

PROPOSED RULEMAKING

PENNSYLVANIA PUBLIC UTILITY COMMISSION

[52 PA. CODE CHS. 1, 3 AND 5]
[L-2023-3041347]

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)

Public Meeting held
August 22, 2024

Commissioners Present: Stephen M. DeFrank, Chairperson; Kimberly Barrow, Vice Chairperson, statement follows; Ralph V. Yanora, Concurring in Part and Dissenting in Part; Kathryn L. Zerfuss, statement follows; John F. Coleman, Jr., statement follows, Concurring in Part and Dissenting in Part

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 Order

By the Commission:

With this Order, the Pennsylvania Public Utility Commission (PUC) clarifies various aspects of the Notice of Proposed Rulemaking Order (NOPR) and accompanying Annex that was entered December 20, 2023 at the above-captioned docket.¹ That December 2023 NOPR Order and accompanying Annex was served on the parties and sought comments from them on the proposed amendments to the PUC's regulations at 52 Pa. Code §§ 1.1—1.96, 3.1—3.602, and 5.01—5.633 (relating to rules of administrative practice and procedure; special provisions; and formal proceedings), (Chapters 1, 3, and 5, respectively). Specifically, with this NOPR, the PUC proposes changes to its regulations in order to update and clarify the general provisions in Subpart A of Title 52 surrounding practice before the PUC. This rulemaking proceeding is initiated by this clarified Preamble Order and an accompanying Annex A, which presents the proposed changes to the PUC's Rules of Administrative Practice.

Background

The general provisions regarding practice before the PUC were last revised in 2006.² Since then, our jurisdic-

¹ At its November 9, 2023 Public Meeting, the Commission adopted Vice Chair Kimberly Barrow's Motion at the above-captioned docket. See 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. Additionally, the Vice Chair, Commissioner Kathryn L. Zerfuss, and Commissioner John F. Coleman, Jr. each issued individual Statements at the November 9, 2023 Public Meeting at the above-captioned docket, which were served to the parties at this Docket. In accordance with the action taken at the November 9, 2023 Public Meeting, the Commission subsequently entered a NOPR Order and Annex at this docket on December 20, 2023 (December 20, 2023 NOPR and Annex) which was also served on the parties. The Commission has taken action to clarify its previously entered December 20, 2023 NOPR Order and Annex in order to correct various defects therein that have been brought to its attention. The previous Statements adopted at the November 9, 2023 Public Meeting and entered at this docket will be published along with this clarified Preamble Order and accompanying Annex in the *Pennsylvania Bulletin*.

² 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.irrc.state.pa.us/regulations/find_a_regulation.cfm.

tional responsibilities have changed considerably, and important technological innovations and advancements have occurred that, if implemented, could bring much-needed efficiencies to the current processes and procedures in PUC administrative hearings and proceedings. As such, in the first quarter of 2016, the PUC announced its intention to revise the PUC's rules of practice and procedure, 52 Pa. Code Chapters 1, 3, and 5, by convening 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 recommend amended language for the PUC's consideration. We stated our intention to solicit additional input regarding proposed revisions and our commitment to carefully consider the views of all interested parties prior to taking formal action. Upon extensive consideration of the input we received from stakeholders, we now enter this Notice of Proposed Rulemaking Order for the requisite review and public comment.

Discussion

I. Proposed Amendments to Chapter 1—Rules of Administrative Practice and Procedure

The PUC recognizes that the rules of administrative practice and procedure 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, the PUC proposes the following amendments to the regulations at 52 Pa. Code §§ 1.1—1.96 for the rationales articulated herein.

52 Pa. Code § 1.3. Information and Special Instructions.

Proposed Change

Section 1.3(a) would be amended to replace “application” with “request.”

Section 1.3(a)(2) would be amended to identify clearly that overnight delivery, certified or priority mail are the mailing options other than first-class mail.

Rationale for Proposed Change

The proposed amendment to Section 1.3(a) would streamline the process for seeking information about the PUC's procedural rules or information regarding hearings. The proposed amendment would clarify that an individual seeking procedural information no longer needs to file an “application,” which usually requires approval by the PUC or PUC staff. Additionally, the proposed amendment to Section 1.3(a)(2) is intended to clarify what is meant by the term “mail other than first-class” by deleting it and specifically identifying those types of mail service.

52 Pa. Code § 1.4. Filing Generally.

Proposed Change

Section 1.4(a)(2) would be amended to identify clearly that overnight delivery, certified or priority mail are the mailing options other than first-class mail for filings made with the PUC.

Rationale for Proposed Change

The proposed amendment to Section 1.4(a)(2) is intended to bring clarity to what is meant by the term “mail other than first class” by deleting it and specifically identifying those types of mail service.

*52 Pa. Code § 1.5(a). Amendment to Rules.**Proposed Change*

Section 1.5(a) is amended to remove “persons” from who may file an application based on the proposed new definition of “person” in Section 1.8 (relating to definitions).

Rationale for Proposed Change

The proposed amendment to Section 1.5(a) would allow parties in addition to “persons” (e.g., corporations and municipal corporations) to file applications requesting a general and permanent change in the PUC’s rules of administrative practice and procedure.

*52 Pa. Code § 1.6. Commission Office Hours.**Proposed Change*

Section 1.6 would be amended to allow the PUC to modify its office hours.

Rationale for Proposed Change

The proposed amendment to Section 1.6 is intended to recognize that the PUC, as an independent agency, may set its own hours.

*52 Pa. Code § 1.7. Sessions of the Commission.**Proposed Changes*

Section 1.7 would be amended to incorporate livestreamed and/or telephone public meetings.

Rationale for Proposed Changes

The proposed amendment to Section 1.7 is intended to recognize that the PUC has begun to use livestreamed and telephone public meetings more regularly.

*52 Pa. Code § 1.8. Definitions.**Proposed Changes*

“Act” would be amended to replace Section “3315” with “3316.”

“Adjudication” would be amended to clarify qualifying proceedings under the definition.

“Applicants” would be amended to change the term to singular form and to clarify qualifying entities under the definition.

“Adversarial proceeding” would be amended to replace “other persons” with “parties” to be consistent with the proposed new definition of “person” in this section.

“Authorized agent” would be amended to replace “person” with “representative of a filing user” to be consistent with the proposed new definition of “person” in this section. The definition would also be amended to allow anyone with permission to submit filings to do so, which lowers the previous standard from anyone with permission to “legally act” on behalf of the filing user.

“Corporation” would be added to refer to the definition of “corporation” set forth at 66 Pa.C.S. § 102.

“Certified legal intern” would be added to define the qualifications and conditions under which law students may participate in legal matters before the Commission.

“Electronic mail” would be amended to address communication methods, including prospective ones such as text messaging.

“Filing user” would be amended to include corporations and municipal corporations, which were previously included in the definition of “person,” and to provide the PUC’s updated website URL.

“Initial decision” would be amended to replace “participant” with “party.”

“Intervenor” would be amended to include corporations and municipal corporations, which were previously included in the definition of “person.”

“Municipal corporation” would be added to refer to the definition of “municipal corporation” set forth at 66 Pa.C.S. § 102.

“Nonadversarial proceeding” would be amended to remove references to “person.”

“Notarial officer” would be amended to replace “persons” with “individuals” in light of the proposed change to the definition of “person.”

“Party” would be amended to include “corporation” and “municipal corporation” in light of the proposed change to the definition of “person.”

“Person” would be amended to refer to the definition of “person” set forth at 66 Pa.C.S. § 102.

“Petitioners” would be redefined as “petitioner” and the definition amended to replace the term “persons” with “party.”

“Presiding officer” would be amended to replace the reference to “a person” with “a Commission employee.”

“Principal” would be amended to replace the reference to “a party” with “an individual” who can take action on behalf of a partnership, association, corporation, or municipal corporation, and to clarify that the individual can authorize counsel to take specified action on behalf of a partnership, association, corporation, or municipal corporation.

“Protestants” would be amended to change the term to singular form and to replace “persons” with “a party” to reflect the change to the definition of “person.”

“Qualified document” would be amended to update the PUC’s website address and to clarify existing language concerning types of documents that can be filed with the PUC electronically.

“Rate proceeding” would be amended for brevity.

“Recommended decision” would be amended for clarity.

“Respondents” would be amended to change the term to singular form and for brevity and to replace reference to “person” with “a party.”

“Secretary” would be amended for brevity.

“Staff” would be amended to remove the outdated reference to the “Office of Trial Staff” and to incorporate reference to the “Bureau of Investigation and Enforcement.”

“Statutory advocate” would be amended to remove the outdated reference to the “Office of Trial Staff” and incorporate reference to the “Bureau of Investigation and Enforcement.”

“Submittal” would be amended for clarity.

“Telefacsimile transmittal” would be redefined as “fax transmittal” and amended for clarity.

“Tentative Decision” would be replaced with “Tentative Order” and the definition would be amended for clarity.

“Trade Secret” would be amended for brevity and clarity.

“Writing or written” would be amended to update the definition.

Rationale for Proposed Changes

The proposed amendments to Section 1.8 would revise the definition of “person” to bring our regulations into line with the definition of “person” as set forth in Section 102 of the Public Utility Code (66 Pa.C.S. § 102). The proposed amendments also update the terms “corporation,” and “municipal corporation” and further incorporate those terms into the existing definition of “party.” Where appropriate, the term “person(s)” has been replaced with “party” or “parties” to reflect the regulation’s applicability to persons, corporations, and municipal corporations. The proposed amendments to Section 1.8 would also add, clarify and update certain existing definitions.

Additionally, “act” would be replaced with “Act” throughout the regulations when necessary to refer to the Public Utility Code (Code).

*52 Pa. Code § 1.13. Issuance of Commission Orders.**Proposed Changes*

Section 1.13 would be amended for clarity and to address references to PUC orders.

Rationale for Proposed Changes

The proposed amendments to Section 1.13 are intended to provide brevity and clarity.

*52 Pa. Code § 1.15. Extensions of Time and Continuances.**Proposed Changes*

Section 1.15(a)(1) would be amended to change “person” to “Commission employee” and would amend the language concerning notice of the PUC.

Section 1.15(b) would be amended to add “to the extent possible” to the end of the section, regarding when requests for continuances should be filed.

Rationale for Proposed Changes

The proposed amendments to Section 1.15(a)(1) are primarily intended to provide clarity as to who at the Commission is authorized to grant an extension of a time period for filing pursuant to the Commission’s regulations, a prior Commission order, or other notice by an authorized Commission employee.

Concerning Section 1.15(b), the PUC provides its administrative law judges (ALJs) who preside over PUC proceedings with the authority to regulate the course of the proceeding, under 52 Pa. Code § 5.483. Nevertheless, there are several existing PUC regulations that either impair ALJ control or do not reflect what occurs in practice.

For example, the PUC’s regulation at Section 1.15(b) provides that requests for a continuance of hearings should be filed at least five (5) days prior to the hearing date. However, it is not always possible for a party to submit a request for continuance at least five (5) days prior to the hearing date, especially in the event of illness, and ALJs are oftentimes faced with requests for a continuance less than five (5) days before the start of a hearing. Therefore, the proposed amendment to Section 1.15(b) is intended to recognize that it is not always possible for a party to submit a request for continuance at least five (5) days prior to the hearing date, especially in the event of illness. As ALJs are often faced with requests for a continuance that are submitted less than five (5) days before the start of a hearing, the proposed amendment provides presiding ALJs flexibility in their authority to regulate the course of a proceeding.

Likewise, presiding ALJs often address service of documents by parties during prehearing conferences. A party may express a preference as to how he or she wishes to be served during the course of the proceeding. Therefore, Sections 5.222 (related to initiation of prehearing conferences in nonrate proceedings) and 5.224 (related to Prehearing conference in rate proceedings) would be amended to afford the presiding officer with the authority to address and determine the method of service on parties.

*52 Pa. Code § 1.16. Issuance of decisions by presiding officers.**Proposed Changes*

Section 1.16(b) would be amended to delete the existing language describing the process for serving presiding officer decisions and simply refer to Section 703(e) of the Public Utility Code, 66 Pa.C.S. § 703(e).

Rationale For Proposed Changes

The proposed amendment to Section 1.16(b) would make the regulation consistent with the process for serving decisions by presiding officers as set forth by the General Assembly in Section 703(e) of the Public Utility Code, 66 Pa.C.S. § 703(e).

*52 Pa. Code § 1.21. Appearance.**Proposed Changes*

The title of Section 1.21 would be amended to “appearance in nonadversarial or informal proceedings” to clarify that it deals with appearances in PUC nonadversarial and informal proceedings only. The text of Section 1.21 would be amended to change “person” to “party” to specify who can appear on behalf of a party involved in a nonadversarial or informal PUC proceedings.

Section 1.21(c) would be amended 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.

Rationale for Proposed Changes

The proposed amendment to Section 1.21 is intended to provide a clear distinction between nonadversarial and informal proceedings and adversarial proceeding and states who can appear on behalf of a party in a nonadversarial and informal PUC proceedings. The proposed amendment also provides consistency with the proposed amended definition of “party” set forth in Section 1.8.

Further, various administrative agencies permit a party to be represented by a nonlawyer in some circumstances. For example, an individual claiming unemployment compensation (UC) may be represented by a duly authorized agent before the Pa. Department of Labor and Industry, the Unemployment Compensation Board of Review, and a UC referee. See *Harkness v. Unemployment Compensation Bd. of Rev.*, 920 A.2d 162 (Pa. 2007). Also, nonlawyer representatives are permitted to appear on behalf of individuals appearing before the Pa. Department of Human Services, Office of Hearings and Appeals. See *Nolan v. Department of Public Welfare*, 673 A.2d 414 (Pa. Cmwlth. 1995); and 55 Pa. Code §§ 275.2, 275.3(a), and 275.4(a)(1)(iv). Additionally, the Pa. Department of Revenue, Board of Appeals, specifies that a taxpayer filing an appeal may appear on his own behalf or be represented by someone else with the required technical knowledge who is not necessarily an attorney.

Accordingly, we propose a more permissive approach to representation similar to other administrative agencies would better facilitate the development of evidentiary records in complaint proceedings involving individual consumers.

The proposed amendment to Section 1.21(c) is intended to clarify that a non-attorney third-party representative holding power of attorney may represent an individual in nonadversarial proceedings during periods of disability or incapacity, or both.

52 Pa. Code § 1.22. Appearance by Attorney or Certified Legal Intern.

Proposed Changes

The title of Section 1.22 would be amended to “appearance in adversarial proceedings” to clarify that is dealing with appearances in PUC adversarial proceedings only. The amended section would define who can appear on behalf of a party involved in an adversarial proceeding. The proposed amendments also include “corporations” and “municipal corporations” in order to provide consistency with the proposed amended definition of “party” set forth in Section 1.8.

Section 1.22(a) would be amended to allow an authorized corporate official to represent small businesses or partnerships in adversarial proceedings, and 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.

Section 1.22(b) would be amended by removing the existing language and replacing it with language concerning representation before the Commission in adversarial proceedings.

Section 1.22(c) would be amended by deleting the existing language and replacing it with language stating that Section 1.22(b) supersedes 1 Pa. Code § 31.22 (relating to appearance by attorney). Section 1.22(c) is also amended by inserting the language currently existing at 1.22(b) concerning appearance by attorneys not licensed to practice in the Commonwealth.

Rationale for Proposed Changes

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 an adversarial proceeding.

Sections 1.21 through 1.23 of our current rules operate to preclude a corporation or partnership from appearing before the PUC in an adversarial proceeding unless they have legal counsel. This rule relies on case precedent holding that a corporation may appear in court only through an attorney at law admitted to practice before the court. See *Walacavage v. Excell 2000*, 480 A.2d 281 (Pa. Super. 1984) (citing *Simbraw, Inc. v. United States*, 367 F.2d 373 (3rd Cir. 1966); *MOVE Organization v. Department of Justice*, 555 F. Supp. 684 (E.D.Pa. 1983); *MacNeil v. Hearst Corp.*, 160 F. Supp. 157 (D.Del. 1958); *Merco Construction Engineers, Inc., v. Municipal Court*, 581 P.2d 636 (Ca. 1978); *Oahu Plumbing Sheet Metal, Ltd. v. Kona Construction, Inc.*, 590 P.2d 570 (Haw. 1979)).

However, Rule 207 in the Rules of Procedure of the Magisterial District Judges (MDJ) in Pennsylvania allows corporate or partnership entities to appear pro se although, as noted that is not the case with the Court of

Common Pleas and higher courts. It may be 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) is intended to grant a more permissive approach to representation for individuals, small businesses, and partnerships, to better facilitate the development of evidentiary records in complaint proceedings involving individual consumers, and the ability of small Pennsylvania businesses to operate and seek redress before the PUC.

As part of the PUC’s consideration of whether small businesses and partnerships should continue to be precluded from appearing before the PUC without legal counsel in adversarial proceedings, we seek comment on a prospective definition for “small business,” including factors such as size or revenue or the potential adoption of an appropriate definition contained in other law.

52 Pa. Code § 1.23(a). Other Representation Prohibited at Hearings.

Proposed Changes

Section 1.23(a) would be amended to replace “persons” with “parties.”

Rationale for Proposed Changes

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

52 Pa. Code § 1.24. Notice of Appearance or Withdrawal.

Proposed Changes

Section 1.24(b)(2)(i)(B) would be amended to replace “not licensed in this Commonwealth” with “appearing pro hac vice” and to remove parentheses in “jurisdiction(s).”

Section 1.24(b)(2)(i)(D) would be amended to change “person” to “party.”

Section 1.24(b)(2)(ii)(A) would be amended to include language that the attorney must serve notice of appearance.

Section 1.24(b)(3) would be amended to require the attorney to serve notice of withdrawal on the Secretary, the parties and the presiding officer.

Rationale for Proposed Changes

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 amendment 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.

The proposed amendment to Section 1.24(b)(2)(ii)(A) is intended to clarify that the attorney must serve notice of appearance on the parties and a certificate of service with the Secretary.

The proposed amendment to Section 1.24(b)(3) is intended to clarify that the attorney must serve notice of withdrawal on the parties and presiding officer in addition to the Secretary.

52 Pa. Code § 1.27(a). Suspension and Disbarment.

Proposed Changes

Section 1.27(a) would be amended to change “person” to “individual.”

Rationale for Proposed Changes

The proposed amendment to Section 1.27(a) is intended to create consistency with the proposed amended definition of “person” set forth in Section 1.8.

*52 Pa. Code § 1.31. Requirements for Documentary Filings.**Proposed Changes*

Section 1.31(c)(3) would be amended to include “corporation” and “municipal corporation” in addition to “person.”

