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INDEPENDENT REGULATORY REVIEW COMMISSION

333 MARKET STREET, 14TH FLOOR, HARRISBURG, PA 17101

April 7, 2025

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

RCVD PUC SEC BUR
APR 11 2025 AM 10:31

L-2023-3041347-AEL-4/22/25

Re: Regulation #57-341 (IRRC #3420)
Pennsylvania Public Utility Commission
Rules of Administrative Practice and Procedure; Special Provisions; and Formal
Proceedings

Dear Secretary Chiavetta:

Enclosed are the Commission's comments for consideration when you prepare the final version of this regulation. These comments are not a formal approval or disapproval of the regulation. However, they specify the regulatory review criteria that have not been met.

The comments will be available on our website at www.irrc.state.pa.us. If you would like to discuss them, please contact me.

Very truly yours,

David Sumner
Executive Director

MKB

Enclosure

cc: Honorable Patrick J. Stefano, Chair, Senate Consumer Protection and Professional Licensure Committee
Honorable Lisa M. Boscola, Minority Chair, Senate Consumer Protection and Professional Licensure Committee
Honorable Danilo Burgos, Chair, House Consumer Protection, Technology, and Utilities Committee
Honorable Carl Walker Metzgar, Republican Chair, House Consumer Protection, Technology, and Utilities Committee
Amy Elliott, Esq., Chief Deputy Attorney General, Office of Attorney General
Addie Abelson, Esq., Deputy General Counsel, Office of General Counsel

Comments of the Independent Regulatory Review Commission



Pennsylvania Public Utility Commission Regulation #57-341 (IRRC #3420)

Rules of Administrative Practice and Procedure; Special Provisions; and Formal Proceedings

April 7, 2025

We submit for your consideration the following comments on the proposed rulemaking published in the December 7, 2024 *Pennsylvania Bulletin*. Our comments are based on criteria in Section 5.2 of the Regulatory Review Act (RRA) (71 P.S. § 745.5b). Section 5.1(a) of the RRA (71 P.S. § 745.5a(a)) directs the Pennsylvania Public Utility Commission (PUC) to respond to all comments received from us or any other source.

1. Reaching of consensus.

The general provisions regarding practice before the PUC were last revised in 2006. Since then, the PUC states that its jurisdictional responsibilities have changed considerably, and important technological advancements have occurred. It is the desire of the PUC to bring much needed efficiencies to the current processes and procedures in its administrative hearings and proceedings.

In 2016, the PUC announced its intention to revise its rules of practice and procedure codified at Chapters 1, 3, and 5 of Title 52 of the *Pennsylvania Code*. It convened a series of informal stakeholder meetings to identify issues and concerns with the existing rules, as well as recommend amended language for the PUC's consideration. The PUC stated its intent to solicit additional input regarding proposed revisions and commitment to carefully consider interested parties' feedback in the development of this proposed rulemaking.

The PUC, in addition to the proposed amendments, seeks additional stakeholder input on:

- Section 1.22 (relating to appearance in adversarial Commission proceedings) regarding a definition for "*Small business*," including factors such as size or revenue or the potential adoption of an appropriate definition contained in other law;
- Section 1.43(a)(relating to schedule of fees payable to the Commission), regarding whether certain fees are still relevant given changes in the PUC processes;
- Section 1.72 (relating to content and review of formal case files) regarding whether the regulations for written requests for access to PUC files are still needed given the Right to Know Law (RTK Law) and the publicly accessible PUC docketing system available through the PUC's website; and

- Section 5.41a (relating to electronic submission of pre-served testimony) regarding how pre-served written testimony that is modified at a hearing may be filed (in the event that this section is repealed).

