

ORIGINAL

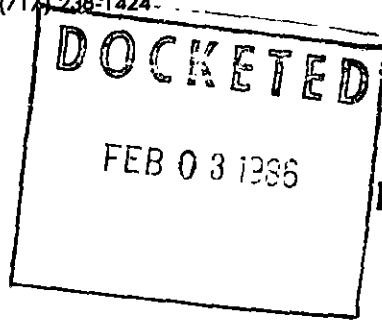
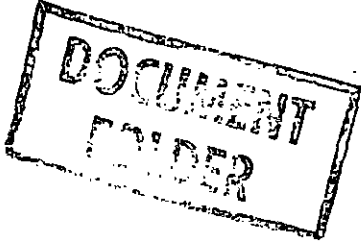
CRAIG A. DOLL

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January 7, 1986

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FEB 8 1986

SECRETARY'S OFFICE
Public Utility Commission

Mr. Jerry Rich, Secretary
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17120

Re: Comments to L-840097
Pa. Bull. Vol. 15, No. 52

Dear Sirs:

While generally pleased with the operation of the Commission's Comprehensive rules of Practice and Procedure, several procedural questions have been raised which do not appear to be contemplated by the Rules as written.

Service of Petitions to Intervene (52 Pa. Code §5.75) and Service by a Participant (52 Pa. Code §1.54)

Both sections 1.54 and 5.75 require that a pleading, submittal, brief, etc. shall be served upon all active participants to a proceeding. While the purpose of the rules is easily understood, a practical difficulty arises when one wishes to participate by intervention.

If a person files his Petition to Intervene after the proceeding has begun, and all participants identified, an official service list has, in all likelihood been compiled by either the Office of Administrative Law Judge or the Secretary's office. However, if a person wishes to intervene in a proceeding prior to the initial hearing and during the time fixed for intervention, he does not have available the names, addresses, etc. of those persons who may currently be parties or who prospectively may become parties to the proceeding. As such, it may become impossible for an intervenor to comply with the provisions of §§1.54 and 5.75.

In order to alleviate this difficulty, it may be possible

to amend §5.75 as follows:

5.75 Notice, service and action on petitions to intervene.

(a) Notice and service. Petitions to intervene, when tendered to the Commission for filing, shall show service thereof upon all known participants to the proceeding in conformity with §1.54 (relating to service by a participant).

Such an amendment will allow an intervenor to check the docket prior to the filing of his intervention while not penalizing him for failing to serve a later complainant or intervenor.

Pleadings Allowed (52 Pa. Code §5.1) and Answers (52 Pa. Code §5.61-5.66)

An answer may be filed to complaints and petitions (§5.61); to orders to show cause (§5.64); amendments of pleadings (§5.65); and petitions to intervene (§5.66). The Rules set forth the manner in which those answers are to be framed, i.e. specific admission or denial of each allegation. Although traditionally permitted, the rules do not provide for the introduction of New Matter or Set-off or Counterclaim.

A strict interpretation of the rules would permit the careful crafting of a complaint, petition, or order to show cause containing allegations which, being incapable of being denied, are deemed admitted. Having admitted all factual allegations, the proceeding may be terminated without the opportunity afforded to a Respondent to raise additional factual or legal issues having a hearing upon the proceeding.

A new rule could be added as follows:

New Matter. All affirmative defenses shall be pleaded in an Answer or other responsive pleading under the heading of "New Matter". A party may set forth as new matter any other material facts which are not merely denials of the averments of the preceding pleading.
See Pa. R.C.P. Rule 1030.

Such a rule would give official recognition to past Commission practice.

Scope [of Discovery] (52 Pa. Code §5.321)

Subsection (b) of Section 5.321 provided, in part, for

discovery "regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action..."

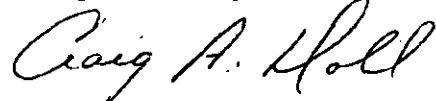
While this subsection gives rise to the objection of relevancy, discovery of immaterial matter does not appear to be precluded. Although the terms "relevant" and "material" have been used interchangeably, the two terms are not synonymous.

In order to facilitate the conduct of a proceeding, evidence which is immaterial, i.e. evidence which has no bearing upon the issues in the proceeding should also be excluded. In order to effectuate this change, I would suggest the alteration of §5.321(b) to provide for discovery:

regarding any matter, not privileged, which is relevant and material to the subject matter in the pending action...

In summary, the undersigned is of the opinion that the modification of §§5.75, 5.321(b), and the addition of a New Matter section would alleviate difficulties encountered by this PUC practitioner.

Respectfully submitted,


Craig A. Doll

CAD/ce

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JAN 28 1986

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January 23, 1986

JAN 27 1986

Mr. Jerry Rich, Secretary
Pennsylvania Public Utility Commission
P. O. Box 3265
Harrisburg, PA 17120

SECRETARY'S OFFICE
Public Utility Commission

Dear Sir:

L-840097

In a notice published in the Pennsylvania Bulletin on December 28, 1985, the Commission solicited comments and suggestions for possible revision to its Comprehensive Rules of Practice and Procedure (set forth at 52 Pa. Code Chapters 1, 3 and 5), as a result of experience gained since their implementation on January 1, 1985. The following suggestions are offered on behalf of Metropolitan Edison Company ("Met-Ed") and Pennsylvania Electric Company ("Penelec").

Pleadings Before Other Tribunals
(52 Pa. Code §1.61(a))

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The intent of this subsection of the revised rules is to provide for reasonable notice to the Commission of a matter, over which it has jurisdiction, which has been raised in a proceeding before another tribunal. But arguments could be made in support of a number of different interpretations under the present indistinct wording of §1.61(a). For instance, one could argue that this subsection requires a Commission filing to cover each and every miscellaneous proceeding brought before any adjudicatory body where there is even the slightest potential that a matter within the Commission's jurisdiction may be raised. Clearly, except to the extent that matters within its jurisdiction actually have been raised, the Commission has no interest in being inundated with copies of papers filed in other tribunals.

In addition, the requirement to make a "filing" with the Commission is placed upon "any party subject to the Act". One may question why this requirement is imposed upon any "party" (i.e., anyone who at the time happens to be appearing in a proceeding before the Commission, whether or not that proceeding is in any way related to the outside proceeding, and who has a direct interest in the subject matter of that proceeding before the Commission) rather than being limited to public utilities subject to Commission jurisdiction.

The following rewording of subsection (a) would further clarify the Commission's intent:

"(a) When [proceedings relating to] matters over which the Commission [may have] has jurisdiction under the Act are raised in proceedings filed with any federal or state court or other public utility regulatory body by any [party] public utility subject to the Act, either an appropriate application or petition, or notice of such proceedings and copies of the material pleadings filed therein, shall be filed simultaneously with the Commission in order that it may have sufficient notice and time for proper consideration of the matters within its jurisdiction."

Timing of Discovery
(52 Pa.Code §5.331(b))

Although discovery has been undertaken earlier in the course of base rate proceedings as a result of the revised procedural rules, numerous and voluminous interrogatories are still filed during hearings, with the result that significant hearing time has continued to be devoted to the resolution of various types of discovery-related disputes, including many having to do with the initially filed rate case supporting data.

It is cumbersome at best to continue throughout the course of hearings with what essentially should be a prehearing matter. But improved utilization of informal discovery conferences, coupled with a specific deadline for the submission of discovery which deals with the utility's initial rate filing, could help to relieve some of the present difficulties.

The benefit to all parties to rate proceedings of informal discovery conferences should be readily apparent. Such conferences provide an opportunity for the utility to explain its filing, and for other parties to become better acquainted with the various claims being made. An early review of questions concerning the filing could contribute significantly to decreasing the volume of written interrogatories, a number of which frequently request general explanatory information. Unfortunately, all too often informal discovery conferences between the parties are not utilized or are not scheduled early enough in the proceeding. The requirement of §5.331((b) (that discovery directed to initially filed data be initiated no later than the first evidentiary hearing) has been observed largely by the disregard thereof.

To encourage earlier participation, it is suggested that a specific rule be added to Subchapter D, requiring that an initial informal discovery conference between the parties be

held within the week following the initial prehearing conference in a rate proceeding. By this point in time the parties to such proceeding would have had better than sixty days within which to obtain and review the utility's filing. Such a rule would at least insure that such parties will communicate with one another concerning general questions which may have arisen during their initial review of the filing.

In addition to such informal discovery conferences, the specific limitation on the time during which formal interrogatories may be submitted with respect to the initial rate filing could be revised accordingly so as to help to promote a more timely and orderly discovery process. Specifically, §5.331(b) should be revised to provide that:

". . . [initial] all discovery directed to data supplied by the utility at the time of the initiation of the proceeding shall be submitted to the utility no later than [the first day of evidentiary hearings . . .] one week following the informal discovery conference provided for under this subchapter".

Under the suggested two new provisions, parties to a rate proceeding would have an opportunity to review the company's filing, to formulate some preliminary thoughts concerning discovery for discussion at an informal discovery conference, and within a reasonable time following such conference, to propound such discovery as may be unresolved, so that discovery with respect to the initial filing would be well under way prior to the commencement of evidentiary hearings. Discovery directed to any matter other than the initial filing would continue to be available until the close of evidentiary hearings.

In general, the revised rules of practice have worked reasonably well, and are a substantial improvement over the somewhat disjointed series of procedural rules which had been applicable to proceedings before the Commission. The foregoing specific suggestions are offered in the interest of clarification and of further improvement in the Commission's ability to bring about an expeditious and orderly resolution of one of the more complex type of matters brought before it.

Respectfully submitted,

RYAN, RUSSELL & McCONAGHY


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EDWARD S. STITELER
Counsel

DREW J. KOVALAK
Attorney

JOHN L. MUNSCH
Attorney

DEBORAH M. DePAUL
Attorney



West Penn Power Company

Part of the Allegheny Power System

Cabin Hill, Greensburg, PA 15601 (412) 837-3000

January 24, 1986

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JAN 27 1986

**SECRETARY'S OFFICE
Public Utility Commission**

EXPRESS MAIL

Mr. Jerry Rich, Secretary
Pennsylvania Public Utility Commission
P. O. Box 3265
Harrisburg, PA 17120

Re: L-840097 - Comments of West Penn Power Company to Proposed
Rulemaking Concerning Revisions to Comprehensive Rules of
Practice and Procedure

Dear Secretary Rich:

Enclosed are an original and eight copies of comments concerning the above-captioned rulemaking submitted on behalf of West Penn Power Company.

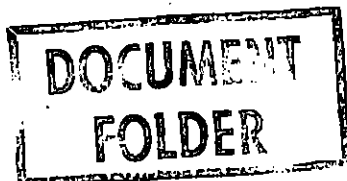
West Penn Power Company expresses its hope that its comments will be helpful in further clarification of the proposed regulations.

Sincerely,

Deborah M. DePaul

DMD:rt

Enclosures



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JAN 27 1986

COMMENTS OF WEST PENN POWER COMPANY
TO PROPOSED RULEMAKING CONCERNING REVISIONS TO
COMPREHENSIVE RULES OF PRACTICE AND PROCEDURE
PUC L-840097

SECRETARY'S OFFICE
Public Utility Commission

By Order entered August 28, 1984, the Pennsylvania Public Utility Commission adopted as final rulemaking its revised Comprehensive Rules of Practice and Procedure at 52 Pa. Code Chapters 1, 3 and 5 ("Rules"). This final rulemaking was published at 14 Pa. Bulletin 3819 (October 13, 1984) and became effective January 1, 1985.

As part of its August 28, 1984 Order, the Commission directed that the above-captioned docket be kept open to allow the monitoring and review of the Rules after their initial year of implementation. In order to satisfy this requirement, the Commission adopted a proposal to solicit comments and suggestions concerning the Rules at its public meeting held December 5, 1985. The proposal and an invitation for the general public to submit comments were published at 15 Pa. Bulletin 4589 (December 28, 1985).

West Penn Power Company ("West Penn") requests that the following comments be entered into the record of this proceeding.

Section 1.11 - Date of Filing

This section presently provides that documents will be deemed filed with the Commission on the date actually received in the Commission's office or "on the date deposited in the United States mail as shown on a United States Postal Service Form 3817 certificate of mailing attached to the cover of the original document." West Penn submits that the current Form 3817 requirement is unnecessarily burdensome because of difficulties encountered in the use of Form 3817. (See attached Exhibit A, discussed *infra*.)

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JAN 27 1986

In recognition of these difficulties, Rule 1112 of the Pennsylvania Rules of Appellate Procedure specifically permits parties filing appeals by allowance before the Pennsylvania Supreme Court to file such appeals as of the date of mailing without attaching an executed Form 3817 to the original petition. Under Rule 1112, such petitions will be deemed filed on the date deposited in the mail if (1) Form 3817 is pasted to the outside of the envelope, and delivered to the postal clerk with instructions to execute such form, or (2) Form 3817 is obtained and transmitted by mail in a separate envelope. A copy of Rule 1112 is attached hereto as Exhibit A and made a part hereof.

In addition, West Penn submits that both certified and express mail delivery would provide expeditious alternatives to the Form 3817 certificate requirement. Both types of delivery are given priority over first class mail by the United States Post Office, provide for written evidence of the date of mailing, and are easily obtained from any postal clerk.

Accordingly, in order to facilitate filings under Section 1.11 of the Rules, and to render such Rules consistent with United States Postal Service practice and with the Pennsylvania Rules of Appellate Procedure, West Penn recommends that Section 1.11 be revised to read as follows:

§1.11. Date of Filing.

- (a) Pleadings, submittals, or other documents - including exceptions to the decision of an administrative law judge and appeals to the Commission under section 332(h) of the act '(relating to procedures in general) - required or permitted to be filed under this title or by statute will be deemed filed on the date actually received in the office of the Commission or on the date deposited in the United States mail as shown on a certified mail receipt, express mail receipt, or on a United States Postal

Service Form 3817 certificate of mailing. The certified mail receipt, express mail receipt, or certificate of mailing shall be either enclosed with the document, firmly affixed to the outside of the envelope containing the document, or separately mailed to the office of the Commission.

