

PENNSYLVANIA PUBLIC UTILITY COMMISSION
Uniform Cover and Calendar Sheet

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|-----------------------------|----------------------------|--------------------------------|-----------------|
| 1. <u>REPORT DATE:</u> | August 13, 1984 | 2. <u>BUREAU AGENCY:</u> | |
| 3. <u>BUREAU:</u> | Law | | AUG-84-L-18* |
| 4. <u>SECTION(S):</u> | Office of Counsel | 5. <u>PUBLIC MEETING DATE:</u> | |
| 6. <u>APPROVED BY:</u> | | | August 27, 1984 |
| | Director: Hoffman 7-5000 | | |
| | Supervisor: Delaney 3-3190 | | |
| 7. <u>MONITOR:</u> | Johnson | | |
| 8. <u>PERSON IN CHARGE:</u> | Melia 3-3190 | | |
| 9. <u>DOCKET NO:</u> | L-840097 | | |

10. (a) **CAPTION** (abbreviate if more than 4 lines)
 (b) **Short summary of history & facts, documents & briefs**
 (c) **Recommendation**

(a) Comprehensive Rules of Practice and Procedure

(b) At the Public Meeting of February 3, 1984, the Commission adopted an order establishing a rulemaking docket to amend the procedural provisions of Chapters 1, 3 and 5 of Title 52. Subsequent publications of the proposed rules occurred on April 27, 1984 in the Pennsylvania Bulletin for 60-day comment ending June 27, 1984. On April 5, the Independent Regulatory Review Commission disapproved the discovery subchapter which was redrafted and resubmitted to IRRC with Office of Consumer Advocate approval. The IRRC is expected to approve the amended Discovery subchapter at its meeting of August 16, 1984. The order provides that the rules will become effective for cases filed after January 1, 1985 and for cases filed prior to that date if the parties agree.

(c) The Law Bureau recommends that the regulations set forth at Annex A, Parts 1, 2 and 3 be adopted and made final and take effect January 1, 1985.

11. **MOTION BY:** Commissioner Chm. Taliaferro Commissioner Cawley - Yes
 Commissioner Fischl - Yes
SECONDED: Commissioner Johnson Commissioner Shane - Yes

CONTENT OF MOTION: Staff recommendation adopted.

DOCKET FOLDER

SEP 11 1984

| | | | |
|-----------------------------|---------------------|-------------------------------|------------------------------|
| 1. <u>REPORT DATE:</u> | August 22, 1984 | 2. <u>BUREAU AGENCY NO.:</u> | |
| 3. <u>BUREAU:</u> | Law | | AUG. 84-L-18* (Supplemental) |
| 4. <u>SECTION(S):</u> | Office of Counsel | 5. <u>PUBLIC MOTION DATE:</u> | August 27, 1984 |
| 6. <u>APPROVED BY:</u> | | | |
| Director: | Hoffman 7-5000 | | |
| Supervisor: | Delaney 3-3190 | | |
| 7. <u>MONITOR:</u> | Comm. Johnson | | |
| 8. <u>PERSON IN CHARGE:</u> | Christiansen 3-3190 | | |
| 9. <u>DOCKET NO.:</u> | L-840097 | | |

10. (a) CAPTION (abbreviate if more than 4 lines)
 (b) Short summary of history & facts, documents & briefs
 (c) Recommendation

(a) Comprehensive Rules of Practice and Procedure

(b) and (c) In a report submitted on August 13, 1984, the Law Bureau recommended that the Commission finally adopt comprehensive procedural rules. That report noted that review of the proposal by the Independent Regulatory Review Commission had not yet occurred. Subsequently, IRRC approved the regulations on August 16, 1984. A revised proposed order reflecting the date of the IRRC action has been prepared. Page 5 of the Order has also been amended to remove a reference to \$5.72 which was not modified by the comments.

11. MOTION BY: Commissioner Chm. Taliaferro Commissioner Cawley - Yes
 Commissioner Fischl - Yes
 SECONDED: Commissioner Johnson Commissioner Shane - Yes

CONTENT OF MOTION: Staff recommendation adopted.

DOCUMENT
 ORDER

DOCKETED
 SEP 10 1984

PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17120

Public Meeting held August 27, 1984

Commissioners Present:

Linda C. Taliaferro, Chairman
Michael Johnson
James H. Cawley
Frank Fischl
Bill Shane

Comprehensive Rules of Practice
and Procedure

L-840097

O R D E R

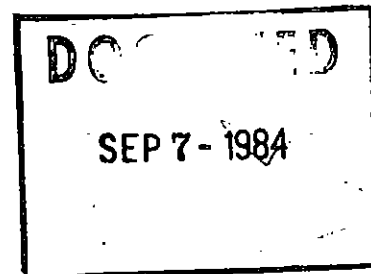
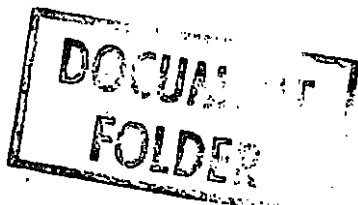
BY THE COMMISSION:

At its public meeting held on February 3, 1984, the Commission adopted an order proposing to amend 52 Pa. Code Chapters 1, 3 and 5. These proposed amendments would establish comprehensive rules of practice and procedure before the Commission. Although not required to publish notices of proposed rulemakings pertaining to agency practice and procedure,^{1/} the Commission nonetheless sought the input of interested parties. The amendments were published for comments, as a proposed rulemaking, at 14 Pennsylvania Bulletin 1511 (April 28, 1984). The comment period closed June 27, 1984. The Independent Regulatory Review Commission approved the proposal on August 16, 1984.

Comments were received from Commission Staff of the Bureau of Rates and Law; Bell Telephone Company of Pennsylvania; Chessie System Railroads; Columbia Gas of Pennsylvania; Consolidated Rail Corporation; General Waterworks Management and Service Company; Malatesta, Hawke and McKeon; McNees, Wallace and Nurick; Morgan, Lewis and Bockius; Office of Consumer Advocate; Pennsylvania Public Utility Law Project; Peoples Natural Gas Company; Thomas and Thomas; Tubis, Schwartz and Zeigler; United Telephone Company; West Penn Power Company; and Wolf, Block, Schorr and Solis-Cohen.

Over 200 pages of comments, submitted from 20 parties, have been received and considered. We would, at this time, commend all commenting parties for their diligence in formulating their respective suggested modifications. Due to the magnitude of the responses, we have attempted to summarize only those comments which resulted in substantive changes to the regulations.

1/ 45 P.S. §1205



The following is a section by section summary of the comments which were received and the changes which have been made to each section.

CHAPTER 1 - SPECIAL RULES
OF
ADMINISTRATIVE PRACTICE AND PROCEDURE

Subchapter A -- GENERAL PROVISIONS

§1.1 Scope of Chapter. In our final regulations, a subpart (b) was added as a supersession clause to clearly designate these final rules as superseding completely the applicability of 1 Pa. Code Part II to practice and procedure before the Commission.

§1.2 Liberal Construction. A subsection (c) was added in response to numerous comments of the Office of Consumer Advocate critical of the use of sexually exclusive language. To correct this, we have incorporated the language of Rule 102 of the Pennsylvania Rules of Civil Procedure which permits a liberal construction of wording relating to number, gender and tense.

§1.7 Sessions of the Commission. The word "weekly" was struck as the Commission usually but does not exclusively meet on a bi-weekly basis.

§1.5 Definitions. Several definitions were modified in response to comments. First, the term "Complainant" was rewritten to more fully conform to the definition of complaint appearing in 66 Pa. C.S. §701. The revised definition of "Formal Record" deletes the last sentence of the current definition referencing "proposed testimony and exhibits not offered into evidence" so as to eliminate an internal inconsistency with the rest of the definition. The second sentence of the definition of "Intervenor" was transferred to section 5.75(b) dealing with the effect of filing petitions to intervene. The definition of "Person" was modified to track the statutory definition appearing at 1 Pa. C.S. §1991, "Pleading" was modified to delete the word "adjudicatory" where not all Commission proceedings are adjudicatory in nature. The definition of "Recommended Decision" was modified to delete the words "in a rate case" as such decisions occur in other than rate cases. Finally, the term "Rate Case" and a definition was added. Minor corrections to grammar and section references were also made here and to other subsections.

Subchapter B - TIMING

§1.11 Date of filing. In subsection (a), the last sentence in this section was deleted. The effect of the remainder of the section establishes date of filing as date received in the Commission or date of mailing. If date of mailing is utilized, such a filing shall be accompanied by a U.S. Postal Service Form 3817.

§1.15 Extension of Time. In subsection (b), the words "or the presiding officer" were added at line 5 to provide for an administrative law judge granting requests for continuance.

Subchapter D - DOCUMENTARY FILINGS

§1.32 Form of documents. In subsection (a), the words "shall be typewritten" were changed to "should be typewritten" to permit the filing of handwritten documents, in limited circumstances.

§1.33 Incorporation by reference. A subsection (c) was added, at the request of OCA and the Public Utility Law Project, requiring any party who incorporates by reference any pleading, submittal or other documents to provide a copy of such document to any party who requests it.

§1.36 Verification. Subsection (a) was modified to include the language of Pa. R.C.P. Rule 26 defining "Verification" at the suggestion of Malatesta, Hawke and McKeon.

Subsection E - FEES

§1.43 Schedule of fees payable to the commission. Subsection (e) was deleted entirely as its fee schedule was duplicative of subsection (b).

Subsection F - SERVICE OF DOCUMENTS

§1.52 Service generally. The supersession clause in Subsection (c) was modified to include section 33.32.

§1.54 Service by a participant. Subsection (a) was modified to refer to subsection (b) as an exception to the general provision for service to participants.

Subchapter G - MATTERS BEFORE OTHER TRIBUNALS

§1.61 Notice and filing of copies of pleadings before other tribunals. Subsection (c) was modified throughout to refer to trustees in bankruptcy.

§1.62 Filing and records of securities certificate. The title has been modified to add the words "in bankruptcy proceedings" to the title to better reflect its subject matter.

Subchapter H - PUBLIC ACCESS TO COMMISSION RECORDS

§1.74 Disclosure of other documents. Bell of Pennsylvania filed a proposed revision to this section. After review and

consideration, we propose to make the issue of access to proprietary information filed with the Commission the subject of a future investigation.

§1.76 Tariffs, minutes and annual reports. The title of this section has been modified to read as "minutes of the public meeting".

Subchapter I - AMENDMENTS AND WITHDRAWAL OF SUBMITTALS

§1.82 Withdrawal or termination. Subsection (c) has been modified to provide for a ten day period for parties to object to a motion to withdraw or terminate a matter before the Commission.

CHAPTER 3 - SPECIAL PROVISIONS

§3.2 Issuance of emergency orders. Subsection (a) was subdivided into three numbered categories with the third category providing for notice to all parties directly affected.

§3.112 Action on Informal complaints. We have incorporated language, suggested by the OCA, as subsection (b), to provide that all documents relating to action on informal complaints be made part of the public record, upon completion of the Commission investigation.

CHAPTER 5 - FORMAL PROCEEDINGS

Subchapter A - PLEADINGS AND OTHER PRELIMINARY MATTERS FORMAL COMPLAINTS

§5.21 Formal complaints generally. Subsection (a) was further subdivided into subsections (a) through (c) for clarification purposes. Subsection (a) was modified to track the language of section 701 of the Public Utility Code, 66 Pa. C.S. §701 governing complaints.

§5.24 Satisfaction of formal complaints. Subsection (b) was added at the suggestion of Bell of Pennsylvania to permit a respondent to also certify that he has satisfied the complaint.

PETITIONS

§5.42 Petitions for declaratory orders. Subsection (b) was added, at the suggestion of the Consumer Advocate, to provide for service of copies of the petition on all affected parties. Subsection (c) permits service to all other parties as the Commission designates.

ANSWERS

§5.61 Answers to complaints and petitions. The term "date of receipt of service" was modified in subsection (a) to "date of service" as the former proved awkward and imprecise.

§5.63 Replies to answers seeking affirmative relief. The time period for filing replies to answers seeking affirmative relief in subsection (a) was lengthened from 15 to 20 days after date of service of the answer at the request of several parties.

§5.65 Answers to amendments of pleadings. The time period for filing answers to amendments of pleadings in subsection (a) was lengthened from 15 to 20 days after the date of service of the amendment.

INTERVENTION

§5.71 Initiation of intervention. Subsection (a)(2) now permits participation as an intervenor by permission of the presiding officer.

§5.74 Filing of petitions to intervene. Subsection (a) was modified to permit intervention in a motor carrier proceeding after the time for filing protests as published in the Pennsylvania Bulletin has passed.

§5.75 Notice, services and action on petitions to intervene. Subsection (b) was modified to include the language of the second sentence in the definition of intervention in section 1.8. Thus admission as an intervenor is not recognition by the Commission that one has a direct interest or is aggrieved.

MOTIONS

§5.101 Preliminary motions. Subsection (b) was modified and subdivided into sections (b) - (f) for purposes of clarification. These changes require the filing of preliminary motions with the answer, except where a motion for more specific pleading is filed. In such a case, no further answer need be filed until further directed by the Commission. Answers to preliminary motions may be filed within 10 days with the decision of the presiding officer or Commission due in 20 days of filing of the motion.

§5.102 Motions for summary judgment and judgment on the pleadings. Subsection (b)(1) was modified to provide for a 20 day

response period by opposing parties. Subsection (b)(3) detailing what must be shown to prevail on a summary judgment motion was transferred to subsection (c) dealing with decisions on such motions.

PREHEARING AND OTHER CONFERENCES

§5.222 Initiation of prehearing conferences in non-rate proceedings. This title was modified by the additional language "in non-rate proceedings" to distinguish it from §5.224 governing prehearings in rate proceedings. Subsection 5.222(b) provides for prehearing conferences to be conducted telephonically.

§5.224 Initiation of prehearing conferences in rate proceedings. Subsection (a)(4) was added to provide for telephonic prehearing conferences where all parties agree. Subsection (e)(3) which would establish time limits for cross-examination of witnesses was deleted at the request of OCA. Subsection (f) providing for settlement conferences at the time of the second prehearing conference was modified to provide for service of statements of position on or before the date of the conference.

SETTLEMENTS AND STIPULATIONS

§5.235 Motor carrier restrictive amendments. Subsection (b) was modified, at the request of McNeese, Wallace and Nurick, to provide for remand of the matter to the Commission in the event of its rejection of a restrictive amendment.

Subchapter E - EVIDENCE AND WITNESSES

§5.402 Admission of evidence. Due to numerous comments opposing the "blanket admission" of exhibits language of subsection (b) governing admission of exhibits, that subsection was modified to provide that an exhibit must be both identified and moved into evidence at hearing to be admitted. Motions for admission of exhibits after the close of the record must be in writing and are subject to objections of opposing parties.

§5.405 Effect of Pleadings. Subsection (b) was substantially rewritten to conform to 1 Pa. Code §35.125(d). Subsection (b) states that, except for non-contested proceedings, pleadings not offered and received into evidence, may only be considered as evidence of filing. This modification was suggested by Wolf, Block, Schorr and Solis-Cohen.

§5.406 Public documents. Subsection (b) was added to require the provision of copies, of public documents incorporated by reference, to all requesting parties at the direction of the presiding officer.

EVIDENCE

§5.408 Official Notice. Subsection (a), as rewritten, now provides for both judicial and official notice by the Commission of particular facts. Subsection (a) also tracks the language of 66 Pa. C.S. §332(e) governing official notice. The title of the section was also amended to more accurately describe its contents.

SUBPOENAS

§5.421 Subpoenas. A new Subsection (b) was added to provide for service of applications for subpoenas on adverse parties.

Subchapter G - BRIEFS

§5.501 Content and form of briefs. Subsection (a)(2) now provides for references to the pages of the record or to exhibits where evidence is relied upon in the briefs.

§5.534 Appeal to the Commission. Subsection (a) was modified to limit appeals to the Commission from rulings on exceptions to a single page where the presiding officer grants no exceptions. Otherwise the appeal must conform to the requirements of §5.533(c) and (d).

§5.535 Replies. Subsection (a) was substantially modified, at the request of OCA, to permit participants to file reply exceptions and replies to appeals to the Commission where the presiding officer has granted some or all of the exceptions. Such replies are limited to 25 pages in length and are subject to all other requirements of §5.533(c) and (d).

§5.537 Rate case settlements. This section proposed by OCA provides for the right to file exceptions and replies to exceptions as provided for in sections §§5.533 and 5.535.

So that Commission personnel, practitioners and the utilities subject to our jurisdiction may have an adequate opportunity to familiarize themselves with the procedural rules, these rules shall become effective for cases filed after January 1, 1985. For cases which were filed prior to that date and which continue in litigation after January 1, 1985, these rules may be used upon agreement of the parties provided no substantive rights of any party thereto are adversely effected.

The extensive modification of Title 52 accomplished in this proceeding was designed to streamline practice and procedure before this Commission. So that we may have some evidence on the efficiency of these rules, interested parties are invited to comment on them in their initial year of application. The Secretary is therefore directed to keep open this rulemaking docket for the receipt of such comments.

These comments will be reviewed in the first quarter of 1986 and appropriate changes to these rules will be considered at that time; THEREFORE,

IT IS ORDERED:

1. That the regulations set forth at Annex A, Parts 1, 2 and 3 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. These rules shall become effective for cases filed after January 1, 1985. For cases which were filed prior to that date and which continue in litigation after January 1, 1985, these rules may be used upon agreement of the parties provided no substantive rights of any party thereto are adversely effected.

5. The Secretary is directed to keep this rulemaking docket open for the receipt of comments on these rules in their initial year of application.

6. That the regulations set forth at Annex A shall take effect on January 1, 1985.

BY THE COMMISSION,



Jerry Rich
Secretary

(SEAL)

ORDER ADOPTED: August 27, 1984

ORDER ENTERED: August 28, 1984

52 PA. CODE CHAPTER 1

PRELIMINARY PROVISIONS

PART 1 OF ANNEX A

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Practice and Procedure

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TITLE 52 - PUBLIC UTILITIES
PART I - PUBLIC UTILITY COMMISSION
Subpart A - General Provisions

CHAPTER 1. Rules of Administrative
Practice and Procedure

SUBCHAPTER A: GENERAL PROVISIONS

Section

- 1.01. Scope of Chapter
- 1.02. Liberal Construction
- 1.03. Information and Special Instructions
- 1.04. Communications and filing generally
- 1.05. Amendments to Rules
- 1.06. Commission Office Hours
- 1.07. Sessions of the Commission
- 1.08. Definitions

§1.1. Scope of Chapter

(a) The subpart governs the practice and procedure before the Commission.

(b) These rules are intended to supersede totally the applicability of 1 Pa. Code Part II (concerning general rules of administrative practice and procedure) to practice and procedure before the Commission.

§1.2. Liberal Construction

(a) This subpart shall be liberally construed to secure the just, speedy and inexpensive determination of every action or proceeding to which it is applicable.

The Commission or presiding officer at any stage of any such action or proceeding may disregard any error or defect of procedure which does not affect the substantive rights of the parties.

(b) Subsection (a) supersedes 1 Pa. Code §31.2 (relating to liberal construction).

(c) The singular shall include the plural, and the plural, the singular. Words used in the masculine gender shall include the feminine and neuter. Words used in the past or present tense shall include the future.

§1.3. Information and Special Instructions

(a) Information as to procedures under this subpart, and instructions supplementing this subpart in special instances, will be furnished upon application to:

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

(b) Subsection (a) is identical to 1 Pa. Code §31.4 (relating to information and special instructions).

§1.4. Filing Generally

(a) All submittals, pleadings and other documents filed with the Commission should be addressed as follows:

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

(b) All submittals, pleadings and other documents filed with the Commission should clearly designate the relevant file number, docket number, or similar identifying symbols, if any, employed by the Commission, and should set forth a short title. The person communicating shall state his address, his telephone number, the party he represents, and how responses should be sent to him if not by first class mail.

(c) All submittals and pleadings, including all documents filed under Chapter 5 (relating to formal proceedings) shall also comply with Subchapter D (relating to documentary filings).

(d) In any proceeding when, upon inspection, the Commission is of the opinion that a submittal or pleading tendered for filing does not comply with this subpart or this title or, if it is an application or similar document, does not sufficiently set forth required material or is otherwise insufficient, the Commission may decline to accept the document for filing and may return it unfiled, or the Commission may accept it for filing and advise the person tendering it of the deficiency and require that the deficiency be corrected.

(e) The Commission may order any redundant, immaterial, impertinent, or scandalous matter stricken from any document filed with it.

(f) Subsections (a)-(e) are identical to 1 Pa. Code §31.5 (relating to communications and filings generally).

§1.5. Amendment to Rules

(a) Any person may file an application under §§5.1 (relating to pleadings allowed) and 5.11 (relating to applications generally), requesting a general and permanent change in this subpart.

(b) Subsection (a) supersedes 1 Pa. Code §31.6 (relating to amendment to rules).

