

**PENNSYLVANIA  
PUBLIC UTILITY COMMISSION  
Harrisburg, PA 17105-3265**

Public Meeting held November 9, 2023

Commissioners Present:

Stephen M. DeFrank, Chairman  
Kimberly Barrow, Vice Chair, Statement  
Ralph V. Yanora, Dissenting  
Kathryn L. Zerfuss, Statement  
John F. Coleman, Jr., Statement, Dissenting

Regulations Governing the Public Utility  
Commission's General Provisions, 52 Pa. Code  
Chapters 1, 3, and 5 (relating to Rules of  
Administrative Practice and Procedure; Special  
Provisions; and Formal Proceedings)

Docket No. L-2023-3041347

**NOTICE OF PROPOSED RULEMAKING**

**BY THE COMMISSION:**

The Pennsylvania Public Utility Commission (PUC) has commenced this Notice of Proposed Rulemaking Order (NOPR) to seek comments on proposed amendments to the PUC's regulations at 52 Pa. Code §§ 1.1—1.96, 3.1—3.602, and 5.01—5.633 (relating to rules of administrative practice and procedure; special provisions; and formal proceedings), (Chapters 1, 3, and 5, respectively). Specifically, with this NOPR, the PUC proposes changes to its regulations in order to update and clarify the general provisions in Subpart A of Title 52 surrounding practice before the PUC.<sup>1</sup>

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<sup>1</sup> This NOPR is comprised of a PUC Order, which is the Preamble, and an Annex A, which presents the proposed changes to the PUC's Rules of Administrative Practice.

## **PREAMBLE**

### **BACKGROUND**

The general provisions regarding practice before the PUC were last revised in 2006.<sup>2</sup> Since then, our jurisdictional responsibilities have changed considerably, and important technological innovations and advancements have occurred that, if implemented, could bring much-needed efficiencies to the current processes and procedures in PUC administrative hearings and proceedings. As such, in the first quarter of 2016, the PUC announced its intention to revise the PUC's rules of practice and procedure, 52 Pa. Code Chapters 1, 3 and 5, by convening a series of informal stakeholder meetings wherein PUC Staff and attorneys representing clients that regularly practice before the PUC could identify issues and concerns with the existing rules as well as recommend amended language for the PUC's consideration. We stated our intention to solicit additional input regarding proposed revisions and our commitment to carefully consider the views of all interested parties prior to taking formal action. Upon extensive consideration of the input we received from stakeholders, we now enter this Notice of Proposed Rulemaking Order for the requisite review and public comment.

### **DISCUSSION**

#### **I. Proposed Amendments to Chapter 1 - Rules of Administrative Practice and Procedure**

The PUC recognizes that the rules of administrative practice and procedure need to be updated in order to make PUC proceedings operate in a more efficient manner.

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<sup>2</sup> *Final Rulemaking For the Revision of Chapters 1, 3, and 5 of Title 52 of the Pennsylvania Code Pertaining to Practice and Procedure Before the Commission*, Docket No. L-00020156 (Final Rulemaking Order entered January 4, 2006), effective April 29, 2006, 36 Pa.B. 2097 (4/29/2006). On April 28, 2006, a Secretarial Letter was issued providing that for any PUC proceeding initiated prior to April 29, 2006, all active parties could jointly seek a determination for the assigned presiding officer or from the PUC that the revisions would apply to that proceeding, 36 Pa.B. 2281 (5/13/2006). That rulemaking may be viewed on the website of the Pennsylvania Independent Regulatory Review Commission as IRRC Number 2441, at [https://www.irrc.state.pa.us/regulations/find\\_a\\_regulation.cfm](https://www.irrc.state.pa.us/regulations/find_a_regulation.cfm).

Therefore, with the aim of increasing efficiency and clarity in PUC proceedings, the PUC proposes the following amendments to the regulations at 52 Pa. Code §§ 1.1—1.96 for the rationales articulated herein.

***52 Pa. Code § 1.2. Liberal Construction.***

**Proposed Change**

Section 1.2(c) would be amended to further limit the PUC’s or a presiding officer’s ability to grant a waiver under Chapter 1 to not only a circumstance when granting the waiver may adversely affect a substantive right of a party but also when granting a waiver would adversely affect a due process right of a party.

Section 1.2(a) and (c) would be amended to replace “substantive” with “substantial.”

**Rationale for Proposed Change**

The existing language in Section 1.2(c) only accounts for a waiver adversely affecting a party’s substantive rights only. Accordingly, the proposed amendment in Section 1.2(c) is intended to distinguish between the impact of waiving a procedural regulation that adversely affects a party’s substantive rights or that adversely affects due process rights, respectively.

The proposed amendment to Section 1.2(a) and (c) is intended to align the section more closely with Pennsylvania Rule of Civil Procedure 126 (Pa.R.C.P. No. 126) (concerning liberal construction and application of rules). The change from “substantive” to “substantial” allows the PUC to draw upon the body of case law interpreting and applying Pa.R.C.P. No. 126 and also makes clear, through that case law, that the section does not apply when due process rights are affected.

***52 Pa. Code § 1.3. Information and Special Instructions.***

**Proposed Change**

Section 1.3(a) would be amended to replace “application” with “request.”

Section 1.3(a)(2) would be amended to identify clearly that overnight delivery, certified or priority mail are the mailing options other than first-class mail.

**Rationale for Proposed Change**

The proposed amendment to Section 1.3(a) would streamline the process for seeking information about the PUC’s procedural rules or information regarding hearings. The proposed amendment would clarify that an individual seeking procedural information no longer needs to file an “application,” which usually requires approval by the PUC or PUC staff. Additionally, the proposed amendment to Section 1.3(a)(2) is intended to clarify what is meant by the term “mail other than first-class” by deleting it and specifically identifying those types of mail service.

***52 Pa. Code § 1.4. Filing Generally.***

**Proposed Change**

Section 1.4(a)(2) would be amended to identify clearly that overnight delivery, certified or priority mail are the mailing options other than first-class mail for filings made with the PUC.

**Rationale for Proposed Change**

The proposed amendment to Section 1.4(a)(2) is intended to bring clarity to what is meant by the term “mail other than first class” by deleting it and specifically identifying those types of mail service.

***52 Pa. Code § 1.5(a). Amendment to Rules.***

**Proposed Change**

Section 1.5(a) is amended to remove “persons” from who may file an application based on the proposed new definition of “person” in Section 1.8 (relating to definitions).

**Rationale for Proposed Change**

The proposed amendment to Section 1.5(a) would allow parties in addition to “persons” (e.g., corporations and municipal corporations) to file applications requesting a general and permanent change in the PUC’s rules of administrative practice and procedure.

***52 Pa. Code § 1.6. Commission Office Hours.***

**Proposed Change**

Section 1.6 would be amended to allow the PUC to modify its office hours.

**Rationale for Proposed Change**

The proposed amendment to Section 1.6 is intended to recognize that the PUC, as an independent agency, may set its own hours.

***52 Pa. Code § 1.7. Sessions of the Commission.***

**Proposed Changes**

Section 1.7 would be amended to incorporate livestreamed and/or telephone public meetings.

**Rationale for Proposed Changes**

The proposed amendment to Section 1.7 is intended to recognize that the PUC has begun to use livestreamed and telephone public meetings more regularly.

**52 Pa. Code § 1.8. Definitions.**

**Proposed Changes**

“Act” would be amended to replace Section “3315” with “3316.”

“Adjudication” would be amended to clarify qualifying proceedings under the definition.

“Applicants” would be amended to change the term to singular form and to clarify qualifying entities under the definition.

“Adversarial proceeding” would be amended to replace “other persons” with “parties” to be consistent with the proposed new definition of “person” in this section.

“Authorized agent” would be amended to replace “person” with “representative of a filing user” to be consistent with the proposed new definition of “person” in this section. The definition would also be amended to allow anyone with permission to submit filings to do so, which lowers the previous standard from anyone with permission to “legally act” on behalf of the filing user.

“Corporation” would be added to refer to the definition of “corporation” set forth at 66 Pa.C.S. § 102.

“Electronic mail” would be amended to address communication methods, including prospective ones such as text messaging.

“Filing user” would be amended to include corporations and municipal corporations, which were previously included in the definition of “person,” and to provide the PUC’s updated website URL.

“Initial decision” would be amended to replace “participant” with “party.”

“Intervenor” would be amended to include corporations and municipal corporations, which were previously included in the definition of “person.”

“Municipal corporation” would be amended to refer to the definition of “municipal corporation” set forth at 66 Pa.C.S. § 102.

“Nonadversarial proceeding” would be amended to remove references to “person.”

“Notarial officer” would be amended to replace “persons” with “individuals” in light of the proposed change to the definition of “person.”

“Party” would be amended to include “corporation” and “municipal corporation” in light of the proposed change to the definition of “person.”

“Person” would be amended to refer to the definition of “person” set forth at 66 Pa.C.S. § 102.

“Petitioners” would be redefined as “petitioner” and the definition amended to include corporations and municipal corporations.

“Presiding officer” would be amended to replace the reference to “a person” with “a Commission employee.”

“Principal” would be amended to replace the reference to “a party” with “an individual” and to clarify that the individual can authorize counsel “for a party” to take specified action.

The reference in “proof of service” to Sections 1.57 and 1.58 would be amended to remove an errant semicolon.

“Protestant” would be amended to replace “persons” with “a party” to reflect the change to the definition of “person.”

“Qualified document” would be amended to update the PUC’s website address and to clarify existing language concerning types of documents that can be filed with the PUC electronically.

“Rate proceeding” would be amended for brevity.

“Recommended decision” would be amended for clarity.

“Respondent” would be amended for brevity and to replace reference to “person” with “a party.”

“Secretary” would be amended for brevity.

“Staff” would be amended to remove the outdated reference to the “Office of Trial Staff” and to incorporate reference to the “Bureau of Investigation and Enforcement.”

“Statutory advocate” would be amended to remove the outdated reference to the “Office of Trial Staff” and incorporate reference to the “Bureau of Investigation and Enforcement.”

“Submittal” would be amended for clarity.



“Telefacsimile transmittal” would be redefined as “fax transmittal” and amended for clarity.

“Tentative Order” would be amended for clarity.

“Trade Secret” would be amended for brevity and clarity.

“Writing or written” would be amended to update the definition.

### **Rationale for Proposed Changes**

The proposed amendments to Section 1.8 would revise the definition for the terms “corporation,” and “municipal corporation” and also incorporate those terms into the existing definition of “person” to bring our regulations into line with the definition of “person” as set forth in Section 102 of the Public Utility Code (66 Pa.C.S. § 102). The proposed amendments to Section 1.8 would also add, clarify and update certain existing definitions.

Additionally, “act” would be replaced with “Act” throughout the regulations when necessary to refer to the Public Utility Code (Code).

### ***52 Pa. Code § 1.13. Issuance of Commission Orders.***

#### **Proposed Changes**

Section 1.13 would be amended for clarity and to address references to PUC orders.

#### **Rationale for Proposed Changes**

The proposed amendments to Section 1.13 are intended to provide brevity and clarity.

***52 Pa. Code § 1.15. Extensions of Time and Continuances.***

**Proposed Changes**

Section 1.15(a)(1) would be amended to change “person” to “individual” and would amend the language concerning notice of the PUC.

Section 1.15(b) would be amended to add “to the extent possible” to the end of the section, regarding when requests for continuances should be filed.

**Rationale for Proposed Changes**

The proposed amendments to Section 1.15(a)(1) are intended to provide consistency with the amended definition of “person” set forth in Section 1.8 and for the sake of brevity.

Concerning Section 1.15(b), the PUC provides its administrative law judges (ALJs) who preside over PUC proceedings with the authority to regulate the course of the proceeding, under 52 Pa. Code § 5.483. Nevertheless, there are several existing PUC regulations that either impair ALJ control or do not reflect what occurs in practice.

For example, the PUC’s regulation at Section 1.15(b) provides that requests for a continuance of hearings should be filed at least five (5) days prior to the hearing date. However, it is not always possible for a party to submit a request for continuance at least five (5) days prior to the hearing date, especially in the event of illness, and judges are oftentimes faced with requests for a continuance less than five (5) days before the start of a hearing. Therefore, the proposed amendment to Section 1.15(b) is intended to recognize that it is not always possible for a party to submit a request for continuance at least five (5) days prior to the hearing date, especially in the event of illness. As Judges are often faced with requests for a continuance that are submitted less than five (5) days before the start of a hearing, the proposed amendment provides presiding officers flexibility in their authority to regulate the course of a proceeding.

Likewise, presiding ALJs often address service of documents by parties during prehearing conferences. A party may express a preference as to how he or she wishes to be served during the course of the proceeding. Therefore, Sections 5.222 (related to initiation of prehearing conferences in nonrate proceedings) and 5.224 (related to Prehearing conference in rate proceedings) would be amended to afford the presiding officer with the authority to address and determine the method of service on parties.

***52 Pa. Code § 1.21. Appearance.***

**Proposed Changes**

The title of Section 1.21 would be amended to “appearance in nonadversarial or informal proceedings” to clarify that it deals with appearances in PUC nonadversarial and informal proceedings only. The text of Section 1.21 would be amended to change “person” to “party” to specify who can appear on behalf of a party involved in a nonadversarial or informal PUC proceedings.

Section 1.21(c) would be amended to allow a non-attorney third party representative holding the power of attorney for an individual consumer to represent that individual during periods of disability or incapacity, or both.

**Rationale for Proposed Changes**

The proposed amendment to Section 1.21 is intended to provide a clear distinction between nonadversarial and informal proceedings and adversarial proceeding and states who can appear on behalf of a party in a nonadversarial and informal PUC proceedings. The proposed amendment also provides consistency with the proposed amended definition of “party” set forth in Section 1.8.

Further, various administrative agencies permit a party to be represented by a nonlawyer in some circumstances. For example, an individual claiming unemployment

compensation (UC) may be represented by a duly authorized agent before the Pa. Department of Labor and Industry, the Unemployment Compensation Board of Review, and a UC referee. *See Harkness v. Unemployment Compensation Bd. of Rev.*, 920 A.2d 162 (Pa. 2007). Also, nonlawyer representatives are permitted to appear on behalf of individuals appearing before the Pa. Department of Human Services, Office of Hearings and Appeals. *See Nolan v. Department of Public Welfare*, 673 A.2d 414 (Pa. Cmwlth. 1995); and 55 Pa. Code §§ 275.2, 275.3(a), and 275.4(a)(1)(iv). Additionally, the Pa. Department of Revenue, Board of Appeals, specifies that a taxpayer filing an appeal may appear on his own behalf or be represented by someone else with the required technical knowledge who is not necessarily an attorney.

Accordingly, we propose a more permissive approach to representation similar to other administrative agencies would better facilitate the development of evidentiary records in complaint proceedings involving individual consumers.

The proposed amendment to Section 1.21(c) is intended to clarify that a non-attorney third-party representative holding power of attorney may represent an individual in nonadversarial proceedings during periods of disability or incapacity, or both.

***52 Pa. Code § 1.22. Appearance by Attorney or Certified Legal Intern.***

**Proposed Changes**

The title of Section 1.22 would be amended to “appearance in adversarial proceedings” to clarify that is dealing with appearances in PUC adversarial proceedings only. The amended section would define who can appear on behalf of a party involved in an adversarial proceeding. The proposed amendments also include “corporations” and “municipal corporations” in order to provide consistency with the proposed amended definition of “party” set forth in Section 1.8.

Section 1.22(a) would be amended to allow an authorized corporate official to represent small businesses or partnerships in adversarial proceedings, and to allow a non-attorney third party representative holding the power of attorney for an individual consumer to represent that individual during periods of disability or incapacity, or both.

### **Rationale for Proposed Changes**

The proposed amendments to Section 1.22 are intended to adequately show that corporations and municipal corporations are subject to this section and clearly state who can appear on their behalf in an adversarial proceeding.

Sections 1.21 through 1.23 of our current rules operate to preclude a corporation or partnership from appearing before the PUC in an adversarial proceeding unless they have legal counsel. This rule relies on case precedent holding that a corporation may appear in court only through an attorney at law admitted to practice before the court. See *Walacavage v. Excell 2000*, 480 A.2d 281 (Pa. Super. 1984), citing *Simbrow, Inc. v. United States*, 367 F.2d 373 (3rd Cir. 1966); *MOVE Organization v. Department of Justice*, 555 F. Supp. 684 (E.D.Pa. 1983); *MacNeil v. Hearst Corp.*, 160 F. Supp. 157 (D.Del. 1958); *Merco Construction Engineers, Inc., v. Municipal Court*, 581 P.2d 636 (Ca. 1978); *Oahu Plumbing Sheet Metal, Ltd. v. Kona Construction, Inc.*, 590 P.2d 570 (Haw. 1979).

