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February 5, 2025

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

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

Dear Secretary Chiavetta:

Enclosed for filing are the comments of the Energy Association of Pennsylvania to the Clarified Notice of Proposed Rulemaking Order (NOPR) in the above-referenced proceeding.

Sincerely,

A handwritten signature in blue ink, which appears to read "Donna M.J. Clark". The signature is fluid and cursive.

Donna M.J. Clark
Vice President & General Counsel

Enclosure

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

**COMMENTS OF THE
ENERGY ASSOCIATION OF PENNSYLVANIA ON THE
CLARIFIED NOTICE OF PROPOSED RULEMAKING ORDER**

I. INTRODUCTION

On August 22, 2024, the Pennsylvania Public Utility Commission (“PUC” or “Commission”) entered a Clarified Notice of Proposed Rulemaking Order (“Clarified NOPR”) to consider its proposed amendments to 52 Pa. Code Chapters 1, 3, and 5, which set forth the Commission’s administrative practice and procedure rules, special provisions, and formal proceeding regulations, respectively. The Clarified NOPR was published in the *Pennsylvania Bulletin* on December 7, 2024, thereby making Comments on the Clarified NOPR due by February 5, 2025, with Reply Comments due by March 6, 2025.

The Energy Association of Pennsylvania (“Association” or “EAP”), a trade association whose members include the major natural gas and electric public utilities operating in the Commonwealth of Pennsylvania, respectfully submits these Comments on behalf of its electric distribution company (“EDC”) and natural gas distribution company (“NGDC”) members. Individual member companies may also submit additional input on these issues presently before the Commission. EAP’s Comments will follow the order in which the proposed amendments appear in the Clarified NOPR.

Chapters 1, 3, and 5 are critically important to the myriads of adversarial and non-adversarial proceedings before the PUC, as they govern parties' practice and conduct. Although those regulations may warrant a fresh look since they were last revised in 2006, EAP cautions the Commission against adopting new rules that contravene Pennsylvania law and Commission precedent and lead to inefficiencies in the administrative and legal process. The ultimate aim should be to develop a clear set of rules that produce efficient and timely dispositions and adjudications, protect parties' rights, and comply with all applicable laws. With that goal in mind, EAP respectfully offers the following Comments.

II. COMMENTS

A. 52 PA. CODE § 1.8 DEFINITIONS

The Commission proposes to modify its definition of "authorized agent" by replacing the current definition of "[a] person with permission to legally act on behalf of the filing user" with "[a] representative of a filing user with permission to submit filings on behalf of the filing user." Clarified NOPR, pp. 5, 59.

To the extent that this proposed change is connected to the Commission's proposed amendments to Sections 1.21 and 1.22 of its regulations, the Commission's proposed modification of the "authorized agent" definition should be rejected. As explained in Section II.B, *infra*, the Commission's proposed changes to Sections 1.21 and 1.22 would suborn the unauthorized practice of law in violation of well-established Pennsylvania law and prior Commission precedent. In addition, functioning as a legally authorized agent must include a demonstration of the authority to bind the customer, not merely permission to submit an e-filing on the customer's behalf.

B. 52 PA. CODE § 1.21 APPEARANCE & 52 PA. CODE § 1.22 APPEARANCE BY ATTORNEY OR CERTIFIED LEGAL INTERN

The Commission proposes significant changes to Sections 1.21 and 1.22 of its regulations, which would permit non-lawyers to represent individuals and small businesses or partnerships in proceedings. Specifically, the Commission proposes to amend Sections 1.21 and 1.22 so that a non-attorney third-party representative holding power of attorney can represent an individual in non-adversarial and adversarial proceedings during periods of disability or incapacity, or both. Clarified NOPR, pp. 11-13, 64-65. Similarly, the Commission wants to modify Section 1.22 so that “[a]n authorized corporate official” can “represent a small business or partnership in an adversarial Commission proceeding.” Clarified NOPR, pp. 13-14, 65.

According to the Commission, it is proposing that “a more permissive approach to representation similar to other administrative agencies would better facilitate the development of evidentiary records in complaint proceedings involving individual consumers.” Clarified NOPR, p. 12. In alleged support, the Commission states that “various administrative agencies permit a party to be represented by a nonlawyer in some circumstances,” such as how: (1) “an individual claiming unemployment compensation (UC) may be represented by a duly authorized agent before the Pa. Department of Labor and Industry, the Unemployment Compensation Board of Review, and a UC referee”; (2) “nonlawyer representatives are permitted to appear on behalf of individuals appearing before the Pa. Department of Human Services, Office of Hearings and Appeals”; and (3) the Pa. Department of Revenue, Board of Appeals, specifies that a taxpayer filing an appeal may appear on his own behalf or be represented by someone else with the required technical knowledge who is not necessarily an attorney.” Clarified NOPR, p. 12. As for allowing an “authorized corporate official” to represent a “small business or partnership” in an adversarial proceeding, the Commission likens this practice to how Rule 207 of the Rules of Procedure of the

Magisterial District Judges (“MDJ”) in Pennsylvania allow “corporate or partnership entities to appear *pro se*.” Clarified NOPR, p. 14. Although the Commission recognizes “that is not the case with the Court of Common Pleas and higher courts,” the Commission claims “[i]t may be that PUC proceedings are more akin to MDJ proceedings, albeit at an administrative level, given the rights of appeal to Pennsylvania courts set out in the Code.” Clarified NOPR, p. 14.

These proposed changes to Sections 1.21 and 1.22 of the Commission’s regulations should be rejected because they would permit the unauthorized, and unlawful, practice of law. First, the Commission cannot permit a non-lawyer with a power of attorney (“POA”) to represent an individual. As the Pennsylvania Superior Court declared in *Kohlman v. Western Pennsylvania Hospital*:

[T]o permit a non-attorney to appear and represent a principal in a court of record would be to permit the licensing and admission requirements to be circumvented. In addition, such an interpretation would effectively abrogate the Judicial Code’s prohibition against the unlicensed practice of law. The potential problems created by the use of the power of attorney as a means of encouraging the unauthorized practice of law are obvious. Of course, if the principal wishes to proceed *pro se*, he or she may do so. However, the power of attorney cannot be used as a device to license laypersons to act as an attorney-at-law.¹

The Commission itself even applied this well-established principle from *Kohlman* in *Ricks v. PECO Energy Co.* when it agreed with the presiding officer’s refusal to permit the complainant’s son, who had a power of attorney, to represent her at the hearing and rejected the Exceptions filed by the complainant’s son, because he was neither an attorney nor a certified legal intern.² The Commission should not adopt a regulation that conflicts with appellate case law and its own precedent.

¹ *Kohlman v. Western Pa. Hosp.*, 652 A.2d 849, 852 (Pa. Super. 1994) (“*Kohlman*”) (emphasis added).

² *Ricks v. PECO Energy Co.*, Docket No. C-2012-2321440, pp. 9-10 (Order entered Mar. 6, 2014).

Second, the examples of other agencies and courts that permit non-lawyers to represent individuals are readily distinguishable. For example, while the Commission points to unemployment compensation proceedings, a non-lawyer's representation of an individual before the Unemployment Compensation Board of Review is expressly contemplated by the Unemployment Compensation Law. *See* 43. P.S. § 822(a). Also, in the *Harkness* case cited by the Commission in its Clarified NOPR, the Supreme Court of Pennsylvania observed several distinct features about unemployment compensation proceedings that justify non-lawyer representation, such as how “the claims for benefits are not intended to be intensely litigated,” “there is no pre-hearing discovery,” “there is no requirement that the referee be a lawyer,” and “[i]ssues arising in these matters are generally questions of fact not requiring complex legal analysis.”³ In contrast, Commission proceedings often are intensely litigated, have pre-hearing discovery, and involve complex legal issues, and the Commission's administrative law judges are required to be licensed attorneys. *See* 66 Pa. C.S. § 304(c)(1).

