COMMONWEALTH OF PENNSYLVANIA

PATRICK M. CICERO
Consumer Advocate

OFFICE OF CONSUMER ADVOCATE
555 Walnut Street, 5th Floor, Forum Place
Harrisburg, Pennsylvania 17101-1923
(717) 783-5048
(800) 684-6560

@pa_oca
/pennoca
FAX (717) 783-7152
consumer@paoca.org
www.oca.pa.gov

January 31, 2025

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

Re: 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

Dear Secretary Chiavetta:

Attached for electronic filing please find the Office of Consumer Advocate's Comments in the above-referenced proceeding.

Copies have been served as indicated on the enclosed Certificate of Service.

Respectfully submitted,

/s/ Jacob Guthrie
Jacob Guthrie
Assistant Consumer Advocate PA
Attorney I.D. # 334367
JGuthrie@paoca.org

Enclosures:

cc: Office of Administrative Law Judge (email only: crainey@pa.gov)
Paul Diskin, TUS (email only: pdiskin@pa.gov)
Office of Special Assistants (email only: ra-OSA@pa.gov)
Colin W. Scott, Law Bureau (email only: colinscott@pa.gov)
Tiffany L. Tran, Law Bureau (email only: tiftran@pa.gov)
Karen Thorne, Law Bureau (email only: kathorne@pa.gov)
Ra-pcpcregreview@pa.gov
Certificate of Service

CERTIFICATE OF SERVICE

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

I hereby certify that I have this day served a true copy of the following document, the Office of Consumer Advocate's Comments, upon parties of record in this proceeding in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant), in the manner and upon the persons listed below:

Dated this 31st day of January 2025.

SERVICE BY E-MAIL ONLY

Allison Kaster, Esquire
Bureau of Investigation & Enforcement
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
Harrisburg, PA 17120
akaster@pa.gov
Counsel for I&E

NazAarah Sabree, Small Business Advocate
Office of Small Business Advocate
555 Walnut Street
1st Floor, Forum Place
Harrisburg, PA 17101-1923
ra-sba@pa.gov
Counsel for OSBA

Counsel for:
Patrick M. Cicero
Consumer Advocate

Office of Consumer Advocate
555 Walnut Street
5th Floor, Forum Place
Harrisburg, PA 17101-1923
Phone: (717) 783-5048

Dated: January 31, 2025

/s/ Melanie Joy El Atieh
Melanie Joy El Atieh
Deputy Consumer Advocate
PA Attorney ID # 209323
MElAtieh@paoca.org

Christine Maloni Hoover
Of Counsel
David T. Evrard
Jacob Guthrie
Assistant Consumer Advocates

BEFORE THE

PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

COMMENTS OF THE OFFICE OF CONSUMER ADVOCATE

Melanie Joy El Atieh
Deputy Consumer Advocate
PA Attorney ID # 209323
MElAtieh@paoca.org

Christine Maloni Hoover
Of Counsel
PA Attorney I.D. # 50026
CHoover@paoca.org

David T. Evrard
Assistant Consumer Advocate
PA Attorney I.D. #33870
DEvrard@paoca.org

Jacob Guthrie
Assistant Consumer Advocate
PA Attorney ID # 334367
JGuthrie@paoca.org

Counsel for:
Patrick M. Cicero
Consumer Advocate

Office of Consumer Advocate
555 Walnut Street
5th Floor, Forum Place
Harrisburg, PA 17101-1923
Phone: (717) 783-5048

Dated: January 31, 2025

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I. INTRODUCTION

On November 9, 2023, the Pennsylvania Public Utility Commission (Commission) issued a Notice of Proposed Rulemaking (NOPR), seeking comments from the public on the Commission's proposed amendments to its regulations contained in 52 Pa. Code Chapters 1, 3, and 5, or the rules of administrative practice and procedure, special provisions, and formal proceedings, respectively.[1] On August 22, 2024, the Commission issued a Clarified Notice of Proposed Rulemaking Order (Clarified NOPR), modifying the NOPR issued on November 9, 2023. Also on August 22, 2024, Vice Chair Barrow and Commissioner Zerfuss submitted Statements in the docket, indicating specific rules in which they seek comment, and Commissioner Coleman issued a Dissenting Statement. On November 4, 2024, the Commission issued a Corrected Clarified Notice of Proposed Rulemaking Order (Corrected Clarified NOPR), correcting an inadvertent omission in the Clarified NOPR issued on August 22, 2024. The Corrected Clarified NOPR was published in the *Pennsylvania Bulletin* on November 9, 2024, beginning the 60-day comment period.[2] 54 Pa.B. 7361.

The OCA appreciates the opportunity to submit these comments to the Commission's Corrected Clarified NOPR (referred to as the NOPR from this point forward). Below, the OCA provides comments on the substantive rule changes proposed in the NOPR. If the OCA does not address below a proposed change in the NOPR, it means the OCA submits no comment on the proposed change. Below, the OCA also addresses the issues identified in the Statements of Vice Chair Barrow and Commissioner Zerfuss.

[1] The Commission's procedural regulations were last amended in 2006. *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 (2006 Rulemaking).

[2] Comments from the public are due February 5, 2025, and Reply Comments are due March 7, 2025.

In summary, as indicated below, the OCA supports changes to the procedural rules that will improve readability of the rules and enhance consumer access to participation in proceedings before the Commission. The OCA raises several specific concerns about the following: (1) procedural roadblocks that consumers encounter when trying to raise issues with their utility service before the Commission, (2) the consistency of how proceedings are conducted before the Office of Administrative Law Judge, and (3) the codification of implementation orders for statutory sections which were created following the most recent changes to the procedural rules. In addition, the OCA offers several proposed changes to the rules that were not addressed in the NOPR but which the OCA believes will enhance practice before the Commission.

By the same statute that enables the OCA, the Commission is mandated as follows:

> In dealing with any proposed action which may substantially affect the interest of consumers, including but not limited to a proposed change of rates and the adoption of rules, regulations, guidelines, orders, standards or final policy decisions, the [C]ommission shall:…(2) [c]onsistent with its other statutory responsibilities, take such action with due consideration to the interest of consumers.

71 P.S. § 309-5. Thus, in adopting the final NOPR, the Commission must adopt such regulations with due consideration to the interest of consumers.

II. COMMENTS ON CHANGES WITHIN THE NOPR

1. 52 Pa. Code § 1.3. Information and Special Instructions

Rule 1.3(a) states:

> (a) Information as to procedures under this subpart, and instructions supplementing this subpart in special instances, will be furnished upon application to:
>
> (1) By first-class mail:
> Secretary
> Pennsylvania Public Utility Commission
> Post Office Box 3265
> Harrisburg, Pennsylvania 17105-3265
>
> (2) In person or by mail other than first-class:
> Secretary

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

In the NOPR, the Commission proposes amending 1.3(a) to replace "application" with "request" and specify that "mail other than first-class" includes overnight delivery, certified, or priority mail. In the NOPR, the Commission states that these changes would streamline the process for seeking information about the Commission's procedural rules or hearings. NOPR at 4. Under the Commission's proposal, Rule 1.3(a) would now read:

> (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

The OCA supports these proposed changes with modification. Specifically, Rule 1.3(a) should include a third option for contacting the Commission regarding requests for information regarding the Commission's procedural rules or hearings: contact via email, which is already permitted under Rule 1.4(a)(3) for filings. From the OCA's experience, consumers often prefer contact by email or phone to request information, not by mail. Reliance on mail to get information from the Commission can pose a roadblock to consumer participation in Commission proceedings, as it can create a delay in getting the information to the requestor, especially if the information request requires multiple rounds of communication for clarification or other purposes. As such, the OCA proposes that a Rule 1.3(a)(3) be added, which would provide contact information for a

Commission-run email address for information requests regarding procedural rules, hearings, or other time-sensitive inquiries from members of the public.

2. 52 Pa. Code § 1.6. Commission Office Hours.

Rule 1.6 states:

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

In the NOPR, the Commission proposes including language permitting the Commission to set its own hours – as it is an independent agency – instead of relying solely on the direction of the Governor. NOPR at 5. Under the Commission's proposal, Rule 1.6 would now read:

> 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.

The OCA supports this change with modification. The OCA would suggest that the Commission add language requiring the Commission to provide public notice of any changes to its operating hours. At minimum, the Commission should post the proposed changes to its hours on its website at least three business days prior to implementing any such changes. The OCA would prefer a greater level of notice be provided, such as notifying participants with active, pending cases that the hours would change, especially if a participant is not using email for filing and service.

3. 52 Pa. Code § 1.7. Sessions of the Commission.

Rule 1.7 states:

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

In the NOPR, the Commission proposes adding the option for Public Meetings to be livestreamed or held telephonically, to recognize that the Commission has begun to hold livestreamed and telephonic Public Meetings. Under the Commission's proposal, Rule 1.7 would now read:

> 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.

The OCA supports this proposed modification with two recommendations. First, if the Commission is permitted to hold a livestreamed or telephonic Public Meeting and a Commissioner is able to elect to attend the Public Meeting remotely, then the Commission should further define the types of circumstances that could make a Commissioner unavailable to attend a Meeting as being unforeseen, exigent circumstances. While it is important to allow flexibility in scheduling and in Commissioner participation in Public Meetings, that flexibility requires responsibility and commitment on behalf of the Commission to ensure that Public Meetings are only cancelled due to unforeseen, exigent circumstances.

Second, the Commission should pursue having Public Meetings more often. As discussed in the OCA's proposal to add 52 Pa. Code Sections 5.110 and 5.111, regarding determining the last Public Meeting date when setting the litigation schedule for a proceeding with a statutorily prescribed time frame, the frequency of Public Meetings can be a limiting factor in the ability of parties to fully litigate a proceeding before a Commission. Namely, in proceedings with a time frame established by statute, litigation before the Commission becomes compressed, meaning that a full evidentiary record is developed in a matter of weeks, usually eight weeks or less from the filing of direct testimony to the evidentiary hearings. Parties which initiate proceedings before the Commission are able to select a filing date which provides as little time as possible for opposing

parties to assemble their case-in-chief. By having more frequent Public Meetings, there will be more parity between parties initiating proceedings and those who do not initiate proceedings, such as the OCA, in providing time for the full development of an evidentiary record.

With the additional flexibility of a remote option for Public Meetings, the Commission should be able to schedule additional Public Meetings each year, as there should be fewer scheduling conflicts that prevent additional Public Meetings from being held. While the revised rule need not set a precise number of Public Meetings per year or number of weeks between Public Meetings, the OCA recommends that no more than two weeks should pass between Public Meetings, if there is a remote option. In the alternative, the Commission should be required to schedule additional Public Meetings to be consistent with and in accordance with the OCA's proposal to add 52 Pa. Code Sections 5.110 and 5.111. This proposal is addressed further below, but effectively would require the Commission to schedule a special public meeting that is eight to ten calendar days prior to the end-of-suspension date in a rate or other adversarial proceeding with a statutory deadline.

4. 52 Pa. Code § 1.8. Definitions.

Rule 1.8 provides the definitions utilized in Chapters 1, 3, and 5. Of particular importance is the definition of "Trade secret," which reads:

> *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 advantage over competitors who do not know or use it.

In the NOPR, the Commission proposes adding language that would allow for a party to claim information is a trade secret if that information's disclosure would cause "economic harm," instead of just an advantage. NOPR at 61. The rationale for this change is that it would provide

brevity and clarity to the definition. NOPR at 9. Under the Commission's proposal, Rule 1.8 would now read:

> **(**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:
>
> * * * * *
>
> *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.

While the OCA agrees with the formatting changes, the OCA disagrees with the inclusion of "economic harm" in the definition of trade secrets. The current definition of "trade secret" in the Commission's regulations mirrors that of the Restatement of Torts, which does not provide for economic harm in its definition and is used in common law trade secrets actions in the Commonwealth. Restatement of Torts § 757, comment b; *see*, *e.g.*, *Van Prods. Co. v. Gen. Welding & Fabricating Co.*, 213 A.2d 769 (Pa. 1965). Pennsylvania has also adopted the Uniform Trade Secrets Act, which defines a "trade secret" as:

> Information, including a formula, drawing, pattern, compilation including a customer list, program, device, method, technique or process that:
>
> (1) Derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use.
>
> (2) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

12 Pa. C.S. § 5302. Both the Commission's current definition and the statutory definition of trade secrets create a higher burden on the claimant to show that the information actually qualifies for the protections of the law than that proposed in the NOPR. The OCA is concerned that parties may

too eagerly or easily claim that information qualifies as a trade secret when it does not or should not under any body of law besides the Commission's regulations. If parties were able to more liberally claim that information qualified as a trade secret, it would make it more difficult for parties to conduct discovery on that information and would create a disproportionate burden on consumer complainants who may already struggle to navigate proceedings before the Commission.

As such, the OCA proposes that the revised definition of trade secret read as follows:

> *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]** **to entities that, but for disclosure,** do not know or use it.

5. 52 Pa. Code §§ 1.21 – 1.23. Rules Regarding Appearance and Representation Before the Commission.

Rule 1.21(a-d) currently states:

> (a) Individuals may represent themselves.
>
> (b) Except as provided in subsection (a), persons in adversarial proceedings shall be represented in accordance with § 1.22 (relating to appearance by attorneys and 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.
>
> (c) In nonadversarial proceedings, persons 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.
>
> (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 (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:

(1) A paralegal working under the direct supervision of an attorney admitted to the Pennsylvania Bar.

(2) An appropriate individual including a family member or other individual or entity with oral or written authority.

Rule 1.22 currently states:

(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.

(b) An attorney not licensed in this Commonwealth may appear before the Commission in accordance with the Pennsylvania Bar Admission Rules.

(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).

(d) Subsection (a) supersedes 1 Pa. Code § 31.22 (relating to appearance by attorney).

Rule 1.23(a) currently states:

(a) Persons 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; and appearance by attorney or certified legal intern).

