

# Regulatory Analysis Form

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IRRC Number: 2441

(1) Agency

Pennsylvania Public Utility Commission

(2) I.D. Number (Governor's Office Use)

L-00020156/57-236

(3) Short Title

Final Rulemaking For Chapters 1, 3, and 5 Pertaining to Practice and Procedure Before the Commission

(4) PA Code Cite

52 Pa. Code Sections 1.1 - 5.633

(5) Agency Contacts & Telephone Numbers

Primary Contact: Joseph K. Witmer (Legal)

Secondary Contact: Jaime McClintock (Legal); Sherri DelBiondo (Legal)

(6) Type of Rulemaking (check one)

- Proposed Rulemaking
- Final Order Adopting Regulation
- Final Order, Proposed Rulemaking Omitted

(7) Is a 120-Day Emergency Certification Attached?

- No
- Yes: By the Attorney General
- Yes: By the Governor

(8) Briefly explain the regulation in clear and nontechnical language.

Chapters 1, 3, and 5 of the Commission's regulations govern practice and procedure before the Commission 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, formal and informal Commission proceedings including pleadings, filing deadlines, discovery rules, emergency order procedures, filing Exceptions and Reply Exceptions, and Appeals from Commission staff action.

(9) State the statutory authority for the regulation and any relevant state or federal court decisions.

66 Pa. C.S. § 501, et. seq.

## Regulatory Analysis Form

(10) Is the regulation mandated by any federal or state law or court order, or federal regulation? If yes, cite the specific law, case or regulation, and any deadlines for action.

No.

(11) Explain the compelling public interest that justifies the regulation. What is the problem it addresses?

The Commission intends to update the Commission's procedural rules in order to reflect changes in practice, the advent of new technologies for proceedings before the Commission, and revisions intended to make the Commission's rules easier to understand and use in a manner similar to those used in the Pennsylvania Courts

(12) State the public health, safety, environmental or general welfare risks associated with nonregulation.

None.

(13) Describe who will benefit from the regulation. (Quantify the benefits as completely as possible and approximate the number of people who will benefit.)

Entities that practice before the Commission.

## Regulatory Analysis Form

(14) Describe who will be adversely affected by the regulation. (Quantify the adverse effects as completely as possible and approximate the number of people who will be adversely affected.)

No person or entity will be adversely affected by updating the Commission's procedural rules.

(15) List the persons, groups or entities that will be required to comply with the regulation. (Approximate the number of people who will be required to comply.)

All utilities and other persons who have occasion to practice before, or otherwise formally interact with, the Commission

(16) Describe the communications with and input from the public in the development and drafting of the regulation. List the persons and/or groups who were involved, if applicable.

As required by the regulatory process, the Commission engaged in a public notice and comment period. The following entities submitted formal comments to the Commission regarding the proposed revisions to the Commission's rules: Craig A. Doll, Esq., the Pennsylvania Department of Environmental Protection, Kirkpatrick & Lockhart, LLP, McNaughton Bros., Inc., Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company, the Pennsylvania Office of the Consumer Advocate, the Pennsylvania Office of the Small Business Advocate, Superior Water Company, Verizon Pennsylvania Inc., and Verizon North, Inc. The following entities submitted comments to the Commission regarding the final regulations revising the Commission's rules: The Office of Consumer Advocate, the Office of Small Business Advocate, Ryan, Russel, Ogden & Seltzer (law firm), the Pennsylvania Department of Environmental Protection (DEP), Saul Ewing on behalf of the Practitioners' Group (a group of attorneys that regularly appear in proceedings before the Commission), Thomas, Thomas, Armstrong and Niessen (law firm), and the Independent Regulatory Review Commission (IRRC).

(17) 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.

There should be no costs or savings to persons or entities which practice before the Commission.

### **Regulatory Analysis Form**

(18) Provide a specific estimate of the costs and/or savings to local governments associated with compliance, including any legal, accounting or consulting procedures which may be required.

None.

(19) Provide a specific estimate of the costs and/or savings to state government associated with the implementation of the regulation, including any legal, accounting, or consulting procedures which may be required.

None.

## Regulatory Analysis Form

(20) 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
<b>SAVINGS:</b>	\$	\$	\$	\$	\$	\$
Regulated Community						
Local Government						
State Government						
Total Savings						
<b>COSTS:</b>						
Regulated Community						
Local Government						
State Government						
Total Costs						
<b>REVENUE LOSSES:</b>						
Regulated Community						
Local Government						
State Government						
Total Revenue Losses						

(20a) Explain how the cost estimates listed above were derived.

Not applicable.

### Regulatory Analysis Form

(20b) Provide the past three year expenditure history for programs affected by the regulation.

<b>Program</b>	<b>FY -3</b>	<b>FY -2</b>	<b>FY -1</b>	<b>Current FY</b>

(21) Using the cost-benefit information provided above, explain how the benefits of the regulation outweigh the adverse effects and costs.

Not applicable.

(22) Describe the nonregulatory alternatives considered and the costs associated with those alternatives. Provide the reasons for their dismissal.

Not applicable.

(23) Describe alternative regulatory schemes considered and the costs associated with those schemes. Provide the reasons for their dismissal.

Not applicable.

## Regulatory Analysis Form

(24) 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 regulation.

Not applicable.

(25) How does this regulation compare with those of other states? Will the regulation put Pennsylvania at a competitive disadvantage with other states?

The Commission has not performed an extensive or in depth analysis of other states' legislation, however the Commission does not believe that these regulations, which generally pertain to procedure and not substance, will have little effect on Pennsylvania's competitiveness.

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

No.

(27) Will any public hearings or informational meetings be scheduled? Please provide the dates, times, and locations, if available.

No.

## Regulatory Analysis Form

**(28) Will the regulation change existing reporting, record keeping, or other paperwork requirements? Describe the changes and attach copies of forms or reports which will be required as a result of implementation, if available.**

No.

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

Not applicable

**(30) What is the anticipated effective date of the regulation; the date by which compliance with the regulation will be required; and the date by which any required permits, licenses or other approvals must be obtained?**

The regulation will become effective upon publication in the Pennsylvania Bulletin following review by the legislative standing committees and the Independent Regulatory Review Commission.

**(31) Provide the schedule for continual review of the regulation.**

After taking effect, the regulations will be reviewed on an on-going basis and as warranted.



**FACE SHEET  
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Copy below is hereby approved as to form and legality. Attorney General.

BY \_\_\_\_\_  
(DEPUTY ATTORNEY GENERAL)

\_\_\_\_\_  
DATE OF APPROVAL

Check if applicable  
Copy not approved. Objections attached

Copy below is hereby certified to be true and correct copy of a document issued, prescribed or promulgated by:

Pennsylvania Public Utility Commission  
(AGENCY)

DOCUMENT/FISCAL NOTE NO. L-00020156/57-236

DATE OF ADOPTION December 15, 2005

BY James J. McNulty  
James J. McNulty  
(SECRETARY)

TITLE \_\_\_\_\_

Copy below is hereby approved as to form and legality. Executive or independent Agencies.

BY Bohdan R. Pankiw  
Bohdan R. Pankiw  
Chief Counsel

12-15-05  
DATE OF APPROVAL

Check if applicable. No Attorney General approval or objection within 30 days after submission.

L-00020156/57-236  
Final Rulemaking  
Revision of Chapters 1, 3 and 5 of Title 52 of the  
Pennsylvania Code Pertaining to Practice  
and Procedure Before the Commission  
52 Pa. Code, Chapters 1, 3 and 5

The Pennsylvania Public Utility Commission on December 15, 2005, adopted a final rulemaking order revising and updating the Commission's rules of practice and procedure. The contact persons are Jaime McClintock, Law Bureau, 783-2811 and Joseph Witmer, Law Bureau, 787-3663.



**EXECUTIVE SUMMARY**  
L-00020156/57-236  
Final Rulemaking  
Re: Chapters 1, 3, and 5 of the  
Commission's Rules of Practice and Procedure

Periodically the Commission reevaluates its procedural rules in order to ensure that they reflect the Commission's current policies and the current state of the law.

On September 12, 2002, the Commission issued an Advance Notice of Proposed Rulemaking to solicit comments from interested persons regarding possible changes and development of the Commission's procedural rules.

On October 30, 2004, the *Pennsylvania Bulletin* published the Commission's Order and Annex of proposed regulations. The Order established a 60-day deadline for Comments following publication in the *Bulletin*. The Comment period expired on December 28, 2004. The Commission received nine sets of comments and additionally incorporated the views of individual Commission Bureaus in evaluating possible changes.

From December 2004 through December 2005, the Commission reviewed the proposed regulations and comments. On December 15, 2005, the Commission adopted an Order and Annex establishing final regulations. The Commission entered a final Order and Annex on January 4, 2006.

The final regulations accomplish a number of Commission objectives. First, the final rules abandon the proposal to allow electronic filing until development of an electronic filing capability at the Commission. Second, the final rules develop or expand definitions in response to Comments of the parties and the Independent Regulatory Commission (IRRC). The final rules reorganize the procedural requirements to be more reader friendly and easier to navigate. Fourth, the final rules make a number of ministerial changes, such as shortening or lengthening time periods for filing various documents and changing terminology, to be more consistent with modern practice and the Pennsylvania Rules of Civil



**Procedure.** Finally, the Commission abandoned proposals to use forms in lieu of regulatory requirements, particularly with regard to water applications and security transactions, in response to Comments. Taken together, the combination of changes and continuation of existing practices provide for more efficient practice and procedure before the Commission.

The contact persons for this rulemaking are Joseph K. Witmer, Law Bureau (legal), 717-787-3663 and Jamie McClintock, Law Bureau (legal), (717) 783-2811.



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

Public Meeting held December 15, 2005

**Commissioners Present:**

Wendell F. Holland, Chairman  
James H. Cawley, Vice Chairman  
Bill Shane  
Kim Pizzingrilli  
Terrance J. Fitzpatrick

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**

**BY THE COMMISSION:**

On September 12, 2002, the Commission adopted an Advance Notice of Proposed Rulemaking Order announcing our intention to revise the Commission's rules of practice and procedure, 52 Pa. Code Chapters 1, 3 and 5. We noted that the rules were last revised in 1996, and that since then the Commission's jurisdiction and responsibilities have changed significantly. We stated our intention to solicit input regarding proposed revisions and our commitment to carefully consider the views of all interested persons prior to taking any formal action.

On May 10, 2004, we entered an Order and Annex A. The Order contained an explanation for the proposed revisions. Annex A contained the proposed regulations.

On October 30, 2004, the *Pennsylvania Bulletin* published our Order and Annex A at 34 *Pennsylvania Bulletin* 44, pages 5895-5938. The Order established a 60-day

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Comment period following publication in the *Pennsylvania Bulletin*. The Comment period expired on December 28, 2004.

We thank the following for their comments to our proposed revisions: The Office of Consumer Advocate (OCA comment), the Office of Small Business Advocate (OSBA comment), Ryan, Russell, Ogden & Seltzer on behalf of Metropolitan Edison Company, Pennsylvania Electric Company, and Pennsylvania Power Company (Ryan comment), the Department of Environmental Protection (DEP comment), and Saul Ewing on behalf of the Practitioners' Group, a group of seasoned, respected, and experienced attorneys appearing before the Commission on multiple utility matters (the Utility Bar comment). On January 15, 2005, Thomas, Thomas, Armstrong, and Niessen submitted a comment (Thomas comment). The Independent Regulatory Review Commission (IRRC) submitted comments on January 28, 2005 (IRRC comment).

The language of the final regulations contained in Annex A reflects our resolution of these varied comments. The Order explains the reasoning for the final regulations.

The first part of the Order contains a general summary of the important changes to the regulations. The second part contains a regulation by regulation summary of the proposed regulation, the comments, and the Commission's reasoning and disposition reflected in the final regulation. Annex A reflects the final regulations.