§1.6. Commission Office Hours

Unless otherwise directed by the Governor, the Commission offices will be open from 8 a.m. until 4:30 p.m. on each business day except Saturdays, Sundays and legal holidays.

§1.7. Sessions of the Commission

Public meetings of the Commission ordinarily will be held in its offices in the North Office Building, Harrisburg. Schedules for Public Meetings can be obtained from the Commission Secretary.

§1.8. Definitions

(a) This subsection supersedes 1 Pa. Code §31.3 (relating to definitions). Subject to additional definitions contained in subsequent sections which are applicable to specific chapters or subchapters, the following words and terms, when used in this subpart, shall have the following meanings, unless the context clearly indicates otherwise:

Act - The Public Utility Code (66 Pa. C.S. §§101-3315).

Adjudication - Any order, decree, decision, determination, or ruling by the Commission affecting personal or property rights, privileges, immunities, duties, liabilities, or obligations of any or all of the parties to the proceeding in which the adjudication is made.

Applicants - In proceedings involving applications for permission or authorization which the Commission may give under statutory or other authority delegated to it, the parties on whose behalf the applications are made.

Commission - The Pennsylvania Public Utility Commission.

Complainants - Persons who complain to the Commission of any act or thing done or omitted to be done by any public utility, or claimed violation, of any law which the Commission has jurisdiction to administer, or of any regulation or order of the Commission.

Date of service - The date on which a document is served as provided in §1.56. (relating to date of service).

Formal record - All the pleadings and submittals in a matter or proceeding, any notice or Commission order initiating the matter or proceeding, and if a hearing is held, the following: the designation of the presiding officer, transcript of hearing, all exhibits received in evidence, all exhibits offered but not received in evidence, offers of proof, motions, stipulations, subpoenas, proofs of service, references to the Commission, and determinations made by the Commission

thereon, certifications to the Commission, and anything else upon which action of the presiding officer or the Commission may be based.

Initial Decision - A decision by a presiding officer which becomes final unless exceptions are filed by a party within a time period specified by statute or set forth in the order.

Intervenors - Persons intervening or petitioning to intervene as provided by §§5.71-5.76 (relating to intervention), when admitted as a participant to a proceeding.

Notarial officer - An officer authorized under §5.346 (relating to officer before whom deposition is taken) to take depositions for use before the Commission or presiding officer.

Participant - Any party and any other person admitted by the Commission to limited participation in a proceeding, and staff counsel.

Party - Any person who appears in a proceeding before the Commission who has a direct interest in the subject matter of such proceeding.

Person - Except as otherwise provided in this Subpart or in the Act, the term person includes corporations, partnerships and associations.

Petitioners - Persons seeking relief, not otherwise designated in this section.

Pleading - Any application, complaint, petition, answer, motion, protest, reply or other similar document filed in a proceeding.

Presiding officer - The Commission, one or more of the Commissioners, one or more Administrative Law Judges or any employe of the Commission appointed according to law and duly designated to preside at hearings or conferences, or other officers specially provided for and designated pursuant to statute to conduct specified classes of proceedings.

Principal - A party with power to authorize its counsel to enter into stipulations or settlement agreements.

Proof of service - A certificate of service complying with §1.57 (relating to proof of service) and §1.58 (relating to form of certificate of service).

Protestants - Persons objecting on the ground of private or public interest to the approval of an application or other matter which the Commission may have under consideration.

Rate Proceeding - Any on the record proceeding brought by or before the Commission, the purpose of which is to determine the justness and reasonableness of a proposed or present rate for utility service, including, but not limited to, proceedings initiated pursuant to Sections 1307, 1308, 1310 and 1312 of the Act.

Recommended Decision - An opinion and order submitted for the approval of the Commission by the presiding officer.

Regulation - Any provision of Title 52 of the Pennsylvania Code.

Respondents - Persons subject to any statute or other delegated authority administered by the Commission, who must

respond to an order or notice issued by the Commission instituting a proceeding or investigation on its own initiative or otherwise.

Rules - The provisions of Chapters 1 and 5 of 52 Pa. Code.

Secretary - The Secretary of the Commission

Staff - The Commission prosecutory counsel and other Commission employees participating in a proceeding before the agency.

Submittal - Any application, amendment, exhibit, or other similar document filed in an ex parte or other non-adversary proceeding.

Tentative Decision - An order of the Commission which becomes final unless exceptions are filed by a party within the time period specified by statute or as set forth in the order.

(b) Subsection (a) supersedes 1 Pa. Code §31.3 (relating to definitions).

SUBCHAPTER B: TIME

Section

- 1.11 Date of filing.
- 1.12 Computation of time.
- 1.13 Issuance of Commission orders.
- 1.14 Effective date of Commission orders.
- 1.15 Extensions of time.
- 1.16. Issuance of Decisions or Rulings on Exceptions
By Presiding Officers

§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 United States Postal Service Form 3817 certificate of mailing attached to the cover of the original document.

(b) Subsection (a) supersedes 1 Pa. Code §31.11 (relating to timely filing).

§1.12 Computation of Time.

(a) Except as otherwise provided by statute, in computing any period of time prescribed or allowed by this title or by statute, the day of the act, event, or default

after which the designated period of time begins to run shall not be included. The last day of the period shall be included, unless it is Saturday, Sunday, or a legal holiday in this Commonwealth, in which event the period shall run until the end of the next day which is neither a Saturday, Sunday, nor a holiday. A part-day holiday shall be considered as other days and not as a holiday. Intermediate Saturdays, Sundays, and legal holidays shall be included in the computation.

(b) Subsection (a) is identical to 1 Pa. Code §31.12 (relating to computation of time).

§1.13 Issuance of Commission Orders.

(a) In computing any period of time involving the date of the issuance of an order by the Commission, the day of issuance of an order will be the date the Secretary enters the order. An Order will not be made public prior to its entry, except where in the Commission's judgment, the public interest so requires. The date of entry of an order may or may not be the day of its adoption by the Commission. The Secretary will clearly indicate on each order the date of its adoption by the Commission and the date of its entry.

(b) At the time any decision of a presiding officer becomes effective as an adjudication of the Commission in the absence of Commission review as provided for in Section 332(h) of the Act, relating to procedures in general, the Secretary will issue and serve upon the parties of record an appropriate notice of the date such adjudication became effective as a Commission order.

(c) The date of entry of an order which is subject to review by the Commonwealth Court is governed by 210 Pa. Code Rule 108-relating to date of entry of orders. The date of issuance of any other order shall be deemed to be the date of entry thereof for the purposes of computing the time for appeal under any applicable statute relating to judicial review of Commission action.

(d) Subsections (a)-(c) are identical to 1 Pa. Code §31.13 (relating to issuance of agency orders).

§1.14 Effective Dates of Commission Orders.

(a) Orders of the Commission promulgating regulations shall be effective upon publication in the Pennsylvania Bulletin unless otherwise specially provided in the order.

(b) All other orders of the Commission shall be effective as of the dates of issuance unless otherwise specially provided in the orders.

(c) Subsections (a) and (b) are identical to 1 Pa. Code §31.14 (relating to effective dates of agency orders).

§1.15 Extensions of Time.

(a) Extensions of time shall be governed by the following:

(1) Except as otherwise provided by law, whenever under this title or by order of the Commission, or any notice given thereunder, an act is required or allowed

to be done at or within a specified time, the time fixed or the period of time prescribed may, by the Commission, the presiding officer or other authorized person, for good cause be extended upon motion made before expiration of the period originally prescribed or as previously extended. Upon motion made after the expiration of the specified period, the act may be permitted to be done where reasonable grounds are shown for the failure to act.

(2) Requests for the extension of time in which to file briefs shall be filed at least five days before the time fixed for filing such briefs unless the presiding officer, for good cause shown allows a shorter time.

(b) Except as otherwise provided by law, requests for continuance of hearings or for extension of time in which to perform any act required or allowed to be done at or within a specified time by this title or by order of the Commission or the presiding officer, shall be by motion in writing, timely filed with the Commission, stating the facts on which the application rests, except that during the course of a proceeding, such requests may be made by oral motion in the hearing before the Commission or the presiding officer.

(1) Only for good cause shown, will requests for continuance be considered. Such requests should be submitted at least five (5) days prior to the hearing date.

(c) Subsections (a) and (b) supersede 1 Pa. Code §31.15 (relating to extensions of time).

§1.16 Issuance of Decisions or Rulings on Exceptions
By Presiding Officers.

In computing any period involving the issuance of a decision or ruling on exceptions by a presiding officer, the day of the issuance or ruling shall be the date on which the Secretary mails copies of the decision to the participants. The Secretary shall clearly indicate on each decision and ruling the date of the mailing.

SUBCHAPTER C: REPRESENTATION BEFORE THE COMMISSION

Section

- 1.21 Appearance in person.
- 1.22 Appearance by attorney.
- 1.23 Other representation prohibited at hearings.
- 1.24 Notice of appearance.
- 1.25 Form of notice of appearance.
- 1.26 Contemptuous conduct.
- 1.27 Suspension and disbarment.

§1.21 Appearance in Person.

(a) An individual may appear in his own behalf in any proceeding. In nonadversarial proceedings a member of a partnership may represent the partnership, a bona fide officer of a corporation, trust, or association may represent the corporation, trust, or association, and an officer or employe of another agency or of a political subdivision may represent the agency or political subdivision in presenting any submittal to the Commission subject to this Chapter and Chapter 5. All participants, except individuals appearing in their own behalf and as otherwise provided in Chapter 56, relating to standards and billing practices for residential utility service shall be represented in adversary proceedings only under §1.22 (relating to appearance by attorney).

(b) Subsection (a) is identical to 1 Pa. Code §31.21 (relating to appearance in person).

§1.22 Appearance by Attorney.

(a) A person may be represented in any proceeding by an attorney at law admitted to practice before the Supreme Court of Pennsylvania, or, if a public utility regulatory agency of another jurisdiction accords like privileges to members of the bar of this Commonwealth, the highest court of such other jurisdiction.

(b) Subsection (a) is identical to 1 Pa. Code §31.22 (relating to appearance by attorney).

§1.23 Other Representation Prohibited at Hearings.

(a) A person shall not be represented at any hearing before the Commission or a presiding officer except:

(1) as stated in §1.21 (relating to appearance in person) or §1.22 (relating to appearance by attorney); or

(2) as otherwise permitted by the Commission in a specific case.

(b) Subsection (a) is identical to 1 Pa. Code §31.23 (relating to other representation prohibited at hearings).

§1.24 Notice of Appearance.

(a) When an individual appears in his own behalf before the Commission or a presiding officer in a particular proceeding which involves a hearing or an opportunity for hearing, he shall file with the Secretary or otherwise state

on the record an address at which any notice or other written communication required to be served upon him or furnished to him may be sent.

(b) An attorney whose name and address appear in a representative capacity on an initial pleading filed with the Commission or a presiding officer in a particular proceeding which involves a hearing or an opportunity for hearing shall be considered to have entered an appearance in that proceeding. An attorney who enters the matter at a later stage of the proceeding must file with the Secretary a written notice of such appearance, which shall state his name, address and telephone number and the name and address of the person or persons on whose behalf he appears. Such notice shall be served on all participants in the proceeding.

(c) Any person appearing or practicing before the Commission in a representative capacity may be required to file a power of attorney with the Commission showing his authority to act in such capacity.

(d) Subsection (a)-(c) supersede 1 Pa. Code §31.24 (relating to notice of appearance).

§1.25 Form of Notice of Appearance.

(a) The form of Notice of Appearance is as follows:

COMMONWEALTH OF PENNSYLVANIA
BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

In the Matter of:
[File, Docket
or other
identifying No.:]

NOTICE OF APPEARANCE

Please enter my appearance in the above-designated matter on behalf of

I am authorized to accept service on behalf of said participant in this matter.

[CHECK ONE]

On the basis of this notice, I request a copy of each document hereafter issued by the Commission in this matter.

I am already receiving or have access to a copy of each document issued by the Commission in this matter (alone, or in a consolidated proceeding) and do not on the basis of this notice require an additional copy.

Signature

Name (Printed)

P.O. address

City, state and zip code

Telephone Number
(including area code)

(b) Subsection (a) is identical to 1 Pa. Code

§31.25 (relating to form of notice of appearance).

§1.26 Contemptuous Conduct.

(a) Contemptuous conduct at any hearing before the Commission or a presiding officer shall be ground for exclusion from such hearing and for summary suspension without a hearing for the duration of the hearing.

(b) Subsection (a) is identical to 1 Pa. Code §31.27 (relating to contemptuous conduct).

§1.27 Suspension and Disbarment.

(a) The Commission may deny, temporarily or permanently, the privilege of appearing or practicing before it in any way to any person who is found by the Commission after notice and opportunity for hearing in the matter:

(1) not to possess the requisite qualifications to represent others;

(2) not to possess the requisite technical education, training or experience for a particular project or type of project submitted for Commission approval; or

(3) to have engaged in unethical or improper conduct before the Commission.

(b) For the purpose of subsection (a), practicing before the Commission shall include, but shall not be limited to:

(1) Transacting any business with the Commission.

(2) The preparation of any statement, opinion or other paper by an attorney, accountant, engineer or other expert, filed with the Commission in any pleading, submittal

or other document with the consent of such attorney, accountant, engineer or other expert.

(c) Subsections (a) and (b) are identical to 1 Pa. Code §31.28 (relating to suspension and disbarment).

SUBCHAPTER D: DOCUMENTARY FILINGS.

Section

- 1.31 Form of documentary filings generally.
- 1.32 Form of documents.
- 1.33 Incorporation by reference.
- 1.34 Single pleading or submittal covering more than one matter.
- 1.35 Execution.
- 1.36 Verification.
- 1.37 Number of copies.

§1.31. Form of Documentary Filings Generally.

(a) Each application, petition, complaint, or answer thereto or other similar document shall be divided into numbered paragraphs.

(b) Copies of all contracts, agreements, certificates, permits, or other writings referred to in the application or petition, shall be attached as exhibits. Copies of writings or orders already of record with the Commission need not be attached to the application or petition if reference by docket number is made to the proceeding in which they were filed.

(c) Pleadings, submittals, or other documents filed with the Commission in any proceeding shall clearly show the file number or similar identifying symbols, if any,

and title of the proceeding before the Commission. They shall also show, in the title of the particular pleading, submittal, or other document filed, the name of the person in whose behalf the filing is made. If more than one person is involved, a single name only need be included in the title.

(d) Subsections (a)-(c) supersede 1 Pa. Code §33.1 (relating to titles).

§1.32. Form of Documents.

(a) Typewritten. Pleadings, submittals, or other documents filed in proceedings, if not printed, should be typewritten on paper cut or folded to letter size, 8 to 8 1/2 inches wide by 10 1/2 to 11 inches long, with left-hand margin not less than 1 1/2 inches wide and other margins not less than 1 inch. The impression shall be on only one side of the paper, unless there are more than four pages, and shall be double spaced, except that quotations in excess of a few lines shall be single spaced and indented. Reproduced copies will be accepted as typewritten, if all copies are clearly legible.

(b) Printed. Printed documents shall not be less than 10-point type on unglazed paper, cut or folded so as not to exceed 8 1/2 inches wide by 11 inches long, with inside margin not less than 1 inch wide, and with double-leaded text and single-leaded, indented quotations.

(c) Binding. Pleadings, submittals, and other documents, other than correspondence, shall be stapled, fastened or otherwise bound at the left side only.

(d) Subsections (a)-(c) are identical to 1 Pa. Code §33.2 (relating to form).

§1.33 Incorporation by Reference.

(a) Except as otherwise provided in subsection (b), any documents on file with the Commission may be incorporated by reference into a subsequently filed pleading, submittal, or other document. A document may be so incorporated only by reference to the specific document and to the prior filing in which it was physically filed, not to another document which incorporates it by reference.

(b) No document which has been on file with the Commission for a period of more than twenty years may be incorporated by reference in a current document unless the person filing the current document first makes inquiry to the Secretary's office and ascertains that the earlier document continues to be readily available in the active records of the Commission.

(c) Notwithstanding the provisions of §1.33(a) and (b), a party or participant who incorporates by reference any pleading, submittal, or other document shall provide a copy of such document to each party or participant who requests a copy thereof.

(d) Subsections (a), (b) and (c) supersede 1 Pa. Code §33.3 (relating to incorporation by reference).

§1.34. Single Pleading or Submittal Covering More Than One Matter.

(a) Except as otherwise provided under this Chapter and Chapter 5, a single pleading or submittal may be accepted for filing with respect to a particular transaction and one or more related transactions. Such acceptance for filing shall not affect the computation of fees under §1.43 (relating to filing fees).

(b) Subsection (a) is identical to 1 Pa. Code §33.4 (relating to single pleading on submittal covering more than one matter).

§1.35. Execution.

(a) Signature. Except as may be otherwise ordered or requested by the Commission, the original copy of each pleading, submittal or other document shall be signed in ink by the party in interest, or by his or its attorney, as required by subsection (b), and shall show the office and post office address of such party or attorney. All other copies filed shall fully conform thereto.

(b) Subscription.

(1) Pleadings, submittals, and other documents filed with the Commission shall be subscribed by one of the following:

(i) the person filing such documents, and severally if there is more than one person so filing;

(ii) an officer if it is a corporation, trust, association, or other organized group;

(iii) an officer or employe thereof if it is another agency or a political subdivision, or other governmental authority, agency or instrumentality; or

(iv) an attorney having authority with respect thereto.

(2) Documents filed by any corporation, trust, association, or other organized group, may be required to be supplemented by appropriate evidence of the authority of the officer or attorney subscribing such documents.

(c) Effect. The signature of the person subscribing any document filed with the Commission constitutes a certificate by such individual that he has read the document being subscribed and filed, and knows the contents thereof; that if executed in any representative capacity, the document has been subscribed and executed in the capacity specified upon the document with full power and authority so to do; that the contents are true as stated, except as to matters and things, if any, stated on information and belief, and that as to those matters and things, he believes them to be true.

(d) Subsections (a)-(c) are identical to 1 Pa. Code §33.11 (relating to execution).

§1.36. Verification.

(a) Verification shall mean a signed written statement of fact supported by oath or affirmation or made

subject to the penalties of 18 Pa. C.S. §4904 relating to unsworn falsification to authorities. Each application, petition, formal complaint, and answer thereto shall be personally verified by a party thereto or by an authorized officer of such party if a corporation or association.

(b) Affidavits shall conform with the following:

(1) The form for a natural person as applicant is as follows:

A F F I D A V I T

_____ (Affiant) 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 any hearing hereof.

(Signature of Affiant)

Sworn and subscribed before me

this _____ day of _____, 19 _____

(Signature of official
administering oath)
(My Commission Expires)

(2) The form for a corporation as applicant is as follows:

A F F I D A V I T

_____ (Affiant) being duly sworn (affirmed) according to law deposes and says that he is _____ (Office of Affiant) of _____ (Name of Corporation); that he is authorized to and does make this affidavit for it; and that the facts set forth above are true and correct (or are true and correct to the best of his knowledge, information and belief) and he expects the said _____ (Name of Corporation) to be able to prove the same at any hearing hereof.

(Signature of Affiant)

Sworn and subscribed before me
this _____ day of _____, 19 _____

(Signature of official
administering oath)
(My Commission Expires)

(c) Each applicant for motor carrier rights shall include in his verification the following statement:

Applicant is not now engaged in any intrastate transportation of property for compensation in this Commonwealth except as authorized by the Pennsylvania Public Utility Commission certificate or permit, and will not engage in the transportation for which approval is herein sought, unless and until such transportation is authorized by your Honorable Commission.

(d) Any individual who shall execute any pleading, submittal, or other document knowing that it contains a false statement and who shall cause or suffer it to be filed in the Commission shall be subject to prosecution for the commission of a misdemeanor of the second degree in violation of section 4904(a) of the Crimes Code (18 Pa. C.S. §4904(a)).

(e) Subsections (a)-(d) supersede 1 Pa. Code §33.12 (relating to verification).

§1.37. Number of Copies.

(a) Except as may be otherwise provided by statute or ordered or requested by the Commission, and except as provided by §5.502 (relating to filing and service of briefs) at the time pleadings, submittals, or documents other than correspondence are filed with the Commission, there shall be furnished to the Commission an original and two conformed copies of such papers, including all exhibits, if any.

(b) In the case of applications and petitions, one of the copies filed with the Commission may be filed without exhibits.

(c) In the case of complaints or petitions, where more than one respondent is named, an additional copy of the complaint or petition shall be filed for each additional respondent.

(d) Subsections (a)-(c) supersede 1 Pa. Code §33.15 (relating to number of copies).

SUBCHAPTER E. FEES.

Section

1.41 Filing Fees.

1.42 Mode of payment of Fees.

1.43 Schedule of fees payable to the Commission.

§1.41. Filing Fees.

(a) A pleading, submittal, or other document for which a filing fee is required to be charged shall be received, but shall not be deemed to be filed, until the filing fee required by statute or regulation has been paid.

(b) Subsection (a) supersedes 1 Pa. Code §33.21 (relating to filing fees).

