

Regulatory Analysis Form

(Completed by Promulgating Agency)

INDEPENDENT REGULATORY REVIEW COMMISSION

RECEIVED

Independent Regulatory
Review Commission

October 8, 2024

(All Comments submitted on this regulation will appear on IRRC's website)

(1) Agency

Pennsylvania Public Utility Commission (PUC)

(2) Agency Number: 57-341

Identification Number: L-2023-3041347

IRRC Number: 3420

(3) PA Code Cite: 52 Pa. Code §§ 1.1—5.633

(4) Short Title: Regulations Governing the 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)

(5) Agency Contacts (List Telephone Number and Email Address):

Primary Contact: Colin W. Scott, 717-783-5949, colinscott@pa.gov

Secondary Contact: Tiffany L. Tran, 717-783-5413, tiffran@pa.gov

Regulatory Review Assistant: Karen Thorne, 717-772-4597, kathorne@pa.gov

(6) Type of Rulemaking (check applicable box):

- Proposed Regulation, as clarified
 Final Regulation
 Final Omitted Regulation

- Emergency Certification Regulation;
 Certification by the Governor
 Certification by the Attorney General

(7) Briefly explain the regulation in clear and nontechnical language. (100 words or less)

Chapters 1, 3, and 5 of the PUC's regulations govern practice and procedure before the PUC in a manner similar to how the Pennsylvania Rules of Civil Procedure govern practice and procedure before Pennsylvania state courts. Thus, the regulations delineate, among other things, the form and content of applications and pleadings, filing deadlines, discovery rules, emergency order procedures, and filing exceptions.

(8) State the statutory authority for the regulation. Include specific statutory citation.

66 Pa.C.S. § 501 (relating to general powers).

(9) Is the regulation mandated by any federal or state law or court order, or federal regulation? Are there any relevant state or federal court decisions? If yes, cite the specific law, case or regulation as well as, any deadlines for action.

No, the proposed amendments to Chapters 1, 3, and 5 are not mandated.

No, there are no relevant state or federal court decisions.

There are no deadlines for action.

(10) State why the regulation is needed. Explain the compelling public interest that justifies the regulation. Describe who will benefit from the regulation. Quantify the benefits as completely as possible and approximate the number of people who will benefit.

Chapters 1, 3, and 5 of the PUC’s regulations govern practice and procedure before the PUC and the PUC has not taken action to revise its practice and procedural regulations since 2006. Since then, the PUC’s jurisdictional responsibilities have significantly expanded and important technological innovations and advancements that create efficiencies have occurred such as electronic filing capability with the PUC. Through this Notice of Proposed Rulemaking (NOPR), the PUC proposes to update its regulations in Subpart A of Title 52 relative to practice before the PUC.

All parties practicing before the PUC would benefit from these proposed changes, whether the party is a ratepayer, a prospective ratepayer, a public utility, a statutory or other advocate, or a complainant or a respondent.

(11) Are there any provisions that are more stringent than federal standards? If yes, identify the specific provisions and the compelling Pennsylvania interest that demands stronger regulations.

No, there are not federal standards to which the PUC’s regulations are comparable.

(12) How does this regulation compare with those of the other states? How will this affect Pennsylvania’s ability to compete with other states?

No comparison to administrative practices and procedures was conducted in drafting the amendments to the PUC’s existing regulations. The proposed regulations are borne out of the Public Utility Code and based on practice solely before the PUC. There is no competitive impact.

(13) Will the regulation affect any other regulations of the promulgating agency or other state agencies? If yes, explain and provide specific citations.

No, the PUC’s rules regarding administrative practice and procedure are self-contained, only impacting representation and practice before the PUC.

(14) Describe the communications with and solicitation of input from the public, any advisory council/group, small businesses and groups representing small businesses in the development and drafting of the regulation. List the specific persons and/or groups who were involved. (“Small business” is defined in Section 3 of the Regulatory Review Act, Act 76 of 2012.)

In the first quarter of 2016, the PUC announced its intention to revise its rules of practice and procedure, codified at Chapters 1, 3 and 5 of Title 52 of the Pennsylvania Code, by convening a series of informal stakeholder meetings wherein PUC Staff and attorneys representing parties 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. This included representation from the statutory advocates (i.e., Office of Consumer Advocate, the Office of Small Business Advocate, and the PUC’s Bureau of Investigation and Enforcement), several law firms (e.g., Buchanan Ingersoll & Rooney, Eckert Seamans, McNees Wallace & Nurick, and Hawke McKeon & Sniscak, LLP), as well as internal representation from several PUC bureaus (i.e., Bureau of Consumer Services, Office of Administrative Law Judge, Law Bureau, Office of Special Assistants, and Secretary’s Bureau). The PUC stated its

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.

(15) Identify the types and number of persons, businesses, small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012) and organizations which will be affected by the regulation. How are they affected?

All parties appearing before the PUC, whether consumers, public utilities, or advocates, would be impacted by the amendments to the PUC's regulations, as each would be required to abide by the PUC's updated administrative practices and procedures.

(16) List the persons, groups or entities, including small businesses, that will be required to comply with the regulation. Approximate the number that will be required to comply.

All parties appearing before the PUC, whether consumers, public utilities, or advocates, will be impacted by the amendments to the PUC's regulations, as each will be required to abide by the PUC's updated administrative practices and procedures. All individuals, small businesses, and corporations that are parties to PUC proceedings will be required to comply.

The Commission regulates 465 electric entities (EDCs and EGSs), 359 gas entities (NGDCs and NGSs), 48 private water entities, 21 municipal water entities operating outside their municipal boundaries, 48 wastewater entities, 291 telecommunications companies, 61 railroad entities, 3 pipeline companies and 162 pipeline operators and 3 steam heat and chilled water entities.

(17) Identify the financial, economic and social impact of the regulation on individuals, small businesses, businesses and labor communities and other public and private organizations. Evaluate the benefits expected as a result of the regulation.

There should be no financial, economic or social impact on parties to PUC proceedings. Amendments to rules for administrative practice and procedure do not have these impacts. These rules are being updated to enable PUC proceedings to operate more efficiently, to provide, in certain instances, greater clarity to PUC rules, and to incorporate technological innovations and improve electronic filing processes.

(18) Explain how the benefits of the regulation outweigh any cost and adverse effects.

The PUC's proposed amendments to its practice and procedural rules are intended to enable PUC proceedings to operate more efficiently by incorporate technological innovations such as the expansion of the PUC's electronic filing processes and provide greater clarity for parties. Accordingly, the PUC does not anticipate adverse effects from this proposed rulemaking.

(19) Provide a specific estimate of the costs and/or savings to the **regulated community** associated with compliance, including any legal, accounting or consulting procedures which may be required. Explain how the dollar estimates were derived.

There should be no costs or savings to persons or entities that practice before the PUC. While about 65% of all filers who submit filings use an e-filing account, the PUC is unable to estimate the savings these filers experience. There are still many filers who prefer to file through the mail such as *pro se*

complainants, and others who are submitting confidential and proprietary materials – which cannot be efiled. There is no metric to calculate or estimate these cost benefits.

(20) Provide a specific estimate of the costs and/or savings to the **local governments** associated with compliance, including any legal, accounting or consulting procedures which may be required. Explain how the dollar estimates were derived.