However, Rule 207 in the Rules of Procedure of the Magisterial District Judges (MDJ) in Pennsylvania allows corporate or partnership entities to appear *pro se* although, as noted that is not the case with the Court of Common Pleas and higher courts. It may be that PUC proceedings are more akin to MDJ proceedings, albeit at an administrative level, given the rights of appeal to Pennsylvania courts set out in the Code. Accordingly, the proposed amendment to Section 1.22(a) is intended to grant a more permissive approach to representation for individuals, small businesses, and partnerships, to better facilitate the development of evidentiary records in complaint proceedings involving

individual consumers, and the ability of small Pennsylvania businesses to operate and seek redress before the PUC.

As part of the PUC’s consideration of whether small businesses and partnerships should continue to be precluded from appearing before the PUC without legal counsel in adversarial proceedings, we seek comment on a prospective definition for “small business,” including factors such as size or revenue or the potential adoption of an appropriate definition contained in other law.

***52 Pa. Code § 1.23(a). Other Representations Prohibited at Hearings.***

**Proposed Changes**

Section 1.23(a) would be amended to include “corporations” and “municipal corporations.”

**Rationale for Proposed Changes**

The proposed amendment to Section 1.23(a) is intended to adequately show that corporations and municipal corporations are subject to this section.

***52 Pa. Code § 1.24. Notice of Appearance or Withdrawal.***

**Proposed Changes**

Section 1.24(b)(2)(i)(B) would be amended to replace “not licensed in this Commonwealth” with “appearing pro hac vice” and to remove parentheses in “jurisdiction(s).”

Section 1.24(b)(2)(i)(D) would be amended to change “person” to “party.”

Section 1.24(b)(2)(ii)(A) would be amended to include language that the attorney must serve notice of appearance.

Section 1.24(b)(3) would be amended to require the attorney to serve notice of withdrawal on the Secretary, the parties and the presiding officer.

### **Rationale for Proposed Changes**

The proposed amendment to Section 1.24(b)(2)(i)(B) is intended to use the appropriate legal language for appearing pro hac vice before the Commonwealth.

The proposed amendment to Section 1.24(b)(2)(i)(D) is intended to create consistency with the proposed amended definition of “person” set forth in Section 1.8.

The proposed amendment to Section 1.24(b)(2)(ii)(A) is intended to clarify that the attorney must serve notice of appearance on the parties and a certificate of service with the Secretary.

The proposed amendment to Section 1.24(b)(3) is intended to clarify that the attorney must serve notice of withdrawal on the parties and presiding officer in addition to the Secretary.

### ***52 Pa. Code § 1.27(a). Suspension and Disbarment.***

#### **Proposed Changes**

Section 1.27(a) would be amended to change “person” to “individual.”

#### **Rationale for Proposed Changes**

The proposed amendment to Section 1.27(a) is intended to create consistency with the proposed amended definition of “person” set forth in Section 1.8.

***52 Pa. Code § 1.31. Requirements for Documentary Filings.***

**Proposed Changes**

Section 1.31(c)(3) would be amended to add “corporation” and “municipal corporation” to the list of entities on whose behalf a filing can be made.

**Rationale for Proposed Changes**

The proposed amendment to Section 1.31(c)(3) is intended to create consistency with the proposed amended definition of “person” set forth in Section 1.8.

***52 Pa. Code § 1.32. Filing Specifications.***

**Proposed Changes**

Section 1.32(a)(1) would be amended to require that all typewritten documents be one-sided and have margins of at least one inch on all sides.

Section 1.32(a)(2) would be amended to require double-spaced text, except for quotations with a few lines of more, which are to be single-spaced and indented, all printed documents would have to be in at least 12-point font with 10-point font allowed for footnotes, and margins of at least 1 inch throughout.

Section 1.32(b) would be amended to explain how filings must be filed electronically using the PUC’s electronic filing system as it specifies the filing requirements and the PUC’s requirement that documentary filings be searchable PDFs.

**Rationale for Proposed Changes**

The proposed amendments in Section 1.32(a) are intended to ensure that documents submitted to the PUC are accessible and legible. The proposed amendments in Section 1.32(b) are intended to ensure that submitted electronic documents are accessible to the PUC’s staff, including the ability to search submitted PDF documents.



***52 Pa. Code § 1.33. Incorporation by Reference.***

**Proposed Changes**

Section 1.33(b) would be amended to remove the specific language “person filing the current document ascertains that the.”

**Rationale for Proposed Changes**

The proposed amendment to Section 1.33(b) is intended to provide clarity and brevity.

***52 Pa. Code § 1.35. Execution.***

**Proposed Changes**

Section 1.35(b) would be amended to change “person” to “individual” and “act” to “Act.”

**Rationale for Proposed Changes**

The proposed amendments Section 1.35(b) are intended to create consistency with the revised definitions in Section 1.8.

***52 Pa. Code § 1.36. Verification.***

**Proposed Changes**

Section 1.36(a) would be amended to encourage parties to submit a cover letter with their petition if the petition contains no averment or denial of fact not appearing of record. Section 1.36(a) would be further amended to omit language providing that the verification may be signed by an individual other than a filing user.

**Rationale for Proposed Changes**

The amendment to incorporate a cover letter is proposed to aid the Secretary’s staff in processing filings. It is a best practice for the filing attorney to outwardly communicate whether such averment or denial is made, as the PUC employees

processing the filing may or may not be attorneys. Therefore, adding this information in a cover letter will save the Secretary's staff time, as they will not have to review the filing to determine whether the petition contains an averment or denial of fact.

Existing language in Section 1.36(a) states that verifications signed by someone other than the filing user must be refiled with a corrected verification within three days. This proposed amendment removing this language is intended to clarify that verifications must be signed by the appropriate individual upon filing and that improperly verified filings will be rejected.

***52 Pa. Code § 1.37. Number of Copies.***

**Proposed Changes**

Section 1.37(a)(3) would be amended to include and allow other electronic storage devices, such as USB flash drives.

**Rationale for Proposed Changes**

The proposed amendment to Section 1.37(a)(3) is intended to reflect current practice whereby many documents are already submitted to the Secretary's Bureau by USB flash drive.

***52 Pa. Code § 1.43. Schedule of Fees Payable to the Commission.***

**Proposed Changes**

Section 1.43(a) would be amended to communicate that the PUC's filing fees are non-refundable.

Section 1.43(a) would also be amended to update the schedule of fees charged by the PUC for processing various filings. Further, Section 1.43(a) would be amended to note that the category of "applications for amending a certificate" of public convenience (CPC) includes an application to abandon a CPC.

## **Rationale for Proposed Changes**

The proposed amendment to Section 1.43(a) is intended to address requests by filers seeking a refund of filing fees paid to the PUC. The filing fees collected by the PUC are directly related to the costs of processing filings. If these fees were refundable, the PUC would be responsible for the costs associated with filing, whether the purposes of the filing were met or not. Therefore, it is appropriate that the regulation be amended to clarify that the PUC's filing fees are non-refundable.

The proposed amendment to Section 1.43(a) would also eliminate certain fees. The PUC proposes to eliminate the fees related to intangible transition property notices since they relate to the 1997 restructuring of the electric industry and the retirement of resulting stranded costs and are therefore obsolete.<sup>3</sup> The PUC's microfiche records have all been converted to digital format, eliminating the need for any fees related to copies made of microfiche and microfilm rolls. The fee for filing an application for a certificate to discontinue service for intrastate common carrier passenger or household goods in use has been eliminated, due to the difficulty of obtaining this *de minimis* amount from carriers who have gone out of business.

The proposed amendment to Section 1.43(a) would also add fees that have been implemented by the PUC since this regulation was last updated, including fees for applications to begin telecommunications service, applications to be a pipeline operator, applications to be a conservation service provider, and applications to be a utility valuation expert. Further, the fee schedule would be updated to clarify that applications to amend a CPC include applications to abandon a CPC.

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<sup>3</sup> See *Perfection of Security Interests in Intangible Transition Property*, Docket No. L-00970122 (Final Rulemaking Order adopted July 10, 1997); see also 27 Pa.B. 5420 (10/18/1997): <https://www.pacodeandbulletin.gov/Display/pabull?file=/secure/pabulletin/data/vol27/27-42/1662.html> (last accessed on November 27, 2023). That proceeding is sometimes referred to at Docket No. L-970122.

In addition to the proposed amendments to Section 1.43(a), the PUC solicits comment on the proposed schedule of fees, including whether certain fees are still relevant given changes in PUC processes.

***52 Pa. Code § 1.51. Instructions for Service, Notice and Protest.***

**Proposed Changes**

Section 1.51(c) would be added to state that where an individual party is a victim of domestic violence and has a court order providing clear evidence of domestic violence, that party's address will be redacted on the service list.

**Rationale for Proposed Changes**

The addition of Section 1.51(c) serves an important role in protecting the personal information of domestic violence victims. There is no need for the personal information of domestic violence victims to be posted on the PUC's website, which is accessible to the general public.

***52 Pa. Code § 1.53. Service by the Commission.***

**Proposed Changes**

Section 1.53(a) would be amended to clarify that a person is not required to register for the PUC's electronic filing system to be a party in a PUC proceeding nor do they have to register to agree to the electronic service of documents by the PUC.

Section 1.53(b)(1) would be amended to clearly state that if a party has not agreed to electronic service they will continue to be served via first-class mail and that the recipient of the first-class mail would be the party's designated contact registered with the PUC.

Section 1.53(b)(3) would be amended to incorporate the current reality of the PUC's electronic filing system and also to add that a party does not have to have created

a registered eService account with the PUC as a prerequisite to explicitly agreeing to the PUC serving the party with documents via electronic mail (e-mail). This section would be restructured by including subsections (i) and (ii) to differentiate between parties that open and use an account on the PUC's electronic filing system and those without an account but who agree to service by e-mail.

§ 1.53(c) would be amended to change “act” to “Act,” incorporate the reality of a respondent utility that is an e-filing user, and to reflect that service of complaints in all hearings, investigations, and proceedings pending before the PUC can be made by e-mail upon agreement by each party, under 66 Pa.C.S. § 702 (relating to service of complaints on parties).

### **Rationale for Proposed Changes**

The proposed amendment to Section 1.53(a) is intended to clarify that persons are not required to register to use the electronic filing system to be a party in a PUC proceeding and shall continue to be served documents in paper form by the PUC unless they have agreed to electronic service.

The proposed amendment to Section 1.53(b)(1) is intended to create a more uniform service process to reduce potential confusion for PUC staff. We note that all persons appearing before the PUC are required to provide and maintain updated contact information, under Section 1.24.

The proposed amendment to Section 1.53(b)(3) originated from the PUC's waiver of service requirements during the COVID-19 pandemic, during which the PUC permitted electronic service *by* the PUC on all parties regardless of whether a particular

party agreed to electronic service.<sup>4</sup> The PUC has discerned that the flexibility of electronic service has provided additional efficiency across PUC operations; these include benefits to pro se complainants who rely on e-mail for more expedient service to avoid missing regulatory filing deadlines as well as allowing the Secretary's Bureau to more readily accept large filings.

The proposed amendment to Section 1.53(c) is intended to create consistency with the proposed new definitions in Section 1.8 and to incorporate the General Assembly's 2019 amendment to 66 Pa.C.S. § 702 that provides an explicit exception to the certified mailing of a complaint for a respondent party that has created a registered account with the PUC's electronic filing system.

***52 Pa. Code § 1.54. Service by a Party.***

**Proposed Changes**

Section 1.54(a) would be amended to clarify that a person will not be required to register to use the electronic filing system in order to serve documents on other parties. Section 1.54(b)(1) would be amended to clearly state that if a party has not agreed to the electronic service of documents, the other parties to the proceeding must continue to serve them their filings via first-class mail. Section 1.54(b)(3) would be amended to add the allowance of e-mail service when a party explicitly agrees to receive documents filed with the PUC in this fashion regarding a particular proceeding. This section would be restructured to differentiate between parties that open and use an account on the PUC's electronic filing system and those without an account but who agree to receive documents by e-mail.

Section 1.54(c) would be amended to remove "and persons or individuals."

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<sup>4</sup> On March 20, 2020, Chairman Gladys Brown Dutrieuille issued an Emergency Order that provided for the suspension of regulatory and statutory deadlines under appropriate circumstances and modified filing and service requirements. The Commission unanimously ratified the March 20 Emergency Order at its March 26, 2020 Public Meeting. See also September 15, 2022 Order, Docket No. M-2021-3028321.

### **Rationale for Proposed Changes**

The proposed amendment to Section 1.54(b)(3) originated from the PUC's waiver of service requirements during the COVID-19 pandemic, during which the PUC directed that electronic service *on* PUC staff in proceedings pending before it, whether staff is a party or otherwise, be exclusively electronic unless the parties agreed otherwise.<sup>5</sup> Allowing service by e-mail to parties who explicitly agree to e-mail service improves the efficiency of PUC operations.

The proposed amendment to Section 1.54(c) is intended for clarity and brevity and for consistency with the proposed new definitions in Section 1.8.

### ***52 Pa. Code § 1.56. Date of Service.***

#### **Proposed Changes**

Section 1.56(b) would be amended to remove “and the document is served.”

#### **Rationale for Proposed Changes**

The proposed amendment to Section 1.56(b) is intended for brevity and clarity.

### ***52 Pa. Code § 1.59. Number of Copies Served.***

#### **Proposed Changes**

Section 1.59 would be amended to provide the presiding officer with the discretion to determine the appropriate number of copies to be served on the presiding officer and other parties in a proceeding.

#### **Rationale for Proposed Changes**

Section 1.59 delineates the number of hard copies that shall be served on the presiding officer as well as the parties. The proposed amendment to Section 1.59 is

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<sup>5</sup> See September 15, 2022 Order, at Docket No. M-2021-3028321.

intended to afford presiding officers with control to determine the appropriate number of copies that should be served in a proceeding, especially since serving hard copies may be unnecessary due to electronic service.

***52 Pa. Code § 1.61. Notice and Filing of Copies of Pleadings before other Tribunals.***

**Proposed Changes**

Section 1.61(a) would be amended to change “act” to “Act” and “person” to “entity.”

Section 1.61(b) would be amended to change required service from the Office of Trial Staff to the PUC’s Bureau of Investigation and Enforcement.

Section 1.61(d) would be amended to change “act” to “Act” and “person” to “entity.”

**Rationale for Proposed Changes**

The proposed amendments to Section 1.61(a) and (d) are intended to create consistency with the proposed new definitions in Section 1.8.

The proposed amendment to Section 1.61(b) is intended to reflect the renaming of the Office of Trial Staff to the Bureau of Investigation and Enforcement.

***52 Pa. Code § 1.71. Statement of Objectives.***

**Proposed Changes**

Section 1.71 would be amended to change “act” to “Act.”

**Rationale for Proposed Changes**

The proposed amendments to Section 1.71 are intended to create consistency with the proposed new definitions in Section 1.8.



***52 Pa. Code § 1.72. Content Review of Formal Case Files.***

**Proposed Changes**

Section 1.72 would be amended to remove procedures for written requests for access to PUC records.

**Rationale for Proposed Changes**

Sections 1.71—1.77 of the PUC’s regulations relate to 1) what documents should be kept for inspection at the Secretary’s Bureau’s public filing office, and 2) the process for getting non-confidential documents from the PUC and challenging determinations under those provisions. Under the Right to Know Law (RTK Law), 65 P. S. §§ 67.101—67.3104, that was in place at the time these regulations were last amended, agencies had to have their own processes for responding to written requests for records. Now that process is unified under the RTK Law within the Office of Open Records (OOR) appeal process.

Therefore, the PUC’s regulations about written requests for review of public documents are now moot and are potentially in conflict with the RTK Law.

We seek comment on whether the regulations for written requests for access to PUC files are still needed given the RTK Law and the publicly-accessible PUC docketing system available on the PUC’s website.

***52 Pa. Code § 1.73. Fiscal Records.***

**Proposed Changes**

Section 1.73(b) would be amended to change “act” to “Act.”

### **Rationale for Proposed Changes**

The proposed amendment to Section 1.73(b) is intended to update the reference from a prior version of the RTK Law to Act 3 of 2008 which created the newest version of the RTK Law.

### ***52 Pa. Code § 1.75. Review of Staff Determination.***

#### **Proposed Changes**

Section 1.75 would be removed from the PUC's regulations.

#### **Rationale for Proposed Changes**

The proposed amendments to Section 1.75 are intended to bring PUC regulations in line with the RTK Law, now that the process for requesting access to PUC records is unified under the law. While it is still useful to have a regulation listing what must be kept for public inspection and processes for addressing informal requests for records, our regulations concerning written requests for review of public documents are now moot and are potentially in conflict with the RTK Law.