A number of important general considerations guided the Commission when considering the merits of each comment. While recognizing that the final rules should be thorough and comprehensive, we seek to avoid making them unnecessarily lengthy and have therefore elected not to create a particular, narrowly-focused rule to address every possible situation that might arise in a proceeding.

Other considerations include an intention to avoid unduly restricting a presiding officer's ability to conduct hearings, to make rulings that resolve factual circumstances, and to make credibility determinations on a case-by-case basis. The Commission also wanted to ensure that the final rules are not unduly burdensome and strike the appropriate balance between the interests of *pro se* individual complainants, statutory parties, intervenors and involved utilities, jurisdictional or otherwise.



## **SUMMARY OF CHANGES**

### ***Summary of Major Ministerial Changes.***

The term participant is replaced with the term party throughout the regulation. This change ensures that those who wish to appear before the Commission do so consistent with Pennsylvania law and Commission procedure based on standing as a party. This final change eliminates any uncertainty associated with the term participant. Each Section in which this is the only change is noted in the Annex below.

The word Prothonotary is changed to Secretary wherever it appears. This change reflects the absence of a Prothonotary at the Commission. The duties assigned to the Prothonotary are now assigned to the Secretary. This change aligns the Commission's rules with our structural practice and enabling statute set forth at Section 305(b) of the Public Utility Code, 66 Pa.C.S. §305(b).

Executive Director is changed to Director of Operations throughout the Commission's rules. This change reflects the statutory language set forth in Section 305(a) of the Public Utility Code, 66 Pa.C.S. §305(a). The Director of Operations has the responsibilities of the former Executive Director. This change aligns our practice with the enabling statute.

### ***Summary of Major Substantive Changes***

In addition to the ministerial changes set forth above, the Commission made some adjustments on important issues between the version set forth in the Proposed Regulations and our Final Regulations. These major changes, set forth in Annex A, are briefly presented here given their importance as reflected in the comments.

***Electronic Filing.*** The Proposed Regulations added language that would permit electronic filing in the future. IRRC questions the wisdom of developing electronic filing requirements in advance of securing the funding and implementing an electronic system. The IRRC suggested addressing those requirements at a later date. The General Assembly subsequently approved funding for the Commission's electronic network. That system is under development.

We agree with IRRC that adoption of regulations governing electronic filing is inadvisable at this time. The final regulations delete any detailed reference or discussion of electronic filing. The final regulations do allow the parties, as opposed to the Commission, an option to use electronic service among themselves when they agree it is appropriate. The Commission does not permit electronic filing even as an option because the Commission is not presently equipped to accept electronic filing.

***Section 1.8 Definitions.*** The Proposed Regulations contained no detailed definitions for many terms in the proposed rules. IRRC urged the Commission to develop definitions for adversarial proceedings, nonadversarial proceedings, informal proceedings, agency, political subdivision, and government entity. In response to these comments, the Commission has developed definitions and rules for many additional terms.

However, some terms are governed by statutes and court precedent. Reliance on a statute or reference for a definition requires revision of the definition if the statute or caselaw change. For that reason, the Commission did not develop definitions for terms that depended on a statute or caselaw. The Commission has, and will continue to, incorporate statutory or judicial changes in undefined terms using

incorporation by adoption instead of amendment given the cost differential.

The Commission did, however, develop many of the definitions IRRC requests. This includes definitions for non-adversarial proceedings and informal proceedings.

***Section 1.24. Notice of Appearance or Withdrawal and Telefacsimile Transmittals.*** The proposed regulation did not allow multiple appearances by a party represented by more than one attorney. The comments suggest that all attorneys listed on an initial pleading be considered attorneys of record and that parties be allowed to file using telefacsimile transmittals.

The Commission rejected the suggestion for multiple service on more than one attorney. The vast majority of proceedings before the Commission involve *pro se* litigants without counsel. Multiple appearances by a party represented by more than one attorney typically occur in high-profile or costly proceedings like rate cases. Multiple service requirements will increase the cost and burden of service on the Commission. This invites the submission of more pleadings raising, and resources devoted to deciding, claims of defective or imperfect service. This also requires more staff and resources than is the case today when the only apparent benefit seems to be the private litigant's ability to shift the cost and burden of duplication and service to the Commission even though those costs are recovered in assessments and rates.

***Section 3.501 Application Requirements for a Certificate of Public Convenience for a Water Supplier or Wastewater collection, treatment or disposal provider.*** The Proposed Regulation eliminated the requirements imposed on an applicant seeking a Certificate of Public Convenience as a new or existing but uncertificated water supplier or wastewater collection, treatment, or disposal provider. The final regulation restores the existing requirements and meshes our enabling statute and regulations with those of the DEP.

The final regulation also formalizes the Commission's authority to reject nonconforming filings. The final regulation includes existing but uncertificated utilities.

The final regulation at Section 3.501(a)(2)(vi) requires an applicant to provide a Map of Service Area including the County Comprehensive Plan, Municipal Comprehensive Plan, and Zoning Designations if requested. An applicant letter is required to address compliance with the applicable requirements of these plans pursuant to Section 3.501(a)(7) regardless of whether the Commission requests a copy of these voluminous documents. Section 3.501(b) provides additional considerations that the Commission will consider and may rely on. This includes Comprehensive Plans, Multimunicipal Plans, Zoning Ordinances and Joint Zoning Ordinances reflecting the Municipalities Planning Code. This reflects our agreement with IRRC and DEP about important considerations that should be considered when evaluating an application.

Sections 3.501(c) through (f) expand and retain the Commission's existing notice and publication requirements. Section 3.501(d) restores the existing 60-day notice and protest period as well as the requirement of daily publication for two weeks in a newspaper of general circulation located in the territory covered by the application. Section 3.501(f) restores service on the Office of Consumer Advocate and expands notice or service to include the statutory advocates, the central and regional office of the DEP, any utility or municipality within one mile or abutting an application's service territory, and customers of an initial or existing utility without a certificate.

Finally, the Commission retains an option to develop forms for purposes of Section 3.501. The Commission believes this will make it easier for an applicant to obtain Commission authority although the final regulation establishes a process for development of any forms. This reflects comments asking the Commission to provide notice and an opportunity to provide input.

***Section 5.14 and 5.53. Applications Requiring Notice and Protest Period.*** The proposed regulation eliminated the list of applications subject to notice and publication in the existing regulation. The final regulation retains the existing list in response to comment. The final regulation at Section 5.14(a) also requires publication of applications

in the *Pennsylvania Bulletin*. The final regulation at Section 5.14(b) details additional publication requirements.

The final regulation at Section 5.14(c) provides that protest periods are governed by Section 5.53, which, in turn, states that the protest period is governed by publication of the application. Sections 5.14(c) and 5.53 together establish a 60-day default period for those situations where publication inadvertently fails to establish a protest period. This default rule is tantamount to the general rule suggested in the IRRC comments.

The final regulation at Section 5.14(d) restores and reinstates the list of applications subject to notice and publication in Section 5.14(b) of the existing regulation. This responds to comments, particularly those of the Utility Bar, about retaining the list for certainty, clarity, and predictability. The final regulation at Section 5.14(d) retains the existing protest periods. These are 15-days for the applications set forth in the list and 30-days for more complex applications. The Commission does so because applications range from basic transportation applications of small businesses seeking market entry to the complex applications of multiple service providers in other utility industries.

***Section 5.24: Satisfaction of Formal Complaints.*** The proposed regulation established procedures allowing a complainant or respondent to submit proof of the satisfaction of formal complaints. The comments were concerned about a regulation that allowed a party to claim satisfaction without proof such as a written statement.

The final regulation for Section 5.24(a) requires a complainant to file a certified statement of satisfaction. In the alternative, Section 5.24(b) allows the respondent to file a certified writing of satisfaction provided the complainant acknowledges satisfaction to the respondent or the complainant acknowledges that they are not pursuing the matter. If the alternative satisfaction of Section 5.24(b) is taken, the respondent must simultaneously serve the complainant a copy of the certified writing filed with the Commission. The complainant must also be provided a statement informing the

complainant of their right to object in writing within 10 days . The docket is closed after 10 days unless the complainant objects in writing under Section 5.24(c).

***Section 5.62 and 5.63: Answers seeking affirmative relief or raising new matter.***

The proposed regulation contains no requirement that answers raising new matter contain a notice to plead. The comments suggest that a notice to plead be specified in a new matter given that failure to file a timely reply is deemed a default and facts stated may be deemed to be admitted. The Section 5.63(b) ramifications of not responding within the time period set forth in Section 5.63(a) provide sufficient notice.

The Commission disagrees with this suggestion. A Notice to Plead requirement may be appealing because it might better inform the recipient of an obligation to file and answer. However, this well-intentioned procedural suggestion actually erects another procedural hurdle for dismissing otherwise valid *pro se* matters on grounds unrelated to the substantive issue. Dismissal of *pro se* complaints for failure to comply with a Notice to Plead undermines the value these complaints play in warning the Commission about possible utility service problems. Moreover, a disgruntled complainant can always file another complaint and that would require the expenditure of resources addressing a matter that could have been just as easily addressed in the first complaint. Finally, large respondents with seasoned or multiple numbers of attorneys need not be advised of the well-appreciated ramifications of failing to respond. Given these considerations, the Commission declines to require a Notice to Plead.

***Section 5.74: Filing of Petitions to Intervene.*** The proposed regulation established a uniform deadline for a private party's Petition to Intervene as well as a Notice of Intervention filed by the OTS, OCA, and OSBA.

In response to the comments, the final regulation distinguishes between a private party's Petition to Intervene and a statutory advocate's Notice of Intervention or Right of Participation. A Petition to Intervene is subject to express time limits although they can be set aside for good cause shown. A Notice of Intervention or Right of Participation, on

the other hand, are not subject to an express time limit although a party making such a filing after expiration of the time period takes the record as the party finds it absent extraordinary circumstances. This approach reconciles the need for reasonable intervention limits with the statutory advocate's rights.

**Section 5.101. Preliminary Objections.** The proposed regulation substituted the phrase "preliminary objection" for the existing "preliminary motion" and deletes the requirement that all preliminary objections be filed at once.

The final regulation uses preliminary objection in place of preliminary motion. The final regulation also requires a party to serve all preliminary objections at one time. The final regulation retains the Commission's existing prohibition against the filing of a motion or preliminary objection in response to a preliminary objection. The final regulation requires a response to a preliminary objection within 10 days.

The response time period, the requirement to raise all preliminary objections at once, and a prohibition against preliminary objections in response to a preliminary objection should discourage dilatory pleading. This also reduces administrative costs for all parties given that such costs are, in the end, reflected in assessments and rates.

**Section 5.342: Answers or objections to written interrogatories by a party.**

Section 5.342(a) imposes verification of answers in accord with Section 1.36. Section 5.342(c) governs objections. Section 5.342(d) imposes a 15-day period for answers in rate cases and a 20-day period for nonrate cases. This facilitates compliance with the statutory requirement in Section 332(g) of the Public Utility Code. This also addresses concerns about an inconsistency between the general rule in Section 5.342(d) and the additional rule in Section 5.342(d)(1) of the proposed regulation. Section 5.342(e) of the final regulation establishes a 10-day period for filing objections regardless of the nature of the proceeding.

# **DETAILED DISCUSSION OF REGULATORY CHANGES**

## **CHAPTER 1. RULES OF ADMINISTRATIVE PRACTICE AND PROCEDURES**

### **Sections 1.2, 1.3, 1.4, and 1.7.**

The proposed regulation makes ministerial changes concerning the name Secretary, the Commission's address, the location of the Commission's normal meeting place, and the use of the Commission's website. There were no objections to these ministerial changes. The final regulation makes the changes consistent with Commission practice and provides a liberal construction of the rules for pro se litigants.