Some commentators have provided feedback on the sections listed above. For instance, the Office of Small Business Advocate (OSBA) recommends a definition of “small business” that comports with Title 73 P.S. § 399.42. CAUSE-PA and TURN support updating the fee schedule contained in Section 1.43 to accurately reflect the most-current PUC fees. However, they are concerned that requiring filing fees of lower income consumers may act as a barrier to financially vulnerable consumers participating in PUC proceedings and processes. The Office of Consumer Advocate (OCA) is concerned with the proposed removal of Section 1.72. It states that “While Rule 1.72(d) may be moot under the RTK Law, the codification of what PUC documents can be requested and the process for requesting those documents is essential.” It proposes that, if Section 1.72(d) is removed, it should be replaced by a rule which describes how the PUC is implementing its obligations under the RTK Law to provide access to correspondence and report-type documents. Both the OCA and the Pennsylvania American Water Company (PAWC) seek modifications to repealed Section 5.41a.

These stakeholder responses are important and substantive. If new language is added to the Annex, in consideration of commentator input, we would encourage the PUC to issue an Advance Notice of Final Rulemaking that includes specific language to be included in final rulemaking. This would provide interested parties the opportunity to provide feedback on substantive language that was not included in the proposed rulemaking. The PUC should continue to engage interested parties to build consensus with regard to the above-mentioned provisions.

CHAPTER 1. RULES OF ADMINISTRATIVE PRACTICE AND PROCEDURE Subchapter A. GENERAL PROVISIONS

2. Section 1.8. Definitions. – Protection of public health, safety and welfare; Clarity; Reasonableness.

“Adjudication”

A commentator asserts that the proposed change to “*Adjudication*” does not align with definition as set forth under Title 2, Chapter 1 of Pennsylvania’s Consolidated Statutes governing Administrative Law and Procedure. The commentator states that establishing a definition of “*Adjudication*” that diverges from the Administrative Agency Law is not only unlawful but will also cause confusion about how the PUC’s definition under Section 1.8 may be differently applied compared to the definition contained in Title 2, Section 101.

The commentator also contends that the PUC’s proposed definition is ambiguous and interjects consideration of whether a party had the opportunity to plead. For these reasons, they urge the PUC to reject the proposed amendment to the definition of “*Adjudication*.” We ask the PUC to explain how it is reasonable to propose a definition that is different than what is set forth in the statute governing Administrative Law and Procedure.

“Adversarial proceeding”

The PUC proposes to replace “other persons” with “parties” to be consistent with the proposed new definition of “person.” The use of the word “party” or “parties,” according to a commentator, implies the individual or entity has, either by right or by authorized intervention, the legal prerogative to participate in a legal proceeding. As such, the commentator recommends that only authorized parties may initiate an adversarial proceeding. We ask the PUC to amend the definition in the final regulation to ensure clarity for the regulated community.

“Staff”

Shouldn't this definition read “...in a proceeding before the Commission” rather than “...before the agency?” We ask the PUC to clarify this definition in the final rulemaking.

“Tentative decision; Tentative order”

The PUC's proposed regulation would change the defined term “*Tentative decision*” to “*Tentative order*.” The PUC also proposes to define the new term “*Tentative order*” as an “[o]rder of the Commission that may become final without further action by the Commission and to which a party may file comments within a time specified by the order.” A commentator notes the proposed definition of “*Tentative order*” lacks context in which PUC Tentative Orders are issued. We ask the PUC to amend the definition in the final regulation to ensure clarity for the regulated community.

“Trade secret”

A commentator disagrees with the inclusion of “economic harm” in the definition of “*Trade secret*.” The commentator contends that both the PUC's current definition and the statutory definition of “*Trade secret*” create a higher burden on the claimant to show that the information actually qualifies for the protections of the law than in the proposed rulemaking.

In addition to the commentator's concern, we seek clarity on the following phrase as used in this definition: “...or economic harm to entities that, but for disclosure, do not know or use it.” Wouldn't the economic harm from disclosure, in fact, come to the entity that knows and uses it? The PUC should amend the definition in the final version of the rulemaking to make clear its intent with regard to this proposed change. The response should also detail how the final-form regulation's definition of “*Trade secret*” protects the public health, safety, and welfare.