In the NOPR, the Commission proposed significant changes to the rules of representation before it. The Commission proposed transitioning Rules 1.21 and 1.22 into appearance in nonadversarial or informal proceedings and appearance in adversarial Commission proceedings, respectively, instead of maintaining the dynamic established in the General Rules of Administrative Practice and Procedure between appearance in person and appearance by an attorney. 1 Pa. Code §§ 31.21 and 31.22. Rule 1.23(a) was amended to reflect the changes to Rules 1.21 and 1.22, and the amended definitions of "parties" and "person" in Rule 1.8. Under the Commission's proposal, Rules 1.21-1.23 would now read:

§ 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) **[An attorney not licensed in this Commonwealth may appear before the Commission in accordance with the Pennsylvania Bar Admission Rules.]** **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]** **Parties** 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**).

The changes to Rule 1.21 will not permit an individual to be represented by an attorney in nonadversarial or informal proceedings before the Commission[3] and will permit an individual to be represented by a non-attorney holding a Power of Attorney, if representation occurs during periods of disability or incapacity. The changes to Rule 1.22 similarly permit an individual to be represented by a non-attorney holding a Power of Attorney, if representation occurs during periods of disability or incapacity, and would permit an authorized agent of a business or partnership to

[3] Under 2 Pa. C.S. § 502, "any party may be represented before a Commonwealth agency." However, with the Commission's proposed removal of the language in 52 Pa. Code Section 1.22 "an attorney at law admitted to practice before the Supreme Court of Pennsylvania shall represent persons in Commission proceedings" and 52 Pa. Code Section 1.23(a), "persons may not be represented at a hearing before the Commission or a presiding officer except as stated in § 1.21 or § 1.22," and no provision that an attorney may represent a person in informal or nonadversarial proceedings in the revised 52 Pa. Code Section 1.21, the Commission is proposing that no person may be represented by an attorney before the Commission in informal or nonadversarial proceedings. The OCA provides its recommendation, *infra*.

represent that business or partnership in formal proceedings before the Commission. The Commission purports that it proposed these changes to bring its rules regarding representation and appearance more in line with those utilized by other administrative agencies in the Commonwealth, such as the Unemployment Compensation Board and the Department of Revenue. Commissioner Coleman expressed concern in his Statement on the NOPR that the proposed expansion would constitute the unauthorized practice of law, without further examination and comparison of the manner of proceedings before the Commission and other agencies which permit non-attorney representation. Statement of Commissioner Coleman Nov. 9, 2023.

The OCA has concerns, as outlined more fully below, about the limitations imposed by these rules in relation to the more permissive representation rules permitted before other administrative agencies and tribunals.[4] Consumers should be able to be represented by non-attorney representatives under Rules 1.21 and 1.22 in informal, nonadversarial proceedings or in formal, adversarial proceedings brought under Chapters 56 and 64 of the Commission's regulations or under Chapters 14[5] and 15, Subchapter B of the Public Utility Code (without the need to demonstrate incapacity or disability) because such proceedings are factual and non-technical and, therefore, are not the practice of law. Non-attorney, third-party representatives should include

[4] Non-attorney representation has been permitted before several administrative agencies as well as before Magisterial District Judges. *Harkness v. Unemployment Compensation Bd. of Rev.*, 920 A.2d 162 (Pa. 2007); *Nolan v. Dep't of Pub. Welfare*, 673 A.2d 414 (Pa. Cmwlth. Ct. 1995) (non-attorney representation permitted before the Department of Public Welfare's Office of Hearing and Appeals); 34 Pa Code. § 91.2 (non-attorney representation permitted before the Labor Relations Board); 28 Pa. Code § 1111.8 (non-attorney representation permitted before the Department of Health's Bureau of Women, Infants, and Children); 61 Pa. Code § 702.21 and 72 P.S. § 9704(d.1) (non-attorney representation permitted before the Board of Finance and Revenue); Pa.R.Civ.P.M.D.J. 207(A)(1) (Individuals may be represented by themselves, by an attorney at law, or by a representative with personal knowledge of the subject matter of the litigation and written authorization from the individual to appear as the individual's representative).

[5] Chapter 14 of the Public Utility Code expired on December 31, 2024. The Commission issued a Statement of Policy on December 24, 2024, reaffirming and maintaining all provisions of Chapter 14 unless subsequently modified by Commission order or regulation. *See Sunset of Chapter 14, Title 66 of the Pennsylvania Public Utility Code,* Docket No. M-2024-3052328 (Order entered Dec. 24, 2024). Considering the uncertainty of whether Chapter 14 will be renewed by the General Assembly in any form during the pendency of the instant rulemaking, the OCA retains references to Chapter 14 here for sake of ease and familiarity.

individuals working under the direct supervision of an attorney admitted to the Pennsylvania Bar; family members, or other individuals acting with oral or written authority, such as a power of attorney, without the need to demonstrate incapacity or disability; or, an authorized corporate official on behalf of a small business or partnership in an adversarial Commission proceeding.

Regarding the Commission's proposed changes to Rule 1.21, the OCA submits that permitting non-attorney, third-party representatives to act on behalf of a consumer in an informal, adversarial proceeding would not constitute the unauthorized practice of law. Informal proceedings before the Commission are nontechnical and require little legal argument and few legal documents. Further, the public interest strongly weighs in favor of permitting non-attorney representation in such proceedings. The Supreme Court of Pennsylvania considers representation to constitute the practice of law when it involves: advising on legal rights and obligations; preparing legal documents; appearing on behalf of clients to assist a presiding officer in interpreting the law; holding oneself out as capable of legal analysis; a formal or lengthy representation before a tribunal; and/or the public's interest in restricting representation outweighs the public benefit which would result from not permitting it. *Harkness v. Unemployment Compensation Bd. of Rev.*, 920 A.2d 162, 166-169 (Pa. 2007). The Court's consideration of these factors does not vary with whether the representation occurs before an executive administrative agency, or a different form of administrative agency. *Compare Nolan v. Dep't of Pub. Welfare*, 673 A.2d 414 (Pa. Cmwlth. Ct. 1995) (allowing representation by a non-attorney before the Department of Public Welfare, an executive agency) *with Shortz v. Farrell*, 193 A. 20 (Pa. 1937) (disallowing representation by a non-attorney before the Workmen's Compensation Board, a quasi-judicial agency).

In informal complaint proceedings before the Commission, the primary concern is whether a complainant provided the Bureau of Consumer Services (BCS) with sufficient facts to identify

if the complaint is valid; neither the complainant nor a non-attorney representative of the complainant is required to submit legal analysis, pleadings or motions, or hold themselves out as a legal expert. Instead, the representative would be able to assist the complainant in compiling the necessary documentation and submitting it to the BCS, ensuring completeness, and completing any necessary follow-up steps with BCS until the complaint is resolved.

In contrast, formal proceedings before the Commission are more similar to the practice of law than informal proceedings. Due to the use of motions, pleadings, evidentiary hearings, and discovery, some knowledge of the law which exceeds that of a layperson may be necessary to navigate some formal proceedings before the Commission. That said, the OCA proposes that subsection (d) of Rule 1.21, including both of its subsections, should be incorporated into the new Rule 1.22, to permit the prosecution of formal, adversarial proceedings brought under Chapters 56 and 64 of the Commission's regulations and Chapter 14 of the Public Utility Code (*i.e.*, mostly disputes regarding a customer's bill, fees, payments/non-payments, service termination, and/or service reconnection), through the use of a non-attorney representative. In the formal complaint proceeding before the Commission, the primary concern is whether a complainant provided the Administrative Law Judge (ALJ) or Special Agent with sufficient facts to identify if the complaint is valid. Again, neither the complainant nor a non-attorney representative of the complainant is required to submit legal analysis, pleadings or motions, or hold themselves out as a legal expert. Thus, the representative would be able to assist the complainant in compiling the necessary documentation and submitting it to the ALJ, ensuring completeness, and completing any necessary follow-up steps with ALJ until the complaint is resolved.

In Rule 1.21(d) proceedings, there is a significant public interest in permitting non-attorney representation in formal, adversarial proceedings regarding billing disputes due to the grave

consequences of the subject matter of such proceedings, instead of forcing consumers to represent themselves or retain an attorney, especially in proceedings regarding termination of essential utility services due to a billing dispute. Importantly, the issues presented in Rule 1.21(d) proceedings are largely factual and require little to no legal analysis; little harm could result from permitting non-attorney representation in such proceedings. While formal proceedings generally permit or encourage the submission of legal documents and analysis, as well as the submission of evidence from discovery or a hearing, the legal knowledge of a representative in such a case is not likely to impact the ability of a complainant to prosecute their claim, due to the highly factual and routine nature of the proceeding.

Proceedings brought under Rule 1.21(d) are also similar to complaints initiated under Chapter 15, Subchapter B of the Public Utility Code (Discontinuance of Service to Leased Premises), which are highly factual and require little to no legal analysis to successfully prosecute. Therefore, the OCA proposes that Chapter 15, Subchapter B proceedings be included in Rule 1.21(d), as well as the proposed adoption of a Rule 1.21(d) equivalent for the Commission's revised Rule 1.22 for formal, adversarial proceedings.

Such a development is strongly in the public interest and would bring the Commission more in line with other agencies and Magisterial District Courts which permit non-attorney, third-party representation in proceedings before them. *See supra*, n. 4 (providing that proceedings before the Unemployment Compensation Board, Department of Public Welfare, Labor Relations Board, and Department of Health's Bureau of Women, Infants, and Children are among the Commonwealth agencies which permit non-attorney, third-party representation); *see also* Phila. M.C.R. Civ.P. No. 131 (providing that a party may be represented by an "authorized representative" in certain proceedings before the Philadelphia Municipal Court).

In sum, in both informal proceedings before the Commission as well as in formal, adversarial proceedings brought under Chapters 56 and 64 of the Commission's regulations or Chapters 14 and 15, Subchapter B of the Public Utility Code, the factors elucidated by the Pennsylvania Supreme Court in *Harkness*, *supra*, demonstrate that non-attorney, third-party representation would not constitute the unauthorized practice of law. Rather, the nontechnical, largely factual investigations in such pleadings require few formal, legal filings and can be handled by laypersons. Further, permitting non-attorney, third-party representatives would remove obstacles from consumers who may face dire consequences of failing to bring such an action – such as termination of utility services – but struggle to advocate on their own behalf. Furthermore, the Commission's recommendations enabling individuals holding powers of attorney (POA) to advocate on behalf of the POA's grantor should be accepted, with the modification that there should be no requirement to prove a period of disability or incapacity. Individuals experiencing a period of disability or incapacity should not have to prove such disability or incapacity in order to have a holder of a POA initiate informal action before the Commission on their behalf. Instead, because the POA is a powerful legal document which is regulated by statute and subject to checks outside the scope of Commission practice, the Commission should permit POA holders to prosecute actions on behalf of their principal.

In addition, generally speaking, business entities are held to the same standards as non-attorney representatives regarding whether such representation constitutes the unauthorized practice of law. *See* Pa.R.Civ.P.M.D.J. 507 (permitting non-attorneys to represent individuals and corporate agents to represent businesses); *Harkness*, *supra* (permitting employers in unemployment compensation proceedings to be represented by a corporate official, in part, because employees can be represented by non-attorneys). As such, the OCA recommends that

small business entities should be able to be represented by a corporate official when individuals are able to be represented by a non-attorney.

Based on the foregoing, the OCA's proposal for the revised Rules 1.21 and 1.22 is as follows:

Rule 1.21(a-d). Appearance <u>in nonadversarial or informal proceedings</u>.

(a) Individuals may represent themselves **<u>in a nonadversarial Commission proceeding or an informal Commission proceeding</u>**.

(b) [Except as provided in subsection (a), persons in adversarial proceedings shall be represented in accordance with § 1.22 (relating to appearance by attorneys and 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]** **<u>a party</u>** 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.

<u>(4) A non-attorney third-party representative holding the power of attorney of an individual consumer may represent that individual.</u>

(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**<u>s</u>** 14 **<u>and 15, Subchapter B</u>** of the **[act]** **<u>Act</u>** (relating to standards and billing practices for residential **<u>telephone and</u>** utility service; and **[standards and billing practices for residential telephone service]** **<u>standards regarding discontinuance of service to leased premises</u>**), parties may be represented by one of the following:

(1) A paralegal**<u>, certified legal intern, or other individual</u>** working under the direct supervision of an attorney admitted to the Pennsylvania Bar.

(2) An appropriate individual including a family member or other individual or entity with oral or written authority.

Rule 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.**

(b) **[An attorney not licensed in this Commonwealth may appear before the Commission in accordance with the Pennsylvania Bar Admission Rules.] 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 paralegal or 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) In formal 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 Chapters 14 and 15, Subchapter B of the Act (relating to standards and billing practices for residential telephone and utility service; and standards regarding discontinuance of service to leased premises), parties may be represented by one of the following:

(1) A paralegal, certified legal intern, or other individual working under the direct supervision of an attorney admitted to the Pennsylvania Bar.

(2) An appropriate individual including a family member or other individual or entity with oral or written authority, including a power of attorney.

(3) An authorized corporate official may represent a small business or partnership in an adversarial Commission proceeding.

(d) Subsection (**[a]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.**

Additionally, as indicated *supra*, the proposals for Rules 1.21 through 1.23 preclude the ability of an individual to be represented by an attorney for informal or nonadversarial proceedings. However, individuals are guaranteed a right to such representation by statute. 2 Pa.C.S. § 502. The

OCA proposes that Rule 1.23(a) should read as follows, to remove any conflict between the Commission's regulations with relevant statutes or with itself:

> (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**), **except that any party may be represented by an attorney before the Commission**.

The OCA believes that, with these proposed changes, the Commission will be able to lower the barrier to participating in Commission proceedings without endorsing the unauthorized practice of law, bringing the Commission more in-line with other Commonwealth agencies.

6. 52 Pa. Code § 1.32. Filing Specifications.

Rule 1.32 currently describes the specifications for filing paper and electronic documents.