N/A

(21) Provide a specific estimate of the costs and/or savings to the **state government** associated with the implementation of the regulation, including any legal, accounting, or consulting procedures which may be required. Explain how the dollar estimates were derived.

There should be no costs or savings to the PUC or other state agencies relating to the implementation of these amendments to the PUC’s rules. While the PUC has attempted to acquire data on the costs or savings of implementing these regulations, stakeholders did not furnish such information.

(22) For each of the groups and entities identified in items (19)-(21) above, submit a statement of legal, accounting or consulting procedures and additional reporting, recordkeeping or other paperwork, including copies of forms or reports, which will be required for implementation of the regulation and an explanation of measures which have been taken to minimize these requirements.

N/A

(22a) Are forms required for implementation of the regulation?

No.

(22b) If forms are required for implementation of the regulation, **attach copies of the forms here**. If your agency uses electronic forms, provide links to each form or a detailed description of the information required to be reported. **Failure to attach forms, provide links, or provide a detailed description of the information to be reported will constitute a faulty delivery of the regulation.**

The PUC’s printable formal complaint form can be found at <https://www.puc.pa.gov/documents/utility-files/604/FormalComplaintFormPrint09282023.pdf>.

(23) In the table below, provide an estimate of the fiscal savings and costs associated with implementation and compliance for the regulated community, local government, and state government for the current year and five subsequent years.

	Current FY Year	FY +1 Year	FY +2 Year	FY +3 Year	FY +4 Year	FY +5 Year
SAVINGS:	\$ N/A	\$ N/A	\$ N/A	\$ N/A	\$ N/A	\$ N/A
Regulated Community						
Local Government						
State Government						

Total Savings						
COSTS:						
Regulated Community	N/A	N/A	N/A	N/A	N/A	N/A
Local Government	N/A	N/A	N/A	N/A	N/A	N/A
State Government	N/A	N/A	N/A	N/A	N/A	N/A
Total Costs	N/A	N/A	N/A	N/A	N/A	N/A
REVENUE LOSSES:						
Regulated Community	N/A	N/A	N/A	N/A	N/A	N/A
Local Government	N/A	N/A	N/A	N/A	N/A	N/A
State Government	N/A	N/A	N/A	N/A	N/A	N/A
Total Revenue Losses	N/A	N/A	N/A	N/A	N/A	N/A

(23a) Provide the past three year expenditure history for programs affected by the regulation.

Program	FY -3	FY -2	FY -1	Current FY
N/A	N/A	N/A	N/A	N/A

(24) For any regulation that may have an adverse impact on small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012), provide an economic impact statement that includes the following:

- (a) An identification and estimate of the number of small businesses subject to the regulation.
- (b) The projected reporting, recordkeeping and other administrative costs required for compliance with the proposed regulation, including the type of professional skills necessary for preparation of the report or record.
- (c) A statement of probable effect on impacted small businesses.
- (d) A description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation.

The proposed regulations would no adverse impact on small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012).

(25) List any special provisions which have been developed to meet the particular needs of affected groups or persons including, but not limited to, minorities, the elderly, small businesses, and farmers.

The expansion of electronic filing capability with the PUC and the creation of an online fillable formal complaint form

(26) Include a description of any alternative regulatory provisions which have been considered and rejected and a statement that the least burdensome acceptable alternative has been selected.

No less burdensome alternatives were considered.

(27) In conducting a regulatory flexibility analysis, explain whether regulatory methods were considered that will minimize any adverse impact on small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012), including:

- a) The establishment of less stringent compliance or reporting requirements for small businesses;
- b) The establishment of less stringent schedules or deadlines for compliance or reporting requirements for small businesses;
- c) The consolidation or simplification of compliance or reporting requirements for small businesses;
- d) The establishment of performance standards for small businesses to replace design or operational standards required in the regulation; and
- e) The exemption of small businesses from all or any part of the requirements contained in the regulation.

N/A

(28) If data is the basis for this regulation, please provide a description of the data, explain in detail how the data was obtained, and how it meets the acceptability standard for empirical, replicable and testable data that is supported by documentation, statistics, reports, studies or research. Please submit data or supporting materials with the regulatory package. If the material exceeds 50 pages, please provide it in a searchable electronic format or provide a list of citations and internet links that, where possible, can be accessed in a searchable format in lieu of the actual material. If other data was considered but not used, please explain why that data was determined not to be acceptable.

Data are not the basis for these proposed regulations.

(29) Include a schedule for review of the regulation including:	
A. The length of the public comment period:	60 days for public comment
B. The date or dates on which any public meetings or hearings will be held:	As needed for stakeholder meetings; a PUC public meeting will be held to enter the final-form regulation, 3 rd quarter 2026.
C. The expected date of delivery of the final-form regulation:	4 th quarter 2026
D. The expected effective date of the final-form regulation:	Upon publication in the <i>Pennsylvania Bulletin</i> as final
E. The expected date by which compliance with the final-form regulation will be required:	Upon publication in the <i>Pennsylvania Bulletin</i> as final
F. The expected date by which required permits, licenses or other approvals must be obtained:	N/A
(30) Describe the plan developed for evaluating the continuing effectiveness of the regulations after its implementation.	
<p>After taking effect, the PUC’s administrative practices and procedures will be reviewed on an ongoing basis and as warranted. The PUC, through its Office of Administrative Law Judge, Office of Special Assistants, and Secretary’s Bureau, will continue to evaluate the need for additional amendments to these rules. Also, the PUC will consider input provided by parties that regularly participate in PUC proceedings and discern whether further updates are required.</p>	

FISCAL NOTE FOR DOCUMENTS FILED WITH THE LEGISLATIVE REFERENCE BUREAU

March 1, 2024

Agency: Public Utility Commission

Agency Identification Number: 57-341

Subject of Regulation: Regulations Governing the 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)

Pursuant to Section 612 of the act of April 9, 1929 (P.L. 177, No. 175), known as the Administrative Code of 1929, I am submitting the following fiscal note for publication in the *Pennsylvania Bulletin* to accompany this notice of regulatory action or administrative procedure.

FISCAL NOTE AS REQUIRED BY SECTION 612
Administrative Code of 1929
(See also 4 Pennsylvania Code § 7.231, *et seq.* [9 Pennsylvania Bulletin])

This action will not result in a loss of revenue or an increase in program costs to the Commonwealth or its political subdivisions.

The Secretary of the Budget recommends adoption of this regulatory action or administrative procedure.

