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February 8, 2019

Rosemary Chiavetta, Esq., Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
Harrisburg, Pennsylvania 17120

Re: The Commission's Regulation Governing the Consumer Advisory Council
52 Pa. Code Ch. 91
Docket No. L-2018-3004948

Dear Secretary Chiavetta:

Please find enclosed for filing the Comments of the Energy Association of Pennsylvania to the Advanced Notice of Proposed Rulemaking Order at the above-referenced docket.

Sincerely,

A handwritten signature in blue ink that reads "Terrance J. Fitzpatrick".

Terrance J. Fitzpatrick
President & CEO

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

The Commission's Regulation

Governing the Consumer Advisory Council :

L-2018-3004948

52 Pa. Code Ch. 91

**COMMENTS OF THE
ENERGY ASSOCIATION OF PENNSYLVANIA**

I. INTRODUCTION

On October 25, 2018, the Pennsylvania Public Utility Commission (“Commission” or “PUC”) issued an Advance Notice of Proposed Rulemaking (“ANOPR”) regarding its regulations governing the Consumer Advisory Council at 52 Pa. Code Ch. 91. Initially, the ANOPR directed commenters to provide input to the Commission within 45 days of the publication of the ANOPR in the *Pennsylvania Bulletin*, which occurred on November 10, 2018. This made the due date for comment submission December 26, 2018. On December 7, 2018, at the request of the Consumer Advisory Council (“CAC” or “Council”), the Commission issued a Secretarial Letter that extended the deadline for submission of comments to February 8, 2019.

The Commission is seeking input specifically regarding the following: “(1) whether to repeal Chapter 91 and concomitantly reestablish the Council via Commission Order; (2) what improvements are needed for CAC operational efficiency; (3) information sharing between Commission Staff and the Council; (4) the Council’s ability to file comments in proceedings before the Commission; (5) the diversity of Council membership; (6) Consumer Advisory Council members’ interactions with the media or at public forums; (7) clarification to the General Assembly and the Governor’s Office regarding the appointments and biennial terms of

the Council; and (8) ministerial changes to the Council including examining the frequency of meetings and evaluating the Council's composition.”¹

The Energy Association of Pennsylvania (“EAP” or “Association”) is a trade association that represents and promotes the interests of regulated electric and natural gas distribution companies operating in the Commonwealth. EAP respectfully submits these comments on behalf of its member companies.²

II. BACKGROUND

The Consumer Advisory Council was created in 1977 by the Commission through the adoption of 52 Pa. Code Chapter 91 shortly following legislative action creating the Office of Consumer Advocate.³ At its public meeting of March 8, 1977, the Commission, citing its authority under Sections 901 and 902 of the Public Utility Code, 66 P.S. §§ 1341 and 1342 respectively, as well as Sections 201, 202, and 409 of the Commonwealth Documents Law, 45 P.S. §§ 1201, 1202, and 1409, adopted an order to promulgate these new regulations. At that time, three Commissioners voted in favor of the Order, with one Commissioner abstaining and another dissenting. The stated purpose for the CAC's creation was “to articulate the concerns of the consumers of the utility services in the Commonwealth, to collect data pertinent to the execution of the duties of the Commission under the Public Utility Law, and to recommend to the Commission changes in its internal operating procedures, regulations, and the statutes

¹ p.1-2

² The Association's electric distribution company members include: Citizens' Electric Company; Duquesne Light Company; Metropolitan Edison Company; PECO Energy Company; Pennsylvania Electric Company; Pennsylvania Power Company; Pike County Light & Power Company; PPL Electric Utilities Corporation; UGI Utilities, Inc.(Electric Division); Wellsboro Electric Company; and, West Penn Power Company. The Association's natural gas distribution company members include: Columbia Gas of Pennsylvania, Inc.; Pike County Light & Power Company; Leatherstocking Gas Co., LLC, National Fuel Distribution Corp.; PECO Energy Company; Peoples Natural Gas Company LLC; Peoples Gas Company LLC; Philadelphia Gas Works; UGI Central Penn Gas, Inc.; UGI Penn Natural Gas, Inc.; UGI Utilities Inc.; and Valley Energy Inc.

³ Act 161 of 1976.

pursuant to which the Commission operates.”⁴ The purpose of the Council is to advise the PUC upon matters relating to the protection of consumer interests as those interests are affected by the PUC’s exercise of its jurisdiction as provided by law. Nothing in the provisions regarding the Council will prevent or discourage advice on any subject which could aid the PUC in pursuance of its regulatory duties. 52 Pa. Code § 91.2. The Council may consider all matters within the scope of the above provision which arise from: (1) consumer inquiry or request; (2) PUC inquiry or request; or (3) the proceedings, deliberations, or motions of the Council itself. 52 Pa. Code § 91.3.

The Council must make periodic reports to the PUC regarding the activities of the Council and its recommendations as to how the PUC may better serve the public and, particularly, the interest of ratepayers. Also, the Council, in considering matters within its jurisdiction, may conduct investigations and may solicit and receive comments from interested parties and the general public. 52 Pa. Code § 91.3.

The Council must hold regular meetings not less than quarterly in such places as it may deem appropriate in the performance of its duties. All meetings of the Council must be open to the public and must be preceded by reasonable notice of the date, time, and place thereof. Notice of all Council meetings must be made to the media through the Public Information Office of the PUC. Copies of all Council actions must be filed with the Secretary and the Bureau of Consumer Services. 52 Pa. Code § 91.3.

