



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
P. O. BOX 1265, HARRISBURG, PA 17120
October 31, 1986

IN REPLY PLEASE
REFER TO OUR FILE

Gary Hoffman, Esquire
Director, Pennsylvania Code & Bulletin
Room 647, Main Capitol Building
Harrisburg, PA 17120

Re: L-840097 - Amendment to the
Commission's Comprehensive
Rules of Practice and Procedure -
Special Commission Actions -
Injunctive Relief
52 Pa. Code §§3.1-3.12
Regulation No. 57-54)



Dear Mr. Hoffman:

Enclosed please find an original and one copy of the face sheet and order finally adopting regulations in the above-captioned proceeding. The Attorney General approved this proposal on October 17, 1986. The fiscal documents have been submitted to the Budget Office for final review. The Commission requests that this order be published as a final rulemaking in the Pennsylvania Bulletin.

Sincerely,

John G. Alford
Director of Operations

cc: Mr. Delaney
Ms. Gustin

FACE SHEET
FOR FILING DOCUMENTS
WITH THE LEGISLATIVE REFERENCE BUREAU

(Pursuant to Commonwealth Documents Law)

DO NOT WRITE IN THIS SPACE

Copy below is hereby approved as to form and legality Attorney General

[Signature]

DEPUTY ATTORNEY GENERAL

OCT 17 1986

DATE OF APPROVAL

Check if applicable
Copy not approved Objections
attached

Copy below is hereby certified to be a true and correct copy of a document issued, prescribed or promulgated by:

Pennsylvania Public Utility Commission
(AGENCY)

L-840097

DOCUMENT/FISCAL NOTE NO

DATE OF ADOPTION

August 21 1986

BY

[Signature]
Jerry Rich

TITLE

Secretary
(EXECUTIVE OFFICER, CHAIRMAN OR SECRETARY)

Copy below is hereby approved as to form and legality Executive or Independent Agencies

BY *[Signature]*

John G. Alford
Acting Chief Counsel

10/8/86
DATE OF APPROVAL

(Deputy General Counsel)
(Chief Counsel, Independent Agency)
(Strike inapplicable title)

1) Check if applicable No Attorney General approval or objection within 30 days after submission

L-840097: Amendment of the Commission's Comprehensive Rules of Practice and Procedure-Special Commission Action-Emergency Relief. 52 Pa. Code Chapter 3, Subchapter A, §§3.1-3.12.

The Pennsylvania Public Utility Commission at its public meeting held August 21, 1986, issued an order finally adopting amendments to its comprehensive rule of practice and procedure at 52 Pa. Code §§3.1-3.12 governing petitions for emergency relief. The proposed amendments were published at 16 Pa. B. 2219 (6/2/86). The amendments implement a revised procedure in which the Commission will consider petitions for emergency relief filed by an aggrieved party at any time during the pendency of a Commission proceeding. This revised procedure will reduce or avoid emergency circumstances being experienced by an aggrieved party to preserve the status quo as to prevent irreparable harm to the party prior to the issuance of a final Commission order. The amendment will become effective upon publication in the Pennsylvania Bulletin.

PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17120

Public Meeting held August 21, 1986

Commissioners Present:

Linda C. Taliaferro, Chairman
Frank Fischl
Bill Shane

Amendment of the Commission's Regulations L-840097
52 Pa. Code, Chapter 3, Subchapter A,
Special Commission Actions, Emergency
Relief.

O R D E R

BY THE COMMISSION:

At public meeting held September 19, 1985, this Commission adopted an Order which proposed to amend the Commission's regulations at 52 Pa. Code, Chapter 3, Subchapter A, regarding petitions for emergency relief. Briefly, the proposed amendments would institute a procedure which permit consideration of petitions for emergency relief during the pendency of Commission proceedings. The amendments were written to reduce or avoid emergency circumstances by preserving the status quo or by preventing irreparable injury during the course of Commission proceedings.

By memorandum dated December 22, 1985, the proposed regulations were approved for form and legality by the Office of Attorney General. After approval by the Consumer Protection and Professional Licensure Committee of the Pennsylvania Senate on June 10, 1986 and the Consumer Affairs Committee of the Pennsylvania House of Representatives on June 17, 1986, the proposed amendments were published in the Pennsylvania Bulletin on June 21, 1986. Written comments were solicited for the following 30 day period. During the 30 day interim, the proposed regulations were approved by the Independent Regulatory Review Commission by order dated July 17, 1986. Comments have been received by T. W. Phillips Gas and Oil Co., Pennsylvania Gas Association and Maurice A. Frater. The 30 day period has ended, and the regulatory review process has been completed. We may now adopt the regulations in final form. They are attached hereto as Annex A.