In the NOPR, the Commission proposes several stylistic changes for readability, as well as requiring filed documents to use 12-point font with optional 10-point footnotes, submit documents in searchable PDFs, and filings must be in a "Microsoft-compatible format" when feasible in a newly proposed Rule 1.32(b)(2)(v). NOPR at 68. The stated purpose of these changes is to ensure that filings are accessible to PUC staff. NOPR at 16. Under the Commission's proposed modifications to Rule 1.32, the Rule would read, in relevant part, as follows:

> (a) *Paper filings*. A paper filing made with the Commission must be:
> * * * * *
> (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-leaded text and single-leaded, 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.**
> * * * * *

(2*) Requirements*.

An electronic filing made with the Commission must:

* * * * *

(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.

The OCA accepts the stylistic changes without modification but disagrees with the proposed typeface changes and specification of Microsoft compatibility. Specifically, stating that 10-point font is "allowed" for footnotes does not indicate under what circumstances it is allowed or is not allowed; for example, the OCA uses 11-point size font in its footnotes to balance conserving space with readability. For this provision to be adopted, the rule change should require either a range of acceptable font sizes, or circumstances under which other size footnotes is or is not allowed.

Additionally, the OCA does not believe that the Commission should adopt a particular company's software as the additional filing provision. Instead, the OCA would recommend that the rule require a second transmittal of ".doc" or ".docx" file types, which are compatible with Microsoft products but can be created by a number of word processing programs, or freely converted-to online before filing, to minimize the number of potential roadblocks a filing party may encounter.

Moreover, the rule should provide clarity on what constitutes "provided to Commission staff." For example, the OCA participates in many cases in which the Commission's Bureau of Investigation and Enforcement (I&E) is also a party; the OCA should not be required to provide I&E with a Microsoft-compatible document whenever serving I&E with a document in a case, when that document is also filed with the Commission and served on I&E as a PDF, in accordance with the certificate of service. If the rule specified that filings provided to Commission staff of the

Bureau of Consumer Services, Office of Administrative Law Judges, or Office of Special Assistants must be in .doc or .docx formats, it would provide much more clarity.

Furthermore, the OCA recommends that the Commission require all filings which initiate a proceeding before it which total or exceed 100 pages use Bates stamping to consecutively paginate all pages in the filing, beginning with the cover letter and continuing through the final page of the final volume submitted. This requirement would apply to applications, petitions, and rate filings which are listed as the first docketed entry at a Commission docket number, but would not include secretarial letters filed for the purpose of placing the Commission on notice of an impending filing. All prevalent PDF document management software include Bates numbering functionality, including Adobe Acrobat, as well as some multifunctional printers. Bates numbering assigns a page number to each page of a filing and allows the parties to a proceeding and the Commission to be able to reference specific pages and sections of the filing in a consistent way that avoids ambiguity and aids in clarity akin to a reproduced record in an appeal before Commonwealth Court.

Consecutive pagination in initial filings would eliminate the need for lengthy references to specific pages of schedules, contained within appendices, contained within exhibits, contained within volumes. Initial filings, in particular, remain relevant throughout the entirety of a proceeding, as they form the evidentiary basis for a utility's attempt to meet its burden of proof. Further, initial filings can number in excess of 10,000 pages between numerous volumes, exhibits, and pieces of testimony. Large rate cases and application filings, such as applications under Section 1329 of the Public Utility Code, require substantial work on the part of non-filing parties to parse, identifying which pages from which exhibits, etc., address particular topics, regardless of how clearly labeled exhibits and schedules may be.

Bates numbering is used extensively throughout the legal profession – including in appellate practice in Pennsylvania – especially in fields of law that involve the exchange of voluminous records and documents numbering in the tens or hundreds of thousands of pages, such as medical malpractice, intellectual property litigation, and others. It is also used in public utility practice in, *inter alia*, California, Florida, Michigan, New Hampshire, Oregon, Rhode Island, Texas, West Virginia, and Wisconsin. Regardless of whether these states' analogs to the Commission *require* Bates stamping, pervasive use in a number of states demonstrates the functionality of using Bates numbering systems to navigate easily within and between voluminous documents.

Such widespread usage also demonstrates the low burden to entry: the ubiquity of Bates stamping software applications and low-level of technical skill required to apply such numbering would present little burden to the filing party. Initial filings, also, are almost never subject to timing restraints which require documents be filed by a particular date, meaning that taking the time to Bates number such filings will pose no burden on the filing party. The miniscule amount of effort needed to ensure initial filings are Bates numbered is a small concession, removing the burden from other parties – who are subject to timing constraints – to navigate and interpret initial filings.

While Bates numbering is more difficult to navigate with regard to confidential and amended filings, such difficulty remains an insignificant hurdle to overcome. In other practices and before other public utility jurisdictions, confidential filings are Bates numbered while public versions are not because a public version is merely a redacted version of the confidential filing, and navigating a public version of a confidential filing is easily done through the confidential document's Bates numbering. Further, portions of initial filings which are later amended swap out the page range of the amended portion of the initial filing and apply that page range to the amended

pages. This process is identical to what is currently done with pre-served written testimony when it is provided to the court reporter for entry into the official record in a proceeding after an amendment during an evidentiary hearing. Should such a process result in confusion, a disclaimer can be added to an amended page range, indicating that the pages are "as amended" instead of "as-filed."

Finally, the Commission's ease of handling lengthy filings will improve. Records produced on appeal by the Law Bureau will not be impacted, as the Bates numbering used to produce such records begins with the initial filing in a proceeding. Further, should the Commission wish to develop rules pertaining to the creation of indices for filed documents, Bates numbering would reduce the burden on filing parties to produce such indices while enabling streamlined navigation for all parties utilizing an index.

Therefore, the OCA urges the Commission to adopt a requirement that initial filings in excess of 100 pages should be submitted with consecutive pagination in the form of Bates numbering. This requirement should be added as a subsection (c) to Rule 1.32, with the current subsection (c) being amended as a subsection (d). The OCA's suggested language is as follows:

> **(c) *Consecutive pagination*. Electronic or paper filings that are the first filing to initiate a proceeding under a Commission-assigned docket number made with the Commission that are in excess of 100 pages must consecutively paginate each page of the filing, beginning with the filing letter and continuing through the last page of the filing. Such pagination must be in the form of a Bates stamp, must appear clear on each stamped page, and must continue logically through each section of the filing. No other documents submitted to the Commission must be so paginated.**
>
> **([c]<u>d</u>)** *Supersession*. Subsection (a) is identical to 1 Pa. Code § 33.2 (relating to form).

7. 52 Pa. Code § 1.36. Verification.

Rule 1.36 currently provides the verification requirements for submitting "applications, petitions, formal complaints, motions and answers [] containing an averment of fact not appearing of record in the action or containing a denial of fact," including example verifications for several types of proceedings.

In the NOPR, the Commission has proposed requiring that, where no extra-record averment or denial of fact is included in a filed petition, the filing letter accompanying the document must indicate the same. NOPR at 70. The stated purpose of this change is to assist the Commission in processing documents more quickly, so documents without a verification may be more quickly processed without the need to confirm that a verification is attached. NOPR at 17. Under the Commission's proposal, Rule 1.36(a) would now read:

> (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.**

The OCA is concerned with the manner in which this proposed change is being codified. Specifically, this proposed change will require the Commission to dedicate resources to

determining whether or not it was correct to include a cover letter in lieu of a verification, without demanding the same level of scrutiny for other types of filings, which are often incomplete but are accepted nonetheless, such as rate filing documents. As such, the OCA suggests that, if the Commission were to adopt this proposed change to Rule 1.36(a), that Commission review of the filing would toll any applicable statutory or regulatory clock, pending the review's confirmation that the filing is complete and accurate. This way, the Commission is allotted additional time to confirm that lengthy petitions are complete and verified, without providing disparate treatment to other types of filings due to their smaller size. Therefore, the OCA suggests that the following language be added to Rule 1.36:

> **(f) For the purposes of determining the time to file a responsive pleading or the computation of a statutory deadline following the Commission's receipt of a document which was accompanied by a verification, affidavit, or cover letter in lieu of a verification pursuant to subsections (a) through (c), such time will commence once the Secretary's Bureau has indicated that such filing has been accepted as in accordance with this Section by making the document available on the Commission's website.**
>
> (**[f]g**) Subsections (a)—(e) supersede 1 Pa. Code § 33.12 (relating to verification).

8. 52 Pa. Code § 1.37. Number of Copies.

Rule 1.37(b)(2) states:

> (b) *Electronic filings*. - (2) When the qualified document, including attachments, exceeds 250 pages, but does not exceed 10 megabytes, the filing user may file one electronic copy on the electronic filing system and shall also file the original in paper form with the Commission. The original in paper form shall be filed no later than 3 business days after the electronic filing is submitted. The filing date for the qualified document in paper form will be determined in accordance with § 1.11(a)(1)-(3) (relating to date of filing).

In the NOPR, the Commission currently proposes to amend Section 1.37(a)(3) to allow for the submission of large electronic documents on a USB drive or other electronic storage device, a

practice which is already used by many parties in Commission proceedings. Under the Commission's proposed changes to Rule 1.37(a)(3), it would now appear as:

> (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.

The OCA accepts the proposed modification. However, the OCA proposes that no party should be required to make a paper filing, unless otherwise required by statute, upon good cause shown, or at the discretion of the presiding officer to a proceeding.[6] As shown above in the quoted language from Section 1.37(b)(2), the rules currently require that any filing over 250 pages must be provided to the Commission in paper form, in addition to electronic form, while smaller documents do not require paper filing. Due to the ease of access to electronic files and filing, it is a needless expense to provide the Commission with a paper copy of a large file when electronic submission is already permitted. While allowing electronic filing of large documents should not prevent access to parties who cannot receive large electronic documents, and rely on the Commission's paper copies, such circumstances are rare and best left to the flexibility of the presiding officer, and should be the exception, not the rule, for the Commission's electronic filing practices.

[6] Notably, the OCA is not proposing an adjustment to the manner in which filing of confidential materials in excess of 250 pages is performed. The OCA's comment is specifically with regard to documents that are available to e-file because they contain no confidential information.

9. 52 Pa. Code § 1.51. Instructions for Service, Notice and Protest.

Rule 1.51(b) currently states:

> (b) Service list for parties. The Commission will make available to filing users on the electronic filing system a service list for each docket in which they are a party that contains the following provisions:
>
> (1) The names and addresses of the parties.
>
> (2) An indication of whether or not a party has agreed to receive electronic service.
>
> (3) The e-mail addresses of parties who have agreed to receive electronic service.

In the NOPR, the Commission has proposed to remove the address of any party who is under a Protection From Abuse (PFA) order or other court order which provides clear evidence of domestic violence, issued by a court of the Commonwealth, from the service list of an action before the Commission. NOPR at 71. This change seeks to reduce the exposure of individuals protected by such orders, should they choose to be involved in actions before the Commission, because service lists are posted on the Commission website and are, therefore, accessible to the general public. NOPR at 20. Under the Commission's proposed changes to Rule 1.51(c), it would now read as:

> **(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.**

While the OCA appreciates the Commission's effort to minimize public exposure for victims of domestic violence, the proposed change is not sufficient to provide such protection. As such, the OCA accepts the proposed change, with the modification that the PFA or other court order need not be issued by a court of the Commonwealth. Any court order that provides evidence of domestic violence should be permissible to remove a party's address from the public service

list, regardless of the jurisdiction which issued it. Therefore, the OCA recommends that the Commission's proposal be amended as follows:

> **(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 which provides clear evidence of domestic violence, the address of the victim will be redacted on the service list.**

10. 52 Pa. Code § 1.53. Service by the Commission.

Rule 1.53 currently governs how the Commission is required to serve documents on parties to a proceeding before it. In the NOPR, the Commission proposes waiving the requirement to register for the Commission's electronic filing system in order to receive electronic service of documents. This change will reduce potential confusion for Commission staff and allow for uniform electronic service of Commission documents.

The OCA supports this recommendation without modification. Specifically, the Commission should not require registration with their electronic filing platform to accept service by email. Electronic filers are notified via email of updates to their proceedings; therefore, there is an extra, unneeded step that requires them to interface with the Commission's electronic filing system, when email is a sufficient means of electronically engaging in Commission proceedings. Removing this barrier to entry, even if it may be a minor inconvenience to most, will increase access to participation in Commission proceedings for first-time users and those less technically savvy users or with less time to navigate through the e-filing system to receive the same information.

11. 52 Pa. Code § 1.54. Service by a Party.

Rule 1.54 currently governs how parties before the Commission are required to serve documents on other parties to a Commission proceeding. The proposed changes are similar to

those for Rule 1.53. The OCA supports the Commission's proposed changes without modification, for the reasons laid out in its comments to Rule 1.53.

12. 52 Pa. Code § 1.72. Content Review of Formal Case Files.

Rule 1.72 governs the review of the Commission's formal case files. This rule, as currently drafted, predates the current iteration of the Pennsylvania Right to Know Law. The Commission has proposed removing Rule 1.72(d), regarding procedures for reviewing correspondence and reports with the Commission, to avoid potential conflicts with the Right to Know Law, and because it may no longer be necessary, considering public access to Commission documents through the Commission's website and Open Records Office.

The OCA is concerned with the proposed removal. While Rule 1.72(d) may be moot under the Right to Know Law, the codification of what Commission documents can be requested and the process for requesting those documents is essential. The OCA proposes that, if the current text of Rule 1.72(d) is removed, it should be replaced by a rule which describes how the Commission is implementing its obligations under the Right to Know Law to provide access to correspondence- and report-type documents. The Commission's current description of its Right to Know Policies and Procedures on its website is too ephemeral to guarantee that consumers will be informed of how the Commission processes requests for records. Namely, the Commission could change its web page at any point; so long as the web page provides the information required under the Right to Know Law, Section 504, the Commission will satisfy its obligations.

Requesters should be able to have a guarantee of consistency for records requests to the Commission. Such a guarantee requires codification in the Commission's regulations and policies, which currently does not exist in a manner applicable to the current Right to Know Law. This way, if the Commission does change its webpage, the information is additionally available in the

Commission's regulations, and requesters are able to easily identify to what information they can request access, from where they can obtain that information, to whom that information can be obtained, and the timeline of when that information could be expected.