An amendment to Chapter 91 regulations in 1994 increased the term length of Council members from one to two years and provided for the selection of Council Members-at-Large. The Commission indicated they believed these amendments would make the Council more

⁴ PA Bulletin, Vol. 7, No. 16, April 16, 1977, p. 1034-1035.

effective. Noting comments from the Legislature regarding changed names of the relevant standing committees, no other comments were filed to these amendments.⁵

As noted above, just before the Commission's creation of the CAC in 1977, the Pennsylvania General Assembly established by law the Office of Consumer Advocate ("OCA") in 1976 to represent the interests of Pennsylvania utility consumers before the Commission, federal regulatory agencies, and state and federal courts.⁶ The OCA is an independent office within the Pennsylvania Office of Attorney General. This act followed the filing of more than two dozen bills across both legislative chambers in the 1975-1976 legislative session concerning the power, duties, and make-up of the Public Utility Commission. It is worth noting that this legislative action came at the apex of the 20th century's consumer advocacy movement of the 1960s and 1970s, which included the creation of a federal Consumer Advisory Council, President Johnson's Committee on Consumer Interests, and passage of such acts as the National Traffic and Motor Vehicle Safety Act, the Occupational Safety and Health Act, and the Consumer Product Safety Act. Providing a voice for and protection of consumer interests was a hallmark of legislative action at both the federal and state levels of government at this time.

III. COMMENTS

While EAP and its member utility companies are not direct participants in the Council by appointment, utilities regularly attend Council meetings to provide information as requested and gain insight into consumer issues. Utilities also interact with their own regional consumer advocacy groups in public forums, through their Universal Service Working Groups, and other agency advisory councils, such as the Pennsylvania Department of Human Service's LIHEAP

⁵ *Pennsylvania Bulletin*, Vol. 24, No. 53, December 31, 1994, p. 6568

Advisory Council or the Pennsylvania Department of Community and Economic Development's Weatherization Policy Advisory Council.

Through observation, as well as in comparing the public filings of the CAC to those made by low-income advocacy groups,⁷ much of the CAC's focus in recent years has been on low-income consumer issues. While important, EAP believes it has become the predominant focus of the Council at the expense of consumer issues more broadly. A critical balance of utility customer assistance programs is maintaining benefit for those with hardship while not unduly burdening those – including households just above qualification for benefits – who pay for the programs.

EAP believes the Council could better maintain the interests of all utility customers by instituting term limits not only for a chairperson, but for members appointed by the Commission as well for as those by the Governor's Office and members of the Pennsylvania General Assembly as currently outlined in the regulations. There is nothing particularly technical about the topics discussed or the methods or means by which the Council currently provides input to the Commission that would preclude new members from effectively participating. EAP recommends the Commission, in its review of CAC regulations, consider adopting a two- or three-time renewal limit on appointment to the Council from any appointing body. Utilities, advocacy groups, and other members of the public are always welcome to attend the CAC's publicly-held meetings and provide input.

EAP agrees with the Commission's assessment contained in the ANOPR that the Council's current ability to "conduct investigations and...solicit and receive comments from

⁷ See Comments of the CAC re: Chapter 14 Implementation, Docket No. M-2014-2448824; Comments of the CAC re: Standards and Billing Practices for Residential Utility Service at Chapter 56, Docket No. L-2015-2508421; Comments of the CAC re: Fixed Utility Distribution Rates Policy Statement, Docket No. M-2015-2518883.

interested parties and the general public” has both rarely been utilized by the CAC and “may be duplicative of the work conducted by other bureaus and offices in the Commission.”⁸ Comparing the Council to other advisory councils in which EAP participates, EAP notes that other advisory councils do not conduct investigations or solicit comments from the general public.⁹ These advisory bodies provide input on various relevant Department initiatives and actions and routinely request, and receive, relevant information but do not have investigative authority. EAP cannot envision a scenario where investigative action by the Council would be necessary or prudent given the many opportunities that currently exist for public input to the Commission or to the utilities themselves. Moreover, a separate investigation by the CAC may duplicate efforts by the Commission or the OCA and would necessitate tools and resources not currently available to the CAC.

In addition, the Commission and consumers now benefit from over forty years of advocacy on consumer issues from OCA, which is explicitly tasked with investigating and filing comments on behalf of consumers. OCA is a sophisticated and mature operation with attorneys and staff who represent consumers in cases before the PUC including “rate increase cases, retail competition issues, mergers, and alternative regulation plans.”¹⁰ OCA has also “actively participated in the legislative and policy debates” surrounding essential utility service.¹¹ Since the time of OCA and the CAC’s nearly-concurrent inception, OCA has developed to serve the same essential purpose of the CAC; that is, to communicate the concerns of all residential

⁸ ANOPR, p.6

⁹ EAP is a sitting member of the PA Department of Human Service’s LIHEAP Advisory Council as well as the Weatherization Policy Advisory Council convened by the Pennsylvania Department of Community and Economic Development.

¹⁰ Website of the Office of Consumer Advocate, “Who We Are,”

http://www.oca.state.pa.us/information_links/brochure.htm

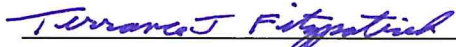
¹¹ *Id.*

consumers, collect data pursuant to those concerns, and to make recommendations to the Commission. In light of this, it is appropriate to revisit the purpose and scope of the CAC.

IV. CONCLUSION

EAP appreciates the opportunity to comment at the outset of this review to improve the effectiveness of the Commission's Consumer Advisory Council. The Association reserves the right to make further comment on these and other unaddressed issues that might arise in the context of this proceeding.

Respectfully submitted,



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Date: February 8, 2019