Before formally adopting the new regulations we wish to express our appreciation to those who provided

written comments. As will become evident from our discussion below, many of those suggestions have been implemented. The comments were unanimous in recommending changes in three areas: Commission review of the Administrative Law Judge's order, the need for posting a bond by a successful petitioner, and the necessity for additional factors which should be used to judge the need for interim emergency relief.

With regard to using additional criteria to judge the need to grant relief, the Commission agrees that the Administrative Law Judge should consider the impact of granting the request upon the public interest. Accordingly, we have added that criterion to those which the petitioner must satisfy. See §3.7.

The question of requiring the posting of a bond by a successful petitioner was also raised. We were not persuaded that posting a bond should be required in every case. Therefore, we have given the Administrative Law Judge the discretion to determine whether a bond is needed, and if so, in what amount. We have also directed the Secretary not to accept any bond which is not accompanied by a power of attorney. Should there be any reason to forfeit the bond, no impediment should exist to the availability of the funds. See §3.8.

The question of the form of an appeal to the Commission or Commission review has been given careful consideration. Assuming that the petitioner has been able to persuade the Administrative Law Judge that a genuine emergency exists, we do not want to delay implementation of the Judge's order. We are willing to rely on the Judge's decision while we conduct an expedited review of the order. Accordingly, we have tried to balance the interests of the parties by giving them the opportunity to file exceptions and by reviewing the order and exceptions shortly thereafter. We emphasize that no stay of the Administrative Law Judge order will be permitted during this review period. If the petitioner has been able to convince the Administrative Law Judge that it is suffering irreparable harm, a stay would only worsen a situation we are trying to control or prevent. See §3.10.

Some of the comments were addressed to the issue of how the parties should be notified of the Administrative Law Judge's decision. We agree that a copy of the written order must be served expeditiously upon the parties. We encourage the judge to telephone the parties if the facts require it. In other situations service by overnight mail or messenger may be appropriate. In any event, we leave it to the Judge's discretion to determine the best way to notify the parties in the circumstances of the case. See §3.7(c).

Two comments questioned whether parties should be required to attend the hearing which must be held prior to

issuance of an interim emergency order. Interestingly, the suggestions were diametrically opposed: One would have required that the hearing not be held until all parties could attend. The other suggested that the hearing not be delayed simply because one party was recalcitrant. We subscribe to the latter view. This Commission is well aware that requiring a hearing to be held within 10 days of receipt of the petition will cause some inconvenience to the parties. While every effort will be made to accommodate the parties, the overriding concern is that we are dealing with an alleged emergency situation. In the final analysis due process requires notice of the hearing and a reasonable opportunity to be heard. Smith v. Pennsylvania Public Utility Commission, 192 Pa. Superior Ct. 424, 429, 162 A.2d 80, 83 (1960). Promulgation of these rules should make everyone aware that when a party is served with a copy of a petition for an interim emergency order, they should anticipate that attending a hearing to protect their interests within 10 days. Emergencies inconvenience people by definition. These rules cannot eliminate that problem, but they are intended to lessen that inconvenience as much as possible. See §3.9.

On December 28, 1985 a Notice of Inquiry was published in the Pennsylvania Bulletin pursuant to a Commission Order entered on December 10, 1986 at the above docket number. The Notice solicited comments and suggestions for possible revision to the Comprehensive Rules of Practice and Procedure at 52 Pa. Code Chapters 1, 3 and 5. Our actions today should not be construed as terminating that review process. The additions to Chapter 3 under consideration herein are being evaluated and adopted independent of the review of the Comprehensive Rules. THEREFORE,

IT IS ORDERED:

1. That the regulations set forth in Annex A are hereby adopted and made final.
2. That the Secretary shall submit this Order and Annex A to the Office of Attorney General for approval as to legality.
3. That the Secretary shall deposit the original certified order and Annex A with the Legislative Reference Bureau for publication in the Pennsylvania Bulletin.

4. That this docket shall remain open until the completion of our review of the Comprehensive Rules of Practice and Procedure.

BY THE COMMISSION,

Jerry Rich
Secretary

(SEAL)

ORDER ADOPTED: August 21, 1986

ORDER ENTERED: August 26, 1986

ANNEX A

Title 52 Public Utilities
Part I
Public Utility Commission
Chapter 3 - Subchapter A
Special Commission Actions
Emergency Relief

§3.1 Definitions.