Rationale for Proposed Changes

The proposed amendment to Section 1.31(c)(3) is intended to clarify that, in addition to all entities that fall within the definition of “person” at 66 Pa.C.S. § 102, corporations and municipal corporations are also entities on whose behalf a filing can be made.

*52 Pa. Code § 1.32. Filing Specifications.**Proposed Changes*

Section 1.32(a)(1) would be amended to require that all typewritten documents be one-sided and have margins of at least one inch on all sides.

Section 1.32(a)(2) would be amended to require double-spaced text, except for quotations with a few lines of more, which are to be single-spaced and indented, all printed documents would have to be in at least 12-point font with 10-point font allowed for footnotes, and margins of at least 1 inch throughout.

Section 1.32(b)(1) would be deleted in its entirety.

Section 1.32(b) would further be amended to explain how filings must be filed electronically using the PUC’s electronic filing system as it specifies the filing requirements and the PUC’s requirement that documentary filings be searchable PDFs.

Rationale for Proposed Changes

The proposed amendments in Section 1.32(a) are intended to ensure that documents submitted to the PUC are accessible and legible. The proposed amendments in Section 1.32(b) are intended to ensure that submitted electronic documents are accessible to the PUC’s staff, including the ability to search submitted PDF documents. The proposed deletion of Section 1.32(b)(1), concerning participation in electronic filing, is to reduce confusion given that the PUC is also proposing amendments to Section 1.53, concerning service by the PUC, and Section 1.54, concerning service by a party, which will address participation in electronic service and filing, respectively.

*52 Pa. Code § 1.33. Incorporation by Reference.**Proposed Changes*

Section 1.33(b) would be amended to remove the specific language “person filing the current document ascertains that the.”

Rationale for Proposed Changes

The proposed amendment to Section 1.33(b) is intended to provide clarity and brevity.

*52 Pa. Code § 1.35. Execution.**Proposed Changes*

Section 1.35(b) would be amended to change “person” to “individual” and “act” to “Act.”

Rationale for Proposed Changes

The proposed amendments Section 1.35(b) are intended to create consistency with the revised definitions in Section 1.8.

*52 Pa. Code § 1.36. Verification.**Proposed Changes*

Section 1.36(a) would be amended to encourage parties to submit a cover letter with their petition if the petition contains no averment or denial of fact not appearing of record. Section 1.36(a) would be further amended to omit language providing that the verification may be signed by an individual other than a filing user.

Rationale for Proposed Changes

The amendment to incorporate a cover letter is proposed to aid the Secretary’s staff in processing filings. It is a best practice for the filing attorney to outwardly communicate whether such averment or denial is made, as the PUC employees processing the filing may or may not be attorneys. Therefore, adding this information in a cover letter will save the Secretary’s staff time, as they will not have to review the filing to determine whether the petition contains an averment or denial of fact.

Existing language in Section 1.36(a) states that verifications signed by someone other than the filing user must be refiled with a corrected verification within three days. This proposed amendment removing this language is intended to clarify that verifications must be signed by the appropriate individual upon filing and that improperly verified filings will be rejected.

*52 Pa. Code § 1.37. Number of Copies.**Proposed Changes*

Section 1.37(a)(3) would be amended to include and allow other electronic storage devices, such as USB flash drives.

Rationale for Proposed Changes

The proposed amendment to Section 1.37(a)(3) is intended to reflect current practice whereby many documents are already submitted to the Secretary’s Bureau by USB flash drive.

*52 Pa. Code § 1.43. Schedule of Fees Payable to the Commission.**Proposed Changes*

Section 1.43(a) would be amended to communicate that the PUC’s filing fees are non-refundable.

Section 1.43(a) would also be amended to update the schedule of fees charged by the PUC for processing various filings. Further, Section 1.43(a) would be amended to note that the category of “applications for amending a certificate” of public convenience (CPC) includes an application to abandon a CPC.

Rationale for Proposed Changes

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. The filing fees collected by the PUC are directly related to the costs of processing filings. If these fees were refundable, the PUC would be responsible for the costs associated with filing, whether the purposes of the filing were met or not. Therefore, it is appropriate that the regulation be amended to clarify that the PUC’s filing fees are non-refundable.

The proposed amendment to Section 1.43(a) would also eliminate certain fees. The PUC proposes to eliminate the

fees related to intangible transition property notices since they relate to the 1997 restructuring of the electric industry and the retirement of resulting stranded costs and are therefore obsolete.³ The PUC's microfiche records have all been converted to digital format, eliminating the need for any fees related to copies made of microfiche and microfilm rolls. The fee for filing an application for a certificate to discontinue service for intrastate common carrier passenger or household goods in use has been eliminated, due to the difficulty of obtaining this de minimis amount from carriers who have gone out of business.

The proposed amendment to Section 1.43(a) would also add fees that have been implemented by the PUC since this regulation was last updated, including fees for applications to begin telecommunications service, applications to be a pipeline operator, applications to be a conservation service provider, and applications to be a utility valuation expert. Further, the fee schedule would be updated to clarify that applications to amend a CPC include applications to abandon a CPC.

In addition to the proposed amendments to Section 1.43(a), the PUC solicits comment on the proposed schedule of fees, including whether certain fees are still relevant given changes in PUC processes.

52 Pa. Code § 1.51. Instructions for Service, Notice and Protest.

Proposed Changes

Section 1.51(c) would be added to state 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.

Rationale for Proposed Changes

The addition of Section 1.51(c) serves an important role in protecting the personal information of domestic violence victims. There is no need for the personal information of domestic violence victims to be posted on the PUC's website, which is accessible to the general public.

52 Pa. Code § 1.53. Service by the Commission.

Proposed Changes

Section 1.53(a) would be amended to clarify that a person is not required to register for the PUC's electronic filing system to be a party in a PUC proceeding nor do they have to register to agree to the electronic service of documents by the PUC.

Section 1.53(b)(1) would be amended to clearly state that if a party has not agreed to electronic service they will continue to be served via first-class mail and that the recipient of the first-class mail would be the party's designated contact registered with the PUC.

Section 1.53(b)(3) would be amended to incorporate the current reality of the PUC's electronic filing system and also to add that a party does not have to have created a registered eService account with the PUC as a prerequisite to explicitly agreeing to the PUC serving the party with documents via electronic mail (e-mail). This section would be restructured by including subsections (i) and (ii) to differentiate between parties that open and use an account on the PUC's electronic filing system and those without an account but who agree to service by e-mail.

³ See Perfection of Security Interests in Intangible Transition Property, Docket No. L-00970122 (Final Rulemaking Order adopted July 10, 1997); see also 27 Pa.B. 5420 (10/18/1997): <https://www.pacodeandbulletin.gov/Display/pabull?file=/secure/pabulletin/data/vol27/27-42/1662.html> (last accessed on November 27, 2023). That proceeding is sometimes referred to at Docket No. L-970122.

Section 1.53(c) would be amended to change "act" to "Act," incorporate the reality of a respondent utility that is an e-filing user, and to reflect that service of complaints in all hearings, investigations, and proceedings pending before the PUC can be made by e-mail upon agreement by each party, under 66 Pa.C.S. § 702 (relating to service of complaints on parties).

Rationale for Proposed Changes

The proposed amendment to Section 1.53(a) is intended to clarify that persons are not required to register to use the electronic filing system to be a party in a PUC proceeding and shall continue to be served documents in paper form by the PUC unless they have agreed to electronic service.

The proposed amendment to Section 1.53(b)(1) is intended to create a more uniform service process to reduce potential confusion for PUC staff. We note that all persons appearing before the PUC are required to provide and maintain updated contact information, under Section 1.24.

The proposed amendment to Section 1.53(b)(3) originated from the PUC's waiver of service requirements during the COVID-19 pandemic, during which the PUC permitted electronic service by the PUC on all parties regardless of whether a particular party agreed to electronic service.⁴ The PUC has discerned that the flexibility of electronic service has provided additional efficiency across PUC operations; these include benefits to pro se complainants who rely on e-mail for more expedient service to avoid missing regulatory filing deadlines as well as allowing the Secretary's Bureau to more readily accept large filings.

The proposed amendment to Section 1.53(c) is intended to create consistency with the proposed new definitions in Section 1.8 and to incorporate the General Assembly's 2019 amendment to 66 Pa.C.S. § 702 that provides an explicit exception to the certified mailing of a complaint for a respondent party that has created a registered account with the PUC's electronic filing system.

52 Pa. Code § 1.54. Service by a Party.

Proposed Changes

Section 1.54(a) would be amended to clarify that a person will not be required to register to use the electronic filing system in order to serve documents on other parties. Section 1.54(b)(1) would be amended to clearly state that if a party has not agreed to the electronic service of documents, the other parties to the proceeding must continue to serve them their filings via first-class mail. Section 1.54(b)(3) would be amended to add the allowance of e-mail service when a party explicitly agrees to receive documents filed with the PUC in this fashion regarding a particular proceeding. This section would be restructured to differentiate between parties that open and use an account on the PUC's electronic filing system and those without an account but who agree to receive documents by e-mail.

Section 1.54(c) would be amended to remove "and persons or individuals."

Rationale for Proposed Changes

The proposed amendment to Section 1.54(b)(3) originated from the PUC's waiver of service requirements

⁴ On March 20, 2020, Chairman Gladys Brown Dutrieuille issued an Emergency Order that provided for the suspension of regulatory and statutory deadlines under appropriate circumstances and modified filing and service requirements. The Commission unanimously ratified the March 20 Emergency Order at its March 26, 2020 Public Meeting. See also September 15, 2022 Order, Docket No. M-2021-3028321.

during the COVID-19 pandemic, during which the PUC directed that electronic service on PUC staff in proceedings pending before it, whether staff is a party or otherwise, be exclusively electronic unless the parties agreed otherwise.⁵ Allowing service by e-mail to parties who explicitly agree to e-mail service improves the efficiency of PUC operations.

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

52 Pa. Code § 1.56. Date of Service.

Proposed Changes

Section 1.56(b) would be amended to remove “and the document is served.”

Rationale for Proposed Changes

The proposed amendment to Section 1.56(b) is intended for brevity and clarity.

52 Pa. Code § 1.59. Number of Copies to be Served.

Proposed Changes

Section 1.59 would be amended to provide the presiding officer with the discretion to determine the appropriate number of copies to be served on the presiding officer and other parties in a proceeding.

Rationale for Proposed Changes

Section 1.59 delineates the number of hard copies that shall be served on the presiding officer as well as the parties. The proposed amendment to Section 1.59 is intended to afford presiding officers with control to determine the appropriate number of copies that should be served in a proceeding, especially since serving hard copies may be unnecessary due to electronic service.

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

Proposed Changes

Section 1.61(a) would be amended to change “act” to “Act” and “person” to “entity.”

Section 1.61(b) would be amended to change required service from the Office of Trial Staff to the PUC’s Bureau of Investigation and Enforcement.

Section 1.61(d) would be amended to change “act” to “Act” and “person” to “entity.”

Rationale for Proposed Changes

The proposed amendments to Section 1.61(a) and (d) are intended to create consistency with the proposed new definitions in Section 1.8.

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.

52 Pa. Code § 1.71. Statement of Objectives.

Proposed Changes

Section 1.71 would be amended to change “act” to “Act.”

Rationale for Proposed Changes

The proposed amendments to Section 1.71 are intended to create consistency with the proposed new definitions in Section 1.8.

52 Pa. Code § 1.72. Content Review of Formal Case Files.

Proposed Changes

Section 1.72 would be amended to remove procedures for written requests for access to PUC records.

Rationale for Proposed Changes

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 Right to Know Law (RTK Law), 65 P.S. §§ 67.101—67.3104, that was in place at the time these regulations were last amended, agencies had to have their own processes for responding to written requests for records. Now that process is unified under the RTK Law within the Office of Open Records (OOR) appeal process.

Therefore, the PUC’s regulations about written requests for review of public documents are now moot and are potentially in conflict with the RTK Law.

We seek comment on whether the regulations for written requests for access to PUC files are still needed given the RTK Law and the publicly-accessible PUC docketing system available on the PUC’s website.

52 Pa. Code § 1.73. Fiscal Records.

Proposed Changes

Section 1.73(b) would be amended to change “act” to “Act.”

Rationale for Proposed Changes

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 which created the newest version of the RTK Law.

52 Pa. Code § 1.75. Review of Staff Determination.

Proposed Changes

Section 1.75 would be removed from the PUC’s regulations.

Rationale for Proposed Changes

The proposed amendments to Section 1.75 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. While it is still useful to have a regulation 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 are potentially in conflict with the RTK Law.

52 Pa. Code § 1.77. Extensions of Time to Review Folders.

Proposed Changes

Section 1.77 would be removed from the PUC’s regulations.

Rationale for Proposed Changes

The proposed amendments to Section 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. While it is still useful to have a regulation 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 are potentially in conflict with the RTK Law.

⁵ See September 15, 2022 Order, Docket No. M-2021-3028321.

52 Pa. Code § 1.96. *Unofficial Statements and Opinions by Commission Personnel.*

Proposed Changes

Section 1.96 would be amended to correct the spelling error in “employees” to “employeees.”

Rationale for Proposed Changes

The proposed amendment to Section 1.96 is intended to correct a typographical error.

II. *Proposed Amendments to 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 propose the following amendments to the regulations at 52 Pa. Code §§ 3.1—3.602 for the rationales articulated herein.

52 Pa. Code § 3.1. *Definitions.*

Proposed Changes

“Emergency” would be amended to include clear and present danger to the public interest.

“Emergency Order” would be amended to replace “Director of Operations” with “Executive Director.”

Rationale for Proposed Changes

The proposed amendment to the definition of “emergency” allows the PUC to act in certain circumstances when there is a danger to the public interest, which was not previously specified. The amendment preserves the requirement that a “clear and present danger” must exist prior to any PUC action, and thereby alleviates any concerns regarding an overbroad definition of “emergency.”

The proposed amendment to the definition of “emergency order” reflects the renaming of the Director of Operations to the Executive Director.

52 Pa. Code § 3.2. *Petitions for Issuance of Emergency Orders.*

Proposed Changes

Section 3.2 would be amended to require, to the extent practicable, service of petitions for emergency orders to be served upon the statutory advocates.

Rationale for Proposed Changes

The proposed amendment to Section 3.2 is intended to ensure that the statutory advocates, namely, the Office of Consumer Advocate, the Office of Small Business Advocate, and the PUC’s Bureau of Investigation and Enforcement, are served with petitions to the PUC seeking the issuance of emergency orders. This requirement 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.

52 Pa. Code § 3.3. *Disposition of Ex Parte Emergency Orders.*

Proposed Changes

Section 3.3(a)—(d) would be amended to replace “Director of Operations” with “Executive Director.”

Section 3.3(b) and (d) would be amended to allow statutory advocates to receive a copy of an emergency order or the denial of a petition for emergency order.

Rationale for Proposed Changes

The proposed amendments to Section 3.3(a)—(d) reflect the renaming of the Director of Operations to the Executive Director.

The proposed amendments to Section 3.3(b) and (d) are intended to ensure that the statutory advocates, namely, the Office of Consumer Advocate, the Office of Small Business Advocate, and the PUC’s Bureau of Investigation and Enforcement, are served with copy of an emergency order or the denial of a petition for emergency order. This requirement would allow the statutory advocates to be kept aware of such orders and to take appropriate action in response to said orders at their discretion.

52 Pa. Code § 3.4. *Hearings Following Issuance of Emergency Orders.*

Proposed Changes

Section 3.4(b) would be amended to require the petitioner to serve the statutory advocates and other parties.

Section 3.4(d) would be amended to replace “Director of Operations” with “Executive Director.”

Rationale for Proposed Changes

The proposed amendment to Section 3.4(b) clarifies all the parties that the petitioner is required to serve.

The proposed amendment to Section 3.4(d) reflects the renaming of the Director of Operations to the Executive Director.

52 Pa. Code § 3.6. *Petitions for Interim Emergency Orders.*

Proposed Changes

Section 3.6 would be amended to require service on statutory advocates.

Rationale for Proposed Changes

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 and contemporaneously serve the Chief Administrative Law Judge and the parties.

52 Pa. Code § 3.101. *Municipal Contracts.*

Proposed Changes

Section 3.101 would be amended to replace “reproduction” with “reproduced.”

Rationale for Proposed Changes

The proposed amendment to Section 3.101 is intended to clarify existing language.

52 Pa. Code § 3.111. *Form and Content of Informal Complaints.*

Proposed Changes

Section 3.111(b) would be amended to change the PUC’s mailing address and to require informal complaints to comply with Section 3.111(a).

Rationale for Proposed Changes

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).

52 Pa. Code § 3.113. *Resolution of Informal Investigations.*

Proposed Changes

Subsections 3.113(a), (b)(1), and (b)(3) would be amended to state informal investigations terminated by letter will be served on affected parties.

Rationale for Proposed Changes

The proposed amendment to Section 3.113(b)(1) is intended to clarify on whom the PUC will serve letters terminating an informal investigation.

52 Pa. Code § 3.381. *Applications for Transportation of Property, Household Goods in Use and Persons.*

Proposed Changes

Section 3.381(a)(3) would be amended to change the PUC's address.

Rationale for Proposed Changes

The proposed amendment to Section 3.381(a)(3) is intended to provide an updated mailing address for the PUC.

52 Pa. Code § 3.391. *Arbitration of Claims for Billing and Collecting Services.*

Proposed Changes

Section 3.391(a) would be amended to reflect the correct statute governing arbitration of a dispute between a water utility and an authority, city, borough or township as to the cost of billing and collecting services.

Rationale for Proposed Changes

The current statutory provision incorporated in Section 3.391 has been repealed. The proposed amendment would reflect the correct statutory provision that now governs when the water utility acts as a billing and collecting agent for a municipal authority, city, borough or township and the PUC is the forum for the arbitration of the dispute that arises between them due to the cost of billing and collecting services.

52 Pa. Code § 3.551. *Official Forms.*

Proposed Changes

Section 3.551 would be amended to change the PUC's address.

Rationale for Proposed Changes

The proposed amendment to Section 3.551 is intended to provide an updated mailing address for the PUC.

III. *Proposed Amendments to 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, the PUC proposes the following amendments to the regulations at 52 Pa. Code §§ 5.1—5.633 for the rationales articulated herein.

52 Pa. Code § 5.12. *Contents of Applications.*

Proposed Changes

Section 5.12(a) would be amended to direct the applicant to serve the application upon the statutory advocates.

