



1775 Industrial Blvd. • Lewisburg, PA 17837
Phone: 570-524-2231 • Fax: 570-524-5887

Pamela Polacek, Chief Legal & Regulatory Officer
Direct Mail: P.O. Box 129; Venetia PA 15367
Direct Phone: 570-724-9469 (o); 717-503-6531 (m)
ppolacek@ctenterprises.org

March 6, 2025

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

VIA E-FILING

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

Dear Secretary Chiavetta:

Enclosed for filing with the Pennsylvania Public Utility Commission ("PUC" or "Commission") are the Reply Comments of Citizens' Electric Company, Wellsboro Electric Company and Valley Energy, Inc., regarding the above-referenced proceeding.

This filing has been served via email on the parties listed on the attached Certificate of Service. If you have any questions regarding this filing, please feel free to contact the undersigned. Thank you.

Very truly yours,

Pamela C. Polacek

By

Pamela C. Polacek
Counsel to Citizens' Electric Company,
Wellsboro Electric Company and
Valley Energy, Inc.

PCP/

Enclosure

c: Certificate of Service

RA-PCPRGREVIEW@pa.gov

Tiffany L. Tran, Esq., Law Bureau (via email)

Colin W. Scott, Esq., Law Bureau (via email)

Karen Thorne, Regulatory Review Assistant, Law Bureau (via email)

CERTIFICATE OF SERVICE

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

VIA E-MAIL

Rebecca Lyttle, Esq.
Office of Small Business Advocate
Forum Place
555 Walnut Street, 1st Floor
Harrisburg, PA 17101
relyttle@pa.gov

Allison Kaster, Esq.
Bureau of Investigation and Enforcement
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor West
Harrisburg, PA 17120
akaster@pa.gov

Melanie Joy El Atieh, Esq.
Christine Maloni Hoover, Esq.
David T. Evrard, Esq.
Jacob Guthrie, Esq.
Office of Consumer Advocate
555 Walnut Street
Forum Place - 5th Floor
Harrisburg, PA 17101-1921
MElAtieh@paoca.org
CHoover@paoca.org
DEvrard@paoca.org
JGuthrie@paoca.org

Pamela C. Polacek

Pamela C. Polacek (PA ID No. 78276)

Dated this 6th day of March, 2025, in Venetia, Pennsylvania.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**REPLY COMMENTS OF
CITIZENS’ ELECTRIC COMPANY OF LEWISBURG, PA, WELLSBORO
ELECTRIC COMPANY AND VALLEY ENERGY, INC.**

I. INTRODUCTION

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

On February 5, 2025, Citizens’ Electric Company of Lewisburg, PA (“Citizens”), Wellsboro Electric Company (“Wellsboro”) and Valley Energy, Inc., (“Valley”) (collectively, “C&T Utilities”) submitted a letter in lieu of comments. The C&T Utilities indicated their support of the Energy Association of Pennsylvania’s (“Association” or “EAP”) Comments on the Clarified NOPR, and also explained the benefits of continuing the current settlement provisions in the administrative rules. Comments were submitted by several other interested stakeholders, including the Office of Consumer Advocate (“OCA”), Office of Small Business Advocate (“OSBA”),

Pennsylvania-American Water Company (“PAWC”), AIDS Resource, et al. (“AIDS Resource”), the Industrial Energy Consumers of Pennsylvania (“IECPA”), and the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (“CAUSE-PA”) and Tenant Union Representative Network (“TURN”) (collectively, “CAUSE-PA/TURN”).

II. REPLY COMMENTS

The C&T Utilities support the arguments articulated in EAP’s Reply Comments. These limited Reply Comments will provide further explanation of several issues addressed in EAP’s Reply Comments.