* * * *

Interim Emergency Order - an order in the form of a recommended decision issued by an Administrative Law Judge or Presiding Officer which is immediately effective and grants injunctive relief during the pendency of a proceeding.

* * * *

§3.6 Petitions for Interim Emergency Orders.

(a) A petition in the form as set forth in §5.41 (relating to petitions generally) for an interim emergency order may be submitted by a party at any time during the pendency of a proceeding. To the extent practicable, the petition shall be supported by affidavits verifying facts which establish the existence of the need for interim emergency relief.

(b) The allegations contained in the petition shall be deemed to have been denied by the

opposing parties, and an answer is not required. However, if a party desires, an answer in the form set forth in §5.61 (relating to answers to complaints and petitions) may be filed no later than 5 days after receipt of a copy of the petition.

- (c) No other pleadings, memoranda or briefs related to a petition for interim emergency orders are permitted unless specifically requested by the Administrative Law Judge or Presiding Officer.
- (d) A copy of the petition shall be served on the Chief Administrative Law Judge at the same time the petition is filed with the Secretary.

§3.7 Issuance of Interim Emergency Orders.

- (a) An Administrative Law Judge or Presiding Officer may issue an interim emergency order upon finding that all of the following exist:
 - (1) petitioner's right to relief is clear;
and
 - (2) the need for relief is immediate; and

(3) the injury would be irreparable if relief is not granted; and

(4) the relief requested is not injurious to the public interest.

(b) An order granting or denying interim emergency relief shall be issued within 15 days of receipt of the petition.

(c) An interim emergency order or an order denying interim emergency relief shall be served as expeditiously as practicable on all parties to the proceeding.

§3.8 Form of Interim Emergency Order.

An order granting or denying interim emergency relief shall:

(a) contain a brief description of the evidence presented in support of or in opposition to the petition and shall specify how that evidence meets or fails to meet the criteria set forth in §3.7 (relating to the issuance of interim emergency orders); and

(b) if relief is granted, determine whether or not a bond (in form satisfactory to the Secretary) should be posted by the petitioner; and

(c) if a bond is required, determine the amount of the bond.

§3.9 Hearings on Petitions for Interim Emergency Orders.

No interim emergency order shall be issued until the Administrative Law Judge or Presiding Officer holds a hearing on the merits of the petition. The hearing shall be held within 10 days of the receipt of the petition.

§3.10 Commission Review of Interim Emergency Orders.

(a) An order granting or denying interim emergency relief is immediately effective upon issuance by the Administrative Law Judge. No stay of the order will be permitted while the matter is being reviewed by the Commission.

(b) The parties may file exceptions in the form set forth in §5.533 (relating to procedure

to except to initial, tentative and recommended decisions) to an order granting or denying interim emergency relief within 5 days after the order is issued. No reply exceptions may be filed.

- (c) An order granting or denying interim emergency relief shall be affirmed, modified or reversed by the Commission at the next regularly scheduled public meeting which is more than 13 days after the order was issued by the Administrative Law Judge.

§3.11 Duration of Interim Emergency Orders.

An interim emergency order shall expire upon entry of the final Commission order which ends the pending proceeding unless otherwise specified.

§3.12 Applicability to Transportation Proceedings.

Nothing in this subchapter shall be construed as preempting or modifying the procedures as set forth in §§3.338-3.385 (relating to applications for temporary authority and emergency temporary authority, disposition of applications, and rates, fares, charges for TA and ETA authorities).

ORIGINAL



Bell of Pennsylvania
A Bell Atlantic Company

Edward J. Kennedy
Vice President - Regulatory
and Governmental Relations

315 North Second Street
Harrisburg, Pennsylvania 17101
(717) 255-5613

June 29, 1988

Mr. Jerry Rich
Secretary
Pennsylvania Public
Utility Commission
P.O. Box 3285
Harrisburg, PA 17120

RECEIVED

JUN 29 1988

SECRETARYS OFFICE
Public Utility Commission

Re: Docket L-840097
Rules of Practice and Procedure

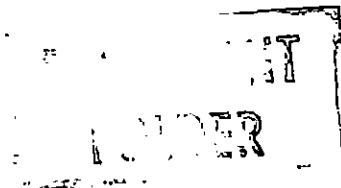
Dear Mr. Rich:

Attached for the Commission's consideration are Bell of Pennsylvania's further comments in the above proceeding. Unfortunately, the Company was not made aware until this week of the Commission's preliminary revisions which were distributed to interested parties in March, 1988.

Accordingly, we are taking this opportunity to address some specific concerns on proposed treatment of proprietary information. Please contact me if you have any questions.