Eric A. Rice for

Secretary of the Budget

**FACE SHEET
FOR FILING DOCUMENTS
WITH THE LEGISLATIVE REFERENCE BUREAU**

(Pursuant to Commonwealth Documents Law)

RECEIVED

Independent Regulatory
Review Commission

October 8, 2024

DO NOT WRITE IN THIS SPACE

<p>Copy below is hereby approved as to form and legality. Attorney General.</p> <p>BY: <u>Amy M. Elliott</u> (DEPUTY ATTORNEY GENERAL)</p> <p><small>Digitally signed by Amy M. Elliott DN: cn=Amy M. Elliott, o=Pennsylvania Office of Attorney General, ou=Chief Deputy Attorney General, email=ae Elliott@attorneygeneral.gov, c=US Date: 2024.10.01 08:21:04 -0400</small></p> <p><u>10/01/24</u> DATE OF APPROVAL</p> <p><input type="checkbox"/> Check if applicable Copy not approved. Objections attached.</p>	<p>Copy below is hereby certified to be a true and correct copy of a document issued, prescribed or promulgated by:</p> <p><u>Pennsylvania Public Utility Commission</u> (PA PUC) (AGENCY)</p> <p>Agency Docket No.: <u>L2023-3041347</u> Fiscal Note No.: <u>57-341</u></p> <p>Date of PUC Public Meeting: <u>11/9/2023</u> Date of Entry of NOPR: <u>12/20/2023</u> Date Of PUC Public Meeting: <u>8/22/2024</u> Date of Entry of Clarified NOPR: <u>8/24/2024</u></p> <p>BY: <u>/s/ Rosemary Chiavetta</u> Rosemary Chiavetta</p> <p>TITLE: <u>Secretary</u> (SECRETARY)</p>	<p>Copy below is hereby approved as to form and legality. Executive or Independent Agencies.</p> <p>BY: <u>/s/ David E. Screven</u> David Screven Chief Counsel PA PUC</p> <p><u>02/15/2024</u> Date of Original Approval</p> <p><u>8/22/2024</u> Date of Approval of Clarified NOPR</p> <p>Check if applicable. No Attorney General approval or objection within 30 days after submission.</p>
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PA PUC Docket No. L-2023-3041347
Fiscal Note Number 57-341

**Notice of Proposed Rulemaking (NOPR), as Clarified
Regulations Governing the Public Utility Commission’s General Provisions, 52 Pa. Code
Chs. 1, 3, and 5 (relating to Rules of Administrative Practice and Procedure; Special
Provisions; and Formal Proceedings)**

The PUC’s existing procedural regulations are under review in this NOPR, as clarified, to determine if changes are necessary. When appropriate, the PUC periodically initiates a rulemaking to make necessary changes to its procedural regulations.

The contact persons for this rulemaking are Colin W. Scott, Assistant Counsel, Law Bureau, 717-783-5949, colinScott@pa.gov; Tiffany Tran, Assistant Counsel, Law Bureau, 717-783-5413, tiffran@pa.gov; and Karen Thorne, Regulatory Review Assistant, Law Bureau, kathorne@pa.gov.

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

Public Meeting held August 22, 2024

Commissioners Present:

Stephen M. DeFrank, Chairman
Kimberly Barrow, Vice Chair, Statement
Ralph V. Yanora, Concurring in Part and Dissenting in Part
Kathryn L. Zerfuss, Statement
John F. Coleman, Jr., Statement, 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

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*.**

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.

PREAMBLE

BACKGROUND

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

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.irc.state.pa.us/regulations/find_a_regulation.cfm.

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 amended 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.

“Protestant” would be amended 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.

“Respondent” would be amended 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 Order” 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 *Simbrow, 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 Representations 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.

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.

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.

§ 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

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.

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 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.

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

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 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.

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 “employes” to “employees.”

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 “compliant” 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

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

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 in an order or notice with respect to the proceedings 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 Conferences 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. *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. Records of Proceedings.

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. Copies.

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, 701—703, 501, 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 deliveries.

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.

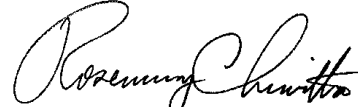
11. That the contact persons for this proceeding are Tiffany L. Tran, Esq., Law Bureau, 717-783-5413, tiftran@pa.gov; Colin W. Scott, Esq., Law Bureau, 717-783-5949, colinscott@pa.gov; and Karen Thorne, Regulatory Review Assistant, Law Bureau, kathorne@pa.gov.

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.

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.

BY THE COMMISSION



Rosemary Chiavetta
Secretary

(SEAL)

ORDER ADOPTED: August 22, 2024

ORDER ENTERED: August 22, 2024

PENNSYLVANIA PUBLIC UTILITY COMMISSION
Harrisburg, Pennsylvania 17120

**Regulations Governing the PA Public
Utility Commission's General Provisions
at 52 Pa. Code Chapters 1, 3, and 5**

**Public Meeting of August 22, 2024
3041347-LAW
Docket No. L-2023-3041347**

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
Date


Kimberly Barrow, Vice Chair

**PENNSYLVANIA PUBLIC UTILITY COMMISSION
Harrisburg, Pennsylvania 17120**

**Regulations Governing the PA Public
Utility Commission's General Provisions
at 52 Pa. Code Chapters 1, 3, and 5**

**Public Meeting of November 9, 2023
3041347-LAW
Docket No. L-2023-3041347**

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
DATE


Kimberly Barrow, Vice Chair

**PENNSYLVANIA PUBLIC UTILITY COMMISSION
HARRISBURG, PENNSYLVANIA 17120**

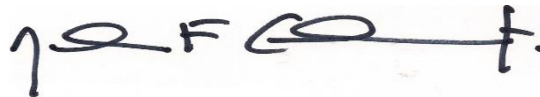
**Regulations Concerning the PA
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Chapters 1, 3 and 5**

**Public Meeting August 22, 2024
3041347-LAW
Docket No. L-2023-3041347**

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.¹ Therefore, I will be voting no on the proposed order.

Date: August 22, 2024



**JOHN F. COLEMAN, JR.
COMMISSIONER**

¹ Please see my dissenting statement at this docket entered on November 9, 2023.

**PENNSYLVANIA PUBLIC UTILITY COMMISSION
HARRISBURG, PENNSYLVANIA 17120**

**Regulations Concerning the PA
Public Utility Commission's
General Provisions at 52 Pa. Code
Chapters 1, 3 and 5**

**Public Meeting November 9, 2023
3041347-LAW
Docket No. L-2023-3041347**

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.¹

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.²

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

¹ 65 Pa.C.S. §§ 701-716.

² 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.

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.³ 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.⁴ The plain language of the statute provides the best indication of legislative intent regarding the consequences of failing to appear at a scheduled hearing.⁵ 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.⁶

The obligation to abide by Section 332(f) clearly applies both to attorneys and parties. The section heading is “Actions of parties and counsel.”⁷ 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.

³ 1 Pa.C.S. § 1921(a).

⁴ *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.

⁵ *Miller v. County of Centre*, 643 Pa. 560 (2017).

⁶ “[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).

⁷ Section headings may be used in aid of construction. 1 Pa.C.S. § 1924.

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 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,⁸ 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*.⁹ 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.¹⁰ 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.

⁸ *McNeil v. Owens-Corning Fiberglas Corp.*, 545 Pa. 209, 213, 680 A.2d 1145,1147-48 (1996).

⁹ *See Howell v. Philadelphia Gas Works*, Docket No. C-2016-2568426, (Opinion and Order entered May 2, 2017).

¹⁰ 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.

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.¹¹ Liberal construction is to apply with particularity for cases involve pro se litigants.¹² 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.



JOHN F. COLEMAN, JR.
COMMISSIONER

Date: November 9, 2023

¹¹ 52 Pa. Code § 1.2(a).

¹² 52 Pa. Code § 1.2(d).

**PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17120**

**Regulations Governing the Pa. Public
Utility Commission's General Provisions at
52 Pa. Code Chapters 1, 3, and 5**

**Public Meeting held August 22, 2024
3041347-LAW
Docket No. L-2023-3041347**

STATEMENT OF COMMISSIONER KATHRYN L. ZERFUSS


Over 18 years have passed since the Commission last revised the general provisions governing practice before the PUC. Since then, our jurisdictional responsibilities have changed considerably and the nature of administrative practice and procedure has evolved and matured. The Clarified 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 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 including many 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 policy 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 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 a generation 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 income-eligible 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.

