

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

The Commission’s Regulation Governing :
The Consumer Advisory Council, :
52 PA. Code Ch. 91 :
Advance Notice of Proposed Rulemaking : Docket No. L-2018-3004948

**Comments of the Consumer Advisory Council to
the Pennsylvania Public Utility Commission**

Introduction

The members of the Consumer Advisory Council (“CAC” or “Council”) submit these comments in response to the Advance Notice of Proposed Rulemaking (ANOPR) adopted by the Pennsylvania Public Utility Commission (PUC or Commission) on October 25, 2018. In its ANOPR, the Commission seeks comments on whether changes should be made to the CAC regulations “in order to improve its efficiency as an advisory body and to clarify its duties and role.” ANOPR at 1. In particular, the Commission asks “whether to repeal Chapter 91 and concomitantly reestablish the Council via Commission Order.” Id.

The members of the CAC support the Commission’s objective of improving the effectiveness of the CAC as an advisory body. The CAC, however, shares the concerns expressed by Commissioner Place in his Dissenting Statement that the proposed ANOPR does not further that goal. In particular, the suggestion that the regulations establishing and governing the CAC be repealed in their entirety would weaken rather than strengthen the ability of the CAC to serve in its role as an advisory body.

Thus, as to the fundamental matter at issue in this ANOPR, the Council does not support a repeal of Chapter 91. It is critical that the Council remain a regulatory body. As stated eloquently in the Comments submitted at this docket by the Citizens Advisory Council to the Department of Environmental Protection, “[h]aving council authorizations and membership requirements rooted in law offers a sense of permanency that encourages the development of long-term partnerships.” Comments of Citizens Advisory Council at 2. The Council shares these sentiments. Rooting the CAC in regulation ensures continuity of the body over time notwithstanding changes of personnel or priorities at the Commission. The Council recognizes, however, that increased flexibility may be desired in order to enable the Commission, and the CAC, to respond to changes in the public utility landscape. The Council believes that this can be accomplished by amending the CAC’s enabling regulations to make them less prescriptive rather than eliminating them in their entirety.

That is, the regulations of Chapter 91 could be amended to include the creation and purpose of the Council and the identification of the appointing authorities for Council members. The remaining details regarding the operations of the Council can be addressed by a Commission Order and/or the establishment of Council by-laws. In that way, the regulatory foundation and continuity of the Council can be maintained, while any future changes to the operation of the Council can be made expeditiously without the need to go through a cumbersome regulatory process. The CAC agrees that “ministerial concerns surrounding the CAC” (ANOPR at 3) should not have to be addressed by changes in regulations, but should be handled in the future through Commission Orders and/or modifications to by-laws developed by the Council and approved by the Commission.

With respect to the specific issues raised in the ANOPR, the CAC responds as follows:

Operational Efficiency of the Consumer Advisory Council

In the current regulations, all actions of the Council are to be filed with the Secretary of the Commission and the Bureau of Consumer Services (BCS). 52 Pa Code § 91.3(f). In the ANOPR, the Commission notes that it has been the practice of the Commission to no longer require this and, instead, post Council minutes and actions on its website and communicate through the Office of Communications to the Commissioners' Offices. (ANOPR at 4).

The Council submits that the requirements set forth in the current regulations should be followed. There is a fundamental difference between something being filed at a docket with the Secretary's Bureau – which has the responsibility for maintaining documents for the Commission – and something being posted on the Commission's website. Websites and their content change far more frequently than do dockets. The Council believes that the better practice would be for the Commission to establish a docket to which CAC actions can be posted in addition to the practice of posting this information on the Commission's website.

The CAC would note, however, that this is the type of ministerial issue that does not need to be enshrined in Commission regulations. Rather, this issue can be addressed through Commission Order or Council by-laws.

Information Sharing between the Commission and Council and the Filing of Comments

The Commission discusses the important questions surrounding the sharing of information between the Commission and the Council and specifically asks whether the Council should be empowered to file comments in public proceedings before the Commission. As the

Commission notes at page 5 of the ANOPR, the Council has frequently filed formal comments in major generic proceedings before the Commission. Indeed, in 2018 alone, after hearing presentations at Council meetings from Commission staff on relevant issues, the Council filed formal comments with the Commission regarding electric retail shopping rules (L-2017-26288991); rate reductions under the Tax Cuts and Jobs Act of 2017 (M-2018-2641242); and the policy statement on utility distribution rates (M-2015-2518883).

While the Council seeks to work with the Commission on determining the best methods of communicating its views to the Commission (and in turn receiving information from the Commission), the Council submits that the filing of public comments is an important function of the Council and should be continued to be permitted.

The Commission also sought comments concerning whether the current powers of the Council to “conduct investigations . . . and solicit comments from interested parties and the general public”, 52 Pa. Code § 91.3(c) should remain as they “may be duplicative of the work conducted by other bureaus and offices in the Commission.” (ANOPR at 6). The Council believes, that to the extent that specific powers of the Council remain enumerated in either regulation or Commission Order, that this power should remain. The Commission is correct in its assertion that the Council has not exercised this authority recently. Nevertheless, this method of engaging with the public may be an appropriate and efficient way for the Council to solicit feedback and input on matters of interest to the Commission.