§1.42. Mode of Payment of Fees.

(a) All fees shall be paid by money order or check made payable to the Commonwealth of Pennsylvania. Cash is sent at the risk of the sender.

(b) Subsection (a) supersedes 1 Pa. Code §33.22 (relating to mode of payment).

§1.43. Schedule of Fees Payable to the Commission.

(a) Fees for services. The fees for services rendered by the Commission are, as follows:

| Description | Fee (in dollars) |
|---|---------------------|
| Copies of papers, testimony and records per page | 0.75 |
| Certifying copy of any paper, testimony, or record | 2.00 |

Filing each securities certificate 10.00

Filing each application for a certificate, 125.00
permit, or license

(b) Fees for testing. The fees fixed by section 317 of the act relating to fees for service rendered by the Commission to be charged and collected from public utilities for the testing of their instruments of precision and measuring apparatus are as follows:

| Description. | Fee (in dollars) |
|---|---------------------|
| Testing each watthour meter | 16.00 |
| Testing each indicating instrument | 10.00 |
| Testing each instrument transformer | 10.00 |
| Testing each standard cell | 5.00 |
| Testing each standard resistance | 10.00 |
| Testing each potentiometer | 50.00 |
| Testing each gas meter prover | 35.00 |
| Testing each calorimeter tested at the gas company's plant | 35.00 |
| Testing each calorimeter tested at the commission laboratory | 10.00 |
| Each water meter testing apparatus tested at the company's plant | 15.00 |
| Each water meter tested at the com- mission laboratory | 3.00 |

(c) Condensation and steam flow meters. The schedule of fees for testing condensation and steam flow meters is as follows:

(1) For condensation meters having
an outlet not exceeding two inches - \$5.00.

(2) For condensation meters having
an outlet in excess of two inches - \$10.00.

(3) For steam flow meters - \$25.00.

(4) Upon the receipt of complete specifications, the Commission will determine the fees for testing those meters so located that the cost is out of proportion to the fee specified or those not included in the classification set forth in this subsection:

(d) Water meters. The schedule of fees for testing meters is as follows:

(1) For each water meter having an outlet not exceeding one inch - \$5.00.

(2) For other water meters having an outlet not exceeding two inches - \$10.00.

(3) Rates for testing other meters, including those which are so located that the cost is out of proportion to the fee specified, will be furnished by the Commission upon the receipt of complete specifications.

(e) Subsections (a)-(d) supersede 1 Pa. Code §33.21(b) (relating to filing fees) and 1 Pa. Code §33.23 (relating to copy fees).

SUBCHAPTER F. SERVICE OF DOCUMENTS.

Section

1.51. Instructions for service and notice.

1.52. Service generally.

1.53. Service by the Commission.

1.54. Service by a participant.

1.55. Effect of service on an attorney.

1.56. Date of service.

1.57. Proof of Service.

1.58. Form of Certificate of Service.

1.59. Number of copies to be served.

§1.51. Instructions for Service and Notice.

Upon receipt of any application or initial petition, the Secretary of the Commission will instruct the applicant or petitioner concerning the required service and public notice.

§1.52. Service Generally.

(a) When service is effected by mail, the first class mail shall be utilized, except that service of a petition under §3.391 (relating to arbitration of claims for billing and collecting services), and service of a complaint under Section 702 of the Act (relating to service of complaint on parties) shall be by registered or certified mail, return receipt requested.

(b) Section 1.55 (relating to effect of service upon an attorney) shall not be applicable to service under §3.381 (relating to applications for transportation of persons).

(c) Subsections (a) and (b) supersede 1 Pa. Code §33.32 (relating to service by participant) and §33.33 (relating to effect of service upon an attorney).

§1.53. Service by the Commission.

(a) Orders, notices, and other documents originating with the Commission, including all forms of Commission action and similar process, and other documents designated by the Commission for this purpose, shall be served by the Commission by mail, except when service by another method shall be specifically required by the Commission, by mailing a copy thereof to the person to be served, addressed to the person or persons designated in the initial pleading, submittal or notice of appearance at his or its principal office or place of business. When service is not accomplished by mail, it may be effected by anyone duly authorized by the Commission.

(b) Subsection (a) is identical to 1 Pa. Code §33.31 (relating to service by the agency).

§1.54. Service by a Participant.

(a) Except as provided for in §1.54(b), all pleadings, submittals, briefs, and other documents, filed in

proceedings pending before the Commission, when filed or tendered to the Commission for filing, shall be served upon all participants in the proceeding and the presiding officer, if one has been assigned. Such service shall be made by delivering in person or by mailing, properly addressed with postage prepaid, the requisite number of copies to each participant as provided in §1.59 (relating to number of copies).

(b) In a proceeding in which only some of the participants participate actively, the active participants, with the authorization of the presiding officer, may serve such documents upon the other active participants and to such inactive participants as state of record or request in writing that they wish to be served.

(c) Subsections (a) and (b) supersede 1 Pa. Code §33.32 (relating to service by a participant).

§1.55 Service on Attorneys.

(a) In any proceeding where an attorney has filed a pleading or submittal on behalf of a client or has entered an appearance pursuant to §1.24(b) (relating to notice of appearance), any notice or other written communication required to be served upon or furnished to the client shall be served upon or furnished to the attorney - or one of such attorneys if the client is represented by more than one attorney - in the same manner as prescribed for his client.

(b) When any participant has appeared by attorney, service upon such attorney shall be deemed service upon the participant and separate service on the participant may be omitted.

(c) Subsections (a) and (b) supersede 1 Pa. Code §31.26 (relating to service on attorneys).

§1.56. Date of Service.

(a) The date of service shall be the day when the document served is deposited in the United States mail, or is delivered in person, as the case may be.

(b) Subsection (a) is identical to 1 Pa. Code §33.34 (relating to date of service).

§1.57. Proof of Service.

(a) There shall accompany and be attached to the original of each pleading, submittal, or other document filed with the Commission when service is required to be made by the parties, a certificate of service in the form prescribed by §1.57 (relating to form of certificate of service). All other copies filed shall be fully conformed thereto.

(b) Subsection (a) supersedes 1 Pa. Code §33.35 (concerning proof of service).

§1.58. Form of Certificate of Service.

I hereby certify that I have this day served a true copy of the foregoing document upon all parties of

record in this proceeding in accordance with the requirements of §1.54 (relating to service by a participant).

Dated this _____ day of _____, 19____

(Signature)

Counsel for

This section supersedes 1 Pa. Code §33.36 (concerning certificate of service).

§1.59. Number of Copies to be Served.

(a) One copy of each document shall be served on the presiding officer if one has been designated.

(b) The following number of copies of documents shall be served on each other participant in a proceeding:

(1) Briefs - two copies.

(2) All other documents - one copy.

(c) Subsections (a) and (b) supersede 1 Pa. Code §33.37 (relating to number of copies).

SUBCHAPTER G. MATTERS BEFORE OTHER TRIBUNALS.

Section

1.61. Notice and filing of copies of pleadings before other tribunals.

1.62. Filing and record of securities certificate.

§1.61. Notice and Filing of Copies of Pleadings Before Other Tribunals.

(a) When proceedings relating to matters over which the Commission may have jurisdiction are filed with any Federal or state court or other public utility regulatory body by any party 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.

(b) Any public utility subject to the jurisdiction of the Commission which files a petition under Chapters 7, 9, 11 or 13 of the United States Bankruptcy Code (11 U.S.C. §101 et seq.), its supplements and amendments, or against which such petition is filed, shall, within ten days of the filing thereof or notification of such filing, file a copy of such petition with the Commission.

(c) Any public utility which is subject to the regulatory jurisdiction of the Commission, that becomes a debtor under 11 U.S.C. §101 or its trustee in bankruptcy, shall file any plan of reorganization affecting it with the

Commission within ten days after the debtor, or its trustee in bankruptcy, has filed the plan or has received notice that the plan has been filed with the court. For the purpose of enabling the Commission to suggest amendments or offer objections to the plan, the Commission will hold such hearings and require the debtor or its trustee in bankruptcy to furnish such information as the Commission deems advisable.

(d) Any public utility which is subject to the regulatory jurisdiction of the Commission, or its trustee in bankruptcy, shall file a petition for Commission approval of any reorganization plan as to the public interest therein and the fairness thereof, accompanied by a copy of the plan within ten days after the debtor has filed the plan, its supplements and amendments, or has received notice that the plan has been filed with the court.

(i) The petition shall contain a concise statement of the relevant facts and shall set forth the grounds upon which Commission approval should be granted.

(ii) If the reorganization plan comprehends the issuance of new securities or a change in the terms and conditions of securities already outstanding, the record shall be developed to show the same information which the Commission requires in securities certificates.

(iii) If the reorganization plan contemplates the abandonment of service, said petition shall include an application under Section §1102(a)(2).

(iv) The Commission will make a finding and certify its approval or disapproval of the plan to the Bankruptcy Court in which the petition is filed.

§1.62. Filing and Record of Securities Certificate in Bankruptcy Proceedings.

After final approval of any plan by the Bankruptcy Court, but before issuing or changing the terms and conditions of any securities, the debtor or its successor shall file with the Commission a securities certificate in respect to such issuance or change. Development of a record in such proceeding, however, may be unnecessary, if the petition contains a stipulation that the record in any previous proceeding relating to the plan may be considered by the Commission in passing upon the securities certificate.

SUBCHAPTER H. PUBLIC ACCESS TO COMMISSION RECORDS.

Section

- 1.71. Statement of Objectives.
- 1.72. Formal case files.
- 1.73. Fiscal Records.
- 1.74. Disclosure of other documents.
- 1.75. Review of staff determination.
- 1.76. Tariffs, minutes, and annual reports.
- 1.77. Exceptions.

§1.71. Statement of Objectives.

It is the intention of the Commission to establish a records maintenance system which allows for the greatest degree of public access to Commission documents that is consistent with the exercise of the functions of the Commission under the Public Utility Code (66 Pa.C.S. §§101-3315). A system is hereby created to meet that objective and to give public notice of which classes of documents are available for inspection. This system provides a predictable standard, which nevertheless permits the Commission to take cognizance of the circumstances of individual requests for documents which may militate in favor of or against disclosure.

§1.72. Formal Case Files.

(a) Format. Format for filing records in formal cases shall conform with the following:

(1) The files for formal cases initiated prior to May 15, 1977, shall contain a Records, Correspondence, and Testimony Folder.

(2) The files for formal cases initiated on or after May 15, 1977, shall contain a Document, Report and Testimony Folder.

(b) Contents. Contents of folders in formal cases shall conform with the following:

(1) Formal cases initiated prior to May 15, 1977 shall conform with the following:

(i) Testimony Folder. This folder shall contain hearing transcripts and exhibits, depositions, responses to interrogatories, admissions, and all other information, not otherwise confidential, which is obtained through formal discovery processes.

(ii) Record Folder. This folder shall contain all formal filings in a case, including but not limited to, complaints, petitions, answers, replies, motions, briefs, and requests for procedural or interim orders and opinions.

(iii) Correspondence Folder. This folder shall contain staff reports, acknowledgments, proofs of service, and all other documents not covered by subparagraphs (i) and (ii) of this paragraph.

(2) Formal cases initiated on or after May 15, 1977 shall conform with the following:

(i) Testimony Folder. This folder shall contain in all respects the same material as described in subsection (b) (1) of this section.

(ii) Document Folder. This folder shall contain all formal filings in a case, including but not limited to, complaints, petitions, answers, replies, motions, briefs, and requests for procedural or interim orders and opinions. In addition, it shall contain all correspondence from or to the Commission except for staff reports, investigative materials, and all other material not subject to the disclosure requirements of the Commission.

(iii) Report Folder. This folder shall contain staff reports, investigative materials, and all other material not subject to the disclosure requirements of the Commission.

(c) Access. Access to files in formal cases shall conform with the following:

(1) The Record and Testimony Folders for cases initiated prior to May 15, 1977, shall be available for inspection upon request made to File Room personnel during normal Commission business hours.

(2) The Document and Testimony Folders for cases initiated on or after May 15, 1977, shall be available for inspection upon request made to File Room personnel during normal Commission business hours.

(3) Material contained in the Correspondence Folders of formal cases initiated prior to May 15, 1977, shall be available for inspection if such material would otherwise have qualified for placement in the Document Folder, as described in subsection (b)(2)(ii) of cases initiated on or after May 15, 1977. Such inspection shall be subject to the procedures outlined in subsection (d).

(4) The material contained in the Report Folder of cases initiated on or after May 15, 1977, shall not be available for public inspection except as described in §1.74 (relating to disclosure of other documents).

(d) Procedures. Procedures for review of Correspondence and Report Folders shall conform with the following:

(1) Correspondence Folders. Review procedures for Correspondence Folders shall be as follows:

(i) Any person desiring access to a Correspondence Folder of a formal case may request File Room personnel for a review of the file to determine which material contained therein may be released for inspection.

(ii) Such review shall be made and the requestor notified within 30 days.

(iii) If dissatisfied with the results of the first review, the requestor may ask that the documents removed from the Correspondence Folder before it was given to him be reviewed again.

(iv) A like 30-day period shall apply to this second request for review.

(2) Report Folders. Review procedures for Report Folders shall be as follows:

(i) Any person may request File Room personnel for a review of particular documents or for a specifically defined portion of the Report Folder to determine which, if any, material contained in such folder may be released for inspection.

(ii) Such review, except for good cause, shall be made and the requestor notified within 30 days.

§1.73. Fiscal Records.

(a) Except as provided in subsection (b), any account, voucher, or contract dealing with the receipt or disbursement of funds by the Commission or its acquisition, use or disposal of services or supplies, materials, equipment, or other property shall be available during normal Commission business hours upon request made to the Public Utility Commission Fiscal Office.

(b) No fiscal record, nor any unseverable part thereof, which contains material exempted from the disclosure requirements provided in the Right-to-Know Law (65 P.S. §§66.1-66.4) or which otherwise presents a substantial need for nondisclosure, shall be available for public inspection.

§1.74. Disclosure of Other Documents.

For any documents not made public by the regulations under this heading or by statute, access may be had only upon petition of the requestor made to and granted by the Commission.

§1.75. Review of Staff Determination.

When advised by a staff member that no further staff review of the request for review is possible, the requestor may petition the Commission for review as to any specific or definite class of documents.

§1.76. Tariffs, Minutes of the Public Meeting, and Annual Reports.

Tariffs, minutes, and annual reports shall be available for public inspection upon request to the Office of the Secretary during normal Commission business hours.

§1.77. Exceptions.

For good cause the Commission may extend the time limits applicable to requests for access to documents; or, in the case of documents displaying no need for confidentiality, or, conversely, documents containing information which the Commission considers improper for public inspection, the Commission may direct the appropriate treatment thereof, notwithstanding contrary provisions in §§1.71-1.77 (relating to public access to Commission Records).

SUBCHAPTER I. AMENDMENTS AND WITHDRAWALS OF SUBMITTALS.

Section

1.81. Amendments.

1.82. Withdrawal or termination.

§1.81. Amendments.

(a) An amendment to any submittal or pleading may be tendered for filing at any time and shall be deemed filed as of the date of tender unless the Commission shall otherwise order.

(b) Subsection (a) is identical to 1 Pa. Code §33.41 (relating to amendments).

§1.82. Withdrawal or Termination.

(a) A party which desires to terminate an uncontested matter or proceeding before final decision by the Commission or otherwise desires to withdraw a submittal or pleading shall file a motion for leave to withdraw the appropriate document. If no participant objects to the motion within ten (10) days, the matter shall be stricken.

(b) Withdrawal of pleadings in contested proceedings shall be governed by the provisions of §5.94 (relating to withdrawal of pleadings).

(c) Subsections (a) and (b) supersede 1 Pa. Code §33.42 (relating to withdrawal or termination).

SUBCHAPTER J. DOCKET.

Section

1.86. Docket.

§1.86. Docket.

(a) The Secretary will maintain a docket of all proceedings, and each proceeding as initiated shall be assigned an appropriate designation. The docket shall be available for inspection and copying by the public during the Commission's office hours insofar as consistent with the proper discharge of the duties of the Commission.

(b) Subsection (a) is identical to 1 Pa. Code §33.51 (relating to docket).

SUBCHAPTER K. WAIVER OF RULES

Section

1.91. Applications for waiver of formal requirements.

§1.91. Applications for Waiver of Formal Requirements.

(a) Pleadings, submittals, or other documents which are subject to rejection under §1.4 (relating to filings generally) may be accompanied by a request, pursuant to §5.43 (relating to petitions for issuance, amendment, waiver, or repeal of regulations) for waiver of, or exception to, any provision of this Chapter or Chapters 3 or 5 or any regulation or requirement with which the document tendered is in conflict or does not conform. Such request shall show the nature of the waiver or exception desired and set forth the reasons in support thereof. Unacceptable filings may be returned by the Commission with an indication of the deficiencies thereof and the reasons for nonacceptance and return.

(b) Unless the Commission shall expressly so order, acceptance for filing shall not waive any failure to comply with these rules, the Commission's regulations, or any other applicable requirements, and such failure may be cause for striking all or any part of such filings.

(c) Subsections (a) and (b) are identical to 1 Pa. Code §33.61 (relating to waiver of formal requirements).

SUBCHAPTER L. UNOFFICIAL STATEMENTS AND OPINIONS

Section

1.96. Unofficial Statements and Opinions by Commission Personnel

§1.96. Unofficial Statements and Opinions by Commission Personnel.

For reasons of sound administration, statements in opinions of the Commission or a presiding officer which are not necessary to the deciding of the case, and informal opinions, whether oral or written, expressed by Commissioners, presiding officers, legal counsel, employes or representatives of the Commission are only considered as aids to the public, do not have the force and effect of law or legal determinations, and are not binding upon the Commonwealth or the Commission. Such informal opinions are subject to withdrawal or change at any time to conform with new or different interpretations of the law.

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SPECIAL PROVISIONS

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CHAPTER 3 - SPECIAL PROVISIONS
SUBCHAPTER A. SPECIAL COMMISSION ACTIONS
EMERGENCY RELIEF

§3.1. Definitions.

The following words and terms when used in this subchapter shall have the following meanings unless the context clearly indicates otherwise:

Emergency - A situation which presents a clear and present danger to life or property.

Emergency order - An ex parte order issued by a single Commissioner, the Commission or the Commission's Director of Operations directly affecting the personal or property rights of a person or corporation and issued in response to an emergency.

§3.2. Issuance of emergency orders.

(a) To the extent practicable, (1) applications for emergency relief shall be in the form of a petition as set forth in §5.41 (relating to Petitions generally), (2) shall be supported by affidavits verifying facts which establish the existence of an emergency and (3) shall be served on all persons directly affected by the application.

(b) In situations where there is an actual or declared emergency the Chairman, a Commissioner, and the Commission's Director of Operations have the authority to issue an emergency order.

§3.3. Form of emergency orders.

(a) All emergency orders shall be issued in writing with copies to all Commissioners, to the Director of Operations and to the Secretary of the Commission.

(b) Emergency orders shall be served on all persons or corporations directly affected by the order.

§3.4. Hearings on emergency orders

Upon application by a person or corporation against whom an emergency order is issued, an expedited hearing before a presiding officer shall be conducted within 5 days to determine whether or not the emergency order shall remain in effect. The presiding officer shall take into account the irreparable harm, if any, which staying or continuing the emergency order would cause to the public interest or the persons or corporations directly affected and the likelihood that the emergency order will be ratified by the Commission. If the emergency order is issued by a single Commissioner or the Director of Operations, the presiding officer shall have the authority to stay the effect of the order until the next scheduled public meeting. If the emergency order is issued by the Commission, the decision of the presiding officer shall constitute an initial decision to be acted upon by the Commission at its next scheduled public meeting.

§3.5. Ratification of emergency orders.

All emergency orders issued by a single Commissioner or the Director of Operations shall be ratified, modified or rescinded by the Commission at the next scheduled public meeting after issuance of the order.

§§3.21 - 3.97 - These sections are deleted and reserved. See 52 Pa. Code Chapter 1 for material previously covered by these sections.

SUBCHAPTER B: INFORMAL PROCEEDINGS GENERALLY

§3.101. Municipal Contracts.

No formal application need accompany municipal contracts filed under Section 507 of the Act relating to contracts between public utilities and municipalities, but an executed copy or reproduction copy of such contract and two additional copies shall be filed with the Commission at least 30 days prior to the effective date of the contract.

§3.102. Reserved.

§3.103. Reserved.

INFORMAL COMPLAINTS

3.111 Form and Content of Informal Complaints

(a) Informal complaints may be by letter or other writing. No form of informal complaint is suggested, except as set forth in Chapter 56 (relating to standards and billing practices for residential utility service), but in substance the letter or other writing must contain the essential elements of a formal complaint as specified in §5.21 (relating to formal complaints generally). Only one copy of an informal complaint need be filed. It may include supporting papers.

(b) Subsection (a) supersedes 1 Pa. Code §35.5 relating to form and content of informal complaints.