As for non-lawyer representation before the Pennsylvania Department of Human Services' Office of Hearings and Appeals (“OHA”), federal regulations require the state agency responsible for operating the state Medicaid program to “inform every applicant or beneficiary in writing” that “he may represent himself or use legal counsel, a relative, a friend, or other spokesman,” which is why that provision has been incorporated into DHS's regulations.⁴ No such federal regulation requires the Commission to permit non-lawyer representation of individuals in Commission proceedings. Further, while a non-lawyer can represent a taxpayer when pursuing an appeal with

³ *Harkness v. Unemployment Comp. Bd. of Review*, 920 A.2d 162, 168 (Pa. 2007).

⁴ 42 C.F.R. § 431.206(b)(3); *see* 55 Pa. Code § 275.4(a)(1)(iv) (stating that the “County Assistance Office or administering or provider agency will provide whatever help the applicant/recipient needs in requesting a hearing,” which may include “[a]dvising the applicant/recipient that he may be represented by an attorney, relative, friend or other spokesman and explaining that he may contact his local bar association to locate the legal services available in the county”).

the Pennsylvania Department of Revenue’s Board of Appeals, that non-lawyer must still possess “the requisite technical education, training or experience” to effectively represent that individual. 61 Pa. Code § 7.15(a)(2)(i). Even then, however, that non-lawyer cannot raise or make any legal arguments at a hearing before the Board of Appeals.⁵ The Commission has not proposed any similar restrictions or qualifications here.

Third, the Commission’s attempt to equate its own proceedings to magisterial district court proceedings is unsupportable. Magisterial district courts’ rulings in civil cases generally are appealed to the courts of common pleas and are heard *de novo* by those courts.⁶ The Commission’s rulings, by contrast, are final orders appealable to the Commonwealth Court of Pennsylvania, where only questions of law are reviewed *de novo*.⁷ The Commonwealth Court cannot “reweigh the evidence below” or “substitute [its] judgment for that of the PUC, particularly on matters within the PUC’s area of expertise.”⁸ Accordingly, unlike in magisterial district court proceedings, non-lawyers could significantly and adversely affect the ability of an individual, small business, or partnership to develop a complete evidentiary record in support of their claims.

⁵ See 61 Pa. Code § 7.15(a)(2)(ii) (stating “[o]nly an attorney-at-law representing a petitioner, or the petitioner acting without representation before the Board, shall be permitted to raise or make a legal argument at a hearing before the Board”).

⁶ See, e.g., 42 Pa. C.S. § 932 (“Except as otherwise prescribed by any general rule adopted pursuant to section 503 (relating to reassignment of matters), each court of common pleas shall have exclusive jurisdiction of appeals from final orders of the minor judiciary established within the judicial district.”); Pa.R.C.P.D.J. No. 1002(A) (“A party aggrieved by a judgment for money, or a judgment affecting the delivery of possession of real property arising out of a nonresidential lease, may appeal the judgment within 30 days after the date of the entry of the judgment by filing with the prothonotary of the court of common pleas a notice of appeal on a form that shall be prescribed by the State Court Administrator together with a copy of the Notice of Judgment issued by the magisterial district judge.”); Pa. R.C.P.D.J. No. 1007(A) (“The proceeding on appeal shall be conducted *de novo* in accordance with the Rules of Civil Procedure that would be applicable if the action was initially commenced in the court of common pleas.”).

⁷ See, e.g., 66 Pa. C.S. §§ 316, 501; 42 Pa. C.S. § 763(a)(1); *Twin Lakes Utils. v. Pa. PUC*, 281 A.3d 384, 389 n.5 (Pa. Cmwlth. 2022) (citing *Popowsky v. Pa. PUC*, 910 A.2d 38, 48 (Pa. 2006)).

⁸ *Coalition for Affordable Util. Servs. & Energy Efficiency in Pa. v. Pa. PUC*, 120 A.3d 1087, 1107 (Pa. Cmwlth. 2015) (citation omitted).

Fourth, nearly 30 years ago, the Commission considered and rejected the incorporation of non-lawyer representation into its regulations because doing so would permit the unlawful practice of law. As the Commission explained:

One section which attracted considerable attention was § 1.22 (relating to appearance by attorney or certified legal intern) which deals with appearances and representation before the Commission. We had proposed allowing legal assistants under the supervision of an attorney admitted to practice in this Commonwealth to represent complainants in informal hearings. The wording made it unclear, however, whether we intended to allow such representation before administrative law judges in formal hearings.

We live in a state which has a strict approach to the practice of law. In this Commonwealth, the Supreme Court has the “inherent and exclusive power to regulate the admission to the bar and the practice of law.” Bar Admission Rule 103. This regulation by the Supreme Court limits the power of the Legislature and State agencies to act contrary to the rules established by the Court. Currently, the only persons authorized to practice law in this Commonwealth are: (1) those fully admitted to the Pennsylvania bar, (2) those admitted pro hac vice under Rule 301, and (3) those who qualify as certified legal interns under Rule 321.

Federal agencies have the ability to decide whether only lawyers can represent clients before it under the Administrative Procedure Act (5 U.S.C.A. § 555) even if those agencies are located in states which would not otherwise permit nonlawyer representation. *Sperry v. State of Florida ex rel the Florida Bar*, 373 U.S. 379, 83 S.Ct. 1322, 10 L.Ed.2d 428 (1963). State agencies whose Federal funding source requires the agencies to meet Federal statutory requirements as a condition of Federal aid are the only Pennsylvania agencies which allow nonlawyer representation. This Commission is not such an agency.

Whether or not we agree with the Supreme Court’s rules for the practice of law and their application to practice before administrative agencies is immaterial; we are bound by the laws of this Commonwealth. A careful review of those laws and the comments received has persuaded us to rework the regulation in order to conform the regulation to reflect Pennsylvania law.⁹

⁹ *Rules of Administrative Practice and Procedure*, Docket No. L-930076 (Order entered July 18, 1996) (emphasis added). See Attachment 1.

Nothing in the intervening years would justify departing from this precedent. The Commission should, like it did in 1996, reevaluate its proposal to permit non-lawyer representation and ultimately find that its proposed changes would conflict with the Commonwealth's strict approach to the practice of law.

EAP notes that non-lawyers are not subject to the Professional Rules of Conduct or the same ethical standards as licensed attorneys in Pennsylvania. For example, there would be no obligation for the non-lawyer to keep information confidential nor would the attorney-client privilege be applicable to the non-lawyer/customer-complainant relationship. Problems could also arise if the non-lawyer's interests diverge from those of the customer-complainant or become adversarial during the course of a Commission proceeding.

Additionally, the proposal does not address several practical issues surrounding its suggested changes to Sections 1.21 and 1.22. For instance:

- What kinds of POAs will be considered acceptable?
- Will POAs have to meet all the requirements in 20 Pa. C.S. § 5601 or some other set of elements?
- How will the holder of the POA prove that the individual is disabled or incapacitated such that they cannot represent themselves at the hearing, who will make that determination, and what legal standard will apply?
- What will happen if the customer/complainant is dissatisfied with the outcome after the holder of the POA represented their interests?
- What will happen if the customer/complainant later argues that they were not disabled or incapacitated and, therefore, the holder of the POA lacked the authority to represent their interests?

- What does the Commission mean by “authorized corporate official”?
- Who will make the determination that the corporate official is “authorized” to represent the small business or partnership?
- How will the corporate official prove that they are “authorized,” who will make that determination, and what legal standard will apply?
- What will happen if the small business or partnership is dissatisfied with the outcome after the authorized corporate official represented their interests?
- What will happen if another corporate official or owner of the business disputes the authorized corporate official’s authority to represent small business or partnership’s interests?

