

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**The Commission’s Regulation Governing the
Consumer Advisory Council,
52 Pa. Code Chapter 91**

Docket No. L-2018-3004948

COMMENTS OF THE COALITION FOR AFFORDABLE UTILITY SERVICES AND
ENERGY EFFICIENCY IN PENNSYLVANIA (CAUSE-PA) TO THE
OCTOBER 25, 2018, ADVANCED NOTICE OF PROPOSED RULEMAKING

Introduction

The Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA),¹ through its attorneys at the Pennsylvania Utility Law Project, respectfully files these comments in response to the Commission’s Advanced Notice of Proposed Rulemaking (ANOPR) issued October 25, 2018. The ANOPR seeks comments on the current regulations, 52 Pa. Code §§ 91.1. et. seq., that govern the Commission’s Consumer Advisory Council (CAC). Specifically, 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.

¹ CAUSE-PA is an unincorporated association of low income individuals that advocates on behalf of its members to enable consumers of limited economic means to connect to and maintain affordable water, electric, heating and telecommunication services. CAUSE-PA membership is open to moderate and low income individuals residing in the Commonwealth of Pennsylvania who are committed to the goal of helping low income households maintain affordable access to utility services and achieve economic independence.

At the outset, CAUSE-PA wishes to make clear that regardless of the changes adopted by the Commission, it is imperative that the Commission maintain the CAC as a regulatory body that is independent of, yet advisory to, the Commission. CAUSE-PA supports the Commission's objective of making the CAC a more effective advisory body. However, CAUSE-PA shares the concerns raised by Commissioner Place and members of the CAC that the ANOPR does not further the stated goal. See Statement of Commissioner Andrew Place, Docket No. L-2018-3004948 at 1; CAC Comments at 1. Thus, CAUSE-PA strongly opposes any effort to repeal Ch. 91. Such a drastic step is neither necessary nor justified given the concerns raised by the Commission in its ANOPR, and would weaken the ability of the CAC to effectively fulfil its purpose. Indeed, the purpose of the CAC is an important one: "to advise the Commission related to the protection of consumer interests as those interests are affected by the Commission's exercise of its jurisdiction." 52 Pa. Code § 91.2.

As a membership association comprised of low income individuals, CAUSE-PA believes it is critical that the CAC continue to exist, be appropriately staffed, and be empowered to carry out its role with all of the support that is necessary to do so. Indeed, while changes may be necessary to ensure that the CAC remains robust, CAUSE-PA shares the sentiment of the CAC that "[r]ooting the CAC in regulation ensures continuity of the body over time notwithstanding changes of personnel or priorities at the Commission." CAC Comments at 2. Moreover, the administrative efficiencies and ministerial modifications desired by the Commission can be accomplished without threatening the permanency of the CAC. Indeed, the only benefit of repealing Chapter 91, and reestablishing it by Commission Order, is the inherent ability to disband it in the same manner. The interests and protections of consumers are vital to the work of the

Commission and should be treated as such through the continued establishment of the CAC as a regulatory body.

CAUSE-PA has reviewed and supports the comments submitted by the CAC because they provide a well-reasoned approach to issues identified in the ANOPR. As suggested by the CAC, CAUSE-PA asserts that the Commission should consider a more collaborative approach and dialogue with the CAC and its members about administrative improvements that can be made prior to proceeding further with a formal rulemaking. CAUSE-PA offers the following additional comments for the Commission's consideration.

The Commission should establish direct communication between the CAC and the Bureau of Consumer Services.

The purpose of the CAC is set out in Chapter 91.2:

§ 91.2 Purposes of the Council.

The purpose of the Council shall be to advise the Commission upon matters relating to the protection of consumer interests as those interests are affected by the Commission's exercise of its jurisdiction as provided by law. Nothing in this chapter shall prevent or discourage advice on any subject which will aid the Commission in the pursuance of its regulatory duties.

52 Pa. Code § 91.2.

This purpose should be maintained. While CAUSE-PA acknowledges that there are administrative efficiencies to be gained from modernizing some of the CAC's processes, CAUSE-PA submits that current concerns regarding CAC attendance and functioning, which are outlined in the ANOPR, may be due in part to the slow erosion of the CAC's connection to those bureaus within the Commission that are charged with the protection of consumer interests. In years past, the CAC was staffed by staff from Commissioners' offices, and then by the Bureau of Consumer Services, which is the agency within the Commission charged with responding to consumer complaints and monitoring utility compliance with Commission regulations. During this time, the

CAC was active, involved, met on a monthly basis, and provided significant input and advice about the protection of consumer interests. Through reorganization, the CAC is currently staffed by the Office of Communications.² To be sure, the Office of Communication is a critical office within the Commission and its staff are diligent public servants. However, the primary purpose of the Office of Communications is outward facing. That is, the role of the Office of Communications is to be the public relations, educational, and media face of the Commission. Its role is to inform the public about all that is happening within the Commission. This is an important role, but it is not the role or purpose of the CAC. The CAC's purpose is not to inform the public about the activities within the Commission, but rather to bring together – in a structured manner – a council of diverse representatives of the public in order to conduct investigations, inform, and advise the Commission about what is happening in the public and what is necessary for the protection of consumer interests within the exercise of the Commission's jurisdiction.