### **Section 1.8 Definitions.**

The proposed regulation updated definitions in Section 1.8. There are updated definitions for "individual" to distinguish between the legal term "person" and a human being. "Mediation" was defined given the important role it plays at the Commission. The proposed regulation also defined "verification" while "party" replaced "participant" throughout the regulation.

There were several comments. IRRC expressed concern about using undefined terms. These terms are adversarial proceedings, nonadversarial proceedings, informal proceedings, agency, political subdivision, and government entity. IRRC believes the regulation would be improved by defining these terms. IRRC suggests cross-referencing definitions used elsewhere in the statute or regulations.

The final regulation reflects agreement with IRRC that a definition for non-adversarial proceedings is appropriate. The final regulation defines "non-adversarial proceedings" in order to distinguish those proceedings and other proceedings that may be



subject to the prohibition against *ex parte* communications for contested “on the record” proceedings in 66 Pa.C.S. § 334(c). In this regard, the Commission may, in its discretion, designate a particular proceeding as adversarial and subject to *ex parte* prohibitions if warranted by the circumstances. The final regulation also reflects agreement with IRRC that a definition for informal proceeding is needed.

The final regulation does not define “agency” or “political subdivision” or “government entity” as suggested by IRRC. Defining these terms beyond the definition already provided by the regulations would require the Commission to amend the regulations whenever the cross-referenced definition is amended, revised, or addressed in the courts. The Commission prefers to incorporate legislative or judicial changes in practice instead of regulatory amendments. Other comments asked the Commission to distinguish between “active” and “inactive” parties in the regulations. The Commission declines to do that given the fact that this determination is better made on a case-by-case basis and not in a general regulation. The final regulation deletes the attempt to differentiate between “active” and “inactive” parties by referring only to parties in the final regulation.

The Commission agrees with other comments seeking clarification of terms. The final regulation adopts definitions for the terms electronic mail, formal complaint, formal investigation, formal proceeding, friendly cross-examination, informal complaint, informal investigation, informal proceeding, mediation, mediator, person, pleading, Secretary, Statutory Advocate, submittal, telefacsimile transmittal, and verification.

The definitions respond to other comments about the need for definitions. A definition for electronic mail is necessary to clarify when the parties can use electronic service among themselves as opposed to the prohibition against electronic filing with the Commission. This approach reflects comments suggesting that the Commission avoid electronic filing requirements due to the current unavailability of the system. The final rulemaking also defines formal and informal complaints, investigations, and proceedings. These definitions respond to comments suggesting the need to explain the difference between informal and formal matters at the Commission.

A revised definition of “mediation” and a definition of “Mediator” respond to the Utility Bar comment on the need to distinguish between dispute resolution and litigation. However, the Commission denies the Ryan comment seeking the development of formal dispute resolution regulations in this rulemaking.

Revised definitions of friendly cross-examination, party, person, and pleading are developed. A definition of statutory advocate is developed to differentiate the service and intervention rights of public advocates and private parties. A revised definition of transmittal is developed in response to an IRRC suggestion. There is a revised definition of the term verification to ensure compliance with the requirement.

## **SUBCHAPTER B. TIME**

### **Section 1.11 Date of filing**

The proposed regulation at Section 1.11(a)(4) established how an electronic filing occurs at the Commission. The proposed regulation specified that it must: (1) enter the information processing system, (2) be designated by the Commission for the purpose of receiving documentary filings, (3) be in a form which the Commission is capable of retrieving, and (4) be in a form readable by the system. The revision did not permit electronic filing but specified how electronic filing may be permitted by the Commission.

The proposed regulation at Section 1.11(a)(3) eliminated the use of a United States postage stamp on an envelope as postal proof of the date of filing. The proposed regulation limits postal proof of filing to United States Postal Service Form 3817. The proposed regulation at Section 1.11(c) retained the prohibition against document filing by telefacsimile as well.

IRRC questions the wisdom of electronic filing when there is no system or funding for a system. IRRC is also concerned that elimination of proof of postal filing based on the date “shown on the United States Postal Service (USPS) stamp on the envelope” could be significant for individual *pro se* litigants unfamiliar with the

intricacies of Postal Form 3817. IRRC further questions the reasonableness of precluding parties from filing documents by telefacsimile given that this is allowed in other agencies so long as an original is filed within a reasonable time thereafter. IRRC also identifies the inconsistent use of "local time" and "Eastern Standard Time" in the proposed regulation.

The Utility Bar encourages the Commission to adopt electronic filing for greater transparency. The Utility Bar shares IRRC's concerns about the wisdom of developing regulations for a non-existent system.

The Commission agrees with IRRC that electronic filing is premature. The Commission eliminates all regulations addressing electronic filing with the Commission in Sections 1.24(b)(2)(i)(A), 1.25(a), 1.32(d), 1.35(a)(2), 1.37(c), 1.53(b)(3), 1.54(b)(3), 1.56(a)(5), 1.59(b)(1)(ii), and 5.306. The final regulations at Sections 1.11(a)(4), 1.32(d), 1.35(a)(2), and 1.37(c) also prohibit the use of electronic filing by private parties.

The final regulations in Sections 1.24(b)(2)(i)(A), 1.25(a), 1.54(b)(3), 1.56(a)(5), and 1.59(b)(1)(ii) do allow the parties to use electronic communications to service documents or communicate among themselves when they deem it appropriate. Even in those cases, however, the parties must comply with traditional Commission filing requirements based on our decision to not incorporate electronic filing at this time due to the current unavailability of the system.

The final regulation for Section 1.54(b)(3) allows the parties to voluntarily use electronic service among themselves. However, even in such cases, the party must file a hard copy of the final version with the Secretary stamped on the due date. A party can file a corrected version so long as the version is not substantive and the presiding officer approves the filing.

The Commission rejects the Utility Group suggestion that we rewrite Section (a)(1-4) by inserting semi-colons with "or" after (3) since the proposal does not reflect the correct format used by the *Pennsylvania Bulletin* in the publication of regulations.

The Commission agrees with IRRC that retention of the existing postal proof rule is advisable given the potential for confusion among parties unfamiliar with the intricacies of Form 3817. The Commission adopts many of the Utility Bar's ministerial corrections, including a suggestion that the Commission resolve an inconsistency between references to "local time" and "Eastern Standard Time" in the regulations. The Commission adopts "prevailing local time" to address this issue.

The Commission disagrees with IRRC's suggestion that the Commission approve the use of telefacsimile transmittals as do other Pennsylvania agencies. The Commission previously considered telefacsimile filing and rejected it for several reasons.

A telefacsimile transmittal contains no legal signature and, even if it did, the Commission's regulations require a party to file an original. A telefacsimile copy is not an original under traditional filing. We also agree with IRRC that electronic filing is not appropriate in this rulemaking. Given that telefacsimile transmittals are a form of electronic filing, we also reject the use of telefacsimile transmittals for filing with the Commission.

Another important consideration is cost. The Commission receives a voluminous amount of pleadings, petitions, complaints, answers, applications, and other documents numbering in the thousands on a monthly basis. This volume is what motivated the Commission, in part, to propose electronic filing in the proposed regulation. At the current time, the Commission's telefacsimile facilities are limited generally and even more so in the Secretary's Bureau.

The Secretary's Bureau is already challenged to accept, process, and identify the hard copy volume let alone additional telefacsimile transmittals that will occur if we allow telefacsimile transmittals. The Commission could easily be overwhelmed if multiple parties in one proceeding decide to use telefacsimile filing to submit their voluminous pleadings in the final hour on the final day. This challenge would be made worse if other parties also decided to use those same facilities on the same day.

However, in response to IRRC's suggestions that we prohibit electronic filing yet still consider the use of telefacsimile transmittals, the final regulation at

Section 1.54(b)(4) allows the parties the option to use electronic communications for service among themselves. In that instance, nevertheless, a final version must be filed with the Secretary no later than the close of business at the Commission on the due date regardless of the parties' agreement. This reconciles the prohibition against electronic filing with the Commission's limited facilities.

**Section 1.15. Extensions of time and continuances.**

*Section 1.15(b).* The proposed regulation inserted the phrase "for a continuance" in Section 1.15(b).

IRRC and the Utility Bar suggest that the phrase "timely filed" replace the current "filed at least 5 days prior to the hearing date" language of Section 1.15(b).

The Utility Bar also suggests that the word "filing" replace "submitted" in the last sentence of Section 1.15(b).

The Commission disagrees with IRRC and the Utility Bar. The phrase "timely filed" should not replace the phrase "filed at least five days in advance" for several reasons. A strict limit leaves little or no discretion to address cases where a litigant, particularly a *pro se* litigant, is unable to comply due to unforeseen circumstances or inadvertence. A strict requirement also provides a costly and inefficient basis for dismissing a proceeding, typically involving *pro se* litigants, on procedural grounds knowing that the case will be refiled. The other recourse, dismissal with prejudice, is relatively draconian compared to the possible violation, e.g., a failure to file in 5 days.

The Commission retains the existing regulatory phrase. However, the Commission agrees that the word "filed" should replace the word "submitted" in the final regulation.

## **SUBCHAPTER C. REPRESENTATION BEFORE THE COMMISSION**

The proposed regulation reflected electronic filing requirements and Pennsylvania Supreme Court authority over the practice of law. The Pennsylvania Supreme Court promulgates its own rules. The Commission concluded it lacks authority to promulgate rules that contravene the Pennsylvania Supreme Court rules.

The substance of the proposed regulation is that: (1) individuals may represent themselves, (2) in adversarial proceedings, any entity other than an individual must be represented by an attorney, (3) in nonadversarial proceedings, entities may be represented as permitted by the rules of the Pennsylvania Supreme Court, and (4) in informal proceedings brought under Chapter 14 of the Public Utility Code or Chapters 56 and 64 of the Commission's regulations only, representation may be by other than a licensed attorney. Throughout, the information required to be provided by an attorney includes the Pennsylvania Supreme Court identification number.

The final regulation deletes the proposed electronic filing and reaffirms the Pennsylvania Supreme Court's authority over the practice of law that requires use of the Pennsylvania Supreme Court attorney identification number whenever appropriate.

**Section 1.21. Appearance [in person].** The proposed regulation reflected the Supreme Court's authority over the practice of law in Pennsylvania.

IRRC suggests that the Commission define the term "appropriate individual" in Section 1.21(d). The Utility Bar suggests that the Commission define the terms "informal complaint" and "informal proceeding." They also want the Commission to address the relationship with an "informal investigation" under Subchapter B and Section 3.113. The Utility Bar concludes that the correct term should be "informal complaint" rather than "informal proceeding" in the final regulation.<sup>1</sup> The OSBA

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<sup>1</sup>Utility Bar, p. 7.

comment suggests that Section 1.21(a) be revised to allow sole proprietorships to represent themselves before the Commission.

The final regulation defines an “appropriate individual” for informal proceedings in a way that does not contravene the Pennsylvania Supreme Court’s authority. The final regulations contain definitions for “informal complaint,” “informal investigation,” and “informal proceeding” as well. The final regulation rejects the OSBA comment that “individual” include sole proprietorships. The OSBA comment includes incorporated sole proprietorships although any incorporated entity must be represented by counsel.

**Section 1.22. Appearance by attorney or certified legal intern.** The proposed regulation is premised on the Pennsylvania Supreme Court’s authority. The Utility Bar suggests that the phrase “Subject to the provisions of Section 1.21” be added to underscore the view that Section 1.22 does not mean that all must be represented by counsel including *pro se* individuals that represent themselves. The final regulation inserts the proposed phrase for clarification although the phrase is limited to Section 1.21(a) because it governs *pro se* representation by individuals as defined in Section 1.8.

