

The Office of Administrative Law Judge Operating Procedures Manual

INTRODUCTION

The Office of Administrative Law Judge Operating Procedures Manual is intended to assist OALJ employees in determining procedures to be used in the review, handling and processing of assigned cases. It is not dispositive of procedures used by the OALJ or the Commission in the handling of all cases. Reference should always be made to the Public Utility Code, the Pennsylvania Code, and the Commission's Procedures Manual in as much as many of the OALJ procedures are governed by these sources. In addition, the OALJ Scheduling Unit maintains an extensive Deskbook for the scheduling of cases and most OALJ support staff maintain desk manuals outlining the processes those employees use in the performance of their job functions.

If any employee has questions about procedure after reviewing the OALJ Procedures Manual, the Public Utility Code, the Pennsylvania Code and/or the Commission's Procedures Manual, the Chief Administrative Law Judge, the Legal Division Supervisor, or the Support Staff, may be contacted for clarification.

**Chapter 1. ORGANIZATION OF THE OFFICE OF ADMINISTRATIVE
LAW JUDGE**

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Section 1.1 - Purpose

The Office of Administrative Law Judge (OALJ) provides fair, prompt conflict resolution whether by formal on-the-record proceedings or the by the use of alternative dispute resolution techniques. The Chief Administrative Law Judge (CALJ) is the bureau director who is responsible for the day-to-day operations of the Office and who is responsible for the assignments of cases to Administrative Law Judges, mediators, and Office support staff. ALJs preside at formal hearings in contested on-the-record matters before the Public Utility Commission (PUC), gather all the facts relating to individual cases and prepare written decisions outlining the issues of the case and recommending formal resolution of the dispute. The use of alternative dispute resolution techniques is designed to avoid expensive and time-consuming formal litigation and to facilitate the amicable resolution of the dispute between parties. The OALJ assigns mediators (or, in certain specialized cases, arbitrators) if required or if such an assignment might lead to resolution of a case, thereby avoiding undue delay and costs to the parties.

Section 1.2 - Administrative Law Judges

Administrative Law Judges are responsible for the fair, prompt conflict resolution of formal on-the-record contested proceedings assigned to them. Judges are under the supervision of the Chief Administrative Law Judge but are required to work with considerable independence upon receipt of an assigned case. They are responsible for determining and following a schedule for the proceedings assigned to them, ruling on motions, presiding over the hearing process, encouraging settlements, controlling and ensuring a well-developed record, and preparing Initial or Recommended Decisions to assist the Commission in meeting its statutory responsibilities under the Public Utility Code. ALJs are located in Harrisburg, Philadelphia, Pittsburgh and Scranton. Judges must comply with the Commission's Code of Ethics as well as with other relevant Codes of Conduct.

Section 1.3 - Mediators and Arbitrators

The OALJ arranges to mediate disputes between parties as an alternative to time consuming and expensive litigation. The OALJ employs full-time trained mediators to facilitate the mediation and possible settlement of proceedings which would otherwise be assigned to an Administrative Law Judge for litigation. Mediation may be available to parties before, or after, a case is assigned to an ALJ. The CALJ assigns cases to the OALJ mediation staff for possible resolution. If not resolved through mediation, the proceeding will be reassigned to a Judge for an on-the-record hearing. In telephone interconnection proceedings, arbitration can be requested. Upon request, the CALJ assigns a qualified OALJ employee (usually a Judge) to the case as an arbitrator.

Section 1.4 - Office Managers

In each regional office (Harrisburg, Philadelphia, Pittsburgh and Scranton) an Administrative Law Judge serves as Office Manager to coordinate the general office operations and to ensure support staff compliance with

applicable Commission and Commonwealth personnel policies.

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Section 1.5 - Legal Division

This Division provides general legal and administrative support to ALJs and staff regarding all areas of the Commission's jurisdiction and its procedures. This includes providing legal assistance to ALJs, providing general legal and administrative support for the CALJ and implementing Commission or Bureau-mandated policy initiatives. Legal Division staff may also provide mediation or arbitration services. This general support can be augmented by technical support from other OALJ technical support staff or from the Bureau of Fixed Utility Services or from other Commission Bureaus. In the absence of the CALJ, the Legal Division Supervisor is authorized to act in place of the CALJ, as directed. In the absence of the CALJ, the Legal Division Supervisor should be consulted, as necessary.

Section 1.6 - Transportation Technical Support

OALJ employees provide assistance to ALJs in cases involving railroad-highway crossings or the transportation of persons and/or property for compensation. Technical support staff also provides administrative assistance to the OALJ and the CALJ. The transportation technical support is supervised by the Legal Division Supervisor.

Section 1.7 - Scheduling Staff

The primary function of the OALJ Scheduling Staff is, upon Commission case assignment, to schedule all hearings or informal conferences presided over by ALJs, mediators and/or arbitrators. The Scheduling Staff notifies parties of hearing dates, arranges for hearing rooms within the Commonwealth, assigns ALJs, mediators or arbitrators by locale and expertise, and assigns court reporting firms to take notes of testimony in formal on-

the-record hearings and prehearing conferences. The Scheduling Staff works closely with the CALJ and with the ALJ assigned to the case in scheduling hearings, prepares the OALJ weekly calendar and distributes the calendar to the Commission. The Supervisor of the Scheduling Staff also handles the court reporter contract and any accommodation requests made under the ADA.

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Section 1.8 - ALJ Secretaries

ALJ secretaries provide support and assistance to ALJs in the preparation of decisions and the control of caseloads by typing, taking dictation, filing, making overnight accommodation and transportation arrangements, tracking assignments, and performing general administrative tasks as directed.

Section 1.9 - Administrative Staff

The primary purpose of the administrative staff is to provide support to the CALJ in the general administration of the OALJ. The administrative staff maintains records of decision due dates; receives and logs decisions; monitors internal review; prepares decisions for issuance and placement on the Public Meeting Agenda for Commission review; compiles time reporting for assessment purposes; controls entry of OALJ computer data; prepares various monthly, quarterly and annual reports; and works with the Scheduling Staff in maintaining proper case flow and control.

Section 1.10 - Organization Chart

See Attachment A located at the end of this Manual.

CHAPTER 2. CASE PRIORITY LISTING

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- 2.4 - Time Limited Commission-Ordered Proceedings
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- 2.7 - 1307(f) Gas Cases
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- 2.11 - Complaints
- 2.12 - Applications
- 2.13 - Billing Dispute Cases
- 2.14 - Petitions
- 2.15 - Motor Carrier Complaints
- 2.16 - Fuel Adjustment Statements and Miscellaneous Dockets

Section 2.1 - Generally

This chapter lists OALJ cases in order of relative priority based on the assumed importance to

Commonwealth, the Commission or the individuals involved or affected. This list is a generalization intended to assist OALJ staff resolve competing demands on their time and to determine when work is to be performed. Mediation is always preferred to litigation in handling case assignments.

Section 2.2 - Emergency Relief

These cases include requests for emergency relief, emergency orders regarding abandonment or failure of service, cases requiring immediate action to protect the health and safety of the public, or cases involving irreparable injury to the parties or to the public.

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Section 2.3 - Rate Cases

Cases involving rate increases and a utility's rate structure affect substantial numbers of people and usually have statutory deadlines.

Section 2.4 - Time Limited Commission-Ordered Proceedings

Cases the Commission identifies as urgent either due to internal Commission policies or statutorily-mandated deadlines.

Section 2.5 - Telecommunication Arbitrations

The Federal Telecommunications Act has imposed tight time deadlines on several types of telecommunication proceedings.

Section 2.6 - Termination Cases

These are service termination cases that were mediated and informally decided by the Bureau of Consumer Services. In these cases, the customer could face the loss of necessary utility service.

Section 2.7 - 1307(f) Cases

These cases include requests for adjustments to the cost of gas filed by gas utilities with annual revenues over \$40 million. These cases are subject to a statutory deadline.

Section 2.8 - Applications to Abandon Service

These cases can include a group of customers facing the potential loss of utility service.

Section 2.9 - Rail Complaints

These cases involve safety issues and problems with the public's access to work and community and could include possible public safety issues.

Section 2.10 - Investigations

General Commission investigation dockets which do not

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have a Commission mandated deadline. These cases encompass a wide variety of issues, including some rail proceedings.

Section 2.11 - Complaints

These cases involve a broad variety of issues. Complaints are filed by a Commission prosecutorial bureau, a private party, or a utility. This category includes cases arising from the Philadelphia Taxicab Medallion Program.

Section 2.12 - Applications

These cases can include the taking of private land for a utility's use, the siting of a transmission facility, extensions of authority, the authority to provide rail or some types of motor carrier service (household goods movers, limousines, taxicabs) to the public.