CAUSE-PA recommends that, to the extent Chapter 91 is amended and/or other changes are made to the CAC's governance, the Commission should consider whether it may be more appropriate for the CAC to be staffed by the Bureau of Consumer Services or by staff from the Commissioner's offices rather than, or in addition to, the Office of Communications. The Bureau of Consumer Services is the consumer's direct line of contact with the Commission and is likely in the best position to allow the CAC to fulfill its statutory mandate of responding to issues or inquiries raised by the consumers.

² The CAC is also staffed by the Commission's Law Bureau.

The CAC should be empowered to file comments in public proceedings and, where necessary, conduct investigations and solicit feedback.

In its ANOPR, the Commission solicited feedback concerning whether the CAC should be permitted to continue to conduct investigations and solicit and receive feedback from interested parties and the general public. ANOPR at 6. CAUSE-PA believes this is a critical function of the CAC that should remain intact and endorses the reasoning of the CAC in its comments. See CAC Comments at 4-5. Additionally, while other offices within the Commission may engage in targeted investigations, those investigations are usually limited in scope and a part of a larger proceeding. The fact that the CAC has not recently used its investigatory power should be viewed more like a missed opportunity than an unnecessary power. For example, recent docketed proceedings such as the Commission's Energy Burden Study ³ and changes to the Supplier Marketing Regulations⁴ could have benefited from information acquired through a CAC-led investigation that solicited consumer feedback and experiences.

In addition to the ability to conduct investigations, where warranted and in consultation with the Commission, CAUSE-PA also fully supports the ability of the CAC to file comments at Commission dockets. It is critical for the Commission to hear a broad range of views at its public dockets. While multiple parties typically participate in the docketed proceedings, the CAC represents a diversity of perspectives within the Commonwealth which help to inform its comments to the Commission. To that end, it is also critical that the CAC be permitted to utilize the full menu and flexibility of approaches inherent in its purpose, which clearly indicates that nothing in the regulations are meant to "prevent or discourage advice on any subject which will aid the Commission in the pursuance of its regulatory duties." 52 Pa Code § 92.2. Thus, CAUSE-

³ See Energy Affordability for Low-Income Customers Docket No. M-2017-2587711, Order entered May 5, 2017.

⁴ See Rulemaking Regarding Electric Generation Customer Choice, 52 Pa. Code Chapter 54. Docket No. L-2017-2628991, Order entered December 7, 2017.

PA asserts that the Commission and its staff should not seek to curtail the methods employed by, or the ability of, the CAC to comment publically on the broad range of issues that could or should be brought to the Commission's attention.

Council Membership should be diverse and should include low income consumers.

CAUSE-PA is a membership organization comprised of a diverse members located throughout Pennsylvania that includes geographic, economic, racial, ethnic, age, and gender diversity. This diversity brings a range of perspectives to the causes and positions that CAUSE-PA seeks to pursue because it allows for the exchange of information and perspective that takes into consideration the life experiences of its members. The same should be true of the CAC. Ideally, the CAC should be comprised of members from across the Commonwealth with a range of experiences, and should certainly include individuals who are low income. Without a range of perspectives and experience, the CAC would be deprived of the diversity of viewpoints that make up Commonwealth and should be considered when the CAC advises the Commission.

The CAC's members must be permitted to speak freely when authorized to do so by the CAC itself.

CAUSE-PA agrees with the CAC and the Commission that no CAC member may speak on behalf of the CAC without a quorum of the CAC granting such authority. Likewise, we share the position that CAC members should in no way be limited from speaking in their own personal or professional capacity. ANOPR at 7. However, the Commission seeks comment as to whether CAC members should have to seek Commission approval before a member can speak publicly about the work of the Council or at a public input hearing. Id. CAUSE-PA views such a restriction as unnecessary and too restrictive. To be sure, it is understandable why the Commission may wish to control the messaging narrative about official Commission communications, but the CAC's role of advising the Commission sometimes may necessitate discussing the role and scope of that

advice with members of the public. CAUSE-PA shares the perspective of the CAC that “[a]s 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.” Comments of CAC at 6.

Conclusion

CAUSE-PA appreciates the opportunity to provide these comments in response to the Commission’s ANOPR. As indicated at the beginning of these comments, CAUSE-PA endorses the CAC’s comments at this docket in addition to the comments provided here.

Respectfully Submitted,
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Dated: February 8, 2019