Thus, even setting aside the threshold legal issues with the Commission’s proposed changes to Sections 1.21 and 1.22 leave many implementation questions unanswered. Without such clarity, placing these proposed regulations into practice would throw the Commission’s practice and procedures into disarray.

C. 52 PA. CODE § 1.24. NOTICE OF APPEARANCE OR WITHDRAWAL

Under the Commission’s proposed changes to Section 1.24(a) of its regulations, an “individual appearing without legal representation before the Commission or a presiding officer shall file with the Secretary **[an] a mailing** address for service of a notice or other written **[communication] communications unless the individual is an eFiling user or has agreed to electronic service of documents.** A change in **the individual’s mailing** address which occurs during the course of the proceeding **[shall] must** be reported to the Secretary promptly.” Clarified NOPR, p. 66.

Given the Commission's proposed changes to Sections 1.21 and 1.22, EAP questions whether holders of POAs or authorized corporate officials would need to enter or withdraw their appearances in Commission proceedings. Although EAP disputes the Commission's proposal to allow such persons to represent individuals, small business, and partnerships (see Section II.B, *supra*), EAP believes that any person attesting to represent the interests of another individual or a small business or partnership should be required to enter and withdraw their appearance. Otherwise, the first that the presiding officers or opposing parties hear about those persons could be the evidentiary hearings, which would be inefficient and unduly prejudicial.

D. 52 PA. CODE § 3.1 DEFINITIONS

In Section 3.1 of its regulations, the Commission proposes to expand the scope of an "emergency" that would qualify for an *ex parte* emergency order issued by the Commission prior to the next scheduled public meeting. Specifically, the Commission wants to define emergency as "[a] situation which presents a clear and present danger to life **or the public interest** or property or which is uncontested and requires action prior to the next scheduled public meeting." Clarified NOPR, p. 79. The Commission claims that it has "alleviate[d] any concerns regarding an overbroad definition of 'emergency'" by "preserv[ing] the requirement that a "clear and present danger" exist. Clarified NOPR, p. 28.

EAP respectfully disagrees with the Commission. In this circumstance, "public interest" is undefined and, as such, could be interpreted as applying to essentially any situation where the Commission deems there is a "clear and present danger" rather than a specific "clear and present danger to life." Expanding the definition of "emergency" to include the "public interest" could result in a situation where a petition is filed seeking emergency relief by a person claiming to represent the general public interest or the interest of all customers rather than seeking relief for a situation that poses an immediate and specific danger to the petitioner. *Ex parte* emergency orders

are an extreme form of relief and should be limited to particular, well-defined situations in order to prevent potential abuse by parties and to avoid the need to address underlying issues of legal standing.

E. 52 PA. CODE § 5.245. FAILURE TO APPEAR, PROCEED OR MAINTAIN ORDER IN PROCEEDINGS

The Commission proposes amending Section 5.245 of its regulations to prohibit: (1) “the section from applying to a party who is not required to secure counsel if there is no finding that the party has committed an abuse of process”; and (2) “the dismissal of a complaint, petition, or application with prejudice for a procedural failure on the complainant, petitioner, or applicant’s behalf.” Clarified NOPR, p. 42.

EAP respectfully requests that the Commission withdraw these proposals. Public utilities must dedicate significant time and resources to customer complaint proceedings, many of which are initiated by serial filers who do not appear at the hearing. For EAP member companies that track this data, a range of between 10% to 86% of consumer complaint cases in recent years have been dismissed for failure to appear. On average, between 25-30% of cases are dismissed for failure to appear. Meanwhile, public utilities have to pull internal personnel, mostly customer service representatives, from their everyday work, prepare them for the hearings, and have them appear to provide testimony. Such personnel could have been using all that time to better serve the public utilities’ customers. Additionally, the public utilities must devote their internal or external legal resources to prepare for and participate in the hearings as well. By eliminating one of the key deterrents to parties failing to abide by the Commission’s procedural rules and appear at hearings, the Commission’s proposed regulations would require public utilities to commit even more significant time and resources to these cases and would lead to increased arrearages on customers’ accounts, which would increase the costs that are passed onto other customers.

In addition, EAP agrees with Commissioner Coleman that the proposed regulations conflict with Section 332(f) of the Public Utility Code, which states, in pertinent part:

Any party who shall fail to be represented at a scheduled conference or hearing after being duly notified thereof, shall be deemed to have waived the opportunity to participate in such conference or hearing, and shall not be permitted thereafter to reopen the disposition of any matter accomplished thereat, or to recall for further examination of witnesses who were excused, unless the presiding officer shall determine that failure to be represented was unavoidable and that the interests of the other parties and the public would not be prejudiced by permitting such reopening or further examination.¹⁰

Nothing in the Commission’s proposed regulations requires the party to demonstrate that the “failure to be represented was unavoidable and that the interests of the other parties and the public would not be prejudiced by permitting such reopening or further examination,” as required by Section 332(f) of the Public Utility Code. In fact, the Commission’s proposed Section 5.245(d) states that “[s]ubsection (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.” Clarified NOPR, p. 92. Of more concern, the proposed Section 5.245(e) bars, in all circumstances, the “[d]ismissal of a complaint, petition, or application with prejudice of the complainant, petitioner, or applicant for the failure to appear.” Clarified NOPR, p. 92. The Commission’s regulations must conform to and cannot conflict with the applicable statutes.¹¹ Thus, these proposed changes to Sections 5.245 of the Commission’s regulations should not move forward.

F. 52 PA. CODE § 5.251. RECORDING OF PROCEEDINGS

The Commission proposes to amend Section 5.251(d) of its regulations to state that “[s]pecial agent proceedings will be audio recorded and will not be transcribed, unless the parties request the transcription of the audio recording or other circumstances warranting transcription

¹⁰ 66 Pa. C.S. § 332(f) (emphasis added).

¹¹ See, e.g., *Hommrich v. Pa. PUC*, 231 A.2d 1027, 1038-41, 1044 (Pa. Cmwlth. 2020).

exist.” Clarified NOPR, p. 93. The Commission explains that this change “is intended to clarify what occurs in practice during special agent proceedings.” Clarified NOPR, p. 43.

However, Section 332(i) of the Public Utility Code provides that “[t]his section shall not be construed to require the electronic recording of testimony” and that “[t]he official record of a proceeding shall be the written transcript.” 66 Pa. C.S. § 332(i). Consequently, the proposed change to Section 5.251(d) of the Commission’s regulations conflicts with Section 332(i) of the Public Utility Code and unnecessarily creates due process concerns. Further, a written transcription of a special agent proceeding is important, given the potential for the special agent’s initial decision to be appealed to the Commission and higher courts.

G. 52 PA. CODE § 5.351. ON THE RECORD DATA REQUESTS

The Commission proposes to “permit on the record data requests in all PUC proceedings, instead of only in rate cases.” Clarified NOPR, p. 47. The Commission provides no explanation for why it is proposing the change; it only states that its proposed change is “intended to allow on the record data requests in all PUC proceedings, instead of only in rate cases.” Clarified NOPR, p. 48.

EAP respectfully disagrees with the Commission’s proposed change. In general, Commission rules allow for robust discovery prior to the hearing, making on the record requests by a party during a hearing unnecessary. The one exception, on-the-record data requests during a rate case, is warranted. Those proceedings must be completed within timeframes defined by statute, so the on-the-record data request process enables the parties to obtain necessary data points or information to create a complete record without distorting the timely disposition of the rate cases. Moreover, in rate cases, the parties engage in extensive discovery before hearings, making any on-the-record data requests limited in number and in scope. Under the Commission’s proposal, however, on-the-record data requests would be open for use in any Commission

proceeding, affording litigants the opportunity to engage in discovery, for potentially the first time, at the evidentiary hearing. To the extent that presiding officers need additional documents upon which to base their decision, the presiding officers have routinely directed the parties to submit those documents as late-filed exhibits and provided the opposing parties an opportunity to submit written objections by a certain deadline. In general, EAP believes this process has worked well. There is no need to open the door for parties to make on-the-record data in all Commission proceedings.