§3.112. Action on informal complaints.

(a) Upon receipt of an informal complaint, except as set forth in Chapter 56 (relating to standards and billing practices for residential utility service, the Commission shall transmit a copy or a statement of the substance thereof to each person regarding whom the complaint is made in an endeavor to have it satisfied. The filing or withdrawal of an informal complaint is without prejudice to the right of complainant to file and prosecute a formal complaint.

(b) Upon the completion of the Commission's investigation of an informal complaint, the complaint and documents describing the action taken on the complaint shall be part of

the public record and shall be accessible to the public in accordance with Subchapter H, relating to public access to Commission records.

(c) Subsections (a) and (b) supersede 1 Pa. Code §35.6 (relating to correspondence handling of informal complaints) and §35.7 (relating to discontinuance of informal complaints without prejudice).

§2.121 - 3.151 - These sections are deleted and reserved. See 52 Pa. Code Chapter 5 for materials previously covered by these sections.

POLICY STATEMENT ON PUBLIC INPUT HEARINGS

§3.161. Reserved.

§3.162. Reserved.

* * *

§§3.181 - 3.321 - These sections are deleted and reserved.

See 52 Pa. Code Chapter 5 for materials previously covered by these sections.

§§3.351 - 3.354 - These sections are deleted and reserved.

See 52 Pa. Code Chapter 1 for materials previously covered by these sections.

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FORMAL PROCEEDINGS

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CHAPTER 5. FORMAL PROCEEDINGS

Subchapter A. PLEADINGS AND OTHER PRELIMINARY MATTERS

§5.1. Pleadings allowed.

(a) The pleadings in an action before the Commission shall include all of the following:

- (a) application and protest
- (b) formal complaint and an answer
- (c) order to show cause and an answer
- (d) petition and an answer
- (e) preliminary motions.

(b) Any pleading except a preliminary motion may be subject to a preliminary motion as set forth in §5.101 relating to preliminary motions.

APPLICATIONS

§5.11. Applications generally.

(a) Applications for authorization or permission filed with the Commission shall conform to the requirements of this subchapter. In addition to the requirements of this subchapter, applications for certificates of public convenience or permits for contract carriers should conform to the requirements of §3.551 (relating to official forms).

(b) Subsection (a) supersedes 1 Pa. Code §35.1 relating to applications generally).

§5.12. Contents of applications.

(a) Where a form is not provided in §3.551 (relating to official forms), applications shall conform to the provisions of this section. All applications shall be in writing, shall state clearly and concisely the authorization or permission sought, shall cite by appropriate reference the statutory provisions or other authority under which the Commission authorization or permission is sought, and shall set forth, in the order indicated, the following - unless otherwise provided by this subchapter for the specific type of application involved:

(1) The exact legal name of the applicant, and, if the applicant is a corporation, trust, association, or other entity, the jurisdiction under the laws of which the applicant was created or organized and the location of the principal place of business of the applicant.

(2) The name, title, and post office address of the person to whom correspondence or communications in regard to the application are to be addressed. The Commission will serve, where required, all notices, orders, and other papers upon the person so named, and such service shall be deemed to be service upon the applicant.

(b) Subsection (a) supersedes 1 Pa. Code §35.2 (relating to contents of applications).

§5.13. Applications for construction or alteration of crossings.

(a) Applications for construction, relocation, alteration, protection or abolition of a crossing under Section 2702 of the Act (relating to construction, relocation, suspension, and abolition of crossings) shall comply substantially with the requirements as to crossing complaints as set forth in §3.361 (relating to crossing complaints).

(b) Plans submitted for the relocation, alteration, protection or abolition of any crossing complained against shall be accompanied by the names and post office addresses of the record owners of all property necessary to be acquired in the execution thereof, and shall, when directed by the Commission, be supplemented by a description by metes and bounds of all property necessary to be acquired.

FORMAL COMPLAINTS

§5.21. Formal complaints generally.

(a) Any person complaining of any act or thing done or omitted to be done by any person subject to the jurisdiction of the Commission, in violation, or claimed violation of any law which the Commission has jurisdiction to administer, or of any regulation or order of the Commission, may file a formal complaint with the Commission.

(b) If the complaint relates to a provision in a tariff, regulation, report or other similar document on file with the Commission as a matter of public record, the document should be identified.

(c) A copy of the complaint must be served by the Commission, by Certified Mail, upon the respondent.

(d) Subsections (a) through (c) supersede 1 Pa. Code §35.9 (relating to formal complaints generally).

§5.22. Contents of formal complaint.

(a) Each formal complaint shall set forth all of the following:

(1) The name and address of the complainant and the attorney, if any, of the complainant.

(2) The name and address of the respondent complained against and the nature and character of its business.

(3) The interest of the complainant in the subject matter.

(4) The act or thing done or omitted to be done or about to be done or omitted to be done by the respondent in violation, or claimed violation, of any law which the Commission has jurisdiction to administer, or of any regulation or order of the Commission.

(5) A clear statement of the relief sought.

(b) Complaints by a public utility or other person or corporation subject to the Public Utility Code against any regulation or order of the Commission, which the complainant is or has been required to observe or carry into effect, shall be substantially in the form prescribed by subsection (a) of this section and reference shall be made

to the particular regulation or order or part thereof complained against and shall quote the pertinent portions thereof.

(c) Subsections (a) and (b) supersede 1 Pa. Code §35.10 (relating to form and content of formal complaints).

§5.23. Joinder of formal complaints.

(a) Two or more complainants may join in one complaint if they are complaining against the same respondent or respondents, and if the subject matter and relief sought is substantially the same.

(b) Subsection (a) supersedes 1 Pa. Code §35.11 (relating to joinder of formal complaints).

§5.24. Satisfaction of formal complaints.

(a) If the respondent satisfies a formal complaint either before or after hearing, a statement to that effect signed by the complainant shall be filed with the Commission setting forth that the complaint has been satisfied and that the complaint is withdrawn. Except as requested by the parties, the presiding officer shall not be required to render a decision upon the satisfaction of a complaint.

(b) In lieu of the statement set forth in (a), the respondent may certify to the Commission that it has satisfied the complaint and that the complainant has acknowledged satisfaction to the respondent. In such case, the respondent

shall serve a copy of its certification upon the complainant. Unless complainant objects to the certification within ten (10) days of its filing, the complaint shall be withdrawn.

(c) Subsections (a) and (b) supersede 1 Pa. Code §35.41 (relating to satisfaction of complaints).

ORDERS TO SHOW CAUSE

§5.31. Order to show cause.

(a) Whenever the Commission desires to institute a proceeding against any person under statutory or other authority, the Commission may commence such action where appropriate by an order to show cause setting forth the grounds for such action. Such order will contain a statement of the particular matter about which the Commission is inquiring, which shall be deemed to be tentative and for the purpose of framing issues for consideration and decision by the Commission in the proceeding, and the order will require that the respondent named respond in writing as provided in §5.64 (relating to answers to orders to show cause).

(b) Subsection (a) is identical to 1 Pa. Code §35.14 (relating to orders to show cause).

PETITIONS

§5.41. Petitions generally.

(a) Petitions for relief, under any provisions of the Public Utility Code or other statute that the Commission administers, shall be in writing, shall state clearly and

concisely the grounds of interest of the petitioner in the subject matter, the facts relied upon, and the relief sought. Petitions to intervene shall conform to the requirements of 52 Pa. Code §§5.71-5.76 (relating to intervention).

(b) Subsection (a) supersedes 1 Pa. Code §35.17 (relating to petitions generally).

§5.42. Petitions for declaratory orders.

(a) Petitions for the issuance, of a declaratory order to terminate a controversy or remove uncertainty, shall state clearly and concisely the controversy or uncertainty which is the subject of the petition, shall cite the statutory provision or other authority involved and shall include a complete statement of the facts and grounds prompting the petition, together with a full disclosure of the interest of the petitioner.

(b) A copy of the petition shall be served on the Office of Consumer Advocate, all persons directly affected and on other parties whom petitioner believes will be affected by the petition. Such service shall be evidenced with a certificate of service filed with the petition.

(c) Copies shall also be served in compliance with Commission direction.

(d) Subsections (a) through (c) supersede 1 Pa. Code §35.19 (relating to petitions for declaratory orders).

§5.43. Petitions for issuance, amendment, waiver, or repeal of regulations.

(a) A petition to the Commission for the issuance, amendment, waiver, or repeal of a regulation shall set forth clearly and concisely the interest of the petitioner in the subject matter, the specific regulation, amendment, waiver, or repeal requested, and shall cite by appropriate reference the statutory provision or other authority therefor. Such petition shall set forth the purpose of, and the facts claimed to constitute the grounds requiring such regulation, amendment, waiver, or repeal. Petitions for the issuance or amendment of a regulation shall incorporate the proposed regulation or amendment.

(b) Subsection (a) is identical to 1 Pa. Code §35.18 (relating to petitions for issuance, waiver or repeal of regulations).

§5.44. Petitions for appeal from actions of the staff.

(a) Unless otherwise provided in this part, actions taken by a subordinate officer, other than a hearing officer, pursuant to authority delegated by the Commission may be appealed to the Commission by filing a petition within ten days after service of notice of such action, unless a different time period is specified herein or in the Act.

(b) Subsection (a) supersedes 1 Pa. Code §35.20 (relating to appeals from action of the staff).

PROTESTS

§5.51. Protest to an application.

(a) Any person objecting to the approval of an application under consideration by the Commission may file a protest to the application.

(b) Subsection (a) supersedes 1 Pa. Code §35.23 (relating to protests generally).

§5.52. Content of a protest to an application.

(a) A protest to an application shall on its face set out clearly and concisely the facts from which the alleged interest or right of the protestant can be determined, the grounds of the protest and the facts establishing protestant's standing to protest.

(b) Any person objecting to the approval of an application shall file with the Secretary of the Commission and serve upon the applicant and applicant's attorney, if any, a written protest to that application which shall conform with the requirements of §3.381(c)(1) (relating to applications for transportation of property and persons).

(c) Upon the filing of a timely protest, the protestant shall be permitted to participate in the proceeding as a party.

(d) Motions in regard to protests shall be in accordance with §§5.101-103 (relating to motions).

(e) Subsections (a)-(d) supersede 1 Pa. Code §35.24 (relating to effect of protest).

§5.53. Time of filing.

A protest shall be filed within the time specified in §3.381(d) (relating to applications for transportation of property and persons).

§5.54. Failure to file a protest to an application.

If no such protest is filed with the Commission on or before the date specified in the Pennsylvania Bulletin, the Commission may, in its discretion, take such action as specified in 52 Pa. Code §3.381(e) (relating to applications for transportation of property and persons).

ANSWERS

§5.61. Answers to complaints and petitions.

(a) Answers to complaints and petitions, shall be filed with the Commission within 20 days after the date of service, unless a different time is prescribed by law or by the Commission.

(b) The answer to a complaint shall set forth, in paragraphs numbered to correspond with the complaint, the facts upon which the respondent relies. All answers shall be in writing, and so drawn as fully and completely to advise the parties and the Commission as to the nature of the defense. They shall admit or deny specifically and in detail each material allegation of the pleading answered, and state clearly and concisely the facts and matters of law relied upon.

(c) Any respondent failing to file an answer within the applicable period shall be deemed in default, and all relevant facts stated in such complaint or petition may be deemed admitted.

(d) Subsections (a)-(c) supersede 1 Pa. Code §35.35 (relating to answers to complaints and petitions).

§5.62. Answers seeking affirmative relief.

(a) In its answer, a Respondent may seek relief against other parties in a proceeding by reason of the presence of common questions of law or fact and in such case shall set forth in its answer the facts constituting the grounds of complaint, the provisions of the statutes, rules, regulations, or orders relied upon, the injury complained of, and the relief sought. The answer shall in all other respects conform to the requirements of these rules for answers generally.

(b) Subsection (a) supersedes 1 Pa. Code §35.38 (relating to respondents seeking affirmative relief).

§5.63. Replies to answers seeking affirmative relief.

(a) Unless otherwise ordered by the Commission, replies to answers seeking affirmative relief shall be filed with the Commission and served within 20 days after date of service of the answer, but not later than five days prior to the date set for the commencement of the hearing, if any.

(b) Subsection (a) is identical to 1 Pa. Code §35.39 (relating to replies to respondents seeking affirmative relief).

§5.64. Answers to orders to show cause.

(a) Any person upon whom an order to show cause has been served under §5.31 (relating to orders to show cause) shall, if directed to do so, respond to the same by filing with the Commission, within the time specified in said order, an answer in writing. Such answer shall be drawn so as specifically to admit or deny the allegations or charges which may be made in said order, set forth the facts upon which respondent relies, and state concisely the matters of law relied upon. Mere general denials of the allegations of an order to show cause which are unsupported by specific facts upon which respondent relies, will not be considered as complying with this section and may be deemed a basis for entry of a final order without hearing, unless otherwise required by statute, on the ground that the response has raised no issues requiring a hearing or further proceedings. Any respondent failing to file an answer within the time allowed shall be deemed in default, and all relevant facts stated in the order to show cause may be deemed admitted.

(b) Subsection (a) is identical to 1 Pa. Code §35.37 (relating to answers to orders to show cause).

§5.65. Answers to amendments of pleadings.

(a) Any participant may file an answer to any amendment, modification or supplement to an application, complaint, petition or other pleading. If made, answers shall be filed with the Commission within 20 days after the

date of service of the amendment, modification or supplement, unless for cause the Commission or presiding officer with or without motion shall prescribe a different time.

(b) Subsection (a) is identical to 1 Pa. Code §35.40 (relating to answers to amendments of pleadings).

§5.66. Answers to petitions to intervene.

(a) Any participant may file an answer to a petition to intervene, and in default thereof, may be deemed to have waived any objection to the granting of such petition. Answers shall be served upon all other participants.

(b) Subsection (a) supersedes 1 Pa. Code §35.36 (relating to answers to petitions to intervene).

INTERVENTION

§5.71. Initiation of intervention.

(a) Participation in a proceeding as an intervenor may be initiated as follows:

(1) By the filing of a notice of intervention by any other agency of the Commonwealth which is authorized by statute to participate in the proceeding.

(2) By order of the presiding officer or the Commission upon petition to intervene.

(3) By operation of a specific provision of this subchapter which provides for party status.

(b) Subsection (a) supersedes 1 Pa. Code §35.27 (relating to initiation of intervention).

§5.72. Eligibility to intervene.

(a) Persons. A petition to intervene may be filed by any person claiming a right to intervene or an interest of such nature that intervention is necessary or appropriate to the administration of the statute under which the proceeding is brought. Such right or interest may be any one of the following:

(1) A right conferred by statute of the United States or of this Commonwealth.

(2) An interest which may be directly affected and which is not adequately represented by existing participants, and as to which the petitioner may be bound by the action of the Commission in the proceeding.

(3) Any other interest of such nature that participation of the petitioner may be in the public interest.

(b) Commonwealth. The Commonwealth or any officer or agency thereof may intervene as of right in any proceeding subject to paragraphs (a) (1), (2) and (3).

(c) Subsections (a) and (b) are identical to 1 Pa. Code §35.28 (relating to eligibility to intervene).

§5.73. Form and content of petitions to intervene.

(a) Petitions to intervene shall set out clearly and concisely the facts from which the nature of the alleged right or interest of the petitioner can be determined, the grounds of the proposed intervention, and the position of

the petitioner in the proceeding, so as fully and completely to advise the participants and the Commission as to the specific issues of fact or law to be raised or controverted.

(b) Subsection (a) supersedes 1 Pa. Code §35.29 (relating to form and content of petitions to intervene).

§5.74. Filing of petitions to intervene.

(a) Petitions to intervene and notice of intervention may be filed following the filing of an application, petition, complaint, or other document seeking Commission action, but no later than the date fixed for the filing of petitions to intervene in any order or notice with respect to the proceedings, or, except for due cause shown, date fixed for filing protests as published in the Pennsylvania Bulletin. Where a person has been permitted to intervene notwithstanding the failure to file a petition within the time prescribed in this section, the Commission or presiding officer may, where the circumstances warrant, permit the waiver of the requirements of §5.409 (relating to copies of documentary evidence) with respect to copies of exhibits for such intervenor.

(b) Subsection (a) supersedes 1 Pa. Code §35.30 relating to filing of Petitions to intervene.

§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 participants to the proceeding in conformity with §1.54 (relating to service by a participant).

(b) Action on petitions. As soon as practicable after the expiration of the time for filing answers to such petitions as provided in §5.66 (relating to answers to petitions to intervene), the Commission or presiding officer will grant or deny such petition in whole or in part or may, if found to be appropriate, authorize limited participation. Admission as an intervenor will not be construed as recognition by the Commission that the intervenor has a direct interest in the proceeding or might be aggrieved by any order of the Commission in the proceeding. No petitions to intervene may be filed or will be acted upon during a hearing unless permitted by the Commission or presiding officer after opportunity for all parties to object.

(c) Subsections (a) and (b) supersede 1 Pa. Code §35.31 (relating to notice and action on petitions to intervene).

§5.76. Limitation of participation in hearings.

(a) Where there are two or more intervenors having substantially like interests and positions, the Commission or presiding officer may, in order to expedite the hearing, arrange appropriate limitations on the number of attorneys who will be permitted to cross-examine and make and argue motions and objections on behalf of such intervenors.

(b) Subsection (a) is identical to 1 Pa. Code §35.32 (relating to limitation of participation in hearings).

CONSOLIDATION

§5.81. Consolidation.

(a) The Commission or presiding officer, with or without motion, may order proceedings involving a common question of law or fact to be consolidated. The Commission or presiding officer may make such orders concerning the conduct of such proceeding as may avoid unnecessary costs or delay.

(b) Subsection (a) is identical to 1 Pa. Code §35.45 (relating to consolidation) and §35.122 (relating to consolidation fo formal proceedings).

AMENDMENT AND WITHDRAWAL OF PLEADINGS

§5.91. Amendments of pleadings generally.

(a) Any modification of or supplement to an application, complaint, petition, or other pleading shall be deemed as an amendment to the pleading, and shall comply with the requirements of this subchapter relating to the pleading amended insofar as appropriate.

(b) Except as otherwise provided in this subchapter, no amendment to a pleading may be filed within five days preceding the commencement of or during a hearing unless directed or permitted by the Commission or the presiding officer after opportunity for all parties to be heard thereon.

(c) This section does not apply to an increase in the aggregate amount of a general rate increase request.

(d) Subsections (a)-(c) supersede 1 Pa. Code §35.48 (relating to amendments of pleadings generally).

§5.92. Amendments to conform to the evidence.

(a) When, at a hearing, issues not raised by the pleadings are introduced by express or implied consent of the participants, they shall be treated in all respects as if they had been raised in the pleadings. Such amendment of the pleadings as may be necessary to cause them to conform to the evidence and to raise these new issues may be made upon motion of any participant at any time during the hearing as set forth in §5.102 (relating to motions for summary judgment and judgment on the pleadings). If evidence upon such new issues is objected to on the ground that it is not within the issues raised by the pleadings, the Commission or the presiding officer may allow the pleadings to be amended and such evidence to be received, when it appears that the presentation of the merits of the proceedings will be served thereby without prejudicing the public interest or the rights of any participant. When in the discretion of the Commission or the presiding officer, a continuance is necessary in order to enable the objecting participant to meet such new issues and evidence, a continuance may be granted by the Commission or the presiding officer, as provided in §1.15 (relating to extensions of time).

(b) If an amendment adopted pursuant to subsection (a) has the effect of broadening the issues in the proceeding,

notice of such amendment shall be given in the same manner as notice was given at the commencement of the proceeding and to the same persons who received such notice.

(c) Subsections (a) and (b) are identical to 1 Pa. Code §35.49 (relating to amendments to conform to evidence).

§5.93. Directed amendments.

(a) The Commission may at any time; or during a hearing, presiding officers may on their own motion or the motion of any participant, direct participants to state their case by way of amendment more fully or in more detail. Such amendment shall be reduced to writing and filed within such time as may be fixed by the Commission or the presiding officer.

(b) Subsection (a) is identical to 1 Pa. Code §35.50 (relating to directed amendments).

§5.94. Withdrawal of pleadings.

(a) A participant desiring to withdraw a pleading may file a notice of withdrawal thereof with the Commission and with all parties to the proceeding. Such notice shall set forth the reasons for the withdrawal. Unless otherwise ordered by the Commission for good cause, such notice shall, 30 days after the filing thereof, be deemed to have effected the withdrawal of the pleading, including amendment, if any.

(b) Subsection (a) supersedes 1 Pa. Code §35.51 (relating to withdrawal of pleadings).

MOTIONS

§5.101. Preliminary motions.

(a) Preliminary motions are available to any participant. They shall state specifically the grounds relied upon, the standing of the party, and they shall be limited to the following:

- (i) A motion questioning the jurisdiction of the Commission.
- (ii) A motion to strike off a pleading that is insufficient as to form.
- (iii) A motion to dismiss a pleading that is insufficient as to substance, that does not indicate on its face the standing of the party to participate in the proceeding, or the failure to join an indispensable party.
- (iv) A motion for a more specific pleading.