(Proposed revisions are underlined.)

This concludes the comments of West Penn to the proposed rulemaking. The Company appreciates the opportunity to offer these comments and trusts that the Commission will give them due consideration.

Rule 1112

RULES OF APPELLATE PROCEDURE

Rule 1112. Appeals by Allowance

(a) **General rule.** An appeal may be taken by allowance under 42 Pa.C.S. § 724(a) (allowance of appeals from Superior and Commonwealth Courts), from any final order of the Commonwealth Court, not appealable under Rule 1101 (appeals as of right from the Commonwealth Court), or from any final order of the Superior Court.

(b) **Petition for allowance of appeal.** Allowance of an appeal from a final order of the Superior Court or the Commonwealth Court may be sought by filing a petition for allowance of appeal with the Prothonotary of the Supreme Court within the time allowed by Rule 1113 (time for petitioning for allowance of appeal), with proof of service on all other parties to the matter in the appellate court below. If the petition for allowance of appeal is transmitted to the Prothonotary of the Supreme Court by means of first class mail, the petition shall be deemed received by the Prothonotary for the purposes of Rule 121(a) (filing) on the date deposited in the United States mail, as shown on a U.S. Postal Service Form 3817 certificate of mailing. The certificate of mailing shall show the docket number of the matter in the appellate court below and shall be either enclosed with the petition or separately mailed to the Prothonotary. Upon actual receipt of the petition for allowance of appeal the Prothonotary of the Supreme Court shall immediately stamp it with the date of actual receipt. That date, or the date of earlier deposit in the United States mail as prescribed in this subdivision, shall constitute the date when allowance of appeal was sought, which date shall be shown on the docket. The Prothonotary of the Supreme Court shall immediately note the Supreme Court docket number upon the petition for allowance of appeal and give written notice of the docket number assignment in person or by first class mail to the prothonotary of the appellate court below (who shall note on the docket that a petition for allowance of appeal has been filed), to the petitioner and to the other persons named in the proof of service accompanying the petition.

(c) **Reproduced record.** One copy of the reproduced record, if any, in the appellate court below shall be lodged with the Prothonotary of the Supreme Court at the time the petition for allowance of appeal is filed thereon. A party filing a cross-petition for allowance of appeal from the same order need not lodge any reproduced record in addition to that lodged by petitioner.

(d) **Fee.** The petitioner upon filing the petition for allowance of appeal shall pay any fee therefor prescribed by Chapter 27 (fees and costs in appellate courts and on appeal).

(e) **Entry of appearance.** Upon the filing of the petition for allowance of appeal the Prothonotary of the Supreme Court shall note on the record as counsel for the petitioner the name of his counsel, if any, set forth in or endorsed upon the petition for allowance of appeal, and, as counsel for other parties, counsel, if any, named in the proof of service. The Prothonotary shall upon praecipe of any such counsel for other parties, filed at any time within 30 days after filing of the petition, strike off or correct the record of appearance. Thereafter an entry of appearance may be withdrawn only by leave of court.

Note: Based on 42 Pa.C.S. § 724(a) (allowance of appeals from Superior and Commonwealth Courts). The notation on the docket by the prothonotary of the Superior Court or Commonwealth Court of the filing of a petition for allowance of appeal renders universal the rule that the appeal status of any order may be discovered by examining the docket of the court in which it was entered.

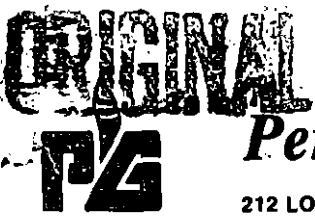
The U.S. Postal Service Form may be in substantially the following form.

<small>POST OFFICE DEPARTMENT</small> CERTIFICATE OF MAILING	AIR postage and postmark.
Received From <u>Richard Row, Esq.</u> <u>123 Eye Street</u> <u>Scranton, PA 19075</u>	
One piece of ordinary mail addressed to: <u>Prothonotary - Supreme Court</u> <u>Room 456 - City Hall</u> <u>Philadelphia, PA 19107</u>	
<small>MAY BE USED FOR DOMESTIC AND INTERNATIONAL MAIL. DOES NOT PROVIDE FOR INSURANCE.</small>	
<small>POD FORM 3817</small>	<small>NOV 1983</small>
Comm. Ct., No. 63 Comm. Dkt. 1973	

185833

The transmittal should be taken unsealed to the Post Office, the Form 3817 should be obtained and attached to the petition, and the envelope should only then be sealed. Occasionally a postal clerk will refuse to cooperate. In such cases the envelope may be sealed, the Form 3817 pasted firmly to the outside of the envelope, and the entire package submitted to the postal clerk with instructions to execute the Form 3817 pasted on the envelope. Alternatively, the certificate may be transmitted to the prothonotary by mail in a separate envelope. It is recommended that the petitioner obtain a duplicate copy of the Form 3817 as evidence of mailing. Since the Post Office is technically the filing office for the purpose of this rule a petition which was mailed in accordance with this rule and which is subsequently lost in the mail will nevertheless toll the time for petitioning for allowance of appeal. However, counsel will be expected to follow up on a mail filing by telephone inquiry to the appellate prothonotary where written notice of the docket number assignment is not received in due course.

Amended June 23, 1976, effective July 1, 1976; Dec. 11, 1978, effective Dec. 30, 1978; April 26, 1982, effective 120 days after May 15, 1982; Dec. 16, 1983, effective Jan. 1, 1984.



Pennsylvania Gas Association

212 LOCUST STREET, P.O. BOX 805, HARRISBURG, PA 17108-0805 • (717) 233-5814

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JAN 27 1986

January 27, 1986

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2nd Vice Chairman

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Jerry Rich, Secretary
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17120

SECRETARY'S OFFICE
Public Utility Commission

**SUBJECT: L-840097 - - Notice of Inquiry into the
Commission's Comprehensive Rules of Practice
and Procedure**

Dear Secretary Rich:

The purpose of this letter is to provide the comments and suggestions of the Pennsylvania Gas Association in response to the Commission's solicitation that appeared at 15 Pa. Bulletin 4589 (Pennsylvania Bulletin of December 28, 1985). By its solicitation, the Commission has requested comments and suggestions from interested persons "for possible revision to its rules [of practice and procedure] as a result of experience gained since their implementation."

While many of the PGA member companies might submit their own comments and response to the Commission's solicitation, the PGA's comments and suggestions are limited exclusively to the Commission's regulation at 52 Pa. Code §5.244 - - "Supporting data for future test year." Section 5.244 presently provides that where a public utility uses a future test year to discharge the burden of proof imposed upon it in a rate proceeding by Section 315(a) of the Public Utility Code, the future test year "shall be based on estimates for a period of 12 consecutive months, which shall begin on the day following the end of the required experienced 12-month period." As it presently operates, therefore, Section 5.244 virtually assures that the period encompassed within the so-called "future test year" will have lapsed completely either before or immediately after the Commission's final order in a major utility's general rate proceeding. Consequently, in almost every circumstance, the most forward-looking data upon which the utility's rates have been based already will have become stale prior to the first day on which the rates take effect. For all practical purposes then, and despite its purported application of a future test year, Section 5.244 only provides an extended historic test year.

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In the PGA's view, this inherent contradiction of Section 5.244 violates both the letter and spirit of the Commission's enabling legislation, and does not serve the best interests of public utilities or their ratepayers. First, with respect to the Commission's enabling legislation, Section 5.244 was developed in direct response to the addition of Section 315(e) to the Public Utility Code in the mid to late 1970's. The latter section expressly authorizes the use of a "future test year", and contains the following language:

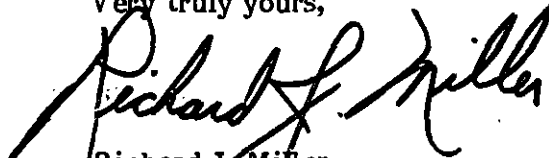
Whenever a utility utilizes a future test year in any rate proceeding and such future test year forms a substantive basis for the final rate determination of the commission, the utility shall provide, as specified by the commission in its final order, appropriate data evidencing the accuracy of the estimates contained in the future test year, and the commission may after reasonable notice and hearing, in its discretion, adjust the utility's rates on the basis of such data.

By its expressed contemplation that the Commission, in its final order, might direct the utility to later provide appropriate data to test the accuracy of future test year estimates, the General Assembly clearly intended that the 12-month period encompassed within the future test year would extend beyond the date of the Commission's final order in a rate proceeding and, therefore, beyond the date on which the utility's rates would take effect. Indeed, when viewed in its entirety, Section 315(e) of the Code clearly suggests a legislative intent that the future test year would not even begin until the date upon which the utility's rates would take effect, in order to assure that the rates, when actually applied to ratepayers, would be based exclusively upon "current" data.

Second, neither the interests of public utilities nor those of their ratepayers are served by the current contents of Section 5.244. The obvious reason behind the General Assembly's introduction of the future test year concept into the Public Utility Code was to provide a mechanism by which utility rates would be set under the most current data or projections available, thereby mitigating the effects of "regulatory lag" and the consequent need for repeated utility rate filings. It long has been recognized that no one, including the Commission, is served by "revolving door" ratemaking, and that both the direct and indirect costs generated by that process could be avoided through more forward-looking ratemaking proceedings. The PGA submits that a true "future test year" represents the most obvious, legislatively-sanctioned means to provide a more forward look in utility rate proceedings, and that the Commission finally should respond to the General Assembly's legislative initiative by amending Section 5.244 to produce a true future test year.

As always, the PGA appreciates the Commission's invitation to provide comments and suggestions on matters of interest to its members. If you have any questions regarding the contents of this letter, I would be pleased to answer them.

Very truly yours,



Richard J. Miller,
President

RJM/kg

cc: Daniel P. Delaney, Esquire

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FRANCIS B. HAAS, JR.
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DONALD R. WAISEL
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100 PINE STREET
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January 27, 1986

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1942-1967

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SAMUEL A. SCHRECKENGAUST, JR.

In re: Comprehensive Rules of Practice and Procedure;
L-840097

Jerry Rich, Secretary
Pennsylvania Public Utility Commission
P. O. Box 3265
Harrisburg, PA 17120

Dear Mr. Rich:

The following are comments and suggestions which we are submitting in the above-captioned matter:

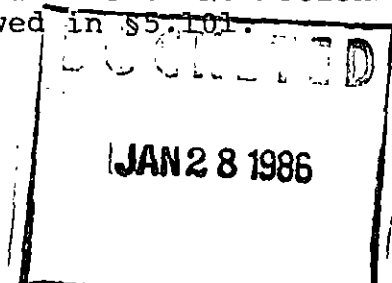
1. 52 Pa. Code §5.534. Appeal to the Commission.

There have been some questions concerning whether matters to be placed on cover pages and in the certificate-of-service page must be part of the single-page appeal. While we feel certain that the rule contemplates a cover page and certificate-of-service page in addition to the substantive page of the appeal, we recommend that the issue be clarified by the following revision:

. . . Except where the presiding officer grants any or all of the exceptions, an appeal shall be limited to a single page (excluding the cover page and certificate-of-service page).

2. 52 Pa. Code §5.101. Preliminary Motions.

In the course of practice under the new rules, we have experienced a need for the rules to allow for preliminary motions in addition to those set forth in this section. For example, while the rules provide for consolidation (52 Pa. Code §5.81), this provision, to a certain extent, is inconsistent with §5.101 which limits preliminary motions to those specifically provided for. No motion to consolidate is included in the motions allowed in §5.101.



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Public Utility Commission

Jerry Rich, Secretary
January 27, 1986
Page 2

Furthermore, it may be that a party would desire to seek to have a proceeding dismissed when, prior to the commencement of hearing, it becomes obvious that the proceeding is completely encompassed by a subsequent proceeding. Likewise, it may be that a party would like to seek to have a proceeding dismissed in view of 52 Pa. Code §3.381(j) (relating to applications filed within six months of the date of an order refusing or dismissing on the merits an application for the same rights filed by the same party). Motions to accomplish these purposes may be very appropriate but would not be allowed under the wording of §5.101. In order to remedy this problem, we recommend that 52 Pa. Code §5.101(a) provide as follows:

Preliminary motions are available to participants. They shall state specifically the grounds relied upon, the standing of the party, and they shall include, but not be limited to, the following:

We have enclosed two copies of this letter.

Respectfully submitted,

MCNEES, WALLACE & NURICK

By


Herbert R. Nurick

HRN/jh

cc: Daniel P. Delaney, First Deputy
Chief Counsel
Law Bureau

ORIGINAL

Jon C. Oplinger

**The Bell Telephone Company
of Pennsylvania**

Law Department
One Parkway
Philadelphia, Pennsylvania 19102
Phone (215) 466-4712

January 27, 1986

RECEIVED

JAN 27 1986

Jerry Rich, Secretary
Pennsylvania Public Utility Commission
P.O. Box 3265, Rm. B-18
Harrisburg, Pennsylvania 17120

**SECRETARY'S OFFICE
Public Utility Commission**

Re: Comprehensive Rules of Practice
and Procedure, Docket L-840097

Dear Mr. Rich:

Enclosed for filing in the above-captioned matter
are the original and two copies of Comments of The Bell
Telephone Company of Pennsylvania.

Sincerely yours,

Jon C. Oplinger
Jon C. Oplinger

JCO/dkf
Enc.