**Section 1.24. Notice of appearance or withdrawal.** The proposed regulation established the process for filing a notice of appearance or withdrawal including *pro se* individuals. The proposed regulation permitted electronic filing.

*Section 1.24(a).* The Utility Bar suggests that the Commission require a *pro se* litigant to file a change of address with “active” parties under Section 1.24(a).

The final regulation adopts the proposed regulation. The regulation does not require a *pro se* litigant to provide notice to “active” parties.

A regulation that imposes burdens on *pro se* litigants by attempting to differentiate between “active” and “inactive” parties in a regulation undermines the effort to end attempts to distinguish between “active” and “inactive” parties. It is difficult if not

impossible to make that determination in a general rule when that decision is better made on a case-by-case basis by a presiding officer. For that reason, the definition of party does not differentiate between an active and inactive party.

*Section 1.24(b)(1).* The proposed regulation deems an attorney's signature on the pleading tantamount to an appearance in a representative capacity. The Utility Bar opposes this departure from traditional Commission practice. They view the departure as undermining support for electronic filing when the problem can be easily corrected with a letter of clarification. The Utility Bar alternatively suggests that all counsel listed on an initial pleading be deemed to have entered an appearance if the Commission retains the proposed regulation. The OSBA comment suggests that if the Commission does not intend an appearance sheet to substitute for notice under Section 1.25, the Commission should automatically enter the appearance of each attorney listed on the initial pleading regardless of who signed the pleading.

The final regulation retains the proposed regulation holding that the attorney signing the initial pleading in a representative capacity is the attorney of record. There is no valid reason for replacing the proposed regulation with any proposed alternatives. The alternatives are costly, burdensome on the Commission and litigants, and encourage litigation based on allegations of incomplete or defective service of process on multiple attorneys in such instances. These alternatives may have merit in an electronic filing environment because of their potential to reduce duplication, storage, and retention costs. Our decision to prohibit electronic filing renders multiple attorney service inadvisable.

*Section 1.24(b)(2)(i)(A).* The proposed regulation required an electronic mailing address. IRRC questions the imposition of electronic mailing addresses in the absence of electronic filing. The final regulation agrees with IRRC and deletes the requirement to supply an electronic mailing address although a party can voluntarily provide that address to facilitate service among the parties.



**Section 1.25(a). Form of Notice of Appearance.** The proposed regulation allowed a party to request email receipt of documents. It also required a party to provide their Pennsylvania Attorney I.D. Number and electronic mailing address. The Utility Bar wants the Commission to clarify whether electronic requests are in lieu of, or in addition to, hard copy requests. This provision, in their view, does not address a telefacsimile number request. IRRC suggests that the electronic filing provisions in this Section reflect the Commission's response to their suggested elimination of electronic filing.

The final regulation prohibits electronic filing. The final regulation requires a party to provide a telefacsimile number and adds the word Pennsylvania to the Attorney I.D. Number. The final regulation inserts the phrase "Other Jurisdictions Admitted" for *pro hac vice* appearances and lets a party provide an email address.

The telefacsimile line is added for regulatory consistency. Pennsylvania is added to clarify that the Attorney I.D. number is the Pennsylvania Attorney I.D. Otherwise, a *pro hac vice* counsel must list their jurisdictional admissions. One can voluntarily provide an email address to facilitate electronic communication.

#### **SUBCHAPTER D. DOCUMENTARY FILINGS.**

The proposed regulation restructured the form of a documentary filing in formal cases to make it easier to follow. The proposed regulation contained a format for exchanging electronic documents among the parties. The final regulation prohibits electronic filing.

**Section 1.31.** The proposed regulation addressed documentary filing requirements and procedures. The proposed regulation addressed the form, attachments, identifying information, and electronically submitted documents.

**Section 1.31(a).** The proposed regulation required pleadings to be in numbered format. The OSBA claims that Section 1.31(a) is routinely ignored and should be

abandoned. The Commission disagrees. This requirement is a longstanding requirement that can be addressed if ignored.

*Section 1.31(b).* The proposed regulation required attachment of documents relied on in the pleadings as exhibits although copies of writings or orders of record with the Commission need not be attached if the docket reference number of the proceeding in which they were filed was provided.

The Utility Bar opposes use of the word “exhibits” because it is misleading and denies attorneys any flexibility in defining how to attach their documents. The OSBA suggests that the Commission intended to include publicly available court decisions within the class of those not required to be produced.

The Commission deletes the word “exhibit” in response to the Utility Bar comment. The Commission agrees with the OSBA comment that reported court decisions do not have to be produced.

*Section 1.31(c).* The proposed regulation established requirements governing the information provided in any document filed with the Commission. The Utility Bar suggests the phrase “caption of the proceeding” for Section 1.31(c)(2) and the phrase “Within the title of the proceeding” for Section 1.31(c)(3). The Commission agrees.

**Section 1.32. Form of Documents.** The proposed regulation at Section 1.32(d) requires that electronically filed documents comply with margin and spacing requirements applicable to other filed documents.

IRRC opposes electronic filing in this regulation. The Commission agrees. The final regulation eliminates this requirement because no document can currently be filed electronically with the Commission.

**Section 1.33. Incorporation by Reference.** The proposed language for Section 1.33(b) deleted the existing 20-year time frame covering documents that cannot

be incorporated by reference without determining if they are in the Commission's active files. IRRRC and the OSBA suggest restoring some kind of cutoff to avoid subjecting every document to a burdensome determination of its status. The OSBA comment disputes the wisdom of requiring a party to contact the Commission to confirm that even a recently filed comment remains in the active records. This is burdensome and unnecessarily expensive. IRRRC recognizes that 20 years may be too long and suggests that the Commission consider a shorter period.

The final regulation reinstates the existing rule. The Commission agrees that elimination of the current rule could be a burden if imposed on every document. The Commission realizes the existing 20-year rule reflects a requirement prior to electronic filing and duplication. Nevertheless, the Commission retains the existing rule pending examination of this issue in any subsequent rulemaking focused on electronic filing.

**Section 1.35. Execution.** The proposed regulation at Section 1.35(a)(2) allowed an electronically filed document to contain an electronic signature in a form approved by the Commission.

IRRC opposes electronic filing. The final regulation deletes electronic filing in this provision based on IRRRC's suggestion that such filing requirements are premature at this time.

**Section 1.36. Verification.** The proposed regulation expanded the pool of those who may sign the verification, to "other authorized employees" of the party of a corporation or association.

The Utility Group supports the use of verification but requests that the Commission include affidavits. IRRRC and the Utility Group comments want the word "utilized" to replace the word "permitted" in the last sentence of Section 1.36(a). The Utility Group believes this avoids confusion about verification in lieu of an affidavit. To the best of the Utility Group's knowledge, there are no specific provisions directing the use of verification or an affidavit in specified circumstances.

The Commission disagrees with replacing the word “permitted” with “utilized” in Section 1.36(a). IRRC correctly notes that the word “permitted” means that verification is required. Verification is required in the final rules. The use of the word “utilized” is ambiguous. Counsel could argue that a party, not the rules, determines where verification or notarization is applicable. The final rules do want to allow the parties to choose between less expensive verification and more expensive notarization. The parties, however, cannot unilaterally decide when the regulations require them make that choice. The word “utilized” implies that and is to be avoided.

**Section 1.37. Number of Copies.** The proposed regulation at Section 1.37(c) allowed a single copy of a document to be filed electronically with the Secretary’s Bureau. IRRC opposes electronic filing in this regulation. The Commission agrees. The final regulation eliminates electronic filing of one copy.

**Section 1.38. Rejection of Filings.** The proposed regulation codifies existing Commission practice. The Commission can reject non-conforming filings or filings by persons that do not comply with Commission directives.

Three concerns underscore IRRC’s objection. The proposal appears to preclude a utility from bringing or defending an action before the Commission for failing to satisfy any regulatory obligation. The statutory authority for this provision is unclear. Subchapter A of the Public Utility Code outlines the procedures for bringing matters to the Commission’s attention. There is no indication the legislature intended to permanently foreclose Commission channels because a utility is not in full compliance with Commission regulations. Finally, IRRC questions the meaning of the phrase “delinquent in its regulatory obligations” and states that if the PUC believes this proposal is consistent with regulatory intent, it should explain the meaning of this phrase.

The Utility Bar has additional concerns. They agree with IRRC that the phrase “delinquent in its regulatory obligations” is unclear. The absence of any materiality standard concerns them. The Commission never rejects a pleading on minor grounds

such as delinquencies in fine or assessment payments. The Commission must identify the reasons, establish a time limit, and allow a party an opportunity to cure any defect.

The Commission agrees with IRRC and revises the final rule accordingly. The final regulation does not automatically preclude access to Commission process. This more narrowly drawn provision is consistent with the Commission's authority in Section 501(b) of the Public Utility Code because it is a necessary and proper requirement not otherwise inconsistent with law. Moreover, any abuse can be addressed by an appeal from any staff action pursuant to Section 5.44 of our regulations. The Commission also agrees with IRRC that the phrase "delinquent in its regulatory obligations" is vague. The final regulation removes the phrase.

#### **SUBCHAPTER E. FEES**

**Section 1.42. Mode of payment of fees.** The proposed regulation permitted other methods of payment in the future, such as credit cards, when the Commission is prepared to accept them.

IRRC suggests that the regulations replace the nonregulatory "should" with the regulatory "shall" in the second sentence if the Commission retains this revision.

The Commission agrees with IRRC. The final regulation replaces "should" with "shall." The final regulation limits payment methods to the forms of payment allowed in the existing regulation given the Commission's limitations. The Commission concludes that electronic payments, like electronic filing, are inadvisable at this time.

**Section 1.43. Schedule of fees payable to the Commission.** The proposed regulation repealed Sections (b), (c) and (d) of § 1.43 to reflect that the Commission no longer performs testing. The remaining fees are not changed.

The Ryan comment wants the Commission to impose a \$25 fee for filing a Formal Complaint. The final regulation rejects this suggestion. The General Assembly recently

rejected a \$25 filing fee when adopting amendments to the Public Utility Code. Such a fee could undermine the warning service that formal complaints of this nature play in advising the Commission about potential service problems. A fee could also frustrate the role that such formal complaints play in helping the Commission meet its statutory obligation to ensure the delivery of adequate, efficient, safe and reasonable service under Section 1501 of the Public Utility Code.

## **SUBCHAPTER F. SERVICE OF DOCUMENTS**

The proposed regulations amended Section 1.56(a)(4) to provide that a faxed document must be transmitted prior to 4:30 p.m. local time. This thwarted attempts to send documents after offices close. Section 1.56(a)(5) provided for electronic service when agreed to by the parties. The proposed regulation revised Sections 1.53(b)(3), 1.54(b)(3), 1.56(a)(5), and 1.59(b)(1)(ii) to reflect electronic filing.

IRRC opposes electronic filing regulations and the Commission agrees. The final regulations prohibit electronic filing.

**Section 1.53. Service by the Commission.** The proposed regulation revised the applicability of this provision, revised the forms of service to allow electronic filing, made minor revisions to registered or certified mail requirements, and addressed provisions concerning change of address and alternative service.

*Section 1.53(b)(1). Forms of Service.* The proposed regulation allowed service by person, by anyone authorized by the Commission, or by electronic means. IRRC and the OSBA suggest that the word "by" be inserted between "made" and "mailing" in the first sentence. The Utility Group states that the proposed regulation excludes service by mail to a person's residence. The Utility Group wants the Commission to include residence in the final regulation.

The Commission agrees with IRRC and the Utility Group. The final regulation inserts “by” between “made” and “mailing” in the first sentence as well as “residence” after “person’s” and before “principle” in Section 1.53(b)(1).

