility Commission (Commission) proposes to amend its current motor carrier passenger regulations to: (1) eliminate the vehicle list requirements for taxis and limousines in Sections 29.314(c) and 29.333(d); (2) eliminate the waiver exception for vehicle age limitation for taxis in Section 29.314(d); and (3) replace the vehicle age limitation for limousines in Section 29.333(e) with a vehicle mileage requirement. The Commission seeks comments from all interested parties on these proposed regulation amendments, which follows as Annex A to this Order.

Background

On March 24, 2005, the Commission issued a Proposed Rulemaking Order that discussed, inter alia, adding Sections 29.314(c)—(d) and 29.333(d)—(e) to the *Pennsylvania Code* to establish vehicle list and age requirements for taxis and limousines. Proposed Rulemaking Amending 52 Pa. Code Chapters 29 and 31, Docket No. L-00020157, 2004 WL 1585868 (Mar. 24, 2005). In its proposed rulemaking, the Commission believed at the time that the annual vehicle list requirement for taxis and limousines would aid the Commission in enforcement efforts. The Commission also determined that an eight-year vehicle age limitation for vehicles utilized in taxi and limousine service would ensure a current, reliable fleet. In the Proposed Rulemaking Order, the Commission did not propose a waiver exception to the eight-year vehicle age limitation. Id.

After receiving and considering numerous public comments, the Commission issued a Final Rulemaking Order on August 16, 2005. Final Rulemaking Order Amending 52 Pa. Code Chapters 29 and 31, Docket No. L-00020157, 2005 WL 2205731 (Aug. 16, 2005). The Commission had received extensive commentary on the vehicle age requirement for taxis, suggesting that the requirement would unnecessarily increase industry costs and that a vehicle’s age is not necessarily an accurate barometer of the vehicle’s condition. In the Final Rulemaking Order, the Commission responded that while “age is not synonymous with condition,” age is still one of the most important factors indicating whether a vehicle is fit for service. The Commission further noted that age is a viable and efficient tool for the Commission to utilize in undertaking its difficult task of ensuring a safe and reliable taxi fleet for the public. However, given the potential undue hardship asserted by select motor carriers, the Commission decided to impose the eight year limit, subject to a specific exemption for vehicles that are otherwise deemed safe by the Commission. Observing that a waiver exception would necessitate a certain amount of discretion by the Commission’s enforcement personnel, the Commission added the waiver exception language “Unless otherwise permitted by the Commission” to the vehicle age requirement for taxis to Section 29.314(d).

The Commission received similar comments and concerns from interested parties regarding the vehicle age requirement for limousines. Therefore, the Commission also added the waiver exception language “Unless otherwise permitted by the Commission” to the vehicle age requirement for limousines to Section 29.333(e).

The Commission’s regulations at Sections 29.314(c)—(d) and 29.333(d)—(e) became effective on August 5, 2006 and remain in effect.

Discussion

In an effort to streamline procedures to more efficiently and effectively use Commission resources in regulating motor carriers of passengers, the Commission now seeks to amend its regulations to: (1) eliminate the vehicle list requirements for taxis and limousines in Sections 29.314(c) and 29.333(d); (2) eliminate the waiver exception for vehicle age limitation for taxis in Section 29.314(d); and (3) replace the vehicle age limitation for limousines in Section 29.333(e) with a vehicle mileage requirement.¹

Section 1501 of the Public Utility Code requires every public utility in Pennsylvania to “maintain adequate, efficient, safe, and reasonable service and facilities” and to “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 its patrons, employees, and the public.” 66 Pa.C.S. § 1501. Pursuant to such authority and Section 501 of the Public Utility Code, the Commission enacted the regulations at Sections 29.314(c)—(d) and 29.333(d)—(e) to ensure a safe and reliable taxi and limousine fleet for the public by requiring motor carriers of passengers to provide vehicle lists and to upgrade vehicles older than eight model years. The Commission acted well within its statutory authority in enacting the eight-year age limitation on vehicles. *Keystone Cab Serv. v. Pa. Public Utility Commission*, 54 A.3d 126, 128 (Pa. Cmwlth. 2012) (observing that the Commission carefully considered comments from the industry during the rulemaking process). The Court also observed that the correlation between a vehicle’s age and mileage and its reliability and safety is a matter of common sense and practical experience. *Id.* at 129.

The Commission has now determined that the vehicle list regulation is an unnecessary requirement since it does not effectively aid in Commission enforcement efforts. The Commission has also determined that the waiver exception is no longer in the public interest since reviewing applications for waiver exceptions for taxis that are older than eight model years consumes limited Commission resources that could be more effectively and efficiently utilized in other areas of motor carrier enforcement. As to limousines, the Commission finds that a mileage limitation is more appropriate than an age limitation since limousines generally tend to accumulate mileage and incur wear and tear at a slower rate than taxis.

I. *Eliminating the Vehicle List Requirement for Taxis and Limousines*

In 2001, the Legislative Budget and Finance Committee (LBFC) recommended that all Pennsylvania taxis and limousines should be individually registered with the Commission to: (1) enable the Commission to maintain basic management information on taxis and limousines and (2) enable the Commission to systematically inspect vehicles based upon poor maintenance histories. Commonwealth Regulation of Taxicab and Limousine Service: A Report in Response to House Resolution 247, Legislative Budget and Finance Committee, at S-7 (Dec. 2001).

This vehicle list requirement did permit the Commission to maintain basic management information for carri-

¹ The Commission receives many applications requesting to use older vehicles in good condition in limousine service. Unlike taxis that are subject to more constant use, limousines tend to accumulate mileage and incur wear and tear at a slower rate. Therefore, the use of older limousines generally does not invoke the same kind of safety and reliability concerns as older taxis. The Commission finds that a mileage limitation (1) provides a clear and fair standard for the industry and (2) is a viable and efficient tool for the Commission to utilize in ensuring safe and reliable limousine service for the public.

ers that complied with the vehicle list requirement. However, since the list is only required for submission once a year between December 1 and December 31, the list often became unreliable and outdated due to frequent vehicle turnover. Presently, enforcement officers can obtain an up-to-date vehicle list for all the vehicles in a carrier’s fleet on the date of inspection of any vehicle in the carrier’s fleet. Therefore, the Commission finds that vehicle list requirement has not provided the Commission with accurate, up-to-date information. Accordingly, since requiring vehicle lists for taxis and limousines is unnecessary as the lists do not effectively aid in Commission enforcement efforts, the Commission proposes eliminating the existing vehicle list requirements at Section 29.314(c) for taxis and Section 29.333(d) for limousines.

II. *Eliminating the Waiver Exception For Vehicle Age of Taxis*

A. *Commission Review Process of Vehicle Age Limitation Waiver Requests*

Commission review of a waiver request can be a fairly extensive and time-consuming process, depending on the completeness of the application and the timing of the filing of the application. Upon receiving a waiver request for a single vehicle, the Manager of the Transportation Division (the manager) assigns the application for review to a motor carrier compliance specialist (the specialist). The specialist reviews the application to ensure all information is included. If the application is missing information, the specialist contacts the carrier via letter, providing 10 business days to provide the missing information. If no information is received, the specialist, with approval of the manager, submits a letter to the carrier that dismisses the application with a reason and explains that a carrier can challenge the dismissal within 20 days by filing a request for reconsideration.