DATE: August 22, 2024


Kathryn L. Zerfuss, Commissioner

**PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17120**

**Regulations Governing the Pa. Public
Utility Commission’s General Provisions at
52 Pa. Code Chapters 1, 3, and 5**

**Public Meeting held November 9, 2023
3041347-LAW
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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.

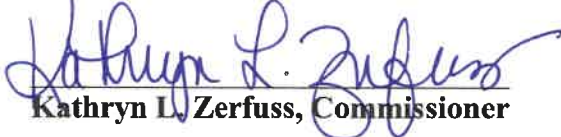
We should always endeavor to improve efficiencies in our administrative hearing process and the NOPR takes significant steps in that direction. I am pleased that the motion before us today includes more substantive considerations. These include proposals to modernize our regulations to meet the realities 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.

DATE: November 9, 2023


Kathryn L. Zarfuss, Commissioner

ANNEX A
TITLE 52. PUBLIC UTILITIES
PART 1. 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 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.

* * * * *

(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 application] **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.

* * * * *

§ 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] Applicant—[In proceedings involving applications for] **A party seeking** permission or authorization **[which] from** the Commission **[may give]** under **the Commission’s** statutory or **[other] delegated** authority **[delegated to it, the parties on whose behalf the applications are made]**.

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.

* * * * *

Corporation—As defined in 66 Pa.C.S. § 102.

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

* * * * *

Electronic mail—[A means of dispatching] **The electronic transmittal** or **[receiving] 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).

* * * * *

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.

Notarial officer—An officer authorized under § 5.346 (relating to **[persons] individuals** before whom depositions may be taken) to take depositions for use before the Commission or presiding officer.

* * * * *

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] Petitioner—[Persons]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 or direct [its] counsel for the partnership, association, corporation, or municipal corporation to enter into stipulations or settlement agreements on behalf of the corporation or municipal corporation.

* * * * *

[Protestants] Protestant—[Persons] 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] A decision [submitted for the approval of the Commission by the presiding officer] authored by a presiding officer(s) that requires Commission approval to become effective.

[Respondents] Respondent—[Persons] 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] The** Office of Consumer Advocate **[and the],** Office of Small Business Advocate, **and the Commission’s Bureau of Investigation & 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 the order] 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]** which, if disclosed, would provide **[the]** opportunity **[to obtain an] for competitive** advantage **[over competitors who] or economic harm to entities that, but for disclosure,** do not know or use it.

* * * * *

Writing or written—Applies to documents **[filed] whether** in **[paper form and documents filed electronically] 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 five (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 § 703(e) of the Act (relating to fixing of hearings).**

(c) Parties who are filing users and have agreed to receive electronic service also 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. REPRESENTATIONS 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:

(e) Subsection (a) supersedes 1 Pa. Code § 31.21 (relating to appearance in person).

§ 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 § 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 authorized 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) 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 Commission proceedings or informal Commission proceedings**; and [appearance by attorney or certified legal intern] **appearance 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 **[communication] 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 party on whose behalf the filing is made. If more than one party 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-leaded text and single-leaded, 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**.

* * * * *

(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.

* * * * *

§ 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.

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(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.**

* * * * *

§ 1.37. Number of copies.

(a) *Paper filings.*

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(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, 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.

* * * * *

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:

Description	Fee (in dollars)
[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
Filing each application for amendment of a certificate, permit or license...	\$350
<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
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
<u>Filing an application to be a pipeline operator...</u>	<u>\$250</u>
<u>Filing an application to be a conservation service provide ...</u>	<u>\$125</u>
<u>Filing an application to be a utility valuation expert...</u>	<u>\$125</u>
[Filing an application for a certificate to discontinue intrastate common carrier passenger or household goods in use service...]	[\$10]

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Subchapter F. SERVICE OF DOCUMENTS

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§ 1.51. Instructions for service, notice and protest.

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(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 subparts (b)(2), and 4) (1), and (2).

(b) *Forms of service.*

(1) *First class mail.* Service may be made by mailing a copy **of the document [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] to the party as set forth in § 1.24 of this chapter (relating to notice of appearance or withdrawal).**

* * * * *

(3) *Electronic.* Service may be made electronically to **[filing users] a party** who **[have] has** agreed to receive electronic service except when the Act specifically requires a different form of 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.]**

(i) A party that is a filing user has agreed to the service of Commission documents exclusively via 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 website.

(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] Act or another law, the following documents must be served by registered or certified mail, return receipt requested:**

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

(2) A complaint under § 702 of the Act (relating to service of complaint 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).

* * * * *

§ 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 [to use] 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 **of filings.** [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.] **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.

* * * * *

(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.

* * * * *

(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:**

* * * * *

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 Commission 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**.

* * * * *

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.

* * * * *

(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

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§ 1.73. Fiscal records.

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(b) No fiscal record, nor unseverable part thereof, which contains material exempted from the disclosure requirements provided in the [act] 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] February 14, 2008 (P.L. 6, No. 3) 65 P.S. §§ 67.101-67.3104), will be available for public inspection.

* * * * *

§ 1.75. [Review of staff determination.

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

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§ 1.77. [Extensions of time to review folders.

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.] (Reserved).

* * * * *

§ 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.

TITLE 52. PUBLIC UTILITIES
PART 1. PUBLIC UTILITY COMMISSION
Subpart A. GENERAL PROVISIONS
CHAPTER 3: SPECIAL PROVISIONS
Subchapter A. SPECIAL COMMISSION ACTIONS

§ 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.

* * * * *

§ 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.

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(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.

* * * * *

§ 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

§ 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.

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§ 3.111. Form and content of informal complaints.

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(b) Informal complaints as defined by §3.111(a) [shall] 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.

(a) The Commission staff may conduct informal investigations or informal proceedings in appropriate circumstances regarding the condition and management of a public utility or other person subject to its jurisdiction. The informal investigations are typically undertaken to gather data or to substantiate allegations of potential violations of the act and may be conducted with or without hearing.

(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 or from the Secretary of the Commission, [P. O. Box 3265] 400 North Street, Harrisburg, Pennsylvania, [17105-3265] 17120; (717) 772-7777.

**TITLE 52. PUBLIC UTILITIES
PART 1. PUBLIC UTILITY COMMISSION
Subpart A. GENERAL PROVISIONS
CHAPTER 5: FORMAL PROCEEDINGS
Subchapter A. PLEADINGS AND OTHER PRELIMINARY MATTERS**

* * * * *

§ 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:

* * * * *

(4) Set forth, in the order indicated, the 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.

* * * * *

§ 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).**

(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).R**

(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).

* * * * *

(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).

§ 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] [telefax] fax** number and Pennsylvania Supreme Court identification number of the attorney and, if available, the electronic mailing address.

§ 5.24. Satisfaction of formal complaints.

* * * * *

(b) In lieu of the certified statement required by subsection (a), the respondent may provide a certified writing to the Commission that it has addressed the complaint and at least one of the following:

(1) That the complainant has acknowledged satisfaction to the respondent.

(2) That the complainant has acknowledged to the respondent that the complainant no longer wishes to pursue the complaint.

(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. **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.**

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

§ 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.

* * * * *

§ 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.

* * * * *

§ 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.

* * * * *

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

§ 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**.

§ 5.72. Eligibility to intervene.

