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March 6, 2025

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

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

Dear Secretary Chiavetta:

Enclosed for filing are the reply comments of the Energy Association of Pennsylvania to the Clarified Notice of Proposed Rulemaking Order (NOPR) in the above-referenced proceeding. This filing has been served via email on the parties listed on the attached Certificate of Service.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Donna M.J. Clark', is written in a cursive style.

Donna M.J. Clark
Vice President & General Counsel

Enclosure

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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).

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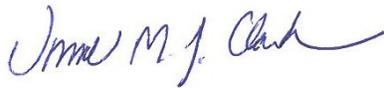
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Donna M.J. Clark

Dated March 6, 2025

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

I. INTRODUCTION

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

On February 5, 2025, the Energy Association of Pennsylvania (“Association” or “EAP”) filed Comments on the Clarified NOPR, along with 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”).

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

II. 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 opposed the Commission’s proposed changes to these regulations, while the OCA, CAUSE-PA/TURN, and AIDS Resource, et al. proposed revisions to the regulations that would permit non-lawyers to represent individuals in Commission proceedings under certain circumstances. (*See* EAP Comments, pp. 3-9; OCA Comments, pp. 8-19; CAUSE-PA/TURN Comments, pp. 20-31; AIDS Resource, et al., pp. 1-3.) Relatedly, OSBA proposed that “small businesses” be included in the groups to which the Commission’s revised Section 1.21 would apply, proposed that the Commission add a definition for “small business,” and supported the Commission’s proposed changes to Section 1.22.¹ (OSBA Comments, pp. 5-10.)

¹ EAP supports the existing language in 52 Pa. Code § 1.21(c) which allows corporations, trusts, associations, and partnerships to be represented respectively by a bona-officer or a partner in a nonadversarial proceeding and opposes the Commission’s proposal to amend § 1.22(a) to allow an “authorized corporate official” to represent “a small business or partnership: in an adversarial proceedings for the reasons set forth in its initial comments (EAP Comments, pp. 3-9.) EAP recognizes OSBA’s effort to clarify the Commission’s proposal by adding a definition for “small business” to 52 Pa. Code Chapter 1. That definition, however, includes various business entities if, *inter alia*, the number of employees is less than 250, a large number in the context of considering adoption of a rule change

EAP reiterates its concerns with the Commission amending its regulations to permit non-lawyer representation of third parties, as such amendments would enable individuals to engage in the unlawful practice of law. (*See* EAP Comments, pp. 3-9.) Moreover, to the extent that parties are concerned about *pro se* litigants' ability to navigate Commission proceedings, the Commission and administrative law judges ("ALJs") already do a great job of assisting on that front. For example, the Commission's website provides forms for filings, including formal complaints, as well as useful information about eFiling and relevant issues, laws, and regulations.² The Commission's Secretary's Bureau and ALJs also help answer procedural questions that *pro se* litigants may have. Although the Commission and ALJs do not provide legal advice, they provide assistance which greatly aids *pro se* litigants in navigating Commission proceedings. As such, non-lawyer representation of individuals is unnecessary.

Notwithstanding, to the extent that the Commission presses onward with modifying its regulations to permit non-lawyer representation, EAP believes that the proposals offered by CAUSE-PA/TURN and AIDS Resource, et al. are more reasonable than the changes proposed by OCA. Specifically, CAUSE-PA/TURN and AIDS Resource, et al. recommend that the Commission amend Sections 1.21 and 1.22 to permit non-attorneys to represent individuals in: (1) non-adversarial proceedings; and (2) adversarial proceedings where the representative is acting under the supervision of a licensed attorney. (CAUSE-PA/TURN Comments, pp. 29-30; AIDS Resource, et al. Comments, pp. 1-3.) These recommendations contrast with OCA's proposed modifications, which, among other things, would allow any non-attorney third-party representative

which would reverse a long-standing rule of practice in Pennsylvania that a business entity (corporation, trust, partnership and association) be represented by an attorney in a court proceeding and would promote the unauthorized practice of law without any clear statutory authority granted to the Commission. EAP believes that a sole proprietorship could be represented by an individual owner in both a non-adversarial and an adversarial proceeding under current law and Commission regulations and suggests that clarifying that point may allow for the greater flexibility envisioned by the Commission.

