



COMMONWEALTH OF PENNSYLVANIA

March 6, 2025

**E-FILED**

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

**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 please find the Reply Comments in response to the Clarified Notice of Proposed Rulemaking Order, published December 7, 2024, on behalf of the Office of Small Business Advocate ("OSBA"), in the above-referenced proceeding.

If you have any questions, please do not hesitate to contact me.

Sincerely,

/s/ Rebecca Lyttle

Rebecca Lyttle  
Assistant Small Business Advocate  
Attorney I.D. 201399

/s/ Steven C. Gray

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*Enclosures*

cc: Certificate of Service

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

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**OFFICE OF SMALL BUSINESS ADVOCATE’S  
REPLY COMMENTS TO THE  
CLARIFIED NOTICE OF PROPOSED RULEMAKING ORDER**

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**I. INTRODUCTION**

On December 20, 2023, the Pennsylvania Public Utility Commission (“Commission”) entered an Order commencing a Notice of Proposed Rulemaking (“NOPR”). The Order sought comments from the public on the Commission’s proposed amendments to its regulations contained in 52 Pa. Code Chapters 1, 3, and 5.

On August 22, 2024, the Commission entered a Clarified Notice of Proposed Rulemaking Order (“Clarified NOPR”).

Also on August 22, 2024, Vice Chair Barrow and Commissioner Zerfuss submitted Statements at this docket, listing specific rules upon which they sought comment. In addition, Commissioner Coleman submitted a Dissenting Statement on that date.

On December 7, 2024, the Commission published its Corrected Clarified Notice of Proposed Rulemaking Order (“Corrected Clarified NOPR”) in the *Pennsylvania Bulletin*. This began the 60-day comment period.<sup>1</sup>

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<sup>1</sup> 54 Pa.B 7834.

Several companies and agencies submitted their comments regarding the proposed rule amendments. The Office of Small Business Advocate (“OSBA”) hereby files its Reply Comments to those comments.

## **II. REPLY COMMENTS**

The OSBA replies to several comments regarding the following: (1) whether the Commission should encourage settlement; (2) whether a small business consumer can represent itself *pro se* (as a non-attorney) in a legal proceeding before the Commission; and (3) whether a statutory advocate, such as the OSBA, should provide legal counsel to small business consumers in an action before the Commission.

### **1. The Commission Should Continue to Encourage Settlements**

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

The OSBA agrees with the companies and agencies that submitted comments in support the continuation of this policy. Encouraging settlements does not hinder the full exploration of the issues in a case, nor does it prejudice consumers or the utility companies. The parties usually conduct extensive discovery and submit expert testimony about the issues prior to any settlement discussions. While settlements may save litigation costs, the OSBA only settles a case if this office can reach an agreement that benefits small business consumers. If no such agreement can be reached, the OSBA will litigate the case. The Commission's policy on settlement does not affect the OSBA's decision on whether to settle or litigate.

Additionally, the Commission retains the discretion to alter or even reject a settlement. The Commission's policy does not change the Commission's power to do so.

## **2. A Small Business Should be Allowed to Represent Itself *Pro Se* Before the Commission**

Several companies and agencies have disagreed with the proposed changes to the definition of "authorized agent." Specifically, the Commission proposes to modify its definition of "authorized agent" by replacing the current definition of "[a] person with permission to legally act on behalf of the filing user" with "[a] representative of a filing user with permission to submit filings on behalf of the filing user."<sup>2</sup>

This proposed change is connected to the Commission's proposed amendments to Sections 1.21 and 1.22 of its regulations.<sup>3</sup> The OSBA observes that most of the negative comments that the Commission received on this issue were in relation to a *residential consumer* appointing a third party (non-attorney) to represent them before the Commission. The OSBA's focus is on whether a small business consumer should be held to the same standard as a residential consumer and be allowed to represent itself *pro se* before the Commission.

The OSBA replies to the comments, as follows: (a) whether allowing a small business consumer to represent itself *pro se* before the Commission would be allowing the unauthorized practice of law; (b) whether a non-lawyer representative of a small business consumer would have the authority to bind that small business; and (c) whether a non-lawyer representative of a small business consumer has the ability to develop a complete evidentiary record in support of their claims, or would in any way hinder the development of an evidentiary record for the purposes of an appeal.

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<sup>2</sup> See Corrected Clarified NOPR, pp. 5, 59.

<sup>3</sup> See 52 Pa. Code § 1.21 (Appearance) & 52 Pa. Code § 1.22 (Appearance by attorney or certified legal intern).

a. *This is not an Unauthorized Practice of Law*

Currently, an individual residential consumer can file a complaint and prosecute a case before the Commission on behalf of themselves, *pro se*.<sup>4</sup> This is not considered an “unauthorized practice of law.” The same should apply to small business consumers.