### ***52 Pa. Code § 1.77. Extensions of Time to Review Folders.***

#### **Proposed Changes**

Section 1.77 would be removed from the PUC's regulations.

#### **Rationale for Proposed Changes**

The proposed amendments to Section 1.77 are intended to bring PUC regulations in line with the RTK Law, now that the process for requesting access to PUC records is unified under the law. While it is still useful to have a regulation listing what must be kept for public inspection and processes for addressing informal requests for records, our regulations concerning written requests for review of public documents are now moot and are potentially in conflict with the RTK Law.

***52 Pa. Code § 1.96. Unofficial Statements and Opinions by Commission Personnel.***

**Proposed Changes**

Section 1.96 would be amended to correct the spelling error in “employes” to “employees.”

**Rationale for Proposed Changes**

The proposed amendment to Section 1.96 is intended to correct a typographical error.

**II. Proposed Amendments to Chapter 3 - Special Provisions**

The PUC recognizes that the rules relating to special provisions need to be updated in order to make PUC proceedings operate in a more efficient manner. Therefore, with the aim of increasing efficiency and clarity in PUC proceedings, we propose the following amendments to the regulations at 52 Pa. Code §§ 3.1—3.602 for the rationales articulated herein.

***52 Pa. Code § 3.1. Definitions.***

**Proposed Changes**

“Emergency” would be amended to include clear and present danger to the public interest.

“Emergency Order” would be amended to replace “Director of Operations” with “Executive Director.”

**Rationale for Proposed Changes**

The proposed amendment to the definition of “emergency” allows the PUC to act in certain circumstances when there is a danger to the public interest, which was not previously specified. The amendment preserves the requirement that a “clear and present

danger” must exist prior to any PUC action, and thereby alleviates any concerns regarding an overbroad definition of “emergency.”

The proposed amendment to the definition of “emergency order” reflects the renaming of the Director of Operations to the Executive Director.

***52 Pa. Code § 3.2. Petitions for Issuance of Emergency Orders.***

**Proposed Changes**

Section 3.2 would be amended to require, to the extent practicable, service of petitions for emergency orders to be served upon the statutory advocates.

**Rationale for Proposed Changes**

The proposed amendment to Section 3.2 is intended to ensure that the statutory advocates, namely, the Office of Consumer Advocate, the Office of Small Business Advocate, and the PUC’s Bureau of Investigation and Enforcement, are served with petitions to the PUC seeking the issuance of emergency orders. This requirement would allow the statutory advocates to be kept aware of such petitions and to take appropriate action in response to said petitions at their discretion.

***52 Pa. Code § 3.3. Disposition of Ex Parte Emergency Orders.***

**Proposed Changes**

Section 3.3(a)—(d) would be amended to replace “Director of Operations” with “Executive Director.”

Section 3.3(b) and (d) would be amended to allow statutory advocates to receive a copy of an emergency order or the denial of a petition for emergency order.

### **Rationale for Proposed Changes**

The proposed amendments to Section 3.3(a)—(d) reflect the renaming of the Director of Operations to the Executive Director.

The proposed amendments to Section 3.3(b) and (d) are intended to ensure that the statutory advocates, namely, the Office of Consumer Advocate, the Office of Small Business Advocate, and the PUC’s Bureau of Investigation and Enforcement, are served with copy of an emergency order or the denial of a petition for emergency order. This requirement would allow the statutory advocates to be kept aware of such orders and to take appropriate action in response to said orders at their discretion.

### ***52 Pa. Code § 3.4. Hearings Following Issuance of Emergency Orders.***

#### **Proposed Changes**

Section 3.4(b) would be amended to require the petitioner to serve the statutory advocates and other parties.

Section 3.4(d) would be amended to replace “Director of Operations” with “Executive Director.”

#### **Rationale for Proposed Changes**

The proposed amendment to Section 3.4(b) clarifies all the parties that the petitioner is required to serve.

The proposed amendment to Section 3.4(d) reflects the renaming of the Director of Operations to the Executive Director.

### ***52 Pa. Code § 3.6. Petitions for Interim Emergency Orders.***

#### **Proposed Changes**

Section 3.6 would be amended to require service on statutory advocates.

### **Rationale for Proposed Changes**

The proposed amendment to Section 3.6 is intended to ensure service of a petition for interim emergency order on the statutory advocates, in addition to the existing requirement to file with the Secretary and contemporaneously serve the Chief Administrative Law Judge and the parties.

### ***52 Pa. Code § 3.101. Municipal Contracts.***

#### **Proposed Changes**

Section 3.101 would be amended to replace “reproduction” with “reproduced.”

#### **Rationale for Proposed Changes**

The proposed amendment to Section 3.101 is intended to clarify existing language.

### ***52 Pa. Code § 3.111. Form and Content of Informal Complaints.***

#### **Proposed Changes**

Section 3.111(b) would be amended to change the PUC’s mailing address and to require informal complaints to comply with Section 3.111(a).

#### **Rationale for Proposed Changes**

The proposed amendments to Section 3.111(b) are intended to provide an updated mailing address for the PUC and to clarify that informal complaints should comply with the requirements of Section 3.111(a).

### ***52 Pa. Code § 3.113. Resolution of Informal Investigations.***

#### **Proposed Changes**

Subsections 3.113(a), (b)(1), and (b)(3) would be amended to state informal investigations terminated by letter will be served on affected parties.

**Rationale for Proposed Changes**

The proposed amendment to Section 3.113(b)(1) is intended to clarify on whom the PUC will serve letters terminating an informal investigation.

***52 Pa. Code § 3.381. Applications for Transportation of Property, Household Goods in Use and Persons.***

**Proposed Changes**

Section 3.381(a)(3) would be amended to change the PUC’s address.

**Rationale for Proposed Changes**

The proposed amendment to Section 3.381(a)(3) is intended to provide an updated mailing address for the PUC.

***52 Pa. Code § 3.391. Arbitration of Claims for Billing and Collecting Services.***

**Proposed Changes**

Section 3.391(a) would be amended to reflect the correct statute governing arbitration of a dispute between a water utility and an authority, city, borough or township as to the cost of billing and collecting services.

**Rationale for Proposed Changes**

The current statutory provision incorporated in Section 3.391 has been repealed. The proposed amendment would reflect the correct statutory provision that now governs when the water utility acts as a billing and collecting agent for a municipal authority, city, borough or township and the PUC is the forum for the arbitration of the dispute that arises between them due to the cost of billing and collecting services.

***52 Pa. Code § 3.551. Official Forms.***

**Proposed Changes**

Section 3.551 would be amended to change the PUC’s address.

### **Rationale for Proposed Changes**

The proposed amendment to Section 3.551 is intended to provide an updated mailing address for the PUC.

### **III. Proposed Amendments to Chapter 5 - Formal Proceedings**

The PUC recognizes that the rules governing formal proceedings need to be updated in order to make PUC proceedings operate in a more efficient manner. Therefore, with the aim of increasing efficiency and clarity in formal proceedings, the PUC proposes the following amendments to the regulations at 52 Pa. Code §§ 5.1—5.633 for the rationales articulated herein.

#### ***52 Pa. Code § 5.12. Contents of Applications.***

##### **Proposed Changes**

Section 5.12(a) would be amended to direct the applicant to serve the application upon the statutory advocates.

##### **Rationale for Proposed Changes**

The proposed amendment to Section 5.12(a) is intended to ensure that the statutory advocates, namely, the Office of Consumer Advocate, the Office of Small Business Advocate, and the PUC’s Bureau of Investigation and Enforcement, are served with copies of applications. This requirement will allow the statutory advocates to be kept aware of applications filed with the PUC, and take appropriate action in response to said applications, at their discretion.

#### ***52 Pa. Code § 5.13. Applications for Construction or Alteration of Crossings.***

##### **Proposed Changes**

Section 5.13(b) would be amended to remove the phrase “complained against.”



### **Rationale for Proposed Changes**

The proposed amendment to Section 5.13(b) is intended to permit abolitions of crossings even when complaints have not been filed.

### ***52 Pa. Code § 5.14. Applications Requiring Notice.***

#### **Proposed Changes**

Section 5.14(a) would be amended to set forth illustrative examples of the applications for authority that must be published, whether in the *Pennsylvania Bulletin* only or as otherwise required by the PUC. This list would duplicate the list of applications mentioned in the existing Section 5.14(d), except for (d)(4- 6) and (d)10, which would be deleted. Applications for initiation of steam utility service would be added to the newly-created Sections 5.14(a)(1-3).

Section 5.14(d) would be deleted in its entirety.

#### **Rationale for Proposed Changes**

Section 5.14(a) currently sets forth the general rule that notice of applications to the PUC for authority under the Code must be published in the *Pennsylvania Bulletin* and as may otherwise be required by the PUC. The proposed amendment to Section 5.14(a) would provide an informational listing of the applications for authority that must be published, which includes only the public utility service that is currently regulated by the PUC as defined under 66 Pa.C.S. § 102.

The proposed amendment to Section 5.14(d) would delete it in its entirety as it is no longer necessary.

***52 Pa. Code § 5.21. Formal Complaints Generally.***

**Proposed Changes**

Section 5.21(c) would be amended to change “Office of Trial Staff” to “Bureau of Investigation and Enforcement” and to allow for a complaint to be served electronically if the respondent is a filing user. It would also provide that the PUC may serve a copy of the complaint by e-mail upon agreement by each party, under 66 Pa.C.S. § 702.

Section 5.21(d) would be amended to replace “compliant” with “complaint.”

**Rationale for Proposed Changes**

The proposed amendment to Section 5.21(c) is intended to reflect the renaming of the Office of Trial Staff to the Bureau of Investigation and Enforcement and to incorporate the General Assembly’s 2019 amendment to 66 Pa.C.S. § 702, which allows for the electronic filing of formal complaints when applicable.

The proposed amendment to Section 5.21(d) is intended to correct a typographical spelling error.

***52 Pa. Code § 5.22. Content of Formal Complaint.***

**Proposed Changes**

Section 5.22(a)(1)-(2) would be amended to change “telefacsimile” to “fax.”

**Rationale for Proposed Changes**

The proposed amendment to Section 5.22(a)(2) is intended to update existing language.

***52 Pa. Code § 5.24. Satisfaction of Formal Complaints.***

**Proposed Changes**

Section 5.24(c) would be amended to specify that, in cases involving multiple respondents, a docket will not be marked closed until the filing of certified statements or certificates of satisfaction that resolve all claims against all respondents.

**Rationale for Proposed Changes**

The proposed amendment to Section 5.24(c) is intended to address the filing of certificates of satisfaction in cases where there are multiple respondents. Section 5.24(c) currently only addresses complaints involving a single respondent. In such cases, the filing of a certificate of satisfaction that is not objected to by the complainant resolves all claims against the respondent and allows the docket to be closed.

However, in complaints where there are multiple respondents, a certificate of satisfaction may or may not resolve the complainant's claims against each and every respondent. Therefore, in cases involving multiple respondents, the filing of a certificate of satisfaction will not automatically trigger closure of the case as long as there are claims that remain outstanding against any of the respondents.

***52 Pa. Code § 5.31. Staff-initiated Complaints.***

**Proposed Changes**

Section 5.31(b) would be amended to change "Office of Trial Staff" to "Bureau of Investigation and Enforcement."

**Rationale for Proposed Changes**

The proposed amendment to Section 5.31(b) is intended to reflect the renaming of the Office of Trial Staff to the Bureau of Investigation and Enforcement.

***52 Pa. Code § 5.41. Petitions Generally.***

**Proposed Changes**

Section 5.41(a) would be amended to require materially supportive documents to be attached, and, if they are not available for attachment, the petition must set forth the reason for unavailability.

Section 5.41(b) would be amended to change “Office of Trial Staff” to “Bureau of Investigation and Enforcement.”

**Rationale for Proposed Changes**

The proposed amendment to Section 5.41(a) is intended to harmonize the filing requirements for formal complaints, as addressed in Section 5.22(a), and the filing requirements for petitions.

The proposed amendment to Section 5.41(b) is intended to reflect the renaming of the Office of Trial Staff to the Bureau of Investigation and Enforcement.

***52 Pa. Code § 5.42. Petitions for Declaratory Orders.***

**Proposed Changes**

Section 5.42(c) would be amended to require copies to be served in accordance with the PUC’s direction.

**Rationale for Proposed Changes**

The proposed amendment to Section 5.42(c) is intended to provide consistency with similar language in Section 5.41(c).

***52 Pa. Code § 5.43. Petitions for Issuance, Amendment, Repeal, or Waiver of Commission Regulations.***

**Proposed Changes**

Section 5.43(b) would be amended to change “Office of Trial Staff” to “Bureau of Investigation and Enforcement.”

Section 5.43(c) would be amended to require copies to be served in accordance with the PUC’s direction.

**Rationale for Proposed Changes**

The proposed amendment to § 5.43(b) is intended to reflect the renaming of the Office of Trial Staff to the Bureau of Investigation and Enforcement.

The proposed amendment to Section 5.43(c) is intended to provide consistency with similar language in Section 5.41(c).

***52 Pa. Code § 5.52. Content of a Protest to an Application.***

**Proposed Changes**

Section 5.52(a)(2) would be amended to remove the extraneous space after “protest” and to add a new subsection (4) that would require that a protest to an application must explicitly request a hearing before the Office of Administrative Law Judge or the PUC will not schedule one.

**Rationale for Proposed Changes**

The proposed amendment to Section 5.52(a) is intended to correct a typographical error and to inform parties that submit protests that if they do not explicitly request a hearing before the Office of Administrative Law Judge the PUC will rule on the pleadings alone without holding evidentiary hearings.

**52 Pa. Code § 5.53. Time of Filing.**

**Proposed Changes**

Section 5.53 would be amended to provide for a 30-day period from the date of publication in the *Pennsylvania Bulletin* in which to file protests to applications, with modifications to this protest period being granted for good cause shown.

**Rationale for Proposed Changes**

Various PUC regulations provide for a 60-day period in which to file protests, unless otherwise specified. The 60-day period commences from the date of publication in the *Pennsylvania Bulletin*. See 52 Pa. Code § 5.14(c) (indicating that the time for filing protests to applications is governed by Section 5.53); and 52 Pa. Code § 5.53 (related to Time of filing).

Executive Order 2023-07, building Efficiency in the Commonwealth’s Permitting, Licensing, and Certification Processes, which was issued on January 31, 2023, instructs executive agencies to examine the type of permits, licenses, or certifications they issue, which would then be subject to recommended efficient application processing times.<sup>6</sup> As a best practice, the PUC should also take this opportunity to examine whether the PUC’s application processes may be improved while still affording interested parties with notice and an opportunity to be heard.

The proposed amendment to Section 5.53 reduces the default protest period from 60 days to 30 days following publication of an application in the *Pennsylvania Bulletin*. This amendment is intended to follow Executive Order 2023-07 and to make processing times for applications more efficient while still affording interested parties with notice and an opportunity to be heard.

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<sup>6</sup> Executive Order 2023-07 – Building Efficiency in the Commonwealth’s Permitting, Licensing, and Certification Processes. See, [https://www.governor.pa.gov/wp-content/uploads/2023/01/20230131\\_EO-2023-07\\_FINAL\\_Executed.pdf](https://www.governor.pa.gov/wp-content/uploads/2023/01/20230131_EO-2023-07_FINAL_Executed.pdf)

***52 Pa. Code § 5.72. Eligibility to Intervene.***

**Proposed Changes**

Section 5.72(a) would be amended replace “Persons” with “Parties” at the beginning and to include “corporation” and “municipal corporation” in addition to “person” in the body of the section.

**Rationale for Proposed Changes**

As proposed in Section 1.8, the proposed amendment in Section 5.72(a) is intended to provide consistency with the definitions of “persons,” “corporations” and “municipal corporations.”

***52 Pa. Code § 5.74. Filing of Petitions to Intervene.***

**Proposed Changes**

Section 5.74(b)(3) would be amended to change the timeline for filing petitions to intervene to the time specified in an order or notice, and within 30 days if no time is specified is set in an order or notice with respect to the proceedings.

**Rationale for Proposed Changes**

Section 5.74(b) of the PUC’s regulations allows for the filing of a petition to intervene to occur no later than the date fixed for the filing of responsive pleadings in an order or notice with respect to the proceedings but not less than the notice and protest period established under §§ 5.14 and 5.53, absent good cause shown. Therefore, we propose to retain the existing language in the regulation at Section 5.74(b), but amend Section 5.74(b)(3) to note that, absent an order or notice stating otherwise under Sections 5.76(b)(1) or (b)(2), the outer limit for filing a petition to intervene would be aligned with proposed shortened time for filing protests of 30-days from the date of publication in the *Pennsylvania Bulletin*, except upon good cause shown. As proposed in Section 5.14(c), the proposed amendment to Section 5.74(b)(3) is intended to provide consistency with the timeframe for the filing of a protest as set forth in Section 5.53.

