

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Agnes and Steve Atuahene

v.

PECO Energy Company

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C-2019-3012904

BRIEFING ORDER

By Hearing Notice dated January 16, 2020, an initial in-person hearing was scheduled for this proceeding on Wednesday, February 19, 2020. The hearing convened as scheduled. The Complainants, Agnes and Steve Atuahene, represented themselves. The Respondent, PECO Energy Company (PECO), was represented by Edward Fisher, Esquire.

At the conclusion of the presentation of testimony and evidence, Mr. Atuahene requested the opportunity to present argument through written presentation. The undersigned granted his request. Although the undersigned directed a briefing schedule at the hearing, that schedule is slightly changed through this Order. Both parties will be responsible for Main Briefs. Reply Briefs may be filed at the discretion of the party. The briefing schedule is:

<u>Item</u>	<u>Due date</u>
Main Brief	April 3, 2020
Reply Brief	April 13, 2020
Record Close	April 17, 2020

The above schedule is contingent on the transcript being accessible (date delivered to the undersigned) on or before, March 20, 2020. If the transcript fails to be accessible by March 20, 2020, the above due dates will be adjusted as follows:

<u>Item</u>	<u>Due date</u>
Main Brief	2 weeks after transcript
Reply Brief	10 days after Main Brief
Record Close	4 days after Reply Brief

The above dates are in-hand dates meaning the undersigned, the opposing party and the Secretary of the Pennsylvania Public Utility Commission (PUC) should receive the item in-hand at or before close of business (4:30 p.m.) on the corresponding due date. For the convenience of the parties the mailing addresses for the Secretary of the PUC and the undersigned are:

If using U.S. Postal Service:

Rosemary Chiavetta, Secretary
 Pennsylvania Public Utility
 Commission
 P.O. Box 3265
 Harrisburg, PA 17105-3265

Honorable Angela T. Jones
 Pennsylvania Public Utility
 Commission
 Office of Administrative Law Judge
 801 Market Street, 4th Floor Suite
 4063
 Philadelphia, PA 19107

If using Overnight/Hand Delivery:

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

If any of the above due dates are a non-business day for the PUC, which is a Saturday, Sunday, or legal holiday observed by the PUC, then the due date is the first business day following the non-business day.

The Briefs may contain proposed findings of fact and proposed conclusions of law as the content of the appendices to the Brief. The parties are to use their discretion as to whether to include in the appendices proposed ordering paragraphs. Other matters regarding the form and content of the briefs should comply with 52 Pa.Code §§ 5.501, 5.502, which is attached as an Appendix to this Order.

APPENDIX

§ 5.486. Unavailability of presiding officer.

(a) If a presiding officer becomes unavailable, the Chief Administrative Law Judge may either designate another qualified officer to prepare the initial or recommended decision or cause the record to be certified to the Commission for decision.

(b) Subsection (a) is identical to 1 Pa. Code § 35.203 (relating to unavailability of presiding officer).

Authority

The provisions of this § 5.486 amended under the Public Utility Code, 66 Pa.C.S. §§ 501, 504—506, 1301 and 1501.

Source

The provisions of this § 5.486 adopted October 12, 1984, effective January 1, 1985, 14 Pa.B. 3819; amended April 28, 2006, effective April 29, 2006, 36 Pa.B. 2097. Immediately preceding text appears at serial pages (225715).

Subchapter G. BRIEFS

- Sec.
5.501. Content and form of briefs.
5.502. Filing and service of briefs.

§ 5.501. Content and form of briefs.

- (a) Briefs must contain the following:
- (1) A concise statement or counter-statement of the case.
 - (2) Reference to the pages of the record or exhibits where the evidence relied upon by the filing party appears.
 - (3) An argument preceded by a summary. The party with the burden of proof shall, in its main or initial brief, completely address, to the extent possible, every issue raised by the relief sought and the evidence adduced at hearing.
 - (4) A conclusion with requested relief.
- (b) Briefs must also contain the following, if and as directed by the presiding officer:
- (1) A statement of the questions involved.
 - (2) Proposed findings of fact with references to transcript pages or exhibits where evidence appears, together with proposed conclusions of law.
 - (3) Proposed ordering paragraphs specifically identifying the relief sought.
- (c) Exhibits should not be reproduced in the brief, but may, if desired, be reproduced in an appendix to the brief.

(d) Briefs of more than 20 pages must contain on their front leaves a table of contents with page references and a table of citations, which may be prepared without pagination.