A. 52 PA. CODE §§ 1.21-1.23. APPEARANCE, APPEARANCE BY ATTORNEY OR CERTIFIED LEGAL INTERN, & OTHER REPRESENTATION PROHIBITED AT HEARINGS

Several parties submitted Comments on the Commission’s proposed changes to Sections 1.21 and 1.22 of its regulations concerning appearance before the Commission. EAP’s Comments addressed these sections and articulated why the Commission’s proposed changes would constitute the unauthorized practice of law. EAP Comments, pp. 3-9. The arguments raised by OCA, CAUSE-PA/TURN, AIDS Resource, et al. and the OSBA in support of allowing non-attorneys to represent individual consumers or “small businesses” do not rebut the conclusion that the proposed changes are unlawful. *See* OCA Comments, pp. 8-19; CAUSE-PA/TURN Comments, pp. 20-31; AIDS Resource, et al., pp. 1-3. OSBA Comments, pp. 5-10.

The parties supporting the changes to Sections 1.21-1.23 offer contradictory explanations of the issues and scope of proceedings where non-attorney representatives would be allowed. OCA claims that the proceedings involve primarily mathematics and documentation, while CAUSE-PA/TURN suggest that the procedures are too difficult for many consumers to undertake on their own accord. *Compare* OCA Comments, pp. 13-14 to CAUSE-PA/TURN Comments, p. 25. The

C&T Utilities support EAP's Comments and Reply Comments regarding why non-attorney representation should not be allowed except in very limited circumstances.

In Comments, OSBA requests that any corporation or other entity with 250 or fewer employees should be permitted to rely on an officer to participate in adversarial proceedings. OSBA Comments, pp. 5-7. OSBA cites the cost of retaining attorneys as the primary basis for the request to enable small businesses to proceed as *pro se* litigants through an officer.

The C&T Utilities strongly oppose allowing any corporation or other legal entity with 250 or fewer employees to participate in adversarial proceedings without an attorney. The C&T Utilities are each "small businesses" under the OSBA's proposed definition. In fact, with 31 employees or fewer at each company, the C&T Utilities are on the smaller end of the OSBA's "small business" definition. It is unfair to allow one segment of litigants before the Commission to operate by different rules than similarly-sized utilities.

There are benefits to ensuring that all non-residential consumers and parties in a proceeding are represented by counsel. Lawyers are subject to the *Pennsylvania Rules of Professional Conduct*, which include many requirements for attorneys. Those duties include:

- **Duties of candor to the tribunal**—a lawyer may not make any statement of material fact or law; a lawyer may not offer evidence that the lawyer knows to be false or allow a witness to testify falsely (Rule 3.3)
- **Meritorious claims and contentions**—a lawyer may not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis for the claim and it is not frivolous (Rule 3.1)
- **Expediting litigation**—a lawyer shall make reasonable efforts to expedite litigation (Rule 3.2)
- **Fairness to opposing party and counsel**—a lawyer shall not obstruct another party's access to evidence or falsify evidence or testimony (Rule 3.4)

The Rules of Professional Conduct are one tool to ensure that PUC proceedings are conducted in a fair and reasonable manner, with respect for all parties involved in the litigation.

Lawyers also have an ethical duty of competence and a duty to adhere to the procedural rules adopted by the Commission. An adversarial proceeding involves rules of pleading, rules of evidence, burdens of proof, and many other procedural steps. When individual consumers participate on a *pro se* basis, ALJs often assist the consumers and provide some latitude regarding strict compliance with procedural steps. Extending this latitude to corporations who decide to be represented by a non-attorney officer impinges on the due process rights of the utilities and other parties in the proceeding. As a matter of fundamental fairness, the C&T Utilities have a right to litigate against other “small businesses” that have engaged counsel who will be expected to abide by the procedural and other legal rules applicable to PUC proceedings.

B. OCA’S PROPOSED CHANGES TO 52 PA. CODE §§ 5.110 AND 5.111. LAST PUBLIC MEETING DATES IN RATE PROCEEDING & LAST PUBLIC MEETING DATES IN NON-RATE PROCEEDINGS WITH STATUTORY DEADLINES

OCA proposes new regulations to govern the date by which utilities must file a general rate increase under Section 1308(d), another rate proceeding with a statutory deadline, or a non-rate proceeding with statutory deadlines. OCA Comments, pp. 67-70. Specifically, the OCA proposes a new Section 5.110, which states:

52 Pa. Code § 5.110. Last Public Meeting Dates in Adversarial Proceedings with Statutory Deadlines.

(a) General Rate Increases under Section 1308(d):

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

(2) A utility that files a general rate increase under Section 1308(d) shall be required to file on the date in the month that, in the event the filing is suspended for investigation by the Commission, will result in an end-

of-suspension date that falls eight to ten calendar days following a regularly scheduled Public Meeting date.

