

**PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17105-3265**

Public Meeting held October 1, 2026

Commissioners Present:

Stephen M. DeFrank, Chairman
Kimberly Barrow, Vice Chair
John F. Coleman, Jr.
Ralph V. Yanora
Kathryn L. Zerfuss

Rulemaking to Amend Regulations Governing the
Public Utility Commission's General Provisions at
52 Pa. Code Chs. 1, 3, and 5 (relating to Rules of
Administrative Practice and Procedure; Special
Provisions; and Formal Proceedings)

L-2023-3041347

FINAL RULEMAKING ORDER

BY THE COMMISSION:

BACKGROUND

Chapters 1, 3, and 5 of the PUC's regulations, which set forth the general provisions regarding practice before the PUC, were last revised in 2006.¹ In the first quarter of 2016, the PUC acknowledged the need for a comprehensive review and updates to its rules of practice and procedure and initiated a process involving a series of informal stakeholder meetings wherein PUC Staff and attorneys representing clients that regularly practice before the PUC could identify issues and concerns with the existing rules as well as propose amended language for the PUC's consideration.

¹ *Final Rulemaking For the Revision of Chapters 1, 3, and 5 of Title 52 of the Pennsylvania Code Pertaining to Practice and Procedure Before the Commission*, Docket No. L-00020156 (Final Rulemaking Order entered January 4, 2006), effective April 29, 2006, 36 Pa.B. 2097 (4/29/2006). That rulemaking may be viewed on the website of the Pennsylvania Independent Regulatory Review Commission as IRRC Number 2441, at https://www.irc.state.pa.us/regulations/find_a_regulation.cfm.

After extensive consideration of the input from stakeholders, on August 22, 2024, the PUC entered a Clarified Notice of Proposed Rulemaking (NOPR) at the above-referenced docket number proposing amendments and updates to the PUC’s procedural rules at Chapters 1, 3, and 5 of its regulations.² The NOPR was published in the *Pennsylvania Bulletin* on December 7, 2024,³ and stakeholders were provided an opportunity to comment on the PUC’s proposed amendments.

The PUC received comments from the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania and Tenant Union Representative Network (CAUSE-PA); the Pennsylvania Utility Law Project, et. al. (PULP);⁴ Energy Association of Pennsylvania (EAP); FirstEnergy Pennsylvania (FirstEnergy); Industrial Energy Consumers of Pennsylvania (IECPA); Met-Ed Industrial Users Group, Penelec Industrial Customer Alliance, Philadelphia Area Industrial Energy Users Group, PP&L Industrial Customer Alliance, and West Penn Power Industrial Intervenors (collectively, MEIUG, et al.); Office of Consumer Advocate (OCA), Office of Small Business Advocate (OSBA), Pennsylvania-American Water Company (PAWC); PPL Electric Utilities Corporation (PPL).

In lieu of Comments, the PUC received Letters from Citizens’ Electric Company of Lewisburg, PA and Wellsboro Electric Company and Valley Energy, Inc.

² *Regulations Governing the Public Utility Commission’s General Provisions, 52 Pa. Code Chapters 1, 3, and 5 (relating to Rules of Administrative Practice and Procedure; Special Provisions; and Formal Proceedings)*, Docket No. L-2023-3041347 (Clarified Notice of Proposed Rulemaking entered August 22, 2024).

³ 54 Pa.B. 7834.

⁴ Along with AIDS Resource, Centre Helps, Community Action Association of Pennsylvania, Community Justice Project, Community Legal Services of Philadelphia, Congolese Community of Scranton, Conservation Voters of Pennsylvania, Face to Face, Housing Alliance of Pennsylvania, Legal Clinic for the Disabled, Pennsylvania Legal Aid Network, POWER Interfaith, The Public Interest Law Center, SeniorLAW Center, and United Neighborhood Center of NEPA.

(collectively, Citizens, et al.); Columbia Gas of Pennsylvania, Inc. (Columbia); National Fuel Gas Distribution Corporation (NFG); and People's Natural Gas (Peoples).⁵

The PUC received Reply Comments from CAUSE-PA; Citizens, et al.; EAP; the OCA; and the OSBA. The PUC received Letters in lieu of filing Reply Comments from PPL and Peoples.⁶

For each proposal below, we will address only the stakeholders' comments that were submitted to that proposal, the replies thereto, and IRRC's comments.

DISCUSSION

CHAPTER 1: RULES OF ADMINISTRATIVE PRACTICE AND PROCEDURE

The Commission recognizes that significant and important technological innovations and advancements have occurred since it last revised its rules of administrative practice and procedure in 2006. As such, the Commission initiated this instant rulemaking to update its existing administrative processes and procedures so that PUC administrative hearing and proceedings operate more efficiently. Therefore, with the aim of increasing efficiency and clarity in Commission proceedings, the Commission proposed amendments to the existing regulations in Chapters 1, 3 and 5 in the aforementioned NOPR and the accompanying Annex.

Upon consideration of the entirety of the stakeholder comments and reply comments received by the PUC to the proposed amendments to its rules of practice and procedure in the NOPR, as well as comments from the Independent Regulatory Review Commission (IRRC) to the NOPR and accompanying Annex, we hereby enter this Final

⁵ In their Letters filed in lieu of Comments, Columbia, NFG, and Peoples expressed support for EAP's Comments.

⁶ In their Letters in lieu of filing Reply Comments, PPL and Peoples expressed support for EAP's Reply Comments.

Rulemaking Order setting forth final form amendments to Chapters 1, 3, and 5 of our regulations, as described below and set forth in the accompanying Annex.

§ 1.2. Liberal Construction.

Section 1.2 provides for the liberal construction of the regulations governing practice and procedure before the Commission. The current rule reads: “The Commission or presiding officer at any stage of an action or proceeding may waive a requirement of this subpart when necessary or appropriate, if the waiver does not adversely affect the substantive right of a party.” In order to align Section 1.2 more closely with Pennsylvania Rule of Civil Procedure 126, Vice Chair Barrow proposed in her November 9, 2023 Motion that both instances of the term “substantive” in Subsections 1.2(a) and 1.2(c) be replaced with “substantial.”⁷ This change would allow the PUC to draw upon the body of case law interpreting and applying Pa.R.C.P. 126, and also make clear, through relevant caselaw, that Section 1.2 does not apply when due process rights are affected.

Stakeholder Comments on § 1.2

The stakeholders offered no substantive comments regarding Section 1.2. IRRC also offered no comments on Section 1.2.

Reply Comments on § 1.2

No reply comments were filed.

⁷ Vice Chair Barrow’s November 9, 2023 Motion was adopted by the PUC at the Public Meeting held on that date. However, the proposed amendments to Section 1.2 were inadvertently omitted from the NOPR. Nevertheless, Vice Chair Barrow’s Motion has been publicly accessible on the PUC’s website since November 9, 2023.

Disposition on § 1.2

Having received no comment from stakeholders or IRRC, we hereby adopt the proposed amendment to replace the word “substantive” with “substantial” in subsections 1.2(a) and 1.2(c). Accordingly, the final form regulation set forth in the accompanying Annex incorporates the adoption of this amendment to Section 1.2.

§ 1.3. Information and Special Instructions.

In the NOPR, we proposed amendments to Section 1.3 that would streamline the process for seeking information about the Commission’s procedural rules or information regarding hearings. We proposed that an individual seeking procedural information no longer needs to file an “application,” which usually requires approval by the PUC or PUC staff. Additionally, we proposed to clarify Section 1.3(a)(2) by amending it to specifically identify those types of mail service that are other than first-class mail service.

Stakeholder Comments on § 1.3

In its comments, the OCA recommends that Section 1.3(a) should include a third option for contacting the PUC regarding requests for information about the Commission’s procedural rules: contact via email, which is already permitted under Section 1.4(a)(3) for filings. The OCA recommends this modification because it has found that consumers prefer contact by email or phone over mail, and that reliance on that mail to get information from the PUC can pose a roadblock to consumer participation in Commission proceedings. As such, OCA proposes that a Section 1.3(a)(3) be added, which would provide contact information for a PUC-run email address for information regarding procedural rules, hearings, or other time-sensitive inquiries from members of the public. OCA Comments at 3.

Reply Comments on § 1.3

No reply comments were filed.

Disposition on § 1.3

We recognize the OCA's position that consumers today prefer the convenience of email or telephonic communication over correspondence via physical mail. We note that the PUC's website contains ample consumer information resources, including telephone numbers for key staff members in each PUC Bureau, including the Secretary's Bureau and the Office of Administrative Law Judge, which are readily accessible by anyone with an internet connection. Such readily available contact information provides consumers with the ability to reach out to PUC staff to request information. However, we find that developing a resource email account for public inquiries under Section 1.3, as OCA proposes, is appropriate given the popularity and convenience of email communications in the current day. Thus, we hereby amend Section 1.3 to add subsection (c), which provides for the development and maintenance of a resource email account which will be made readily accessible on the Commission's website for consumers to request information about the Commission's procedural rules or information regarding hearings.

Accordingly, the final form regulation set forth in the accompanying Annex incorporates the adoption of this amendment to Section 1.3.

§ 1.4. Filing Generally.

In the NOPR, we explained that the term "mail other than first class" in Section 1.4(a)(2) is vague and that we should bring clarity to this regulatory provision by deleting it and specifically identifying the various other types of mail service.

Stakeholder Comments on § 1.4

The stakeholders offered no substantive comments regarding Section 1.4. IRRC also offered no comments on Section 1.4.

Reply Comments on § 1.4

No reply comments were filed.

Disposition on § 1.4

Since we received no comments regarding our proposed amendment to Section 1.4 as expressed in the NOPR, we hereby adopt the proposed amendment to Section 1.4. Accordingly, the final form regulation set forth in the accompanying Annex incorporates the adoption of this proposed amendment to Section 1.4(a)(2) and reflects the deletion of the term “mail other than first class” from the regulation and specifically identifying the various other types of acceptable service for the delivery documents to the PUC within Section 1.4.

§ 1.5. Amendment to Rules.

In the NOPR, we proposed to amend the definition of the term “person” in Section 1.8 (relating to definitions) so that it is consistent with the definition of “person” set forth in Section 102 of the Public Utility Code, 66 Pa.C.S. § 102. Additionally, we proposed to amend the definition of the term “party” in Section 1.8 to include “persons, corporations, or municipal corporations.” Due to these proposed amendments, the PUC then proposed to amend Section 1.5(a) by deleting the term “persons” from it and indicating that applications requesting a general and permanent change in the PUC’s rules of administrative practice and procedure are permitted.

Stakeholder Comments on § 1.5

The stakeholders offered no substantive comments regarding Section 1.5(a).
IRRC also offered no comments on Section 1.5(a).

Reply Comments on § 1.5

No reply comments were filed.

Disposition on § 1.5

Since we received no comments regarding Section 1.5(a), we hereby adopt the proposed amendment to Section 1.5(a) as expressed in the NOPR. Accordingly, the final form regulation set forth in the accompanying Annex incorporates the adoption of the proposed amendment to Section 1.5(a).

§ 1.6. Commission Office Hours.

In the NOPR, we explained that the proposed amendment to Section 1.6 is intended to recognize that the PUC, as an independent agency, may set its own hours instead of relying solely on the direction of the Governor.

Stakeholder Comments on § 1.6

In its comments, the OCA supports this change with modification, suggesting that the PUC add language requiring the PUC to provide public notice of any changes to its operating hours. The OCA recommends, at a minimum, that the PUC should post the proposed changes to their hours on its website at least three business days prior to implementing any such changes. OCA Comments at 4.

Reply Comments on § 1.6

No reply comments were filed.

Disposition on § 1.6

Currently, when the Commission determines that it will modify its established work hours due to early dismissals or closures related to holidays, the Commission will post the modified work hours on the homepage of the Commission's website within three (3) business days prior to the modification taking effective in order to give adequate notice to the regulated community and the public. However, during emergency situations, such as severe weather, it may not be possible for the PUC to provide more than a few hours' notice of changes to its operating hours. Thus, we decline to adopt the OCA's proposal to add language within Section 1.6 requiring the PUC to provide public notice of any changes to its operating hours. Thus, we will adopt the amendment to Section 1.6 as proposed in the NOPR.

Accordingly, the final form regulation set forth in the accompanying Annex incorporates the adoption of the proposed amendment to Section 1.6.

§ 1.7. Sessions of the Commission.

In the NOPR, we explained that the proposed amendment to Section 1.7 intends to recognize that the PUC has begun to use livestreamed and telephonic public meetings more regularly.

Stakeholder Comments on § 1.7

OCA Comments

In its comments, OCA supports this proposed change and proposes two additional changes. The OCA highlights that while it is important to allow flexibility in scheduling

and in Commissioner participation in public meetings, that flexibility requires responsibility and a commitment on behalf of the PUC to ensure that public meetings are only cancelled due to unforeseen, exigent circumstances. As such, the OCA suggests that if the Commission is permitted to hold a livestreamed or telephonic Public Meeting and a Commissioner is able to elect to attend the Public Meeting remotely, then the Commission should further define the types of circumstances that could make a Commissioner unavailable to attend a Meeting as being unforeseen, exigent circumstances. The OCA also encourages the PUC to hold public meetings more often. The OCA avers that this would aid parties to fully litigate their proceedings before the PUC, allowing for more parity between parties initiating proceedings and those who do not, providing time for the full development of an evidentiary record. Specifically, the OCA recommends that no more than two weeks should pass between public meetings. OCA Comments at 5-6.

OSBA Comments

The OSBA agrees with the proposed change as many small businesses are unable to attend meetings in person. OSBA Comments at 2.

Reply Comments on § 1.7

The C&T Utilities agree with the OCA's alternate suggestion for the PUC to consider more frequent meetings or adding in-person, telephonic, or virtual public meetings to the PUC's calendar. C&T Utilities asserts that there is no need to constrain the dates by which utilities must initiate base rate proceedings, other rate proceedings, or non-rate proceedings with statutory deadlines. C&T Utilities Reply Comments at 6.

Disposition on § 1.7

We decline to accept the OCA's proposal to amend Section 1.7 to specifically enumerate that a Commissioner's unavailability is an unforeseen or exigent reason that

results in the cancellation of public meeting. Given the availability of teleconferencing technology in conjunction with livestreaming capabilities, we note that even if a Commissioner is unable to physically attend the scheduled public meeting session, they are able to participate telephonically and record their votes on public meeting items. Additionally, as long as a quorum is present, which is a requirement of the Sunshine Law, it is unlikely that a Commission would cancel a public meeting entirely due to a Commissioner's absence. Even during the height of the COVID-19 pandemic, when statewide COVID-19 stay-at-home mandates and government-enforced business shutdowns were in effect throughout the Commonwealth of Pennsylvania, the Commission continued to hold public meetings. Thus, beyond the most extreme exigent circumstances, the Commission would not cancel a scheduled public meeting. Thus, OCA's specific proposal is unwarranted.

We appreciate the stakeholders' observations concerning the need for a certain level of frequency and regularity in the scheduling of public meetings. However, the PUC issues public meeting schedules more than six months in advance of the calendar year. This established publication cycle should allow parties who are in the midst of active litigation before the PUC or who anticipate initiating litigation before the PUC to plan their litigation schedules. Further, we note that our public meeting schedule for calendar year 2026, which was issued on April 28, 2025, contains twenty scheduled public meetings. Furthermore, we have previously scheduled additional supplemental public meetings to address matters that required disposition to meet statutory deadlines prior to the next regularly scheduled public meeting. As such, we decline to adopt the OCA's proposed amendments for scheduling public meetings and hereby adopt the amendments to Section 1.7 as proposed in the NOPR.

Accordingly, the final form regulation set forth in the accompanying Annex incorporates the adoption of the proposed amendment to Section 1.7.

§ 1.8. Definitions.

In the NOPR, we proposed amendments to Section 1.8 that added additional terms and that clarified or updated certain existing definitions. In particular, one of our proposed amendments to Section 1.8 was revising the definition of “person” in order to make it consistent with the definition of “person” as set forth in the Public Utility Code (Code). *See* 66 Pa.C.S. § 102. Additionally, we added the terms “corporation” and “municipal corporation” to Section 1.8 and also made the proposed definitions of those terms consistent with the definitions set forth in 66 Pa.C.S. § 102. We also further incorporated those terms into the existing definition of “party” in Section 1.8. Consequently, where appropriate, we replaced the term “person(s)” with “party” or “parties” to reflect the regulation’s applicability to persons, corporations, and municipal corporations.

The PUC received comments concerning proposed amendments to certain definitions, and proposals for adding previously undefined terms. We address and dispose of those comments below.⁸

1. Amendments Proposed by the PUC

a. Definition of “Adjudication”

In the NOPR, the PUC proposed to amend the term “adjudication” to clarify qualifying proceedings under the definition.

Stakeholder Comments

In its comments, CAUSE-PA/TURN disagree with the proposed change to the definition of “adjudication” and urge the PUC to reject the amendment. CAUSE-PA/TURN assert that the proposed definition is unlawful because it would result in a

⁸ Definitions that we did not receive comments on are being adopted as reflected in the Annex.

definition of “adjudication” that would be inconsistent with the definition of “adjudication” set forth at 2 Pa.C.S.A. § 101. CAUSE-PA/TURN argue that a regulation cannot contradict a statute, and that the proposed change would create confusion regarding the different definitions and their applicability, which is out of line with the stated intent of the NOPR to streamline and clarify the PUC’s rules of practice. CAUSE-PA/TURN are also concerned that the proposed definition is ambiguous and is likely to violate an intervenor’s and other parties’ due process rights and contravenes the Commonwealth’s Administrative Agency Law. CAUSE-PA/TURN Comments at 14-15.

IRRC Comments

IRRC noted CAUSE-PA/TURN’s comments that the proposed definition of “adjudication” would not align with governing statutes. IRRC asked the PUC to explain how it is reasonable to propose a definition that is different than what is set forth in the statutes governing Administrative Law and Procedure. IRRC Comments at 2-3.

Reply Comments

No reply comments were filed.

Disposition

Upon review of comments from stakeholders and IRRC, we acknowledge that our proposed amendments to the definition of “adjudication” in Section 1.8 would render it inconsistent with the definition of “adjudication” set forth in the Administrative Agency Law, 2 Pa.C.S.A. §§ 101, *et seq.*⁹ The PUC acknowledges that while its proposed

⁹ “Adjudication.” Any final order, decree, decision, determination or ruling by an agency 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. The term does not include any order based upon a proceeding before a court or which involves the seizure or forfeiture of property, paroles, pardons or releases from mental institutions. 2 Pa.C.S.A. § 101 (relating to definition of “adjudication”) (emphasis added).

amendment to the definition of “adjudication” in Section 1.8 of our regulations was intended to provide clarity, it cannot contradict the statutory definition of “adjudication” in the Administrative Agency Law. For this reason, we shall not adopt the amendment proposed in the NOPR and will retain the existing definition of “adjudication” in Section 1.8.

Accordingly, the final form regulation set forth in the accompanying Annex reflects the deletion of our proposed amendment to the definition of “adjudication” and the retention of the existing definition of adjudication in Section 1.8.

b. Definition of “Adversarial Proceeding”

In the NOPR, the PUC proposed to amend the definition of “adversarial proceeding” by replacing “other persons” with “parties” so that its definition would be consistent with the proposed new definition of “person” in Section 1.8.

Stakeholder Comments

FirstEnergy recommends that only authorized parties may initiate an adversarial proceeding. FirstEnergy argues that the use of the word “party” or “parties” implies that the individual or entity has, either by right or by authorized intervention, the legal prerogative to participate in a legal proceeding.

Reply Comments

No reply comments were filed.

Disposition

We disagree with FirstEnergy’s comments that use of the term “parties” in the proposed definition of “adversarial proceeding” implies a legal prerogative to participate

in a legal proceeding. We note that the current Section 1.8 defines a “party” as “[a] person who appears in a proceeding before the Commission.”¹⁰ Nothing in this definition implies an unrestricted legal right to participate in the proceeding, nor does it preclude other parties from challenging the right of a party to participate in a proceeding. Accordingly, we decline to adopt FirstEnergy’s recommendation as to the definition of “adversarial proceeding.”

However, we believe that, for clarity, it is appropriate for us to further amend the definition of “adversarial proceeding” to distinguish it from a “nonadversarial proceeding” under this section by noting that adversarial proceedings are decided on the basis of a formal record before a presiding officer of the Office of Administrative Law Judge, consistent with Section 331(d) of the Public Utility Code. *See* 66 Pa.C.S. § 331(d). Therefore, we hereby revise our proposed amendments to the term “adversarial proceeding” in Section 1.8.

Accordingly, the final form regulation set forth in the accompanying Annex incorporates the aforementioned revision to our proposed amendments to the term “adversarial proceeding” in Section 1.8.

c. Definition of “Authorized Agent”

In the NOPR, we proposed to amend the definition of “authorized agent” by replacing the term “person” with “representative of a filing user” so that the definition would be consistent with the proposed definition of “person” in Section 1.8. Further, we amended the definition to allow anyone with permission to submit filings to do so, which lowered the previous standard from anyone with permission to “legally act” on behalf of the filing user.

¹⁰ In the NOPR, we proposed to amend the definition of “party” to account for corporations and municipal corporations.

Stakeholder Comments

EAP believes the PUC's proposed definition of "authorized agent," as it relates to proposed Sections 1.21 and 1.22, should be rejected. EAP argues that if this proposed definition is adopted, it would suborn the unauthorized practice of law. EAP urges that the definition of "authorized agent" must include a demonstration of the authority to bind the customer, not merely permission to submit an efile on the customer's behalf. EAP Comments at 2.

FirstEnergy supports EAP's suggested revision to the PUC's proposed definition of "authorized agent" under Section 1.8. FirstEnergy Comments at 1-2.

PPL opposes the proposed change to the definition of "authorized agent." PPL argues that this would broaden the scope of who can represent individuals before the PUC and potentially permit the unauthorized practice of law. PPL is concerned that the proposed change may lead to a class of "PUC Agents" who represent customers without the necessary knowledge of PUC practices and procedures who are not bound by ethical rules, compromising the integrity of the proceedings and quality of representation. PPL further argues that the proposed definition could lead to more mistakes in filings, creating additional burdens on the ALJs and other parties involved. PPL feels that the current definition of "authorized agent" sufficiently protects those who are truly incapacitated and unable to represent themselves and effectively ensures that only qualified individuals represent parties before the PUC. PPL Comments at 2-3.

Reply Comments

In its reply comments, the OCA supports the proposed definition of "authorized agent" without modification, believing that the proposed change will make no operative difference to practice before the PUC, for it is a consumer-friendly practice and does not

constitute an expansion of legal practice by non-lawyers. The OCA opposes FirstEnergy's recommendation to insert a requirement "that only authorized parties may initiate an adversarial proceeding" as this is already a requirement under the standing doctrine. The OCA finds that FirstEnergy's recommendation will increase confusion and reduce efficiency. OCA Reply Comments at 3-4, 5, 6.

Disposition

Our proposed amendments to the definition of "authorized agent" are not intended to subvert the requirements for execution of documents filed with the PUC, as set forth in Section 1.35, as EAP's comments appear to suggest. *See* 52 Pa. Code § 1.35 (relating to Execution). Rather, our proposed amendments to the definition of "authorized agent" were intended to permit paralegals, law clerks, and clerical staff to file properly executed documents on behalf of the signatories of said documents, consistent with the usage of the term in Section 1.35(b)(2-3) of our regulations, 52 Pa. Code § 1.35(b)(2-3) (relating to electronic filings and limitations on user ID and password). However, with the intent of addressing the concerns raised by stakeholders regarding the extent of authorized agent's legal authority, we hereby further amend the definition to clarify that an authorized agent is "an individual with permission to submit filings on behalf of a filing user." This clarification explicitly states that an individual acting as an "authorized agent" of a party may only file documents in the proceeding on behalf of that party.

Accordingly, the final form regulation set forth in the accompanying Annex incorporates this new revised definition of "authorized agent" in Section 1.8.

d. Definition of "Certified Legal Intern"

In the NOPR, we proposed a definition for "certified legal intern" to be added to Section 1.8.

Stakeholder Comments on § 1.8

The stakeholders offered no substantive comments regarding the incorporation of a definition for “certified legal intern” in Section 1.8. IRRC also offered no comments on the proposed inclusion of a definition of “certified legal intern” in Section 1.8.

Reply Comments on § 1.8

No reply comments were filed.

Disposition

While we received no comments to the proposed definition, upon further review, we determine that it is necessary to clarify the proposed definition of “certified legal intern” by adding the word “who” before “may appear.” As such, the definition for “certified legal intern” shall read as follows:

Certified legal intern—A law student meeting the requirements of Pa.B.A.R. No. 321 (relating to requirements for formal participation in legal matters by law students) who may appear in a Commission proceeding consistent with Pa.B.A.R. No. 322 (relating to authorized activities of certified legal interns).

Accordingly, the final form regulation set forth in the accompanying Annex incorporates this revised definition of “certified legal intern agent” in Section 1.8.

e. Definition of “Tentative Order”

In the NOPR, we proposed an amendment to the term “tentative decision” by replacing it with the term “tentative order” to reflect current PUC practice.

Stakeholder Comments

CAUSE-PA/TURN are supportive of changing “tentative decision” to “tentative order” to align with current PUC practices and policies but are concerned that the proposed definition lacks context in which PUC Tentative Orders are issued with regard to publication in the *Pennsylvania Bulletin* and the public comment process. CAUSE-PA/TURN offer a proposed definition to acknowledge that such orders are published, available for public comment, and may only become effective following the receipt and review of comments upon PUC final action. CAUSE-PA/TURN argue that this proposed definition aligns with current PUC practice and provides important clarification regarding the PUC’s use of Tentative Orders in non-adjudicative proceedings. CAUSE-PA/TURN Comments at 15-17.

IRRC Comments

IRRC states that stakeholder comments illustrate confusion regarding the proposed definition of “tentative order.” IRRC asks the PUC to amend this definition in the final regulation to ensure clarity for the regulated community. IRRC Comments at 2-3.

Reply Comments

No reply comments were filed.

Disposition

The PUC acknowledges that the proposed definition of “tentative order” lacks sufficient detail. To provide clarity, we hereby replace the proposed definition with language in line with the definition proposed by CAUSE-PA/TURN and further clarify that a tentative order may become final without further action by the PUC if no comments are filed.

Accordingly, the final form regulation set forth in the accompanying Annex reflects our adoption of CAUSE-PA/TURN's suggested amendment to the definition of "tentative order" in Section 1.8.

f. Definition of "Trade Secrets"

In the NOPR, we amended the definition of term "trade secret" to provide brevity and clarity.

Stakeholder Comments

The OCA agrees with the formatting changes to Section 1.8 but disagrees with the inclusion of "economic harm" in the definition of "trade secrets." The OCA states that both the PUC's current definition and the statutory definition of trade secrets set forth in the Uniform Trade Secrets Act (12 Pa.C.S. § 5302) create a higher burden on claimants to show that the information actually qualifies for the protection of the law than what is proposed in the NOPR. The OCA is concerned that the proposed definition would permit parties to more liberally claim that information qualifies as a trade secret, making it more difficult for parties to conduct discovery and would create a disproportionate burden on consumer complainants. As such, the OCA proposes a revised definition of trade secret. OCA Comments at 7-8.

IRRC Comments

IRRC also notes stakeholders' assertion that the inclusion of "economic harm" in the definition of "trade secret" may create a higher burden on claimants to show that the information actually qualifies for the protections of the law than in the proposed rulemaking. IRRC asks the PUC to clarify the definition to make clear its intent regarding the proposed change and how the final-form regulation's definition will protect the public health, safety, and welfare. IRRC Comments at 3.

Reply Comments

No reply comments were filed.

Disposition

By using the term “economic harm” in the context of the proposed amendments to the definition of “trade secret,” we intend to include information that, if disclosed, would, for example, cause a devaluation of a company’s stock market price or a loss of customers. We disagree with IRRC that the addition of “economic harm” makes it more difficult for entities claiming protection of certain information as a “trade secret” since the definition is disjunctive, rather than conjunctive, with regard to “obtaining a competitive advantage” OR “to cause economic harm.” Nevertheless, in light of IRRC’s perceived concerns, we determine that it is prudent to further amend the definition of “trade secret” to clarify what is intended by the use of the term “economic harm.”

Accordingly, the final form regulation set forth in the accompanying Annex incorporates certain revisions to our proposed amendment to the definition of “trade secret” in Section 1.8.

g. Definition of “Writing” or “Written”

In the NOPR, we amended the definition of the term “writing” or “written” in order to update the definition.

Stakeholder Comments

CAUSE-PA/TURN support the PUC’s intent to broaden the definition of “writing” or “written” to reflect the variety of means by which individuals can submit filings to the PUC but are concerned that the proposed amendment does not capture the full variety of document types which may need to be filed with the PUC. In particular,

CAUSE-PA/TURN assert that it is unclear whether “media” includes electronic documents submitted through efilg and email. In order to clear up this confusion, CAUSE-PA/TURN recommend that the definition be further revised to apply “to documents whether in hard copy, media, or electronic format.” CAUSE-PA/TURN Comments at 17.

IRRC Comments

IRRC asks the PUC to clarify the definition of “writing” or “written” to ensure that the regulated community understands which types of documents are covered. IRRC Comments at 3.

Reply Comments

No reply comments were filed.

Disposition

We acknowledge that the term “media” as used in the proposed amended definition of “writing” or “written” was unclear as to the scope of document formats encompassed therein and will adopt CAUSE-PA/TURN’s recommendation to expand the definition to include “electronic format.”

Accordingly, the final form regulation set forth in the accompanying Annex reflects the additional revisions to the definitions of “writing” or “written” in Section 1.8.

2. Definitions Proposed by Stakeholders

a. Definition for “Partnership”

Stakeholder Comments

FirstEnergy proposes adding a definition for the term “partnership.” As a definition, FirstEnergy proposes a “partnership” to mean “an association of two or more persons to carry on as co-owners of a business for profit. The term includes a limited liability partnership or an electing partnership that is not also a limited partnership.”

Reply Comments

No reply comments were filed.

Disposition

Generally, the terms of the partnership agreement between the persons forming the partnership will delineate the roles, responsibilities, profit-sharing, liabilities, dispute resolution and business dissolution method between the partners. However, we agree that it would be prudent to include a definition of “partnership” in Section 1.8.

Notwithstanding, we will not adopt FE’s proposed definition for “partnership,” but rather, we will incorporate the following definition for partnership in Section 1.8:

Partnership—A partnership is a voluntary, contractual association between two or more persons, corporations and other entities to manage and operate a business and share its profits.

Thus, we find it appropriate to add this definition for “partnership” to Section 1.8.

Accordingly, the final form set forth regulation in the accompanying Annex incorporates the inclusion of a definition for the new term “partnership” in Section 1.8.

b. Definition for “Small Business”

Stakeholder Comments

The OSBA recommended that the definition of “small business” be added to Section 1.8. OSBA proposes that this addition reflect the definition of “small business consumer” in 73 P.S. § 399.42¹¹ to ensure that the amendment explicitly includes small businesses in the list of identified parties allowed to file legal complaints with the PUC. Furthermore, OSBA recommends that the definitions of “filing user,” “intervenor,” “party,” and “principal” be amended to include small businesses. OSBA Comments at 3-4.

FirstEnergy also proposed a new definition for the term “small business” based on the definition used by the PUC’s own Small Business Mediation Program, which defines a “small business” as “a registered business with fewer than 250 employees.”¹²

Reply Comments

No reply comments were filed.

Disposition

The variety of ways that small businesses are organized and structured in the Commonwealth presents difficulties for establishing a workable definition under our regulatory framework. For example, we note that the definition of “person” in Section 102 of the Code includes “[i]ndividuals, partnerships, or associations other than corporations,” and also has a separate definition for “corporation.” *See* 66 Pa.C.S. § 102

¹¹ “Small business consumer.” A person, sole proprietorship, partnership, corporation, association, or other business entity which employs fewer than 250 employees, and which receives public utility service under a small commercial, small industrial or small business rate classification. 73 P.S. § 399.42 (relating to definition of “small business”).

¹² https://www.puc.pa.gov/media/3629/mediation_program_09-2025.pdf.

(relating to definitions of “person” and “corporation”). We also note that the definition of “small business consumer” in 73 P.S. § 399.42, specifies that such entities “receive[] public utility service under a “small commercial, small industrial or small business rate classification.” Additionally, we acknowledge that some small businesses, particularly individuals and sole proprietorships, may not receive utility service under commercial or industrial rate classifications. Relatedly, we note that small businesses may file complaints against regulated utilities wherein they assert claims that have nothing to do with their utility service. Finally, we note that our regulated utilities’ tariffs vary in how they define small businesses (including small commercial and small industrial customers).

For these reasons, we decline to add a definition for “small business” to Section 1.8 of our regulations. Similarly, we shall also decline OSBA’s recommendation that we incorporate “small business” into the definitions of “filing user,” “intervenor,” “party,” and “principal.”

c. Definition for “Sole Proprietor”

In response to comments we received to Section 1.22 concerning representation of small businesses, we hereby add a definition for the term “sole proprietor.” For further context, see the disposition of Section 1.22, below.

