



February 5, 2025

VIA E-FILE

Rosemary Chiavetta, Secretary
PA Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105

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

Dear Secretary Chiavetta:

Please find the attached **Comments of the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA) and Tenant Union Representative Network (TURN)**, which is respectfully submitted for filing in the above-noted proceeding.

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

Respectfully submitted,

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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)

CERTIFICATE OF SERVICE

I hereby certify that I have, on this day, served copies of the **Comments of the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA) and Tenant Union Representative Network (TURN)** in the above captioned matter upon the following persons and in accordance with the requirements of 52 Pa. Code § 1.54.

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Provisions; and Formal Proceedings) :

COMMENTS OF
THE COALITION FOR AFFORDABLE UTILITY SERVICES AND ENERGY EFFICIENCY
IN PENNSYLVANIA (CAUSE-PA) AND
TENANT UNION REPRESENTATIVE NETWORK (TURN)

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I. INTRODUCTION

The Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA)¹ and the Tenant Union Representative Network (TURN)² respectfully submit the following Comments to the Commission's Clarified Notice of Proposed Rulemaking (NOPR) related to 52 Pa. Code §§ 1.1—1.96, 3.1—3.602, and 5.01—5.633 (hereafter, Chapters 1, 3, and 5), published in the Pennsylvania Bulletin on December 7, 2024. Publication of this NOPR opened a 90-day comment period, inclusive of a 60-day initial comment period and a 30-day reply comment period.

Chapters 1, 3, and 5 of the Commission's regulations set forth the rules of administrative practice and procedure, special provisions, and formal proceedings before the Commission. Taken together, the provisions set forth in Chapters 1, 3, and 5 prescribe how consumers, utilities, and other interested persons access and enforce utility rights and protections throughout Pennsylvania. The last time that these general provisions regarding practice before the Commission were revised was nearly 20 years ago, in 2006.³ Since then, the utility landscape has changed dramatically, and technology has transformed the way consumers communicate and engage with their utility. Costs have also increased significantly, and consumers have faced mounting levels of utility debts and rising levels of involuntary terminations which impact their ability to stay safe and healthy in their homes. These fundamental changes necessitate review and revision of the rules of practice before the Commission to ensure that consumers and other interested persons can meaningfully and adequately enforce their rights and protections under statute and Commission regulation.

¹ CAUSE-PA is an unincorporated association of low income Pennsylvanians from all corners of the state that advocates on behalf of its members to families of limited economic means across the state are able to connect and maintain safe and affordable water, electric, heating and telecommunication services to their home.

² TURN is a not-for-profit organization with moderate- and low-income tenant members. All of TURN's members are either customers of or dependent on service from the public utilities of this Commonwealth. TURN has intervened in numerous matters before the Commission.

³ NOPR at 2.

CAUSE-PA and TURN are supportive of the Commission’s undertaking to revise its regulations contained in Chapter 1, 3, and 5, and the detailed rules of practice contained therein.⁴ Nevertheless, we urge further amendments to Chapters 1, 3, and 5 to help ensure consumers can meaningfully access appropriate relief – and just and equitable resolutions to utility issues and disputes. As we discuss at length below, we offer a comprehensive suite of recommendations designed to better ensure that the provisions in Chapters 1, 3, and 5 provide meaningful access to the Commission’s processes. We urge the Commission to take decisive action, as outlined in these Comments, to clarify and improve its rules of practice so that consumers can meaningfully enforce their rights and protections afforded under statute and Commission regulation in a manner consistent with the policies of the Commission and the Commonwealth.

II. BACKGROUND

Section 501, Title 66 of the Pennsylvania Consolidated Statutes sets forth the general powers of the Commission, and provides, in relevant part, that the Commission has the full power and authority – as well as the duty – “to enforce, execute and carry out, by its regulations, orders, or otherwise” the provisions and full intent of the provisions of Title 66.⁵ Section 501(b) further provides, in relevant part, that the Commission has the “general administrative power and authority to supervise and regulate all public utilities doing business within this Commonwealth.”⁶

To carry out its powers and duties, the Commission has set forth regulations in Chapters 1, 3, and 5 which provide rules of practice before the Commission. These rules prescribe how utilities, consumers, and other interested persons access the Commission. Meaningful access to

⁴ NOPR at 1-2.

⁵ 66 Pa. C.S. § 501(a).

⁶ 66 Pa. C.S. § 501(b).

the Commission through the pathways set forth in Chapters 1, 3, and 5 determines whether consumers can protect their interests and enforce the rights provided for under statute, Commission regulation, and formal Commission policy. It is therefore essential to ensure that Chapters 1, 3, and 5 are drafted in a way that ensures consumers can access just and equitable relief from the Commission and, in turn, protect their ability to maintain life essential utility services to their home.

While meaningful access to the Commission is essential for all consumers, it is particularly important for financially vulnerable low income consumers. Approximately one quarter of Pennsylvania’s electric and gas customers are estimated to have low household incomes, including over 1.2 million electric customers and over 720,000 gas customers.⁷ Low income customers are more likely to interact with the Commission than other consumers because low income consumers face disproportionately high utility burdens which lead to accrual of unmanageable arrears, payment trouble, and involuntary termination of services.

To contextualize the importance of ensuring that Chapters 1, 3, and 5 set forth processes that are accessible and equitable to all consumers, it is essential to understand the significant challenges that low income consumers face in affording and staying connected to services. Utility insecurity is pervasive across Pennsylvania.⁸ A household’s utility burden is the

⁷ Pennsylvania Public Utility Commission, [Universal Service Programs & Collections Performance 2023](#) at p. 9, available at: [2023-universal-service-report-final.pdf](#). Water and wastewater utilities are not currently required to track and report on low income customer data; however, it is likely there are well over 200,000 low income customers who rely on water and wastewater service from Pennsylvania’s investor-owned water and wastewater utilities. See Pa. PUC v. Aqua, CAUSE-PA Statement in Support, Docket Nos. R-2024-3047822, et al, at 4, FN 8 (Settlement with Statement in Support filed Nov. 7, 2024), citing to CAUSE-PA St. 1 at 12: 6-13; CAUSE-PA St. 1 at 13: 17-19. Aqua indicates that it has 28,918 confirmed low income customers (customers at or below 150% FPL) as of June 2024, and 109,143 estimated low income customers (customers at or below 200% FPL). Pa. PUC v. PAWC, CAUSE-PA Main Brief, Docket Nos. R-2023-3043189, et al, at 13 (CAUSE-PA Main Brief filed March 26, 2024), “As of December 2023 (the most recent data provided), PAWC indicates that it has 64,803 confirmed low income customers and approximately 114,343 estimated low income customers.” (internal citation omitted).

⁸ See [Universal Service Programs & Collections Performance 2023](#) at 15, available at: [2023-universal-service-report-final.pdf](#), reporting 200,410 residential electric customers and 125,411 residential gas customers experienced service termination in 2023.

proportion of household income spent on utility costs. There is general agreement that, to be affordable, a combined energy burden should not exceed 6% of household income and combined water/wastewater burden should not exceed 4% of household income.⁹

Low income households pay a much higher proportion of income on their utility bills than higher income families. Disparities in utility burden are particularly pronounced for low income households of color.¹⁰ Low income households regularly pay between 10-30% of their income on home energy costs, while middle and high income households only pay between 2-4% of household income toward home energy costs.¹¹ According to the United States Census Bureau's Household Pulse Survey, 25% of Pennsylvanians reported that they were unable to afford their energy bill in January 2024.¹² In addition to these high energy burdens, water and wastewater costs have been rising precipitously across the Commonwealth with a slew of increases to jurisdictional water and wastewater basic rates of service in recent years.¹³ Many

⁹ 2019 Amendments to Policy Statement on Customer Assistance Program, 52 Pa. Code § 69.261–69.267, Docket No. M-2019-3012599 at 13-14. See NRDC, Water Affordability Toolkit: Affordability and Assistance Programs, at 73, available at: <https://www.nrdc.org/sites/default/files/water-affordability-toolkit-section-8.pdf>; Roger Colton, The Affordability of Water and Wastewater Service in Twelve US Cities, *The Guardian* (May 2020), available at: <https://www.theguardian.com/environment/2020/jun/23/full-report-read-in-depth-water-poverty-investigation>; NAACP Legal Defense and Educational Fund, Inc., Water/Color: A Study of Race & The Water Affordability Crisis in America's Cities (2019), available at:

https://www.naacpldf.org/wpcontent/uploads/Water_Report_FULL_5_31_19_FINAL_OPT.pdf; Lauren Patterson et al., Affordability of Household Water Services Across the United States, *PLOS* (May 10, 2023), [https://journals.plos.org/water/article?id=10.1371/journal.pwat.0000123#:~:text=The%20average%20indoor%20per%20capita,labor%20for%20minimum%20wage%20earners](https://journals.plos.org/water/article?id=10.1371/journal.pwat.0000123#:~:text=The%20average%20indoor%20per%20capita,labor%20for%20minimum%20wage%20earners;);

¹⁰ U.S. Dep't of Energy, Energy Info. Admin., 2020 Residential Energy Consumption Survey, <https://www.eia.gov/consumption/residential/data/2020>; see also Diana Hernández & Jennifer Laird, Surviving a Shut-Off: U.S. Households at Greatest Risk of Utility Disconnections and How They Cope, 66 *Am. Behavioral Sci.* 856 (2020), available at: <https://journals.sagepub.com/doi/epub/10.1177/00027642211013401>; Jamal Lewis, Diana Hernández, & Arlene Geronimus, Energy Efficiency as Energy Justice: Addressing Racial Inequities through Investments in People and Places, 13(3) *Energy Effic.* 419 (Mar. 2019), available at: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7966972/>.

¹¹ *Id.*; see also PUC, Bureau of Consumer Services, Home Energy Affordability for Low-Income Customers in Pennsylvania, Docket No. M-2017-2587711 (Jan. 2019).

¹² US Census Bureau, Household Pulse Survey, Pennsylvania – Jan. 9 – Feb. 5, 2024, available at: https://www.census.gov/data-tools/demo/hhp/#/?s_state=00042&measures=ENERGYBILL.

¹³ Pa. PUC v. PWSA, Order, Docket No. R-2023-3039919; R-2023-3039920; R-2023-3039921 (Order entered Jan. 18, 2024). Pa. PUC v. Aqua Pa., Inc., and Aqua Pa. Wastewater, Inc., Recommended Decision, Docket Nos. R-2024-3047822 & R-2024-3047824 (RD entered Dec. 19, 2024) (final order pending). Pa. PUC v. PAWC, Opinion and Order, Docket Nos. R-2023-3043189, et al (Order entered Sept. 26, 2024).

low income water and wastewater customers pay 10% of income or more for water and wastewater services.¹⁴ These extremely high utility costs are not sustainable.

As discussed in further detail below, these rising costs and associated burdens lead to significant payment troubles and loss of essential utility services for low income consumers. In 2023, the termination rate for electric confirmed low income customers was 13.5%, compared to the termination rate of 3.9% for all residential electric customers, while the termination rate for gas confirmed low income customers was 11.6%, compared to the termination rate of 4.5% for all residential gas customers.¹⁵ Utility unaffordability has posed a growing threat to the financial stability and safety of low income families since the last revision to the Commission's rules of practice in 2006. In December 2022, involuntary terminations of residential electric, gas, and water services were up 3% year over year.¹⁶ As of August 2023, involuntary terminations were up 8% year over year.¹⁷ While jurisdictional water/ wastewater utilities are not required to report on low income termination rates in the same manner as jurisdictional electric and gas utilities, data has been made available through various Commission proceedings which show that low income consumers and their households face involuntary water termination at far greater rates than consumers with higher incomes, despite the availability of certain low income assistance programs amongst larger jurisdictional water and wastewater utilities.¹⁸

¹⁴ Pa. PUC v. PAWC, CAUSE-PA Statement 1 (Direct Testimony, Harry S. Geller), Docket Nos. R-2023-3043189, et al, at Exhibit 1 (Direct Testimony dated February 1, 2024). Pa. PUC v. Aqua, CAUSE-PA Statement 1 (Direct Testimony, Harry S. Geller), Docket Nos. R-2024-3047822, et al, at CAUSE-PA Exhibit 1 (Direct Testimony dated Aug. 16, 2024).

¹⁵ 2023 Universal Service Report at 14-15.

¹⁶ Pa. PUC, Terminations and Reconnections: Year-to-Date Dec. 2021 vs. Year-to-Date Dec. 2022 (distributed by the PUC, on file with PULP). Note that the Commission does not publish prior year-to-date termination data comparisons on its website.

¹⁷ Pa. PUC, Terminations and Reconnections: Year-to-Date Aug. 2022 vs. Year-to-Date Aug. 2023, available at: <https://www.puc.pa.gov/media/2514/terminations-reconnectionsyt-d-july22vs23.pdf>. This increase in termination rates would have been even higher if PPL Electric had not paused terminations through July as a result of widespread billing errors through early 2023.