(b) Preliminary motions shall be filed along with an answer, within the time period prescribed by §5.61 (relating to answers to complaints and petitions). All preliminary motions shall be raised at the same time.

(c) Except where a motion for more specific pleading is filed, answers shall be filed along with preliminary motions. Where a motion for more specific pleading is filed, no answer need be filed until further directed by the presiding officer or the Commission.

(d) An answer to a preliminary motion may be filed within ten (10) days of date of service.

(e) Preliminary motions shall be decided by the presiding officer or the Commission within 20 days of the filing of the motion.

(f) If any preliminary motion to strike is granted, the complaining participant shall have the right to file an amended pleading within ten days.

(g) Subsections (a)-(f) supersede 1 Pa. Code §§35.54 (relating to motions as to complaint) and 35.55 (relating to motions as to answer).

§5.102. Motions for summary judgment and judgment on the pleadings.

(a) Motion for Judgment on the Pleadings. After the pleadings are closed, but within such time as not to delay the hearing, any participant may move for judgment on the pleadings. The opposing participant shall have the opportunity to respond.

(b) Motion for Summary Judgment. After the pleadings are closed, but within such time as not to delay hearing, any participant may move for summary judgment on the pleadings and any depositions, answers to interrogatories, admissions and supporting affidavits. Those documents not already filed with the Commission shall be filed with the motion.

(1) The opposing party shall have the opportunity to respond within 20 days of service and may present affidavits in response.

(2) Affidavits may be supplemented or opposed by depositions, answers to interrogatories or further affidavits.

(c) Decisions on motions. The presiding officer shall grant or deny a motion for judgment on the pleadings or a motion for summary judgment, as appropriate. The judgment sought shall be rendered, if the pleadings, depositions, answers to interrogatories, and admissions, together with affidavits, if any, show that there is no genuine issue as to any material fact and that the moving participant is entitled to a judgment as a matter of law. If such a motion is granted, the presiding officer shall do so in the form of an initial decision. As in the case of other initial decisions, the procedures regarding exceptions and appeal to the Commission shall apply. If such a motion is denied, the presiding officer shall do so in the form of an order.

§5.103. Hearing motions.

(a) Scope and content. After a hearing has commenced in a proceeding, a request may be made by motion for any relief desired, except as may be otherwise expressly provided in these rules. Motions shall set forth the ruling or relief sought, and shall state the grounds therefor and the statutory or other authority relied upon.

(b) Presentation of motions. Motions may be made in writing at any time, and motions made during hearings may be stated orally upon the record, or the presiding officer may require that such oral motions be reduced to writing and filed separately.

(c) Response to motions. Any participant shall have ten days within which to answer or object to any motion, unless the period of time is otherwise fixed by the Commission or the presiding officer.

(d) Rulings on motions. The presiding officer is authorized to rule and shall rule upon any motion not formally acted upon by the Commission prior to the commencement of the hearing where immediate ruling is essential in order to proceed with the hearing, and upon any motion filed or made after the commencement of the hearing and prior to the submission of a decision in the proceeding. The presiding officer by initial decision may render a final determination with regard to any motion prior to the termination of hearings if in the opinion of the presiding officer the motion involves a question of jurisdiction, the establishment of a prima facie case, or standing. Motions made during the course of hearing, which if granted would otherwise dispose of parties' rights, should be acted upon by the presiding officer prior to taking further testimony if, in the opinion of the presiding officer, such action is warranted.

(e) Subsection (a) is identical to 1 Pa. Code §35.177 (relating to scope and contents of motions). Subsection (b) is identical to 1 Pa. Code §35.178 (relating to presentation of motions, subsection (c) is identical to 1 Pa. Code §35.179 (relating to objections to motions); and subsection (d) supersedes 1 Pa. Code §35.180 (relating to action on motions).

Subchapter B. HEARINGS

GENERAL

§5.201. Notice of Proceeding; Hearing; Waiver of Hearing

(a) Where notice and hearing are required under law, publication in the Pennsylvania Bulletin of a notice of application or other initial pleading is sufficient to provide notice of the proceeding. Service on interested persons is also sufficient to provide such notice. Such notice shall fix a reasonable period of time, but not less than fifteen days, within which any person desiring to be heard may file a petition to intervene, a protest, complaint or other appropriate pleading. Hearings will be held upon the filing of said pleading, unless waived by the parties.

(b) If the appropriate pleading is not filed within the set period of time, or where the participants have waived hearings, the Commission may forthwith dispose of the matter without a hearing upon the basis of the pleadings or submittals and the studies and recommendations of the staff.

(c) Subsections (a) and (b) supersede 1 Pa. Code §§35.101 (relating to waiver of hearings) and 35.103 (relating to preliminary notice to Department of Justice) and 35.121 (relating to initiation of hearings).

§5.202. Scheduling of Hearing

(a) The Commission will schedule all hearings other than those involving the lawfulness of rates and will maintain hearing calendar of all proceedings set for hearing.

(b) Proceedings pending on the calendar will be heard so far as practicable, in their order of assignment to the calendar at the times and places fixed by the Commission or presiding officer, giving due regard to the convenience and necessity of the participants and their attorneys.

(c) The Commission or the presiding officer in the exercise of discretion, for cause, may advance or postpone any proceeding on the hearing calendar with due notice to the participants.

(d) Subsections (a)-(c) supersede 1 Pa. Code §35.102, (relating to hearing calendar).

§5.203. Hearings in rate proceedings.

(a) Hearing dates in rate proceedings will be fixed by the presiding officer.

(b) Ordinarily, hearings in rate proceedings will be scheduled with due regard to the convenience of the parties, attorneys, and witnesses, as well as that of the presiding officer and the Commission staff. In scheduling hearings, however, the presiding officer will be guided by the requirement of section 315 of the act (66 Pa. C.S. §315) that rate cases are to be given preference over all other proceedings, and are to be decided as speedily as possible.

The presiding officer may continue a scheduled hearing upon his own motion or upon the request of a party for good cause shown. Mere convenience or other engagements of counsel shall not ordinarily constitute grounds for continuance.

(c) Subsections (a) and (b) supersede 1 Pa. Code §§35.121 (relating to initiation of hearings) and 35.123 (relating to conduct of hearings).

NOTICE OF HEARING

§5.211. Notice of rulemaking proceedings

(a) Before the adoption of any regulation, the Commission will cause general notice to be published as provided in 1 Pa. Code Chapter 7 (relating to procedure for adoption or change of regulations).

(b) The order or notice will state the time and place of any proposed hearing, and nature of the proceeding, recite the statutory or other authority under which the regulation is proposed to be adopted, and include either the terms of the proposed regulation, or description of the subjects and issues involved to inform interested persons of the nature of the proceeding, so as to permit any interested persons to submit data, views or proposals relative thereto within such time period as is required by the act.

(c) Subsections (a) and (b) supersede 1 Pa. Code §35.104 (relating to notice of rulemaking proceedings).

§5.212. Notice of nonrulemaking proceedings

(a) The presiding officer, the Office of Administrative Law Judge, or the Commission are authorized to schedule prehearing conferences and hearings. All participants shall be given reasonable notice of the time and place of the prehearing conference or hearing. In fixing the time and place of such conferences and hearings, due regard will be given to the convenience and necessity of the participants or their attorneys so far as time and the proper execution of the functions of the Commission permit.

(b) Subsection (a) supersedes 1 Pa. Code §§35.105 (relating to notice of nonrulemaking proceeding) and 35.106 (relating to contents of notice of nonrulemaking proceedings).

PREHEARING AND OTHER CONFERENCES

§5.221. Conferences to adjust, settle, or expedite proceedings

(a) In order to provide opportunity for the submission and consideration of facts, arguments, offers of settlement, or proposals of adjustment, for settlement of a proceeding, or any of the issues therein, or consideration of means by which the conduct of the hearing may be facilitated and the disposition of the proceeding expedited, conferences between the participants for such purposes may be held at any time prior to or during hearings as time, the nature of the proceeding, and the public interest may permit.

(b) Subsection (a) is identical to 1 Pa. Code §35.111 (relating to conferences to adjust, settle or expedite proceedings).

§5.222. Initiation of Prehearing Conferences in Non-Rate Proceedings.

(a) In order to make possible a more effective use of hearing time in formal proceedings, other than rate proceedings which are governed by §5.224, and to otherwise expedite the orderly conduct and disposition of such proceedings and to serve the ends to justice and the public interest, it is the policy of the Commission to arrange for conferences between participants to such proceedings prior to the commencement of hearings.

(b) The Commission, or the presiding officer, with or without motion, and after consideration of the probability of beneficial results to be derived therefrom, may direct that a prehearing conference be held, and direct the participants to the proceeding to appear there to consider any or all of the matters enumerated at §5.112(c). Due notice of the time and place of such conference shall be given to all participants to the proceeding. Upon agreement of all the parties, such conferences may be conducted telephonically.

(c) All of the following matters shall be considered at prehearing conference:

- (1) The possibilities for settlement of the proceeding, subject to the approval of the Commission;
- (2) The amount of hearing time which will be required to dispose of the proceeding and the establishment of a schedule of hearing dates;
- (3) Arrangements for the submission of direct testimony of witnesses in writing in advance of hearing to the extent

practicable, and for the submission in advance of hearing of written requests for information which any participant contemplates asking another participant to present at hearing; and

(4) Such other matters as may aid in expediting the orderly conduct and disposition of the proceeding and the furtherance of justice, including, but not limited to the following:

(i) The simplification of the issues;

(ii) The exchange and acceptance of service of exhibits proposed to be offered in evidence;

(iii) The obtaining of admissions as to, or stipulations of, facts not remaining in dispute, or the authenticity of documents which might properly shorten the hearing;

(iv) The limitation of the number of witnesses;

(v) The discovery or production of data or other material.

(d) All participants and counsel will be expected to attend the conference fully prepared for a useful discussion of all problems involved in the proceeding, both procedural and substantive, and fully authorized to make commitments with respect thereto. Such preparation should include, among other things, advance study of all relevant materials, and advance informal communication between the participants, including requests for additional data and information, to the extent it appears feasible and desirable. Failure of a participant to attend such conference, after being served with due notice of the time and place thereof, without good

cause shown, shall constitute a waiver of all objections to the agreements reached, if any, and any order or ruling with respect thereto.

(e) Subsections (a) and (b) supersede 1 Pa. Code §35.112 (relating to conferences to expedite hearings). Subsections (b) and (d) are identical to 1 Pa. Code §35.113 (relating to initiation of conferences).

§5.223. Authority of presiding officer at any conference

(a) The presiding officer at any conference may dispose of any procedural matters which he is authorized to rule upon during the course of the proceeding. In addition, where it appears that the proceeding would be substantially expedited by distribution of proposed exhibits and written prepared testimony reasonably in advance of the hearing session, the presiding officer, at his discretion, and with due regard for the convenience and necessity of the participants, may direct such advance distribution by a prescribed date. The rulings of the presiding officer made at such conference shall control the subsequent course of the hearing, unless modified for good cause shown.

(b) The presiding officer shall have authority to participate in the discussions, to arrange for recording stipulations or agreements reached at conference, to fix the date of initial hearing and the date or dates for additional hearings which may be required to dispose of the proceeding, and otherwise to assist the participants to reach agreement that will expedite the proceeding and serve the ends of justice.

(c) Subsection (a) is identical to 1 Pa. Code §35.114 (relating to authority of presiding officer at conference) and subsection (b) supplements §35.114.

§5.224. Prehearing conferences in rate proceedings

(a) In rate proceedings the presiding officer may schedule all of the following:

- (1) A First Prehearing Conference to establish a schedule for discovery and tentative hearing dates, as well as the matters enumerated in §5.222 (relating to initiation of prehearing conferences);
- (2) A Second Prehearing Conference to consider, inter alia, the possibilities of settlement and the status of discovery.
- (3) Other conferences as are deemed necessary.
- (4) Upon agreement of all the parties, such conferences may be held telephonically.

(b) The First Prehearing Conference should be held as soon as practicable after the entry of the order of investigation. Each participant shall come to the First Prehearing Conference prepared to discuss all of the following:

- (1) a proposed plan and schedule of discovery;
- (2) other proposed orders with respect to discovery;
- (3) tentative scheduling of evidentiary hearings, close of the record, filing of briefs and any other matters deemed appropriate.

(c) At the first prehearing conference, participants may submit a written statement addressing the issues in paragraphs (1)-(3) of subsection (b).

(d) Following the First Prehearing Conference, the presiding officer shall enter an order establishing a tentative set of hearing dates, establishing a plan and schedule for discovery and addressing any other matters deemed necessary.

(e) The Second Prehearing Conference should be scheduled not fewer than ten (10) days prior to the first scheduled evidentiary hearings to do all of the following:

- (1) Resolve outstanding discovery disputes;
- (2) Schedule order of witnesses;
- (3) Incorporate stipulations in record, and
- (4) Resolve any other matters.

(f) Combined with the Second Prehearing Conference should be a Settlement Conference for the purpose of discussing settlement of the case and/or stipulation of certain issues. All participants, except the filing utility, must file and serve on all other participants, on or before the date of the conference, a Statement of Position which identifies the issues as they then appear. Also included shall be a listing of the names and addresses of the witnesses each participant then intends to call and their proposed area of testimony.

(g) The presiding officer, or the Commission, shall have the authority to amend the above requirements

upon his (or its) own motion or that of any participant whenever justice so requires.

(h) The rules applicable to Prehearing and Other Conferences set forth in §§5.221-5.223 (relating to conferences to adjust, settle or expedite proceedings, initiation of prehearing conferences, and authority of presiding officer at conferences) are applicable to prehearing conferences in rate cases except to the extent inconsistent with this section.

SETTLEMENT AND STIPULATIONS

§5.231. Offers of settlement

(a) It is the policy of the Commission to encourage settlements. Nothing contained in these rules shall be construed as precluding any participant in a proceeding from submitting, at any time, offers of settlement or proposals of adjustment, or from requesting conferences for such purpose. Unaccepted proposals of settlement, or of adjustment, or as to procedure to be followed, and proposed stipulations not agreed to, shall not be admissible in evidence against any counsel or participant claiming such privilege.

(b) Subsection (a) is identical to 1 Pa. Code §35.115 (relating to offers of settlement).

§5.232. Stipulations made in conferences

Stipulations and agreements reached at any conference shall be signed or otherwise accepted of record by the participants to the stipulation or agreement, shall be filed with the Commission within such time as shall be ordered by the presiding officer, shall be received in evidence as part of the record of the proceeding, and shall be binding upon such participants with respect to the matters therein stipulated or agreed.

§5.233. Refusal to make admissions or stipulate

(a) If a party attending a conference convened pursuant to these rules refuses to admit or stipulate the genuineness of any documents or the truth of any matters of fact and if the participant requesting the admissions or stipulations thereafter proves the genuineness of any such document or the truth of any such matter of fact, he may apply to the presiding officer for an order requiring the other party to pay him the reasonable expenses incurred in making such proof, including reasonable attorney's fees. Unless the presiding officer finds that there were good reasons for the refusal to admit or stipulate or that the admissions or stipulations sought were of no substantial importance, the order shall be made. An interlocutory appeal may be taken to the Commission immediately from any such order made by a presiding officer. If a party refuses to comply with such order after it becomes final, the agency may strike all or part of such pleadings of such party or limit or deny further participation by such party.

(b) Subsection (a) is identical to 1 Pa. Code §35.116 (relating to refusal to make admissions or stipulate)

§5.234. Presentation and effect of stipulations

(a) Independently of the orders or rulings issued as provided by §§5.221-5.224 (relating to prehearing and other conferences) the participants may stipulate as to any relevant matters of fact or the authenticity of any relevant

documents. Such stipulations may be received in evidence at a hearing, and when so received shall be binding on the participants with respect to the matters therein stipulated.

(b) The Commission may disregard in whole or in part any stipulation of facts under this section but may grant further hearing if requested by a party to the stipulation within 15 days after issuance of a Commission order disregarding the stipulation of fact.

(c) Subsection (a) is identical to 1 Pa. Code §35.155 (relating to presentation and effect of stipulations). Subsection (b) supplements 1 Pa. Code §35.155.

§5.235. Motor Carrier Restrictive Amendments

(a) The participants to motor carrier applications may stipulate as to restrictions or modifications to proposed motor carrier rights. All stipulations in the form of restrictive amendments or modifications shall be in writing, signed by each participant to the stipulation, and a copy submitted to the Secretary of the Commission for insertion into the document folder.

(b) Restrictive amendments shall be binding on the parties but not on the Commission should it determine they are not in the public interest. If a restrictive amendment is not accepted by the Commission, it may remand the matter for appropriate proceedings.

HEARINGS

§5.241. Appearances

(a) The presiding officer before whom the hearing is held shall cause to be entered upon the record all appearances, with a notation on whose behalf each appearance is made.

(b) Subsection (a) supersedes 1 Pa. Code §35.124 (relating to appearances).

§5.242. Order of procedure

(a) In hearings upon applications, formal complaints, or petitions, the complainant, petitioner, or other participant having the burden of proof, as the case may be, shall open and close, unless otherwise directed by the presiding officer. In hearings on investigations and in proceedings which have been consolidated for hearing, the presiding officer may direct who shall open and close.

(b) Intervenors shall follow the participants on whose behalf the intervention is made. Where the intervention is not in support of any original participant, the presiding officer shall designate at what stage such intervenor will be heard.

(c) In proceedings where the evidence is peculiarly within the knowledge or control of another participant, the order of presentation set forth in subsections (a) and (b) may be varied by the presiding officer.

(d) Subsections (a)-(c) supersede 1 Pa. Code §35.125 (relating to order of procedure).

§5.243. Presentation by parties and staff counsel

(a) Parties and staff counsel shall have the right of presentation of evidence, cross-examination, objection, motion, and argument. The taking of evidence and subsequent proceedings shall proceed with all reasonable diligence and with the least practicable delay.

(b) When objections to the admission or exclusion of evidence before the Commission or the presiding officer are made, the grounds relied upon shall be stated briefly. Formal exceptions are unnecessary and shall not be taken to rulings thereon.

(c) The presiding officer may require or allow a factual statement of the scope of any pleading or the position of any participant in the proceeding. Facts admitted of record by any participant or by testimony, exhibits, or in writing, need not be further proved.

(d) The Commission or the presiding officer may limit appropriately the number of witnesses who may be heard upon any issue.

(e) Subsections (a) and (b) are identical to 1 Pa. Code §35.126 (relating to presentation by parties). Subsections (c) and (d) Supplement 1 Pa. Code §35.126.

§5.244. Supporting data for future test year

(a) In discharging its burden of proof under section 315 of the act (relating to burden of proof), a public utility may submit and use data for a future test

year. Such submission shall be in addition to, and not in lieu of, any other data or material required under this title, including the submission requirements for an experienced 12-month test period. Where a future test year is used, it 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. Estimates for a future test year shall be of the same or similar type, quantum, and nature as required to be submitted for an experienced test year and shall include the methodology, data, and material used as the basis for the estimates.

(b) Where a public utility submits and uses data for a future test year, it shall, during the course of the proceeding, submit for the record the results of its actual experience in the future test year for each quarter starting with the day following the end of the required experienced 12-month period. Such results shall be submitted within 30 days of the end of the quarter or as soon thereafter as available.

§5.245. Failure to appear, proceed, or maintain order in proceedings.

(a) After being duly notified, any participant who fails to be represented at a scheduled conference or hearing in any proceeding shall be deemed to have waived the opportunity to participate in such conference or hearing, and shall not be permitted thereafter to reopen the disposition of any matter accomplished at such conference or hearing, or to recall for further examination of witnesses who were

excused, unless the presiding officer determines that the failure to be represented was unavoidable and that the interests of the other participants and of the public would not be prejudiced by permitting such reopening or further examination. Counsel shall be expected to go forward with the examination of witnesses at the hearing in accordance with §5.242 (relating to order of procedure), or as has been otherwise stipulated or has been directed by the presiding officer.

(b) If the actions of a participant in any proceeding are determined by the Commission or the presiding officer after due notice and opportunity for hearing, to be obstructive to the orderly conduct of the proceeding and inimical to the public interest, the Commission or the presiding officer may take any appropriate action, including but not limited to, where appropriate, dismissal of the complaint, application, or petition, if the action is that of complainant, applicant, or petitioner.

TRANSCRIPT

§5.251. Recording of proceedings.

(a) Where required by law, hearings will be stenographically reported by the Commission's official reporter. The transcript of such report will be a part of the record and the sole official transcript of the proceeding. Such transcripts shall include a verbatim report of the hearings and nothing shall be omitted therefrom except as is directed by the presiding officer. After the closing of the

record, there shall not be received in evidence or considered as part of the record any document except as provided in §5.404 (relating to additional evidence) or changes in the transcript as provided in §5.252 (relating to transcript corrections).

(b) Subsection (a) is identical to 1 Pa. Code §35.131 (relating to recording of proceedings).