Section 2.13 - Billing Dispute Cases

These cases are billing disputes mediated and informally decided in the Bureau of Consumer Services but presenting no immediate threat of service termination.

Section 2.14 - Petitions

These cases include a wide variety of requests for relief.

Section 2.15 - Motor Carrier Complaints

Complaints usually instituted by the Bureau of Transportation of Safety or by a private party alleging illegal or unsafe motor carrier service.

Section 2.16 - Fuel Adjustment Statements and Miscellaneous Dockets

These cases include assorted issues. Cases involving statutory time limits, which involve a large number of persons, safety or other important public interest issues are given priority.

CHAPTER 3. OALJ SCHEDULING/ASSIGNMENT PROCEDURES

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- 3.1 - Scheduling/Assignment Procedures
- 3.2 - Postponements, Cancellations and Continuances
- 3.3 - Scheduling Additional Hearings
- 3.4 - Court Reporters/Transcripts
- 3.5 - Appearance Sheets
- 3.6 - Consolidation of Proceedings
- 3.7 - Scheduling Office Files
- 3.8 - Scheduling of Specific Types of Cases
- 3.9 - Hearings For The Public
- 3.10 - Preliminary Motions
- 3.11 - Referral of Uncontested Proceedings to
Another Bureau

Section 3.1 - Scheduling/Assignment Procedures

A. Generally - detailed scheduling procedures are to be found in the OALJ Scheduling Office Deskbook maintained by the Scheduling Staff Supervisor. Most OALJ assignments are reviewed for mediation upon receipt by the Bureau. If a case qualifies for mediation, the case will normally be handled by the Mediation Unit before assignment to an ALJ (if not otherwise resolved).

B. Assignment to ALJ - a case is officially assigned to an ALJ when the initial hearing/prehearing conference hearing notice is generated by the Scheduling Staff or upon written notification by the CALJ. The assigned ALJ is then responsible for handling all aspects of the assigned case, except for initial continuance requests. See Section 3.2 below.

C. Location of Hearings - where possible, hearings should be scheduled in the state office building where the assigned ALJ is located. Hearing are in-person or by telephone, depending on the type of case. When cases involve PUC non-OALJ staff, the assigned ALJ should travel to Harrisburg, if the matter cannot be handled telephonically. This saves the Commission the cost of sending PUC staff members to an out-of-town hearing.

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In some cases, travel costs for other bureaus can be substantial.

D. Public Input Hearings - public input hearings are scheduled in the service territory of the utility where sufficient public interest has been evidenced through complaints, letters or the request of parties. The CALJ should be contacted for the appropriate disposition of a request for a public input hearing. See 66 Pa. C.S. Section 69.321, Section 405 of the Commission's Procedures Manual and Section 3.9 below.

E. Exceptions to Scheduling Hearings in State Office Buildings - if, after an initial hearing or hearing on remand, the assigned ALJ feels an additional evidentiary hearing(s) should be scheduled at a site outside of a state office building, the CALJ should be

consulted before the ALJ commits to the holding of a hearing. This is required because of policy and funding considerations.

Section 3.2 - Postponements, Cancellations, and Continuances

A. Normally, the assigned ALJ or the Scheduling Unit will determine whether to grant a request for the postponement, continuance or cancellation of a hearing or a prehearing conference.

(1) Requests Involving Initial Prehearing Conferences/Initial Hearings - Routine requests concerning initial prehearing conferences or initial hearings are normally handled by the Scheduling Unit; however, the assigned ALJ should be consulted by the Scheduling Unit in difficult or unusual situations. If an ALJ rules on a request concerning an initial hearing or prehearing conference, even if the result is just a conversion of a hearing into a prehearing conference, the ALJ should inform the Scheduling Unit immediately.

(2) Requests Involving Subsequent Prehearing Conferences/Hearings - When requests are made after the initial hearing or initial prehearing conference has been held, the assigned ALJ rules on those requests, and promptly notifies the Scheduling Unit of the ruling. As necessary, in the absence of the assigned ALJ, the Chief ALJ and the Legal Division Supervisor can aid the Scheduling Unit in making a decision concerning a request.

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B. When granted - requests for postponement, cancellation, or continuance may be granted for good cause shown on a case-by-case basis. The agreement of all parties is helpful but is not dispositive of the decision to grant or deny the request. Actions granting or denying such requests should be done in writing and placed in the Commission files. To aid employees in making a decision to continue a case, please see Attachment B located at the end of this Manual.

C. Notification - if the CALJ or a designated employee grants a continuance, the parties, the court reporter and the presiding ALJ are notified immediately. If the presiding officer grants a continuance, the ALJ notifies the parties and the Scheduling Staff immediately. This avoids unnecessary cost, confusion, and travel by the parties, by the court reporter, and by the OALJ. Written confirmation of the grant of the continuance must be issued as noted in Section B above. If the hearing cancellation occurs less than 6 working days before the scheduled hearing, all parties, the court reporter and the presiding judge should be notified by telephone as well as by hearing notice.

Section 3.3 - Scheduling Additional Hearings

A. Generally - when a ALJ decides that additional hearings need to be scheduled, the ALJ must contact the Scheduling Staff to check on the availability of a hearing room before the parties are given specific hearing dates. Rooms might not be available on the dates selected. Do not confirm hearing dates with parties until you have contacted the Scheduling Staff.

Section 3.4 - Court Reporters/Transcripts

A. Court reporters are independent contractors which the Commission hires to transcribe and prepare transcripts. A contract governs the assignment, attendance, and payment of court reporters. The Scheduling Staff supervisor maintains a copy of the court reporter contract, and any questions regarding the work done by a court reporter should be directed to the Scheduling Staff supervisor. Legal interpretation of the contract is made in the first instance by the OALJ Legal Division.

B. The Scheduling Staff is responsible for the assignment of court reporters to hearings. No court reporter is assigned to mediations or to the initial prehearing conference held in a rate case in which the parties have agreed to use mediation.

Section 3.5 - Appearance Sheets

A. Generally - all appearance sheets must be completed and returned to the Scheduling Staff regardless of whether the hearing is held. Failure to file an appearance sheet, or failure to properly complete an appearance sheet, results in an inaccurate case list and may preclude the Commission's Docketing Section from closing a case and/or removing it from the assigned ALJ's case list. Information on the appearance sheet must be legible and any directions to the staff must be written clearly.

B. Cancellation of Hearing - the ALJ indicates this on the appearance sheet. When placed in the Commission files, the appearance sheet is the official hearing cancellation notice.

C. Failure of Parties to Appear - the ALJ indicates this on the appearance sheet. When placed in the Commission files, the appearance sheet is the official hearing cancellation notice. Failure to appear may be considered as grounds for dismissal.

D. Cancellation of Some Multiple Hearing Dates - an ALJ canceling the second, third, or fourth day of multiple hearings must note this on the appearance sheet and notifies the Scheduling Staff directly. Failure to do so can result in the Scheduling Staff failing to cancel the court reporter for the canceled hearings. This results in unnecessary expense to the Commission and can prevent the Commission's Docketing Section from closing the case. If the case cannot be closed by the Docketing Section, the case will be carried on the open, active case list of the assigned ALJ.

E. Close of Record - the close of record section of the Appearance Sheet should be completed. If the record is to be held open, that is to be noted and, when the record is finally closed, that should be memorialized by Interim Order.

F. Mediation - mediators file a Notice of Attendance form with the Commission. This form is similar to the ALJ appearance sheet but its only function is for internal OALJ and Commission case tracking and to record the mediation participants. It is not the parties of record list should the proceeding become a contested on-the-record proceeding assigned to an ALJ.

Section 3.6 - Consolidation of Proceedings

Requests for consolidation of two or more proceedings are submitted to the CALJ for determination. Where the CALJ assigns two or more cases to the same ALJ without a formal consolidation order, the presiding ALJ is authorized to issue a consolidation order without consulting the CALJ.

Section 3.7 - Scheduling Staff Files

Scheduling files should not be removed from the Scheduling office without notifying a scheduler or the Scheduling Staff supervisor. If possible, information should be obtained without removing the file.

Section 3.8 - Scheduling of Specific Types of Cases

A. Generally - the Scheduling Deskbook addresses the process of scheduling cases in detail. The following is an overview of some of the different types of cases which are scheduled.

B. Category One Rate Cases - these cases, which involve utility tariff filings of over \$1 million, are scheduled under the Commission's Policy Statement at 52 Pa. Code Sections 69.401-406. The CALJ ordinarily assigns a hearing judge and a settlement judge. Settlement conferences are scheduled by the Scheduling Staff, but no court reporter is assigned to the settlement conference and the settlement conference is not transcribed.