“Writing or written”

A commentator expresses concern that the definition of “*Writing or written*” does not capture the full variety of document types which may need to be filed with the PUC. In particular, it is unclear whether “media” would include electronic documents submitted through efilng and email. For these reasons, the commentator recommends that the definition of “writing or written” be revised in the final rulemaking to apply “to documents whether in hard copy, media, or electronic format.” We ask the PUC to clarify the definition in the final regulation to ensure that the regulated community understands which type of documents are covered.

Subchapter C. REPRESENTATION BEFORE THE COMMISSION

3. Section 1.15. Extensions of time and continuances. – Need; Possible conflict with other statutes and regulations; Clarity.

The proposed amendment to Section 1.15(b) which adds the phrase “to the extent possible” is intended, according to the PUC, to recognize that it is not always possible for a party to submit a request for continuance at least five (5) days prior to the hearing date, especially in the case of illness.

Commissioner Coleman, in his statement dated November 9, 2023, notes that the PUC’s administrative law judges (ALJs) already have the discretion to liberally construe the PUC’s procedural rules and accept requests for continuance received less than five days prior to the hearing date, and grant such requests on a regular basis. Section 1.2 of the PUC’s existing regulations permit ALJs to waive any defect of procedure “to secure the just, speedy and inexpensive” determination in every type of proceeding. He goes on to state that “[l]iberal construction is to apply with particularity for cases [that] involve pro se litigants.” The revision to Section 1.15, he believes, is unnecessary and would appear to create a standard different than found at Section 1.2(a). We ask the PUC to explain the need for this amendment and how it is consistent with the standard at Section 1.2(a).

4. Section 1.21. Appearance in nonadversarial or informal proceedings.

Section 1.22. Appearance in adversarial Commission proceedings. – Reasonableness; Clarity; Need.

Commentators representing utilities oppose the proposed amendments to Section 1.22 (a) (relating to adversarial proceedings) which permit an individual consumer to represent themselves or be represented by an authorized representative who is not an attorney during periods of disability or incapacity for the same reasons that Commissioner Coleman sets forth in his Motion dated November 9, 2023. Commissioner Coleman is concerned that the revisions would allow for the unauthorized practice of law before the PUC. He further argues that the PUC is neither part of the Pennsylvania unified judicial system nor an executive agency like those cited as the basis for the amendment. He stated that without more details about the nature of these proceedings before these other forums and state agencies, he is not comfortable concluding that the proposed changes are lawful.

Advocates representing low-income consumers are supportive of the PUC’s proposal to expand appropriate non-attorney third party representation in PUC proceedings. However, they are concerned that the proposed amendments do not address the significant need for expanded representation. Some commentators feel the proposal is too narrow in scope and would require the PUC to make case-by-case determinations regarding a consumer’s disability or incapacity. This approach, they say, also restricts representation to a limited subset of consumers, leaving others, especially low-income individuals, without the support needed to navigate complex PUC proceedings.

Given the divergent viewpoints expressed on this proposal, we encourage the PUC to continue engaging with the regulated community to address their concerns and questions. The PUC

should submit an updated regulatory analysis form that describes the communications and outreach efforts with the regulated community on these matters.

Section 1.22 (a) states that “An authorized corporate official may represent a small business or partnership in an adversarial Commission proceeding.” Not all small businesses will be corporations. Nor will partnerships be corporations. We ask the PUC to clarify in the final rulemaking whether “authorized corporate official” should be replaced with “authorized agent?”

5. Section 1.24. Notice of appearance or withdrawal. – Clarity; Implementation procedures.

A commentator questions whether holders of Powers of Attorney (POAs) or authorized corporate officials would need to enter or withdraw their appearances in PUC proceedings. Although the commentator disputes the PUC’s proposal to allow such persons to represent individuals, small business, and partnerships, it believes that any person attesting to represent the interests of another individual or a small business or partnership should be required to enter and withdraw their appearance. We ask the PUC to clarify in the final-form regulation whether holders of POAs or authorized corporate officials will need to enter or withdraw their appearances in PUC proceedings.