¹⁸ See, e.g., Pa. PUC v. PAWC, Direct Testimony, Docket Nos. R-2022-3031672; R-2022-3031673, at 16 (Direct Testimony of Harry S. Geller, Esq. dated June 29, 2022).

The consequences of this growing utility insecurity are severe – particularly for those consumers who cannot address their payment troubles through the utility or seeking relief with the Commission. Involuntary loss of utility services and the overwhelming utility burden faced by low income households has severe and lasting impacts on the health, safety, financial stability of individuals, families, and communities.¹⁹ When faced with utility insecurity, low income families are often forced to make impossible decisions as to which life-sustaining needs they will cover, regularly forgoing food, medicine, and medical care to keep the lights on and the temperature stable in their home. In 2022, 52.9% of lower income families reported forgoing food or medicine at least once to pay their home energy bills.²⁰ Water shutoffs pose a threat to public health and human dignity because without access to running water, families are unable to cook, bathe, clean, or flush their toilets.²¹ Moreover, access to water service is tied directly to the health and well-being of the household, and the habitability of the home.²²

¹⁹ Diana Hernández, Understanding 'energy insecurity' and why it matters to health, Soc Sci Med. at 167: 1-10 (Oct. 2016), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5114037/>. See Joint State Government Commission, General Assembly of the Commonwealth of Pennsylvania,

Homelessness in Pennsylvania: Causes, Impacts, and Solutions: A Task Force and Advisory Committee Report (2016), available at:

<http://jsg.legis.state.pa.us/resources/documents/ftp/documents/HR550%201%20page%20summary%204-6-2016.pdf>. See United States Energy Information Administration, 2020 Residential Energy Consumption Survey, Table HC11.1 Household energy insecurity, 2020 available at:

<https://www.eia.gov/consumption/residential/data/2020/hc/pdf/HC%2011.1.pdf>; see also NEADA, 2018 National Energy Assistance Survey, at 17, 20 (Dec. 2018), available at: <http://neada.org/wp-content/uploads/2015/03/liheapsurvey2018.pdf> (hereinafter NEADA Survey). See Joint State Government Commission, General Assembly of the Commonwealth of Pennsylvania,

Homelessness in Pennsylvania: Causes, Impacts, and Solutions: A Task Force and Advisory Committee Report (2016), available at:

<http://jsg.legis.state.pa.us/resources/documents/ftp/documents/HR550%201%20page%20summary%204-6-2016.pdf>. Coty Montag, Water/Color: A Study of Race and the Water Affordability Crisis in America's Cities, NAACP Legal Defense and Educational Fund, Inc, May 2019, at p. 28, (hereinafter “Water/Color Report”) available at: https://www.naacpldf.org/wp-content/uploads/Water_Report_FULL_5_31_19_FINAL_OPT.pdf.

²⁰ Nat'l Energy Assist. Dir. Ass'n (NEADA), Energy Hardship Report (Nov. 2022), at 20, available at: https://neada.org/wp-content/uploads/2022/11/NEADA-Energy-Hardship-Report_Final.pdf.

²¹ Water/Color Report at 28.

²² Id.

The loss of essential utility service is also a common catalyst to homelessness,²³ which ultimately causes communities to expend an even greater level of resources to adequately address homelessness and protect the overall safety and well-being of community members. Indeed, a 2016 report of Pennsylvania’s Joint State Government Commission on Homelessness found that utility assistance ranked in the top three types of assistance noted by survey respondents (24.1 percent) that would have prevented homelessness.²⁴ Utility insecurity and resulting payment trouble is increasingly recognized as a predictor of first-time homelessness,²⁵ confirming the need to improve timely access to rate assistance programs to prevent the more costly consequences of homelessness to individuals, families, and communities.

Importantly, consumers are required to spend significant resources when they are attempting to navigate the accrual of debt and termination of service caused by utility insecurity. Before a consumer turns to the Commission’s complaint processes, they spend significant time negotiating with their utilities. This often requires consumers to take time away from their work and other obligations and may require that they spend hours on hold with multiple agencies and/or customer service representatives. For hourly workers, time to handle personal matters during business hours is oftentimes severely limited. Low wage workers often do not have access to paid

²³ See Joint State Gov’t Comm’n, Gen. Assembly of the Commw. of Pa., Homelessness in Pennsylvania: Causes, Impacts, and Solutions: A Task Force and Advisory Committee Report (2016), available at: <http://jsg.legis.state.pa.us/resources/documents/ftp/documents/HR550%201%20page%20summary%204-6-2016.pdf>.

²⁴ Joint State Government Commission, Homelessness in Pennsylvania: Causes, Impacts, and Solutions, at 112, 157, 160 (April 2016), available at: http://jsg.legis.state.pa.us/publications.cfm?JSPU_PUBLN_ID=447 (“When asked if there were any services that may have prevented them from becoming homeless, the women responded overwhelmingly that assistance with past-due rent and utilities, security deposit, and first and last months’ rent would have been most beneficial.”).

²⁵ Colin Middleton, Kim Boynton, David Lewis & Andrew M. Oster, The Value of Utility Payment History in Predicting Homelessness, PLOS (Oct. 9, 2023), available at: <https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0292305>.

time off or flexible work schedules and may have to sacrifice wages even if they are afforded time during normal business hours for personal matters.

The unaffordability, payment troubles, and severe constraints faced by low income consumers underscore the importance of ensuring that the Commission's rules of practice are revised to ensure that consumers can equitably and meaningfully access the Commission and its processes. Through the instant proceeding, the Commission has the opportunity to revise, clarify, and strengthen its rules of practice contained in Chapters 1, 3, and 5 to better ensure this accessibility.

III. PROCEDURAL HISTORY

On April 29, 2006, the Commission issued a Final Rulemaking which revised the provision of Chapters 1, 3, and 5 of its regulations.²⁶ In its 2006 Final Rulemaking Order, the Commission noted that its rules were previously revised only in 1996, and its jurisdiction and responsibilities significantly changed over the intervening years.²⁷ In the first quarter of 2016, the Commission announced its intention to revise its rules of practice and procedure contained in Chapters 1, 3, and 5.²⁸

On November 9, 2023, the Commission voted to initiate a NOPR to revise its rules of practice and procedure contained in Chapters 1, 3, and 5, with the NOPR entered on December 20, 2023. On November 9, 2023, Statements in this proceeding were provided by Vice Chairman Kimberly Barrow, Commissioner John F. Coleman, Jr., and Commissioner Kathryn L. Zerfuss. On

²⁶ NOPR at 2, FN 2.

Final Rulemaking For the Revision of Chapters 1, 3, and 5 of Title 52 of the Pennsylvania Code Pertaining to Practice and Procedure Before the Commission, Docket No. L-00020156 (Final Rulemaking Order entered January 4, 2006), effective April 29, 2006, 36 Pa.B. 2097 (4/29/2006).

²⁷ 2006 Final Rulemaking Order, at 1, available at: <https://www.irrc.state.pa.us/docs/2441/AGENCY/2441FF.pdf>.

²⁸ NOPR at 2.

May 1, 2024, a Secretarial Letter was issued, which indicated that an opportunity for public comment of the NOPR would commence upon its publication in the Pennsylvania Bulletin.

On May 30, 2024, CAUSE-PA, Community Legal Services (CLS), and the Office of Consumer Advocate (OCA) submitted a joint request for extension of the comment period in this matter, and the provision of a reply comment period. On August 22, 2024, additional Statements were provided by Vice Chairman Barrow, Commissioner Coleman, and Commissioner Zerfuss. In her Statement, Vice Chairman Barrow raised concerns that Section 5.231(a) may discourage parties proceeding to litigation by encouraging settlements as a matter of Commission policy. As discussed in detail below, Commissioner Zerfuss raised concerns that the NOPR's proposals related to representation by non-attorney third parties in Commission proceedings fell short of providing the necessary reforms to address the need for representation before the Commission. Commissioner Coleman noted that he believed that the NOPR failed to address some of his concerns related to the Commission's proposed interpretation of Sections 316 and 332 of the Public Utility Code, and rules related to legal representation in Commission proceedings.

On November 4, 2024, a Clarified NOPR was issued (hereafter, NOPR). This NOPR was published in the Pennsylvania Bulletin on December 7, 2024, initiating a 90-day comment period.

CAUSE-PA and TURN submit the instant Comments in accordance with the NOPR. Through these Comments, we urge the Commission to further amend Chapters 1, 3, and 5 of its regulations to provide important clarity and strengthen the ability of consumers, particularly low income consumers, to protect their rights and interests and access relief pursuant to the rules set forth in Chapters 1, 3, and 5. Amendment of these rules, as we recommend in detail below, are essential to consumers enforcing their rights and protections provided for under statute and Commission regulations.

IV. COMMENTS

As discussed, Chapters 1, 3, and 5 of the Commission’s regulations set forth rules of practice and procedure which determine whether consumers can meaningfully access relief from the Commission – upholding their rights and protecting their interests. While these changes are essential to all consumers, they are particularly critical to the extensive number of low income consumers who are required to rely on Commission processes when they experience payment difficulties and/or involuntary loss of services. We urge the Commission to implement the changes set forth throughout these Comments to better ensure that Chapters 1, 3, and 5 create rules of practice and procedure that allow all consumers to enforce their utility rights and pursue appropriate relief.

A. Chapter 1: Rules of Administrative Practice / Procedure

i. 52 Pa. Code § 1.8. Definitions.

In the definitions section in Chapter 1, the Commission’s regulations set forth foundational guidelines and policies for how to interpret the provisions set forth throughout the Commission’s regulations. Definitions must be appropriately tailored to facilitate accessibility before the Commission. As discussed in detail below, we address proposed amendments set forth in Section 1.8 of the NOPR and suggest several important further revisions to clarify and enhance the proposed definitions. The definitions identified below are addressed in alphabetical order, in line with the discussion of Section 1.8 contained in the NOPR, and its associated Annex.

a. “Adjudication”

The NOPR proposes to amend the definition of “Adjudication” contained in Section 1.8. As currently enacted, Section 1.8 defines an “Adjudication” as an “order, decree, decision, determination or ruling by the Commission affecting personal or property rights, privileges, immunities, duties, liabilities or obligations of the parties to the proceeding in which the

adjudication is made.”²⁹ The NOPR proposes to amend this definition to apply to “a party with the opportunity for protest, answer, complaint or other opposition pleading” (rather than parties to the proceedings in which the adjudication is made).³⁰ The NOPR explains that this amendment is proposed to clarify qualifying proceedings under this definition.³¹

CAUSE-PA and TURN respectfully disagree with the proposed change to the definition of “Adjudication” set forth in the NOPR. As an initial matter, this proposed change would cause the definition of “Adjudication” in Section 1.8 to be out line with definition of “Adjudication” set forth under Title 2, Chapter 1 of Pennsylvania’s Consolidated Statutes governing Administrative Law and Procedure.³² Pursuant to Title 2, section 101, an “Adjudication” is defined as follows:³³

Any final order, decree, decision, determination or ruling by an agency affecting personal or property rights, privileges, immunities, duties, liabilities or obligations of any or all of the parties to the proceeding in which the adjudication is made. The term does not include any order based upon a proceeding before a court or which involves the seizure or forfeiture of property, paroles, pardons or releases from mental institutions.

Establishing a definition of “Adjudication” that diverges from the Administrative Agency Law is not only unlawful, as regulations cannot contradict statute, but will also cause confusion about how the Commission’s definition under Section 1.8 may be differently applied compared to the definition contained in Title 2, section 101. This is particularly problematic as the Commission and the Commonwealth Court in reviewing Commission decisions have relied upon the definition of “Adjudication” in Title 2, Section 101.³⁴ Implementing a different definition of “Adjudication”

²⁹ 52 Pa. Code § 1.8.

³⁰ NOPR at 58; Annex A, Section 1.8.

³¹ NOPR at 5.

³² 2 Pa. C.S. § 101.

³³ *Id.*

³⁴ See, e.g., *Pub. Advocate v. Phila. Water*, 1070 C.D. 2019, (Pa. Cmmw. Ct. Sep. 24, 2021).

in Section 1.8 is out of line with the Commission's stated intent within this NOPR to streamline and clarify its rules of practice.

We are concerned that the Commission's proposed definition is ambiguous and interjects consideration of whether a party had the opportunity to plead. This appears to preclude consideration of the rights of intervenors or other parties that may be joined after the close of pleading. TURN/CAUSE-PA note that it is frequently the case that their petitions to intervene are not acted upon in proceedings until an Administrative Law Judge (ALJ) prehearing conference. By such time, the opportunity to plead has frequently elapsed. Modifying the definition as proposed by the Commission appears likely to impermissibly curtail intervenors due process rights and contravene the Commonwealth's Administrative Agency Law.

