



March 6, 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 **Reply 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,

A handwritten signature in black ink, appearing to read "Ria M. Pereira".

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BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

Regulations Governing the Public Utility :
 Commission’s General Provisions, 52 Pa. Code : Docket No. L-2023-3041347
 Chapters 1, 3, and 5 (relating to Rules of :
 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 **Reply 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.

SERVICE VIA EMAIL ONLY

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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) :

REPLY 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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TABLE OF CONTENTS

I. INTRODUCTION 1

II. REPLY COMMENTS..... 2

 A. 52 Pa. Code § 1.32. Filing Specifications..... 2

 B. 52 Pa. Code §§ 1.21-1.23. Appearance in nonadversarial or informal proceedings;
 Appearance in adversarial Commission proceedings; Other representation prohibited at
 hearings..... 3

 1. CAUSE-PA/TURN’s recommendations related to Sections 1.21-1.22 address
 concerns regarding unauthorized practice of law raised by other Commenters. ... 4

 2. Comparison to other forums provides important guidance to inform how to
 structure non-attorney third-party representation during Commission
 proceedings..... 7

 C. 52 Pa. Code § 5.74. Filing of Petitions to Intervene..... 9

 D. 52 Pa. Code § 5.245. Failure to Appear, Proceed or Maintain Order in Proceedings..... 9

 E. 52 Pa. Code § 5.351. On the Record Data Requests..... 11

 F. 52 Pa. Code § 5.365. Orders to Limit Availability of Proprietary Information. 12

III. CONCLUSION..... 13

I. INTRODUCTION

The Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA) and the Tenant Union Representative Network (TURN) respectfully submit the following Reply Comments in response 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.

On February 5, 2025, CAUSE-PA and TURN timely submitted initial Comments in response to the NOPR, providing detailed discussion and corresponding recommendations. Our discussions and recommendations were aimed at clarifying and improving the rules of practice and procedure contained in Chapters 1, 3, and 5 so that consumers can meaningfully enforce their rights and protections afforded under the Public Utility Code and Commission regulations in a manner consistent with the laws and policies of the Commission and the Commonwealth. Comments were also submitted by the Office of Consumer Advocate (OCA), the Office of Small Business Advocate (OSBA), Energy Association of Pennsylvania (EAP), FirstEnergy Pennsylvania Electric Company (FE PA), Pennsylvania American Water Company (PAWC), PPL Electric Utilities Corporation (PPL), the Large Users Group, Columbia Gas of Pennsylvania (Columbia), Citizens’ Electric Company of Lewisburg, PA, Wellsboro Electric Company and Valley Energy, Inc. (C&T Utilities), and Industrial Energy Consumers of Pennsylvania (IECPA).

CAUSE-PA and TURN submit the following Reply Comments in response to the comments of others. For the sake of brevity, we will not reiterate the comprehensive discussion and recommendations set forth in our initial Comments, which are incorporated by reference

herein. Our positions and recommendations set forth in our initial Comments have not changed after review of comments of other stakeholders.

As a threshold matter, we note that we are supportive of proposals by OCA and other stakeholders which are aimed at increasing access to the Commission by consumers – particularly *pro se* consumers who do not have the benefit of legal representation to navigate the complex rules of practice and procedure contained in Chapters 1, 3, and 5 of the Commission’s regulations. We specifically support the arguments and recommendations set forth by OCA in their initial Comments to the following Sections of Chapters 1, 3, and 5: Section 1.3 (Information and Special Instructions); Section 1.6 (Commission Office Hours); and Section 1.7 (Sessions of the Commission).

II. REPLY COMMENTS

A. 52 Pa. Code § 1.32. Filing Specifications.

Proposed Section 1.32(b)(2)(v) would require that electronic filings “be filed and served as a searchable PDF.” Through its Comments in this matter, Pennsylvania American Water Company (PAWC) argues that, while searchable PDF format is preferable, PDF software cannot always accurately recognize text on older documents, such as old territory maps or property deeds. PAWC recommends that this regulation be modified to state that electronic filings should “be filed and served as a searchable PDF where feasible” to provide flexibility.¹

CAUSE-PA and TURN support the proposed changes to Section 1.32(b)(2)(v) contained in the NOPR and oppose PAWC’s proposal to revise this Section to further modify the requirement – requiring searchable formatting only “where feasible.” PAWC’s proposed modification

¹ PAWC Comments at 3-4.

introduces a broad and undefined exception – creating a loophole for any party that may be inconvenienced, however slight, by the requirement.