² <https://www.puc.pa.gov/filing-resources/>

holding the power of attorney of an individual to represent that individual in non-adversarial or informal proceedings and, during periods of disability or incapacity, in adversarial proceedings and would allow “[a]n appropriate individual including a family member or other individual or entity with oral or written authority, including a power of attorney, to represent the individual or entity in “formal proceedings brought under Chapters 56 and 64” of the Commission’s regulations and “Chapter 14 and 15, Subchapter B of the Act.” (OCA Comments, pp. 17-18.)

When comparing these competing two proposals, EAP maintains that CAUSE-PA/TURN and AIDS Resource, et al.’s proposed approach is preferable to the OCA’s recommendation. A primary concern of EAP regarding the Commission’s proposed changes, in addition to promoting the unauthorized and unlawful practice of law, is the lack of accountability when a non-lawyer represents an individual. At least under CAUSE-PA/TURN and AIDS Resource et al.’s proposals, a lawyer would be responsible for supervising the work being performed by the non-lawyer in an adversarial proceeding.³ By contrast, OCA would not have any requirement for a licensed attorney to supervise the work being performed by the non-lawyer. Moreover, while the OCA tries to confine its proposal for non-lawyer representation of individuals in adversarial matters to particular types of proceedings, most customer complaints raise issues within the scope of those statutes and regulations.

Cases arising under Chapters 56 or 64 of the Commission’s regulations or under Chapters 14 or 15, Subchapter B of the Public Utility Code, should be treated no differently from other adversarial proceedings, as they will all be on-the-record proceedings and, ultimately, affect

³ EAP suggests that this proposal, i.e., to have a non-attorney third-party represent an individual in adversarial proceeding under the supervision of a licensed attorney, may offer the more flexible approach sought by the Commission for small businesses or partnerships. EAP cautions, however, that even with the alternative approach offered by CAUSE-PA/TURN, without explicit statutory authority, such a rule change would be in conflict with the Pennsylvania Judicial Code. See, *Kohlman v. Western Pa. Hosp.*, 652 A.2d 849, 852 (Pa. Super. 1994).

individuals' rights and ability to pursue further relief. From that perspective, an individual's formal complaint dealing with billing issues is no less consequential than that individual's complaint in a base rate proceeding. In fact, Section 701 of the Public Utility Code requires that any formal complaint set "forth any act or thing done or omitted to be done by any public utility in violation, or claimed violation, of any law which the commission has jurisdiction to administer, or of any regulation or order of the commission." 66 Pa. C.S. § 701. As such, every complaint proceeding inherently raises a legal question, which non-legal professionals would likely be ill-equipped to answer.

Finally, to the extent that the Commission does adopt CAUSE-PA/TURN's and AIDS Resource, et al.'s recommendation, EAP suggests that the Commission also adopt requirements that supervising attorneys: (1) provide some form of certification that they are responsible for overseeing the non-attorney's work in the case, before the non-attorney begins representing the individual; and (2) be required to attend the evidentiary hearing.

B. 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

CAUSE-PA/TURN recommend that the Commission amend Sections 3.2-3.4 and 3.6 of the regulations to "expand service" of petitions for emergency orders and petitions for interim emergency orders on not only the statutory advocates, as proposed by the Commission, but on "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." (CAUSE-PA/TURN Comments, pp. 46-47.)

EAP respectfully disagrees with this recommendation. The list of parties in a base rate proceeding is often extensive and includes several, if not many, *pro se* litigants who filed

complaints against the proposed rate increase. Apart from the statutory advocates, many, if not all, of those parties will have no interest in every petition for emergency order or, especially, every petition for interim emergency order involving the applicable utility. Furthermore, the Commission should recognize that expanding the required service list to all parties in the utility's most recent base rate proceeding will make it more time-consuming and burdensome for petitioners to prepare, file, and serve their petitions for emergency order and petitions for interim emergency order. Indeed, many of the *pro se* parties in base rate cases do not provide e-mail addresses or consent to electronic service, thus requiring service by mail. Given the often emergent and critical nature of those filings, it would be unreasonable for the Commission to require that the petitioners spend time on locating the service list from the utility's most recent base rate proceeding, incorporating those parties into their service list for the petition for emergency order or petition for interim emergency order, and then effecting such service.