For these reasons, we urge the Commission to reject the NOPR's proposed amendment to the definition of "Adjudication" contained in Section 1.8.

b. "Tentative Order"

Section 1.8 of the Commission's regulations defines the term "tentative decision" as "[a]n order of the Commission which becomes final unless exceptions are filed by a party within the time period specified by statute or as set forth in the order."³⁵

The Commission's NOPR would change the defined term "tentative decision" to "tentative order." The NOPR also proposes to define the new term "tentative order" as an "[o]rder of the Commission that may become final without further action by the Commission and to which a party may file comments within a time specified by the order."³⁶

We are supportive of changing the nomenclature of "tentative decision" to "tentative order" to align with current Commission practices and policies. However, we are concerned the proposed

³⁵ 52 Pa. Code § 1.8.

³⁶ NOPR at 62; Annex A, Section 1.8.

definition of “tentative order” lacks context in which Commission Tentative Orders are issued. Broadly speaking, Commission Tentative Orders are issued in the process of development of a Commission rule, guideline, policy, program or plan. In short, such orders are not utilized in the context of quasi-judicial Commission adjudications in which an ALJ’s recommended decision is subject to exceptions and which is statutorily authorized to become final if no such exceptions are submitted.³⁷ Rather such orders are published in the Pennsylvania Bulletin and made available for public comment in order to ensure the Commission receives input from those who may be affected by administrative action.

Furthermore, in the context of issuing a Tentative Order, and eliciting comments from interested stakeholders, CAUSE-PA and TURN are unaware of any circumstance in which a Tentative Order has become final without subsequent Commission action. Indeed, for a Tentative Order to become final, without regard to the input provided via comments, suggests that the Commission could simply disregard a fair notice and comment process, contrary to longstanding principles of administrative law and fundamental fairness

Taking into account the foregoing, CAUSE-PA and TURN recommend that the definition of “tentative order” be revised to acknowledge that such orders are published, available for public comment, and may only become effective following the receipt and review of comments upon Commission final action:

Tentative Order: An order of the Commission published for public comment in the Pennsylvania Bulletin, and providing a specified time for comments and potential reply comments, concerning a proposed Commission rule, guideline, policy, program or plan that may become final upon subsequent action of the Commission informed by the comments received.

³⁷ 66 Pa. C.S. §332(h).

CAUSE-PA and TURN's proposed definition aligns with current Commission practice and provides important clarification regarding the Commission's use of Tentative Orders in non-adjudicative proceedings.

c. "Writing or written"

Pursuant to 52 Pa. Code 1.8, "writing or written" is defined as applying "to documents filed in paper form and documents filed electronically."³⁸

The NOPR proposes to amend the definition of "writing or written" under Section 1.8 to remove reference to "paper form and documents filed electronically." Instead, "writing or written" is proposed to be defined as applying "to documents whether in hard copy or media."³⁹

We are supportive of the Commission's intent to broaden the definition of "writing or written" in Section 1.8 to reflect the variety of means by which individuals can submit filings to the Commission. Notwithstanding this support, we are concerned that the proposed amendment to the definition of "writing or written" in Section 1.8 does not capture the full variety of document types which may need to be filed with the Commission. In particular, it is unclear whether "media" would include electronic documents submitted through e-filing and email. For these reasons, we recommend further revision of the definition of "writing or written" in Section 1.8 to apply "*to documents whether in hard copy, media, or electronic format.*" This further revision will help to clarify that electronic documents fall within the definition of "writing or written".

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

As currently enacted, Section 1.15 provides, in relevant part, that "requests for a continuance should be filed at least 5 days prior to the hearing date." The NOPR proposes to amend

³⁸ 52 Pa. Code § 1.8.

³⁹ NOPR at 62; Section 1.8.

Section 1.15(b) to add “to the extent possible” related to the deadline for filing requests for continuances.

CAUSE-PA and TURN support the proposed revisions set forth in the NOPR to Section 1.15 of the Commission’s regulations. As the NOPR notes, the current language of Section 1.15(b) does not reflect what occurs in practice before an ALJ. Current Section 1.15(b) requires that a request for continuance of a hearing should be filed at least five (5) days prior to the hearing date. However, in reality, a party may not be able to request a continuance at least five (5) days before the date of a hearing – such as in the event of illness or other emergency.⁴⁰ While this flexibility is important for all parties, it is particularly critical for low income consumers. Low income families often have greater scheduling difficulty as they have the least flexible work schedules and may not get paid for time away from work.⁴¹

Low income families may also face a variety of other pressures, including having to navigate other proceeding and governmental agencies to access public assistance.⁴² These families may also lack access to reliable transportation because they cannot afford a personal vehicle. A 2018 analysis by the U.S. Department of Transportation found that transportation expenditures made up 31.8% of household income for low income households, and that 20% of low-income households do not have a personal vehicle.⁴³ In addition, particularly vulnerable groups, such as seniors, medically vulnerable households, and victims of domestic violence face unique constraints

⁴⁰ NOPR at 10.

⁴¹ Winston, P., Work-Family Supports for Low-Income Families: Key Research Findings and Policy Trends, Office of the Assistant Secretary for Planning and Evaluation, published February 28, 2014.

⁴² For example, the Bureau of Hearings and Appeal of the Pa. DHS conducts hearings related to public benefits, which entail in person and telephonic hearings which low income consumers may need to participate in if they receive a denial, reduction, suspension or termination of public benefits. Commonwealth of Pa, Request a Hearing or Appeal Decision from DHS, available at: <https://www.pa.gov/agencies/dhs/resources/hearings-and-appeals.html#accordion-a94098ce11-item-7bc1b665b1>.

⁴³ Us. Dept. of Transportation, Federal Highway Admin., The Transportation Future: Trends, Transportation, and Travel, Nov. 2021, at 17, 38, available at: https://www.fhwa.dot.gov/policy/otps/TPS_2020_Trends_Report.pdf.

on their time due to medical conditions, appointments, (in the case of domestic violence victims) court proceedings. Finally, low income and vulnerable consumers may lack stable telecommunications and internet – making it difficult to make arrangements to appear at telephonic or electronic hearings.⁴⁴

Low income consumers’ ability to participate in Commission proceedings should not be hampered as a result of inflexible rules related to granting continuances of hearings. Instead, revising Section 1.15 to add “to the extent possible” related to the five (5) day deadline for requests for continuance of hearings provides ALJs with important flexibility to oversee the course of proceedings. We are therefore supportive of the proposed amendments to Section 1.15 of the Commission’s regulations set forth in the NOPR.

We note that Commissioner Coleman raised concerns about the proposed amendments to Section 1.15 in his Statement submitted on this matter on November 9, 2023. In his Statement, Commissioner Coleman explains his position that the amendments to Section 1.15 are unnecessary because Section 1.2 of the Commission’s regulations already permit ALJs to liberally construe procedural rules, including requests for continuance received less than five days prior to a hearing date, and to grant such requests based on Section 1.2.⁴⁵

While Section 1.2 helps to reinforce flexibility for the issuance of a continuance to fairly resolve procedural defects, we respectfully disagree with Commissioner Coleman that the proposed amendments to Section 1.15 are duplicative of Section 1.2. We believe the proposed amendments to Section 1.15 will provide important clarity that ALJs can consider continuance

⁴⁴ Pa. DCED, [Pennsylvania Broadband Survey](https://www.broadband.pa.gov/wp-content/uploads/2024/04/Appendix-E-PA-Broadband-Study_The-Institute-October-2023.pdf), Oct. 2023, available at: https://www.broadband.pa.gov/wp-content/uploads/2024/04/Appendix-E-PA-Broadband-Study_The-Institute-October-2023.pdf; Peter Gonzalez, [Pa. has a ‘digital divide.’ Here’s how to bridge it](https://www.inquirer.com/opinion/commentary/broadband-internet-digital-divide-pennsylvania-20220630.html), Opinion, Philadelphia Inquirer, June 30, 2022, available at: <https://www.inquirer.com/opinion/commentary/broadband-internet-digital-divide-pennsylvania-20220630.html>.

⁴⁵ Commissioner Coleman Statement, November 9, 2023, at 4.

received within 5 days of a hearing date as a matter of course. This is particularly important for *pro se* parties, who are less likely to be able to navigate overlapping Commission regulations to determine how Section 1.2 may be applied to other regulations. If an ALJ is unclear whether they can grant continuances within 5 days of a hearing date, it is exceedingly unlikely that a *pro se* litigant will be able to argue about the applicability of Section 1.2. Instead, the *pro se* litigant's request for a continuance will be denied, even if they are facing an emergency.

For these reasons, we support the proposed amendments to Section 1.15 contained in the NOPR.

iii. 52 Pa. Code §§ 1.21-1.23. Appearance in nonadversarial or informal proceedings; Appearance in adversarial Commission proceedings; Other representation prohibited at hearings.

Sections 1.21-1.23 of the NOPR propose to limit representation by non-attorney third parties in both Commission nonadversarial and adversarial proceedings to certified legal interns⁴⁶ and third parties holding powers of attorney during periods of disability and/or incapacity (except in some noted cases of corporations, partnerships, or agencies). As explained in detail below, while we are supportive of the Commission's intent to permit non-attorney third-party representation, we are concerned that the proposed amendment is simultaneously too broad and too narrow to improve consumer representation in proceedings before the Commission.

Specifically, we urge the Commission to amend Section 1.21 and 1.22 to permit a consumer to be represented by a non-attorney advocate working under the direct supervision of a licensed attorney. Allowing representation by a non-attorney advocate would provide consumers – particularly those with limited financial resources – with more equitable access to competent

⁴⁶ Certified legal intern is proposed in the NOPR at Section 1.8, at 59 to be defined as “[a] law student meeting the requirements of Pa.B.A.R. No. 321 (relating to requirements for formal participation in legal matters by law students) may appear in a Commission proceeding consistent with Pa.B.A.R. No. 322 (relating to authorized activities of certified legal interns).” We support this proposed definition.

representation during Commission proceedings and would establish a clear line of accountability that prevents the unauthorized practice of law and maintains the integrity of Commission proceedings.

In its NOPR, the Commission proposes to amend Section 1.21 to apply to “appearance in nonadversarial or informal proceedings.”⁴⁷ In turn, the Commission proposes Section 1.22 to apply to “appearance in adversarial proceedings.”⁴⁸ The NOPR proposes to allow representation of a party by a non-attorney, third party representation in both adversarial and nonadversarial proceedings during periods of disability and/or incapacity, if the third party holds a power of attorney.⁴⁹ Notably, it appears that the NOPR retains the current language of Section 1.21(d) which permits a paralegal working under the direct supervision of an attorney admitted to the bar in Pennsylvania to represent individuals in informal proceedings.

Section 1.22(b) proposes to limit representation to licensed attorneys or certified legal interns in adversarial Commission proceedings, unless provided for in Section 1.22(a). Finally, Section 1.23 would be amended to clarify that parties may not be represented before the Commission or a presiding officer in nonadversarial or adversarial Commission proceedings, except as provided for under Sections 1.21 and 1.22, as proposed.

Commissioner Zerfuss issued a Statement in this matter, identifying the need for additional revisions to Section 1.21-1.22. She explained that the Commission’s proposed amendments fall short of providing the reforms necessary to improve due process for consumers, pointing to similar to the procedures utilized by several other agencies.⁵⁰ Commissioner Zerfuss further explained that

⁴⁷ NOPR at 11; Annex A, Section 1.21.

⁴⁸ NOPR at 12; Annex A, Section 1.22.

⁴⁹ NOPR proposed Sections 1.21 and 1.22.

⁵⁰ Commissioner Zerfuss Statement at 1, dated August 22, 2024.

authorizing additional representation may help to better facilitate development of evidentiary records in complaint proceedings.⁵¹ As discussed below, we agree.

Commissioner Coleman also issued a Statement addressing the Commission's rules regarding representation by a non-attorney, noting concerns that the NOPR's revisions would permit the unauthorized practice of law. Commissioner Coleman noted that, without more details about the nature of proceedings before other forums or agencies, enabling legislation, regulations or rules of court which apply to other forums as compared to the Commission, changes to these provisions should be vetted through an Advance Notice of Proposed Rulemaking, rather than the current proceeding. In response to Commissioner Coleman's concerns, we note here that there are numerous examples of state and federal agencies which permit representation by a non-attorney who is acting under the supervision of an attorney. We see no reason to further delay adoption of reforms that will improve due process for consumers that cannot afford to hire an attorney to represent them in an administrative proceeding.

CAUSE-PA and TURN support the Commission's review of Sections 1.21-1.23 to expand appropriate non-attorney third-party representation in Commission proceedings. However, we are concerned that the Commission's proposed amendments to Sections 1.21-1.23 do not address the significant need for expanded representation in Commission proceedings. As discussed, the NOPR proposed to allow only non-attorney third parties to represent individuals before the Commission if the third-party holds the power of attorney *and* representation would occur during periods of disability and/or incapacity (except if operating as a certified legal intern, or in some narrow cases related to corporations and businesses).