H. 52 PA. CODE § 5.365 ORDERS TO LIMIT AVAILABILITY OF PROPRIETARY INFORMATION

EAP supports the Commission's efforts to clarify the procedures surrounding the protection of personal information when the complainant or another individual in the same residence has a "protection from abuse" order or "any other order which provides clear evidence of domestic violence against the complainant or the other individual that is currently in effect or personal safety or welfare." Clarified NOPR, p. 97. EAP notes, however, that there may be a typographical error in the proposed Section 5.365(h). In its Clarified NOPR, the Commission observes that its formal complaint forms include, among other things, "instructions to include a copy of said order with the formal complaint form." Clarified NOPR, p. 48. Indeed, in Paragraph 6 of the Commission's Formal Complaint form, it directs the complainant to "attach a copy of the current PFA order to this Formal Complaint form." Yet, the proposed Section 5.365(h) appears to make the provision of the PFA order or other order optionable, stating:

Where a complainant in a formal proceeding has indicated in the complaint that a court has granted the complainant or another individual in the same residence a "protection from abuse" order or any other order which provides clear evidence of domestic violence against the complainant or the other individual that is currently in effect for personal safety or welfare, **or** provided a copy of the same, all parties are required to exclude or redact the complainant's personal address and contact information from any filings to the proceeding.

Clarified NOPR, p. 97 (emphasis added). EAP believes that the word “or” indicated above is intended to be the word “and.”

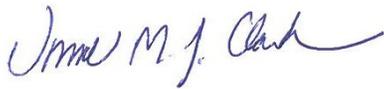
III. CONCLUSION

The Energy Association of Pennsylvania respectfully asks that the Pennsylvania Public Utility Commission take these Comments into consideration as it evaluates its proposed changes to Chapters 1, 3, and 5 of its regulations.

Respectfully submitted,



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Donna M. J. Clark
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Date: February 5, 2025

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RULES AND REGULATIONS

Title 52--PUBLIC UTILITIES

PENNSYLVANIA PUBLIC UTILITY COMMISSION

[52 PA. CODE CHS. 1, 3, 5, 57 AND 59]
[L-930076]

Rules of Administrative Practice and Procedure

[27 Pa.B. 414]

The Pennsylvania Public Utility Commission (Commission) on July 18, 1996, adopted an order at its public meeting to promulgate final-form regulations regarding its rules of administrative practice and procedure. The amendments will update and amend the approximately 100 sections. Changes range from corrections to punctuation, rewording phrases and correcting references to adding entirely new sections to address perceived problems. The contact person is Susan D. Colwell, Assistant Counsel, Office of Counsel, Law Bureau (717) 783-3459.

At the public meeting of July 18, 1996, the Commission adopted final regulations for the revision of its rules of administrative practice and procedure, appearing at Chapters 1, 3 and 5 (relating to rules of administrative practice and procedure; special provisions; and formal proceedings).

This will be the third time that the rules have been revised since they were amended in 1984 and 1989. After monitoring the 1989 rules, the Commission noted room for some improvements and initiated this rulemaking by publication of advance notice on March 13, 1993. The proposed amendments were published at 25 Pa.B. 1288 (April 8, 1995) with a 90-day comment period. Numerous comments and recommendations were received and reviewed by an internal committee before the final-form was adopted by the Commission.

Changes range from punctuation and phraseology to the addition of new subsections and sections. The form section has been eliminated to allow the periodic update of Commission-generated forms without requiring a rulemaking, thus keeping the forms current with changing laws and policies.

Effective rules of administrative practice and procedure result in more efficient case management, and periodic revisions of the rules are necessary for them to remain effective.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), the Commission submitted a copy of the final rulemaking, which was published as proposed at 25 Pa.B. 1288, and served on March 28, 1995, to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of House Committee Consumer Affairs and the Senate Committee on Consumer Protection and Professional Licensure for review and comment. In compliance with section 5(b.1) of the Regulatory Review Act, the Commission also provided IRRC and the Committees with copies of the comments received, as well as other documentation.

In preparing these final-form regulations, the Commission has considered the comments received from IRRC, the Committees and the public.

These final-form regulations were deemed approved by the House Committee on Consumer Affairs and was approved November 13, 1996, by the Senate Committee on Consumer Protection and Professional Licensure, and was approved by IRRC on November 21, 1996, in accordance with section 5(c) of the Regulatory Review Act.

Commissioners Present: John M. Quain, Chairperson; Lisa Crutchfield, Vice Chairperson; John Hanger, Concurring & Dissenting in part-Statement; David W. Rolka, Concurring & Dissenting in part; and Robert K. Bloom

Public Meeting held
July 18, 1996

Order

By the Commission:

In 1984, Chapters 1, 3 and 5 were revised and amended to establish comprehensive practice and procedure rules applicable to Commission proceedings. The revised rules became effective on January 1, 1985. Thereafter, the Commission solicited comments on the effectiveness and usefulness of the rules in order to implement timely and necessary revisions. By order entered August 5, 1988, the Commission again amended the procedural regulations effective January 3, 1989.

After monitoring the 1988 rules and noting room for improvement, the Commission decided to initiate a proceeding designed to update, amend and streamline its procedural regulations. On March 13, 1993, the Commission published an advance notice of proposed rulemaking for the Rules of Administrative Practice and Procedure in the *Pennsylvania Bulletin* at 23 Pa.B. 1177. The notice stated that the Commission was considering amending regulations pertaining to the Rules of Administrative Practice and Procedure at Chapters 1, 3 and 5, and that interested persons had 45 days in which to file written comments.

Comments were received from: the law offices of Louis J. Carter; Duquesne Light Company; the Office of Consumer Advocate; Philadelphia Electric Company, now PECO Energy; the law firm of Malatesta Hawke & McKeon; the Bell Telephone Company of Pennsylvania, now Bell Atlantic--PA; the Office of Small Business Advocate; the law firm of Kirkpatrick & Lockhart; and from the Commission's Bureaus of Law and Transportation, and the Offices of Administrative Law Judge and Trial Staff. Based on these comments, preliminary revisions were made and presented to a committee formed from the Commission's bureaus.

In August 1994, a finalized version of the preliminary revisions was sent to committee members for further review. The end product of this internal and external review of the Commission's procedural regulations has resulted in numerous proposed changes to the existing rules as well as an increase in one of the Commission fees. We adopted them as proposed amendments to our procedural regulations at the December 1, 1994, public meeting, and they were published for comment at 25 Pa. B. 1288 (April 25, 1995). Again, we received many useful comments from both inside the Commission and from the industry and utility bar.

Comments to the proposed regulations were received from: Central Pennsylvania Paralegal Association, Pennsylvania Department of Environmental Protection, Duquesne Light Company, the law firms of Kirkpatrick & Lockhart, and Malatesta, Hawke & McKeon, and Raymond A. Thistle, Jr., the National Federation of Paralegal Associations, the Offices of Trial Staff, Consumer Advocate and Small Business Advocate, PECO Energy, Pennsylvania Power Company, Pennsylvania Bar Association, Pennsylvania Gas Association, West Penn Power Company, and from the Commission's Offices of Administrative Law Judge, and Special Assistants and the Bureaus of Audits, Law, and the Secretary.

Throughout the long process necessary to update our procedures, our goal has been to develop and fine-tune our regulations to produce procedural rules of practice before the Commission that are fair, efficient and clearly stated. The final-form regulations we adopt today will improve our rules by clarifying some otherwise murky procedures and will simplify practice before this Commission.

