

February 5, 2025

Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street, 2<sup>nd</sup> Floor  
Harrisburg, PA 17120

**VIA ELECTRONIC FILING**

**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:

Please find enclosed for filing with the Pennsylvania Public Utility Commission ("PUC" or "Commission") the Initial Comments of Industrial Energy Consumers of Pennsylvania ("IECPA") in the above-referenced matter.

This document was filed electronically with the Commission on this date. All parties are being served a copy of this document in accordance with the enclosed Certificate of Service.

Please contact the undersigned if you have any questions concerning this filing.

Sincerely,

SPILMAN THOMAS & BATTLE, PLLC

By



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Certificate of Service

**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** : **Docket No. L-2023-3041347**  
**Rules of Administrative Practice and** :  
**Procedure; Special Provisions; and** :  
**Formal Proceedings** :

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served a true copy of the foregoing document upon the following parties to this proceeding in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by participant).

**VIA E-MAIL**

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Steven W. Lee

Dated: February 5, 2025

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**Regulations Governing the Public Utility** :  
**Commission's General Provisions, 52** :  
**Pa. Code Chapters 1, 3, and 5 (relating** : **Docket No. L-2023-3041347**  
**to Rules and Administrative Practice** :  
**and Procedure; Special Provisions; and** :  
**Formal Proceedings)** :

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**INITIAL COMMENTS OF  
INDUSTRIAL ENERGY CONSUMERS OF PENNSYLVANIA**

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On December 4, 2024, the Pennsylvania Public Utility Commission's ("PUC" or "Commission") Clarified Notice of Proposed Rulemaking Order ("Clarified NOPR Order") in the above-referenced docket was published in the *Pennsylvania Bulletin*. The Clarified NOPR Order requested interested parties submit Comments 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. Interested parties were provided 60 days from the Clarified NOPR Order's publication in the *Pennsylvania Bulletin*, or by February 5, 2025, to submit Comments.

The Industrial Energy Consumers of Pennsylvania ("IECPA") files these Initial Comments in response to the Clarified NOPR Order. The fact that IECPA does not address each and every proposed revision by the Clarified NOPR Order should not be construed as either support or opposition to the policy as stated in the Clarified NOPR Order, or as presented by other stakeholders in their Comments, and IECPA reserves the right to respond to other Comments as they pertain to any element of the Clarified NOPR Order.

IECPA<sup>1</sup> is an association of energy-intensive industrial consumers of electricity and natural gas taking service from regulated utilities in Pennsylvania, including Columbia Gas of Pennsylvania, Inc. ("Columbia Gas"), Duquesne Light Company ("Duquesne"); FirstEnergy Pennsylvania Electric Company ("FE PA"); Pennsylvania Electric Company ("Penelec"); PPL Electric Utilities Corporation ("PPL"); and UGI Utilities Inc. – Gas Division ("UGI Gas").

IECPA's Initial Comments are limited to two main issues: (1) the timing of filing for protests and petitions to intervene; and (2) IECPA's position on the regulations' preference for settlements. For protests and petitions to intervene, IECPA believes that 60 days, as currently provided for in the regulations, strikes the appropriate balance between efficiency and notice and opportunity to be heard for interested parties. The proposed amendment to cut the period in half would severely hinder the ability of intervenors like IECPA from being able to participate in proceedings that impact its members, thus potentially violating those parties' due process rights. On the topic of settlements, IECPA does not believe that the preference for settlements hinders the full litigation of cases but does believe that there are other regulatory factors that may hinder litigation as more fully discussed below.

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

The Clarified NOPR Order proposes that 52 Pa. Code § 5.53 be amended to provide for a 30-day protest period from the date of publication in the *Pennsylvania Bulletin*, rather than maintaining the current 60-day requirement. The Commission advocates this proposed change by citing Executive Order 2023-07, building Efficiency in the Commonwealth's Permitting,

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<sup>1</sup> For the purpose of this matter, IECPA's membership consists of: Air Products & Chemicals, Inc.; Benton Foundry, Inc.; East Penn Manufacturing Company; Keystone Cement Company; Knouse Foods Cooperative, Inc.; Linde, Inc.; Marathon Petroleum Corporation; Nestle Purina PetCare Company; Proctor & Gamble Paper Products Company; and United States Gypsum Company.

Licensing, and Certification Processes, which encouraged making the processing times for applications more efficient.