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

* * * * *

§ 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.**

* * * * *

§ 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:

* * * * *

(vi) The method of service by a party.

* * * * *

§ 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.**

* * * * *

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

* * * * *

(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.

* * * * *

§ 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 **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.

* * * * *

§ 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 rights of a party.

(4) Does not exceed 15 pages.

* * * * *

(i) *Failure to act.* Failure of the Commission to act on a certified question within 30 days of its receipt will be deemed to be an affirmation of the decision of the presiding officer.

* * * * *

§ 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. Notification by means other than by mail will be confirmed by the presiding officer by service in writing and a filing will be made with the Secretary regarding confirmation.

* * * * *

§ 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. If the statement is not provided, the party may move for an order from the presiding officer. For the purposes of this subsection, a statement previously made is one of the following:

* * * * *

§ 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). Unless a presiding officer has been designated, objections and motions to compel shall be ruled upon by the Chief Administrative Law Judge. **Once a protest or adverse pleading is filed with the Commission, staff data requests are deemed withdrawn.**

* * * * *

§ 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 to compel that the interrogatory be answered. The motion to compel must include the interrogatory objected to and the objection. If a motion to compel is not filed within 10 days of service of the objection, **or until such time as the parties may determine by mutual agreement,** the objected to interrogatory will be deemed withdrawn.

* * * * *

§ 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 a party seeking discovery, the party against whom discovery is sought shall reproduce the designated documents at the requesting party's expense. Regulated utilities shall provide copies of requested materials to Commission staff, which includes 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]**. The request may only be made orally or in writing and shall be presented at the time the witness appears for cross-examination.

* * * * *

§ 5.365. Orders to limit availability of proprietary 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.

* * * * *

§ 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.

* * * * *

§ 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] must provide [two copies] 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 strikethroughs or electronic strikethroughs 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 document management database that pre-served testimony has been electronically submitted to the Commission.]

* * * * *

§ 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].*

(1) *Main briefs.* A main brief may be filed by a party except as provided by agreement or by direction of the presiding officer.

(2) *Reply brief.* A party may file a reply brief to a main brief regardless of whether the party filed a main brief.

(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] Main briefs [responsive 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.]**

(g) *Late-filed briefs.* Briefs not filed and served on or before the dates fixed therefore will not be accepted, except by special permission of the Commission or the presiding officer as permitted under § 1.15 (referring to extensions of time and continuances).

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

* * * * *

§ 5.531. Certification of record without decision.

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

* * * * *

§ 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.

* * * * *

§ 5.591. Reports of compliance.

(a) A **party [person]** subject to the jurisdiction of the Commission **that [who]** 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.



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
COMMONWEALTH KEYSTONE BUILDING
400 NORTH STREET
HARRISBURG, PENNSYLVANIA 17120

October 8, 2024

Independent Regulatory Review Commission
333 Market Street
14th Floor
Harrisburg PA 17101

Via email to: irrc@irrc.state.pa.us

Re: PUC Docket No. L-2023-3041347; Fiscal Note No. 57-341;
Proposed Rulemaking for Regulations Governing the Public Utility Commission's
General Provisions
52 Pa. Code Chs. 1, 3, and 5 (relating to Rules of Administrative Practice and Procedure;
Special Provisions; and Formal Proceedings)

Hello:

Pursuant to Section 745.5(a) of the Regulatory Review Act, (71 P.S. §§ 745.1—745.15), please find enclosed a copy of the Notice of Proposed Rulemaking (NOPR) and supporting documents for review by the Independent Regulatory Review Commission.

The Pennsylvania Public Utility Commission (PA PUC) entered this NOPR as clarified on August 22, 2024, at PA PUC Docket No. L-2023-3041347. This is an ongoing process whereby the Commission's procedural rules are examined periodically to determine if any changes are necessary. When appropriate, the PUC initiates a rulemaking to make necessary changes to its procedural regulations.

Pursuant to Section 745.5(a), the PA PUC is also submitting a copy of the NOPR with supporting documents to the Majority and Minority Chairs of the House Consumer Protection, Technology and Utilities Committee, the Majority and Minority Chairs of the Senate Committee on Consumer Protection and Professional Licensures, and the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.

IRRC

PUC NOPR: PUC Docket No. L-2023-3041347; Fiscal Note No. 57-341

October 8, 2024

Page 2

The PA PUC appreciates the opportunity to deliver these materials electronically. Please acknowledge, via email to the attention of Karen Thorne, kathorne@pa.gov, your receipt of this delivery.

Sincerely,

/s/ **David E. Screven**

David E. Screven

Chief Counsel

Enclosures:

Clarified NOPR (Preamble and Annex A)

Face Sheet & Executive Summary

Regulatory Analysis Form

Fiscal Note

Vice Chair Kimberly Barrow Statements dated 11/9/2023 and 8/22/2024

Commissioner Kathryn L. Zerkus Statements dated 11/9/2023 and 8/22/2024

Commissioner John F. Coleman Statements dated 11/9/2023 and 8/22/2024

Proof of delivery to the Legislative Committees and the *Bulletin*

Transmittal with enclosures to:

The Honorable Lisa Boscola, via email c/o Jesse Monoski, jesse.monoski@pasentate.com
and Enid Vazquez, enid.vazquez@pasenate.com

The Honorable Jim Marshall, via email c/o Phil Kirchner, pkirchner@pahousegop.com

The Honorable Robert F. Matzie, via email c/o Rich Pronesti, rpronest@pahouse.net and
Patrick Grill, pgrill@pahouse.net

The Honorable Patrick Stephano, via email c/o Jennifer Smeltz, jmsmeltz@pasen.gov

Transmittal of the Clarified NOPR (Preamble and Annex A) and Statements for publication to:
Pennsylvania Bulletin/Legislative Reference Bureau

cc:

JJ Livingston, PUC Legislative Affairs Director, jerlivings@pa.gov

David E. Screven, Chief Counsel, dscreven@pa.gov

Colin Scott, PUC Assistant Counsel, colinscott@pa.gov

Tiffany Tran, PUC Assistant Counsel, tiftran@pa.gov

Karen Thorne, PUC Regulatory Review Assistant, kathorne@pa.gov

October 8, 2024

From: [Bulletin](#)
To: [Thorne, Karen](#); [Code&Bulletin](#); [A.J. Mendelsohn](#)
Cc: [Tran, Tiffany](#); [Screven, David](#); [Fink Smith, Louise](#); [Scott, Colin](#); [Livingston, JJ](#)
Subject: [External] Re: 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); Fiscal ...
Date: Tuesday, October 8, 2024 3:59:51 PM

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Thank you for submitting this document.

Please provide the word files for the statements so that we can schedule it for publication.