C. Rate Cases Involving Utility Tariff Filings of \$1 million or less - ordinarily, these cases are assigned to an ALJ and to a mediator (where the parties have agreed to use mediation). The ALJ and the mediator attend the first prehearing conference but no court reporter is assigned and the prehearing conference is not transcribed.

The ALJ sets a tentative hearing schedule and then leaves the prehearing conference. The mediator will then conduct the initial mediation session. The tentative hearing schedule is then memorialized in a prehearing conference order and served on all parties by the ALJ.

D. 1307(f) Rate Cases - these cases, which involve gas utilities with annual revenues of over \$40 million where the utility is requesting an adjustment to the cost of gas, are filed pursuant to a yearly schedule published in the Pa. Bulletin yearly (the publication usually takes place in late summer or early fall). These cases are not suspended at Public Meeting; the first prehearing conference is scheduled and held within 10 days of the tariff filing.

E. Proceedings with Commission-mandated Deadlines - the CALJ (or in his absence the Legal Division Supervisor) reviews the order establishing the deadlines, assigns the ALJ, and provides for the initial hearing or initial prehearing conference date.

F. Act 294 Proceedings (including Bureau-instituted motor carrier complaints) - these cases should be scheduled within 90 days of receipt of an answer (or assignment, in the case of a Bureau-instituted complaint). If no answer is filed, these cases are assigned as if an answer was timely filed.

G. Medallion Cases - are scheduled within 15 days of assignment from the Bureau of Transportation and Safety.

H. Special Agent Proceedings - are scheduled within 25 days of receipt of an answer. If no answer is filed, these cases are assigned as if an answer was timely filed.

I. Telecommunications Arbitrations - the initial arbitration conference is scheduled and held within 10 days of receipt of a request for arbitration.

J. Mediations (except Rate Cases and 1307(f) Proceeding; See Section C and D above) - after a case is identified for mediation and the parties consent is

obtained, a mediation conference notice is mailed to the parties. Normally, no ALJ is assigned to the case and no

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court reporter is assigned since mediations are not transcribed and are confidential in nature.

Section 3.9 - Hearings For The Public

A. Public Input Hearings -

1. Generally - public input hearings are used primarily in rate cases when the ALJ determines that sufficient public interest exists to schedule a hearing in the service territory of the utility. Public interest can be ascertained by requests of the parties, letters, telephone calls from customers and/or their elected representatives, or requests from Commissioner's that a public input hearing be held.

2. How scheduled - after the ALJ determines that sufficient public interest exists for a Public Input, and after consultation with the CALJ (or the Legal Division Supervisor in the CALJ's absence), proposed dates should be discussed with the parties. Those dates should be checked with the Scheduling Staff for conflicts and should not be finalized until after: (a) the Scheduling Staff receives Commissioner approval of the proposed dates and (b) the Scheduling Staff obtains a site to hold the Public Input. Although suggestions from parties are helpful for site selection, the OALJ must select the site because of costs, disability accessibility, location of the site, and the size of the room.

3. Notice - after the time, date and location of the hearing is established, ALJs will routinely and consistently direct utilities to publish display advertisements in newspapers of general circulation announcing the date, time and location of the public input hearing. Published notice must occur approximately 2 to 3 weeks before the hearing date.

4. Change of Hearing Date - public input hearings should not be changed after notice is given to

the public absent the most compelling of circumstances. Whenever possible, the CALJ should be consulted in advance.

5. See also 52 Pa. Code Sections 69.321 and Section 69.405(d) (Settlement Guidelines and Procedures for Major Rate Cases--Statement of Policy) and Section 405 of the Commission's Procedures Manual.

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B. Public Hearings - Administrative Law Judges can schedule public evidentiary hearings in local service territories (for example, an EAS proceeding might have a local evidentiary hearing). The CALJ (or the Legal Division Supervisor in the absence of the CALJ) must be consulted before one is scheduled but no Commissioner approval is needed in advance since these are evidentiary hearings. The Scheduling Staff should obtain a site for this hearing (following the procedure outlined at 2. above except the necessity of obtaining Commissioner approval).

C. Hearings On Settlement Petitions - See Chapter 7.

Section 3.10 - Preliminary Motions

The CALJ assigns selected preliminary motions to Harrisburg ALJ's. The assignment is logged by the Executive Secretary and an assignment letter is prepared by the CALJ and mailed to the parties. A Preliminary Motion must be completed within regulatory deadlines, unless good cause exists to extend the deadline. Assignment and ruling of a preliminary motion might be delayed if undergoing mediation. If the case has been assigned to a presiding hearing ALJ before assignment of the Motion, the presiding hearing ALJ disposes of the Motion.

Section 3.11 - Referral Of Uncontested Proceeding to Another Bureau

A. Proceeding not yet assigned to a Presiding Officer - when a proceeding has not yet been assigned to an ALJ and the Scheduling Unit has been informed that the case is no longer contested, the Scheduler should send a memo to the Secretary's Bureau, with a copy sent directly

to the affected Bureau, that the case should be reassigned to that Bureau.

B. After proceeding has been assigned to an ALJ - when a proceeding becomes uncontested and the presiding ALJ requests the case be reassigned to another Bureau, the Scheduler should proceed as in A above. See also Section 7.6 Referrals to Other Bureaus.

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CHAPTER 4. OALJ HEARING PROCEDURES

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- 4.1 - Generally
- 4.2 - Record Development
- 4.3 - Parties
- 4.4 - Interim Orders
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- 4.7 - Briefing Procedures
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- 4.13 - Interim Emergency Relief
- 4.14 - Consolidation
- 4.15 - Close of the Record
- 4.16 - Post-Hearing Pleadings
- 4.17 - Compliance with Act 294 90 Day Requirements

Section 4.1 Generally

Although each hearing may present a different set of facts and individuals, the common procedural issues are handled in a consistent and systemic fashion.

Section 4.2 Record Development

A. Generally - ALJs build complete records in cases over which they preside to ensure that all material issues are raised and discussed. ALJs decide issues, subject to court and Commission policy and precedent. All material issues should be discussed by the ALJ so that when the decision reaches the Commission there is an adequate record upon which it can base its review and then act. ALJs cite appropriate statutes, regulations, and policies.

B. Ability to Pay Proceedings - the record and

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Initial Decision should include information on the following specific issues:

1. The record must contain income and expenses and the ALJ must rule on the credibility of financial status when no documentation is provided;

2. The record must contain the amount of the arrearage at the time of the hearing, the specifics of the payment arrangement under appeal and whether there has been compliance with the BCS decision;

3. If the BCS decision has not been complied with, the record should contain an explanation as to why there has not been compliance.

C. Motor Carrier Cases - if an ALJ denies a motor carrier application, all the evidentiary criteria (contained in 52 Pa. Code 41.14) must be developed in the record and discussed in the Initial Decision. For example, if the ALJ determines that an application should be denied because the applicant is not fit, need and competition must be discussed in the Initial Decision.

Section 4.3 - Parties

A. Generally - see the Commission's procedural regulations for specific details. Note that corporations, partnerships, and/or political subdivisions must be represented by counsel.

B. Pro Se Participants - individuals representing themselves create special problems for ALJs regarding the development of a full and complete record. An ALJ may allow them to retain counsel. Unrepresented participants are allowed to exercise their rights within the limits of the Commission's processes, but must meet the requirements of notice, due process, and orderly conduct. ALJs should explain the process and the ALJs role to unrepresented participants, including the burden of proof, the right to cross examine, etc. ALJs often ask pro se participants questions to develop the record but should make it clear on the record that this is the purpose of the

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questions and that the ALJ is not representing the participant. In cases such as ability to pay complaints, ALJs develop checklists of issues to address.

Section 4.4 - Interim Orders

When an ALJ requires the submission of information, makes major rulings on interim matters, closes or reopens the record, the ALJ prepares and issues an interim order and serves the order on the parties. The ALJ submits the original and two copies to the CALJ; the original is sent to docketing, one copy goes to the Office Support Secretary for input on OALJ mainframe fields, and one copy is reviewed and sent to the Scheduling Staff.

Section 4.5 - Subpoenas

A. Generally - the ALJ considers a party's written (oral if at hearing) application/petition for issuance of a subpoena for the attendance of witnesses or for the production of documentary evidence to determine the relevancy and materiality of the evidence sought. See 52 Pa. Code Section 5.421.

B. Issuance - the ALJ signs and dates the original subpoena and mails it to the requesting party for completion within the scope of the application/petition and for service of a copy by that party.

C. Service of Application/Petition - the requesting party serves a copy of the application/petition on the adverse party and includes a notice that any answer to the application/petition should be filed within 10 days of service. The ALJ includes sufficient time for an answer before issuing the subpoena unless the adverse party expressly acquiesces in the application/petition and waives the 10 day requirement.