§5.252. Transcript corrections.

(a) Corrections in the official transcript may be made only to make it conform to the evidence presented at the hearing and to speak the truth.

(b) No correction of any transcript of testimony shall be made except upon either written request within 15 days after the transcript has been filed with the Commission, or upon written stipulation by all participants of record filed within 20 days after the transcript has been filed with the Commission, unless such correction is made at another time upon permission of the presiding officer granted prior to the closing of the record.

(c) Subsections (a) and (b) supersede 1 Pa. Code §35.132 (relating to transcript corrections).

§5.253. Copies of transcripts

(a) Any party or other person desiring copies of the transcript may obtain copies from the official reporter upon payment of the fees fixed therefore.

(b) Subsection (a) supersedes 1 Pa. Code §35.133 (relating to copies of transcripts).

Subchapter C. INTERLOCUTORY REVIEW

§5.301. Interlocutory review generally

(a) The Commission will not permit interlocutory review of rulings of presiding officers, made during the course of proceedings, except upon petition alleging extraordinary circumstances and as hereinafter specified in this subchapter.

(b) Subsection (a) supersedes 1 Pa. Code §35.190 (relating to appeals to agency head from rulings of presiding officers).

§5.302. Petition for commission review and answer to a material question.

(a) During the course of a proceeding, a participant may submit a timely petition to the Secretary of the Commission requesting the Commission's review and answer to a material question which has arisen or is likely to arise. The petition shall be in writing with copies served on all participants and the presiding officer and shall state, in not more than one page, the question to be answered and the compelling reasons why interlocutory review will prevent substantial prejudice or expedite the conduct of the proceeding.

(b) Within seven days of service of the petition, each participant may submit a brief to the Secretary supporting or opposing the petition and addressing the merits of the question for which an answer is requested and whether a stay of proceedings is required to protect the substantial rights of any participant. The brief shall not exceed fifteen (15) pages.

(c) The participant petitioning for Commission review and answer shall also provide with the above brief, any rulings on its question, and such extracts from the record as will assist the Commission in reaching a decision.

(d) No additional briefs are permitted unless directed by the Commission.

§5.303. Commission action on petition for review and answer

(a) Within thirty (30) days of receipt of the petition by the Secretary, the Commission will, without permitting oral argument do one of the following:

- (1) continue, revoke, or grant a stay of proceedings if necessary to protect the substantial rights of any of the participants.
- (2) determine that the petition was improper and return the matter to the presiding officer;
- (3) decline to answer the question; or
- (4) answer the question.

(b) The Commission will act promptly on all such petitions. Petitions for Commission review and answer which are not granted within thirty (30) days of filing shall be deemed to be denied.

§5.304 Interlocutory Review of Discovery Matters

(a) Unless otherwise ordered by the Commission in exceptional situations, rulings of presiding officers on discovery are not subject to interlocutory review absent certification by the presiding officer that the ruling

involves an important question of law or policy that should be resolved immediately by the Commission, except that an order of a presiding officer regarding the deposing of a Commissioner or Commission employe will be subject to interlocutory appeal to the Commission as provided in §§5.301-5.303 (relating to interlocutory review generally, petition for Commission review and answer to a material question, Commission action on petition for review and answer).

(1) Participants desiring interlocutory review of a presiding officer's ruling on discovery shall, within three days of such ruling, petition the presiding officer to certify the question to the Commission. The request shall be in writing with copies served on all participants and shall state, in not more than one page, the question to be certified and the reasons why interlocutory review will prevent substantial prejudice or expedite the conduct of the proceedings.

(2) Within seven days of any request for certification, each participant may submit a brief to the presiding officer supporting or opposing certification and, in addition, addressing the merits of the question for which certification is requested and whether a stay or proceedings is required to protect the substantial rights of any participant.

(3) The presiding officer shall, within three days of the deadline for filing briefs, announce his decision in writing or orally on the record, with the reasons why certification has been granted or denied and whether a stay of proceedings has been granted.

(4) Unless the moving participant has withdrawn the request for certification, the presiding officer shall, within four days of the announcement of his decision, deliver to the Secretary of the Commission the certified question, the reasons justifying certification, any rulings on the certified question, and such extracts from the record as will assist the Commission in reaching a decision.

(b) Each participant may, on or before the date the presiding officer is required to deliver the certification to the Secretary, submit a brief, not to exceed 15 pages, to the Secretary addressing the issue of certification, the merits of the certified question, and the stay of proceedings. No additional briefs are permitted unless directed by the Commission.

(c) Upon the expiration of the time provided for filing briefs, the Secretary will schedule the certified question for consideration at the next meeting of the Commission.

(d) Within thirty (30) days of receipt of the certified question by the Secretary, the Commission will, without permitting oral argument do one of the following:

- (i) continue, revoke, or grant a stay of proceedings;
- (ii) determine that the certification was improper and return the matter to the presiding officer for resolution; or
- (iii) answer the certified question.

An interlocutory appeal from the ruling of the presiding officer on discovery shall not result in a stay of the proceedings except upon a finding by the presiding

officer or the Commission that extraordinary circumstances exist, or to protect the substantial rights of the participants.

§5.305. Notification by telephone

Presiding officers may order notification of participants by telephone when appropriate. Because time periods provided in these rules are short and delivery by mail may not prove adequate in all situations.

Subchapter D. DISCOVERY

GENERAL

§5.321. Scope

(a) Applicability. This chapter applies to on the record proceedings brought by or before the Commission. The presiding officer may vary provisions of this subchapter as justice requires.

(b) Scope generally. Subject to this subchapter, a participant may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of another party or participant, including the existence, description, nature, content, custody, condition and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of a discoverable matter. It is not ground for objection that the information sought will be inadmissible at hearing if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

(c) Exceptions. This subchapter shall not apply to discovery sought of Commissioners or Commission staff serving in an advisory or adjudicatory capacity.

(d) Commission staff. This subchapter shall apply equally to Commission staff serving in a prosecutory or party capacity in proceedings before the Commission, with no exceptions other than as specifically set forth in this chapter.

(e) Purpose and methods. A participant may obtain discovery for the purpose of preparation of pleadings, or for preparation or trial of a case, or for use at a proceeding initiated by petition or motion, or for any combination of these purposes, by one or more of the following methods:

(1) Depositions upon oral examination or written questions.

(2) Written interrogatories to a participant.

(3) Production of documents and things and entry for inspection and other purposes.

(4) Requests for admission.

(5) On the record data requests.

(f) Supersession. Subsections (a)-(e) supersede 1 Pa. Code §35.145 (relating to depositions).

§5.322. Informal agreement regarding discovery or deposition procedure.

The participants may by agreement provide that depositions may be taken before a person, at any time or place, upon any notice, and in any manner, and when so taken may be used like other depositions. The participants may modify the procedures provided by this chapter for methods of discovery and, notwithstanding any provisions of this subchapter, participants are encouraged to exchange information on an informal basis.

§5.323. Trial preparation material.

(a) Generally. Subject to this subchapter, a participant may obtain discovery of any matter discoverable under §5.321(b) (relating to scope) even though prepared in anticipation of litigation or hearing by or for another participant or by or for that other participant's representative, including his attorney, consultant or agent. The discovery shall not include disclosure of the mental impressions of a participant's attorney or his conclusions, opinions, memoranda, notes, summaries, legal research or legal theories. With respect to the representative of a participant other than the participant's attorney, discovery shall not include disclosure of his mental impressions, conclusions or opinions respecting the value or merit of a claim or defense or respecting strategy or tactics or preliminary or draft versions of written testimony or exhibits, whether or not final versions of the testimony or exhibits are offered into evidence.

(b) Statements. Upon written request, a participant is entitled to immediate receipt of a photostatic copy or like reproduction of a statement concerning the action or its subject matter previously made by that participant, another participant or a witness. If the statement is not provided, the participant may move for an order from the presiding officer. For purposes of this subsection, a statement previously made is one of the following:

(1) A written statement signed or otherwise adopted or approved by the person making it; or

(2) A stenographic, mechanical, electrical or other recording, or a transcription thereof, which is a substantially verbatim recital of an oral statement by the person making it and contemporaneously recorded.

§5.324. Discovery of expert testimony.

(a) Discovery of facts known and opinions held by an expert, otherwise discoverable under §5.321 (relating to scope), may be obtained as follows:

(1) A participant may through interrogatories require both of the following:

(i) The other participant to identify each person whom that participant expects to call as an expert witness at hearing and to state the subject matter on which the expert is expected to testify.

(ii) The other participant to have each expert so identified by him state the substance of the facts and opinions to which the expert is expected to testify and a summary of the grounds for each opinion. The participant answering the interrogatories may file as his answer a report of the expert, have the interrogatories answered by his expert or provide written direct testimony of his expert. The answer, separate report or testimony shall be signed by the expert.

(2) Where the participant against whom discovery is sought, under paragraph (1)(ii), responds by the filing of written direct testimony, the response shall be considered timely,

regardless of §5.342 (relating to answers or objections to written interrogatories by a participant), if the written direct testimony is served on all participants at least 10 days prior to the date on which the expert is scheduled to testify or in accordance with the schedule for the submission of written testimony established by the presiding officer. However, he must still comply with paragraph (1)(i) within the time otherwise applicable.

(3) Upon cause shown, the presiding officer may order further discovery by other means, subject to restrictions as to scope and provisions concerning fees and expenses as he may deem appropriate.

(b) If the identity of an expert witness is not disclosed in compliance with subsection (a)(1), he shall not be permitted to testify on behalf of the defaulting participant at hearing. If the failure to disclose the identity of the witness is the result of extenuating circumstances beyond the control of the defaulting participant, the presiding officer may grant a continuance or other appropriate relief.

(c) To the extent that the facts known or opinions held by an expert have been developed in discovery proceedings under subsection (a), his direct testimony at hearing may not be inconsistent with or go beyond the fair scope of his testimony in the discovery proceedings as set forth in his deposition, answer to an interrogatory, separate report, written direct testimony, or supplement thereto. He shall

not be prevented from testifying as to facts or opinions on matters on which he has not been interrogated in the discovery proceedings.

(d) The answering participant may supplement answers only to the extent that facts, or opinions based on those facts, can reasonably be shown to have changed after preparation of the answer or where additional facts or information have become known to the answering participant or where the interest of justice otherwise requires.

(e) Subsections (a)-(d) supersede 1 Pa. Code §35.152 (relating to fees of officers and deponents).

TIMING AND SUPPLEMENTAL RESPONSES

§5.331. Sequence and timing of discovery.

(a) Any participant or any person who has formally applied to the Commission for participant status may conduct discovery. Commission staff may initiate discovery at an earlier time but is subject to the limitation of subsection (b).

(b) Participants shall endeavor to initiate discovery as early in the proceedings as reasonably possible. In rate proceedings, initial discovery directed to data 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 shall be available 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.

(c) Unless the presiding officer upon motion, for the convenience of participants and witnesses and in the interests of justice, orders otherwise, methods of discovery may be used in any sequence and the fact that a participant is conducting discovery shall not operate to delay another participant's discovery.

§5.332. Supplementing responses.

A participant or an expert witness who has responded to a request for discovery with a response that was complete when made is under a duty to supplement his response to include information thereafter acquired, as follows:

(1) A participant is under a duty seasonably to supplement his response with respect to a question directly addressed to the identity and location of persons having knowledge of discoverable matters and the identity of each person expected to be called as an expert witness at hearing, the subject matter on which he is expected to testify and the substance of his testimony as provided in §5.324(a)(1) (relating to discovery of expert testimony).

(2) A participant or an expert witness is under a duty seasonably to amend a prior response if he obtains information upon the basis of which he knows that the response is incorrect or incomplete.

(3) A duty to supplement responses may be imposed by order of the presiding officer, agreement of the participants, or at a time prior to hearing through new requests to supplement prior responses.

TYPES OF DISCOVERY

§5.341. Written interrogatories to a party.

(a) Subject to the limitations provided by §5.361 (relating to limitation of scope of discovery and deposition), any participant may serve upon any other participant written interrogatories to be answered by the participant served or, if the participant served is a public or private corporation or similar entity or a partnership or association, by any officer or agent, who shall furnish such information as is available to the participant.

(b) Interrogatories shall not be filed with the Commission. A copy of interrogatories shall be served on all participants.

(c) Interrogatories may relate to any matters which can be inquired into under §§5.321, 5.323 and 5.324 (relating to scope, trial preparation material, discovery of expert testimony) and may include requests that the answering party provide copies of documents without making a separate request for the production of documents pursuant to §5.349.

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

(a) Answers to an interrogatory shall be in writing and each answer shall identify the name and position of the person who provided the answer. Answers shall be submitted as such and shall not be submitted as exhibits or in any other form. Interrogatories shall be answered fully and completely

unless an objection is made. The answer shall first restate the interrogatory which is being answered.

(b) Answers may be used by any participant for any appropriate purpose, so far as admissible under the applicable rules of evidence; however, answers shall not be offered into evidence by the participant who provided them, except through the sworn oral testimony of the person who provided the answer.

(c) If objected to, the reasons for the objection to an interrogatory shall be stated in lieu of an answer. Objections shall be prepared, filed and served in the same manner provided for answers, except that objections shall be contained in a document separate from answers as required by the time provisions of paragraph (d). Objections shall identify the interrogatory or part thereof deemed objectionable and the specific ground for the objection. The objection shall include a description of the facts and circumstances purporting to justify the objection. Objections shall be signed by the attorney making them. An interrogatory otherwise proper is not objectionable solely because an answer will involve an opinion or contention that related to a fact or the application of law to fact. The statement of an objection shall not excuse the answering participant from answering remaining interrogatories or subparts of interrogatories to which no objection is stated.

(d) The answering participant shall serve the interrogatories and answers within 15 days for rate proceedings,

and 20 days after service of the interrogatories for all other cases. Time periods may be modified by the presiding officer, on motion or by agreement of the participants. Objections shall be served within 10 days of service of the interrogatories, except as agreed by the participants or as ordered by the presiding officer. Within the time periods prescribed above, the answering or objecting participant shall serve copies of the answers or objections on all other participants and shall file with the Secretary a certificate of service, which shall identify specifically the interrogatories to which answers or objections have been provided. The participant against whom the interrogatories are directed shall remain under a duty to meet the time requirements for answering or objecting to all interrogatories or subparts of interrogatories for which the time period for response has not been modified specifically.

(e) The participant submitting the interrogatories may move that the presiding officer dismiss an objection and direct that the interrogatory be answered. 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.

§5.343. Procedures in deposition by oral examination.

(a) A participant desiring to take the deposition of a person upon oral examination shall give 15 days notice in writing to every other participant to the action and to the

presiding officer. A participant, or witness within the control of a participant, noticed to be deposed shall be required to appear without subpoena. A nonparticipant shall not be required to appear unless subpoenaed.

(b) The notice shall conform with the requirements of subsections (c) and (f) and of §5.344 (relating to approval by presiding officer) and shall state the time and place of taking the deposition and the name and address of each person to be examined if known, and if the name is not known, a general description sufficient to identify him or the particular class or group to which he belongs.

(c) The notice shall include a brief statement of the matters to be inquired into.

(d) If the person to be examined is a participant, the notice may include a request made in compliance with §5.349 (relating to requests for documents, entry for inspection and other purposes) for the production of documents and tangible things at the taking of the deposition. If the person to be examined is not a participant, and is to be served with a subpoena duces tecum to produce designated materials, the notice shall specify the materials to be produced.

(e) A participant may in his notice and in a subpoena, if issued, name as the deponent a public or private corporation, a partnership or association, or a governmental agency. In that event, the organization named shall serve a designation of one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth,

for each person designated, the matters on which he will testify. A subpoena shall advise a nonparticipant organization of its duty to make a designation. The person designated shall testify as to matters known or reasonably available to the organization. This subsection does not preclude taking a deposition by other procedures authorized in this chapter.

(f) Subsections (a)-(g) supersede 1 Pa. Code §§35.142, 35.145 and 35.146 (relating to subpoenas, depositions and notice and application).

§5.344. Approval by presiding officer.

(a) Notice of the deposition served upon the presiding officer, under §5.343(a) (relating to procedure in deposition by oral examination), shall constitute an application for an order to take a deposition under section 333(b) of the act (relating to prehearing procedures). The copy served on the presiding officer shall contain the following addendum:

"Application granted. So Ordered this _____ day of _____."
and shall bear a signature line for the presiding officer.

(b) The application shall be granted by the presiding officer, except as provided in §§5.324(a)(3) (relating to discovery of expert testimony), 5.343(f) (relating to procedure in deposition by oral examination) or subsection (c), unless objected to within 10 days by any participant. The presiding officer shall consider timely filed objections and §§5.324(a)(3) and 5.343(f) and subsection (c) before granting the application.

(c) If a participant provides notice scheduling the taking of a deposition prior to an expiration of 20 days after initiation of the proceedings, he shall set forth the facts requiring the expedited discovery, and the presiding officer shall consider whether expedited discovery is warranted.

(d) Subsections (a)-(c) supersede 1 Pa. Code §35.147 (relating to authorization of taking deposition).

§5.345. Procedure on depositions by written questions.

(a) A participant taking a deposition by written questions shall serve the questions upon the deponent and serve a copy upon each other participant or his attorney of record. Within 30 days thereafter the participant served and other participants may serve cross questions upon the deposing participant and upon each other participant or his attorney of record. Reply questions shall be similarly served by a participant within 10 days of the service of cross questions.

(b) The questions shall contain a notice stating the name and address of each person to be examined if known, and, if the name is not known, a general description sufficient to identify him or the particular class or group to which he belongs. A deposition upon written questions may be taken of a public or private corporation, a partnership or association, or a governmental agency in accordance with §5.343(e) (relating to procedure in deposition by oral examination).

(c) Objections to the form of questions are waived unless filed and served upon the participant propounding them

within the time allowed for serving the succeeding cross or other questions or within 10 days after service of the last questions. Other objections may be made at the trial except as otherwise provided by §§5.346-5.348 (relating to persons before whom depositions may be taken, taking of depositions - objections, transcript of deposition, objections and filing).

(d) A copy of questions for the taking of a deposition, as well as a signature page and envelope bearing the caption and marked "Deposition of _____" (name of witness, shall be transmitted to the person being deposed who shall complete, certify and file the deposition with or send it by registered mail to the Secretary attaching thereto the copy of the questions.

(e) When the deposition is filed or received by the Secretary, he shall promptly give notice thereof to participants.

(f) After the service of questions and prior to the taking of the testimony of the deponent, the presiding officer, on motion promptly made by a participant or a deponent, may make an order in accordance with §5.155 or an order that the deposition shall not be taken except upon oral examination.

§5.346. Persons before whom depositions may be taken.

(a) Within the United States or within a territory or insular possession subject to the dominion of the United States, depositions other than by interrogatories shall be taken before an officer authorized to administer oaths by the laws of the United States, of this Commonwealth or of the

place where the examination is held, or before a person appointed by the presiding officer. A person so appointed shall have power to administer oaths and take testimony.

(b) No deposition shall be taken before a person who is a relative, employe or attorney of any of the parties, or who is a relative or employe of the attorney, or who is financially interested in the action.

(c) Depositions by written questions need only be answered under oath and notarized.

(d) Attendance of a witness at a deposition may be compelled by subpoena.

(e) Subsections (a)-(d) supersede 1 Pa. Code §35.148 (relating to officer before whom deposition is taken).

§5.347. Taking of depositions - objections.

(a) Objection to taking a deposition because of the disqualification of the person before whom it is to be taken is waived unless made before the taking of the deposition begins or as soon thereafter as the disqualification becomes known or could be discovered with reasonable diligence.

(b) Objections to the competency of a witness or to the competency, relevancy, or materiality of the testimony are not waived by failure to make them before or during the taking of the deposition, unless the ground of the objection is one which was known to the objecting participant and which might have been obviated or removed if made at that time.

(c) Errors and irregularities occurring at the oral examination in the manner of taking the deposition, in the form

of oral questions or answers, in the oath or affirmation, or in the conduct of participants and errors of any kind which might have been obviated, removed, or cured if objections had been promptly made, are waived unless reasonable objection is made at the taking of the deposition.

(d) All errors and irregularities in the notice for taking a deposition are waived unless written objection is served upon the participant giving the notice under §5.344 (relating to approval by presiding officer).

(e) Subsections (a)-(d) supersede 1 Pa. Code §35.151 (relating to status of deposition as part of record).

§5.348. Transcript of deposition, objections and filing.

(a) The person before whom the deposition is taken shall put the witness on oath or affirmation and shall personally, or by someone acting under his direction and in his presence, record the testimony of the witness.

(b) The testimony of the witness shall be transcribed. Objections to the manner of preparation or the correctness of the transcript are waived unless they are filed in writing with the presiding officer promptly after the grounds of objection become known or could have been discovered with reasonable diligence.