If incomplete information is submitted again, the specialist submits a second letter, providing an additional 10 working days to receive the missing information. If information is still missing, the specialist, with approval of the manager, submits a letter to the carrier that dismisses the application with a reason and explains that a carrier may challenge the dismissal within 20 days by filing a request for reconsideration. If the application is complete, the specialist begins processing the application.

Upon obtaining a completed application, the specialist first reviews photographs to assess the condition of the vehicle and checks the mileage. The specialist then reviews one year of maintenance records to determine whether the vehicle has been properly maintained. The specialist reviews the reason provided by the applicant as to why the vehicle is worthy to remain in service. The specialist reviews financial records to verify existence of a financial hardship. The specialist reviews Commission records to verify the carrier’s compliance with all fines and assessments. The specialist then verifies that the financial information provided matches information listed on the assessment report. The specialist checks records at the Pennsylvania Department of Transportation to ensure the vehicle is properly registered to the carrier and has been in service.²

If the specialist determines that a vehicle will not be approved at any point in reviewing the application, the specialist, with approval of the manager, submits a letter to the carrier that dismisses the application with a reason

² The Vehicle Identification Number is checked instead of license plate tags to avoid any possibility of a carrier transferring tags from one vehicle to another that is already older than eight model years, thereby requesting a waiver on a vehicle that was not in service.

and explains that a carrier may challenge the dismissal within 20 days by filing a request for reconsideration. Upon receiving a request for reconsideration, the Commission re-opens the entire case and reviews again. The Commission's Office of Special Assistants prepares an order for all appeals.

If the vehicle survives the above review of the application, the specialist, with approval of the manager, submits a letter to the carrier indicating that the vehicle was approved to be inspected and that the carrier will be contacted by an enforcement officer within 60 days to arrange a mutually agreeable time for the inspection. The letter specifically informs the carrier to ensure that the vehicle has no defects causing the vehicle to be "rejected" and thus not subject to re-inspection. With approval by the manager, the specialist then submits a memorandum and a certificate to the relevant District Office of the Commission's Bureau of Investigation and Enforcement, requesting an inspection for the vehicle. An enforcement officer will contact the carrier within 60 days to schedule a time for a "four wheels off" inspection. If the vehicle does not pass inspection, the Enforcement Officer notifies the carrier who signs the inspection report. The Enforcement Officer then submits a copy of the inspection report signed by the carrier, the certificate, and the original inspection report to the compliance specialist.

If the vehicle passes inspection, the Enforcement Officer issues the certificate, performs proper documentation, and sends the original inspection report back to the compliance specialist in charge of the case. Then, the compliance specialist verifies and closes the case.

B. Statistics Regarding Recent Waiver Requests Filed With the Commission

Of the 172 taxi companies regulated by the Commission eligible to file requests for waivers in 2012, only 25 companies requested waivers for 2013 for a total of 112 vehicles. The Commission approved the applications of nine companies for a total of 16 vehicles. All carriers whose applications were denied filed requests for reconsideration.

These statistics demonstrate that out of 112 self-selected vehicles presented for waiver applications, less than 15% passed the Commission's safety and reliability standards for taxis to operate in motor carrier service for the public. Given this extremely low passing rate, the Commission's administrative costs to manage the waiver program and the potential safety risks associated with the use of older taxis outweigh any public benefit of maintaining and administering the waiver program.

In 2009, 2010, and 2011, nearly half of the motor carriers (taxi and limousine) that requested waiver exceptions did not file requests until a few weeks before the deadline. In 2012, over half of the motor carriers that requested waiver exceptions did not file requests until a few weeks before the deadline. This has placed a tremendous burden on the small contingent of motor carrier enforcement officers at the Commission since the officers are unable to carry out any other assignments during this time period.

Accordingly, since Commission review of a waiver request can be a fairly extensive and time-consuming process, the Commission finds that the waiver exception³

³ A carrier regulated by the Commission may still file a petition for waiver of Commission regulations. 52 Pa. Code § 5.43 (providing rules governing petitions for issuance, amendment, repeal, or waiver of Commission regulations). For example, carriers with antique or classic vehicles in good condition still have the option to file a petition for waiver of Commission regulations to provide motor carrier passenger service to the public.

is no longer in the public interest and takes resources away from the Commission's statutory mandate to ensure safe and reliable taxi service for the public.

III. Replacing the Vehicle Age Limitation for Limousines With A Vehicle Mileage Limitation

Due to the number of applications requesting to use older vehicles in good condition in limousine service, the Commission proposes to replace the eight-year vehicle age limitation for limousines with a vehicle mileage limitation of 200,000 miles.

The Commission receives many applications requesting to use older vehicles, including antiques, in good condition in limousine service. Unlike taxis that are subject to more constant use, limousines tend to accumulate mileage and incur wear and tear at a slower rate. Therefore, the use of older limousines generally does not invoke the same kind of safety and reliability concerns as older taxis. The Commission finds that a mileage limitation for limousines (1) provides a clear and fair standard for the industry and (2) is a viable and efficient tool for the Commission to utilize in ensuring safe and reliable limousine service for the public.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on October 3, 2013, the Commission submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House Consumer Affairs Committee and the Senate Consumer Protection and Professional Licensure Committee. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey any comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections must specify the regulatory review criteria which have not been met. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the rulemaking, by the Commission, the General Assembly and the Governor of comments, recommendations or objections raised.

Conclusion

The Commission has proposed the amended regulations issued for comment by this Order in order to streamline Commission procedures and requirements pertaining to motor common carriers of passengers. The Commission, therefore, formally commences its rulemaking process to amend its existing regulations at 52 Pa. Code §§ 29.314(c)—(d) and 52 Pa. Code §§ 29.333(d)—(e) consistent with Annex A to this Order. The Commission seeks comments from all interested parties on these proposed amended regulations.

Accordingly, pursuant to sections 501 and 1501 of the Public Utility Code (66 Pa.C.S. §§ 501 and 1501); sections 201 and 202 of the Act of July 31, 1968 (P.L. 769, No. 240) (45 P.S. §§ 1201 and 1202), and the regulations promulgated thereunder at 1 Pa. Code §§ 7.1, 7.2 and 7.5; section 204(b) of the Commonwealth Attorneys Act (71 P.S. § 732.204(b)); section 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—7.234, we are considering adopting the proposed regulations set forth in Annex A; *Therefore,*

It Is Ordered That:

1. A proposed rulemaking be opened to consider the regulations set forth in Annex A.

2. The Secretary shall submit this proposed rulemaking order and Annex A to the Office of Attorney General for review as to form and legality and to the Governor's Budget Office for review of fiscal impact.

3. The Secretary shall submit this proposed rulemaking order and Annex A for review and comments to the Independent Regulatory Review Commission and the Legislative Standing Committees.

4. The Secretary shall certify this proposed rulemaking order and Annex A and deposit them with the Legislative Reference Bureau to be published in the *Pennsylvania Bulletin*.

5. Original written comments referencing Docket No. L-2013-2349042 be submitted within 30 days of publication in the *Pennsylvania Bulletin* to the Pennsylvania Public Utility Commission, Attn: Secretary, P. O. Box 3265, Harrisburg, PA 17105-3265.

6. A copy of this proposed rulemaking order and Annex A shall be served on the Bureau of Technical Utility Services, the Bureau of Investigation and Enforcement, the Office of Consumer Advocate, the Office of Small Business Advocate, and all affected jurisdictional passenger motor carriers.