Under subsection (a), a change in the individual’s mailing address which occurs during the course of the proceeding must be reported to the Secretary promptly. The proposed language does not address whether an individual is required to report a change in their electronic service account. We ask the PUC to include electronic service account in the final version of this rulemaking or explain why it is not needed and how excluding it is in the public interest.

Subchapter D. DOCUMENTARY FILINGS

6. Section 1.31. Requirements for documentary filings. – Clarity.

The PUC proposes to amend Section 1.31(c)(3) by including “corporation” and “municipal corporation” to this provision so that the new subparagraph reads: “Within the title of the document, the name of the person, corporation or municipal corporation on whose behalf the filing is made. **If more than one person is involved, only a single name is necessary.**” (Emphasis added.)

We believe that all parties making the filing should be listed and ask the PUC to explain why only the name of one party is necessary under this section.

Subchapter F. SERVICE OF DOCUMENTS

7. Section 1.51. Instructions for service, notice, and protest. – Protection of the public health, safety, and welfare; Clarity.

The PUC proposes to amend Section 1.51 to state that where an individual party is a victim of domestic violence with a Protection from Abuse (PFA) order or court order issued by a court of competent jurisdiction in this Commonwealth, which provides clear evidence of domestic violence, the address of the victim will be redacted on the service list.

A commentator remarks that any court order that provides evidence of domestic violence should be sufficient grounds to remove a party's address from the service list regardless of the jurisdiction which issued it.

Another commentator expresses concern with the PUC's approach that explicitly ties a victim's ability to protect sensitive personal information to their ability to obtain a PFA or other court order. This approach, the commentator says, chills the ability of victims to access PUC proceedings and processes. Victims who cannot meet the narrow showing under proposed Section 1.51 will be left without recourse to enforce their utility rights, further compounding utility issues that victims experience as a result of abuse. The commentator urges the PUC to broaden the standard set forth in Section 1.51(c) to permit victims to provide an affidavit which attests to their status as a domestic violence victim to keep their address or other personally identifying information confidential. This commentator also questions whether this provision protects both the physical and email addresses of victims.

The PUC should describe in the final rulemaking how the proposed amendment, specifically its approach limiting a PFA and court order to those issued in Commonwealth courts and tying a victim's ability to protect personal information to their ability to obtain a PFA or other court order, protects the public health, safety, and welfare. Additionally, we ask the PUC to include in the discussion whether it considered permitting victims to provide an affidavit.

CHAPTER 3. SPECIAL PROVISIONS

Subchapter A. SPECIAL COMMISSION ACTIONS

8. Section 3.1. Definitions. – Clarity; Need.

“Emergency”

The PUC proposed to amend the definition of “*Emergency*” to include clear and present danger to the public interest. The new definition is proposed to read: “A situation which presents a clear and present danger to life **or the public interest** or property which is uncontested and requires action prior to the next scheduled public meeting.”

The Energy Association of PA (EAP) and PPL Electric Utilities (PPL) oppose expanding the scope of an emergency that would qualify for an ex parte emergency order issued by the PUC prior to the next scheduled public meeting. EAP argues that “public interest” is undefined and as such could be interpreted as applying to essentially any situation where the PUC deems there is a clear and present danger rather than a specific clear and present danger to life. EAP asserts that expanding the definition of “*Emergency*” to include the public interest could result in a situation where a petition is filed seeking emergency relief by a person claiming to represent the general public interest or the interest of all customers rather than seeking relief for a situation that poses an immediate and specific danger to the petitioner. We ask the PUC to define “public interest” as used in the definition of “*Emergency*” to ensure clarity for the regulated community. The PUC should also explain the need for this amendment.

We would additionally note that the placement of proposed language is confusing. The fact that “or property” appears directly after “or the public interest,” could cause it to be read as public interest or public property. We believe the provision would be much clearer if it read: “to life, property or the public interest.”