The Commission determines that a sole proprietor will be defined as “An individual who owns an unincorporated business by themselves.” This definition is consistent with how a “sole proprietor” is defined by the Internal Revenue Service.¹³ Accordingly, the final form regulation set forth in the accompanying Annex reflects the incorporation of a definition for the new term “sole proprietor” in Section 1.8.

¹³ <https://www.irs.gov/businesses/small-businesses-self-employed/sole-proprietorships>.

§ 1.13. Issuance of Commission Orders.

In the NOPR, we explained that the proposed amendments to Section 1.13 is intended to provide clarity, brevity, and to address references to PUC orders.

Stakeholder Comments and Reply Comments on § 1.13

The stakeholders offered no substantive comments regarding Section 1.13. IRRC also offered no comments on Section 1.13.

Disposition on § 1.13

Since we received no comments regarding Section 1.13, we hereby adopt the amendments as proposed in the NOPR. Accordingly, the final form regulation set forth in the accompanying Annex incorporates the proposed amendment to Section 1.13.

§ 1.15. Extensions of Time and Continuances.

In the NOPR, we explained that the proposed amendments to Section 1.15(a)(1) are primarily intended to provide clarity as to who at the PUC is authorized to grant an extension of a time period for filing pursuant to PUC regulations, a prior PUC order, or other notice by an authorized PUC employee. We explained that the proposed amendments would provide flexibility to the presiding ALJs in their authority to regulate the course of a proceeding and to afford presiding officers with the authority to address and determine the method of service on parties.

Stakeholder Comments on § 1.15

CAUSE-PA/TURN Comments

In its comments, CAUSE-PA/TURN support the proposed revisions to Section 1.15 for the flexibility it offers to low-income and vulnerable consumers to participate in PUC proceedings. CAUSE-PA/TURN note the concerns that Commissioner John F.

Coleman raised in his November 9, 2023, statement on this matter and respectfully disagree with the Commissioner that the proposed amendments to Section 1.15 are duplicative of Section 1.2. CAUSE-PA/TURN believe that the proposed amendments will provide important clarity that ALJs can consider requests for continuance received within five days of a hearing date, especially for *pro se* parties who may not be able to effectively navigate overlapping PUC regulations especially if they are facing an emergency. CAUSE-PA/TURN Comments at 18, 19-20.

OSBA Comments

The OSBA agrees with the proposed amendment to Section 1.15(b) to add “to the extent possible” to the end of the section. OSBA feels that the amendment acknowledges that circumstances may arise that may prevent requests for continuances from being filed at least five days prior to the hearing date and that the amendment provides an explicit provision for ALJs to consider allowances within the five-day window based on the circumstances in question. OSBA Comments at 5.

IRRC Comments on § 1.15

IRRC notes that the ALJs already have the discretion to liberally construe the PUC’s procedural rules and accept requests for continuance received less than five days prior to the hearing date and grant such requests regularly. IRRC also notes that Section 1.2 of the PUC’s existing regulations permit ALJs to waive any procedural defect “to secure the just, speedy and inexpensive” determination in every type of proceeding. IRRC states that liberal construction is particularly applied in cases involving *pro se* litigants. IRRC believe that the revision to Section 1.15 is unnecessary and would appear to create a different standard than found in Section 1.2(a). IRRC asks the PUC to explain the need for this amendment and how it is consistent with the standard at Section 1.2(a). IRRC Comments at 4.

Reply Comments on § 1.15

No reply comments were filed.

Disposition on § 1.15

The PUC acknowledges IRRC's concerns that the proposed amendment to Section 1.15 may be duplicative of the authority of presiding officers to regulate proceedings as set forth in Section 1.2(a). However, the PUC takes the position that Section 1.2(a) does not address the authority to grant extensions of time and only confers upon presiding officers the authority to waive other procedural requirements (such as the requirements for documentary filings in Sections 1.31-1.38). The use of "speedy" in Section 1.2(a) is intended to permit the presiding officer leeway to not require a party submitting a filing with minor deficiencies to take additional time to submit a corrected filing, and to prevent opposing parties to move for dismissal over ministerial deficiencies, both of which would unnecessarily prolong litigation. This interpretation is consistent with Section 1.2(d), which encourages presiding officers to construe procedural requirements liberally as *pro se* litigants, who are often less versed in the procedural rules of the PUC and more likely to commit procedural errors.

Further, the PUC notes that Section 1.15(a)(1) contains existing language identifying presiding officers among the class of persons authorized to grant extensions of time. If Section 1.2 was intended to confer upon presiding officers the authority to grant extensions of time, it would be unnecessary for Section 1.15 to include presiding officers. For these reasons, we shall adopt the amendments to Section 1.15 as proposed.

Accordingly, the final form regulation set forth in the accompanying Annex incorporates the proposed amendment to Section 1.15.

§ 1.16. Issuance of decisions by presiding officers.

In the NOPR, we stated that the proposed amendment to Section 1.16(b) seeks to make the regulation consistent with the process for serving decisions by presiding officers as set forth in 66 Pa.C.S. § 703(e).

Stakeholder Comments and Reply Comments on § 1.16

The stakeholders offered no substantive comments regarding Section 1.16. IRRC also offered no comments on Section 1.16.

Disposition on § 1.16

Since we received no comments regarding Section 1.16, we hereby adopt the amendments as proposed in the NOPR. Accordingly, the final form regulation set forth in the accompanying Annex incorporates the proposed amendment to Section 1.16.

§ 1.21. Appearance.

In the NOPR, we proposed amendments to Section 1.21 to clarify that it deals with appearances in nonadversarial PUC proceedings and informal PUC proceedings only. The text of Section 1.21 was also amended to change “person” to “party” to specify who can appear on behalf of a party involved in a PUC nonadversarial proceeding or informal proceeding in order to provide consistency with the proposed amended definition of “party” set forth in Section 1.8. Lastly, we noted that various administrative agencies permit a party to be represented by a non-lawyer in some circumstances.¹⁴ Thus, we proposed to amend Section 1.21(c) to allow a non-attorney third party representative holding the power of attorney for an individual consumer to represent that individual during periods of disability or incapacity, or both as permitted by the specific language in each power of attorney.

¹⁴ See *Harkness v. Unemployment Comp. Bd. of Rev.*, 920 A.2d 162 (Pa. 2007); *Nolan v. Dep’t of Pub. Welfare*, 673 A.2d 414 (Pa. Cmwlth. 1995); and 52 Pa. Code § 275.2, 52 Pa. Code § 275.3(a), and 52 Pa. Code § 275.4(a)(1)(iv).

Stakeholder Comments on § 1.21

AIDS Resource, et al. Comments

In its comments, AIDS Resource, et al. recommends that the PUC amend Section 1.21 to permit third-party representatives, with attorney supervision, to represent consumers in formal administrative proceedings. AIDS Resource, et al. argues that this amendment would allow consumers, particularly those with limited financial resources, greater access to competent representation in PUC proceedings while maintaining proper oversight of advocates acting as authorized representatives. AIDS Resource, et al. finds that allowing individuals holding power of attorney (POA) to serve as third-party representatives for consumers is too narrow in its scope. AIDS Resource, et al. notes that this proposal would require the PUC to make case-by-case determinations, which may delay proceedings while creating additional administrative burdens.

AIDS Resource, et al. further suggests the proposal is overly restrictive because it fails to address the representation gap in Pennsylvania. By allowing non-lawyer advocates such as paralegals to represent consumers under attorney supervision, AIDS Resource, et al. believes it will expand service to vulnerable populations like seniors, low-income households, or disabled individuals. AIDS Resource, et al. further contends that such practice does not amount to the unauthorized practice of law. AIDS Resource, et al. Comments at 1-2.

CAUSE-PA/TURN Comments

CAUSE-PA/TURN are supportive of the PUC's intent to permit non-attorney third-party representation in informal, nonadversarial proceedings but are concerned that the proposed amendment to Section 1.21 is both too broad and too narrow to address the significant need for expanded representation in PUC proceedings. CAUSE-PA/TURN argue that the PUC's proposed standard is unduly restrictive and may create unintended

consequences for vulnerable consumers and may chill customers from seeking representation even if they meet the proposed standard. CAUSE-PA/TURN cite examples of other Pennsylvania forums to argue that permitting third-party representation increases representation of *pro se* litigants, helping improve outcomes and streamline PUC processes.

Hence, CAUSE-PA/TURN specifically submits that Section 1.21(c) be amended further to allow representation by a non-attorney advocate in nonadversarial proceedings where the representative is acting under the supervision of a licensed attorney. CAUSE-PA/TURN argue that permitting such representation will enable organizations such as legal service providers, pro bono law clinics, medical-legal partnerships, and community-based advocacy groups to assist more utility consumers. CAUSE-PA/TURN Comments at 20-29.

OCA Comments

The OCA believes that consumers should be represented by non-attorney representatives in informal, nonadversarial proceedings because such proceedings are factual and non-technical, and do not amount to the practice of law. By permitting representation of consumers by non-attorney representatives, the OCA finds it is strongly in the public interest. The OCA further proposes that subsection (d) of Section 1.21, including both of its subsections, should be incorporated into the new Section 1.22, to permit the prosecution of formal, adversarial proceedings brought under Chapters 56 and 64 of the PUC's regulations and Chapter 14 of the Code through the use of non-attorney representatives. The OCA also encourages that Chapter 15 of the Public Utility Code, Subchapter B proceedings should be included in Section 1.21(d), as well as the proposed adoption of a subsection (d) equivalent to the revised Section 1.22 for formal, adversarial

proceedings.¹⁵ This proposition, as the OCA argues, would bring the PUC more in line with Magisterial District Courts and other agencies which permit non-attorney, third-party representation in proceedings before them. The OCA believes that permitting non-attorney, third-party representatives would remove obstacles from consumers who may face dire consequences of failing to bring such an action – such as termination of utility services – but struggle to advocate on their own behalf. The OCA supports the PUC’s recommendation allowing those holding powers of attorney to advocate on behalf of the POA’s grantor but recommends that there should be no requirement to prove a period of disability or incapacity. OCA Comments at 12-15, 16-17.

OSBA Comments

The OSBA agrees with the proposed amendment to Section 1.21 but recommends that “small business” be explicitly included in the groups to which the amendment applies, which can be accomplished by accepting their recommended definition of “small business” in Section 1.8. OSBA Comments at 6.

PAWC Comments

Pennsylvania-American Water Company (PAWC) recommends the PUC clarify Section 1.21 to state that a party is permitted to be represented by an attorney in nonadversarial proceedings.¹⁶ PAWC notes that although nonadversarial proceedings may begin with no dispute among the parties, such proceedings can result in future adversarial proceedings and that parties should have the option of having an attorney who is familiar with the law to represent their interests. PAWC Comments at 3.

¹⁵ We note that this comment and the previous comment appear to relate to OCA’s comments regarding Section 1.22.

¹⁶ We note that this comment appears to relate to PAWC’s comments regarding Section 1.22.

EAP Comments

The EAP urges the PUC to reject the proposed amendments to Section 1.21 because it would permit the unauthorized and unlawful practice of law. EAP cites to *Kohlman v. W. Pa. Hosp.*, 652 A.2d 849 (Pa. Super. 1994), arguing that the proposed amendment conflicts with established case law. Further, EAP argues that the PUC itself applied the holding of *Kohlman* in *Ricks v. PECO Energy Co.*,¹⁷ when it affirmed the presiding officer's refusal to permit a complainant's son, who had a POA, to represent her during a hearing because he was not an attorney nor a certified legal intern. EAP argues that the examples cited in the NOPR of other agencies that permit non-lawyers to represent individuals are distinguishable. EAP further notes that non-lawyers are not subject to ethical standards nor to the Pennsylvania Rules of Professional Conduct governing attorneys. As such, EAP argues that it can create problems for the complainant because their information may not be kept confidential, or their interests may not remain paramount during the proceeding. Additionally, EAP notes that the proposed amendment to Section 1.21 does not address several practical issues. EAP Comments at 4, 5, 8-9.

Columbia Gas Comments

Columbia Gas offers its support for the EAP's Comments, in particular the comments urging the PUC to reject the proposed amendments to Section 1.21. Columbia Gas Letter at 1.

Reply Comments on § 1.21

CAUSE-PA/TURN Reply Comments

In its reply comments, CAUSE-PA/TURN urge the PUC to amend Section 1.21 to permit a consumer to be represented by a non-attorney advocate working under the direct

¹⁷ *Ricks v. PECO Energy Co.*, Docket No. C-2012-2321440, pp. 9-10 (Order entered Mar. 6, 2014).

supervision of a licensed attorney. CAUSE-PA/TURN argue that EAP's Comments mischaracterize the legal authority of a POA, for the PUC has no authority to limit the otherwise valid authority of a duly executed POA. CAUSE-PA/TURN emphasize that their initial Comments advocating for expanding the availability of competent representation by a non-attorney under the direct supervision of an attorney will meaningfully address the representation gap for consumers in PUC proceedings. CAUSE-PA/TURN again reiterate that the PUC must revise its rules to provide a clear line of accountability to prevent the unauthorized practice of law and maintain the integrity of PUC proceedings. CAUSE-PA/TURN Reply Comments at 3-4, 5, 8-9.

OCA Reply Comments

The OCA continues to support the recommendations made in its Comments regarding proposed changes to Section 1.21. The OCA recommends that the PUC consider implementing a form similar to that in use by the Philadelphia Municipal Court for designating an authorized representative. The OCA further argues that the EAP's and PPL's Comments provide no analysis to demonstrate how PUC proceedings are so legally intensive as to require attorney representation in all circumstances. Further, the OCA argues that the PUC can relieve concerns of a "PUC Agents" class developing by establishing a certification process which requires a representative to attest in a legally binding document. Additionally, the OCA supports the Comments and Reply Comments submitted by CAUSE-PA/TURN, due to the organization's familiarity with advocating for low-income consumers. OCA Reply Comments at 10, 12, 13.

OSBA Reply Comments

The OSBA finds that the proposed changes to Section 1.21 would not constitute an unauthorized practice of law. The OSBA notes that currently, individuals may file a complaint and represent themselves *pro se* before the PUC. The OSBA believes the same procedure should apply to small businesses as a matter of fairness because

prohibiting small businesses from proceeding *pro se* before the PUC is unjust, unreasonable, and discriminatory. In response to some comments' concerns over a small business representative's authority to make binding decisions, the OSBA advances that the representative signing the complaint would have to verify that they have a specific relationship with the small business, such as an owner, a partner, or other employee. OSBA Reply Comments at 4-5.

EAP Reply Comments

EAP opposes the proposed amendment to Section 1.21 and supports the existing language in Section 1.21(c). EAP reiterates its concerns with the PUC amending its regulations to permit non-lawyer representation of third parties, as such amendments would enable individuals to engage in the unlawful practice of law. Regarding the OSBA's effort to add a definition for "small business" in the regulations, the EAP believes that a sole proprietorship could be represented by an individual owner in nonadversarial and adversarial proceedings under current law and PUC regulations, suggesting that the PUC clarify this point to allow for greater flexibility. EAP believes that the proposals offered by CAUSE-PA/TURN and AIDS Resource, et al. are more reasonable than the changes proposed by the OCA. To the extent that the PUC does adopt CAUSE-PA/TURN's and AIDS Resource's recommendations, the EAP suggests that the PUC also adopt requirements that supervising attorneys: (1) provide some form of certification that they are responsible for overseeing the non-attorney's work in the case, before the non-attorney begins representing the individual; and (2) be required to attend the evidentiary hearing. EAP Reply Comments 2-3, 5.

C&T Utilities Reply Comments

C&T Utilities supports EAP's Comments and Reply Comments regarding why non-attorney representation should not be allowed except in very limited circumstances. C&T Utilities also notes that the arguments advanced by parties supporting the changes

to Section 1.21 offer contradictory explanations of the issues and scope of proceedings where non-attorney representatives would be allowed. C&T Utilities Reply Comments at 2-3.

Disposition on § 1.21

In addressing the comments to Section 1.21, it is appropriate to distinguish between representation in nonadversarial proceedings and representation in informal proceedings.

a. Representation In Nonadversarial Proceedings

First, we determine whether participation in a nonadversarial proceeding constitutes the practice of law. Section 1.8 defines a nonadversarial proceeding as a “proceeding initiated by a person **which is not contested or** a proceeding initiated by the Commission or at the request of a person **to develop regulations, policies, procedures, technical rules or interpretations of law.**” 52 Pa. Code § 1.8 (relating to definitions) (emphasis added). Unlike adversarial proceedings, in nonadversarial proceedings there is no submission of testimony and exhibits, direct and cross examination, the development of a formal transcribed record, or a decision rendered by a presiding officer. As such, we find that participation in a nonadversarial proceeding does not rise to the level of a formal PUC proceeding. Therefore, we do not find that representation by a third-party non-attorney in uncontested proceedings constitutes the unauthorized practice of law.

As such, we find it appropriate to further amend Section 1.21(c) to clearly account for permitted forms of representation in nonadversarial proceedings. We find that an individual or sole proprietor¹⁸ may be represented in a nonadversarial proceeding in the following ways: (1) represent themselves *pro se*; (2) be represented by an attorney licensed to practice in the Commonwealth; (3) be represented by an attorney licensed in

¹⁸ See Disposition of Sections 1.8 and 1.22 regarding the definition of “sole proprietor.”

another jurisdiction admitted *pro hac vice*; (4) be represented by a certified legal intern; or (5) be represented by a third party non-attorney representative holding the power of attorney of the individual or sole proprietor during periods of the individual's or sole proprietor's disability and/or incapacity. Accordingly, this new language will replace the existing language at Section 1.21(c)(1) concerning representation of partnerships in nonadversarial proceedings.

We find that all other entities, including but not limited to partnerships, corporations, trusts, associations, and agencies, political subdivisions, and government entities, may be represented as provided by the amended language in Sections 1.21(c)(2), (3) and (4). Further, pursuant to new Section 1.21(c)(5), any party may be represented by an attorney not licensed in the Commonwealth but appearing before the PUC *pro hac vice* in accordance with Pennsylvania Bar admission rules.

However, we note that any pleading, submittal, or other document filed with the PUC in a nonadversarial proceeding must be signed in ink by the party in interest, or by the party's attorney, as required Section 1.35(b) and show the office and mailing address of the party or attorney. *See* 52 Pa. Code §§ 1.35(b), 1.35(c)(1). Parties representing themselves or that are using third-party representation should be mindful that if it is determined that a document in a nonadversarial proceeding was signed in violation of PUC regulations concerning execution, the PUC or presiding officer may impose sanctions on the individual(s) who signed the document and/or the party on whose behalf the document was signed, consistent with Section 1.35(c)(2). *See* 52 Pa. Code § 1.35(c)(2). We also caution that an initially uncontested proceeding may shift from nonadversarial to adversarial. Once another party files an answer, preliminary objections, or protest in an uncontested proceeding, the matter becomes contested and representation of the parties to the proceeding is governed by Section 1.22 (relating to appearance in adversarial Commission proceedings). *See* 52 Pa. Code § 1.22.

b. Representation In Informal Proceedings

Next, we determine whether participation in an informal proceeding constitutes the practice of law. Section 56.163 of our regulations, relating to informal complaint procedures, provides that parties to an informal complaint proceeding “may represent themselves or be represented by counsel or other person of their choice, and may bring witnesses to appear on their behalf.”¹⁹ *See* 52 Pa. Code § 56.163. While Chapter 56 is beyond the scope of this rulemaking, we find this language regarding representation in informal complaint proceedings to be instructive for resolving the issue of proper representation in PUC informal proceedings and amending Section 1.21 accordingly.

An informal proceeding is **not intended to produce a formal record**. 52 Pa. Code § 1.8 (relating to definition of “informal proceeding”). An informal proceeding at the PUC is initiated by the filing of an informal complaint with the Bureau of Consumer Services (BCS). An informal complaint **seeks action on a matter that lacks the legal or other requirements of a formal complaint** under 66 Pa.C.S. § 701 **and does not involve a legal proceeding before a presiding officer or mediator**. 52 Pa. Code § 1.8 (relating to definition of “informal complaint”). The filing of an informal complaint may trigger an informal investigation by a BCS investigator. During the informal investigation, the BCS investigator may seek relevant information and records from the utility, as well as additional information and documentation from the complainant. 52 Pa. Code § 56.163(1). Upon completion of the informal investigation, the BCS investigator will generally issue an informal decision on the merits of the informal complaint. *See* 52 Pa. Code §§ 1.8 (relating to definition of “informal investigation”) and 3.112 (relating to action on informal complaints). A BCS informal decision of an informal complaint is

¹⁹ Section 56.392 sets forth the informal complaint procedures for victims under a protection from abuse order as provided by 23 Pa.C.S. Chapter 61 (relating to Protection from Abuse Act) or a court order issued by a court of competent jurisdiction in this Commonwealth which provides clear evidence of domestic violence against the applicant or customer as provided by 66 Pa.C.S. § 1417 (relating to nonapplicability). *See* 52 Pa. Code §§ 56.251, 56.392.

binding upon the parties unless a party appeals the BCS decision by filing a formal complaint with the Office of Administrative Law judge. *See* 52 Pa. Code § 56.163(3).

Consistent with Section 56.163, at no point in the informal complaint and investigation process is it necessary for any party to be represented by an attorney, and in fact utilities are often represented by non-attorney staff when responding to the BCS investigator's requests for information. Under these circumstances, we find that the parties to a BCS informal complaint proceeding are not engaging in the practice of law. Accordingly, we find that it is appropriate to amend the existing language at Section 1.21(d) by deleting subsections 1.21(d)(1) and 1.21(d)(2) and replacing them with language stating parties may be represented in the manner set forth in Section 56.163.

As such, based on the comments and replies of the stakeholders and our discussion above, we determine that it is prudent to fundamentally alter our proposed amendment to Section 1.21 by reorganizing Section 1.21 in its entirety. This reorganization will streamline Section 1.21 and provide easier navigation for the reader. Specifically, we are deleting the existing language in subsections (a) and (b), having subsection (c) focus on representation in nonadversarial and informal proceedings only, and having subsection (d) focus on representation in informal proceedings brought under Chapters 56 and 64 only.

For clarity, we further amend subsection 1.21(c) to clarify that the subsection applies to both nonadversarial and informal proceedings.

Accordingly, the final form regulation set forth in the accompanying Annex reflects a reorganized Section 1.21 that reflects that subsections (a) and (b) are reserved since the existing language in those subsections has been deleted in its entirety, that reflects that an amendment to subsection (c) so that it focus on representation in nonadversarial and informal proceedings, and also reflects an amendment to subsection

(d) which focuses on representation in informal proceedings brought under Chapters 56 and 64 only.

§ 1.22. Appearance by Attorney or Certified Legal Intern.

In the NOPR, we stated that the proposed amendments to Section 1.22 are intended to adequately show that corporations and municipal corporations are subject to this section and clearly state who can appear on their behalf in adversarial proceedings. We explained that our current rules operate to preclude a corporation or partnership from appearing before the PUC in an adversarial proceeding unless they have legal counsel. However, we also took note that Rule 207 in the Rules of Procedure of the Magisterial District Judges (MDJ) in Pennsylvania allows corporate or partnership entities to appear *pro se* and explained that PUC proceedings are more akin to MDJ proceedings, albeit at an administrative level, given the rights of appeal to Pennsylvania courts set out in the Code. Accordingly, the proposed amendment to Section 1.22(a) was intended to better facilitate the development of evidentiary records in complaint proceedings involving individual consumers, to grant a more permissive approach to representation for small businesses and partnerships, and the ability of small businesses to operate and seek redress before the PUC.

Stakeholder Comments on § 1.22

OSBA Comments

The OSBA agrees with the proposed amendment to Section 1.22 and reiterates its recommended definition of “small business.” The OSBA notes that several Commonwealth departments and agencies, as well as federal administrative agencies, allow individuals to represent themselves at a hearing without an attorney present. These include the Board of Finance and Review (61 Pa. Code § 701.6); Department of Environmental Resources (25 Pa. Code § 21.21); Department of Revenue (61 Pa. Code § 7.5); Federal Communications Commission (47 C.F.R. §§ 1.21(a)-(d), and § 1.25

(1990)); Pennsylvania Securities Commission (1 Pa. Code §§ 31.21-31.28); Unemployment Compensation Board (34 Pa. Code § 101.41(a)); and Workmen's Compensation Board (Title 77 by implication). OSBA Comments at 7-10.

OCA Comments

The OCA supports the proposed amendment to Section 1.22 and recommends that small businesses could be represented by a corporate official when individuals are able to be represented by non-attorneys. Generally speaking, the OCA argues that business entities are held to the same standards as non-attorney representatives whether such representation constitutes the unauthorized practice of law.²⁰ Additionally, the OCA offers a proposed definition for Section 1.22, arguing that their proposed changes will allow the PUC to lower the barrier to participating in PUC proceedings without endorsing the unauthorized practice of law. OCA Comments at 16-17, 18.

The OCA agrees with Vice Chair Barrow that small businesses should be able to proceed *pro se* in actions before the PUC in the same manner as individual consumers. The OCA recommends that the definition of "small business" used in the Small Business Advocate Act be incorporated into the PUC's regulations, less the requirement that the entity must receive public utility service. The OCA further recommends that the PUC permit businesses entities employing less than 250 employees to appear before the PUC without being represented by counsel. OCA Comments at 61.

PPL Comments

PPL opposes the proposed amendment to Section 1.22, as it could broaden the scope of who can represent individuals before the PUC, potentially leading to the unauthorized practice of law. PPL notes that Rule 207 of the Rules of Procedure for MDJs require an individual to provide a verification of the subject matter of the litigation.

²⁰ See Pa.R.Civ.P.M.D.J. 507.

PPL avers that the proposed Section 1.22 does not include such a requirement, which could lead to inconsistencies and representation issues. PPL further argues that MDJ hearings are not akin to PUC formal proceedings. PPL contends that developing a complete and accurate record is more important in formal PUC proceedings than it is in magisterial district court hearings. Additionally, PPL argues that the proposed changes could cause confusion as to whether a business representative has the authority to bind the company, which would make settlement negotiations more difficult. PPL thus recommends that the current language of Section 1.22 be retained to ensure only qualified individuals represent parties before the PUC to protect the public and maintain the integrity of proceedings. PPL Comments at 3-4.

EAP Comments

EAP opposes the proposed amendments to Section 1.22, as it would permit the unauthorized and unlawful practice of law. EAP argues that the PUC's attempt to equate its own proceedings to magisterial district court proceedings is unsupportable. EAP avers that questions of law and fact from MDJ's rulings in civil proceedings are generally heard by the Courts of Common Pleas *de novo*, whereas only questions of law from final PUC orders can be reviewed by the Commonwealth Court on a *de novo* basis. The EAP argues that unlike magisterial district court proceedings, non-lawyers could significantly and adversely affect the ability of individuals, small businesses, or partnerships to develop a complete evidentiary record to support their claims. Further, the EAP notes that the PUC considered and rejected the incorporation of non-lawyer representation into its regulations nearly thirty years ago, because doing so would permit the unlawful practice of law.²¹ EAP Comments at 6-7.

²¹ See *Rules of Administrative Practice and Procedure*, Docket No. L-930076 (Order entered July 18, 1996).

Reply Comments on § 1.22

Columbia Gas Reply Comments

Columbia Gas offers its support for the EAP's Comments, in particular the comments urging the PUC to reject the proposed amendment to Section 1.22. Columbia Gas Letter at 1.

PAWC Reply Comments

PAWC recommends the PUC clarify Section 1.22 to state that a party is permitted to be represented by an attorney in adversarial proceedings.

C&T Utilities Reply Comments

C&T Utilities strongly opposes allowing any corporation or other legal entity with 250 or fewer employees to participate in adversarial proceedings without an attorney. C&T Utilities points out that the utilities they represent are each "small businesses" under the OSBA's proposed definition. C&T Utilities further notes that when individual consumers participate on a *pro se* basis in PUC proceedings, the ALJs often assist the consumers and provide them with some latitude regarding strict compliance with procedural steps. C&T Utilities argues that extending this latitude to corporations who decide to be represented by a non-attorney officer impinges on the due process rights of utilities and other parties in the proceeding. C&T Utilities Reply Comments at 3-4.

IRRC Comments on § 1.22

IRRC notes that the stakeholders representing utilities echo the same concerns Commissioner Coleman set forth in his November 9, 2023, motion. IRRC states that the PUC is neither part of the Pennsylvania Unified Judicial System nor an executive agency like the precedent the PUC cites to as basis for the proposed amendment. IRRC also notes that stakeholders representing low-income consumers express concerns that the

proposed amendments to Section 1.22 do not fully address the significant need for expanded representation. IRRC explains that stakeholders assert that the proposal would require the PUC to make case-by-case determinations regarding a consumer's disability or incapacity, which may restrict representation to a limited subset of consumers. Given the divergent viewpoints expressed, IRRC encourages the PUC to continue engaging with the regulated community to address their concerns. IRRC asks the PUC to submit an updated regulatory analysis form describing the communications and outreach efforts with the regulated community on these matters. With respect to Section 1.22(a), IRRC also notes that not all small businesses will be corporations. IRRC asks the PUC to clarify in the final rulemaking whether "authorized corporate official" should be replaced with "authorized agent."²² IRRC Comments at 4-5.

Disposition on § 1.22

Our primary goal in proposing to amend Section 1.22 was to implement a more permissive approach to representation of individual consumers in complaint proceedings, as other administrative agencies have done for their administrative proceedings. An adversarial proceeding is a matter initiated by a person, corporation, or municipal corporation to seek authority, approvals, tariff changes, enforcement, fines, remedies or other relief from the PUC which is contested by one or more other persons and which will be decided on the basis of a formal record before a presiding officer of the Office of Administrative Law Judge.²³ See 52 Pa. Code § 1.8 (relating to definition of "adversarial proceeding"). While it is undisputed that non-attorney individuals may represent themselves *pro se* in adversarial proceedings, the legality of permitting non-attorneys to represent other non-attorneys and small businesses (including sole proprietorships,

²² See Disposition of Section 1.8 regarding the definition of "authorized agent."

²³ A formal record consists of the pleadings and submittals in a matter or proceeding, a notice or PUC order initiating the matter or proceeding, and if a hearing is held, the following: the designation of the presiding officer, transcript of hearing, exhibits received in evidence, offers of proof, motions, stipulations, subpoenas, proofs of service, references to the PUC and determinations made by the PUC thereon, certifications to the PUC, and anything else upon which action of the presiding officer or the PUC may be based. 52 Pa. Code § 1.8 (relating to definitions).

partnerships, and corporations) in adversarial proceedings is disputed by stakeholders in their comments and reply comments to the NOPR. Specifically, some stakeholders express concern that representation by a non-attorney third party in an adversarial proceeding constitutes the unauthorized practice of law. Other stakeholders assert that permitting non-attorney third parties to represent individuals will provide much-needed legal representation to *pro se* and low-income individuals who pursue litigation before the PUC.

The PUC acknowledges IRRC's observation that the PUC is not part of the Pennsylvania Unified Judicial System, which we cited to in the NOPR as the basis for the proposed amendments to Section 1.22. We note that IRRC suggested that the PUC engage in further outreach efforts with the stakeholders to resolve the polarized views on this matter. IRRC Comments at 4-5. However, given the fact that stakeholders that regularly practice before the PUC were provided with two years of meetings to voice their concerns to the PUC and to other stakeholders; the opportunity for all stakeholders to file comments and reply comments to the NOPR and our extensive consideration thereof herein; and, most importantly, the clarity of the law concerning the unauthorized practice of law.

Accordingly, we determined that additional outreach is not necessary to reach an outcome on this particular issue in this final rulemaking order.

a. Representation by Non-Attorney Third Parties in Adversarial Proceedings

Initially, we address the issue of whether a non-attorney third party may appear in a representative capacity on that person's behalf in an adversarial proceeding before the PUC.

i. Appellate Caselaw

The Pennsylvania Constitution has exclusively granted to the Pennsylvania Supreme Court the power to regulate the practice of law before all the courts of the Commonwealth. Pa. Const. art. V, § 10. The Pennsylvania Supreme Court has held that in-court representation of another amounts to the practice of law in this Commonwealth. *Dauphin Cnty. Bar Assoc. v. Mazzacaro*, 351 A.2d 229, 234 (Pa. 1976) (*Mazzacaro*). Following the Pennsylvania Supreme Court's guidance in *Mazzacaro*, the Superior Court has held that a non-lawyer having a POA on behalf of a person does not authorize the non-lawyer to engage in the unauthorized practice of law, such as representing that person in court, even if the power of attorney documents technically appear valid. *Kohlman v. W. Pa. Hosp.*, 652 A.2d 849 (Pa. Super. 1994) (*Kohlman*). In *Kohlman*, Eleanor C.K. Smith (Smith), as Viola Kohlman's (Kohlman) POA, commenced a medical malpractice action against Western Pennsylvania Hospital, a corporation, and various physicians on behalf of Kohlman. *Kohlman* at 850. The trial court found that Kohlman failed to be represented by an attorney and entered a judgment non pros. *Kohlman* at 850. On appeal to the Superior Court, Ms. Kohlman argued that Sections 5602 and 5603 of the Probate Code, 20 Pa.C.S.A. §§ 5602-5603, permitted Smith, a non-attorney individual holding her power of attorney, to "pursue claims and litigation" on her behalf. *Id.* at 850-851. As such, Ms. Kohlman argued that Smith was justified in commencing a medical malpractice suit on her behalf since Smith was the individual acting in the capacity of Kohlman's POA. *Id.* In denying Ms. Kohlman's appeal, the Superior Court addressed Pennsylvania Supreme Court's actions to regulate the legal profession in the Commonwealth:

To help administer admission to the bar, the Supreme Court has created the Pennsylvania Board of Law Examiners, which, among other things, establishes standards for admission to the bar. Pa.B.A.R. 104. The Supreme Court has also adopted the Code of Professional Conduct in order to govern the conduct of those individuals privileged to practice law in this Commonwealth. Additionally, to assure that lawyers admitted to practice in the Commonwealth continue

their education to have and maintain the requisite knowledge and skill necessary to fulfill their professional responsibilities, the Pennsylvania Supreme Court has adopted the Pennsylvania Rules for Continuing Legal Education. Pa.R.C.L.E. 102.