**DOCUMENT
FOLDER**

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

DOCUMENT
FOLDER

Comprehensive Rules of Practice and Procedure : : Docket L-840097

COMMENTS OF THE BELL TELEPHONE COMPANY
OF PENNSYLVANIA

The experience of The Bell Telephone Company of Pennsylvania ("Bell" or "Company") with the new Comprehensive Rules of Practice and Procedure ("Rules") during 1985 has been in the context of a general rate case, non-general rate cases, and complaint proceedings. Bell has found the Rules to be much more than a recodification of previous practice. Rather, the Rules -- especially with respect to the discovery process in a general rate case -- represent a more familiar, standardized approach to proceedings which in recent years have taken on a more formal nature. Notwithstanding this formality, however, the Rules also lend themselves to relaxation or modification as the sophistication of the issues or parties may require. Consequently, Bell's suggestions for amendment or clarification of the Rules are quite limited.

Section 1.11. Date of filing.

While this "mailbox rule" incorporating the use

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of a U.S. Postal Service Form 3817 certificate of mailing does enhance a party's ability to file documents with the Commission in timely fashion without regard to the vagaries of mail service, a provision similar to that contained in Federal Rule of Civil Procedure 6(e) would be a welcome addition. It provides:

"Whenever a party has the right or is required to do some act or take some proceedings within a prescribed period after the service of a notice or other paper upon him and the notice or paper is served upon him by mail, 3 days shall be added to the prescribed period."

Adoption of such a provision would generally ensure that a party is not deprived of the full opportunity which the Rules contemplate to consider and take appropriate action. This provision may be particularly helpful in circumstances where, for example, a preliminary motion is filed and mailed on a Friday and received on Monday, thus leaving not more than five (5) business days within which to respond by the following Monday.

Section 1.59. Number of copies to be served.

Bell believes that subsection (b) is unnecessary and should be eliminated. Most parties do not require more than one copy of a brief, and those few who do can readily make an additional copy or obtain one from the party submitting the brief.

Section 5.21. Formal complaints generally, et seq.
Section 5.51. Protect to an application, et seq.
Section 5.71. Initiation of intervention, et seq.

There is overlap in the Rules relating to complaints, protests, and intervention in that each appears to be available to a party who believes he has been or potentially will be aggrieved by the present or proposed act or omission of a utility or the Commission. The content of each of these pleadings by which a party involves itself in a matter within the Commission's jurisdiction is essentially identical. See §5.22, §5.52, and §5.73. Accordingly, clarification of their intended applicability would facilitate interested parties' involvement and would avoid the Commission's having to rectify after the fact the selection of an improper pleading vehicle, and to indicate how it intends to treat the pleading.

Section 5.331. Sequence and timing of discovery.

In order to expedite the conduct of discovery which, particularly in the general rate case context, can be extensive and time-consuming, Bell recommends the modification of subsection (b) to read as follows (added text is underlined):

(b) Participants shall endeavor to initiate discovery as early in the proceedings as reasonably possible. In rate proceedings, initial discovery directed to data, testimony or information supplied by the public utility

at the time of the initiation of the proceeding shall be submitted to the utility no later than the first day of evidentiary hearings in the proceeding. Discovery directed to any other matter arising during the course of the proceeding shall be available, if determined by the presiding officer to be necessary, until the close of evidentiary hearings. In all other proceedings, the presiding officer, upon motion of a participant, may establish reasonable limitations upon the timing of discovery.

This modification should tend to focus initial discovery and limit "fishing expeditions" while still permitting reasonable follow-up discovery.

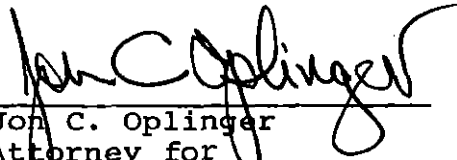
Section 5.342. Answers or objections to written interrogatories by a participant.

Subsection (e) requires the presiding officer to rule within 10 days on a motion to compel answers to interrogatories, however no specification of a time limit for responding to a motion to compel is set forth. In order to explicitly provide for a response and avoid the situation in which the presiding officer rules before a response to the motion to compel can be presented, Bell suggests that this subsection be amended to read as follows (added text is underlined):

(e) The participant submitting the interrogatories may move that the presiding officer dismiss an objection and direct that the interrogatory be answered. If the participant against whom the interrogatories are directed wishes to respond to a motion to compel

answers to interrogatories, such response shall be served within 5 days of service of the motion to compel. The presiding officer shall rule on such motion within 10 days of its presentation, unless the presiding officer proposes and the moving party agrees that the time period be extended.

Respectfully submitted,



Jon C. Oplinger
Attorney for
The Bell Telephone
Company of Pennsylvania
One Parkway
Philadelphia, PA 19102

Dated: January 27, 1986



OFFICE OF CONSUMER ADVOCATE
1425 Strawberry Square
Harrisburg, Pennsylvania 17120

DOCUMENT
FOLDER

DAVID M. BARASCH
Consumer Advocate

(717) 783-5048

January 29, 1986

RECEIVED

Jerry Rich, Secretary
Pennsylvania Public Utility
Commission
P.O. Box 3265
Harrisburg, PA 17120

JAN 29 1986

SECRETARY'S OFFICE
Public Utility Commission

Re: Comprehensive Rules Of
Practice And Procedure
Notice Of Inquiry 52 PA
Code Chapters 1, 3 And 5
L-840097

Dear Secretary Rich:

Enclosed for filing please find an original and nine
(9) copies of the Office of Consumer Advocate's Comments in the
above-captioned proceeding.

Sincerely,

Daniel Clearfield
Assistant Consumer Advocate

Enclosure
2261B

cc: Dan Delaney, Esq.

ORIGINAL

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

COMPREHENSIVE RULES OF :
PRACTICE AND PROCEDURE :
NOTICE OF INQUIRY 52 PA : L-840097
CODE CHAPTERS 1, 3 AND 5 :

RECEIVED

JAN 29 1986

SECRETARY'S OFFICE
Public Utility Commission

DOCKETED
JAN 30 1986

**DOCUMENT
FOLDER**

COMMENTS OF THE
OFFICE OF CONSUMER ADVOCATE

The Office of Consumer Advocate of the Commonwealth of Pennsylvania ("OCA") hereby submits these comments and suggestions concerning revisions to the Commission's Comprehensive Rules of Practice and Procedure (52 Pa. Code Chapters 1, 3 and 5). The Commission requested such comments and suggestions by Order dated December 10, 1985, published in the Pennsylvania Bulletin on December 28, 1985. The purpose of these comments is not to state specific requests for changes at this time. Their purpose, instead, is to alert the Commission to areas of concern and to suggest items deserving further study. We assume that these suggestions will be considered by the Procedural Rules Committee or another appropriate body. We will be happy to provide more detailed justification for these suggestions upon request. The suggestions will be presented in

accordance with the section of the Procedural Rules to which they are directed.

§1.56. Date of Service.

The decision to adopt a strict "mailbox rule" for the PUC's Rules of Practice needs to be reconsidered. Delays of three to four days before receipt of documents are the norm rather than the exception. Where there is only a ten day response period such a delay can be prejudicial. We suggest that a rule be added to provide additional response time when service is by mail, e.g., three days when service is by first class mail.

§3.2. Issuance of Emergency Orders.

Service of requests for emergency orders should be made not only upon all persons directly affected by the application but also upon all parties to a utility's last rate proceeding or fuel adjustment clause proceeding, as well as the OCA.

§5.324. Discovery of Expert Testimony.

Most of this section impliedly assumes that the expert testimony of the utility will be filed at the time it submits its request for a general rate increase. In fact, in many cases that does not happen. OCA suggests that the PUC give consideration to requiring that such testimony be filed at the time that the general rate increase is submitted. (This would involve a change in §5.412(d) as well.)

§5.322. Supplemental Responses.

OCA suggests that consideration be given to amending subsection (2) to make clear that the duty to supplement responses includes the duty to update all discovery that is affected by the submission of actual data under section 5.244(b). Frequently, utilities file "quarterly updates" in the course of a case and argue that the new submission should be the basis for the decision in the case. In most instances, however, they neglect to file supplements to interrogatory responses which are materially affected by the updated information.

§5.342(e). Motions to Dismiss Objections.

This section requires that a presiding officer rule on a motion to dismiss objections and to compel response within ten days of presentation of the motion. This section is inconsistent with section 5.103(a) and (c) which provides for responses to motions during hearings and permits such a response to be filed within ten days. Section 5.342(e) should state explicitly that, other than an oral response at a hearing on the motion, no formal written response to a motion to compel will be permitted and the 10 day time response period will not apply.

§5.362. Protective Orders.

At the present time, the nature, extent and application of protective orders to limit the availability and

dissemination of "propriety data" vary widely from case to case. In telephone cases, a "standard" protective order usually is entered for telephone utilities which limits the availability and dissemination of proprietary data. The scope and nature of the protective order and the extent to which a utility can refuse to supply data to certain parties has become the subject of intense controversy, however. For example, on several occasions, Bell of Pennsylvania has challenged the right of consultants of OCA, and consultants as well as employees of other parties to receive proprietary data.

Moreover, some companies, such as MCI, have, in the past, initially denied all access to proprietary data to all parties (except the Trial Staff), notwithstanding the parties' willingness to abide by the terms of a protective order. With respect to other utilities, such as electric and gas companies, the practice is even more varied. In some instances, a gas company has refused to provide lists of customers who have informed the Company that they intend to reduce or terminate service, even when the parties have agreed to accept the information subject to a protective order. Similarly, electric companies have refused to provide certain data used as part of cost surveys, again, despite the assurances of parties that such information could be provided pursuant to a protective order.

OCA suggests that the Commission consider including detailed rules for the issuance and administration of

protective orders in PUC proceedings. The rule should consider when and under what circumstances such a protective order will be issued, the kind of information that can be protected by a protective order, the degree to which the information can be disseminated, the nature and extent of the protection provided by such an order and the procedures for opposing a request for a protective order or opposing a request that certain information be covered by a protective order.

§5.412. Written Testimony.

This section does not state whether prefiled written testimony should be filed with the Secretary of the Commission on the day it is due to be served on the parties. OCA suggests that a provision similar to the provision for the filing of interrogatory answers (§5.342) be added to this section. This would require that a certificate of service evidencing the filing of prefiled testimony be submitted to the Secretary on the due date for service of the testimony. Copies of the testimony would not be so submitted. Testimony would then find its way into the official record when it is moved into evidence during the normal course of the proceedings.

§5.533. Procedure to except to initial tentative and recommended decisions.

OCA suggests that reconsideration be given to the page limitations for exceptions and reply exceptions in rate

proceedings. OCA has found that all parties have had an extremely hard time meeting these restrictions in the average rate case. OCA suggests that the number of pages permitted be expanded or that a more workable waiver procedure be established.

§5.534. Appeals to the Commission.

This section permits a 40 page appeal in instances in which the ALJ grants some or all of the exceptions of a party. OCA suggest that this language be clarified to make clear that the 40 page rule applies only to exceptions generated by the ruling on exceptions by the ALJ, not to rulings made by the ALJ in his or her original decision. The rule was intended to limit parties to a one-page appeal when the ALJ has affirmed in all respects his or her Initial Ruling in his or her Ruling on Exceptions, but to allow for a longer appeal in response to rulings which reversed the ALJ's initial determination. In certain recent cases, however, parties have used this exception provision to file additional exceptions to portions of the ALJ's original ruling, even though the ALJ had not altered or changed that part of his or her decision.

Respectfully submitted,



Office of Consumer Advocate by:
Daniel Clearfield
H. Kay Dailey
Debra M. Kriete
Assistant Consumer Advocates

David M. Barasch
Consumer Advocate

DATED: January 29, 1986

ORIGINAL

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February 5, 1986

OF COUNSEL:
JAMES K. THOMAS

WRITER'S DIRECT DIAL NUMBER

255-7611

RECEIVED

FEB 6 - 1986
SECRETARY'S OFFICE
Public Utility Commission

Jerry Rich, Secretary
PA Public Utility Commission
P. O. Box 3265
Harrisburg, PA 17120

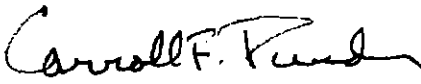
RE: Comprehensive Rules of Practice
and Procedure - L-840097

Dear Sir:

Enclosed for your records is a copy of comments which we
filed directly with Daniel P. Delaney in the above matter.

Sincerely,

THOMAS & THOMAS

By 
Carroll F. Purdy

Enclosure

CFP:lkz:P7-06

**DOCUMENT
FOLDER**

Thomas & Thomas
Attorneys and Counsellors at Law

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January 27, 1986

OF COUNSEL
JAMES K. THOMAS

WRITERS DIRECT DIAL NUMBER

255-7611

FOLDER

RECEIVED

FEB 5 - 1986

SECRETARY'S OFFICE
Public Utility Commission

DOCKETED
FEB 7 1986

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LINDA S. PORR
MELINDA S. SHOOP

Daniel Delaney
Pennsylvania Public Utility Commission
North Office Building
P.O. Box 3265
Harrisburg, PA 17120

Dear Mr. Delaney:

In accordance with the notice published in the Pennsylvania Bulletin, Thomas & Thomas hereby submits comments on the existing Rules of Administrative Practice and Procedure before the Pennsylvania Public Utility Commission, 52 Pa. Code §1.01, et seq. The comments are referenced by the Section number of Title 52 of the Pennsylvania Code and no effort will be made to reprint the entire rule.

Section 1.4 - Filing Generally

For the convenience of those who are not regular practitioners before the Commission, this Rule should contain specific instructions as to the room at which filings are to be received. The manner in which checks should be made out is covered in §1.42(a) and again for the convenience of non regular practitioners should be cross referenced here.

Section 1.11 - Date of Filing

It should be made clear whenever mailing through Postal Service Form 3817 is used as the manner of filing, the time for a response begins running only upon receipt of the mailing and does not run from the date of mailing. Perhaps a provision such as appears in Rule 121(e) of the Rules of Appellate Procedure would be appropriate.