⁵¹ *Id.*

The Commission's proposed standard is unduly restrictive and may create unintended consequences for vulnerable consumers. As a threshold matter, we note that a properly executed Power of Attorney (POA) already bestows the right of the holder to act on behalf of a consumer. The Commission's proposed revision would add a potentially unlawful requirement that a POA holder also prove the consumer is experiencing a period of disability and/or incapacity – even if the POA does not require such infirmity. It is unclear how the Commission and its officers would determine whether consumers are in a period of disability and/or incapacity. The Commission would be required to determine, on a case-by-case basis, whether consumers meet this narrow requirement. Making these determinations would be time-intensive, squander Commission resources, and unnecessarily delay proceedings. Requiring the Commission to determine whether a consumer is seeking non-attorney third-party representation during a period of disability and/or incapacity would also likely require invasive questioning into the personal details of a consumer's health. In formal proceedings, these sensitive personal details would become part of formal records. Requiring consumers to disclose sensitive personal information about their health may chill consumers obtaining representation – even if they meet the proposed standards for representation.

The proposed standard for non-attorney third-party representation will also likely expose consumers to other risks if they cannot afford to, or cannot otherwise secure, competent representation. For example, the proposed standard may incentivize consumers seeking representation to hastily convey power of attorney to a third party and thereby expose themselves to a wide range of risks – without any assurances that the third party is competent to provide

representation. Indeed, a power of attorney is most often conveyed to family or friends – rather than trained professionals with subject matter expertise.⁵²

This approach to non-attorney, third-party representation would continue to leave the vast majority of consumers without competent representation before the Commission. There is a profound representation gap across the Commonwealth, particularly for low income consumers who cannot afford needed representation.⁵³ Low income customers must necessarily access Commission proceedings at greater rates compared to other consumers because they face profound and disproportionate payment troubles and termination rates compared to residential customers as a whole. For example, confirmed low income electric customers represented 51.6% of all residential payment troubled electric residential customers in 2023 – despite comprising only 12.3% of total electric residential customers.⁵⁴ Confirmed low income gas customers represented 74% of all residential payment troubled gas residential customers in 2023 – despite comprising only 16.3% of total gas residential customers.⁵⁵

In 2023, the termination rate for electric confirmed low income customers was 13.5%, compared to the termination rate of 3.9% for all residential electric customers. Similarly, in 2023, the termination rate for gas confirmed low income customers was 11.6%, compared to the termination rate of 4.5% for all residential gas customers.⁵⁶ With these profound payment

⁵² ABA, Power of Attorney, available at:

https://www.americanbar.org/groups/real_property_trust_estate/resources/estate-planning/power-of-attorney/.

Indeed, the American Bar Association indicates that there are no special qualifications necessary for someone acting under a power of attorney, and that a person may wish to choose a family member to act under a power of attorney.

⁵³ Last year, legal services programs within the Pennsylvania Legal Aid Network represented consumers in fewer than 2,000 utility disputes. Data on file with PULP. In comparison, over 377,000 households faced an involuntary termination of their gas, electric, or water service. For further background on the representation gap for low income families, see Legal Services Corporation, The Justice Gap: Measuring the Unmet Civil Legal Needs of Low-income Americans, Prepared by NORC at the University of Chicago for Legal Services Corporation, Washington, DC (2017).

⁵⁴ 2023 Report on Universal Service Programs & Collections Performance, at 7; 10, available at: [2023-universal-service-report-final.pdf](#).

⁵⁵ 2023 Universal Service Report at 7; 10.

⁵⁶ 2023 Universal Service Report at 14-15.

difficulties, and corresponding involuntary loss of services, low income consumers necessarily must engage in Commission processes at greater rates compared to customers who can afford to maintain consistent services. When a low income consumer cannot afford an attorney, they must contend with complex processes which oftentimes entail complicated utility law and policy – and are often being opposed by experienced utility attorneys.

In our experience, the vast majority of legal service organizations, community organizations, and other assistance organizations do not have sufficient attorneys on staff who can appear during utility proceedings. According to a 2017 study by the Pennsylvania IOLTA Board and Pennsylvania Legal Aid Network (PLAN), “for every person represented by the PLAN program, at least two people asked for help and were eligible for services but received inadequate or no assistance.”⁵⁷

As discussed, Commissioner Zerfuss explained in her Statement the proposed revisions to nonattorney representation fell short of providing the necessary reforms similar to the procedures utilized by several other agencies.⁵⁸ Commissioner Coleman also raised concerns that there was a current lack of information in the instant proceeding related to the details of representation in other forums by non-attorney third parties, and how those details apply to Commission proceedings.⁵⁹

Legal service organizations often utilize paralegals, advocates, and other support staff who are trained and operate under direct attorney supervision to assist in representation in other administrative contexts. For example, at public benefits hearings, an appellant seeking public benefits may be represented by an attorney and other representative – with applicants advised that

⁵⁷ Legal Services Corporation. 2017. *The Justice Gap: Measuring the Unmet Civil Legal Needs of Low-income Americans*. Prepared by NORC at the University of Chicago for Legal Services Corporation. Washington, DC.

⁵⁸ Commissioner Zerfuss Statement at 1, dated August 22, 2024.

⁵⁹ Commissioner Coleman Statement at 3, dated Nov. 9, 2023.

they may be represented by “an attorney, relative, friend, or other spokesman.”⁶⁰ Similarly, in proceedings before Pennsylvania’s Unemployment Compensation Board of Review, Title 43, Section 774 provides: “Any party in any proceeding under this act before the department, a referee or the board may be represented by an attorney or other representative.”⁶¹

Practices before the Pennsylvania Department of Revenue Board of Appeals also provides important guidance related to how to structure non-attorney third party representation. Section 7.15(a)(2), Title 61 of the Pennsylvania Code provides in relevant part that:

(2) Representation.

(i) An individual may appear on his own behalf or be represented by a person possessing the requisite technical education, training or experience. There is not a requirement that a petitioner be represented before the Board by an attorney or certified public accountant. A petitioner’s representative shall be authorized in writing to represent the petitioner. A letter signed by the petitioner or a listing as a representative on the face of the petition signed by the petitioner will be accepted as authorization for representation. An authorization continues until the Board is notified in writing by the petitioner that the authorization is rescinded.

(ii) Only 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.⁶²

The Pennsylvania Department of Revenue/ Board of Appeals further explains on its E-Petition website that:

If you are a representative, you must provide a Power of Attorney form or a signed statement on the Petitioner's letterhead authorizing you to act on their behalf. The completed Power of Attorney form or Statement of Authorization may be mailed, faxed (717-787-7270) or scanned and sent electronically to the Board with your petition. If sending a Statement of Authorization please include the confirmation number provided at the end of the online submission process. If the Statement of Authorization or Power of Attorney form is not submitted electronically with the

⁶⁰ 55 Pa. Cod. §§ 275.3; 275.4.

⁶¹ 43 Pa. C.S. § 774.

⁶² Pennsylvania Dept. of Revenue, File a Tax Appeal, available at: <https://www.pa.gov/services/revenue/file-a-tax-appeal.html>; 61 Pa. Code § 7.15(a)(2).

petition, the Board of Appeals must receive the form within 15 days of the date the petition was filed.⁶³

Similarly, Section 2704(d.1)(1) of the Tax Code of 1971, which applies to review by Board of Finance and Revenue⁶⁴ provides in relevant part that: “Appearances in tax appeal proceedings conducted by the board may be by the taxpayer or by an attorney, accountant or other representative provided the representation does not constitute the unauthorized practice of law as administered by the Pennsylvania Supreme Court.”⁶⁵

In sum, the practices established by other forums in Pennsylvania underscore that, where rules of practice permit competent third-party representation, legal service organizations and other community organizations can increase representation of *pro se* Pennsylvanians – helping improve outcomes and streamline Commission processes.

Representation by an advocate helps consumers understand their rights and options - and whether they even have a case. A nationwide review of self-represented litigants revealed that these litigants experienced difficulties understanding processes, completing paperwork, preparing for proceedings, and presenting evidence.⁶⁶ Similarly, representation helps encourage appropriate settlements, or narrow issues between parties. Representation also balances parties’ interests in a

⁶³ Pennsylvania Dept. of Revenue, Board of Appeals Online Petition Center, available at: <https://www.eservices.revenue.pa.gov/FileAnAppeal>. See also Pennsylvania Dept. of Revenue, Board of Appeals Petition Form, REV-65, available at: <https://www.pa.gov/content/dam/copapwp-pagov/en/revenue/documents/formsandpublications/otherforms/documents/rev-65.pdf>; Pennsylvania Dept. of Revenue, Power of Attorney and Declaration of Representative (REV-677), available at: <https://www.pa.gov/content/dam/copapwp-pagov/en/revenue/documents/formsandpublications/otherforms/documents/rev-677.pdf>.

⁶⁴ The Board of Finance and Revenue “is an independent administrative tax tribunal, administered by the State Treasurer, responsible for the second and final level of administrative appeal (with minor exceptions) before appealing to court.” Pennsylvania Treasury, News Release, Jan. 24, 2025, available at: <https://patreasury.gov/newsroom/archive/2025/01-24-BFR.html>.

⁶⁵ 1971 Act 2 2704(d.1)(1).

⁶⁶ Institute for the Advancement of the American Legal System, University of Denver, Ensuring the Right to be heard: Guidance for Trial Judges in Cases Involving Self-Represented Litigants, available at: https://iaals.du.edu/sites/default/files/documents/publications/ensuring_the_right_to_be_heard_guidance_for_trial_judges.pdf.

way that mediation cannot because it helps put the consumer on more equitable footing against utilities and other opposing parties. Notably, in a broad survey of judicial practices, 26% of the judges indicated that the injustice that occurs when one party is not represented is “troubling.”⁶⁷

As Commissioner Zerfuss correctly points out in her Statement, increasing the availability of competent representation also helps to facilitate the development of evidentiary records. *Pro se* litigants may make procedural errors that foreclose their ability to present evidence, effectively examine witnesses, and raise objections.⁶⁸ In addition, *pro se* litigants may struggle to appropriately meet evidentiary standards required through the course of proceedings.⁶⁹ If a *pro se* complainant is unable to appropriately present evidence, ALJs are constrained in their ability to fully investigate issues – and may be presented with imbalanced evidence which is presented by opposing attorneys.

Pro se litigants who cannot secure representation will likely require additional time to explain procedure and substance of cases. Broader examinations of court systems have revealed that 90% of judges categorize these resulting slower procedures as having a negative impact on court systems.⁷⁰ By contrast, increasing competent representation for individual consumers helps to increase the orderliness and efficiency of Commission proceedings – which benefits the Commission and all parties.

We note that permitting competent representation at Commission proceedings is well within the Commission’s authority. Section 501(a), Title 66 of the Pennsylvania Consolidated

⁶⁷ Christina E. Cerniglia, The Civil Self-Representation Crisis: The Need for More Data and Less Complacency, Georgetown Journal on Poverty Law and Policy Volume XXVII, Number 3, Spring 2020, at 374, available at: https://www.law.georgetown.edu/poverty-journal/wp-content/uploads/sites/25/2020/06/01-Cerniglia_Final_Proof.pdf.

⁶⁸ Christina E. Cerniglia, The Civil Self-Representation Crisis: The Need for More Data and Less Complacency, at 373.

⁶⁹ *Id.*

⁷⁰ *Id.*

Statutes provides in relevant part, that in addition to its express powers, the Commission “shall have full power and authority, and it shall be its duty to enforce, execute and carry out, by its regulations, orders, or otherwise, all and singular, the provisions of this part, and the full intent thereof; and shall have the power to rescind or modify any such regulations or orders.”⁷¹ The authority of the Commission to enforce its regulations and orders must necessarily extend to ensuring that litigants have access to competent representation necessary to upholding and enforcing consumer rights and protections.

For these reasons, CAUSE-PA and TURN submit that Sections 1.21 and 1.22 should be amended to permit consumers to secure competent representation by a non-attorney serving under an attorney’s supervision so that consumers can equitably enforce their rights through Commission proceedings. We specifically recommend that Section 1.21 and 1.22 be amended to allow representation by a non-attorney advocate in non-adversarial, and adversarial proceedings where the representative is acting under the supervision of an attorney. Permitting representation by third parties under the direct supervision of an attorney will enable organizations such as legal service providers, pro bono law clinics, medical-legal partnerships, and community-based advocacy groups to assist more utility consumers. While these organizations may be limited by the number of attorneys who can directly represent clients in Commission proceedings, paralegals, advocates, and other support staff are regularly trained and operate under the supervision of attorneys in a variety of other administrative arenas.

Under our proposed amendment, non-attorney third parties would be supervised by licensed attorneys. Non-attorney representatives would be accountable to attorneys to ensure that attorneys are making important decisions related to client representation, including what

⁷¹ 66 Pa. C.S. § 501(a).

information and advice is provided to consumers about their cases; the pros and cons of settling versus fully litigating their cases; and whether and how consumers are informed about their rights and protections. Ensuring that attorneys are supervising non-attorney representatives prevents non-attorney representatives from engaging in unauthorized practice of law, and helps to ensure competent representation for consumers.