Rationale for Proposed Changes

The proposed amendment to Section 5.12(a) is intended to ensure that the statutory advocates, namely, the Office

of Consumer Advocate, the Office of Small Business Advocate, and the PUC's Bureau of Investigation and Enforcement, are served with copies of applications. 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.

52 Pa. Code § 5.13. *Applications for Construction or Alteration of Crossings.*

Proposed Changes

Section 5.13(b) would be amended to remove the phrase "complained against."

Rationale for Proposed Changes

The proposed amendment to Section 5.13(b) is intended to permit abolitions of crossings even when complaints have not been filed.

52 Pa. Code § 5.14. *Applications Requiring Notice.*

Proposed Changes

Section 5.14(a) would be amended to set forth illustrative examples of the applications for authority that must be published, whether in the *Pennsylvania Bulletin* only or as otherwise required by the PUC. This list would duplicate the list of applications mentioned in the existing Section 5.14(d), except for (d)(4)—(6) and (d)(10), which would be deleted. Applications for initiation of steam utility service, rail service, and common carrier service by motor vehicle (except as provided for in 52 Pa. Code § 3.381(b)) would be added to the newly-created Sections 5.14(a)(1)—(3). The reference to "fixed utilities" that originally appeared in Section 5.14(d) would be replaced with "utilities" in the newly-created Sections 5.14(a)(1)—(3).

Section 5.14(d) would be deleted in its entirety.

Rationale for Proposed Changes

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. The proposed amendment to Section 5.14(a) would provide an informational listing of the applications for authority that must be published, which includes not just fixed utilities, but all utility service that is currently regulated by the PUC as defined under 66 Pa.C.S. § 102.

The proposed amendment to Section 5.14(d) would delete it in its entirety as it is no longer necessary.

52 Pa. Code § 5.21. *Formal Complaints Generally.*

Proposed Changes

Section 5.21(c) would be amended to change "Office of Trial Staff" to "Bureau of Investigation and Enforcement" and to allow for a complaint to be served electronically if the respondent is a filing user. It would also provide that the PUC may serve a copy of the complaint by e-mail upon agreement by each party, under 66 Pa.C.S. § 702.

Section 5.21(d) would be amended to replace "complaint" with "complaint."

Rationale for Proposed Changes

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, 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 spelling error.

52 Pa. Code § 5.22. Content of Formal Complaint.

Proposed Changes

Section 5.22(a)(1)-(2) would be amended to change “telefacsimile” to “fax.”

Rationale for Proposed Changes

The proposed amendment to Section 5.22(a)(2) is intended to update existing language.

52 Pa. Code § 5.24. Satisfaction of Formal Complaints.

Proposed Changes

Section 5.24(c) would be amended to specify that, in cases involving multiple respondents, a docket will not be marked closed until the filing of certified statements or certificates of satisfaction that resolve all claims against all respondents.

Rationale for Proposed Changes

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. Section 5.24(c) currently 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, 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 claims that remain outstanding against any of the respondents.

52 Pa. Code § 5.31. Staff-initiated Complaints.

Proposed Changes

Section 5.31(b) would be amended to change “Office of Trial Staff” to “Bureau of Investigation and Enforcement.”

Rationale for Proposed Changes

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.

52 Pa. Code § 5.41. Petitions Generally.

Proposed Changes

Section 5.41(a) would be amended to require materially supportive documents to be attached, and, if they are not available for attachment, the petition must set forth the reason for unavailability.

Section 5.41(b) would be amended to change “Office of Trial Staff” to “Bureau of Investigation and Enforcement.”

Rationale for Proposed Changes

The 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.

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.

52 Pa. Code § 5.42. Petitions for Declaratory Orders.

Proposed Changes

Section 5.42(c) would be amended to require copies to be served in accordance with the PUC’s direction.

Rationale for Proposed Changes

The proposed amendment to Section 5.42(c) is intended to provide consistency with similar language in Section 5.41(c).

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

Proposed Changes

Section 5.43(b) would be amended to change “Office of Trial Staff” to “Bureau of Investigation and Enforcement.”

Section 5.43(c) would be amended to require copies to be served in accordance with the PUC’s direction.

Rationale for Proposed Changes

The proposed amendment to § 5.43(b) is intended to reflect the renaming of the Office of Trial Staff to the Bureau of Investigation and Enforcement.

The proposed amendment to Section 5.43(c) is intended to provide consistency with similar language in Section 5.41(c).

52 Pa. Code § 5.52. Content of a Protest to an Application.

Proposed Changes

Section 5.52(a)(2) would be amended to remove the extraneous space after “protest” and to add a new subsection (4) that would require that a protest to an application must explicitly request a hearing before the Office of Administrative Law Judge or the PUC will not schedule one.

Rationale for Proposed Changes

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

52 Pa. Code § 5.53. Time of Filing.

Proposed Changes

Section 5.53 would be amended to provide for a 30-day period from the date of publication in the *Pennsylvania Bulletin* in which to file protests to applications, with modifications to this protest period being granted for good cause shown.

Rationale for Proposed Changes

Various PUC regulations provide for a 60-day period in which to file protests, unless otherwise specified. The 60-day period commences from the date of publication in the *Pennsylvania Bulletin*. See 52 Pa. Code § 5.14(c) (indicating that the time for filing protests to applications is governed by Section 5.53); and 52 Pa. Code § 5.53 (related to Time of filing).

Executive Order 2023-07, building Efficiency in the Commonwealth’s Permitting, Licensing, and Certification Processes, which was issued on January 31, 2023, instructs executive agencies to examine the type of permits, licenses, or certifications they issue, which would then be subject to recommended efficient application processing

times.⁶ As a best practice, the PUC should also take this opportunity to examine whether the PUC's application processes may be improved while still affording interested parties with notice and an opportunity to be heard.

The proposed amendment to Section 5.53 reduces the default protest period from 60 days to 30 days following publication of an application in the *Pennsylvania Bulletin*. This 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.

52 Pa. Code § 5.72. Eligibility to Intervene.

Proposed Changes

The heading of Section 5.72(a) would be amended to replace "Persons" with "Parties." Section 5.72(a) would also be amended to include "corporation" and "municipal corporation" in addition to "person."

Rationale for Proposed Changes

The proposed amendment in Section 5.72(a) is intended to clarify that Section 5.72(a) addresses persons, corporations, and municipal corporations seeking to intervene in a proceeding as a party.

52 Pa. Code § 5.74. Filing of Petitions to Intervene.

Proposed Changes

Section 5.74(b)(3) would be amended to change the timeline for filing petitions to intervene to the time specified in an order or notice, and within 30 days if no time is specified is set in an order or notice with respect to the proceedings.

Rationale for Proposed Changes

Section 5.74(b) of the PUC's regulations allows for the filing of a petition to intervene to occur no later than the date fixed for the filing of responsive pleadings but not less than the notice and protest period established under §§ 5.14 and 5.53, absent good cause shown. Therefore, we propose to retain the existing language in the regulation at Section 5.74(b), but amend Section 5.74(b)(3) to note that, absent an order or notice stating otherwise under Sections 5.76(b)(1) or (b)(2), the outer limit for filing a petition to intervene would be aligned with proposed shortened time for filing protests of 30-days from the date of publication in the *Pennsylvania Bulletin*, except upon good cause shown. 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.

52 Pa. Code § 5.81. Consolidation.

Proposed Changes

We propose to amend Section 5.81 to incorporate a rule addressing the identification of, and participation by, utility and non-utility indispensable parties when it will result in a better record and comprehensive consideration of the parties, facts, and issues in a proceeding.

Rationale for Proposed Changes

Section 5.81 of the current rules expressly authorizes an Administrative Law Judge (ALJ) or the PUC to consolidate a common question of law or fact. The current rules contain no provision authorizing the ALJ or the PUC to identify an indispensable party and interplead

that party. Accordingly, we solicit input on the development of a prospective rule that would address this issue.

52 Pa. Code § 5.222. Initiation of Prehearing Conferences in Nonrate Proceedings.

Proposed Changes

Section 5.222 would be amended to allow the presiding officer to address and determine the manner of service on parties in non-rate proceedings.

Rationale for Proposed Changes

The proposed amendment to Section 5.222 is intended to reflect that presiding officers often address service of documents by parties during prehearing conferences, and a party may express a preference as to how they wish to be served during the course of the proceeding. Therefore, it follows that the presiding officer be afforded with the authority to address and determine the method of service on parties.

52 Pa. Code § 5.224. Prehearing Conference in Rate Proceedings.

Proposed Changes

Section 5.224 would be amended to allow the presiding officer to address and determine the manner of service on parties in rate proceedings.

Rationale for Proposed Changes

The proposed amendment to Section 5.224 is intended to reflect that presiding officers often address service of documents by parties during prehearing conferences, and a party may express a preference as to how they wish to be served during the course of the proceeding. Therefore, it follows that the presiding officer be afforded with the authority to address and determine the method of service on parties.

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

Proposed Changes

Section 5.245 would be amended to prohibit the section from applying to a party who is not required to secure counsel if there is no finding that the party has committed an abuse of process. It would also be amended to prohibit the dismissal of a complaint, petition, or application with prejudice for a procedural failure on the complainant, petitioner, or applicant's behalf.

Rationale for Proposed Changes

The PUC often relies on Sections 316 and 332(f) of the Code, 66 Pa.C.S. §§ 316 and 332(f), respectively, to dismiss proceedings with prejudice when litigants fail to appear. Section 332(f) addresses the failure to be at a scheduled conference or hearing. Section 332(f) holds that the failure to secure counsel and appear precludes that party from participating, seeking a rehearing, or a recall unless it was unavoidable, and the other party is 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. This has also been relied on to dismiss unrepresented pro se litigant cases with prejudice when they fail to appear.

Section 316 of the Code also governs prima facie evidence of facts found which are conclusive unless set aside. This provision does not address stare decisis or dismissals with prejudice. This provision 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.

⁶ Executive Order 2023-07—Building Efficiency in the Commonwealth's Permitting, Licensing, and Certification Processes. See, https://www.governor.pa.gov/wp-content/uploads/2023/01/20230131_EO-2023-07_FINAL_Executed.pdf.

McLaughlin v. DQE, Docket No. C-20065798 (2009); *Duquesne Light Co. et al. v. Pa. PUC*, 715 A.2d 540 (Pa. Cmwlth. 1998); *Popowsky v. Pa. PUC*, 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. PUC*, 401 A.2d 1377, 1380 (Pa. Cmwlth. 1979); *Schellhammer v. Pa. PUC*, 629 A.2d 189, 193 (Pa. Cmwlth. 1993).

The PUC often relies on Section 316 of the Code 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, like a failure to appear, because there has been no substantive determination on the merits. *Scharf v. Richard De Cou Company*, 183 A. 41, 41-42 (Pa. 1936); *Farabiugh Chevrolet v. Covenant Management, 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). For collateral estoppel to apply, there must be an identity of parties yet often a matter is raised by separate spouses at different times on very different facts.

Section 5.245 of our rules addresses 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, it is the appropriate section to clarify when a pro se litigant can be dismissed with prejudice, and whether the application of res judicata and collateral estoppel based upon a litigant's failure to appear at hearing is permissible.

52 Pa. Code § 5.251. Recording of Proceedings.

Proposed Changes

Section 5.251(d) would be amended to include a provision detailing the rules regarding recording during a special agent proceeding.

Rationale for Proposed Changes

The proposed amendment to Section 5.251(d) is intended to clarify what occurs in practice during special agent proceedings.

52 Pa. Code § 5.252. Review of testimony.

Proposed Changes

Section 5.252(c) and (d) would be amended to replace "tapes" with "recordings."

Rationale for Proposed Changes

The proposed amendments to Section 5.252(c) and (d) are intended to reflect the change in technology the PUC uses for record proceedings from cassette tape to digital recordings.

52 Pa. Code § 5.302. Petition for interlocutory Commission review and answer to a material question.

Proposed Changes

Section 5.302(b) would be amended to replace "substantial" with "substantive."

Rationale for Proposed Changes

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). Further, this proposed amendment is consistent with the Order of the Pennsylvania Supreme Court, effective January 1, 2024, which amended Pa.R.C.P. 126 to change "substantial rights" to "substantive rights."

§ 5.303. Commission action on petition for interlocutory review and answer.

Proposed Changes

Section 5.303(a)(1) would be amended to replace "substantial" with "substantive."

Rationale for Proposed Changes

The proposed amendment to Section 5.303(a)(1) is intended to provide consistency with the term "substantive right" as it appears in Section 1.2(d). Further, this proposed amendment is consistent with previously articulated rationale for amending Section 5.302(b).

52 Pa. Code § 5.304. Interlocutory Review of Discovery Matters.

Proposed Changes

Section 5.304(d) would be amended to change the heading from "Responsive brief" to "Brief."

Section 5.304(d)(3) would be amended to replace "substantial" with "substantive."

Section 5.304(i) would be amended to be left justified.

Section 5.304(j) would be amended to replace "substantial" with "substantive."

Rationale for Proposed Changes

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.

The proposed amendment to Section 5.304(i) is intended to clarify the proper placement of the provision in the statute.

The proposed amendments to Sections 5.304(d)(3) and 5.304(j) are consistent with previously articulated rationale for amending Section 5.302(b).

52 Pa. Code § 5.305. Interlocutory review of a material question submitted by a presiding officer.

Proposed Changes

Section 5.305(c) would be amended to replace "substantial" with "substantive."

Rationale for Proposed Changes

The proposed amendments to Sections 5.305(c) is consistent with previously articulated rationale for amending Section 5.302(b).

52 Pa. Code § 5.306. Expedited Notification.

Proposed Changes

Section 5.306 would be amended to replace "telefacsimile" with "telefax."

Rationale for Proposed Changes

The proposed amendment to Section 5.306 is intended to update existing language.

52 Pa. Code § 5.323. Hearing Preparation Material.

Proposed Changes

Section 5.323(b) would be amended to change the reference of "photostatic copy" to "copy."

Rationale for Proposed Changes

The proposed amendment to Section 5.323(b) is intended to clarify the reference in the provision and reduce confusion.

*52 Pa. Code § 5.331. Sequence and Timing of Discovery.**Proposed Changes*

Section 5.331(c) would be amended to add the sentence, "Once a protest or adverse pleading is filed with the PUC, staff data requests are deemed withdrawn."

Rationale for Proposed Changes

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 Office of Administrative Law Judge for assignment to a presiding officer, and staff data requests would be deemed "withdrawn."

*52 Pa. Code § 5.342. Answers or Objections to Written Interrogatories by a Party.**Proposed Changes*

Section 5.342(g) would be amended to add "or until such time as the parties may determine by mutual agreement," in reference to the timing of filing a motion to dismiss an objection to interrogatories.

Rationale for Proposed Changes

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.

*52 Pa. Code § 5.349. Requests for Documents, Entry for Inspection and other Purposes.**Proposed Changes*

Section 5.349(b) would be amended to replace "Office of Trial Staff" with "Bureau of Investigation and Enforcement."

Rationale for Proposed Changes

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.

*52 Pa. Code § 5.351. On the Record Data Requests.**Proposed Changes*

Section 5.351(a) would be amended to permit on the record data requests in all PUC proceedings, instead of only in rate cases.

Rationale for Proposed Changes

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. 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.

*52 Pa. Code § 5.365. Orders to Limit Availability of Proprietary Information.**Proposed Changes*

Section 5.365 would be amended to add subsection (h). The new Section 5.365(h) would require that, where parties to formal proceedings have indicated that they have a currently-effective court-granted Protection From Abuse (PFA) order, or other order for the protection of their personal safety, in place, all parties must redact the PFA holder's address and contact information from any documents filed as part of the formal complaint proceeding.

Rationale for Proposed Changes

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 form. 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.

*52 Pa. Code § 5.408. Official and Judicial Notice of Fact.**Proposed Changes*

Section 5.408(c) would be amended to add to the existing regulation that an aggrieved party has the opportunity to present counter evidence prior to the decision of the presiding officer being issued if the decision relies upon the noticed fact.

Rationale for Proposed Changes

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 timely request to show that the facts are not properly noticed or that alternative facts should be noticed.

*52 Pa. Code § 5.409. Copies and Form of Documentary Evidence.**Proposed Changes*

Section 5.409(a) would be amended to replace "two copies" of testimony to "one copy" of testimony.

Rationale for Proposed Changes

The proposed amendment to Section 5.409(a) is intended to provide consistency with Chapter 1 of the PUC's regulations.

*52 Pa. Code § 5.412. Written testimony.**Proposed Changes*

Section 5.412(f) would be amended to delete the requirement to file pre-served testimony according to Section 5.412a, given the proposed repeal of Section 5.412a.

Section 5.412(g) would be amended to replace "two copies" of testimony to "one copy" of testimony and to recognize that written testimony may be admitted via stipulation with no court reporter present.

Rationale for Proposed Changes

The proposed amendment to Section 5.412(f) reflects the proposed repeal of Section 5.412a.

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.

*52 Pa. Code § 5.412a. Electronic Submission of Pre-served Testimony.**Proposed Changes*

Section 5.412a would be repealed in its entirety.

Rationale for Proposed Changes

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.

Upon review of current procedures for processing of transcripts, we cannot identify any concrete benefit to stakeholders from continuing to require parties to submit electronic copies of pre-served testimony under 52 Pa. Code § 5.412a. 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, 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.

*52 Pa. Code § 5.502. Filing and Service of Briefs.**Proposed Changes*

Section 5.502 would be amended to repeal original Section 5.502(c).

Section 5.502(d) would be amended to consolidate the filing requirements for briefs in rate proceedings and non-rate proceedings.

Section 5.502(f) would be amended to remove the non-specified timeline for main briefs and reply briefs; all timelines would be set by the presiding officer.

Rationale for Proposed Changes

The proposed amendments to Section 5.502 are intended to add clarity by removing references to "initial briefs" and "responsive briefs."

*52 Pa. Code § 5.531. Certification of Record without Decision.**Proposed Changes*

Section 5.531(a) would be amended to replace "file" with "issue."

Rationale for Proposed Changes

The proposed amendment to Section 5.531(a) is intended to clarify that a presiding officer will issue a decision.

*52 Pa. Code § 5.533. Procedure to Except to Initial, Tentative and Recommended Decisions.**Proposed Changes*

Section 5.533 would be amended to delete all references to "tentative decisions."

Rationale for Proposed Changes

The proposed amendment to Section 5.533 is intended to clarify that the PUC does not have "tentative decisions." The PUC does have "tentative orders" but not "tentative decisions."