All documents can be converted to searchable format, even though there are some instances where the contents of a particular document may not be searchable following the conversion. PDF searchability facilitates review and streamlines litigation. In many contested matters, documents may span thousands of pages and contain a myriad of complex issues. If a PDF is not provided in a searchable format, individuals who cannot afford software which allows them to edit PDFs will likely be unable to convert a PDF to searchable formats. Being unable to search a PDF limits the ability to streamline review of documents and adds administrative burden to others involved in Commission proceedings and processes. For these reasons, we support the Commission’s proposed revisions to Section 1.32(b)(2)(v) and oppose PAWC’s proposal related to the same.

B. 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 interns and third parties holding powers of attorney during periods of disability and/or incapacity (except in some noted cases of corporations, partnerships, or agencies). Through our initial Comments in this matter, we explained that, while we are supportive of the Commission’s intent to permit non-attorney third-party advocates, we are concerned that the proposed amendment is simultaneously too broad and too narrow to improve consumer representation in proceedings before the Commission.² We instead urge the Commission to amend Section 1.21 and 1.22 to permit a

² CAUSE-PA/ TURN Comments at 20-31.

consumer to be represented by a non-attorney advocate working under the direct supervision of a licensed attorney.³

Through initial Comments filed in this proceeding, EAP, Columbia Gas, and PPL express concerns with the Commission's proposed revisions to Sections 1.21 and 1.22 related to non-attorney representation for consumers at Commission proceedings. Namely, they contend that the Commission's proposal (1) raises issues related to unauthorized practice of law; (2) raises a host of practical considerations related to application of power of attorneys and disability/incapacity status; and (3) is not analogous to non-attorney representation provided in other forums.⁴ We discuss these arguments below. As discussed in our initial Comments, CAUSE-PA and TURN are also concerned that the Commission's proposed revisions to Sections 1.21-1.22 may be challenging to apply and fail to sufficiently promote consumer protections. We instead urge the Commission to further revise Sections 1.21-1.22 to allow a non-attorney representative under the direct supervision of a licensed attorney to represent consumers in Commission proceedings.⁵ We stand firmly by the recommendations set forth in our initial Comments, as discussed in further detail below.

1. CAUSE-PA/TURN's recommendations related to Sections 1.21-1.22 address concerns regarding unauthorized practice of law raised by other Commenters.

³ CAUSE-PA/ TURN Comments at 20-31.

⁴ FirstEnergy indicates through its Letter filed in this matter that it supports EAP Comments related to 1.21 and 1.22. FE PA Letter at 1. In its Comments, OSBA agrees with the proposed amendments to Section 1.21 and 1.22 contained in the NOPR, as modified by OSBA's recommendations related to small businesses. OSBA Comments at 5-7. Pa. American Water Company (PAWC) indicates through its Comments that it does not object to the additional flexibility created by Sections 1.21-1.22, but requests clarification that Sections 1.21-1.22 permit a party to be represented by an attorney in both adversarial and non-adversarial proceedings. PAWC Comments at 2-3. OCA also sets forth recommended revisions to Section 1.21-1.23. OCA Comments at 8-19. While we do not address these comments in detail herein, we note that we continue to stand firmly by our recommended revisions to Sections 1.21-1.22.

⁵ CAUSE-PA/ TURN Comments at 20-31.

Through their Comments, EAP, together with Columbia and PPL, oppose the NOPR's proposed revisions to Sections 1.21-1.22 and argue that Sections 1.21 and 1.22 would permit the unauthorized practice of law.⁶ Additionally, EAP argues that it is inappropriate to permit non-attorneys with powers of attorney to represent individuals.⁷ EAP cites to the Rules of Administrative Practice and Procedure, in which the Commission indicates that it adheres to a "strict approach to the practice of law."⁸ EAP argues that the intervening years do not contravene these concerns.⁹ EAP similarly argues that non-attorneys are not subject to professional rules of conduct, raising concerns about confidentiality and privilege.¹⁰

As an initial matter, EAP has mischaracterized the legal authority of a power of attorney. Someone possessing power of attorney for another individual has been granted authority to act in their stead. When appearing before the Commission, they would be acting in place of the *pro se* litigant, they would not be acting in the same capacity as a legal representative. The Commission has no authority to limit the otherwise valid authority of a duly executed power of attorney.