Id. at 851, citing *McLaughlin v. Philadelphia Newspapers, Inc.*, 348 A.2d 376 (Pa. 1975); *Appeal of Hanson*, 198 A. 113 (Pa. 1938). The Superior Court went on to note that the General Assembly passed legislation making the unauthorized practice of law a misdemeanor in the Commonwealth of Pennsylvania pursuant to Section 2524 of the Judiciary Act of 1976.²⁴ *Id.*, citing 42 Pa.C.S. § 2524. In rejecting Ms. Kohlman's interpretation of Sections 5602 and 5603 of the Probate Code, the Superior Court held that:

Sections 5602 and 5603 of the Probate Code do not empower an individual who is not licensed as an attorney-at-law to practice law in this Commonwealth. To construe the Probate Code so as to permit a non-attorney to appear and represent a principal in a court of record would be to permit the licensing and admission requirements to be circumvented. In addition, such an interpretation would effectively abrogate the Judicial Code's prohibition against the unlicensed practice of law. The potential problems created by the use of the power of attorney as a means of encouraging the unauthorized practice of law are obvious. Of course, if the principal wishes to proceed pro

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§ 2524. Penalty for unauthorized practice of law.

(a) General rule.--Except as provided in subsection (b), **any person**, including, but not limited to, a paralegal or legal assistant, **who within this Commonwealth shall practice law**, or who shall hold himself out to the public as being entitled to practice law, or use or advertise the title of lawyer, attorney at law, attorney and counselor at law, counselor, or the equivalent in any language, in such a manner as to convey the impression that he is a practitioner of the law of any jurisdiction, **without being an attorney at law** or a corporation complying with 15 Pa.C.S. Ch. 29 (relating to professional corporations), **commits a misdemeanor of the third degree upon a first violation. A second or subsequent violation of this subsection constitutes a misdemeanor of the first degree.**

42 Pa.C.S. § 2524 (emphasis added).

se, he or she may do so. However, the power of attorney cannot be used as a device to license laypersons to act as an attorney-at-law.

Id. at 852.

The PUC notes that there are no provisions in the Public Utility Code that create a statutory exemption for purposes of legal representation before the PUC. As such, following the guidance of the Supreme Court and the Superior Court, a non-attorney individual holding power of attorney seeking to represent that individual in a PUC adversarial proceeding would result in the unauthorized practice of law, which is a misdemeanor under 42 Pa.C.S. § 2524. Accordingly, we hereby decline to adopt any regulatory language permitting representation of individuals by non-attorney third parties.

ii. Practice Before Other Agencies

In its comments the OSBA provided examples of Commonwealth agencies that purportedly permit individuals to be represented by non-attorneys in support of its position that the PUC should likewise permit such representation. OSBA Comments at 7-10.²⁵ We now review these proffered examples in turn.

- **Department of Revenue:**
 - **Board of Appeals:** The regulations at 61 Pa. Code § 7.15²⁶ govern practice and procedure before the Board of Appeals. The regulation at 61 Pa. Code § 7.15(a)(ii) permits an individual to represent themselves before the Board of Appeals or be represented by a

²⁵ The OSBA also cites to 47 C.F.R. 1.21(a) (1990) concerning appearance before the Federal Communications Commission (FCC). Given that the FCC is a Federal agency, and not a Commonwealth agency, we find that 47 C.F.R. 1.21(a) (1990) is inapplicable and irrelevant for purposes of our ruling on the matter of representation before the PUC.

²⁶ The OSBA cites to 61 Pa. Code § 7.5. However, 61 Pa. Code §§ 7.1-7.7 were repealed January 25, 2013, effective January 26, 2013, 43 Pa.B. 532.

person possessing the requisite technical education, training or experience. However, the regulation at 61 Pa. Code § 7.15(a)(ii) states that “***Only an attorney-at-law representing a petitioner, or the petitioner acting without representation before the Board [of Appeals], shall be permitted to raise or make a legal argument at a hearing before the Board [of Appeals].***”

- **Board of Finance and Review (Finance Board):** The regulations at 61 Pa. Code §§ 702.21-702.22 governing practice before the Finance Board permits representation by the petitioner or by an attorney, accountant or other representative, including persons holding a power of attorney on behalf of the petitioner.²⁷ However, Chapter 702 was issued under Section 2703.1(m) of the Tax Reform Code of 1971 (72 P.S. § 9703.1(m)), which authorizes the Finance Board to promulgate appropriate regulations. More relevant, **Section 9704 of the Tax Reform Code of 1971** provides that “Appearances in tax appeal proceedings conducted by the [Finance Board] may be by the taxpayer or by an attorney, accountant or other representative ***provided the representation does not constitute the unauthorized practice of law as administered by the Pennsylvania Supreme Court.***” 72 P.S. § 9704 (emphasis added).
- **Department of Environmental Protection (DEP):**²⁸ The regulation at 25 Pa. Code § 1021.21²⁹ governing representation before the Environmental

²⁷ The OSBA cites to 61 Pa. Code § 701.6. However, 61 Pa. Code §§ 701.1-701.7 were repealed July 8, 2016, effective July 9, 2016, 46 Pa.B. 3646.

²⁸ The OSBA appears to mistakenly refer to DEP as the “Department of Environmental Resources.”

²⁹ The OSBA references Section 21.21 of Title 25. This regulation does not exist and appears to be a typographical error in reference to Section 1021.21 of Title 25. However, it is unclear where the OSBA obtained the language in its Comments purportedly pertaining to representation before the EHB.

Hearing Board (EHB) states that “*Parties, except individuals appearing on their own behalf, shall be represented by an attorney in good standing at all stages of the proceedings* subsequent to the filing of the notice of appeal or complaint.” 25 Pa. Code § 1021.21(a) (emphasis added). However, the EHB encourages individuals to be represented by counsel, and may require representation by counsel if the EHB determines that the individual is not merely appearing on their own behalf. *See* 25 Pa. Code § 1021.21(c).

- **Department of Labor and Industry:**
 - **Unemployment Compensation Board (UCB):** The regulation at 34 Pa. Code § 101.41 states that an individual claiming unemployment compensation before the UCB may be represented by counsel or another authorized agent. However, this regulation cites to **Section 702 of the Employment Compensation Law, 43 P.S. § 862** (relating to limitations on fees), which states that “*[a]ny individual claiming compensation in any proceeding before the [UCB] may be represented by counsel or other duly authorized agent;* but no such counsel or agent shall either charge or receive any greater fee for such services than is approved by the board.”
- **Workmen’s Compensation Board (WCB):** The regulation at 34 Pa. Code § 111.2 concerning the rules of administrative practice and procedure before the WCB do not specifically set forth rules for representation before the WCB. However, 34 Pa. Code § 111.3 defines a “party” with regard to the WCB as a “petitioner or respondent,” and clarifies that “*[a]n act required or authorized by this chapter, to be done by or to a party, may be done by or to that party’s counsel of record.*” The definition contains no mention of representation by a non-attorney.

- Department of Banking and Securities (DBS):** Section 1-706(a) of the Pennsylvania Securities Act (Securities Act) provides that a person may request a hearing before the Pennsylvania Securities Commission (Securities Commission) regarding any matter determined in a summary order issued by the DBS under 70 P.S. §§ 1-204, 1-208, 1-211, 1-305, 1-606. 70 P.S. § 1-706(a). Subsection 1-706(e) of the Securities Act states that all administrative proceedings conducted by the department pursuant to this act shall be subject to the requirements of the Administrative Agency Law, 2 Pa.C.S. §§ 101, et seq. Subchapter A of the Administrative Agency Law (2 Pa.C.S. §§ 501-508) governs practice and procedure of Commonwealth Agencies. Section 502 of the Administrative Agency Law states that any party may be represented before a Commonwealth agency. 2 Pa.C.S. § 502. A review of caselaw related to the construction and application Section 502 of the Administrative Agency Law indicates that this statutory provision relates to the right of a party appearing before a Commonwealth Agency to be represented by counsel.³⁰

In sum, many of the Commonwealth agencies cited by the OSBA do **not** permit a party to be represented by a non-attorney in hearings before said agencies and/or their designated hearing officers. To the extent that some Commonwealth agencies identified by the OSBA permit representation by a non-attorney at hearings, such representation is based on a carve-out appearing in statutory law duly enacted by the General Assembly. Again, there is no provision of the Public Utility Code that provides for parties to be represented by non-attorney third parties in hearings before the PUC or its presiding officers. Since the Public Utility Code provides no statutory basis for representation by non-attorneys, and given the Pennsylvania Supreme Court’s holding in *Mazzacaro*, we

³⁰ *Kusnir v. Leach*, 439 A.2d 223 (Pa. Cmwlth. 1982) (holding that a state college was a “Commonwealth agency” subject to provisions of the Administrative Agency Law and therefore a party appearing before it had the right to be represented by counsel).

find that any effort by the PUC to promulgate regulations permitting such representation would be suborning the unauthorized practice of law.

b. Representation of Individuals in Adversarial Proceedings

While we acknowledge OCA's well-meaning efforts to expand representation of low-income individuals in adversarial proceedings by encouraging the PUC to permit representation by non-attorney third parties, we note that the PUC already permits representation of an individual by a non-attorney third party in the form of a certified legal intern. The PUC also has policy of providing *pro se* litigants considerable latitude to ensure that they receive full due process. For example, Section 1.2 requires that, with regard to *pro se* litigants, the procedural rules be liberally construed and waived where such waiver does not affect the due process rights of another party. *See* 52 Pa. Code § 1.2 (relating to liberal construction). Further, PUC presiding officers may exercise their authority under Section 5.483 to take appropriate action to regulate the course of a proceeding to ensure a fully developed record. *See* 52 Pa. Code § 5.483. For these reasons, in addition to the Superior Court's guidance on representation by non-attorneys in *Kohlman*, we decline to adopt the OCA's proposal to permit representation of individuals by non-attorney third parties.

c. Representation of Small Businesses in Adversarial Proceedings

While the OSBA and OCA support permitting small businesses to be represented by non-attorney representatives in adversarial proceedings, we find comments expressing concern about whether a non-attorney individual has the legal background to adequately represent a small business or the legal authority to bind a small business to be persuasive. Specifically, we agree with EAP's comments that non-attorney representation on behalf of a small business (including partnerships and corporations) could result in a party's failure to develop a complete evidentiary record to support their claims, which could be detrimental to other business partners and employees. We also acknowledge and agree

with PPL's comments that non-attorney representation would raise questions about whether the representative has the authority to bind the small business, which would also impede settlement negotiations.³¹ Under these circumstances, we find that non-attorney representation would constitute the unauthorized practice of law.

Conversely, we do not find that a sole proprietor with no employees who appears *pro se* in an adversarial proceeding is engaging in the unauthorized practice of law as they are effectively representing only themselves. While it may be more prudent for a sole proprietor with no employees to retain the services of licensed counsel or a certified legal intern in an adversarial proceeding, they have the choice to represent themselves in PUC adversarial proceedings. We believe that this determination, which is specific to sole proprietorships with no employees, addresses the concerns expressed by the OSBA and OCA that it may be unduly burdensome to require a small business to retain an attorney to prosecute formal complaint over what might be a simple billing or service dispute with a utility, without sanctioning the unauthorized practice of law. To be clear, sole proprietorships with one or more employees, regardless of whether they are part-time or full-time, must be represented by an attorney or a certified legal intern under Section 1.22.

We decline to permit representation of a sole proprietorship, with or without employees, by a non-attorney third party, including in instances where the sole proprietor is experiencing a period of disability and/or incapacity and has a designated power of attorney (consistent with *Kohlman*). Under such circumstances, the sole proprietorship must be represented by an attorney. For these reasons, we shall modify Section 1.22(a) by withdrawing our proposed amendment which would allow an authorized corporate official to represent a small business or partnership in adversarial proceedings. We shall

³¹ We also acknowledge IRRC's observation that the PUC is not part of the Pennsylvania Unified Judicial System, and as such Rule 207 in the Rules of Procedure of the MDJ in Pennsylvania, which allows corporate or partnership entities to appear *pro se*, is inapplicable to the PUC's administrative proceedings.

replace the withdrawn language with new language which states that an individual or sole proprietorship with no employees may represent themselves or be represented by an attorney or certified legal intern.

Given our distinction between sole proprietors with employees and sole proprietors without employees, and to clarify which entities require representation by an attorney, we shall further amend Section 1.22(b) to replace “person” with “sole proprietors with employees, partnerships, associations other than corporations.”

Additionally, as we stated *supra*, we shall add a definition for sole proprietor in Section 1.8. This definition states that a sole proprietor is “an individual who owns an unincorporated business by themselves.” The sole proprietor is the individual person who owns the business, while a sole proprietorship is the unincorporated business entity itself. A sole proprietor and sole proprietorship are legally indistinguishable as the owner has full control and receives all profits but holds unlimited personal liability for all business debts and legal actions.

Lastly, for organizational purposes, we shall also move the proposed language in Section 1.22(b) concerning requests for general rate increases to new Section 1.22(d). We shall also take existing language at 1.22(d) and move it to new subsection 1.22(e). Additionally, we shall withdraw the proposed language in Section 1.22(c) and replace it with language concerning appearance by attorneys not licensed in the Commonwealth.

Accordingly, the final form regulation set forth in the accompanying Annex incorporates these aforementioned revisions to Section 1.22.

§ 1.23(a). Other Representations Prohibited at Hearings.

In the NOPR, we explained that the proposed amendment to Section 1.23(a) is intended to clarify that all entities encompassed by the amended definition of “party” in Section 1.8 are subject to this section.

Comments on § 1.23(a)

In its comments, the OCA argues that the proposals for Sections 1.21 through 1.23 would preclude the ability of an individual to be represented by an attorney for informal and nonadversarial proceedings. However, the OCA points out that individuals are guaranteed a right to such representation set forth in 2 Pa.C.S. § 502. As such, the OCA offered a proposed definition for Section 1.23(a) to remove any conflict between the PUC’s regulations with relevant statutes or with itself.

(a) Persons, **corporations, and municipal corporations** may not be represented at a hearing before the Commission or a presiding officer except as stated in § 1.21 or § 1.22 (relating to appearance **in nonadversarial Commission proceedings or informal Commission proceedings**; and [appearance by attorney or certified legal intern] **appearance in adversarial Commission proceedings**), **except that any party may be represented by an attorney before the Commission.**

OCA Comments at 18-19.

Disposition on § 1.23(a)

We appreciate the OCA’s efforts to ensure that Section 1.23(a) addresses representation by an attorney in nonadversarial, informal, and adversarial proceedings. However, given the additional amendments to Sections 1.21 and 1.22 as described above,

we find that OCA’s proposal is moot. As such, we hereby adopt the amendments to Section 1.23(a), as proposed in the NOPR.

Accordingly, the final form regulation set forth in the accompanying Annex incorporates the proposed amendment to Section 1.23.

§ 1.24. Notice of Appearance or Withdrawal.

In the NOPR, we explained that the proposed amendments to Section 1.24 are intended to create clarity and consistency regarding the procedures for attorneys appearing and withdrawing before the PUC. The proposed amendment to Section 1.24(b)(2)(i)(B) is intended to use the appropriate legal language for appearing *pro hac vice* before the Commonwealth. The proposed changes to Section 1.24(b)(2)(i)(D) is intended to create consistency with the proposed amended definition of “person” set forth in Section 1.8. Additionally, we explained that the proposed amendment to Section 1.24(b)(3) is intended to clarify that an attorney must serve a notice of withdrawal on the parties, presiding officer, and the Secretary.

Stakeholder Comments on § 1.24

CAUSE-PA/TURN Comments

CAUSE-PA/TURN recommend further clarification to Sections 1.24(b)(2)(ii)(A) and 1.24(b)(3) for when attorneys are required to file a formal notice of appearance or withdrawal during PUC proceedings. CAUSE-PA/TURN state that in many PUC proceedings, a separate notice of appearance is not required to be filed. CAUSE-PA/TURN argue that filing notices of appearance and withdrawal in every PUC proceeding adds unnecessary processes and burdens to parties who participate in numerous PUC proceedings. To address these concerns, CAUSE-PA/TURN offer a

proposed definition for Section 1.24(b)(2)(ii)(A). CAUSE-PA/TURN Comments at 32-33.

EAP Comments

EAP questions whether holders of POAs or authorized corporate officials would need to enter or withdraw their appearances in PUC proceedings under the proposed amendments to Section 1.24 given the PUC's proposed amendments to Sections 1.21 and 1.22. EAP believes that any person attesting to represent the interests of another individual, small business, or partnership should be required to enter and withdraw their appearance before the PUC. EAP Comments at 10.

Reply Comments on § 1.24

No reply comments were filed.

IRRC Comments on § 1.24

IRRC notes a stakeholder's question of whether holders of POA or authorized corporate officials would need to enter their appearance in PUC proceedings. IRRC also notes a stakeholders' assertion that any person attesting to represent the interests of another individual, small business, or partnership should be required to enter and withdraw their appearance. IRRC asks the PUC to clarify whether holders of POAs or authorized corporate officials will need to enter or withdraw their appearances in PUC proceedings. Additionally, IRRC states that under the current Section 1.24(a), an individual's change of address occurring the course of a proceeding must be promptly reported to the Secretary. IRRC notes that the proposed language to subsection (a) does not address whether an individual is required to report a change in their electronic service account. IRRC asks the PUC to include electronic service account in the final rulemaking or explain why it is not needed and how excluding it is in the public interest. IRRC Comments at 5.

Disposition on § 1.24

We agree with CAUSE-PA/TURN that it is reasonable to only require attorneys to enter their appearance under Section 1.24(b)(2) when there is an adversarial proceeding. Accordingly, we hereby further amend Section 1.24(b)(2)(ii)(A) to specify that attorneys who do not file an initial pleading are required to serve their notice of appearance on the other parties and provide a certificate of service to the Secretary in adversarial proceedings, only.

We next address EAP's comments about whether holders of POAs and authorized corporate officials will need to enter their appearance under this section, given the amendments we proposed to Sections 1.21 and 1.22 in the NOPR. Given that we no longer propose to permit non-attorney third parties who hold POAs to represent individuals or authorized corporate officials to represent small businesses, it is not necessary for those individuals to enter or withdraw their notice of appearance in PUC proceedings pursuant to Section 1.24.

We acknowledge IRRC's comment concerning a change in the email address of an efilings user. Thus, we hereby further amend Section 1.24(a) to include a requirement that an efilings user must immediately notify the Secretary's Bureau if their email address used for efilings changes during the course of a proceeding.

Accordingly, the final form regulation set forth in the accompanying Annex incorporates the adoption of these aforementioned modifications to our proposed amendments to Section 1.6.

§ 1.27(a). Suspension and Disbarment.

In the NOPR, we explained that Section 1.27(a) is intended to create consistency with the proposed amended definition of “person” in Section 1.8.

Stakeholder Comments and Reply Comments on § 1.27(a)

The stakeholders did not offer substantive comments or reply comments regarding Section 1.27(a). Also, IRRC did not offer substantive comments regarding Section 1.27(a).

Disposition on § 1.27(a)

Since we received no comments or reply comments regarding Section 1.27(a), we hereby adopt the amendments as proposed in the NOPR. Accordingly, the final form regulation set forth in the accompanying Annex incorporates the proposed amendment to Section 1.27(a).

§ 1.31. Requirements for Documentary Filings.

In the NOPR, we explained that Section 1.31(c)(3) would be amended to clarify that, in addition to all entities that fall within the definition of “person” under the Public Utility Code, corporations and municipal corporations are also entities on whose behalf a filing can be made.

Stakeholder Comments on § 1.31

In its comments, the OSBA recommends that “small business” should be added to the amendment to Section 1.31(c)(3) as a qualifying entity in addition to “corporation” and “municipal corporation.” OSBA Comments at 10.

Reply Comments on § 1.31

No reply comments were filed.

IRRC Comments on § 1.31

Regarding the proposed amendment to Section 1.31(c)(3), IRRC believes that all parties making the filing should be listed on the filing and asks the PUC to explain why only the name of one party is necessary under this section. IRRC Comments at 5.

Disposition on § 1.31

Given that we declined to add a definition for “small business” under Section 1.8, we likewise decline to adopt OSBA’s proposed amendment to include “small business” in Section 1.31(c)(3).

Next, we turn to IRRC’s concerns that Section 1.31(c)(3) does not currently require the names of all persons on whose behalf the filing is made to appear in the title of the document. We note that the number of persons who are associated with a filing may be numerous, which could result in lengthy document titles. However, we acknowledge that a document should clearly state the persons on whose behalf it has been submitted. Therefore, we shall amend the second sentence of Section 1.31(c)(3) to require that all persons on whose behalf a document is filed be listed within the body of the filing.

Accordingly, the final form regulation set forth in the accompanying Annex incorporates the adoption of this revision to the proposed amendment to Section 1.31.

§ 1.32. Filing Specifications.

In the NOPR, we explained that the proposed amendments to Section 1.32(a) are intended to ensure that documents submitted to the PUC are accessible and legible. The proposed amendments to Section 1.32(b) are intended to ensure that submitted electronic documents are accessible to PUC staff, including the ability to search submitted PDF documents. The proposed deletion of Section 1.32(b)(1) is to reduce confusion given the proposed amendments to Sections 1.53 and 1.54.

Stakeholder Comments on § 1.32

OCA Comments

Although the OCA accepts the stylistic changes, it disagrees with the PUC's proposed typeface changes and Microsoft compatibility specifications. The OCA finds the rule change should require either a range of acceptable font sizes, or circumstances under which other size footnotes are permitted. Further, the OCA recommends that the rule require a second transmittal of ".doc" or ".docx" file types, which are compatible with Microsoft products but can be created by several word processing programs to minimize the number of potential roadblocks a filing party may encounter. The OCA further asks for clarity on the PUC's "provided to the Commission staff" language, as OCA participates in many proceedings that involve different offices in the PUC such as the Bureau of Investigation and Enforcement (I&E). The OCA also encourages the PUC to require all filings which initiate proceedings before it which total or exceed 100 pages use Bates stamping to consecutively paginate all pages in the filing, beginning with the cover letter and continuing through the final page of the final volume submitted. The OCA avers that Bates numbering would reduce the burden on filing parties to produce indices while enabling streamlined navigation for all parties utilizing an index. Therefore, the OCA proposes that the PUC adopt their proposed language for Section 1.32(c), with the current subsection (c) being amended as subsection (d). OCA Comments at 20-21, 23.

MEIUG, et al. Comments

Met-Ed Industrial Users Groups (MEIUG, et al.) support the PUC's proposed filing specifications in Section 1.32(a)(2) but request one minor clarification. MEIUG, et al. recommends that footnotes should be included in the exception for double spacing. Specifically, MEIUG, et al. propose modifying Section 1.32(a)(2) to read "...double-spaced text except that: (1) footnotes; and (2) quotations in excess of a few lines shall be single spaced. Quotations in excess of a few lines shall also be indented on both the left and right margins." MEIUG, et al. Comments at 3.

PAWC Comments

PAWC agrees that searchable PDF format is the preferable filing type. However, Adobe Acrobat and similar PDF creation software cannot always accurately recognize text on older documents. PAWC recommends that the PUC amend Section 1.32(b)(2)(v) to state that electronic filings should "be filed and served as a searchable PDF where feasible." PAWC finds this revision allows for flexibility needed for different types of documents that are uploaded. PAWC Comments at 3-4.

Reply Comments on § 1.32

In its reply comments, CAUSE-PA/TURN support the proposed changes to Section 1.32(b)(2)(v) and oppose PAWC's proposal to require searchable formatting only "where feasible." CAUSE-PA/TURN asserts that PDF searchability facilitates review and streamlines litigation. CAUSE-PA/TURN argue that being unable to search a PDF limits the ability to streamline the review of documents and adds an administrative burden to others involved in PUC proceedings. CAUSE-PA/TURN Reply Comments at 3-4.

Disposition on § 1.32

The PUC does not agree with OCA's proposal to amend Section 1.32(a)(2) to prescribe a range of permissible font sizes for paper filings. We note that increasing the minimum font size for the body of paper filings from 10-point to 12-point will improve readability not only for PUC staff but also for stakeholders and the public. While we have not previously prescribed a font size for footnotes, we find that requiring the use of 10-point font will reduce the risk of reader confusion by ensuring that footnotes are not presented in the same or larger font size than the font size used in the body of a document.

We also decline to adopt OCA's recommendation to amend proposed Section 1.32(b)(2)(v) to specify that the additional Microsoft-compatible submittal be in .doc or .docx format as we do not want to foreclose filers from using existing or future Microsoft-compatible formats. Further, we also decline OCA's recommendation to require Bates numbers for initiating filings in excess of 100 pages. While we acknowledge that Bates pagination might provide consistency in citing to the filing, we believe it more appropriate to permit the initiating party to determine how best to organize and paginate their filing. We do, however, acknowledge that our proposed requirement that parties submit Microsoft-compatible versions of filings to PUC staff warrants clarification. Accordingly, we amend proposed Section 1.32(b)(2)(v) to require that Microsoft-compatible versions of electronic filings be provided to designated PUC staff as directed by the presiding officer, Secretary, or PUC.

The PUC agrees with MEIUG, et al. that footnotes should be included in the exceptions to the double-spacing requirement in Section 1.32(a)(2). Accordingly, we hereby incorporate MEIUG, et al.'s amendment, as proposed. Additionally, upon further review, we believe that the proposed amendment to Section 1.32(a)(2) regarding the formatting of quotations should be clarified by changing the proposed language from "a

few lines” to “50 words.” This change is intended to remove the subjective nature of “a few words” and standardize the length of a quotation under this subsection.

With the proposed addition of Section 1.32(b)(2)(v), the PUC has already established that it is cognizant of the benefits of requiring electronic filings to be made in searchable PDF format as enumerated by CAUSE-PA/TURN. By the same token, the PUC acknowledges PAWC’s concern that some older documents may not lend themselves to conversion to a searchable PDF. Accordingly, with the understanding that this accommodation will not be abused to intentionally limit accessibility for other parties to a proceeding, we adopt PAWC’s amendment to proposed Section 1.32(b)(2)(v) to require electronic filing of searchable PDFs only where feasible.

Accordingly, the final form regulation set forth in the accompanying Annex incorporates the aforementioned modifications to the proposed amendments to Section 1.32.

§ 1.33. Incorporation by Reference.

In the NOPR, we explained that the proposed amendment to Section 1.33 is intended to provide clarity and brevity to our rules.

Stakeholder Comments on § 1.33

In its comments, PPL does not oppose the proposed changes to Section 1.33 but requests clarification on how it will be determined that a document “continues to be readily available” at the PUC in order to ensure the integrity and efficiency of proceedings. PPL Comments at 4.

Reply Comments on § 1.33

No reply comments were filed.

Disposition on § 1.33

Over the past several years, the PUC's Secretary's Bureau has converted its archive of historical records stored on microfiche into digital format. The Secretary's Bureau has also scanned and converted the PUC's paper records to digital format. Many of these digitized records are now publicly available through the document search function on the PUC's website. Likewise, with the now widespread use of efilings, electronically-filed documents are automatically uploaded to the PUC's website after intake and processing by the Secretary's Bureau.³² Given the millions of PUC records now readily accessible on our website, we find it appropriate to resolve PPL's concerns by amending Section 1.33 to delete the phrase "for more than 20 years" and also replace the existing language "in the active records of the Commission" with "on the Commission's website." The final regulation will therefore permit incorporation by reference of a record on file with the PUC only when said record is publicly available on the PUC's website.

Accordingly, the final form regulation set forth in the accompanying Annex incorporates these revisions to the proposed amendment to Section 1.33.

§ 1.35. Execution.

In the NOPR, we explained that the proposed amendments to Section 1.35(b) are intended to create consistency with the revised definitions in Section 1.8.

³² We note that filings which have been designed by the filer as confidential, proprietary, or containing confidential security information are not publicly available on the website and are not subject to public access under Section 1.72 of our regulations, 52 Pa. Code § 1.72 (relating to content and review of formal case files).

Stakeholder Comments and Reply Comments on § 1.35

The stakeholders did not file substantive comments or reply comments regarding Section 1.35. IRRC likewise does not offer comments regarding this section.

Disposition on § 1.35

Since we received no comments regarding Section 1.35, we hereby adopt the amendments as proposed in the NOPR. Accordingly, the final form regulation set forth in the accompanying Annex incorporates the proposed amendment to Section 1.35.

§ 1.36. Verification.

In the NOPR, we explained that the proposed amendment to incorporate a cover letter is intended to aid the Secretary's staff in processing filings. We explained that it is a best practice for the filing attorney to outwardly communicate their positions to aid PUC employees processing the filings, saving the Secretary Bureau's staff time as they will not have to review the filing to determine whether the petition contains an averment or denial of fact. The proposed amendment to Section 1.36(a) removed existing language in order to clarify that verifications must be signed by the appropriate individual upon filing and that improperly verified filings will be rejected.

Stakeholder Comments on § 1.36

OCA Comments

In its comments, the OCA is concerned with the manner in which the proposed amendment to Section 1.36 is being codified. The OCA argues that this proposed change will require the PUC to dedicate resources to determining whether or not it was correct to include a cover letter in lieu of a verification, without demanding the same level of scrutiny for other types of filings. As such, the OCA avers that if the PUC were to adopt this proposed change, PUC review of the filing would toll any applicable statutory or

regulatory clock, pending the review's confirmation that the filing is complete and accurate. This way, the OCA argues that the PUC is allotted additional time to confirm that lengthy petitions are complete and verified, without providing disparate treatment to other types of filings due to their smaller size. As such, the OCA proposes adding language to Section 1.36. OCA Comments at 24-25.

PPL Comments

PPL supports the clarification to Section 1.36 that documents without factual averments do not require verification. PPL sees the changes as helpful for streamlining the filing process and reducing unnecessary administrative burdens. PPL Comments at 4-5.

Reply Comments on § 1.36

No reply comments were filed.

Disposition on § 1.36

We believe that the OCA's concern about the proposed amendment to Section 1.36 is misplaced. Previously, Secretary's Bureau staff would have to review *all* petitions filed to determine (1) whether the petition contained factual averments, and (2) if the petition did contain factual averments, whether a verification was included as required by this section. The proposed new language in Section 1.36 requiring a cover letter from the filing attorney indicating that no factual averments are contained within a petition will indicate to the PUC's Secretary's Bureau staff that it is unnecessary to conduct a detailed review of that petition for any factual averments and a corresponding verification. Instead, Secretary's Bureau staff will only have to focus on ensuring that petitions lacking such a cover letter are accompanied by a verification as required under this section. As PPL correctly observes, this change will streamline the Secretary's Bureau's processing of petitions, rather than adding more steps, as OCA claims. Thus,

we decline to adopt the OCA’s recommendation and hereby adopt the amendments to Section 1.35 as proposed in the NOPR.

Accordingly, the final form regulation set forth in the accompanying Annex incorporates the adoption of the proposed amendment to Section 1.36.

§ 1.37. Number of Copies.

In the NOPR, we explained that the proposed amendment to Section 1.37 is intended to reflect current practice of allowing many documents to be submitted to the Secretary’s Bureau by USB flash drive.

Stakeholder Comments on § 1.37

OCA Comments

In its comments, the OCA accepts the proposed modification to Section 1.37 but encourages that no party should be required to make a paper filing, unless otherwise required by statute, upon showing of good cause, or at the discretion of the presiding officer to a proceeding. While allowing electronic filing of large documents should not prevent access to parties who cannot receive large electronic documents and rely on paper copies, the OCA posits that such circumstances are rare and should be the exception, not the rule, for the PUC’s electronic filing practices. OCA Comments at 26.

PPL Comments

PPL supports the proposed amendment to Section 1.37 but recommends that the rule change be expanded to include secure file transfer methods. PPL points out that physical media, such as USB flash drives, are at risk for cyber threats and many companies have internal cybersecurity policies that do not allow physical media file transfers. PPL Comments at 5.

Reply Comments on § 1.37

No reply comments were filed.

Disposition on § 1.37

Regarding OCA's concern that no parties should be required to make a paper filing, we note that neither the existing language concerning paper filings at Sections 1.32(a) and 1.37(a), nor the PUC's proposed amendment to Section 1.37(b), mandates paper filings. In fact, the PUC regularly encourages the public to sign up for efilings in lieu of submitting paper filings and receiving service by mail. As such, it is not the intention of the PUC to mandate paper filings, though such a requirement may be made in specific circumstances at the discretion of presiding officers and the PUC.