***52 Pa. Code § 5.81. Consolidation.***

**Proposed Changes**

We propose to amend Section 5.81 to incorporate a rule addressing the identification of, and participation by, utility and non-utility indispensable parties when it will result in a better record and comprehensive consideration of the parties, facts, and issues in a proceeding.

**Rationale for Proposed Changes**

Section 5.81 of the current rules expressly authorizes an Administrative Law Judge (ALJ) or the PUC to consolidate a common question of law or fact. The current rules contain no provision authorizing the ALJ or the PUC to identify an indispensable party and interplead that party. Accordingly, we solicit input on the development of a prospective rule that would address this issue.

***52 Pa. Code § 5.222. Initiation of Prehearing Conferences in Nonrate Proceedings.***

**Proposed Changes**

Section 5.222 would be amended to allow the presiding officer to address and determine the manner of service on parties in non-rate proceedings.

**Rationale for Proposed Changes**

The proposed amendment to Section 5.222 is intended to reflect that presiding officers often address service of documents by parties during prehearing conferences, and a party may express a preference as to how they wish to be served during the course of the proceeding. Therefore, it follows that the presiding officer be afforded with the authority to address and determine the method of service on parties.



***52 Pa. Code § 5.224. Prehearing Conferences in Rate Proceedings.***

**Proposed Changes**

Section 5.224 would be amended to allow the presiding officer to address and determine the manner of service on parties in rate proceedings.

**Rationale for Proposed Changes**

The proposed amendment to Section 5.224 is intended to reflect that presiding officers often address service of documents by parties during prehearing conferences, and a party may express a preference as to how they wish to be served during the course of the proceeding. Therefore, it follows that the presiding officer be afforded with the authority to address and determine the method of service on parties.

***52 Pa. Code § 5.245. Failure to Appear, Proceed or Maintain Order in Proceedings.***

**Proposed Changes**

Section 5.245 would be amended to prohibit the section from applying to a party who is not required to secure counsel if there is no finding that the party has committed an abuse of process. It would also be amended to prohibit the dismissal of a complaint, petition, or application with prejudice for a procedural failure on the complainant, petitioner, or applicant's behalf.

**Rationale for Proposed Changes**

The PUC often relies on Sections 316 and 332(f) of the Code, 66 Pa.C.S. §§ 316 and 332(f), respectively, to dismiss proceedings with prejudice when litigants fail to appear. Section 332(f) addresses the failure to be at a scheduled conference or hearing. Section 332(f) holds that the failure to secure counsel and appear precludes that party from participating, seeking a rehearing, or a recall unless it was unavoidable, and the other party is not prejudiced. This general rule and exception seem to be limited to those circumstances where a party is required to have legal counsel before the PUC. This has

also been relied on to dismiss unrepresented *pro se* litigant cases with prejudice when they fail to appear.

Section 316 of the Code also governs *prima facie* evidence of facts found which are conclusive unless set aside. This provision does not address *stare decisis* or dismissals with prejudice. This provision creates a presumption that prior facts, such as tariffed rates, are reasonable and precludes collateral attacks upon those facts absent a showing of changed circumstances. *McLaughlin v. DQE*, Docket No. C-20065798 (2009); *Duquesne Light Co. et al. v. Pa. PUC*, 715 A. 2d 540 (Pa. Cmwlth. 1998); *Popowsky v. Pa. PUC*, 669 A. 2d 1029, 1037 n. 14 (Pa. Cmwlth. 1995), rev'd in part on other grounds, 706 A. 2d 1197 (Pa. 1997); *Zucker v. Pa. PUC*, 401 A. 2d 1377, 1380 (Pa. Cmwlth. 1979); *Schellhammer v. Pa. PUC*, 629 A. 2d 189, 193 (Pa. Cmwlth. 1993).

The PUC often relies on Section 316 of the Code and the ancillary *res judicata* or collateral estoppel. However, Pennsylvania law holds that *res judicata* should not apply if a matter is dismissed on procedural matters, like a failure to appear, because there has been no substantive determination on the merits. *Scharf v. DeCou Company*, 183 A.41, 41-42 (1936); *Farabiugh Chevrolet v. Covenant Management, Inc.*, 522 A.2d 100, 101 (Pa. Super. 1987); *Gutman v. Giordano*, 557 A.2d 782, 783 (Pa. Super. 1989); *Acobacey v. Acobacey*, 22 Phila. 333, 191 Phila. Cty. Rptr. LEXIS 42 (1991); *Monroeville v. Liberatore*, 736 A.2d 31, 34 (Pa. Cmwlth. 1999). For collateral estoppel to apply, there must be an identity of parties yet often a matter is raised by separate spouses at different times on very different facts.

Section 5.245 of our rules addresses failure to appear and the circumstances in which failure to be represented at a hearing may constitute a waiver to participate in the hearing. Therefore, it is the appropriate section to clarify when a *pro se* litigant can be dismissed with prejudice, and whether the application of *res judicata* and collateral estoppel based upon a litigant's failure to appear at hearing is permissible.

***52 Pa. Code § 5.251. Recording of Proceedings.***

**Proposed Changes**

Section 5.251(d) would be amended to include a provision detailing the rules regarding recording during a special agent proceeding.

**Rationale for Proposed Changes**

The proposed amendment to Section 5.251(d) is intended to clarify what occurs in practice during special agent proceedings.

***52 Pa. Code § 5.252. Records of Proceedings.***

**Proposed Changes**

Section 5.252(c) and (d) would be amended to replace “tapes” with “recordings.”

**Rationale for Proposed Changes**

The proposed amendments to Section 5.252(c) and (d) are intended to reflect the change in technology the PUC uses for record proceedings from cassette tape to digital recordings.

***52 Pa. Code § 5.304. Interlocutory Review of Discovery Matters.***

**Proposed Changes**

Section 5.304(c) would be amended to replace “Responsive brief” with “Brief.”

Section 5.304(i) would be amended to be left justified.

**Rationale for Proposed Changes**

The proposed amendment to Section 5.304(c) is intended to provide consistency with the language in Section 5.302(b) and to clarify that any party may file a brief in support or opposition to a petition for interlocutory review of a presiding officer’s ruling on discovery.

The proposed amendment to Section 5.304(i) is intended to clarify the proper placement of the provision in the statute.

***52 Pa. Code § 5.306. Expedited Notification.***

**Proposed Changes**

Section 5.306 would be amended to replace “telefacsimile” with “telefax.”

**Rationale for Proposed Changes**

The proposed amendment to Section 5.306 is intended to update existing language.

***52 Pa. Code § 5.323. Hearing Preparation Material.***

**Proposed Changes**

Section 5.323(b) would be amended to change the reference of “photostatic copy” to “copy.”

**Rationale for Proposed Changes**

The proposed amendment to Section 5.323(b) is intended to clarify the reference in the provision and reduce confusion.

***52 Pa. Code § 5.331. Sequence and Timing of Discovery.***

**Proposed Changes**

Section 5.331(c) would be amended to add the sentence, “Once a protest or adverse pleading is filed with the PUC, staff data requests are deemed withdrawn.”

**Rationale for Proposed Changes**

The proposed amendment to Section 5.331(c) is intended to clarify that when a protest or adverse pleading is filed with the PUC, the matter would be referred to the

Office of Administrative Law Judge for assignment to a presiding officer, and staff data requests would be deemed “withdrawn.”

***52 Pa. Code § 5.342. Answers or Objections to Written Interrogatories by a Party.***

**Proposed Changes**

Section 5.342(g) would be amended to add “or until such time as the parties may determine by mutual agreement,” in reference to the timing of filing a motion to dismiss an objection to interrogatories.

**Rationale for Proposed Changes**

The proposed amendment to Section 5.342(g) is intended to allow parties to jointly set a timeline for motions to dismiss an objection to compel that was already answered in an interrogatory.

***52 Pa. Code § 5.349. Requests for Documents, Entry for Inspection and other Purposes.***

**Proposed Changes**

Section 5.349(b) would be amended to replace “Office of Trial Staff” with “Bureau of Investigation and Enforcement.”

**Rationale for Proposed Changes**

The proposed amendment to Section 5.349(b) is intended to reflect the renaming of the Office of Trial Staff to the Bureau of Investigation and Enforcement.

***52 Pa. Code § 5.351. On the Record Data Requests.***

**Proposed Changes**

Section 5.351(a) would be amended to permit on the record data requests in all PUC proceedings, instead of only in rate cases.

### **Rationale for Proposed Changes**

Section 5.351(a) allows a party to request that a witness provide information or documents at a later time as part of the witness' response to a question posed during cross-examination in the course of a rate proceeding. The proposed amendment to Section 5.351(a) is intended to allow on the record data requests in all PUC proceedings, instead of only in rate cases.

### ***52 Pa. Code § 5.365. Orders to Limit Availability of Proprietary Information.***

#### **Proposed Changes**

Section 5.365 would be amended to add subsection (h). The new Section 5.365(h) would require that, where parties to formal proceedings have indicated that they have a currently-effective court-granted Protection From Abuse (PFA) order, or other order for the protection of their personal safety, in place, all parties must redact the PFA holder's address and contact information from any documents filed as part of the formal complaint proceeding.

#### **Rationale for Proposed Changes**

The proposed amendment to Section 5.365 is intended to ensure that individuals who have a valid PFA order or similar order from a court are protected from having their personal address and contact information inadvertently disclosed to the public. The formal complaint forms provided by the PUC include a section wherein a complainant may indicate that they have a court-granted PFA order, or other order that demonstrates evidence of domestic violence against them currently in effect for their personal safety or welfare in place, along with instructions to include a copy of said order with the formal complaint form. Parties to the proceeding would be responsible for reviewing the complaint form to ensure whether the complainant has indicated that they have a PFA order or similar order, and correspondingly ensuring that any filings to the proceeding exclude or redact the complainant's personal address and contact information.

***52 Pa. Code § 5.408. Official and Judicial Notice of Fact.***

**Proposed Changes**

Section 5.408(c) would be amended to add to the existing regulation that an aggrieved party has the opportunity to present counter evidence prior to the decision of the presiding officer being issued if the decision relies upon the noticed fact.

**Rationale for Proposed Changes**

The proposed amendment to Section 5.408(c) is intended to allow a party that is adversely affected by a noticed fact to have the opportunity upon timely request to show that the facts are not properly noticed or that alternative facts should be noticed.

***52 Pa. Code § 5.409. Copies and Form of Documentary Evidence.***

**Proposed Changes**

Section 5.409(a) would be amended to replace “two copies” of testimony to “one copy” of testimony.

**Rationale for Proposed Changes**

The proposed amendment to Section 5.409(a) is intended to provide consistency with Chapter 1 of the PUC’s regulations.

***52 Pa. Code § 5.412. Copies.***

**Proposed Changes**

Section 5.412(f) would be amended to delete the requirement to file pre-served testimony according to Section 5.412a, given the proposed repeal of Section 5.412a.

Section 5.412(g) would be amended to replace “two copies” of testimony to “one copy” of testimony and to recognize that written testimony may be admitted *via* stipulation with no court reporter present.

### **Rationale for Proposed Changes**

The proposed amendment to Section 5.412(f) reflects the proposed repeal of Section 5.412a.

The proposed amendment to Section 5.412(g) is intended to provide consistency with Chapter 1 of the PUC's regulations and to recognize that, on occasion, testimony is admitted *via* stipulation by the presiding officer when there is no court reporter present.

### ***52 Pa. Code § 5.412a. Electronic Submission of Pre-served Testimony.***

#### **Proposed Changes**

Section 5.412a would be repealed in its entirety.

#### **Rationale for Proposed Changes**

The coexistence of the court reporter's transcript and exhibits and the parties' separate electronic filing of pre-served testimony under Section 5.412a complicates matters when the Secretary's Bureau (SEC) is working with the Law Bureau (LAW) to prepare a certified record for a Commonwealth Court appeal. The existence of the parties' Section 5.412a filings of pre-served testimony in addition to testimony filed by the Court Reporter makes it more difficult for SEC staff to identify which documents should be included in the certified record.

Upon review of current procedures for processing of transcripts, we cannot identify any concrete benefit to stakeholders from continuing to require parties to submit electronic copies of pre-served testimony under 52 Pa. Code § 5.412a. It is apparent that continuation of this requirement is causing SEC staff considerable difficulty in preparing reproduced/certified records when working with LAW on appellate proceedings. As such, repealing Section 5.412a would reduce the administrative burden on SEC staff and aid in timely compliance with appellate deadlines. However, the PUC seeks stakeholder



comment regarding how pre-served written testimony that is modified at hearing may be filed in the event that Section 5.412a is repealed.

***52 Pa. Code § 5.502. Filing and Service of Briefs.***

**Proposed Changes**

Section 5.502 would be amended to repeal original Section 5.502(c).

Section 5.502 (d) would be amended to consolidate the filing requirements for briefs in rate proceedings and non-rate proceedings.

Section 5.502(f) would be amended to remove the non-specified timeline for main briefs and reply briefs; all timelines would be set by the presiding officer.

**Rationale for Proposed Changes**

The proposed amendments to Section 5.502 are intended to add clarity by removing references to “initial briefs” and “responsive briefs.”

***52 Pa. Code § 5.531. Certification of Record without Decision.***

**Proposed Changes**

Section 5.531(a) would be amended to replace “file” with “issue.”

**Rationale for Proposed Changes**

The proposed amendment to Section 5.531(a) is intended to clarify that a presiding officer will issue a decision.

***52 Pa. Code § 5.533. Procedure to Except to Initial, Tentative and Recommended Decisions.***

**Proposed Changes**

Section 5.533 would be amended to delete all references to “tentative decisions.”

**Rationale for Proposed Changes**

The proposed amendment to Section 5.533 is intended to clarify that the PUC does not have “tentative decisions.” The PUC does have “tentative orders” but not “tentative decisions.”

***52 Pa. Code § 5.591. Reports of Compliance.***

**Proposed Change**

Section 5.591(a) would be amended to state that compliance reports will be filed by parties subject to the Commission’s jurisdiction.

**Rationale for Proposed Changes**

The proposed amendment to Section 5.591(a) is intended to clarify who is responsible for filing compliance reports with the Commission following the amended definition of “person.”

**CONCLUSION**

Accordingly, under sections 331, 332, 333, 334, 335, 501, 701, 702, 703 and 1501 of the Public Utility Code (66 Pa.C.S. §§ 331-335, 701—703, 501 and 1501; section 201 and 202 of the Act of July 31, 1968 (P.L. 769, No. 240), referred to as the Commonwealth Documents Law (45 P.S. §§ 1201 and 1202), and the regulations promulgated thereunder at 1 Pa. Code §§ 7.1, 7.2 and 7.5 (relating to notice of proposed rulemaking required: adoption of regulations; and approval as to legality); section 204(b) of the Commonwealth Attorneys Act (71 P.S. § 732-204(b)); section 5 of the Regulatory

Review Act (71 P.S. § 745.5); and section 612 of The Administrative Code of 1929 (71 P.S. § 232), and the regulations promulgated thereunder at 4 Pa. Code §§ 7.231—7.234 (relating to fiscal note), we are considering adopting proposed changes to existing regulations and proposed new regulations, at 52 Pa. Code §§ 1.1—1.96, 3.1—3.602, and 5.01— 5.633; **THEREFORE,**

**IT IS ORDERED:**

1. That a proposed rulemaking be opened to consider the proposed amendments to 52 Pa. Code Chapters 1, 3, and 5 (relating to rules of administrative practice and procedure; special provisions; and formal proceedings) set forth in Annex A.

2. That a copy of this Notice of Proposed Rulemaking Order, consisting of a Preamble and an Annex A, shall be posted on the Public Utility Commission’s website.

3. That the Secretary shall serve this Notice of Proposed Rulemaking Order, consisting of a Preamble and an Annex A, upon the Office of Consumer Advocate, the Office of Small Business Advocate, the PUC’s Bureau of Investigation and Enforcement, the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania, the Energy Association of Pennsylvania, the Tenant Union Representative Network and Action Alliance of Senior Citizens of Greater Philadelphia, AARP Pennsylvania, the Pennsylvania Telephone Association, the Broadband Communications Association of Pennsylvania, the PUC’s Consumer Advisory Council, and all jurisdictional fixed public utilities.

4. That the Law Bureau shall deliver this Notice of Proposed Rulemaking Order, consisting of a Preamble and an Annex A, together with an appropriate rulemaking packet, to the Office of Attorney General for review as to form and legality and to the Governor’s Budget Office for review of fiscal impact.