Furthermore, while CAUSE-PA and TURN did not take a position in their initial Comments related to whether the NOPR's proposed revisions to Sections 1.21-1.22 would raise issues related to unauthorized practice of law, we set forth extensive concerns that the proposed revisions are unworkable and would continue to leave the vast majority of consumers without competent representation before the Commission.¹¹ CAUSE-PA and TURN recommend that Sections 1.21

⁶ EAP Comments at 4. Columbia Letter at 1. PPL Comments at 3-4.

⁷ EAP Comments at 4-5. EAP shares the same concerns regarding the Commission's proposed changes for appointment of Authorized Agents. EAP Comments at 2. EAP's concerns are misplaced as an Authorized Agent could be appointed for a task as limited as filing, which is not a role that results in a relationship of legal representation.

⁸ Rules of Administrative Practice and Procedure, Docket No. L-930076 (Order entered July 18, 1996) (emphasis added).

⁹ EAP Comments at 7-8.

¹⁰ *Id.* at 8.

¹¹ CAUSE-PA/ TURN Comments at 21-24.

and 1.22 be amended to allow representation by a non-attorney advocate in Commission proceedings where the representative is acting under the supervision of an attorney.¹² Non-attorney advocates would be accountable to and under the direct supervision of a licensed attorney to ensure that the attorney – not the advocate - is making important decisions related to client representation, including what 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.

Regarding EAP, Columbia, and PPL’s concerns, CAUSE-PA and TURN submit that requiring supervision by attorneys of non-attorney advocates will ensure that there is a clear line of accountability if a consumer is dissatisfied or otherwise has issues with representation during Commission proceedings. Requiring attorney supervision of non-attorney advocates fulfills the strict objectives of the definition of representation discussed by EAP, as it prevents non-attorneys from engaging in unauthorized practice of law and helps to ensure competent representation for consumers.

As discussed extensively in our initial Comments, permitting representation by a third party advocate under the direct supervision of an attorney helps improve access to assistance and narrows the representation gap present in Commission proceedings.¹³ This is particularly true for low income consumers, who access Commission proceedings without counsel at greater rates compared to other consumers because they face profound and disproportionate payment trouble and termination rates compared to residential customers as a whole.¹⁴ Permitting non-attorney representation under the supervision of attorneys helps expand access to quality assistance by

¹² Id. at 29-31.

¹³ CAUSE-PA/ TURN Comments at 24.

¹⁴ Id. at 24.

enabling organizations such as legal service providers, pro bono law clinics, and medical-legal partnerships to represent more utility consumers who may be at risk of losing critical energy, water, and telecommunication services.¹⁵

For these reasons, as more extensively articulated in our initial Comments, we maintain that the Commission should amend Section 1.21 and 1.22 to permit consumers to be represented by a non-attorney advocate working under the direct supervision of a licensed attorney.¹⁶

2. *Comparison to other forums provides important guidance to inform how to structure non-attorney third-party representation during Commission proceedings.*

EAP argues that the Commission's administrative hearings are distinguishable from the administrative hearings held by the Department of Human Services, the Unemployment Compensation Board, and the Department of Revenue.¹⁷ PPL also argues that magisterial district rules are distinguishable from the proposed changes to Section 1.22 because they require verification of subject matter. PPL also argues that magisterial district court hearings are not akin to Commission formal proceedings, and allow *de novo* appeals which lower the stakes for the creation of factual records. By contrast, evidentiary records in Commission matters are relied on for appeals, and therefore of greater importance.¹⁸

The practices established by other Pennsylvania agencies, governing access to justice by aggrieved Pennsylvania consumers, provide important examples which underscore that rules of practice can be structured to permit competent non-attorney representation.¹⁹ Legal service organizations often utilize paralegals, advocates, and other support staff who are trained and

¹⁵ *Id.* at 29.

¹⁶ *Id.* at 20-31.

¹⁷ EAP Comments at 5-6.

¹⁸ PPL comments at 3-4.