*Section 1.53(b)(3). Electronic Filing.* The proposed regulation allowed the Commission to serve a recipient electronically. IRRC opposes electronic filing in this rulemaking. The Commission agrees with IRRC. The final regulation eliminates Section 1.53(b)(3).

**Section 1.54. Service by a party.** The proposed regulation provided detailed provisions governing electronic service.

*Section 1.54(b)(3).* Section 1.54(b)(3) authorized electronic service among the parties. IRRC asks the Commission to review this provision as part of their response to IRRC’s comment about electronic filing. The Ryan comment proposed a series of revisions to Section 1.54 detailing who, what, when, and where service is provided, particularly relating to multi-attorney service.

The Commission agrees with IRRC. Section 1.54(b)(3) is revised to prohibit electronic filing in the final regulation. The final regulation does allow the parties to use electronic service voluntarily. However, even in those situations where the parties agree to use electronic filing, the final regulation at Section 1.54(b)(3) requires that the filing be stamped on the due date. The Commission uses the term stamped instead of postmarked so that a filing party can use the United States Postal Service or an overnight delivery service. Corrected versions can be filed if they are not substantive and with the approval of the Presiding officer. This optional use of electronic communications preserves traditional filing given our adoption of IRRC’s comment prohibiting electronic filing.

The Commission does not adopt the Ryan comment on detailed service provisions that include service on multiple numbers of attorneys. The Ryan comment is costly to private parties and the Commission. The suggestion imposes unnecessary burdens on the

Commission to provide a minimal benefit. The only benefit seems to be that a party with resources sufficient to retain multiple numbers of attorneys is no longer required to assume the cost and burden of informing those attorneys. This suggestion effectively shifts duplication and distribution costs to the public and the Commission. The suggestion could also dramatically increase the number of challenges based on defective or imperfect service.

**Section 1.55. Service on attorneys.** This proposed regulation detailed service on attorneys including electronic service. The Ryan comment wants Sections 1.54(a) and 1.55(b) revised to authorize multiple attorney service.

The Commission disagrees with the Ryan comment on multiple attorney service. This comment essentially shifts duplication, distribution, and noncompliance responsibilities from a private party with resources sufficient to have multiple attorneys to the Commission and the public. This needlessly complicates litigation when the only discernible benefit seems to be that litigants no longer bear the cost of circulating information among their multiple counsels in complex litigation. This also increases the potential for parties to raise, and require the Commission to devote resources deciding, allegations of defective or imperfect service.

**Section 1.56. Date of Service.** The proposed regulation changed the time requirement to 4:30 p.m. prevailing local time in Section 1.56(a). The proposed regulation also dates service for electronic filings as the date the document entered an information system designated by the recipient for receiving service and from which the recipient could retrieve the filing.

IRRC opposes the use of electronic filing at the Commission at this time. IRRC wants the provision in Section 1.56(a)(5) governing the date of service for electronic documents to reflect its opposition to electronic filing. The Utility Group proposed revisions to Section 1.56(a)(5) for clarity and to limit service to “active” parties. The



OSBA comment suggests that Section 1.56(a)(5)'s provision for electronic email by "4:30 p.m. local time" is ambiguous.

The Commission agrees with IRRC. The final regulation prohibits electronic filing with the Commission. This requires the use of traditional service although the parties can use electronic communications for service among themselves when appropriate.

The Commission does not adopt the Utility Group's comment on differentiating between active and inactive parties in this provision. As explained throughout this rulemaking, the difficulties of differentiating between an active or inactive party for date of service and disposition is better made by a presiding officer on a case-by-case basis and not in a general regulation.

**Section 1.59. Number of copies to be served.** Section 1.59(b)(1) of the proposed regulation governed the number of copies of a brief to be served. Section 1.59 differentiated between hard copy filings, which required two, and electronic or telefacsimile filing which only required one copy.

IRRC wants the Commission to revise Section 1.59(b)(1)(ii) governing electronic filing copies. The Commission agrees. Section 1.59(b)(1)(ii) is deleted although the parties, as opposed to the Commission, can agree on electronic service on a case-by-case basis.

## **SUBCHAPTER G. MATTERS BEFORE OTHER TRIBUNALS**

### **Section 1.61. Notice and filing of copies of pleadings before other tribunals**

The proposed regulation for Section 1.61(c) was removed because it is identical to (d). The proposed language added the category of "licensee." The proposed language also required that a licensee or utility whose parent company had declared bankruptcy to

inform the Commission. The proposed regulations help the Commission monitor bankruptcy proceedings without approving the bankruptcy plans of certificated utilities.

There were no comments on this proposed regulation. The final regulation adopts the proposed regulation and ministerial changes.

## **SUBCHAPTER H. PUBLIC ACCESS TO COMMISSION RECORDS.**

**Sections 1.71 to 1.73. Objectives and Fiscal Records.** The proposed regulation expressed the Commission's commitment to maintaining a record system that facilitates public access and imposes an obligation to retain fiscal records according to statutory, regulatory, and administrative requirements. There are no comments. The final regulation adopts the proposed regulation.

**Section 1.76. Tariffs, minutes of public meetings and annual reports.** The proposed regulation contains no substantive changes compared to the existing regulation. The Utility Group proposed ministerial language changes for clarity. The Commission agrees. The final regulation incorporates those suggestions.

**Sections 1.81 to 1.86. Amendments or withdrawals of submittals.** The proposed regulation made ministerial changes for clarity and consistency. There are no comments. The final regulation contains the ministerial changes.

## **CHAPTER 3. SPECIAL PROVISIONS**

### **Section 3.1. Definitions.**

The proposed regulation replaces the word "Executive Director" with "Director of Operations" for consistency.

**Section 3.2 through Section 3.5. Petitions for issuance of emergency order.**

The proposed regulation removed references to the office of Executive Director. The term Director of Operations was used in its place. The Utility Bar comment identifies places in the proposed regulations at Sections 3.1, 3.2, 3.3, 3.4 and 3.5 where Executive Director should be replaced by Director of Operations for consistency.

The Commission agrees with the Utility Group. The final regulation uses the term Director of Operations for consistency and clarity.

The proposed regulation reorganized the emergency order sections. The provisions referring to *ex parte* emergency orders were located together and those sections referring to interim emergency orders were located together. The proposed regulation provided language adjustments so that there would be parallel standards for both sections. The proposed regulation relocated Section 3.5 to Section 3.3. This resulted in the elimination of Section 3.5. Section 3.9 was relocated to Section 3.6a .

IRRC suggests ministerial changes and parallel construction in Section 3.2 The Commission agrees with IRRC and made adjustments in the final regulation responsive to these suggestions.

**Section 3.6 through Section 3.10. Interim emergency relief.**

The proposed regulation reorganized this section. The sections referring to interim emergency orders were located together. The proposed regulation provided language adjustments so that there would be parallel standards for this Section and Sections 3.2 through Section 3.5 for emergency orders. The proposed regulation relocated Section 3.5 to Section 3.3. This resulted in the elimination of Section 3.5. Section 3.9 was relocated to Section 3.6a .

There were no comments on this proposal. The final regulation adopts the proposed regulation.

## **SUBCHAPTER B. INFORMAL COMPLAINTS**

This proposed regulation changed the subheading to read “Informal Complaints and Investigations” because it better reflected the contents of the section. The proposed regulation also created and labeled Sections for ease of reference. Section (b) of Section 3.112 proposed a process for staff review of informal complaints.

The Utility Group comment on Section 3.112 wants the final regulation to require the Commission to issue and serve a written decision of every informal complaint.

The final regulation rejects the Utility Group requirement that Section 3.112 require a written decision. The Commission informally resolves thousands of matters on an ongoing basis. Few of those resolutions become a formal proceeding. The alleged benefit resulting from a mandated written decision because of its usefulness in subsequent formal proceedings is not justified by the additional burden and cost. Such a result could also increase the number of formal appeals of informal complaints. The burden and costs for the paperwork required to implement this suggestion could overwhelm the Commission’s administrative processes and certainly increase staffing and implementation costs ultimately recovered in assessments and rates.

The final regulation takes the least expensive and effective approach for resolving informal complaints. The Commission recognizes that a respondent to informal complaints may want a written decision to address allegations and factual assertions that could be inaccurate or incomplete. The cost to issue and serve a written decision addressing an informal resolution in those instances is far greater than a cost-effective solution that could, at times, rely on some ambiguous or unexplored factual allegations. The cost to resolve these ambiguities by service of a formal written decision is greater than an informal resolution and will almost certainly increase staff and resource needs ultimately recovered in assessments and rates.

Equally important, the role that these informal matters provide in advising the Commission about service problems is undermined if every informal matter, including

allegations by current or ex-employees of a utility, became the subject of a written decision. A written decision imposes additional procedural requirements on *pro se* litigants. This could well result in more formal appeals and increase those costs.

The Commission, however, recognizes the Utility Group's desire to secure some kind of process for questioning ambiguities in informal complaint resolutions. For that reason, Section 3.112(e) of the final regulation permits an appeal of any resolution of informal complaints under Section 5.44 of our rules. The final regulation continues addressing Informal Complaints in Section 3.112 and Informal Investigations in Section 3.113.

#### **SUBCHAPTER D. CROSSING PROCEEDINGS.**

The proposed regulation modified the service requirements for Section 3.361 complaints and notice of the forms for Section 3.363. There were no comments on these proposed changes.

##### **Section 3.361. Crossing complaints.**

The proposed regulation revised Section (a) to serve the owner of the railroad right-of-way, which may be different from the public utility operating over it, as a party to a Commission proceeding. There are no comments. The final regulation adopts the proposed regulation.

##### **Section 3.363. Claims for property damages from crossings.**

The proposed regulation modified Section (a)(2) to indicate that forms are no longer listed in the regulations. They are available from the Secretary. There are no comments. The final regulation adopts the proposed regulation.

**SUBCHAPTER E.  
MOTOR TRANSPORTATION PROCEEDINGS**

The proposed regulation made no changes to this section. This Section will be dealt with in a separate rulemaking proceeding.

**SUBCHAPTER F.  
ARBITRATION OF DISPUTES.**

The proposed regulation contained no substantive revisions to this section. The Ryan comment wants a new Section 3.392 regulation addressing Commission arbitrations.

The Commission denies that request. The Commission recognizes the concerns expressed in the Ryan comment. However, the Commission is unwilling to issue a final comprehensive rule given the complexity of such a rule and the very limited opportunity of other parties to address this suggestion.

**SUBCHAPTER G.  
WATER OR WASTEWATER UTILITY PROCEEDINGS.**

**Section 3.501. Certificate of public convenience as a water supplier or wastewater collection, treatment or disposal provider.**

The proposed elimination of significant parts of the existing regulation generated substantial comments. In response to those comments, the final regulation retains the existing regulation as well as some additional provisions. A detailed discussion of each section's existing, proposed, and final Section is set forth below.

*Section 3.501(a) and (a)(1) to (a)(10). Applicability.* The existing regulation contains a list of requirements an applicant for a certificate of convenience must satisfy. The proposed regulation deleted this list in favor of forms.

The proposed regulation agreed with DEP that additional requirements, including a county comprehensive plan, municipal comprehensive plan and zoning designations, must be addressed by an applicant. The proposed regulation required an applicant to provide a certification letter as opposed to a Commission determination.

IRRC and DEP stress that the existing regulation should be retained because it is more comprehensive than the proposed regulation and reflects years of interagency comity. IRRC and DEP are concerned about establishing mandatory filing requirements in any way other than by setting them forth in a regulation. We agree. The final regulation retains the filing requirements for new and existing but uncertificated service.

The final regulation for Section 3.501(a) also makes a ministerial change in Section 3.501(a) to underscore that it is the Commission that has always been responsible for determining filing requirements. The final regulation retains the existing regulations for Section 3.501(a)(1)-(10) as mandatory filing requirements. There are some minor ministerial title revisions for these provisions at Sections 3.501(a)(6), (7), (8), (9) and (10). They do not impact retention of the existing filing requirements.