**Subchapter B. INFORMAL PROCEEDINGS
GENERAL APPLICATIONS**

9. Section 3.111. Form and content of informal complaints. – Clarity.

The proposed amendments to Section 3.111(b), according to the PUC, are intended to provide an updated mailing address for the PUC and to clarify that informal complaints should comply with the requirements of Section 3.111(a).

The OCA argues that there is no proper clarification in the procedural rules regarding the purpose of informal complaints. The OCA would support an addition to this section which would define what an informal complaint is, and the status that an informal complaint has before the PUC. By defining these things, consumers would be better able to differentiate between informal and formal complaints when determining which type of complaint they should file.

The PUC should clarify in the regulatory body of the final regulation the purpose of informal complaints, define what an informal complaint is and the status that an informal complaint has before the PUC.

This comment applies also to Section 5.21 (relating to formal complaints generally). The PUC should describe what a formal complaint is and how it is used in practice before the PUC.

**CHAPTER 5. FORMAL PROCEEDINGS
Subchapter A. PLEADINGS AND OTHER
PRELIMINARY MATTERS APPLICATIONS**

10. Section 5.53. Time of filing. – Reasonableness.

The PUC proposes amending this section to provide for a 30-day period from the date of publication in the *Pennsylvania Bulletin* in which to file protests to applications, with modifications to this protest period being granted for good cause shown. Currently, the protest period is 60 days following publication of an application in the *Pennsylvania Bulletin*. The PUC states that this amendment is intended to follow Executive Order 2023-07 and to make processing times for applications more efficient while still affording interested parties with notice and an opportunity to be heard.

A number of commentators oppose the shortened timeframe. The OSBA feels this reduction in the filing window will strain its capacity to effectively represent the interests of small business consumers. The OCA also expresses similar concern with the proposal. The OCA requests that the protest period remain at 60 days unless the PUC is otherwise able to ensure that protestants to an application will be guaranteed additional time to develop a response to an application. The OCA suggests that if certain types of applications are more likely to result in protests being filed, the PUC should provide the current 60-day response period for those applications while reducing the response period to 30 days for applications which are highly unlikely to be the subject of protests.

We ask the PUC to explain how shortening the length of time in which to file protests to applications is reasonable and in the public interest.

11. Section 5.74. Filing of petitions to intervene. – Clarity.

The OCA believes that the current 60-day response period should be maintained for both the filing of protests (Section 5.53) as well as the filing of petitions to intervene. If the PUC determines that a 30-day default response is appropriate, it should only institute that default period for applications that are unlikely to have an impact on a significant number of consumers, as supported by the PUC internal data regarding application processing. In all other instances, the 60-day default period should remain in place.

The Large User Group recommends that Section 5.74(b)(3) be modified to note that the notice will occur in the *Pennsylvania Bulletin*. We would concur with the Large Users Group’s suggestion regarding the notice being published in the *Pennsylvania Bulletin*.

We ask the PUC to explain how shortening the length of time for filing petitions to intervene is reasonable and in the public interest.

12. Section 5.81. Consolidation. – Clarity.

The OCA recommends that this section be amended to address the general meaning of the term “indispensable party.” The OCA proposes language that it believes will provide parties to proceedings before the PUC with concrete understanding of the powers of the PUC to join indispensable parties, who qualifies as an indispensable party, and what to do if the identity of the indispensable party cannot be publicly disclosed. CAUSE-PA/TURN suggests that the PUC incorporate the four factors that the PA Supreme Court has provided when making a determination as to whether or not a party is indispensable in a note clarifying Section 5.81.

The PUC should define the term “indispensable party” in the final regulation and provide additional clarity in determining whether or not a party is indispensable or explain why it is unnecessary to do so.