We find that PPL's suggestion that filings be permitted via secure file transfer methods, while forward-thinking, is unworkable with our efilings system. The PUC's efilings system is designed to accept documents, not fileshare links. Having the PUC accept emailed fileshare links would place the onus on PUC staff, and not the filer, to access and submit the document(s) contained therein. This creates syncing problems for the PUC's docketing system. Therefore, if no PUC staff are available to retrieve a document from a secured file transfer, there is no guarantee that the document will be timely filed. Further, it is the PUC's position that given the number of filings the PUC receives daily, requiring Secretary's Bureau staff to click on fileshare links from third parties constitutes an unreasonable cybersecurity risk. For these reasons, we decline to adopt PPL's proposal to permit filings to be made via secured fileshare transfer.

Accordingly, the final form regulation set forth in the accompanying Annex incorporates the adoption of the proposed amendment to Section 1.37.

§ 1.43. Schedule of Fees Payable to the Commission.

In the NOPR, we explained that the proposed amendment to Section 1.43(a) is intended to address requests by filers seeking a refund of filing fees paid to the PUC. Since the filing fees collected by the PUC are directly related to the costs of processing files, if the filing fees were refundable, the PUC would be responsible for any processing fees, whether the purposes of the filings were met or not. Therefore, the PUC deems it appropriate to amend Section 1.43(a) to clarify that the filing fees are non-refundable.

We further explained in the NOPR that the amended Section 1.43(a) would eliminate fees related to intangible transition property notices. The PUC's microfiche records have all been converted to a digital format, thus eliminating the need for fees related to copies of microfiche and microfilm rolls. We also proposed eliminating the filing fee for applications for a certificate to discontinue service for intrastate common carrier passenger or household goods in use due to the difficulty of obtaining this *de minimis* amount from carriers that have gone out of business.

Additionally, we explained that the proposed amendment to Section 1.43(a) would add fees that have been implemented by the PUC since 2006. These include fees for applications to begin telecommunications service, as well as applications to be a pipeline operator, conservation service provider, and a utility valuation expert. Further, we propose to update the fee schedule to clarify that applications to amend a CPC include applications to abandon a CPC. Lastly, we solicited comments on the proposed schedule of fees, including whether certain fees are still relevant given changes in PUC processes.

Stakeholder Comments on § 1.43

CAUSE-PA/TURN support updating the fee schedule contained in Section 1.43 to accurately reflect the most-current PUC fees but are concerned that requiring filing fees from lower income consumers and pro bono legal counsel may act as a barrier to their

participation in PUC proceedings and processes, in particular fees for copies and certified copies of paper, testimony, records, and computer printouts per sheet. CAUSE-PA/TURN argue that the fee provisions contained in Section 1.43 do not currently address the high fees which consumers, legal aid organizations, and public interest law firms may have to pay to meaningfully participate in PUC proceedings. CAUSE-PA/TURN recommend that the PUC revise Section 1.43 to implement a process allowing low-income litigants to petition to proceed *in forma pauperis* (IFP) to waive PUC filing fees. Specifically, CAUSE-PA/TURN recommend that the PUC establish a form facilitating a consumer to file a petition or application seeking IFP status, where they certify that they are low-income or cannot afford the costs of litigation. CAUSE-PA/TURN state that this form should be accessible on the PUC's website where other consumer complaint forms are located. If a party has representation, the PUC should allow the party, through their counsel or advocate, to proceed IFP upon the filing of a praecipe which contains a certification by the attorney or advocate that they are providing free representation to the party and believes the party is unable to pay the costs. CAUSE-PA/TURN Comments at 33-36.

Reply Comments on § 1.43

No reply comments were filed.

Disposition on § 1.43

As we noted in the NOPR, the fees in Section 1.43 are intended to cover the PUC's costs of undertaking these services on behalf of requesting individuals and entities. The PUC's budget, as approved by the General Assembly, does not include an allocation for these services. As many of the stakeholders know, the PUC's budget is funded entirely by assessments on regulated utilities and ultimately paid for by utilities' customers as part of their utility bill. As such, CAUSE-PA/TURN's proposal that the PUC seek to increase its budget to account for providing Section 1.43 services rather than

charge low-income customers and advocates (such as CAUSE-PA/TURN) is counter-intuitive. An increase in the PUC's budget would result in increased assessments on regulated utilities and they will presumably seek to recover these estimated operational costs from their customers, including low-income customers, in their filed rate cases. However, we find that the existing fee schedule is equitable by ensuring that only those individuals and entities who seek the PUC services enumerated in Section 1.43 bear the costs of fulfilling their request.

Further, we observe that most *pro se* litigants, including low-income customers, do not request these services and can successfully prosecute their complaint through the administrative process. We also note that the need to pay for copies of records is minimized where most case documents are now publicly available on the PUC's website free of charge. Therefore, while we acknowledge the hard work of attorneys who advocate on behalf of low-income and disadvantaged clients, we find it inappropriate to adopt CAUSE-PA/TURN's proposal. Thus, we hereby adopt the amendments to Section 1.43, as proposed in the NOPR.

Accordingly, the final form regulation set forth in the accompanying Annex incorporates the adoption of the proposed amendment to Section 1.43.

§ 1.51. Instructions for Service, Notice and Protest.

In the NOPR, we explained that the addition of Section 1.51(c) will serve an important role in protecting the personal information of domestic violence victims. Proposed Section 1.51(c) states that where an individual party is a victim of domestic violence and has a court order providing clear evidence of domestic violence, that party's address will be redacted on the service list. The PUC is of the opinion there is no need for the personal information of domestic violence victims to be posted on the PUC's website, which is accessible by the general public.

Stakeholder Comments on § 1.51

CAUSE-PA/TURN Comments

In its comments, CAUSE-PA/TURN support the PUC's initiative to protect the personal information of domestic violence victims involved in complaints but are concerned that the proposed standard in Section 1.51 improperly limits protection only to victims with PFAs or similar court orders containing clear evidence of domestic violence. CAUSE-PA/TURN aver that the proposed standard in Section 1.51 mirrors the standard for other domestic violence protections in Chapter 56 of the PUC's regulations. CAUSE-PA/TURN argue that those domestic violence exemptions apply to utility debt, billing, and collections, and do not dictate that protecting a victim's personal information requires them first obtain a Protection from Abuse (PFA) or other specific court order. CAUSE-PA & TURN argue that victims may decline obtaining or be otherwise unable to obtain a PFA for a variety of reasons, and the narrow standard for protecting their personal information could chill victims from engaging with the complaint process and exercising their utility rights. CAUSE-PA/TURN are also concerned that it is unclear whether the proposed amendment would extend protection for both physical and email addresses of victims. CAUSE-PA/TURN state that victims regularly seek to protect their email addresses from disclosure for safety concerns. CAUSE-PA/TURN argue that it is essential for victims to be able to protect both their physical and electronic addresses and other personally identifying information when they are engaging in PUC proceedings. Further, CAUSE-PA/TURN urge the PUC to broaden the proposed standard set forth in Section 1.51(c) to permit victims to provide an affidavit attesting to their status as a domestic violence victim to keep their address or other personally identifying information confidential, similar to provision in Pennsylvania's Address Confidentiality Program. As such, CAUSE-PA/TURN offer proposed revisions to Section 1.51(c). CAUSE-PA/TURN Comments at 36-39.

OCA Comments

While the OCA appreciates the PUC's efforts to protect domestic violence victims from public exposure, the OCA argues that the proposed amendment to Section 1.51 is not sufficient to provide such protection. The OCA recommends that the PUC modify Section 1.51 so that a PFA or other court order need not be issued by a court of this Commonwealth. The OCA argues that any court order that provides evidence of domestic violence should be permissible to remove a party's address from the public service list, regardless of the jurisdiction which issued it. OCA Comments at 27-28.

FirstEnergy Comments

FirstEnergy recommends adding "and other contact information" between the words "address" and "of" to ensure that the individual's contact information, in addition to their address is redacted on the service list. FirstEnergy Comments at 2.

Reply Comments on § 1.51

No reply comments were filed.

IRRC Comments on § 1.51

Regarding Section 1.51(c), IRRC notes that a stakeholder expresses concern with the PUC's approach that explicitly ties a victim's ability to protect sensitive personal information to their ability to obtain a PFA or other court order. IRRC also notes that the stakeholder urges the PUC to broaden the standard set forth in the proposed Section 1.51(c) to permit victims to provide an affidavit which attests to their status as a domestic violence victim to keep their address and other personally identifiable information confidential. IRRC asks the PUC to describe how the proposed amendment, specifically its approach in limiting a PFA and court order to those issued in Commonwealth courts and tying a victim's ability to protect their personal information to their ability to obtain a

PFA or other court order protects the public health, safety, and welfare. Additionally, IRRC asks the PUC to include in its discussion whether it considered permitting victims to provide an affidavit. IRRC Comments at 5-6.

Disposition on § 1.51

First, we address OCA's proposal that the PUC accept PFAs or orders issued by courts in jurisdictions other than the Commonwealth. In our Chapter 56 Working Group Order, we addressed which orders are entitled to the protections in Chapter 56, Subchapters L-V of the Commission's regulations and determined "that PFAs, including those outside the Commonwealth, and non-PFA court orders or court orders issued by a court of competent jurisdiction 'in this commonwealth' are entitled to those protections."³³ It is appropriate to be consistent with that determination here in terms of the PFAs and court orders we are referencing in Section 1.51(c). Accordingly, Section 1.51(c) in the Annex specifies that, where an individual party is a victim of domestic violence with a PFA, including a PFA outside the Commonwealth, or a non-PFA court order or court order issued by a court of competent jurisdiction in this commonwealth which provides clear evidence of domestic violence, the party's address and contact information will be redacted on the service list.

Next, we address IRRC's question regarding whether the Commission considered accepting affidavits from victims of domestic violence for purposes of redacting their personal addresses and contact information. We note CAUSE-PA/TURN's suggestion that complainants without PFAs be permitted to submit an affidavit attesting to their status as a victim of domestic violence in order to have their address and contact information redacted from service lists under new Section 1.51(c). In support of this proposal, CAUSE-PA/TURN references the Pennsylvania Address Confidentiality

³³ *Working Group on Medical Certificates, Other Court Orders, and Privacy Guidelines Relating to the Rulemaking to Amend the Provisions of 52 Pa. Code Chapter 56 to Comply with the Amended Provisions of 66 Pa.C.S. Chapter 14*, Docket No. L-2015-2508421, at 20 (Order entered January 5, 2022).

Program (PACP). The PACP is a program of the Commonwealth's Office of Victim Advocate that provides participants who qualify as victims of domestic violence, sexual assault, stalking, human trafficking, or child abduction with a substitute address to use in a variety of government records, as well as for utility bills.³⁴ We note that the PACP application form³⁵ requests that applicants provide detailed information documenting all applicable criminal and civil court proceedings, including any PFAs, custody, family court, and domestic relations proceedings.³⁶ Additionally, the PACP is required to notify the courts of an approved applicant's participation in the program.

We are not unsympathetic to the difficulties experienced by victims of domestic violence or abuse and it is clear that the safety of domestic violence victims remains a timely and important issue. For instance, although unrelated, it is notable that, in the Settlement in the UGI Gas rate case approved by the Commission on October 1, 2026,³⁷ the settling parties agreed that UGI Gas will update its protections for victims of domestic violence to also accept a written certification from a domestic violence counselor/advocate.³⁸ Given the timeliness and importance of this issue, further consideration of the acceptance of affidavits for purposes of redacting domestic violence victims' personal addresses and contact information is warranted. We decide here that it is appropriate to accept affidavits from domestic violence counselors or advocate

³⁴ <https://www.pa.gov/agencies/ova/address-confidentiality>.

³⁵ <https://www.pa.gov/content/dam/copapwp-pagov/en/ova/documents/ACP%20Application%20Packet.pdf>.

³⁶ "C. Civil or Criminal Proceedings

- Document all pending civil and criminal proceedings (include PFA, custody, family court, domestic relations proceedings). [. . .]
- Include case numbers, types of proceedings (civil, criminal, state, federal), and courts in which cases are pending. Upon enrollment, the ACP is required to notify the courts of your participation in the ACP.
- Failure to disclose known information may result in denial or cancellation of your participation."

³⁷ *Pa. Pub. Util. Comm'n v. UGI Utilities, Inc. – Gas Division*, Docket Nos. R-2025-3059523, *et al.*, at 21 (Recommended Decision issued July 31, 2026) (Order entered October 1, 2026).

³⁸ The proposed Settlement simply shows the timeliness of this issue. This rulemaking should not be construed as relying upon a settlement provision as precedential. It is well-established that settlements do not establish legal precedent. *See e.g. HIKO Energy, LLC v. Pa. Pub. Util. Comm'n*, 163 A.3d 1079, 1102-1103 (Pa. Cmwlth. 2017).

organizations on the counselor or organization's letterhead on an individual party's behalf. Doing so will serve as a reasonable alternative when an individual party or complainant that is a victim of domestic violence is unable to provide a PFA or a non-PFA court order as described above. Thus, Section 1.51(c) in the Annex specifies that an affidavit from a domestic violence counselor or advocate organization on the counselor or organization's letterhead will be accepted for the limited purpose of redacting the personal addresses and contact information of victims of domestic violence.

The PUC also acknowledges and agrees with CAUSE-PA/TURN, the OCA, and FirstEnergy that the proposed new Section 1.51(c) should be expanded to explicitly provide for redaction of a domestic violence victim's contact information in addition to their address. As explained above, we amended Section 1.51(c) to require that the address and contact information of the victim be redacted from the service list.

Accordingly, the final form regulation set forth in the accompanying Annex incorporates the adoption of these revisions to the proposed amendment to Section 1.51(c).

§ 1.53. Service by the Commission.

In the NOPR, we explained the proposed amendments to Section 1.53 are intended to provide clarity, uniformity, and efficiency to the PUC's electronic filing (Efiling) system. The proposed amendment to Section 1.53(a) is intended to waive the requirement of registering for the PUC's Efiling system in order to receive electronic service of documents. We explained that persons shall continue to be served documents in paper form unless they have agreed to electronic service. We noted that the proposed amendment to Section 1.53(b)(3) originated from the PUC's waiver of service requirements during the COVID-19 pandemic, and the PUC has since discerned the flexibility of electronic service has provided additional efficiency across PUC operations.

Additionally, the proposed amendment to Section 1.53(c) is intended to create consistency with the proposed definitions in Section 1.8 and to incorporate the General Assembly's 2019 amendment to § 702 of the Code.

Stakeholder Comments on § 1.53

The OCA supports this recommendation without modification. Specifically, the OCA argues that the PUC should not require registration with their electronic filing platform to accept service by email. The OCA argues that removing this barrier to entry will increase access to participation in PUC proceedings for first-time users and those less technically savvy users or with less time to navigate through the efilings system to receive the same information. OCA Comments at 28.³⁹

Reply Comments on § 1.53

No reply comments were filed.

Disposition on § 1.53

As we received no substantive comments or reply comments to our proposed amendments to Section 1.53, we shall adopt them as proposed in the NOPR. Accordingly, the final form regulation set forth in the accompanying Annex incorporates the adoption of the proposed amendment to Section 1.53.

§ 1.54. Service by a Party.

In the NOPR, we explained that the proposed amendment to Section 1.54(b)(3) originated from the PUC's waiver of service requirements during the COVID-19 pandemic. We explained that allowing service by email to parties who explicitly agree to such service improves efficiency of PUC operations. Additionally, we explained that the

³⁹ We note that this comment appears to relate to OCA's comments regarding Section 1.54.

proposed amendment to Section 1.54(c) is intended to bring clarity, brevity, and consistency with the proposed definitions in Section 1.8.

Stakeholder Comments on § 1.54

CAUSE-PA/TURN recommend that the PUC further revise the standards set forth in the proposed Section 1.54 to permit parties to perform electronic mail service of documents in a proceeding unless a party explicitly requests service through first-class mail to comport with current practice and help conserve parties' resources from unnecessary and onerous costs. CAUSE-PA/TURN argue that under the proposed amendments to Section 1.54, parties would be required to perform paper service if another party has not explicitly agreed to service via email. CAUSE-PA/TURN argue that these unnecessary costs are particularly onerous for parties with limited financial means and may act as a barrier to low-income consumers participating in PUC proceedings. CAUSE-PA/TURN thus recommend amending Section 1.54 to reflect that parties may perform service through email, unless a party to a proceeding explicitly requests service through first-class mail. CAUSE-PA/TURN Comments at 40-41.

Reply Comments on § 1.54

No reply comments were filed.

Disposition on § 1.54

We note that upon the initiation of a formal complaint, a complainant must select whether they elect to receive service via eservice or via First Class Mail. Under such circumstances, all parties are bound to provide service to the complainant based on their selected service method. In other PUC proceedings, all parties are provided the option to receive electronic service, whether through email or through creating a user account with the PUC's Efiling system. We cannot speculate on why a party may or may not elect to receive electronic service, and in fact there are instances where a party prefers to be

served with paper filings. As such, we decline to adopt CAUSE-PA/TURN's request to permit service to another party by email where that party has made no indication that they wish to receive electronic service.

Accordingly, the final form regulation set forth in the accompanying Annex incorporates the adoption of the proposed amendment to Section 1.54.

§ 1.56. Date of Service.

In the NOPR, we explained that the proposed amendment to Section 1.56(b) is intended for brevity and clarity.

Stakeholder Comments on § 1.56

The stakeholders did not offer any substantive comments or reply comments regarding Section 1.56. IRRC likewise did not file comments regarding this Section.

Reply Comments on § 1.56

No reply comments were filed.

Disposition on § 1.56

Since we received no comments regarding Section 1.56, we hereby adopt the amendments as proposed in the NOPR. Accordingly, the final form regulation set forth in the accompanying Annex incorporates the adoption of the proposed amendment to Section 1.56.

§ 1.59. Number of Copies Served.

In the NOPR, we explained that the proposed amendment to Section 1.59 is intended to afford the presiding officer with control to determine the appropriate number of hard copies that should be served in proceeding, especially with electronic service.

Stakeholder Comments on § 1.59

In its comments, CAUSE-PA/TURN are supportive of the proposed amendment to Section 1.59, as it provides presiding officers with important flexibility to determine the appropriate service based on individual proceedings. However, CAUSE-PA/TURN recommend further amending Section 1.59 to clarify that service requirements can be satisfied by email or other electronic service in order to eliminate unnecessary, costly, and duplicative requirements for paper service and align service requirements with current PUC practice. CAUSE-PA & TURN Comments at 42-43.

Reply Comments on § 1.59

No reply comments were filed.

Disposition on § 1.59

As CAUSE-PA/TURN notes, the amendment to Section 1.59(b) as proposed in the NOPR provides the presiding officer with flexibility to determine the number of copies of documents to be served on other parties. As such, parties to a proceeding may request that the presiding officer modify service requirements, including whether service must be provided with paper copies, pending consent by the other parties. For these reasons, we decline to adopt CAUSE-PA/TURN's proposal to allow email or electronic service to satisfy standard requirements for service via paper documents.

Accordingly, the final form regulation set forth in the accompanying Annex incorporates the adoption of the proposed amendment to Section 1.59.

§ 1.61. Notice and Filing of Copies of Pleadings before other Tribunals.

In the NOPR, we explained that the proposed amendments to Sections 1.61(a) and (d) are intended to create consistency with the proposed definitions in Section 1.8. Additionally, we explained that the proposed amendment to Section 1.61(b) is intended to reflect the renaming of the Office of Trial Staff to the Bureau of Investigation and Enforcement.

Stakeholder Comments on § 1.61

The stakeholders did not offer any substantive comments or reply comments regarding Section 1.61. IRRC likewise did not file comments regarding this Section.

Reply Comments on § 1.61

No reply comments were filed.

Disposition on § 1.61

Since we received no comments regarding Section 1.61, we hereby adopt the amendments as proposed in the NOPR. Accordingly, the final form regulation set forth in the accompanying Annex incorporates the adoption of the proposed amendment to Section 1.61.

§ 1.71. Statement of Objectives.

In the NOPR, we stated that the proposed amendments to Section 1.71 are intended to create consistency with the proposed definitions in Section 1.8.

Stakeholder Comments on § 1.71

The stakeholders did not offer any substantive comments or reply comments regarding Section 1.71. IRRC likewise did not file comments regarding this Section.

Reply Comments on § 1.71

No reply comments were filed.

Disposition on § 1.71

Since we received no comments regarding Section 1.71, we hereby adopt the amendments as proposed in the NOPR. Accordingly, the final form regulation set forth in the accompanying Annex incorporates the adoption of the proposed amendment to Section 1.71.

§ 1.72. Content Review of Formal Case Files.

In the NOPR, we stated that the proposed amendments to Section 1.72 are intended to bring our regulations in line with the Right to Know Law (RTKL), 65 P.S. §§ 67.101-67.3104. Sections 1.71-1.77 of the PUC's regulations relate to 1) what documents should be kept for inspection at the Secretary's Bureau's public filing office, and 2) the process for getting non-confidential documents from the PUC and challenging determinations under those provisions. Under the RTKL that was in place the last time these regulations were amended, agencies had to have their own processes for responding to written requests for records. Since this process is now unified for all Commonwealth administrative agencies subject to the RTKL within the Office of Open Records (OOR) appeal process, we explained that the PUC's regulations about written requests for review of public documents are now moot and potentially in conflict with the RTKL. Thus, we stated that the PUC seeks to amend Section 1.72 to remove procedures for written requests for access to PUC records. Additionally, the PUC sought comment on whether the regulations for written requests for access to PUC files are still needed given the

RTKL and the publicly accessible PUC docketing system available on the PUC's website.

Stakeholder Comments on § 1.72

OCA Comments

In its comments, the OCA expresses concern with the proposed amendments to Section 1.72. The OCA argues that while Section 1.72(d) may be moot under the RTK Law, the codification of what PUC documents can be requested and the process for requesting those documents is essential. The OCA proposes that, if the current text of Section 1.72(d) is removed, it should be replaced by a rule which describes how the PUC is implementing its obligations under the RTK Law to provide access to correspondence- and report-type documents. The OCA argues that the PUC's current description of its RTK policies and procedures on its website is too ephemeral to guarantee that consumers will be informed of the PUC processes for requests. The OCA argues that Requesters should be able to have a guarantee of consistency for records requests to the PUC, and such a guarantee requires codification of the PUC's regulations. OCA Comments at 29.

PPL Comments

PPL supports the PUC's decision to remove procedures for written requests for access to PUC records in order to align with the RTKL. PPL sees this change as avoiding conflicts with RTKL, reducing the risk of legal challenges, and promoting consistency and clarity in handling public information requests. PPL Comments at 5.

Reply Comments on § 1.72

No reply comments were filed.

Disposition on § 1.72

We disagree with the OCA that it is necessary to retain any of the existing language at Section 1.72(d). To the extent that OCA is concerned about the availability of information regarding how the PUC organizes its files, such information is already available in Sections 1.72(a) and 1.72(b), which we have not proposed to amend. We agree with PPL that removal of the existing language at Section 1.72(d) is necessary to avoid parallel pathways for requests to review PUC records, which would lead to legal conflicts with the RTKL.

Accordingly, the final form regulation set forth in the accompanying Annex incorporates the adoption of the proposed amendment to Section 1.72.

§ 1.73. Fiscal Records.

In the NOPR, we explained that the proposed amendment to Section 1.73(b) is intended to update the reference from a prior version of the RTK Law to Act 3 of 2008.

Stakeholder Comments on § 1.73

The stakeholders do not offer substantive comments regarding Section 1.73. IRRC likewise does not offer comments regarding this Section.

Reply Comments on § 1.73

No reply comments were filed.

Disposition on § 1.73

Since we received no comments regarding Section 1.73, we hereby adopt the amendments proposed in the NOPR. Accordingly, the final form regulation set forth in

the accompanying Annex incorporates the adoption of the proposed amendments to Section 1.73.

§§ 1.75, 1.77. Review of Staff Determination; Extension of Time to Review Folders.

In the NOPR, we explained that the proposed amendments to Sections 1.75 and 1.77 are intended to bring PUC regulations in line with the RTK Law, now that the process for requesting access to PUC records is unified under the law. We explained that while it is still useful to have regulations listing what must be kept for public inspection and processes for addressing informal requests for records, our regulations concerning written requests for review of public documents are now moot and potentially in conflict with the RTKL.

Stakeholder Comments on §§ 1.75, 1.77

The stakeholders do not offer substantive comments or reply comments regarding Sections 1.75 and 1.77. IRRC likewise does not offer comments regarding these Sections.

Reply Comments on §§ 1.75, 1.77

No reply comments were filed.

Disposition on §§ 1.75, 1.77

Since we received no comments regarding Sections 1.75 and 1.77, we hereby adopt the amendments as proposed in the NOPR. Accordingly, the final form regulation set forth in the accompanying Annex incorporates the adoption of the proposed amendments to Section 1.75 and 1.77.

§ 1.96. Unofficial Statements and Opinions by Commission Personnel.

In the NOPR, we explained that the proposed amendment to Section 1.96 is intended to correct a typographical error.

Stakeholder Comments on § 1.96

The stakeholders do not offer substantive comments regarding Section 1.96. IRRC likewise did not file comments regarding this Section.

Reply Comments on § 1.96

No reply comments were filed.

Disposition on § 1.96

Since we received no comments regarding Section 1.96, we hereby adopt the amendments as proposed in the NOPR. Accordingly, the final form regulation set forth in the accompanying Annex incorporates the adoption of the proposed amendment to Section 1.96.

CHAPTER 3: SPECIAL PROVISIONS

The PUC recognizes that the rules relating to special provisions need to be updated in order to make PUC proceedings operate in a more efficient manner. Therefore, with the aim of increasing efficiency and clarity in PUC proceedings, we proposed the following amendments.⁴⁰

⁴⁰ The PUC addressed 52 Pa. Code §§ 3.501 and 3.502 in a previous rulemaking at Docket No. L-2020-3017232.

§ 3.1. Definitions.

In the NOPR, we explained that the proposed amendments to the definition of “emergency order” allows the PUC to act in certain circumstances when there is a danger to the public interest, which was not previously specified. We stated that the proposed amendment preserves the “clear and present danger” requirement, alleviating any concerns regarding an overbroad definition of “emergency.” Additionally, we explained that the proposed amendment to Section 3.1 reflects the renaming of the Director of Operations to Executive Director.

Stakeholder Comments on § 3.1

CAUSE-PA/TURN Comments

In its comments, CAUSE-PA/TURN support the proposed amendments to Section 3.1, as the amendments will provide the PUC with important flexibility to address emergency situations which pose a clear and present danger to the public interest, thereby preventing irreparable injury that may occur. CAUSE-PA/TURN avers that the American Bar Association has explained that a legal definition of “public interest” is “something in which the public, the community at large, has some pecuniary interest, or some interest by which their legal rights or liabilities are affected.”⁴¹ Furthermore, CAUSE-PA/TURN argue that permitting the PUC to respond to emergencies which present a danger to the public interest is squarely in line with the PUC’s statutory duties and enumerated powers, particularly in 66 Pa.C.S. §§ 501(b) and 1501. CAUSE-PA/TURN Comments at 44-45.

⁴¹ Citing Jayne R. Reardon, “As Lawyers we must further the public interest,” *ABA Magazine* Article, Aug. 13, 2021, available at: <https://www.americanbar.org/groups/gpsolo/resources/magazine/archive/lawyers-we-must-further-public-interest> (citing *Black’s Law Dictionary*).

EAP Comments

EAP opposes the proposed amendment to Section 3.1, both arguing that the term “public interest” is undefined and could be interpreted too broadly. EAP argues that *ex parte* emergency orders are an extreme form of relief and should be limited to particular, well-defined situations in order to prevent potential abuse by parties and to avoid addressing standing issues. EAP Comments at 10-11.

PPL Comments

PPL argues that expanding the scope of the definition to include anything in the public interest could result in emergency orders being issued to address nebulous issues that may not be directly related to the immediate and tangible concerns traditionally addressed by emergency orders. PPL Comments at 6. PPL also argues that the broad definition could lead to the denial of parties’ due process rights by bypassing procedural safeguards and leading to decisions made without adequate input from affected parties. *Id.*

Reply Comments on § 3.1

No reply comments were filed.

IRRC Comments on § 3.1

Regarding Section 3.1, IRRC notes the concerns raised by stakeholders. IRRC notes the stakeholder’s argument that expanding the definition of “emergency” to include the public interest could result in a situation where a petition seeking emergency relief by a person claiming to represent the general public interest rather than seeking relief for a situation that poses an immediate and specific danger to the petitioner. IRRC asks the PUC to define “public interest” as used in the definition of “emergency” to ensure clarity for the regulated community and explain the need for this amendment. Additionally,

IRRC note that the placement of the proposed language for Section 3.1 is confusing. IRRC points out that the fact that “or property” appears directly after “or the public interest,” could cause it to be read as public interest or public property. IRRC believes that the provision would be much clearer if read: “to life, property or the public interest.” IRRC Comments at 6.

Disposition on § 3.1

We first address IRRC’s request that we clarify the definition of “public interest” in relation to the definition of “emergency.” We note that the portion of the definition referencing danger to “life” and “property” implicates relief on the basis of harm to an individual or a defined group of individuals. The addition of the term “the public interest” by its very nature implicates harm to the general public rather than to an individual or defined group of individuals. In other words, the addition of “the public interest” to the definition of “emergency” in Section 3.1 broadens the scope of the PUC’s authority to grant petitions for emergency relief in situations where the anticipated harms are not confined to individuals. As such, we find that to the extent stakeholders are concerned that Section 3.1’s amended definition of “Emergency” will be used by individuals to claim that their individual rights justify emergency relief under “the public interest,” such concerns are unfounded.

We agree with IRRC that the proposed placement of “the public interest” in the definition of “emergency” could create confusion. As such, we accept IRRC’s recommendation to rewrite the relevant portion of the definition of “emergency” as presenting “a clear and present danger to life, property, or the public interest, or which is uncontested and requires action prior to the next scheduled public meeting.”

As we received no comments on the proposed amendment to the definition of “Emergency order” to replace the term “Director of Operations” with the term “Executive Director” we shall adopt the amendment as proposed in the NOPR.

Accordingly, the final form regulation set forth in the accompanying Annex incorporates a revision to the proposed amendment to Section 3.1.

§§ 3.2-3.4., 3.6. Petitions for Issuance of Emergency Orders; Disposition of *Ex Parte* Emergency Orders; Hearings Following Issuance of Emergency Orders; Petitions for Interim Emergency Orders.

In the NOPR, we explained that the proposed amendments to Sections 3.2, 3.3(b), and 3.3(d) are intended to ensure that the statutory advocates, namely the OCA, the OSBA, and I&E are served with petitions to the PUC seeking the issuance of emergency orders. We explained that these requirements would allow the statutory advocates to be kept aware of such petitions and to take appropriate action in response to said petitions at their discretion. The proposed amendments to Sections 3.3(a)-(d) and 3.4(d) are to reflect the renaming of the Director of Operations to the Executive Director. The proposed amendment to Section 3.4(b) is intended to clarify all the parties that the petitioner is required to serve. Additionally, we explained that the proposed amendment to Section 3.6 is intended to ensure service of a petition for interim emergency order on the statutory advocates, in addition to the existing requirement to file with the Secretary’s Bureau and contemporaneously serve the Chief ALJ and the parties.

Stakeholders Comments on §§ 3.2-3.4, 3.6

In its comments, CAUSE-PA/TURN are supportive of the PUC’s proposals to amend Sections 3.2-3.4 and 3.6 to require service on the statutory advocates. CAUSE-PA/TURN aver that setting forth these service requirements will permit statutory advocates to better fulfil their duties and obligations to the public. CAUSE-PA/TURN recommend these sections are further amended to expand the service requirements to

include both statutory advocates and any person or entity who was a party to the most recent base rate proceeding for any utilities involved in the emergency request or proceeding. CAUSE-PA/TURN argue that requiring service on all parties to a utility's last base rate proceeding helps ensure that due process requirements are being satisfied and gives interested or affected parties the opportunity to participate in these proceedings in a timely manner. CAUSE-PA/TURN Comments at 46-47.

Reply Comments on §§ 3.2-3.4, 3.6

PAWC Reply Comments

PAWC opposes CAUSE-PA/TURN's proposal, disagreeing that most parties to its last rate case would be interested or impacted by its numerous filings. PAWC emphasizes that most residential customers who file formal complaints in base rate proceedings are only interested in requesting that the PUC minimize their rate increase. Therefore, PAWC argues that it is not likely that those customers have interest in receiving copies of the many applications it files at the PUC every year. Since the applications can be lengthy at times, PAWC predicts many customers would strongly oppose service of the applications and supplemental documents. PAWC further finds the cost of serving filings would be unreasonable, as the PUC's existing regulations already provide service on impacted parties. PAWC Reply Comments at 2-3.

EAP Reply Comments

EAP disagrees with CAUSE-PA/TURN's recommendation that the PUC amend Sections 3.2-3.4 and 3.6 of the regulations to "expand service" of petitions for emergency orders and petitions for interim emergency orders on not only the statutory advocates, as proposed by the PUC, but on "any person – including organizations – who was a party to the most recent base rate proceeding for any utilities involved in the emergency request or proceeding." EAP avers that many, if not all, parties who are involved in rate cases will have no interest in every petition for emergency order or, especially, every petition

for interim emergency order involving the applicable utility. EAP also notes that expanding the required service list to all parties will make it more time-consuming and burdensome for petitioners to prepare, file, and serve their petitions for emergency order and petitions for interim emergency order. EAP Reply Comments at 5-6.