(e) Briefs must be as concise as possible and, except for briefs in rate cases, be limited to 60 pages in length, unless some other limitation is imposed or allowed by the presiding officer. The length of briefs in rate cases will be controlled by the presiding officer.

(f) Subsections (a)—(e) supersede 1 Pa. Code § 35.192 (relating to content and form of briefs).

Authority

The provisions of this § 5.501 amended under the Public Utility Code, 66 Pa.C.S. §§ 501, 504—506, 1301 and 1501.

Source

The provisions of this § 5.501 adopted October 12, 1984, effective January 1, 1985, 14 Pa.B. 3819; amended April 28, 2006, effective April 29, 2006, 36 Pa.B. 2097. Immediately preceding text appears at serial pages (225715) to (225716).

§ 5.502. Filing and service of briefs.

(a) *Service.* Copies shall be served on the parties in accordance with § 1.59(b) and (c) (relating to number of copies to be served).

(b) *Number of copies.*

(1) *Paper filing.* An original of a brief shall be filed with the Commission under § 1.4 (relating to filing generally).

(2) *Electronic filing.*

(i) When the brief, including attachments, is 250 pages or less and does not exceed 5 megabytes, the filing user may file one electronic copy of the brief with the Commission and is not required to file a paper copy.

(ii) When the brief, including attachments, exceeds 250 pages but does not exceed 5 megabytes, the filing user may file one electronic copy of the brief and shall also file an original of the brief in paper form. The original shall be filed no later than 3 business days after the electronic filing is made. The filing date for the brief in paper form for purposes of this section will be determined in accordance with § 1.11(a)(1)—(3) (relating to date of filing).

(3) *Voluminous briefs.* When the brief, including attachments, exceeds 5 megabytes, in addition to filing the requisite number of hard copies in accordance with subsection (b)(1), a CD-ROM or DVD containing the brief and an index to the brief shall be filed with the Commission.

(c) *Filing of briefs in nonrate proceedings.*

(1) *Initial brief.* An initial brief shall be filed by the party with the burden of proof except as provided by agreement or by direction of the presiding officer.

(2) *Response brief.* A party may file a response brief to the initial brief.

(d) *Filing of briefs in rate proceedings.*

(1) *Main brief.* A main brief may be filed by a party except as provided by agreement or by direction of the presiding officer.

(2) *Reply brief.* A party may file a reply brief to a main brief regardless of whether the party filed a main brief.

(e) *Filing of amicus curiae briefs.* A person interested in the issues involved in a Commission proceeding, although not a party, may, without applying for leave to do so, file amicus curiae briefs in regard to those issues. Unless otherwise ordered, amicus curiae briefs shall be filed and served in the manner and number required and within the time allowed by this section, absent good cause.

(f) *Deadlines.* Initial briefs, main briefs, responsive briefs and reply briefs shall be filed and served within the time fixed by the presiding officer. If no specific times are fixed, initial briefs or main briefs shall be filed and served within 20 days after the date of service of notice of the filing of the transcript and responsive briefs or reply briefs shall be filed within 40 days after date of service of the notice of the filing of the transcript.

(g) *Late-filed briefs.* Briefs not filed and served on or before the dates fixed therefore will not be accepted, except by special permission of the Commission or the presiding officer as permitted under § 1.15 (referring to extensions of time and continuances).

(h) *Supersession.* Subsections (a)—(f) supersede 1 Pa. Code §§ 35.191 and 35.193 (relating to proceedings in which briefs are to be filed; and filing and service of briefs).

Authority

The provisions of this § 5.502 amended under the Public Utility Code, 66 Pa.C.S. §§ 501, 504—506, 523, 1301, 1501 and 1504.

Source

The provisions of this § 5.502 adopted October 12, 1984, effective January 1, 1985, 14 Pa.B. 3819; amended January 24, 1997, effective January 25, 1997, 27 Pa.B. 414; amended April 28, 2006, effective April 29, 2006, 36 Pa.B. 2097; amended September 26, 2008, effective September 27, 2008, 38 Pa.B. 5303; amended January 10, 2014, effective January 11, 2014, 44 Pa.B. 249. Immediately preceding text appears at serial pages (368441) to (368442).

Notes of Decisions

Discretion

There was no abuse of discretion when the administrative law judge accepted and considered a party's initial brief even though it was filed in violation of the briefing order. *Springfield Township v. Pennsylvania Public Utility Commission*, 676 A.2d 304 (Pa. Cmwith. 1996).

Cross References

This section cited in 52 Pa. Code § 1.37 (relating to number of copies).

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