The final regulation at Section 3.501(a)(2)(vi) requires that a copy of county comprehensive plans, municipal comprehensive plans and zoning designations be provided upon request of the Commission. Section 3.501(a)(2)(vi) takes this approach because these plans typically are voluminous and reflect a considerable duplication cost. The Commission does not want to impose mandatory submission requirement given these costs unless the plans are necessary and requested. An applicant letter is required to address compliance with the applicable requirements of these plans pursuant to Section 3.501(a)(7) regardless of whether the Commission requests a copy of these voluminous documents.

The proposed regulation would have required an applicant to provide a letter certifying compliance with these requirements. The final regulation at Section 3.501(a)(7) adopts the proposed regulation and requires an applicant to submit a letter addressing whether the applicant does or does not meet the requirements of these and additional governmental entities.

The Commission also agrees with the Utility Group that the word “new” should be stricken from Section 3.501(a). We agree on the need to retain the long-standing filing requirements of Section 3.501. The Commission has and will continue to apply these filing requirements to initial and existing but uncertificated utilities.

In addition, DEP raises a concern that, with respect to applications for additional and expanded authority by water and wastewater utilities, the Commission would not consider whether the proposed expansion would be in compliance with DEP requirements. The Commission takes seriously each utility’s obligation to comply with the applicable DEP requirements. For this reason, the Commission will continue to require water and wastewater utilities to demonstrate compliance with applicable DEP requirements (via DEP certification) and the Commission will consider and may rely upon the local government’s applicable zoning and planning requirements (via certification by the governmental entity) in considering a utility’s application for additional or expanded service.

*Section 3.501(b).* The existing Section establishes filing requirements.

Section 3.501(b) requires the applicant to file an original and three copies with the Commission. The applicant is advised that failure to include the required information and documents may subject the application to rejection. The application must contain exhibits. An affidavit of service must show the identity of those served under Section (d) as an accompaniment to the original and copies submitted to the Commission.

Section 3.501(c) governs docketing and publication requirements.

The proposed Section 3.501(b) continued many of these provisions. However, the proposed regulation deleted the original and three copies requirement. The proposed regulation retained the affidavit requirement. An applicant had to submit the forms set forth in the proposed Section 3.501(c).

The final regulation for Section 3.501(b) lists the additional considerations an applicant must address. These additional considerations respond to DEP and IRRC comments as well as our determination in the proposed regulation that these matters are



an appropriate subject for the final regulations. They also incorporate the Commission obligations under the act of June 22, 2000 (P.L. 483, No. 67) and the act of June 23, 2000 (P.O. 495, No. 68). The new Section 3.501(b) also reflects our Commission Policy Statements concerning Local Land Use at 52 Pa.Code § 69.1101 and small water company issues addressed in our policy statement at 52 Pa.Code §§ 69.701 and 711.

The new Section 3.501(c) contains the existing Section 3.501(b) requirements. The final regulation retains the copy requirements in the existing regulation. The final regulation adopts the first sentence of the proposed regulation at Section 5.301(b) requiring conformity with the Commission's documentary filing requirements in Sections 1.31 and 1.32. It also addresses payment of fees set out in Sections 1.42 and 1.43.

*Section 3.501(c).* The existing Section 3.501(c) regulation addresses docketing with the Commission, publication in the *Pennsylvania Bulletin*, and additional requirements. The proposed Section 3.501(c) replaced the requirements of Section 3.501(a) in the current regulation.

The OCA is concerned about the proposal to include less, not more, notice in the proposed regulation. The OCA is particularly concerned about the proposal to reduce newspaper publication from daily publications for two consecutive weeks to once a week for two consecutive weeks. We agree and adopt the OCA's position on newspaper publication.

*Section 3.501(d).* The existing regulation at Section 3.501(d) governs copy distribution requirements. The existing regulation at Section 3.501(d) does not require service of an application on any water or wastewater utility, municipal corporation or authority with a service area within one mile of a new or affected service area.

The proposed regulation denied a request to expand the copy requirement to include anyone except those abutting a proposed service area. The proposed regulation did, however, allow any water or wastewater utility, municipal corporation or authority with a service area within one mile of the proposed new or affected service area to

request a copy. The proposed regulation also eliminated a requirement that the OCA be served a copy. The proposed regulation moved these revised copy requirements to Section 3.501(e).

The OCA wants service expanded to include any water or wastewater utility, municipal corporation or authority within one mile of any proposed or affected service area. The OCA wants notice provided to existing and prospective customers. The OCA opposes the reduction in publication from daily for two consecutive weeks to once a week for two consecutive weeks.

The DEP is concerned about changes that allow or encourage unplanned development or sprawl. DEP claims that the proposed regulation conflicts with the legislative directions of the General Assembly to coordinate agency permitting decisions. DEP is also concerned about the distribution of copies to their regional or central office.

The OSBA is concerned that the Commission's renumbering in the proposed regulation fails to properly convert the existing regulation at Section 3.501(d)(1) through (3) into the proposed regulation at Section 3.501(e)(1)(i) through (iii), respectively.

In the final regulations, we believe we have addressed all of these concerns. The final requirements relating to copies, notice, and distribution requirements are set forth in Section 3.501(c) through (f). The final regulation at Section 3.501(f)(3) addresses the OCA's service concern by requiring service on the statutory advocates, including the OCA. These final regulations also restore the existing application requirements. These final regulations expand service to include DEP's regional and central offices, the statutory advocates, and all utilities abutting or within one mile of the proposed service territory. Finally, the customers of any proposed or existing but uncertificated applicant must be notified of any application. This combination of retaining current requirements and expanding the notice and service obligations better meshes our statutory mandates with the concerns of DEP and others.

Based on our agreement with the OCA's position on newspaper publication, we also see no need to reduce the public notice requirements of an applicant as reflected in our newspaper publication requirements. The final regulation continues the existing

public notice requirements published in a newspaper of general circulation to ensure broad dissemination of the information.

*Section 3.501(e).* The existing Section 3.501(e) is a reference section. The proposed Section 3.501(e) contained reduced copy service requirements. The final Section 3.501(e) contains a process for development of any forms.

The proposed regulation would have deleted mandatory application requirements in favor of forms that were subject to revision. The final regulation restores the application filing requirements while allowing the Commission to make forms available so that an applicant can understand exactly what is needed to comply with Section 3.501. Also, the procedures governing the development of any form for purposes of Section 3.501 require publication, website posting, and consultation with interested agencies or persons. This should resolve concerns about the need for public input in the development of forms that reflect the Commission's filing requirements.

*Section 3.501(f).* There is no existing or proposed Section 3.501(f) because the copy requirements are set forth in Section 3.501(e) of the proposed regulation. The final Section 3.501(f)(3) regulation establishes a copy requirement for the OCA but also adds OTS and OSBA. The final Section 3.501(f)(3) regulation also establishes service of a copy on DEP's central and appropriate regional offices. Finally, the final Section 3.501(f) regulation establishes a service requirement on any water or wastewater utility, municipal corporation or authority with a service area within one mile of or abutting any proposed new or affected service area.

For ease of understanding this complex and lengthy response, Annex A presents our agreement with the parties' comments as new material written in capitalized text. This reflects incorporation of their suggestions. The proposed regulations are deleted in their entirety.

**Section 3.502(a). Protests to applications for certificate of public convenience as a water supplier or wastewater collection, treatment and disposal provider.**

The proposed regulation in Section 3.502(a) added the requirement that an attorney for a protestant supply his or her Pennsylvania attorney identification number. There were no comments. The final regulation adopts the proposed regulation.

**Section 3.502(b). Participation in a proceeding.**

The existing regulation allows a protestant to participate in a proceeding as a party intervenor if they file a timely protest. The proposed regulation required that the protest be in appropriate and legally sufficient form. IRRC states that the requirement is vague. IRRC wants the final regulation to cross-reference the applicable regulatory standards.

The Commission agrees with IRRC. The final regulation deletes this proposed change and retains the existing regulation.

**Section 3.502(c).** The existing regulation makes no changes. The OSBA comment notes that this provision is governed by Section 5.101. However, Section 5.101 changes the term "Motions" to "Preliminary Objections." The OSBA comment recommends that the language in this provision be consistent with Section 5.101.

## **SUBCHAPTER H. FORMS**

**Section 3.551. Official forms.** This proposed regulation deleted the current list of forms stating that forms for applications, petitions, complaints and other matters are available on the Commission's website or from the Secretary. There are no comments. The final regulation adopts the proposed regulation.

## **SUBCHAPTER I. REGISTRATION OF SECURITIES**

**Section 3.601.** The proposed regulation at Section 3.601(b) clarified the certificate filing and payment requirements. The proposed regulation at 3.601(c) replaced the existing list of necessary information with a notice that a form is available from the Commission. There were no comments to this proposal.

The final regulation at Section 3.601(b) adopts the certificate filing and payment requirement provisions. The final regulation at Section 3.601(c) retains the current list of required information in light of IRRC's expressed concern about the use of forms in lieu of regulatory requirements in Section 3.501. The final regulation, however, contains new information in Section 3.601(d) detailing the process for developing standard formats. The revision balances IRRC and DEP concerns about forms with notice about revisions, provides an opportunity for input, and authorizes an appeal from any staff action under Section 5.44.

**Section 3.602. Abbreviated securities certificate.**

*Section 3.602(a).* The proposed regulation made no changes to Section 3.602(a) on the scope of our abbreviated securities rules. The late-filed Thomas comment urged the Commission to include two additional categories within the scope of the proposed regulation. Rulemaking is a quasi-legislative function under Pennsylvania law. There were no objections to this late-filed comment on due process or substantive grounds. The Commission considered the comment. The final regulation for Section 3.602(a) incorporates the two suggestions.

*Section 3.602(b).* The proposed regulation contained a list of the required information submitted on the form filed under this provision. There were no comments. The final regulation adopts this proposed regulation. The final regulation, however, also revises the number of days set forth in the proposed regulation for Sections 3.602(c)(1) and 3.602(c)(2). Section 3.602(c)(1) is revised from 10 days to 20. The number of days set forth in Section 3.602(c)(2) is revised from 10 and 30, respectively, to 20 and 40. These revisions reflect regulatory consistency and review within a reasonable time.

**CHAPTER 5. FORMAL PROCEEDINGS  
SUBCHAPTER A.  
PLEADINGS AND OTHER PRELIMINARY MATTERS**

**Section 5.1. General provisions.**

*Section 5.1(a).* The proposed regulation for Section 5.1(a) added “New matter, reply to new matter, and motions” to the list of pleadings to accurately reflect practice. The OSBA comment notes that since the proposed regulation changes “preliminary motions” to “preliminary objections,” the regulation in Section 5.1(a)(5) should include a reference to Section 5.61 authorizing answers to preliminary objections. The final regulation allows the filing of an answer to a preliminary objection in Section 5.101(g) of the final regulation.

*Section 5.1(b).* The proposed regulation for Section 5.1(b) deleted preliminary motion and replaced it with preliminary objection. There were no comments. The final regulation adopts the proposed regulation.

**Sections 5.11-5.14. Applications.**

**Section 5.12. Contents of applications.** The proposed regulation revised Section 5.12 to lay out contents of an application. An added provision encourages inclusion of an e-mail address. The proposed regulation denied the OCA’s request for service of every application based on considerations of expediency and the availability of the Commission’s website. Moreover, the proposed regulation recognized that Section 5.14(b) authorizes the Secretary to direct service of applications upon the OCA and other interested persons in appropriate circumstances.

The OCA filed comments opposing the Commission’s denial of its request in the proposed regulation. The OCA claims that the Commission’s website does contain

notice of a new application, but the absence of the detailed schedules and exhibits in the application require the OCA to go to the Secretary's Bureau to review and copy the application.

