



McNees Wallace & Nurick LLC
100 Pine Street
P.O. Box 1166
Harrisburg, PA 17108-1166

Charis Mincavage
Direct Dial: 717.237.5437
Direct Fax: 717.260.1725
cmincavage@mcneeslaw.com

February 5, 2025

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd 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:

Attached for filing with the Pennsylvania Public Utility Commission are the Comments on behalf of Met-Ed Industrial Users Group ("MEIUG"), Penelec Industrial Customer Alliance ("PICA"), Philadelphia Area Industrial Energy Users Group ("PAIEUG"), PP&L Industrial Customer Alliance ("PPLICA"), and West Penn Power Industrial Intervenors ("WPPII") (collectively, the "Large Users Groups"), in the above-referenced proceeding.

As evidenced by the attached Certificate of Service, the State Advocates are being duly served with a copy of this document. Thank you.

Sincerely,

A handwritten signature in black ink that reads 'Charis Mincavage'.

Charis Mincavage
MCNEES WALLACE & NURICK LLC

Counsel to Met-Ed Industrial Users Group,
Penelec Industrial Customer Alliance,
Philadelphia Area Industrial Energy Users Group
PP&L Industrial Customer Alliance, and
West Penn Power Industrial Intervenors

c: Tiffany L. Tran, Esq., Law Bureau tiftran@pa.gov (via email with Word version)
Colin W. Scott, Esq., Law Bureau colin.scott@pa.gov (via email with Word version)
Karen Thorne, Regulatory Review Assistant, Law Bureau kathorne@pa.gov (via email with Word version)
ra-pcprgreview@pa.gov (via email with Word version)
Certificate of Service

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing document upon the participants, listed below, in accordance with the requirements of Section 1.54 (relating to service by a participant).

VIA EMAIL

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

Allison C. Kaster, Esq.
Bureau of Investigation and Enforcement
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
P. O. Box 3265
Harrisburg, PA 17105-3265
akaster@pa.gov

Darryl Lawrence, Esq.
Acting Consumer Advocate
Office of Consumer Advocate
555 Walnut Street
Forum Place, 5th Floor
Harrisburg, PA 17101
dlawrence@paoca.org
ra-oca@paoca.org



Charis Mincavage

Counsel to Met-Ed Industrial Users Group,
Penelec Industrial Customer Alliance,
Philadelphia Area Industrial Energy Users
Group, PP&L Industrial Customer Alliance,
and West Penn Power Industrial Intervenors

Dated this 5th day of February, 2025, in Harrisburg, Pennsylvania.

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

**COMMENTS ON BEHALF OF MET-ED INDUSTRIAL USERS GROUP,
PENELEC INDUSTRIAL CUSTOMER ALLIANCE, PHILADELPHIA AREA
INDUSTRIAL ENERGY USERS GROUP, PP&L INDUSTRIAL CUSTOMER
ALLIANCE, AND WEST PENN POWER INDUSTRIAL INTERVENORS**

I. INTRODUCTION

Met-Ed Industrial Users Group ("MEIUG"), Penelec Industrial Customer Alliance ("PICA"), Philadelphia Area Industrial Energy Users Group ("PAIEUG"), PP&L Industrial Customer Alliance ("PPLICA"), and West Penn Power Industrial Intervenors ("WPPII") (collectively, the "Large Users Groups")¹ submit these Comments in response to the Pennsylvania Public Utility Commission's ("PUC" or "Commission") August 22, 2024 clarification of the Notice of Proposed Rulemaking ("Clarified NOPR") and accompanying Annex that was entered on December 20, 2023, at the above-captioned proceeding.²

The general provisions regarding practice before the PUC were last revised in 2006. Because of the various responsibilities, innovations, and advancements that have occurred since

¹ The Large Users Groups are associations of large commercial and industrial energy consumers taking service from Electric Distribution Companies in Pennsylvania, including Metropolitan Edison Company ("Met-Ed"); PECO Energy Company ("PECO"); Pennsylvania Electric Company ("Penelec"); PPL Electric Utilities Corporation ("PPL"); and West Penn Power Company ("West Penn").