The Council does not believe that this activity would be duplicative of the work conducted by other bureaus and offices of the Commission because the role of the Council is unlike other bureaus and offices at the Commission. While advisory in nature, the Council consists of members of the public from various walks of life who are appointed because of their

experience, knowledge, and expertise on matters affecting the public. If the Council were to attend public hearings and solicit comments from others, this information would then be used to inform the Council's recommendations to the Commission on matters related to their jurisdiction and the protection of the public. No other bureau in the Commission performs this role. While various bureaus are in charge of consumer complaints, prosecution, communications and the like, each of these has discrete roles that are not nearly as broad as the mandate of the Council. While the Commission expressed concern about the potential cost if the Council were to engage in such investigations, the Council believes that this does not necessarily have to be so and the Council remains committed to working with the Commission to ensure that any such activities are undertaken with budgetary prudence in mind.

The Council submits that its ability to conduct investigations and solicit comments from interested parties and the general public is an important function of the Council and should continue to be authorized whether by regulation or through bylaws and Commission order.

Diversity of Consumer Advisory Council Membership

On page 7 of the ANOPR, the Commission seeks comments about the membership of the Council. The Council agrees that diverse membership is critical. This diversity should be geographic so as to cover the concerns of all of the state and utility service territories, as well as demographic diversity so as to cover the concerns of low income and underrepresented groups.

The Council is happy to work with the Commission regarding appointments and believes that it is important for the Commission to retain the authority to appoint additional Council members so as to ensure the geographic and demographic diversity of the Commonwealth. Ideally, membership would include low income consumers along with others, but, like other

aspects of the proposed changes, the Council suggests that this issue does not need to be the subject of prescriptive regulations. Rather, the Commission should amend the regulations to incorporate only those matters that are necessary to the establishment and purpose of the Council as well as the identity of the appointing authorities. The other issues raised in the ANOPR can be addressed through Commission Order and/or the development of by-laws that can be changed by the Council with Commission approval.

Interaction of Council Members with the Media or at Public Forums

The CAC agrees with the statements at page 7 of the ANOPR that no Council member may speak on behalf of the CAC without a quorum of the Council granting such authority. The Council also agrees that Council members are not limited from speaking in their own individual or professional capacities in their respective communities.

The Commission, however, also asks for comment on whether Council members should be required to receive explicit Commission approval before speaking to the media or to the public regarding the work of the Council or the Commission. The Council would not support any requirement for Commission approval whenever a Council member – who speaks with the authority of the Council – wishes to comment on a matter regarding the Council or the Commission.

If, for example, the Council files written comments with the Commission regarding a matter before the Commission, and if the Council Chair or Council Member is asked by a member of the media or the public to discuss those comments, the member should not have to seek Commission approval before responding to such a request. As long as a Council member is authorized by the Council to speak publicly on any matters on which the Council has taken a

position, it would be unwieldy and inappropriate for the Council to have to seek Commission approval to make such a statement.

Biennial Terms and other Ministerial Changes

At pages 8 to 10 of the ANOPR, the Commission raises questions concerning the terms of Council members as well as other ministerial changes to the Council such as frequency of meetings and evaluation of the Council composition.

The Council is happy to work with the Commission regarding these and other ministerial issues regarding the operation of the Council, but again suggests that these do not need to be the subject of prescriptive regulations. Rather, the Commission should amend the regulations to incorporate only those matters that are necessary to the establishment and purpose of the Council as well as the identity of the appointing authorities. The other issues raised in the ANOPR can be addressed through Commission Order and/or the development of by-laws that can be changed by the Council with Commission approval.

Conclusion

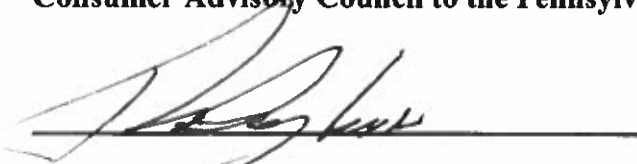
The members of the Consumer Advisory Council appreciate the opportunity to provide these comments in response to the Commission's effort to improve the operational efficiency and effectiveness of the Council as an advisory body. The CAC submits that the overall regulatory framework establishing the Council in 52 Pa. Code Chapter 91 should be retained, but that those regulations should be amended to be less prescriptive with respect to the operations of the Council.

In order to permit greater flexibility and responsiveness by the Commission and the Council in the future, the administrative concerns raised in the Commission's ANOPR should be

addressed through Commission Orders and/or the establishment of Council by-laws subject to Commission review. In this way, the overall authority and continuity of the Council can be maintained, while the specific activities and operations of the Council can be allowed to evolve without the need to engage in cumbersome regulatory processes each time a change is required.

Respectfully submitted,

Consumer Advisory Council to the Pennsylvania Public Utility Commission

A handwritten signature in black ink, appearing to read 'Ralph Douglass', is written over a solid horizontal line.

By: Ralph Douglass, Chairperson,

Consumer Advisory Council

Dated: 01/22/19