One section which attracted considerable attention was § 1.22 (relating to appearance by attorney or certified legal intern) which deals with appearances and representation before the Commission. We had proposed allowing legal assistants under the supervision of an attorney admitted to practice in this Commonwealth to represent complainants in informal hearings. The wording made it unclear, however, whether we intended to allow such representation before administrative law judges in formal hearings.

We live in a state which has a strict approach to the practice of law. In this Commonwealth, the Supreme Court has the "inherent and exclusive power to regulate the admission to the bar and the practice of law." Bar Admission Rule 103. This regulation by the Supreme Court limits the power of the Legislature and State

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agencies to act contrary to the rules established by the Court. Currently, the only persons authorized to practice law in this Commonwealth are: (1) those fully admitted to the Pennsylvania bar, (2) those admitted pro hac vice under Rule 301, and (3) those who qualify as certified legal interns under Rule 321.

Federal agencies have the ability to decide whether only lawyers can represent clients before it under the Administrative Procedure Act (5 U.S.C.A. § 555) even if those agencies are located in states which would not otherwise permit nonlawyer representation. *Sperry v. State of Florida ex rel the Florida Bar*, 373 U.S. 379, 83 S.Ct. 1322, 10 L.Ed.2d 428 (1963). State agencies whose Federal funding source requires the agencies to meet Federal statutory requirements as a condition of Federal aid are the only Pennsylvania agencies which allow nonlawyer representation. This Commission is not such an agency.

Whether or not we agree with the Supreme Court's rules for the practice of law and their application to practice before administrative agencies is immaterial; we are bound by the laws of this Commonwealth. A careful review of those laws and the comments received has persuaded us to rework the regulation in order to conform the regulation to reflect Pennsylvania law. New § 1.21(d) addresses our informal practice, specifically providing that paralegals working under the direct supervision of an attorney or another appropriate individual may represent parties in cases brought under Chapters 56 and 64 (relating to standards and billing practices for residential utility service; and residential telephone service). This is allowed since appearances before our Bureau of Consumer Services to address informal consumer complaints under 66 Pa.C.S. § 308(d)(1) (relating to bureaus and offices) do not constitute the practice of law, and parties may have a representative other than an attorney. These informal proceedings are not bound by the same strict rules to which we must adhere in formal hearings before the administrative law judges, and, indeed, are typically conducted over the telephone among a nonattorney utility customer service representative, the BCS representative and the customer. We include the new section to outline an existing practice.

We have added the Office of Prothonotary and the appropriate sections have been changed to reflect the addition. The Office of Prothonotary was created effective April 30, 1996, and is responsible ". . . for the filing, docketing, safekeeping, control, dissemination, record retention and retrieval of all documents filed with this agency. . . . Additionally, the Prothonotary will have the discretion to reject filings not properly perfected." Notice, 26 Pa.B. 1456 (March 30, 1996).

Our provisions for water and wastewater collection, treatment and disposal applications have been expanded and refined in order to update our regulations in accordance with new laws. Every effort has been made to incorporate the requirements of the Department of Environmental Protection in order to streamline and standardize the requirements for applicants and to reduce their regulatory burden while fulfilling our statutory mandate.

The following is a section-by-section description of the changes made to each section. The Commission thanks all who provided comments and suggestions.

Chapter 1. Rules of Administrative Practice and Procedure

Subchapter A. General Provisions.

§ 1.1. Scope of subpart.

The title is changed from "Scope of chapter."

§ 1.3. Information and special instructions.

The changes are the update of the Commission's mailing address by deleting the former zip code and including the correct nine-digit zip code, and by substituting "Prothonotary" as the office within the Commission which will receive filings.

§ 1.4. Filing generally.

Subsection (a) was updated to include the Commission's correct nine-digit zip code and the Prothonotary. Subsection (b) reflects the removal of the phrase "relevant file number," which has no independent meaning but is merely repetitive where the more commonly used "docket number" appears. The wording of the section is rearranged for greater clarity.

§ 1.5. *Amendment to rules.*

Here a semi-colon and a comma are removed from locations where they are not necessary.

§ 1.8. *Definitions.*

"Active parties" and "inactive parties" are defined in general rate cases to distinguish those who intend to play an active role at hearings (file testimony, cross-examine witnesses, and the like) from those who do not. The new language also sets forth the rights of "inactive parties" to testify at hearings and to obtain copies of all orders and decisions issued in the proceeding. A definition is added for "Prothonotary."

§ 1.9. *Organization chart.*

This section is deleted to eliminate the need to promulgate a regulation whenever the organization of the agency undergoes a change.

§ 1.11. *Date of filing.*

This rule is amended to add "Prothonotary" and to comply with the rules of the United States Post Office (USPO). The previous rule required attaching the proof of mailing certificate to the original document. The USPO rules, however, do not allow execution of a proof of mailing certificate for an unsealed envelope. Since the two rules were incompatible, this rule is changed.

The certificate of mailing itself is deleted since its periodic updating is beyond the control of the Commission, and its removal eliminates the need to promulgate a regulation whenever the USPO makes a change in the certificate.

A new subsection (c) is added to explicitly prohibit the filing of documents by telecopier facsimile with the Commission. This is to ensure that the Commission's files contain clear and legible original documents. This new provision, however, does not affect the ability of parties to a litigation to agree to accept faxed documents from each other.

The spacing and punctuation are adjusted to facilitate easier reading of this section.

§ 1.12. *Computation of time.*

The existing subsection (a) provides for part-day holidays to be counted as full days for computing due dates. This poses a problem on those days when the Commission's file room is closed for part of the day, such as when employees are sent home due to heavy storms. The case of *Commonwealth v. Koeck*, 360 Pa. Super. 200, 520 A.2d 53 (1987), held that an appeal was not late-filed when the appellant attempted to file on the afternoon of the 30th day but found the office closed for the latter half of the day, and was forced to file on the 31st day. The recommended change merely recognizes that an appellate court would be likely to strike any regulation which cuts short a filing period.

A new subsection (b) is added to spell out the computation of time prescribed or allowed by regulation or statute which is measured by counting a specified number of days backward from a scheduled future act.

§ 1.13. *Issuance of Commission orders.*

The change here reflects the correct citation.

§ 1.14. *Effective dates of Commission orders.*

Terminology is changed to be consistent with the law and practice of the Commission, which recognizes the entry of the order to be the effective date, unless otherwise specifically provided in the order.

§ 1.15. *Extensions of time and continuances.*

The title is changed to more accurately reflect the content of the section.

§ 1.21. *Appearance in person.*

This section is divided into four paragraphs for simplification. The first states that individuals may represent themselves. The second deals with representation before the Commission in adversarial proceedings, and the third concerns nonadversarial proceedings. The changes further define who may represent which type of entity before the Commission.

The fourth specifically spells out that in informal proceedings brought under the chapters relating to standards and billing practices for residential utility service and residential telephone service, parties may be represented by paralegals under the supervision of an attorney or by another appropriate individual.

§ 1.22. Appearance by attorney or legal intern.

In subsection (a), the term "a person" is replaced with the phrase "individuals, partnerships, associations, corporations or governmental entities," in order to clarify which entities may be represented by an attorney licensed in another state.

Subsection (b) is added to permit the Commission the discretion of allowing the right to practice before the Commission to a member of the bar of a state which does not grant Pennsylvania bar members reciprocal rights consistent with the Supreme Court Rules relating to admission pro hac vice.

Subsection (c) spells out that law students meeting the requirements of the Pa.B.A.R. No. 321 may represent clients consistent with 322.

§ 1.23. Other representation prohibited at hearings.

For consistency, the same substitution of "individuals, partnerships, associations, corporations or governmental units" is made for the word "person" that was made in the previous two sections.

§ 1.24. Notice of appearance or withdrawal.

In this section, which deals with who should file a notice of appearance or withdrawal, the phrase "in a particular proceeding which involves a hearing or an opportunity for hearing" was deleted to cut down on excess verbiage without changing the meaning of the section, and "him" is replaced with "the individual" to promote gender neutral phraseology. Further, additional language spells out that a change in address which occurs during the course of a proceeding shall be reported to the Secretary promptly.