Section 1.13 - Issuance of Commission Orders

and

Section 1.16 - Issuance of Decisions By The Presiding Officers

The date of entry of orders should be consistent with Rule 108 of the Rules of Appellate Procedure. To avoid conflict,

the language of Rule 108 should be tracked exactly for determining date of entry for all purposes, not just for purposes of appeal.

Section 1.15 - Extensions of Time

The five-day rule contained in Section 1.15(a)(2) can be too restrictive. As long as all parties are in agreement and no party has been prejudiced by the delay, an extension of time granted less than five days before the time fixed should be allowed.

Section 1.32 - Documents

Section 1.32(c) provides that documents shall be stapled at the left side only. It should be made clear whether this means one staple at the upper left or a series of covered staples along the left side as in appellate court filings.

Section 5.22 - Contents of Formal Complaint

There is nothing wrong with this rule which designates the contents of a formal complaint. It is, however, not followed in 52 Pa. Code §3.551 J which prescribes a different form nor with the Commission's printed form (copy enclosed) which is still a third form. Each of these forms should be the same and should comply with Section 701 of the Code and Section 5.22.

Section 5.31 - Orders to Show Cause

There is dubious statutory basis for this rule. If the Commission wishes to file a complaint or institute an investigation, they should do so. If there must be such a rule, there should be tightly defined standards as to what information the Commission must disclose to properly warn the respondent as to the possible consequences of the Order to Show Cause.

Section 5.53 - Time of Filing

Since not all protests are to motor carrier applications, there should be a separate rule spelling out the time of filing protests without reference to the motor carrier rules.

Section 5.66 - Answers to petitions to intervene

There should be a deadline prescribed for the filing of an answer to a petition to intervene.

Section 5.72(b) - Eligibility to Intervene

It should be made clear that the Commonwealth or an officer or agency thereof may not intervene separately on behalf of consumers in a matter in which the Consumer Advocate is already

representing the interests of the consumer. This should not foreclose the Commonwealth from intervening for other reasons, e.g., as a customer or to protect some public interest. However, it would be unnecessary duplication and possible conflict, having two state agencies representing the interests of the same consumers.

Section 5.76 - Limitation of
Participation in hearings

This limitation on participation by intervenors if improperly applied could be an impairment of the intervenors' right to due process. Each intervenor should have the right to choose its own counsel and to choose the method and extent to which it will present its arguments.

Section 5.101(b) - Preliminary Motions

Preliminary motions should be permitted to be filed prior to the answer. A proper motion could eliminate the necessity of a further pleading such as an answer and a party should not be required to answer allegations if the prior pleading is improper.

Section 5.203(b) - Hearings in rate proceedings

One of the factors to be considered in scheduling should be the scheduling conflicts of attorneys, particularly court conflicts. The rule should make specific reference to respecting such conflicts.

Section 5.224 - Prehearing conferences in
rate proceedings

This section appears to require that there be an order of investigation before the first prehearing conference. If an administrative law judge has in fact been assigned prior to the order of investigation, there is no reason why the first prehearing conference must await that order.

Section 5.244 - Supporting data for
future test year

This section appears to make it mandatory that when a future test year is used two sets of figures be filed; one for an experienced 12 month period, and one for a 12 month period commencing at the end of the experienced 12 month period. This is contrary to the rule for major rate cases for electric utilities and some exception for that type of filing should be noted in this Section.

Section 5.252 - Transcript Corrections

The time period for transcript corrections in this rule is unduly restrictive. To begin with, 15 days is not a reasonable time when there are daily hearings and the parties who would be reviewing the transcript for errors are engaged in full-time litigation. Likewise, it may be a reasonable practice to wait until the entire record is transcribed and to submit all transcript corrections at one time. As the rule stands, if the transcripts are filed piecemeal, it would not be possible to file all corrections at once.

Section 5.302 - Petition for Commission review
and answer to a material question

The seven day period for serving the brief in support of the petition for Commission review may be appropriate in situations where the Commission is under a statutory deadline to act, such as in a rate case. In the absence of such a statutory deadline there is no reason why the brief must be filed in such a short time.

Section 5.361 - Limitation of Scope of
Discovery and Deposition

There should be another limitation on discovery, particularly in rate cases. The limitation should be that a party should not be entitled to request information already contained in the original filing. Parties should be encouraged to first review existing materials before putting the other party to the trouble of digging out information for them which is already available. There should be some meaningful penalty for violation of this provision.

Section 5.361(b)

This subsection puts a duty on the answering party to make a special study or analysis, if such a study or analysis cannot reasonably be conducted by the participants making the request. This should be replaced by a standard of comparative inconvenience whereby the answering party should not be put to some inconvenience the requesting party will not assume. As written it could require the answering party to go to greater lengths in preparing a study or analysis than the requesting party would be required to go to.

Subsection (d) of the same rule provides that no additional briefs are permitted unless directed by the Commission. This is unusual since the briefs of all parties are to be filed simultaneously. Thus, matters could be raised for the first time in briefs of the petitioning parties for which there is no chance to answer as of right. This is particularly likely since the original petition is restricted to one page.

Section 5.321 - Scope

The discovery rules appear to be based to some extent on the discovery rules within the Rules of Civil Procedure. This is not always appropriate since the situations differ somewhat between administrative proceedings before a commission and discovery in civil litigation. In the Commission situation, discovery takes place in part at the same time as the hearings and matters arising in the course of hearings give rise to additional discovery in the civil procedural context. Civil procedure discovery is generally pre-trial discovery and once the parties reach the point of trial, they are no longer concerned with discovery. The whole discovery section should be reviewed to make it appropriate to Commission proceedings.

Section 5.324 - Discovery of expert testimony

This Rule relating to discovery of expert testimony is inappropriate to Commission proceedings and underscores the difference between Commission proceedings and civil proceedings under the Rules of Civil Procedure. Since pursuant to §5.412, all testimony may be submitted in advance, there need be no distinction between testimony of an expert and testimony of any other witness. Thus no special provision is necessary to provide for discovery of expert testimony.

Section 5.331 - Sequence and timing of discovery

In rate cases all discovery except that raised by some disclosure during hearings should be during the 60 day notice period.

Section 5.342(b) - Answers or objections to written interrogatories by a participant

This section appears to be correct as written, but has been misused by administrative law judges who have refused to permit the incorporation of answers by the expedient of presenting the witness who originated the answer to appear and be subjected to cross-examination. Perhaps the rule should be redrafted in a positive manner to state that "Answers may be offered into evidence by the participant who provided them by presenting the person who provided the answer as a witness and subjecting him or her to cross-examination as in the case of written testimony under §5.412."

Section 5.342(d)

Provides that copies of the answers shall be served on all other participants. In those cases where there are numerous complainants who do not continue to participate in the proceedings,

such a burden may be onerous. Perhaps the answers should be served only on the party propounding the interrogatories and upon those others who request them.

Section 5.343 - Procedures in deposition by
oral testimony

This section provides a fifteen (15) day notice for the taking of oral depositions. Such a period may be too short. Perhaps the rule should read a longer period but provide the administrative law judge with the power to reduce the period upon cause shown.

Section 5.348(c) - Transcript of Depositions,
objections and filing

The procedure for requiring the signature of a witness or in the absence of his signature a delay of thirty (30) days is onerous and unnecessary. This should simply be a matter of making corrections to a transcript as in the case of a hearing transcript.

Section 5.414 - Offers of Proof

It should be made clear that offers of proof are appropriate only in direct examination. Although this is apparently the law, there are some litigants who request offers of proof in cross-examination which is not appropriate.

Section 5.33(d) - Procedure to except

The forty (40) page limitation on exceptions and supporting reasons is generally a good rule. However, it is unduly restrictive in the case of the utility seeking rate relief in a rate case. Perhaps there should be a different rule in that case.

Sections 5.533 and 5.534

These rules provide in the case of appeals to the Commission that, except where the presiding officer grants any or all exceptions, an appeal is limited to a single page. This means that if the presiding officer denies all exceptions, the appeal is limited to one page; further that there is a likelihood that an ALJ will deny all exceptions. As a result, an appeal limited to one page is hardly adequate where you may have substantial factual and legal issues. In addition, even if it is permitted in the one page appeal to incorporate the exceptions, it is not the answer to an appeal from the rulings of the administrative law judge. Errors in the ALJ's rulings can be entirely different than the exceptions, so an appeal in this respect can be entirely

deficient and indeed raises the question whether there is a violation of the procedural and substantive due process provisions of the law. Moreover, this limitation can be abused. The practice can develop where ALJ denies all Exceptions, which effectively precludes a fair review of his rulings.

One other comment is made in respect to appeals. Reference is made to 52 Pa. Code §5.533 and to §5.534(a) where it is stated that where the presiding officer has granted any or all exceptions, the appeal shall be in the form required by §5.533(c) and (d). We believe here that this reference merely goes to the format of the appeal, and not that the appeal should be set forth as exceptions. The appeal should take the form of errors to the ALJ's ruling on the exceptions, such errors to it be specific, numbered and concise, with supporting reasons.

Section 5.535 - Replies

A similar comment is appropriate as to this section. The rule is generally adequate, but in the case of complex rate cases, the twenty-five (25) page limitation is unduly restrictive. Likewise, the ten (10) day reply period is unduly restrictive in that situation.

Section 5.537 - Rate case settlements

Although apparently fair on its face, this rule may unduly delay a settlement agreed to by most parties. There should be some summary procedure with a short response time which allows a fast resolution of the case but nonetheless protects the interest of the party who does not agree to the settlement. The non agreeing party should not be put into the position of being able to blackmail the other parties to the settlement merely by exercising a right to undue delay.

Thank you for allowing us to comment on the rules. We believe that the rules adopted are generally an improvement and that over prior practice. By continuing to hone them as you apparently are doing, is a worthy undertaking.

Sincerely,

THOMAS & THOMAS

By

Carroll F. Purdy

COPY

FORMAL COMPLAINT

RECEIVED

JAN 13 1986

BEFORE

PENNSYLVANIA PUBLIC UTILITY COMMISSION

REGULATORY OFFICE
Public Utility Commission

For Commission Use Only: COMPLAINT DOCKET NO. <u>C-860580</u>	REF. # _____	UTILITY CODE <u>312050</u>
GUY J. RASPATELLO VS. ALLTEL PENNSYLVANIA, INC.		

PLEASE PRINT:

- YOUR NAME, ADDRESS AND TELEPHONE NUMBER.

Name Guy J. RaspateLlo
 Street 143 SWIFT ST.
 City Ridgway State Pa. Zip 15853
 County ELK Home Telephone-Area Code (014) 772-0816
 Work Telephone-Area Code () _____

- COMPANY YOU ARE COMPLAINING ABOUT.

Name ALLTEL

- WHAT IS YOUR COMPLAINT (DESCRIBE PROBLEM):

I have had a Telephone for 34 yrs. I have had my telephone service disconnected more than once but I always managed to pay for the service. My phone bills are usually pretty high because I make a lot of long distance calls. I'm sure I can manage without the long distance calls most of them aren't necessary. My telephone is very important to me because I have three grandchildren I babysit from Friday to Sunday. The rest of the time I'm here alone (More Space On Back)

For Commission Use Only: DATE FILED <u>1/13/86</u>	MONITOR _____	BUREAU <u>ALT</u>
---	---------------	-------------------

THIS MUST BE COMPLETED BY NOTARY PUBLIC
AFFIDAVIT (Natural Person)

COMMONWEALTH OF PENNSYLVANIA

ELK County

ss:

Guy J. Raspattello, being duly sworn (affirmed) according to law, deposes and says that the facts above set forth are true and correct; or are true and correct to the best of his knowledge, information and belief and he expects to be able to prove the same at the hearing hereof.

Guy J. Raspattello
Signature of Affiant

Sworn and subscribed before me this 8th

day of Jan 1986

My Commission Expires _____

WALTER P. GENTON, NOTARY PUBLIC
ST. MARY'S BORO, ELK COUNTY
MY COMMISSION EXPIRES NOV. 10, 1996
Member, Pennsylvania Association of Notaries

Walter P. Genton
Signature of Official Administering Oath

AFFIDAVIT (Corporation)

COMMONWEALTH OF PENNSYLVANIA

_____ County

ss:

_____, being duly sworn (affirmed) according to law, deposes and says that he is _____ of _____; that he is authorized to and does make this affidavit for it; and that the facts above set forth are true and correct; or are true and correct to the best of his knowledge, information and belief and he expects the said _____

_____ to be able to prove the same at the hearing hereof.

Signature of Affiant

Sworn and subscribed before me this _____

day of _____ 19 _____

My Commission Expires _____

Signature of Official Administering Oath

ORIGINAL

Law Offices

2-840097

KEYSTONE LEGAL SERVICES, INC.

SUITE 230 — UNICO BUILDING
477 EAST BEAVER AVENUE
STATE COLLEGE, PENNSYLVANIA 16801
(814) 238-4958

IN DU BOIS (814) 371-1723

February 21, 1986

RECEIVED

FEB 24 1986

**SECRETARY'S OFFICE
Public Utility Commission**

Mr. Jerry Rich, Secretary
Pennsylvania Public Utility Commission
P. O. Box 3265
Harrisburg, PA 17120

Dear Secretary Rich:

I am responding to your request for comments that appeared in the Pennsylvania Bulletin concerning the new rules of practice and procedure of the Public Utility Commission.

While I believe the rules are a great improvement, I believe that they lack procedures for filing class actions before the Commission. Procedures for class actions can help deal with a multitude of claims at one time and can help avoid any problems with mootness. The question of mootness is now an issue in a case that I have had before the Commission and is now in Commonwealth Court. Goldie King v. West Penn Power Company, No. C-844087. The appeal in this case to Commonwealth Court might not have been necessary if class action procedures were available.

Consequently, I would request that the Commission consider implementing rules providing for class actions similar to the Pennsylvania Rules of Civil Procedure. Thank you for consideration of my comments.