² See *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)*, Clarified Notice of Proposed Rulemaking Order, Docket No. L-2023-3041347 (entered Aug. 22, 2024) (hereinafter, "*August 22 Clarified NOPR Order*").

that time, in 2016, the Commission announced its intention to revise the PUC's rules of practice and procedure, 52 Pa. Code Chapter 1, 3, and 5. To that end, the Commission convened a series of informal meetings in which stakeholders could identify issues and concerns with the existing rules as well as recommend amended language for the PUC's consideration. At the PUC's November 9, 2023, Public Meeting, the Commission adopted Vice Chair Barrow's Motion at this docket. Additionally, Vice Chair Barrow, Commissioner Zerfuss, and Commissioner Coleman each issued individual Statements.

In accordance with the action taken at the November 9 Public Meeting, the Commission subsequently entered a NOPR Order and Annex at this docket on December 20, 2023. In order to correct various defects contained therein, the Commission took action to clarify the December 20, 2023 NOPR Order and Annex. As a result, the previous Statements adopted at the November 9 Public Meeting, along with the Commissioners' Statements, a clarified Preamble Order,³ and accompanying Annex were published in the *Pennsylvania Bulletin*. Pursuant to the Commission's Secretarial Letter of January 13, 2025, the PUC is now seeking review of and public comments on the Clarified NOPR, which was developed based upon consideration of the aforementioned stakeholders' input. Comments are due on February 5, 2025, with Reply Comments due on March 6, 2025, to coincide with the publication of the Clarified NOPR in the *Pennsylvania Bulletin*.

The Large Users Groups often participate in various proceedings before the PUC in order to protect their interests, including but not limited to, proceedings on Electric Distribution Companies' ("EDCs") rate cases, default service plans, and energy efficiency and conservation plans. As such, the Large Users Groups submit the following Comments to address issues raised in the Clarified NOPR. Specifically, the Large Users Groups' Comments will address concerns

³ See *August 22 Clarified NOPR Order*, n.1.

related to modifications proposed to filing requirements, notice provisions, and requirements for preserved testimony with the goals of advancing regulatory efficiency and protecting customers' due process rights.

II. COMMENTS

A. Filing Specifications

Section 1.32(a)(2) of the NOPR provides that "[p]rinted documents must be at least 12-point font with 10-point font allowed for footnotes...with double-spaced text except that quotations in excess of a few lines shall be single spaced and indented..."⁴ The rationale for these proposed changes is to ensure that documents submitted to the PUC are accessible and legible.⁵

The Large Users Groups support this rationale but respectfully request the Commission adopt one minor clarification. Per the change in Section 1.32(a)(2), the PUC already recognizes that footnotes should be a smaller font than the body of a document. The Large Users Groups submit that, similarly, footnotes should be included in the exception for double spacing. Specifically, the Large Users Group would propose modifying Section 1.32(a)(2) to read as follows "...double-spaced text except that: (1) footnotes; and (2) quotations in excess of a few lines shall be single spaced. Quotations in excess of a few lines shall also be indented on both the left and right margins."

By making this minor modification, the PUC ensures that valuable space in filings, which are sometimes limited to a specific number of pages, will be utilized for legal analysis rather than simply the double-spacing of footnotes. Moreover, this change does not contradict the PUC's

⁴ *Id.*, Annex A at § 1.32(a)(2).

⁵ *Id.* at p. 17.

intent to ensure legibility for documents, as the Commission already recognized in Section 1.32(a)(2) that footnotes should be afforded a small font. Accordingly, the Large Users Groups submit that this slight change adheres to the Commission's rationale while also addressing stakeholder concerns.

B. Contents of Applications

With respect to the contents of applications, the Commission proposes to add a new Section 5.12(a)(5), which would require applications to be served upon the statutory advocates.⁶ The rationale for this change is to ensure that the statutory advocates are kept aware of applications filed with the PUC so that the advocates can take appropriate action as needed.⁷ The Large Users Groups do not oppose this modification. Rather, the Large Users Groups simply seek clarification from the Commission that this change applies to all applications (*i.e.*, both those that address utilities and those that address transportation).

