**BEFORE THE**

**PENNSYLVANIA PUBLIC UTILITY COMMISSION**

PA Public Utility Commission : R-2016-2538660

Office of Consumer Advocate : C-2016-2540738

Guillermo Barbosa : C-2016-2548325

Erle Grubb : C-2016-2548262

Yvette Lawson : C-2016-2549382

v. :

:

Community Utilities of Pennsylvania Inc. :

(Water Division) :

**PREHEARING ORDER # 2**

A prehearing conference was held on June 8, 2016, at 10:00 a.m. Present and participating through counsel were respondent Community Utilities of Pennsylvania, Inc. (Community Utilities), the Bureau of Investigation and Enforcement (I&E), and the Office of Consumer Advocate (OCA).

In accordance with the Prehearing Conference Order, dated May 26, 2016, I received prehearing memoranda from each of the parties identified above.

This order sets forth the procedural matters addressed at the prehearing conference.

THEREFORE,

IT IS ORDERED:

1. That the following Complaints have been filed:

1. By OCA at Docket No. C-2016-2540738;
2. By Guillermo Barbosa at Docket No. C-2016-2548235;
3. By Erle Grubb at Docket No. C-2016-2548262; and
4. By Yvette Lawson at Docket No. C-2016-2549382.

2. That pursuant to 52 Pa. Code §§ 5.32 and 5.61, complaints filed against the pending general rate increase, despite receiving a separate docket number, are considered to be docketed with the proceeding and need not be consolidated with the Commission’s investigation or answered by respondent.

3. That the parties of record as of this date are Community Utilities, I&E, OCA, Guillermo Barbosa, Erle Grubb, and Yvette Lawson.

4. That the present Order shall amend the May 26, 2016 Prehearing Conference Order and extend the deadline to July 1, 2016 for the *pro se* Complainants to designate whether they want to be treated as an active participant in writing to the presiding officer and the current participants of record.

5. That pursuant to 52 Pa. Code § 1.55, each party shall be limited to one entry on the service list, although there can be more than one name listed. Service on respondent Community Utilities shall be made on Thomas J. Sniscak; service on I&E shall be made on Philip C. Kirchner; and service on OCA shall be made on Christine Maloni Hoover.

6. That parties may arrange service among themselves as they agree. Pursuant to 52 Pa. Code § 5.154(c), the parties are permitted without further order to limit the service of documents to parties who indicate that they do not wish to be served with such documents.

7. That parties may serve documents electronically by 4:30 p.m. to meet any required due date, with hard copy to follow by regular first class mail, with the provision that large documents not able to be transmitted electronically may be hand-delivered to the parties located in Harrisburg on the due date and received the next business day by parties located outside Harrisburg.

8. That service on the presiding officer may be made electronically by 4:30 p.m. on the due date, with the conditions that: (1) **any document must be in Word compatible format (Adobe is not acceptable)**; (2) electronic service must be followed by a hard copy sent through either first class mail or overnight delivery; and (3) if the content is greater than 4 megabytes, the e-mail must be broken up into smaller transmissions.

9. That the informal e-mail distribution list is as follows. Any changes should be communicated to me, via e-mail ([evero@pa.gov](mailto:evero@pa.gov)) as soon as possible. Please include my legal assistant, Pamela McNeal ([pmcneal@pa.gov](mailto:pmcneal@pa.gov)) on anything you send to me.

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| --- | --- | --- |
| **Party** | **Counsel** | **e-mail** |
| Community Utilities | Thomas J. Sniscak | [tjsniscak@hmslegal.com](mailto:tjsniscak@hmslegal.com) |
| Community Utilities | Christopher M. Arfaa | [cmarfaa@hmslegal.com](mailto:cmarfaa@hmslegal.com) |
| Community Utilities | William E. Lehman | [welehman@hmslegal.com](mailto:welehman@hmslegal.com) |
| I&E | Phillip C. Kirchner | [phikirchne@pa.gov](mailto:phikirchne@pa.gov) |
| OCA | Kristine Marsilio | [KMarsilio@paoca.org](mailto:KMarsilio@paoca.org) |
| OCA | Christine M. Hoover | [CHoover@paoca.org](mailto:CHoover@paoca.org) |
| ALJ | Eranda Vero | [evero@pa.gov](mailto:evero@pa.gov) |
| ALJ | Pamela McNeal | [pmcneal@pa.gov](mailto:pmcneal@pa.gov) |