*52 Pa. Code § 5.591. Reports of Compliance.**Proposed Change*

Section 5.591(a) would be amended to state that compliance reports will be filed by parties subject to the Commission's jurisdiction.

Rationale for Proposed Changes

The proposed amendment to Section 5.591(a) is intended to clarify who is responsible for filing compliance reports with the Commission following the amended definition of "person."

Conclusion

Accordingly, under sections 331, 332, 333, 334, 335, 501, 701, 702, 703, and 1501 of the Public Utility Code (66 Pa.C.S. §§ 331—335, 501, 701—703, and 1501); section 201 and 202 of the Act of July 31, 1968 (P.L. 769, No. 240), referred to as the Commonwealth Documents Law (45 P.S. §§ 1201 and 1202), 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 204(b) of the Commonwealth Attorneys Act (71 P.S. § 732-204(b)); section 5 of the Regulatory Review Act (71 P.S. § 745.5); and section 612 of The Administrative Code of 1929 (71 P.S. § 232), and the regulations promulgated thereunder at 4 Pa. Code §§ 7.231—7.234 (relating to fiscal note), we are considering adopting proposed changes to existing regulations and proposed new regulations, at 52 Pa. Code §§ 1.1—1.96, 3.1—3.602, and 5.01—5.633; *Therefore*,

It Is Ordered:

1. That a proposed rulemaking be opened to consider the proposed amendments to 52 Pa. Code Chapters 1, 3, and 5 (relating to rules of administrative practice and procedure; special provisions; and formal proceedings) set forth in Annex A.

2. That a copy of this Notice of Proposed Rulemaking Order, consisting of a clarified Preamble Order and an Annex A, shall be posted on the Public Utility Commission's website at Docket No. L-2023-3041347.

3. That the Secretary shall serve this Notice of Proposed Rulemaking Order, consisting of a clarified Preamble Order and an Annex A, upon the Office of Consumer Advocate, the Office of Small Business Advocate, the PUC's Bureau of Investigation and Enforcement, the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania, the Energy Association of Pennsylvania, the Tenant Union Representative Network and Action Alliance of Senior Citizens of Greater Philadelphia, AARP Pennsylvania, the Pennsylvania Telephone Association, the Broadband Communications Association of Pennsylvania, the PUC's Consumer Advisory Council, and all jurisdictional fixed public utilities.

4. That the Law Bureau shall deliver this Notice of Proposed Rulemaking Order, consisting of a clarified Preamble Order and an Annex A, together with an appropriate rulemaking packet, to the Office of Attorney General for review as to form and legality and to the Governor's Budget Office for review of fiscal impact.

5. That, after receiving approvals from the Office of the Attorney General and Governor's Budget Office, the Law Bureau shall deliver this Notice of Proposed Rulemaking Order, consisting of a clarified Preamble Order and an Annex A, together with an appropriate rulemaking packet, for review and comment to the majority and minority chairs of the Senate Committee on Consumer

Protection and Professional Licensure and to the majority and minority chairs of the House Consumer Protection, Technology, and Utilities Committee.

6. That the Law Bureau shall deliver this Notice of Proposed Rulemaking Order, consisting of a clarified Preamble Order and an Annex A, together with an appropriate rulemaking packet, to the Legislative Reference Bureau to be published in the *Pennsylvania Bulletin*.

7. That the Law Bureau shall deliver this Notice of Proposed Rulemaking Order, consisting of a clarified Preamble Order and an Annex A, together with an appropriate rulemaking packet, to the Independent Regulatory Review Commission with proof of the other deliverables.

8. That a 90-day Public Comment Period is established for this Notice of Proposed Rulemaking proceeding. Interested persons may file written comments to this Notice of Proposed Rulemaking, consisting of a clarified Preamble Order and an Annex A, as published in the *Pennsylvania Bulletin*, during the 60-day period following publication in the *Pennsylvania Bulletin*. Written reply comments may be filed during the 30-day period following the 60-day period for filing written comments. Comments filed during the Public Comment Period will be posted to the Public Utility Commission's website and forwarded by the Public Utility Commission to the majority and minority chairs of the Senate Committee on Consumer Protection and Professional Licensure and the House Consumer Protection, Technology, and Utilities Committee and to the Independent Regulatory Review Commission.

9. That comments regarding this Notice of Proposed Rulemaking Order, consisting of a clarified Preamble Order and an Annex A, may be filed electronically through the Public Utility Commission's efilings system,⁷ in which case no paper copy needs to be filed with the Secretary of the Public Utility Commission provided that the filing is less than 250 pages.⁸ If you do not efile, then you are required to mail, preferable by overnight delivery, one original filing, signed and dated, with the PUC's Secretary at: Pennsylvania Public Utility Commission, Commonwealth Keystone Building 2nd Floor, 400 North Street, Harrisburg, PA 17120. Comments must reference Docket No. L-2023-3041347. All pages of filed comments, with the exception of a cover letter, must be numbered.

10. That comments filed prior to publication of the Notice of Proposed Rulemaking in the *Pennsylvania Bulletin* will be considered untimely filed and may be rejected by the Pennsylvania Public Utility Commission.

11. That the contact persons for this proceeding are Tiffany L. Tran, Esq., Law Bureau, 717-783-5413, tiftran@pa.gov; Colin W. Scott, Esq., Law Bureau, 717-783-5949, colinscott@pa.gov; and Karen Thorne, Regulatory Review Assistant, Law Bureau, kathorne@pa.gov.

12. That an electronic copy, in WORD® or WORD®-compatible format, of all filed submissions, comments for filings at the docket must be emailed to the contact persons and to ra-pcprgreview@pa.gov.

ROSEMARY CHIAVETTA,
Secretary

ORDER ADOPTED: August 22, 2024

ORDER ENTERED: August 22, 2024

⁷ <https://www.puc.pa.gov/efiling/default.aspx>.

⁸ Any persons submitting a filing of 250 pages or more must mail one copy to the Secretary of the Commission.

Statement of Vice Chair Kimberly Barrow

Today we vote to initiate a notice of proposed rulemaking process to revise our rules of practice and procedure. In addition to those changes that the Commission proposes and would seek comment on, I also would like to hear from parties as to whether our regulations' stated preference for settlements is appropriate in all circumstances.

Section 5.231(a) of our current rules states that it "is the policy of the Commonwealth to encourage settlements." Uniformly, settlements have been encouraged because they avoid the time and expense associated with litigation. Although litigation costs are a legitimate factor when considering settlements, there may be proceedings in which the public interest would be better served by a full evidentiary hearing. Moreover, the stated policy in Section 5.231(a) may serve to discourage parties from proceeding to litigation out of a perception that the Commission looks with disfavor on litigated proceedings. In your comments to the proposed rulemaking, please do include comments and evidence on the benefits and burdens created by the settlement policy and under what circumstances the Commission might seek a full public hearing for purposes of transparency.

November 9, 2023

KIMBERLY BARROW,
Vice Chairperson

Statement of Commissioner Kathryn L. Zerfuss

Over 17 years have passed since the Commission last revised the general provisions governing practice before the PUC. During that time, our jurisdictional responsibilities have changed considerably and the nature of administrative practice and procedure has evolved and matured. The Notice of Proposed Rulemaking (NOPR) we are considering today recognizes that important technological innovations and advancements have occurred since 2006 and proposes updates to bring efficiencies to the current procedures employed in PUC administrative hearings and proceedings.

We should always endeavor to improve efficiencies in our administrative hearing process and the NOPR takes significant steps in that direction. I am pleased that the motion before us today includes more substantive considerations. These include proposals to modernize our regulations to meet the realities and circumstances faced by the parties, particularly pro se complainants who appear on their own behalf, as well as small businesses navigating our administrative hearing process. I wholeheartedly support these critical considerations and welcome the comments and policy debates they will generate.

I emphasize the current proposal to permit "an individual consumer to be represented by an individual who holds a power of attorney over an individual during periods of disability and incapacity." The proposal within the motion is a good starting point, but in my view, it falls short of necessary reforms to individual representation, similar to procedures utilized by several other administrative agencies. By authorizing additional representation options for individuals, we may better facilitate the development of evidentiary records in complaint proceedings involving individual consumers. However, I am not prejudging the outcome and welcome a robust discussion. Undoubtedly, inclusion of this issue in the NOPR makes this one of the more consequential rulemakings in some time that is directly aimed at helping consumers.

I encourage all vested partners—including those organizations representing vulnerable populations such as legal services organizations, law school/pro bono clinics, and organizations representing seniors—to weigh in on this issue. It would be beneficial to hear from experienced paralegals, social workers, and other professionals (who already represent low income individuals in public benefits, unemployment, and other administrative hearings) about this proposal or other similar proposals which could better inform this NOPR on how to accomplish effective representation for individuals in Commission hearings and proceedings.

November 9, 2023

KATHRYN L. ZERFUSS,
Commissioner

Statement of Commissioner John F. Coleman, Jr.

Before the Commission for disposition is the Commission's Notice of Proposed Rulemaking (NOPR) seeking comments on proposed amendments to update and clarify the Commission's procedural regulations at 52 Pa. Code §§ 1.1—1.96, 3.1—3.602, and 5.01—5.633. By way of background, the Commission's general provisions for practice before the Commission were last modified in 2006. In preparation for this NOPR, the Commission convened a series of meetings between Commission staff and attorneys who practice before the Commission in 2016. The recommendation prepared by staff is the result of lengthy efforts to obtain input and balance the interests of all parties. I thank those who participated in this process. I would have supported beginning the rulemaking through the adoption of the proposed Order that is now before us.

However, I do not support the Motion that has been offered to modify the proposed Order. My objections to the Motion are both to the process and the substance of some of the changes. First, regarding the process, the Motion proposes a number of far reaching, substantive changes that were not the subject of the Commission's prior efforts to obtain input from stakeholders and build consensus. I think a better approach would have been to share these changes with stakeholders through an Advanced Notice of Proposed Rulemaking. Additionally, in some cases the Motion does not identify the specific, alternative regulatory language that is to be used in the Annex that will be served on the Office of Attorney General, the Governor's Budget Office, and the public. It is the Commission's usual practice in NOPRs to vote on specific, regulatory language, whether from a staff recommendation or a Motion. Given that it is unclear what the Commission is voting to do for some of the changes, I am not certain that this approach satisfies Pennsylvania's Open Meeting Law.⁹

Turning to the substance of the Motion, I will explain my objections to some of the substantive changes, using the criteria in Section 5.2 of the Regulatory Review Act.¹⁰

1. *Dismissals With Prejudice, Section 332(f):* Statutory Authority, Economic Impact, Clarity

The Pennsylvania General Assembly adopted Section 332(f) of the Public Utility Code (Code) to ensure judicial economy and provide for finality of proceedings. The Commission's existing regulations at Section 5.245(a)—(c) follow the statutory language and enjoy the presumption of reasonableness. The dismissal of a case, "with prejudice," for the failure to appear at a hearing gives full

effect to all the words of this subsection.¹¹ Such dismissals are mandated by the plain language of the statute, and are not a policy decision of the Commission:

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.*

66 Pa.C.S. § 332(f) (emphasis added). In my view, the proposed rule is contrary to the plain language of Section 332(f) of the Code. The word "shall" carries an imperative or mandatory meaning, and was used twice by the General Assembly as a clear direction to the Commission.¹² The plain language of the statute provides the best indication of legislative intent regarding the consequences of failing to appear at a scheduled hearing.¹³ The statute does allow the Commission to permit a party to reopen the proceeding if nonappearance was "unavoidable" and the interests of other parties are not prejudiced. Words and phrases of a statute are to be construed according to their ordinary and plain meaning, and there is no basis in the language of the statute or law to eliminate the requirement of a finding that nonappearance was "unavoidable" and replace it with an "abuse of process" standard. The proposed rule is also contrary to Commonwealth Court precedent recognizing that the dismissal of cases for failure to appear at an agency hearing does not violate due process.¹⁴

The obligation to abide by Section 332(f) clearly applies both to attorneys and parties. The section heading is "Actions of parties and counsel."¹⁵ The language clearly penalizes a "party" complainant who is representing themselves who fails to appear by prohibiting them from later reopening the proceeding. With attorneys, the language permits the Commission to bar them from appearing before the Commission in any future proceedings for obstructive conduct. In either case, the obligation is the same; either party complainants representing themselves or their attorneys are obligated by Code Section 332(f) to appear for a scheduled hearing or to explain why the nonappearance was unavoidable.

Allowing parties to later reopen proceedings they failed to prosecute will result in increased legal costs for public utilities which will be paid for by other ratepayers. No alternative regulatory language has been proposed for review.

2. *Need: Res judicata/Collateral Estoppel interplay with dismissal with prejudice:* Need, Clarity

The Motion proposes to prohibit the application of res judicata and collateral estoppel to dismiss a complaint brought on the same allegations as a complaint that was previously dismissed for failure to appear at the scheduled hearing. I do not disagree that res judicata/collateral

¹¹ 1 Pa.C.S. § 1921(a).

¹² In re Canvass of Absentee Ballots of Nov. 4, 2003 Gen. Election, 577 Pa. 231 (2004). "This Court has repeatedly recognized the unambiguous meaning of the word in most contexts." 577 Pa. at 245.

¹³ *Miller v. County of Centre*, 643 Pa. 560 (2017).

¹⁴ "[D]ismissal of a proceeding for a party's failure to prosecute or failure to appear at a hearing without good cause does not violate due process." *Fountain Capital Fund, Inc. v. Pennsylvania Securities Commission*, 948 A.2d 208, 214 (Pa. Cmwlth. 2008).

¹⁵ Section headings may be used in aid of construction. 1 Pa.C.S. § 1924.

⁹ 65 Pa.C.S. §§ 701—716.

¹⁰ 71 P.S. § 745.5a. Among other things, the Section 5.2 criteria requires us to show the following in support of a proposed regulation: the legal authority, need, and financial/economic impact.

estoppel should not be used to dismiss such a complaint. One of the required elements of res judicata is that the case acting as a bar must have been a final judgment,¹⁶ and it is at least debatable as to whether a decision to dismiss a complaint with prejudice when the complainant fails to appear is a “final judgment” for purposes of res judicata.¹⁷ In my view, however, this prohibition would be an unnecessary addition to our regulations because an existing Code provision already addresses how to handle a complaint brought on the same allegations as a complaint that was previously dismissed for failure to appear. Namely, this type of case can be dismissed under Section 316 of the Code, which gives conclusive effect to a final Commission order not appealed that dismisses a complaint with prejudice for failure to appear at hearing.¹⁸ Therefore, I do not agree with the Motion that Section 316 of the Code does not address dismissals with prejudice. No specific regulatory language has been proposed for consideration in this Motion.

3. *Representation of Corporations and Partnerships and Representation of Individuals.* Clarity/Statutory Authority.

The Motion proposes to revise our procedural rules to permit small business corporations or partnerships to appear through an authorized corporate official. The Motion also proposes to revise the rules to permit an individual consumer to be represented by an authorized representative who is not an attorney. I oppose these proposed revisions because I am concerned that they would allow for the unauthorized practice of law before the Commission. I note that the Motion cites to the practice before other forums and state agencies as support for the proposed revisions. However, without more details about the nature of the proceedings before these other forums and state agencies, I am not comfortable concluding that the proposed revisions are lawful. Unlike the examples cited, the Commission is neither part of Pennsylvania’s unified judicial system nor an executive agency. The Motion provides no analysis or comparison of the enabling legislation, regulations or rules of court for these other forums with the respective rules or case precedent that applies to the Commission. In my view, these are the types of changes that should have been vetted with stakeholders first through an Advanced Notice of Proposed Rulemaking. No specific regulatory language has been proposed in this Motion on this issue.

4. *Extensions of time and continuances:* Need/clarity

The Commission’s administrative law judges already have the discretion to liberally construe our procedural rules and accept requests for continuance received less than five days prior to the hearing date, and grant such requests on a regular basis. Section 1.2 of our regulations permit the ALJs to waive any defect of procedure “to secure the just, speedy and inexpensive” determination in every type of proceeding.¹⁹ Liberal construction is to apply with particularity for cases involve pro se liti-

gants.²⁰ The revision to Section 1.15 is unnecessary and would appear to create a standard different than found at Section 1.2(a).

Having identified these specific concerns, I do not agree with modifying the proposed Order to include the changes from the Motion.

November 9, 2023

JOHN F. COLEMAN, Jr.,
Commissioner

Statement of Vice Chair Kimberly Barrow

On November 9, 2023, the Commission initiated a notice of proposed rulemaking process to revise our rules of practice and procedure and I offered a statement at that public meeting. Consistent with that statement, with this clarification order, I also would like to hear from parties as to whether our regulations’ stated preference for settlements is appropriate in all circumstances.

Section 5.231(a) of our current rules states that it “is the policy of the Commonwealth to encourage settlements.” Uniformly, settlements have been encouraged because they avoid the time and expense associated with litigation. Although litigation costs are a legitimate factor when considering settlements, there may be proceedings in which the public interest would be better served by a full evidentiary hearing. Moreover, the stated policy in Section 5.231(a) may serve to discourage parties from proceeding to litigation out of a perception that the Commission looks with disfavor on litigated proceedings. In your comments to the proposed rulemaking, please do include comments and evidence on the benefits and burdens created by the settlement policy and explain under what circumstances the Commission might seek a full public hearing for purposes of transparency.

August 22, 2024

KIMBERLY BARROW,
Vice Chairperson

Statement of Commissioner Kathryn L. Zerfuss

Over 17 years have passed since the Commission last revised the general provisions governing practice before the PUC. During that time, our jurisdictional responsibilities have changed considerably and the nature of administrative practice and procedure has evolved and matured. The Notice of Proposed Rulemaking (NOPR) we are considering today recognizes that important technological innovations and advancements have occurred since 2006 and proposes updates to bring efficiencies to the current procedures employed in PUC administrative hearings and proceedings.

We should always endeavor to improve efficiencies in our administrative hearing process and the NOPR takes significant steps in that direction. I am pleased that the motion before us today includes more substantive considerations. These include proposals to modernize our regulations to meet the realities and circumstances faced by the parties, particularly pro se complainants who appear on their own behalf, as well as small businesses navigating our administrative hearing process. I wholeheartedly support these critical considerations and welcome the comments and policy debates they will generate.

I emphasize the current proposal to permit “an individual consumer to be represented by an individual who holds a power of attorney over an individual during periods of disability and incapacity.” The proposal within the motion is a good starting point, but in my view, it

¹⁶ *McNeil v. Owens-Corning Fiberglas Corp.*, 545 Pa. 209, 213, 680 A.2d 1145,1147-48 (1996).