13. 52 Pa. Code § 3.111. Form and Content of Informal Complaints.

Rule 3.111 currently states:

> (a) Informal complaints may be by letter or other writing. No form of informal complaint is suggested, except as set forth in §§ 56.162 and 64.152 (relating to informal complaint filing procedures), but in substance the letter or other writing must contain the essential elements of a formal complaint as specified in § 5.22 (relating to contents of formal complaint).
>
> (b) Informal complaints shall be submitted to the Secretary for referral to the appropriate bureau, addressed to the following: Pennsylvania Public Utility Commission, Post Office Box 3265, Harrisburg, Pennsylvania 17105-3265.

In the NOPR, the Commission has proposed updating subsection (b) to update the Commission's mailing address, and to provide in subsection (b) that subsection (a) defines what an informal complaint is. This change was proposed to ensure informal complaints are properly addressed and comply with the requirements of subsection (a). The OCA accepts the proposed changes without modification. However, the OCA has two comments regarding informal comment procedures, generally, which should be incorporated into the proposed changes.

First, consumers should be able to submit informal complaints to the Commission via email. Currently, requiring informal complaints to be mailed in to the Commission presents a potentially significant hardship for consumers who merely wish to provide comment or opposition on a proceeding before the Commission, or wish to report an issue with a Commission-regulated utility without going through the formal complaint procedure. There is no reason that the Commission should be willing to accept informal complaint submissions through its website but not via email. Allowing informal complaints to be submitted via email would increase

administrative efficiency in processing complaints that are emailed to the Commission as well as remove a barrier to accessing proceedings before the Commission.[7]

Second, there is not proper clarification in the procedural rules regarding the purpose of informal complaints. Consumers often struggle to differentiate between informal complaints and formal complaints, which to file, and the realities that follow from which kind of complaint they elect to file. The OCA would support an addition to Rule 3.111 which defined what an informal complaint is, and the status that an informal complainant has before the Commission, to help consumers differentiate between informal and formal complaints, and be better informed when picking which type of complaint they should file.

14. 52 Pa. Code § 5.21. Formal Complaints Generally.

Rule 5.21 currently provides the process for the filing of formal complaints, and how the Commission provides those complaints to the complaints' respondents. In the NOPR, the Commission has proposed updating the title of the Bureau of Investigation and Enforcement and permitting the service of complaints by email to each party. These changes reflect the current status of I&E and the increasingly electronic nature of the proceedings carried out before the Commission. The OCA supports these changes without modification. However, as with the procedures regarding informal complaints, the Commission's current practices for formal complaints are not consumer-friendly and require several changes to reduce the burden on consumers to engage in practice before the Commission.

[7] In the case of informal complaints to rate proceedings, wherein the informal complaints mailed to the Commission are kept in the public correspondence folder for a particular rate case, the OCA would encourage the Commission to scan and upload mailed-in informal complaints to maintain in the same space as all complaints received via email or the Commission's website. This would streamline review of such complaints – that already must be reviewed to determine to which case they belong – for both the Commission and all parties, such as the OCA, which may review such complaints in the course of a litigated proceeding.

First, as with informal complaints, consumers should be able to file formal complaints via email, and otherwise electronically. The reasons for allowing formal complaints to be filed via email are identical to those for filing informal complaints, as laid out above. However, there is no manner in which a consumer may submit a formal complaint electronically, as exists for informal complaints. Because formal consumer complaints often contain nearly identical information to the informal complaints submitted by consumers, the same type of electronic submission should be available for formal complaints.

Second, formal complaints should be liberally construed. The OCA became aware in a recent case that a packet of approximately 50 formal complaints were received by the Commission, and the Commission mailed each complaint back to the individual complainants, rejecting the complaints because they were filed on the wrong form, with the correct form attached to the rejected complaint. It was unclear to the OCA what material difference existed between the form used by the complainants and the form attached by the Commission to the rejected complaints.[8] This was a frustrating experience for the consumers, which wasted their time and resources and the time and resources of the Commission in returning the complaints. Instead, the Commission should have accepted the complaints, despite the minor differences in form.[9] As such, the OCA suggests that the filing requirements for formal complaints pertaining to the form on which the

[8] The OCA is aware that the Commission is vested with discretion to determine the form upon which it will accept formal complaints. 66 Pa. C.S. § 701; *Schellhammer v. Pa. PUC*, 629 A.2d 189, 192 (Pa. Cmwlth. Ct. 1993). However, the OCA submits that the Commission's discretion should favor opening access to consumer involvement in its proceedings, including liberally construing documents which are clearly intended to be formal complaints, in the same manner that Pennsylvania Courts liberally contrue filings made by *pro se* parties. *See Kozicki v. Unemployment Comp. Bd. of Rev.*, 299 A.3d 1055, 1063 (Pa. Cmwlth. Ct. 2023) (quoting *Commonwealth v. Blakeney*, 108 A.3d 739, 766 (Pa. 2014)) ("the courts may liberally construe materials filed by a *pro se* litigant.").

[9] Notably, the OCA, Office of Small Business Advocate, and Commission's Bureau of Investigation and Enforcement file formal complaints which do not use the Commission's provided formal complaint form; there is no reason that individual consumers should be held to a higher standard when Section 1.2 provides that "liberal construction provisions apply with particularity in proceedings involving pro se litigants." 52 Pa. Code § 1.2.

complaint is submitted should be liberally construed, such that any document that reasonably appears to be a formal complaint will be accepted by the Commission as one.

Third, Commission regulations do not provide sufficient guidance regarding whether a party is better suited to filing a formal or informal complaint, as laid out in the OCA's discussion of Rule 3.111. Rule 5.21 does not lay out with specificity what filing a formal complaint does for a party, what their rights and obligations are as a formal complainant, or what formal party status might mean for a party filing a formal complaint. The OCA suggests that the Commission amend Rule 5.21 to describe what a formal complaint is and how it is used in practice before the Commission.

Fourth, parties should be able to elect in their formal complaint what status they want as a complainant. The OCA has heard from numerous consumers that they are deterred from engaging in proceedings before the Commission because of "email fatigue," due to being served with each and every document in a given proceeding. Few consumer complainants have the time or resources to sift through the documents with which they are served and identify those which are valuable to the resolution of their complaint. Many Administrative Law Judges offer a "lesser" or "inactive" party status to individual consumer complainants, allowing for removal from the service list without withdrawal of the complaint; however, this practice is not uniform, and raises concerns regarding the existence of a party status which is not codified in statute or regulations.

Therefore, the OCA proposes that complainants may elect to receive "minimum service" when entering a proceeding as a formal party. Minimum service would include only those documents served by the Commission, including hearing notices (evidentiary and public input), settlement petitions, recommended or initial decisions, and orders. This way, the Commission can control the volume of documents through which formal complainants will have to sift in order to

identify what is impactful to them, and there will be consistency in the treatment of formal complainants across adversarial proceedings before the Office of Administrative Law Judges. Offering this choice at the outset, and clearly explaining that the rights of the party are unaffected, will reduce administrative burdens for presiding officers and the OCA – who currently has to track down individual complainants to offer inactive party status in some cases – and formal complainants, who wish to have party status without the burden of unrelenting service of documents.

As a final note, fax numbers should not be required. Parties to Commission proceedings, to the extent the OCA is aware, do not utilize fax transmissions. If parties wish to communicate via fax, then the parties can exchange fax information with each other.

15. 52 Pa. Code § 5.52. Content of a Protest to an Application.

Currently, Rule 5.52(a) states:

> (a) Form. A protest to an application must:
>
> (1) Set out clearly and concisely the facts from which the alleged interest or right of the protestant can be determined.
>
> (2) State the grounds of the protest.
>
> (3) Set forth the facts establishing the protestant's standing to protest.

In the NOPR, the Commission has proposed adding a subsection (4), which would require protestants to an application to specifically request a hearing before the Office of Administrative Law Judges or no hearing will be scheduled. This change informs the parties of the need to request an evidentiary hearing at the outset, a practice which has not been commonplace in Commission proceedings for some time.

The OCA does not support this proposed modification, or requests that the Commission provide additional guidance on the expectations of parties to an application proceeding if no

hearing is requested. Specifically, the OCA's concern is that applications will be granted because no hearing is requested. The lack of an evidentiary hearing does not change the statutory requirements for an applicant to meet its burden of proof, nor does the filing of a protest; in other words, if an applicant does not meet its burden of proof, it is not necessary to conduct an evidentiary hearing – the application should be denied, without the need to consider the content of protests against the application. However, specifying that a protestant must request an evidentiary hearing to receive one implies that the application is more likely to be approved than denied if no evidentiary hearing is requested. The OCA rejects any such implication. Instead, the default procedure for a protested application should be automatic referral to the Office of Administrative Law Judges; if the protestant and applicant agree to proceed without an evidentiary hearing and rely solely on the facts averred in pleadings, then the Commission need not refer the matter. The burden should not be on the protestant to request referral.

Such practice carries two significant implications. The first is discovery. At the time an application is filed, parties have no right to request discovery in order to better develop a future evidentiary record; it is only after a responsive protest is filed that parties can initiate discovery and begin to assess whether or not substantial evidence may support granting the relief requested in the application. The second reason is that consumers who may wish to protest an application may not be aware that they must request a hearing specifically or the Commission may grant the application without a hearing. If the Commission determines to include the proposed language in Rule 5.52, it must also update its website or provide a form protest online so that way all parties are aware that the protest must specifically state that a hearing is requested. However, it should be the Commission's default practice to assign an application proceeding to the Office of

Administrative Law Judge when a protest is filed or if it is determined that additional information is required for the application to be granted.

16. 52 Pa. Code § 5.53. Time of Filing.

Rule 5.53 currently states:

> A protest shall be filed within the time specified in the published notice of the application. If no protest time is specified, the protest shall be filed within 60 days of publication of the notice.

In the NOPR, the Commission proposes reducing the protest time to within 30 days of the publication of the notice. Under the Commission's proposal, Rule 5.53 would read:

> 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**.

To support the proposed change, the Commission cites to Executive Order 2023-07, Building Efficiency in the Commonwealth's Permitting, Licensing, and Certification Processes, which required, among other things, that executive agencies review the amount of time that it takes to review each type of application filed with the agency, so the Governor's Office could produce a recommended application processing time. The Commission does not provide in the NOPR that it produced the same type of recommendation for the amount of time it takes to process different types of applications as discussed in the Executive Order.

The OCA disagrees with the proposed change. Thirty days is too short a time frame for parties to consider an application before filing a protest in proceedings where it is likely that a significant number of consumers will be affected. Such applications include applications to acquire a system, especially those requesting valuation under Section 1329 of the Public Utility Code, discontinue service, or transmission line siting applications. The Commission has not demonstrated that there are currently significant inefficiencies which result from the current 60-

day protest period which would be improved upon by a shorter protest period. While the OCA respects the desire to move more quickly through the application resolution process, litigation schedules are often already crunched in application proceedings. The applicant has as much time as is needed before filing their application to ensure that it should meet the burden of proof; protestants to the application currently have approximately 60 days to develop their response to the application and determine whether intervention is necessary.

The OCA requests that the protest period remain at 60 days, unless the Commission is otherwise able to ensure that protestants to an application will be ensured additional time to develop a response to an application. Furthermore, the OCA would recommend that – before amending the protest filing deadline – the Commission should present data regarding the application response periods for different types of applications. For example, if certain types of applications are more likely to result in protests being filed, such as those described above, then the Commission should provide the current 60-day response period for those applications while reducing the response period to 30 days for applications which are highly unlikely to be the subject of protests. Alternatively, the Commission should ensure that when certain types of applications are filed, the protest time specified in the notice of that application aligns with established time frames that recognize the likely impact to consumers from that type of application being filed. It is imperative to weigh the likelihood of significant impact to consumers when determining whether a shorter default protest window is appropriate.

17. 52 Pa. Code § 5.74. Filing of petitions to intervene.

Rule 5.74(b)(3) currently reads:

> (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.

In the NOPR, the Commission requested comment on proposed changes which would, similar to the proposed changes to Rule 5.53, shorten the default time for the filing of a petition to intervene in a proceeding to 30 days unless otherwise specified in an order or notice. Under the Commission's proposal, Rule 5.74(b)(3) would now read:

(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.**

Similar to the reasons described regarding Rule 5.53, the OCA is concerned with this proposed change and submits that the Commission should not adopt it. However, the OCA is additionally concerned that intervention is a more likely route for most parties than the filing of a protest in practice before the Commission. Unlike the statutory advocates which file protests, other parties that seek intervention to participate in a Commission proceeding are not served with the application itself at the time of filing. Direct service on the statutory advocates provides a head start in evaluating whether or not filing a protest is necessary. Parties likely to petition to intervene instead of filing a protest, therefore, have the same concerns raised by the OCA in its comments on the proposed modification to Rule 5.53, in addition to overcoming the delay in receiving notice of the filing.

Therefore, the OCA reiterates its recommendation that the default 60-day response period to applications be preserved for both the filing of protests as well as the filing of petitions to intervene. If the Commission determines that a 30-day default response period is appropriate, it should only institute that default period for applications that are unlikely to have an impact on a

significant number of consumers, as supported by the Commission's internal data regarding application processing. In all other instances, the 60-day default period should remain in place.

18. 52 Pa. Code § 5.81. Consolidation.

Rule 5.81 currently reads:

> (a) The Commission or presiding officer, with or without motion, may order proceedings involving a common question of law or fact to be consolidated. The Commission or presiding officer may make orders concerning the conduct of the proceeding as may avoid unnecessary costs or delay.
>
> (b) Subsection (a) is identical to 1 Pa. Code §§ 35.45 and 35.122 (relating to consolidation; and consolidation of formal proceedings).