7. The contact person for this proposed rulemaking is Kenneth R. Stark, Assistant Counsel, Law Bureau, (717) 787-5558. Alternate formats of this document are available to persons with disabilities and may be obtained by contacting Sherri DelBiondo, Regulatory Coordinator, Law Bureau, (717) 772-4597.

ROSEMARY CHIAVETTA,
Secretary

Fiscal Note: 57-296. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 52. PUBLIC UTILITIES

PART I. PUBLIC UTILITY COMMISSION

Subpart B. CARRIERS OF PASSENGERS OR PROPERTY

CHAPTER 29. MOTOR CARRIERS OF PASSENGERS

**Subchapter D. SUPPLEMENTAL REGULATIONS
CALL OR DEMAND SERVICE**

§ 29.314. Vehicle and equipment requirements.

* * * * *

(c) [*Vehicle list*. Between December 1 and December 31 of each year, carriers shall provide the Commission with a current list of all vehicles utilized under its call or demand authority. The list must contain the year, make, vehicle identification number and registration number for each vehicle. The list shall be mailed to Director, Bureau of Transportation and Safety, Pennsylvania Public Utility Commission, Post Office Box 3265, Harrisburg, Pennsylvania 17105-3265.

(d) [*Vehicle age*. Unless otherwise permitted by the Commission, a vehicle may not be operated in call and demand service which] A vehicle that is more than 8 model years old may not be operated in

call and demand service. For example, the last day on which a [1996] 2014 model year vehicle may be operated in taxi service is December 31, [2004] 2022. This provision is effective after [August 6, 2007] _____ (*Editor's Note: The blank refers to the effective date of adoption of this proposed rulemaking.*)

[(e)] (d) *Dome lights*. Unless otherwise permitted by the Commission, vehicles operated by call and demand carriers must have a dome light affixed to the roof of the vehicle. The dome light shall be visible from a distance of 100 feet from the front and rear of the vehicle. The dome light shall be illuminated only when a customer does not occupy the vehicle.

LIMOUSINE SERVICE

§ 29.333. Vehicle and equipment requirements.

* * * * *

(d) [*Vehicle list*. Between December 1 and December 31 of each year, carriers shall provide the Commission with a current list of all vehicles utilized under its limousine authority. The list must contain the year, make, vehicle identification number and registration number for each vehicle. The list shall be mailed to Director, Bureau of Transportation and Safety, Pennsylvania Public Utility Commission, Post Office Box 3265, Harrisburg, Pennsylvania 17105-3265.

(e) [*Vehicle [age] mileage*. Unless otherwise permitted by the Commission, a] A vehicle with more than 200,000 miles of cumulative mileage registered on its odometer may not be operated in limousine service [which is more than 8 model years old. For example, the last day on which a 1996 model year vehicle may be operated in limousine service is December 31, 2004]. This provision is effective [August 6, 2007] after _____ (*Editor's Note: The blank refers to the effective date of adoption of this proposed rulemaking.*)

[Pa.B. Doc. No. 13-1957. Filed for public inspection October 18, 2013, 9:00 a.m.]

**[52 PA. CODE CH. 121]
[L-2012-2317274]**

Review of Long-Term Infrastructure Improvement Plan

The Pennsylvania Public Utility Commission (Commission), on March 14, 2013, adopted a proposed 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.

Executive Summary

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 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.

On May 11, 2012, the Commission entered a Tentative Implementation Order at Docket No. M-2012-2293611 that proposed procedures and guidelines necessary to implement Act 11, including the elements of and standards for approval of a LTIIP, the ability to use previously approved plans, and the subsequent periodic review parameters of the LTIIP. 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. Specifically, the Final Implementation Order, *inter alia*, set forth the elements a LTIIP must contain and outlined the procedures and process for the filing and review of LTIIPs. Accordingly, the proposed rulemaking incorporates many of the aspects already discussed in the Final Implementation Order.

Public Meeting held
March 14, 2013

Commissioners Present: Robert F. Powelson, Chairperson; John F. Coleman, Jr., Vice Chairperson; Wayne E. Gardner; James H. Cawley; Pamela A. Witmer

Review of Long-Term Infrastructure Improvement Plan;
L-2012-2317274

Proposed Rulemaking Order

By the Commission:

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). 66 Pa.C.S. §§ 308, 1307, 1311, 1327 and 1350—1360. Act 11 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 proposed rulemaking establishes the procedures and criteria for the filing and subsequent periodic review of LTIIPs.

Background

On April 5, 2012, the Commission 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 a LTIIP, 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 LTIIP 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.

Discussion

The DSIC mechanism, enacted via Act 11, now 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 LTIIP is a necessary component of a DSIC petition. 66 Pa.C.S. § 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. However, water utilities with a previously-approved DSIC are not required to file a LTIIP unless otherwise directed by the Commission. See 66 Pa.C.S. § 1360.

As mentioned above, the Final Implementation Order addressed various procedures and guidelines regarding the implementation of Act 11. Specifically, the Final Implementation Order set forth the elements a LTIIP must contain and outlined the procedures and process for the filing and review of LTIIPs. Accordingly, this proposed rulemaking will incorporate many of the aspects already discussed in the Final Implementation Order.

In the Final Implementation Order, the Commission determined that the following six elements must be included in a proposed LTIIP: (1) types and age of eligible property; (2) schedule for its planned repair and replace-

ment; (3) location of the eligible property; (4) reasonable estimate of the quantity of property to be improved; (5) projected annual expenditures and measures to ensure that the plan is cost effective; and (6) manner in which replacement of aging infrastructure will be accelerated and how repair, improvement or replacement will maintain and ensure adequate, efficient, safe, reliable and reasonable service to customers. Additionally, the Commission highlighted the importance of including workforce management plans in a LTIIIP and its view that the acquisition of qualified personnel is essential to the successful implementation of any long-term plan to improve infrastructure. Accordingly, we stated 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 is also a necessary element of a LTIIIP.

While the Commission recently decided against establishing a separate Pipeline Replacement and Performance Plan filing process at Docket M-2011-2271982,¹ because it would be duplicative of the Act 11 DSIC regulatory process, specifically, the filing of LTIIPs; we nevertheless determined that we would order additional actions from NGDCs if necessary in order to safeguard the public. Accordingly, we determine that each NGDC filing a LTIIIP should also include as an element of their respective LTIIIP, a description of its plan to address damage prevention, corrosion control, emergency response times and identification of critical valves. Given the age of the existing natural gas distribution infrastructure throughout the Commonwealth, we believe that it is necessary that the NGDCs submit this information and indicate how their LTIIPs prioritize gas system safety and reliability. This particular element will be incorporated into proposed section 121.3 and will apply only to NGDCs.

Additionally, we note the implementation of a DSIC mechanism may lead to numerous maintenance and construction projects by the utilities. This could lead to significant disruptions as utilities perform work in the right of ways of the roadways and streets across the Commonwealth in order to replace or repair their infrastructure. We believe it is prudent for utilities to coordinate their maintenance efforts so they can minimize multiple disruptions to location where projects may overlap. Therefore, we will direct that a utility, as a part of its LTIIIP, should provide a description of its outreach and coordination activities with other utilities, Pennsylvania Department of Transportation (PennDOT) and local governments regarding their planned maintenance/construction projects and roadways that may be impacted by the plan.