§ 1.27. Suspension and disbarment.

Subsection (a) is altered to insert commas and to further define conduct which may result in suspension or disbarment from practice before the Commission. Subsection (a)(4) is added to specifically provide that the repeated failure to follow directives constitutes behavior which may be subject to discipline, as is "contemptuous" conduct, added in subsection (a)(3).

The definition of practice before the Commission is detailed more fully to include "appearances at any hearing before the Commission or a presiding officer" in the newly added subsection (b)(3).

§ 1.31. Form of documentary filings generally.

The word "file" is replaced with the more commonly used "docket," and the word "on" replaces the formerly-used "in."

§ 1.33. Incorporation by reference.

The words "and docket number" are added to clarify that the docket number should be used whenever a party wishes to incorporate a previously filed document by reference. Deleted language was excess verbiage, and the deletion did not change the meaning. "Prothonotary" is added to denote the correct office for checking the availability of a document.

§ 1.34. Single pleading or submittal covering more than one matter.

This section is revised to permit the submittal of one filing fee when a pleading refers to one or more related transactions to promote consolidation of filings and reduce administrative burdens while facilitating comprehensive analysis of related matter. However, the Commission may, upon review, determine that the

transaction should be refiled as two or more separate filings requiring additional fees if, in the Commission's judgment, the transactions are not closely related or otherwise properly joined.

§ 1.36. Verification.

This section is rearranged to facilitate easier understanding by beginning with a list of documents which require verification, then defining verification, and finally giving examples of a verification and an affidavit. The verification for motor carrier applicants now includes those transporting passengers.

§ 1.37. Number of copies.

The words are rearranged to allow easier reading of this section, and the number of copies to be submitted to the Commission has been increased from an original and two to an original and three.

§ 1.43. Schedule of fees payable to the Commission.

Following a cost study performed in-house, the fee for copies of microfilm per roll is being raised from \$25 to \$80 to reflect actual costs.

§ 1.51. Instructions for service and notice.

"Prothonotary" is added to denote the proper office within the Commission.

§ 1.52. Reserved.

The contents of this regulation are moved to Section 1.53(b) since it contains an exception to that section rather than a rule which should stand on its own.

§ 1.53. Service by the Commission.

Phraseology of subsection (a) is rearranged to facilitate easier understanding but the actual requirements have not changed. New subsection (b) is essentially old Section 1.52, providing the enumeration of those instances which require service by certified mail.

§ 1.54. Service by a participant.

Subsection (a) is divided into subsections (a), (b) and (c) for easier reference. In addition, subsection (c) now permits parties to serve each other by telecopier, but only if that method of service is agreed upon in advance. Service of a hard copy must follow the faxed copy.

§ 1.56. Date of service.

Subsection (a) is divided into smaller subsections for easier reading, and a fourth method of computing the date of service has been added to reflect the allowance of service by telecopier between parties.

§ 1.57. Proof of service.

The wording of this sentence is rearranged to make the section easier to understand but the meaning is unchanged.

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

Subsection (b) now requires that public utilities filing for bankruptcy notify the Offices of Consumer Advocate and Small Business Advocate as well as the Commission. Subsection (c) has been deleted since the Commission does not hold hearings on bankruptcy plans as a practice, and the requirement that a public utility which has filed for bankruptcy notify the Commission is included in the following subsection.

New subsection (c), formerly (d), clarifies which noun the word "its" modifies by replacing it with the phrase "the public utility's." Otherwise, the section remains the same.

§ 1.72. Formal case files.

The designation of the contents of testimony folders is changed to eliminate depositions, responses to interrogatories, admissions and other information obtained through discovery which do not belong in the official record unless admitted into evidence at hearing.

§ 1.76. Tariffs, minutes of the public meeting and annual reports.

Pursuant to a comment received, this section is changed to specifically add that tariffs, minutes and annual reports shall be available for copying during business hours.

§ 1.77. Extensions of time to review folders.

The name of this section is changed to more accurately reflect the nature of the section.

Subchapter I. Amendments or Withdrawals of Submittals.

The word "or" replaces the word "to" in the title for greater accuracy.

§ 1.86. Docket.

Excess wording is eliminated without changing the meaning of the section, and "Prothonotary" is added.

§ 1.91. Applications for waiver of formal requirements.

The language is rearranged so that the subject of the section appears at the beginning instead of the middle. The meaning remains the same.

§ 1.96. Unofficial statements and opinions by Commission personnel.

The introductory phrase and last sentence are eliminated as unnecessary. "Reports drafted by Commission bureaus" are added to the list of items which this section specifically mentions as not having the force and effect of law and are not binding on the Commission.

Chapter 3

§ 3.1. Definitions.

The definition of "emergency order" is changed to reflect the current Commission practice of issuing emergency orders signed by the Commission Secretary when a Commissioner or the Director of Operations is not available.

§ 3.2. Issuance or denial of emergency order.

The list of Commission officials who are authorized to issue emergency orders is enlarged to include the Commission's Secretary, and the section now provides for procedures for denial of petitions for emergency order when denial is by less than the full Commission.

§ 3.3. Form of emergency order.

A copy of emergency orders shall be served upon the Prothonotary for inclusion in the formal record.

§ 3.4. Hearing on emergency order.

For easier reading, this section is divided into two subsections. The Commission's Secretary has been added to the list of Commission personnel whose order may be stayed by the presiding officer. The substance of the section has not been changed. New subsection (b) specifies that a petition for emergency order denied by less than the full Commission will be deemed ratified as denied if not acted upon at the next public meeting following service of denial.

§ 3.5 Ratification of emergency order.

The Commission's Secretary is added to the list of personnel whose orders will be affirmed or revoked at the public meeting following issuance.

§ 3.6. *Petitions for interim emergency orders.*

Subsection (d) now provides for filing with the Prothonotary.

§ 3.7. *Issuance of interim emergency orders.*

Subsection (b) is changed with the substitution of the word "will" for the existing "shall."

§ 3.10. *Commission review of interim emergency orders.*

Wording is changed to clarify that the presiding officer will certify the question of granting or denying the relief requested whether he or she grants or denies it. Previous wording left some question whether certification was necessary if the question were denied.

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

Section references are clarified, and the requirement that informal complaints be filed with the Commission's Bureau of Consumer Services except in rate cases is added. Complaints filed in rate cases shall be filed with the Prothonotary.

§ 3.112. *Action on informal complaints.*

Subsection (a) now provides that a copy of an informal complaint filed in a matter which is already docketed will be placed in the folder of that docket, and a reference to Chapter 64 is added. Subsection (c) is added to state clearly that the filing of an informal complaint does not entitle complainant to a formal hearing.

§ 3.113. *Resolution of informal investigations.*

Language is added to specify that Commission staff may conduct informal investigations and that staff may also initiate formal investigations. This language change eliminates the implication that the Commissioners might initiate a formal investigation that is prosecutory in nature.

§ 3.163. *Policy statement concerning public input hearings in rate proceedings.*

This policy statement is deleted from the rules of practice and will be placed in Chapter 69 with the other policy statements.

§ 3.501. *Certificate of public convenience as a water or waste water collection, treatment and disposal supplier.*

The section is expanded to cover wastewater treatment suppliers. Although more detail is required, most of the requirements can be met by submitting the same documents to the Commission as must be submitted to DEP. Alternate forms may be used if the applicant elects not to submit the DEP forms. Subsection (a) now provides that applicants not submitting the DEP Business Plan must use the current form available from the Commission and spells out the filing requirements for these applications.

Subsection (b) spells out that incomplete applications can be rejected. Subsection (d) requires service of applications upon the Office of Consumer Advocate, Office of Small Business Advocate and the Department of Environmental Protection. The protest section has been removed and made into new § 3.502.