The final regulation does not require service of every application on the OCA or the other Statutory Advocates. The Commission receives thousands of applications and many are of minimal interest to the OCA. This includes transportation requests for new authority, abandonment or transfer of existing authority, requests for additional authority, or license applications of gas or electric generation suppliers not otherwise regulated by the Commission. The obligation to serve a copy of every application on the statutory advocates imposes unjustified additional costs and encourages challenges based on defective or imperfect compliance. The only discernible benefit seems to be a reduction in the time the OCA staff must spend coming to and from the Commission to review applications following their publication in the *Pennsylvania Bulletin*.

**Section 5.13. Applications for construction or alteration of crossings.** The proposed regulation for Section 5.13(b) added construction within the scope of the plans required under the regulations. There were no comments. The final regulation adopts the proposed regulation.

**Section 5.14. Applications requiring notice.** The proposed regulation eliminated the Section 5.14 list of applications that required notice. The Commission proposal reflected the need to update the list in light of market changes.

IRRC and the Utility Group comments express concern that a general reference to publication of applications is less desirable than retention of the existing list. IRRC is additionally concerned that the proposed regulation at Section 5.14(c) references the deadline for filing protests in Section 5.53 but Section 5.53 provides that the time for filing protests shall be as stated in the published notice. IRRC suggests that the PUC establish a standard deadline for filing protests absent good cause shown. The Utility

Group wants the list and exceptions in the existing regulation at Section 5.14(b) reinstated in the final regulation.

IRRC suggests a general protest period for all applications submitted to the Commission. IRRC is understandably concerned that the regulated community does not know the timing for filing a protest. IRRC suggests publication occur in the *Pennsylvania Bulletin*. The Utility Group believes a 60-day default period is too long. The Utility Group proposes a 30-day period.

The Commission agrees with IRRC and the Utility Group. A notice of application under Section 5.14 will continue to be published in the *Pennsylvania Bulletin*. That notice will also establish a protest period consistent with Section 5.14(d).

The final regulation at Section 5.14(d) reinstates the applications list of the existing regulation at Section 5.14(b). Reinstatement of the existing Section 5.14(b) list is provided in the new Section 5.14(d) provision. Reinstatement ensures that listed applications are subject to a standard 15-day protest period. The Commission has operated for many years with this standard 15-day protest period and we see no compelling reason to change it given the Secretary's authority to establish additional protest periods as appropriate. Section 5.53 contains a 60-day protest period default in case the Commission's notice of application in the *Pennsylvania Bulletin* inadvertently fails to set a protest period.

As noted per the final regulation in Section 5.14(b), the Secretary's Bureau can impose additional publication or notification requirements as warranted. This includes publication in a newspaper of general circulation, actual notification to the parties affected, or another form of actual or constructive notification. These will also contain a protest period unless, as indicated in Section 5.53, no protest period is established. In that case, the 60-day protest period applies by default.

There are some minor revisions which make the exception consistent with existing regulations, particularly Sections 3.381 and 5.301. The retained exceptions are subject to the existing 60-day protest period. These exceptions are applications under Section 3.361-3.363 (Crossing complaints, Reimbursement of damages from crossings,



and Claims for property damages from crossings) and 52 Pa.Code 57.71-77 (relating to siting and construction of electric lines). The reference to Section 3.381 in Section 5.14(d) of the regulation is removed to make it consistent with the minimum 15-day protest period set forth in Section 3.381 of the existing regulation. Section 3.501 is revised to reflect a cross-reference to the 60-day protest period for water and wastewater in Section 3.501.

The Commission disagrees with comments suggesting that we establish a standard rule for protest periods. The Commission believes a general rule is inadvisable regardless of whether it is 15 days, 30 days or 60 days for the reasons set forth below.

The existing regulations already impose a 15-day protest period for the applications listed in the final regulation unless they come within an exception or no protest period is established. In those instances, there is a 60-day protest period. This approach is taken because applications to the Commission range from the basic request of a very small carrier to the more complex authority requested by large utilities. A uniform protest period ignores the very real differences in scale of applicants that come before the Commission. The final regulation provides the flexibility required by this difference.

A 15-day standard protest period is appropriate in situations where an applicant wants to implement a business plan or transportation service but needs Commission approval. This is often the case for telecommunications resellers or transportation providers. The Section 5.14(b) list for telecommunications in the existing regulation is retained in the final Section 5.14(d) regulation. Retention of the 15-day protest period is consistent with the Utility Group's view that a 60-day protest period is too long.

On the other hand, the same 15 day standard protest period is inappropriate for more complex or controversial applications. A 15-day protest period involving, for example, the construction and siting of high-capacity electric lines, the merger applications of immense interstate carriers, in-depth analysis of technical or financial fitness, or applications with a host of unexpected issues is inadvisable. In those cases, the suggested 30-day standard protest period may be inappropriate when a 60-day protest period is advisable given the complexities of the case.

A 30-day standard protest period is superficially appealing but untenable on close examination. A 30-day period may reconcile a 15-day protest period with the 60-day protest period. A 30-day protest period, however, is equally untenable. On the one hand, it errs by extending the protest period for small applications like telecommunications resellers or transportation providers. On the other hand, it errs by shortening the protest period for complex or controversial cases like HV line construction or railroad crossing abandonments. A 30-day standard protest period may be particularly unwise for telecommunications applications because federal law prohibits state action that constitutes a barrier to entry. An unnecessarily long 30-day protest period in telecommunications runs the risk of preemption as a barrier to entry compared to the short 15-day protest period. In that case, a shorter protest period makes sense. With that in mind, the list in Section 5.14(d) retains a 15-day protest period for most applications. This makes more sense than a 30 or 60-day rule.

A 60-day protest period is superficially appealing but equally unwise. That rule may well provide interested parties more time to decide if they want to intervene or protest. It also makes little sense to a taxi driver seeking reinstatement or issuance of a new certificate following revocation. A 60-day protest period is difficult for a transportation provider who relinquished their authority, voluntarily or otherwise, and wants to reenter the market. However, a longer protest period is appropriate for complex matters including the exceptions listed in Section 5.14(b) of the current regulation.

#### **Sections 5.21-5.31. Formal Complaints.**

**Section 5.21 Formal complaints generally.** There were no proposed revisions to this section. The Ryan comment suggests language for Section 5.21(d). The language provides that it is neither necessary nor appropriate for a respondent to introduce any evidence when the complainant fails to meet its burden of proof by presenting probative evidence or, as is frequently the case with *pro se* complainant, a failure to appear. The Ryan comment addresses cases where a presiding officer sometimes requires a

respondent to present their evidence even though a *pro se* complainant fails to appear or does not present probative evidence.

The final regulation denies the suggestion for several reasons. For one thing, some utilities want to present their case even if the complainant fails to show or present probative evidence at the hearing. This generates a record in the event the complainant files another complaint.<sup>2</sup> Moreover, administrative proceedings are not tantamount to proceedings in courts of law in Pennsylvania. See *Pittsburgh Press Company v. Pittsburgh Commission on Human Relations*, 4 Pa. Commonwealth Ct. 448, 287 A.2d 161, 167 (1972) holding that an administrative proceeding is not restricted to the niceties of common law pleadings. The comment seems to commingle burden of proof and burden of persuasion although they are not the same. *Corbett and O'Malley v. Bell Telephone Company*, Docket No. C-00923898 (Order entered January 25, 1995), slip op. at 18-20 citing *Page v. Camp Manufacturing Co.*, 180 N.C. 330, 331, 104 S.E. 667 (1920); *McDonald v. Pennsylvania Railroad Company*, 348 Pa. 558, 36 A.2d 492, 495-96 (1940); *Wilson v. Pennsylvania Railroad*, 421 Pa. 419, 219 A.2d 666, 669-670 (1966) ("Burden of proof never shifts but evidence may establish *prima facie* case sufficient to shift the burden of persuasion"). In some instances, an presiding officer may require a respondent to go forward based on a determination that the complaint's allegations and attachments provide evidence of a *prima facie* showing sufficient to shift the burden of persuasion. In that case, it may well be a violation of due process to *not* require a respondent to respond to the formal complaint notwithstanding a party's absence or failure to present probative evidence at the hearing. A general rule is inadvisable given these considerations.

## Section 5.22. Contents of formal complaints.

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<sup>2</sup>*Agnes Manu v. AT&T Communications of Pennsylvania, Inc.; Bell Telephone Company of Pennsylvania, Inc. and Philadelphia Electric Company, Inc.*, Docket Nos. F-09029141, C-00935014, C-00934970, C-00923621, and C-00924554. Three family members filed multiple Formal Complaints regarding arrearages of \$25,775.61, \$1,337.04, \$13,484, \$22,509.82, and \$24,124.21 and then failed to appear. There, a respondent may want to present their response.

*Section 5.22(a).* The proposed regulation revised Section 5.22 to specify the requirements of a formal complaint when the complainant is represented by an attorney and when the complainant has no formal representation. The proposed regulation at Section 5.22(a)(2) required an attorney to list his or her attorney identification number. The proposed additions in Sections 5.22(a)(5) and (6) sought more detailed and easier to read information to facilitate Commission responses.

IRRC suggests that the reference to “writing” in Section 5.22(a)(7) either define the term or specify what documents are subject to this section. The Utility Group suggests that the final regulation at Section 5.22(a)(5) specify whether or not the Formal Complaint is an appeal of an informal complaint. The OSBA thinks this provision seems to contradict Section 5.21 of our rules, which only requires identification of a document.

The Commission appreciates the concerns about Section 5.22(a)(5). The final regulation retains the requirement of a clear and concise statement of the act or thing complained of including the result of an informal matter within Section 5.22(a)(7). The rephrasing addresses the commentators’ concern, particularly with respect to parties with counsel.

We agree with IRRC on Section 5.22(a)(7). In this regard, the Commission generally relied on rules 1019 through 1024 of the Rules of Civil Procedure governing the attachment of writings to a complaint since complaints are the subject of Section 5.22. The Commission notes that the language in Section 5.22(a)(7) is virtually identical to Rule 1019(i) of the Rules of Civil Procedure. That rule, as this rule, requires attachment of a writing although the term writing is not defined in Rule 76 of the Rules of Civil Procedure’s Rules of Construction nor is the term defined in Sections 1019 through 1024.

The Commission agrees with IRRC and replaces with word “document” for the word “writing” in the final regulation.

The final regulations adopt a modified administrative equivalent of Rules 1002 through 1005 of the Pennsylvania Rules of Evidence for writings (now referred to as documents) and Rules 1019 through 1024 of the Rules of Civil Procedure governing the attachment of a document and its production.

We do not agree with the OSBA comment that Section 5.22(a)(7) contradicts Section 5.21(b). The final regulation states more clearly that the attachment requirement of Section 5.22(a)(7) is not applicable to Section 5.21(b) writings. Section 5.21(b) identifies documents that are more easily obtained because they are on file at the Commission. Extension of the mandatory attachment rule of Section 5.22(a)(7) to Section 5.21(b), particularly with regard to *pro se* litigants, could dramatically increase the number of *pro se* proceedings dismissed on procedural grounds. A large increase in dismissals based on noncompliance with an unnecessary procedural requirement could hinder the Commission's ability to identify and address customer service problems raised by *pro se* litigants.

*Section 5.22(c).* The proposed regulation revised the language clarifying that a complainant must reference any order or regulation of the Commission that forms the basis for a formal complaint. IRRC suggests that the last sentence in Section 5.22(b) also contain the phrase "the act" for consistency.

We agree with IRRC. We add the phrase "the act" in the second sentence.