Very truly yours,

Richard G. Fishman
Attorney-at-Law

RGF:bj

DOCKETED
FEB 25 1986

file room

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

BY: [Signature]
(DEPUTY ATTORNEY GENERAL)

10/4/85
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:

Pa. Public Utility Commission
(AGENCY)

DOCUMENT/FISCAL NOTE NO. L-840097

DATE OF ADOPTION: September 19, 1985

BY: [Signature]

TITLE: Secretary
(EXECUTIVE OFFICER, CHAIRMAN OR SECRETARY)

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

BY: [Signature]
Charles F. Hoffman

10/4/85
DATE OF APPROVAL

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

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

L-840097—Amendment to the Commission Regulations at 52 Pa. Code Chapter 3, Special Commission Actions: Emergency Relief 52 Pa. Code §§3.1-3.12

At its public meeting of September 19, 1985, the Pennsylvania Public Utility Commission adopted an order which proposes to amend the Commission's regulations at 52 Pa. Code Chapter 3 regarding petitions for emergency relief. These amendments propose to implement a revised procedure under which the Commission will consider petitions for emergency relief by an aggrieved party during the pendency of a Commission proceeding. The revised procedure will serve to reduce or avoid emergency circumstances or problems being experienced by an aggrieved party in order to preserve the status quo or to prevent irreparable injury to a party before a final Commission order is entered in the proceeding. Interested persons are invited to submit written comments to the Commission within 30 days of publication in the Pennsylvania Bulletin. The contact person is Daniel P. Delaney, Esquire, Chief, Office of Counsel, Law Bureau, (717)783-3190.

PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17120

Public Meeting held September 19, 1985

Commissioners Present:

Linda C. Taliaferro, Chairman
Frank Fischl
Bill Shane

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

L-840097

O R D E R

BY THE COMMISSION:

At public meeting held on August 27, 1984, at docket number L-840097 this Commission finally adopted comprehensive rules of Practice and Procedure. 52 Pa. Code Chapters 1, 3 and 5. Since that time we have noted that a party may suffer severe prejudice by the passage of time during the pendency of a proceeding. We now propose to amend our regulations to provide an orderly procedure for Administrative Law Judges or Presiding Officers to use to reduce or avoid emergency problems by preserving the status quo or preventing irreparable injury to parties during the pendency of a Commission proceeding.

Presently the rules provide for reactions to crises only when the parties are on the brink of disaster. Such special applications for emergency orders to individual Commissioners or the Director of Operations should be reserved for extraordinary circumstances. See 52 Pa. Code §§3.1-3.5. As a case progresses before an Administrative Law Judge or Presiding Officer circumstances may change or may threaten to change which, if permitted to continue, could irreparably harm a party before a final order is entered. For this reason the Administrative Law Judges or Presiding Officers will be given the authority to preserve the status quo or to grant some other form of injunctive relief. The proposed regulations in Annex A are designed to implement an orderly process for crisis avoidance. The current Rules of Practice and Procedure will be improved and supplemented with this new proposal.

These changes are reflected throughout sections 3.1 and 3.6-3.11 and are set forth fully in Annex A of this order.

Accordingly, pursuant to Sections 308, 316, 331, 501, 1501, 1504 and 1704 of the Public Utility Code, Act of July 1, 1978, P.L. 548, No. 116, 66 Pa. C.S. §§308, 316, 331, 501, 1501, 1504 and 1704; Sections 201, 202 and 205 of the Commonwealth Documents Law, Act of July 31, 1968, P.L. 769, as amended, 45 P.S. §§1201, 1202 and 1205, we find that 52 Pa. Code should be amended by revising Chapter 3, Sections §§3.1-3.12, as set forth in Annex A hereto, or as modified after receipt of comments; THEREFORE,

IT IS ORDERED:

1. That a proposed rulemaking docket be opened to consider the regulations set forth in Annex A.

2. That the Secretary shall submit this Order and Annex A to the Office of Attorney General for review as to form and legality.

3. That the Secretary shall submit this Order and Annex A for review by the designated standing committees of the General Assembly and for review and approval by the Independent Regulatory Review Commission.

4. That the Secretary shall duly certify this Order and Annex A and deposit them with the Legislative Reference Bureau for publication as proposed rulemaking in the Pennsylvania Bulletin.

5. That the original and ten (10) copies of comments concerning these proposed amendments be submitted within 30 days of publication in the Pennsylvania Bulletin to the Pennsylvania Public Utility Commission, Attention: Secretary, P.O. Box 3265, Harrisburg, PA 17120. The contact person is Daniel P. Delaney (717) 783-3190.

BY THE COMMISSION,

Jerry Rich
Secretary

(SEAL)

ORDER ADOPTED: September 19, 1985

ORDER ENTERED: September 24, 1985

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 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.

- (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.

§3.7 Issuance of Interim Emergency Orders.

- (a) An Administrative Law Judge or Presiding Officer may issue an interim emergency order upon finding that:

- (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.

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

§3.8 Form of Interim Emergency Order.

An interim emergency order shall contain a brief description of the evidence presented in support of the petition and shall specify how that evidence meets the criteria set forth in §3.7 (relating to the issuance of interim emergency orders).

§3.9

Hearings on Interim Emergency Orders.

- (a) 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.

- (b) An interim emergency order shall be served as expeditiously as practicable on all parties to the proceeding.

§3.10

Commission Review of Interim Emergency Orders.

An interim emergency order or an order denying injunctive relief may be reviewed by the Commission upon petition in accordance with the procedures set forth at §§5.301-5.303 (relating to interlocutory review).

§3.11

Duration of Interim Emergency Orders.

An interim emergency order shall expire upon entry of a final Commission order 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 temporary authority or emergency temporary authority).

REGULATORY ANALYSIS FORM

For use in providing information to the Independent Regulatory Review Commission pursuant to Section 5 of the Regulatory Review Act and for providing information to the Governor's Task Force on Regulatory Relief pursuant to Executive Order 1982-2 and Section 612 of the Administrative Code.

PART I: IDENTIFYING INFORMATION

(1) Agency Public Utility Commission	(2) I.D. No. (Use Task Force No.) L-340097	THIS SPACE FOR USE BY IIRC: Date Received:
(3) Short Title Amendment to the Commission's Rules of Practice and Procedure—Special Commission Actions—Emergency Relief		
(4) Pa. Code Cite 52 Pa. Code §§3.1-3.12	(5) Agency Contact & Phone Number Daniel P. Delaney (717) 733-3190	
(6) Type (check one) <input checked="" type="checkbox"/> Proposed Rulemaking <input type="checkbox"/> Final Order Adopting Regulation	(7) Is a 120 day Emergency Certification Attached? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes: By the Attorney General <input type="checkbox"/> Yes: By the Governor	(8) APPROVAL (Name & Date) Agency Head: <i>Jerry Rich</i> 10/9/85 Task Force: <i>Secretary</i> (Executive Agencies Only)

PART II: BASIC ANALYSIS MATERIAL (Required by Sec. 5(a) of the Regulatory Review Act.)

(9) Briefly explain the proposed regulation.

This proposal amends the Commission's procedural rules governing Emergency relief at 52 Pa. Code Chapter 3. The amendments will permit Administrative Law Judges to consider a petition for emergency relief filed by a litigant at any time during the course of a Commission proceeding and to enter interim emergency orders in order to prevent harm to a party while the case is in progress before the Commission.

(10) How does this regulation reduce costs of state and local government or private entities (business, consumers, etc.) within the Commonwealth?

These regulations neither reduce nor increase costs to state and local governments or private utilities.

(10) What is the statutory or other authority under which the regulation is proposed? (For state law cite Act and P.S. For federal law cite Act and U.S.C. For federal regulations cite C.F.R. or Federal Register. Be sure to cite court decisions, orders, or consent decrees or attach copies of unpublished documents.)

- Sections 308, 316, 331, 501, 1501, 1504 and 1704 of the Public Utility Code, Act of July 1, 1973, P.L. 548, No. 116, 66 Pa. C.S. §§308, 316, 331, 501, 1501, 1504 and 1704; Sections 201, 202 and 205 of the Commonwealth Documents Law, Act of July 31, 1963, P.L. 769, as amended, 45 P.S. §§1201, 1202 and 1205.

(11) Why is the regulation needed?

The current regulations only permit entry of an emergency order in property or life threatening situations. Such orders can presently be entered only by the Director of Operations or a Commissioner. The Commission believes that in some cases the litigants can be severely prejudiced by the passage of time while their case is being heard. In order to lessen this harm and to prevent the development of a property or life threatening situation, these amendments give the Administrative Law Judge the power to enter injunctive relief for the duration of the litigation.

(12) What legal, accounting or consultant procedures will be required by the proposed regulation and who must comply with these procedures?

N/A

(13) What additional reporting, record keeping and other paperwork will be required by the proposed regulation? (Attach copies of any available forms or reports which will be required in implementation of the proposed regulation.)

None

(14) What is the suggested timetable for public comment, hearings, implementation, and what are various conformity deadlines (I.E. permits, licenses etc.)?

The public will be afforded a 30-day comment period to submit comments concerning this rulemaking. Implementation will occur thereafter.

(15) What types of persons, businesses and organizations will be affected by the regulation?

Staff, private practitioners, utilities and all other persons who practice before the Commission.

(16) What other regulations and State agencies will be affected by the regulation?

The Office of Consumer Advocate will be effected due to its active participation in Commission proceedings.

PART III: REGULATORY FISCAL IMPACT (Required by Sec. 612 of the Administration Code)

(17) Generally describe the costs imposed by this regulation upon state and local government.

None

(18) Are there Revenue Losses? State Local School Districts (Attach statement of method used to estimate)

Pund	FY	FY	FY	FY	FY	FY
N/A						

(19) Are there increased program costs? State Local School Districts (Attach statement of method used to estimate)

Program	FY	FY	FY	FY	FY	FY
(a) N/A						
(b)						
(c)						
(d)						
(e)						

(20) What is the three year expenditure history for programs affected by the regulation? (Attach statement of method used to estimate)

Year / Program	(a)	(b)	(c)	(d)	(e)
N/A					

(21) Has any increased cost been included in the current budget? Yes No

If no, how will funds be obtained?

N/A

PART IV: COSTS AND BENEFITS (Required by Sec. 5(b) of the Regulatory Review Act.)

(22) Generally describe the costs imposed by this regulation on private entities. (e.g. consumers, business, etc.)

This regulation should impose no additional costs upon private entities.

(23) What is the amount of reasonably measurable private cost?

Sector	FY	FY	FY	FY	FY	FY
N/A						

(24) Explain the types of benefits which arise from the regulation, and who receives these benefits.

Aggrieved litigants will benefit from the regulations due to the expeditious fashion in which petitions for emergency relief will be handled by the Commission.

(25) If any of these benefits are measurable, what are their estimated values

Benefit	FY	FY	FY	FY	FY	FY
N/A						

(26) Will the potential benefits outweigh the potential costs imposed? Explain.

Yes. The preservation of the status quo and/or the prevention of undue harm to a litigant while a case is being heard outweighs the nominal costs of preparing the petition and participating in the additional, expedited procedures.

(27) Has the regulation been drafted in a manner which maximized the difference between potential benefits and potential costs? Explain.

See question 26.

(28) List the alternative regulatory approaches which were considered and reasons for rejecting these alternatives.

Existing procedures have proven that a gap in the availability of emergency relief to litigants exists. The new regulations will prevent the potential for harm to litigants from becoming a property or life threatening crisis.

(29) How will this regulation reduce or minimize paperwork, legal, accounting, reporting or paperwork requirements?

N/A

(30) What provisions are included in the regulation to meet the special needs of affected groups or persons? If no such provisions are included, explain why.

None. The interim emergency relief proposed by these regulations will be available to all qualified litigants.

(31) What plan has been developed to evaluate the effectiveness of the regulation after its implementation? What sunset date, if any, has been assigned?

The Commission will periodically review these regulations to assure consistency with its overall intent.

PART V: OTHER INFORMATION (Required by Sec. 5(a) of the Regulatory Review Act and Executive Order 1982-2.)

(32) Is there a deadline for action? Why? If there is no deadline, when should the regulation be adopted and what are the consequences of delay. (Attach copies of documents supporting the need for a deadline.)

No specific deadline exists, but the regulation should be adopted as soon as possible in order to take advantage of the resulting benefits to Commission procedures.

(33) Is this regulation mandated by federal law or court order? (Attach copies of orders, consent decrees, settlement memos, federal regulations, letters of agreement etc.)

No.

(34) Upon what information is the need for this regulation based? What studies, hearings or other research has been conducted?

The current rules do not encompass procedures for the filing, expedient conduct of a hearing and prompt decision on requests for preliminary injunctive and/or other interim relief. The Commission believes that the public and the Administrative Law Judges need a standard procedure on how to handle these requests. The proposal sets forth that procedure and will provide a consistent manner in which the Commission will consider and determine such petitions.

(35) What steps, if any, were taken in the development of this regulation to provide public and legislative participation?

None.

(36) Will current litigation be affected by this regulation? Cite cases and explain.

No.



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
P. O. BOX 3265, HARRISBURG, Pa. 17120

June 4, 1986

IN REPLY PLEASE
REFER TO OUR FILE

The Honorable Clarence D. Bell
Chairman, Senate Committee on
Consumer Protection and
Professional Licensure
Room 286
Main Capitol Building
Harrisburg, PA 17120

Re: L-840097: Amendment to the Commission's Comprehensive
Rules of Practice and Procedure - Special
Commission Actions - Emergency Relief
52 Pa. Code §§3.1-3.12

Dear Senator Bell:

Enclosed please find twenty (20) copies of the Commission's order and the regulatory analysis form concerning the above-captioned proposed rulemaking. These documents are being submitted pursuant to Section 745.5 of the Regulatory Review Act, (71 P.S. §745.5). The Office of the Attorney General approved this proposal on November 20, 1985. The purpose of the proposed regulation is to implement a revised procedure under which the Commission will consider petitions for emergency relief submitted by an aggrieved party during the pendency of a Commission proceeding. This procedure will serve to reduce or avoid emergency circumstances or problems being experienced by an aggrieved party in order to preserve the status quo or to prevent irreparable injury to a party before a final order is entered.