In the Final Implementation Order, we also stated that a LTIIIP should include a review of all eligible distribution plant property, as defined in 66 Pa.C.S. § 1351, including its inventory, age, functionalities, reliability and performance. By limiting the plan to only “eligible property,” we mean eligible property for which DSIC treatment is sought (DSIC-eligible plant). 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. Accordingly, LTIIPs need only address the specific property eligible for DSIC recovery.

In the Final Implementation Order, we established the time frame that a LTIIIP must cover. We determined that a five-to-ten year term for a LTIIIP is appropriate as this time period is forward-looking enough for utilities to

make accurate predictions and also provides sufficient time for long-term planning of planned repairs and replacement of eligible property. However, we also suggested that any such plan should coincide with longer term plans that address specific goals, including cast iron replacement plans and bare steel replacement plans, and that such plans meet overall system replacement goals.

A proposed LTIIIP plan must include a schedule for the planned repair and replacement of eligible property. See 66 Pa.C.S. § 1352(a)(2). A proposed LTIIIP should also reflect and maintain an acceleration of infrastructure replacement over the utility’s historic level of capital improvement. As we noted in the Final Implementation Order, some utilities have taken substantial steps recently to increase prudent capital investment to address their aging infrastructure and we believe that the five-to-ten year timeframe established for a LTIIIP should reflect how the DSIC will maintain or augment acceleration of infrastructure replacement and prudent capital investment.

The utility has the burden of proof to demonstrate, in accordance with section 1352(a), that the proposed LTIIIP and associated expenditures are reasonable and cost effective and are designed to ensure and maintain adequate, efficient, safe, reliable and reasonable service to customers. This burden of proof is also consistent with section 1501 of the Code, 66 Pa.C.S. § 1501.

Furthermore, we believe that a utility must always have a LTIIIP on file so that the Commission has a means to determine whether a utility’s DSIC mechanism is serving its intended purpose. Accordingly, we determine that a utility shall file a new proposed LTIIIP at least 120 days prior to the expiration of its currently filed LTIIIP. This will allow the Commission and interested persons adequate time to review the new proposed LTIIIP before the existing LTIIIP term expires. Any new plan filed subsequent to the first Commission-approved LTIIIP must also include the elements set forth in 66 Pa.C.S. § 1352. The proposed regulations will adopt this schedule in section 121.5.

Lastly, we required utilities to serve copies of their proposed LTIIPs on the statutory advocates as well as all of the active parties in the utility’s most recent base rate proceeding.² We also determined that the proposed LTIIIP will be initially assigned to staff of the Bureau of Technical Utility Services (TUS) for analysis and a recommendation to the Commission. Interested parties will be given 20 days to file comments to the proposed LTIIIP. If, upon review, the comments raise material factual issues, the proposed LTIIIP will then be referred to the Office of Administrative Law Judge (OALJ) for hearing and the issuance of a recommended decision. Regardless, we generally established a period of 120 days for review of each proposed LTIIIP.

A Commission-approved LTIIIP is subject to a periodic subsequent review by the Commission. In the Final Implementation Order, we acknowledged that there may be a need for utility management to have the flexibility to deviate from a previously approved LTIIIP, if certain circumstances arise, such as when variations in construction expenditures occur within a given year. Accordingly, the proposed regulations will allow utility management

² While we believe that a LTIIIP is subject to public review, if a utility believes that any portion of the information contained in the LTIIIP qualifies as Confidential Security Information under 35 P.S. § 2141 or should be afforded proprietary and confidential treatment, the utility must request proprietary treatment of such information pursuant to a protective order. See 52 Pa. Code § 5.423 (Propriety Information) and 52 Pa. Code §§ 102.1–102.4 (Confidential Security Information). A LTIIIP will not automatically receive proprietary and confidential status.

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

the flexibility and discretion to make major and minor changes as needed, so long as the utility identifies reasonable operational, financial, or other justifications for deviating from its approved plan.

However, major modifications or deviations to the LTIIIP necessitate the filing of a Petition for Modification that will be subject to public notice and Commission approval. In the Commission's judgment, major changes, modifications or deviations from the LTIIIP are those that: (1) eliminate a category of eligible property from the plan; (2) extend the schedule for repair, improvement or replacement of a category of eligible property by more than 2 years; (3) increase the total estimated cost of the plan by more than 15%; or (4) otherwise reflect a substantial change to the current Commission-approved LTIIIP.³ Conversely, minor modifications to a LTIIIP that are changes that do not qualify as major changes as defined in proposed section 121.2 can and will be addressed concurrent with Staff's review of the utility's Annual Asset Optimization Plan.

Additionally, in regard to any future dispute as to whether the utility has adhered to the Commission-approved LTIIIP, which is a condition for the ability to maintain its DSIC mechanism, 66 Pa.C.S. § 1353(b)(2), a utility will be afforded notice and an opportunity to be heard before its DSIC is terminated for non-compliance with an approved LTIIIP or other violations of Act 11. The proposed regulations set forth the procedures for the periodic review of an approved LTIIIP.

Furthermore, we note that section 1356 of Act 11, 66 Pa.C.S. § 1356, requires a utility with an approved DSIC to file an Annual Asset Optimization Plan (AAO plan). The AAO plan elements are as follows: (1) a description of all eligible property repaired, improved and replaced in the preceding 12 months and (2) a detailed description of all facilities to be improved in the upcoming 12 months. Since the AAO plan is to be filed annually, the Commission believes it is appropriate to set a uniform filing date of March 1 for all utilities with a DSIC to file their AAO plans with the Commission, rather than adopting the anniversary of the utility's implementation of its DSIC, which will vary from utility to utility.

As we stated in the Final Implementation Order, the AAO plan is intended to provide the Commission and the public with an overall status report regarding a utility's progress in making infrastructure improvements pursuant to its Commission-approved LTIIIP. We also believe that the AAO plans will be a beneficial tool for the Commission when it conducts its overall periodic review of a utility's approved LTIIIP. The Commission expects the AAO plan to demonstrate a utility's compliance and progress in meeting its LTIIIP and to identify the utility's near-term construction projects that will be funded by the DSIC, consistent with the LTIIIP. Additionally, if a utility determines that a major modification to its LTIIIP is necessary once it has finalized its AAO plan, it can submit a separate petition for modification at the time it submits its annual filing of its AAO plan to the Commission. Such modification(s) will be subject to notice and an opportunity to be heard by interested parties. The proposed regulations set forth the procedures for major

modifications to an approved LTIIIP. However, as noted above, minor modifications can and will be addressed by Staff during its review of the AAO plan.

Summary of Proposed Regulations

Based upon these considerations, the proposed regulations will include the following sections:

§ 121.1. Purpose.

This section of the proposed regulations sets forth the general purposes for filing a LTIIIP, which must be filed and approved before a utility can implement a DSIC. Additionally, this section highlights that a LTIIIP is intended to ensure that utilities are planning and executing capital expenditures that will maintain and improve safety, adequacy and reliability of existing distribution infrastructure.

§ 121.2. Definitions.

This section of the proposed regulations sets forth the definitions of the key terms that will be used throughout the proposed regulations.

§ 121.3. Long Term Infrastructure Improvement Plan.

This section of the proposed regulations sets forth the specific elements that must be contained in a utility's proposed LTIIIP.

§ 121.4. Filing and Commission Review Procedures.