5. That, after receiving approvals from the Office of the Attorney General and Governor's Budget Office, the Law Bureau shall deliver this Notice of Proposed Rulemaking Order, consisting of a Preamble and an Annex A, together with an appropriate rulemaking packet, for review and comment to the majority and minority chairs of the Senate Committee on Consumer Protection and Professional Licensure and to the majority and minority chairs of the House Consumer Protection, Technology, and Utilities Committee. On the same day, the Law Bureau shall deliver this Notice of Proposed Rulemaking Order, consisting of a Preamble and an Annex A, together with an appropriate rulemaking packet, to the Legislative Reference Bureau to be published in the *Pennsylvania Bulletin*. Also on the same day, the Law Bureau shall deliver this Notice of Proposed Rulemaking Order, consisting of a Preamble and an Annex A, together with an appropriate rulemaking packet, to the Independent Regulatory Review Commission with proof of the other deliveries.

6. That interested persons may file written comments to this Notice of Proposed Rulemaking, consisting of a Preamble and an Annex A, as published in the *Pennsylvania Bulletin*, during the 60-day period following publication in the *Pennsylvania Bulletin*. The 60 days constitute the Public Comment Period. Comments filed during the Public Comment Period will be posted to the Public Utility Commission's website and forwarded by the Public Utility Commission to the majority and minority chairs of the Senate Committee on Consumer Protection and Professional Licensure and the House Consumer Protection, Technology, and Utilities Committee and to the Independent Regulatory Review Commission.

7. That comments regarding this Notice of Proposed Rulemaking Order, consisting of a Preamble and an Annex A, may be filed electronically through the Public Utility Commission's efilings system,<sup>7</sup> in which case no paper copy needs to be filed with

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<sup>7</sup> <https://www.puc.pa.gov/efiling/default.aspx>.

the Secretary of the Public Utility Commission provided that the filing is less than 250 pages.<sup>8</sup> If you do not efile, then you are required to mail, preferable by overnight delivery, one original filing, signed and dated, with the PUC's Secretary at: Pennsylvania Public Utility Commission, Commonwealth Keystone Building 2nd Floor, 400 North Street, Harrisburg, PA 17120. Comments must reference Docket No. L-2023-3041347. All pages of filed comments, with the exception of a cover letter, must be numbered.

8. That comments filed prior to publication of the *Notice of Proposed Rulemaking* in the *Pennsylvania Bulletin* will be considered untimely filed and may be rejected by the Pennsylvania Public Utility Commission.

9. That the contact persons for this proceeding are Tiffany L. Tran, Esq., Law Bureau, 717-783-5413, [tiftran@pa.gov](mailto:tiftran@pa.gov); Colin W. Scott, Esq., Law Bureau, 717-783-5949, [colinscott@pa.gov](mailto:colinscott@pa.gov); and Karen Thorne, Regulatory Review Assistant, Law Bureau, [kathorne@pa.gov](mailto:kathorne@pa.gov).

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<sup>8</sup> Any persons submitting a filing of 250 pages or more must mail one copy the Secretary of the Commission.

10. That an electronic copy, in WORD® or WORD®-compatible format, of all filed submissions, comments for filings at the docket must be emailed to the contact persons and to ra-pcprgreview@pa.gov.

**BY THE COMMISSION**



Rosemary Chiavetta  
Secretary

(SEAL)

ORDER ADOPTED: November 9, 2023

ORDER ENTERED: December 20, 2023

**ANNEX A**  
**TITLE 52. PUBLIC UTILITIES**  
**PART 1. PUBLIC UTILITY COMMISSION**  
**Subpart A. GENERAL PROVISIONS**  
**CHAPTER 1: RULES OF ADMINISTRATIVE PRACTICE AND PROCEDURE**  
**Subchapter A. GENERAL PROVISIONS**

\* \* \* \* \*

**§ 1.2. Liberal construction.**

(a) This subpart shall be liberally construed to secure the just, speedy and inexpensive determination of every action or proceeding to which it is applicable. The Commission or presiding officer at any stage of an action or proceeding may disregard an error or defect of procedure which does not affect the **[substantive] substantial** rights of the parties.

\* \* \* \* \*

(c) The Commission or presiding officer at any stage of an action or proceeding may waive a requirement of this subpart when necessary or appropriate, if the waiver does not adversely affect a **[substantive] substantial** right of a party.

\* \* \* \* \*

**§ 1.3. Information and special instructions.**

(a) Information as to procedures under this subpart, and instructions supplementing this subpart in special instances, will be furnished upon **[application] request** to:

\* \* \* \* \*

(2) In person or by **[mail other than first-class] overnight delivery, certified mail or priority mail**:

Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street  
Harrisburg, Pennsylvania 17120

**§ 1.4. Filing generally.**

\* \* \* \* \*

(2) In person or by **[mail other than first-class] overnight delivery, certified mail or priority mail:**

Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street  
Harrisburg, Pennsylvania 17120

\* \* \* \* \*

**§ 1.5. Amendment to rules.**

(a) **[Persons may file an application] An application** under §§ 5.1 and 5.11 (relating to pleadings allowed; and applications generally) requesting a general and permanent change in this subpart **is permitted.**

\* \* \* \* \*

**§ 1.6. Commission office hours.**

Unless otherwise directed by the Governor **or the Commission,** the Commission offices will be open from 8 a.m. until 4:30 p.m. on business days except Saturdays, Sundays and legal holidays.

\* \* \* \* \*

**§ 1.7. Sessions of the Commission.**

Public meetings of the Commission ordinarily will be held in its offices in the Commonwealth Keystone Building, Harrisburg, **or will be livestreamed or held over telephone.** Schedules for public meetings can be obtained from the Commission Secretary or viewed on the Commission’s website.

\* \* \* \* \*



**§ 1.8. Definitions.**

(a) Subject to additional definitions contained in subsequent sections which are applicable to specific chapters or subchapters, the following words and terms, when used in this subpart, have the following meanings, unless the context clearly indicates otherwise:

*Act*—66 Pa.C.S. §§ 101—~~[3315]~~ 3316 (relating to the Public Utility Code).

*Adjudication*—An order, decree, decision, determination or ruling by the Commission affecting personal or property rights, privileges, immunities, duties, liabilities or obligations of **[the parties to the proceeding in which the adjudication is made] a party with the opportunity for protest, answer, complaint or other opposition pleading.**

~~[Applicants]~~ *Applicant*—**[In proceedings involving applications for] A party seeking** permission or authorization **[which] from** the Commission **[may give]** under **the Commission’s** statutory or **[other] delegated** authority **[delegated to it, the parties on whose behalf the applications are made].**

*Adversarial proceeding*—A proceeding initiated **[by a person]** to seek authority, approvals, tariff changes, enforcement, fines, remedies or other relief from the Commission which is contested by one or more **[other persons] parties** and which will be decided on the basis of a formal record.

*Authorized agent*—A **[person] representative of a filing user** with permission to **[legally act] submit filings** on behalf of the filing user.

\* \* \* \* \*

*Corporation*—As defined in 66 Pa.C.S. § 102.

*Certified legal intern*—A law student meeting the requirements of Pa.B.A.R. No. 321 (relating to requirements for formal participation in legal matters by law students) may appear in a Commission proceeding consistent with Pa.B.A.R. No. 322 (relating to authorized activities of certified legal interns).

\* \* \* \* \*

*Electronic mail*—**[A means of dispatching] The electronic transmittal** or **[receiving] receipt of** a submittal in **[relation to] a Commission matter [through electronic means].**

**Fax transmittal**—A telephonic means of transmitting or receiving a submittal in a Commission matter that prints a hard copy facsimile of the submittal in a legible form at the recipient’s telefax machine.

*Filing user*—A person [who has], **corporation, or municipal corporation** registered to use the electronic filing system in accordance with the registration instructions available on the Commission’s web site at [<http://www.puc.state.pa.us/>] <http://www.puc.pa.gov/> and who has obtained a **filing** user ID and password.

\* \* \* \* \*

*Initial decision*—A decision by a presiding officer [which] **that** becomes final unless timely exceptions are filed by a [participant] **party**, the Commission requests review upon its own motion, or as otherwise established by the [act] **Act**.

*Intervenor*—A person, **corporation, or municipal corporation** intervening or petitioning to intervene as a party as provided by §§ 5.71—5.76 (relating to intervention).

\* \* \* \* \*

**Municipal corporation**—As defined in 66 Pa.C.S. § 102.

*Nonadversarial proceeding*—A proceeding [initiated by a person which] **that** is not contested or a proceeding initiated by the Commission or [at the request of a person] **upon request to the Commission** to develop regulations, policies, procedures, technical rules or interpretations of law.

*Notarial officer*—An officer authorized under § 5.346 (relating to [persons] **individuals** before whom depositions may be taken) to take depositions for use before the Commission or presiding officer.

\* \* \* \* \*

*Party*—A person, **corporation, or municipal corporation** who appears in a proceeding before the Commission.

*Person*—[Except as otherwise provided in this subpart or in the act, the term includes individuals, corporations, partnerships, associations, joint ventures, other business organizations, trusts, trustees, legal representatives, receivers,

agencies, governmental entities, municipalities, municipal corporations or other political subdivisions] As defined in 66 Pa.C.S. § 102.

*[Petitioners]* **Petitioner**—**[Persons]** A person, corporation, or municipal corporation seeking relief **[not otherwise designated in this section]** or other action from the Commission under the Commission’s statutory or delegated authority.

\* \* \* \* \*

*Presiding officer*—A **[person]** Commission employee designated by the Commission to preside over a matter.

*Principal*—**[A party]** An individual within a corporation or municipal corporation that has the requisite power to authorize or direct [its] counsel for the corporation or municipal corporation to enter into stipulations or settlement agreements on behalf of the corporation or municipal corporation.

\* \* \* \* \*

*[Protestants]* **Protestant**—**[Persons]** A party objecting on the ground of private or public interest to the approval of an application or other matter which the Commission may have under consideration.

*Qualified document*—**[A document that is listed in the categories of documents that are permitted to be filed electronically]** A document authorized for filing with the Commission’s electronic filing system in accordance with the instructions on the Commission’s web site at **[<http://www.puc.state.pa.us/>]** **[<http://www.puc.pa.gov/>]** and that complies with the filing requirements and restrictions in **[§ 1.32(b)]** this Chapter **[relating to filing specifications]**.

*Rate proceeding*—An **[on the record]** on-the-record proceeding brought by or before the Commission, the purpose of which is to determine the justness and reasonableness of a proposed or present rate for utility service, including, but not limited to, proceedings initiated under **[sections 1307, 1308, 1310 and 1312]** Chapter 13 of the **[act]** Act.

*Recommended decision*—[An opinion and order] **A decision** [submitted for the approval of the Commission by the presiding officer] **authored by a presiding officer(s) that requires Commission approval to become effective.**

*[Respondents] Respondent*—[Persons] **A party** subject to [a statute or other delegated authority administered by the Commission,] **Commission jurisdiction** who [are] **is** required to respond to an order or notice issued **or served** by the Commission [instituting a proceeding or investigation on its own initiative or otherwise].

*Secretary*—The Secretary of the Commission [, **who is the Commission officer with whom pleadings and other documents are filed and by whom official records are kept**].

*Staff*—The Commission’s [**Office of Trial Staff**] **Bureau of Investigation and Enforcement** prosecutor or Law Bureau staff counsel [and] or other Commission employees participating in a proceeding before the agency.

*Statutory advocate*—[**The Office of Trial Staff, the**] **The** Office of Consumer Advocate [and the], Office of Small Business Advocate, **and the Commission’s Bureau of Investigation & Enforcement.**

*Submittal*—An application, amendment, exhibit, or similar document [**involving matters filed in an adversarial or nonadversarial**] **that complies with the filing requirements and restrictions in this Chapter and involves matters filed or served in a Commission** proceeding.

*[Telefacsimile transmittal*—A means of dispatching or receiving a submittal in a Commission matter through electronic means that prints a hard copy facsimile of a document in a legible form at the recipient’s machine.]

*Tentative [decision] order*—An order of the Commission [**which becomes final unless exceptions are filed by a party within the time period specified by statute or as set forth in the order**] **that may become final without further action by the Commission and to which a party may file comments within the time specified by the order.**

*Trade secret*—A private formula, pattern, device, cost study or compilation of information **[which is]** used in **[a]** business **[and]** which, if disclosed, would provide **[the]** opportunity **[to obtain an] for competitive** advantage **[over competitors who] or economic harm to entities that, but for disclosure,** do not know or use it.

\* \* \* \* \*

*Writing or written*—Applies to documents **[filed] whether** in **[paper form and documents filed electronically] hard copy or media.**

\* \* \* \* \*

### Subchapter B. TIME

\* \* \* \* \*

#### § 1.13. Issuance of Commission orders.

(a) In computing a period of time involving the date of the issuance of **[an order by the Commission] a Commission order,** the day of issuance **[of an order]** will be the date the Secretary enters the order. An order will not be made public prior to its entry except where, in the Commission’s judgment, the public interest so requires. The date of entry of an order may or may not be the day of its adoption by the Commission. The Secretary will clearly indicate on each order the date of its adoption by the Commission and the date of its entry.

(b) At the time a decision of a presiding officer becomes effective as an adjudication of the Commission in the absence of Commission review as provided for in section 332(h) of the **[act] Act** (relating to procedures in general),<sup>2</sup> the Secretary will issue and serve upon the parties of record an appropriate notice of the date the adjudication became effective as a Commission order.

(c) The date of entry of an order **[which is]** subject to review by Commonwealth Court is governed by Pa.R.A.P. No. 108. The date of issuance of any other order shall be deemed to be the date of entry for the purposes of computing the time for appeal under an applicable statute relating to judicial review of Commission action.

\* \* \* \* \*

**§ 1.15. Extensions of time and continuances.**

(a) Extensions of time shall be governed by the following:

(1) Except as otherwise provided by statute, whenever under this title or by order **or notice** of the Commission, **[or notice given thereunder,]** an act is required or allowed to be done at or within a specified time, the time fixed or the period of time prescribed may, by the Commission, the presiding officer or other authorized **[person] Commission employee**, for good cause be extended upon motion made before expiration of the period originally prescribed or as previously extended. Upon motion made after the expiration of the specified period, the act may be permitted to be done where reasonable grounds are shown for the failure to act.

\* \* \* \* \*

(b) Except as otherwise provided by statute, requests for continuance of hearings or for extension of time in which to perform an act required or allowed to be done at or within a specified time by this title or by order of the Commission or the presiding officer, shall be by motion in writing, timely filed with the Commission, stating the facts on which the application rests, except that during the course of a proceeding, the requests may be made by oral motion in the hearing before the Commission or the presiding officer. Only for good cause shown will requests for continuance be considered. The requests for a continuance should be filed at least five (5) days prior to the hearing date **to the extent possible.**

\* \* \* \* \*

**§ 1.16. Issuance of decisions by presiding officers.**

\* \* \* \* \*

(b) **[The Secretary will mail a decision to parties who are not filing users or have not agreed to receive electronic service. The decision will be deposited in the United States mail on the same date that the decision is posted on the Commission’s electronic filing system. The date of the issuance will be clearly indicated on each paper copy of the decision that is mailed to parties.] The Secretary will mail a copy of the decision as prescribed in § 703(e) of the Act (relating to fixing of hearings).**

(c) Parties who are filing users and have agreed to receive electronic service also will be notified electronically that the decision has been posted on the Commission’s electronic filing system and provided with a link to the decision.

## Subchapter C. REPRESENTATIONS BEFORE THE COMMISSION

### § 1.21. Appearance in nonadversarial or informal proceedings.

(a) Individuals may represent themselves in a nonadversarial Commission proceeding or an informal Commission proceeding.

(b) [Except as provided in subsection (a), persons in adversarial proceedings shall be represented in accordance with § 1.22 (relating to appearance by attorney or legal intern). For purposes of this section, any request for a general rate increase under § 1307(f) or § 1308(d) of the act (relating to sliding scale of rates; adjustments; and voluntary changes in rates) shall be considered to be an adversarial proceeding.] (Reserved).

(c) In nonadversarial proceedings, [persons] a party may be represented in the following manner:

(1) A partner may represent the partnership.

(2) A bona fide officer of a corporation, trust or association may represent the corporation, trust or association.

(3) An officer or employee of an agency, political subdivision or government entity may represent the agency, political subdivision or government entity.

**(4) A non-attorney third-party representative holding the power of attorney of an individual consumer may represent that individual during periods of disability or incapacity, or both.**

(d) In informal proceedings brought under Chapters 56 and 64 (relating to standards and billing practices for residential utility service; and standards and billing practices for residential telephone service) and Chapter 14 of the [act] Act (relating to standards and billing practices for residential utility service; and standards and billing practices for residential telephone service), parties may be represented by one of the following:

(e) Subsection (a) supersedes 1 Pa. Code § 31.21 (relating to appearance in person).