C. 52 PA. CODE § 5.12. CONTENTS OF APPLICATIONS

CAUSE-PA/TURN proposes that every application be served not only on the statutory advocates, as proposed by the Commission, but on every party to the utility's last base rate case. (CAUSE-PA/TURN Comments, pp. 48-49.)

EAP respectfully disagrees with this recommendation. For this proposal, EAP has the same concerns that it identified previously with respect to CAUSE-PA/TURN's similar proposal for service of petitions for emergency order and petitions for interim emergency order. Moreover, the proposed service of every application on the parties to the last base rate proceeding is unnecessary, given the publication of the application in the *Pennsylvania Bulletin*. Therefore, if a party to the last base rate case has concerns about any applications being filed after the base rate case concludes, they can track the notices published in the *Pennsylvania Bulletin* and, if they have standing, file a protest or petition to intervene.

D. 52 PA. CODE § 5.53. TIME OF FILING

Multiple parties disagreed with the Commission’s proposal to reduce the time to file protests and petitions to intervene in response to applications from 60 days to 30 days. (*See, e.g.*, OCA Comments, pp. 36-37; CAUSE-PA/TURN Comments, pp. 50-51.)

EAP does not oppose keeping the existing, default 60-day protest period.

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

Both OCA and CAUSE-PA/TURN support the Commission’s proposal to allow on the record data requests in all Commission proceedings as opposed to only in rate proceedings, as currently provided under the Commission’s regulations. (OCA Comments, pp. 45-46; CAUSE-PA/TURN Comments, p. 57.)

As explained in EAP’s Comments, the Commission should keep confining the use of on the record data requests to rate proceedings and not implement its proposed change to this regulation. If the Commission were to permit the use of on the record data requests in every Commission proceeding, parties who fail to engage in discovery in a timely manner before the hearing could try to use on the record data requests for the entirety of their discovery in a matter. Doing so would needlessly prolong the hearings and deny the responding party an opportunity to submit evidence in response to the on the record data requests.

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

In its Comments, CAUSE-PA/TURN propose that the Commission amend its proposed Section 5.365(h) of the regulations 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. ~~that is currently in effect for personal safety or welfare, or provided a copy of the same, all parties are required to exclude or redact the complainant's personal address and contact information from any filings to the proceeding.~~

(CAUSE-PA/TURN Comments, p. 61.)

In support of the proposal and to provide clarity around the application of this suggested change to the proposed Section 5.365(h) of the Commission's regulations, EAP respectfully recommends the following adjustments to CAUSE-PA/TURN's revisions to the proposed regulation (new text shown in underline):

(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 has been granted a "protection from abuse" order or any other court order which provides clear evidence of domestic violence against the complainant or the other individual-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.

G. 52 PA. CODE 5.412A. ELECTRONIC SUBMISSION OF PRE-SERVED TESTIMONY

In its Comments, OCA opposes the Commission's proposed repeal of Section 5.412a of the regulations and recommends, among other things, that the Commission amend the regulation to require that parties electronically file their testimony and exhibits admitted into the record within 5 days of the final hearing and not furnish copies to the court reporter. (OCA Comments, pp. 50-57.) While the EAP could support a requirement to electronically file the admitted testimony and exhibits and not furnish copies to the court reporter, EAP is concerned that the 5-day deadline could prove to be burdensome, especially in significant litigations where the utilities' testimony

and exhibits may total thousands of pages. Condensing all of those pieces of testimony and exhibits into a single PDF or as few PDFs as possible as set forth in OCA's proposed changes to Section 5.412a could be difficult to accomplish in 5 days, especially if there are corrections to the testimony or portions stricken at the evidentiary hearing that need to be reflected in the as-filed versions of the testimony and exhibits. Accordingly, to the extent that the Commission considers adopting OCA's proposal, the Commission should not adopt OCA's proposed 5-day deadline.