Disposition on §§ 3.2-3.4, 3.6

We agree with PAWC and EAP that CAUSE-PA/TURN's proposal to expand the service requirements to include not just the statutory advocates but also any person or entity who was a party to the most recent base rate proceeding for any utilities involved in the emergency request or proceeding is unwarranted. As PAWC notes, customers who intervene in a rate case proceeding are generally protesting the requested rate increase. Such opposition to an increase in their utility bill does not automatically indicate that these customers also want to be informed of every emergency petition filed by their utility, especially since the incident upon which the emergency petition is based may be unrelated to service in area wherein they reside. For these reasons, we decline to adopt CAUSE-PA/TURN's proposed expansion of service requirements for Sections 3.2, 3.3, 3.4, and 3.6, and herein adopt the amendments to these sections as proposed in the NOPR.

Accordingly, the final form regulation set forth in the accompanying Annex incorporates the adoption of the proposed amendments to Sections 3.2 - 3.4 and 3.6.

§ 3.101. Municipal Contracts.

In the NOPR, we explained that the proposed amendment to Section 3.101 is intended to clarify existing language.

Stakeholder Comments on § 3.101

The stakeholders do not offer substantive comments regarding Section 3.101. IRRC likewise does not offer comments regarding this Section.

Reply Comments on § 3.101

No reply comments were filed.

Disposition on § 3.101

Since we received no comments regarding Section 3.101, we hereby adopt the amendments as proposed in the NOPR. Accordingly, the final form regulation set forth in the accompanying Annex incorporates the adoption of the proposed amendment to Section 3.101.

§ 3.111. Form and Content of Informal Complaints.

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

Stakeholder Comments on § 3.111

In its comments, the OCA accepts the proposed changes to Section 3.111 without modification but has two comments regarding informal comment procedures for the PUC's consideration. First, OCA believes consumers should be able to submit informal complaints to the PUC via email. Allowing informal complaints to be submitted by email would increase administrative efficiency in processing complaints that are emailed to the PUC as well as remove a barrier to accessing proceedings before the PUC. OCA also notes there is no proper clarification in the procedural rules about the purpose of informal complaints. The OCA would support an addition to Section 3.111 defining

what an informal complaint is, and the status that an informal complainant has before the PUC, to help consumers differentiate between informal and formal complaints, and be better informed when picking which type of complaint they should file. OCA Comments at 30-31.

Reply Comments on § 3.111

No reply comments were filed.

IRRC Comments on § 3.111

Regarding Section 3.111, IRRC notes that a stakeholder argues that there is no proper clarification in the procedural rules regarding the purpose of informal complaints. IRRC states that this stakeholder would support an addition to this section which would define what an informal complaint is, and the status that an informal complaint has before the PUC. IRRC asks the PUC to clarify the purpose of informal complaints, define what an informal complaint is, and the status that an informal complaint has before the PUC.⁴² IRRC Comments at 7.

Disposition on § 3.111

The PUC agrees with OCA and IRRC that Section 3.111(b) does not currently provide a definition for an informal complaint, and the amendments proposed in the NOPR likewise do not provide a definition. Accordingly, we shall replace the proposed reference to Section 3.111(a) with a reference to the definition of “informal complaint” in Section 1.8.⁴³

⁴² The IRRC’s comments regarding Section 3.111 also apply to the IRRC’s comments for Section 5.21 (relating to formal complaint generally). The IRRC asks the PUC to describe what a formal complaint is and how it is used in practice before the PUC.

⁴³ *Informal complaint*—A document or communication to the Commission seeking action on a matter that lacks the legal or other requirements of a formal complaint under 66 Pa.C.S. § 701 and does not involve a legal proceeding before a presiding officer or mediator. 52 Pa. Code § 1.8 (relating to definition of “informal complaint”).

The PUC also agrees with the OCA that Section 3.111(b) as written does not provide for submission of informal complaints via email. To clarify, we hereby further amend Section 3.111(b) to include language stating that informal complaints can be submitted electronically by filling out the online formal complaint form on the PUC's website. Similarly, we hereby add additional language that an informal complaint can also be initiated by contacting the PUC's Bureau of Consumer Services using the telephone number provided on the PUC's website.

Accordingly, the final form regulation set forth in the accompanying Annex incorporates revisions to the proposed amendments to Section 3.111.

§ 3.113. Resolution of Informal Investigations.

In the NOPR, we explained that the proposed amendment to Section 3.113(b) is intended to clarify on whom the PUC will serve letters terminating an informal investigation. We stated that subsections 3.113 would be amended to state that informal investigations terminated by letter will be served on affected parties.

Stakeholder Comments on § 3.113

In its comments, PPL is generally supportive of the proposed language in Section 3.113, but requests that additional rules be added to clarify how a utility can appeal an adverse decision from the Bureau of Consumer Services (BCS) on informal complaints. PPL feels that this is especially relevant when BCS issues a citation that is not a violation finding because the current rules are unclear on how to proceed with an appeal of such a citation. PPL also requests additional guidance for appealing decisions in favor of the customer and whether the customer is required to proceed with a formal complaint or if the complaint is otherwise dismissed. PPL Comments at 6-7.

Reply Comments on § 3.113

No reply comments were filed.

Disposition on § 3.113

While Sections 3.111-3.113 address informal complaints, generally, we note that Chapter 56 of our regulations contain specific regulations about the informal complaint process. *See* 52 Pa. Code §§ 56.140-56.181 (relating to disputes; termination disputes; informal and informal complaints).⁴⁴ Accordingly, we find that PPL's comments are beyond the scope of this rulemaking. Thus, we hereby adopt the amendments to Section 3.113 as proposed in the NOPR.

Accordingly, the final form regulation set forth in the accompanying Annex incorporates the adoption of the proposed amendment to Section 3.113.

§ 3.381. Applications for Transportation of Property, Household Goods in Use and Persons.

In the NOPR, we explained that the proposed amendment to Section 3.381(a)(3) is intended to provide an updated mailing address for the PUC.

Stakeholder Comments on § 3.381

The stakeholders do not offer substantive comments regarding this Section. IRRC likewise does not offer comments regarding this Section.

⁴⁴ *Also see*, 52 Pa. Code §§ 56.371-56.411 (relating to disputes; termination disputes; informal and informal complaints involving victims of domestic violence with a protection from abuse order or a court order issued by a court of competent jurisdiction in this Commonwealth which provides clear evidence of domestic violence).

Reply Comments on § 3.381

No reply comments were filed.

Disposition on § 3.381

Since we received no comments regarding Section 3.381, we hereby adopt the amendments as proposed in the NOPR. Accordingly, the final form regulation set forth in the accompanying Annex incorporates the adoption of the proposed amendment to Section 3.381.

§ 3.391. Arbitration of Claims for Billing and Collecting Services.

In the NOPR, we explained that the current statutory provision incorporated in Section 3.391 has been repealed. Thus, the proposed amendment for Section 3.391 is intended to reflect the current statutory provision that now governs when a water utility acts as a billing and collecting agent for a municipal authority, city, borough, or township and the PUC is the forum for arbitration of disputes that arise between them due to costs of billing and collecting services.

Stakeholder Comments on § 3.391

The stakeholders do not offer any substantive comments or reply comments regarding this Section. IRRC likewise does not offer comments regarding this Section.

Reply Comments on § 3.391

No reply comments were filed.

Disposition on § 3.391

Since we received no comments regarding Section 3.391, we hereby adopt the amendments as proposed in the NOPR. Accordingly, the final form regulation set forth

in the accompanying Annex incorporates the adoption of the proposed amendment to Section 3.391.

§ 3.551. Official Forms.

In the NOPR, we explained that the proposed amendment to Section 3.551 is intended to provide an updated mailing address for the PUC.

Stakeholder Comments on § 3.551

The stakeholders do not offer any substantive comments or reply comments regarding this Section. IRRC likewise does not offer comments regarding this Section.

Reply Comments on § 3.551

No reply comments were filed.

Disposition on § 3.551

Since we received no comments regarding Section 3.551, we hereby adopt the amendments as proposed in the NOPR. Accordingly, the final form regulation set forth in the accompanying Annex incorporates the adoption of the proposed amendment to Section 3.551.

CHAPTER 5: FORMAL PROCEEDINGS

The PUC recognizes that the rules governing formal proceedings need to be updated in order to make PUC proceedings operate in a more efficient manner. Therefore, with the aim of increasing efficiency and clarity in formal proceedings, we proposed the following amendments.

§ 5.12. Contents of Applications.

In the NOPR, we explained that the proposed amendment to Section 5.12(a) is intended to ensure that the statutory advocates, namely the OCA, the OSBA, and I&E are served with copies of applications. The PUC believes that this requirement will allow the statutory advocates to be kept aware of applications filed with the PUC and take appropriate action in response to said applications at their discretion.

Stakeholder Comments on § 5.12

CAUSE-PA/TURN Comments

In its comments, CAUSE-PA/TURN are supportive of the change to require service on statutory advocates but also recommend that service be extended to parties of a utilities' last base rate case for the reasons described in their comments to Sections 3.2-3.4 and 3.6. CAUSE-PA/TURN state that it is critical that statutory advocates are given notice necessary to determine and pursue an appropriate response and this service requirement will help ensure that the interests of consumers and small businesses are adequately represented in any proceeding which may impact their rights as a utility consumer. CAUSE-PA/TURN recommend that service be extended to all parties of a utilities' last base rate case because they have already evidenced a distinct interest in the operation of that utility by intervening in the base rate proceeding. CAUSE-PA/TURN also note that expansion of e-service minimizes any additional cost associated with service on these parties. CAUSE-PA/TURN Comments at 48-49.

MEIUG, et al. Comments

With respect to the proposed amendment to Section 5.12, MEIUG, et al. do not oppose this modification but seek clarification from the PUC on how this change will apply to all applications (*i.e.*, both that address utilities and those that address transportation). Met-Ed Industrial Users Groups, et al. Comments at 4.

Reply Comments on § 5.12

In its reply comments, EAP respectfully disagrees with CAUSE-PA/TURN's recommendation that every application be served not only on the statutory advocates but on every party to a utility's last base rate case. EAP raises the same concerns that it previously identified with respect to CAUSE-PA/TURN's similar proposal for Sections 3.2-3.4 and 3.6. EAP argues that proposed service of every application on the parties to the last base rate proceeding is unnecessary given the publication of the application in the *Pennsylvania Bulletin*. EAP argues that CAUSE-PA/TURN's proposal would be time-consuming and burdensome on the parties. EAP Reply Comments at 6.

Disposition on § 5.12

Similarly to our disposition of Sections 3.2-3.4 and 3.6, we decline to adopt CAUSE-PA/TURN's proposal that applications be served on all customers who participated in a utility's last base rate case. Again, we find that customers who intervene in rate cases generally do so because they oppose increased rates. We agree with EAP that, given the publication of all applications in the *Pennsylvania Bulletin*, and service of applications on the public advocates, it would be unnecessarily burdensome on the parties to serve every application on all parties who participated in each utility's last rate proceeding. Thus, we hereby adopt the amendments to Section 5.12 as proposed in the NOPR.

Accordingly, the final form regulation set forth in the accompanying Annex incorporates the adoption of the proposed amendment to Section 5.12.

§ 5.13. Applications for Construction or Alteration of Crossings.

In the NOPR, we explained that the proposed amendment to Section 5.13(b) is intended to permit abolitions of crossings even when complaints have not been filed.

Stakeholder Comments on § 5.13

The stakeholders do not offer any substantive comments or reply comments regarding Section 5.13. IRRC likewise does not offer comments regarding this Section.

Reply Comments on § 5.13

No reply comments were filed.

Disposition on § 5.13

Since we received no comments regarding Section 5.13, we hereby adopt the amendments as proposed in the NOPR. Accordingly, the final form regulation set forth in the accompanying Annex incorporates the adoption of the proposed amendment to Section 5.13.

§ 5.14. Applications Requiring Notice.

In the NOPR, we explained that Section 5.14(a) currently sets forth the general rule that notice of applications to the PUC for authority under the Code must be published in the *Pennsylvania Bulletin* and as may otherwise be required by the PUC. We explained that the proposed amendment to Section 5.14(a) is intended to provide an informational listing of the applications for authority that must be published, which includes not just fixed utilities, but all utility services that are currently regulated by the PUC as defined under 66 Pa.C.S. § 102. Additionally, we explained that the PUC proposes to delete Section 5.14(d) in its entirety, as it is no longer necessary.

Stakeholder Comments on § 5.14

The stakeholders do not offer any substantive comments or reply comments regarding Section 5.14. IRRC likewise does not offer comments regarding this Section.

Reply Comments on § 5.14

No reply comments were filed.

Disposition on § 5.14

Since we received no comments on Section 5.14, we shall adopt the amendments as proposed in the NOPR. Accordingly, the final form regulation set forth in the accompanying Annex incorporates the adoption of the proposed amendment to Section 5.14.

§ 5.21. Formal Complaints Generally.

In the NOPR, we explained that the proposed amendment to Section 5.21(c) is intended to reflect the renaming of the Office of Trial Staff to the Bureau of Investigation and Enforcement, and to incorporate the General Assembly's 2019 amendment to 66 Pa.C.S. § 702 into the regulations, which allows for the electronic filing of formal complaints when applicable. The proposed amendment to Section 5.21(d) is intended to correct a typographical error.

Stakeholder Comments on § 5.21

In its comments, the OCA supports the PUC's changes without modification but has some considerations. The OCA believes consumers should be able to file formal complaints via email, and otherwise electronically. The OCA also suggests that the filing requirements for formal complaints pertaining to the form on which the complaint is submitted should be liberally construed, such that any document that reasonably appears to be a formal complaint will be accepted by the PUC as one. The OCA also proposes that complainants may elect to receive "minimum service" when entering a proceeding as a formal party. The OCA avers that minimum service would include only those documents served by the PUC, including hearing notices (evidentiary and public input),

settlement petitions, recommended or initial decisions, and orders. The OCA argues that this will allow the PUC to control the volume of documents. OCA Comments at 31-34.

Reply Comments on § 5.21

No reply comments were filed.

Disposition on § 5.21

We disagree with the OCA that it is incumbent on the PUC to presume that any document containing allegations against a regulated utility be considered a formal complaint and referred to the Office of Administrative Law Judge for disposition. As noted in Section 5.21(d), the filing of a formal complaint entitles the complainant to a formal hearing before the PUC. As such, it is incumbent on the complainant to follow established procedures to submit a completed formal complaint form. That said, if it appears that a document filed with the PUC is an effort to initiate a complaint proceeding, the Secretary's Bureau has the discretion to return the filing to the sender, along with instructions on how to file an informal or formal complaint. For these reasons, we decline to adopt the OCA's proposals as to the acceptance of formal complaints.

Turning to the OCA's proposal to establish and provide an option for parties to a proceeding to receive "minimum service" of documents, we find this to be impractical and counterproductive. This proposal would create an additional burden on the Secretary's Bureau of determining which pleadings should or should not be served and assuming the risk that a party who has elected such service may possibly allege lack of due process if they do not receive a filing that other parties have. For these reasons, we decline to adopt the OCA's proposal for establishing a "minimum service" process. Thus, we adopt the amendments to Section 5.21, as proposed in the NOPR.

Accordingly, the final form regulation set forth in the accompanying Annex incorporates the adoption of the proposed amendment to Section 5.21.

§ 5.22. Content of Formal Complaint.

In the NOPR, we explained that that the proposed amendment to Section 5.22 is intended to update existing language.

Stakeholder Comments on § 5.22

The stakeholders do not offer any substantive comments or reply comments regarding Section 5.22. IRRC likewise does not offer comments regarding this Section.

Reply Comments on § 5.22

No reply comments were filed.

Disposition on § 5.22

Since we received no comments regarding Section 5.22, we hereby adopt the amendments as proposed in the NOPR. Accordingly, the final form regulation set forth in the accompanying Annex incorporates the adoption of the proposed amendment to Section 5.22.

§ 5.24. Satisfaction of Formal Complaints.

In the NOPR, we explained that the proposed amendment to Section 5.24(c) is intended to address the filing of certificates of satisfaction in cases where there are multiple respondents. Currently, Section 5.24(c) only addresses complaints involving a single respondent. In such cases, the filing of a certificate of satisfaction that is not objected to by the complainant resolves all claims against the respondent and allows the docket to be closed. However, in complaints where there are multiple respondents, a

certificate of satisfaction may or may not resolve the complainant's claims against each and every respondent. Therefore, the PUC determines that in cases involving multiple respondents, the filing of a certificate of satisfaction will not automatically trigger closure of the case as long as there are outstanding claims remaining against the other respondents.

Stakeholder Comments on § 5.24

The stakeholders do not offer any substantive comments or reply comments regarding Section 5.24. IRRC likewise does not offer comments regarding this Section.

Reply Comments on § 5.24

No reply comments were filed.

Disposition on § 5.24

Since we received no comments regarding Section 5.22, we hereby adopt the amendments as proposed in the NOPR. Accordingly, the final form regulation set forth in the accompanying Annex incorporates the adoption of the proposed amendment to Section 5.24.

§ 5.31. Staff-initiated Complaints.

In the NOPR, we explained that the proposed amendment to Section 5.31(b) is intended to reflect the renaming of the Office of Trial Staff to the Bureau of Investigation and Enforcement.

Stakeholder Comments on § 5.31

The stakeholders do not offer any substantive comments or reply comments regarding Section 5.31. IRRC likewise does not offer comments regarding this Section.

Reply Comments on § 5.31

No reply comments were filed.

Disposition on § 5.31

Since we received no comments regarding Section 5.31, we hereby adopt the amendments as proposed in the NOPR. Accordingly, the final form regulation set forth in the accompanying Annex incorporates the adoption of the proposed amendment to Section 5.31.

§ 5.41. Petitions Generally.

In the NOPR, we explained that that proposed amendment to Section 5.41(a) is intended to harmonize the filing requirements for formal complaints, as addressed in Section 5.22(a), and the filing requirements for petitions. Additionally, we explained that the proposed amendment to Section 5.41(b) is intended to reflect the renaming of the Office of Trial Staff to the Bureau of Investigation and Enforcement.

Stakeholder Comments on § 5.41

CAUSE-PA/TURN state that the proposed amendment to Section 5.41(a) imposes more onerous requirements than filing a formal complaint as outlined in Section 5.22(a). Specifically, CAUSE-PA/TURN note that the requirement for parties to attach documents already on file with the PUC as a matter of public record is duplicative and burdensome. If the PUC wants to bring Sections 5.22 and 5.41 together in alignment, CAUSE-PA/TURN recommend to the PUC to amend this Section with their proposed language for Section 5.41(a). CAUSE-PA/TURN Comments at 49-50.

Reply Comments on § 5.41

No reply comments were filed.

Disposition on § 5.41

We disagree with CAUSE-PA/TURN that the amendment to Section 5.41(a) is more onerous than the requirements for filing a formal complaint as set forth in Section 5.22(a). We note that the language of Section 5.22(a)(7) is incorporated verbatim in the proposed amendment to Section 5.41(a). Thus, we decline to adopt the language proposed by CAUSE-PA/TURN for Section 5.41(a), and hereby adopt the amendment to Section 5.41(a), as proposed in the NOPR.

Accordingly, the final form regulation set forth in the accompanying Annex incorporates the adoption of the proposed amendment to Section 5.41.

§ 5.42. Petitions for Declaratory Orders.

In the NOPR, we explained that the proposed amendment to Section 5.42(c) is intended to provide consistency with similar language in Section 5.41(c).

Stakeholder Comments on § 5.42

The stakeholders do not offer any substantive comments or reply comments regarding Section 5.42. IRRC likewise does not offer comments regarding this Section.

Reply Comments on § 5.42

No reply comments were filed.

Disposition on § 5.42

Since we received no comments regarding Section 5.42, we hereby adopt the amendments as proposed in the NOPR. Accordingly, the final form regulation set forth in the accompanying Annex incorporates the adoption of the proposed amendment to Section 5.42.

§ 5.43. Petitions for Issuance, Amendment, Repeal, or Waiver of Commission Regulations.

In the NOPR, we explained that the proposed amendments to Section 5.43 are intended to reflect the renaming of the Office of Trial Staff to the Bureau of Investigation and Enforcement, and to provide consistency with similar language in Section 5.41(c).

Stakeholder Comments on § 5.43

The stakeholders do not offer any substantive comments or reply comments regarding Section 5.43. IRRC likewise does not offer comments regarding this Section.

Reply Comments on § 5.43

No reply comments were filed.

Disposition on § 5.43

Since we received no comments regarding Section 5.43, we hereby adopt the amendments as proposed in the NOPR. Accordingly, the final form regulation set forth in the accompanying Annex incorporates the adoption of the proposed amendment to Section 5.43.

§ 5.52. Content of a Protest to an Application.

In the NOPR, we explained that the proposed amendment to Section 5.52(a) is intended to correct a typographical error and to inform parties who submit protests that if they do not explicitly request a hearing before the Office of Administrative Law Judge (OALJ), the PUC will rule on the pleadings alone without holding an evidentiary hearing.

Stakeholder Comments on § 5.52

CAUSE-PA/TURN Comments

In its comments, CAUSE-PA/TURN object to the proposed addition of subsection (4) to Section 5.52(a), requiring protests to an application to explicitly request a hearing before the OALJ or one will not be scheduled. CAUSE-PA/TURN argue that the change would remove much needed flexibility for parties who were not able to determine if a hearing is necessary until after filing their initial protest and beginning the process. CAUSE-PA/TURN also state that the proposed rule could prevent *pro se* litigants from having a hearing if they are unfamiliar with the procedural requirement. CAUSE-PA/TURN Comments at 50.

OCA Comments

The OCA does not support this proposed modification, or requests that the PUC provide additional guidance on the expectations of parties to an application proceeding if no hearing is requested. Specifically, the OCA's concern is that applications will be granted because no hearing is requested. The OCA argues that if the PUC specifies that a protestant must request an evidentiary hearing to receive one implies that the application is more likely to be approved than denied if no evidentiary hearing is requested. The OCA notes that parties can only initiate discovery after a responsive protest has been filed. Instead, the OCA argues that the PUC's default practice should be to assign an application proceeding to the OALJ when a protest is filed or if it is determined that

additional information is required for the application to be granted. OCA Comments at 35-36.

Reply Comments on § 5.52

No reply comments were filed.

Disposition on § 5.52

We agree with CAUSE-PA and the OCA that the proposed addition of subsection (a)(4) should not be adopted as proposed in the NOPR. We shall therefore maintain the Commission's existing default practice of assigning an application proceeding to the OALJ when a protest is filed or when it is determined that additional information is required. Accordingly, the final form regulation set forth in the accompanying Annex omits the proposed amendment to Section 5.52.

§ 5.53. Time of Filing.

In the NOPR, we explained that various PUC regulations provide for a sixty-day period in which to file protests commencing from the dates of publication in the *Pennsylvania Bulletin*, unless otherwise specified.⁴⁵ Executive Order 2023-07, which was issued on January 31, 2023, instructed executive agencies to examine the types of permits, licenses, or certifications they issue, which would then be subject to recommended efficient application processing times.⁴⁶ As a best practice, the PUC also takes this opportunity to examine whether its application processes may be improved while still affording interested parties with notice and an opportunity to be heard.

⁴⁵ See 52 Pa. Code §§ 5.14(c) and 5.53.

⁴⁶ Executive Order 2023-07—Building Efficiency in the Commonwealth's Permitting, Licensing, and Certification Processes. See, https://www.pa.gov/content/dam/copapwp-pagov/en/governor/documents/20230131_EO-2023-07_FINAL_Executed.pdf.

We explained that the proposed amendment to Section 5.53 would reduce the default protest from sixty days to thirty days following publication of an application in the *Pennsylvania Bulletin*. The proposed amendment is intended to follow Executive Order 2023-07 and to make processing times for applications more efficient while still affording interested parties with notice and an opportunity to be heard.

Stakeholder Comments on § 5.53

CAUSE-PA/TURN Comments

In its comments, CAUSE-PA/TURN strongly oppose this reduction in the period to file a protest to an application because the harms of reducing the length for filing protests outweighs the countervailing benefits of efficient application processing times. CAUSE-PA/TURN contend that a shorter time period increases the likelihood of protestants, particularly unrepresented ones, learning of the proceeding after the filing window has passed. CAUSE-PA/TURN argue that the proposed change could have a significant impact on the PUC's ability to resolve issues and hear important matters and would harm the quality of submitted protests and engagement with the public and interested parties. Particularly, CAUSE-PA/TURN argue that this proposed change would disadvantage *pro se* litigants and parties without the resources to draft a protest in such a short period. CAUSE-PA/TURN Comments at 50-51.

OCA Comments

The OCA disagrees with the proposed amendment to Section 5.53, arguing that the thirty days is too short a time frame for parties to consider an application before filing a protest in proceedings where it is likely that a significant number of consumers will be affected. The OCA argues that the PUC has not demonstrated that there are currently significant inefficiencies with the sixty-day protest period which would be improved upon by the proposed amendment. While the OCA respects the desire to move more quickly through the application proceedings, the OCA requests that the protest period

remain at sixty days, unless the PUC is otherwise able to ensure that protestants to an application will be ensured additional time to develop a response. The OCA further recommends the PUC should present data regarding the application response periods for different types of applications before amending the protest filing deadline. OCA Comments at 36-37.

IECPA Comments

The Industrial Energy Consumers of Pennsylvania (IECPA) does not support the proposed changes to Section 5.53 that reduce the time for filing protests to an application from sixty days to thirty days.⁴⁷ While the IECPA understands the PUC’s stated efficiency concerns, the IECPA argues that efficiency should not subrogate prospective complainants’, protestors’, or intervenors’ due process rights. The IECPA does not believe that Executive Order 2023-07 is intended to apply to contested proceedings that impact stakeholders’ procedural and substantive due process rights. Unlike other parties in which there may be a single decisionmaker, the IECPA argues that consumer groups and associations like themselves require consensus decision-making that often take additional time beyond the thirty days contemplated by the PUC. The IECPA recommends maintaining the sixty-day protest period to strike the balance between efficiency and due process rights of intervening parties. IECPA Comments at 2-3.

MEIUG, et al. Comments

MEIUG, et al. oppose the PUC’s proposed time filing change in Section 5.53 from sixty days to thirty days. In shortening the protest period by thirty days, MEIUG, et al. find that the PUC significantly limits the time needed by *ad hoc* groups to coalesce. Moreover, while the PUC has added the language “for good cause shown,” MEIUG, et al. argue that that this phrase does not specifically address whether the time needed for member groups to review filings and obtain approvals would be considered “good

⁴⁷ We note that this comment appears to relate to IECPA’s comments regarding Section 5.74.

cause.” Therefore, MEIUG, et al. suggest the time period set forth in Section 5.53 remains at sixty days. Met-Ed Industrial Users Groups, et al. Comments at 4-5.

OSBA Comments

The OSBA opposes the proposed amendment to Section 5.53. The OSBA argues that the reduction in the time period to file protests to an application would strain the OSBA and other parties’ capacity to effectively represent the interests of small business consumers. OSBA Comments at 11.

Reply Comments on § 5.53

The EAP does not oppose keeping the existing, default sixty-day protest period. EAP Reply Comments at 7.

IRRC Comments on § 5.53

IRRC notes that numerous stakeholders oppose the shortened timeframe to file a protest to an application with the PUC following its publication in the *Pennsylvania Bulletin*. IRRC notes that a couple of shareholders express concerns that the reduction in the filing window will strain their capacity to effectively represent the interests of their constituents. IRRC notes that a stakeholder requests that the protest period remain at sixty days unless the PUC is otherwise able to ensure that protestants to an application will be guaranteed additional time to develop a response to said application. IRRC further take notice of a stakeholder’s suggestion that if certain types of applications are more likely to result in protests being filed, the PUC should provide the current sixty-day response period for those applications while reducing the response period to thirty days for applications which are highly unlikely to be the subject to protests. IRRC asks the PUC to explain how shortening the length of time in which to file protests to applications is reasonable and in the public interest. IRRC Comments at 7.

Disposition on § 5.53

We acknowledge the concerns raised regarding our proposal to reduce the default protest period set forth in Section 5.53 from 60 days to 30 days. We appreciate the perspective provided by various stakeholders to better inform us as to their specific concerns and anticipated challenges should the protest period be reduced as proposed. However, we note that the timeframe set forth in Section 5.53 is a default timeframe and, importantly, under our regulations, we retain the discretion to specify alternative protest periods. Additionally, the regulations provide that the timeframes may be modified upon good cause shown. This is consistent with Section 1.15(a)(1) of the Commission's regulations, which provides that periods of time prescribed may be extended upon motion before their expiration, or upon motion after their expiration where reasonable grounds are shown for the failure to act. Further, pursuant to Section 1.91(a) of our regulations, applications for a waiver of Commission regulations may be filed. Thus, there remains ample opportunity to extend the protest period for a particular case beyond 30 days when necessary, and the concerns raised have been duly accounted for and addressed.

Accordingly, we find that a 30-day default protest period is appropriate and reasonable to achieve administrative efficiencies, while continuing to adequately protect a party's right to notice and an opportunity to be heard.

We also find it appropriate to further amend Section 5.53 to clarify that the ability to file protests beyond the applicable deadline applies equally to notices containing a specific protest period, as well as notices that do not specify a protest period and accordingly have a default protest period of 30 days, for good cause shown.

Accordingly, the final form regulation set forth in the accompanying Annex provides for a default 30-day period for filing protests in Section 5.53 and also incorporates a revision to the proposed language to Section 5.53.

§ 5.72. Eligibility to Intervene.

In the NOPR, we explained that the proposed amendment to Section 5.72(a) is intended to clarify that this section addresses persons, corporations, and municipal corporations seeking to intervene in a proceeding as a party.

Stakeholder Comments on § 5.72

In its comments, the OSBA agrees with the proposed amendment, provided it is amended to explicitly include “small business” in the “eligibility to intervene.” OSBA Comments at 11.

Reply Comments on § 5.72

No reply comments were filed.

Disposition on § 5.72

Since we received no comments in opposition, we hereby adopt the amendments to Section 5.72, as proposed in the NOPR. Accordingly, the final form regulation set forth in the accompanying Annex incorporates the adoption of the proposed amendment to Section 5.72.

§ 5.74. Filings of Petitions to Intervene.

In the NOPR, we stated that the PUC proposes to retain the existing language in the regulation at Section 5.74(b), but to amend Section 5.74(b)(3) to note that, absent an order or notice stating otherwise under Section 5.76(b)(1) or (b)(2), the outer limit for filing a petition to intervene would be thirty days from the date of publication in the *Pennsylvania Bulletin*, except upon a showing of good cause. As proposed in Section 5.14(c), the proposed amendment to Section 5.74(b)(3) is intended to provide consistency with the timeframe for the filing of a protest as set forth in Section 5.53.

Stakeholder Comments on § 5.74

OCA Comments

In its comments, the OCA urges the PUC not to adopt the proposed amendment to Section 5.74 for similar reasons described in their comments regarding Section 5.53. The OCA is additionally concerned that intervention is a more likely route for most parties than the filing of a protest in practice before the PUC. Unlike the statutory advocates which file protests, the OCA avers that other parties that seek intervention to participate in PUC proceedings are not served with the application itself at the time of filing. As such, the OCA reiterates its recommendation that the default sixty-day response period to applications be preserved for both the filing of protests as well as the filing of petitions to intervene. OCA Comments at 38.

IECPA Comments

IECPA opposes the proposed amendment to Section 5.74 and urges the PUC to maintain the default sixty-day response period for both protests and petitions to intervene. IECPA Comments at 4.

MEIUG, et al. Comments

MEIUG, et al. also oppose the PUC's proposed modification to Section 5.74(b)(3). In addition, MEIUG, et al. note that the revised Section 5.74(b) does not specifically indicate where the notice for petitions to intervene would be filed. For clarification purposes, MEIUG et al. recommend that Section 5.74 be modified to note that the notice will occur in the *Pennsylvania Bulletin*. Met-Ed Industrial Users Groups, et al. Comments at 5-6.

Reply Comments on § 5.74

In its reply comments, CAUSE-PA/TURN oppose shortening the default timeline for Petitioners to intervene from sixty days to thirty days. CAUSE-PA/TURN support the OCA's general objections and agree with their concern that intervention is the most likely route for non-statutory parties. However, CAUSE-PA/TURN are concerned with the OCA's proposal to bifurcate timelines for different types of proceedings. CAUSE-PA/TURN argue that it is important that timelines be consistent for all proceedings to prevent uncertainty for consumers and consumer groups, especially for intervenors with limited resources and those acting *pro se*. CAUSE-PA/TURN feel that the OCA's proposal is ambiguous and lacks a clear standard for what qualifies as a "significant number of consumers" and when such a determination will be made. CAUSE-PA/TURN Reply Comments at 9.