D. Return and Filing - when service of a copy of the subpoena has been effected, the Affidavit of Service is completed by the process server, the original returned to the Secretary's Bureau for filing in the original Commission file or to the ALJ if the judge so directs. The ALJ must submit the original to the official Commission files.

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Section 4.6 - Interlocutory Appeals/Certified Questions

A. Request for Commission Review of a Material Question - such requests are governed by 52 Pa. Code Section 5.301 et seq. The Commission does not permit interlocutory review except upon petition alleging extraordinary circumstances. If a party wishes interlocutory review of a material question, the ALJ takes no action. The party must file a petition with the Secretary of the Commission. Rulings of ALJs on discovery issues are not subject to interlocutory appeal absent certification from the ALJ.

B. Certification of a Material Question Submitted by an ALJ - 66 Pa. C.S. Section 331(e) permits the presiding ALJ to certify a material question to the Commission if the ALJ finds that it is necessary to do so to prevent substantial prejudice to any party or to expedite the conduct of the proceeding. Certification is done in unusual situations only.

C. Discovery - To certify a discovery issue, the parties must petition the ALJ within 3 days of the discovery ruling. Within 7 days of the request, the parties may submit a brief to the ALJ addressing the merits of the request and whether a stay of the proceedings is necessary. Within 3 days after briefs are filed, the ALJ will make a decision in writing or orally on the record. If the petition for certification is not withdrawn, the ALJ has 4 days after ruling to deliver the following to the Secretary of the Commission: (1) an order granting certification and the certified question; (2) rulings on the certified question; (3) extracts of the record (if available) that will assist the Commission in reaching a decision. See 52 Pa. Code Section 5.304.

D. Denial of Certification - the ALJ denies certification by interim order.

E. Service of the Interim Order - the ALJ serves copies of the interim order on the parties, submits the original and two copies to the CALJ, serves an additional copy to the Secretary of the Commission and sends one copy to the OALJ Legal Division Supervisor.

Section 4.7 - Briefing Procedures

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Each ALJ is responsible for sending out a briefing schedule to all parties, usually by interim order which sets forth the briefing process and timing. See 52 Pa. Code Sections 5.501-5.502. See also Chapter 5 below.

Section 4.8 - Intervention

When an ALJ is presented with a petition to intervene in a proceeding, the ALJ grants intervenor status by issuing an Interim Order and denies it by Initial or Recommended Decision. The ALJ issuing a Recommended/Initial Decision who wants to modify the 20/10 day Exception/Reply Exception period to accommodate a hearing schedule should contact the OALJ Legal Division Supervisor or the CALJ.

Section 4.9 - Protests

A. Generally - protests filed in application proceedings (fixed utility or motor carrier) create a contested proceeding which the Secretary assigns to the OALJ.

B. Protests Withdrawn Before Being Assigned to an ALJ - the Scheduling Staff prepares memorandums to the Secretary's Bureau to have the case reassigned to the appropriate technical bureau.

C. Protests Withdrawn After Being Assigned to an ALJ -

1. If all protest(s) are withdrawn before the hearing is convened, the ALJ notifies the Scheduling Unit by memorandum that the case has been withdrawn and that the Scheduling Staff should have the case reassigned to the appropriate technical bureau.

2. If all protest(s) are withdrawn after the hearing is convened, the ALJ should issue an Interim Order assigning the unprotested application to the appropriate technical bureau or the ALJ may take evidence and prepare a Decision.

4.10 - Late-Filed Protests

An ALJ receiving a late-filed protest follows the same

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process used for petitions to intervene. The legal standard to be used in dealing with late-filed protests is contained in Re: S.T.S. Motor Freight, Inc., 54 Pa. PUC 343 (1980). See Section 4.8 above.

4.11 - Depositions

ALJs issue a brief Interim Order granting an application for depositions, attaching it to the application and signed Addendum and serves it on the parties.

4.12 - Withdrawal of Pleadings/Certification of Satisfaction

A. Generally - withdrawal of pleadings is governed by either 52 Pa. Code Section 5.24 or Section 5.94. The process outlined below is to be used when the withdrawn pleading results in the termination of the contested proceeding.

B. Process -

1. Written Request for Withdrawal - if an ALJ receives a written request to withdraw a pleading (or a written certification of satisfaction) which would terminate the proceeding (except for rate cases - see Section D below), no participant objects, and the ALJ determines that the withdrawal is in the public interest, a cover memo is prepared to the Scheduling Staff, the written withdrawal is attached, and both documents are transmitted to the Scheduling Staff for processing.

2. Oral Request for Withdrawal - if a request to withdraw is made orally at hearing, the ALJ should attach a copy of the transcript page to the cover memo and transmit both documents to the Scheduling Staff. If there was no transcript or a transcript has been generated but there are reasons to expedite the withdrawal, note this fact on the memo transmitted to the Scheduling Staff with directions to have the case closed administratively.

3. Non-Administrative Handling of Withdrawal - if deemed necessary and/or appropriate, the ALJ prepares an Initial/Recommended Decision approving the withdrawal. The Scheduling Staff should be advised immediately that the ALJ will be preparing and issuing a Decision.

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4. Denial of Request - the ALJ issues an Interim Order denying the withdrawal and immediately informs the Scheduling Staff.

D. Withdrawal of Rate (Tariff) Filings - the Commission has determined that a tariff filing is not a pleading as defined in the Procedural Rules and cannot be

withdrawn administratively. A Recommended Decision must be prepared by the ALJ.

Section 4.13 - Interim Emergency Relief

A. Generally - these cases are handled on an expedited basis under 52 Pa. Code Sections 3.6 - 3.11.

B. Granting or Denying - the ALJ issues an Interim Order and certifies the grant or denial of the emergency relief to the Commission. See Section 4.6 B. above.

Section 4.14 - Consolidation

See Section 3.6 above.

Section 4.15 - Close of the Record

A. Generally - the ALJ must officially close the record in every case assigned for hearing. This is done at the close of the hearing, upon receipt of late-filed exhibits, upon receipt of the transcript, or upon receipt of briefs. This must be done by notation on the appearance sheet or by issuance of an Interim Order stating the specific date the record was closed.

B. No Late Filed Exhibits or Briefs - if no late filed exhibits or briefs are to be filed, the presiding ALJ indicates a record close date on the appearance sheet or issues an Interim Order closing the record. The record close date must be indicated clearly and should be no later than thirty days after the last hearing (to provide time to receive the transcript).

C. Late Filed Exhibits and/or Briefs - immediately upon receipt of the late filed exhibit or the reply brief(s), the presiding ALJ issues an order closing the record, as described in B above.

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Section 4.16 - Post-Hearing Pleadings

A. Before Issuing an Initial or Recommended Decision - if a pleading is received before the Secretary's Bureau issues the Initial or Recommended

Decision, the ALJ immediately informs the Case Control Officer and either the Legal Division Supervisor or the CALJ. Service of the Decision can be delayed so that the ALJ can rule on the pleading, if necessary or appropriate.

B. After Issuing and Initial or Recommended Decision - if a pleading is received after the Secretary's Bureau issues the Initial or Recommended Decision, the ALJ can no longer act on the pleading. The ALJ informs the CALJ or Legal Division Supervisor of the pleading for possible referral to OSA or another Bureau.

Section 4.17 - Compliance with Act 294 90 Day Requirements

A. Generally - Act 294 refers to legislation, enacted in 1978 (and codified at Chapter 3 of the Public Utility Code), which established the OALJ. Act 294 also contains broad procedural rules for the OALJ and the Commission. Act 294 refers to all cases assigned to the OALJ except rate, rail crossing, or other cases as determined by the Commission.

B. Scheduling Procedures -

1. Assignment to the OALJ - a case is assigned to the OALJ when an answer to a complaint is filed or when a case is reassigned to the OALJ by another Bureau.

2. Assignment to an ALJ - a case should be assigned to an ALJ within 90 days after it is assigned to the OALJ. This 90 day scheduling period is waived in those cases undergoing mediation.

C. Issuance of an Initial Decision - under Act 294 the OALJ must issue an Initial Decision within 90 days of the close of the record unless the Commission, at Public Meeting, approves a request for an extension.

D. Extensions of Time - an ALJ not able to meet the 90 day deadline submits a written request for an extension

of time to the CALJ and the Case Control Officer at least 10 days before the 90 day deadline expires. If the request contains good cause, the CALJ will place the request on the Public Meeting agenda.