¹⁷ See *Howell v. Philadelphia Gas Works*, Docket No. C-2016-2568426, (Opinion and Order entered May 2, 2017).

¹⁸ 66 Pa.C.S. § 316. Section 316 of the Code provides, in pertinent part, that: “Whenever the commission shall make any rule, regulation, finding, determination or order, the same 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.” I concede that Section 316 of the Code governs prima facie evidence of facts found which are conclusive unless set aside and creates a presumption that prior facts are reasonable. However, that is not all that Section 316 does. Section 316 of the Code also gives conclusive effect to a final Commission order that is not appealed and in doing so, precludes a collateral attack of such order. Thus, regardless of whether res judicata/collateral estoppel applies, a complainant is barred by Code Section 316 from relitigating issues raised in a prior complaint that was dismissed with prejudice for failure to prosecute and meet the burden of proof.

¹⁹ 52 Pa. Code § 1.2(a).

²⁰ 52 Pa. Code § 1.2(d).

falls short of necessary reforms to individual representation, similar to procedures utilized by several other administrative agencies. By authorizing additional representation options for individuals, we may better facilitate the development of evidentiary records in complaint proceedings involving individual consumers. However, I am not prejudging the outcome and welcome a robust discussion. Undoubtedly, inclusion of this issue in the NOPR makes this one of the more consequential rulemakings in some time that is directly aimed at helping consumers.

I encourage all vested partners—including those organizations representing vulnerable populations such as legal services organizations, law school/pro bono clinics, and organizations representing seniors—to weigh in on this issue. It would be beneficial to hear from experienced paralegals, social workers, and other professionals (who already represent low income individuals in public benefits, unemployment, and other administrative hearings) about this proposal or other similar proposals which could better inform this NOPR on how to accomplish effective representation for individuals in Commission hearings and proceedings.

November 9, 2023

KATHRYN L. ZERFUSS,
Commissioner

Statement of Commissioner John F. Coleman, Jr.

On November 9, 2023, the Commission considered a recommendation to issue a Notice of Proposed Rulemaking regarding its procedural regulations. I voted to dissent from a Motion that modified the proposed rulemaking order. The order was subsequently tolled by the Office of Attorney General. We now consider a clarified notice of proposed rulemaking that includes changes to the proposed revisions to our regulations. These clarifications resolve some of the reasons for my dissent. However, the proposed order does retain certain substantive modifications that, in my view, fail to satisfy the Regulatory Review Act's criteria for statutory authority, necessity and clarity. These modifications include proposed changes to our interpretations of Sections 316 and 332 of the Public Utility Code, and our rules regarding legal representation in Commission proceedings.21 Therefore, I will be voting no on the proposed order.

August 22, 2024

JOHN F. COLEMAN, Jr.,
Commissioner

Fiscal Note: 57-341. No fiscal impact; recommends adoption.

Annex A

TITLE 52. PUBLIC UTILITIES

PART I. PUBLIC UTILITY COMMISSION

Subpart A. GENERAL PROVISIONS

CHAPTER 1. RULES OF ADMINISTRATIVE PRACTICE AND PROCEDURE

Subchapter A. GENERAL PROVISIONS

§ 1.3. Information and special instructions.

(a) Information as to procedures under this subpart, and instructions supplementing this subpart in special

21 Please see my dissenting statement at this docket entered on November 9, 2023.

instances, will be furnished upon [application] request to:

* * * * *

(2) In person or by [mail other than first-class] overnight delivery, certified mail or priority mail:

Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, Pennsylvania 17120

* * * * *

§ 1.4. Filing generally.

(a) Submittals, pleadings and other documents filed with the Commission should be submitted in one of the following manners:

* * * * *

(2) In person or by [mail other than first-class] overnight delivery, certified mail or priority mail:

Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, Pennsylvania 17120

* * * * *

§ 1.5. Amendment to rules.

(a) [Persons may file an] An application under §§ 5.1 and 5.11 (relating to pleadings allowed; and applications generally) requesting a general and permanent change in this subpart is permitted.

* * * * *

§ 1.6. Commission office hours.

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

§ 1.7. Sessions of the Commission.

Public meetings of the Commission ordinarily will be held in its offices in the Commonwealth Keystone Building, Harrisburg, or will be livestreamed or held over telephone. Schedules for public meetings can be obtained from the Commission Secretary or viewed on the Commission's [website] web site.

§ 1.8. Definitions.

(a) Subject to additional definitions contained in subsequent sections which are applicable to specific chapters or subchapters, the following words and terms, when used in this subpart, have the following meanings, unless the context clearly indicates otherwise:

Act—66 Pa.C.S. §§ 101—[3315] 3316 (relating to [the] Public Utility Code).

Adjudication—An order, decree, decision, determination or ruling by the Commission affecting personal or property rights, privileges, immunities, duties, liabilities or obligations of [the parties to the proceeding in which the adjudication is made] a party with the opportunity for protest, answer, complaint or other opposition pleading.

[Applicants—In proceedings involving applications for] Applicant—A party seeking permission or authorization [which] from the Commission [may

give] under the Commission's statutory or [other authority delegated to it, the parties on whose behalf the applications are made] delegated authority.

Adversarial proceeding—A proceeding initiated [by a person] to seek authority, approvals, tariff changes, enforcement, fines, remedies or other relief from the Commission which is contested by one or more [other persons] parties and which will be decided on the basis of a formal record.

Authorized agent—A [person] representative of a filing user with permission to [legally act] submit filings on behalf of the filing user.

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

Confirmation of receipt—A notification generated by the electronic filing system upon receipt of a filing.

Corporation—As defined in 66 Pa.C.S. § 102 (relating to definitions).

Electronic filing or filed electronically—Filing by means of the Commission's electronic filing system.

* * * * *

Electronic mail—[A means of dispatching or receiving] The electronic transmittal or receipt of a submittal in [relation to] a Commission matter [through electronic means].

Fax transmittal—A telephonic means of transmitting or receiving a submittal in a Commission matter that prints a hard copy facsimile of the submittal in a legible form at the recipient's telefax machine.

Filing user—A person [who has], corporation or municipal corporation registered to use the electronic filing system in accordance with the registration instructions available on the Commission's web site at [http://www.puc.state.pa.us/] http://www.puc.pa.gov/ and who has obtained a filing user ID and password.

* * * * *

Initial decision—A decision by a presiding officer [which] that becomes final unless timely exceptions are filed by a [participant] party, the Commission requests review upon its own motion, or as otherwise established by the [act] Act.

Intervenor—A person, corporation or municipal corporation intervening or petitioning to intervene as a party as provided by §§ 5.71—5.76 (relating to intervention).

* * * * *

Mediator—An individual designated to conduct a mediation.

Municipal corporation—As defined in 66 Pa.C.S. § 102.

Nonadversarial proceeding—A proceeding [initiated by a person which] that is not contested or a proceeding initiated by the Commission or [at the request of a

person] upon request to the Commission to develop regulations, policies, procedures, technical rules or interpretations of law.

* * * * *

Party—A person, corporation or municipal corporation who appears in a proceeding before the Commission.

Person—[Except as otherwise provided in this subpart or in the act, the term includes individuals, corporations, partnerships, associations, joint ventures, other business organizations, trusts, trustees, legal representatives, receivers, agencies, governmental entities, municipalities, municipal corporations or other political subdivisions] As defined in 66 Pa.C.S. § 102.

[Petitioners—Persons] *Petitioner*—A person, corporation or municipal corporation seeking relief [not otherwise designated in this section] or other action from the Commission under the Commission's statutory or delegated authority.

* * * * *

Presiding officer—A [person] Commission employee designated by the Commission to preside over a matter.

Principal—[A party with] An individual within a partnership, association, corporation or municipal corporation that has the requisite power to authorize [its] or direct counsel for the partnership, association, corporation or municipal corporation to enter into stipulations or settlement agreements on behalf of the partnership, association, corporation or municipal corporation.

* * * * *

[Protestants—Persons] *Protestant*—A party objecting on the ground of private or public interest to the approval of an application or other matter which the Commission may have under consideration.

Qualified document—[A document that is listed in the categories of documents that are permitted to be filed electronically] A document authorized for filing with the Commission's electronic filing system in accordance with the instructions on the Commission's web site at [http://www.puc.state.pa.us/] http://www.puc.pa.gov/ and that complies with the filing requirements and restrictions in [§ 1.32(b) () this chapter relating to filing specifications[]].

Rate proceeding—An [on the record] on-the-record proceeding brought by or before the Commission, the purpose of which is to determine the justness and reasonableness of a proposed or present rate for utility service, including, but not limited to, proceedings initiated under [sections 1307, 1308, 1310 and 1312] Chapter 13 of the [act] Act.

Recommended decision—[An opinion and order submitted for the approval of the Commission by the presiding officer] A decision authored by a presiding officer(s) that requires Commission approval to become effective.

[Respondents—Persons] *Respondent*—A party subject to [a statute or other delegated authority administered by the Commission,] Commission jurisdiction who [are] is required to respond to an order

or notice issued **or served** by the Commission [**instituting a proceeding or investigation on its own initiative or otherwise**].

Secretary—The Secretary of the Commission [, **who is the Commission officer with whom pleadings and other documents are filed and by whom official records are kept**].

Staff—The Commission’s [**Office of Trial Staff**] **Bureau of Investigation and Enforcement** prosecutor or Law Bureau staff counsel [**and**] **or** other Commission employees participating in a proceeding before the agency.

Statutory advocate—The [**Office of Trial Staff, the**] Office of Consumer Advocate [**and the**], Office of Small Business Advocate **and the Commission’s Bureau of Investigation and Enforcement**.

Submittal—An application, amendment, exhibit or similar document [**involving matters filed in an adversarial or nonadversarial**] **that complies with the filing requirements and restrictions in this chapter and involves matters filed or served in a Commission proceeding.**

[**Telefacsimile transmittal**—A means of dispatching or receiving a submittal in a Commission matter through electronic means that prints a hard copy facsimile of a document in a legible form at the recipient’s machine.]

Tentative [**decision**] **order**—An order of the Commission [**which becomes final unless exceptions are filed by a party within the time period specified by statute or as set forth in**] **that may become final without further action by the Commission and to which a party may file comments within the time specified by** the order.

Trade secret—A private formula, pattern, device, cost study or compilation of information [**which is used in a business and**] **used in business** which, if disclosed, would provide [**the opportunity to obtain an advantage over competitors who**] **opportunity for competitive advantage or economic harm to entities that, but for disclosure,** do not know or use it.

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Writing or written—Applies to documents [**filed in paper form and documents filed electronically**] **whether in hard copy or media.**

* * * * *

Subchapter B. TIME

§ 1.13. Issuance of Commission orders.

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

(b) At the time a decision of a presiding officer becomes effective as an adjudication of the Commission in the absence of Commission review as provided for in section 332(h) of the [**act**] **Act** (relating to procedures in

general), the Secretary will issue and serve upon the parties of record an appropriate notice of the date the adjudication became effective as a Commission order.

(c) The date of entry of an order [**which is**] subject to review by Commonwealth Court is governed by Pa.R.A.P. No. 108. The date of issuance of any other order shall be deemed to be the date of entry for the purposes of computing the time for appeal under an applicable statute relating to judicial review of Commission action.

* * * * *

§ 1.15. Extensions of time and continuances.

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

(1) Except as otherwise provided by statute, whenever under this title or by order **or notice** of the Commission, [**or notice given thereunder,**] an act is required or allowed to be done at or within a specified time, the time fixed or the period of time prescribed may, by the Commission, the presiding officer or other authorized [**person**] **Commission employee**, for good cause be extended upon motion made before expiration of the period originally prescribed or as previously extended. Upon motion made after the expiration of the specified period, the act may be permitted to be done where reasonable grounds are shown for the failure to act.

* * * * *

(b) Except as otherwise provided by statute, requests for continuance of hearings or for extension of time in which to perform an act required or allowed to be done at or within a specified time by this title or by order of the Commission or the presiding officer, shall be by motion in writing, timely filed with the Commission, stating the facts on which the application rests, except that during the course of a proceeding, the requests may be made by oral motion in the hearing before the Commission or the presiding officer. Only for good cause shown will requests for continuance be considered. The requests for a continuance should be filed at least 5 days prior to the hearing date **to the extent possible.**

* * * * *

§ 1.16. Issuance of decisions by presiding officers.

* * * * *

(b) [**The Secretary will mail a decision to parties who are not filing users or have not agreed to receive electronic service. The decision will be deposited in the United States mail on the same date that the decision is posted on the Commission’s electronic filing system. The date of the issuance will be clearly indicated on each paper copy of the decision that is mailed to parties.**] **The Secretary will mail a copy of the decision as prescribed in section 703(e) of the Act (relating to fixing of hearings).**

(c) Parties who are filing users and have agreed to receive electronic service will be notified electronically that the decision has been posted on the Commission’s electronic filing system and provided with a link to the decision.

Subchapter C. REPRESENTATION BEFORE THE COMMISSION

§ 1.21. Appearance in nonadversarial or informal proceedings.

(a) Individuals may represent themselves **in a nonadversarial Commission proceeding or an informal Commission proceeding.**

(b) [Except as provided in subsection (a), persons in adversarial proceedings shall be represented in accordance with § 1.22 (relating to appearance by attorney or legal intern). For purposes of this section, any request for a general rate increase under § 1307(f) or § 1308(d) of the act (relating to sliding scale of rates; adjustments; and voluntary changes in rates) shall be considered to be an adversarial proceeding] [Reserved].

(c) In nonadversarial proceedings, [persons] a party may be represented in the following manner:

- (1) A partner may represent the partnership.
- (2) A bona fide officer of a corporation, trust or association may represent the corporation, trust or association.
- (3) An officer or employee of an agency, political subdivision or government entity may represent the agency, political subdivision or government entity.

(4) A non-attorney third-party representative holding the power of attorney of an individual consumer may represent that individual during periods of disability or incapacity, or both.

(d) In informal proceedings brought under Chapters 56 and 64 (relating to standards and billing practices for residential utility service; and standards and billing practices for residential telephone service) and Chapter 14 of the [act] Act (relating to standards and billing practices for residential utility service; and standards and billing practices for residential telephone service), parties may be represented by one of the following:

* * * * *

§ 1.22. Appearance [by attorney or certified legal intern] in adversarial Commission proceedings.

(a) [Subject to § 1.21(a) (relating to appearance), an attorney at law admitted to practice before the Supreme Court of Pennsylvania shall represent persons in Commission proceedings] **Individuals may represent themselves in an adversarial Commission proceeding. A non-attorney third-party representative holding the power of attorney of an individual consumer may represent that individual during periods of disability or incapacity, or both. An authorized corporate official may represent a small business or partnership in an adversarial Commission proceeding.**

(b) [An attorney not licensed in this Commonwealth may appear before the Commission in accordance with the Pennsylvania Bar Admission Rules] **Except as provided in subsection (a), persons, corporations and municipal corporations shall be represented by an attorney at law admitted to practice before the Supreme Court of Pennsylvania or by a certified legal intern in adversarial Commission proceedings. For purposes of this section, any request for a general rate increase under sections 1307(f) or 1308(d) of the Act (relating to sliding scale of rates; adjustments; and voluntary changes in rates) shall be considered to be an adversarial Commission proceeding.**

(c) [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) may appear in a Commission proceeding consistent with Pa.B.A.R. No. 322 (relating to autho-

alized activities of certified legal interns)] Subsection (b) supersedes 1 Pa. Code § 31.22 (relating to appearance by attorney). An attorney not licensed in this Commonwealth may appear before the Commission in accordance with the Pennsylvania Bar Admission Rules.

* * * * *

§ 1.23. Other representation prohibited at hearings.

(a) [Persons] Parties 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 or informal proceedings**; and appearance [by attorney or certified legal intern] **in adversarial Commission proceedings**).

* * * * *

§ 1.24. Notice of appearance or withdrawal.

(a) *Individuals.* An individual appearing without legal representation before the Commission or a presiding officer shall file with the Secretary [an] **a mailing address for service of a notice or other written [communications unless the individual is an eFiling user or has agreed to electronic service of documents.** A change in **the individual's mailing address** which occurs during the course of the proceeding [shall] **must** be reported to the Secretary promptly.

(b) *Attorneys.*

* * * * *

(2) *Appearance in all other instances.* An attorney shall file with the Secretary a written notice of appearance.

(i) *Content of notice.* Initial pleadings, entries of appearance and notices of withdrawal must include:

(A) The attorney's name, mailing address [and] **or electronic mailing address, if [available] a filing user.**

(B) Pennsylvania attorney identification number or, if [not licensed in this Commonwealth] **appearing pro hac vice**, identification of the **jurisdiction or jurisdictions** in which the attorney is licensed to practice law.

* * * * *

(D) The name and address of the [person] **party** represented.

(ii) *Filing.*

(A) *Appearance.* The **attorney must serve the** notice of appearance [shall be served] on the parties to the proceeding, and a certificate of service shall be filed with the Secretary.

* * * * *

(3) *Withdrawal.* An attorney may withdraw an appearance by filing a written notice of withdrawal with the Secretary [. **The notice shall be served] and serving the notice** on the parties and **on** the presiding officer [,] if one has been designated.

* * * * *

§ 1.27. Suspension and disbarment.

(a) The Commission may deny, temporarily or permanently, the privilege of appearing or practicing before it in any way to [a person] **an individual** who is found by the Commission, after notice and opportunity for hearing in the matter, to have done one or more of the following:

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Subchapter D. DOCUMENTARY FILINGS

§ 1.31. Requirements for documentary filings.

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(c) Identifying information. Documents filed with the Commission in a proceeding must clearly contain the following information:

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(3) Within the title of the document, the name of the person, corporation or municipal corporation on whose behalf the filing is made. If more than one person is involved, only a single name is necessary.

* * * * *

§ 1.32. Filing specifications.

(a) Paper filings. A paper filing made with the Commission must be:

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

(2) Printed. Printed documents must be at least [10-point type] 12-point font with 10-point font allowed for footnotes on unglazed paper, cut or folded so as not to exceed 8 1/2 inches wide by 11 inches long, with [inside margin] all margins at least 1 inch wide, and with [double-ledged text and single-ledged, indented quotations] double-spaced text except that quotations in excess of a few lines shall be single spaced and indented on both the left and right margins.

* * * * *

(b) Electronic filings.

* * * * *

(2) Requirements. An electronic filing made with the Commission must:

(i) Comply with the paper filing requirements in subsection (a) regarding margins, spacing and type size.

(ii) Be a qualified document [that is] listed in the categories of documents [that the Commission, after notice and opportunity to be heard, has designated as being permitted to be filed electronically] the Commission has designated as permissible electronic filings.