(c) When the testimony is fully transcribed, a copy of the deposition with the original signature page shall be submitted to the witness for inspection and signing and shall be read to or by him and shall be signed by him unless the

witness is ill or cannot be found or refuses to sign. Changes which the witness desires to make shall be entered upon the deposition by the person before whom it was taken with a statement of the reasons given by the witness for making the changes. If the deposition is not signed by the witness within 30 days of its submission to him, the person before whom the deposition was taken shall sign it and state on the record why it was not signed. The deposition may then be used as fully as though signed, unless the presiding officer holds that the reasons given for the refusal to sign require rejection of the deposition in whole or in part.

(d) The person before whom the deposition is taken shall certify on the deposition that the witness was sworn by him and that the deposition is a true record of the testimony given by the witness. He shall then securely seal the deposition in an envelope endorsed with the caption of the action and marked "Deposition of (name of witness)" and shall promptly send it by registered mail to the Secretary for filing.

(e) In lieu of participating in the oral examination, participants served with notice of taking a deposition may transmit written questions to the person taking the deposition, who shall propound them to the witness and record the answers verbatim.

(f) Upon payment of reasonable charges, the person before whom the deposition was taken shall furnish a copy thereof to any participant or to the deponent.

(g) Subsections (a)-(f) supersede 1 Pa. Code §35:149 (relating to oaths and reduction to writing).

§5.349. Requests for documents, entry for inspection and other purposes.

(a) A participant may serve on another participant a request for either of the following:

(1) To produce and permit the participant making the request, or someone acting on his behalf, to inspect and copy designated documents - including writings, drawings, graphs, charts, photographs, phonorecords, and other compilations of data from which information can be obtained, translated, if necessary, by the respondent through detection devices into reasonably usable form - or to inspect a copy, test or sample any tangible things which constitute or contain matters within the scope of §§5.321(b), 5.323 and 5.324 (relating to scope, trial preparation material and discovery of expert testimony) and which are in the possession, custody or control of the participant upon whom the request is served; or

(2) To permit entry upon designated land or other property in the possession or control of the participant upon whom the request is served for the purpose of inspecting and measuring, surveying, photographing, testing, or sampling the property or any designated object or operation thereon, within the scope of §§5.321(b), 5.323 and 5.324 (relating to scope, trial preparation material and discovery of expert testimony):

(b) As an alternative to permission to inspect and copy, and if requested by the participant seeking discovery, the participant party against whom discovery is sought shall reproduce the designated documents at the requesting participant's expense. Regulated utilities shall provide copies of requested materials to Commission staff and the Office of Consumer Advocate at no charge.

(c) The request shall set forth the items to be inspected either by individual item or by category, describe items and categories with reasonable particularity, and specify a reasonable time, place, and manner of making the inspection and performing the related acts.

(d) The participant upon whom the request is served shall serve a written response within 15 days for rate proceedings, and 20 days after service of the request for all other cases. Time periods may be modified by the presiding officer, on motion, or by agreement of the participants. The response shall state that inspection and related activities will be permitted as requested. If the request is objected to, such objection shall be made in the manner described in §5.342. A participant may request another participant to produce or inspect documents as part of interrogatories filed pursuant to §5.341. The participant submitting the request may move for an order under §5.342(e) with respect to any objection or to other failure to respond to the request or any part thereof, or failure to permit inspection as requested.

(e) This section shall not apply to official files of the Commission, or materials which are the product of or within the control of Commission advisory or adjudicatory staff, but shall apply only to materials within the control of staff as may be participating in the action as a participant. Access to official files of the Commission shall be as prescribed in §§1.71-1.77 (relating to public access to Commission records).

§5.350. Request for admissions.

(a) A participant may serve upon another participant a written request for the admission of the truth of any matters, within the scope of §5.321-§5.324 (relating to discovery), set forth in the request, that relate to statements or opinions of fact or of the application of law to fact, including the genuineness, authenticity, correctness, execution, signing, delivery, mailing or receipt of any document described in the request. Copies of documents shall be served with the request unless they have been or are otherwise furnished or available for inspection and copying.

(b) Each matter of which an admission is requested shall be separately set forth. The matter is admitted unless, within 20 days after service of the request, the participant to whom the request is directed answers or makes an objection to the matter, signed by the participant or by his attorney. If objection is made, the reasons shall be stated. The answer shall admit or deny the matter or set forth in detail the reasons why the answering participant cannot truthfully do so. A denial shall fairly meet the substance of the requested

admission, and when good faith requires that a participant qualify his answer or deny only a part of the matter of which an admission is requested, he shall specify so much of it as is true and qualify or deny the remainder. An answering participant may not give lack of information or knowledge as a reason for failure to admit or deny unless he states he has made reasonable inquiry and that the information known or readily obtainable by him is insufficient to enable him to admit or deny. A participant who considers that a matter of which an admission has been requested presents a genuine issue for hearing may not, on that ground alone, object to the request.

(c) The participant who has requested the admission may move to determine the sufficiency of the answer or objection. Unless the presiding officer determines that an objection is justified, he shall order that an answer be served. If the presiding officer determines that an answer does not comply with the requirements of this section, he may order either that the matter is admitted or may determine that final disposition of the request be made at a prehearing conference or at a designated time prior to hearing.

(d) Any matter admitted under this section is conclusively established unless the presiding officer on motion permits withdrawal or amendment of the admission. An admission by a participant under this section is for the purpose of the pending action only and is not an admission by him for any other purpose. An admission may not be used against a participant in any other proceeding.

§5.351. On the record data requests.

During the course of a rate proceeding a participant may request that a witness provide information or documents at a later time as part of the witness' response to a question posed during cross-examination. Such a request may be made orally or in writing so long as the written request is presented at the time the witness appears for cross-examination. An oral request may be confirmed in writing by the participant making the request. The procedures for written interrogatories in §5.342 shall be applicable to on the record data requests except that answers shall be supplied as soon as possible after the request but in any event no later than 10 days after the request is made, unless the presiding officer modifies the time period for good cause shown. Any objections to such a request must be made at the time that the request is made. Limitations established in or pursuant to §§5.321, 5.322, 5.323 and 5.331(b) shall be applicable to on the record data requests.

LIMITATIONS

§5.361. Limitation of scope of discovery and deposition.

(a) No discovery or deposition shall be permitted which:

- (1) Is sought in bad faith;
- (2) Would cause unreasonable annoyance, embarrassment, oppression, burden or expense to the deponent or any person or participant;

(3) Relates to matter which is privileged;

(4) Would require the making of an unreasonable investigation by the deponent or a participant or witness.

(b) In rate proceedings, discovery shall not be limited pursuant to paragraph (a) solely because the discovery request requires the compilation of data or information which the answering participant does not maintain in the format requested, in the normal course of business, or because the discovery request requires that the answering participant make a special study or analysis, if such a study or analysis cannot reasonably be conducted by the participant making the request.

§5.362. Protective orders.

(a) Upon motion by a participant or by the person from whom discovery or deposition is sought, and for good cause shown, the presiding officer may make an order which justice requires to protect a participant or person from unreasonable annoyance, embarrassment, oppression, burden or expense, including one or more of the following:

(1) That the discovery or deposition shall be prohibited.

(2) That the discovery or deposition shall be only on specified terms and conditions, including a designation of the method, time or place.

(3) That the scope of discovery or deposition shall be limited and that certain matters shall not be inquired into.

(4) That discovery or deposition shall be conducted with no one present except persons designated by the presiding officer.

(5) That a deposition shall be sealed and shall be opened only by order of the presiding officer.

(6) That the participants simultaneously shall file specified documents or information enclosed in sealed envelopes to be opened as directed by the presiding officer.

(7) That a trade secret or other confidential research, development or commercial information shall not be disclosed or be disclosed only in a designated way.

(b) If the motion for a protective order is denied in whole or in part, the presiding officer may order that a participant or person provide or permit discovery.

(c) At any time during the taking of a deposition on motion of a participant or of the deponent, the presiding officer or other administrative law judge may order the officer conducting the examination to cease from taking the deposition, or may limit the scope and manner of the taking of the deposition as provided in subsection (a). Upon demand of the objecting participant or deponent, the taking of the deposition shall be suspended for the time necessary to make a motion for an order and to obtain the presiding officer's ruling.

§5.363. Stay of proceedings.

The filing of a motion for a protective order shall stay the deposition, production, entry on land or other discovery to which the motion is directed until the presiding officer rules on the motion or for a period of 10 days, whichever is shorter, where the presiding officer does not rule on the motion by the tenth day after its filing, the stay shall be deemed lifted and the discovery shall proceed.

§5.364. Use of depositions at hearing.

(a) At hearing, any part or all of a deposition, so far as admissible under 42 Pa. C.S. §§6101-6112 (relating to rules of evidence), may be used against a participant who was present or represented at the taking of the deposition or who had notice thereof if required, in accordance with any one of the following provisions:

(1) A deposition may be used by a participant for the purpose of contradicting or impeaching the testimony of deponent as a witness.

(2) The deposition of a participant or of any one who at the time of taking the deposition was an officer, director, or managing agent of a participant or a person designated under §5.343(e) (relating to procedure in deposition by oral examination) or §5.345(a)(2) (relating to procedure on depositions by written questions) to testify on behalf of a public or private corporation, partnership, association, or governmental agency which is a participant, may be used by an adverse participant for any purpose.

(3) The deposition of a witness, whether or not a participant, may be used by a participant for any purpose if the presiding officer finds one of the following:

(i) That the witness is dead;

(ii) That the witness is outside the Commonwealth, unless it appears that the absence of the witness was procured by the participant offering the deposition;

(iii) That the witness is unable to attend or testify because of age, sickness, infirmity or imprisonment;

(iv) That the participant offering the deposition has been unable to procure the attendance of the witness by subpoena; or,

(v) Upon application and notice that such exceptional circumstances exist as to make it desirable, in the interest of justice and with due regard to the importance of presenting the witnesses in hearing, to allow the deposition to be used.

(4) If only part of a deposition is offered in evidence by a participant, any other participant may require him to introduce all of it which is relevant to the part introduced, and any participant may introduce any other parts.

(b) Subject to §5.347(b) (relating to taking of depositions-objections), objection may be made at the hearing to receiving in evidence deposition for any reason which would require the exclusion of the evidence if the witness were then present and testifying.

(c) A participant shall not be deemed to make a person his own witness for any purpose by taking his deposition. The introduction in evidence of the deposition or a part thereof for a purpose other than that of contradicting or impeaching the deponent makes the deponent the witness of the party introducing the deposition, but this shall not apply to the use by an adverse participant of a deposition as described in paragraph (2). At the hearing a participant may rebut relevant evidence contained in a deposition whether introduced by him or by any other participant.

SANCTIONS

§5.371. Sanctions - when applicable.

(a) The Commission or the presiding officer may, on motion, make an appropriate order if one of the following occur:

(1) A participant fails to appear, answer, file sufficient answers, file objections, make a designation, or otherwise respond to discovery requests, as required under this subchapter; or

(2) A participant deponent or an officer or managing agent of a participant refuses to obey or induces another to refuse to obey an order of a presiding officer respecting discovery, or induces another not to appear.

(b) A failure to act described in subsection (a) may not be excused on the ground that the discovery sought

is objectionable unless the participant failing to act has filed an appropriate objection or has applied for a protective order.

(c) If a deponent refuses to be sworn or to answer a question, the deposition shall be completed on other matters or adjourned, as the proponent of the question may prefer. Thereafter, on reasonable notice to persons affected thereby, the proponent may apply to the presiding officer for an order compelling the witness to be sworn or to answer.

§5.372. Sanctions - types.

(a) The presiding officer, when acting under §5.371 (relating to sanctions - when applicable) may make one of the following:

(1) An order that the matters regarding which the questions were asked, or the character or description of the thing or land, or the contents of the paper, or other designated fact shall be taken to be established for the purposes of the action in accordance with the claim of the party obtaining the order;

(2) An order, refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting him from introducing in evidence designated documents, things or testimony;

(3) An order striking out pleadings or parts thereof, staying further proceedings until the order is obeyed, or entering a judgment against the disobedient participant or party advising the disobedience; or

(4) An order with regard to the failure to make discovery as is just.

(b) In addition to the sanctions described in paragraph (a), in rate proceedings, when a participant fails to answer discovery requests on the date due, the presiding officer may issue an order that the hearing schedule be modified, or that the deadline for the filing of other participants' written testimony be extended, or that provides such other relief as will allow the other participants a sufficient and reasonable opportunity to prepare their cases.

(c) A witness whose identity has not been revealed as provided in this chapter shall not be permitted to testify on behalf of the defaulting party at hearing on the action. If the failure to disclose the identity of the witness is the result of extenuating circumstances beyond the control of the defaulting participant, the presiding officer may grant a continuance or other appropriate relief.

§5.373. Subpoenas:

(a) If issuance of a subpoena is required by operation of this chapter, or because a participant or witness has not otherwise appeared, issuance of the subpoena shall be in accordance with §5.421 (relating to subpoenas).

(b) Subsection (a) supersedes 1 Pa. Code §35.142 (relating to subpoenas).

Subchapter E. Evidence and Witnesses

EVIDENCE

§5.401. Admissibility of evidence.

(a) Relevant and material evidence is admissible subject to objections on other grounds, but there shall be excluded such evidence as is unduly repetitious or cumulative, or such evidence as is not of the kind which would affect reasonable and fair-minded men in the conduct of their daily affairs.

(b) Subsection (a) is identical to 1 Pa. Code §35.161 (relating to form and admissibility of evidence).

§5.402. Admission of evidence.

(a) Any participant shall move the admission of evidence into the record upon presentation of the sponsoring witness, and after opportunity for other participants to examine the qualifications of the witness.

(b) In order for an exhibit to be received into evidence, it shall be marked for identification and moved into evidence. If a motion to move an exhibit into evidence is made after the close of the record, it shall be in writing and be subject to the same objections which could have been made at the hearing.

(c) Subsections (a) and (b) supersede 1 Pa. Code §35.162 (relating to reception and ruling on evidence).

§5.403. Control of receipt of evidence.

(a) The presiding officer shall have all necessary authority to control the receipt of evidence, including the following:

(1) Ruling on the admissibility of evidence;
(2) Confining the evidence to the issues in the proceeding and impose, where appropriate:

(i) Limitations on the number of witnesses to be heard;

(ii) Limitations of time and scope for direct and cross examinations;

(iii) Limitations on the production of further evidence; and

(iv) Any other necessary limitation(s).

(b) The presiding officer shall actively employ these powers to direct and focus the proceedings consistent with due process.

(c) Subsections (a) and (b) supersede 1 Pa. Code §35.127 (relating to limiting number of witnesses), 35.162 (relating to reception and ruling on evidence) and 35.163 (relating to designation of relevant portions of documentary evidence).

§5.404. Additional evidence.

(a) At any stage of the hearing or thereafter the Commission or the presiding officer may call for further admissible evidence upon any issue and require that such evidence be presented by the participant(s) concerned, either at that hearing or at the adjournment thereof.

(b) Subsection (a) supersedes 1 Pa. Code §35.128 (relating to additional evidence).

§5.405. Effect of Pleadings.

(a) Applications, complaints, orders to show cause and answers thereto and similar formal documents upon which hearings are fixed shall, without further action, be considered as part of the record as pleadings.

(b) In no event, except in the case of a non-contested proceeding, shall such pleadings, or any part thereof, be considered as evidence of any fact other than that of filing thereof unless offered and received into evidence.

(c) Subsections (a) and (b) are identical to 1 Pa. Code §35.125(d) (relating to order of procedure).

§5.406. Public documents.

(a) A report, decision, opinion or other document or part thereof, need not be produced or marked for identification, but may be offered in evidence as a public document by specifying the document or part thereof and where it may be found, if the document is either of the following:

(1) A report or other document on file with the Commission; or

(2) An official report, decision, opinion, published scientific or economic statistical data or similar public document which is issued by any governmental department, agency, committee, commission or similar entity which is shown by the offeror to be reasonably available to the public.

(b) Upon the request of a participant and at the direction of the presiding officer or the Commission, a party who incorporates by reference any pleading must provide a copy of that pleading to the participant requesting one.

(c) Subsections (a) and (b) supersede 1 Pa. Code §35.165 (relating to public documents) and 35.166 (relating to prepared expert testimony).

§5.407. Records of other proceedings.

(a) When any portion of the record in any other proceeding before the Commission is offered in evidence and shown to be relevant and material to the instant proceeding, a true copy of such record shall be presented in the form of an exhibit, together with additional copies as provided in §5.409 (relating to copies and form of documentary evidence), unless both of the following occur:

(1) The participant offering such record agrees to supply, within a period of time specified by the Commission or the presiding officer, such copies at his own expense, if any, when so required;

(2) The portion is specified with particularity in such manner as to be readily identified, and upon motion is admitted into evidence by reference to the records of the other proceedings.

(b) Subsection (a) is identical to 1 Pa. Code §35.167 (relating to records in other proceedings).

§5.408. Official and Judicial notice of fact.

(a) Official notice or judicial notice of facts may be taken by the Commission or the presiding officer. When the decision of the Commission or the presiding officer rests on official notice or judicial notice of a material fact not appearing in the evidence in the record, upon notification that facts are about to be or have been noticed, any party adversely affected shall have the opportunity upon timely request to show that the facts are not properly noticed or that alternative facts should be noticed. The commission or the presiding officer in its discretion shall determine whether written presentations suffice, or whether oral argument, oral evidence, or cross-examination is appropriate in the circumstances. The Commission or presiding officer may also give official notice as that term is defined in §331(g) of the Act, 66 Pa. C.S. §331(g).

(b) Subsection (a) is identical to 1 Pa. Code §35.173 (relating to official notice of facts).

§5.409. Copies and form of documentary evidence.

(a) Except as otherwise provided in these rules, when exhibits of a documentary character are offered in evidence, copies shall be furnished to the presiding officer and to the participants present at the hearing, unless the presiding officer otherwise directs. Two copies of each exhibit of documentary character shall be furnished for the use of the Commission unless otherwise directed by the presiding officer.

(b) Whenever practicable, all exhibits of a documentary character received in evidence shall be on paper of good quality and so prepared as to be plainly legible and durable, whether printed, typewritten or otherwise reproduced, and shall conform to the requirements of Chapter 1 (relating to documentary filings) whenever practicable.

(c) Subsection (a) is identical to 1 Pa. Code §35.169 (relating to copies to parties and agency), Subsection (b) is identical to 1 Pa. Code §35.168 (relating to form and size of documentary evidence).

WITNESSES

§5.411. Oral examination.

(a) Witnesses shall be examined orally unless the testimony is taken by deposition as provided in §§5.145-5.152 (relating to depositions) or the facts are stipulated in the manner provided in §5.116 (relating to stipulations) or in §5.118 (relating to presentation and effect of stipulations) or the testimony is submitted in prepared written form as provided in §5.140 (relating to expert witnesses). Witnesses whose testimony is to be taken shall be sworn, or shall affirm, before their testimony shall be deemed evidence in the proceeding or any questions are put to them.

(b) Subsection (a) is identical to 1 Pa. Code §35.137 (relating to oral examination).

§5.412. Written testimony.

(a) Use of written testimony in Commission proceedings is encouraged, especially in connection with the testimony of expert witnesses. Written direct testimony is required of expert witnesses testifying in rate cases.

(b) Whenever in the circumstances of a particular case it is deemed necessary or desirable, the presiding officer may direct that expert testimony to be given upon direct examination shall be reduced to the form of prepared written testimony. A reasonable period of time shall be allowed for the preparation of such written testimony.

(c) Written testimony shall be subject to the same rules of admissibility and cross-examination of the sponsoring witness as if it were presented orally in the usual manner.

(d) Except in rate proceedings, cross-examination of the witness presenting written testimony shall proceed at the hearing at which testimony is authenticated if, not less than 20 days prior to the hearing, service is made upon each participant of record, unless the presiding officer for good cause otherwise directs. Unless the Commission by rule or order establishes otherwise, in rate proceedings, the presiding officer shall establish the schedule for the filing and authentication of written testimony, and for cross-examination by other participants.

(e) Written testimony shall normally be prepared in question and answer form; and shall include a statement of the qualifications of the witness, and shall be accompanied by any exhibits to which it relates. All participants offering prepared written testimony shall insert line numbers on each page, in the left-hand margin.

(f) Subsections (a)-(e) supersede 1 Pa. Code §§35.138 (relating to expert witnesses), §35.150 (relating to scope and conduct of examination) and §35.166 (relating to prepared expert testimony).

§5.413. Fees of witnesses.

(a) Witnesses subpoenaed by the Commission shall be paid the same fees and mileage as are paid for like services in the courts of common pleas. Witnesses subpoenaed at the instance of participants shall be paid the same fees by the participant at whose instance the witness is subpoenaed; and the Commission, before issuing any subpoena as provided in §5.174 (relating to subpoenas), may require a deposit of an amount adequate to cover the fees and mileage involved.

(b) Subsection (a) is identical to 1 Pa. Code §35.139 (relating to fees of witnesses).

§5.414. Offers of proof.