This section of the proposed regulations sets forth the filing procedures for LTIIIPs, the public comment period, and the manner in which the Commission will review a utility's plan.

§ 121.5. Modification to and expiration of a LTIIIP.

This section of the proposed regulations sets forth the procedures for modifying a Commission-approved LTIIIP and filing a new LTIIIP prior to the expiration of a filed plan. Major modifications or changes to the LTIIIP 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 and disposed of via Staff action.

§ 121.6. Asset Optimization Plan Filings.

This section of the proposed regulations sets forth the procedures for filing the Annual Asset Optimization Plan and the elements of the AAO plan. This section also states that the AAO plan will be reviewed to determine whether the utility has adhered to its LTIIIP and whether any changes to the initial LTIIIP 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.

§ 121.7. Periodic Review of an LTIIIP.

This section of the proposed regulations sets forth the procedures for the periodic review of the LTIIIP, as required by Act 11. The section states that a periodic review will be conducted every five years or more frequently if deemed necessary, and, upon such review, the utility may have to revise or update its LTIIIP.

§ 121.8. Enforcement of LTIIIP Implementation.

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 LTIIIP. The section also provides that variations in individual years and non-material

³ Comments are invited regarding these proposed parameters for the definition of "major" modification to a Commission-approved LTIIIP.

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.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on October 3, 2013, the Commission submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House Consumer Affairs Committee and the Senate Consumer Protection and Professional Licensure Committee. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey any comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections must specify the regulatory review criteria which have not been met. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the rulemaking, by the Commission, the General Assembly and the Governor of comments, recommendations or objections raised.

We invite interested parties to file comments on the proposed subsections of the regulation. 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 (Act of July 31, 1968, P.L. 769) (45 P.S. §§ 1201, et seq.) as amended, and the regulations promulgated thereunder, at 1 Pa. Code §§ 7.1—7.4, 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 That:

1. The proposed rulemaking at the previously-captioned docket will consider the regulations set forth in Annex A.
2. The Secretary shall submit this Order and Annex A to the Office of Attorney General for review as to form and legality and to the Governor's Budget Office for review of fiscal impact.
3. The Secretary shall submit this Order and Annex A for review and comment to the Independent Regulatory Review Commission and Legislative Standing Committees.
4. The Secretary shall certify this Order and Annex A, and deposit them with the Legislative Reference Bureau to be published in the *Pennsylvania Bulletin*.
5. An original copy of any comments referencing the docket number of the proposed regulations, be submitted within 45 days of publication in the *Pennsylvania Bulletin*, to the Pennsylvania Public Utility Commission, Attn: Secretary, P.O. Box 3265, Harrisburg, PA 17105-3265.
6. The contact person for this rulemaking is Assistant Counsel David E. Screven, Law Bureau (717) 787-2126, 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.
7. A copy of this Order and Annex A shall be served upon the Energy Association of Pennsylvania, all jurisdictional electric distribution companies, natural gas utili-

ties, all water and wastewater utilities, the Bureau of Investigation and Enforcement, the Office of Consumer Advocate, and the Office of Small Business Advocate.

ROSEMARY CHIAVETTA,
Secretary

Fiscal Note: 57-294. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 52. PUBLIC UTILITIES

PART I. PUBLIC UTILITY COMMISSION

Subpart G. DISTRIBUTION SYSTEM IMPROVEMENT CHARGE

Chap. 121. LONG-TERM INFRASTRUCTURE IMPROVEMENT PLAN

CHAPTER 121. LONG-TERM INFRASTRUCTURE IMPROVEMENT PLAN

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

§ 121.1. Purpose.

To be eligible to recover the reasonable and prudently incurred costs regarding the repair, improvement and replacement of eligible property from a DSIC, a utility shall submit an LTIIP to be approved by the Commission. See 66 Pa.C.S. § 1353 (relating to distribution system improvement charge). The LTIIP 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 LTIIP.

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" as defined in 66 Pa.C.S. § 1351 (relating to definitions).

LTIIP—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 LTIIP which:

(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%.

(iv) Otherwise reflects a substantial change to the current Commission-approved LTIIIP.

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) An LTIIIP shall be filed by a utility and 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) An 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 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 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 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 LTIIIP and determine if the LTIIIP:

(1) Accelerates or maintains an accelerated rate of infrastructure replacement.

(2) Is sufficient to ensure and maintain adequate, efficient, safe, reliable and reasonable service.

(f) The Commission will order the utility to file a new or revised LTIIIP if the LTIIIP does not meet the criteria in this section.

§ 121.5. Modifications to and expiration of an LTIIIP.

(a) If a utility seeks to modify a Commission-approved LTIIIP during its term to incorporate a major modification to any of the elements in § 121.3(a) (relating to LTIIIP), the utility shall file a separate petition for modification. The utility shall clearly identify the change and explain the operational, financial or other justifications 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 days to file comments to the petition.

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

(c) A utility shall file a new LTIIIP with the Commission at least 120 days prior to the expiration of a currently-effective LTIIIP. The new LTIIIP must contain the elements in § 121.3(a).

§ 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 on or before March 1st of each year following the implementation of the utility's DSIC mechanism. 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 LTIIIP was approved.

(b) An AAO plan must include:

(1) A description of the eligible property repaired, improved and replaced in the prior 12-month period under its LTIIIP.

(2) A description of the eligible property to be 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 to determine whether the utility has adhered to its approved LTIP. 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, adverse comments or Commission action within 60 days, the AAO plan will be deemed approved. The Commission may extend its consideration period if necessary.

§ 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 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.

§ 121.8. Enforcement of LTIP implementation.

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

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

(c) The remedies for noncompliance with an approved LTIP may include civil penalties, revocation of the DSIC and other remedies as may be appropriate based on the record developed in the enforcement proceeding.

[Pa.B. Doc. No. 13-1958. Filed for public inspection October 18, 2013, 9:00 a.m.]

STATE BOARD OF MEDICINE

[49 PA. CODE CHS. 16 AND 18]

Genetic Counselors

The State Board of Medicine (Board) proposes to amend §§ 16.11 and 16.13 (relating to licenses, certificates and registrations; and licensure, certification, examination and registration fees) and to add Chapter 18, Subchapter K (relating to genetic counselors) to read as set forth in Annex A.

Effective Date

The proposed rulemaking will be effective upon final-form publication in the *Pennsylvania Bulletin*.

Statutory Authority

The act of December 22, 2011 (P. L. 576, No. 125) (Act 125) amended the Medical Practice Act of 1985 (act) (63 P. S. §§ 422.1—422.51a) to require the Board to issue licenses to genetic counselors, to issue temporary permits to graduates of genetic counseling education programs and to regulate the practice of genetic counseling and discipline licensees. Specifically, section 3 of Act 125 directs the Board to promulgate regulations to license genetic counselors. Section 8 of the act (63 P. S. § 422.8) authorizes the Board to adopt regulations as are reasonably necessary to carry out the purposes of the act.

Description of Proposed Rulemaking

The proposed rulemaking would amend § 16.11 to add genetic counselors to the list of individuals licensed by the Board. The proposed rulemaking would also amend § 16.13 to provide for fees for the application for genetic counselor license, application for uncertified genetic counselor, biennial renewal of genetic counselor license, application for reactivation of genetic counselor license and application for temporary provisional genetic counselor license.