Warm regards,
Adeline

Adeline Gaydosh | Legal Assistant

agaydosh@palrb.us | 717.783.3984

Legislative Reference Bureau

Pennsylvania Code & Bulletin Office

647 Main Capitol Building

Harrisburg, PA 17120

From: Thorne, Karen <kathorne@pa.gov>
Sent: Tuesday, October 8, 2024 1:11 PM
To: Bulletin <bulletin@palrb.us>; Code&Bulletin <codeandbulletin@palrb.us>; A.J. Mendelsohn <amendelsohn@palrb.us>
Cc: Tran, Tiffany <tiftran@pa.gov>; Screven, David <DSCREVEN@pa.gov>; Fink Smith, Louise <finksmith@pa.gov>; Scott, Colin <colinscott@pa.gov>; Livingston, JJ <jerlivings@pa.gov>
Subject: 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); Fiscal Note: 57-341

Director Mendelsohn:

Attached is the submission for the Clarified Notice of Proposed Rulemaking for Regulations Governing the Public Utility Commission's General Provisions at 52 Pa. Code Chapters 1, 3, and 5 (relating to rules of administrative practice and procedure; special provisions; and formal proceedings). The Pennsylvania Public Utility Commission (PA PUC) entered this proposed rulemaking on August 22, 2024, at PA PUC Docket No. L-2023-3041347. The Fiscal Note Number is: 57-341. The cover letter for the delivery is attached above and pasted below.

Please let us know if you have any questions.

Please let us know that your office has received this transmittal as we must provide proof of delivery to IRRC.

Thank you,

Karen Thorne, RRA
PO Box 3265
Harrisburg, PA 17120
Ph: (717) 772-4597

RECEIVED

Independent Regulatory
Review Commission

October 8, 2024

October 8, 2024

Amy J. (AJ) Mendelsohn, Director
Pennsylvania Code and Bulletin
Main Capitol Building, Room 647
Harrisburg, PA 17120

Via email to: bulletin@palrb.us; codeandbulletin@palrb.us; amendelsohn@palrb.us

Re: PUC Docket No. L-2023-3041347; Fiscal Note No. 57-341;
Proposed Rulemaking for Regulations Governing the Public Utility Commission's
General Provisions
52 Pa. Code Chs. 1, 3, and 5 (relating to Rules of Administrative Practice and
Procedure; Special Provisions; and Formal Proceedings)

Hello:

Pursuant to Section 745.5(a) of the Regulatory Review Act, (71 P.S. §§ 745.1—745.15), please find enclosed a copy of the Notice of Proposed Rulemaking (NOPR) and supporting documents for publication in the *Pennsylvania Bulletin*.

The Pennsylvania Public Utility Commission (PA PUC) entered this NOPR as clarified on August 22, 2024, at PA PUC Docket No. L-2023-3041347. This is an ongoing process whereby the Commission's procedural rules are examined periodically to determine if any changes are necessary. When appropriate, the PUC initiates a rulemaking to make necessary changes to its procedural regulations.

Pursuant to Section 745.5(a), the PA PUC is also submitting a copy of the NOPR with supporting documents to the Majority and Minority Chairs of the House Consumer Protection, Technology and Utilities Committee, the Majority and Minority Chairs of the Senate Committee on Consumer Protection and Professional Licensures, and the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.

The PA PUC appreciates the opportunity to deliver these materials electronically. Please acknowledge, via email to the attention of Karen Thorne, kathorne@pa.gov, your receipt of this delivery.

RECEIVED

Sincerely,

Independent Regulatory
Review Commission
October 8, 2024

/s/ *David E. Screven*

David E. Screven
Chief Counsel

Enclosures:

Clarified NOPR (Preamble and Annex A)
Face Sheet & Executive Summary
Regulatory Analysis Form
Fiscal Note
Vice Chair Kimberly Barrow Statements dated 11/9/2023 and 8/22/2024
Commissioner Kathryn L. Zerfuss Statements dated 11/9/2023 and 8/22/2024
Commissioner John F. Coleman Statements dated 11/9/2023 and 8/22/2024

Transmittal with enclosures to:

The Honorable Lisa Boscola, via email c/o Jesse Monoski,
jesse.monoski@pasentate.com and Enid Vazquez,
enid.vazquez@pasenate.com
The Honorable Jim Marshall, via email c/o Phil Kirchner, pkirchner@pahousegop.com
The Honorable Robert F. Matzie, via email c/o Rich Pronesti,
rpronest@pahouse.net and Patrick Grill, pgrill@pahouse.net
The Honorable Patrick Stephano, via email c/o Jennifer Smeltz, jmsmeltz@pasen.gov

Transmittal of the Clarified NOPR (Preamble and Annex A) and Statements for publication to:
Pennsylvania Bulletin/Legislative Reference Bureau

cc:

JJ Livingston, PUC Legislative Affairs Director, jerlivings@pa.gov
David E. Screven, Chief Counsel, dscreven@pa.gov
Colin Scott, PUC Assistant Counsel, colinsscott@pa.gov
Tiffany Tran, PUC Assistant Counsel, tiftran@pa.gov
Karen Thorne, PUC Regulatory Review Assistant, kathorne@pa.gov

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Independent Regulatory
Review Commission
October 8, 2024

From: [Monoski, Jesse](#)
To: [Thorne, Karen](#)
Cc: [Livingston, JJ](#); [Vazquez, Enid](#)
Subject: RE: 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); Fiscal Note: 57-341
Date: Tuesday, October 8, 2024 12:32:25 PM

Received. Thank you Karen.

Jesse Monoski

Executive Director, Consumer Protection & Professional
Licensure

Senator Lisa M. Boscola, Minority Chair

Rm 458 Main Capitol Building

Harrisburg, PA, 17120

O: 717-787-4236

From: Thorne, Karen <kathorne@pa.gov>
Sent: Tuesday, October 8, 2024 12:27 PM
To: Monoski, Jesse <jesse.monoski@pasenate.com>
Cc: Livingston, JJ <jerlivings@pa.gov>; Vazquez, Enid <enid.vazquez@pasenate.com>
Subject: 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); Fiscal Note: 57-341
Importance: High

EXTERNAL EMAIL

Mr. Monoski on behalf of The Honorable Lisa Boscola:

Please excuse me, I submitted this to the incorrect email address, previously.

Attached is the submission for the Clarified Notice of Proposed Rulemaking for Regulations Governing the Public Utility Commission's General Provisions at 52 Pa. Code Chapters 1, 3, and 5 (relating to rules of administrative practice and procedure; special provisions; and formal proceedings). The Pennsylvania Public Utility Commission (PA PUC) entered this proposed rulemaking on August 22, 2024, at PA PUC Docket No. L-2023-3041347. The Fiscal Note Number is: 57-341. The cover letter for the delivery is attached above and pasted below.

Please let us know if you have any questions.

Please let us know that your office has received this transmittal as we must provide proof of delivery to IRRC.

Thank you,

Karen Thorne, RRA
PO Box 3265
Harrisburg, PA 17120
Ph: (717) 772-4597

RECEIVED

Independent Regulatory
Review Commission
October 8, 2024

October 8, 2024

The Honorable Lisa Boscola
Minority Chair, Senate Committee on Consumer Protection and Professional Licensure
458 Main Capital
Senate Box 203018
Harrisburg, PA 17120-3018

Via email to: Seth Rolko at Seth.Rolko@pasenate.com
Enid Vazquez at enid.vazquez@pasenate.com

Re: PUC Docket No. L-2023-3041347; Fiscal Note No. 57-341;
Proposed Rulemaking for Regulations Governing the Public Utility Commission's
General Provisions
52 Pa. Code Chs. 1, 3, and 5 (relating to Rules of Administrative Practice and
Procedure; Special Provisions; and Formal Proceedings)

Hello:

Pursuant to Section 745.5(a) of the Regulatory Review Act, (71 P.S. §§ 745.1—745.15), please find enclosed a copy of the Notice of Proposed Rulemaking (NOPR) and supporting documents for review by the Senate Committee on Consumer Protection and Professional Licensure (Committee).