E. Interpretation of "Rate Determination" - all proceedings involving rates are "rate determinations" and, therefore, are not Act 294 proceedings, are not required to be referred to an ALJ and are not subject to the procedure set forth in Sections 332(g) and 332(h) of the Public Utility Code. If there is doubt as to the nature of the proceeding, the presiding officer is to make a judgment and caption the Decision accordingly regardless of how the proceeding was assigned to the ALJ. In such proceedings, e.g., complaints against existing rates, Commission and/or prosecutory bureau complaints, complaints against rate structure, the ALJ issues a Recommended Decision rather than an Initial Decision.

F. Rail Cases - rail crossing cases are not subject to Act 294 90 day time limitations, but are subject to internal deadlines established by the CALJ.

1. When Scheduled - rail cases are scheduled within 90 days of assignment to the OALJ.

2. Completion of Decision - a Recommended Decision must be completed and submitted for review within six months of the close of the record or the final hearing date.

G. See Also Section 9.3 Procedures on Remand - Deadlines.

H. To assist the ALJ in determining when Decisions are to be issued, a list of statutory and regulatory deadlines is attached as Attachment C located at the end of this Manual.

CHAPTER 5. BRIEFS

Section

- 5.1 - Establishing a Briefing Schedule
- 5.2 - Instructions and Tables for Rate Cases

Section 5.1 - Establishing a Briefing Schedule

A. Generally - the number and form of briefs should conform with the Commission's procedural rules at Chapter 5 of the Pa. Code. 52 Pa. Code Sections 5.501-5.502.

B. Act 294 Cases - if the presiding officer establishes a briefing schedule by written Interim Order, the ALJ serves the order on all parties indicating that the transcript has been received and briefs are due in a specified number of days or by a date certain. Having briefs submitted within a specified number of days "after the transcript is received" is inadequate. Some parties may not be aware of when the transcript is received and confusion will result in determining when briefs are actually due. The ALJ sends the original and two copies of the Interim Order to the CALJ. See Interim Orders at Section 4.4 above.

C. Non-Act 294 Cases - the presiding officer should include a briefing schedule in the schedule established at the initial prehearing conference when the case has a statutory time limit. This briefing schedule is contained in the Interim Prehearing Conference Order which the ALJ serves on all parties. The ALJ sends the original and two copies to the CALJ. If the schedule is subsequently modified, another Interim Order should issue.

D. Briefing Periods Noted on Appearance Sheet - if the presiding ALJ notes on the appearance sheet that briefs are to be filed, the appearance sheet should include a record close date and the due dates for briefs/reply briefs. If these dates are not noted on the appearance sheet, a Interim Order should be issued (see

B, above). The preferred approach is the issuance of an Interim Order containing the specific due dates.

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5.2 Instructions and Tables For Rate Cases

A. Generally - The OALJ has developed a standardized briefing format for general rate increase proceedings and the Commission has established special instructions for briefs and exceptions in major general rate increase proceedings. The special instructions include requirements concerning tables to be supplied with briefs. These instructions have been provided to all ALJs and are on file in the Harrisburg Office.

B. Procedure - the format requirements and special instructions should be communicated to the parties in each case, in writing. The importance of following these Commission requirements should be stressed to the parties and briefs should be policed to ensure compliance.

CHAPTER 6. DECISION PREPARATION

Section

- 6.1 - Generally
- 6.2 - Decision Nomenclature
- 6.3 - General Order of Format
- 6.4 - Consolidated Proceedings
- 6.5 - Describing Record Size/Record Close Date
- 6.6 - History and/or Summary of Proceeding
- 6.7 - Findings of Fact
- 6.8 - Ordering Paragraphs
- 6.9 - Deadlines in Initial Decisions
- 6.10 - Affirming Previous Orders
- 6.11 - Orders Involving Other Bureaus
- 6.12 - Complaints Involving F and Z Cases
- 6.13 - High Bill Complaints
- 6.14 - Future Actions in Ordering Paragraphs
- 6.15 - Bench Decision Preparation
- 6.16 - Civil Penalties
- 6.17 - Repayment Period for Underbilled Service
- 6.18 - Motor Carrier Decisions
- 6.19 - Listing of Statutory/Regulatory Deadlines for
Submission of Decisions
- 6.20 - Scope of Discussion in Decisions

6.1 Generally

A. Decisions should be written succinctly and with brevity wherever and whenever possible. Care should be taken to avoid unnecessary "padding" of Decisions by use of canned language contained in a computer database. Long, wordy Decisions are to be avoided by ALJs. Commission precedent should be followed, whenever possible. Where Commission policy is not being followed,

an explanation as to why the policy is not being followed must be included in the Decision.

6.2 Decision Nomenclature

A. Generally - the OALJ (through the Secretary's Bureau) issues two types of Decisions - Initial or Recommended. The distinction between the two types of

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Decisions is based upon language contained in Chapter 3 of the Public Utility Code.

B. Initial Decisions - these are issued in most of the cases handled by the OALJ. A decision in a case which does not involve a rail crossing, rates, or a case designated by the Commission as non-Act 294 proceeding, is labeled Initial Decision. An Initial Decision can become final by operation of law if the Commission does not act to review the Decision or if Exceptions are not filed.

C. Recommended Decisions - a decision in a case which involves rates, a complaint against rates, a railroad crossing case, or a case designated by the Commission as non-Act 294 proceeding (usually by a direction that the OALJ issue a Recommended Decision), is labeled Recommended Decision. A Recommended Decision cannot become final by operation of law and must be reviewed by the Commission at Public Meeting.

D. Bench Decisions - an immediate decision, often dictated to a court reporter immediately after the end of the last hearing, is labeled Initial Decision from the Bench or Recommended Decision from the Bench. Bench Decisions are essentially the same as an Initial or Recommended Decision and are issued from Harrisburg by the Secretary's Bureau. The ALJ reviews and proofreads these decisions as any others and revises or recasts them as appropriate. Note: the contract for court reporting services precludes the OALJ from having the court reporter revise the Bench Decision after delivery to the OALJ. Any corrections or revisions must be prepared by the ALJ's secretary. See Section 6.15 below for additional information.

6.3 General Order of Decision Format

A. Elements for Decisions - the following headings are appropriate for most Initial and Recommended Decisions. Complex decisions may require different treatment.

1. Caption
2. Table of Contents - if the decision is over 50 pages.

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3. History and/or Summary of the Proceeding
should be - in most cases a summary included within the History of the Proceeding. A summary should be no more than 3 to 4 sentences in length.
4. Findings of Fact (as necessary to support the outcome)
5. Discussion
6. Conclusions of Law
7. Order

B. Copies of Formats can be obtained from the Decision Repository or from the OALJ Legal Division. Formats should be followed whenever possible. The use of a format is not an elevation of form for form's sake. It helps to ensure that no element is overlooked, and that the decision is more easily read and reviewed by the participants, the Commission and appellate courts.

6.4 Consolidated Proceedings

All separately docketed complaints are included in the caption and ordering paragraphs by party name reference and docket number. The use of "et al." should never be used in the caption or ordering paragraphs.

6.5 Describing Record Size/Record Close Date

An ALJ describes the size of the record at the beginning of the Decision. The ALJ clearly states in the History section or other introductory section the number of hearings held, the number of transcript pages and exhibits generated, and the record close date.

6.6 History and/or Summary of the Proceedings

In every Decision, it is important that a brief, clear History and/or Summary of the case be set forth in sufficient detail so that all readers know what the case concerns. (Example: What is the customer's complaint? What has the PUC charged the carrier was doing wrongfully? What is the outcome?)

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6.7 Findings of Fact

A. Generally - the Findings of Fact should contain only those facts which support the ultimate findings in the case. Not every fact needs (or should) be listed.

B. Identifying Transcript Pages - ALJ's should support each finding of fact by identifying transcript page references, exhibits or other record evidence. This is enormously helpful to those who review cases which come before the Commission, and it is helpful to appellate courts on review.

C. Framing Findings - Findings of Fact should not contain assertions of the parties, unless an assertion is relevant and is to be a finding.

D. Tape Recorded Proceedings - Decisions involving cases that were tape recorded need not contain references to tape counter numbers. Mention should be made in the History/Summary section of the Decision that the hearing was tape recorded.

Section 6.8 Ordering Paragraphs

A. Generally - Ordering paragraphs should be numbered and should be clear as to what relief the ALJ is granting. In most cases involving settlements, the

ordering paragraphs should not recite the terms of the settlement unless the ALJ feels it is necessary.

B. Termination of the proceeding - when a Decision terminates a case, the ALJ should include one paragraph which directs that the "Docket in this proceeding be marked closed." The ordering paragraphs should dispose of all separately docketed complaints or protests clearly.