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

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

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

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

OCA Comments, pp. 69-70.

The C&T Utilities support EAP's Reply Comments in opposition to the OCA's proposed Section 5.110. The timing for the C&T Utilities' filings are heavily influenced by a number of factors, including the desired effective date for the new rates, the test years that will be used for supporting documentation in the filing and the Commission's notice requirements. For example, the C&T Utilities routinely rely on a calendar year for the historic, future and fully projected test years. Based on the definition of "fully projected future test year" recently adopted by the Commission, the first month that the new rates are effective should correspond to the first month of the fully projected future test year. Preparing the documentation and testimony for the filing also takes substantial time (90 to 120 days). To rely on a calendar year as the test year, this means that the base rate case filing will be submitted in April for effectiveness the following January.

When the base rate filing is submitted, the Public Meeting dates for the full suspension period may not be known. As of the date these Reply Comments are being submitted, the Commission has not placed on its website the Public Meeting dates for 2026. Even when those

dates are posted, the meeting dates are subject to change. Thus, the OCA's suggestion for parties to "plan" their filings based on Public Meeting dates is unworkable.

The C&T Utilities agree with the OCA's alternate suggestion, however, for the Commission to consider more frequent meetings or adding in-person, telephonic, or virtual public meetings to the Commission's calendar. There is no need to constrain the dates by which utilities must initiate base rate proceedings, other rate proceedings, or non-rate proceedings with statutory deadlines.

C. OCA'S PROPOSED CHANGES TO 52 PA. CODE § 5.231 *ET SEQ.* DISCOVERY

OCA also recommends that the Commission revise its regulations governing discovery to incorporate "the OCA standard discovery modifications," under which, among other things: (1) the deadline for answers to interrogatories, requests for production of documents, and requests for admission are due within 10 calendar days instead of 20 calendar days; (2) the deadline for written objections to those discovery requests are due within 5 calendar days instead of 10 calendar days; and (3) there is a 3 calendar day deadline for oral objections to interrogatories and requests for production of documents. OCA Comments, pp. 70-73.

Although the C&T Utilities often cooperate with the OCA to adopt discovery rule modifications during litigated proceedings with statutory consideration deadlines like rate cases, the C&T Utilities oppose changing the discovery rules in the regulations. For the C&T Utilities, the agreement to the abbreviated timelines is done on a "best efforts" basis, with both parties agreeing to cooperate on discovery matters. This cooperation includes the recognition that excessive discovery in a shortened period of time may extend the timelines. Alternatively, the C&T Utilities often agree to provide "rolling discovery" through which responses may be provided

prior to the formal due date when available. Finally, the OCA fails to recognize that the discovery modifications would apply to many proceedings without a statutory consideration period.

III. CONCLUSION

Citizens' Electric Company of Lewisburg, PA, Wellsboro Electric Company and Valley Energy, Inc., respectfully asks that the Pennsylvania Public Utility Commission take these Reply Comments into consideration as it evaluates its proposed changes to Chapters 1, 3, and 5 of its regulations.

Respectfully submitted,

Pamela C Polacek

By _____
Pamela C. Polacek (PA ID. No. 78276)
Chief Legal and Regulatory Officer
C&T Enterprises, Inc.
P.O. Box 129
Venetia, PA 15367
Phone: (570) 724-9469; (717) 503-6531(c)
ppolacek@ctenterprises.org

Counsel to Citizens' Electric Company of
Lewisburg, PA, Wellsboro Electric
Company and Valley Energy, Inc.

Date: March 6, 2025