The proposal will be deposited with the Legislative Reference Bureau this date. It is anticipated that the proposal will be published in the Pennsylvania Bulletin on June 21, 1986.

Sincerely,

John G. Alford
Director of Operations



cc: Chief Counsel Hoffman
Mr. Shields
Ms. Gustin



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
P. O. BOX 3265, HARRISBURG, Pa. 17120

June 5, 1986

IN REPLY PLEASE
REFER TO OUR FILE

The Honorable Charles Laughlin
Chairman, House Committee
on Consumer Affairs
Room 521-E-3
Main Capitol Building
Harrisburg, PA 17120

Re: L-840097: Amendment to the Commission's Comprehensive
Rules of Practice and Procedure - Special
Commission Actions - Emergency Relief
- 52 Pa. Code §§3.1-3.12

Dear Representative Laughlin:

Enclosed please find seven (7) copies of the Commission's order and the regulatory analysis form concerning the above-captioned proposed rulemaking. These documents are being submitted pursuant to Section 745.5 of the Regulatory Review Act, (71 P.S. §745.5). The Office of the Attorney General approved this proposal on November 20, 1985. The purpose of the proposed regulation is to implement a revised procedure under which the Commission will consider petitions for emergency relief submitted by an aggrieved party during the pendency of a Commission proceeding. This procedure will serve to reduce or avoid emergency circumstances or problems being experienced by an aggrieved party in order to preserve the status quo or to prevent irreparable injury to a party before a final order is entered.

The proposal will be deposited with the Legislative Reference Bureau this date. It is anticipated that the proposal will be published in the Pennsylvania Bulletin on June 21, 1986.

Sincerely,

John G. Alford
Director of Operations

cc: Chief Counsel Hoffman
Mr. Shields
Ms. Gustin



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
P. O. BOX 3265, HARRISBURG, Pa. 17120

June 5, 1986

IN REPLY PLEASE
REFER TO OUR FILE

The Honorable Irvin G. Zimmerman, Chairman
Independent Regulatory Review Commission
Room 22A
333 Market Street
Harrisburg, PA 17120

Re: L-840097: Amendment to the Commission's Comprehensive
Rules of Practice and Procedure - Special
Commission Actions - Emergency Relief
52 Pa. Code §§3.1-3.12

Dear Chairman Zimmerman:

Enclosed please find the original regulatory analysis form and one copy of the Commission's order concerning the above-captioned rulemaking proceeding. These documents are submitted for consideration pursuant to Section 745.5 of the Regulatory Review Act (71 P.S. §745.5). The Office of Attorney General approved this proposal on November 20, 1985. The purpose of the proposed regulation is to implement a revised procedure under which the Commission will consider petitions for emergency relief submitted by an aggrieved party during the pendency of a Commission proceeding. This procedure will serve to reduce or avoid emergency circumstances or problems being experienced by an aggrieved party in order to preserve the status quo or to prevent irreparable injury to a party before a final order is entered.

The proposal will be deposited with the Legislative Reference Bureau this date. It is anticipated that the proposal will be published in the Pennsylvania Bulletin on June 21, 1986.

Sincerely,

John G. Alford
Director of Operations

cc: Chief Counsel Hoffman
Mr. Shields
Ms. Gustin



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
P. O. BOX 3265, HARRISBURG, Pa. 17120

June 5, 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 - Emergency Relief
52 Pa. Code §§3.1-3.12

Dear Mr. Hoffman:

Enclosed please find an original and one copy of the face sheet and Commission order concerning the above-captioned proposed rulemaking. The Attorney General approved this proposal on November 20, 1985. The fiscal documents have been forwarded to the Budget Office for review. The Commission requests that this order be published as proposed rulemaking in the Pennsylvania Bulletin.

This proposal was originally transmitted to your office for publication on January 22, 1986. Subsequent to that transmittal, the Commission requested that the publication be postponed until the General Assembly made disposition on the re-enacted Regulatory Review Act.

Sincerely,

John G. Alford
Director of Operations

cc: Chief Counsel Hoffman
Mr. Shields
Ms. Gustin

KIRKPATRICK & LOCKHART

ORIGINAL

1500 OLIVER BUILDING
PITTSBURGH, PENNSYLVANIA 15222

TELEPHONE (412) 355-6500

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MIAMI, FL 33131
(305) 374-8112

1900 M STREET, N.W.
WASHINGTON, D.C. 20036
(202) 452-7000



WRITER'S DIRECT DIAL NUMBER
(412) 355-8906

July 1, 1986

Secretary Jerry Rich
Pennsylvania Public Utility Commission
P. O. Box 3265
Harrisburg, PA 17120

RECEIVED

JUL 2 - 1986

SECRETARY'S OFFICE
Public Utility Commission

Re: Comments on Proposed Public Utility
Commission Rulemaking on Special
Commission Actions -- Emergency Relief

Dear Secretary Rich:

L-840097

Please be advised that we represent T. W. Phillips Gas and Oil Co. ("T. W. Phillips"). T. W. Phillips is a natural gas public utility subject to the jurisdiction of the Pennsylvania Public Utility Commission (the "Commission"). In the June 21, 1986 edition of the Pennsylvania Bulletin, the Commission has proposed certain rules governing emergency relief. In that regard, we have reviewed the proposed rules and would recommend, through the attached comments of T. W. Phillips, that specific changes be made to them.

The substance of our comments on behalf of T. W. Phillips can be summarized as follows:

(1) Under proposed Section 3.7, the Administrative Law Judge may issue an Interim Emergency Order upon a finding that (a) petitioner's right to relief is clear, (b) the need for relief is immediate and (c) the injury would be irreparable if relief is not granted. These criteria should be reconsidered and modified in light of the most recent Pennsylvania Supreme Court decisions.

(2) Under proposed Section 3.8, the Administrative Law Judge is only required to provide a "brief description of evidence presented in support of the petition" for injunctive relief. In order to allow the appeal process to proceed fairly, it is necessary that the Administrative Law Judge provide a full description of his

Secretary Jerry Rich
Pennsylvania Public Utility Commission
July 1, 1986
Page 2

findings of fact and conclusions of law. A "brief description" is not adequate for purposes of Commission or potential appellate review.

(3) The Pennsylvania Rules of Civil Procedure define requirements for service and notice in proceedings for preliminary injunctive relief. The proposed rulemaking does not include the corresponding definition of these minimum standards. Full compliance with due process rights will require that this rulemaking either explicitly include provisions for service and notice of parties to such an action or, alternatively, that this rulemaking identify and accept the service and notice provisions of the Pennsylvania Rules of Civil Procedure.

(4) No right of appeal to the Commission is specified. Under the proposed rulemaking, Section 3.10, an order either granting or denying injunctive relief "may" be reviewed by the Commission. In order to protect the rights of parties to such a proceeding, an appeal, when requested, on such injunctive relief should automatically go to the Commission. If the proposed rulemaking does not so specify, then a direct appeal to the Commonwealth Court should be made available to the affected parties. Given the gravity of an "emergency" situation which would necessarily precipitate an Interim Emergency Order, timely review by the Commission is clearly warranted. T. W. Phillips proposes that such a Commission review occur within thirty (30) days from issuance of the Interim Emergency Order. T. W. Phillips further notes that under Pennsylvania Rule of Civil Procedure No. 311, an injunctive order is always appealable as of right. The proposed rulemaking should provide that the Interim Emergency Order is also appealable as of right.

(5) The proposed rulemaking provides no express provisions for the posting of a bond. The posting of a bond is required to insure that if the injunction is improperly

KIRKPATRICK & LOCKHART

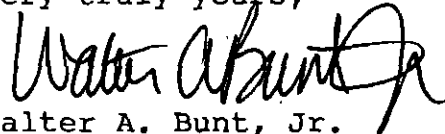
Secretary Jerry Rich
Pennsylvania Public Utility Commission
July 1, 1986
Page 3

requested and incorrectly issued, the enjoined party has the ability to recover any damages caused by the injunction.

Each of these points are addressed more fully in the attached comments. As requested, an original and ten (10) copies of T. W. Phillips' comments are enclosed.

If you have any questions concerning the T. W. Phillips' comments to the proposed rulemaking, please do not hesitate to contact me.

Very truly yours,

A handwritten signature in cursive script that reads "Walter A. Bunt, Jr." The signature is written in dark ink and is positioned above the typed name.

Walter A. Bunt, Jr.

WABJr/lms
Enclosure

cc: Mr. Daniel Delaney

COMMENTS BY T. W. PHILLIPS GAS AND OIL CO.
ON PROPOSED
PENNSYLVANIA PUBLIC UTILITY COMMISSION RULEMAKING

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

RECEIVED

JUL 2 - 1986
SECRETARY'S OFFICE
Public Utility Commission

The following comments are provided by T. W. Phillips Gas and Oil Co. ("T. W. Phillips"), a Pennsylvania natural gas utility regulated by the Pennsylvania Public Utility Commission ("PUC" or the "Commission"). T. W. Phillips has an interest in the proposed rulemaking based on its ongoing activity in furnishing natural gas service to approximately 49,000 residential, commercial and industrial customers in various communities located in seven contiguous counties of western Pennsylvania.

T. W. Phillips has carefully reviewed the proposed rulemaking and recommends that certain changes be made. The primary goal of these changes is to bring the proposed rulemaking into closer conformity with decisions of the Pennsylvania appellate courts as to the prerequisites for injunctive relief and with the Pennsylvania Rules of Civil Procedure. In that regard, T. W. Phillips' specific comments are as follows:

**DOCUMENT
FOLDER**

DOC 59
JUL 2 1986

A. THE CRITERIA FOR ISSUING PRELIMINARY INJUNCTIVE RELIEF SHOULD CONFORM WITH THE RULINGS OF THE PENNSYLVANIA SUPREME COURT

Under Section 3.7, Issuance of Interim Emergency Orders, the Administrative Law Judge or Presiding Officer may enter an Interim Emergency Order upon simply finding that:

- (i) petitioner's right to relief is clear;
- (ii) the need for relief is immediate; and
- (iii) the injury would be irreparable if relief is not granted.

Numerous recent decisions from the Pennsylvania Supreme Court have addressed the question of the adequacy of the grounds required to support preliminary injunctive relief. See e.g., Willman v. Children's Hospital of Pittsburgh, 505 Pa. 263, 479 A.2d 452 (1984); Shenango Valley Osteopathic Hospital v. Dept. of Health, 499 Pa. 39, 451 A.2d 434 (1982). The Court has recognized that a preliminary injunction requires the issuing court to exercise its equitable powers prior to a final determination of the merits of the case and without a complete development of all the facts upon which final judgment will depend. New Castle Orthopedic Association v. Burns, 481 Pa. 460, 392 A.2d 1383 (1978). Because a determination is required before a full development of all the facts, the proponent of a preliminary injunction has a heavy burden of persuasion and a petition for a preliminary injunction may be properly denied for "any apparently reasonable grounds". See, Singzon v.

Commonwealth Department of Public Welfare, 496 Pa. 8, 12, 436 A.2d 125, 127 (1981); New Castle Orthopedic Association, 481 Pa. at 464, 392 A.2d at 1385.

In order to grant a preliminary injunction, the court must determine (a) that the petitioner has a clear right to relief; (b) that the injunction is necessary to prevent immediate and irreparable harm which cannot be compensated by damages; (c) that greater injury would result by refusing the injunction than by granting it; (d) that the injunction restores the parties to their status as it existed immediately prior to the wrongful conduct; and (e) the alleged action or wrong is manifest and the injunction is reasonably suited to abate that wrong. See, Singzon, supra; New Castle, supra; see also Independent State Store Union v. Pennsylvania Liquor Control Board, 495 Pa. 145, 432 A.2d 1375 (1981).

Unless the criteria utilized by the Administrative Law Judge or Presiding Officer conforms with the most recent pronouncements of the Pennsylvania Supreme Court, the Interim Emergency Orders issued under proposed Section 3.7 may be subject to dissolution upon later judicial review. Therefore, T. W. Phillips recommends that the issuance of Interim Emergency Orders faithfully mirror the criteria for injunctive relief as established by the Pennsylvania Supreme Court.

B. THE ADMINISTRATIVE LAW JUDGE OR PRESIDING OFFICER SHOULD BE REQUIRED TO ACCOMPANY HIS INTERIM EMERGENCY ORDER WITH A CONCISE STATEMENT OF HIS FINDINGS OF FACT AND CONCLUSIONS OF LAW

Under the rulemaking for proposed Section 3.8, Form of Interim Emergency Order, the Administrative Law Judge or Presiding Officer shall issue the Interim Emergency Order containing "a brief description of the evidence presented in support of the petition". A "brief description" is inadequate for the purposes of later administrative or judicial review. The Administrative Law Judge or Presiding Officer must be required to support his Interim Emergency Order with a concise description of his findings of fact and conclusions of law. Only by including these findings of fact and conclusions of law can the Administrative Law Judge's or Presiding Officer's Interim Emergency Order be adequately reviewed upon appeal.

It should be noted further that under Pennsylvania Rule of Appellate Procedure 2151, a reproduced record of prior proceedings must generally be made available to the appellate court. Failure of the Administrative Law Judge or Presiding Officer to supply an adequate written record will force the appellate courts either to undertake a de novo review or to remand the matter to the Commission for further factfinding. A de novo review or a remand for further factfinding would only waste judicial and/or administrative resources and impede the timely resolution of the "emergency" situation. See, e.g.,

Hardee's Food Systems, Inc. v. Department of Transportation of Pennsylvania, 495 Pa. 514, 434 A.2d 1209 (1981); Orage v. Commonwealth of Pennsylvania, Office of Administration, 85 Pa. Commw. 497, 482 A.2d 1174 (1984).