C. Ordering paragraphs should be able to stand alone - in writing ordering paragraphs, please keep in mind that 85% of OALJ decisions become final without further Commission review. Ordering paragraphs in OALJ Decisions frequently become the ordering paragraphs of a final Commission order. Avoid references in ordering paragraphs to external documents or information contained in the body of the Decision (for example, do not say "the terms of settlement as discussed at page 2 of this Decision, are

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incorporated herein" rather say "the terms of the settlement are hereby approved.")

6.9 Deadlines in Initial/Recommended Decisions

A. Generally - when preparing an Initial Decision which establishes specific times by which the parties must comply, care must be taken to ensure that the deadline is practical and reasonable and takes into account "administrative lag time" (i.e. the time necessary to internally review and process a Decision-including service of the Decision by the Secretary's Bureau).

B. Specific Dates - When a specific date is used in the ordering paragraphs, please keep in mind that approximately two months can elapse between the date a Decision is filed in the Harrisburg OALJ and the date the Commission takes final action or the date the Decision becomes final by operation of law. Where possible, compliance dates should be set beyond the two month period.

1. Exception - when, by agreement of the parties, compliance is to occur on or before a specific date which occurs within the two month period (i.e. "payments shall begin in three days of date of the hearing"), the ALJ should tell the parties of the administrative lag time, and advise them that they should act as if the Commission had approved the agreement. Also this should be discussed in the Initial or Recommended Decision.

C. Preferred Handling - generally it is better to use a specific date which occurs after the Commission takes final action or the order contained in the Decision becomes final. For example, it is not possible for the parties to comply with a Decision dated February 2, 1998 requiring a payment by February 20, 1998 because the Commission will not have acted on the Decision by that date. In this situation, it is better to direct that a payment be made within a specified number of days after the decision becomes final or that a specific amount of money be paid with the first bill due after the decision becomes final.

1. Rationale - the Commission will not have to continually revise and update specific dates which have already passed. In addition, the parties will not be confused as to when payments are to begin. General references give the Commission more flexibility.

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6.10 Affirming Previous Orders

ALJs should issue their own orders and not simply reaffirm previous orders. This is particularly applicable in service termination proceedings. The Commission should have a single document to review and should not be forced to go to other sources referenced in the order. Any previous order which may be a part of the proceeding can be summarized in the History of the Case or in the Discussion.

6.11 Orders Involving Other Bureaus

A. ALJs should never order other Commission bureaus, or the Commission, to take action. This is particularly true because of the Pennsylvania Supreme Court decision in Lyness v. State Board of Medicine, 529

Pa. 535, 605 A. 2d 1204 (1992). An ALJ can suggest or recommend that another bureau consider reviewing a matter. Such suggestions should be contained in the ordering paragraphs. See Section 504.B.2 of the Commission's Procedures Manual for the appropriate language to be used.

6.12 Complaints Involving F and Z Cases

A. Generally - the leading case in this area is Claypool v. T.W. Phillips, Z-00248730 (December 22, 1995). This case established the basic Commission policy in this area and should be followed by ALJs in rendering decisions in this area. Please note that the Legal Division maintains, updates and periodically distributes an outline of Commission precedent involving this area. This listing is updated and distributed to ALJs on a frequent basis and should be retained by ALJs for reference.

B. De Novo review - cases assigned to the OALJ owing to appeals from the Bureau of Consumer Services (BCS) decisions (usually docketed with an F or a Z prefix) are considered de novo proceedings. The Complainant below remains the complainant in the formal proceeding, and retains the fundamental burden of proof (see Burden of Proof below) and the utility remains the Respondent.

C. Captioning

1. Non-Telephone Fixed Utilities - if the

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utility has taken an appeal, it will be designated the "Complaint Appellant" in the caption so that the Commission knows immediately that the utility took the appeal. Note that the Complainant continues to be referred to as the "Complainant" throughout with regard to form and substance.

2. Telephone Utilities - the PUC rules do not require any special "Complaint Appellant" designations so the ALJ should use the normal party designations.

D. De Novo Proceedings - these case must be heard anew and decided on the record produced before the ALJ. Please note, however, that in shaping a payment plan the Commission's policy requires the ALJ to use the BCS determination as a starting payment in shaping that plan.

E. Lump-Sum ("catch-up") Payments - if the Complainant failed to pay monthly bills pursuant to the BCS determination, a lump sum payment should be ordered in most cases. The lump sum payment should be made by the Complainant within 30-60 days after entry of the final Commission order. If a lump sum is not ordered, this should be thoroughly explained in the decision.

F. Interim Payment Orders - the CALJ or hearing ALJ may issue interim payment orders. If requested and if clear from the pleadings, the CALJ will frequently order an interim payment at the initiation of the proceeding. The hearing ALJ can modify any interim payment order issued by the CALJ.

G. Burden of Proof - the burden of proof regarding the ability to pay remains on the Complainant but the burden of proof on legal or policy issues falls on the utility if the utility has raised those issues (See: Jackson v. Columbia Gas of Pa., Inc., F-00292241 (September 10, 1996)). The burden of persuasion can change. (See: Claypool v. T.W. Phillips, Z-00248730 (December 22, 1995)).

H. Record Development - See Section 4.2B above.

6.13 High Bill Complaints

A. Complaints involving legitimate high bill disputes should be analyzed under the criteria established by the

Commission in Replogle v. Pennsylvania Electric Co., 54 Pa. PUC 528 (1980) which adopted the so-called "Michigan Rule". In Pennsylvania, this standard is known as the

"Waldron Rule". See: Waldron v. Philadelphia Electric Co., 54 Pa. PUC 98(1980).

6.14 Future Actions in Ordering Paragraphs

A. When it is ordered that periodic reports be filed, please indicate a specific time within the period when the reports are due and designate a specific Commission bureau (or bureaus) where the reports are to be filed. Do not require a report to be submitted to "the Commission".

B. When periodic reports are to be filed, the order should articulate a specific ending period for the reporting requirement. Indefinite reporting requirements are not acceptable.

C. ALJs should not, ordinarily, hold a record open to monitor the filing of periodic reports. Monitoring and enforcement of reporting requirements contained in a final Commission order is the responsibility of the named Commission bureau.

6.15 Bench Decision Preparation

A. Generally - Bench Decisions are merely a form of a Recommended or Initial Decision and should be noted as Initial Decision from the Bench or Recommended Decision from the Bench and must be served by the Secretary's Bureau. See Section 6.2 D above.

B. Procedure

1. When dictated - the Bench Decision should be dictated to the court reporter immediately at the conclusion of the hearing. To the extent practicable, the ALJ should follow the established Bench Decision format which is provided to the court reporting firms by the Scheduling Staff Supervisor. A Bench Decision must be dictated to the reporter on the day of the hearing before the reporter leaves the office. Asking a reporter to return later to transcribe the decision constitutes a violation of the court reporter contract.

2. Corrections - returning the Bench Decision to the reporter to make corrections is a violation of the court reporter contract. The ALJ must make the corrections. Mistakes made by the court reporter should be noted by memo and submitted to the Scheduling Staff Supervisor who is authorized to take appropriate action against the court reporting firm as outlined in the court reporting contract.

6.16 Civil Penalties

A. Generally - the imposition of a civil penalty should comply with the existing PUC penalty guidelines (for motor carriers) and any modification of the civil penalty must be fully explained. Where no penalty guidelines exist (fixed utilities), a civil penalty should not exceed statutory limits.

B. Fixed Utility Cases - in cases where the ALJ imposes a civil penalty in a fixed utility proceeding, the civil penalty cannot exceed the \$1,000.00/per violation/per day statutory limit and the amount of the civil penalty should be explained in the Decision. Some rational basis should exist for the civil penalty amount being assessed. Please note that the party penalized must have some clear notice that a civil penalty could be assessed in the proceeding.

C. Motor Carrier/Medallion Cases - in cases where a civil penalty is being sought and could be imposed, the civil penalty assessed should conform to the Commission's penalty guidelines and any variance should be granted only for good cause and must be fully explained in the Decision.

6.17 Repayment Period for Underbilled Service

A. Generally - where a utility issues a make-up bill to a customer for previously underbilled service resulting from the utility's billing error, the period of repayment should generally extend at least as long as the period during which the underbilling accrued.

6.18 Motor Carrier Decisions

A. When denying a motor carrier application an ALJ must discuss all the criteria which must be met to obtain approval of a motor carrier application. This avoids

unnecessary remands to the OALJ if the Commission wishes to grant the authority sought.

B. Motor carrier application cases should not be dismissed "with prejudice". See 52 Pa. Code Section 3.381(g).

C. In cases where an application for motor carrier authority is being granted, the ordering paragraphs should include standard language that the application is being granted contingent upon (1) the payment of any outstanding assessment/fine and (2) the filing of proof of insurance.