(iii) Be in PDF format so that the document, and when feasible, its attachments, shall be capable of being printed and copied without restriction, and may not require a password to view the contents.

(iv) Be filed in accordance with the instructions made available on the Commission's web site at [http://www.puc.state.pa.us/] http://www.puc.pa.gov/.

(v) Be filed and served as a searchable PDF. Additionally, filings must be provided to Commission staff in Microsoft-compatible format when that is feasible.

(3) Size restriction. A filing, including attachments, that exceeds 10 megabytes may not be filed electronically.

* * * * *

§ 1.33. Incorporation by reference.

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(b) Documents on file with the Commission for more than 20 years may not be incorporated by reference in a current document unless the [person filing the current document first ascertains that the earlier] document continues to be readily available in the active records of the Commission.

§ 1.35. Execution.

* * * * *

(b) Signatory.

(1) A pleading, submittal or other document filed with the Commission must be signed by one of the following:

(i) The [person] individual filing the documents, and severally if there is more than one [person] individual so filing.

* * * * *

(c) Effect.

* * * * *

(2) If a document is signed in violation of this subsection, the presiding officer or the Commission, upon motion or upon its own initiative, may impose upon the individual who signed it, a represented party, or both, an appropriate sanction, which may include striking the document, dismissal of the proceeding or the imposition of civil penalties under section 3301 of the [act] Act (relating to civil penalties for violations).

* * * * *

§ 1.36. Verification.

(a) Applications, petitions, formal complaints, motions and answers thereto containing an averment of fact not appearing of record in the action or containing a denial of fact must be personally verified by a party thereto or by an authorized officer or other authorized employee of the party if a corporation or association. Verification means a signed written statement of fact supported by oath or affirmation or made subject to the penalties of 18 Pa.C.S. § 4904 (relating to unsworn falsification to authorities). When a verification is filed electronically, the verification shall be executed by a filing user, or if the verification is signed by an individual who is not a filing user, a filing user may file the verification electronically by scanning the original verification and submitting it as an attachment to a filing. [When a verification is signed by an individual who is not a filing user, the original verification shall be filed in paper form no later than 3 business days after the electronic filing is made. The filing date for the verification in paper form will be determined in accordance with § 1.11(a)(1)—(3) (relating to date of filing).] The docket number for the filing must be clearly indicated on the original verification. When verification is permitted, notarization is not necessary. When a party files a petition with the Secretary's Bureau and that petition contains no averment or denial of fact not appearing of record in the underlying action, the petitioner must include a cover letter with a statement to that effect so that the Secretary's Bureau staff is aware that the filer has intentionally excluded a verification.

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§ 1.37. Number of copies.

(a) *Paper filings.* When a pleading, submittal or document other than correspondence is submitted in hard copy, an original and the cover letter shall be furnished to the Commission at the time of filing, except when:

* * * * *

(3) A filing, including attachments, exceeds 10 megabytes, in addition to filing the requisite number of hard copies in accordance with this subpart, a CD-ROM [or], DVD or other electronic storage device, such as a USB flash drive, containing the filing and an index to the filing shall be filed with the Commission.

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Subchapter E. FEES

§ 1.43. Schedule of fees payable to the Commission.

(a) *Fees for services.* The fees for services rendered by the Commission, **which are non-refundable**, are as follows:

<i>Description</i>	<i>Fee (in dollars)</i>
[Initial filing of Form A for intangible transition property notice .	\$550
Subsequent filing of notice changes in intangible transition property notice on Form B.....	\$350]
Chapter 74 public information requests relating to perfection of security interests .	\$10 plus standard per page copying costs
Copies of papers, testimony, [microfiche,] records and computer printouts per sheet	\$0.75
[Copies of microfiche per sheet	\$1.50
Copies of microfilm per roll.....	\$80]
Certifying copy of a paper, testimony or record	\$5
Filing each securities certificate	\$350
Filing each abbreviated securities certificate.....	\$25
Filing each application for a certificate, permit or license[, or amendment of a certificate, permit or license]......	\$350
<u>Filing each application for amendment of a certificate, permit or license.....</u>	<u>\$350</u>
<u>Filing each application for abandonment of a certificate, permit or license.....</u>	<u>\$350</u>
<u>Filing an application for a certificate of public convenience for telecommunications service.....</u>	<u>\$250</u>
Filing an application for a certificate of public convenience for a motor common carrier of property or a group and party carrier of more than 15 passengers	\$100

<i>Description</i>	<i>Fee (in dollars)</i>
Filing an application for emergency temporary authority as common carrier of passengers or household goods in use, contract carrier of passengers or household goods in use, or broker or for an extension thereof.....	\$100
Filing an application for temporary authority as common carrier of passengers or household goods in use, contract carrier of passengers or household goods in use, or broker	\$100
[Filing an application for a certificate to discontinue intrastate common carrier passenger or household goods in use service	\$10]
<u>Filing an application to be a pipeline operator.....</u>	<u>\$250</u>
<u>Filing an application to be a conservation service provider.....</u>	<u>\$125</u>
<u>Filing an application to be a utility valuation expert.....</u>	<u>\$125</u>

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Subchapter F. SERVICE OF DOCUMENTS

§ 1.51. Instructions for service, notice and protest.

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(b) *Service list for parties.* The Commission will make available to filing users on the electronic filing system a service list for each docket in which they are a party that contains the following provisions:

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(3) The e-mail addresses of parties who have agreed to receive electronic service.

(c) Exception to service list availability. Where an individual party is a victim 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, the address of the victim will be redacted on the service list.

§ 1.53. Service by the Commission.

(a) *Applicability.* This section applies to service of an order, notice or other document originating with the Commission and other documents designated by the Commission, except when the Commission specifically requires a different form of service. **A person is not required to register to use the electronic filing system to be a party in a Commission proceeding. A person does not have to register for the electronic filing system to agree to electronic service. A person that is not an electronic filing user or has not agreed to electronic service of documents shall be served in paper form in accordance with subsection (b)(1) and (2).**

(b) *Forms of service.*

(1) *First class mail.* Service may be made by mailing a copy [**thereof to the person to be served, addressed to the person designated in the initial pleading, submittal or notice of appearance at the person's residence, principal office or place of business]** of

the document to the party as set forth in § 1.24 (relating to notice of appearance or withdrawal).

* * * * *

(3) *Electronic.* Service may be made electronically to [filing users who have] a party who has agreed to receive electronic service[. Filing users will be sent an electronic mail notice informing them that a document was posted on the Commission’s electronic filing system and providing a link to the document on the same day the document is posted] except when the Act specifically requires a different form of service.

(i) A party that is a filing user has agreed to the service of Commission documents exclusively by electronic means. The filing user will be sent an electronic mail notice informing them that the served document was posted and providing a link to the document on the same day the document is posted on the Commission’s web site.

(ii) Parties may agree to electronic service in a Commission proceeding without being required to become a filing user.

(c) *Registered or certified mail.* [Service of a petition under § 3.391 (relating to arbitration of claims for billing and collecting services), and service of a complaint under section 702 of the act (relating to service of complaint on parties) must be by registered or certified mail, return receipt requested.] Except as otherwise provided by the Act or another law, the following documents must be served by registered or certified mail, return receipt requested:

(1) A Commission order under section 703(e) of the Act (relating to fixing of hearings).

(2) A complaint under section 702 of the Act (relating to service of complaints on parties). Service of complaints in all hearings, investigations and proceedings pending before the Commission may be made by e-mail upon agreement by each party.

(3) A petition under § 3.391 (relating to arbitration of claims for billing and collecting services).

(d) *Change of address.* It is the duty of a party to apprise the Commission promptly of changes to the party’s current address.

* * * * *

§ 1.54. Service by a party.

(a) Pleadings, submittals, briefs and other documents, filed in proceedings pending before the Commission shall be served upon parties in the proceeding and upon the presiding officer, if one has been assigned. A person will not be required to register for the electronic filing system to be a party in a Commission proceeding. A person that does not register to use the electronic filing system shall file and serve documents in paper form.

(b) Service may be made by one of the following methods:

(1) *First class mail.* [Service may be made by mailing the requisite number of copies to each party as provided in § 1.59 (relating to number of copies to be served), properly addressed with postage prepaid.] If a party to the proceeding has not

agreed to electronic service of documents, the other parties in the proceeding shall serve that party with the requisite number of copies of the filing as provided in § 1.59 (relating to number of copies to be served), properly addressed with postage prepaid.

* * * * *

(3) *Electronic.*

(i) *Documents not filed with the Commission.* Service may be made electronically **only** to those parties who have agreed to accept service in that manner.

(ii) *Documents filed with the Commission.* Service may be made electronically [to filing users] to all parties in the proceeding who have agreed to [receive] electronic service[. Filing users who have agreed to receive electronic service shall be served with an electronic mail notice stating that a document was filed on the electronic filing system. The notice constitutes service.] of filings. If the party is a filing user, they shall be served an electronic mail notice stating that a document was filed on the electronic filing system. A party that is a non-filing user but who has agreed to the electronic service of filings shall file a paper copy of a notice with the Commission stating that a document was served on the other party electronically. In both cases, the notice shall act as evidence of service of the filing.

(A) The electronic mail notice must contain the following provisions:

* * * * *

(c) In a proceeding in which only some of the parties participate, the parties, with the authorization of the presiding officer, may limit the service of documents to parties [and persons or individuals] which state on the record or request in writing that they wish to be served.

* * * * *

§ 1.56. Date of service.

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(b) Unless otherwise prescribed by the Commission or presiding officer, whenever a party is required or permitted to do an act within a prescribed period after service of a document upon the party [and the document is served] by first-class mail by the United States Postal Service, 3 days shall be added to the prescribed period.

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§ 1.59. Number of copies to be served.

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(b) The following number of copies of documents shall be served on other parties in a proceeding **as deemed appropriate by the presiding officer:**

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Subchapter G. MATTERS BEFORE OTHER TRIBUNALS

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

(a) When matters over which the Commission may have jurisdiction under the [act] **Act** are raised in proceedings filed with a court or other regulatory body by [a person] **an entity** subject to the [act] **Act**, either an appropriate application or petition, or notice of the proceedings and copies of the material pleadings filed therein, shall be filed simultaneously with the Commis-

sion so that it may have sufficient notice and time for proper consideration of the matters within its jurisdiction.

(b) Upon filing of a petition for bankruptcy under the United States Bankruptcy Code (11 U.S.C.) by a jurisdictional **public** utility or licensee or by a parent, affiliate, or direct or indirect subsidiary of a **public** utility or licensee, the **public** utility or licensee shall file a copy of the petition with the Commission, and serve the [**Office of Trial Staff**] **Commission's Bureau of Investigation and Enforcement**, the Office of Consumer Advocate and the Office of Small Business Advocate.

* * * * *

(d) If the reorganization plan submitted under subsection (c) contemplates the abandonment of service, the submittal must include an application under Chapter 11 of the [**act**] **Act** (relating to certificates of public convenience). If a licensee's reorganization plan includes the abandonment of the license, the submittal must include the appropriate pleading as required by the [**act**] **Act**.

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Subchapter H. PUBLIC ACCESS TO COMMISSION RECORDS

§ 1.71. Statement of objectives.

The Commission's records maintenance system is intended to provide for the greatest degree of public access to Commission documents that is consistent with the exercise of the functions of the Commission under the [**act**] **Act** and other applicable laws. The Commission's system is designed to meet that objective and to give public notice of which classes of documents are available for inspection. The system provides a predictable standard, which nevertheless permits the Commission to take cognizance of the circumstances of individual requests for documents which may militate in favor of or against disclosure.

§ 1.72. Content and review of formal case files.

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(d) [**Procedures. Procedures for review of correspondence and report folders will conform with the following:**

(1) **Correspondence folders. Review procedures for correspondence folders will be as follows:**

(i) A person desiring access to a correspondence folder of a formal case may request file room personnel for a review of the file to determine which material contained therein may be released for inspection.

(ii) The review will be made and the requestor notified within 30 days.

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

(iv) A 30-day period applies to the second request for review.

(2) **Report folders. Review procedures for report folders will be as follows:**

(i) A person may request file room personnel for a review of particular documents or for a specifically defined portion of the report folder to determine which, if any, material contained in the folder may be released for inspection.

(ii) The review, except for good cause, will be made and the requestor notified within 30 days] **[Reserved]**.

§ 1.73. Fiscal records.

* * * * *

(b) No fiscal record, nor unseverable part thereof, which contains material exempted from the disclosure requirements provided in the [**act of June 21, 1957 (P.L. 390, No. 212) (65 P.S. §§ 66.1—66.4)** or which otherwise presents a substantial need for nondisclosure] **the Right-to-Know Law (65 P.S. §§ 67.101—67.3104)**, will be available for public inspection.

* * * * *

§ 1.75. [**Review of staff determination**] **[Reserved]**.

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

§ 1.77. [**Extensions of time to review folders**] **[Reserved]**.

[**For good cause the Commission may extend the time limits applicable to requests for access to documents. In the case of documents displaying no need for confidentiality, or, conversely, documents containing information which the Commission considers improper for public inspection, the Commission may direct the appropriate treatment thereof, notwithstanding contrary provisions in §§ 1.71—1.76.**]

Subchapter L. UNOFFICIAL STATEMENTS AND OPINIONS

§ 1.96. Unofficial statements and opinions by Commission personnel.

Statements contained in formal opinions of the Commission or in decisions of a presiding officer which are not necessary in resolving the case, and informal opinions, whether oral or written, expressed by Commissioners, presiding officers, legal counsel, [**employees**] **employees** or representatives of the Commission and reports drafted by Commission bureaus are only considered as aids to the public, do not have the force and effect of law or legal determinations, and are not binding upon the Commonwealth or the Commission.

CHAPTER 3. SPECIAL PROVISIONS

**Subchapter A. SPECIAL COMMISSION ACTIONS
EMERGENCY RELIEF**

§ 3.1. Definitions.

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

Emergency—A situation which presents a clear and present danger to life **or the public interest** or property or which is uncontested and requires action prior to the next scheduled public meeting.

Emergency order—An ex parte order issued by a single Commissioner, the Commission, the Commission's [**Director of Operations**] **Executive Director** or the Commission's Secretary in response to an emergency.

* * * * *

EX PARTE EMERGENCY ORDERS

§ 3.2. Petitions for issuance of emergency orders.

(a) To the extent practicable, a petition for emergency order must be in the form of a petition as set forth in § 5.41 (relating to petitions generally) and [shall] must be served on the persons directly affected by the application and also on the statutory advocates.

* * * * *

§ 3.3. Disposition of ex parte emergency orders.

(a) Authority. The Chairperson, a Commissioner, the Commission's [Director of Operations] Executive Director and the Commission's Secretary have the authority to issue an emergency order.

(b) Form. An emergency order will be issued in writing and filed with the Secretary with copies to Commissioners [and the Director of Operations] and the Executive Director. The emergency order will be electronically served on the statutory advocates.

(c) Ratification. An emergency order or the denial of a petition for emergency order issued by a single Commissioner or the [Director of Operations] Executive Director or the Commission's Secretary will be ratified, modified or rescinded by the Commission at the next scheduled public meeting after issuance of the order.

(d) Service. An emergency order or the denial of a petition for emergency order will be served by the Secretary as expeditiously as practicable upon the persons directly affected by the decision and the statutory advocates with copies to the Commissioners and the [Director of Operations] Executive Director.

§ 3.4. Hearings following issuance of emergency orders.

* * * * *

(b) The petition for expedited hearing shall be filed with the Secretary and a copy served upon the Chief Administrative Law Judge, the statutory advocates and all parties to the underlying proceeding.

* * * * *

(d) If the emergency order is issued by a single Commissioner or the [Director of Operations] Executive Director or by the Commission's Secretary, the presiding officer will have the authority to stay the effect of the order until the next scheduled public meeting.

* * * * *

INTERIM EMERGENCY RELIEF

§ 3.6. Petitions for interim emergency orders.

(a) A party may submit a petition for an interim emergency order during the course of a proceeding. The petition shall be filed with the Secretary and served contemporaneously on the Chief Administrative Law Judge, on the statutory advocates and on the parties.

* * * * *

Subchapter B. INFORMAL PROCEEDINGS GENERALLY APPLICATIONS

§ 3.101. Municipal contracts.

No formal application need accompany municipal contracts filed under section 507 of the [act] Act (relating to contracts between public utilities and municipalities), but an executed copy or [reproduction] reproduced

copy of the contract [shall] must be filed with the Commission at least 30 days prior to the effective date of the contract.

INFORMAL COMPLAINTS AND INVESTIGATIONS

§ 3.111. Form and content of informal complaints.

* * * * *

(b) Informal complaints [shall] as defined in subsection (a) must be submitted to the Secretary for referral to the appropriate bureau, addressed to the following: Pennsylvania Public Utility Commission, [Post Office Box 3265] 400 North Street, Harrisburg, Pennsylvania [17105-3265] 17120.

* * * * *

§ 3.113. Resolution of informal investigations.

* * * * *

(b) Under 65 Pa.C.S. Chapter 7 (relating to Sunshine Act), the Commission's official actions resolving informal investigations will be as follows:

(1) When the Commission staff determines that no violation or potential violation of the [act] Act has occurred, the informal investigation will be terminated by letter served on all parties involved.

* * * * *

(3) When the utility, or other [person] party subject to the Commission's jurisdiction, has committed to undertake action to address or remedy a violation or potential violation of the act or to resolve another perceived deficiency at the utility, in the form of a settlement with the Commission staff or other resolution of the matter, the Commission's consideration of the settlement or approval of the utility's action will occur at public meeting. Except for staff reports and other documents covered by a specific legal privilege, documents relied upon by the Commission in reaching its determination shall be made part of the public record. Before the Commission makes a final decision to adopt the settlement or to approve the utility's action, the Commission will provide other potentially affected [persons] parties with the opportunity to submit exceptions thereon or to take other action provided for under law.

Subchapter E. MOTOR TRANSPORTATION PROCEEDINGS

§ 3.381. Applications for transportation of property, household goods in use and persons.

(a) Applications.

* * * * *

(3) Filing and verification. An original application shall be filed by the applicant, or an authorized officer or representative, with the Secretary of the Pennsylvania Public Utility Commission, [Post Office Box 3265] 400 North Street, Harrisburg, Pennsylvania [17105-3265] 17120. The application shall be verified under § 1.36 (relating to verification). An application by a common carrier for a certificate of public convenience authorizing the transportation of passengers or household goods in use may be accompanied by verified statements of the applicant and supporting party or firm, as set forth in subsection (c)(1)(iii)(A)(II) and (III). An application by a contract carrier for a permit authorizing the transportation of passengers or household goods in use may be accompanied by a verified statement of the applicant, as set forth in subsection (c)(1)(iii)(A)(II) and a copy of the

bilateral contract or statement of the shipper that it will enter into a bilateral contract with the carrier.