The proposed rulemaking would add Chapter 18, Subchapter K setting forth the standards for licensure of genetic counselors. Section 18.701 (relating to purpose) states the purpose of the subchapter is to implement the amendments to the act regarding genetic counselors. Section 18.702 (relating to definitions) sets forth definitions of terms used in Subchapter K.

Section 18.703 (relating to application for genetic counselor license) provides the information necessary for an applicant who holds National certification to apply for a license to practice as a genetic counselor. The qualifications for licensure are in section 13.4(e) of the act (63 P. S. § 422.13d(c)) and are repeated in this section for clarity to applicants.

Section 18.704 (relating to application for genetic counselor license of uncertified persons) provides the information necessary for an applicant who does not hold National certification to apply for a license to practice as a genetic counselor. These qualifications for licensure are in section 13.4(f) of the act and are repeated in this section for clarity to applicants. Section 13.4(f) of the act provides that noncertified persons may only obtain licenses 3 years after the effective date of the section. This limitation is included in § 18.704(b)(1).

Section 18.705 (relating to application for temporary provisional genetic counselor license) provides the information necessary for an applicant to apply for a tempo-

rary provisional license as authorized by section 13.4(g) of the act. The statutory provision recognizes, and the regulatory provision echoes, the fact that in the field of genetic counseling, it is common for graduates to take the certification examination twice. For this reason, section 13.4(g)(2) of the act provides that the provisional license would allow a person to practice, under supervision, until two examination cycles have elapsed. This unusual provision is echoed in § 18.705(d) and (e).

Section 18.706 (relating to biennial registration of genetic counselor license) provides for the biennial registration of the genetic counselor license and effectuates section 13.4(j) of the act, regarding continuing education. Section 18.706(b)(5) requires a genetic counselor to verify that he has completed the continuing education mandated by Act 125 as a condition of biennial renewal.

Section 18.707 (relating to inactive status of genetic counselor license; reactivation of inactive license) provides information to licensees about how a license becomes inactive, that a licensee whose license is inactive is not permitted to practice and how to reactivate an inactive license. Section 18.707(d) provides that a licensee whose license has been inactive for 4 years or more will be required to demonstrate continued competence to practice by showing current certification by the American Board of Genetic Counseling. Late fees are addressed in § 18.707(e).

Section 18.708 (relating to disciplinary action for applicants and licensed genetic counselors) provides that licensees and applicants may be subject to discipline or refusal of licensure for any of the reasons in sections 22 and 41 of the act (63 P. S. §§ 422.22 and 422.41) or for engaging in unprofessional or immoral conduct as defined in § 18.708(b) or (c).

Section 18.709 (relating to continuing education for licensed genetic counselors) sets forth rules regarding continuing education. Section 13.4(j) of the act requires genetic counselors to complete 30 hours of continuing education as a condition of biennial renewal. This section provides additional details about the continuing education requirements, including approved providers of continuing education (the American Board of Genetic Counseling and the National Society of Genetic Counselors) and the documentation that licensees shall maintain as proof of completion of continuing education.

Section 18.710 (relating to professional liability insurance coverage for licensed genetic counselors) effectuates section 13.4(k) of the act, which requires liability insurance.

Fiscal Impact and Paperwork Requirements

The statutory requirements that genetic counselors obtain and renew licenses to practice genetic counseling, obtain and maintain professional liability insurance and complete at least 30 hours of continuing education biennially will have a fiscal impact and impose paperwork requirements on the regulated community of genetic counselors. Genetic counselors will be required to file applications, pay fees and provide documentation evidencing professional liability insurance and continuing education. To the degree genetic counselors are employed by small businesses, and those businesses pay the licensure fees and costs associated with professional liability insurance and continuing education, the proposed rulemaking may impact small businesses. The proposed rulemaking should not have an adverse fiscal impact or impose additional paperwork requirements on the Commonwealth or its political subdivisions.

Sunset Date

The Board continuously monitors its regulations. Therefore, a sunset date has not been assigned.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on October 7, 2013, the Board submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the House Professional Licensure Committee and the Senate Consumer Protection and Professional Licensure Committee. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections must specify the regulatory review criteria which have not been met. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the rulemaking, by the Board, the General Assembly and the Governor of comments, recommendations or objections raised.

Public Comment

Interested persons are invited to submit written comments, recommendations or objections regarding this proposed rulemaking to Teresa Lazo, Board Counsel, State Board of Medicine, P.O. Box 2649, Harrisburg, PA 17105-2649, ST-MEDICINE@pa.gov within 30 days following publication of this proposed rulemaking in the *Pennsylvania Bulletin*.

JAMES W. FREEMAN, M.D.,
Chairperson

Fiscal Note: 16A-4937. The costs associated with implementing Subchapter K in Chapter 18 will be offset by fees paid by licensees; (8) recommends adoption.

Annex A

TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS

PART I. DEPARTMENT OF STATE

Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS

CHAPTER 16. STATE BOARD OF MEDICINE—GENERAL PROVISIONS

Subchapter B. GENERAL LICENSE, CERTIFICATION AND REGISTRATION PROVISIONS

§ 16.11. Licenses, certificates and registrations.

* * * * *

(b) The following nonmedical doctor licenses and certificates are issued by the Board:

* * * * *

(8) Perfusionist license.

(9) Genetic counselor license.

(c) The following registrations are issued by the Board:

* * * * *

(12) Biennial registration of a perfusionist license.

(13) Biennial registration of a genetic counselor license.

§ 16.13. Licensure, certification, examination and registration fees.

* * * * *

(l) *Perfusionist License:*

Application for perfusionist license	\$50
Biennial registration of perfusionist license	\$50
Application for reactivation of perfusionist license	\$50
Application for temporary graduate perfusionist license	\$50
Application for temporary provisional perfusionist license	\$40

(m) *Genetic Counselor License:*

Application for genetic counselor license	\$50
Application for uncertified genetic counselor license	\$100
Biennial renewal of genetic counselor license	\$125
Application for reactivation of genetic counselor license	\$50
Application for temporary provisional genetic counselor license	\$50

CHAPTER 18. STATE BOARD OF MEDICINE—PRACTITIONERS OTHER THAN MEDICAL DOCTORS

(Editor’s Note: The following subchapter is new and printed in regular type to enhance readability.)

Subchapter K. GENETIC COUNSELORS

Sec.	
18.701.	Purpose.
18.702.	Definitions.
18.703.	Application for genetic counselor license.
18.704.	Application for genetic counselor license by uncertified persons.
18.705.	Application for temporary provisional genetic counselor license.
18.706.	Biennial registration of genetic counselor license.
18.707.	Inactive status of genetic counselor license; reactivation of inactive license.
18.708.	Disciplinary action for applicants and licensed genetic counselors.
18.709.	Continuing education for licensed genetic counselors.
18.710.	Professional liability insurance coverage for licensed genetic counselors.

§ 18.701. Purpose.

This subchapter implements section 13.4 of the act (63 P. S. § 422.13d), regarding genetic counselors.

§ 18.702. Definitions.

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

ABGC—The American Board of Genetic Counseling or an equivalent successor.

ABMG—The American Board of Medical Genetics or an equivalent successor.

Active candidate status—The designation awarded to an individual who has received approval from the ABGC or the ABMG to sit for his respective certification examinations.

Genetic counseling—The provision of services to individuals, couples, families and organizations by one or more appropriately trained individuals to address the

physical and psychological issues associated with the occurrence or risk of occurrence of a genetic disorder, birth defect or genetically influenced condition or disease in an individual or a family.