**§ 1.22. Appearance [by attorney or certified legal intern] in adversarial Commission proceedings.**

(a) [Subject to § 1.21(a) (relating to appearance), an attorney at law admitted to practice before the Supreme Court of Pennsylvania shall represent persons in Commission proceedings.] Individuals may represent themselves in an adversarial Commission proceeding. A non-attorney third-party representative holding the power of attorney of an individual consumer may represent that individual during periods of disability or incapacity, or both. An authorized corporate official may represent a small business or partnership in an adversarial Commission proceeding.

(b) Except as provided in subsection (a), persons, corporations and municipal corporations shall be represented by an attorney at law admitted to practice before the Supreme Court of Pennsylvania or by a certified legal intern in adversarial Commission proceedings. For purposes of this section, any request for a general rate increase under § 1307(f) or § 1308(d) of the Act (relating to sliding scale of rates; adjustments; and voluntary changes in rates) shall be considered to be an adversarial Commission proceeding.

(c) [A law student meeting the requirements of Pa.B.A.R. No. 321 (relating to requirements for formal participation in legal matters by law students) may appear in a Commission proceeding consistent with Pa.B.A.R. No. 322 (relating to authorized activities of certified legal interns).] Subsection (b) supersedes 1 Pa. Code § 31.22 (relating to appearance by attorney). An attorney not licensed in this Commonwealth may appear before the Commission in accordance with the Pennsylvania Bar Admission Rules.

\* \* \* \* \*

**§ 1.23. Other representation prohibited at hearings.**

(a) Persons, corporations, and municipal corporations may not be represented at a hearing before the Commission or a presiding officer except as stated in § 1.21 or § 1.22 (relating to appearance in nonadversarial Commission proceedings or informal Commission proceedings; and [appearance by attorney or certified legal intern] appearance in adversarial Commission proceedings).

\* \* \* \* \*



**§ 1.24. Notice of appearance or withdrawal.**

(a) *Individuals.* An individual appearing without legal representation before the Commission or a presiding officer shall file with the Secretary **[an] a mailing** address for service of a notice or other written **[communication] communications unless the individual is an eFiling user or has agreed to electronic service of documents.** A change in **the individual's mailing** address which occurs during the course of the proceeding **[shall] must** be reported to the Secretary promptly.

(b) *Attorneys.*

\* \* \* \* \*

(2) *Appearance in all other instances.* An attorney shall file with the Secretary a written notice of appearance.

(i) *Content of notice.* Initial pleadings, entries of appearance and notices of withdrawal must include:

(A) The attorney's name, mailing address **[and] or** electronic mailing address, if **[available] a filing user.**

(B) Pennsylvania attorney identification number or, if **[not licensed in this Commonwealth] appearing pro hac vice,** identification of the **jurisdiction or** jurisdictions in which the attorney is licensed to practice law.

\* \* \* \* \*

(D) The name and address of the **[person] party** represented.

\* \* \* \* \*

(ii) *Filing.*

(A) *Appearance.* The **attorney must serve the** notice of appearance **[shall be served]** on the parties to the proceeding, and a certificate of service shall be filed with the Secretary.

\* \* \* \* \*

(3) *Withdrawal.* An attorney may withdraw an appearance by filing a written notice of withdrawal with the Secretary[. **The notice shall be served] and serving the notice** on the parties and **on** the presiding officer[, ] if one has been designated.

\* \* \* \* \*

**§ 1.27. Suspension and disbarment.**

(a) The Commission may deny, temporarily or permanently, the privilege of appearing or practicing before it in any way to **[a person] an individual** who is found by the Commission, after notice and opportunity for hearing in the matter, to have done one or more of the following:

\* \* \* \* \*

**Subchapter D. DOCUMENTARY FILINGS**

**§ 1.31. Requirements for documentary filings.**

\* \* \* \* \*

(c) *Identifying information.* Documents filed with the Commission in a proceeding must clearly contain the following information:

\* \* \* \* \*

(3) Within the title of the document, the name of the person, **corporation, or municipal corporation** on whose behalf the filing is made. If more than one person, **corporation, or municipal corporation** is involved, only a single name is necessary.

\* \* \* \* \*

**§ 1.32. Filing specifications.**

(a) *Paper filings.* A paper filing made with the Commission must be:

(1) *Typewritten.* Pleadings, submittals or other documents filed in proceedings, if not printed, must be typewritten on paper cut or folded to letter size, 8 to 8 1/2 inches wide by 10 1/2 to 11 inches long, with **[left-hand margin at least 1 inch wide and other margins] all margins** at least 1 inch. The impression must be **[on only one side of the paper] one sided**, unless **[there are]** more than four pages, and shall be double spaced,

except that quotations in excess of a few lines shall be single spaced and indented on both the left and right margins. Reproduced copies shall be accepted as typewritten[,] if [copies are] clearly legible.

(2) *Printed*. Printed documents must be at least [10-point type] 12-point font with 10-point font allowed for footnotes on unglazed paper, cut or folded so as not to exceed 8 1/2 inches wide by 11 inches long, with [inside margin] all margins at least 1 inch wide, and with [double-lead text and single-lead, indented quotations] double-spaced text except that quotations in excess of a few lines shall be single spaced and indented on both the left and right margins.

\* \* \* \* \*

(b) *Electronic filings*.

[(1) *Participation*. A person may register to use the electronic filing system in accordance with the registration instructions available on the Commission's web site at <http://www.puc.state.pa.us/>. Registration as a filing user constitutes an agreement to receive electronic service, unless the filing user indicates upon registration that the filing user does not agree to receive electronic service. A person will not be required to register to use the electronic filing system to be a party in a Commission proceeding. A person that does not register to use the electronic filing system shall file and serve documents, and shall be served in accordance with the rules in Chapters 1, 3 and 5 (relating to rules of administrative practice and procedure; special provisions; and formal proceedings) for the filing and service of documents in paper form.] (Reserved).

(2) *Requirements*.

An electronic filing made with the Commission must:

(i) Comply with the paper filing requirements in subsection (a) regarding margins, spacing and type size.

(ii) Be a qualified document [that is] listed in the categories of documents [that the Commission, after notice and opportunity to be heard, has designated as being permitted to be filed electronically] the Commission has designated as permissible electronic filings.

(iii) Be in PDF format so that the document, and when feasible, its attachments, shall be capable of being printed and copied without restriction, and may not require a password to view the contents.

(iv) Be filed in accordance with the instructions made available on the Commission's web site at [<http://www.puc.state.pa.us/>] <http://www.puc.pa.gov/>.

**(v) Be filed and served as a searchable PDF. Additionally, filings must be provided to Commission staff in Microsoft-compatible format when that is feasible.**

\* \* \* \* \*

**§ 1.33. Incorporation by reference.**

\* \* \* \* \*

(b) Documents on file with the Commission for more than 20 years may not be incorporated by reference in a current document unless the **[person filing the current document first ascertains that the earlier]** document continues to be readily available in the active records of the Commission.

\* \* \* \* \*

**§ 1.35. Execution.**

\* \* \* \* \*

(b) *Signatory.*

(1) A pleading, submittal or other document filed with the Commission must be signed by one of the following:

(i) The **[person] individual** filing the documents, and severally if there is more than one **[person] individual** so filing.

\* \* \* \* \*

(c) *Effect.*

\* \* \* \* \*

(2) If a document is signed in violation of this subsection, the presiding officer or the Commission, upon motion or upon its own initiative, may impose upon the individual who signed it, a represented party, or both, an appropriate sanction, which may include

striking the document, dismissal of the proceeding or the imposition of civil penalties under section 3301 of the [act] Act (relating to civil penalties for violations).

**§ 1.36. Verification.**

(a) Applications, petitions, formal complaints, motions and answers thereto containing an averment of fact not appearing of record in the action or containing a denial of fact must be personally verified by a party thereto or by an authorized officer or other authorized employee of the party if a corporation or association. Verification means a signed written statement of fact supported by oath or affirmation or made subject to the penalties of 18 Pa.C.S. § 4904 (relating to unsworn falsification to authorities). When a verification is filed electronically, the verification shall be executed by a filing user, or if the verification is signed by an individual who is not a filing user, a filing user may file the verification electronically by scanning the original verification and submitting it as an attachment to a filing. **[When a verification is signed by an individual who is not a filing user, the original verification shall be filed in paper form no later than 3 business days after the electronic filing is made. The filing date for the verification in paper form will be determined in accordance with § 1.11(a)(1)—(3) (relating to date of filing).]** The docket number for the filing must be clearly indicated on the original verification. **When verification is permitted, notarization is not necessary. When a party files a petition with the Secretary’s Bureau and that petition contains no averment or denial of fact not appearing of record in the underlying action, the petitioner must include a cover letter with a statement to that effect so that the Secretary’s Bureau staff is aware that the filer has intentionally excluded a verification.**

\* \* \* \* \*

**§ 1.37. Number of copies.**

(a) *Paper filings.*

\* \* \* \* \*

(3) A filing, including attachments, exceeds 10 megabytes, in addition to filing the requisite number of hard copies in accordance with this subpart, a CD-ROM, DVD, **or other electronic storage device, such as a USB flash drive,** containing the filing and an index to the filing shall be filed with the Commission.

\* \* \* \* \*

## Subchapter E. FEES

### § 1.43. Schedule of Fees Payable to the Commission.

(a) *Fees for services.* The fees for services rendered by the Commission, **which are non-refundable**, are as follows:

Description	Fee (in dollars)
<b>[Initial filing of Form A for intangible transition property notice...]</b>	<b>[\$550]</b>
<b>[Subsequent filing of notice changes in intangible transition property notice on Form B...]</b>	<b>[\$350]</b>
Chapter 74 public information requests relating to perfection of security interests ...	\$10 plus standard per page copying costs
Copies of papers, testimony, <b>[microfiche,]</b> records and computer printouts per sheet...	\$0.75
<b>[Copies of microfiche per sheet...]</b>	<b>[\$1.50]</b>
<b>[Copies of microfilm per roll...]</b>	<b>[\$80]</b>
Certifying copy of a paper, testimony or record...	\$5
Filing each securities certificate...	\$350
Filing each abbreviated securities certificate...	\$25
Filing each application for a certificate, permit or license[, or amendment of a certificate, permit or license]...	\$350
<b>Filing each application for amendment of a certificate, permit or license...</b>	<b>\$350</b>
<b><u>Filing each application for abandonment of a certificate, permit or license...</u></b>	<b><u>\$350</u></b>
<b><u>Filing an application for a certificate of public convenience for telecommunications service...</u></b>	<b><u>\$250</u></b>
Filing an application for a certificate of public convenience for a motor common carrier of property or a group and party carrier of more than 15 passengers...	\$100
Filing an application for emergency temporary authority as common carrier of passengers or household goods in use, contract carrier of passengers or household goods in use, or broker or for an extension thereof...	\$100
Filing an application for temporary authority as common carrier of passengers or household goods in use, contract carrier of passengers or household goods in use, or broker...	\$100

<b><u>Filing an application to be a pipeline operator...</u></b>	<b><u>\$250</u></b>
<b><u>Filing an application to be a conservation service provide ...</u></b>	<b><u>\$125</u></b>
<b><u>Filing an application to be a utility valuation expert...</u></b>	<b><u>\$125</u></b>
<b><u>[Filing an application for a certificate to discontinue intrastate common carrier passenger or household goods in use service...]</u></b>	<b><u>[\$10]</u></b>

\* \* \* \* \*

### Subchapter F. SERVICE OF DOCUMENTS

\* \* \* \* \*

#### § 1.51. Instructions for service, notice and protest.

\* \* \* \* \*

**(c) Exception to service list availability. Where an individual party is a victim of domestic violence with a protection from abuse order or a court order issued by a court of competent jurisdiction in this Commonwealth which provides clear evidence of domestic violence, the address of the victim will be redacted on the service list.**

#### § 1.53. Service by the Commission.

(a) *Applicability.* This section applies to service of an order, notice or other document originating with the Commission and other documents designated by the Commission, except when the Commission specifically requires a different form of service. **A person is not required to register to use the electronic filing system to be a party in a Commission proceeding. A person does not have to register for the electronic filing system to agree to electronic service. A person that is not an electronic filing user or has not agreed to electronic service of documents shall be served in paper form in accordance with subparts (b)[(2), and 4] (1), and (2).**

(b) *Forms of service.*

(1) *First class mail.* Service may be made by mailing a copy **of the document [thereof to the person to be served, addressed to the person designated in the initial pleading, submittal or notice of appearance at the person’s residence, principal office or place of business] upon the party as set forth in § 1.24 of this chapter (relating to notice of appearance or withdrawal).**

\* \* \* \* \*

(3) *Electronic.* Service may be made electronically to **[filing users] a party** who **[have] has** agreed to receive electronic service except when the Act specifically requires a different form of service. **[Filing users will be sent an electronic mail notice informing them that a document was posted on the Commission’s electronic filing system and providing a link to the document on the same day the document is posted.]**

**(i) A party that is a filing user has agreed to the service of Commission documents exclusively via electronic means. The filing user will be sent an electronic mail notice informing them that the served document was posted and providing a link to the document on the same day the document is posted on the Commission’s website.**

**(ii) Parties may agree to electronic service in a Commission proceeding without being required to become a filing user.**

\* \* \* \* \*

(c) *Registered or certified mail.* **[Service of a petition under § 3.391 (relating to arbitration of claims for billing and collecting services), and service of a complaint under section 702 of the act (relating to service of complaint on parties) must be by registered or certified mail, return receipt requested.] Except as otherwise provided by the [act] Act or another law, the following documents must be served by registered or certified mail, return receipt requested:**

**(1) A Commission order under § 703(e) of the Act (relating to fixing of hearings).**

**(2) A complaint under § 702 of the Act (relating to service of complaint on parties). Service of complaints in all hearings, investigations, and proceedings pending before the Commission may be made by e-mail upon agreement by each party.**

**(3) A petition under § 3.391 (relating to arbitration of claims for billing).**

\* \* \* \* \*

**§ 1.54. Service by a party.**

(a) Pleadings, submittals, briefs and other documents, filed in proceedings pending before the Commission shall be served upon parties in the proceeding and upon the



presiding officer, if one has been assigned. **A person will not be required to register [to use] for the electronic filing system to be a party in a Commission proceeding. A person that does not register to use the electronic filing system shall file and serve documents in paper form.**

(b) Service may be made by one of the following methods:

(1) *First class mail.* [Service may be made by mailing the requisite number of copies to each party as provided in § 1.59 (relating to number of copies to be served), properly addressed with postage prepaid.] **If a party to the proceeding has not agreed to electronic service of documents, the other parties in the proceeding shall serve that party with the requisite number of copies of the filing as provided in § 1.59 (relating to number of copies to be served), properly addressed with postage prepaid.**

\* \* \* \* \*

(3) *Electronic.*

(i) *Documents not filed with the Commission.* Service may be made electronically **only** to those parties who have agreed to accept service in that manner.

(ii) *Documents filed with the Commission.* Service may be made electronically [to filing users] **to all parties in the proceeding** who have agreed to [receive] electronic service **of filings.** [Filing users who have agreed to receive electronic service shall be served with an electronic mail notice stating that a document was filed on the electronic filing system. The notice constitutes service.] **If the party is a filing user, they shall be served an electronic mail notice stating that a document was filed on the electronic filing system. A party that is a non-filing user but who has agreed to the electronic service of filings shall file a paper copy of a notice with the Commission stating that a document was served on the other party electronically. In both cases, the notice shall act as evidence of service of the filing.**

\* \* \* \* \*

(c) In a proceeding in which only some of the parties participate, the parties, with the authorization of the presiding officer, may limit the service of documents to parties **[and persons or individuals]** which state on the record or request in writing that they wish to be served.

\* \* \* \* \*

**§ 1.56. Date of service.**

\* \* \* \* \*

(b) Unless otherwise prescribed by the Commission or presiding officer, whenever a party is required or permitted to do an act within a prescribed period after service of a document upon the party **[and the document is served]** by first-class mail by the United States Postal Service, 3 days shall be added to the prescribed period.

\* \* \* \* \*

**§ 1.59. Number of copies to be served.**

\* \* \* \* \*

(b) The following number of copies of documents shall be served on other parties in a proceeding **as deemed appropriate by the presiding officer:**

\* \* \* \* \*

**Subchapter G. MATTERS BEFORE OTHER TRIBUNALS**

**§ 1.61. Notice and filing of copies of pleadings before other tribunals.**

(a) When matters over which the Commission may have jurisdiction under the **[act] Act** are raised in proceedings filed with a court or other regulatory body by **[a person] an entity** subject to the **[act] Act**, either an appropriate application or petition, or notice of the proceedings and copies of the material pleadings filed therein, shall be filed simultaneously with the Commission so that it may have sufficient notice and time for proper consideration of the matters within its jurisdiction.