* * * * *

Subchapter F. ARBITRATION OF DISPUTES

§ 3.391. Arbitration of claims for billing and collecting services.

(a) Each petition for arbitration of a dispute under [section 4 of the act of April 14, 1949 (P.L. 482, No. 98) (53 P.S. § 2264)] section 505 of the Water Services Act (53 P.S. § 3102.505) shall set forth the following:

* * * * *

Subchapter H. FORMS

§ 3.551. Official forms.

Forms for applications, petitions, complaints and other matters are available on the Commission's [website] web site or from the Secretary of the Commission, [P.O. Box 3265] 400 North Street, Harrisburg, Pennsylvania, [17105-3265] 17120; (717) 772-7777.

CHAPTER 5. FORMAL PROCEEDINGS

Subchapter A. PLEADINGS AND OTHER PRELIMINARY MATTERS

APPLICATIONS

§ 5.12. Contents of applications.

(a) Applications must conform to this section unless a form or other specific requirements are provided in Chapter 3 (relating to special provisions). Applications [must :] must:

* * * * *

(4) Set forth, in the order indicated, the [following-unless] following unless otherwise provided by this chapter or in Chapter 3 for the specific type of application involved:

* * * * *

(iii) The name, title, mailing address, telephone number and electronic mail address, if available, of the person to whom correspondence or communication in regard to the application is to be addressed. [The Commission will serve, when required, notices, orders and other papers upon the person named, and service will be deemed to be service upon the applicant.]

(5) Be served upon the statutory advocates.

(a.1) The Commission will serve, when required, notices, orders and other papers on the person named and on the statutory advocates, and service will be deemed to be service on the applicant.

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

§ 5.13. Applications for construction or alteration of crossings.

* * * * *

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

§ 5.14. Applications requiring notice.

(a) *General rule.* Notice of applications to the Commission for authority under the [act] Act must be published in the *Pennsylvania Bulletin* and as may otherwise be required by the Commission. The following list of such applications for authority is for informational purposes only, and any omission of a relevant application does not eliminate or otherwise affect the requirement of its publication in the Pennsylvania Bulletin or as may be otherwise required by the Commission.

(1) To initiate utility service to the public, including any of the following:

(i) Electric.

(ii) Gas.

(iii) Telephone.

(iv) Water.

(v) Wastewater.

(vi) Pipeline.

(vii) Radio-telephone common carrier service.

(viii) Steam.

(ix) Rail service.

(x) Common carrier service by motor vehicle, except as provided for in § 3.381(b) (relating to applications for transportation of property, household goods in use and persons).

(2) To initiate, in a different nature or to a different territory than is currently authorized, utility service to the public, including any of the following:

(i) Electric.

(ii) Gas.

(iii) Telephone.

(iv) Water.

(v) Wastewater.

(vi) Pipeline.

(vii) Radio-telephone common carrier service.

(viii) Steam.

(ix) Rail Service.

(x) Common carrier service by motor vehicle, except as provided for in § 3.381(b).

(3) To abandon, in whole or in part, utility service to the public, including any of the following:

(i) Electric.

(ii) Gas.

(iii) Telephone.

(iv) Water.

(v) Wastewater.

(vi) Pipeline.

(vii) Radio-telephone common carrier service.

(viii) Steam.

(ix) Rail Service.

(x) Common carrier service by motor vehicle, except as provided for in § 3.381(b).

(4) To acquire or transfer tangible or intangible utility property through sale, merger, consolidation, lease or transfer of stock.

(5) To acquire 5% or more of the voting stock of another corporation.

(6) To secure exemption under section 619 of the Pennsylvania Municipalities Planning Code (53 P.S. § 10619).

(b) *Supplemental requirements.* The Secretary may require additional publication or notification in one or more of the following ways:

* * * * *

(d) [*Publication of application.* Except as set forth in §§ 3.361—3.363, 3.501 and 57.71, 57.72 and 57.74—57.77 as relating to the 60-day protest period, or as otherwise provided by the Secretary, application to the Commission for the following types of authority will be published in the *Pennsylvania Bulletin* and, as directed by the Secretary, in a newspaper of general circulation serving the geographical territory affected by the application and shall be subject to a 15-day protest period.

(1) To initiate fixed utility service to the public, including the following:

- (i) Electric.
- (ii) Gas.
- (iii) Telephone.
- (iv) Water.
- (v) Wastewater.
- (vi) Pipeline.
- (vii) Radio-telephone common carrier service.

(2) To initiate, in a different nature or to a different territory than is currently authorized, fixed utility service to the public, including the following:

- (i) Electric.
- (ii) Gas.
- (iii) Telephone.
- (iv) Water.
- (v) Wastewater.
- (vi) Pipeline.
- (vii) Radio-telephone common carrier service.

(3) To abandon, in whole or in part, fixed utility service to the public, including to the following:

- (i) Electric.
- (ii) Gas.
- (iii) Telephone.
- (iv) Water.
- (v) Wastewater.
- (vi) Pipeline.
- (vii) Radio-telephone common carrier service.

(4) To initiate rail utility service to the public.

(5) To initiate, in a different nature or to a different territory than is currently authorized, rail utility service to the public.

(6) To abandon, in whole or in part, rail utility service to the public.

(7) To acquire or transfer tangible or intangible utility property through sale, merger, consolidation, lease or transfer of stock.

(8) To acquire 5% or more of the voting stock of another corporation.

(9) To secure exemption under section 619 of the Pennsylvania Municipalities Planning Code (53 P.S. § 10619).

(10) To construct, alter or abandon, in whole or in part, or to change the status of a rail utility agency station or team track] [Reserved].

FORMAL COMPLAINTS

§ 5.21. Formal complaints generally.

* * * * *

(c) A copy of the complaint will be served by the Commission, by certified mail, upon the respondent unless they are a filing user. The Commission may serve a copy of the complaint by e-mail upon agreement by each party, under 66 Pa.C.S. § 702 (relating to service of complaints on parties). If the complaint proposes to change an existing or proposed tariff rate of a fixed public utility subject to the jurisdiction of the Commission, a copy of the complaint will be served by the Commission on the [Office of Trial Staff] Bureau of Investigation and Enforcement, Office of Consumer Advocate and Office of Small Business Advocate.

(d) The filing of a formal [compliant] complaint entitles the complainant to a formal hearing before the Commission except that the Commission may dismiss any complaint without a hearing if, in its opinion, a hearing is not necessary in the public interest. Motions may be filed in accordance with §§ 5.101 and 5.102 (referring to preliminary objections; and motions for summary judgment and judgment on the pleadings).

* * * * *

§ 5.22. Content of formal complaint.

(a) A formal complaint must set forth the following:

(1) The name, mailing address, telephone number, [telefacsimile] fax number and electronic mailing address, if applicable, of the complainant.

(2) If the complainant is represented by an attorney, the name, mailing address, telephone number, [telefacsimile] fax number and Pennsylvania Supreme Court identification number of the attorney and, if available, the electronic mailing address.

* * * * *

§ 5.24. Satisfaction of formal complaints.

* * * * *

(c) In the case of certification of satisfaction under subsection (b), the respondent shall simultaneously serve a copy of the respondent's certified writing, including a statement informing the complainant of the complainant's right to object in writing within 10 days, upon the complainant. [Unless] In a case where there is only one respondent, unless the complainant objects, in writing, to the certification within 10 days of its filing, the complaint docket will be marked closed. In a case involving two or more respondents, the docket will not be marked closed until the filing of certified statements or certificates of satisfaction resolving all claims against all respondents.

* * * * *

§ 5.31. Staff-initiated complaints.

* * * * *

(b) A Commission bureau filing a complaint under this section involving a fixed utility or licensee will provide a copy to the [Office of Trial Staff] Bureau of Investigation and Enforcement, the Chief Counsel, the Office of Consumer Advocate, and the Office of Small Business Advocate.

* * * * *

PETITIONS

§ 5.41. Petitions generally.

(a) General requirements. Petitions for relief under the [act] Act or other statute that the Commission administers, must be in writing, state clearly and concisely the interest of the petitioner in the subject matter, the facts and law relied upon, and the relief sought. A document, the material part thereof or a copy must be attached when a petition is based upon the document, the material part thereof or a copy. If the document, the material part thereof or a copy is not accessible, the petition must set forth that the document, the material part thereof or the copy is not accessible and the reason, and set forth the substance of the document or material part thereof. Petitions for relief must comply with § 1.51 (relating to instructions for service, notice and protest).

(b) Service. A copy of the petition shall be served on all persons directly affected and on other parties whom petitioner believes will be affected by the petition. Copies of the petition shall be served upon the [Office of Trial Staff] Bureau of Investigation and Enforcement, the Office of Consumer Advocate and the Office of Small Business Advocate. Service shall be evidenced with a certificate of service filed with the petition.

* * * * *

§ 5.42. Petitions for declaratory orders.

* * * * *

(c) [Copies shall also be served in compliance with Commission direction] Copies. Copies must also be served as directed by the Commission.

* * * * *

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

* * * * *

(b) A copy of the petition shall be served on all persons directly affected and on other parties who petitioner believes will be affected by the petition. Copies of the petition shall be served on the [Office of Trial Staff] Bureau of Investigation and Enforcement, the Office of Consumer Advocate and the Office of Small Business Advocate. Service shall be evidenced with a certificate of service filed with the petition.

(c) [Copies shall also be served in compliance with Commission direction] Copies. Copies must also be served as directed by the Commission.

* * * * *

PROTESTS

§ 5.52. Content of a protest to an application.

(a) Form. A protest to an application must:

* * * * *

(2) State the grounds of the [protest .] protest.

(3) Set forth the facts establishing the protestant's standing to protest.

(4) Request a hearing before the Office of Administrative Law Judge, or one will not be scheduled.

(b) Motor carrier. Protests in motor carrier cases must conform with § 3.381(c)(1) (relating to applications for transportation of property, household goods in use and persons).

* * * * *

§ 5.53. Time of filing.

A protest shall be filed within the time specified in the published notice of the application. If no protest time is specified in the notice, the protest shall be filed within [60] 30 days of publication of the notice except upon good cause shown.

INTERVENTION

§ 5.72. Eligibility to intervene.

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

* * * * *

§ 5.74. Filing of petitions to intervene.

* * * * *

(b) Petitions to intervene shall be filed:

* * * * *

(3) [In accordance with § 5.53 if no deadline is set in an order or notice with respect to the proceedings] Within the time specified in an order or notice with respect to the proceedings. If no deadline is specified, the petition must be filed within 30 days of publication of the notice, except upon good cause shown.

* * * * *

CONSOLIDATION

§ 5.81. Consolidation.

(a) The Commission or presiding officer, with or without motion, may order proceedings involving a common question of law or fact to be consolidated. The Commission or presiding officer may make orders concerning the conduct of the proceeding as may avoid unnecessary costs or delay. The Commission or presiding officer may identify indispensable parties to a proceeding and interplead such parties if such action is deemed necessary to enhance the record or to give more comprehensive consideration to the parties, facts and issues in the proceeding.

* * * * *

Subchapter B. HEARINGS

PREHEARING AND OTHER CONFERENCES

§ 5.222. Initiation of prehearing conferences in nonrate proceedings.

* * * * *

(c) The following matters shall be considered at prehearing conference:

* * * * *

(4) Other matters that may aid in expediting the orderly conduct and disposition of the proceeding and the furtherance of justice, including the following:

* * * * *

(v) A proposed plan and schedule of discovery which may include specific limitations on the number of written interrogatories and requests for admissions a party may propound on another party.

(vi) The method of service by a party.

(d) Parties and counsel will be expected to attend the conference fully prepared for a useful discussion of all problems involved in the proceeding, both procedural and substantive, and fully authorized to make commitments with respect thereto.

* * * * *

§ 5.224. Prehearing conference in rate proceedings.

* * * * *

(b) The first prehearing conference shall be held as soon as practicable after the entry of the order of investigation. The parties shall come to the first prehearing conference prepared to discuss the following:

* * * * *

(3) Tentative scheduling of evidentiary hearings, close of the record, filing of briefs and other matters deemed appropriate, such as the method of service by a party.

* * * * *

HEARINGS

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

* * * * *

(c) If the Commission or the presiding officer finds, after notice and opportunity for hearing, that the actions of a party, including an intervenor, in a proceeding obstruct the orderly conduct of the proceeding and are inimical to the public interest, the Commission or the presiding officer may take appropriate action, including dismissal of the complaint, application[,] or petition, if the action is that of complainant, applicant[,] or petitioner.

(d) Subsection (a)(1)–(3) does not apply if the party is not required to secure counsel and there is no finding that the party has committed an abuse of process.

(e) Dismissal of a complaint, petition or application with prejudice of the complainant, petitioner or applicant for the failure to appear is prohibited.

TRANSCRIPT

§ 5.251. Recording of proceedings.

* * * * *

(d) [Subsections (a)–(c) supersede 1 Pa. Code § 35.131 (relating to recording of proceedings) Special Agent Proceedings. Special agent proceedings will be audio recorded and will not be transcribed, unless the parties request the transcription of the audio recording or other circumstances warranting transcription exist.

(e) Subsections (a)–(d) supersede 1 Pa. Code § 35.131 (relating to recording of proceedings).

§ 5.252. Review of testimony.

* * * * *

(c) Upon request for review, the Office of Administrative Law Judge will schedule a time and place for the review which shall be open to all parties. The court reporting firm [**shall**] **will** submit the [**tapes**] **recordings** and equipment necessary for the review and [**shall**] **will** arrange for the court reporter responsible for transcribing the [**tapes**] **recordings** to be present at the review.

(d) Actual costs associated with making the [**tapes**] **recordings** available for review, including the time of the court reporter, [**shall**] **must** be paid by the party requesting review.

* * * * *

Subchapter C. INTERLOCUTORY REVIEW

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

* * * * *

(b) Within 10 days of service of the petition, each party may submit a brief directed to the Commission supporting or opposing the petition and addressing the merits of the question for which an answer is requested and whether a stay of proceedings is required to protect the [**substantial**] **substantive** rights of a party. The brief may not exceed 15 pages.

* * * * *

§ 5.303. Commission action on petition for interlocutory review and answer.

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

(1) Continue, revoke or grant a stay of proceedings if necessary to protect the [**substantial**] **substantive** rights of the parties.

* * * * *

§ 5.304. Interlocutory review of discovery matters.

* * * * *

(d) [**Responsive brief**] **Brief.** A party may file a [**responsive**] brief within 7 days of a request for certification, which:

(1) Either supports or opposes certification.

(2) Addresses the merits of the question for which certification is requested.

(3) Addresses whether a stay of proceedings is required to protect the [**substantial**] **substantive** rights of a party.

* * * * *

(j) *Effect on proceedings.* An interlocutory appeal from the ruling of the presiding officer on discovery will not result in a stay of the proceedings except upon a finding by the presiding officer or the Commission that extraordinary circumstances exist, or to protect the [**substantial**] **substantive** rights of the parties.

§ 5.305. Interlocutory review of a material question submitted by a presiding officer.

* * * * *

(c) Within 7 days of service of the certification, each party may submit a brief directed to the Commission addressing the merits of the question for which an answer is requested and whether a stay of proceedings is required to protect the [**substantial**] **substantive** rights of a party. The brief may not exceed 15 pages.

* * * * *
§ 5.306. Expedited notification.

A presiding officer may order notification of parties by telephone, [telefacsimile] fax transmittal or other electronic means when time periods are short and delivery by mail may not prove adequate.

Subchapter D. DISCOVERY
GENERAL

§ 5.323. Hearing preparation material.

(b) Statements. Upon written request, a party is entitled to immediate receipt of a [photostatic] copy or like reproduction of a statement concerning the action or its subject matter previously made by that party, another party or a witness.

TIMING AND SUPPLEMENTAL RESPONSES

§ 5.331. Sequence and timing of discovery.

(c) Commission staff may initiate discovery at an earlier time. Commission staff discovery prior to formal Commission action to initiate proceeding shall be designated as 'Staff data requests' and shall be answered fully and completely by the public utility within the time periods specified in § 5.342(d) (relating to answers or objections to written interrogatories by a party).

TYPES OF DISCOVERY

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

(g) Motion to compel. Within 10 days of service of an objection to interrogatories, or until such time as the parties may determine by mutual agreement, the party submitting the interrogatories may file a motion requesting the presiding officer to dismiss an objection [and] to compel that the interrogatory be answered.

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

(b) As an alternative to permission to inspect and copy, and if requested by [the] a party seeking discovery, the party against whom discovery is sought shall reproduce the designated documents at the requesting party's expense.

the [Office of Trial Staff] Bureau of Investigation and Enforcement, the Office of Consumer Advocate and the Office of Small Business Advocate at no charge.

§ 5.351. On the record data requests.

(a) A party may request that a witness provide information or documents at a later time as part of the witness' response to a question posed during cross-examination [in the course of a rate proceeding].

LIMITATIONS

§ 5.365. Orders to limit availability of proprietary information.

(g) Confidential security information. Challenges to a public utility's designation of confidential security information or requests in writing to examine confidential security information in nonadversarial proceedings are addressed in Chapter 102 (relating to confidential security information).

(h) Where a complainant in a formal proceeding has indicated in the complaint that a court has granted the complainant or another individual in the same residence a "protection from abuse" order or any other order which provides clear evidence of domestic violence against the complainant or the other individual that is currently in effect for personal safety or welfare, or provided a copy of the same, all parties are required to exclude or redact the complainant's personal address and contact information from any filings to the proceeding.

Subchapter E. EVIDENCE AND WITNESSES

EVIDENCE

§ 5.408. Official and judicial notice of fact.

(c) Upon notification that facts are about to be or have been noticed, a party adversely affected shall have the opportunity upon timely request to show that the facts are not properly noticed or that alternative facts should be noticed. A presiding officer shall afford an adversely affected party the opportunity to show that the facts are not properly noticed or that alternative facts should be noticed prior to the close of the record and the issuance of an initial decision or recommended decision.

§ 5.409. Copies and form of documentary evidence.