IRRC Comments on § 5.74

IRRC notes that a number of stakeholders believe that the current sixty-day response period should be maintained for the filing of petitions to intervene. Specifically, IRRC concurs with a stakeholder's suggestion regarding the notice for filing petitions to intervene being published in the *Pennsylvania Bulletin*. IRRC also asks the PUC to explain how shortening the length of time for filing petitions to intervene is reasonable and in the public interest. IRRC Comments at 8.

Disposition on § 5.74

We acknowledge the concerns raised regarding shortening the period for filing a petition to intervene once notice has been published in the *Pennsylvania Bulletin* from a default protest period of 60 days to 30 days. Consistent with our disposition of Section 5.53, we note that the timeframe set forth in Section 5.74(b)(3) is a default timeframe and, under these regulations, the Commission retains the discretion to specify alternative intervention periods, that timeframes may be modified for good cause shown, and that

applications for a waiver of Commission’s regulations may be filed where necessary, which leaves ample opportunity for an extended intervention period in a particular case if needed. Thus, we amended Section 5.74(b)(3) to reflect a default intervention period of 30 days. We also clarify, as we did with Section 5.53, that the ability to file petitions to intervene beyond the applicable intervention period applies equally to notices containing a specific intervention period, as well as notices that do not specify an intervention period.

Accordingly, the final form regulation set forth in the accompanying Annex incorporates a revision to the proposed amendment to Section 5.74(b)(3) and reflects a default intervention period of 30 days within Section 5.74(b)(3).

§ 5.81. Consolidation.

In the NOPR, we noted that Section 5.81 of the PUC’s current regulations expressly authorizes an ALJ or the PUC to consolidate a common question of law or fact, but does not contain a provision authorizing the ALJ or the PUC to identify an indispensable party and to interplead that party. Accordingly, we solicited input on the development of a prospective rule that would address this issue.

Stakeholder Comments on § 5.81

CAUSE-PA/TURN Comments

In its comments, CAUSE-PA/TURN support the proposed amendment to Section 5.81 but do not have specific language for such a change. CAUSE-PA/TURN point out that Pennsylvania Courts have an extensive history of case law that examines interpleading parties and encourages the PUC to draw upon this history when developing this rule change. CAUSE-PA/TURN aver that under Pennsylvania common law principles, “[a] party is indispensable when his or her rights are so connected with the

claims of the litigants that no decree can be made without impairing those rights.”⁴⁸ As part of determining as whether or not a party is indispensable, CAUSE-PA/TURN note that the Pennsylvania Supreme Court has provided four factors for consideration,⁴⁹ which CAUSE-PA/TURN recommend that the PUC incorporates in a note clarifying Section 5.81. CAUSE-PA/TURN Comments at 51-52.

OCA Comments

The OCA would accept the PUC’s proposed modification. However, the OCA recommends that the PUC adopt Pennsylvania common law principles to aid parties in determining whether a party is indispensable in an official note to the revised Section 5.81. The OCA also recommends that any adopted rule language should address the general meaning of the term “indispensable party.” The OCA further argues that the mechanism to join indispensable parties may vary in each PUC proceeding, based on whenever the identity of the party is confidential and subject to a protective order. Therefore, the OCA proposes a revised Section 5.81 to include their recommendations. OCA Comments at 39-42.

PPL Comments

PPL supports the development of an indispensable party rule to ensure all necessary parties are involved in proceedings to create a comprehensive and accurate record. PPL argues that the indispensable party rule is particularly important in customer

⁴⁸ *William Penn Sch. Dist. v. Pa. Dep’t of Educ.*, 294 A.3d 537, 870 (Pa. Cmwlth. 2023) (quoting *Sprague v. Casey*, 550 A.2d 184, 189 (Pa. 1988)).

⁴⁹ In *Mechanicsburg Area Sch. Dist. v. Kline*; *Rachel Carson Trails Conservancy, Inc. v. Dep’t of Conservation & Nat. Res.*, 201 A.3d 273, 279 (Pa. Cmwlth. 2018); and *HYK Constr. Co. v. Smithfield Twp.*, 8 A.3d 1009, 1015 (Pa. Cmwlth. 2010), Pennsylvania courts list these four factors to determine if a party is indispensable:

1. Do absent parties have a right or interest related to the claim?
2. If so, what is the nature of that right or interest?
3. Is that right or interest essential to the merits of the issue?
4. Can justice be afforded without violating the due process rights of absent parties?

complaints where there is uncertainty whether the complaint concerns the electric distribution company (EDC) or electric generation supplier (EGS). PPL argues that clarifying the involvement of indispensable parties would help address concerns more effectively and ensure that the appropriate entities are represented. PPL Comments at 7.

Reply Comments on § 5.81

No reply comments were filed.

IRRC Comments on § 5.81

IRRC notes that stakeholders recommend that the PUC incorporate the four common law factors as articulated by the Pennsylvania Supreme Court when deciding as to whether or not a party is indispensable to a PUC proceeding. IRRC also notes a stakeholder's request that the PUC amend this Section to address the general meaning of the term "indispensable party." IRRC asks the PUC to define the term "indispensable party" in the final regulation and provide additional clarity in determining whether or not is indispensable or explain why it is unnecessary to do so. IRRC Comments at 8.

Disposition on § 5.81

The PUC appreciates the proposals for a rule to interplead indispensable parties. We agree that it is appropriate to amend Section 5.81 to include a definition for "indispensable party." For organizational purposes, we will take the proposed new language from the NOPR concerning the authority of the PUC or presiding officers to identify indispensable parties and create new subsection 5.81(b), specifically concerning indispensable parties. We also add new language to new subsection 5.81(b) defining an "indispensable party" consistent with common law principles, as articulated by the Supreme Court of Pennsylvania in *Sprague v. Casey*, 550 A.2d 184, 189 (Pa. 1988).

However, we decline to incorporate into our regulations the four factors for determining an indispensable party as articulated by the Commonwealth Court in *Mechanicsburg Area Sch. Dist. v. Kline*; *Rachel Carson Trails Conservancy, Inc. v. Dep't of Conservation & Nat. Res.*, 201 A.3d 273, 279 (Pa. Cmwlth. 2018); and *HYK Constr. Co. v. Smithfield Twp.*, 8 A.3d 1009, 1015 (Pa. Cmwlth. 2010). We find that such factors are more appropriately left to be articulated in decisions of the PUC and presiding officers, who may reasonably adopt the factors set forth by the courts. This approach is consistent with Section 5.572(c), which speaks to petitions for reconsideration, but does not itself contain the factors for granting reconsideration articulated in *Philip Duick, et al. v. Pa. Gas and Water Co.*, 56 Pa. PUC 553 (1982). This approach is also consistent within Section 5.81, as Section 5.81(a) generally defines what proceedings may be consolidated, without setting forth a list of specific factors for consolidation.

With the creation of new subsection 5.81(b), we shall renumber existing subsection 5.81(b) to 5.81(c). Accordingly, the final form regulation set forth in the accompanying Annex incorporates these revisions to the proposed amendments to Section 5.81.

§§ 5.222, 5.224. Initiation of Prehearing Conferences in Nonrate Proceedings; Prehearing Conferences in Rate Proceedings.

In the NOPR, we explained that the proposed amendments to Sections 5.222 and 5.224 are intended to reflect that presiding officers often address service of documents by parties during prehearing conferences, and a party may express a preference on how they wish to be served during the course of a proceeding. The PUC proposed that presiding officers be afforded with the authority to address and determine the method of service on parties.

Stakeholder Comments on §§ 5.222 and 5.224

In its comments, CAUSE-PA/TURN are supportive of the proposed amendments to Sections 5.222 and 5.224. CAUSE-PA/TURN argue that these changes would streamline services for parties who rely on electronic service, provide flexibility for parties who rely on other service methods, and bring the section in line with current practice at prehearing conferences. CAUSE-PA/TURN notes that the PUC, presiding officers, and parties should be mindful that discussions at a prehearing conference should be subject to the proposed changes to Section 1.54 where parties should be served according to what type of service they agreed to. CAUSE-PA/TURN Comments at 53.

Reply Comments on §§ 5.222 and 5.224

No reply comments were filed.

Disposition on §§ 5.222 and 5.224

Since we received no comments in opposition, we shall adopt the amendment to Sections 5.222 and 5.224, as proposed in the NOPR. Accordingly, the final form regulation set forth in the accompanying Annex incorporates the adoption of the proposed amendment to Sections 5.222 and 5.224.

§ 5.231. Offers of Settlement.

In her August 22, 2024 Statement, Vice Chair Barrow requested comments on Section 5.231(a) and expressed concerns whether the PUC's policy of favoring settlements may discourage parties from fully litigating contested proceedings. Specifically, Vice Chair Barrow requested comments and evidence on the benefits and burdens created by the PUC's settlement policy and under what circumstances the PUC might seek a full public hearing for purposes of transparency. Numerous stakeholders

have filed comments and reply comments addressing the Vice Chair’s August 22, 2024 Statement. As such, we will address them in turn.

Stakeholder Comments on § 5.231

CAUSE-PA/TURN Comments

In response to Vice Chair Barrow’s Statement, CAUSE-PA/TURN propose bringing the PUC’s policy in line with the Pennsylvania Rules of Judicial Conduct which states that “[a] judge may encourage parties to a proceeding and their lawyers to settle matters in dispute but shall not act in a manner that coerces any party into settlement”⁵⁰ to allow parties more discretion in deciding whether to enter into a settlement depending on specific facts of a case. CAUSE-PA/TURN argue that settlement offers can have both a positive and negative impact on consumers, particularly low-income consumers and *pro se* litigants. CAUSE-PA/TURN further argue that a blanket policy favoring one outcome over the others will inevitably miss the nuance that is required when negotiating a settlement offer. CAUSE-PA/TURN aver that there are many cases where settlement is still an appropriate and cost-effective goal for all parties involved but propose that the PUC change its policy to acknowledge that this is not always true. CAUSE-PA/TURN offer proposed language for Section 5.231(a) for the PUC to consider. CAUSE-PA/TURN Comments at 53-55.

OCA Comments

In its comments, the OCA agrees with the Vice Chair that the PUC’s policy favoring settlements may disincentive full and complete litigation. It is the OCA’s position that settlements should be encouraged where the settlement would result in public benefits that would likely not result from litigation. By adopting the OCA’s proposed language, the OCA argues that the PUC’s regulations would require a balancing

⁵⁰ 207 Pa. Code §§ 33 Canon 2, Rule 2.6(b).

test. For a settlement to weigh in favor of approval in PUC proceedings, the OCA argues that the settlement's benefits must outweigh the public interest in the full and complete litigation of the factual record and parties' legal arguments. The OCA further notes that the PUC may require a hearing regardless of a settlement between parties. OCA Comments at 59-60.

IECPA Comments

The IECPA does not believe the PUC's policy favoring settlements hinders litigation and is strongly in favor of the current policy. In the interest of exploring factors that hinder litigation, the IECPA suggests that the PUC investigate other aspects of its regulations, including but not limited to, the PUC's practice of issuing quarterly earnings for jurisdictional utilities. In IECPA's experience, this particular component may create artificial incentives to settle without producing a full and robust litigation into critical issues. IECPA also notes that Utility returns on equity (ROE) are a highly contested issue in base rate cases, but suggests that the utilities' ability to rely on the quarterly reports to account for their Distribution System Improvement Charge (DSIC) ROEs as imputed ROEs may disincentivize utilities from risking fully litigating this issue. IECPA further notes that only three of the twenty-three ROEs were established through fully litigated proceedings and suggests the PUC investigate how this and other regulatory components hinder litigation and transparency. IECPA Comments 4-5.

MEIUG, et al. Comments

MEIUG, et al. find that Section 5.231(a) does not discourage its utility members from settling proceedings where appropriate. Met-Ed Industrial Users Group, et al. Comments at 7.

PPL Comments

PPL supports the current rule encouraging settlements, arguing that it is an efficient use of limited resources and helps avoid the time and expense associated with litigation. PPL also notes that the collaborative nature of settlements is particularly beneficial for parties due to the diverse group of stakeholders and interests involved in utility proceedings. PPL observes that settlements are reached after discovery and submission of written testimony and exhibits. Thus, PPL argues that transparency concerns are not as pressing because the PUC is able to evaluate settlement proposals with the benefit of an evidentiary record, and it retains discretion to modify the settlement or seek additional information before rendering a decision. PPL Comments at 7-8.

C&T Utilities Comments

C&T Utilities support the continuation of the PUC's current policies regarding the settlement of contested proceedings. C&T Utilities argues that settlements can reduce litigation costs, mitigate uncertainty, and at times, accelerate disposition of the proceeding. As such, C&T Utilities do not view the PUC's current policies as indicating that the PUC will look with disfavor on a party's unwillingness to settle. C&T Utilities Letter at 1.

Reply Comments on § 5.231

EAP Reply Comments

EAP opposes the changes proposed by the OCA and CAUSE-PA/TURN and is unaware of any instance in which the existing regulation served as a barrier or obstacle to litigation or unduly influenced a party not to pursue litigation of their claims. EAP explains that in every case, the PUC already carefully considers the provisions of the proposed settlement, investigates the factual evidence justifying those provisions, and determines whether the settlement, as a whole, is reasonable and in the public interest.

EAP argues that there is no need for the PUC to adopt a balancing test, to incorporate a rule from the Pennsylvania Rules of Judicial Conduct into the PUC’s regulations, or to require that the settlement consider “what will result in the most fair and equitable outcome” as opposed to what is reasonable. EAP further recommends that the PUC rejects IECPA’s comments about quarterly earnings reports because those reports are required by statute.⁵¹ EAP Reply Comments at 9-11.

OSBA Reply Comments

The OSBA supports the continuation of the settlement policy. The OSBA finds that encouraging settlements does not hinder the full exploration of the issues in a case, nor does it prejudice consumers or utility companies. The OSBA notes that the PUC’s policy on settlements does not affect the OSBA’s decision on whether to settle or litigate a case. OSBA Reply Comments at 2.

PAWC Reply Comments

PAWC supports preserving Section 5.231(a) of the PUC’s regulations as part of this proceeding. PAWC argues that settlements often result in a mutually acceptable outcome for both parties, which is unlikely to be achieved through litigation. PAWC points out that the PUC’s settlement policy gives them more flexibility to offer additional and lengthier payment arrangements to residential customers if they negotiated directly with a utility rather than fully litigating their complaint. PAWC recommends that the PUC reject the OCA’s revision to Section 5.231(a) because it would create an impossible standard for the PUC to meet. PAWC Reply Comments at 3-4.

⁵¹ See 66 Pa.C.S. §§ 1357(b)(3), 1358(b)(3).

Disposition on § 5.231

Upon review of stakeholder comments and reply comments, we find that it is appropriate to continue the PUC's practice of encouraging settlements. Regarding settlements in consumer complaint proceedings, we acknowledge PAWC's comments that settlements allow utilities greater flexibility to offer additional and lengthier payment arrangements to residential customers if they negotiated directly with a utility rather than fully litigating their complaint, where any payment arrangement would be limited by what is permissible under our regulations. Regarding settlements in complex matters such as rate case proceedings, we note that PPL's comments that settlements are reached after discovery and submission of written testimony and exhibits, the ability of parties to terminate settlement discussions and proceed with an on-the-record hearing before the presiding officer, as well as the PUC's discretion to accept or modify the terms of a settlement, are factors that mitigate against settlements that are not in the public interest.

Next, we address the OCA's proposal to amend Section 5.231(a), which states that it is the policy of the PUC to encourage settlements, by adding "only if the provisions which arise out of the settlement process outweigh the public interest in further development of the factual record and legal positions of the parties." OCA Comments at 59. With this outcome in mind, the OCA also proposes that the PUC is entitled, and should, conduct hearings on settlement agreements. *Id.* As a statutory advocate, the OCA may, of course, engage in settlement negotiations and decline to be signatory to a settlement agreement offered or reached by the parties in any PUC proceeding to which it is a party. However, we agree with PAWC that the OCA's proposed amendment would establish an impossible standard for the PUC to meet in reviewing settlement agreements and would additionally have the effect of discouraging parties from entering into settlement negotiations, thereby increasing costs of litigation which will ultimately be borne by ratepayers.

We herein also address CAUSE-PA/TURN's concerns about parties being coerced into a settlement by the presiding officer. Section 5.231(c) permits parties to request that the presiding officer and/or an additional presiding officer or mediator participate in settlement conferences, which may be beneficial to *pro se* litigants who are unfamiliar with the administrative process. To clarify, we envision the settlement judge process as a facilitative one, and not a process whereby a presiding officer may force the parties to enter into a settlement. The choice to enter into a settlement agreement belongs to and must remain with the parties. Accordingly, we do not find it necessary to adopt Rule 2.6(b) of the Pennsylvania Code of Judicial Conduct, 207 Pa. Code §§ 33 Canon 2, Rule 2.6(b), as CAUSE-PA/TURN proposes.

Accordingly, the final form regulation set forth in the accompanying Annex omits Section 5.231 in its entirety since we are not adopting any amendments to this regulation.

§ 5.245. Failure to Appear, Proceed or Maintain Order in Proceedings.

In the NOPR, we stated that the PUC often relies on Sections 316 and 332(f) of the Code to dismiss proceedings with prejudice when litigants fail to appear. Section 332(f) addresses the failure to be at a scheduled conference or hearing, holding that the failure to secure counsel and appear precludes that party participating, seeking a rehearing, or a recall unless it was unavoidable and the other party was not prejudiced. This general rule and exception seem to be limited to those circumstances where a party is required to have legal counsel before the PUC and has been relied on to dismiss *pro se* litigant cases with prejudice when they fail to appear.

We also note that Section 316 governs *prima facie* evidence of facts which are found conclusive unless set aside. This provision does not address *stare decisis* or dismissals with prejudice, but instead creates a presumption that prior facts, such as tariffed rates, are reasonable and precludes collateral attacks upon those facts, absent a

showing of changed circumstances.⁵² The PUC often relies on Section 316 and the ancillary *res judicata* or collateral estoppel. However, Pennsylvania law holds that *res judicata* should not apply if a matter is dismissed on procedural matters because there has not been a substantive determination on the merits.⁵³

Section 5.245 of our regulations address the failure to appear and the circumstances in which failure to be represented at a hearing may constitute a waiver to participate in the hearing. Therefore, the PUC believes that this is the appropriate section to clarify when a *pro se* litigant can be dismissed with prejudice, and whether the applications of *res judicata* and collateral estoppel based upon a litigant's failure to appear at a hearing is permissible.

Stakeholder Comments on § 5.245

CAUSE-PA/TURN Comments

In its comments, CAUSE-PA/TURN support the proposed amendments. CAUSE-PA/TURN argue that the proposed changes to Section 5.245 would resolve the concerns that Commissioner Coleman raised in his statements, since they would bring certainty and clarity to issues of *res judicata* and collateral estoppel for dismissals based on procedural issues. CAUSE-PA/TURN argue that the PUC should support measures that make it easier for *pro se* litigants to participate in PUC proceedings to ensure adequate due process and access to justice since *pro se* litigants are already at a disadvantage compared to represented parties. Furthermore, CAUSE-PA/TURN argue that parties

⁵² *McLaughlin v. DQE*, Docket No. C-20065798 (2009); *Duquesne Light Co., et al. v. Pa. Pub. Util. Comm'n*, 715 A.2d 540 (Pa. Cmwlth. 1998); *Popowsky v. Pa. Pub. Util. Comm'n*, 669 A.2d 1029, 1037 n. 14 (Pa. Cmwlth. 1995), *rev'd in part on other grounds*, 706 A.2d 1197 (Pa. 1997); *Zucker v. Pa. Pub. Util. Comm'n*, 401 A.2d 1377, 1380 (Pa. Cmwlth. 1979); *Schellhammer v. Pa. Pub. Util. Comm'n*, 629 A.2d 189, 193 (Pa. Cmwlth. 1993).

⁵³ *See Scharf v. Richard De Cou Company*, 183 A. 41, 41-42 (Pa. 1936); *Farabiugh Chevrolet v. Covenant Mgmt., Inc.*, 522 A.2d 100, 101 (Pa. Super. 1987); *Gutman v. Giordano*, 557 A.2d 782, 783 (Pa. Super. 1989); *Acobacey v. Acobacey*, 22 Phila. 333, 191 Phila. Cty. Rptr. LEXIS 42 (1991); *Monroeville v. Liberatore*, 736 A.2d 31, 34 (Pa. Cmwlth. 1999).

should not have their complaints, petitions, or applications dismissed with prejudice based on procedural issues, as this is contrary to established case law. CAUSE-PA/TURN Comments at 55-56.

PAWC Comments

PAWC opposes the PUC's proposed substantive change to Section 5.245 of its regulations. PAWC refers to 66 Pa.C.S. § 332(f), which requires dismissal with prejudice when a party fails to attend a scheduled hearing and does not demonstrate that their failure to attend was unavoidable. PAWC believes the PUC should delete the proposed Section 5.245(e) because the PUC does not have authority to adopt a regulation which contradicts Section 332(f) of the Code. PAWC Comments at 4.

OCA Comments

The OCA accepts the PUC's recommendation, but with the suggestion that the PUC should provide more clarity about what constitutes an abuse of process so parties can have clear guidance on the consequences of a failure to appear, and to prevent adversaries of *pro se* parties from securing a dismissal with prejudice when one is not warranted. OCA Comments at 43.

EAP Comments

EAP disagrees with the PUC's amendment proposals to Section 5.245 and recommends the PUC withdraw the proposals. EAP notes that public utilities dedicate significant time and resources to customer complaint proceedings, many of which are initiated by complainants who do not appear at the hearing. EAP argues that by eliminating one of the key deterrents to parties failing to abide by the PUC's procedural rules, the proposed regulations would require public utilities to commit more time and resources to these cases, which would lead to increased arrearages on customers'

accounts. EAP agrees with Commissioner Coleman that the proposed regulations conflict with Section 332(f) of the Code. EAP Comments at 11-12.

PPL Comments

PPL opposes the proposed changes to Section 5.245 regarding guidelines on when *pro se* litigants can be dismissed with prejudice. PPL understands that conflicts can arise that can prevent *pro se* litigants from attending scheduled hearings, but states that there should be consequences for failing to attend a hearing without providing notice. PPL argues that filing a complaint imposes a minimum requirement on the complainant to show up or at least provide notice that they cannot attend. PPL argues that failing to attend a hearing costs time and resources for the opposing parties, witnesses, and outside counsel, and allowing a no-show to simply restart the case requires a utility to expend double the amount of resources by preparing twice for the same case. PPL also notes that failing to appear may also be used as a strategy to avoid termination without any intention of attending the hearing. PPL argues that this behavior should be discouraged because it leads to excessive utility debt amounts; customers should instead be encouraged to enroll in Customer Assistance Programs to find a bill that fits their budget. PPL Comments at 8-9.

Reply Comments on § 5.245

CAUSE-PA/TURN Reply Comments

In their reply comments, CAUSE-PA/TURN argue that there is nothing about the proposed rules that prevents a case from being dismissed. CAUSE-PA/TURN argue that EAP's and PPL's arguments disregard case law. CAUSE-PA/TURN aver that the proposed changes are not only sound policy but consistent with Pennsylvania law. Furthermore, CAUSE-PA/TURN argue that PPL and EAP's concerns are misplaced and

the ability to dismiss complaints without prejudice is sufficient to protect company resources and interests. CAUSE-PA/TURN Reply Comments at 10-11.

OCA Reply Comments

The OCA finds EAP and PPL's arguments that public utilities are harmed when a consumer-complainant fails to appear at a hearing as questionable. The OCA argues that public utilities recover legal costs in their rates, and a consumer-complainant's failure to appear, at least in the first or second instance, is at most neutral to the utility's interests. The OCA believes that the PUC's regulations should be modified to specify the process and procedure that the PUC's staff should follow to ensure that the statute is carried out where a consumer-complainant is not represented by counsel. The OCA argues that a standard process should be employed to ensure that *pro se* complainants' due process is guaranteed, and that the *pro se* complainant is not inappropriately barred with prejudice from being heard by the PUC. The OCA recommends the PUC add language to Section 5.245 so that, in the event a *pro se* consumer-complainant fails to appear, the presiding officer is required to issue a hearing notice rescheduling the hearing and issue an interim evidentiary order that will permit the consumer-complainant to explain on the record the reason for the failure to appear. OCA Reply Comments at 16, 17, 19.

IRRC Comments § 5.245

IRRC notes a number of stakeholders' opposition to the proposed amendments, echoing the concerns raised by Commissioner Coleman in his November 9, 2023, Motion. IRRC notes that Commissioner Coleman believes that the proposed amendments to Section 5.245 are contrary to the legislative intent and plain language of Section 332(f) of the Code. IRRC also observes Commissioner Coleman's assertion that there is no legal basis to eliminate the requirement of finding that nonappearance was unavoidable and replace it with an abuse of process standard. IRRC asks the PUC to explain the basis for eliminating the requirement of a finding that nonappearance was

unavoidable and replacing it with an abuse of process standard, and it is consistent with Commonwealth Court precedent on failure to appear at agency hearing. IRRC also asks the PUC to discuss how allowing parties to reopen proceedings that they failed to prosecute is reasonable to the utilities since they will need to spend time and resources repeatedly preparing for the same case. IRRC Comments at 8-9.

IRRC also notes a stakeholder's concern regarding what constitutes an abuse of process. IRRC asks the PUC to provide additional clarity on what constitutes an abuse of process, so that *pro se* parties can have clear guidance on the consequences of failing to appear, and to prevent adversaries of *pro se* parties from securing a dismissal with prejudice where there is no actual abuse of process. IRRC Comments at 9.

Disposition on § 5.245

We acknowledge IRRC's observation that Section 332(f) of the Public Utility Code contains statutory language governing PUC procedure when a party fails to appear at a scheduled prehearing conference or hearing. The current regulation at Section 5.245(a)-(b) mirrors the language of Section 332(f). *See* 52 Pa. Code § 5.245(a)-(b). Neither Section 332(f) of the Public Utility Code nor this section of our regulations currently provide for the presiding officer to take into consideration whether there has been abuse of process on the part of the party failing to appear at a scheduled conference or hearing or prohibits a presiding officer to dismiss a matter with prejudice due to a party's failure to appear. In the NOPR, we proposed to amend this section of our regulations to prevent litigants, in particular those appearing *pro se*, from being barred from having their claims heard by the PUC on the basis of *res judicata* due to their failure to appear at the scheduled conference or hearing.

Given the comments filed by stakeholders (particularly regulated utilities who express concern about the costs of having to prepare for subsequent hearings if a

complainant fails to appear) and IRRC expressing concern over whether our proposed amendments to Section 5.245 are proper given the statutory language in Section 332(f) of the Public Utility Code, we find it appropriate to examine how the courts have interpreted these provisions as guidance for our disposition of this issue. Thereafter, we will address the applicability of *res judicata* to proceedings where the presiding officer has made a determination that a party's failure to appear was unavoidable.

a. Section 334(f) Provides For Dismissal With Prejudice For A Party's Failure To Appear At A Scheduled Conference Or Hearing

As previously noted, some stakeholders as well as IRRC view our proposed amendments to this section to prohibit dismissal with prejudice for a party's failure to appear unless the presiding officer finds that there has been abuse of process as contrary to the language of Section 332(f) of the Code.⁵⁴ Section 332(f) of the Code states as follows:

(f) Actions of parties and counsel.--Any party who shall fail to be represented at a scheduled conference or hearing after being duly notified thereof, *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 thereat*, or to recall for further examination of witnesses who were excused, *unless the presiding officer shall determine that failure to be represented was unavoidable* and that the interests of the other parties and the public would not be prejudiced by permitting such reopening or further examination.

⁵⁴ The Pennsylvania Supreme Court has held that "[t]he interpretation of a statute by those charged with its execution is entitled to great deference, and will not be overturned unless such construction is clearly erroneous." *Caso v. Workers' Comp. Appeal Bd. (School District of Philadelphia)*, 839 A.2d 219, 221 (Pa. 2003). However, the Pennsylvania Supreme Court has cautioned that, "such deference will exist only where the reviewing court is satisfied that the regulation tracks the meaning of the statute, as narrowly construed, and does not violate the intent of the legislation. ..." *Commonwealth v. Gilmour Manufacturing Co.*, 822 A.2d 676, 679 (Pa. 2003).

66 Pa.C.S. § 332(f) (emphasis added). There is no language in Section 332(f) which suggests that, in addition finding that a party's failure to appear was unavoidable, the presiding officer must **also** find that there was no abuse of process on the part of said party, prior to granting dismissal as against that party and their claims. Further, the language of Section 332(f) does not suggest that the General Assembly intended to prohibit dismissal with prejudice for a party's failure to appear at a scheduled and noticed conference or hearing. Again, Section 332(f) specifically states that a party failing to appear at a scheduled conference or hearing "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 thereat." 66 Pa.C.S. § 332(f) (emphasis added).

As such, Section 332(f) does not clearly provide for the amendments we proposed to Section 5.245(a)-(b) of our regulations in the NOPR. To determine whether our proposed amendments to Section 5.245(a)-(b) contravene the legislative intent of Section 332(f) of the Public Utility Code, we shall review judicial interpretation of these provisions as to the question of dismissal with prejudice and its interplay with the legal principles of waiver and *res judicata*, below.

b. A Complainant Whose Failure To Appear Was Not Unavoidable Under Section 332(f) Has Failed To Sustain Their Burden Of Proof And Has Therefore Waived Their Claims

Concerning the effects of dismissal with prejudice pursuant to Section 332(f) of the Public Utility Code and Section 5.245 for failure to appear, the per curiam memorandum opinion of the Commonwealth Court in *Eileen M. Daniels v. Pa. Pub. Util. Comm'n.*, No. 1167 C.D.1996 (Pa. Cmwlth. 1997) (*Daniels v. PUC*) is instructive. *Daniels v. PUC* arose from a formal complaint filed with the PUC by Ms. Daniels against the Philadelphia Suburban Water Company (PSWC), wherein she questioned the authority of the PUC to permit PSWC to install a device at her residence that would use

her telephone line to relay readings from her water meter to PSWC, and asserted constitutional claims concerning invasion of privacy under the 14th Amendment of the U.S. Constitution (U.S. Const. art. I, § 10, amend. XIV). *Daniels v. Philadelphia Suburban Water Co.*, F-00268958. Ms. Daniels chose to represent herself and proceed as a pro se litigant rather than obtain an attorney in the complaint proceeding. PSWC submitted an application to the presiding ALJ to depose Ms. Daniels, which the ALJ granted and set a deposition date. However, Ms. Daniels failed to appear at the scheduled deposition. PSWC thereafter filed a motion to dismiss Ms. Daniels' formal complaint along with other similar complaints with which it had been consolidated by the presiding ALJ. The ALJ scheduled a prehearing conference to discuss PSWC's motion to dismiss the consolidated formal complaints. Ms. Daniels filed a response to PSWC's motion to dismiss, but did not appear for the scheduled prehearing conference. As a result, the ALJ issued an initial decision wherein she dismissed Ms. Daniels' formal complaint pursuant to Section 332(f) of the Public Utility Code and Section 5.245 of the PUC's regulations due to her failure to appear at both the deposition and the prehearing conference. *Daniels v. Philadelphia Suburban Water Co.*, F-00268958 (Initial Decision filed Dec. 5, 1995).

Ms. Daniels filed exceptions to the ALJ's initial decision on the grounds that she was denied an opportunity to be heard. The PUC issued an opinion and order wherein it denied Ms. Daniels' exceptions on the basis that she failed to provide evidence that her absence from the prehearing conference was "unavoidable" as required by Section 332(f), adopted the ALJ's initial decision, and dismissed Ms. Daniels' formal complaint with prejudice. *Daniels v. Philadelphia Suburban Water Co.*, F-00268958 (Opinion and Order entered April 1, 1996) (*April 1, 1996 Order*). Ms. Daniels thereafter appealed the PUC's *April 1, 1996 Order* to the Commonwealth Court, wherein she alleged that the PUC had no authority to require installation of the meter and again raised her constitutional claims as to invasion of privacy.

On January 23, 1997, the Commonwealth Court issued its memorandum opinion affirming the PUC's *April 1, 1996 Order*.⁵⁵ The Commonwealth Court found that the ALJ had the authority to order a prehearing conference under Section 333(a) of the Code, 66 Pa.C.S. § 333(a). *Daniels v. PUC* at 6. The Commonwealth Court found that Ms. Daniels had adequate notice of the scheduled prehearing conference but failed to respond to the order setting the prehearing conference, or inform the ALJ that she would not be appearing at the prehearing conference, or provide evidence to the ALJ that her failure to appear at the prehearing conference was "unavoidable" as required by Section 332(f) of the Code. *Id.* at 7.

Under these circumstances, the Commonwealth Court found that the ALJ was under no obligation to excuse Ms. Daniels' failure to appear under Section 332(f) of the Code and properly dismissed her formal complaint with prejudice. *Id.* The Commonwealth Court then addressed the impact of Ms. Daniels' failure to appear on her claims, as follows.

i. Dismissal With Prejudice For Failure To Appear Under Section 332(f) Constitutes A Final Determination On The Merits

It is well-established that, as the party seeking affirmative relief from the Commission, the complainant in a formal complaint proceeding has the burden of proof. 66 Pa.C.S. § 332(a). To establish a sufficient case and satisfy the burden of proof, the complainant must show that the respondent utility is responsible or accountable for the problem described in the Complaint. *Patterson v. The Bell Telephone Company of Pennsylvania*, 72 Pa. P.U.C. 196 (1990). Notably, in affirming the Commission's *April 1, 1996 Order*, the Commonwealth Court in *Daniels v. PUC* found that,

⁵⁵ Ms. Daniels' application for allowance of appeal to the Pennsylvania Supreme Court was denied. *Daniels v. Pa. Pub. Util. Comm'n*, 704 A.2d 640 (Table) (Pa. 1997).

because the burden of proof was on Daniels to prove the allegations of her complaint, when she failed to appear to provide any evidence or legal argument, she also failed to meet her burden of proof.

