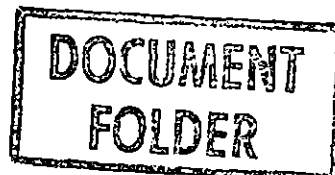


PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17120

Public Meeting held August 21, 1986

Commissioners Present:

Linda C. Taliaferro, Chairman
Frank Fischl
Bill Shane



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

L-840097

A rectangular stamp with a double border containing the word "DOCKETED" in a bold, sans-serif font.

DOCKETED

ORDER

AUG 27 1986

BY THE COMMISSION:

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

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

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

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

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

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

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

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

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

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

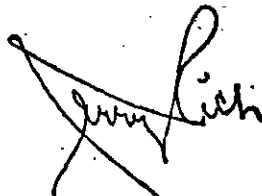
On December 28, 1985 a Notice of Inquiry was published in the Pennsylvania Bulletin pursuant to a Commission Order entered on December 10, 1986 at the above docket number. The Notice solicited comments and suggestions for possible revision to the Comprehensive Rules of Practice and Procedure at 52 Pa.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

IT IS ORDERED:

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

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

BY THE COMMISSION,

A handwritten signature in cursive script, appearing to read "Jerry Rich". The signature is written in dark ink and is positioned above the typed name.

Jerry Rich
Secretary

(SEAL)

ORDER ADOPTED: August 21, 1986

ORDER ENTERED: August 26, 1986

ANNEX A

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

§3.1 Definitions.

* * * *

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

* * * *

§3.6 Petitions for Interim Emergency Orders.

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

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

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

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

§3.7 Issuance of Interim Emergency Orders.

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

- (3) the injury would be irreparable if relief is not granted; and
- (4) the relief requested is not injurious to the public interest.

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

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

§3.8 Form of Interim Emergency Order.

An order granting or denying interim emergency relief shall:

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

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

§3.9 Hearings on Petitions for Interim Emergency Orders.

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

§3.10 Commission Review of Interim Emergency Orders.

- (a) An order granting or denying interim emergency relief is immediately effective upon issuance by the Administrative Law Judge. No stay of the order will be permitted while the matter is being reviewed by the Commission.
- (b) The parties may file exceptions in the form set forth in §5.533 (relating to procedure

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

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

§3.11 Duration of Interim Emergency Orders.

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

§3.12 Applicability to Transportation Proceedings.

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