Under the Pennsylvania Administrative Agency Law, 2 Pa. Cons. Stat. Ann. §103 et seq. (Purdon 1985), the record of a hearing before a Commonwealth agency must be fully recorded:

No adjudication of a Commonwealth agency shall be valid as to any party unless he shall have been afforded reasonable notice of a hearing and an opportunity to be heard. All testimony shall be stenographically recorded and a full and complete record shall be kept of the proceedings.

2 Pa. Cons. Stat. Ann. §504 (Purdon 1985). Failure by a Commonwealth agency such as the Commission to create a full and complete record, including findings of fact and conclusions of law, would be a violation of Section 504.

C. SERVICE OF THE COMPLAINT REQUESTING AN INTERIM EMERGENCY ORDER AND SERVICE OF THE INTERIM EMERGENCY ORDER ITSELF SHOULD BE PERFORMED IN COMPLIANCE WITH THE PENNSYLVANIA RULES OF CIVIL PROCEDURE

Under proposed Section 3.9, Hearings on Interim Emergency Orders, an Interim Emergency Order shall be served as expeditiously as practicable on all parties to the proceeding. No specific form of service is identified. Because of the potentially intrusive nature of the relief granted by an Interim Emergency Order, this service should conform with the Pennsylvania Rules of Civil Procedure in order to abide by the Pennsylvania standards of due process.

Although it is not specifically stated in the proposed rulemaking, service of the petition for an Interim Emergency Order presumably would be performed under the existing service provisions of 52 Pa. Code §1.52. Under the Pennsylvania Rules of Civil Procedure, the provisions for service and notice of complaints for injunctive relief are clearly specified in Pennsylvania Rule of Civil Procedure 2131. Any variation by the PUC from these rules could later be found to be a compromise of due process rights thus causing dissolution of the injunction on appeal. T. W. Phillips recommends, therefore, that the service provision for Interim Emergency Orders conform with the Pennsylvania Rules of Civil Procedure.

D. REVIEW OF INTERIM EMERGENCY ORDERS BY THE COMMISSION SHOULD BE MANDATORY AND TIMELY

Under Section 3.10, Commission Review of Interim Emergency Orders, an Interim Emergency Order "may" be reviewed by the Commission. The prospect of any injunctive order leaving the enjoined party without any right of appeal is certainly a violation of Pennsylvania law.¹ Injunctive relief is potentially intrusive and very burdensome. Accordingly, a mandatory and timely review of all Interim Emergency Orders must be appealable as of right to the Commission.

In that regard, T. W. Phillips proposes that all such Interim Emergency Orders which are appealed should automatically be scheduled by the Commission for review in order to modify, set aside, or affirm the decision of the Administrative Law Judge or Presiding Officer. T. W. Phillips proposes that such an appeal

¹The Pennsylvania Rules of Appellate Procedure specifically provide that injunctive relief orders may be appealed as a matter of right:

Rule 311. Interlocutory Appeals as of Right
(a) General Rule. Except as otherwise prescribed by general rule, an appeal may be taken as of right from:

. . .

(4) Injunctions. An order granting, continuing, modifying, refusing or dissolving injunction, or refusing to dissolve or modify injunctions.

Pa.R.A.P. 311 (emphasis added).

be as of right for either the petitioner or respondent and that a final disposition by the Commission should occur within thirty (30) days from the date of issuance of the Interim Emergency Order.

A timely review by the Commission will then allow the affected parties to seek access to the Commonwealth Court, if desired, as an agency adjudication defined under Section 702 of the Pennsylvania Administrative Agency Law, 2 Pa. Cons. Stat. Ann. §103 et seq. (Purdon 1985).

An administrative action is an "adjudication" under the Administrative Agency Law when it culminates in a final determination affecting personal or property rights. See, Allegheny Ludlum Steel Corporation v. Pennsylvania Public Utility Commission, 501 Pa. 71, 77, 459 A.2d 1218, 1221 (1983). An Interim Emergency Order issued under the proposed rulemaking would have the character of an adjudication where there is a determination affecting personal or property rights. In fact, the Courts of Pennsylvania have stated that agency action "affecting" a party's rights need not be a final or ultimate disposition of a right. Baker v. Commonwealth, Pennsylvania Human Relations Commission, 75 Pa. Commw. 296, 304, 462 A.2d 881, 886 (1983).

Interim Emergency Orders, as envisioned under the proposed rulemaking, will clearly produce a direct and immediate injury to parties who are either enjoined from some action or ordered to perform some task. Because of the direct and immediate injury possible from Interim Emergency Orders, each such Order must be subject to immediate appeal. See Aitkenhead v. Borough of West View, 62 Pa. Commw. 213, 442 A.2d 364 (1982) (Decision of the Department of Environmental Resources to issue permit allowing addition of fluoride to public water system is reviewable by the Commonwealth Court); Buffalino v. Department of Justice of Pennsylvania, 66 Pa. Commw. 272, 443 A.2d 1361 (1982) (Attorney General's denial of attorney's fees was an appealable adjudication).

Finally, T. W. Phillips not only recommends modifications to the Interim Emergency Order rules as previously discussed, but also recommends that a failure of the Commission to act within thirty (30) days of any emergency relief granted or denied by an Administrative Law Judge or Presiding Officer be viewed as a final decision and concurrence with the grant or denial of such Interim Emergency Order. Inclusion of such a provision within the proposed emergency relief rules will ensure appellate court review of the Interim Emergency Orders as a final adjudication.

**E. A BOND SHOULD BE REQUIRED TO BE POSTED BY EACH
COMPLAINANT SEEKING PRELIMINARY INJUNCTIVE RELIEF**

T. W. Phillips notes also that the proposed rulemaking has no express provisions for the posting of a bond. The posting of a bond should be mandatory to insure that if the injunction is improperly requested and wrongfully issued, the enjoined party has the ability to recover damages caused by the injunction. Pennsylvania Rule of Civil Procedure 1531 specifically requires that a bond must be posted prior to issuing preliminary injunctive relief. It is strongly recommended that the proposed rulemaking follow the Pennsylvania Rules of Civil Procedure and include a provision for the posting of a bond prior to the issuance of any Interim Emergency Order.

A bond will also insure that the Administrative Law Judge or Presiding Officer assess the degree of harm or injury which may befall the respondent if the equitable relief is granted. This assessment will be needed in order to evaluate the appropriate amount of the bond. Furthermore, under the criteria established by the Pennsylvania Supreme Court, injunctive relief can only be granted with a determination that a greater injury would result by refusing the injunction than by granting it. A determination of this nature will also be necessary in assessing the appropriate amount of the bond.

**F. ATTENDANCE AT THE HEARING BY ALL INTERESTED OR
AFFECTED PARTIES MUST BE MANDATORY**

Finally, T. W. Phillips suggests that the Commission require that no Interim Emergency Order be issued unless a hearing is held with all interested parties in attendance. Under Section 3.9, Hearings on Interim Emergency Orders, a hearing is required to be held within ten (10) days of the receipt of the petition. T. W. Phillips concurs with the timeliness of this hearing but suggests that the hearing can only be meaningful if all interested parties have notice and are in attendance. Any deviation from this proposed requirement potentially could subject parties to injunctive orders which are issued without giving those parties an opportunity to be heard.



PENNSYLVANIA GAS ASSOCIATION

SUITE 400, 212 LOCUST STREET, HARRISBURG, TELEPHONE (717) 233-5814

REPLY TO:

P.O. BOX 805
HARRISBURG, PA 17108-0805

July 21, 1986

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Jerry Rich, Secretary
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17120

**SECRETARY'S OFFICE
Public Utility Commission**

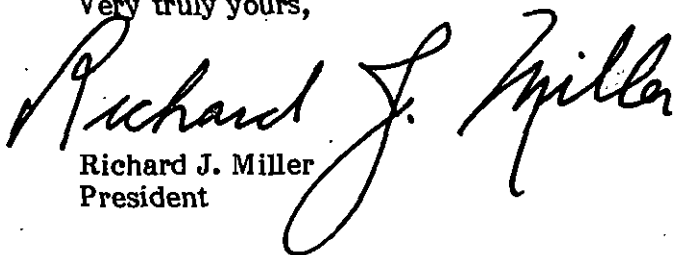
**SUBJECT: L-840097 -- Special Commission Actions:
Emergency Relief**

Dear Secretary Rich:

Enclosed, for filing with the Commission, are an original and ten (10) copies of the Comments of the Pennsylvania Gas Association to the above-captioned proposed rulemaking.

Thank you for your attention to this matter.

Very truly yours,


Richard J. Miller
President

cc: Daniel P. Delaney, Esquire



BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

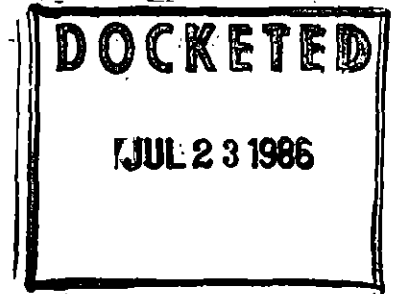
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JUL 21 1986

SECRETARY'S OFFICE
Public Utility Commission

SPECIAL COMMISSION ACTIONS:
EMERGENCY RELIEF

:
:
: L-840097
:



COMMENTS OF THE
PENNSYLVANIA GAS ASSOCIATION

The Pennsylvania Gas Association, by its President, submits the following Comments to the Proposed Rulemaking on Special Commission Actions: Emergency Relief, that was published by the Commission in Volume 16, Pennsylvania Bulletin (June 14, 1986), at pages 2219-2221:



GENERAL COMMENTS

The PGA generally supports the emergency relief regulations proposed by the Commission in the instant proceeding. Prior to making suggestions concerning individual provisions of the regulations, the PGA wishes to raise a general concern about the relationship between the proposed emergency relief regulations and injunctive relief available through the Pennsylvania state courts.

The PGA believes that the Commission must make clear in its order propounding final regulations on emergency relief that the Commission is not attempting to usurp jurisdiction from the state courts with the result that the new emergency relief rules would be an initial or exclusive source of relief which must be exhausted prior to seeking state court injunctive relief. Although state courts generally defer to the PUC on issues

exclusively within the knowledge or expertise of the Commission, these emergency relief regulations do not address such an issue. The Commission, however, can clarify that emergency relief is not such an issue by stating so in its order and, thus, preventing confusion in this matter.

This distinction is important in order to avoid confusion, because only Common Pleas Courts possess injunctive power and the power of contempt for violations. This is demonstrated in the statutory structure of the Public Utility Code where, on the one hand, the Commission is empowered to issue regulations and orders governing rates and service of a public utility (which is sometimes only one of several parties to a proceeding) but, on the other hand, the Commission, through its Chief Counsel and the Attorney General, is required to seek injunctive and other extraordinary relief to enforce regulations and orders from the courts. See 66 Pa. C.S. §§306, 502, and 503. To the extent that they constitute Commission orders, the emergency orders contemplated by the Commission's proposed regulations will be capable of enforcement in the courts against parties over which the Commission has jurisdiction, but cannot supplant Common Pleas Court jurisdiction, particularly where jurisdiction over the person against whom the order is directed is a fundamental question in the Commission's proceeding.

COMMENTS ON SPECIFIC PROVISIONS

1. §3.6. Petitions for Interim Emergency Orders.

(a) The regulation should be clarified to permit the filing of a petition for interim emergency order not only during the pendency of a proceeding, but contemporaneously with a party's filing of the initial pleading in a proceeding. This will insure that parties desiring an interim emergency order can most expediently take advantage of the relief afforded by these regulations.

2. **§3.7. Issuance of Interim Emergency Order.**

(a)(1) The PGA suggests that the phrase "right to relief" be changed to read "right to interim emergency relief." This clarifies that the issuance of an interim emergency order does not depend on an assessment of the merits of the underlying complaint proceeding, but rather upon balancing the potential harm that the petitioning party may suffer against the harm of providing interim emergency relief, where the petition raises a substantial legal question. This comports with the standard used by the state courts in evaluating motions for injunctive relief.

Because this is a less restrictive test than an assessment of the likelihood of success on the merits, the PGA believes a mandatory bond or tender of cash should be required from the party that receives interim emergency relief.

(b) The word "injunctive" should be replaced with the phrase "interim emergency" in order to avoid confusion that could be created by using two different phrases to describe the granted or denied petition.

3. **§3.8 Form of Interim Emergency Order.**

In line with the comment to §3.7(b), the language of this provision should be changed to read as follows:

An order granting or denying interim emergency relief shall 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(a) (relating to issuance of interim emergency orders).

4. **§3.9. Hearings on Interim Emergency Orders.**

(a) This provision should be clarified in order to make clear that a hearing shall be held even if a party is not present or available so that the purpose of the regulations cannot be undermined by the failure of a party to appear at a hearing.

(b) Because of the nature of the relief requested, the PGA suggests that this provision be amended to require the presiding officer to attempt to notify parties by telephone of the decision rendered on the petition for interim emergency relief. The following substitute language is suggested:

Upon the issuance of an order granting or denying interim emergency relief, the administrative law judge or presiding officer shall attempt to notify parties telephonically of his decision and shall cause a written order to be served as expeditiously as practicable on the parties.

5. **§3.10. Commission Review of Interim Emergency Orders.**

The proposed regulation should be amended to provide that the grant or denial of a petition for an interim emergency order is appealable, as a

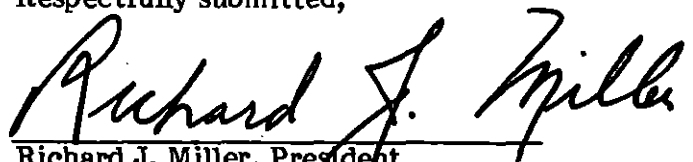
matter of right, to the Commission. Clearly, the consequences of the grant or denial of such a petition are similar to the consequences that arise from the grant or denial of a request for a preliminary injunction in the court system. Because the latter orders, although interlocutory, are appealable as a matter of right, Pa. R.A.P. 311(a)(4), any order issued by an administrative law judge in these matters should be appealable directly to the Commission on a non-discretionary basis.