In the NOPR, the Commission requested comment on changes to Rule 5.81 to permit the joinder of indispensable parties in proceedings before the Commission. Under the Commission's proposal, Rule 5.81(a) would now read:

> (a) The Commission or presiding officer, with or without motion, may order proceedings involving a common question of law or fact to be consolidated. The Commission or presiding officer may make orders concerning the conduct of the proceeding as may avoid unnecessary costs or delay. **The Commission or presiding officer may identify indispensable parties to a proceeding and interplead such parties if such action is deemed necessary to enhance the record or to give more comprehensive consideration to the parties, facts, and issues in the proceeding.**

The OCA would accept the Commission's proposed modification. However, the OCA provides further legal context and recommendations below for greater specificity and to ensure that the Commission's modification is in line with prevailing Pennsylvania law regarding the joinder of indispensable parties. At the very least, the OCA recommends that the Commission include the below-proposed "official note" for inclusion with this amendment to aid parties in determining whether a party is indispensable.

Joining indispensable parties to a proceeding is an essential function of an adjudicator, as the lack of an indispensable party renders a tribunal without jurisdiction to hear the proceeding. *Rachel Carson Trails Conservancy, Inc. v. Dep't of Conservation & Nat. Res.*, 201 A.3d 273, 279 (Pa. Cmwlth. Ct. 2018) (*Rachel Carson Trails*). The Commission has previously used its authority to join indispensable parties to preserve its jurisdiction, though there is no direct provision in the Commission's regulations which provides for a discrete mechanism by which to join indispensable parties or provides a concrete definition of what it means to be an "indispensable party." *See J3 Energy Group, Inc. v. West Penn Power Co. and UGI Development Co. (Indispensable Party)*, Docket No. C-2011-2219920 (Order Oct. 31, 2013) (*UGI Development*). Instead, the Commission and parties rely on Pennsylvania's common law test for determining the indispensability of a party. *See*, *i.e.*, *Application of Safe Harbor Water Power Corporation Pursuant to Section 1102(a)(2) of the Pennsylvania Public Utility Code Authorizing Safe Harbor Water Power Corporation to Abandon Public Service Authorized by a Certificate of Public Convenience*, Docket No. A-2008-2078319 (Petition to Join an Indispensable Party and Answer thereto, filed Jan. 8, 2009, and Jan. 26, 2009, respectively)[10].

Under Pennsylvania common law, to determine if a party is "indispensable," the presiding officer reviews four factors:

1. Do absent parties have a right or interest related to the claim?
2. If so, what is the nature of that right or interest?
3. Is that right or interest essential to the merits of the issue?
4. Can justice be afforded without violating the due process rights of absent parties?

Rachel Carson Trails, 201 A.3d at 279 (quoting *HYK Constr. Co. v. Smithfield Twp.*, 8 A.3d 1009, 1015 (Pa. Cmwlth. Ct. 2010)). The OCA proposes that these factors be included in the notes to a

[10] Available at https://www.puc.pa.gov/pcdocs/1030301.tif (Petition).

revised Rule 5.81 which addresses the issue of joinder of indispensable parties, to provide guidance in determining what an indispensable party is; however, adopted rule language should address the general meaning of the term.

Importantly, the Commission or a presiding officer should be able to join indispensable parties by order, and parties to a proceeding which lacks an indispensable party should be able to move for joinder of the indispensable party. *See* Pa.R.Civ.P. 2232, 2252 (courts may order joinder of indispensable parties and parties may file writs to join parties not named in the initial proceeding, respectively). When the identity of an indispensable party is considered confidential and subject to a protective order, if the Commission, presiding officer, or parties are aware of the identity and indispensability of that party, they should also be able to join it as early as possible in the proceeding. While the mechanism to join the indispensable party may need to vary in each case, based on the reason the identity of the party is confidential, the OCA requests that there be some mechanism by which to ensure the party is joined.

Based on the foregoing, the OCA proposes that Rule 5.81 be revised as follows:

> (a) The Commission or presiding officer, with or without motion, may order proceedings involving a common question of law or fact to be consolidated. The Commission or presiding officer may make orders concerning the conduct of the proceeding as may avoid unnecessary costs or delay.
>
> (b) The Commission or presiding officer, with or without motion, may order the joinder of a party to a proceeding before it, if the party is indispensable to the proceeding and the Commission has jurisdiction over the party which permits such joinder. Indispensable parties may be joined at any point during a proceeding.
>
> (1) A party is considered indispensable when the party's rights or interests are so connected with the subject matter at issue in the proceeding that no relief may be granted in the proceeding without affecting the party's rights or interests.

(2) If the Commission, presiding officer, or parties to a case are aware of the identity of an indispensable party, the party is not joined to the proceeding, and the public disclosure of the identity of the indispensable party is prohibited by an order of the Commission, the Commission or presiding officer shall determine whether the indispensable party's identity is material to the order of the Commission preventing disclosure.

(i) If the identity is not material, then the Commission or presiding officer may amend the order to permit disclosure of the identity and proceed under subsection (b).

(ii) If the identity is material, the Commission or presiding officer shall suspend the proceeding until such time as the identity of the indispensable can be publicly disclosed.

(iii) If the identity is material, and there is no likelihood that the identity of the indispensable party can be publicly disclosed until the termination of the proceeding, then the Commission or presiding officer may permit the indispensable party to proceed and appear under a pseudonym (i.e. "Successful Bidder" or "Supplier") until such time as the identity of the party may be publicly disclosed.

(**[b]**<u>**e**</u>) Subsection<u>**s**</u> (a<u>**-b**</u>) **[is identical to]** <u>**supersede**</u> 1 Pa. Code §§ 35.45 and 35.122 (relating to consolidation; and consolidation of formal proceedings).

Official Note. To determine if a party is "indispensable," the presiding officer reviews four factors:

1. Do absent parties have a right or interest related to the claim?

2. If so, what is the nature of that right or interest?

3. Is that right or interest essential to the merits of the issue?

4. Can justice be afforded without violating the due process rights of absent parties?

Rachel Carson Trails Conservancy, Inc. v. Dep't of Conservation & Nat. Res., 201 A.3d 273, 279 (Pa. Cmwlth. Ct. 2018) (quoting *HYK Constr. Co. v. Smithfield Twp.*, 8 A.3d 1009, 1015 (Pa. Cmwlth. Ct. 2010)).

The OCA submits that, with these revisions, parties to proceedings before the Commission will have a concrete understanding of the powers of the Commission to join indispensable parties, who qualifies as an indispensable party, and what to do if the identity of the indispensable party cannot be publicly disclosed.

19. 52 Pa. Code § 5.245. Failure to Appear, Proceed or Maintain Order in Proceedings.

Rule 5.245 currently governs how the Commission and presiding officer should proceed if a party fails to appear at a conference or hearing of which they were notified. In the NOPR, the Commission proposes clarifying that the rule would not apply to pro se parties if there is no finding that the party committed an abuse of process. Under the Commission's proposal, Rule 5.245(d) and (e) would now read:

> **(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.**
>
> **(e) Dismissal of a complaint, petition, or application with prejudice of the complainant, petitioner, or applicant for the failure to appear is prohibited.**

The OCA accepts this change, with modification. Specifically, there is not sufficient clarity regarding what constitutes an abuse of process. The Commission should provide additional clarity on what constitutes an abuse of process, so *pro se* parties can have clear guidance on the consequences of a failure to appear, and to prevent adversaries of the *pro se* parties from securing a dismissal with prejudice where there is no actual abuse of process.

20. 52 Pa. Code § 5.331. Sequence and Timing of Discovery.

Rule 5.331(c) currently states:

> (c) Commission staff may initiate discovery at an earlier time. Commission staff discovery prior to formal Commission action to initiate a proceeding shall be designated as ''Staff data requests'' and shall be answered fully and completely by the 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.

In the NOPR, the Commission has proposed that staff data requests are deemed withdrawn once a protest or adverse pleading is filed. This proposal is intended to clarify that, once an adverse

pleading is filed, the matter would be assigned to the Office of Administrative Law Judges, and staff data requests would no longer be necessary. Under the Commission's proposal, Rule 5.331(c) would read as follows:

> (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.**

The OCA opposes this change. First, there is not sufficient clarity in the proposed changes to identify what constitutes "staff" for the purposes of this change. Under Rule 1.8, "staff" includes "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." Under the proposed change, I&E's data requests would be withdrawn if it entered its appearance in a case before another party joined as a protestant or complainant. The OCA would request that, if the proposed change is adopted, that the Commission specify which Bureaus within the Commission constitute staff for the purposes of withdrawing such requests.

Second, litigating parties, including the OCA, often rely on responses to the data requests made by I&E or the Commission's Bureau of Technical Utility Services early on in proceedings. It would create needless duplication and delays if, when the OCA joins a proceeding as a protestant or complainant, it would need to issue data requests which had previously been issued by TUS because the data requests had been deemed "withdrawn" under the proposed rule. Parties which would enter proceedings as the first protestant or complainant would be incentivized to delay filing a protest or complaint until after outstanding data requests had been responded-to, in order to

receive the benefit of the information requested, and no party would benefit from such delayed filings.

Third, in certain proceedings, there are procedurally liminal spaces where it is unclear what the actual status of the proceeding is, such as in Applications filed under Section 1329. Under Section 1329, parties may file protests to an Application as soon as it is filed, and the protests may be accepted by the Commission; however, the Application remains with TUS until it is complete, at which point it can be referred to the Office of Administrative Law Judge. In these circumstances, TUS's data requests would be withdrawn under the proposed changes, even though answering TUS's data requests is the only way in which a Section 1329 Application may be deemed complete and subsequently accepted. Due to the complexity of navigating particular types of proceedings, the addition proposed in the NOPR should not be included, and the filing of a protest or adverse pleading should not instantly withdraw staff data requests.

Therefore, the OCA opposes the Commission's proposed modification to Rule 5.331(c) and requests that the Rule not be modified as proposed.

21. 52 Pa. Code § 5.351. On the Record Data Requests.

Rule 5.351(a) currently states:

> (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 be made orally or in writing and shall be presented at the time the witness appears for cross-examination.

In the NOPR, the Commission proposes removing the restriction that on-the-record data requests can only be made during rate proceedings. Specifically, under the Commission's proposal, Rule 5.351(a) would now read:

(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.

The OCA supports this modification. In rate proceedings, on-the-record data requests are a valuable tool to allow for information which supports a witness's testimony on cross-examination to come into the record in conjunction with the testimony. Some types of proceedings, including Application proceedings under Section 1329, have a shorter statutory time frame than base rate proceedings, but do not have access to on-the-record data requests. While some on-the-record data requests have been permitted in non-rate proceedings, parties should have guaranteed access under the rules to on-the-record data requests in all proceedings. Uniform access benefits all parties to proceedings before the Commission, to ensure that cross-examination testimony can be supported by a proper evidentiary basis.

22. 52 Pa. Code § 5.412. Copies.

Rule 5.412(f) and (g) currently state:

(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 provide two copies of the testimony to the court reporter.

In the NOPR, the Commission proposed removing the reference to Rule 5.412a from 5.412(f), and requiring that only one copy of pre-served testimony be filed with the court reporter, if one is present, and with the presiding officer if one is not. Specifically, the Commission proposes the following **[deletions]** and **insertions**:

(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 the presiding officer if no court reporter is present**.

The Commission states that these changes are to make Rule 5.412 consistent with the Commission's proposed repeal of Rule 5.412a and provide consistency with the Commission's regulations regarding the number of copies served and that testimony may be admitted to the record via stipulation.

The OCA does not oppose the proposed deletion in subsection (f) on its face, but as discussed further below, the OCA opposes the repeal of Rule 5.412a, because doing so would represent a move backwards in terms of facilitating public and consumer access to the record developed before the Commission in adversarial proceedings. Rather what is needed is Commission enforcement of Rule 5.412a, not repeal of the rule. However, the Commission's proposed deletion in Rule 5.412(f) does not materially affect Rule 5.412a and is likely superfluous with Rule 5.412a; therefore, the OCA does not oppose the proposed deletion.

To improve clarity of the rule, to be consistent with current practice, and to be consistent with current Rule 5.412a and the OCA's proposed modifications to Rule 5.412a (as discussed below), the OCA offers modifications to subsection (g) as follows:

(g) *Copies*. **[At the hearing at which the testimony is authenticated,] Within five days following the conclusion of the evidentiary hearing,** counsel for the witness **[shall]** must provide **[two copies] one copy** of the **admitted** testimony **that is electronically submitted to the Commission pursuant to subsection 5.412a** to **[the court reporter] the presiding officer**.

The OCA proposed that the references of submitting the admitted testimony to the court reporter be removed and replaced with providing a copy to the presiding officer of the admitted testimony that is electronically submitted pursuant to subsection 5.412a. Under the OCA's proposals in 5.412a and 5.412(g), the admitted testimony will be provided directly to the Commission, and not the court reporter, and a copy to the presiding officer, in order to streamline the overall process. This dovetails with the modifications proposed by the OCA to Rule 5.412a below.

The OCA would like to provide additional comment on the submission of testimony to court reporters. Current practice is to provide the admitted testimony to the court reporter immediately following the completion of an evidentiary hearing. However, admitted written testimony should not have to be submitted to a court reporter separately; instead, parties should be required to e-file testimony – as admitted into the record by the presiding officer at the evidentiary hearing – with the Commission after the hearing concludes. Rule 5.412a already provides for this, and the OCA offers proposed revisions to the rule as improvements. Confidential testimony would still be filed separately as directed by the Commission.

Specifically, admitted written testimony should appear on the Commission's docket search portal as its own docket entry. Such entries should be grouped by party (i.e., "OCA Admitted Written Testimony, Direct, Rebuttal, Surrebuttal," abbreviated in a manner that is understandable as-needed) as if it were any other entry on the Commission's docket.[11] This way, admitted written

[11] The OCA is aware that, from time-to-time, the Commission does post the totality of the testimony and exhibits admitted at the evidentiary hearing to its public docket search portal. However, in order to maximize consistency and administrative efficiency, the OCA provides the below recommendations which reduce the burden on the Secretary's Bureau of processing hearing exhibits and posting them to the public portal and can achieve the same results in every proceeding. Furthermore, such docket entries can number in the thousands of pages; it is a tall task to try and identify

testimony will be easily identifiable in the docket search portal and individuals wishing to review the evidentiary record in a proceeding after the conclusion of evidentiary hearings can do so easily, in a manner which is understandable on its face, without the need to be highly familiar with how such testimony may become available on the docket search portal, the substantial delay of waiting for transcripts to be made publicly available, or spending significant costs for a copy of the transcript from the court reporter with the appended admitted testimony.