(b) Upon filing of a petition for bankruptcy under the United States Bankruptcy Code (11 U.S.C.) by a jurisdictional **public** utility or licensee or by a parent, affiliate, or direct or indirect subsidiary of a utility or licensee, the **public** utility or licensee shall file a copy of the petition with the Commission, and serve the **[Office of Trial Staff] Commission's Bureau of Investigation and Enforcement**, the Office of Consumer Advocate and the Office of Small Business Advocate.

\* \* \* \* \*

(d) If the reorganization plan submitted under subsection (c) contemplates the abandonment of service, the submittal must include an application under Chapter 11 of

the [act] Act (relating to certificates of public convenience). If a licensee's reorganization plan includes the abandonment of the license, the submittal must include the appropriate pleading as required by the [act] Act.

\* \* \* \* \*

## **Subchapter H. PUBLIC ACCESS TO COMMISSION RECORDS**

### **§ 1.71. Statement of objectives.**

The Commission's records maintenance system is intended to provide for the greatest degree of public access to Commission documents that is consistent with the exercise of the functions of the Commission under the [act] Act and other applicable laws. The Commission's system is designed to meet that objective and to give public notice of which classes of documents are available for inspection. The system provides a predictable standard, which nevertheless permits the Commission to take cognizance of the circumstances of individual requests for documents which may militate in favor of or against disclosure.

\* \* \* \* \*

### **§ 1.73. Fiscal records.**

\* \* \* \* \*

(b) No fiscal record, nor unseverable part thereof, which contains material exempted from the disclosure requirements provided in the [act] Act of [June 21, 1957 (P. L. 390, No. 212) (65 P.S. §§ 66.1—66.4)] February 14, 2008 (P.L. 6, No. 3) 65 P.S. §§ 67.101-67.3104 or which otherwise presents a substantial need for nondisclosure, will be available for public inspection.

\* \* \* \* \*

### **§ 1.75. [Review of staff determination.**

**When advised by a staff member that no further staff review of the request for review is possible, the requestor may petition the Commission for review as to a specific or definite class of documents.] (Reserved).**

\* \* \* \* \*

**§ 1.77. [Extensions of time to review folders.**

**For good cause the Commission may extend the time limits applicable to requests for access to documents. In the case of documents displaying no need for confidentiality, or, conversely, documents containing information which the Commission considers improper for public inspection, the Commission may direct the appropriate treatment thereof, notwithstanding contrary provisions in §§ 1.71—1.76.] (Reserved).**

\* \* \* \* \*

**§ 1.96. Unofficial statements and opinions by Commission personnel.**

Statements contained in formal opinions of the Commission or in decisions of a presiding officer which are not necessary in resolving the case, and informal opinions, whether oral or written, expressed by Commissioners, presiding officers, legal counsel, **[employees]** **employees** or representatives of the Commission and reports drafted by Commission bureaus are only considered as aids to the public, do not have the force and effect of law or legal determinations, and are not binding upon the Commonwealth or the Commission.

**TITLE 52. PUBLIC UTILITIES**  
**PART 1. PUBLIC UTILITY COMMISSION**  
**Subpart A. GENERAL PROVISIONS**  
**CHAPTER 3: SPECIAL PROVISIONS**  
**Subchapter A. SPECIAL COMMISSION ACTIONS**

**§ 3.1. Definitions.**

The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise:

*Emergency*—A situation which presents a clear and present danger to life **or the public interest** or property or which is uncontested and requires action prior to the next scheduled public meeting.

*Emergency order*—An ex parte order issued by a single Commissioner, the Commission, the Commission's **[Director of Operations] Executive Director** or the Commission's Secretary in response to an emergency.

\* \* \* \* \*

**§ 3.2. Petitions for issuance of emergency orders.**

(a) To the extent practicable, a petition for emergency order must be in the form of a petition as set forth in § 5.41 (relating to petitions generally) and **[shall] must** be served on the persons, **corporations, and municipal corporations** directly affected by the application **and also on the statutory advocates.**

\* \* \* \* \*

**§ 3.3. Disposition of ex parte emergency orders.**

(a) *Authority.* The Chairperson, a Commissioner, the Commission's **[Director of Operations] Executive Director** and the Commission's Secretary have the authority to issue an emergency order.

(b) *Form.* An emergency order will be issued in writing and filed with the Secretary with copies to Commissioners **[and the Director of Operations] and the Executive Director. The emergency order will be electronically served on the statutory advocates.**

(c) *Ratification.* An emergency order or the denial of a petition for emergency order issued by a single Commissioner or the **[Director of Operations] Executive Director** or the Commission’s Secretary will be ratified, modified or rescinded by the Commission at the next scheduled public meeting after issuance of the order.

(d) *Service.* An emergency order or the denial of a petition for emergency order will be served by the Secretary as expeditiously as practicable upon the persons directly affected by the decision **and the statutory advocates** with copies to the Commissioners and the **[Director of Operations] Executive Director**.

\* \* \* \* \*

**§ 3.4. Hearings following issuance of emergency orders.**

\* \* \* \* \*

(b) The petition for expedited hearing shall be filed with the Secretary and a copy served upon the Chief Administrative Law Judge[.], **the statutory advocates and all parties to the underlying proceeding.**

\* \* \* \* \*

(d) If the emergency order is issued by a single Commissioner or the **[Director of Operations] Executive Director** or by the Commission’s Secretary, the presiding officer will have the authority to stay the effect of the order until the next scheduled public meeting.

\* \* \* \* \*

**§ 3.6. Petitions for interim emergency orders.**

(a) A party may submit a petition for an interim emergency order during the course of a proceeding. The petition shall be filed with the Secretary and served contemporaneously on the Chief Administrative Law Judge, **on the statutory advocates** and on the parties.

\* \* \* \* \*

**Subchapter B. INFORMAL PROCEEDINGS GENERALLY**

**§ 3.101. Municipal contracts.**

No formal application need accompany municipal contracts filed under section 507 of the [act] Act (relating to contracts between public utilities and municipalities), but an executed copy or [reproduction] reproduced copy of the contract [shall] must be filed with the Commission at least 30 days prior to the effective date of the contract.

\* \* \* \* \*

**§ 3.111. Form and content of informal complaints.**

\* \* \* \* \*

(b) Informal complaints as defined by §3.111(a) [shall] must be submitted to the Secretary for referral to the appropriate bureau, addressed to the following: Pennsylvania Public Utility Commission, [Post Office Box 3265] 400 North Street, Harrisburg, Pennsylvania [17105-3265] 17120.

\* \* \* \* \*

**§ 3.113. Resolution of informal investigations.**

(a) The Commission staff may conduct informal investigations or informal proceedings in appropriate circumstances regarding the condition and management of a public utility or other [person] party subject to its jurisdiction. The informal investigations are typically undertaken to gather data or to substantiate allegations of potential violations of the act and may be conducted with or without hearing.

(b) Under 65 Pa.C.S. Chapter 7 (relating to Sunshine Act), the Commission’s official actions resolving informal investigations will be as follows:

(1) When the Commission staff determines that no violation or potential violation of the [act] Act has occurred, the informal investigation will be terminated by letter served on affected persons, corporations and municipal corporations.

\* \* \* \* \*

(3) When the utility, or other **[person] party** subject to the Commission’s jurisdiction, has committed to undertake action to address or remedy a violation or potential violation of the act or to resolve another perceived deficiency at the utility, in the form of a settlement with the Commission staff or other resolution of the matter, the Commission’s consideration of the settlement or approval of the utility’s action will occur at public meeting. Except for staff reports and other documents covered by a specific legal privilege, documents relied upon by the Commission in reaching its determination shall be made part of the public record. Before the Commission makes a final decision to adopt the settlement or to approve the utility’s action, the Commission will provide other potentially affected **[persons] parties** with the opportunity to submit exceptions thereon or to take other action provided for under law.

\* \* \* \* \*

### **Subchapter E. MOTOR TRANSPORTATION PROCEEDINGS**

#### **§ 3.381. Applications for transportation of property, household goods in use and persons.**

(a) *Applications.*

\* \* \* \* \*

(3) *Filing and verification.* An original application shall be filed by the applicant, or an authorized officer or representative, with the Secretary of the Pennsylvania Public Utility Commission, **[Post Office Box 3265] 400 North Street**, Harrisburg, Pennsylvania **[17105-3265] 17120**. The application shall be verified under § 1.36 (relating to verification). An application by a common carrier for a certificate of public convenience authorizing the transportation of passengers or household goods in use may be accompanied by verified statements of the applicant and supporting party or firm, as set forth in subsection (c)(1)(iii)(A)(II) and (III). An application by a contract carrier for a permit authorizing the transportation of passengers or household goods in use may be accompanied by a verified statement of the applicant, as set forth in subsection (c)(1)(iii)(A)(II) and a copy of the bilateral contract or statement of the shipper that it will enter into a bilateral contract with the carrier.

\* \* \* \* \*



## Subchapter F. ARBITRATION OF DISPUTES

### § 3.391. Arbitration of claims for billing and collecting services.

(a) Each petition for arbitration of a dispute under [section 4 of the act of April 14, 1949 (P. L. 482, No. 98) (53 P. S. § 2264)] section 505 of the Water Services Act (53 P.S. § 3102.505) shall set forth the following:

\* \* \* \* \*

## Subchapter H. FORMS

### § 3.551. Official forms.

Forms for applications, petitions, complaints and other matters are available on the Commission's website or from the Secretary of the Commission, [P. O. Box 3265] 400 North Street, Harrisburg, Pennsylvania, [17105-3265] 17120; (717) 772-7777.

**TITLE 52. PUBLIC UTILITIES  
PART 1. PUBLIC UTILITY COMMISSION  
Subpart A. GENERAL PROVISIONS  
CHAPTER 5: FORMAL PROCEEDINGS  
Subchapter A. PLEADINGS AND OTHER PRELIMINARY MATTERS**

\* \* \* \* \*

**§ 5.12. Contents of applications.**

(a) Applications must conform to this section unless a form or other specific requirements are provided in Chapter 3 (relating to special provisions). Applications must:

\* \* \* \* \*

(4) Set forth, in the order indicated, the following [-] unless otherwise provided by this chapter or in Chapter 3 for the specific type of application involved:

\* \* \* \* \*

(iii) The name, title, mailing address, telephone number and electronic mail address, if available, of the person to whom correspondence or communication in regard to the application is to be addressed. **[The Commission will serve, when required, notices, orders and other papers upon the person named, and service will be deemed to be service upon the applicant.]**

**(5) Be served upon the statutory advocates.**

**(a.1) The Commission will serve, when required, notices, orders and other papers on the person named and on the statutory advocates, and service will be deemed to be service on the applicant.**

\* \* \* \* \*

**§ 5.13. Applications for construction or alteration of crossings.**

\* \* \* \* \*

(b) Plans submitted for the construction, relocation, alteration, protection or abolition of a crossing **[complained against shall] must** be accompanied by the names and post office addresses of the record owners of all property necessary to be acquired in the

execution thereof, and shall, when directed by the Commission, be supplemented by a description by metes and bounds of all property necessary to be acquired.

\* \* \* \* \*

**§ 5.14. Applications requiring notice.**

(a) *General rule.* Notice of applications to the Commission for authority under the [act] Act must be published in the *Pennsylvania Bulletin* and as may otherwise be required by the Commission. **The following list of such applications for authority is for informational purposes only, and any omission of a relevant application does not eliminate or otherwise affect the requirement of its publication in the *Pennsylvania Bulletin* or as may be otherwise required by the Commission.**

**(1) To initiate fixed utility service to the public, including any of the following:**

- (i) Electric.**
- (ii) Gas.**
- (iii) Telephone.**
- (iv) Water.**
- (v) Wastewater.**
- (vi) Pipeline.**
- (vii) Radio-telephone common carrier service.**
- (viii) Steam.**

**(2) To initiate, in a different nature or to a different territory than is currently authorized, fixed utility service to the public, including any of the following:**

- (i) Electric.**
- (ii) Gas.**
- (iii) Telephone.**
- (iv) Water.**
- (v) Wastewater.**
- (vi) Pipeline.**
- (vii) Radio-telephone common carrier service.**
- (viii) Steam.**

**(3) To abandon, in whole or in part, fixed utility service to the public, including any of the following:**

- (i) Electric.**
- (ii) Gas.**
- (iii) Telephone.**
- (iv) Water.**
- (v) Wastewater.**
- (vi) Pipeline.**
- (vii) Radio-telephone common carrier service.**
- (viii) Steam.**

**(4) To acquire or transfer tangible or intangible utility property through sale, merger, consolidation, lease or transfer of stock.**

**(5) To acquire 5% or more of the voting stock of another corporation.**

**(6) To secure exemption under section 619 of the Pennsylvania Municipalities Planning Code (53 P.S. § 10619).**

\* \* \* \* \*

**(d) [*Publication of application.* Except as set forth in §§ 3.361—3.363, 3.501 and 57.71, 57.72 and 57.74—57.77 as relating to the 60-day protest period, or as otherwise provided by the Secretary, application to the Commission for the following types of authority will be published in the *Pennsylvania Bulletin* and, as directed by the Secretary, in a newspaper of general circulation serving the geographical territory affected by the application and shall be subject to a 15-day protest period.**

**(1) To initiate fixed utility service to the public, including the following:**

- (i) Electric.**
- (ii) Gas.**
- (iii) Telephone.**
- (iv) Water.**
- (v) Wastewater.**
- (vi) Pipeline.**
- (vii) Radio-telephone common carrier service.**

**(2) To initiate, in a different nature or to a different territory than is currently authorized, fixed utility service to the public, including the following:**

- (i) Electric.**
- (ii) Gas.**
- (iii) Telephone.**
- (iv) Water.**
- (v) Wastewater.**
- (vi) Pipeline.**
- (vii) Radio-telephone common carrier service.**

**(3) To abandon, in whole or in part, fixed utility service to the public, including to the following:**

- (i) Electric.**
- (ii) Gas.**
- (iii) Telephone.**
- (iv) Water.**
- (v) Wastewater.**
- (vi) Pipeline.**
- (vii) Radio-telephone common carrier service.**

**(4) To initiate rail utility service to the public.**

**(5) To initiate, in a different nature or to a different territory than is currently authorized, rail utility service to the public.**

**(6) To abandon, in whole or in part, rail utility service to the public.**

**(7) To acquire or transfer tangible or intangible utility property through sale, merger, consolidation, lease or transfer of stock.**

**(8) To acquire 5% or more of the voting stock of another corporation.**

**(9) To secure exemption under section 619 of the Pennsylvania Municipalities Planning Code (53 P.S. § 10619).**

**(10) To construct, alter or abandon, in whole or in part, or to change the status of a rail utility agency station or team track.] (Reserved).**

**§ 5.21. Formal complaints generally.**

\* \* \* \* \*

(c) A copy of the complaint will be served by the Commission, by certified mail, upon the respondent **unless they are a filing user. The Commission may serve a copy of the complaint by e-mail upon agreement by each party, under 66 Pa.C.S. § 702 (relating to service of complaints on parties).** If the complaint proposes to change an existing or proposed tariff rate of a fixed public utility subject to the jurisdiction of the Commission, a copy of the complaint will be served by the Commission on the **[Office of Trial Staff] Bureau of Investigation and Enforcement,** Office of Consumer Advocate and Office of Small Business Advocate.

(d) The filing of a formal **[compliant] complaint** entitles the complainant to a formal hearing before the Commission except that the Commission may dismiss any complaint without a hearing if, in its opinion, a hearing is not necessary in the public interest. Motions may be filed in accordance with §§ 5.101 and 5.102 (referring to preliminary objections; and motions for summary judgment and judgment on the pleadings).

\* \* \* \* \*

**§ 5.22. Content of formal complaint.**

(a) A formal complaint must set forth the following:

(1) The name, mailing address, telephone number, **[telefacsimile] fax number** and electronic mailing address, if applicable, of the complainant.

(2) If the complainant is represented by an attorney, the name, mailing address, telephone number, **[telefacsimile] [telefax] fax** number and Pennsylvania Supreme Court identification number of the attorney and, if available, the electronic mailing address.

**§ 5.24. Satisfaction of formal complaints.**

\* \* \* \* \*

(b) In lieu of the certified statement required by subsection (a), the respondent may provide a certified writing to the Commission that it has addressed the complaint and at least one of the following:

(1) That the complainant has acknowledged satisfaction to the respondent.

(2) That the complainant has acknowledged to the respondent that the complainant no longer wishes to pursue the complaint.

(c) In the case of certification of satisfaction under subsection (b), the respondent shall simultaneously serve a copy of the respondent's certified writing, including a statement informing the complainant of the complainant's right to object in writing within 10 days, upon the complainant. **In a case where there is only one respondent**, unless the complainant objects, in writing, to the certification within 10 days of its filing, the complaint docket will be marked closed. **In a case involving two or more respondents, the docket will not be marked closed until the filing of certified statements or certificates of satisfaction resolving all claims against all respondents.**

(d) Subsections (a) – (c) supersede 1 Pa. Code § 35.41 (relating to satisfaction of complaints).