Notably, the NOPR proposes to allow certified legal interns to represent consumers in adversarial proceedings. Certified legal interns in Pennsylvania are required to be under the supervision of an attorney who accepts personal professional responsibility for guidance of the intern, and assuring that the intern is fully prepared and assisted in working on case – and ensures that a licensed attorney in their office is personally present during appearances.⁷² Providing for representation by certified legal interns while failing to provide for representation by other third parties who can operate under attorney supervision is a noticeable gap. As the regulations related to representation in Commission proceedings are currently structured, attorneys who are unable to secure legal interns -- but who nonetheless work with advocates who oftentimes have extensive utility expertise – must reject consumers in need of representation if they do not have the capacity to personally undertake representation.

The Pennsylvania Supreme Court has provided guidance related to representation by non-attorney third parties in *Harkness v. Unemployment Compensation Board of Review*.⁷³ In this case, Pennsylvania’s Supreme Court held that a non-attorney representing an employer in an unemployment compensation hearing does not violate unauthorized practice of law rules because what constitutes practice and unauthorized practice of law is determined on a case-by-case basis.⁷⁴

⁷² Rule 322, available at: https://www.pabarexam.org/bar_admission_rules/322.htm.

⁷³ *Harkness v. Unemployment Compensation Board of Review*, 591 Pa. 543, 920 A.2d 162 (Pa. 2007).

⁷⁴ *Harkness v. Unemployment Compensation Board of Review*, 591 Pa. at 550.

The Court explained that “paramount to the inquiry is consideration of the public interest, . . . both in terms of the protections of the public as well as in ensuring that the regulation of the practice of law is not so strict that the public good suffers.”⁷⁵

For these reasons, we urge the Commission to amend Sections 1.21(c) of its regulations to provide as follows:

In nonadversarial proceedings, a person or party may be represented in the following manner:

(1) A partner may represent the partnership.

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

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

(4) A non-attorney third-party representative operating under the direct supervision of a licensed attorney.

Finally, we urge the Commission to amend Section 1.22(a) of its regulations to provide:

(a) In adversarial Commission proceedings individuals may represent themselves or be represented by a non-attorney third-party representative operating under the direct supervision of a licensed attorney. An authorized corporate official may represent a small business or partnership in an adversarial Commission proceeding.

We note that, apart from these recommended changes, we are supportive of the proposed amendments and clarifications in the NOPR Sections 1.21-1.23.

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

The NOPR proposes to amend, in relevant part, Section 1.24(b)(2)(ii)(A) to clarify that an attorney in a Commission proceeding must serve a notice of appearance on parties and a certificate of service with the Secretary. Similarly, the NOPR proposes to amend Section 1.24(b)(3) to clarify

⁷⁵ *Id.*

that an attorney must serve a notice of withdrawal on the parties, presiding officer, and the Secretary.⁷⁶

We recommend further amendment to Sections 1.24(b)(2)(ii)(A) and 1.24(b)(3) to clarify when an attorney is required to file a formal notice of appearance or withdrawal during Commission proceedings. In many proceedings, a separate notice of appearance is not required to be filed. Rather, pursuant to the requirements of Section 1.24(a), counsel is listed as a party of record upon submission of their initial filing – such as an Answer or a Petition to Intervene. Moreover, a variety of proceedings before the Commission, such as comment proceedings, do not require submission of a formal notice of appearance and/or withdrawal. In the current proceeding, for example, an individual is not required to be granted party status or to submit a notice of appearance in order to submit comments.⁷⁷ By contrast, matters which proceed before the Commission’s Office of Administrative Law Judge (OALJ) are quasi-judicial in nature, and require parties to request intervention. In practice, parties provide representation and contact information in petitions to intervene presented in formal proceedings before ALJs. Subsequent notices of appearance and intervention may be filed (for example, if counsel is added or leaves a matter). Requiring filing of notices of appearance and withdrawal in every Commission proceeding is out of line with Commission practice, adds unnecessary process, and may be burdensome on parties who participate in numerous proceedings before the Commission.

To address these concerns, we recommend the Commission further amend Section 1.24(b)(2)(ii)(A) to provide:

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

⁷⁶ NOPR at 15; Annex A, Section 1.42.

⁷⁷ Secretarial Letter dated Jan. 13, 2025.

embedded within an initial Petition, Complaint, Application, Answer, or other pleading without the need to file a separate notice.

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

Section 1.43 of the Commission’s regulations set forth a schedule of Fees Payable to the Commission. The NOPR would amend Section 1.43 to clarify that Commission filing fees are nonrefundable; to update the schedule of fees charged by Commission for processing filings; and to note the category of “application for amending” a certificate of public convenience (CPC) includes an application to abandon a CPC.⁷⁸

CAUSE-PA and TURN support updating the fee schedule contained in Section 1.43 to accurately reflect the most-current Commission fees. However, we are concerned that requiring filing fees of lower income consumers may act as a barrier to financially vulnerable consumers participating in Commission proceedings and processes. Notably, the fee schedule in Section 1.43 requires a fee for copies of paper, testimony, records, and computer printouts per sheet – as well as for certifying copies of paper, testimony, or records. Obtaining copies of testimony, records, and other paper documents can be essential to the ability of low income consumers to meaningfully defend their rights or interests in Commission proceedings.

The fee provisions contained in Section 1.43 do not currently address the high fees which consumers may have to pay to meaningfully participate in proceedings. For example, pursuant to proposed Section 1.43 in the NOPR, copies of transcripts (listed as copies of testimony) would cost \$10 plus \$0.75 per page. Transcripts can total hundreds – if not thousands – of pages. If a Transcript is 100 pages, a copy would cost \$85 dollars based on proposed Section 1.43. This is prohibitive for low income and income constrained consumers. For context, a family of four at the

⁷⁸ NOPR at 19.

poverty level (100%) makes \$32,150 per year – or just \$2,680 per month. Such a transcript would constitute 3.2% of this family’s monthly income.⁷⁹ The practical result of these high fees is that individual consumers will not be able to access transcripts if situations arise necessitating them to consult these documents – truncating their ability to defend their rights and interests. Notably, many transcripts are not publicly available through the Commission’s e-docket, with no immediate way for parties to access these transcripts.

As discussed above, low income consumers face significant utility burdens and are frequently required to access Commission processes so that they can address payment troubles and terminations of service. Low income consumers – who are already struggling because they cannot afford their utility bills -- may be required to pay significant fees if they require copies of documents in order to fully participate in Commission proceedings, further detracting from the resources available to catch up on their bill.

Similarly, legal aid organizations and similar public interest law firms often undertake representation of low income individuals and non-profit groups on a pro bono basis. High fees often hinder pro bono counsel representing individuals and non-profit groups from receiving copies of documents or transcripts which are necessary to conduct a full investigation or otherwise fully litigate an issue.

We note that the availability of internet access affords greater access to access a variety of documents through the Commission’s website. However, low income consumers are often limited in their ability to access these electronic documents because low income consumers are far less

⁷⁹ Federal Poverty Level, 2025, available at: <https://www.aspe.hhs.gov/topics/poverty-economic-mobility/poverty-guidelines>.

likely to have reliable internet services compared to higher income consumers.⁸⁰ According to Pew Research Center, as of 2021, 14% of those with annual income under \$30,000 are not online.⁸¹ Many low income consumers rely on a mobile device as the sole method by which they access the internet, and are often limited in the time and bandwidth they can use.⁸² This limitation can severely restrict the ability of a consumer to open and review technical or legal documents. These restrictions in internet access hinder low income consumers from accessing filings and other documents electronically.

Civil courts throughout Pennsylvania already have provisions which allow consumers with limited means to apply to proceed *In Forma Pauperis* (IFP).⁸³ Under these processes, a party must file a petition and accompanying affidavit so that a court can evaluate whether the party does not have resources to pay the costs of litigation. These processes alternatively permit attorneys for litigant to submit a praecipe which attests to their status as IFP.⁸⁴

We recommend that the Commission revise Section 1.43 to implement a process by which consumers can proceed IFP to waive filing fees required by the Commission. We specifically recommend that the Commission establish a process which allows a consumer to file a petition or application seeking IFP status, in which the consumer certifies that they are low income (i.e., have a household income at or below 150% FPL) or cannot afford the costs of litigation. The

⁸⁰ Pa. DCED, [Pennsylvania Broadband Survey](https://www.broadband.pa.gov/wp-content/uploads/2024/04/Appendix-E-PA-Broadband-Study-The-Institute-October-2023.pdf), Oct. 2023, available at: <https://www.broadband.pa.gov/wp-content/uploads/2024/04/Appendix-E-PA-Broadband-Study-The-Institute-October-2023.pdf>; Peter Gonzalez, Pa. has a ‘digital divide.’ Here’s how to bridge it. Opinion, Philadelphia Inquirer, June 30, 2022, available at: <https://www.inquirer.com/opinion/commentary/broadband-internet-digital-divide-pennsylvania-20220630.html>.

⁸¹ Anna Read, [How Can the U.S. Address Broadband Affordability](https://www.pewtrusts.org/en/research-and-analysis/articles/2022/04/29/how-can-the-united-states-address-broadband-affordability), Pew Research, available at: <https://www.pewtrusts.org/en/research-and-analysis/articles/2022/04/29/how-can-the-united-states-address-broadband-affordability>.

⁸² Emily A. Vogels, [Digital divide persists even as Americans with lower incomes make gains with tech adoption](https://www.pewresearch.org/short-reads/2021/06/22/digital-divide-persists-even-as-americans-with-lower-incomes-make-gains-in-tech-adoption/), Pew Research Center, June 22, 2021, available at: <https://www.pewresearch.org/short-reads/2021/06/22/digital-divide-persists-even-as-americans-with-lower-incomes-make-gains-in-tech-adoption/>.

⁸³ 231 Pa. Code Rule 240.

⁸⁴ 231 Pa. Code Rule 240.

Commission should develop an *in forma pauperis* form to facilitate this process and should make the form easily accessible on its website where other consumer complaint forms are located. If the party is represented by an attorney or advocate, the Commission shall allow the party, through their counsel or advocate, to proceed IFP upon the filing of a praecipe which contains a certification by the attorney or advocate that they are providing free representation to the party and believes the party is unable to pay the costs. As discussed above, these amendments are essential to address the need for increased access to Commission processes for low income litigants, regardless of whether they can afford to pay the costs of court fees.

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

The NOPR proposes to amend Section 1.51 to add a subsection (c) which provides an exception for certain victims of domestic violence from being added to service lists. Specifically, proposed Section 1.51(c) would provide that the address of a victim of domestic violence will be redacted if they have a Protection from Abuse (PFA) Order or other court order issued by a court of competent jurisdiction in Pennsylvania which provides clear evidence of domestic violence.⁸⁵ The NOPR explains that this Section would serve an important role in protecting the personal information of a domestic violence victim from disclosure to the general public.⁸⁶

CAUSE-PA and TURN are supportive of the Commission's initiative to protect the personal information of victims of domestic violence from appearing through publicly-available service lists. However, we are concerned that the proposed revisions unnecessarily restrict this important protection to victims of domestic violence who have obtained a PFA or other court order containing clear evidence of domestic violence.

⁸⁵ NOPR at 72; Annex A, Section 1.51.

⁸⁶ NOPR at 21.

In setting forth this proposed standard, the Commission explicitly ties a victim’s ability to protect sensitive personal information to their ability to obtain a PFA or specific other court order. This standard mirrors the standard for other domestic violence protections in Chapter 56 of the Commission’s regulations. These regulations recognize that victims of domestic violence are often uniquely vulnerable to physical and financial harm – especially during the period of separation from a violent intimate partner, when the risk of physical violence and financial instability is greatest.⁸⁷ However, the domestic violence exemptions in 56 apply to utility debt, billing, and collections – and did not dictate that protecting a victim’s personal information required them to first obtain a PFA or a specific other court order.

A victim may choose not to pursue a PFA or may be otherwise unable to obtain a PFA for a number of reasons, including -- for example – if they are unable effectuate service on a defendant, if they fear retaliatory violence, or they have access to alternative protection such as a criminal no contact order or the incarceration of the abuser. We note that seeking court-ordered protection through the PFA process can be especially dangerous for a survivor who is in hiding, as it requires the survivor to go to court to face their abuser. Even if a victim is able to obtain a different type of court order to meet the standard, such as a criminal charging order, many court orders lack critical factual detail on their face – further limiting the ability victims to utilize these court orders to obtain protection under the proposed NOPR standard. A criminal charging order for assault by an abuser against a victim, for example, contains clear evidence of domestic violence; however, the charging order itself is unlikely to contain an attestation of the relationship between the

⁸⁷ See Nat’l Resource Ctr. on Domestic Violence, Intimate Partner Homicide Prevention, available at: <https://vawnet.org/sc/intimate-partner-homicide-prevention> (explaining that separation is a “predominant risk factor” for intimate partner homicide).

offender and their victim in order to meet the stringent standard in the Commission's Chapter 56 regulations for billing, collection, and termination protections to apply.