6. **§3.11. Duration of Interim Emergency Orders.**

For clarification, the PGA suggests that the phrase "in the pending proceeding" be inserted prior to the word "unless" in this provision.

WHEREFORE, the Pennsylvania Gas Association requests that the Public Utility Commission incorporate fully these comments in the Commission's final regulations and order propounding the regulations in this rule-making proceeding.

Respectfully submitted,


Richard J. Miller, President
Pennsylvania Gas Association
212 Locust Street
P.O. Box 805
Harrisburg, PA 17108

DATED: July 21, 1986

ORIGINAL

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July 21, 1986

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JUL 22 1986

**SECRETARY'S OFFICE
Public Utility Commission**

Jerry Rich, Secretary
Pennsylvania Public Utility Commission
Room B-18
North Office Building
P. O. Box 3265
Harrisburg, PA 17120

Re: Special Commission Actions: Emergency Relief
Docket No. L-840097

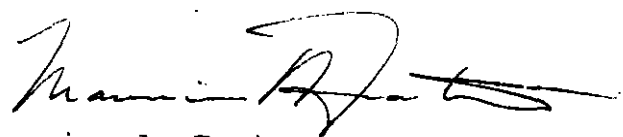
Dear Secretary Rich:

Enclosed herewith for filing with the Commission, please find the original and ten (10) copies of the Comments on Proposed Regulations.

Please acknowledge receipt hereof by date stamping the copy of this letter of transmittal.

Yours truly,

MCNEES, WALLACE & NURICK

By 
Maurice A. Frater

**DOCUMENT
FILED**

MAF/mrw

Enclosures

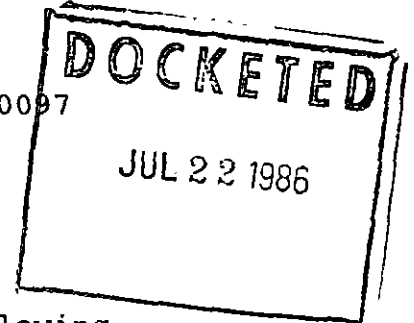
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**SECRETARY'S OFFICE
Public Utility Commission**

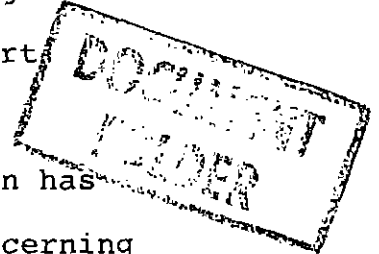
BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

SPECIAL COMMISSION ACTIONS :
EMERGENCY RELIEF : DOCKET NO. L-840097



COMMENTS ON PROPOSED REGULATIONS

COMES NOW Maurice A. Frater to submit the following
Comments on the proposed amendments to Chapter 3, Subpart
A, Part 1, of Title 52 dealing with emergency relief.



1. At the instant Docket, L-840097, the Commission has
issued a Notice captioned, Requests for Suggestions Concerning
Revisions to Commission's Comprehensive Rules of Practice and
Procedure dated September 5, 1985, which invites Comments and
Suggestions from interested persons for possible revision to
its rules. Amendment to Chapter 3, Special Commission Actions:
Emergency Relief proposed by the Commission's Notice dated
September 19, 1985, should not be considered separately, but
rather, in conjunction with all revisions to the Commission's
Rules of Practice and Procedure.

2. The Commission does not have clear authority to issue
Orders in the nature of "injunctive relief". The Public Utility
Code does not clearly spell out such authority. The Public

Utility Commission, as a creature of statute, has only those powers which are expressly conferred upon it by the legislature and those powers which arise by necessary implication; enforcement and remedial powers of the Commission, although formable, are not those of the Courts. Feingold v. Bell of Pennsylvania, 383 A.2d 791, 477 Pa. 1 (1977).

3. The Public Utility Code specifically provides the Commission with authority to institute injunction, mandamus or other appropriate legal proceedings to restrain violations of law, regulations or orders of the Commission.

Whenever the commission shall be of opinion that any person or corporation, including a municipal corporation, is violating, or is about to violate, any provisions of this part; or has done, or is about to do, any act, matter, or thing herein prohibited or declared to be unlawful; or has failed, omitted, neglected, or refused, or is about to fail, omit, neglect, or refuse, to perform any duty enjoined upon it by this part, or has failed, omitted, neglected or refused, or is about to fail, omit, neglect, or refuse to obey any lawful requirement, regulation or order made by the commission; or any final judgment, order, or decree made by any court, then and in every such case the commission may institute injunction, mandamus or other appropriate legal proceedings, to restrain such violations of the provisions of this part, or of the regulations, or orders of the commission, and to enforce obedience thereto.

66 Pa. C.S. §502.

This provision has been set forth in the Public Utility Laws of 1913 and 1937, in addition to being continued in the current Code. The Court of Common Pleas of Dauphin County, acting as the so called "Commonwealth Court", held that,

When the provisions of the Public Utility Commission Law are being violated the Legislature provided for the

Commission to come before this Court, and prevent the violation by obtaining an injunction. When the right to such an injunction is clear, as it is here, under the undisputed facts, it is our duty to issue a Preliminary Injunction.

The Supreme Court confirmed the judgment of the Court of Common Pleas.

Under the Act of 1937, . . . the Public Utility Commission could institute these proceeding to restrain violations of the provisions of the Public Utility Act and of the regulations and orders of the Public Utility Commission and to enforce obedience to those laws and regulations, only in the Court of Common Pleas of Dauphin County and that Court possessed the exclusive jurisdiction to enter its decrees upon the subject matter involved. This Act of 1937 [repealed] is constitutional. The decree appealed from is well supported in fact and is in obedience to the prescriptions of the law.

Pa. PUC v. Israel et al., 52 A.2d 317, 356 Pa. 400 (1947).

4. The Commission has a clear right to seek a Preliminary Injunction from the Courts to enforce the law, its regulations and its orders. The Commission does not have a clear statutory right to issue orders in the nature of injunctive relief.

5. The Pennsylvania Courts have no inherent jurisdiction to award injunctive relief, the authority that they have to issue injunctions must be conferred on them by the state Constitution or by statute, either expressly or by implication. 15 Standard Pennsylvania Practice §83:101. If a Court of Equity requires constitutional and statutory authority to issue an injunction, the Public Utility Commission should have equivalent authority before it assumes the power to issue orders in the nature of injunctive relief.

6. Administrative Law Judges or presiding officers do not have the power to issue "immediately effective orders". Proposed Rule §3.1. The statutory scheme provides that Administrative Law Judges are "presiding officers" in formal proceedings with authority to preside at the reception of evidence and generally conduct the hearing. The presiding officer has power to make recommended decisions or initial decisions, which decisions are subject to review by the Commission. 66 Pa. C.S. §331, §332, §334 and §335. The adoption of the proposed rule, that a Judge may issue an Order affecting directly the rights and privileges of persons, without first being reviewed and approved by the Commission, is an inappropriate delegation of the statutory power of the Commission to issue Orders.

7. The proposed regulation does not provide for an appeal as of right from the issuance or the refusal to issue an Order which grants injunctive relief. If the Commission is assuming the power of its Administrative Law Judges to issue an Order in the nature of injunctive relief, similar to a Preliminary Injunction issued by a Court of Equity, then the right of appeal afforded by the Courts should also be incorporated in the Commission's regulations. Rule 311 of the Rules of Appellate Procedure provide for an appeal "as of right" from injunctions.

Except as otherwise prescribed by general rule, an appeal may be taken as of right from:

. . . .
(4) Injunctions. An Order granting, continuing, modifying, refusing or dissolving injunctions, or refusing to dissolve or modify injunctions.

Proposed Rule §3.10 provides that an Emergency Order or Denial of Injunctive Relief "may be reviewed by the Commission" under its interlocutory review procedure. The interlocutory review provisions, however, are discretionary with both the Administrative Law Judge and with the Commission. If the Administrative Law Judge is to be granted the power to issue immediately effective orders in the nature of injunctive relief, then there must be an appeal as of right to the Commission with a stay of the effectiveness of the Order pending Commission review.

8. The proposed regulations do not establish the same standard for the issuance of an Order which grants injunctive relief as Administrative Law Judge Matuschak has applied to the several cases in which he has had a comparable issue presented to him.

(1) that it has no adequate remedy at law for money damages; (2) that it is being irreparably harmed; (3) that it would suffer greater hardship if the order were not issued than would the opposing parties if the order were issued; (4) that the public interest would not be adversely affected by issuance of the order; and (5) that on the merits it has a clear right to the relief sought Independent State Store Union v. Pennsylvania Liquor Control Board, 495 Pa. 145, 432 A.2d 1375 (1981); Berman v. City of Philadelphia, 425 Pa. 13, 228 A.2d 189 (1967); Gillette Co. v. Master, 408 Pa. 202, 182 A.2d 734 (1962); Herman v. Dexon, 393 Pa. 33, 141 A.2d 576 (1958). In addition, the moving party must post a bond sufficient to protect against potential losses to the opposing parties which may result from issuance of the order.

Columbia Gas of Pennsylvania, Inc. v. The Peoples Natural Gas Company, C-812797 (1982) Memeo, Page 18. If the Commission is to assume the power of issuing Orders in the nature of Preliminary Injunctions issued by Courts of Equity then at least a comparable standard should be applied to the issuance of such Orders to avoid "forum shopping" between the Commission and the Courts of general jurisdiction.

9. A Court of Equity requires a bond in an amount to pay all damages and legally taxable costs and fees sustained by reason of granting the injunction, before a preliminary or special injunction is granted. Pennsylvania Rules of Civil Procedure, Rule 1531(b)(1). The Commission's proposed regulations do not make any provision for the posting of a bond by the Petitioner for injunctive relief.

10. Based on the assumption that the Commission intends to adopt regulations covering "interim emergency orders" the following amended regulations are proposed:

§ 3.1. Definitions.

. . .

Interim emergency order - An order issued by the Commission upon recommended decision of an Administrative Law Judge or presiding officer which is immediately effective and grants injunctive relief during the pendency of a proceeding.

§ 3.7. Issuance of interim emergency order.

(a) An Administrative Law Judge or presiding officer may issue a recommended decision for an interim emergency order upon finding that all of the following exist:

- (1) The Petitioner's right to relief is clear.
- (2) The need for relief is immediate.
- (3) The injury would be irreparable if relief is not granted.
- (4) The Petitioner has no adequate remedy at law for money damages.
- (5) The public interest would not be adversely affected by issuance of the order.

(b) A recommended decision for an interim emergency order or an order denying an interim emergency order shall be issued by the Administrative Law Judge or presiding officer within fifteen (15) days of receipt of the Petition.


(c) No interim emergency order may be issued or be effective until the Petitioner has posted a bond in an amount set by the initial decision sufficient to pay all damages and costs sustained by reason of granting the interim emergency order.

§ 3.10. Commission review of interim emergency orders.

Any party to a proceeding in which a recommended decision for an interim emergency order has been issued or denied may file exceptions to the decision of the Administrative Law Judge or presiding officer with the Commission within five (5) days of the date of the recommended decision. The Commission shall rule upon the exceptions and review the recommended decision of the Administrative Law Judge or presiding officer at its next public meeting held at least three (3) days after the exceptions were due. If no exceptions are filed to a recommended decision for an interim emergency order, the Commission may review such recommended decision upon motion of a Commissioner. If the Commission does not review a recommended decision for an interim emergency order, then that interim emergency order will become an order of the Commission, effective upon the date of the next public meeting of the Commission occurring at least three (3) days after the date on which exceptions were due.

Respectfully submitted,

McNEES, WALLACE & NURICK

By 

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Dated: July 21, 1986

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July 28, 1986

**DOCUMENT
FOLDER**

Jerry Rich, Secretary
Pennsylvania Public Utility Commission
P. O. Box 3265
Harrisburg, PA 17120

RECEIVED

JUL 29 1986

Re: Special Commission Actions: Emergency Relief
Docket No. L-840097

**SECRETARY'S OFFICE
Public Utility Commission**

Dear Secretary Rich:

Under cover of July 21, 1986, we submitted Comments on Proposed Regulations for Commission consideration.

Upon review of our Comments, we have discovered a technical error. The purpose of this letter is to submit a correction to our alternative Proposed Rule §3.10.

To make clear that the automatic effectiveness provision of our proposed Section 3.10 only applies in the situation where no exceptions were filed and where the Commission, on motion of a Commissioner, did not review the recommended decision, we would add the following phrase to the last sentence: "to which no exceptions were filed".

Our proposed §3.10 should now read:

§3.10. Commission Review of Interim Emergency Orders.

Any party to a proceeding in which a recommended decision for an interim emergency order has been issued or denied may file exceptions to the decision of the Administrative Law Judge or presiding officer with the Commission within five (5) days of the date of the recommended decision. The Commission shall rule upon the exceptions and review the recommended decision of the Administrative Law Judge or presiding officer at its next

Jerry Rich
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public meeting held at least three (3) days after the exceptions were due. If no exceptions are filed to a recommended decision for an interim emergency order, the Commission may review such recommended decision upon motion of a Commissioner. If the Commission does not review a recommended decision for an interim emergency order to which no exceptions were filed, then that interim emergency order will become an order of the Commission, effective upon the date of the next public meeting of the Commission occurring at least three (3) days after the date on which exceptions were due.

Thank you for consideration of this proposed change.

Yours truly,

MCNEES, WALLACE & NURICK

By



Maurice A. Frater

MAF/hvn