Daniels v. PUC at 6 (emphasis added). As such, our contention in the NOPR, that an ALJ's dismissal of a complaint with prejudice pursuant to Section 332(f) is nothing more than a "procedural" determination and not a final adjudication on the merits, is not quite accurate. As evidenced by the Commonwealth Court's holding in *Daniels v. PUC*, a complainant's absence prevents them from meeting their burden of proof, which is the ultimate basis of the final adjudication on the merits.

ii. A Complainant Who Fails To Appear Under Section 332(f) Waives Their Right To Pursue Their Claims

Citing Section 332(f) of the Public Utility Code and Section 5.245 of our regulations, the Commonwealth Court in *Daniels v. PUC* also found that the ALJ was authorized to find that a party failing to appear at a prehearing conference and providing no explanation for why their failure to appear was "unavoidable" has waived their opportunity to participate in the proceeding. *Daniels v. PUC* at 6. Specifically addressing the issue of waiver as related to Ms. Daniels' failure to appear, the Commonwealth Court held as follows:

The order setting the prehearing conference informed Daniels that [PSWC's] motion to dismiss her complaint would be addressed at the prehearing conference. Therefore, ***Daniels waived her opportunity to address the merits of her complaint and the motion to dismiss by failing to appear at the prehearing conference.*** All of the issues she now attempts to argue could have been argued at the prehearing conference. She cannot avoid her failure by raising those issues before the PUC on exemptions or before this court. An issue not preserved before the agency cannot be raised on appeal. [. . .] ***Because, under Section 332(f) of the Code, all of these arguments were waived before the ALJ, we must affirm the dismissal of her complaint.***

Id. at 7-8 (emphasis added).

c. A Complainant Whose Claims Were Dismissed With Prejudice For Failure To Appear Pursuant to Section 332(f) Is Barred From Attempting To Relitigate Those Claims Under Principles of *Res Judicata*

i. The Conclusiveness Of Commission Findings And Orders Under Section 316 Applies To Dismissals With Prejudice For Failure To Appear Under Section 332(f)

In the NOPR, we also proposed that Section 316 of the Public Utility Code, which states that a Commission finding, determination, or order shall be prima facie evidence of the facts found and shall remain conclusive upon all parties affected thereby, unless set aside, annulled or modified on judicial review, is inapplicable to dismissals with prejudice for failure to appear pursuant to Section 332(f) of the Public Utility Code. *See* 66 Pa.C.S. § 316 (relating to effect of Commission action). We also cited to caselaw in support of the proposition that Pennsylvania law does not provide for the application of *res judicata* where a matter is dismissed on procedural matters, such as a failure to appear, since there has been no substantive determination on the merits.

However, the judicial opinions to which we cited all originated from the Courts of Common Pleas of the Commonwealth rather than from a complaint brought before the PUC under the provisions of the Public Utility Code and our regulations.⁵⁶ As explained

⁵⁶ It should be noted that the judicial opinions cited to in the NOPR all arose from the Courts of Common Pleas and not before the PUC and the provisions of the Public Utility Code. *See Scharf v. DeCou Company*, 183 A.41, 41-42 (1936) (Appeal No. 419, January term, 1935, from judgment of Court of Common Pleas No. 1, of Philadelphia County); *Farabiugh Chevrolet v. Covenant Management, Inc.*, 522 A.2d 100, 101 (Pa. Super. 1987) (The Court of Common Pleas, Westmoreland County, Civil Division, No. 6470 of 1985); *Gutman v. Giordano*, 557 A.2d 782, 783 (Pa. Super. 1989) (The Court of Common Pleas, Philadelphia County, Civil Division, No. 2892 April Term, 1987); *Acobacey v. Acobacey*, 22 Phila. 333, 191 Phila. Cty. Rptr. LEXIS 42 (1991) (Court of Common Pleas of Pennsylvania, Philadelphia County, Family Division); and *Monroeville v. Liberatore*, 736 A.2d 31, 34 (Pa. Cmwlth. 1999) (The Court of Common Pleas, Allegheny County, No. GD 96-017497).

above, the Commonwealth Court held in *Daniels v. PUC*, dismissal with prejudice for failure to appear under Section 332(f) of the Public Utility Code does in fact constitute a final determination on the merits of a complaint brought before the PUC. Accordingly, absent reversal upon judicial review, dismissal with prejudice under Section 332(f) of the Public Utility Code is conclusive on the merits for a complainant whose failure to appear at a scheduled conference or hearing was not unavoidable, consistent with Section 316 of the Public Utility Code.

**ii. *Res Judicata* Applies To All Claims Which Were Raised
As Well As Claims Which Could Have Been Raised
Before The ALJ**

We must now determine whether *res judicata* applies where the PUC has dismissed a complaint with prejudice for failure to appear under Section 332(f) of the Public Utility Code and Section 5.245(a-b) of our regulations. Here, the memorandum and order of the United States District Court of the Eastern District of Pennsylvania (District Court) in *Eileen Walden Daniels v. Pa. Pub. Util. Comm’n*, 1998 WL 404545 (*Daniels*), is instructive.⁵⁷ Having exhausted her appeals of the PUC’s *April 1, 1996 Order* that dismissed her complaint at Docket No. F–00268958, Ms. Daniels (again representing herself *pro se*) filed suit against the PUC in federal court, wherein she alleged that the PUC’s action in permitting installation of the meter by PSWC violated her federal constitutional rights under the Contracts Clause of Article 1, the Due Process Clause of the Fourteenth Amendment, and the Takings Clause of the Fifth Amendment. U.S. Const. art. I, § 10, amends. V, XIV.

The PUC filed a motion to dismiss on the grounds that Ms. Daniels’ federal claims were barred by the application of *res judicata* as to the Commonwealth Court’s *Daniels v. PUC* decision and should therefore be dismissed pursuant to Fed.R.Civ.P. 12(b)(6).

⁵⁷ Ms. Daniels sought certiorari of the District Court’s decision to the 3rd Circuit Court of Appeals and the U.S. Supreme Court, which were denied. *See* 528 U.S. 1006, 528 U.S. 1107.

The District Court agreed that Ms. Daniels' claims before the Commonwealth Court in *Daniels v. PUC* satisfied the requirements of res judicata as to her claims before the District Court.⁵⁸ *Daniels* at 3. Further, the District Court rejected Ms. Daniels' argument that *res judicata* was not a bar to her federal claims since her formal complaint was never adjudicated, as follows:

“[r]es judicata applies not only to claims actually litigated, but also to claims which could have been litigated during the first proceeding...” *Balent v. City of Wilkes-Barre*, 542 Pa. 555, 669 A.2d 309, 313 (Pa.1995) (citing *Allen v. McCurry*, 449 U.S. 90, 94, (U.S. 1980)). Had she not waived her right to pursue her constitutional claims, Daniels could have litigated those claims before the Administrative Law Judge and the Commonwealth Court. ***The Court therefore concludes that under the doctrine of res judicata, the final judgment by the Pennsylvania Commonwealth Court [in Daniels v. PUC] bars Daniels's claims in this lawsuit.***

Daniels at 4 (emphasis added).⁵⁹ In other words, the District Court found that by failing to appear at the scheduled prehearing conference before the ALJ, Ms. Daniels' waived any claims she may have made before the ALJ, and, given the Commonwealth Court's judgment in *Daniels v. PUC*, she was barred from attempting to litigate the same claims against the Commission before the District Court.

In sum, the PUC's practice of dismissal with prejudice for failure to appear is authorized as follows. First, the plain language of Section 332(f) of the Public Utility

⁵⁸ “Under Pennsylvania law, the doctrine of res judicata provides that ‘a final valid judgment upon the merits by a court of competent jurisdiction bars any future suit between the same parties or their privies, on the same cause of action.’ [. . .] The pleadings and public record show that the Commonwealth Court's judgment involved **the same parties, thing sued for, cause of action, and capacity of the parties that are involved in the action** presently before this Court.” *Daniels* at 3, citing *Delaware River Port Auth. v. Pa. Pub. Util. Comm'n*, A.2d 682, 685 (Pa.1962) (internal citations omitted).

⁵⁹ In its *Daniels* decision, the District Court also noted the ALJ's rationale for dismissing Ms. Daniels' formal complaint with prejudice pursuant to Section 334(f) of the Code and Section 5.245 of the PUC's regulations. *Daniels* at 2, n. 4.

Code provides that unless a presiding officer finds that a complainant's failure to appear at a scheduled conference or hearing was not unavoidable, the complaint shall be dismissed with prejudice. 66 Pa.C.S. § 332(f). Second, the Commonwealth Court's holding in *Daniels v. PUC* that the PUC established that a complainant who fails to appear at a scheduled conference or hearing waives all claims, and that dismissal of their complaint with prejudice for the complainant's failure to appear pursuant to Section 332(f) of the Public Utility Code is a final adjudication on the merits because the complainant has failed to meet their burden of proof. *Daniels v. PUC* at 7-8. Finally, the District Court in *Daniels* found that *res judicata* applies to claims that were raised, as well as claims that could have been raised before the ALJ and therefore a complainant who fails to appear at a scheduled conference or hearing is barred from relitigating the matter under principles of *res judicata*. *Daniels* at 4.

Given the statutory language of Section 332(f) of the Public Utility Code, as well as the holdings from the state appellate and federal courts, we are compelled to acknowledge the following. First, that the standard for dismissal with prejudice for failure to appear pursuant to Section 332(f) of the Public Utility Code and Section 5.245 is not whether there has been abuse of process on the part of the party that failed to appear, but whether the presiding officer finds that the party's absence was "unavoidable." Second, that dismissal with prejudice for failure to appear pursuant to Section 332(f) of the Code results in the non-appearing party waiving their right to argue their claims and is also the statutorily permitted consequence for a party who fails to provide evidence that their absence was "unavoidable." Third, that since complainant's failure to appear means that they failed to sustain their burden of proof, dismissal with prejudice for failure to appear pursuant to Section 332(f) of the Public Utility Code is a final determination on the merits. Finally, dismissal with prejudice under Section 332(f) of the Public Utility Code acts as a bar to the dismissed party attempting to relitigate their claims before the PUC, or state or federal courts under principles of *res judicata*. For all

these reasons, we hereby withdraw new subsections 5.245(d) and (e) as proposed in the NOPR.

Nevertheless, when considering whether to dismiss with prejudice the formal complaint of a *pro se* litigant who has failed to appear at a scheduled conference or hearing pursuant to Section 332(f) of the Public Utility Code, we strongly encourage our presiding officers to liberally exercise their discretion under Section 1.2 of our regulations when determining whether the party's absence was "unavoidable," consistent with Section 5.245 and pursuant to their authority under Section 5.483 (52 Pa. Code § 5.483).⁶⁰ Further, we note that, as with all parties to a proceeding, *pro se* litigants, have the ability to file exceptions to a presiding officer's decision (52 Pa. Code § 5.533) as well as petitions for reconsideration and other relief (52 Pa. Code § 5.572).

Accordingly, the final form regulation set forth in the accompanying Annex deletes the proposed amendments to Section 5.245 in their entirety and retains the existing language of Section 5.245.

§ 5.251. Recording of Proceedings

In the NOPR, we explained that the proposed amendment to Section 5.251(d) is intended to clarify what occurs in practice during special agent proceedings. We stated that Section 5.251(d) would be amended to include a provision detailing the rules regarding recording during a special agent proceeding.

Stakeholder Comments on § 5.251

In its comments, EAP argues that the proposed amendment to Section 5.251(d) conflicts with Section 332(i) of the Code, unnecessarily creating due process concerns.

⁶⁰ Section 1.2 of our regulations directs that the provisions of Chapters 1, 3, and 5 of our regulations be liberally construed with respect to *pro se* litigants. 52 Pa. Code § 1.2.

EAP further argues that a written transcription of a special agent proceeding is important, given the potential for the special agent's initial decision to be appealed to the PUC and higher courts. EAP Comments at 13.

Reply Comments on § 5.251

No reply comments were filed.

IRRC Comments on § 5.251

IRRC notes that Section 332(i) provides that the official record of a proceeding shall be a written transcript. IRRC asks the PUC to explain how this proposed amendment is consistent with Section 332(i) of the Public Utility Code. IRRC Comments at 9.

Disposition on § 5.251

We acknowledge and agree with EAP's and IRRC's concerns about conflict with Section 332(i) of the Code. For these reasons, we hereby withdraw the proposed amendments to Section 5.251, as proposed in the NOPR. Accordingly, the final form regulation set forth in the accompanying Annex does not include the amendments to Section 5.251 that were proposed in the NOPR but rather retains the existing language.

§ 5.252. Review of Testimony.

In the NOPR, we explained that the proposed amendments to Section 5.252(c) and (d) are intended to reflect the change in technology the PUC uses to record proceedings from cassette tape to digital recordings.

Stakeholder Comments and Reply Comments on § 5.252

The stakeholders do not offer any substantive comments or reply comments regarding Section 5.252. IRRC likewise does not offer comments regarding this Section.

Disposition on § 5.252

Since we received no comments regarding Section 5.252, we hereby adopt the amendments as proposed in the NOPR. Accordingly, the final form regulation set forth in the accompanying Annex incorporates the adoption of the proposed amendment to Section 5.252.

§§ 5.302, 5.303. Petition for interlocutory Commission review and answer to material question; Commission action on petition for interlocutory review and answer.

The proposed amendment to Section 5.302(b) is intended to provide consistency with the term “substantive right” as it appears in Section 1.2(d), and to be consistent with the January 1, 2024, Order of the Pennsylvania Supreme Court amending Pa.R.C.P. 126, changing “substantial rights” to “substantive rights.” We also explained that the proposed amendment to Section 5.303(a)(1) is intended to provide consistency with the term “substantive right” in Section 1.2(d).

Stakeholder Comments on §§ 5.302 and 5.303

The stakeholders do not offer any substantive comments or reply comments regarding Sections 5.302 and 5.303. IRRC likewise does not offer comments regarding these Sections.

Reply Comments on §§ 5.302 and 5.303

No reply comments were filed.

Disposition on §§ 5.302, 5.303

Since we received no comments regarding Section 2 5.302 and 5.303, we hereby adopt the amendments as proposed in the NOPR. Accordingly, the final form regulation set forth in the accompanying Annex incorporates the adoption of the proposed amendments to Sections 5.302 and 5.303.

§§ 5.304, 5.305. Interlocutory Review of Discovery Matters; Interlocutory review of a material question submitted by a presiding officer.

In the NOPR, we stated that the proposed amendment to Section 5.304(d) is intended to provide consistency with the language in Section 5.302(b) and to clarify that any party may file a brief in support or opposition to a petition for interlocutory review of a presiding officer's ruling on discovery. We also stated that the proposed amendment to Section 5.304(i) is intended to clarify the proper placement of the provision in the statute. Furthermore, we explained that the proposed amendments to Sections 5.304(d)(3), 5.304(j) and 5.305(c) are consistent with the previously articulated rationale for amending Section 5.302(b).

Stakeholder Comments on §§ 5.304 and 5.305

The stakeholders do not offer any substantive comments or reply comments regarding Sections 5.304 and 5.305. IRRC likewise does not offer comments regarding these Sections.

Reply Comments on §§ 5.304 and 5.305

No reply comments were filed.

Disposition on §§ 5.304 and 5.305

Since we received no comments regarding Sections 5.304 and 305, we hereby adopt the amendments as proposed in the NOPR. Accordingly, the final form regulation

set forth in the accompanying Annex incorporates the adoption of the proposed amendment to Sections 5.304 and 5.305.

§ 5.306. Expedited Notification.

We stated that the proposed amendment to Section 5.306 is intended to update existing language, replacing “telefacsimile” with “telefax.”

Stakeholder Comments on § 5.306

In its comments, CAUSE-PA/TURN recommend that the proposed change from “telefacsimile” to “telefax” should instead be changed to “fax” to be consistent with Section 5.22. CAUSE-PA/TURN Comments at 57.

Reply Comments on § 5.306

No reply comments were filed.

Disposition on § 5.306

Upon review of the NOPR, it appears that we proposed to replace “telefacsimile” with “fax transmittal” and we find that no further changes are required. Thus, we hereby adopt the amendment to Section 5.305, as proposed in the NOPR. Accordingly, the final form regulation set forth in the accompanying Annex incorporates the adoption of the proposed amendment to Section 5.305.

§ 5.323. Hearing Preparation Material.

In the NOPR, we stated that the proposed amendment to Section 5.323(b) is intended to clarify the reference in the provision and to reduce confusion.

Stakeholder Comments on § 5.323

The stakeholders do not offer any substantive comments or reply comments regarding Section 5.323. IRRC has not filed comments regarding this Section.

Reply Comments on § 5.323

No reply comments were filed.

Disposition on § 5.323

Since we received no comments regarding Section 5.323, we hereby adopt the amendments as proposed in the NOPR. Accordingly, the final form regulation set forth in the accompanying Annex incorporates the adoption of the proposed amendment to Section 5.323.

§ 5.331. Sequence and Timing of Discovery.

In the NOPR, we stated that the proposed amendment to Section 5.331(c) is intended to clarify that when a protest or adverse pleading is filed with the PUC, the matter would be referred to the OALJ to be assigned to a presiding officer, and staff data requests would be deemed “withdrawn.”

Stakeholder Comments on § 5.331

In its comments, the OCA opposes the PUC’s proposed amendment to Section 5.331(c) for three reasons. First, the OCA argues that there is not sufficient clarity in the proposed changes to identify what constitutes “staff.” The OCA would request that, if the proposed change is adopted, that the PUC specify which Bureaus within the PUC constitute staff for the purpose of withdrawing such requests. Second, litigating parties, including the OCA, often rely on responses to the data requests made by the PUC’s I&E or Bureau of Technical Utility Services (TUS) early on in proceedings. The OCA argues

that the proposed amendment would create needless duplication and delays if, when a party joins a proceeding as a protestant or complainant, it would need to issue data requests which had been previously issued by TUS because these requests were deemed “withdrawn.” Third, the OCA argues that in certain proceedings, such as in applications filed under Section 1329 of the Code, there are procedurally limited spaces where it is unclear what the actual status of the proceeding is. The OCA argues that under the proposed changes, TUS’ data requests would be withdrawn even though answering said data requests is the only way a Section 1329 Application may be deemed complete and subsequently accepted. Therefore, the OCA requests that the PUC not adopt the proposed amendment to Section 5.331. OCA Comments at 43-45.

Reply Comments on § 5.331

PAWC finds the PUC’s proposed modification to Section 5.331(c) reasonable. PAWC notes that while it is accurate that the OCA has filed protests in Section 1329 proceedings prior to applications being accepted for filing by TUS and the transfer of the matter to the OALJ, PAWC argues it is procedurally inappropriate and should not result in changes to the PUC’s proposed regulations. PAWC agrees that the following minor changes in bold would eliminate any confusion within Section 5.331(c): **“Once a matter is transferred to the Office of Administrative Law Judge,** previous staff data requests are deemed withdrawn.” PAWC Reply Comments at 6-7.

Disposition on § 5.331

Initially, we agree with PAWC that it is appropriate to modify the proposed amendment to Section 5.331(c) by replacing the filing of a protest or adverse pleading with the transfer of the matter to the Office of Administrative Law Judge. We find that this change provides clarity and avoids any dispute about the nature of the filings.

We decline to clarify the definition of “Commission staff” for the purposes of addressing the OCA’s comments to Section 5.331(c) because the issuing PUC Bureau may vary depending on the substance of the proceeding. However, to address the OCA’s concern that previously answered staff data requests may be withdrawn from the record once the matter is transferred to the Office of Administrative Law Judge, we clarify that this withdrawal only applies to unanswered staff data requests, and further amend Section 5.331(c), accordingly. As such, staff data requests for which responses were already provided shall remain part of the record.

Accordingly, the final form regulation set forth in the accompanying Annex incorporates this revision to the proposed amendment to Section 5.331.

§ 5.342. Answers or Objections to Written Interrogatories by a Party.

In the NOPR, we stated that the proposed amendment to Section 5.342(g) is intended to allow parties to jointly set a timeline for motions to dismiss an objection to compel that was already answered in an interrogatory.

Stakeholder Comments on § 5.342

The stakeholders do not offer any substantive comments or reply comments regarding Section 5.342. IRRC likewise did not offer comments regarding this Section.

Reply Comments on § 5.342

No reply comments were filed.

Disposition on § 5.342

Since we received no comments regarding Section 5.342, we hereby adopt the amendments as proposed in the NOPR. Accordingly, the final form regulation set forth

in the accompanying Annex incorporates the adoption of the proposed amendment to Section 5.342.

§ 5.349. Requests for Documents, Entry of Inspection and other Purposes.

In the NOPR, we stated that the proposed amendment to Section 5.349(b) is intended to reflect the renaming of the Office of Trial Staff to the Bureau of Investigation and Enforcement.

Stakeholder Comments on § 5.349

The stakeholders do not offer any substantive comments or reply comments regarding Section 5.349. IRRC also did not offer comments regarding this Section.

Reply Comments on § 5.349

No reply comments were filed.

Disposition on § 5.349

Since we received no comments regarding Section 5.349, we hereby adopt the amendments as proposed in the NOPR. Accordingly, the final form regulation set forth in the accompanying Annex incorporates the adoption of the proposed amendment to Section 5.349.

§ 5.350. Request for admissions.

In the NOPR, we proposed to add subsection (g) to Section 5.350, which would require that the party propounding requests for admission shall serve a copy on the parties and shall file a certificate of service with the Secretary. Proposed subsection (g) also states that a copy of the request for admission may not be filed with the Commission.

Stakeholder Comments on § 5.350

The stakeholders do not offer any substantive comments or reply comments regarding Section 5.350. IRRC also did not offer comments regarding this Section.

Reply Comments on § 5.350

No reply comments were filed.

Disposition of § 5.350

Since we received no comments to the proposed addition of subsection (g) to Section 5.350, we hereby adopt the amendment as proposed in the NOPR. Accordingly, the final form regulation set forth in the accompanying Annex incorporates the adoption of the proposed amendment to Section 5.350.

§ 5.351. On the Record Data Requests.

In the NOPR, we explained that Section 5.351(a) allows a party to 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 in the course of a rate proceeding. We stated that the proposed amendment to Section 5.351(a) is intended to allow on the record data requests in all PUC proceedings, instead of only in rate cases.

Stakeholder Comments on § 5.351

CAUSE-PA/TURN Comments

In its comments, CAUSE-PA/TURN are supportive of the PUC's proposed changes, noting that the technical answers witnesses provide during cross-examination can be difficult to fully interrogate and understand without access to underlying

information. Therefore, CAUSE-PA/TURN argue that parties need to be able to request and access information and documents from witnesses in all PUC proceedings. CAUSE-PA/TURN Comments at 57.

OCA Comments

The OCA supports the proposed change to Section 5.351 because guaranteed access under the rules to on the record data requests in all PUC proceedings benefits all parties, ensuring that cross-examination testimony can be supported by a proper evidentiary basis. OCA Comments at 46.

EAP Comments

EAP disagrees with the proposed amendment to Section 5.351, for they argue that the current process has worked well. EAP asserts that in general, PUC rules allow for robust discovery prior to a hearing, making on the record requests, with the one exception being rate cases, unnecessary. Further, EAP avers that in rate cases, parties engage in extensive discovery before hearings, making any on the record data requests limited in number and scope. As such, EAP argues that there is no need to open the door for parties to make on the record data requests in all PUC proceedings. EAP Comments at 13-14.

Reply Comments on § 5.351

CAUSE-PA/TURN Reply Comments

In their reply comments, CAUSE-PA/TURN argue that EAP's Comments on the proposed change arguing against on the record requests while conceding that requests for information or documents during cross-examination are warranted during rates cases are in direct conflict and reveal a clear bias. According to CAUSE-PA/TURN, if the robust discovery afforded in rate cases is a reason to support requests for information or documents during cross-examination in rate cases, then that robust discovery should also

be a reason to support such requests in other PUC hearings. CAUSE-PA/TURN argue that parties need to be able to make on-the-record requests for information and documents from witnesses in all PUC proceedings to ensure the development of a complete adjudicative record. CAUSE-PA/TURN Reply Comments at 11-12.

OCA Reply Comments

The OCA supports the PUC's proposal in the NOPR because it would fill an important gap in the current rules for proceeding requests. Furthermore, the OCA argues that the process described by EAP whereby a presiding officer permits late-filed exhibits in the event that such exhibits are required is nearly identical to making on the record data requests. The OCA argues that the proposed amendment is a net benefit to those unfamiliar with PUC practices without imposing a burden on any party. OCA Reply Comments at 23-24.

EAP Reply Comments

EAP argues that the PUC should keep confining the use of on-the-record data requests to rate proceedings and not implement the proposed change because doing so would needlessly prolong hearings and deny a responding party an opportunity to submit evidence in response to on-the-record data requests. EAP Reply Comments at 7.

Disposition on § 5.351

We agree with CAUSE-PA/TURN and the OCA that it may be appropriate for parties to make a request for on-the-record data requests in order to ensure a fully-developed record. We find that EAP's concerns that the use of on-the-record data requests in proceedings other than rate case proceedings are mitigated by the ability of parties subject to the on-the-record data request to object at the time the request is made, pursuant to Section 5.351(c). It will be at the discretion of the presiding officer to rule on the objection, consistent with their authority under Section 5.483. *See* 52 Pa. Code

§5.483 (relating to authority of a presiding officer). Thus, we will adopt the amendment to Section 5.351(a), as proposed in the NOPR.

Accordingly, the final form regulation set forth in the accompanying Annex incorporates the adoption of the proposed amendment to Section 5.351.

§ 5.365. Orders to Limit Availability of Proprietary Information.

In the NOPR, we explained that the proposed amendment to Section 5.365 is intended to ensure that individuals who have a valid PFA order or similar order from a court are protected from having their personal address and contact information inadvertently disclosed to the public. The formal complaint forms provided by the PUC include a section wherein a complainant may indicate that they have a court-granted PFA order, or other order that demonstrates evidence of domestic violence against them currently in effect for their personal safety or welfare in place, along with instructions to include a copy of said order with the formal complaint. Parties to the proceeding would be responsible for reviewing the complaint form to ensure whether the complainant has indicated that they have a PFA order or similar order, and correspondingly ensuring that any filings to the proceeding exclude or redact the complainant's personal address and contact information.

Stakeholder Comments on § 5.365

CAUSE-PA/TURN Comments

CAUSE-PA/TURN support the PUC's initiative to protect the personal information of domestic violence victims involved in complaints but are concerned that the proposed standard in Section 5.365(h) improperly limits protection only to victims with active PFAs or similar court orders. CAUSE-PA/TURN express concern that the proposed amendment would not protect disclosure of sensitive documents such as PFAs, court orders, or PUC transcripts containing personal details provided during proceedings.

CAUSE-PA/TURN argue that the proposed standard set forth in Section 5.365 is more restrictive and out of line with the standards set forth in Chapter 56 of the PUC's regulations. CAUSE-PA/TURN argue that the proposed standard does not provide adequate protection for victims who seek to keep their addresses confidential from their abusers and could chill victims from engaging with the complaint process. Additionally, CAUSE-PA/TURN are concerned that the proposed amendment is out of line with Section 1.51 and recommend that additional protections be afforded if a matter involves a victim of domestic violence to ensure that sensitive information disclosed throughout the course of proceedings do not become public. In line with their recommendation related to Section 1.51, CAUSE-PA/TURN urge the PUC to broaden the proposed standard set forth in Section 5.365 and offer revised language. CAUSE-PA/TURN Comments at 57-61.

EAP Comments

EAP supports the PUC's efforts to clarify the procedures surrounding the protection of domestic violence victim's personal information. However, EAP notes that there may be a typographical error in the proposed Section 5.365, believing that the proposed language appears to make the provision of the PFA order or other order optional. EAP believes that the word "or" in the proposed Section 5.365 is intended to be the word "and." EAP Comments at 14-15.

Reply Comments on § 5.365

CAUSE-PA/TURN Reply Comments

CAUSE-PA/TURN strongly oppose EAP's recommendation to change "or" to "and", arguing that this proposed change would create an unreasonable barrier for domestic violence victims seeking to shield their information from disclosure. CAUSE-PA/TURN argue that a victim who does not have the requisite orders must make the untenable decision between releasing their personal information or obtaining relief

through the complaint process. CAUSE-PA/TURN again urge the PUC to broaden the standard set forth in proposed Section 5.365, further arguing that Section 5.365 should explicitly provide that copies of any documents produced regarding domestic violence to the consumer—including documentation of the victim’s self-attestation of abuse—will not be made public. CAUSE-PA/TURN Reply Comments at 12-13.

EAP Reply Comments

In their reply comments, EAP offers revisions to CAUSE-PA/TURN’s proposed language for Section 5.365(h). EAP Reply Comments at 7-8.

IRRC Comments on § 5.365

IRRC notes that stakeholders assert that the proposed amendment is not alignment with the proposed changes to Section 1.51, and that tying victims’ ability to protect their personal address to their ability to obtain a PFA or other court order is improperly restrictive. IRRC also states that stakeholders argue that the proposed amendment further limits a victim’s ability to obtain relief because the proposal requires court orders to be currently effective, and the proposed changes do not protect the disclosure of other sensitive information and documents. Additionally, IRRC notes that another stakeholder seeks clarification from the PUC on the proposed language of Section 5.365(h), as it appears to make the provision of the PFA order or other order optional. IRRC asks the PUC to clarify in the final regulation whether the provision of the PFA order or other court order is optional. IRRC states that this section should be consistent with Section 1.51 and asks the PUC to explain why it is unnecessary to do so. With regards to the subsection (h), IRRC asks the PUC to explain why it is reasonable not to require the complainant to attach copies of the PFA or other orders, which provide clear evidence of domestic violence against the complainant or individual, to the complaint. IRRC Comments at 9-10.

Disposition on § 5.365

In addressing the comments received regarding Section 5.365(h), we refer to our disposition of proposed new Section 1.51(c) above. Consistent with our disposition regarding Section 1.51(c), we amended Section 5.365(h) to specify that, where a complainant in a formal proceeding has indicated in the complaint that he or she has a PFA, including a PFA outside the Commonwealth, or a non-PFA court order or court order issued by a court of competent jurisdiction in this commonwealth which provides clear evidence of domestic violence and provided a copy of the PFA or order with their complaint, all parties are required to exclude or redact the complainant's personal address and contact information from any filings. Additionally, consistent with our disposition of Section 1.51(c), it is appropriate to accept affidavits from domestic violence counselors or advocate organizations on the counselor or organization's letterhead on an individual party's behalf. Thus, Section 5.365(h) in the Annex specifies that an affidavit from a domestic violence counsel or advocate organization on the counselor or advocate organization's letterhead will be accepted for the limited purpose of redating the personal addresses and contact information of victims of domestic violence.

We also acknowledge the confusion expressed by stakeholders about the discrepancies between the proposed amendment to proposed new Section 1.51(c) and proposed new Section 5.365(h). We have made changes to proposed new Section 5.365(h) to bring the language more in line with the proposed new Section 1.51(c). As noted above, we also added language to clarify that the complainant must submit a copy of the PFA or court order with their formal complaint for the protections of proposed new Section 5.365(h) to apply.

Accordingly, the final form regulation set forth in the accompanying Annex incorporates revisions to the proposed amendment to Section 5.365.

§ 5.408. Official and Judicial Notice of Fact.

In the NOPR, we stated that the proposed amendment to Section 5.408(c) is intended to allow a party that is adversely affected by a noticed fact to have the opportunity upon a timely request to show that the facts are not properly noticed or that alternative facts should be noticed.

Stakeholder Comments on § 5.408

The stakeholders do not offer any substantive comments or reply comments regarding Section 5.408. IRRC has not filed comments regarding this Section.

Reply Comments on § 5.408

No reply comments were filed.

Disposition on § 5.408

Since we received no comments regarding Section 5.408, we hereby adopt the amendments as proposed in the NOPR. Accordingly, the final form regulation set forth in the accompanying Annex incorporates the adoption of the proposed amendment to Section 5.408.

§ 5.409. Copies and Form of Documentary Evidence.

In the NOPR, we explained that the proposed amendment to Section 5.409(a) is intended to provide consistency with Chapter 1 of the PUC's regulations.

Stakeholder Comments on § 5.409

The stakeholders did not offer any substantive comments or reply comments regarding Section 5.408. IRRC has not filed comments regarding this Section.

Reply Comments on § 5.409

No reply comments were filed.

Disposition on § 5.409

Since we received no comments regarding Section 5.409, we hereby adopt the amendments as proposed in the NOPR. Accordingly, the final form regulation set forth in the accompanying Annex incorporates the adoption of the proposed amendment to Section 5.409.