10. That pursuant to 52 Pa. Code § 5.342(d), the Commission’s regulations relating to discovery are modified as follows:

1. Answers to written interrogatories shall be served in-hand within ten (10) calendar days of service. Discovery propounded after 12:00 noon on a Friday shall be deemed served on the next business day for purposes of determining the due date of the responses.
2. Objections to interrogatories shall be communicated orally within three (3) days of the service; unresolved objections shall be served to the ALJ in writing within five (5) days of service of interrogatories.
3. Motions to dismiss objection and/or direct the answering of interrogatories shall be filed within three (3) days of service of written objections.
4. Answers to motions to dismiss objections and/or direct the answering of interrogatories shall be filed within three (3) days of service of such motions.
5. Requests for admission shall be deemed admitted unless answered within ten (10) calendar days of service or objected to within five (5) calendar days of service.
6. Responses to requests for document production, entry for inspection or other purposes to be served in hand within ten (10) calendar days.
7. Answers to on-the-record data requests will be served in-hand within three (3) calendar days of the request.

The parties are reminded that 52 Pa. Code § 1.35(c)(1) provides that a signature on a document filed with the Commission constitutes a certificate by the individual that the document is “well grounded in fact and is warranted by existing law” and is not “interposed for

an improper purpose, such as to harass or cause unnecessary delay or needless increase in the cost of litigation,” and that violations are subject to the sanctions listed in 52 Pa. Code § 1.35(c)(2).

The parties are directed to cooperate and exchange information on an informal basis. The parties are expected to resolve discovery issues among themselves; motions to compel should be filed only after such efforts have failed. All motions to compel must contain a certification of counsel of the informal discovery undertaken and their efforts to resolve their discovery disputes informally. If a motion to compel fails to contain such certification, we shall contact the parties and direct them to pursue informal discovery. In addition, the parties are urged to use alternative means of discovery such as discovery conferences or depositions. There are limitations on discovery and sanctions for abuse of the discovery process. 52 Pa. Code

§§ 5.361, 5.371-5.372.

11. That the following schedule is adopted[[1]](#footnote-1):

Rate Filing April 6, 2016

Prehearing Conference June 8, 2016

In-Person Public Input Hearings To be determined

Company Direct Testimony June16, 2016

Other Parties Direct Testimony July 19, 2016[[2]](#footnote-2)

Rebuttal Testimony August 4, 2016

Surrebuttal Testimony August 16, 2016

Outline of Expected Oral Rejoinder August 22, 2016 (noon)

Evidentiary Hearings (in Harrisburg) August 23-24, 2016

Main Briefs September 13, 2016

Reply Briefs September 22, 2016

Commission Public Meeting December 22, 2016

End of Suspension Period January 5, 2017

12. That the parties comply with the Commission’s requirements for the preparation and service of written testimony. 52 Pa. Code § 5.412. These include, but are not limited to, the requirement that written testimony must be accompanied by all exhibits to which it relates. Written testimony shall be marked with numerical, sequential statement numbers. Oral direct, rebuttal or surrebuttal testimony or witnesses not identified in a party’s prehearing memorandum shall not be permitted, except by permission for good cause.

13. That any motions with respect to, or objections to, written testimony must be presented in writing no later than three days prior to the day that the witness sponsoring that testimony is scheduled to testify. Answers to such motions or objections may be filed within three days or sooner if circumstances warrant. Oral motions, other than for good cause, shall not be accepted.

14. That the parties shall comply with the provisions of 52 Pa. Code

§ 5.243(e)which prohibit the introduction of evidence during rebuttal which should have been included in the party’s case-in-chief or which substantially varies from the party’s case-in-chief, unless the party is introducing evidence in support of a proposed settlement.

15. That the hearings will be held in Harrisburg. Parties will complete the daily witness listing and cross-examination grid as directed.

16. That the parties shall stipulate to any matters they reasonably can to expedite this proceeding, lessen the burden of time and expenses in litigation on all parties and conserve precious administrative hearing resources. 52 Pa. Code §§ 5.232 and 5.234. All stipulations entered into by the parties shall be reduced to writing, signed by the parties to be bound thereby, and moved into the record during the hearings in this case. An exception to this requirement may occur when circumstances of time and expediency warrant. If so, an oral presentation of a stipulation is permissible, if it is followed by a reduction to writing as herein directed.