¹⁹ CAUSE-PA/ TURN Comments at 25-26.

operate under direct attorney supervision to assist in representation in other administrative contexts – including for appellants seeking public benefits, before Pennsylvania’s Unemployment Compensation Board of Review, and before the Board of Finance and Revenue.²⁰ Contrary to EAP’s arguments, these forums often entail complex issues which deeply impact consumers’ rights and protections, and require an understanding of complex programmatic and administrative rules and procedure. Among them, these proceedings involve issues related to fraud and overpayments before Pennsylvania’s Unemployment Compensation Board of Review²¹ and complicated issues associated with before the Pennsylvania Department of Revenue Board of Appeals.²²

By setting forth rules and procedures which permit competent representation by non-attorneys, other forums provide the important opportunity for legal service organizations and law clinics to utilize carefully trained advocates with deep programmatic knowledge, acting under direct attorney supervision to assist in representation in other administrative contexts.²³

As discussed above and in our initial Comments, expanding the availability of competent representation by a non-attorney under the direct supervision of an attorney will meaningfully address the representation gap for consumers in Commission proceedings. This is particularly important to low income consumers.²⁴ It is essential that the Commission revise its rules for representation contained in Sections 1.21-1.22 so that consumers can more equitably access

²⁰ Id.

²¹ For example, see Hollingsworth v. Unemployment Comp. Bd. of Rev., 189 A.3d 1109, 1111 (Pa. Commw. Ct. 2018), where pro se claimant was brought before the Unemployment Compensation Board of Review to defend against an allegation that he fraudulently received benefits and an overpayment.

²² For example, see Kelleher v. Com., 704 A.2d 729, 730 (Pa. Commw. Ct. 1997), where the Department of Revenue Board of Appeals was required to determine whether or not an individual was eligible for the industrial use exception of the Realty Transfer Tax is the individual subleases the property to a corporation the individual was also a shareholder in.

²³ CAUSE-PA/ TURN Comments at 25-26.

²⁴ Id. at 24-30.

competent assistance of a non-attorney advocate with a clear line of accountability that prevents the unauthorized practice of law and maintains the integrity of Commission proceedings.

C. 52 Pa. Code § 5.74. Filing of Petitions to Intervene.

The NOPR proposes to shorten the default timeline for Petitions to intervene from 60 days to just 30 days.²⁵ Similarly to what CAUSE-PA and TURN have already outlined in our initial comments regarding Rule 5.53,²⁶ we strongly oppose this change. Although we support the OCA's general objections to this proposed change to the timeline, and agree with their concern that intervention is the most likely route for non-statutory parties, we are concerned with their proposal to bifurcate the timelines for different types of proceedings, with applications that are unlikely to have an impact on a "significant number of consumers" being allowed to remain at the shorter, 30 day timeline.²⁷

It is important that timelines be consistent for all proceedings to prevent uncertainty for consumers and consumer groups who may seek to get involved. OCA's suggestion is ambiguous; there is no clear standard for what qualifies as "a significant number of consumers" as well as a timeline of when such a determination will be made and what kind of notice is required for such a determination. Such inconsistencies may leave potential intervenors without recourse. This will be particularly harmful to intervenors with limited resources and those acting *pro se*. We therefore continue to support a 60-day timeline for intervention in all cases.

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

²⁵ NOPR at 39-40, Section 5.74.

²⁶ CAUSE-PA/TURN Comments at 50-51.

²⁷ OCA Comments at 37-39.

As we previously addressed in our initial Comments, the NOPR proposes restrictions as to when complaints can be dismissed with prejudice, especially when it concerns *pro se* litigants.²⁸ Some commenters, particularly EAP and PPL, expressed concerns about these proposed changes. PPL and EAP noted their concerns about the consumption of company resources when hearings are not able to go forward as planned and expressed additional concerns that this could be part of a strategy to avoid shut off.²⁹ However, nothing about the proposed rules prevents the case from being dismissed. Once the case is dismissed, any arrears can be returned to the collections path, and the company may pursue available collection avenues. Furthermore, although PPL is concerned as to the duplication of resources should the case be restarted after being dismissed,³⁰ the same would hold true if a hearing was canceled with notice and had to be rescheduled. Once the company has prepared, they can utilize the same work product when a new hearing is scheduled.

Moreover, EAP and PPL's arguments disregard case law that supports this change that was cited by the Commission in its NOPR.³¹ This issue has already been litigated by the Pennsylvania Courts, which has long held that "[j]udgment for defendant because nonsuit had been entered in a prior action between the same parties on the same cause of action is improper where the nonsuit was granted without a trial on the merits."³² The proposed changes are not only sound policy but are consistent with Pennsylvania law.