Subchapter B. HEARINGS

13. Section 5.245. Failure to appear, proceed or maintain order in proceedings. – Need and Fiscal Impact.

EAP, PPL, and PAWC oppose the proposed amendment for the reasons set forth in Commissioner Coleman’s Motion dated November 9, 2023. Commissioner Coleman opposes the proposed amendments to Section 5.245 because he believes they are contrary to the legislative intent and plain language of Section 332(f) of the Public Utility Code (Code). Section 5.245 of the PUC’s existing regulations address failure to appear and the circumstances in which failure to be represented at a hearing may constitute a waiver participate in the hearing. Proposed subsection (d) would prohibit Section 5.245 from applying to a party who is not required to secure counsel if there is no finding that the party has committed an abuse of process. Commissioner Coleman asserts that there is no basis in law to eliminate the requirement of a finding that nonappearance was unavoidable and replace it with an “abuse of process” standard. Additionally, he argues that the proposal is contrary to Commonwealth Court precedent recognizing that the dismissal of cases for failure to appear at an agency hearing does not violate due process.

Commissioner Coleman states that Section 332(f) of the Code clearly applies both to attorneys and parties. He is concerned that allowing parties to later reopen proceedings that they failed to prosecute will result in increased legal costs for public utilities which will be paid for by other ratepayers. The Commissioner also questions the need for the proposed Section 5.245(e). He feels it is an unnecessary addition because these types of cases can be dismissed under Section 316 of the Code, which gives conclusive effect to a final PUC order not appealed that dismisses a complaint with prejudice for failure to appear at hearing.

The OCA accepts the proposed change but does not believe there is sufficient clarity regarding what constitutes an abuse of process. We ask the PUC to explain the basis for eliminating the requirement of a finding that nonappearance was unavoidable and replacing it with an abuse of process standard and how it is consistent with Commonwealth Court precedent on failure to appear at an agency hearing. The PUC should also discuss how allowing parties to reopen proceedings that they failed to prosecute is reasonable to the utilities since they will need to spend time and resources repeatedly preparing for the same case.

Lastly, the PUC should provide additional clarity on what constitutes an abuse of process, so pro se parties can have clear guidance on the consequences of a failure to appear, and to prevent adversaries of the pro se parties from securing a dismissal with prejudice where there is no actual abuse of process.

14. Section 5.251. Recording of proceedings. – Possible conflict with statutes or existing regulations.

The PUC proposes to amend Section 5.251(d) to include a provision detailing the rules regarding recording during a special agent proceeding. The EAP believes that the proposed changes to this section conflict with Section 332(i) of the Code and unnecessarily creates due process concerns. Section 332(i) of the Code provides that the official record of a proceeding shall be the written transcript. We ask the PUC to explain how this proposed amendment is consistent with Section 332(i) of the Code.

**Subchapter D. DISCOVERY
GENERAL**

15. Section 5.365. Orders to limit availability of proprietary information. – Reasonableness; Clarity.

New subsection (h) would require, where parties to formal proceedings have indicated that they have a currently effective PFA or other order for the protection of their personal safety in place, or provided a copy of the same, all parties must redact the PFA holder's address and contact information from any documents filed as part of the formal complaint proceeding.

Commentators assert that this amendment is not in alignment with the proposed changes to Section 1.51. They feel that tying victims' ability to protect their personal address to the ability to obtain a PFA or other court is improperly restrictive. Victims are further limited, they say, because the proposal requires court orders to be currently effective. They assert the proposed changes do not protect the disclosure of other sensitive information and documents including copies of the PFA or court orders.

Another commentator seeks clarification from the PUC on Section 5.365(h) as it appears to make the provision of the PFA order or other order optional. The PUC should clarify the final regulation with regard to the commentator's concern regarding whether the provision of the PFA order or other court order is optional. This section should also be consistent with Section 1.51 or the PUC should explain why it is unnecessary to do so.

Under new subsection (h), a complainant in a formal proceeding has either indicated in the complaint that a court has granted the complainant or another individual in the same residence a PFA order or other court order which provides clear evidence of domestic violence which is currently in effect or has provided a copy of the same. The PUC should explain why it is reasonable not to require the complainant to attach copies of the PFA and other orders, which provide clear evidence of domestic violence against the complainant or individual, to the complaint.