6.19 Listing of Statutory/Regulatory Deadlines for Submission of Decisions

A. In order to assist ALJ's the OALJ has attached, as attachment C, a listing of statutory/regulatory deadlines for the submission of decisions. Please note this listing is not necessarily comprehensive and the statute and/or regulation involved should always be reviewed.

B. An ALJ should always provide a reasonable period (three working days is normally sufficient) for staff and CALJ review of all decisions, especially major, time-limited decisions prior to service.

6.20 Scope of Discussion in Decisions

A. All material issues should be reasonably discussed by the ALJ so that when the Recommended or Initial Decision reaches the Commission on review, the Commission can more expeditiously review the matter and issue a final Order. In particular, major, time-limited Decisions should, whenever possible, contain at least a discussion (along with record citation where possible) of alternative outcomes which were briefed by the parties. Should the Commission decide not to adopt the ALJ Decision, this will facilitate the expeditious entry of a final Commission order. On the other hand, such items as non-essential criticism of other bureaus or

unprofessional comments concerning participants are to be excluded from Decisions.

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CHAPTER 7. SETTLEMENTS, WITHDRAWALS, REFERRALS

Section

- 7.1 - Withdrawals
- 7.2 - Settlement Petitions in Consolidated,
Contested Rate Cases
- 7.3 - Settlements In Other Types of Cases
- 7.4 - Complaint Withdrawn as the Result of a
Settlement
- 7.5 - Processing Settlements
- 7.6 - Referrals to Other Bureaus
- 7.7 - Settlements Resulting from Mediation

7.1 Withdrawals

A. Generally - See Section 407 of the Commission's Procedures Manual, Section 5.94 of 52 Pa. Code, and Sections 69.391 through 69.406 of 52 Pa. Code.

7.2 Settlement Petitions in Consolidated, Contested Rate Proceedings

A. Dismissal of Formal Complaints - an ALJ should dismiss all formal complaints in a major consolidated case. This is especially true in a rate case since it is not permissible to approve a settlement and bifurcate those complaints where the parties are not signatories to a settlement agreement.

B. Handling of Settlements Where Not All Parties Are Signatories To The Settlement - When an ALJ receives a settlement in a case where there has not been

a full hearing and not all parties participated in the settlement negotiations and did not consent to the settlement, due process requires the ALJ to provide some way for those parties to review the settlement. There are several different approaches to deal with this situation. Several possible alternatives are outlined below.

(1) Require a major signatory party (usually the utility or OCA) serve all other parties with a

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copy of the settlement and provide an appropriate written comment period to non-signatory parties. Comments should be sent to the ALJ and should also be filed with the Secretary of the Commission.

(2) The ALJ send a letter to non-signatory parties (with the settlement attached) for the parties review of the settlement and provide an appropriate written comment period. This approach is better used if the number of non-signatory parties is small. Otherwise, valuable OALJ staff resources can be used in copying and mailing large settlement documents to a large number of people.

(3) The ALJ send a letter to non-signatory parties advising them that the settlement is located at the utility offices for review and that non-signatory parties can submit written comments by a date certain. This approach is better used when the service territory of the utility is small and compact in nature with a small customer base.

(4) Schedule an on-the-record hearing on the settlement to provide a forum for non-signatory parties to oppose, or support, the settlement.

C. An ALJ should address all complaints in the Decision, all complaints should be dismissed or granted, as appropriate, and all complaints should be closed in the Decisions ordering paragraphs. Each complaint should be referred to by the party's name and the docket number. This should be done in one ordering paragraph, where practicable. This will ensure that these cases are closed on the ALJ's case report.

D. Where all parties have signed a settlement agreement, the settlement must be reviewed to determine if it is in the public interest and, if so, the settlement should be approved and a Recommended Decision issued. If the settlement is found not to be in the public interest, an interim order should issue denying the settlement and ordering further hearings, settlement conferences, informal telephone conferences, or mediation conferences, as appropriate.

E. When all parties have settled a major rate case (either a full or partial settlement) and the settlement is approved by the ALJ, a 7 day exception period

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must be established. See 52 Pa. Code Section 69.406.

7.3 Settlements in Non-Rate Cases.

A. The procedures outlined above can be used in non-rate proceedings.

7.4 Complaint Withdrawn as the Result of a Settlement

A. Before Assignment to an ALJ - if the case has not been assigned to an ALJ, the Scheduling Staff prepares a memo to the Secretary's Bureau requesting that the case be closed by Secretarial letter. See 52 Pa. Code Section 5.24 or Section 5.94.

B. After Assignment to an ALJ - if the case has been assigned to an ALJ, a settlement agreement and a request to withdraw the complaint based on the settlement should be forwarded to the assigned ALJ for further action. An ALJ has three options:

(1) the ALJ can send a memo to the Scheduling Staff requesting that the case be closed by Secretarial letter;

(2) the ALJ can prepare a Decision approving the settlement. If this option is selected, the ALJ should immediately advise the Scheduling Staff that a Decision will be prepared and issued;

(3) the ALJ can issue an interim order rejecting the settlement, refuse to permit withdrawal, and order hearings and/or settlement/mediation conferences.

7.5 Processing Settlements

A. Filing of Settlement -

1. Mediations - the parties should submit the original Settlement Agreement (and any attachments) to the Mediator. It should not be filed with the Secretary of the Commission. If a mediation report is issued, the Settlement Agreement will be attached to the report for ALJ review.

2. Litigated Cases - the parties should file the original Settlement Petition (and any attachments)

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to the Secretary of the Commission. ALJ's should receive a copy of the Settlement Petition from the parties.

B. Decisions approving settlements are handled the same as other Initial/Recommended Decisions and, in most cases, an exception period is established. See: Section 407 of the Commission's Procedures Manual; 52 Pa Code Sections 69.401-69.406.

C. An ALJ should dispose of a settlement petition within 60 days of receipt thereof unless a different statutory, Commission, or OALJ time limit is imposed, in writing, for disposition of the settlement agreement.

7.6 Referrals to Other Bureaus

A. Where a case has become unopposed, or otherwise unopposed, an ALJ can refer the case to a Commission technical bureau for disposition. The referral should be either in the form of an interim order, or where the ALJ has decided to issue a Decision dismissing all protestants, in the Decisions ordering paragraphs. If referral is done by Interim Order, the ALJ

should send a copy of the Interim Order directly to the technical bureau involved.

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CHAPTER 8. INTERNAL PROCESSING OF DECISIONS

Section

- 8.1 - Generally
- 8.2 - Distribution of Interim Orders
- 8.3 - Filing Decisions
- 8.4 - Corrections to Decisions
- 8.5 - Preparation of Calendar Sheets and Final Orders
- 8.6 - Bench Decisions
- 8.7 - Internal Review and Processing of Decisions

8.1 Generally

This section involves the internal processing of Initial or Recommended Decisions. Section 8.2 mentions interim orders to differentiate the processing distinctions between a Decision and an Interim Order.

8.2 Distribution of Interim Orders

A. When an ALJ issues an Interim Order (an order which does not dispose of the case or a party's participation in a case) which does not require Commission review or action (such as certification of a material question), the ALJ's secretary should send a copy to all parties, and the original and two copies should be sent to the CALJ. The CALJ will transmit the original to the File Room for docketing and filing, one copy will go to the Office Support secretary, and one copy will be reviewed and will then be forwarded to the OALJ Scheduling Staff.

B. All Orders should be in written form as an Interim Order, whether or not dictated into the record. An order dictated to the record but not memorialized by Interim Order could be missed by support staff and/or the Commission's Docketing Section.

8.3 Filing Decisions

A. All Recommended or Initial Decisions are filed with the Chief Administrative Law Judge. Decisions are

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logged in by the Case Control Officer and undergo an internal review process. The Case Control Officer processes these decisions and arranges for service through the Service Section of the Secretary's Bureau.

B. Service letters of Decisions issued by the Secretary's Bureau are transmitted to each regional office by the Case Control Officer. Each regional office must then place the issued Decision into the OALJ computerized case repository via the network. This repository can be accessed by other Commission Bureau's for research purposes.

Section 8.4 Corrections to Decisions

A. During Internal Review - the OALJ will not contact the ALJ to correct minor typographical errors on routine Z, F or Z cases. The Decision will be issued as submitted by the ALJ. Major errors (such as incorrect

docket numbers or missing pages) will be brought to the attention of the ALJ for correction.

B. After Issuance of Decision - once a Decision is issued by the Secretary's Bureau, the ALJ loses the ability to substantively modify the Decision. If minor corrections are necessary an Errata Notice should be prepared by the ALJ and forwarded to the Legal Division Supervisor. If appropriate, the Notice will be forwarded to the Secretary's Bureau for service.