C. Timing of Filing

In Section 5.53, the Commission proposes to change the time of a filing so that, "[i]f no protest time is specified in the notice, the protest shall be filed within 30 days of publication of the notice except upon good cause shown."⁸ According to the Commission, the rationale to reduce the default protest period from 60 to 30 days following publication in the *Pennsylvania Bulletin* is to follow Executive Order 2023-07 by making processing times for applications more efficient "while still affording interested parties with notice and an opportunity to be heard."⁹

⁶ *Id.*, Annex A at § 5.12(a)(5).

⁷ *Id.*, at 33.

⁸ *Id.*, Annex A at § 5.53.

⁹ *Id.*, at 39.

While the Large Users Groups agree that efficiency is important for purposes of processing times, the Large Users Groups oppose the reduction from 60 to 30 days for purposes of filing a protest. As noted previously, the Large Users Groups are *ad hoc* coalitions comprised of large commercial and industrial customers receiving electric service from EDCs, with electric costs comprising a significant portion of their costs to do business and operating budgets. As a result, participating in PUC proceedings is of great interest to these members, but members must, generally speaking, first obtain the necessary approvals from their upper-level management. By significantly shortening the protest period by 30 days, the Commission significantly limits the time needed by these *ad hoc* groups to coalesce. Moreover, while the Commission has added the language "for good cause shown," this phrase does not specifically address whether the time needed for member groups to review filings and obtain approvals would be considered "good cause." For that reason, the Large Users Groups respectfully request that the timing set forth in this provision remain at 60 days.

D. Filing of Petitions to Intervene

As part of the Clarified NOPR, the Commission proposes to modify Section 5.74(b)(3) so that Petitions to Intervene shall be filed "[w]ithin 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."¹⁰ According to the Commission, this proposed amendment is intended to provide consistency with the timeframe for the filing of a protest as set forth in Section 5.53. The Large Users Groups oppose this change for the same reasons set forth in Section II.C., *supra*, regarding Section 5.53. In addition, as part of the PUC's rationale for changing this language, the PUC notes that the 30-days would be from the date of

¹⁰ *Id.*, Annex A at § 5.74.

publication in the *Pennsylvania Bulletin*; however, the revised Section 5.74(b) does not specifically indicate where the notice will be filed.¹¹ For clarification purposes, the Large Users Groups recommend that Section 5.74 also be modified to note that the notice will occur in the *Pennsylvania Bulletin*.

E. Written Testimony

Section 5.412 as set forth in the Clarified NOPR generally addresses the service of written testimony upon the presiding officer and parties. Specifically, Section 5.412(g) states that, at a hearing in which testimony is authenticated, one copy of the testimony must be presented to the court reporter or to the presiding officer if no court reporter is present.¹² As a result of the aforementioned language, the Clarified NOPR specifically repeals, in its entirety, Section 5.412a, which addresses the electronic submission of pre-served testimony.¹³

According to the Commission, the rationale for this repeal stems from the fact that the existence of Section 5.412a requiring filing of pre-served testimony combined with the fact that a court reporter would also file such pre-served testimony creates significant difficulty for the Secretary's Bureau to identify which documents should be included in the certified record for purposes of a Commonwealth Court appeal.¹⁴ Moreover, the PUC notes that no concrete benefit to stakeholders has been identified from continuing to require parties to submit electronic copies, whereas repealing this requirement would reduce the administrative burden on the Secretary's

¹¹*Id.*, at 40.

¹² *Id.*, Annex A at § 5.412(g).

¹³ *Id.*, Annex A at § 5.412a.

¹⁴*Id.*, at 50.