(a) An offer of proof may be requested when opposing counsel contends the witness is not competent to testify to the subject matter or that the evidence to be offered is inadmissible. An offer of proof also may be made

when the presiding officer has sustained an objection to the admission of any testimony or tangible evidence. If the proffered evidence is tangible, it shall be marked for identification and shall constitute the offer of proof. If the proffered evidence is oral testimony, the offer of proof shall consist of a summary of the evidence which counsel contends would be adduced by such testimony. The presiding officer may also request a statement of the basis for admissibility of such evidence.

(b) Subsection (a) supersedes 1 Pa. Code §35.190(b) (relating to appeals to agency head from rulings of presiding officers).

SUBPOENAS

§5.421. Subpoenas.

(a) Issuance. Subpoenas for the attendance of witnesses or for the production of documentary evidence, unless directed by the Commission upon its own motion, will issue only upon application in writing to the presiding officer, except that during a hearing in a proceeding, such application may be made orally on the record before the presiding officer, who shall determine the necessity of issuing the subpoena. The written application shall specify as nearly as possible the general relevance, materiality, and scope of the testimony or documentary evidence sought, including, as to documentary evidence, specification as

nearly as possible of the documents desired and the facts to be proved by them in sufficient detail to indicate the necessity of the documents.

(b) Notice to adverse counsel. Each application for a subpoena must be served by the petitioner upon the adverse party, with copies to the presiding officer, all parties of record and the Commission. The application shall contain a notice that any answer thereto shall be filed within five days of service of the application.

(c) Service and return. If service of the subpoena is made by a sheriff or like officer or his deputy, service shall be evidenced by his return thereof. If made by another person, that person shall make affidavit thereof, describing the manner in which service was made, and shall return the affidavit on or with the original subpoena. In case of failure to make service, the reasons for the failure shall be stated on the original subpoena. In making service, a copy of the subpoena shall be exhibited to and left with the person to be served. The original subpoena, bearing or accompanied by the authorized return, affidavit, or statement, shall be returned forthwith to the Secretary of the Commission, or, if so directed on the subpoena, to the presiding officer before whom the person named in the subpoena is required to appear.

(d) Fees of witnesses. Witnesses who are subpoenaed shall be paid fees as provided in §5.413 (relating to fees of witnesses).

(e) Subsections (a)-(d) are identical to 1 Pa. Code §35.142 (relating to subpoenas).

CLOSE OF THE RECORD

§5.431. Close of the record.

(a) Once the record is closed no additional evidence may be introduced or relied upon by any participant unless allowed for good cause shown by the Commission or presiding officer upon motion of a participant, except that transcript corrections may be made consistent with §5.252 (relating to transcript corrections).

(b) Subsection (a) supersedes 1 Pa. Code §§35.231 (relating to reopening on application of party) and 35.232 (relating to reopening by presiding officer).

Subchapter F. PRESIDING OFFICERS

§5.481. Designation of presiding officers.

(a) When evidence is to be taken in a proceeding, either the Commission or its representative appointed according to law, may preside at the hearing.

(b) Subsection (a) is identical to 1 Pa. Code §35.185 (relating to designation of presiding officers).

§5.482. Disqualification of a presiding officer.

(a) A presiding officer may withdraw from a proceeding when he deems himself disqualified in accordance with law, or he may be withdrawn by the Commission for good cause found after timely affidavits alleging personal bias or other disqualification have been filed.

(b) Subsection (a) supersedes 1 Pa. Code §35.186 (relating to disqualification of a presiding officer).

§5.483. Authority of presiding officers.

(a) Presiding officers shall have the authority specified in the Act, subject to this title.

(b) Subsection (a) supersedes 1 Pa. Code §35.187 (relating to authority delegated to presiding officer).

§5.484. Restrictions on duties and activities.

(a) Presiding officers shall perform no duties inconsistent with the Public Utility Code, the rules of the Commission, or with their duties and responsibilities.

(b) Save to the extent required for the disposition of ex parte matters not prohibited by the Public Utility Code, no presiding officer shall consult any person or participant on any fact in issue unless upon notice and opportunity for all participants to participate.

(c) Subsections (a) and (b) are identical to 1 Pa. Code §35.188 (relating to restriction on duties and activities).

§5.485. Manner of conduct of hearings.

(a) It is the duty of the presiding officer to conduct a fair and impartial hearing and to maintain order. Any disregard by participants or counsel of rulings of the presiding officer on matters of order and procedure shall be noted on the record, and where he deems it necessary, shall be made the subject of a special written report to the Commission. In the event that participants or counsel should be guilty of disrespectful, disorderly or contumacious language or conduct in connection with any hearing, the presiding officer immediately may submit to the Commission his report thereon, together with his recommendations, and in his discretion suspend the hearing.

(b) Subsection (a) is identical to 1 Pa. Code §35.189 (relating to manner of conduct of hearings).

§5.486. Unavailability of presiding officer.

(a) If a presiding officer becomes unavailable the Chief Administrative Law Judge may either designate another qualified officer to prepare the initial or recommended decision or cause the record to be certified to the Commission for decision.

(b) Subsection (a) is identical to 1 Pa. Code §35.203 (relating to unavailability of presiding officer).

Subchapter G. BRIEFS

§5.501. Content and form of briefs.

(a) Briefs shall contain the following:

(1) A concise statement or counter-statement of the case.

(2) Where evidence is relied upon by the participant filing the brief, he shall make reference to the pages of the record or exhibits where the evidence appears.

(3) An argument preceded by a summary. The party with the burden of proof shall, in its main or initial brief, completely address, to the extent possible, every issue raised by the relief sought and the evidence adduced at hearing.

(4) A conclusion with requested relief.

(b) Briefs shall also contain the following, if and as directed by the presiding officer:

(1) A statement of the questions involved.

(2) Proposed findings of fact with references to transcript pages or exhibits where evidence appears, together with proposed conclusions of law.

(3) Proposed ordering paragraphs specifically identifying the relief sought.

(c) Exhibits should not be reproduced in the brief, but may, if desired, be reproduced in an appendix to the brief.

(d) Briefs of more than 20 pages shall contain on its front leaves a table of contents with page references and a table of citations, which may be prepared without pagination.

(e) All briefs shall be as concise as possible, and except for briefs in rate cases, shall be limited to 60 pages in length, unless some other limitation is imposed or allowed by the presiding officer. The length of briefs in rate cases shall be controlled by the presiding officer.

(f) Subsections (a)-(e) supersede 1 Pa. Code §35.192 (relating to content and form of briefs).

§5.502. Filing and service of briefs.

(a) An original and nine copies of each brief shall be filed with the Commission in accordance with §1.04 (relating to filing generally) and in care of the New Filing Section, Room B-18.

(b) Except for rate proceedings or as provided by agreement or by direction of the presiding officer, the first or initial brief shall be filed by the participant or participants upon whom rests the burden of proof and the other participant or participants may then respond. If briefs are filed simultaneously, reply briefs may be filed. No additional briefs will be accepted. Each initial brief, responding brief and reply brief shall be filed and served within the time fixed by the presiding officer. If no specific times are fixed, initial briefs shall be filed and served within 30 days after the date of service of notice of

the filing of the transcript and responding briefs or reply briefs shall be filed within 50 days after date of service of the notice of the filing of the transcript.

(c) Briefs not filed and served on or before the dates fixed therefor will not be accepted, except by special permission of the Commission or the presiding officer.

(d) Subsections (a)-(c) supersede 1 Pa. Code §§35.191 and 35.193 (relating to briefs).

Subchapter H: EXCEPTIONS, APPEALS AND ORAL ARGUMENT

§5.531. Certification of record without decision.

(a) If a proceeding is referred to a presiding officer, that officer will normally file a decision. The record will be certified to the Commission without a decision of the presiding officer only as required or allowed by the Commission.

(b) Subsection (a) supersedes 1 Pa. Code §35.201-35.207 (relating to proposed report generally).

§5.532. Oral argument before presiding officer.

(a) When, in the opinion of the presiding officer, time permits and the nature of the proceedings, the complexity or importance of the issues of fact or law involved, and the public interest warrant, such presiding officer may, either on the presiding officer's own motion or at the

request of a participant allow and fix a time for the presentation of oral argument, imposing such limits on the argument as is deemed appropriate.

(b) Subsection (a) supersedes 1 Pa. Code §35.204 (relating to oral argument before presiding officer).

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

(a) Any participant to a proceeding referred to an administrative law judge under Section 331(b) of the Act (relating to powers of Commission and administrative law judges) may file exceptions to the initial decision of the administrative law judge within 15 days after such decision is issued. Such exceptions shall be served on the administrative law judge, as well as on the participants.

(b) In all proceedings not included within subsection (a) exceptions may be filed and served within 15 days after the initial, tentative or recommended decision is issued unless some other exception period is provided.

(c) Exceptions shall be stated in specific, numbered paragraphs. Any supporting reasons for the exceptions shall follow the specific exceptions.

(d) Exceptions shall be concise. The exceptions and supporting reasons shall be limited to 40 pages in length. Statements of reasons supporting exceptions shall, insofar as practicable, incorporate, by reference, relevant passages in previously filed briefs. No separate brief in support of or in reply to exceptions shall be filed.

(e) An original and nine copies of the exceptions shall be filed with the Commission in accordance with §1.04 (relating to filing generally) and in care of the New Filing Section, Room B-18.

(f) Subsections (a)-(e) supersede 1 Pa. Code §§35.211 (relating to procedure to except to proposed report) and 35.212 (relating to content and form of briefs on exceptions).

§5.534. Appeal to the Commission.

(a) Any participant to a proceeding referred to an administrative law judge under Section 331(b) of the Act (relating to powers of Commission and administrative law judges) may appeal to the Commission, from the ruling of the administrative law judge on the exceptions, within 15 days after such ruling is issued. Except where the presiding officer grants any or all of the exceptions, an appeal shall be limited to a single page. Where the presiding officer has granted any or all exceptions, the appeal shall be in the form required by §5.533(c) and (d). Issues raised on appeal shall be limited to issues raised by the exceptions and the ruling on exceptions.

(b) In all other proceedings, Commission review shall be obtained by the filing of exceptions under §5.533(b) (relating to procedure to except to initial, tentative and recommended decisions).

(c) An original and three copies of the appeal shall be filed with the Commission in accordance with §1.04 (relating to filing generally) and to the attention of the New Filing Section, Room B-18.

§5.535. Replies.

(a) Each participant shall have the right to file replies to exceptions in all proceedings before the Commission. Each participant shall have the right to file replies to appeals from rulings on exceptions in which the presiding officer has granted some or all of the exceptions. Such replies shall be filed within ten (10) days of the date of service of the exception or appeal and shall be limited to 25 pages in length and in paragraph form. Such replies shall be concise and shall insofar as is practicable, incorporate by reference, relevant passages in previously filed briefs.

(b) Subsection (a) supersedes 1 Pa. Code §35.211 (relating to replies to exceptions).

§5.536. Effect of failure to file exceptions or appeal.

(a) If no exceptions are filed in a proceeding included within §5.533(a) (relating to procedure to except to initial, tentative and recommended decisions), the decision of the administrative law judge shall become final, without further Commission action, unless, within the 15 day exception period, two or more Commissioners request that the Commission review the decision.

(b) If exceptions are filed under subsection §5.533(a) (relating to procedure to except to initial, tentative and recommended decisions), the ruling on exceptions, together with the underlying decision, shall become final, without further Commission action, unless either an appeal is filed under §5.534 (relating to appeal to the Commission) or two or more Commissioners, within the 15 day exception period, request that the Commission review the ruling on exceptions.

(c) A tentative decision, issued by the Commission, subject to exceptions, shall become final, without further Commission action, if no exceptions are filed under §5.533(a) (relating to procedure to except to initial, tentative and recommended decisions).

(d) Subsections (a)-(c) supersede 1 Pa. Code §35.213 (relating to effect of failure to except to proposed report) and 35.226 (relating to final orders).

§5.537. Rate case settlements.

Except where all parties to a settlement agree, settlements to rate proceedings will be subject to the same right to file exceptions and replies to exceptions provided in this Subchapter H.

§5.538. Oral argument before the Commission.

(a) In a case brought to the Commission by the filing of an appeal, a request for oral argument before the Commission shall be filed in writing together with the appeal.

(b) In a case where exceptions are filed under §5.533(b) (relating to procedure to except to initial, tentative and recommended decisions) any request for oral argument before the Commission shall be filed in writing together with any exceptions to the tentative, recommended or initial decision.

(c) In any case where no tentative, recommended or initial decision will be issued, any request for oral argument before the Commission shall be filed in writing together with the initial or responding brief.

(d) If oral argument is ordered, it shall be limited, unless otherwise specified, to matters properly raised by the briefs.

(e) Subsections (a)-(d) supersede 1 Pa. Code §§35.214 and 35.221 (concerning oral argument before agency head).

§5.539. Withdrawal of appeals.

An appeal to the Commission from a ruling on exceptions may be withdrawn at any time, making the previous decision and ruling, if not otherwise subject to Commission review, final, effective upon the filing of a notice of withdrawal.

Subchapter I. REOPENING, RECONSIDERATION AND REHEARING

§5.571. Reopening prior to a final decision.

(a) At any time after the record is closed but before a final decision is issued, any participant may file a petition to reopen the proceeding for the purpose of taking additional evidence.

(b) A petition to reopen shall set forth clearly the facts claimed to constitute grounds requiring reopening of the proceeding, including material changes of fact or of law alleged to have occurred since the conclusion of the hearing.

(c) Within ten days following the service of such petition, any other participant may file an answer thereto.

(d) The presiding officer, before issuance of the presiding officer's decision or certification of the record to the Commission, otherwise the Commission, upon notice to the participants, may reopen the proceeding for the reception of further evidence if there is reason to believe that conditions of fact or of law have so changed as to require, or that the public interest requires, the reopening of such proceeding.

(e) Subsections (a)-(d) supersede 1 Pa. Code §§35.231 (relating to reopening on application of party) and 35.232 (relating to reopening by presiding officer) and §35.233 (relating to reopening by agency actions).

§5.572. Petitions for relief following a final decision.

(a) Any petitions for rehearing, reargument, reconsideration, clarification, rescission, amendment, supersedeas or the like shall be in writing and shall specify, in numbered paragraphs, the findings or orders involved, and the points relied upon by petitioner, with appropriate record references and specific requests for the findings or orders desired.

(b) A copy of every petition covered by subsection (a) shall be served upon each participant to the proceeding. Every petition (except a petition seeking rescission or amendment or reconsideration under §703(g) of the Act (relating to rescission and amendment of orders)) shall be filed within 15 days after the Commission order involved is entered or otherwise becomes final.

(c) Answers to any petition covered by the provisions of subsection (a) shall be filed and served within ten days after service of the petition.

(d) Subsections (a)-(c) supersede 1 Pa. Code §35.241 (relating to application for rehearing or reconsideration).

Subchapter J. REPORTS OF COMPLIANCE

§5.591. Reports of Compliance.

(a) When any person subject to the jurisdiction of the Commission is required to do or perform any act by a Commission order, permit, or license provision, there shall be filed with the Secretary within 30 days following the date when such requirement becomes effective, a notice,

stating that such requirement has (or has not) been met or complied with, unless the Commission, by regulation or order, or by making specific provision therefor in a license or permit, may provide otherwise for compliance or proof of compliance.

(b) Subsection (a) is identical to 1 Pa. Code §35.251 (relating to reports of compliance).

§5.592. Compliance with orders prescribing rates.

(a) When the Commission, after having held hearings, makes a final decision concerning a general rate increase filing, as defined at Section 1308 of the Act (relating to voluntary changes in rates), and permits or requires the adoption of rates other than the rates originally filed, the public utility affected shall file detailed calculations along with any tariff revisions filed pursuant to the Commission's decision. The utility shall also serve copies of the tariff revisions, along with the calculations, on all other parties who had participated in the hearings.

(b) When rates are prescribed by the Commission they shall be promulgated by the public utility affected in duly published, filed, and posted tariffs, or supplements to tariffs, and a notice shall be sent to the Commission in the following form:

The order of Pennsylvania Public Utility
Commission issued at _____ has
been complied with in item _____, page _____,

of Tariff _____ Pa. P.U.C. No. _____ or
Supplement No. _____ to Tariff _____ Pa. P.U.C.
No. _____.

(c) Unless otherwise specified in the order, such tariff or supplement shall be effective upon statutory notice to the Commission and to the public and, whether made effective on statutory notice or less than statutory notice, or under authority granted in the order, shall bear under the effective date on the title page the following notation:

Items _____, pages _____, filed in compliance with the order of Pennsylvania Public Utility Commission, of _____, 19____, at _____.

(d) When the tariff or supplement contains only the rates ordered, the words "Items _____, page _____" may be omitted.

Subchapter K. APPEALS TO COURT

§5.631. Notice of taking appeal.

When an appeal is taken from an order of the Commission to the Commonwealth Court the appellant shall immediately give notice of such appeal to all participants to the Commission proceeding as provided by §1.54 (relating to service by a participant).

§5.632. Preparation and certification of records.

No record will be certified as complete until copies of exhibits or other papers have been furnished where necessary to complete the Commission file. Such copies will be duly requested by the Commission.

§5.633. Certification of interlocutory orders.

(a) When the Commission has made an order which is not a final order, any participant may by motion request that the Commission find, and include such findings in the order by amendment, that the order involves a controlling question of law as to which there is a substantial ground for difference of opinion and that an immediate appeal to Commonwealth Court from the order may materially advance the ultimate termination of the matter. The motion shall be filed within ten days after service of the order, and shall be subject to §5.103 (relating to hearing motions).

Unless the Commission acts within 30 days after the filing of the motion, the motion shall be deemed denied.

(b) Neither the filing of a motion under subsection (a), nor the adoption of an amended order containing the requested finding, shall stay any proceeding unless otherwise ordered by the Commission or the Commonwealth Court.

(c) Subsections (a) and (b) are identical to 1 Pa. Code §35.225 (relating to interlocutory orders).

Public Meeting April 4, 1985

MOTION OF COMMISSIONER FRANK FISCHL

RE: Developing Procedural Regulations for handling requests
for preliminary injunctive and/or other interim relief.
APR-85-C-4

At Public Meeting held on August 27, 1984, the Commission adopted comprehensive rules of practice and procedure supplementing and amending Title 52 of the Pennsylvania Code, Chapters 1, 3, and 5.

The regulations, which became effective on January 1, 1985, are a monumental step forward in standardizing practice before the Commission. However, the rules do not encompass procedures for the filing, hearing and prompt deciding of requests for preliminary injunctive and/or other interim relief.^{1/} I believe that such regulations are necessary. The public and our Administrative Law Judges need guidance on how to handle these cases.

Over the past year numerous requests for interim relief have been filed with the Commission. Most of the cases involved the competitive gas situation in Western Pennsylvania. In the typical case, a gas utility presently serving an industrial customer files a Complaint against a competitive gas utility alleging that that utility is, or is

^{1/} I recognize that there are those who still question the Commission's authority to order preliminary injunctive relief. I do not share those views, although I note that all parties would have full opportunity to express those concerns when any proposed regulation would be published for comment.

about to begin serving the first utility's customer in violation of the Public Utility Code. In addition to the substantive Complaint, it is common for the presently serving utility to request interim relief to preserve the status quo pending an ultimate resolution of the case on its merits. The Commission's response to such filings has been haphazard at best.

There are no procedures for expedited consideration of these cases by either an Administrative Law Judge or by the full Commission. There are no time limits for either holding hearings, issuing initial decisions or taking final Commission action. Indeed, it is not even clear whether final Commission action on preliminary injunctive relief requests is necessitated.

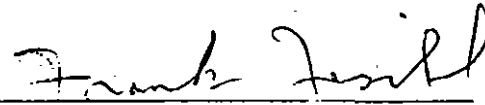
Our failure to have mechanisms in place to decide requests for preliminary injunctive and/or other interim relief promptly has resulted in several utilities filing Complaints in Equity in local Courts of Common Pleas. In at least one instance, the failure of the Commission to take timely action has led to the issuance of an injunction by the Westmoreland County Court of Common Pleas and a subsequent jurisdictional battle in Commonwealth Court. (T. W. Phillips Gas and Oil Company, Allegheny Ludlum Steel Corporation and the Borough of West Leechburg v. The Peoples Natural Gas Company, No. 3411 C.D. 1984).

I have reviewed the Special Provisions for Emergency Relief contained in our new regulations at 52 Pa. Code §3.1. I do not believe that those provisions apply to requests for interim relief to maintain the status quo in fixed utility competition cases. Such cases generally cannot be classified as an "emergency" as defined in the regulations because they do not constitute a "clear and present danger to life or property."

THEREFORE, I MOVE:

1. That the Law Bureau draft proposed procedural regulations to govern requests for preliminary injunctive and/or other interim relief; and
2. That such proposals be submitted to the Commission for approval and publication for comment no later than September 1, 1985.

Guidance may be obtained from Rule 1531 of the Pennsylvania Rules of Civil Procedure. Special consideration should be afforded to whether or not the Commission should or could require the posting of an injunction bond.



FRANK FISCHL
COMMISSIONER

DATE: March 28 1985