Requiring the court reporter to include the admitted testimony as part of the transcript – appended to the evidentiary hearing transcript as "hearing exhibits" – oftentimes makes the cost of acquiring a copy of the transcript cost-prohibitive for *pro se* consumers and other parties with limited budgets that are participants to the adversarial process. Likewise, because the admitted testimony would be e-filed, consumers and other parties with limited budgets will be able to access the testimony for free by using the Commission's public document search function on its website. Additionally, the public interest is served because utilities' rate case expenses can decrease, too, where the costs of acquiring very large transcripts with hundreds of pages of attachments is significantly reduced by eliminating the need for the court reporter to receive and compile the testimony.

Moreover, while in the course of a proceeding, written testimony is served before the hearing on the parties thereto (i.e., pre-served), there are critical junctures at which a party may become involved without having access to all of the admitted written testimony. For example, when a settlement petition is filed, inactive formal consumer complainants may wish to submit comments in opposition to the settlement even if they had not received the pre-served testimony during the course of the proceeding before its admission at the evidentiary hearing, or did not

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the testimony that one is looking for when the document in which one searches contains *all* of the admitted testimony and exhibits from a proceeding, which may include substantial portions of rate filings.

receive the testimony admitted at the evidentiary hearing. Accordingly, by providing the admitted testimony on the Commission's website promptly after the evidentiary hearing (accomplished by parties by following Rule 5.412a and electronically submitting admitted testimony), the Commission would ensure adequate access to all parties that may wish to comment on or be involved in a particular case even if they did not receive pre-served testimony during its pendency. This process would also expedite review of briefs or orders that rely on such testimony before the testimony is made publicly available.

The Commission should seek to improve consumer access to the developed record, not hinder it, and also seek to reduce costs for all involved parties to a proceeding.

By eliminating the need for the court reporter to receive separate copies of admitted testimony, the Commission would be able to rely on Rule 5.412a to eliminate redundancy and streamline the submission process. Eliminating redundancy will reduce the work for the Secretary's Bureau when it must compile a complete record for an appeals court if a Commission decision is appealed (though appeals are not frequent). To the extent that the court reporter is required by contract to receive the testimony and compile the final record, the OCA would urge the Commission to waive that provision of its contract(s) with the court reporter and then remove that provision the next time the contract is renewed. Business for a court reporter does not outweigh improving consumer and public access to the record.

23. 52 Pa. Code § 5.412a. Electronic Submission of Pre-served Testimony.

Rule 5.412a pertains to the electronic submission of pre-served testimony. In the NOPR, the Commission has proposed repealing Rule 5.412a to reduce confusion for the Secretary's Bureau when compiling records on appeal, when multiple instances of the same testimony is filed in a proceeding.

As provided in the OCA's comments to Rule 5.412 above, the OCA does not support the Commission's proposal to repeal this provision of the regulations. To be clear, OCA supports the streamlining of the submission of admitted testimony for the purposes of producing a clean record at the conclusion of Commission proceedings. However, the OCA suggests that the court reporter no longer be required to receive admitted written testimony to reduce the number of copies which need to be submitted, when copies are already submitted to the presiding officer.[12] Requiring the court reporter to include the admitted testimony as hearing exhibits appended to the transcript can make acquiring a copy of the transcript cost-prohibitive to *pro se* consumers that are participants to the process as well as to parties with limited litigation budgets. Repeal of Rule 5.412a would increase costs and represent a move backwards in terms of facilitating public and consumer access to the record developed before the Commission in adversarial proceedings.

Rather, to improve, not hinder, public and consumer access to the developed record, and to reduce costs for all involved parties to a proceeding, parties should be required to e-file the pre-served written testimony which is deemed admitted at an evidentiary hearing and such e-filed admitted testimony should appear on the Commission's docket search portal as its own docket entry.

Therefore, the OCA incorporates its comments to Rule 5.412 as if fully stated herein. In order to provide the most access and transparency regarding admitted testimony to consumers, for the least cost, the OCA recommends the following changes to Rule 5.412(a):

[12] The OCA is not requesting that the presiding officer be responsible for compiling the admitted testimony into a docket entry to be made available through the Commission's public docket search portal. Rather, as stated in the OCA's comments to Rule 5.412, parties to the proceeding should e-file the testimony admitted into the record by the presiding officer for the purposes of making that testimony publicly available. The parties must then provide a copy of the electronic submission of admitted testimony to the presiding officer, as proposed in the OCA's revisions to subsection 5.412(g). The OCA is committed to work with the Commission and the Secretary's Bureau to ensure that the process of making the testimony publicly available is streamlined without creating an additional and significant administrative burden on the Commission.

§ 5.412a. Electronic submission of [pre-served] admitted testimony.

(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] five (5)** 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**] **which was admitted on behalf of that party at the evidentiary hearing, or by stipulation,** during the proceeding.

(b) *Form of electronic submission.* Electronically submitted testimony must be limited to [**pre-served**] **admitted** testimony documents and be in Portable Document Format **(PDF)**. Exhibits attached to [**pre-served**] **admitted** testimony documents may be electronically submitted to the Commission in accordance with subsection (a). Exhibits not electronically submitted with [**pre-served**] **admitted** 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 **party's [piece of pre-served] admitted** testimony filed through the Commission's electronic filing system shall be uploaded [**separately**] **as a single PDF document, containing all pieces of that party's admitted testimony, or if size limitations prevent a single PDF document into multiple PDF documents as minimally necessary**. Each piece of [**pre-served**] **admitted** 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**] **admitted** 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 **pre-served** testimony during the hearing before submitting the **pre-served** testimony to the [**court reporter**] **Commission**, the [**pre-served**] **admitted** 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**] **Commission**, the [**pre-served**] **admitted** 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 striken at hearing.* [**Pre-served**] **Admitted** testimony**, portions of** which [**was**] **were** 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 striken at hearing.

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

(iii) *Inventory of Testimony Moved into Record.* At hearings, or when pre-served testimony is moved into the record by stipulation, the party moving for admission shall provide an inventory of all testimony that the party seeks to move into admission at the evidentiary hearing or by stipulation, identifying testimony as containing confidential or proprietary information if applicable, to the presiding officer as a hearing exhibit. When the party electronically submits the admitted testimony to the Secretary's Bureau following the conclusion of hearings pursuant to this rule, the party shall include such hearing exhibit (the inventory) so that it precedes all admitted testimony included in the party's submission.

(3) *Labeling of electronically submitted testimony.* [**Pre-served**] **Admitted** 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 ___."

(iv) " St. No. -RJ Rejoinder 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.] **(Reserved)**

(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 **notwithstanding the party's attorney's certification as required under subsection 5.412a(g)**, 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**] **admitted** testimony and to receive daily action alerts from the Commission's case and document management database that [**pre-served**] **admitted** testimony has been electronically submitted to the Commission.

(g) The party submitting admitted written testimony to the Commission shall include with the submission a certification by the party's attorney that certifies compliance with the provisions of this Rule. The certification shall be in substantially the following form:

I certify that this testimony complies with the requirements of 52 Pa. Code § 5.412a that requires the testimony submitted to the Secretary's Bureau to match exactly that testimony admitted by the presiding officer and that requires testimony containing confidential or proprietary information to be submitted differently, as prescribed by the Commission.

Through these changes, the OCA seeks to accomplish several things. At the outset, however, the OCA would recommend a review of the Appendix A attached to these Comments. In Appendix A, the OCA provides an example of an inventory of testimony to be submitted to the Secretary's Bureau, as well as several pages of mock testimony to illustrate the OCA's overall proposal for what a packet of admitted testimony submitted to the Commission could look like. Once the example has been reviewed, the OCA's proposed changes become much easier to understand, and to understand why these changes are beneficial to reducing roadblocks to those outside of a proceeding who may wish to review parties' testimony after its admission to the evidentiary record.

First, the name of Rule 5.412a is a misnomer, as the testimony submitted to the Commission is not "pre-served," but rather the testimony which was pre-served prior to being moved into the evidentiary record by the presiding officer at an evidentiary hearing or by

stipulation of the parties; after it is moved into the record, it is no longer pre-served, but is "admitted" testimony. Changing the name of the rule, as well as replacing the instances of "pre-served" which should be "admitted" throughout the rule, recognizes the important distinction between "pre-served" and "admitted" testimony.

Second, the parties do not need more than five days to accomplish the submission following the conclusion of the hearing. Accordingly, the OCA proposed to replace 30 days with five days.

Third, the OCA proposes the addition of 5.412a(b)(2)(iii). The purpose of this addition, which would require parties to submit an inventory to the presiding officer of all testimony that the party will seek to have admitted into the evidentiary record, is to ensure that there is clarity as to the contents of all of the testimony submitted by a party to the proceeding. This requirement would place little burden on parties to proceedings before the Commission, as it is already a longstanding common practice to do this as a party's hearing exhibit. When the admitted testimony is submitted to the Commission, including this inventory as an index of the contents of this submission helps the Secretary's Bureau, or any other party, to quickly identify all of the items which are contained within the packet of admitted testimony. If the testimony were posted as a single packet to the Commission's public document search portal, then the inventory would permit parties who wish to review the testimony in a proceeding after it is admitted to quickly understand what a document contains, instead of being faced with hundreds or thousands of pages of testimony and no way to navigate them.

Fourth, the OCA proposes to add a recognized way to identify rejoinder testimony. This change would merely codify standard practice as to the nomenclature of rejoinder testimony. Fifth, the Commission/court reporter no longer need to receive paper copies of testimony and, therefore, the OCA proposes to remove 5.412a(c).

Sixth, the OCA proposes to add a certification requirement to the submission of admitted testimony. Such certification requirements are common in civil and appellate practice. *See* Pa.R.A.P. 127 (requiring a certification that a filing complies with the *Case Records Public Access Policy of the Unified Judicial System of Pennsylvania*). By adding a certification requirement, parties submitting testimony to the Commission will assure the Secretary's Bureau that the submission complies with Rule 5.412a: namely, that the submitted testimony matches exactly the testimony admitted by the presiding officer, including any hand-marked modifications, and that the testimony does not contain confidential or proprietary information before being posted to the public document search portal. The OCA has provided a sample of such a certification as Appendix B to these comments.

Finally, the references of submitting the admitted testimony to the court reporter have been removed and replaced with the submission of admitted testimony to the Commission. Under the OCA's proposals, the admitted testimony will be provided directly to the Commission, and not the court reporter, in order to streamline the overall process. This dovetails with the modifications proposed by the OCA to Rule 5.412(g) above. Therefore, retaining the references of submitting testimony to the court reporter are no longer necessary.

By adopting these changes, the OCA submits that public access to vital case information (both during the pendency of a case and after a case concludes) would improve dramatically. Someone wishing to review admitted testimony from a pending or prior case would no longer need to search through hearing exhibits or pay for a cost-prohibitively lengthy transcript in order to review the position adopted by a party to the proceeding. Adopting these changes would place little burden on parties practicing before the Commission or on the Commission itself, while reducing the time, expense, and frustration which one must currently endure to review admitted testimony

from pending or prior cases. As a result, the OCA respectfully requests that the Commission withdraw its recommendation to reserve Rule 5.412a and instead modify it as described above.

24. 52 Pa. Code § 5.502. Filing and Service of Briefs.

Rule 5.502 currently governs how briefs are filed and served. In the NOPR, the Commission proposed consolidating the briefing requirements for rate proceedings and non-rate proceedings, and to leave the timing restrictions for briefing to the discretion of the presiding officer. These changes will bring the rules regarding briefs into line with current Commission practice, which set procedural schedules for the filing of briefs by order of the presiding officer. Specifically, under the Commission's proposal, the affected portions of Rule 5.502 would now read:

> **(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).

As such, the OCA supports the recommendations within the NOPR without modification. However, the OCA would like to provide comment on 5.502(b)(1) and (3), which require hard copy filings of briefs, in paper and a CD-ROM or DVD, respectively. As stated in the OCA's comments to Rule 1.37, parties should not be required to provide hard copies of briefs that are served on the Commission when the document could otherwise be filed electronically. Electronic filing is already ubiquitous in Commission practice, and the rules should reflect that it is best left to the discretion of presiding officers and parties to determine whether paper filing and service should be required. Therefore, the OCA requests that the Commission provide that Rule 5.502(b)(1) and (3) only apply if the presiding officer determines that there is good cause to require a paper filing.

V. COMMENTS ON CHANGES PROPOSED BY VICE CHAIR BARROW

1. 52 Pa. Code Section 5.231. Offers of settlement.

Rule 5.231(a) currently states:

> (a) It is the policy of the Commission to encourage settlements.

In her Statement regarding the NOPR, Vice Chair Barrow requested comment on Rule 5.231(a). Vice Chair Barrow expressed concerns regarding whether the Commission's policy favoring settlements may discourage parties from fully litigating contested proceedings. In her Statement, Vice Chair Barrow specifically requested comments and evidence on the benefits and burdens created by the settlement policy.

The OCA agrees with Vice Chair Barrow that the Commission's policy favoring settlement may disincentivize full and complete litigation. The OCA would request that the Commission repeal Rule 5.231(a) and replace it with the following language:

> (a) It is the policy of the Commission to encourage settlements**, only if the provisions which arise out of the settlement process outweigh the public interest in further development of the factual record and legal positions of the parties**.

It is the OCA's position that settlements should be encouraged where the settlement would result in public benefits which would otherwise not be present from the resolution of the proceeding through litigation, as parties can be more creative in creating binding settlement agreements than the Commission can in crafting relief. By adopting the proposed language, the Commission's regulations would require a balancing test. Under the balancing test, the Commission and presiding officer, when considering the proposed settlement agreement, must determine that the public interest is served from settlement provisions. In this way, for the fact of a settlement to weigh in favor of approval in Commission proceedings, the settlement's benefits must outweigh the public interest in the full and complete litigation of the factual record and parties' legal arguments.