Sincerely,

Attachment



BELL OF PENNSYLVANIA'S PRINCIPAL CONCERNS
REGARDING PROPOSED COMMISSION RULES GOVERNING
PROPRIETARY INFORMATION PROTECTION

Bell of Pennsylvania has two main concerns regarding the rules governing the protection of proprietary information which the Commission proposes to adopt at 52 Pa. Code Section 5.423 as part of its forthcoming revision of its Rules of Administrative Practice and Procedure.

Bell's first, and by far more serious, concern arises from the requirement in proposed Section 5.423(c) that proprietary information be released to any employee or representative of a receiving participant unless the producing participant demonstrates that such employee or representative has violated the terms of a recent Commission protective order. This requirement could seriously damage Bell -- and ultimately Bell's ratepayers -- by allowing access to Bell proprietary data by persons who can use the data to hurt Bell competitively. These persons include the officers and employees of participants who are competitors of Bell and participants' outside experts who are affiliated in one way or another with competitors of Bell.*

DOCKETED

JUL 01 1988

* Illustratively, in a Bell rate proceeding involving Centrex rates in which AT&T is a participant, this rule could require Bell to disclose highly confidential Centrex cost data to AT&T employees who could use such data in setting AT&T's PBX prices.

Any restriction on the use of proprietary data ordered under proposed Section 5.423(b)(1) would do little or nothing to prevent the harm to Bell that could result from the unintentional or intentional misuse of proprietary information disclosed to the foregoing persons under Section 5.423(c). For example, it would be extremely difficult as a practical matter for a Bell competitor's officer to shut out of his mind, for purposes of competitive decision-making, proprietary information which he learned during the course of a Bell rate proceeding.

The protective orders which the Commission has entered in Bell rate proceedings over the last several years have implicitly recognized the danger of the virtually unrestricted access to Bell proprietary data which Section 5.423(c) would allow by limiting access to such data to participants' counsel and eligible outside experts. See, e.g. Order entered December 18, 1986 in Docket No. C-860923. This disclosure procedure has worked well, providing the participants' representatives who are directly involved in the presentation of the participants' cases with the information they need while maximizing the protections against the misuse of the information by the participants to cause Bell competitive injury.

Accordingly, Bell urges the Commission to modify proposed Section 5.423(c) to provide a rule limitation on access that is virtually identical to that provided in prior Bell protective orders. Specifically, Bell recommends that Section 5.423(c) be revised to read as follows:

"(c) Access to representatives of participants. Proprietary information provided to a participant pursuant to this section shall be released to the counsel and eligible outside expert(s) of the receiving participant unless the participant who is releasing the information demonstrates that said expert(s) or counsel previously has violated the terms of a recent protective order issued by the Commission. To be eligible to receive proprietary information, said expert(s), subject to the following exception, may not be an officer, director, stockholder, partner, owner or employee of any competitor or any affiliate of a competitor of the producing participant. An expert shall not be ineligible on account of being a stockholder, partner or owner of a competitor or affiliate unless his/her

ownership interest is valued at more than \$10,000 and/or constitutes a more than 1% interest. No other persons shall have access to the proprietary information except as authorized by order of the Commission or of the presiding officer."

If the Commission accepts the foregoing revision, proposed Section 5.423(d) should be modified to add the parenthetical "(except as permitted in section (c))" after the word "participants" in the fourth line.

Bell's second, and relatively less serious, concern is that proposed Section 5.423(b)(3) fails to specify that the prohibition on a participant's refusing to provide claimed proprietary information to the Staff or to the Office of Consumer Advocate ("OCA") prior to the issuance of a protective order is conditioned upon the Staff's and OCA's agreeing to treat the information as if it were covered by a protective order until such an order is either issued or determined to be inappropriate. While competitive sensitivities that exist with respect to disclosing proprietary information to competitor participants do not exist in connection with similar disclosures to the Staff and the OCA, the latter participants should nevertheless be required (like all other receiving participants) to provide advance assurances that they will treat such information as proprietary in the pre-order period. Bell has routinely

entered into these types of agreements with the Office of Trial Staff and the OCA, and accordingly, the revision sought by Bell will simply reflect longstanding practice. Bell specifically proposes that Section 5.423(b)(3) be restated as follows to make the agreement requirement applicable to all receiving participants:

"(3) Prior to the issuance of a protective order, a participant may not refuse to provide information which the participant reasonably believes to be proprietary to any participant who agrees to treat the information as if it were covered by a protective order until the presiding officer or the Commission issues such an order or determines that issuance of such an order would not be appropriate."