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in the *Pennsylvania Bulletin*, and the Independent Regulatory Review Commission (IRRC).

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Independent Regulatory
Review Commission
October 8, 2024

The PA PUC appreciates the opportunity to deliver these materials electronically. Please acknowledge, via email to the attention of Karen Thorne, kathorne@pa.gov, your receipt of this delivery.

Sincerely,

/s/ *David E. Screven*

David E. Screven
Chief Counsel

Enclosures:

Clarified NOPR (Preamble and Annex A)
Face Sheet & Executive Summary
Regulatory Analysis Form
Fiscal Note
Vice Chair Kimberly Barrow Statements dated 11/9/2023 and 8/22/2024
Commissioner Kathryn L. Zerfuss Statements dated 11/9/2023 and 8/22/2024
Commissioner John F. Coleman Statements dated 11/9/2023 and 8/22/2024

Transmittal with enclosures to:

The Honorable Jim Marshall, via email c/o Phil Kirchner, pkirchner@pahousegop.com
The Honorable Robert F. Matzie, via email c/o Rich Pronesti,
rpronest@pahouse.net and Patrick Grill, pgrill@pahouse.net
The Honorable Patrick Stephano, via email c/o Jennifer Smeltz, jmsmeltz@pasen.gov
Independent Regulatory Review Commission, irrc@irrc.state.pa.us

Transmittal of the Clarified NOPR (Preamble and Annex A) and Statements for publication to:
Pennsylvania Bulletin/Legislative Reference Bureau

cc:

JJ Livingston, PUC Legislative Affairs Director, jerlivings@pa.gov
David E. Screven, Chief Counsel, dscreven@pa.gov
Colin Scott, PUC Assistant Counsel, colinscott@pa.gov
Tiffany Tran, PUC Assistant Counsel, tiftran@pa.gov
Karen Thorne, PUC Regulatory Review Assistant, kathorne@pa.gov

This message and any attachment may contain privileged or confidential information intended solely for the use of the person to whom it is addressed. If the reader is not the intended recipient then be advised that forwarding, communicating, disseminating, copying or using

From: [Smeltz, Jennifer](#)
To: [Thorne, Karen](#)
Subject: RE: 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); Fiscal Note: 57-341
Date: Tuesday, October 8, 2024 12:25:49 PM

Received.

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Independent Regulatory
Review Commission
October 8, 2024

*Jennifer Smeltz, Executive Director
Consumer Protection and Professional Licensure Committee
Office of Senator Pat Stefano
Phone: (717) 787-7175*

From: Thorne, Karen <kathorne@pa.gov>
Sent: Tuesday, October 8, 2024 12:19 PM
To: Smeltz, Jennifer <jmsmeltz@pasen.gov>
Cc: Tran, Tiffany <tiftran@pa.gov>; Screven, David <DSCREVEN@pa.gov>; Fink Smith, Louise <finksmith@pa.gov>; Scott, Colin <colinscott@pa.gov>; Livingston, JJ <jerlivings@pa.gov>
Subject: 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); Fiscal Note: 57-341
Importance: High

ⓘ CAUTION : External Email ⓘ

Ms. Smeltz on behalf of The Honorable Patrick Stefano:

Attached is the submission for the Clarified Notice of Proposed Rulemaking for Regulations Governing the Public Utility Commission's General Provisions at 52 Pa. Code Chapters 1, 3, and 5 (relating to rules of administrative practice and procedure; special provisions; and formal proceedings). The Pennsylvania Public Utility Commission (PA PUC) entered this proposed rulemaking on August 22, 2024, at PA PUC Docket No. L-2023-3041347. The Fiscal Note Number is: 57-341. The cover letter for the delivery is attached above and pasted below.

Please let us know if you have any questions.

Please let us know that your office has received this transmittal as we must provide proof of delivery to IRRC.

Thank you,

Karen Thorne, RRA
PO Box 3265
Harrisburg, PA 17120
Ph: (717) 772-4597

October 8, 2024

The Honorable Patrick Stefano
Majority Chair, Senate Committee on Consumer Protection and Professional
Licensure
187 Main Capital
Senate Box 203032
Harrisburg, PA 17120

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Independent Regulatory
Review Commission
October 8, 2024

Via email to: Jennifer Smeltz at jmsmeltz@pasen.gov

Re: PUC Docket No. L-2023-3041347; Fiscal Note No. 57-341;
Proposed Rulemaking for Regulations Governing the Public Utility Commission's
General Provisions
52 Pa. Code Chs. 1, 3, and 5 (relating to Rules of Administrative Practice and
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745.15), please find enclosed a copy of the Notice of Proposed Rulemaking (NOPR) and
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Professional Licensure.

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clarified on August 22, 2024, at PA PUC Docket No. L-2023-3041347. This is an
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with supporting documents to the Majority and Minority Chairs of the House Committee
on Consumer Affairs, the Majority Chair of the Senate Committee on Consumer
Protection and Professional Licensures, the Legislative Reference Bureau for publication
in the *Pennsylvania Bulletin*, and the Independent Regulatory Review Commission
(IRRC).

The PA PUC appreciates the opportunity to deliver these materials electronically.
Please acknowledge, via email to the attention of Karen Thorne, kathorne@pa.gov, your
receipt of this delivery.

Sincerely,

/s/ *David E. Screven*

David E. Screven
Chief Counsel

RECEIVED

Independent Regulatory
Review Commission

October 8, 2024

Enclosures:

Clarified NOPR (Preamble and Annex A)
Face Sheet & Executive Summary
Regulatory Analysis Form
Fiscal Note
Vice Chair Kimberly Barrow Statements dated 11/9/2023 and 8/22/2024
Commissioner Kathryn L. Zerfuss Statements dated 11/9/2023 and 8/22/2024
Commissioner John F. Coleman Statements dated 11/9/2023 and 8/22/2024

Transmittal with enclosures to:

The Honorable Jim Marshall, via email c/o Phil Kirchner, pkirchner@pahousegop.com
The Honorable Robert Matzie, via email c/o Rich Pronesti, rpronesti@pahouse.net and
[Patrick Grill, pgrill@pahouse.net](mailto:pgrill@pahouse.net)
The Honorable Lisa Boscola, via email c/o Jesse Monoski,
jesse.monoski@pasentate.com and Enid Vazquez, enid.vazquez@pasenate.com
Independent Regulatory Review Commission, irrc@irrc.state.pa.us

Transmittal of the Clarified NOPR (Preamble and Annex A) and Statements for publication to:
Pennsylvania Bulletin/Legislative Reference Bureau

cc:

JJ Livingston, PUC Legislative Affairs Director, jerlivings@pa.gov
David E. Screven, Chief Counsel, dscreven@pa.gov
Colin Scott, PUC Assistant Counsel, colinscott@pa.gov
Tiffany Tran, PUC Assistant Counsel, tiftran@pa.gov
Karen Thorne, PUC Regulatory Review Assistant, kathorne@pa.gov

From: [Pronesti, Rich](#)
To: [Thorne, Karen](#); [Grill Patrick](#)
Cc: [Tran, Tiffany](#); [Screven, David](#); [Fink Smith, Louise](#); [Scott, Colin](#); [Livingston, JJ](#)
Subject: Re: 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); Fiscal Note: 57-341
Date: Tuesday, October 8, 2024 12:17:23 PM

Independent Regulatory
Review Commission
October 8, 2024

Received...thank you!