Limiting the ability of victims to protect their personal information by requiring that they have obtained a PFA or other court order chills the ability of victims to access Commission proceedings and other processes. A victim that has not been able to obtain a required court order but nevertheless has privacy concerns because of the abuse that they have suffered may have to decide between releasing their personal information and obtaining relief from the Commission. This poses a significant threat to victims, who may be shielding their address or other personally identifying information from an abuser to prevent further harassment or abuse. Victims who cannot meet this narrow showing under proposed Section 1.51 will be left without recourse to enforce their utility rights, which may, in turn, further compound utility issues that victims experience as a result of abuse.

We are also concerned that it is unclear whether proposed Section 1.51 would protect both the physical and email addresses of victims. Victims regularly seek to protect their email addresses from disclosure because they fear continued abuse if their emails are disclosed. For example, an abuser may continue to try and contact a victim through email – or may even be able to log in to a victim's emails account to obtain the victim's sensitive information.⁸⁸ It is therefore essential that victims should be able to protect both their physical and electronic addresses or other personally identifying information if they are engaging in Commission proceedings. Failing to protect this sensitive information may deter victims from participating in Commission proceedings and act as a barrier to the Commission investigating and resolving utility issues which impact victims.

⁸⁸ National Network to End Domestic Violence, [While Using the Internet](https://www.womenslaw.org/about-abuse/safety-tips/safety-while-using-internet/safety-when-using-email), available at: <https://www.womenslaw.org/about-abuse/safety-tips/safety-while-using-internet/safety-when-using-email>.

We urge that the Commission broaden the standard set forth in proposed Section 1.51(c) to permit victims to provide an affidavit which attests to their status as a domestic violence victim to keep their address or other personally identifying information confidential. We note that such a provision is substantially similar to the Address Confidentiality Program (ACP) in Pennsylvania.⁸⁹ A person is eligible for the ACP if they are, in relevant part, a domestic violence victim who files an affidavit which states that the affiant is eligible for a protection from abuse order and that the affiant fears future violent acts by the perpetrator of the abuse.⁹⁰ Thus, if a victim cannot safely obtain a PFA, they can still attest that they meet the standard for a PFA – including that they have suffered abuse – in order to shield their information from disclosure.⁹¹ Importantly, the ACP also permits attestation by a member of the same household as a program participant – thus maintaining the confidentiality of the household as a whole. In addition, ACP participants can provide notification to continue the program prior to the expiration of the affidavit, rather than having to submit a new affidavit.⁹²

For these reasons, we recommend that the Commission revise proposed Section 1.51(c) as follows:

“(c) Exception to service list availability. Where an individual meets any of the following criteria, the physical and electronic address of the victim and other personally identifying information will be redacted on the service list: (1) party is a victim of domestic violence with a protection from abuse order or a court order issued by a court of competent jurisdiction in this Commonwealth which provides clear evidence of domestic violence; (2) party attests that they or a member of their residence is a victim of domestic violence; or (3) party is a member of the same residence as victim of domestic violence who meets the standard under Subsection (1) or (2).

⁸⁹ Commonwealth of Pa., Address Confidentiality Program, available at: <https://www.pa.gov/agencies/ova/address-confidentiality.html#accordion-d985387460-item-8019afbcc1>.

⁹⁰ 23 Pa. C.S. § 6704.

⁹¹ 23 Pa. C.S. § 6102.

⁹² 23 Pa. C.S. § 6704 (4-5).

vii. 52 Pa. Code § 1.54. Service by a party.

Section 1.54 of the Commissions regulations sets forth requirements for service by a party. The NOPR would amend Section 1.54(a) to clarify that a person will not be required to register to use the Commission’s electronic filing system to serve documents on other parties. The NOPR proposes to amend Section 1.54(b)(1) to clarify that, if a party does not agree to electronic service, other parties must continue to serve them via first-class mail pursuant to the requirements of Section 1.59. Section 1.54(b)(3) would be amended to permit email service when a party explicitly agrees to this form of service.

We recommend that the Commission further revise the service standards set forth in Section 1.54 to permit parties to request service through first-class mail of documents in a proceeding. Requirements for extensive paper service were altered as a result of the COVID-19 pandemic, where parties had limited access to offices required to print high-volume documents and complete mailings.⁹³ As current practice, parties have continued to coordinate in advance of service to arrange for e-service— with very few proceedings requiring service through traditional mail.⁹⁴ Permission to serve via email is often subsequently provided in prehearing orders during litigated proceedings.⁹⁵

To comport with current practices and help conserve parties’ resources, it is essential that parties are permitted to continue to perform e-service unless otherwise requested. Requiring that parties provide paper copies through first-class mail, even if they serve email copies of documents, is redundant and requires an enormous amount of time and resources to print out, prepare, and

⁹³ Suspension of Regulatory and Statutory Deadlines, Modification to Filing and Service Requirements, Emergency Order, Docket No. M-2020-3019262 (Emergency Order dated March 20, 2020).

⁹⁴ See, e.g., Pa. PUC v. Pa. American Water Company, Prehearing Order No. 1, Docket Nos. R-2023-3043189; 3043190, at 4 (Prehearing Order No. 1 entered Jan. 5, 2024. “Active parties may serve the documents via e-mail to meet this [service] requirement.”

⁹⁵ *Id.*

mail filings to each party. For example, in between July 2017 and June 2019 when paper service was required, counsel for CAUSE-PA spent \$3,917 on postage. By comparison, between July 2020 and June 2022 when email service was permitted as the predominant form of service, counsel for CAUSE-PA spent just \$373 on postage. These figures only capture a small portion of paper service costs – including, importantly, printing costs. These are significant amounts which underscore the costs that parties must pay to accomplish paper service. Under the NOPR’s proposal, parties would be required to perform paper service, and incur these costs, if another party has not explicitly agreed to service through email. Requiring parties to opt-out of paper service would prevent parties being able to solely serve through email in many cases. For example, if a *pro se* litigant does not respond to emails for a variety of reasons, parties must continue to provide paper copies, even if these copies are unwanted.

These additional unnecessary costs are particularly onerous for parties with limited financial means and may act as a barrier to low income consumers participating in Commission proceedings. Even if consumers can secure the aid of legal services or pro bono counsel, they may still be required to pay the high costs of printing and mailing. Similarly, unrepresented consumers may have difficulty navigating dockets so that they can successfully contact parties if they wish to perform service solely through email. Requiring paper service unless parties can secure consent for email service thus consumes time and resources and acts as a barrier to low income consumers being able to participate in Commission proceedings.

We therefore recommend amendment to Section 1.54 to reflect that parties may perform service through electronic mail, unless a party to a proceeding explicitly requests service through first-class mail. We specifically recommend that Section 1.54(b)(1) be amended as follows:

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

(1) First class mail. Unless a party requests service through first-class mail of documents in a proceeding, other parties in a proceeding shall be permitted to electronically serve documents in a proceeding. If a party requests service of documents through first-class mail, the other parties in the proceeding shall serve that party with the requisite number of copies of the filing as provided in § 1.59 (relating to number of copies to be served), properly addressed with postage prepaid.

We similarly recommend that Section 1.54(b)(3) and (c) are amended as follows:

(3) Electronic.

(i) Documents not filed with the Commission. Unless a party requests service through first-class mail of documents in a proceeding, other parties in a proceeding shall be permitted to electronically serve documents in a proceeding.

(ii) Documents filed with the Commission. Unless a party requests service through first-class mail of documents in a proceeding, other parties in a proceeding shall be permitted to electronically serve documents in a proceeding.

(c) Except as provided in Section (b)(1), in a proceeding in which only some of the parties participate, the parties, with the authorization of the presiding officer, may limit the service of documents to parties which state on the record or request in writing that they wish to be served.

viii. 52 Pa. Code § 1.59. Number of copies to be served.

The NOPR proposes to amend Section 1.59 to provide the presiding officer with discretion to determine the appropriate number of copies to be served on the presiding officer and other parties to the proceeding.⁹⁶ CAUSE-PA and TURN are supportive of this proposed amendment to Section 1.59, as it provides presiding officers with important flexibility to determine appropriate service based on individual proceedings.

⁹⁶ NOPR at 24, 75.

Notwithstanding this support, we believe that further amendment is required to Section 1.59 to clarify that requirements to serve copies can be satisfied by email or other electronic services. Section 1.59(a) sets forth that “[o]ne copy of a document shall be served on the presiding officer if one has been designated.” Similarly, Section 1.59(b)(1) explicitly notes service by telefacsimile or electronic mail. However, Section 1.59(b)(2) simply indicates related to service of “other documents”, “one copy”.

As discussed above related to Section 1.54, it is essential to eliminate unnecessary, costly, and duplicative requirements for paper service and align service requirements with current practices and realities of Commission practice. To make clear that service may be accomplished through electronic means, we recommend that Section 1.59 be amended to explicitly provide:

...service pursuant to Sections 1.59(a) and (b)(2) may be made by email or other electronic means, if prescribed pursuant to Sections 1.53-1.54.

B. Chapter 3: Special Provisions

i. 52 Pa. Code § 3.1. Definitions.

Section 3.1 of the Commission’s regulations currently define an “Emergency” to be a “situation which presents a clear and present danger to life or property or which is uncontested and requires action prior to the next scheduled public meeting.” Section 3.1 further defines “Emergency Order” as an “ex parte order issued by a single Commissioner, the Commission, the Commission’s Director of Operations or the Commission’s Secretary in response to an emergency.”

The NOPR proposes to amend Section 3.1 to amend the definition of “Emergency” to include 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.”

(emphasis added).⁹⁷ The NOPR also proposes to amend the definition of “Emergency Order” in Section 3.1 to update the positions which may issue Emergency Orders to include the Commission’s Executive Director – rather than the outdated inclusion of the Commission’s Director of Operations.⁹⁸

CAUSE-PA and TURN support these proposed amendments to Section 3.1. The proposed amendments will provide the Commission with important flexibility to address emergency situations which pose clear and present dangers to the public interest. The provision of safe, reliable, and consistent utility services is necessary to the public interest. While what constitutes the public interest may take a variety of forms, the American Bar Association has explained that a legal definition of “public interest” is “something in which the public, the community at large, has some pecuniary interest, or some interest by which their legal rights or liabilities are affected.”⁹⁹ Thus, the proposed amendments to Section 3.1 will broaden the Commission’s ability to address a variety of emergencies affecting public utilities and consumers – and thereby prevent irreparable injury which may occur.

Permitting the Commission to respond to emergencies which present a danger to the public interest is squarely in line with the Commission’s duties and enumerated powers. Section 501(b), Title 66 of Pennsylvania’s Consolidated Statutes provides, in relevant part, that the Commission has the general administrative power and authority to supervise and regulate all public utilities doing business within this Commonwealth.¹⁰⁰ In turn, 66 Pa. C.S. § 1501 sets forth, in relevant

⁹⁷ NOPR, Annex A at 79, Section 3.1.

⁹⁸ *Id.*

⁹⁹ Jayne R. Reardon, As Lawyers we must further the public interest, ABA Magazine Article, Aug. 13, 2021, available at: [¹⁰⁰ 66 Pa. C.S. § 501\(b\).](https://www.americanbar.org/groups/gpsolo/resources/magazine/archive/lawyers-we-must-further-public-interest/#:~:text=My%20copy%20of%20Black%27s%20Law,in%20protecting%20their%20legal%20rights.,citing Black’s Law Dictionary.</p></div><div data-bbox=)

part, that public utilities have the obligation to provide and maintain “adequate, efficient, safe, and reasonable service and facilities.”¹⁰¹

Importantly, and as the Commission notes in its NOPR, the proposed amendments to Section 3.1 retain the requirement that there must be a clear and present danger prior to Commission action.¹⁰² Requiring a “clear and present danger” for emergency orders issued by the Commission help to place guardrails on when the Commission can take emergency actions which were not previously specified.¹⁰³

For these reasons, we support the proposed amendments in the NOPR to Section 3.1.

ii. 52 Pa. Code § 3.2-3.4, 3.6. Petitions for issuance of emergency orders. Hearings following issuance of emergency orders. Petitions for interim emergency orders.

Proposed Sections 3.2-3.4 and 3.6 of the NOPR seek to expand required service of emergency orders on statutory advocates. The NOPR proposes to amend:

- (1) Section 3.2(a) so that, to the extent practicable, a petition for emergency order must be served “on persons directly affected by the application” as well as statutory advocates;¹⁰⁴
- (2) Section 3.3(b) and (d) to add that emergency orders must be served electronically on statutory advocates;¹⁰⁵
- (3) Section 3.4(b) so that a petition for expedited hearing must be served on “statutory advocates and all parties to the underlying proceeding”;¹⁰⁶ and
- (4) Section 3.6(a) so that petitions for interim order must be served on statutory advocates as well as parties.¹⁰⁷

¹⁰¹ 66 Pa. C.S. § 1501.

¹⁰² NOPR, Annex A at 79, Section 3.1.

¹⁰³ *Id.*

¹⁰⁴ NOPR, Annex A at 79, Section 3.2.

¹⁰⁵ NOPR, Annex A at 79-80, Section 3.3.

¹⁰⁶ NOPR, Annex A at 80, Section 3.4.

¹⁰⁷ NOPR, Annex A at 80, Section 3.6.