H. ADDITIONAL ITEMS

1. Vice Chair Barrow's Statement on 52 Pa. Code § 5.231

In response to Vice Chair Barrow's Statement, OCA and CAUSE-PA/TURN proposed certain changes to Section 5.231 of the Commission's regulations, which deal with the Commission's policy of encouraging settlements. (OCA Comments, pp. 59-60; CAUSE-PA/TURN Comments, pp. 53-55.) Specifically, OCA proposes that Section 5.231(a) be amended as follows:

(a) It is the policy of the Commission to encourage settlements, only if the provisions which arise out of the settlement process outweigh the public interest in further development of the factual record and legal positions of the parties.

(OCA Comments, p. 59.) Meanwhile, CAUSE-PA/TURN recommends that the Commission incorporate Rule 2.6(b) of the Pennsylvania Rules of Judicial Conduct in Section 5.231(a), such that it states:

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.

(CAUSE-PA/TURN Comments, p. 55.)

EAP opposes the changes proposed by OCA and CAUSE-PA/TURN. As an initial matter, EAP believes that the proposed changes to Section 5.231(a) are a solution in search of a problem. EAP sees no issues with the Commission's current regulation and is unaware of any instance in which the existing regulation served as a barrier or obstacle to litigation or unduly influenced a party not to pursue litigation of their claims. The Commission's policy is to encourage settlements because settlements can reduce the time and resources expended by the parties and tribunal and can lead to more favorable results. This is a well-established, universal principle in the practice of law.

Furthermore, the Commission does not rubber stamp settlement petitions simply because its policy encourages settlements. In every case, the Commission carefully considers the provisions of the proposed settlement, investigates the factual evidence justifying those provisions, and determines whether the settlement, as a whole, is reasonable and in the public interest. Additionally, in certain instances, the Commission seeks public input regarding settlements. And, if the settlement is not, as a whole, reasonable or in the public interest, the Commission modifies the proposed settlement and offers parties the opportunity to accept those modifications or withdraw from the settlement and continue litigating their claims. No need exists to create a new "balancing test" for settlements (as recommended by OCA), incorporate a rule from the Pennsylvania Rules of Judicial Conduct that would apply to judges with or without incorporation in the Commission's regulations (as recommended by CAUSE-PA/TURN), or require that the settlement consider "what will result in the most fair and equitable outcome" as opposed to what is reasonable (as recommended by CAUSE-PA/TURN). (OCA Comments, p. 59; CAUSE-PA/TURN Comments, p. 55.)

Additionally, IECPA states that although it “is strongly in favor” of the Commission’s policy encouraging settlements, it recommends that the Commission “consider and investigate how other aspects of its regulations might do so, including, but not limited to the Commission’s practice of issuing quarterly earnings reports for jurisdictional utilities.” (IECPA Comments, p. 4.) According to IECPA, “this particular component very well may hinder full litigation by creating artificial incentives to settlement that may not produce a full and robust litigation into critical issues.” (IECPA Comments, p. 4.)

The Commission should reject IECPA’s comments about the quarterly earnings reports. Contrary to IECPA’s claims, the quarterly earnings reports are not “aspects of [the Commission’s] regulations.” (IECPA Comments, p. 4.) Rather, those reports are required by statute to: (1) set the required return on equity for the Distribution System Improvement Charge (“DSIC”), if more than two years have lapsed between the entry of a final order in the utility’s most recent fully litigated base rate proceeding and the effective date of the DSIC; and (2) determine whether the utility is over-earning and needs to reset its DSIC rate to zero. *See* 66 Pa. C.S. §§ 1357(b)(3), 1358(b)(3). Therefore, the Commission must issue the quarterly earnings reports and cannot, as evidently suggested by IECPA, change the requirement to issue those reports.