§ 3.502. *Protests to applications for certificate of public convenience as a water or wastewater collection, treatment and disposal supplier.*

This new section is added to replace and expand the protest subsection removed from § 3.501. Requirements for filing protests are now set out in more detail and include filing with the Prothonotary.

§ 3.551. *Official forms.*

Forms from this section have been removed and replaced with a list of those forms which will be available to the public from a central form repository at the Commission.

Subchapter I. Registration of Securities

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§ 3.601. *General.*

This new section contains information which presently appears in Form L but should be in regulatory form. None of the information is new although some has been deleted to reflect the changes in the law over the years.

§ 3.602. *Abbreviated securities certificate.*

This section is added to relocate information which presently appears in Form M, which will be removed. This information should be in regulatory form. None of the information is new although some has been deleted to reflect actual practice of the Commission, including filing with the Prothonotary.

Chapter 5

§ 5.11. *Applications generally.*

Wording of this section is changed to permit more flexibility in applications while providing guidance to applicants by suggesting that applications conform to official forms and subchapter requirements.

§ 5.12. *Contents of applications.*

This section reflects that the forms have been removed from the regulations but that specific requirements appearing in the regulations shall be followed.

§ 5.14. *Applications requiring notice.*

Subsection (b) is changed to point out the specific provision of § 3.501 which refers to a different time period than is provided here. Prothonotary is substituted to reflect the correct office to direct filing.

§ 5.21. *Formal complaints generally.*

Subsection (c) now requires a complainant to serve a copy of the complaint on the Commission's Office of Trial Staff, as well as the Office of Consumer Advocate and Office of Small Business Advocate, if the complaint proposes to change an existing or proposed tariff.

New subsection (d) spells out that the filing of a formal complaint generally entitles complainant to a formal trial-type hearing unless the Commission dismisses it, and it refers litigants to the appropriate sections governing motions.

Subsection (e) has been added to spell out that no party is directly responsible for answering complaints that are filed against the Commission. Issues will be determined prior to a hearing by prehearing conference memos with no party acting on behalf of the Commission itself.

§ 5.22. *Contents of formal complaint.*

A new subsection (b) has been added to require that a verification be attached to the complaint.

§ 5.31. *Staff-initiated complaints.*

Formerly entitled "Order to show cause," this subsection (a) is adapted to include new Commission procedures developed as a result of *Lyness v. State Board of Medicine*, 529 Pa. 535, 605 A.2d 1204 (1992). New procedures provide for Commission staff to initiate complaints before the Commission. A new subsection (b) has been added to spell out the Commission's procedure when a party files a petition.

§ 5.41. *Petitions generally.*

A new subsection (b) has been added to require that petitions shall be served upon the Office of Consumer Advocate, the Office of Trial Staff, and the Office of Small Business Advocate.

§ 5.42. *Petitions for declaratory orders.*

Subsection (b) requires that service include a copy to the Office of Trial Staff and the Office of Small Business Advocate.

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

"Prothonotary" is substituted to reflect the proper office for filing the application. Nothing else is changed.

§ 5.53. *Time of filing.*

Reference to a water and wastewater collection, treatment and disposal supplier section is added.

§ 5.61. *Answers to complaints, petitions and motions.*

Subsection (a) has been altered to include motions. The wording has been changed in subsection (b) to clarify it without changing its meaning.

Subsection (c) specifically exempts complaints which are docketed with Commission-instituted rate investigations from vulnerability to default judgments. A new subsection (d) specifies that answers may be filed to complaints filed in Commission-instituted rate investigations but that they are not required unless ordered by the Commission or presiding officer.

§ 5.62. *Answers seeking affirmative relief or raising new matter.*

Time for filing a reply to new matter is increased from 10 to 20 days. Wording is added to specify that failure to file a timely reply to new matter shall be deemed in default and that relevant facts stated in the new matter may be deemed to be admitted.

§ 5.64. *Answers to orders to show cause.*

This section is deleted to reflect that Commission procedures no longer include orders to show cause. Under *Lyness*, Commission prosecutory staff files complaints, and answers to complaints are discussed § 5.61.

§ 5.71. *Initiation of intervention.*

Grammatical changes are made without changing the meaning of the section.

§ 5.74. *Filing of petitions to intervene.*

The main paragraph is divided into two smaller sections for ease of reference. Language is added to provide that intervention will not be permitted once an evidentiary hearing has concluded absent extraordinary circumstances.

§ 5.102. *Motions for summary judgment and judgment on the pleadings.*

Subsection (c) is divided into two parts to clarify the procedure to be followed when motions for summary judgment and judgment on the pleadings are filed. Subsection (c)(2) is added to allow the administrative law judge to grant a partial summary judgment under certain circumstances.

§ 5.103. *Motions.*

This section now applies to all motions not covered elsewhere instead of being limited to hearing motions.

Subsection (d) is revised for clarity, and subsection (d)(3) provides that a presiding officer may render a final determination with regard to a motion prior to the termination of hearings by issuing an initial or recommended decision when a motion involves a question of jurisdiction, the establishment of a prima facie case or standing.

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

Subsection (c)(4)(v) is replaced by a more detailed subsection regarding discovery to be addressed at prehearing conferences.

§ 5.224. *Prehearing conference in rate proceedings.*

A sentence in subsection (b) is deleted because it was unnecessary and added nothing to the paragraph. Subsections (b)(1) and (2) have been expanded to suggest details regarding discovery requests for prehearing conferences in rate proceedings. Subsection (d) provides that the presiding officer may identify the active parties

for purposes of service and may determine whether a public input session should be held, if that decision has not already been made.

Subsection (f) references specific authority provisions for presiding officers and then provides that the officer or a mediator may participate in settlement discussions.

§ 5.231. Offers of settlement.

A sentence is added providing that participants may request that the presiding officer or an additional presiding officer or mediator be appointed to participate in settlement negotiations.

§ 5.232. Stipulations and settlements.

Wording is adjusted to clarify the section, and a sentence is added to require that settlements identify the other participants which were provided or denied an opportunity to enter into the subject stipulation or settlement.

§ 5.235. Motor carrier restrictive amendments.

A phrase is added to specify that the section applies only to motor carrier applications for passenger or household goods in use authority to comply with Federal law.

§ 5.242. Order of procedure.

A new subsection is added to specifically allow the presiding officer the right to direct the order of participants for purposes of cross-examination.

§ 5.243. Presentation by participants.

Subsection (e) is expanded to include partial settlements.

§ 5.253. Transcript corrections.

This section is clarified to spell out a procedure for proposing transcript corrections and under what conditions they can be allowed. Subsection (f) states that an unopposed request for corrections not acted upon within 30 days will be deemed granted.

§ 5.301. Interlocutory review generally.

Only grammatical changes are made to this section.

§ 5.302. Petition for interlocutory Commission review and answer to a material question.

A grammatical change is made to subsection (a), and the maximum allowed length of the petition has been increased from one to three pages.

§ 5.303. Commission action on petition for interlocutory review and answer.

The word "interlocutory" is inserted in the title to clarify the subject of the section, a minor adjustment is made to the wording in subsection (a) without changing the meaning.

§ 5.304. Interlocutory review of discovery matters.

The maximum length of a request for interlocutory review of a ruling on discovery is increased from one to three pages, and any brief either in support or opposition is now limited to 15 pages. The changes in subsection (a)(4) and (5) clarify the actions required of the presiding officer, and new subsection (e) provides that the failure of the Commission to act on a certified question within 30 days is deemed to be an affirmance of the decision of the presiding officer.

§ 5.305. Interlocutory review of a material question submitted by a presiding officer.

Subsection (f) is added to provide that the failure of the Commission to act upon a certified question within 30 days will be deemed to be an affirmance of the decision of the presiding officer.