Genetic counselor—An individual who is licensed to practice genetic counseling by the Board or the State Board of Osteopathic Medicine.

Hour of continuing education—At least 50 minutes of instruction, including relevant question and answer sessions, in an approved course of continuing education or an equivalent time that an online or correspondence course would be presented live.

NSGC—The National Society of Genetic Counselors or an equivalent successor.

§ 18.703. Application for genetic counselor license.

(a) An applicant for a license to practice as a genetic counselor shall submit, on forms made available by the Board, a completed application for a license to practice as a genetic counselor, including the necessary supporting documents, and pay the application fee in § 16.13(m) (relating to licensure, certification, examination and registration fees).

(b) The Board may issue a license to practice as a genetic counselor to an applicant who demonstrates that the applicant:

(1) Is at least 21 years of age and of good moral character, as required under section 13.4(e)(1) and (2) of the act (63 P. S. § 422.13d(e)(1) and (2)).

(2) Has received a master’s degree or doctoral degree in human genetics or genetic counseling from an ABGC-accredited or ABMG-accredited educational program or has met the requirements for certification by the ABGC or the ABMG. Proof of the degree, if applicable, shall be sent directly from the applicant’s education program and include an official transcript.

(3) Has passed the examination for certification as a genetic counselor by the ABGC or the ABMG or has passed the examination for certification as a Ph.D. medical geneticist by the ABMG. Proof that the applicant has passed the examination shall be sent directly from the ABGC or the ABMG and may include proof of current certification.

(4) Has obtained professional liability insurance, or is exempt from the requirement to obtain professional liability insurance, as set forth in § 18.710 (relating to professional liability insurance coverage for licensed genetic counselors).

(c) The Board may deny an application for licensure as a genetic counselor upon the grounds for disciplinary action in § 18.708 (relating to disciplinary action for applicants and licensed genetic counselors).

§ 18.704. Application for genetic counselor license by uncertified persons.

(a) An applicant for a license to practice as a genetic counselor who has never passed the ABGC or the ABMG certification examination shall submit, on forms made available by the Board, a completed application for a license to practice as a genetic counselor, including the necessary supporting documents, and pay the application fee in § 16.13(m) (relating to licensure, certification, examination and registration fees).

(b) The Board may issue a license to practice as a genetic counselor to an uncertified applicant who:

(1) Submits his application to the Board, along with the required supporting documentation, by February 20, 2015.

(2) Demonstrates that the applicant is at least 21 years of age and of good moral character as required under section 13.4(e)(1) and (2) of the act (63 P. S. § 422.13d(e)(1) and (2)).

(3) Demonstrates that he has received a master's degree or higher in genetics or a related field of study and has worked as a genetic counselor for a minimum of 3 continuous years preceding December 22, 2011, or has received a bachelor's degree in genetics or a related field of study and has been employed as a genetic counselor for at least 10 continuous years prior to December 22, 2011.

(i) Proof of the degree shall be sent directly from the applicant's educational program and include an official transcript.

(ii) Related fields of study must include core courses in genetics.

(iii) Proof of employment as a genetic counselor may include Federal income tax forms or notarized letters from the applicant's employers.

(4) Submits at least three letters of recommendation, including one from a genetic counselor certified by the ABGC or the ABMG and one from either a clinical geneticist or medical geneticist certified by the ABMG. A person who submits a letter of recommendation shall have worked with the applicant in an employment setting sometime during the previous 10 continuous years and be able to attest to the applicant's competency in providing genetic counseling services.

(5) Demonstrates that the applicant has obtained professional liability insurance, or is exempt from the requirement to obtain professional liability insurance, as set forth in § 18.710 (relating to professional liability insurance coverage for licensed genetic counselors).

§ 18.705. Application for temporary provisional genetic counselor license.

(a) An applicant for a temporary provisional genetic counselor license shall submit, on forms made available by the Board, a completed application, including the necessary supporting documents, and pay the fee in § 16.13(m) (relating to licensure, certification, examination and registration fees) for an application for a temporary provisional genetic counselor license.

(b) The Board may grant a temporary provisional genetic counselor license, which authorizes the license holder to practice only under the supervision of a genetic counselor or physician licensed under the act or under the Osteopathic Medical Practice Act (63 P. S. §§ 271.1—271.18), to an applicant, who:

(1) Demonstrates that the applicant has been granted active candidate status establishing eligibility to sit for the next available certification examination offered by the ABGC.

(2) Demonstrates that the applicant is at least 21 years old, of good moral character and has completed an application form provided by the Board and paid the appropriate fee as required under section 13.4(e)(1)—(3) and (5) of the act (63 P. S. § 422.13d(e)(1)—(3) and (5)).

(3) Otherwise complies with this subchapter.

(c) The Board may deny an application for a temporary provisional genetic counselor license upon the grounds in § 18.708 (relating to disciplinary action for applicants and licensed general counselors).

(d) A temporary provisional genetic counselor license will expire upon the close of the second examination period for which the holder is eligible to test following the date of issuance of the temporary provisional license and may not be renewed.

(e) A temporary provisional genetic counselor license will expire upon notice to the Board that the holder has not passed the certification examination within two examination cycles after receiving the temporary provisional license. The holder of a temporary provisional genetic counselor license who fails to pass the examination within two examination cycles shall immediately cease practicing and return the license to the Board.

(f) The holder of a temporary provisional genetic counselor license may not use the title "genetic counselor." The holder of a temporary provisional genetic counselor license may use the title "graduate genetic counselor" but may not use an abbreviation of the title.

§ 18.706. Biennial registration of genetic counselor license.

(a) The license of a genetic counselor will expire biennially on December 31 of each even-numbered year in accordance with § 16.15 (relating to biennial registration; inactive status and unregistered status). A genetic counselor may not practice after December 31 of an even-numbered year unless the genetic counselor has completed the biennial renewal process and the Board has issued a renewed license.

(b) As a condition of biennial renewal, a genetic counselor shall:

(1) Submit a completed application, including payment of the biennial registration fee in § 16.13(m) (relating to licensure, certification, examination and registration fees) for application for biennial registration of genetic counselor license.

(2) Disclose on the application any license to practice as a genetic counselor in another state, district, territory, possession or country.

(3) Disclose on the application disciplinary action pending before or taken by the appropriate health care licensing authority in any other jurisdiction since the most recent application for biennial registration, whether or not licensed to practice in that other jurisdiction.

(4) Disclose on the application pending criminal charges and any finding or verdict of guilt, admission of guilt, plea of nolo contendere, probation without verdict, disposition instead of trial or accelerated rehabilitative disposition in any criminal matter since the most recent application for biennial registration.

(5) Verify on the application that the licensed genetic counselor has complied with the continuing education requirements mandated by section 13.4(j) of the act (63 P. S. § 422.13d(j)) during the biennial period immediately preceding the period for which registration is sought in accordance with § 18.709 (relating to continuing education for licensed genetic counselors).

(6) Verify on the application that, if practicing as a genetic counselor in this Commonwealth, the licensee maintains professional liability insurance coverage in accordance with section 13.4(k) of the act.

§ 18.707. Inactive status of genetic counselor license; reactivation of inactive license.

(a) A genetic counselor license will become inactive upon either of the following:

(1) The licensee requests in writing that the Board place the license on inactive status. Written confirmation of inactive status will be forwarded to the licensee.