2. OCA’s Proposed Changes to 52 Pa. Code § 5.103(b). Motions

In its Comments, OCA proposes a series of “additional amendments” to Chapter 5 of the Commission’s regulations, the first of which is to add the following sentence in Section 5.103(b): “Parties may make motions orally at evidentiary hearings regarding matter introduced either at the hearing, or in the preceding 5 days, if written motions within that time are not feasible.” (OCA Comments, p. 62.) OCA avers that this proposed change is necessary to ensure that a party is denied the opportunity to object to testimony and exhibits, such as rejoinder testimony and

exhibits, that may be submitted before or at the hearing but after any deadline set by the ALJ for parties to object to evidence. (OCA Comments, p. 62.)

EAP supports this recommendation. Although EAP is unaware of an instance when this posed an issue in a Commission proceeding, adding the language suggested by OCA will help clarify the procedures around objecting to testimony and exhibits should such a scenario arise in the future.

3. OCA’s Proposed Changes to 52 Pa. Code § 5.232(b)(4). Settlement Petitions and Stipulations of Facts

OCA also proposes that the Commission amend Section 5.232(b)(4) of its regulations, such that a settlement agreement must identify the parties that “were not parties to the settlement negotiations or, who were parties to the settlement negotiations, but were denied the opportunity to enter into the settlement.” (OCA Comments, p. 63.) This language would replace the existing text of Section 5.232(b)(4), which requires a settlement agreement to identify the parties that were “[d]enied an opportunity to enter into the settlement.” 52 Pa. Code § 5.232(b)(4).

EAP disagrees with OCA’s proposal. EAP does not understand the logic behind the proposed change. Although OCA tries to justify its proposal by claiming that it wants to delineate between “[p]arties who were not present for settlement negotiations and were denied the opportunity to enter into the settlement as a result of their absence” as opposed to “parties who were not permitted to join the settlement but were party to negotiations,” EAP is unaware of any instances where parties were permitted to participate in settlement negotiations but were denied an opportunity to enter into the settlement agreement. Consequently, EAP does see the need to make this adjustment to the Commission’s regulation. To the extent that the Commission wants to adjust the language of Section 5.232(b)(4) to address parties who participated in the settlement negotiations but did not join the settlement agreement, the Commission could revise the regulation

as follows: “Who were not parties to the settlement negotiations or who were parties to the settlement negotiations but did not enter into the settlement agreement.”

4. OCA’s Proposed Changes to 52 Pa. Code § 5.243. Copies of Transcripts

OCA proposes that the Commission move the existing subsection (g) of Section 5.243 to a new subsection (h) and insert in the existing subsection (g)’s stead the following:

(g) If a party conducts cross-examination, the party may introduce exhibits during cross-examination for the purpose of impeachment if the exhibit is accompanied by a verification signed by the examined witness indicating that the witness was responsible in whole or in part for the contents of the exhibit, without first needing to provide such exhibits in advance of the hearing to other parties or the presiding officer.

(OCA Comments, p. 64.)

EAP can support this proposal with one modification—the referenced “exhibit[s]” that are “accompanied by a verification signed by the examined witness” should be limited to documents that were produced by that witness in discovery in the proceeding in which they are testifying. This would be consistent with OCA’s justification for the proposed regulation, as “a witness should be on notice of all statements for which they submitted verifications during the discovery process.” (OCA Comments, p. 64) (emphasis added). As written, however, OCA’s proposed regulation would open up a witness on cross-examination to any document for which they previously provided a signed verification, including, but not limited to, a pleading in another Commission proceeding. Such an approach does not protect against the concern of “unfair surprise” noted by OCA. Thus, if the Commission does adopt OCA’s proposed change, it should incorporate language specifying that the exhibit must have been a document produced by that witness in discovery in the proceeding in which they are testifying.

5. OCA’s Proposed Changes to 52 Pa. Code § 5.254. Copies of Transcripts

OCA proposes that the Commission, “upon the termination of the Commission’s current contract(s)” with court reporter services, ensure that subsequent contracts provide “public access” to transcripts for all public Commission proceedings. (OCA Comments, pp. 65-66.) “At the very least,” OCA recommends that the Commission implement a process permitting parties to apply to proceed *in forma pauperis* to waive transcript transmittal fees. (OCA Comments, p. 66.)