We are supportive of the Commission’s proposals to amend Sections 3.2-3.4 and Section 3.6 to require service on statutory advocates. Setting forth these service requirements will permit statutory advocates to better fulfil their duties and obligations to the public. Section 1.8 of the Commission’s regulations define Statutory Advocates as including the Office of Consumer Advocate (OCA), Office of Small Business Advocate (OSBA), and the Commission’s Bureau of Investigations and Enforcement (I&E).¹⁰⁸ Section 3206, Title 66 of Pennsylvania’s Consolidated Statutes sets forth certain duties of OCA and OSBA, including that these statutory advocates will represent, respectively, the interest of consumers and small business consumers.¹⁰⁹ In addition, the Commission has delegated authority to initiate proceedings that are prosecutorial in nature to I&E, as well as other bureaus with enforcement responsibilities.¹¹⁰ It is essential that Statutory Advocates are informed in a timely manner of proceedings impacting their respective interests so that they can fulfill their statutory duties. Requests for emergency orders – and the issuance of such orders -- has the potential to broadly and rapidly impact public utilities, consumers, and the interests which Statutory Advocates represent.

Notwithstanding our support of expanding service of emergency matters and filings pursuant to Sections 3.2-3.4 and Section 3.6 to include statutory advocates, it is essential that these Sections are further amended to ensure that other persons who are likely to have an interest in emergency proceedings are apprised of these proceedings. Specifically, we recommend that service requirements contained in Sections 3.2-3.4 and Section 3.6 be expanded to include both

¹⁰⁸ 52 Pa. Code § 1.8. The NOPR proposes to update the definition of “Statutory Advocate” contained in Section 1.8 to replace outdated references to the Commission’s Office of Trial Staff to I&E. We are supportive of these updates.

¹⁰⁹ 66 Pa. C.S. § 3206.

¹¹⁰ Delegation of Prosecutory Authority to Bureaus with Enforcement Responsibilities, Docket No. M-00940593 (Order entered September 2, 1994), as amended by Act 129 of 2008, 66 Pa. C.S. § 308.2(a)(11). See also Implementation of Act 129 of 2008; Organization of Bureaus and Offices, Docket No. M-2008-2071852 (Order entered August 11, 2011) at 5 (transferring authority to prosecute assessment cases to I&E).

statutory advocates and any person – including organizations -- who was a party to the most recent base rate proceeding for any utilities involved in the emergency request or proceeding.

Parties to a base rate proceeding intervened in these proceedings because they have an interest in a utility's rates, and terms and conditions of service. These interests do not dissipate with the end of base rate proceedings, and parties continue to be impacted by utilities policies and practices. As discussed, emergency proceedings may occur rapidly, and without sufficient time for parties to be apprised of these proceedings if they are not timely served with notice. Even if a party to a base rate proceeding learns about an emergency proceeding prior to the issuance of an order, they will likely be constrained in their time to respond to emergency requests. It is therefore essential to expand service of emergency requests and orders to include both statutory advocates *and* parties who participated in recent rate proceedings for utilities who may be impacted by emergency requests/ proceedings.

Requiring service on all parties to a utility's last base rate proceeding also helps to ensure that due process requirements are being satisfied. To satisfy due process, notice must be reasonably calculated to apprise interested parties of the proposal and afford them an opportunity to present their objection.¹¹¹ The Public Utility Code further provides that the Commission may, at any time, after notice and opportunity to be heard by all affected parties, rescind or amend any order made by the Commission.¹¹² By requiring service pursuant to Sections 3.2-3.4, 3.6 will better ensure that interested or affected parties are apprised of proceedings, and given the opportunity to participate in these proceedings in a timely manner.

¹¹¹ *Wilkes ex Rel. Mason v. Phoenix Home*, 587 Pa. 590, 619 (Pa. 2006).

¹¹² 66 Pa. C.S. § 703(g). 66 Pa. C.S. § 703(g) (relating to rescission and amendment of orders).

For these reasons, we recommend amendment to Sections 3.2-3.4, 3.6 to expand service under these provisions to statutory advocates, as well as all *parties to a most-recent base rate proceeding for the utility/utilities involved in the requests and/or orders.*

C. Chapter 5: Formal Proceedings

i. 52 Pa. Code § 5.12. Contents of Applications.

Section 5.12 describes the contents of applications made to the Commission and the parties the Commission serves them upon. Currently, this section only requires the Commission to serve applications on persons named in the application. The changes to Section 5.12 in the NOPR would require applications to be served on the statutory advocates.¹¹³ We support this change but also recommend that service be extended beyond the statutory advocates and to parties of a utilities' last base rate case in a similar manner and for the reasons described in our comments to Sections 3.2-3.4 and Section 3.6. above.

As laid out in more detail in our comments to Sections 3.2-3.4 and Section 3.6, it is critical that the statutory advocates are given the notice necessary to determine and pursue an appropriate response. This requirement for service will help ensure that Pennsylvania consumers and small businesses by ensuring their designated advocates are given an opportunity to prepare. Furthermore, we recommend that all parties to a utility's last base rate case also be served, because they have already evidenced a distinct interest in the operation of that utility through intervention in a previous base rate proceeding. Providing expanded service of Applications in this manner will help to ensure that impacted individuals and entities are appropriately provided notice and an opportunity to be heard in a proceeding which may impact their rights as a utility consumer. We

¹¹³ NOPR at 33, Section 5.12.

note that the expansion of e-service minimizes any additional cost associated with service on parties to a utility's last base rate proceeding.

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

Section 5.41 describes the general requirements for petitions filed with the Commission. The proposed changes in the NOPR to Section 5.41(a) would require materially supportive documents to be attached and if not, set forth their reason for unavailability. The NOPR describes that this change is intended to bring the requirements for filing a petition in line with the requirements for filing a formal complaint outlined in Section 5.22(a).¹¹⁴ We recommend that this language be changed, as it outlines more onerous requirements than those in Section 5.22(a).

One fundamental piece that is present in Section 5.22(a) that is not present in the proposed language for 5.41(a) is that complainants are not required to attach documents that are already on file with the Commission as a matter of public record. Requiring parties to attach documents that are already on file with the Commission as a matter of public record is duplicative and burdensome. The Commission has stated that it wants to bring these two sections into alignment and public records should be handled for petitions in a similar manner they are for formal complaints. Specifically, we recommend that Section 5.41(a) be amended as follows:

(a) General requirements. Petitions for relief under the [act] Act or other statute that the Commission administers, must be in writing, state clearly and concisely the interest of the petitioner in the subject matter, the facts and law relied upon, and the relief sought. Except for a tariff, regulation, report or other similar document on file with the Commission as a matter of public record, a document, the material part thereof, or a copy must be attached when a petition is based upon the document, the material part thereof, or a copy. If the document, the material part thereof, or a copy is not accessible, the petition must set forth that the document, the material part thereof, or the copy is not accessible and the reason, and set forth the substance of the document or material part thereof. Petitions for relief

¹¹⁴ NOPR at 36, Section 5.41.

must comply with § 1.51 (relating to Instructions for service, notice, and protest).

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

Section 5.52 describes the form of a protest to an application. The proposed changes in the NOPR to Section 5.52(a) would add a new subsection that would require that protests to an application must explicitly request a hearing before the OALJ or one will not be scheduled. We object to the addition of the new subsection (4).¹¹⁵

The proposed changes would remove much needed flexibility as to whether or not a hearing should be scheduled as the result of a protest to an application. Sometimes a party may not have been able to determine if a hearing is necessary until after the filing of the initial protest and they have gone through some of the process. Such parties should not be barred from having a hearing. Furthermore, the proposed rule could prevent *pro se* litigants who are unfamiliar with the procedural requirement from having a hearing if they do not request a hearing at the outset. For the foregoing reasons, we oppose the addition of new subsection (4).

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

Section 5.53 outlines that a protest to an application needs to be filed within the time period outlined in the published notice or within 60 days if a time period is not specified in the notice. The proposed changes in the NOPR to Section 5.53 reduce the 60-day period to file a protest to just 30 days.¹¹⁶ We strongly oppose this reduction in the period to file a protest to an application.

The harms of reducing the length of time for filing of protests outweigh the countervailing benefits of efficient application processing times. A time period this short increases the likelihood

¹¹⁵ NOPR at 38, Section 5.52.

¹¹⁶ NOPR at 38, Section 5.53.

that some protestants will learn of the proceeding only after the window to file has passed, this is even more likely for unrepresented protestants. As a result, this could have a significant impact on the Commission's ability to resolve issues and hear important matters. Furthermore, a reduction from 60 days to 30 days significantly hinders the ability of parties to examine applications and develop a well-crafted protest. Providing additional time allows for better quality engagement with the public and interested parties. This change would particularly disadvantage *pro se* parties and other parties without substantial resources to devote to crafting a protest in such a short period. As a result, CAUSE-PA and TURN propose maintaining Section 5.53 in its current form, allowing for a 60-day default comment period.

v. 52 Pa. Code § 5.81. Consolidation.

Section 5.81 provides the Commission or the presiding officer with the ability to consolidate proceedings with a common question of law or fact. However, this section does not provide the Commission or the presiding officer with the ability to identify and interplead indispensable parties. The NOPR proposes to amend this section to provide the Commission or the presiding officer with this ability.¹¹⁷

We support such a change, but we do not have specific language for this change. The ability to interplead indispensable parties is an integral part of judicial practice. It makes sure that relevant parties' rights are protected, it furthers a full examination of relevant facts, and it contributes to greater judicial economy. Further, the Supreme Court of Pennsylvania has recognized that "unless all indispensable parties are made parties to an action, a court is powerless to grant relief."¹¹⁸

¹¹⁷ NOPR at 40, Section 5.81.

¹¹⁸ *Sprague v. Casey*, 520 Pa. 38, 48, 550 A.2d 184, 189 (1988).

The Pennsylvania Courts have an extensive history of cases that examine this issue and we encourage the Commission to draw upon this history when developing this rule change. Under common law principles in Pennsylvania, “[a] party is indispensable when his or her rights are so connected with the claims of the litigants that no decree can be made without impairing those rights.”¹¹⁹ As part of making a determination as to whether or not a party is indispensable, the Pennsylvania Supreme Court has provided four factors to be considered:

- “1. Do absent parties have a right or interest related to the claim?
2. If so, what is the nature of that right or interest?
3. Is that right or interest essential to the merits of the issue?
4. Can justice be afforded without violating the due process rights of absent parties?”¹²⁰

The Court has further clarified that these factors can be “rephrased as a balancing of the interests of the plaintiff, the defendant, the absent party, and the efficient administration of justice.”¹²¹

Given the extensive and continued analysis of this issue by Pennsylvania Courts, we recommend that the Commission incorporate the above-described common law principles in a note clarifying Section 5.81.

vi. 52 Pa. Code § 5.222. Initiation of Prehearing Conferences in Non-rate Proceedings and 52 Pa. Code § 5.224. Prehearing Conferences in Rate Proceedings.

Section 5.222 describes the purpose and operation of prehearing conferences in non-rate proceedings and Section 5.224 describes the purpose and operation of prehearing conferences in

¹¹⁹ *William Penn Sch. Dist. v. Pennsylvania Dep't of Educ.*, 294 A.3d 537, 870 (Pa. Commw. Ct. 2023) (quoting *Sprague v. Casey*, 520 Pa. 38, 550 A.2d 184, 189 (1988)).

¹²⁰ *Mechanicsburg Area Sch. Dist. v. Kline*, 494 Pa. 476, 481, 431 A.2d 953, 956 (1981)

¹²¹ *CRY, Inc. v. Mill Serv., Inc.*, 536 Pa. 462, 473, 640 A.2d 372, 377 (1994)

rate proceedings. At a prehearing conference, which is usually conducted telephonically, the presiding officer considers a number of logistical topics for the proceeding such as the scheduling of hearing dates, arrangements for the submission of direct testimony, or a proposed plan for discovery. The NOPR proposes to amend these sections to allow the presiding officer to address and determine the manner of service on parties in rate and non-rate proceedings. We are in support of these proposed changes.¹²²

Allowing for various forms of service on the parties would streamline service for parties who rely on electronic service while also providing flexibility and accessibility for other parties who rely on other methods of service. This proposed change will also bring this section in line with current general practice at prehearing conferences. The Commission, presiding officers, and parties to proceedings should be mindful that such discussions at a prehearing conference should be subject to the proposed changes to Section 1.54 where parties who have not agreed to electronic service should still be served via first-class mail and that parties that have agreed to electronic service may be served via email.¹²³ With that, we are in support of the proposed changes to Sections 5.222 and 5.224.

vii. 52 Pa. Code § 5.231. Offers of Settlement.

In her August 22, 2024 statement Vice Chair Barrow asked for input on Section 5.231(a) of the Commission's current rules that state that it "is the policy of the Commonwealth to encourage settlements."¹²⁴ While reducing costs spent on litigation is an important and valid goal that saves Pennsylvania consumers money, the drawbacks of discouraging full litigation may sometimes outweigh the value of these cost savings. As noted by Vice Chair Barrow: Although

¹²² NOPR at 41, Section 5.222 and Section 5.224.