(2) The licensee fails to register the license by the expiration of the biennial registration period, that is, by December 31 of each even-numbered year.

(b) A genetic counselor whose license has become inactive may not practice as a genetic counselor in this Commonwealth until the license has been reactivated.

(c) To reactivate an inactive license, the licensee shall apply on forms made available by the Board. The licensee shall:

(1) Include the documentation required under § 18.709 (relating to continuing education for licensed genetic counselors) for the immediately preceding biennium. Unless waived by the Board under section 13.4(i)(3) of the act (63 P. S. § 422.13d(i)(3)), the Board will not reactivate a license until the required continuing education for the preceding biennium has been successfully completed.

(2) Pay the current biennial registration fee and the reactivation application fee specified in § 16.13(m) (relating to licensure, certification, examination and registration fees).

(3) Except as provided in subsection (d), verify that the licensee did not practice as a genetic counselor in this Commonwealth while the license was inactive.

(d) A licensee whose license has been inactive for 4 years or more shall demonstrate continued competence by showing current certification by the ABGC.

(e) A licensee who has practiced with an inactive license, and who cannot make the verification required under subsection (c)(3), shall also pay the late fees required under section 225 of the Bureau of Professional and Occupational Affairs Fee Act (63 P. S. § 1401-225) as more fully set forth in this subsection. Payment of a late fee does not preclude the Board from taking disciplinary action for practicing as a genetic counselor without a currently registered license.

(1) A licensee whose license was active at the end of the immediately preceding biennial registration period and who practiced after the license became inactive shall pay a late fee of \$5 for each month or part of a month from the beginning of the current biennium until the date the reactivation application is filed.

(2) A licensee whose license has been inactive since before the beginning of the current biennium shall pay the biennial registration fee for each biennial registration period during which the licensee practiced and shall pay a late fee of \$5 for each month or part of a month from the first date the licensee practiced as a genetic counselor in this Commonwealth after the license became inactive until the date the reactivation application is filed.

§ 18.708. Disciplinary action for applicants and licensed genetic counselors.

(a) A licensed genetic counselor, graduate genetic counselor or applicant for a license is subject to refusal of license or disciplinary action under sections 22 and 41 of the act (63 P. S. §§ 422.22 and 422.41). Following a final determination subject to the right of notice, hearing and adjudication and the right of appeal therefrom in accord-

ance with 2 Pa.C.S. §§ 501—508 and 701—704 (relating to Administrative Agency Law), the Board may refuse licensure or impose any of the corrective actions of section 42 of the act (63 P. S. § 422.42).

(b) Unprofessional conduct includes:

(1) Engaging in conduct prohibited under § 16.110 (relating to sexual misconduct).

(2) Performing an act in a health care profession in a fraudulent, incompetent or negligent manner.

(3) Violating a provision of the act or this subchapter setting a standard of professional conduct.

(4) Engaging in health care practice beyond the licensee's authority to practice.

(5) Representing oneself to be a physician or other health care practitioner whose profession the genetic counselor is not licensed to practice.

(6) Practicing while the licensee's ability to do so is impaired by alcohol, drugs, physical disability or mental instability.

(7) Revealing personally identifiable facts obtained as the result of a practitioner-patient relationship without the prior consent of the patient, except as authorized or required by statute or regulation.

(8) Failing to provide appropriate supervision to a genetic counselor student or a graduate genetic counselor practicing under a temporary provisional license. For purposes of this paragraph, appropriate supervision of a genetic counselor student means that the student is under the overall direction of the chair or director of the educational program. For purposes of this paragraph, appropriate supervision of a graduate genetic counselor means that the graduate genetic counselor is under the overall direction of the area supervisor and the supervisor conducts periodic review of the work of the graduate genetic counselor.

(9) Practicing outside the scope of practice for a genetic counselor as set forth in section 13.4(c) of the act (63 P. S. § 422.13d(c)).

(c) Immoral conduct includes:

(1) Misrepresenting or concealing a material fact in obtaining a license issued by the Board or renewal, reactivation or reinstatement thereof.

(2) Being convicted of a crime involving moral turpitude, dishonesty or corruption in the courts of the Commonwealth, the United States, another state, the District of Columbia, a territory of the United States or another country.

(3) Committing an act involving moral turpitude, dishonesty or corruption.

§ 18.709. Continuing education for licensed genetic counselors.

(a) *Credit hour requirements.* A licensed genetic counselor shall satisfy the following continuing education credit hour requirements:

(1) As a condition for biennial registration, a licensed genetic counselor shall complete at least 30 hours of continuing education applicable to the practice of genetic counseling. A licensed genetic counselor is not required to complete continuing education during the biennium in which the licensed genetic counselor was first licensed if licensure occurred within 3 years of completion of the degree.

(2) Except when reactivating an inactive license, when the Board has granted a waiver, or when ordered by the Board, continuing education credits may be used to satisfy the continuing education credit hour requirements only for the biennial period in which the credits were earned. No hour of continuing education may be used to satisfy the requirement of paragraph (1) for more than one biennium.

(3) A licensed genetic counselor may request a waiver of the continuing education credit hour requirements because of serious illness, military service or other demonstrated hardship by submitting a request for waiver with the supporting documentation to the Board at least 90 days prior to the end of the biennial registration period for which the waiver is sought. The Board may grant the waiver request in whole or in part and may extend the deadline by which the credit hour requirements shall be met.

(4) A licensed genetic counselor may be subject to disciplinary sanction as provided in section 41 of the act (63 P. S. § 422.41), including the suspension or revocation of the license, imposition of a civil penalty or other corrective measure as determined by the Board if the licensee either submits false information to the Board regarding completion of the continuing education credit hour requirements to complete biennial registration, or fails to complete the continuing education hour requirements and practices as a genetic counselor after the end of the biennial period.

(b) *Continuing education activities.* Credit for continuing education may be earned for activities approved by the ABGC or the NSGC.

(c) *Documentation of continuing education.* Continuing education shall be documented with a certificate of attendance or completion issued by the activity provider. The certificate must include the name of the course provider, the name and date of the course, the name of the

licensee, the number of credit hours based on a 50-minute hour and the category of continuing education, if applicable.

§ 18.710. Professional liability insurance coverage for licensed genetic counselors.

(a) A licensed genetic counselor shall maintain a level of professional liability insurance coverage in the minimum amount of \$1 million per occurrence or claims made as required under section 13.4(k) of the act (63 P. S. § 422.13d(k)).

(b) Proof of professional liability insurance coverage may include:

(1) A certificate of insurance or copy of the declaration page from the insurance policy setting forth the effective date, expiration date and dollar amounts of coverage.

(2) Evidence of a plan of self-insurance approved by the Insurance Commissioner of the Commonwealth under regulations of the Insurance Department in 31 Pa. Code Chapter 243 (relating to medical malpractice and health-related self-insurance plans).

(c) A license that was issued in reliance upon a letter from the applicant's insurance carrier indicating that the applicant will be covered against professional liability effective upon the issuance of the applicant's license as permitted under section 13.4(k)(2) of the act will become inactive as a matter of law 30 days after the date of issuance of the license if the licensee has not provided proof of professional liability insurance coverage and will remain inactive until the licensee provides proof of insurance coverage.

(d) A licensee who does not have professional liability insurance coverage as required under section 13.4(k) of the act may not practice as a genetic counselor in this Commonwealth.

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