As an additional note, the OCA stresses that the Commission may require a hearing, regardless of whether the parties reach a settlement. Section 703(a) of the Public Utility Code provides that "[i]f such party shall not satisfy the complaint within the time specified, and it shall appear to the commission from a consideration of the complaint and answer, or otherwise, that reasonable ground exists for investigating such complaint, *it shall be the duty of the commission to fix a time and place for a hearing*." *Id*. (emphasis added). In complaint proceedings, therefore, the Commission is entitled to request additional hearings on settlement agreements. The OCA proposes that the Commission adopt similar language in its regulations, if the Commission wishes to pursue hearings in other types of proceedings.

Additionally, under Section 5.234(c) of the Commission's regulations, "[t]he Commission may disregard in whole or in part a stipulation of facts under this section but may grant further hearing if requested by a party to the stipulation within 15 days after issuance of a Commission order disregarding the stipulation of fact." *Id*. In other words, if the Commission is not satisfied with the evidentiary record in a case, the Commission may reject the joint stipulation of facts; if the parties do not request a hearing on the stipulation, then litigation would continue and develop a full factual record supporting the settlement petition.

2. Representation of Corporations and Partnerships

Vice Chair Barrow's Motion requested comment on the Representation of Corporations and Partnerships. Under the Commission's current regulations, business entities must be represented by counsel in proceedings before the Commission, which is in line with Pennsylvania practice before the Courts of Common Pleas and Appeals, though not before the Magisterial District Courts. In her Motion, Vice Chair Barrow requested comment on the appropriate

definitions of small business corporations or partnerships, so small businesses may proceed pro se before the Commission through an authorized corporate official.

The OCA agrees with Vice Chair Barrow that small businesses should be able to proceed pro se in actions before the Commission in the same manner as individual consumers. The OCA recommends that the definition of small business used in the Small Business Advocate Act be incorporated into the Commission's regulations, less the requirement that the entity must receive public utility service. P.L. 1871, No. 181. Specifically, in that statute, "small business consumers" are defined as:

> A person, sole proprietorship, partnership, corporation, association or other business entity which employs fewer than 250 employees and which receives public utility service under a small commercial, small industrial or small business rate classification.

The Office of Small Business Advocate has been a statutory advocate practicing before the Commission since the passage of the Small Business Advocate Act in 1988 and has relied on this definition to determine which business entities it may represent before the Commission. As such, the Commission has a history of relying on this definition, and it could be easily incorporated into the Commission's regulations. To provide greater flexibility, the definition need not include that the entity receives public utility service, as small businesses regulated by the Commission as carriers of passengers or property should be able to proceed *pro se* without consideration of their status as consumers of utility service. Therefore, the OCA recommends that the Commission permit business entities employing fewer than 250 employees to appear before the Commission without being represented by counsel.

VI. ADDITIONAL AMENDMENTS SUPPORTED BY OCA

1. 52 Pa. Code § 5.103(b). Motions.

Rule 5.103(b) currently states:

> (b) *Presentation of motions*. A motion may be made in writing at any time, and a motion made during a hearing may be stated orally upon the record, or the presiding officer may require that an oral motion be reduced to writing and filed separately. Written motions must contain a notice which states that a responsive pleading shall be filed within 20 days of the date of service of the motion.

The OCA has been involved in a number of recent cases in which the presiding officer's scheduling order requires that motions must be submitted at least five days in advance of the evidentiary hearing in a proceeding. However, in proceedings with abbreviated litigation schedules due to statutory timeframes, oftentimes the OCA is not aware of the content of any potential motions until the evidentiary hearing or just before it. For example, rejoinder testimony is frequently given orally at the evidentiary hearing or in writing the day before; if the rejoinder testimony is needlessly repetitive, then the OCA should be able to move to strike the testimony under Rule 5.243(e), which disallows the introduction of such evidence. While presiding officers usually offer a "good cause" exception to the written-in-advance requirement, presiding officers should not be allowed to require advanced presentation of motions when parties cannot be certain what information may ultimately be subject to such a motion. Therefore, the OCA proposes the following modification:

> (b) *Presentation of motions*. A motion may be made in writing at any time, and a motion made during a hearing may be stated orally upon the record, or the presiding officer may require that an oral motion be reduced to writing and filed separately. **Parties may make motions orally at evidentiary hearings regarding matter introduced either at the hearing, or in the preceding 5 days, if written motions within that time are not feasible.** Written motions must contain a notice which states that a responsive pleading shall be filed within 20 days of the date of service of the motion.

2. 52 Pa. Code § 5.232(b)(4). Settlement Petitions and Stipulations of Facts.

Rule 5.232(b) currently states:

> (b) *Positions of the parties*. A settlement agreement must specifically identify the parties:
>
> (1) Supporting the settlement.
>
> (2) Opposing the settlement.
>
> (3) Taking no position on the settlement.
>
> (4) Denied an opportunity to enter into the settlement.

The OCA takes issue with Rule 5.232(b)(4) due to the fact that parties to a settlement rarely include this fourth category of party. Instead, the OCA would request the Commission provide additional clarification to what constitutes being "denied an opportunity to enter into the settlement" as part of Rule 5.232(b)(4). The OCA has been party to several proceedings where certain parties were denied the opportunity to even partake in the settlement negotiations, usually individual consumer complainants or smaller consumers or consumer groups. Under the current rules, it is unclear whether these parties were denied the opportunity to enter into the settlement or were denied the opportunity to negotiate the settlement agreement. Specifically, the OCA would repeal Rule 5.232(b)(4) and replace it with the following:

> (4) That were not parties to the settlement negotiations or, who were parties to the settlement negotiations, but were denied the opportunity to enter into the settlement.

Under this clarification, being denied the opportunity to enter into the settlement specifically refers to a party to the negotiations who was not permitted to join the settlement agreement. Parties who were not present for settlement negotiations and were denied the opportunity to enter into the settlement as a result of their absence would be delineated, under this proposal, from parties who were not permitted to join the settlement but were party to negotiations.

3. 52 Pa. Code § 5.243. Presentation by parties.

Rule 5.243(a) currently states:

> (a) A party, has the right of presentation of evidence, cross-examination, objection, motion and argument subject to the limitations in §§ 5.75 and 5.76 (relating to notice, service and action on petitions to intervene; and limitation of participation in hearings). The taking of evidence and subsequent proceedings shall proceed with reasonable diligence and with the least practicable delay.

The OCA has been party to Commission proceedings where the presiding officer has required that cross exhibits be submitted at least five days before an evidentiary hearing where cross-examination would be conducted. The OCA opposes this practice, where the cross exhibit is used for the purposes of impeachment. While voluminous cross exhibits used to supplement the record, introduced to request another party's witness to lay the foundation for that exhibit, should provide another party's witness the opportunity to review the entirety of the exhibit either at the hearing or in advance, if possible, before being asked questions about it on cross-examination, such is not the case for all cross exhibits. Specifically, due to the ubiquity of discovery through written interrogatories, parties obtain a significant volume of documents usable as impeachment evidence during cross-examination which are verified by witnesses who are available for cross-examination at hearings; a witness should be on notice of all statements for which they submitted verifications during the discovery process. As a result, the OCA recommends the addition of the below language, as a subsection (g) to Rule 5.243, with the current subsection (g) being made into subsection (h):

> (g) If a party conducts cross-examination, the party may introduce exhibits during cross-examination for the purpose of impeachment if the exhibit is accompanied by a verification signed by the examined witness indicating that the witness was responsible in whole or in part for the contents of the exhibit, without first needing to provide such exhibits in advance of the hearing to other parties or the presiding officer.

With this change, parties would be able to rely upon cross-exhibits for the purposes of impeachment without presenting a concern of unfair surprise.

4. 52 Pa. Code § 5.254. Copies of Transcripts.

Rule 5.254 currently states:

> (a) A party or other person desiring copies of the transcript may obtain copies from the official reporter upon payment of the fees fixed therefore.
>
> (b) Subsection (a) supersedes 1 Pa. Code § 35.133 (relating to copies of transcripts).

The OCA submits that transcripts of public proceedings should be made publicly available. While the OCA is aware that the Commission's current contract(s) for court reporter services may prevent the Commission from providing public access to transcripts. The OCA requests that, upon the termination of the Commission's current contract(s), the Commission should ensure that the subsequent contract(s) provides public access.

Access to transcripts of public proceedings provides a significant benefit to consumers who are unable to participate in the recorded proceeding. Outside of Public Meetings, there is no way for parties to access public proceedings other than attending the proceedings; they may not be recorded, and transcripts are not made public. Due to the Commission's hours, there is little possibility for consumers to attend proceedings before the Commission without having to take time away from work, potentially suffering personal or economic consequences from participating in Commission proceedings. Before the Federal Energy Regulatory Committee (FERC), due to the wide-ranging impact of FERC's actions and narrow windows during which public proceedings occur, FERC publishes its transcripts within a short time frame following the conclusion of proceedings. Providing transcripts to the public allows for interested parties to be quickly apprised

of FERC proceedings without having to attend them, ensuring all parties that need access to the contents of transcripts are able to access them without much delay.

As a result, if the Commission wishes to cultivate greater consumer access to proceedings before it, one manner to provide greater consumer access is through publishing transcripts of proceedings. At the very least, the OCA proposes that the Commission permit parties to apply to proceed *in forma pauperis*, to waive transcript transmittal fees. Under Pa.R.J.A. 4008(B), parties that proceed *in forma pauperis* can receive transcripts for half or no cost "in matters under appeal or where the transcript is necessary to advance the litigation," at 200% or below and 125% or below, respectively, of the Federal Poverty Level. In civil cases, a party may proceed *in forma pauperis* if they are "without financial resources to pay the costs of litigation." Pa.R.Civ.P. 240(b). The Unified Judicial System has a publicly accessible form which lays out the application for *in forma pauperis* status[13]; it would be a simple matter to adapt the form to the needs of the Commission, asking only strictly necessary information to ensure transcript access to those who need it.

5. 52 Pa. Code § 5.350. Requests for Admission.

Currently, the rules governing requests for admission do not specify what document must be filed with the Commission upon service of the request. Therefore, the OCA recommends that requests for admission be treated similar to interrogatories, where the certificate of service must be filed with the Commission but the actual request itself need not be.

The following language should be added as a subsection (g) to Rule 5.350:

(g) *Filing*. The party propounding requests for admission shall serve a copy on the parties and shall file a certificate of service with the Secretary. Requests for admission may not be filed with the Commission.

[13] Available at: https://www.pacourts.us/Storage/media/pdfs/20210515/215527-file-6680.pdf.

6. 52 Pa. Code § 5.110. Last Public Meeting Dates in Rate Proceeding and 52 Pa. Code § 5.111. Last Public Meeting Dates in Non-Rate Proceedings with Statutory Deadlines.

In the NOPR, the Commission has proposed no regulation on the calculation of time between Public Meeting dates and the termination of a suspension period to determine what is reasonable. Administrative Law Judges have lately been requiring that the last Public Meeting to be used in setting a litigation schedule must provide at least 10 to 14 days between the Public Meeting and expiration of the suspension period to provide Commission staff this amount of time for the preparation of a rewrite order in the event the need arises. This has been based on the following prior Commission orders: *Pa. PUC v. Columbia Gas of Pa., Inc.*, R-2020-3018835 at 21, n.10 (Order Aug. 20, 2020) and *Pa. PUC v. Pennsylvania-American Water Co*., R-2020-3019369 at 21, n.10 (Order Aug. 20, 2020). However, these two orders were entered while emergency orders were in place during the COVID-19 pandemic and these orders state that "[a] reasonable time for preparation of a rewrite following the public meeting is between 10 and 14 days." Hence, the 10 to 14 days made sense during the pandemic. Notably, practice before the Commission was modified by emergency orders issued in response to the COVID-19 pandemic at the time that the above orders were made. However, these emergency orders are no longer in effect. The OCA suggests that a period of eight to ten calendar days should be sufficient for Commission's staff's preparation of a rewrite order in non-emergency circumstances.

The OCA recommends that the Commission adopt a regulation which specifically provides for the amount of time needed following a Public Meeting in case of a need for preparation of a rewrite order.

Additionally, due to the statutory time frames involved in rate proceedings and applications brought under Section 1329, among others, a litigation schedule may need to be significantly compressed depending on the Public Meeting date that is selected by the presiding officer to

provide the basis of the schedule. Such compression of the litigation schedule undoubtedly favors the applicant in a proceeding, as the applicant has the unseen advantage of: (1) preparation (they may likely spend months or years developing their case and perfecting their filing), (2) selecting the day when to file (applicants represented by counsel will undoubtedly look ahead at the Public Meeting schedule and calculate the time between the Public Meeting dates and the end of the suspension period). Applicants should not be encouraged to take advantage of the current uncodified nature of the Commission's benchmarks for determining litigation schedules. This advantage to the favor of applicants results in unfairly compressed litigation schedules on the other party litigants, including the OCA.

Compressed litigation schedules are unduly burdensome on the OCA, a statutory advocate. As a statutory advocate, the OCA has a duty and responsibility to represent the interests of consumers in matters properly before the Commission. The OCA is statutorily duty-bound to intervene and participate in litigated proceedings before the Commission when doing so will serve and protect the interest of utility consumers. By the same statute that enables the OCA, the Commission is mandated as follows:

> In dealing with any proposed action which may substantially affect the interest of consumers, including but not limited to a proposed change of rates and the adoption of rules, regulations, guidelines, orders, standards or final policy decisions, the [C]ommission shall:…(2) [c]onsistent with its other statutory responsibilities, take such action with due consideration to the interest of consumers.

71 P.S. § 309-5. Thus, in adopting the final NOPR, the Commission must adopt such regulations with due consideration to the interest of consumers. That should include the Commission's due consideration of the burden placed on the OCA in carrying out its representation of the interests of consumers in a manner consistent with the statute.