While IECPA understands the stated efficiency concerns, efficiency should not subrogate prospective complainants', protestors', or intervenors' due process rights.<sup>2</sup> IECPA does not believe that Executive Order 2023-07 is intended to apply to, nor should it be read as applying to, contested proceedings such as those heard by the Commission that impact stakeholders' procedural and substantive due process rights. Furthermore, IECPA is unaware of any current need to streamline the protest, complaint, and intervention period to achieve a substantive regulatory goal.

The due process concerns attendant to reducing the time available to protest, complain, or intervene in a Commission proceeding is particularly true for intervenors like IECPA who have multiple members that must separately consider any application before determining as a group whether participation in a particular matter is needed. Unlike other parties in which there may be a singular decision-maker, consumer groups and associations like IECPA require consensus decision-making that can often take additional time beyond the 30 days now contemplated by the Commission. In IECPA's experience, the current 60-day requirement has provided the necessary time for IECPA members to review, meet, decide, and ultimately prepare and file IECPA's pleadings to respond to an application and participate in the resulting proceeding. By proposing to cut that period in half to 30 days, the regulations would prioritize administrative efficiency to the detriment of intervening parties' due process rights. For this reason, IECPA strongly recommends maintaining the protest period at 60 days because doing so strikes the appropriate balance between efficiency and the due process rights of intervening parties.

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<sup>2</sup> See 52 Pa. Code § 5.74. Filing of Petitions to Intervene, discussed below; *see also* 52 Pa. Code § 5.14(c) (indicating that the time for filing protests to applications is governed by Section 5.53).

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

The timing of filing for petitions to intervene are currently set in accordance with 52 Pa. Code § 5.53, discussed above. In the Clarified NOPR Order, the Commission proposed changes that would, similar to Section 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. For the same reasons discussed above, IECPA opposes this change and recommends that the Commission maintain the default 60-day response period for both protests and petitions to intervene.

**C. Comments on Changes Proposed by Vice Chair Barrow – 52 Pa. Code § 5.231. Offers of Settlement.**

In her Statement regarding the Clarified NOPR Order, Vice Chair Barrow requested comment on 52 Pa. Code § 5.231 and the Commission's policy encouraging settlements. Vice Chair Barrow expressed concerns that the Commission's policy favoring settlements may discourage parties from fully litigating contested proceedings and requested comments and evidence on the benefits and burdens created by the settlement policy.

IECPA does not believe that the policy favoring settlements hinders litigation; indeed, IECPA is strongly in favor of that policy. To the degree that the Commission is interested in exploring factors that hinder litigation, IECPA suggests that the Commission consider and investigate how other aspects of its regulations might do so, including, but not limited to the Commission's practice of issuing quarterly earnings reports for jurisdictional utilities. Based on IECPA's experience, this particular component very well may hinder full litigation by creating artificial incentives to settlement that may not produce a full and robust litigation into critical issues. There may be others.

Utility returns on equity ("ROE") are typically a highly-contested issue in base rate proceedings; however, since the utilities are able to rely on their quarterly reports to account for

their Distribution System Improvement Charge ("DSIC") ROEs as imputed ROEs, utilities may be disincentivized to risk fully litigating this issue. To that end, IECPA notes that the Commission's most recent quarterly earnings report indicates that, out of total reported utility ROEs, only *three of twenty-three* (23) were established through a fully litigated proceeding<sup>3</sup> (and this does not include three recently concluded electric cases for which ROE likewise was not fully litigated<sup>4</sup>). As such, and in the spirit of responding to the Vice Chair's inquiry, IECPA believes that the Commission should consider investigating how this regulatory component (and perhaps other mechanisms) may hinder litigation and transparency.

Respectfully submitted,

**SPILMAN, THOMAS & BATTLE, PLLC**

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*Counsel to Industrial Energy Consumers of Pennsylvania*

Dated: February 5, 2025

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<sup>3</sup> See Bureau of Technical Utility Services Report on the Quarterly Earnings of Jurisdictional Utilities for the Year Ended June 30, 2024, Docket No. M-2024-3051104 (issued Oct. 10, 2024), Attachment H, p. 27.

<sup>4</sup> See generally *Pennsylvania Public Utility Commission, et al. v. Duquesne Light Company*, Docket Nos. R-2024-3046523, *et al.*; *Pennsylvania Public Utility Commission, et al. v. PECO Energy Company – Electric Division*, Docket Nos. R-2024-3046931, *et al.*; *Pennsylvania Public Utility Commission v. FirstEnergy Pennsylvania Electric Company*, Docket Nos. R-2024-3047068, *et al.*