Specifically, the Pennsylvania Supreme Court ruled, as follows:

The Pennsylvania Constitution vests with our Court the exclusive authority to regulate the practice of law, which includes the power to define what constitutes the practice of law. What constitutes the practice of law, however, is not capable of a comprehensive definition. For this reason, our Court has not attempted to provide an all-encompassing statement of what activities comprise the practice of law. Thus, we have determined what constitutes the practice of law on a case-by-case basis.

*Harkness v. Unemployment Comp. Bd. of Review*, 591 Pa. 543, 920 A.2d 162, at 166 (citations omitted).

Furthermore, the Pennsylvania Supreme Court reasoned, as follows:

While our Court has addressed the question of what constitutes the practice of law on an individualized basis, we have made clear that paramount to the inquiry is consideration of the public interest. Consideration of the public interest has two related aspects: protection of the public and prudent regulation so as not to overburden the public good.

*Harkness*, at 166 (citations omitted).

The Supreme Court continued, as follows:

While the public interest is certainly served by the protection of the public, it is also achieved by not burdening the public by too broad a definition of the practice of law, resulting in the overregulation of the public's affairs.

*Harkness*, at 167. The Supreme Court further stated:

Thus, our Court, in determining what constitutes the practice of law, must keep the public interest of primary concern, both in

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<sup>4</sup>52 Pa. Code Section 1.21(a) (Individuals may represent themselves).

terms of the protection 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.

*Id.*

The OSBA respectfully submits that prohibiting small business consumers from proceeding *pro se* before the Commission is causing the public good to suffer. Few small businesses can afford to hire legal counsel to pursue a complaint against a well-funded public utility. Thus, unable to afford legal counsel, small businesses have little to no recourse against any Commonwealth public utility.

To allow residential consumers the *pro se* option but not small business consumers is unjust, unreasonable, and discriminatory.

*b. Authority to Bind the Company*

The comments suggest that it may not be clear if the representative has the necessary authority to make binding decisions on behalf of a small business. The solution to this issue is straight-forward and would conform with normal Commission practice. When a small business consumer files a complaint with the Commission, the representative signing the complaint would have to verify that they have a specific relationship with the small business, such as an owner, a partner, or other employee. By signing the complaint and verification, it authenticates that the representative has the authority to bind the small business.

*c. Ability to Develop a Complete Evidentiary Record*

As previously stated, since a residential consumer can proceed *pro se* before the Commission, the OSBA submits that it is fair that a small business consumer should also be allowed to proceed *pro se* before the Commission. The OSBA acknowledges that some companies that are defined as “small businesses” can afford legal counsel. However, there are a high number that cannot. The OSBA submits that there is no justification from preventing “mom

and pop shops” from appearing before the Commission when such a small business cannot afford legal counsel.

Some comments suggested that *pro se* complainants would lead to incomplete evidentiary records, which would then be submitted to the Commonwealth Court on appeal. Such a suggestion is untenable. The OSBA, as well as the Commission, is aware that Commonwealth utilities are represented by highly paid, highly experienced, outside legal counsel. No law firm within the litigation history of the OSBA, has, or would, allow *any* Commission proceeding to have an “undeveloped” evidentiary record.

### **3. The OSBA Should Represent Small Business Consumers before the Commission**

The OSBA is committed to ensuring that small business consumers have a strong and effective voice in proceedings before the Commission, particularly when they file complaints. The OSBA fully supports the objective of representing individual small business consumers before the Commission. However, due to historical and current budgetary constraints, the OSBA faces significant challenges in fulfilling this role to its full potential.

Despite these financial limitations, OSBA remains dedicated to advancing this mission.

### III. CONCLUSION

For the reasons set forth in the OSBA's Comments, as well as these Reply Comments, set forth above, the OSBA respectfully recommends that: (1) the Commission's Policy to encourage settlements be continued; (2) the current language of sections 1.21 and 1.22 be amended to bring consistency to the Commission's regulations that all consumers, residential or small business, have the right to represent themselves *pro se* before the Commission and bring complaints on issues that personally affect them and/or their business without the requirement of attorney representation; and (3) the OSBA supports the goal of having this Office represent all small business consumers before the Commission, but cannot do so at this time.

Respectfully submitted,

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DATE: March 6, 2025

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**CERTIFICATE OF SERVICE**

I hereby certify that true and correct copies of the foregoing have been served via email (*unless otherwise noted below*) upon the following persons, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

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Date: March 6, 2025

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