Accordingly, the Commission must consider the undue administrative burden placed on statutory advocates and other parties when setting unfairly compressed litigation schedules. To give context, for the period of July 1, 2023 – June 30, 2024, the OCA represented the interests of consumers in more than 224 cases, including general rate increase cases, purchased gas cost, default service, Section 1329 acquisitions, all of which have statutory deadlines, and other filings. During that period, the OCA participated in 25 rate cases with statutory deadlines before the Commission, and through our advocacy efforts, and that of others, the OCA reduced the requested rate increases in total by nearly $153 million and ensured that assistance programs were funded and available to help struggling consumers.[14] This heavy case load and responsibility means the OCA experiences undue administrative burden resulting from unfairly compressed litigation schedules.

To reduce the undue administrative burden placed on statutory advocates caused by unfairly compressed litigation schedules, and to give due consideration to the interest of consumers in setting litigation schedules, the OCA proposes the following rules be added to Chapter 5 of the Commission's procedural regulations:

> *52 Pa. Code § 5.110. Last Public Meeting Dates in Adversarial Proceedings with Statutory Deadlines.*
>
> (a) General Rate Increases under Section 1308(d):
>
> (1) For the purposes of determining a litigation schedule in general rate increase proceedings, the public meeting date used by the presiding officer shall be the last public meeting date which is eight to ten calendar days before the end of the suspension period. (2) A utility that files a general rate increase under Section 1308(d) shall be required to file on the date in the month that, in the event the filing is suspended for investigation by the Commission, will result in an end-of-suspension date that falls eight to ten calendar days following a regularly scheduled Public Meeting date.

[14] See OCA Annual Report for FY 2023-2024, available at https://www.oca.pa.gov/wp-content/uploads/OCA-Annual-Report-2023-2024.pdf.

(b) For other rate proceedings with statutory deadlines not covered under (a), and for non-rate proceedings with statutory deadlines:

(1) For the purposes of determining a litigation schedule, the public meeting date used by the presiding officer shall be the last public meeting date which is eight to ten calendar days before the end of the suspension period.

(2) If the last regularly scheduled Public Meeting date falls outside of the eight to ten calendar days required under subsection (b)(1), the Commission shall schedule a special public meeting to accommodate this requirement.

(c) This rule under (a) or (b) above may be suspended by Order of the Commission in the event of an emergency.

Under these proposed rules, parties will know at the time a proceeding is initiated exactly which Public Meeting date will form the basis of their litigation schedule. This change will provide parties with predictability and ensure consistent enforcement across all proceedings. Finally, while a utility has a statutory right to file a general rate increase, the Commission certainly has the authority to control the manner of such filings to ensure judicial economy and to protect against undue administrative burden for all participants. Hence, requiring through regulation that utilities coordinate the timing of their general rate increase filings so that the end of suspension period falls within a reasonable time period following a regularly scheduled Commission Public Meeting date is certainly within the Commission's scope of authority.

7. 52 Pa. Code §§ 5.321 et seq. Discovery.

The OCA proposes that its standard discovery modifications be adopted by the Commission as the default discovery deadlines in adversarial proceedings before the Commission. The OCA's standard discovery modifications are accepted by all parties in each of the proceedings where a litigation schedule is set and have been considered the "default" discovery deadlines in Commission practice, in actions involving the OCA, since before the last time the procedural rules were amended in the 2006 Rulemaking; in several proceedings, the Administrative Law Judge

proposed the OCA's standard discovery modifications, due to their ubiquity. These discovery modifications are used in rate proceedings and non-rate proceedings; due to the increasingly compressed nature of litigation before the Commission, with the increase in application proceedings with statutory time frames, there is no reason to distinguish between rate and non-rate proceedings in the default rules regarding the sequence and timing of discovery. For reference, the OCA standard discovery modifications are as follows:

> A. Answers to interrogatories and responses to requests for document production, entry for inspection, or other purposes be served in-hand within ten (10) calendar days of service of the interrogatories or requests for production.
>
> B. Objections to interrogatories and/or requests for production be communicated orally to the propounding party within three (3) calendar days of service; unresolved objections be served in writing to the propounding party within five (5) calendar days of service of the interrogatories and/or requests for production.
>
> C. Motions to dismiss objections and/or direct the answering of interrogatories and/or requests for production be filed within three (3) calendar days of service of written objections.
>
> D. Answers to motions to dismiss objections and/or direct the answering of interrogatories and/or requests for production be filed within three (3) calendar days of service of such motions.
>
> E. Requests for admission be deemed admitted unless answered within ten (10) calendar days or objected to within five (5) days of service.
>
> F. Discovery requests and discovery related pleadings (such as objections, motions, and answers to same) served after 4:30 p.m. Monday through Thursday or after 12:00 p.m. on a Friday or the day preceding a holiday shall be deemed to have been served on the next business day.
>
> G. All discovery due-dates are "in-hand" due dates, and electronic service on the due date satisfies the "in-hand" requirement.

Therefore, the OCA proposes that the following changes be made to Subchapter D of Chapter 5 of the Commission's regulations:

- Add subsections (f) and (g) to Rule 5.331, which reads:

(f) Responses to discovery requests or written objections to discovery requests must be received by the requesting party by the end of the business day during which the response or objection was due to the requesting party ("in-hand" requirement). Electronic receipt of responses to discovery requests or written objections to discovery requests on the due date shall satisfy this requirement, so long as the party consents to receive electronic service.

(g) Discovery requests and discovery-related pleadings served after 4:30 p.m. Monday through Thursday or after 12:00 p.m. on a Friday or the day preceding a holiday observed by the Commission shall be deemed to have been served on the next business day.

- Change Rule 5.342(d) to read:

(d) *Service of answer*. The answering party shall serve answers on the parties within **10 [15]** days **[for rate proceedings, and 20 days]** after service of the interrogatories **[for other cases]**. Time periods may be modified by the presiding officer, on motion or by agreement of the parties.

- Change Rule 5.342(e) to read:

(e) Service of objections. The objecting party shall serve objections within **[10] 5** days of service of the interrogatories.

(1) Objections to interrogatories will first be issued orally to the propounding party within three days of receipt of service, in an attempt to resolve the objections.

(**[1]2**) The objecting party shall serve copies of the objection on the parties, along with a certificate of service, which specifically identifies the objectionable interrogatories.

(**[2]3**) The objecting party shall file a copy of the certificate of service with the Secretary.

- Change Rule 5.342(g) to read:

(g) *Motion to compel*. Within **[10] 3** days of service of an objection to interrogatories, the party submitting the interrogatories may file a motion requesting the presiding officer to dismiss an objection and 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] 3** days of service of the objection, the objected to interrogatory will be deemed withdrawn.

(1) The party against whom the motion to compel is directed shall file an answer within **[5] 3** days of service of the motion absent good cause or, in the alternative, respond orally at the hearing if a timely hearing has been scheduled within the same **[5] 3**-day period.

(2) The presiding officer will rule on the motion as soon as practicable. The motion should be decided within 15 days of its presentation, unless the motion presents complex or novel issues. If it does have complex or novel issues, the presiding officer will, upon notice to the parties, rule in no more than 20 days of its presentation.

- Change Rule 5.349(d) to read:

(d) The party upon whom the request is served shall serve a written response within 10 days**. [for rate proceedings, and 20 days after service of the request for all other cases.]** Time periods may be modified by the presiding officer or by agreement of the parties. The response shall be verified or notarized, as permitted by § 1.36 (relating to verification), and state that inspection and related activities will be permitted as requested. If the request is objected to, the objection shall be made in the manner described in § 5.342 (relating to answers or objections to written interrogatories by a party). A party may request another party to produce or inspect documents as part of interrogatories filed under § 5.341 (relating to written interrogatories to a party). The party submitting the request may move for an order under § 5.342(e) with respect to an objection or to other failure to respond to the request or any part thereof, or failure to permit inspection as requested.

- Add Rule 5.350(d)(4), which should read:

(4) The matter of requests for admission shall be deemed admitted unless answered within 10 calendar days or objected-to within 5 days of service.

By providing this additional guidance, the Commission's regulations regarding discovery will be brought up to pace with current Commission practice, while leaving the flexibility of having presiding officers alter discovery procedures when necessary or allowing for parties to conduct informal discovery.

VII. CONCLUSION

The OCA respectfully submits these comments with the hope that, upon review, the Commission will be able to reduce barriers to participation in proceedings before the Commission for consumers, ensure greater predictability for the nature of proceedings before the Commission and Office of Administrative Law Judges, and create a measure of consistency and accessibility to litigation proceedings. The OCA invites comment and greater development in Reply Comments to the above suggestions and recommendations to help the Commission's regulations meet the OCA's aims during this review of the Commission's regulations.

Respectfully submitted,

/s/ Melanie Joy El Atieh

Melanie Joy El Atieh
Deputy Consumer Advocate
PA Attorney I.D. # 209323
MElAtieh@paoca.org

Christine Maloni Hoover
Of Counsel
PA Attorney I.D. # 50026
CHoover@paoca.org

David T. Evrard
Assistant Consumer Advocate
PA Attorney I.D. #33870
DEvrard@paoca.org

Jacob Guthrie
Assistant Consumer Advocate
PA Attorney I.D. # 334367
JGuthrie@paoca.org.

Counsel for:
Patrick M. Cicero
Consumer Advocate

Office of Consumer Advocate
555 Walnut Street
5th Floor, Forum Place
Harrisburg, PA 17101-1923
Phone: 717-783-5048

Dated: January 31, 2025

OCA Appendix A

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Pennsylvania Public Utility Commission	:	
	:	
v.	:	Docket No. R-2025-XXXXXXX
	:	
Utility	:	

OCA Hearing Exhibit No. 1

INVENTORY OF EVIDENCE TO BE ADMITTED INTO THE EVIDENTIARY RECORD BY THE OFFICE OF CONSUMER ADVOCATE

The Office of Consumer Advocate (OCA) intends to submit the following evidence into the evidentiary record in the above captioned proceedings at the evidentiary hearings scheduled for Month, Day 1 and Day 2, 2025.

DIRECT TESTIMONY

OCA Statement 1:	Public Version of Direct Testimony of John Doe consisting of 43 pages of testimony, Appendix A consisting of 6 pages, and Exhibit JD-1 consisting of Schedules A through C-20 and Exhibit JD-2 along with a signed verification of John Doe.
OCA Statement 1:	Confidential Version of Direct Testimony of John Doe consisting of 43 pages of testimony, Appendix A consisting of 6 pages, and Exhibit JD-1 consisting of Schedules A through C-20 and Exhibit JD-2 along with a signed verification of John Doe.
OCA Statement 2:	Direct Testimony of Jane Roe consisting of 63 pages of testimony, Exhibits JR-1 through JR-16 and Appendices A-B along with a signed verification of Jane Roe

SUPPLEMENTAL DIRECT TESTIMONY

OCA Statement 1 Supp: Supplemental Direct Testimony of John Doe consisting of 3 pages of testimony and Exhibit JD-1-SD along with a signed verification of John Doe.

REBUTTAL TESTIMONY

OCA Statement 2-R: Rebuttal Testimony of Jane Roe consisting of 2 pages of testimony and a signed verification of Jane Roe

SURREBUTTAL TESTIMONY

OCA Statement 1-SR: Surrebuttal Testimony of John Doe consisting of 20 pages of testimony along with a signed verification of John Doe.

OCA Statement 2-SR: Surrebuttal Testimony of Jane Roe consisting of 9 pages of testimony along with a signed verification of Jane Roe.

ADDITIONAL EVIDENCE

OCA Hearing Exh. No. 2: Additional Evidence to be Admitted into the Evidentiary Record by the Office of Consumer Advocate

OCA Statement 1, Direct Testimony of John Doe (Public Version)

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Pennsylvania Public Utility Commission	:	
	:	Docket No.: R-2025-XXXXXXX
v.	:	
	:	
Utility	:	

DIRECT TESTIMONY

OF

JOHN DOE

On behalf of the

PENNSYLVANIA OFFICE OF CONSUMER ADVOCATE

Date Served: Month Day, 2025

Q. Does this conclude your testimony?

A. Yes.

OCA Statement 1, Direct Testimony of John Doe (Confidential Version) has been separately provided to the Commission in accordance with 52 Pa. Code § 5.412a(d).

OCA Statement 2, Direct Testimony of Jane Roe

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Pennsylvania Public Utility Commission	:	
	:	Docket No.: R-2025-XXXXXXX
v.	:	
	:	
Utility	:	

DIRECT TESTIMONY

OF

JANE ROE

On behalf of the

PENNSYLVANIA OFFICE OF CONSUMER ADVOCATE

Date Served: Month Day, 2025

Q. Does this conclude your testimony?

A. Yes.

OCA Statement 1 Supp, Supplemental Direct Testimony of John Doe

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Pennsylvania Public Utility Commission	:	
	:	Docket No.: R-2025-XXXXXXX
v.	:	
	:	
Utility	:	

SUPPLEMENTAL DIRECT TESTIMONY

OF

JOHN DOE

On behalf of the

PENNSYLVANIA OFFICE OF CONSUMER ADVOCATE

Date Served: Month Day, 2025

Q. Does this conclude your testimony?

A. Yes.

OCA Statement 2-R, Rebuttal Testimony of Jane Roe

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Pennsylvania Public Utility Commission	:	
	:	Docket No.: R-2025-XXXXXXX
v.	:	
	:	
Utility	:	

REBUTTAL TESTIMONY

OF

JANE ROE

On behalf of the

PENNSYLVANIA OFFICE OF CONSUMER ADVOCATE

Date Served: Month Day, 2025

Q. Does this conclude your testimony?

A. Yes.

OCA Appendix B

Certificate of Compliance with 52 Pa. Code § 5.412a

I certify that this testimony complies with the requirements of 52 Pa. Code § 5.412a that requires the testimony submitted to the Secretary's Bureau to match exactly that testimony admitted by the presiding officer and that requires testimony containing confidential or proprietary information to be submitted differently, as prescribed by the Commission.

Attorney Name
Attorney Title
PA Attorney I.D. #

DATED: Month Day, 2025