**§ 5.31. Staff-initiated complaints.**

\* \* \* \* \*

(b) A Commission bureau filing a complaint under this section involving a fixed utility or licensee will provide a copy to the **[Office of Trial Staff] Bureau of Investigation and Enforcement**, the Chief Counsel, the Office of Consumer Advocate, and the Office of Small Business Advocate.

\* \* \* \* \*

**§ 5.41. Petitions generally.**

(a) *General requirements.* Petitions for relief under the **[act] Act** or other statute that the Commission administers, must be in writing, state clearly and concisely the interest of the petitioner in the subject matter, the facts and law relied upon, and the relief sought. **A document, the material part thereof, or a copy must be attached when a petition is based upon the document, the material part thereof, or a copy. If the document, the material part thereof, or a copy is not accessible, the petition must set forth that the document, the material part thereof, or the copy is not accessible and the reason, and set forth the substance of the document or material part thereof.** Petitions for relief must comply with § 1.51 (relating to Instructions for service, notice, and protest).

(b) *Service.* A copy of the petition shall be served on all persons directly affected and on other parties whom petitioner believes will be affected by the petition. Copies of the petition shall be served upon the **[Office of Trial Staff] Bureau of Investigation and Enforcement**, the Office of Consumer Advocate and the Office of Small Business Advocate. Service shall be evidenced with a certificate of service filed with the petition.

\* \* \* \* \*

**§ 5.42. Petitions for declaratory orders.**

\* \* \* \* \*

(c) [Copies shall also be served in compliance with Commission direction.] Copies.  
Copies must also be served as directed by the Commission.

\* \* \* \* \*

**§ 5.43. Petitions for issuance, amendment, repeal, or waiver of Commission regulations.**

\* \* \* \* \*

(b) A copy of the petition shall be served on all persons directly affected and on other parties who petitioner believes will be affected by the petition. Copies of the petition shall be served on the [Office of Trial Staff] Bureau of Investigation and Enforcement, the Office of Consumer Advocate and the Office of Small Business Advocate. Service shall be evidenced with a certificate of service filed with the petition.

(c) [Copies shall also be served in compliance with Commission direction.] Copies.  
Copies must also be served as directed by the Commission.

\* \* \* \* \*

**§ 5.52. Content of a protest to an application.**

(a) *Form.* A protest to an application must:

\* \* \* \* \*

(2) State the grounds of the [protest .] protest.

\* \* \* \* \*

(4) Request a hearing before the Office of Administrative Law Judge, or one will not be scheduled.



**§ 5.53. Time of filing.**

**Except as prescribed in § 5.14(c) of this chapter, [A] a** protest shall be filed within the time specified in the published notice of the application. If no protest time is specified **in the notice**, the protest shall be filed within **[60] 30** days of publication of the notice **except upon good cause shown.**

**§ 5.72. Eligibility to intervene.**

(a) **[Persons] Parties.** A petition to intervene may be filed by a **person, corporation, or municipal corporation** claiming a right to intervene or an interest of such nature that intervention is necessary or appropriate to the administration of the statute under which the proceeding is brought. The right or interest may be one of the following:

\* \* \* \* \*

**§ 5.74. Filing of petitions to intervene.**

\* \* \* \* \*

(b) Petitions to intervene shall be filed:

\* \* \* \* \*

(3) **[In accordance with § 5.53 if no deadline is set in an order or notice with respect to the proceedings.] Within the time specified in an order or notice with respect to the proceedings. If no deadline is specified, the petition must be filed within 30 days of publication of the notice, except upon good cause shown.**

\* \* \* \* \*

**§ 5.222. Initiation of prehearing conferences in nonrate proceedings.**

\* \* \* \* \*

(c) The following matters shall be considered at prehearing conference:

\* \* \* \* \*

(4) Other matters that may aid in expediting the orderly conduct and disposition of the proceeding and the furtherance of justice, including the following:

\* \* \* \* \*

**(vi) The method of service by a party.**

\* \* \* \* \*

**§ 5.224. Prehearing conference in rate proceedings.**

\* \* \* \* \*

(b) The first prehearing conference shall be held as soon as practicable after the entry of the order of investigation. The parties shall come to the first prehearing conference prepared to discuss the following:

\* \* \* \* \*

(3) Tentative scheduling of evidentiary hearings, close of the record, filing of briefs and other matters deemed appropriate, **such as the method of service by a party.**

\* \* \* \* \*

**§ 5.245. Failure to appear, proceed or maintain order in proceedings.**

\* \* \* \* \*

(c) If the Commission or the presiding officer finds, after notice and opportunity for hearing, that the actions of a party in a proceeding obstructs the orderly conduct of the proceeding and are inimical to the public interest, the Commission or the presiding officer may take appropriate action, including dismissal of the complaint, application, or petition if the action is that of complainant, applicant, or petitioner.

**(d) Subsection (a)(1)---(3) does not apply if the party is not required to secure counsel and there is no finding that the party has committed an abuse of process.**

\* \* \* \* \*

**§ 5.251. Recording of proceedings.**

\* \* \* \* \*

**(d) [Subsections (a)—(c) supersede 1 Pa. Code § 35.131 (relating to recording of proceedings)] *Special Agent Proceedings. Special agent proceedings will be audio recorded and will not be transcribed, unless the parties request the transcription of the audio recording or other circumstances warranting transcription exist.***

**(e) Subsections (a)--(d) supersede 1 Pa. Code § 35.131 (relating to recording of proceedings).**

\* \* \* \* \*

**§ 5.252. Review of testimony.**

\* \* \* \* \*

(c) Upon request for review, the Office of Administrative Law Judge will schedule a time and place for the review which shall be open to all parties. The court reporting firm **[shall] will** submit the **[tapes] recordings** and equipment necessary for the review and **[shall] will** arrange for the court reporter responsible for transcribing the **recordings** to be present at the review.

(d) Actual costs associated with making the **[tapes] recordings** available for review, including the time of the court reporter, **[shall] must** be paid by the party requesting review.

\* \* \* \* \*

**§ 5.304. Interlocutory review of discovery matters.**

\* \* \* \* \*

**(d) [Responsive brief] Brief.** A party may file a **[responsive]** brief within 7 days of a request for certification, which:

- (1) Either supports or opposes certification.
- (2) Addresses the merits of the question for which certification is requested.
- (3) Addresses whether a stay of proceedings is required to protect the substantial rights of a party.
- (4) Does not exceed 15 pages.

\* \* \* \* \*

(i) *Failure to act.* Failure of the Commission to act on a certified question within 30 days of its receipt will be deemed to be an affirmance of the decision of the presiding officer.

\* \* \* \* \*

**§ 5.306. Expedited notification.**

A presiding officer may order notification of parties by telephone, **[telefacsimile] fax transmittal** or other electronic means when time periods are short and delivery by mail may not prove adequate. Notification by means other than by mail will be confirmed by the presiding officer by service in writing and a filing will be made with the Secretary regarding confirmation.

\* \* \* \* \*

**§ 5.323. Hearing preparation material.**

\* \* \* \* \*

(b) *Statements.* Upon written request, a party is entitled to immediate receipt of a **[photostatic] copy** or like reproduction of a statement concerning the action or its subject matter previously made by that party, another party or a witness. If the statement is not provided, the party may move for an order from the presiding officer. For the purposes of this subsection, a statement previously made is one of the following:

\* \* \* \* \*

**§ 5.331. Sequence and timing of discovery.**

\* \* \* \* \*

(c) Commission staff may initiate discovery at an earlier time. Commission staff discovery prior to formal Commission action to initiate proceeding shall be designated as ‘Staff data requests’ and shall be answered fully and completely by the **public** utility within the time periods specified in § 5.342(d) (relating to answers or objections to written interrogatories by a party). Unless a presiding officer has been designated, objections and motions to compel shall be ruled upon by the Chief Administrative Law Judge. **Once a protest or adverse pleading is filed with the Commission, staff data requests are deemed withdrawn.**

\* \* \* \* \*

**§ 5.342. Answers or objections to written interrogatories by a party.**

\* \* \* \* \*

(g) *Motion to compel.* Within 10 days of service of an objection to interrogatories, **or until such time as the parties may determine by mutual agreement**, the party submitting the interrogatories may file a motion requesting the presiding officer to dismiss an objection to compel that the interrogatory be answered. The motion to compel must include the interrogatory objected to and the objection. If a motion to compel is not filed within 10 days of service of the objection, the objected to interrogatory will be deemed withdrawn.

\* \* \* \* \*

**§ 5.349. Requests for documents, entry for inspection and other purposes.**

\* \* \* \* \*

(b) As an alternative to permission to inspect and copy, and if requested by a party seeking discovery, the party against whom discovery is sought shall reproduce the designated documents at the requesting party’s expense. Regulated utilities shall provide copies of requested materials to Commission staff, which includes the **[Office of Trial Staff] Bureau of Investigation and Enforcement**, the Office of Consumer Advocate and the Office of Small Business Advocate at no charge.

\* \* \* \* \*

**§ 5.351. On the record data requests.**

(a) A party may request that a witness provide information or documents at a later time as part of the witness’ response to a question posed during cross-examination **[in the course of a rate proceeding]**. The request may only be made orally or in writing and shall be presented at the time the witness appears for cross-examination.

\* \* \* \* \*

**§ 5.365. Orders to limit availability of proprietary information.**

\* \* \* \* \*

**(h) Where a complainant in a formal proceeding has indicated in the complaint that a court has granted the complainant or another individual in the same residence a “protection from abuse” order or any other order which provides clear evidence of domestic violence against the complainant or the other individual that is currently in effect for personal safety or welfare, or provided a copy of the same, all parties are required to exclude or redact the**

**complainant’s personal address and contact information from any filings to the proceeding.**

\* \* \* \* \*

**§ 5.408. Official and judicial notice of fact.**

\* \* \* \* \*

(c) Upon notification that facts are about to be or have been noticed, a party adversely affected shall have the opportunity upon timely request to show that the facts are not properly noticed or that alternative facts should be noticed. **A presiding officer shall afford an adversely affected party the opportunity to show that the facts are not properly noticed or that alternative facts should be noticed prior to the close of the record and the issuance of an initial decision or recommended decision.**

\* \* \* \* \*

**§ 5.409. Copies and form of documentary evidence.**

(a) Except as otherwise provided in this chapter, Chapters 1 and 3 (relating to rules of administrative practice and procedure; and special provisions), when exhibits of a documentary character are offered in evidence, copies shall be furnished to the presiding officer and to the parties present at the hearing, unless the presiding officer otherwise directs. **[Two copies] One copy** of each exhibit of documentary character **[shall] must** be furnished for the use of the Commission unless otherwise directed by the presiding officer.

\* \* \* \* \*

**§ 5.412. Written testimony.**

\* \* \* \* \*

(f) *Service.* Written testimony shall be served upon the presiding officer and parties in the proceeding in accordance with the schedule established by this chapter. At the same time the testimony is served, a certificate of service for the testimony shall be filed with the Secretary. **[ Pre-served testimony furnished to the court reporter during an adjudicatory proceeding before the Commission shall be filed with the Commission as required under § 5.412a (relating to electronic submission of pre-served testimony).]**

(g) *Copies.* At the hearing at which the testimony is authenticated, counsel for the witness **[shall] must provide [two copies] one copy of the testimony to the court reporter or to the presiding officer if no court reporter is present.**

\* \* \* \* \*

§ 5.412a. [Electronic submission of pre-served testimony.] (Reserved).

**[(a) *General requirement for electronic submission.* A party serving pre-served testimony in proceedings pending before the Commission under § 5.412(f) (relating to written testimony) is required, within 30 days after the final hearing in an adjudicatory proceeding, unless the time period is otherwise modified by the presiding officer, to electronically file with, under § 1.32(b) (relating to filing specifications), or provide to the Secretary’s Bureau a compact disc or technology prescribed by the Commission containing the testimony furnished by the party to the court reporter during the proceeding.**

**(b) *Form of electronic submission.* Electronically submitted testimony must be limited to pre-served testimony documents and be in Portable Document Format. Exhibits attached to pre-served testimony documents may be electronically submitted to the Commission in accordance with subsection (a). Exhibits not electronically submitted with pre-served testimony shall be submitted in paper form to the court reporter at hearing. The electronic submission requirements in this section do not apply to discovery requests or responses, or pre-filed testimony, including testimony filed under § 53.53(c) (relating to information to be furnished with proposed general rate increase filings in excess of \$1 million).**

**(1) *Electronic submission.* Each piece of pre-served testimony filed through the Commission’s electronic filing system shall be uploaded separately. Each piece of pre-served testimony submitted to the Secretary’s Bureau on a compact disc or other technology as prescribed by the Commission may be uploaded onto one compact disc, pending file size limitations.**

**(2) *Electronic submission of testimony modified at hearing.* Pre-served testimony submitted to the Commission must match exactly the version of testimony the presiding officer has required to be submitted to the court reporter at hearing. When a presiding officer requires a party to make hand-marked modifications to testimony during the hearing before submitting the testimony to the court reporter, the pre-served testimony electronically submitted to the Commission shall be marked to reflect the modifications. When a presiding officer does not require a party to make modifications to testimony at hearing before submitting the testimony to the court reporter, the pre-served testimony electronically submitted to the**

Commission may not be marked. Testimony not admitted into the record during a hearing may not be electronically submitted to the Commission.

(i) *Electronic submission of testimony stricken at hearing.* Pre-served testimony which was stricken at hearing shall be revised to reflect that which was stricken by containing hand-marked strikethroughs or electronic strikethroughs on the testimony. A party may not completely electronically delete testimony which was stricken at hearing.

(ii) *Pagination of electronically submitted testimony documents.* Stricken or modified text on electronically submitted pre-served testimony documents must appear on the same page as the stricken or modified text on the pre-served testimony documents submitted to the court reporter at hearing.

(3) *Labeling of electronically submitted testimony.* Pre-served testimony electronically submitted to the Commission must be labeled consistent with the following examples:

(i) “St. No. Direct Testimony of .”

(ii) “St. No. -R Rebuttal Testimony of .”

(iii) “St. No. -SR Surrebuttal Testimony of .”

(c) *Submission of paper copies of pre-served testimony to the court reporter when electronically filing pre-served testimony.* When electronically filing pre-served testimony with the Commission, one paper copy of pre-served testimony shall be provided to the court reporter at hearing.

(d) *Electronic submission of confidential or proprietary testimony.* Electronically submitted testimony confidential or proprietary in nature shall be submitted to the Secretary’s Bureau on a compact disc or other technology as prescribed by the Commission. The compact disc must be labeled “CONFIDENTIAL” or “PROPRIETARY.” Confidential or proprietary testimony may not be filed through the Commission’s electronic filing system. Electronically submitted testimony confidential or proprietary in nature must match exactly the version of the confidential or proprietary testimony submitted to the court reporter at hearing.

(e) *Electronic submission of improper testimony.* If a party in an adjudicatory proceeding discovers that improper testimony documents have been electronically submitted to the Commission, the party may raise the improper submission with the presiding officer assigned to the adjudicatory proceeding. The presiding officer or



the Commission will make a determination regarding the submission of improper testimony.

(f) *Electronic access to electronically submitted testimony.* A party shall obtain an eFiling account with the Commission to view electronically submitted pre-served testimony and to receive daily action alerts from the Commission’s case and document management database that pre-served testimony has been electronically submitted to the Commission.]

\* \* \* \* \*

§ 5.502. Filing and service of briefs.

\* \* \* \* \*

(c) [*Filing of briefs in nonrate proceedings.*] (Reserved).

(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 briefs.* 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**] **must** be filed and served in the manner and number required within the time allowed by this section, absent good cause.

(f) *Deadlines.* [**Initial briefs, main**] **Main** briefs [**responsive briefs**] and reply briefs [**shall**] **must** 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)] Subsections (a)–(e)** superseded 1 Pa. Code § 35.191 and 35.193 (relating to proceedings in which briefs are to be filed; and filing and service of briefs).

\* \* \* \* \*

**§ 5.531. Certification of record without decision.**

(a) If a proceeding is referred to a presiding officer, that officer will normally **issue [file]** a decision. The record will be certified to the Commission without a decision of the presiding officer only as required or allowed by the Commission.

\* \* \* \* \*

**§ 5.533. Procedure to except to initial, [tentative] and recommended decisions.**

(a) In a proceeding, exceptions may be filed by a party and served within 20 days after the initial[, **tentative**] or recommended\_decision is issued unless some other exception period is provided. Exceptions may not be filed with respect to an interlocutory decision.

\* \* \* \* \*