(a) Except as otherwise provided in this chapter, Chapters 1 and 3 (relating to rules of administrative practice and procedure; and special provisions), when exhibits of a documentary character are offered in evidence, copies shall be furnished to the presiding officer and to the parties present at the hearing, unless the presiding officer otherwise directs. [Two copies] One copy of each exhibit of documentary character [shall] must be furnished for the use of the Commission unless otherwise directed by the presiding officer.

WITNESSES

§ 5.412. Written testimony.

* * * * *

(f) *Service.* Written testimony shall be served upon the presiding officer and parties in the proceeding in accordance with the schedule established by this chapter. At the same time the testimony is served, a certificate of service for the testimony shall be filed with the Secretary. [Pre-served testimony furnished to the court reporter during an adjudicatory proceeding before the Commission shall be filed with the Commission as required under § 5.412a (relating to electronic submission of pre-served testimony).]

(g) *Copies.* At the hearing at which the testimony is authenticated, counsel for the witness [shall provide two copies] must provide one copy of the testimony to the court reporter or to the presiding officer if no court reporter is present.

* * * * *

§ 5.412a. [Electronic submission of pre-served testimony] [Reserved].

[(a) *General requirement for electronic submission.* A party serving pre-served testimony in proceedings pending before the Commission under § 5.412(f) (relating to written testimony) is required, within 30 days after the final hearing in an adjudicatory proceeding, unless the time period is otherwise modified by the presiding officer, to electronically file with, under § 1.32(b) (relating to filing specifications), or provide to the Secretary's Bureau a compact disc or technology prescribed by the Commission containing the testimony furnished by the party to the court reporter during the proceeding.

(b) *Form of electronic submission.* Electronically submitted testimony must be limited to pre-served testimony documents and be in Portable Document Format. Exhibits attached to pre-served testimony documents may be electronically submitted to the Commission in accordance with subsection (a). Exhibits not electronically submitted with pre-served testimony shall be submitted in paper form to the court reporter at hearing. The electronic submission requirements in this section do not apply to discovery requests or responses, or pre-filed testimony, including testimony filed under § 53.53(c) (relating to information to be furnished with proposed general rate increase filings in excess of \$1 million).

(1) *Electronic submission.* Each piece of pre-served testimony filed through the Commission's electronic filing system shall be uploaded separately. Each piece of pre-served testimony submitted to the Secretary's Bureau on a compact disc or other technology as prescribed by the Commission may be uploaded onto one compact disc, pending file size limitations.

(2) *Electronic submission of testimony modified at hearing.* Pre-served testimony submitted to the Commission must match exactly the version of testimony the presiding officer has required to be submitted to the court reporter at hearing. When a presiding officer requires a party to make hand-marked modifications to testimony during the hearing before submitting the testimony to the court

reporter, the pre-served testimony electronically submitted to the Commission shall be marked to reflect the modifications. When a presiding officer does not require a party to make modifications to testimony at hearing before submitting the testimony to the court reporter, the pre-served testimony electronically submitted to the Commission may not be marked. Testimony not admitted into the record during a hearing may not be electronically submitted to the Commission.

(i) *Electronic submission of testimony stricken at hearing.* Pre-served testimony which was stricken at hearing shall be revised to reflect that which was stricken by containing hand-marked strikeouts or electronic strikeouts on the testimony. A party may not completely electronically delete testimony which was stricken at hearing.

(ii) *Pagination of electronically submitted testimony documents.* Stricken or modified text on electronically submitted pre-served testimony documents must appear on the same page as the stricken or modified text on the pre-served testimony documents submitted to the court reporter at hearing.

(3) *Labeling of electronically submitted testimony.* Pre-served testimony electronically submitted to the Commission must be labeled consistent with the following examples:

- (i) " ____ St. No. ____ Direct Testimony of _____."
- (ii) " ____ St. No. ____ -R Rebuttal Testimony of _____."
- (iii) " ____ St. No. ____ -SR Surrebuttal Testimony of _____."

(c) *Submission of paper copies of pre-served testimony to the court reporter when electronically filing pre-served testimony.* When electronically filing pre-served testimony with the Commission, one paper copy of pre-served testimony shall be provided to the court reporter at hearing.

(d) *Electronic submission of confidential or proprietary testimony.* Electronically submitted testimony confidential or proprietary in nature shall be submitted to the Secretary's Bureau on a compact disc or other technology as prescribed by the Commission. The compact disc must be labeled "CONFIDENTIAL" or "PROPRIETARY." Confidential or proprietary testimony may not be filed through the Commission's electronic filing system. Electronically submitted testimony confidential or proprietary in nature must match exactly the version of the confidential or proprietary testimony submitted to the court reporter at hearing.

(e) *Electronic submission of improper testimony.* If a party in an adjudicatory proceeding discovers that improper testimony documents have been electronically submitted to the Commission, the party may raise the improper submission with the presiding officer assigned to the adjudicatory proceeding. The presiding officer or the Commission will make a determination regarding the submission of improper testimony.

(f) *Electronic access to electronically submitted testimony.* A party shall obtain an eFiling account with the Commission to view electronically submitted pre-served testimony and to receive daily action alerts from the Commission's case and docu-

ment management database that pre-served testimony has been electronically submitted to the Commission.]

Subchapter G. BRIEFS

§ 5.502. Filing and service of briefs.

* * * * *

(c) [Filing of briefs in nonrate proceedings] [Reserved].

[(1) Initial brief. An initial brief shall be filed by the party with the burden of proof except as provided by agreement or by direction of the presiding officer.

(2) Response brief. A party may file a response brief to the initial brief.]

(d) Filing of briefs [in rate proceedings].

* * * * *

(e) Filing of amicus curiae briefs. A person interested in the issues involved in a Commission proceeding, although not a party, may, without applying for leave to do so, file amicus curiae briefs in regard to those issues. Unless otherwise ordered, amicus curiae briefs [shall] must be filed and served in the manner and number required within the time allowed by this section, absent good cause.

(f) Deadlines. [Initial briefs, main briefs, responsive briefs] Main briefs and reply briefs [shall] must be filed and served within the time fixed by the presiding officer. [If no specific times are fixed, initial briefs or main briefs shall be filed and served within 20 days after the date of service of notice of the filing of the transcript and responsive briefs or reply briefs shall be filed within 40 days after date of service of the notice of the filing of the transcript.]

* * * * *

(h) Supersession. [Subsections (a)—(f)] Subsections (a)—(e) supersede 1 Pa. Code §§ 35.191 and 35.193 (relating to proceedings in which briefs are to be filed; and filing and service of briefs).

Subchapter H. EXCEPTIONS, APPEALS AND ORAL ARGUMENT

§ 5.531. Certification of record without decision.

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

* * * * *

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

(a) In a proceeding, exceptions may be filed by a party and served within 20 days after the initial[, tentative] or recommended decision is issued unless some other exception period is provided. Exceptions may not be filed with respect to an interlocutory decision.

* * * * *

Subchapter J. REPORTS OF COMPLIANCE

§ 5.591. Reports of compliance.

(a) A [person] party subject to the jurisdiction of the Commission [who] that is required to do or perform an

act by a Commission order, permit or license provision shall file with the Secretary a notice stating that the requirement has or has not been met or complied with.

* * * * *

[Pa.B. Doc. No. 24-1726. Filed for public inspection December 6, 2024, 9:00 a.m.]

FISH AND BOAT COMMISSION

[58 PA. CODE CH. 69]

Fishing; Fishing in Lake Erie and Boundary Lakes

The Fish and Boat Commission (Commission) proposes to amend Chapter 69 (relating to fishing in Lake Erie and boundary lakes). The Commission is publishing this proposed rulemaking under the authority of 30 Pa.C.S. (relating to Fish and Boat Code) (code). The proposed amendments update the Commission’s regulations relating to addressing changing conditions and current best practices.

A. Effective Date

This proposed rulemaking, if approved on final-form rulemaking, will go into effect upon publication in the Pennsylvania Bulletin.

B. Contact Person

For further information on this proposed rulemaking, contact Renae Kluk Kiehl, Esq., P.O. Box 67000, Harrisburg, PA 17106-7000, (717) 705-7810. This proposed rulemaking is available on the Commission’s web site at https://www.pa.gov/en/agencies/fishandboat.html.

C. Statutory Authority

The proposed amendments to §§ 69.26, 69.33 and 69.37—69.39 are published under the statutory authority of section 2903 of the code (relating to boat and net licenses for boundary lakes).

D. Purpose and Background

The specific purpose and background of the proposed amendments are described in more detail under the summary of proposal.

E. Summary of Proposal

This Commonwealth’s portion of Lake Erie supports a thriving yellow perch commercial fishery, and there are three commercial trap net licenses issued by the Commission. The commercial fishery is regulated by the Commission in Subchapters C and D (relating to commercial fishing licenses; and commercial fishing, seasons and nets); however, these regulations need to be updated to address changing conditions and current best practices.

Commission staff systematically reviewed current regulations and identified potential amendments that would streamline regulatory compliance while continuing to provide resource protection to the Lake Erie fishery. Commission staff also consulted the three licensed commercial fishers throughout the review process. Commission staff presented these proposed changes to the Fisheries and Hatcheries Committee at its October 2024 meeting.

The substantive changes to each amended section are as follows:

1.) § 69.26—*Reports*

Subsection (a) is proposed to be amended to refine reporting of daily and monthly catches allowing for a thorough understanding of spatial and temporal catches associated with the commercial fishery. Amendments also provide additional mechanisms by which reports can be filed by allowing for electronic (for example, e-mail) submission instead of mailing reports to the Commission. In addition to the Northwest Region Law Enforcement Office, the Lake Erie Unit should receive reports as it is responsible for tracking and summarizing commercial catches which are used to inform lake-wide, multijurisdictional harvest quotas.

2.) § 69.33—*Use of commercial trap nets*

This section is proposed to be amended to align scientific and common names of fish species that are permitted for harvest under a commercial trap net license with the American Fisheries Society nomenclature. Species defined in §§ 75.1 and 75.2 (relating to endangered species; and threatened species), as well as nondesirable species (for example, goldfish) were removed from the list of species that are permitted for harvest under a commercial trap net license. Marking of buoys and tags allows law enforcement to check compliance without negatively impacting commercial fishing operations. Amendments to the time in which fishing is permitted are necessary to align with time as defined in § 69.31 (relating to seasons).

3.) § 69.37—*Prohibited acts*

This section is proposed to be amended to ensure all commercial trap net catch is accounted for, regardless if the fish are alive or dead at the time of harvest, which is critical to regulating a quota-managed fishery. Language to further protect commercial fishing gear from tampering will improve commercial fishing operations.

4.) § 69.38—*Clearing of nets*

This section is proposed to be amended to avoid wanton waste of undesirable, undersized, or threatened or endangered species that could perish due to prolonged net sets.

5.) § 69.39—*Landing of catch*

This section is proposed to be amended to improve enforcement and monitoring of daily catch by species prior to the catch being transported for processing.

The Commission proposes that §§ 69.26, 69.33 and 69.37—69.39 be amended to read as set forth in Annex A.

F. *Paperwork*

This proposed rulemaking will not increase paperwork and will not create new paperwork requirements.

G. *Fiscal Impact*

This proposed rulemaking will have no adverse fiscal impact on the Commonwealth or its political subdivisions.

H. *Public Comments*

Interested persons are invited to submit written comments, objections or suggestions about this proposed rulemaking to the Executive Director, Fish and Boat Commission, P.O. Box 67000, Harrisburg, PA 17106-7000, within 30 days after publication of this notice in the *Pennsylvania Bulletin*. Comments submitted by facsimile will not be accepted.

Comments also may be submitted electronically to RA-pfbcregulations@pa.gov. Electronic comments submitted in any other manner will not be accepted.

TIMOTHY D. SCHAEFFER,
Executive Director

Fiscal Note: 48A-359. No fiscal impact; recommends adoption.

Annex A

TITLE 58. RECREATION

PART II. FISH AND BOAT COMMISSION

Subpart B. FISHING

CHAPTER 69. FISHING IN LAKE ERIE AND BOUNDARY LAKES

Subchapter C. COMMERCIAL FISHING LICENSES

§ 69.26. Reports.

(a) The holder of a license described in this chapter or section 2903 of the code (relating to boat and new licenses for boundary lakes), shall file a monthly report with the Commission describing the licensee's daily catch **and latitude and longitude coordinates** for each grid fished during the period. When a trap net licensee holds multiple trap net licenses, the licensee shall only file one consolidated report each month for catches with all trap nets. Separate reports shall be filed for other types of licensed gear. Reports shall be made on forms furnished by the Commission and shall be received on or before the 5th day of the month following the month to which the report pertains. **Reports filed electronically with a digital signature will be acceptable.** Reports shall be sent to the [**Fish and Boat Commission,**] **Commission's Lake Erie Unit and** Northwest Region Law Enforcement Office.

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Subchapter D. COMMERCIAL FISHING, SEASONS AND NETS

§ 69.33. Use of commercial trap nets.

* * * * *

(b) *Species.* A commercial trap net licensee may not possess or sell a fish except in compliance with the following size limits and seasons. **Species, as listed in §§ 75.1 and 75.2 (relating to endangered species; and threatened species), encountered shall be released unharmed.** The following size limits apply to commercial trap net licensees except that 5% of each licensee's daily catch by number per species may be undersized fish that may be lawfully sold:

<i>Species</i>	<i>Size Limit</i>	<i>Season</i>
Yellow perch (<i>Perca flavescens</i>)	None	No closed season until the total allowable catch is taken. See § 69.31 (relating to seasons).

<i>Species</i>	<i>Size Limit</i>	<i>Season</i>
Walleye [(<i>Stizostedion vitreum</i>)] (<i>Sander vitreus</i>)	15 inches	January 1 to March 14 and [May 1] the first Saturday in May to December 31. This season will close when the total allowable catch for walleye is taken. See § 69.31.
[White fish (<i>Coregonus spp.</i>)	17 inches	No closed season]
White perch (<i>Morone americana</i>)	No size limit	No closed season
[Cisco (<i>Coregonus spp. except C. artedii</i>)	No size limit	No closed season]
White bass (<i>Morone chrysops</i>)	No size limit	No closed season
Burbot (<i>Lota lota</i>)	No size limit	No closed season
[Sheepshead] Freshwater Drum (<i>Aplodinotus grunniens</i>)	No size limit	No closed season
Gizzard shad (<i>Dorosoma cepedianum</i>)	No size limit	No closed season
[Goldfish (<i>Carassius auratus</i>)	No size limit	No closed season]
Lake whitefish (<i>Coregonus clupeaformis</i>)	No size limit	No closed season
Brown bullhead (<i>Ictalurus nebulosus</i>)	No size limit	No closed season
Yellow bullhead (<i>Ictalurus natalis</i>)	No size limit	No closed season
[Rainbow smelt (<i>Osmerus mordax</i>)	No size limit	No closed season]
Channel catfish (<i>Ictalurus punctatus</i>)	No size limit	No closed season
Suckers ([<i>Carpides sp</i>] <i>Carpiodes spp.</i> , <i>Catostomus</i> [<i>sp.</i>] <i>commersonii</i> , [<i>Ictiobus sp.</i>] and <i>Moxmostoma</i> [<i>sp.</i>] <i>spp.</i>)	No size limit	No closed season
Carp (<i>Cyprinus carpio</i>)	No size limit	No closed season

(c) *Buoys/tags.* Marker buoys shall be attached to the beginning of each lead and to the back of the crib. A staff extending 8 feet above the water with a minimum size flag of 18 inches by 18 inches secured near the top shall be attached to the anchor for the beginning of the lead and a staff extending 8 feet above the water with 2 minimum size flags of 18 inches by 18 inches (double flags) shall be attached to the anchor for the crib. **An orange buoy float ball with a minimum diameter of 15 inches shall be attached to the anchor line of wing walls that are attached to the trap.** The licensee shall affix a metal, numbered tag provided by the Commission to each of the [**required staffs showing the name and address of the owner or the lessee**] **traps and mark buoys and staffs with the tag number.** Licensees shall report **vandalism to a trap net**, a seal that is lost, misplaced or stolen orally within 24 hours of discovery [**and in writing**] to the Commission at Northwest Law Enforcement Region [**within 2 business days**]. **Trap nets shall be properly tagged and marked and buoys, floats, staffs and flag markings shall be in good serviceable condition at all times.** [**Improperly marked or tagged nets**] **Trap nets not properly marked and maintained** shall be subject to confiscation by the Commission. Officers authorized to enforce the code and this part may mark trap nets for the purpose of determining the number of trap nets being used by a particular licensee.

* * * * *

(f) *Time.* Trap nets may be fished 24 hours a day, but it is unlawful to set or lift them during the period from 30 minutes after sunset to 30 minutes before sunrise. [**Trap**

nets may be set or fished, or both, from March 1 to November 30.]

* * * * *

§ 69.37. Prohibited acts.

* * * * *

(d) It is unlawful to fish by hook and line from a boat engaged in commercial fishing under this chapter.

(e) It is unlawful while fishing under a commercial license to dispose of dead, legally caught fish within the trap net and dispose of them in waters of this Commonwealth. These fish shall be disposed of properly and will count towards the licensee's quota.

(f) Anglers and boaters may not interfere with properly marked commercial trap nets.

§ 69.38. Clearing of nets.

Nets fished [**under**] **pursuant to** a commercial fishing license or subject to licensing under this chapter and section 2903 of the code (relating to boat and net licenses for boundary lakes), shall be lifted and cleared of catch [**on a schedule as the**] **every 7 days or less after the net is set. Live undersized fish or live fish with no market value may be returned to the lake. The Executive Director may establish additional time frames** to provide for the better protection and management of fish, except under circumstances where the Executive Director or his designee, upon a showing of good cause by the licensee, authorizes the licensee to lift and clear his nets on an alternate schedule.

§ 69.39. Landing of catch.

* * * * *

(c) Fish caught under a Commonwealth commercial fishing license may not be off-loaded onto a boat other than a boat on which they were caught.

(d) A licensee shall notify the Commission's Lake Erie Unit and Northwest Region Law Enforcement Office within 24 hours prior to each time nets are lifted and cleared of catch. All of the following conditions shall be met:

(1) Fish shall be separated in containers by species.

(2) Containers shall be labeled with the trap net tag number from which they were caught.

(3) The weight of the containers shall be estimated while on the water.

(4) Containers that are being off-loaded with fish at the dock shall have an accurate weight attached to them.

(5) Weights shall be posted in or on the containers and documented on reports at the time the containers are off-loaded and prior to transport.

(6) Containers and reports shall be subject to inspection by officers authorized to enforce the code.

[Pa.B. Doc. No. 24-1727. Filed for public inspection December 6, 2024, 9:00 a.m.]