§ 5.306. *Notification by telephone.*

This section provides that any telephone notification ordered by a presiding officer will be confirmed by the presiding officer by service in writing.

§ 5.321. *Scope.*

Subsection (a) is expanded to provide more detail regarding which types of proceedings fall within this section.

§ 5.324. *Discovery of expert testimony.*

New language states that the answer, report or testimony signed by the expert shall be deemed to be provided under oath in accordance with 66 Pa.C.S. § 333(d) (relating to prehearing procedures).

§ 5.331. *Sequence and timing of discovery.*

Subsection (d) is altered to provide that initial discovery directed to data supplied by the public utility at the time of the initiation of the proceeding shall be submitted to the utility within 10 working days following the first prehearing conference.

§ 5.332. *Supplementing responses.*

In paragraphs (1) and (2), the word "seasonably" is replaced with the word "continuing," which is more accurate. The meaning of the subchapter has not been changed.

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

Subsection (d) is divided into two more sections for ease of reference. A phrase is added to make clear that discovery shall only be filed with the Prothonotary if there is an objection.

§ 5.343. *Procedures in deposition by oral examination.*

A phrase is added to specifically recognize that another provision exists for the taking of depositions.

§ 5.345. *Procedure on depositions by written questions.*

The word "trial" is replaced with the more commonly used "hearing" in the interests of consistency in subsection (c). Subsection (d) requires that following completion of the deposition questions, the deposed shall return the deposition to the sender instead of filing it with the Commission. The requirement that the Secretary notify other participants of the receipt of the deposition is eliminated.

§ 5.346. *Persons before whom depositions may be taken.*

The word "insular" is removed as unnecessary.

§ 5.348. *Transcript of deposition, objections and filing.*

The requirement that a deposition be filed with the Secretary is deleted since the official file no longer contains depositions.

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

In subsection (a)(1), computer records are added to the list of documents which are discoverable. The Offices of Small Business Advocate and Trial Staff are now included with the Office of Consumer Advocate to receive copies of discoverable materials from regulated utilities at no charge.

§ 5.371. *Sanctions generally.*

Two new subsections are added to provide a set time period for answering and deciding motions for sanctions.

§ 5.401. *Admissibility of evidence.*

The word "men" is replaced with the gender-neutral "persons."

§ 5.413. *Reserved.*

Formerly "Fees of witnesses," the substance of this section is placed in § 5.421, where it is more appropriate.

Subpoenas and Protective Orders

The title is expanded to state that the section covers protective orders as well.

§ 5.421. *Subpoenas.*

A sentence is added to subsection (a) to state that the proposed subpoena may be attached to the application. Subsection (b) now provides that a copy of an application for a subpoena of a Commission employee must be served on the Commission's Law Bureau.

Subsection (c) is divided into two sections for ease of reference and provides that service by mail may be accomplished by any form of mail requiring a return receipt. Service is complete upon delivery of the mail to the participant or according to Pa.R.C.P. No. 402(a)(2).

Subsection (d), instead of referring to § 5.413, now replaces it by providing that witnesses be paid the same fees and mileage as witnesses in courts of common pleas.

§ 5.431. *Close of the record.*

A reference to § 5.402(b) is inserted to draw attention to the provision which sets out the requirements for admission of evidence following the close of the record. The substance of this section is not changed.

§ 5.482. *Disqualification of a presiding officer.*

This section is expanded and set out in an easy-to-read format. It details the procedure under which a party may request that a presiding officer be removed from a case.

§ 5.483. *Authority of presiding officers.*

The addition to this section expands the authority of a presiding officer to include the scheduling and imposition of reasonable limitations on discovery as discussed in the earlier sections relating to discovery.

§ 5.502. *Filing and service of briefs.*

The incorrect room number of the New Filing Section is removed from this section.

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

Subsection (b) changes the format requirement from stating each exception in a numbered paragraph to simply numbering the exceptions, which allows more than one paragraph per exception. Only grammatical changes were made to subsection (c). New subsection (e) specifically states that the 3-day mailbox rule does not apply to exceptions.

§ 5.536. *Effect of failure to file exceptions.*

In subsection (a), the word "will" is changed to "may" since there are decisions issued by administrative law judges which will not become final without some action by the Commission.

§ 5.539. *Withdrawal of appeals.*

This section is divided into two subsections. The first is new and spells out that filing of exceptions is an appeal of a recommended or initial decision to the Commission. The second section provides that an appeal to the Commission may be withdrawn at any time, and if an appeal of an order not otherwise subject to Commission review is withdrawn, then the order becomes final upon withdrawal of the appeal.

§ 5.572. *Petitions for relief following a final decision.*

These sections are rearranged to clarify that petitions for reconsideration, rehearing, reargument, clarification, and supersedeas must be filed within 15 days of entry of an order, and that petitions for rescission and amendment may be filed at any time. No substantive changes are made.

§ 5.591. *Reports of compliance.*

"Prothonotary" is substituted for "Secretary."

§ 5.592. *Compliance with orders prescribing rates.*

An additional reference is added to subsection (a), but the meaning is unchanged.

§ 57.26. *Construction and maintenance of facilities.*

This section sets the standards for maintenance and construction of facilities according to the most recent National Electrical Safety Code rather than a particular edition.

§ 57.45. *Preservation of records.*

Public utilities are now required to keep records according to the most recent publication of the National Association of Regulatory Utility Commissioners rather than the publication of a particular year.

§ 59.45. *Preservation of records.*

Gas utilities are required to keep records according to the current publication applicable rather than that of a particular year.

Accordingly, under sections 501, 504--506, 1301 and 1501 of the Public Utility Code, 66 Pa.C.S. §§ 501, 504--506, 1301 and 1501, and the Commonwealth Documents Law (45 P. S. § 1201 et seq.), and the regulations promulgated thereunder at 1 Pa. Code §§ 7.1--7.4, the Commission adopts final-form regulations pertaining to practice and procedure before the Commission to read as set forth in Annex A, *Therefore*,

It is Ordered that:

1. The Commission's regulations, 52 Pa. Code Chapters 1, 3 and 5, are amended by:

(a) adding §§ 3.502, 3.601 and 3.602;

(b) deleting §§ 1.9, 1.52, 3.163, 5.64 and 5.413; and

(c) amending §§ 1.1, 1.3--1.5, 1.8, 1.11--1.15, 1.21--1.24, 1.27, 1.31, 1.33, 1.34, 1.36, 1.37, 1.43, 1.51, 1.53, 1.54, 1.56, 1.57, 1.61, 1.72, 1.76, 1.77, 1.86, 1.91, 1.96, 3.1--3.8, 3.10, 3.111--3.113, 3.501, 3.551, 5.11, 5.12, 5.14, 5.21, 5.22, 5.31, 5.41, 5.42, 5.52, 5.53, 5.61, 5.62, 5.71, 5.74, 5.102, 5.103, 5.222, 5.224, 5.231, 5.232, 5.235, 5.242, 5.243, 5.253, 5.301--5.306, 5.321, 5.324, 5.331, 5.332, 5.342, 5.343, 5.345, 5.346, 5.348, 5.349, 5.371, 5.401, 5.412, 5.421, 5.431, 5.482, 5.483, 5.502, 5.533, 5.536, 5.539, 5.572, 5.591, 5.592, 57.26, 57.45 and 59.45, to read as set forth in Annex A.

2. The Secretary shall submit this order and Annex A to the Office of Attorney General for approval as to legality.

3. The Secretary shall submit this order and Annex A to the Governor's Budget Office for review of fiscal impact.

4. The Secretary shall submit this order and Annex A for formal review by the designated standing committees of both Houses of the General Assembly, and for formal review and approval by IRRC.

5. The Secretary shall deposit this order and Annex A with the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*, effective upon publication.

6. A copy of this order shall be served upon all persons who submitted comments in this rulemaking proceeding.

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