EAP can support the Commission’s implementation of an *in forma pauperis* process to waive transcript transmittal fees. The costs of hearing transcripts can present affordability challenges for certain litigants, and an *in forma pauperis* process would help ensure those individuals’ access to the evidentiary record while they pursue their claims. However, EAP opposes OCA’s recommendation that the Commission make transcripts of all public proceedings available. OCA presents no estimate of the increased costs associated with this proposal. Yet, it would be expected that the court reporting services would charge more for the Commission to make the transcripts publicly available, as opposed to the court reporting services charging fees to the individual parties, with the exception of the statutory parties that receive copies of the transcripts without additional charge.

6. OCA’s Proposed Changes to 52 Pa. Code § 5.350. Requests for Admission

OCA recommends that the Commission add a new subsection (g) to Section 5.350, which clarifies that parties propounding requests for admission must serve a copy on the parties, must file a certificate of service with the Commission, and need not file the requests themselves with the Commission. (OCA Comments, p. 66.)

As this proposed regulation memorializes the existing practice in Commission proceedings, EAP supports OCA’s proposal.

7. 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.) In particular, 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.) Although OCA’s Comments reference a Section 5.111 being proposed as well, OCA fails to provide a draft regulation for the referenced Section 5.111. However, in light of the proposed Section 5.110(b) applying to “non-rate proceedings with statutory deadlines” as well and OCA’s reference to Section 5.111 applying to “non-rate

proceedings with statutory deadlines,” EAP assumes that Section 5.111 was subsumed into OCA’s proposed Section 5.110(b).

EAP strongly opposes the OCA’s proposed Section 5.110. OCA’s concerns about the litigation schedules may be affected by the timing of filings relative to the public meetings on the Commission’s calendar can easily be addressed by either 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. The dates on which those cases are filed, which can take several months to prepare, should be driven by the need for rate relief or, in the case of non-rate proceedings, for the Commission approvals requested in those filings. Moreover, there are other considerations that go into utilities’ determinations of filing dates. For example, the utility may want to align the end of the suspension period with the start of a particular billing cycle, so that it will be easier and simpler to implement any resulting rate change. Under OCA’s proposal, however, utilities will instead have to target specific filing dates for their base rate cases to ensure that the suspension period is appropriately spaced 8 to 10 days from the Commission public meeting date. That is an unreasonable constraint on utilities’ rights to seek the rate relief they are requesting. For these reasons, the Commission should reject OCA’s proposed regulations.

8. 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.)

EAP strongly opposes OCA's proposal. Although these modifications have been agreed to and adopted in rate cases and other Commission proceedings that regularly involve OCA and other statutory parties, it is wholly unreasonable to make these modifications apply to all Commission proceedings. Indeed, a shift from 20 days to 10 days for answers to discovery requests in all Commission proceedings would impose a significant burden on parties. This is simply not feasible considering the hundreds if not thousands of customer complaint cases and other Commission proceedings in a given year, where these discovery modifications have not been applied. Objecting and response to discovery requests in those proceedings already require a substantial amount of time and expense, which would only be exponentially increased with even tighter deadlines across all proceedings.

In addition, OCA fails to recognize that discovery is a two-way street, so its proposed modifications would apply to non-utility parties in proceedings as well, including *pro se* litigants. EAP does not believe it is reasonable to expect individuals appearing *pro se* to comply with these modifications for all Commission proceedings, including customer complaints. Thus, the best approach is to continue with current practice, such that the presiding officer can adopt these discovery rule modifications for the proceedings when they make sense, as opposed to making these rules universal across all Commission proceedings.

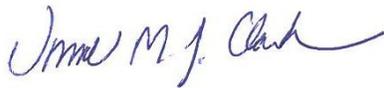
III. CONCLUSION

The Energy Association of Pennsylvania 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,



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