¹²³ NOPR at 23, Section 1.54.

¹²⁴ 52 Pa. Code 5.232.

litigation costs are a legitimate factor when considering settlements, there may be proceedings in which the public interest would be better served by a full evidentiary hearing.¹²⁵ Vice Chair Barrow further states 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.”

Evidentiary hearings often reveal critical information that, if heard, could lead to considerably improved outcomes for consumers. Low income consumers, especially those who are self-represented, are likely to be most impacted by this. *Pro se* litigants may be informed of Commission policy and not realize they have any other choice but to accept a settlement offer or might feel unduly pressured to accept. Other parties may even take advantage of the situation in order to present potentially worse settlement offers than they would otherwise present to a represented party, trusting that Commission policy will encourage consumers to accept whatever is offered to them. However, due to Commission policy, even parties that believe that a fully litigated case would benefit their interests may agree to a settlement due to perceived pressure from the Commission. Conversely, *pro se* litigants and others with limited resources and capacity may benefit from settlement in some circumstances, as they will not have the resources to invest in prolonged litigation. As a result, it is critical that there be discretion in determining when settlement or litigation will lead to the most fair and equitable outcome. These situations are highly context dependent and a blanket policy in favor of one outcome or the other will inevitably miss the nuance that is required.

CAUSE PA and TURN propose bringing commission policy in line with the Pennsylvania Rules of Judicial Conduct that states that “[a] judge may encourage parties to a proceeding and their lawyers to settle matters in dispute but shall not act in a manner that coerces any party into

¹²⁵ Statement of Vice Chair Kimberly Barrow, dated August 22, 2024.

settlement.”¹²⁶ This would allow for more discretion in encouraging settlement or choosing not to do so depending on the specifics of a case. There are many cases where settlement is still an appropriate and cost-effective goal for all parties involved. However, the Commission should change its policy to acknowledge that that is not always true. We propose changing Section 5.231(a) to read:

The Commission may use its discretion to encourage parties to a proceeding and their lawyers to settle matters in dispute but shall not act in a manner that coerces any party into settlement. When determining if settlement is appropriate, the Commission shall consider what is in the public interest and what will result in the most fair and equitable outcome.

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

Section 5.245 prevents a party from reopening the disposition of a matter if the party misses a hearing or conference for that matter. Depending on the hearing or conference, this can effectively result in the dismissal of a complaint, petition, or application with prejudice. The NOPR proposes to amend this section so that it does not apply to *pro se* parties who are not required to secure counsel. The NOPR also proposes to amend this section so that dismissing a complaint, petition, or application with prejudice based on this section is prohibited.¹²⁷ We support both changes.

First, though, we turn to the issue raised by Commissioner Coleman as to whether or not the proposed changes to Section 5.245 are appropriate. Commissioner Coleman states that these proposed changes “would be an unnecessary addition to our regulations” because the Commissioner believes 66 Pa.C.S. §§ 316 “already addresses how to handle a complaint brought

¹²⁶ 207 Pa. Code § 33 Canon 2, Rule 2.6(b).

¹²⁷ NOPR at 41-43, Section 5.245.

on the same allegations as a complaint that was previously dismissed for failure to appear.” However, Commissioner Coleman also states that “it is at least debatable as to whether a decision to dismiss a complaint with prejudice when the complainant fails to appear is a ‘final judgment’ for purposes of res judicata”.¹²⁸ This points to a lack of clarity that would be resolved by the proposed changes to Section 5.245. Therefore, the proposed change is appropriate because it brings certainty and clarity regarding issues of res judicata and collateral estoppel for their complaints, petitions, or applications dismissed based on procedural issues.

To ensure adequate due process and access to justice, the Commission should support measures that make it easier for *pro se* parties to participate in Commission proceedings. Because of the specialized nature of the work of the PUC, the Commission is the primary venue parties have for resolving issues related to their utilities, which are necessary for many of these parties’ lives. Many parties, especially low-income parties with limited resources, have to proceed *pro se* before the Commission. This already puts them at a disadvantage in comparison to represented parties. Therefore, the Commission should take affirmative steps to support *pro se* parties like the ones proposed in this rule change.

Furthermore, parties should not have their complaints, petitions, or applications dismissed with prejudice based on procedural issues. This is contrary to established case law as outlined in the Commission’s expressed rationale for the proposed change.

¹²⁸ Statements of Commissioner John F. Coleman, Jr., dated Nov. 9, 2023 and Aug. 22, 2024.

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

The change to this section proposes changing “telefacsimile” to telefax.¹²⁹ We suggest that instead this section should replace “telefacsimile” with “*fax*” to be consistent with Section 5.22.¹³⁰

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

Section 5.351 currently allows a party to request information or documents from a witness during cross-examination as part of a witness’s response to a question, but only in the course of a rate proceeding. The NOPR proposes to amend this section to allow parties to make such requests of witnesses in all Commission proceedings and not just in the course of a rate case.¹³¹ We are in support of this proposed change.

Even for proceedings involving just an individual customer, witnesses can provide answers during cross-examination that are very technical in nature. It can be hard to fully interrogate and understand such answers without access to the information underlying these answers. Therefore, parties need to be able to request and access information and documents from witnesses in all Commission proceedings.

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

The NOPR proposes to amend Section 5.365 to add subsection (h). Section 5.365(h) would require that all parties exclude or redact a complainants’ personal address and contact information for any documents filed as part of a formal complaint proceeding, if the complainant indicates they or another member of their residence have a currently-effective PFA or other court order for the

¹²⁹ NOPR at 46, Section 5.336.

¹³⁰ NOPR at 35, Section 5.22.

¹³¹ NOPR at 47, Section 5.351.

protection of their personal safety in place, or provides a copy of this order.¹³² The NOPR explains that these proposed amendments are intended to protect individuals with PFAs or similar court orders from disclosure of their personal address through complaint processes.¹³³

CAUSE-PA and TURN are supportive of the Commission’s initiative to protect the personal information of domestic violence victims who are involved in complaints. However, we are concerned that the standard set for in proposed Section 5.365(h) improperly limits these important protections to only those victims of domestic violence who have current PFAs or similar court orders. We are also concerned that the proposed amendment would not protect disclosure of sensitive documents, such as PFAs, court orders, and Commission transcripts containing a victim’s personal details.

Proposed Section 5.365 explicitly ties a victim’s ability to protect their address during a complaint process to whether they have a currently effective PFA or similar court order. Notably, this standard is even more restrictive – and out of line – with the standards set forth in Chapter 56 of the Commissions regulations, which afford protections to victims who have obtained PFAs or other court orders containing clear evidence of domestic violence.¹³⁴ By contrast, proposed Section 5.365(h) requires a *currently effective* PFA or other court order for personal safety or welfare. Thus, victims with expired PFAs and court orders cannot protect their personal information even though these orders provide evidence of abuse. Similarly, a victim cannot protect their personal information if they have another court order which is unrelated to personal safety or welfare, but

¹³² NOPR at 48; 97. Section 5.365(h). Note that rationale for the proposed change indicates that formal complaint forms include a section to indicate if there is a court-granted PFA order, or other order that demonstrates evidence of domestic violence against them currently in effect for their personal safety or welfare in place, “*along with instructions to include a copy of said order with the formal complaint form.*” (emphasis added). However, proposed Section 5.365(h) in Annex A, NOPR p. 97 indicates that can indicate that there is a PFA or similar court order *or* provide a copy of the same.

¹³³ NOPR at 48.

¹³⁴ 52 Pa. Code § 56.1(b).

which still provides evidence of domestic violence. These standards do not provide adequate protection for victims who seek to keep their address confidential from their abusers, including to protect themselves from further abuse.

This proposal is also out of line with proposed amendments to Section 1.51, which affords protection to victims with PFAs or other court orders containing clear evidence of domestic violence. As discussed in the context of Section 1.51 above, tying a victims' ability to protect their personal address to their ability to obtain a PFA or other court order is improperly restrictive. While Chapter 56 of the Commission's regulations require a PFA or other court order containing clear evidence of domestic violence, the protections set forth in these provisions relate to billings, payments, and collections. These provisions do not dictate that a victim be required to provide PFA or other court order to protect their personal information.

As discussed in further detail above, limiting the ability of victims to protect their personal information by requiring that they can produce these specific court orders chills the ability of victim to engage in complaint processes which are critical to enforcing utility rights and protections. Instead, a victim who does not have the requisite orders must make the untenable decision between releasing their personal information or obtaining relief through the complaint process. As mentioned, victims are further limited by the proposed requirement that these court orders must be currently effective.

We are also concerned that proposed changes to Section 5.365 do not protect disclosure of other sensitive information and documents including copies of PFAs or court orders. During the course of proceedings, victims may be required to provide a myriad of documents with sensitive information about their abuse and other personal details of their lives. These may include copies of PFAs or other court orders which a victim may be required to provide to avail themselves of

protection under Chapter 56. Other sensitive documents could include lease information or other details that disclose the victim's location, household composition, or other housing information. In addition, victims may be required to disclose, on the record, personal details about their abuse and their lives, such as information about their living situations. It is essential that victims can be assured that participation in Commission proceedings will not lead to disclosure of sensitive information which may jeopardize their safety.

In line with our recommendation related to Section 1.51, we urge that the Commission broaden the standard set forth in proposed Section 5.365. A victim should be able to obtain address protection during a complaint process if they have a PFA or other court order containing clear evidence of domestic violence (regardless of whether these orders are currently effective). Victims should also be permitted to attest to their status as a domestic violence victim, or that they live in a household with a victim of domestic violence who meets the showing under these provisions. We note that provision is similar to the Address Confidentiality Program (ACP) in Pennsylvania – as discussed in further detail above.¹³⁵

We also recommend that additional protections are required if a matter involves a victim of domestic violence to ensure that sensitive information disclosed throughout the course of proceedings does not become public. Section 5.365 should explicitly provide that copies of PFAs or other court orders/ documents will not be made public. Furthermore, transcripts to proceedings should not be public and should not be available unless requested by parties to the proceeding -- thereby ensuring that third persons other than parties cannot access details about victims which are provided on the record.

¹³⁵ Commonwealth of Pa., Address Confidentiality Program, available at: <https://www.pa.gov/agencies/ova/address-confidentiality.html#accordion-d985387460-item-8019afbce1>.

For these reasons, we recommend that the Commission revise proposed Section 5.365(h) as follows:

(h) Where a complainant in a formal proceeding has indicated in the complaint that a court has granted the complainant or another individual in the same residence a “protection from abuse” order or any other court order which provides clear evidence of domestic violence against the complainant or the other individual, or the complainant attests that they or another individual in their same residence is a victim of domestic violence, any documents on file with the Commission related to the proceeding shall be treated as confidential and redacted from the public record, consistent with the Commission’s rules on confidential filings.

xii. 52 Pa. Code § 5.412. Written Testimony and § 5.412a. Electronic Submission of Pre-served Testimony

Section 5.412a lays out the requirements and procedures related to pre-served testimony provided by parties to the court reporter through the course of a proceeding. The NOPR proposes to remove this section and the related clause in Section 5.412. The NOPR states that having parties submit pre-served testimony to the court reporter during the course of a proceeding creates confusion and burdensome work on the Secretary’s Bureau and the Law Bureau when preparing an official record for appeals of proceedings. This then creates delays and difficulties in complying with appeal deadlines.¹³⁶

We acknowledge this burden on staff and do not oppose the revision of Section 5.412a; however, we do oppose its complete removal. It is important that such testimony be easily accessible and available on the docket, so we ask that language be included in place of the existing provision that requires a presiding officer to determine the manner in which admitted evidence and testimony is provided to the docket. This is especially important with the proposed removal of

¹³⁶ NOPR at 49-50, Section 5.412.

Sections 1.72, 1.75, and 1.77.¹³⁷ The removal of these sections removes one of the methods parties can use to request documents from proceedings before the Commission, which would include testimony. With the removal of this method of accessing testimony, it is especially important that testimony be easily accessible on the docket.

In addition, we also support the proposed change to Section 5.412(g) requiring only one copy of testimony be provided to the court reporter or presiding officer, but we ask that this section be further amended such that providing an electronic copy of testimony is sufficient. Requiring parties to provide multiple physical copies of testimony to the court reporter is both wasteful and burdensome, especially because written testimony is generally distributed in electronic form. This amendment would be in line with other proposed changes by the Commission to bring these sections in line with modern practice.

¹³⁷ NOPR at 25-27, Sections 1.72, 1.75, and 1.77.

V. CONCLUSION

CAUSE-PA and TURN appreciate the Commission's thoughtful consideration of the issues raised in our Comments to Clarified Notice of Proposed Rulemaking Order in this matter. As detailed throughout our Comments, we urge the Commission to adopt the important reforms and further amendments to its proposed regulatory language of Chapters 1, 3, and 5 so that the Commission's rules of practice and procedure are accessible to all consumers.

Respectfully submitted,

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