Bureau.¹⁵ With that said, the Commission seeks stakeholder comment regarding how pre-served written testimony modified at a hearing may be filed in the event that Section 5.412a is repealed.¹⁶

Prior to responding to the PUC's request regarding how modified pre-served written testimony may be filed in light of a potential repeal of Section 5.412a, the Large Users Groups seek to address an additional concern with respect to this potential repeal. Specifically, the Clarified NOPR changes to Section 5.412 in general seem to assume that all hearings would occur in-person, as Section 5.412 provides that pre-served testimony can be provided either directly to the court reporter or the Administrative Law Judge if the court reporter is not present. These modifications, combined with the repeal of Section 5.412a, do not seem to contemplate how pre-served written testimony would be filed with the Commission in the event that a hearing is telephonic.

To that end, the Large Users Groups recommend that Section 5.412 be modified to address the protocol for providing written testimony during a telephonic hearing. Specifically, the parties should provide an electronic copy of any such testimony to the court reporter, with the Administrative Law Judge being copied on this email. This process would still streamline the filing of testimony, while also ensuring that both the Commission and the Administrative Law Judge have a complete record.

Moreover, this process could also be used to address any pre-served written testimony that is modified during a hearing. Counsel for the witness whose testimony has been modified can revise the written testimony, provide it via email within a set period of time to the court reporter, and copy the Administrative Law Judge on this email. Again, this process avoids the duplication

¹⁵ *Id.*

¹⁶ *Id.*

previously occurring, while also ensuring that both the Court Reporter and the Administrative Law Judge are aware of the process.

For these reasons, the Large Users Groups propose modifying Section 5.412 to address the filing of pre-served written testimony both during telephonic hearings and after such testimony has been modified as set forth above.

F. Settlements

Section 5.231(a) currently provides that it is the policy of the Commonwealth to encourage settlements. Although the Clarified NOPR does not propose any changes to Section 5.231(a), Vice Chair Barrow's August 22, 2024 Statement addresses this provision. Specifically, Vice Chair Barrow raises concerns that Section 5.231(a) may serve to discourage parties from proceeding to litigation out of a perception that the Commission looks with disfavor on litigated proceedings.¹⁷ For that reason, Vice Chair Barrow requests that parties include comments and evidence on the benefits and burdens created by the settlement policy and explain under what circumstances the Commission might seek a full public hearing for purposes of transparency.

At this time, the Large Users Groups simply offer their belief that Section 5.231(a) does not discourage the Large Users Groups from settling proceedings where appropriate. Moreover, the Large Users Groups have been involved in various proceedings before the PUC in which some issues are resolved via settlement while others are reserved for litigation, thus suggesting that parties recognize that in some instances settlement may be appropriate while in other instances litigation may be required.

¹⁷ *Regulations Governing the PA Public Utility Commission's General Provisions at 52 Pa. Code Chapters 1, 3, and 5*, Statement of Vice Chair Kimberly Barrow, p. 1, Docket No. L-2023-3041347 (issued Aug. 22, 2024).

With that said, the Large Users Groups plan to review and consider the Comments of the other stakeholders to this proceeding and reserve the right to address this issue further in Reply Comments.

III. CONCLUSION

MEIUG, PICA, PAIEUG, PPLICA, and WPPII appreciate the opportunity to provide these Comments and respectfully request that the Commission take these Comments into consideration in the development of finalizing changes to the PUC's Rules of Administrative Practice.

Respectfully submitted,

McNEES WALLACE & NURICK LLC

By 

Susan E. Bruce (Attorney I.D. #80146)
Charis Mincavage (Attorney I.D. #82039)
Adeolu A. Bakare (Attorney I.D. #208541)
Kenneth R. Stark (Attorney I.D. #312945)
McNees Wallace & Nurick LLC
100 Pine Street
Harrisburg, PA 17108-1166
Phone: 717.232.8000
Fax: 717.237.5300
sbruce@mcneeslaw.com
cmincavage@mcneeslaw.com
abakare@mcneeslaw.com
kstark@mcneeslaw.com

Counsel to Met-Ed Industrial Users Group, Penelec Industrial Customer Alliance, Philadelphia Area Industrial Energy Users Group, PP&L Industrial Customer Alliance, and West Penn Power Industrial Intervenors

Dated: February 5, 2025