17. That the evidentiary hearings in this matter constitute formal legal proceedings and will be conducted in accordance with the Commission’s Rules of Administrative Practice and Procedure, as well as the rules of evidence as applied to administrative hearings.

18. That parties serving pre-served testimony in proceedings pending before the Commission pursuant to 52 Pa. Code § 5.412(f) shall be required, within thirty (30) days after the final hearing in an adjudicatory proceeding to either eFile with or provide to the Secretary’s Bureau a Compact Disc (CD) containing all testimony furnished to the court reporter during the proceeding, consistent with the Commission’s Implementation Order, dated January 10, 2013, at Docket No. M-2012-2331973.

19. That the parties must comply with 52 Pa. Code §§5.501, *et* *seq*., regarding the preparation and filing of briefs. Service can be made electronically by no later than 4:30 p.m. on the dates listed, with a hard-copy received in hand on the next business day. Parties are directed to e-mail me a copy of their as-filed briefs in ADOBE or other compatible PDF format in addition to a WORD-formatted document. The format of the briefs served electronically on the parties may be as requested by the parties.

20.That all briefs shall comply with the requirements of 52 Pa. Code §§ 5.50l and 5.502,and in addition to the mandatory contents set forth in 52 Pa. Code § 5.501(a),all main briefs, regardless of length, must contain:

A. A table of contents;[[3]](#footnote-3)

B. A history of the proceeding;

C. A discussion;

D. Proposed findings of facts (with record citations to transcript pages or exhibits where supporting evidence appears);

E. Proposed conclusions of law (with citations to supporting statutes, regulations or relevant case law); and

F. Proposed ordering paragraphs specifically identifying the relief sought.

52 Pa. Code § 5.501(e) requires that “Briefs shall be as concise as possible.” Page limitations on briefs will be discussed on or before the last day of hearing.

21. That if a party does not file a reply brief, it will be assumed that the party does not dispute the assertions, contentions or arguments made by the other parties in their main briefs. While it is not necessary in a reply brief to repeat a particular argument or discussion contained in the main brief, the reply brief should note where the responsive argument is located in the main brief and how it responds to the other parties’ assertions, contentions or arguments.

22. That any brief not filed and served on or before the date fixed therefore will not be accepted for filing, except by permission for good cause.

23. That the parties are to confer among themselves in an attempt to resolve all or some of the issues associated with these Complaints. The parties are reminded it is the Commission’s policy to encourage settlements. 52 Pa. Code § 5.231(a). The parties are strongly urged to seriously explore this possibility. A joint settlement petition executed by representatives of all parties to be bound thereby, together with statements in support of settlement by all signatory parties, must be filed with the Secretary for the Commission and served on us.

24. That any provision of this prehearing order may be modified upon motion and good cause shown by any party in interest in accordance with 52 Pa. Code § 5.223(a).

Date: June 16, 2016 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Eranda Vero

Administrative Law Judge

**R-2016-2538660 - PA PUBLIC UTILITY COMMISSION v. COMMUNITY UTILITIES OF PENNSYLVANIA INC**

**SERVICE LIST**

THOMAS J SNISCAK ESQUIRE

CHRISTOPHER M ARFAA ESQUIRE

WILLIAM E LEHMAN ESQUIRE

HAWKE MCKEON AND SNISCAK LLP

100 NORTH TENTH STREET

HARRISBURG PA 17101

**717-236-1300**

***Accepts e-Service***

CHRISTINE M HOOVER ESQUIRE

KRISTINE E MARSILIO

OFFICE OF CONSUMER ADVOCATE

5TH FLOOR FORUM PLACE

555 WALNUT STREET

HARRISBURG PA 17101-1923

**717-783-5048**

***Accepts e-Service***

PHILLIP C KIRCHNER ESQUIRE

400 NORTH STREET

2ND FLOOR WEST

HARRISBURG PA 17120

**717-783-6151**

***Accepts e-Service***

1. Testimony shall not be filed with the Commission at the time of service, but parties may file a certificate of service. [↑](#footnote-ref-1)
2. All Testimony and Briefs due dates are in-hand dates meaning the material must be received no later than 4:30 p.m. on that date. An e-mail can satisfy the in-hand receipt if the receiving party has agreed to accept service by e-mail. [↑](#footnote-ref-2)
3. In addition, each reply brief must contain a table of contents. [↑](#footnote-ref-3)