§§ 5.412, 5.412a. Written Testimony; Electronic Submission of Pre-served Testimony.

In the NOPR, we stated that the proposed amendment to Section 5.412(f) reflects the proposed repeal of Section 5.412a. We also explained that the proposed amendment to Section 5.412(g) is intended to provide consistency with Chapter 1 of the PUC's regulations and to recognize that, on occasion, testimony is admitted via stipulation by the presiding officer when there is no court reporter present.

Furthermore, we explained that the coexistence of the court reporter's transcript and exhibits and the parties' separate electronic filing of pre-served testimony under Section 5.412a complicates matters when the Secretary's Bureau (SEC) is working with the Law Bureau (LAW) to prepare a certified record for a Commonwealth Court appeal. The existence of the parties' Section 5.412a filings of pre-served testimony in addition to testimony filed by the Court Reporter makes it more difficult for SEC staff to identify which documents should be included in the certified record. Additionally, upon review of current procedures for processing transcripts, we cannot identify any concrete benefit to stakeholders from continuing to require parties to submit electronic copies of pre-served testimony under Section 5.412a. We believe that it is apparent that continuation of this requirement is causing SEC staff considerable difficulty in preparing

reproduced/certified records when working with LAW on appellate proceedings. As such, we stated in the NOPR that repealing Section 5.412a would reduce the administrative burden on SEC staff and aid in timely compliance with appellate deadlines. However, the PUC seeks stakeholder comment regarding how pre-served written testimony that is modified at hearing may be filed in the event that Section 5.412a is repealed.

Stakeholder Comments on §§ 5.412 and 5.412a

PAWC Comments

PAWC recommends modifying the PUC's proposed Section 5.412 to include a new subsection that directs parties to file any written testimony modified at evidentiary hearings at the PUC within thirty days following the hearing. PAWC suggests this will properly alert the Secretary's Bureau that the filed copy of the written testimony is the correction version. PAWC Comments at 5.

MEIUG, et al. Comments

MEIUG, et al. recommend that Section 5.412 be modified to address the protocol for providing written testimony during a telephonic hearing. Specifically, MEIUG, et al. encourage the parties to provide an electronic copy of any testimony to the court reporter, with the ALJ being copied on that email. MEIUG, et al. find that this recommendation will streamline the testimony filing, while ensuring that the PUC and the ALJ have a complete record. Met-Ed Industrial Users Group, et al. Comments at 7.

OCA Comments

The OCA does not oppose the proposed deletion in subsection (f) on its face, but opposes the repeal of Section 5.412a, because doing so would represent a move backwards in terms of facilitating public and consumer access to the record developed

before the PUC in adversarial proceedings. The OCA recommends revising Section 5.412(g) to provide that within five days following the conclusion of an evidentiary hearing, admitted testimony will be provided directly to the PUC, and not the court reporter, and a copy to the presiding officer, in order to streamline the overall process. The OCA further recommends that admitted written testimony should appear on the PUC's docket search portal as its own docket entry and further encourages the PUC to improve consumer access to the developed record. With regards to Section 5.412a, the OCA recommends the court reporter should no longer be required to receive admitted written testimony to reduce the number of copies which need to be submitted when copies are already submitted to the presiding officer. The OCA urges the PUC to waive the provision of its contract(s) with the court reporter and then remove that provision the next time the contract is renewed. OCA Comments at 47-51.

The OCA also proposes adding a certification requirement to the submission of admitted testimony. By adding a certification requirement, parties submitting testimony to the PUC will assure the Secretary's Bureau that the submission complies with Section 5.412a: namely, that the submitted testimony matches exactly the testimony admitted by the presiding officer, including any hand-marked modifications, and that the testimony does not contain confidential or proprietary information before being posted to the public document search portal. OCA Comments at 56.

CAUSE-PA/TURN Comments

CAUSE-PA/TURN support the proposed amendment to Section 5.412(g) but recommend further amending this section, such that providing an electronic copy of testimony is sufficient to bring this section in line with other proposed changes and with modern practice. Regarding Section 5.412a, CAUSE-PA/TURN acknowledge the burden on staff involved in the submission of pre-served testimony but oppose its removal. CAUSE-PA/TURN request that language be included in place of the existing provision

that requires a presiding officer to determine the manner in which admitted evidence and testimony is provided to the docket. CAUSE-PA/TURN argue that the proposed removals of Sections 1.72, 1.75, and 1.77 removes one method for parties to request documents from PUC proceedings including testimony. CAUSE-PA/TURN Comments at 61-62.

Reply Comments on §§ 5.412 and 5.412a

EAP is concerned that the five-day deadline could prove to be burdensome, especially in significant litigations where the utilities' testimony and exhibits may total thousands of pages. Therefore, EAP recommends that the PUC does not adopt the OCA's proposed five-day deadline. EAP Reply Comments at 8-9.

Disposition on §§ 5.412 and 5.412a

Initially, we seek to avoid confusion in terminology when referring to unadmitted written testimony, which the parties serve on the presiding officer and other parties prior to a hearing pursuant to Section 5.412(f), versus admitted written testimony, which is a copy of the written testimony that reflects what was admitted by the presiding officer at the hearing. Rather than using the term "Pre-served testimony" that previously appeared in Section 5.412a (and was referenced in Section 5.412(f)), we shall henceforth refer to written testimony served pursuant to Section 5.412(f) as "original written testimony." Accordingly, we hereby make additional amendments to Sections 5.412(f) and (g) to replace existing references to "written testimony" or "testimony" with "original written testimony." For additional clarity, and to avoid confusion on the part of the Secretary's Bureau over multiple copies of written testimony, we hereby further amend Section 5.412(f) to add a sentence clearly stating that original written testimony should not be filed with the PUC.

We agree with CAUSE-PA/TURN that, for telephonic hearings, parties should provide the court reporter with an electronic copy of the original written testimony via

email, copying the presiding officers. We hereby incorporate this requirement into Section 5.412(g).

We agree with PAWC that the appropriate way to address the removal of Section 5.412a is to create a new subsection to Section 5.412 to address the requirement for parties to file copies of admitted written testimony that reflects all changes made at the hearing. As such, we hereby create new subsection 5.412(h), relating to filing of admitted written testimony. We also agree with PAWC and the OCA that admitted written testimony filed with the PUC be accompanied by a cover letter certifying that the filing is an accurate copy of the written testimony as admitted by the presiding officer at the hearing. Given EAP's observation that for complex cases, utilities' testimony and exhibits may total thousands of pages, we decline to adopt the OCA's proposal to require parties to file admitted written testimony within five days of the conclusion of the hearing and adopt PAWC's proposal to allow parties up to thirty days after the hearing to file admitted written testimony. However, we agree with the OCA that a copy of the admitted written testimony should be placed on the docket and made publicly accessible.

We hereby adopt all other amendments to Section 5.412, as proposed in the NOPR. Given all amendments to Section 5.412 as addressed herein, we also adopt the deletion of Section 5.412a in its entirety, as proposed in the NOPR.

Accordingly, the final form regulation set forth in the accompanying Annex incorporates these revisions to the proposed amendments to Section 5.412 and 5.412a.

§ 5.502. Filing and Service of Briefs.

In the NOPR, we stated that the proposed amendments to Section 5.502 are intended to add clarity by removing references to "initial briefs" and "responsive briefs."

Stakeholder Comments on § 5.502

In its comments, the OCA supports the PUC's recommendation but requests that the PUC provide that Section 5.502(b)(1) and (3) only apply if the presiding officer determines that there is good cause to require a paper filing. OCA Comments at 58.

Reply Comments on § 5.502

No reply comments were filed.

Disposition on § 5.502

We decline to adopt the OCA's proposal to amend Section 5.502(b)(1). The requirement for filing a paper copy of a brief is intended to ensure that there is a physical copy in the PUC's records, submitted by the party, as a backup to the electronic filing. Upon further review of Section 5.502(b)(2), and (b)(3), however, we believe it is no longer necessary to distinguish electronic filing of briefs based on whether they exceed 250 pages and/or 5 megabytes in size. The Secretary's Bureau is now capable of accepting filings up to 100 megabytes in size. Accordingly, we shall delete Section 5.502(b)(2)(i) in its entirety, delete the language in Section 5.502(b)(2)(ii) that addresses the number of pages and size of the filing, and also delete Section 5.502(b)(3) in its entirety. The language that remains from 5.502(b)(2)(ii) will be reorganized into Section 5.502(b)(2).

In the NOPR, we proposed to remove language in subsection 5.502(f) establishing deadlines for filing and service of briefs in the absence of specific deadlines established by the presiding officer. Our intention was that the presiding officer would set all briefing deadlines. Upon further review, however, we determine that it is appropriate to maintain the existing language in this subsection as pertains to briefing deadlines. This will avoid confusion for parties in circumstances where a presiding officer has not established specific briefing deadlines. For clarity, the presiding officer maintains their

ability to exercise discretion in shortening or extending the briefing deadlines. For this reason, the final form regulation restores the existing language of subsection 5.502(f), except for the removal of the reference to an “initial brief”, as reflected in the Annex.

Accordingly, the final form regulation set forth in the accompanying Annex retains most of the original language of subsection 5.502(f) and incorporates the amendments to subsection 5.502(b), as described above.

§ 5.531. Certification of Record without Decision.

In the NOPR, we stated that the proposed amendment to Section 5.531(a) is intended to clarify that a presiding officer will issue a decision.

Stakeholder Comments on § 5.531

The stakeholders did not offer any substantive comments or reply comments regarding Section 5.531. IRRC has not filed comments regarding this Section.

Reply Comments on § 5.531

No reply comments were filed.

Disposition on § 5.531

Since we received no comments regarding Section 5.531, we hereby adopt the amendments as proposed in the NOPR. Accordingly, the final form regulation set forth in the accompanying Annex incorporates the adoption of the proposed amendment to Section 5.531.

§ 5.533. Procedure to Except to Initial, Tentative and Recommended Decisions.

In the NOPR, we explained that the proposed amendment to Section 5.533 is intended to clarify that the PUC does not have “tentative decisions,” but instead “tentative orders.”

Stakeholder Comments on § 5.533

The stakeholders did not offer any substantive comments or reply comments regarding Section 5.531. IRRC has not filed comments regarding this Section.

Reply Comments on § 5.533

No reply comments were filed.

Disposition on § 5.533

Since we received no comments regarding Section 5.533, we hereby adopt the amendments as proposed in the NOPR. Accordingly, the final form regulation set forth in the accompanying Annex incorporates the adoption of the proposed amendment to Section 5.533.

§ 5.591. Reports of Compliance.

In the NOPR, we stated that the proposed amendment to Section 5.591(a) is intended to clarify who is responsible for filing compliance reports with the PUC following the amended definition of “person.”

Stakeholder Comments on § 5.591

The stakeholders did not offer any substantive comments or reply comments regarding Section 5.531. IRRC has not filed comments regarding this Section.

Reply Comments on § 5.591

No reply comments were filed.

Disposition on § 5.591

Since we received no comments to Section 5.591, we shall adopt the amendments as proposed in the NOPR. Accordingly, the final form regulation set forth in the accompanying Annex incorporates the adoption of the proposed amendment to Section 5.591.

Additional Amendments To Chapter 5 Proposed By The Office Of Consumer Advocate

In addition to the proposed amendments the PUC discussed in the NOPR and set forth in the accompanying Annex, the OCA offered several additional proposed changes to the PUC's regulations in Chapter 5. The OCA believes that these proposed amendments will enhance practice before the PUC. OCA Comments at 2. Since numerous stakeholders have filed reply comments regarding the OCA's proposed amendments, we will address each of OCA's additional proposals in turn below.

§ 5.103(b). Motions.

OCA's Proposed Amendment on § 5.103(b)

The OCA raises concern regarding scheduling orders issued by presiding officers requiring that motions be submitted at least five days prior to an evidentiary hearing, especially in proceedings with abbreviated litigation schedules. OCA Comments at 62. The OCA notes that it is often not aware of the content of potential motions until the evidentiary hearing or just before it and advocates that presiding officers should not be allowed to require advanced presentation of motions when parties cannot be certain of the information that may ultimately be subject to such a motion. *Id.* Thus, the OCA

proposes adding the following sentence in Section 5.103(b): Parties may make motions orally at evidentiary hearings regarding matters introduced either at the hearing, or in the preceding 5 days, if written motions within that time are not feasible. *Id.*

Other Stakeholder Comments on OCA's Proposed Amendment to § 5.103(b)

EAP supports adding the language suggested by the OCA and states that it will help clarify the procedures around objecting to testimony and exhibits should the need arise. EAP Reply Comments at 12.

Reply Comments

No additional reply comments were filed to OCA's proposed amendment to Section 5.103(b).

Disposition on OCA's Proposed Amendment to § 5.103(b)

Currently, Section 5.103(b) reads as follows:

(b) *Presentation of motions.* A motion may be made in writing at any time, and a motion made during a hearing may be stated orally upon the record, or the presiding officer may require that an oral motion be reduced to writing and filed separately. Written motions must contain a notice which states that a responsive pleading shall be filed within 20 days of the date of service of the motion.

52 Pa. Code § 5.103(b). There is nothing in the existing regulation that requires that motions be presented in writing at least 5 days prior to a hearing. As such, we find that the regulation allows for motions to be made fewer than 5 days prior to a hearing, or even at the hearing, as circumstances may require. However, where possible, we encourage parties to file written motions at least 5 days prior to a scheduled hearing in order to allow the presiding officer and parties adequate time to review the motion and take appropriate action. Similarly, we encourage our presiding officers to allow parties to

submit motions consistent with the timelines and procedures set forth in Section 5.103(b). Accordingly, we decline to adopt the OCA's proposal to amend Section 5.103(b).

§§ 5.110, 5.111. Last Public Meeting Dates in Rate Proceeding; Last Public Meeting Dates in Nonrate Proceedings with Statutory Deadlines.

OCA Proposed Amendment on §§ 5.110 and 5.111

The OCA advocates for the PUC to adopt a regulation that specifically provides the amount of time needed between Public Meeting dates and the termination of a suspension period to determine what is reasonable and to allow PUC staff to prepare a rewrite order as needed. OCA Comments at 67. The OCA suggests that a period of eight to ten calendar days should be sufficient for PUC staff to prepare a rewrite order in non-emergency circumstances. *Id.*

The OCA also states that, in adopting a Final Rulemaking Order, the PUC should consider the burden placed on the OCA in carrying out its representation of consumers' interests and must consider the undue administrative burden placed on statutory advocates and other parties when setting compressed litigation schedules. *Id.* at 68-69. Thus, the OCA proposes the establishment of a new Section 5.110, which should include the addition of the following rules to Chapter 5 of the PUC's regulations:

52 Pa. Code § 5.110. Last Public Meeting Dates in Adversarial Proceedings with Statutory Deadlines.

(a) General Rate Increases under Section 1308(d):

1. For the purposes of determining a litigation schedule in general rate increase proceedings, the public meeting date used by the presiding officer shall be the last public meeting date which is eight to ten calendar days before the end of the suspension period.

2. A utility that files a general rate increase under Section 1308(d) shall be required to file on the date in the month that, in the event the filing is suspended for investigation by the Commission, will result in an end-of-suspension date that falls eight to ten calendar days following a regularly scheduled Public Meeting date.

(b) For other rate proceedings with statutory deadlines not covered under (a), and for non-rate proceedings with statutory deadlines:

1. For the purposes of determining a litigation schedule, the public meeting date used by the presiding officer shall be the last public meeting date which is eight to ten calendar days before the end of the suspension period.
2. If the last regularly scheduled Public Meeting date falls outside of the eight to ten calendar days required under subsection (b)(1), the Commission shall schedule a special public meeting to accommodate this requirement.

(c) This rule under (a) or (b) above may be suspended by Order of the Commission in the event of an emergency.

The OCA claims that, under its proposed rules, parties will know at the time a proceeding is initiated exactly which Public Meeting date will form the basis of their litigation schedule. *Id.* at 69-70. The OCA states that the PUC having a regulation that requires utilities to coordinate the timing of their general rate increase filings so that the end of suspension period falls within a reasonable time period following a regularly scheduled Public Meeting date is certainly within the PUC's scope of authority. *Id.* at 70.

Reply Comments on OCA's Proposed §§ 5.110 and 5.111

EAP Reply Comments

The EAP strongly opposes the OCA's proposed Section 5.110. The EAP provides that there is no need to constrain the dates by which utilities must initiate base rate proceedings, other rate proceedings, or non-rate proceedings with statutory deadlines. EAP Reply Comments at 16. The EAP contends that the OCA's proposal would be an unreasonable constraint on utilities' rights to seek the rate relief they are requesting. *Id.*

C&T Utilities Reply Comments

The C&T Utilities support EAP's Reply Comments in opposition to the OCA's proposed Section 5.110. C&T Reply Comments at 5. C&T Utilities state that the timing of its filings are heavily influenced by a number of factors including the desired effective date for new rates, the test year that will be used for supporting documentation in a filing, and the PUC's notice requirements. *Id.*; *see also* EAP Reply Comments at 16. C&T Utilities notes that when a base rate filing is submitted, Public Meeting dates for the full suspension period may not be known and that Public Meeting dates are subject to change; thus, the OCA's suggestion for parties to plan their filing based on these dates is unworkable. *Id.* at 5-6.

PAWC Reply Comments

PAWC opposes OCA's proposed sections 5.110 and 5.111 because they impose prescriptive timing requirements on the PUC and parties that should instead be determined on a case-by-case basis by the assigned presiding officer. PAWC Reply Comments at 8. PAWC continues that the OCA's proposal that the PUC should be required to schedule special public meetings to ensure that all final orders are issued within eight to ten days of the end of a suspension period is unreasonably restrictive. *Id.* PAWC suggests that the better solution to address the OCA's timing concerns is for the

PUC and parties to use the flexibility already present withing the PUC's regulations to adopt procedural schedules that maximize the litigation time for parties while preserving a reason period for the PUC to prepare a final order. *Id.*

Disposition on OCA's Proposed §§ 5.110 and 5.111⁶¹

We share the concerns expressed by EAP, C&T Utilities, and PAWC that the OCA's proposed regulations would unreasonably restrict utilities from filing rate cases. While we understand the OCA's view that the timing of a rate case may affect the number of days available for litigation, we agree with the utilities that it may not be possible for a utility to know the date of the last public meeting would fall within suspension period. Further, as PAWC notes, our procedural regulations allow for the parties to work with the presiding officer to develop a litigation schedule that would maximize the parties' litigation time. For these reasons, we hereby decline to adopt the OCA's proposed new Section 5.110.

§ 5.232(b)(4). Settlement Petitions and Stipulations of Facts.

OCA Proposed Amendment on § 5.232(b)(4)

The OCA proposes to repeal Rule 5.232(b)(4), which requires a settlement agreement to identify parties denied an opportunity to enter into a settlement, and requests that the PUC provide clarification about what constitutes being "denied an opportunity to enter into the settlement." OCA Comments at 63. The OCA contends that the current rule is unclear whether certain parties were denied the opportunity to enter into the settlement or were denied the opportunity to negotiate the settlement agreement. *Id.* The OCA proposes to replace the current language with the following:

⁶¹ Like EAP, we assume that proposed Section 5.111 was subsumed into the OCA's proposed Section 5.110(b) because the OCA provided no draft regulation and because of the OCA's reference to Section 5.111 applying to "non-rate proceedings with statutory deadlines." *See* EAP Reply Comments at 15-16.

(4) That were not parties to the settlement negotiations or, who were parties to the settlement negotiations, but were denied the opportunity to enter into the settlement.

Reply Comments on OCA Proposed Amendment on § 5.232(b)(4)

The EAP does not support the OCA's proposal and states it is unaware of any instances where parties were permitted to participate in settlement negotiations but were denied an opportunity to enter into the settlement agreement. EAP Reply Comments at 12. The EAP provides the following counterproposal for the PUC's consideration to the extent that the PUC wants to adjust the language of Section 5.232(b)(4): "Who were not parties to the settlement negotiations or who were parties to the settlement negotiations but did not enter into the settlement agreement." EAP Reply Comments at 12-13.

Disposition on OCA Proposed Amendment on § 5.232(b)(4)

We agree with the OCA and EAP that the current language of Section 5.232(b)(4) requires clarification on what constitutes a party being "denied" an opportunity to enter into a settlement. However, we agree with EAP that the OCA's proposed language presupposes a scenario where a party was excluded from being able to enter into a settlement. We find that EAP's counterproposal language provides a more appropriate description of what transpires when a party does not participate in settlement negotiations or chooses not to enter into a settlement. Thus, we hereby adopt EAP's proposed language to replace the existing language at Section 5.232(b)(4).

Accordingly, the final form regulation set forth in the accompanying Annex incorporates an amendment to Section 5.232(b)(4).

§ 5.243. Presentation by parties.

OCA Proposed Amendment on § 5.243

The OCA opposes the practice of presiding officers requiring that cross-exhibits, when being used for impeachment, be submitted at least five days before an evidentiary hearing where cross-examination would be conducted. OCA Comments at 64. The OCA proffers that a witness should be on notice of all statements for which the witness submitted verifications during the discovery process. *Id.* The OCA recommends new language be added as subsection (g) of Rule 5.243, and that the current language in subsection (g) be made into a separate subsection (h). Subsection (g) would now read:

(g) If a party conducts cross-examination, the party may introduce exhibits during cross-examination for the purpose of impeachment if the exhibit is accompanied by a verification signed by the examined witness indicating that the witness was responsible in whole or in part for the contents of the exhibit, without first needing to provide such exhibits in advance of the hearing to other parties or the presiding officer.

According to the OCA, this change would allow parties to rely on cross-exhibits for the purposes of impeachment without presenting a concern of unfair surprise.

Reply Comments on OCA Proposed Amendment on § 5.243

The EAP states that it can support this proposal with one modification, that the referenced “exhibit[s]” that are “accompanied by a verification signed by an examined witness” should be limited to documents that were produced by that witness in discovery in the proceeding in which they are testifying. EAP Reply Comments at 13. The EAP claims that the OCA’s proposal, as written, would open up a witness on cross-examination to any document for which they previously provided a signed verification, including, but not limited to, a pleading in another PUC proceeding. *Id.* Thus, the EAP contends that if the PUC does adopt OCA’s proposed change, it should incorporate

language specifying that the exhibit must have been a document produced by that witness in discovery in the proceeding in which they are testifying. *Id.*

Disposition on OCA Proposed Amendment on § 5.243

We agree with the OCA that Section 5.243 would benefit from clarifying language concerning the presentation of cross-exhibits for purposes of impeaching a witness on cross-examination. However, we also agree with EAP that a requirement that such presentation should be limited to documents that were produced by the witness being cross-examined during discovery in the proceeding in which they are testifying. Thus, we hereby adopt the amendment to Sections 5.243 (g) and (h) as proposed by the OCA, and as modified by EAP.

Accordingly, the final form regulation set forth in the accompanying Annex incorporates an amendment to Section 5.243.

§ 5.254. Copies of Transcripts.

OCA Proposed Amendment on § 5.254

The OCA submits that transcripts of public proceedings should be made publicly available and requests that the PUC, upon the termination of its existing contracts for court reporter services, ensure that subsequent contract(s) provide public access. OCA Comments at 65. The OCA states that if the PUC wishes to cultivate greater consumer access to proceedings before it, one avenue for greater consumer access is through publishing transcripts of proceedings. *Id.* at 66. At the very least, the OCA contends, the PUC should permit parties to apply to proceed *in forma pauperis* to waive or reduce transcript transmittal fees. *Id.*

Reply Comments on OCA Proposed Amendment on § 5.254

The EAP opposes the OCA's recommendation that the PUC make transcripts of all public proceedings available and notes that the OCA provides no estimate of the increased costs associated with its proposal. EAP Reply Comments at 14. At the same time, EAP could support the PUC's implementation of an *in forma pauperis* process to waive transcript fees as such fees can present affordability challenges to certain litigation. *Id.*

Disposition on OCA Proposed Amendment on § 5.254

The PUC is not unsympathetic to the financial burden that paying for a copy of a transcript imposes on low-income, *pro se* litigants. However, the PUC contracts with court reporting companies to produce transcripts of hearings as needed. As such, the terms of the court reporting contract are controlling as to the number of copies the PUC receives, and how many copies the PUC can make. Currently, our court reporting contracts provide for the PUC two hard copies of a transcript: one for the presiding officer and one for the Secretary's Bureau. Outside of including a copy of a transcript as part of the reproduced record in an appellate court proceeding or in compliance with any other court order, the PUC is contractually bound not to make any additional copies of the transcript. Further, these restrictions do not simply disappear upon the termination of a court reporting contract. The transcripts remain the property of the court reporting company and its successors. For these reasons, the PUC likewise cannot make an electronic copy of the transcript available on its website.

However, Section 1.72 of our regulations provides procedures for reviewing for reviewing the contents of formal case files, including transcripts. 52 Pa. Code § 1.72. A *pro se* litigant may accordingly request to be provided access to view a transcript at a PUC office at a given date and time. We note that from time to time we have made the Secretary's Bureau's physical copy of a transcript available at our regional offices in

Philadelphia and Pittsburgh in order to accommodate the geographic location of the requestor.

We now address the OCA's proposal that the PUC establish a procedure whereby pro se litigants could apply for *in forma pauperis* status, thereby allowing them to receive copies of transcripts for free or at reduced rates. As EAP notes, the costs of such a program would necessarily be assessed on the regulated community and ultimately borne by ratepayers. Given the rising costs of utility bills and other household expenses for families across the Commonwealth, who already pay a share of their bills towards universal service programs benefitting low-income utility customers, we are reluctant to impose additional costs on ratepayers. As such, we decline to adopt the OCA's proposal to use PUC funds to subsidize providing low-income individuals copies of transcripts for free or at reduced rates.

§ 5.321 *et seq.* Discovery.

OCA Proposed Amendment on § 5.321 *et seq.*

The OCA proposed standard discovery modifications to be adopted by the PUC as the default discovery deadlines in adversarial proceedings before the PUC. OCA Comments at 71. Thereafter, the OCA recommend language for additional subsections (f) and (g) of Section 5.331 (Sequence of timing of discovery), as well as changes to Section 5.342(d) (Service of answers to written interrogatories) and 5.349(d) (related to requests for documents, entry for inspection and other purposes). The OCA contends that these changes will bring the PUC's regulations regarding discovery up to pace with current PUC practice while still giving flexibility to presiding officers to alter discovery procedures when necessary or allowing parties to conduct informal discovery. OCA Comments at 71-73.

Reply Comments on OCA Proposed Amendment to § 5.321 *et seq.*

C&T Utilities Reply Comments

C&T Utilities acknowledges that it often cooperates with the OCA to adopt discovery rule modifications during litigated proceedings but opposes changing the discovery rules in the PUC's regulations. C&T Utilities Reply Comments at 6; *see also* EAP Reply Comments at 17, PAWC Reply Comments at 5. C&T Utilities notes that agreements to abbreviated timelines is done on a "best efforts" basis. C&T Utilities Reply Comments at 6; *see also* PAWC Reply Comments at 5. C&T Utilities states that the OCA fails to recognize that the discovery modifications it proposes would apply to many proceedings without a statutory consideration period. *Id.* at 7.

EAP Reply Comments

EAP adds that a shift from 20 days to 10 days for answers to discovery requests in all PUC proceedings would impose a significant burden on parties and simply not feasible. EAP Reply Comments at 17. The EAP contends that the OCA fails to recognize the impact its proposed modifications would have on *pro se* litigants. *Id.* EAP advocates for continuing with the current practice so that presiding officers can adopt discovery rule modifications when they make sense. *Id.*

Disposition on OCA Proposed Amendment on § 5.321 *et seq.*

We agree with the C&T Utilities and EAP that the OCA's proposal for the PUC to implement shorter discovery response deadlines would be unduly burdensome on parties to a proceeding, particularly in matters where some parties may be represented *pro se*. We also find that, consistent with Sections 5.362 (relating to protective orders) and 5.483 (related to authority of a presiding officer), parties may seek a ruling on discovery procedures and timelines from the assigned presiding officer. Therefore, we decline to adopt the OCA's proposed amendments regarding discovery.

§ 5.350. Requests for Admission.

OCA Proposed Amendment on § 5.350

The OCA recommends that requests for admission be treated similarly to interrogatories, where the certificate of service must be filed with the PUC, but the actual request itself need not be. OCA Comments at 66. To this end, the OCA proposes to add the following language as subsection (g) to Section 5.350:

(g) *Filing.* The party propounding requests for admission shall serve a copy on the parties and shall file a certificate of service with the Secretary. Requests for admission may not be filed with the Commission.

Reply Comments on OCA Proposed Amendment on § 5.350

The EAP supports the OCA's proposal as it memorializes the existing practice in PUC proceedings. EAP Reply Comments at 14.

Disposition on OCA Proposed Amendment to § 5.350

We find that the OCA's proposal to add new subsection (g) to Section 5.350 to direct parties to file a certificate of service with the PUC memorializing requests for admission to be reasonable and consistent with current practice. Therefore, we hereby adopt the OCA's proposed amendment.

CONCLUSION

This rulemaking proceeding to update Chapters 1, 3, and 5 of our regulations has been a significant undertaking. We would like to thank the regulated community and interested stakeholders for their contributions submitted with the goal of improving our administrative process. We determine that this collaborative process has allowed us to revise to our procedural rules so that they will provide fair, clear, and relevant guidance

for those who practice and participate in proceedings before the Commission. As such, the Commission's regulations at Title 52 Pa. Code, Chapters 1, 3 and 5 are amended to read as set forth in Annex A.

Accordingly, under sections 501, 1501, 2203, and 2804 of the Public Utility Code (66 Pa.C.S. §§ 501, 1501, 2203, and 2804); section 201 of the Act of July 31, 1968, (P.L. 769, No. 240), referred to as the Commonwealth Documents Law (45 P.S. § 1201), and the regulations promulgated thereunder at 1 Pa. Code §§ 7.1, 7.2, and 7.5 (relating to notice of proposed rulemaking required; adoption of regulations; and approval as to legality); section 732-204(b) of the Commonwealth Attorneys Act (71 P.S. § 732-204(b)); section 745.5 of the Regulatory Review Act (71 P.S. § 745.5); and section 612 of The Administrative Code of 1929 (71 P.S. § 232), the regulations promulgated thereunder at 4 Pa. Code §§ 7.231—7.234 (relating to fiscal note), having reviewed the comments and reply comments to the NOPR, by entry of this FFRO, we adopt as final the revisions to 52 Pa. Code §§ 1.1—1.96, 3.1—3.602, and 5.01— 5.633, as set forth in Annex A, attached hereto; **THEREFORE,**

IT IS ORDERED:

1. That the Public Utility Commission hereby adopts the final form regulations as set forth in the accompanying Annex.
2. That the Secretary shall serve upon all certificated fixed public utilities, the Public Utility Commission's Bureau of Investigation and Enforcement, the Office of Consumer Advocate, the Office of Small Business Advocate, and all parties that filed comments or reply comments at this docket, a Secretarial Letter that provides notice of this Final Rulemaking Order (Preamble and Annex).

3. That the Secretary shall serve a Secretarial Letter by mail on all motor vehicle carriers providing notice of this Final Rulemaking Order proceeding.

4. That a copy of this Final Rulemaking Order shall be posted and made available electronically on the Pennsylvania Public Utility Commission's website at Docket No. L-2023-3041347.

5. That the Law Bureau will deliver this Final Rulemaking Order (Preamble and Annex), with the regulatory packet, on the same day to:

- a. The Majority and Minority Chairs of the Senate Committee on Consumer Protection and Professional Licensure and the Majority and Minority Chairs of the House Consumer Protection, Technology and Utilities Committee.
- b. The Independent Regulatory Review Commission, with confirmations of receipt from the Legislative Committees.

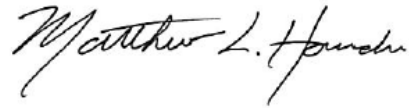
6. That upon approval by the Independent Regulatory Review Commission, the Law Bureau is directed to deliver this Final Rulemaking Order (Preamble and Annex), with the regulatory packet, to the Office of Attorney General for approval as to legality and form and to the Governor's Office of the Budget for a fiscal note.

7. That upon final approvals by the Legislative Committees, the Office of the Attorney General, and the Governor's Office of the Budget, the Law Bureau is directed to deliver this Final Rulemaking Order (Preamble and Annex), with the regulatory packet, to the Legislative Reference Bureau for publication of the Formal-Form Rulemaking Order (Preamble and Annex) in the *Pennsylvania Bulletin*.

8. That the final-form regulations will become effective 120 days after publication in the *Pennsylvania Bulletin*.

9. The contact persons for this Final Rulemaking are Tiffany Tran, Assistant Counsel, Law Bureau, (717) 783-5413, tiftran@pa.gov, Colin Scott, Assistant Counsel, Law Bureau, (717) 783-5949, colinscott@pa.gov, and Karen Thorne, Regulatory Review Assistant, Law Bureau (717) 772-4597, kathorne@pa.gov.

BY THE COMMISSION

A handwritten signature in black ink, reading "Matthew L. Homsher". The signature is written in a cursive, flowing style.

Matthew L. Homsher
Secretary

(SEAL)

ORDER ADOPTED: October 1, 2026

ORDER ENTERED: October 20, 2026