²⁸ NOPR at 41-43, Section 5.245.

²⁹ PPL Comments at 8-9; EAP Comments at 11-12..

³⁰ PPL Comments at 9.

³¹ NOPR at 42-43. See, e.g., *Monroeville v. Liberatore*, 736 A.2d 31, 34 (Pa. Commw. Ct. 1999).

³² Scharf v. Richard De Cou Co., 320 Pa. 552, 183 A. 41 (1936).

PPL and EAP's concerns are misplaced and the ability to dismiss complaints without prejudice is sufficient to protect company resources and interests.

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

The NOPR proposes amending Section 5.351 to allow parties to request information or documents from a witness during cross-examination as part of a witness's response to a question in all Commission proceedings and not just during a rate case.³³ In our Comments, we expressed support for this proposed change.³⁴ EAP, however, has expressed opposition to this proposal.³⁵

EAP argues that on the record requests should not be allowed, because "Commission rules allow for robust discovery prior to the hearing, making on the record requests by a party during a hearing unnecessary."³⁶ However, EAP concedes that requests for information or documents during cross-examination are warranted during rates cases. EAP supports such requests during rate cases in part because "parties engage in extensive discovery before hearings, making any on-the-record data requests limited in number and in scope."³⁷ These two positions are in direct conflict, and reveal a clear bias. If the robust discovery afforded in rate cases is a reason to support requests for information or documents during cross-examination in rate cases, then that robust discovery should also be a reason to support such requests in other PUC hearings.

On-the-record data requests are permitted in rate cases to make sure that parties can "obtain necessary data points or information to create a complete record."³⁸ The same need for data and information to create a complete record exists across Commission formal proceedings. Even for

³³ NOPR at 47, Section 5.351.

³⁴ CAUSE-PA/TURN Comments at 57.

³⁵ EAP Comments at 13.

³⁶ EAP Comments at 13.

³⁷ Id.

³⁸ Id.

proceedings involving an individual customer dispute, a witness may provide new information not previously disclosed that may lead to other pertinent data. A witness may also provide answers during cross-examination that are very technical in nature that would require the underlying data and information for the parties to fully understand the witness' answers. Parties need to be able to make on-the-record requests for information and documents from witnesses in all Commission proceedings to ensure the development of a complete adjudicative record.

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

The NOPR proposes to amend Section 5.365 to add subsection (h). If adopted, newly added Section 5.365(h) would require all parties to 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 Protection from Abuse (PFA) Order or other court order for the protection of their personal safety in place, *or* if they provide a copy of such a protective order.

EAP argues that the proposed language of Section 5.365 should be adjusted to change “or” to “and.”³⁹ This would effectively require consumers to both assert that they have a protective order and produce copies of a PFA or separate court order with evidence of domestic violence in order for their personal information to be protected from disclosure. EAP argues that the Commission's formal complaint form indicates that copies of orders are required with formal complaints.⁴⁰

We strongly oppose EAP's suggested change to Section 5.365. Far from being merely a typographical error, this proposed change would create an unreasonable barrier for victims of

³⁹ EAP Comments at 14.

⁴⁰ Id.

domestic violence seeking to shield their information from disclosure. Such a result may place the victim's physical safety at risk of harm. Even if a victim is protected by such an order, they may not be able to access the requisite documentation, particularly if they are experiencing a crisis such as displacement from housing. 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 in our initial comments, victims are further limited by the proposed requirement that these court orders must be currently effective.⁴¹

As we recommended in our initial Comments, we urge the Commission to broaden the standard set forth in proposed Section 5.365.⁴² A victim of domestic violence should be able to protect their personal identifying information from public disclosure even if they do not have court-ordered protection. Section 5.365 should also explicitly provide that copies of any documents produced regarding domestic violence to the consumer – including documentation of the victim's self-attestation of abuse – 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. Limiting such access ensures that non-parties cannot obtain details about a victim or their unique victimization that may be provided on the record.⁴³

III. CONCLUSION

CAUSE-PA and TURN appreciate the Commission's thoughtful consideration of the issues discussed above and raised in our comprehensive initial Comments. We urge the Commission to act in accordance with the recommendations included in our Comments and Reply Comments.

⁴¹ CAUSE-PA/TURN Comments at 59.

⁴² *Id.* at 60.

⁴³ CAUSE-PA/TURN Comments at 60.

Respectfully submitted,

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Dated: March 6, 2025