8.5 Preparation of Calendar Sheets and Final Orders

A. Calendar Sheets - the ALJ is responsible for the preparation of calendar sheets. Completed calendar sheets should be submitted with each Decision.

B. Final Orders - the ALJ is responsible for the preparation of a draft Final Commission Order. Since 85% of Initial Decisions become final by operation of law, the draft Final Commission Order will become the final Order served on all parties. The draft Final Order should duplicate the language of the ordering paragraphs in the Decision submitted for review. See Section 6.8 above.

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Section 8.6 Bench Decisions

To expedite the processing of Bench Decisions, the cover page of the transcript should be copied and attached to the Bench Decision as a cover page. This saves time in having to type a new cover page for the Decision.

Section 8.7 Internal Review and Processing of Decisions

A. Notes - Decisions are logged into the OALJ computerized case control system and reviewed by the CALJ, the Legal Division and/or the Technical Staff. Notes are made on the route slip regarding adherence to PUC policies (including substantive and time

requirements), typographical errors, and points assigned. Those notes are recorded for each ALJ on a computerized log. The CALJ may use this information for evaluation purposes at the end of the evaluation period.

B. An Exception/Reply Exception period is established by the CALJ or the Legal Division Supervisor and the Service Section of the Secretary's Bureau is notified when the Initial/Recommended Decision is sent to that Section for service. See 52 Pa Code Sections 5.533 and 5.535. If an ALJ is aware of exigent circumstances to modify the normal exception/reply exception period, the CALJ or the Legal Division Supervisor should be notified.

C. Specific details of Decision processing are contained in the Case Control Officer's Deskbooks.

CHAPTER 9. PROCEDURE ON REMAND

Section

- 9.1 - Generally
- 9.2 - Procedures To Be Used
- 9.3 - Deadlines

9.1 Generally

The OALJ does not treat cases remanded by the Commission as new assignments to the OALJ and, wherever possible, they are sent back to the originally assigned ALJ.

9.2 Procedures to be Used

A. After Public Meeting, the Legal Division Supervisor prepares a memo summarizing Commission assignments to the OALJ (including remands). This is forwarded to the Scheduling Unit and to all Administrative Law Judges.

B. Upon receipt of the remand order from the Secretary's Bureau, the remand order is sent to the Scheduling Staff and a hearing date is established after consultation with the ALJ. The originally assigned Administrative Law Judge should also receive a copy of this order.

C. If the remand involves other than a further hearing (e.g., new briefs, additional analysis of existing record, etc.) the ALJ should so inform the Scheduling Staff and inform the parties by Interim Order.

9.3 Deadlines

A. Although remanded proceedings are not governed by the deadlines contained in Act 294, it is the OALJ policy to have all decisions on remand submitted for internal review within 90 days of the close of the record on remand.

CHAPTER 10. MEDIATION

Section

- 10.1 - Generally
- 10.2 - Process
- 10.3 - Telecommunication Interconnection Proceedings

10.1 Generally

A. Mediation is intended to be a flexible program designed to facilitate the amicable resolution of disputes between parties in lieu of incurring the time, expense and uncertainty of litigation. The processes outlined below may be varied by the OALJ or the assigned mediator when deemed necessary or appropriate. Mediation is governed by the Commission's policy statement at 52 Pa. Code Sections 41.31- 41.32 and Sections 69.391- 69.394. Mediation is encouraged by the Commission and is available in most contested cases before the Commission.

B. Mediations are strictly confidential and no transcript or recording is made of the meetings. Mediators, and parties, are not permitted to discuss the mediation and such information is not to be made public.

C. The Telecommunications Act of 1996 also provides for mediation, if requested.

10.2 Process

A. Non-Rate Proceedings

1. The Mediation Coordinator reviews cases assigned to the OALJ for mediation possibilities. The Mediation Coordinator (or mediator assigned) may determine (1) that an Interim Order be issued by the CALJ requiring the parties to meet, (2) that a letter be sent to the parties to determine if they wish to mediate, (3) that mediation should not be attempted and the matter referred to an ALJ for hearing or, (3) another disposition, as appropriate.

2. If all parties consent to mediation, the

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Mediator assigned will schedule a mediation session. Where mediation occurs at the initiation of the proceeding, an ALJ will ordinarily not be assigned (in rate cases, an ALJ is also assigned to the case for the limited purpose of establishing a tentative litigation

schedule). Only if mediation does not resolve all of the issues, will the case be assigned to an ALJ for on-the-record hearings.

3. At the conclusion of a successful mediation, the parties can agree to withdraw (unless otherwise provided for by operation of law) or may submit an executed settlement for Commission approval.

(a) If the case is withdrawn see Section 7 above.

(b) If settled, in full or in part, the parties will submit a settlement agreement to the Mediator. The Mediator will submit a procedural report (if one is required) of the mediation with the settlement agreement attached and will forward that report to an assigned ALJ for a public interest review. This review will result in either a Decision or Interim Order. See Section 7 above. See also Section 407 of the Commission's Procedures Manual.

B. Rate Proceedings

1. Generally, the Legal Division Supervisor will review the Public Meeting agenda for rate cases suspended and assigned to the OALJ for hearing. A public meeting assignment memo will be prepared and forwarded to the CALJ for consideration. Formal assignment of the case to a mediator is made by the CALJ.

2. Once assigned, the case is normally assigned to a mediator and an ALJ. The ALJ will attend the first prehearing/mediation conference for the sole purpose of establishing a tentative hearing date. Then, the prehearing/mediation conference becomes a mediation session and the ALJ should not participate at this stage.

3. At the end of the rate mediation process, the mediator will generally issue a procedural report. If mediation was successful, the parties will submit a settlement agreement which the mediator attaches to the mediation report. The assigned ALJ will make a public

interest review of the settlement agreement. This review will result in a Recommended Decision or an Interim Order. If the mediation was unsuccessful, the case will be referred to the assigned ALJ for hearings. If a case is withdrawn, no procedural report will issue.

Section 10.3 Telecommunication Interconnection Proceedings

A. In a telecommunication interconnection proceeding initiated under the Telecommunications Act of 1996, the parties can request mediation. Under the statutory time framework, the parties can make this request from the initiation of interconnection discussions (day 1) until arbitration is requested (between day 135 to 160). Mediation requests cannot be entertained after day 135. Parties are free to extend these time periods by agreement.

CHAPTER 11. TELECOMMUNICATION ARBITRATIONS

Section

- 11.1 - Generally
- 11.2 - Timing

Section 11.1 - Generally

Telecommunication arbitrations involve interconnection requests mandated by the Federal Telecommunications Act of 1996. These are assigned to an ALJ and are transcribed proceedings. Mediation can occur before an arbitration request is made. See Chapter 10 above.

Section 11.1 Timing

A. Generally - Recommended Decisions involving telephone arbitration's must issue within 220 days of the initial written request for interconnection made by a party to the incumbent local exchange carrier (ILEC). This written request (which does not have to be filed with the Commission) is day one. The arbitration request from a party must be filed with the Commission between day 135 and day 160 and an arbitration conference is scheduled within 10 days of receipt of the arbitration request. See the Commission's Implementation Order at M-00960799 (entered June 3, 1996). A copy of the Implementation Order can be obtained from the Legal Division.

B. Waiver - Parties can agree to waive the time periods contained in the Telecommunications Act.

CHAPTER 12. REQUESTS FOR ASSISTANCE

Section

- 12.1 - Internal OALJ Assistance
- 12.2 - Bureau of Fixed Utility Service
- 12.3 - Other Bureaus
- 12.4 - Ex Parte Concerns

Section 12.1 Internal OALJ Assistance

ALJ's seeking OALJ legal or technical assistance should make those requests to the CALJ or to the supervisor of the Legal Division. Requests which may take substantial time and/or staff resources should be made, or confirmed if initially made by telephone, in writing by the ALJ requesting the assistance.

Section 12.2 Bureau of Fixed Utility Services

Where assistance is required from the Bureau of Fixed Utility Services (BFUS), the CALJ (or Legal Division Supervisor) should be consulted and, if appropriate, the CALJ will request that Bureau to provide technical assistance to the ALJ.

Section 12.3 Other Bureaus

Where assistance is required from a Bureau other than BFUS, the CALJ should be consulted and, if appropriate, the CALJ (or Legal Division Supervisor) will request that Bureau to provide technical assistance to the ALJ.

Section 12.4 Ex Parte Concerns

In all situations involving technical support being provided to the OALJ by another Bureau, ALJs and other employees must take care to avoid ex parte considerations and commingling issues. See Section 403 of the

Commission's Procedures Manual and 66 Pa. C.S. Sections
319 and 334.

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APPENDIX