From: Thorne, Karen <kathorne@pa.gov>
Sent: Tuesday, October 8, 2024 12:03:47 PM
To: Pronesti, Rich <RPronest@pahouse.net>; Grill, Patrick <PGrill@pahouse.net>
Cc: Tran, Tiffany <tiftran@pa.gov>; Screven, David <DSCREVEN@pa.gov>; Fink Smith, Louise <finksmith@pa.gov>; Scott, Colin <colinscott@pa.gov>; Livingston, JJ <jerlivings@pa.gov>
Subject: 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); Fiscal Note: 57-341

Mr. Grill and Mr. Pronesti on behalf of The Honorable Robert Matzie:

Attached is the submission for the Clarified Notice of Proposed Rulemaking for Regulations Governing the Public Utility Commission's General Provisions at 52 Pa. Code Chapters 1, 3, and 5 (relating to rules of administrative practice and procedure; special provisions; and formal proceedings). The Pennsylvania Public Utility Commission (PA PUC) entered this proposed rulemaking on August 22, 2024, at PA PUC Docket No. L-2023-3041347. The Fiscal Note Number is: 57-341. The cover letter for the delivery is attached above and pasted below.

Please let us know if you have any questions.

Please let us know that your office has received this transmittal as we must provide proof of delivery to IRRC.

Thank you,

Karen Thorne, RRA
PO Box 3265
Harrisburg, PA 17120
Ph: (717) 772-4597

October 8, 2024

The Honorable Robert Matzie
Majority Chair, The House Consumer Protection, Technology and Utilities Committee
202 Irvis Office Building
PO Box 202016
Harrisburg, PA 17120-2016

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Via email to: Rich Pronesti at rpronesti@pahouse.net
Patrick Grill at pgrill@pahouse.net

Independent Regulatory
Review Commission
October 8, 2024

Re: PUC Docket No. L-2023-3041347; Fiscal Note No. 57-341;

Proposed Rulemaking for Regulations Governing the Public Utility Commission's
General Provisions

52 Pa. Code Chs. 1, 3, and 5 (relating to Rules of Administrative Practice and
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The PA PUC appreciates the opportunity to deliver these materials electronically.
Please acknowledge, via email to the attention of Karen Thorne, kathorne@pa.gov, your
receipt of this delivery.

Sincerely,

/s/ **David E. Screven**

David E. Screven

Chief Counsel

Enclosures:

Clarified NOPR (Preamble and Annex A)

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Face Sheet & Executive Summary
Regulatory Analysis Form
Fiscal Note

Independent Regulatory
Review Commission

October 8, 2024

Vice Chair Kimberly Barrow Statements dated 11/9/2023 and 8/22/2024
Commissioner Kathryn L. Zerfuss Statements dated 11/9/2023 and 8/22/2024
Commissioner John F. Coleman Statements dated 11/9/2023 and 8/22/2024

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The Honorable Patrick Stefano, via email c/o Jennifer Smeltz at jmsmeltz@pasen.gov

The Honorable Lisa Boscola, via email c/o Jesse Monoski,
jesse.monoski@pasentate.com and Enid Vazquez, enid.vazquez@pasenate.com

Independent Regulatory Review Commission, irrc@irrc.state.pa.us

Transmittal of the Clarified NOPR (Preamble and Annex A) and Statements for publication to:
Pennsylvania Bulletin/Legislative Reference Bureau

cc:

JJ Livingston, PUC Legislative Affairs Director, jerlivings@pa.gov

David E. Screven, Chief Counsel, dscreven@pa.gov

Colin Scott, PUC Assistant Counsel, colin.scott@pa.gov

Tiffany Tran, PUC Assistant Counsel, tiftran@pa.gov

Karen Thorne, PUC Regulatory Review Assistant, kathorne@pa.gov

From: [David Drumheller](#)
To: [Thorne, Karen](#)
Subject: RE: [EXTERNAL]: 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); Fiscal No
Date: Tuesday, October 8, 2024 2:20:40 PM

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Good Afternoon Ms. Thorne,

Independent Regulatory
Review Commission

I received the email with attachments.

October 8, 2024

Thank You,
David Drumheller

From: Thorne, Karen <kathorne@pa.gov>
Sent: Tuesday, October 8, 2024 12:53 PM
To: David Drumheller <Ddrumheller@pahousegop.com>; Angel Pagan <Apagan@pahousegop.com>
Cc: Tran, Tiffany <tiftran@pa.gov>; Screven, David <DSCREVEN@pa.gov>; Fink Smith, Louise <finksmith@pa.gov>; Scott, Colin <colinscott@pa.gov>; Livingston, JJ <jerlivings@pa.gov>
Subject: [EXTERNAL]: 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); Fiscal Not...
Importance: High

David Drumheller and Angel Pagan on behalf of The Honorable Jim Marshall:

Apologies for submitting this to Mr. Kirchner, I was made aware that I should submit rulemaking packets to you both instead.

Attached is the submission for the Clarified Notice of Proposed Rulemaking for Regulations Governing the Public Utility Commission's General Provisions at 52 Pa. Code Chapters 1, 3, and 5 (relating to rules of administrative practice and procedure; special provisions; and formal proceedings). The Pennsylvania Public Utility Commission (PA PUC) entered this proposed rulemaking on August 22, 2024, at PA PUC Docket No. L-2023-3041347. The Fiscal Note Number is: 57-341. The cover letter for the delivery is attached above and pasted below.

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Karen Thorne, RRA
PO Box 3265
Harrisburg, PA 17120
Ph: (717) 772-4597

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Independent Regulatory
Review Commission

October 8, 2024

October 8, 2024

The Honorable Jim Marshall
Majority Chair, The House Consumer Protection, Technology and Utilities Committee
214 Ryan Office Building
PO Box 202014
Harrisburg, PA 17120-2014

Via email to: David Drumheller at Ddrumheller@pahousegop.com
Angel S. Pagan at Apagan@pahousegop.com

Re: PUC Docket No. L-2023-3041347; Fiscal Note No. 57-341;

Proposed Rulemaking for Regulations Governing the Public Utility Commission's
General Provisions

52 Pa. Code Chs. 1, 3, and 5 (relating to Rules of Administrative Practice and
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Sincerely,

/s/ **David E. Screven**

David E. Screven

Chief Counsel

RECEIVED

Independent Regulatory
Review Commission

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Commissioner John F. Coleman Statements dated 11/9/2023 and 8/22/2024

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The Honorable Robert Matzie, via email c/o Rich Pronesti, rpronesti@pahouse.net and
[Patrick Grill, pgrill@pahouse.net](mailto:Patrick.Grill@pahouse.net)

The Honorable Lisa Boscola, via email c/o Jesse Monoski,
jesse.monoski@pasentate.com and Enid Vazquez, enid.vazquez@pasenate.com

Independent Regulatory Review Commission, irrc@irrc.state.pa.us

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Pennsylvania Bulletin/Legislative Reference Bureau

cc:

JJ Livingston, PUC Legislative Affairs Director, jerlivings@pa.gov
David E. Screven, Chief Counsel, dscreven@pa.gov
Colin Scott, PUC Assistant Counsel, colin.scott@pa.gov
Tiffany Tran, PUC Assistant Counsel, tiftran@pa.gov

Karen Thorne, PUC Regulatory Review Assistant, kathorne@pa.gov

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