**Section 5.24. Satisfaction of formal complaints.** The proposed regulation revised Section 5.24. The proposed revision addressed circumstances in which a complainant does not wish to proceed but neither is the complainant satisfied. The proposed regulation anticipated closing a complainant's matter after the complainant acknowledges a lack of interest in pursuing the matter.

IRRC's comment recognizes that the revised Section 5.24(b) allows a respondent to certify satisfaction based on a complainant's acknowledgement of satisfaction or if the complainant no longer wishes to pursue the matter. The Ryan comment wants the Commission to address the current requirement that a complainant file a withdrawal or the respondent obtain the complainant's signature. The comment claims this requires considerable resources, such as obtaining the complainant's signature or preparing for a hearing where the complainant will never appear. The Utility Group suggests an efficient

revision that allows the respondent to represent that the complainant is not going to pursue a matter.

The Commission agrees with IRRC as well as the Utility Group and Ryan comments. The final regulation at Section 5.24(b) allows the respondent to file a certified writing confirming satisfaction either through a complainant's acknowledgement or in cases where the complainant no longer desires to pursue a matter. The final regulation at Section 5.24(c) also requires the respondent to simultaneously serve a copy of the certified writing. The respondent must also include a written statement informing the complainant of their right to object in writing within 10 days. The docket is closed unless the complainant objects in writing. This reconciles concerns about efficiency with due process and certainty.

The final regulation also makes clear that the presiding officer is not required to render a decision unless the parties require one for good cause.

**Section 5.31. Staff-initiated complaints.** The proposed regulation revised the language to include actions taken pursuant to delegated authority and required the named party to file an answer consistent with Section 5.61. The OCA suggests that staff-initiated complaints be served on the OCA and OSBA but not on OTS.

The Commission recognizes the need for greater dissemination of information about staff-initiated complaints to all statutory advocates and not just the OCA. For that reason, the final regulation requires that a copy be provided to the Statutory Advocates and the Chief Counsel. The final regulation deletes the current Section 5.31(b) as well. These revisions provide the need for information about staff-initiated matters without imposing a service requirement that could give rise to challenges based on imperfect service. Service, because it is a legal term of art, is distinct from the understandable desire for information on Commission undertakings.

**Section 5.32. Complaints in rate proceedings.** The proposed regulation added a new Section that recognizes a person's right to file a complaint against a proposed rate

filing with the need to impose a reasonable time limit on complaints. This reflected narrower time limits for rate cases compared to nonrate cases under Section 332 of the Public Utility Code.

There are no comments. Subsequent Commission review shows that the plain language of Section 315 of the Public Utility Code requires the Commission to either include any complaint filed against a proposed rate increase in the case itself or to start another one with the utility still having the burden of proof. This means that, as long as the rates are proposed and not approved, the Commission cannot stop the complaint from either being considered or from instituting another proceeding.

For that reason, the final regulation for Section 5.32(b) provides that a complainant filing a formal complaint in a rate case takes the record as they find it.

#### **Sections 5.41-5.44. Petitions.**

**Section 5.41. Petitions generally.** The proposed regulation made no major substantive changes. The proposed revisions seek to clarify the regulation.

IRRC suggests clarification to the phrase “in compliance with Commission direction” in Section 5.41(c) with a cross-reference to the service requirements contained in the final regulation.

The Commission disagrees with cross references in this provision. This provision addresses who is served or given a copy not how the service or copy is accomplished.

The Ryan comment urges the Commission to insert a new sentence in Section 5.41(d) imposing a mandatory time period for Commission decisions. The Ryan comment concedes that the Public Utility Code differentiates between general rate cases, which impose a 7-month period for decisions in 66 Pa.C.S. §1308, and other non-rate proceedings under Section 332(g) that lack this mandate. The Ryan comment suggests a similar time period for Section 5.41 petitions. The Ryan Comment proposes a rule that the Commission decide any proceeding initiated by a petition within seven months after filing unless the Commission grants itself a ninety-day extension for good cause shown.

The Commission declines to adopt this comment for several reasons. The Commission manages multiple, and sometimes controversial if not complex, petitions. Petitions run the gamut from a single suspended taxi driver seeking reinstatement through mid-sized carriers seeking resolution of intercarrier compensation matters under state and federal law to large utilities implementing restructuring or broadband deployment.

It is not possible or advisable to craft a mandatory 7 month decision rule for all non-rate cases premised on a statutory provision governing rate cases. Rate cases already consume such a considerable number of resources and staff in order to meet the statutory deadline. The resource and staff needs of the Commission will increase if the same 7 month statutory requirement were imposed on the entire gamut of non-rate cases. This increase is ultimately reflected in assessments and rates. Moreover, it is often difficult to reach a final decision in many matters in 7 months. This includes, for example, the Commission's promulgation of final rules governing the securitization of stranded costs where there were no dispute and billions of dollars. That problem is exacerbated in non-rate cases where there are disputes and complex questions of law and policy.

A general rule requiring a decision within a specific time period for every petition, regardless of its nature, fails to appreciate the sheer variety of proceedings or the costs that come with such a requirement.

**Section 5.42. Petitions for declaratory orders.** The proposed regulation contained no substantive changes for Section 5.42. Section 5.42 was broken down for ease of reference.

**Section 5.43. Petitions for issuance, repeal, or waiver of Commission regulations.** The proposed regulation contained no substantive changes for Section 5.43. The OCA requested that Section 5.43 be revised for consistency to require service on the OCA. The Commission agrees and Sections 5.41, 5.42, and 5.43 of the final regulation provides for service of petitions on the Statutory Advocates.



**Section 5.44. Petitions for appeal from actions of staff.** The proposed regulation extended the appeal period to a standard 20 days.

IRRC suggests that the Commission consider a general rule. The Commission agrees with IRRC and extends the challenge period to 20 days in the final regulation.

The Utility Group suggests that the Commission adopt a provision that appeals under this Section are decided at Public Meeting. The Utility Group makes the suggestion given that staff determinations often have a considerable impact to a party. The final regulation clarifies that the Commission decides these appeals at Public Meeting.

**Sections 5.51-5.54. Protests.**

**Section 5.51. Protest to an application.** The proposed regulation made minor linguistic changes for clarity. There were no comments. The final regulation adopts the proposed regulation.

**Section 5.52. Content of a protest to an application.** The proposed regulation contained no substantive changes. There was rewording for clarity. OSBA suggests that the word "shall" be included in brackets in Section 5.52(a). IRRC and the Utility Group suggested elimination of the word "shall" due to a typographical error at Section 5.52(c). The Commission agrees and inserts the word "must" in the final regulation.

**Section 5.53 and Section 5.14. Time of filing protests and applications requiring notice.** The proposed regulation revised Section 5.53 to provide a consistent default filing time for filing a protest. The proposed regulation deleted Section 5.54 as redundant. There was considerable comment.

For the reasons discussed in Section 5.14 earlier, the Commission's final regulation retains the conjunctive approach to Section 5.53 and 5.14. In deference to IRRC concerns about a standard protest period, the final regulation establishes a default

provision for times when an application published in the *Pennsylvania Bulletin* fails to establish a protest period.

**Section 5.61-5.66. Answers.**

**Section 5.61. Answers to complaints, petitions and motions.** The proposed regulations for Sections 5.61, 5.102 and 5.103 are revised for consistency in providing a twenty day response time.

The OSBA comment suggests that the numbering requirement of Section 5.61(b)(1) is complicated, routinely ignored, and should be eliminated. The Commission retains the existing numbering rule based on its experience.

The OCA suggests that the 20-day rule in Section 5.61(a)(1) apply to rate complaints in Section 5.61(d) as opposed to the reference to Section 5.32. The Commission disagrees. Rate case proceedings are under a very tight timeframe and, for that reason, require a shorter answer period. The final regulation establishes a time identical to that for preliminary objections, e.g., 10 days. This is appropriate given that there is no duty, and hence no adverse consequences, for failure to file an answer in rate case proceedings. The Commission also provides Section 5.61(e) clarifying the contents of an answer to a petition.

**Section 5.62. Answers seeking affirmative relief or raising new matter.** The proposed regulation reformatted the structure for clarity. The IRRC comment suggests that the Commission determine if a notice to plead must be included with the new matter. IRRC thinks this may be important in view of the fact that Section 5.63(b) provides that failure to file a timely reply may be deemed an admission of the facts raised. The Utility Group notes that presiding officers do sometimes instruct utility counsel to append a Notice to Plead, particularly in *pro se* proceedings, when an answer raises new matter. The Utility Bar asks whether the final rules should contain this requirement.

The Commission declines to impose a Notice to Plead requirement. In many cases, particularly involving *pro se* litigants, the litigant is unaware of the consequences for not filing a reply with or without a Notice to Plead. In such instances, a Notice to Plead encourages dismissal on procedural grounds as opposed to disposition of the substantive concern. A well-intentioned suggestion that a Notice to Plead be required actually creates an avoidable procedural landmine for the unwary or unsophisticated litigant. The Commission prefers to err on the side of caution by not mandating a Notice to Plead in *pro se* proceedings. As for formal proceedings where the parties are typically represented by seasoned counsel if not multiple numbers of attorneys, counsel in those proceedings fully appreciate the Section 5.63 ramifications of any failure to reply.

Moreover, practice before the Commission is not synonymous with practice in the courts. The Commission has no jurisdiction to entertain counterclaims involving damages. The Commission does, however, retain an interest in new matter raising a counterclaim that is not one related to damages. The Commission does not want litigants dismissed from a proceeding based on failure to append, or reply to, a Notice to Plead. The Commission prefers, particularly for *pro se* litigants, to hear all the claims and allegations within our jurisdictional authority. The Commission's final regulations balance the formalities of courtroom-like proceedings where all parties have counsel with those incredibly varied cases involving *pro se* litigants.

**Section 5.63. Replies to answers seeking affirmative relief or new matter** The proposed regulation added replies to new matter including the possible consequences of a failure to reply to new matter. There were no substantive comments.

**Section 5.65. Answers to amendment of pleadings.** The proposed regulation excepted Section 5.101 preliminary objections from the provisions of this regulation. There were no substantive comments.

**Section 5.66. Answers to petitions to intervene.** The proposed regulation revised Section 5.66 to confirm that an answer to a petition to intervene must be filed within 20 days of service. The Utility Group suggests that answers be limited to “active” parties but not “inactive” parties. The Commission confined the language in the final regulation to “parties” given the difficulties, discussed throughout the rulemaking, of distinguishing between the meanings of “active” and “inactive” parties in a regulation.

**Sections 5.71-5.76. Intervention:**

**Section 5.73. Form and content of petitions to intervene.** The proposed regulation addressed frustration about facing an unknown intervenor group. The proposed regulation required intervenor petitions filed on behalf of more than one person to list the persons and entities comprising the represented group.

The Ryan comment contains an even more detailed proposal imposing nine additional informational matters that must be provide by an association intervenor. The suggested criteria would require an association intervenor to provide the name of the association, the date of formation, their purpose, their organizational structure, the number of members, their governance structure, whether intervention is by resolution or members, the interest of the association, and specific detail on the association’s alleged interest. The Ryan comment is particularly concerned about associations that provide little or no information about their formation, interest, or basis for intervention.

The Commission adopts the proposed regulation as final. The Ryan comment would mandate detailed information about every association’s standing in every proceeding regardless of the nature of the proceeding. Such a universal, detailed and costly-to-administer pleading is burdensome compared to the benefit. A party that wants to challenge an association’s intervention in any proceeding can always ask the presiding officer to require this kind of detailed information. We conclude that the permissive “may” allows this approach better than use of the directory “must” in the final regulation.

**Section 5.74. Filing of petitions to intervene.** The proposed regulation in Section 5.74 established a default deadline for filing a Petition to Intervene as well as a Notice of Intervention. The proposed regulation limited intervention regardless of the party. The Sections are revised to notify the presiding officer of the appropriate standard to use in considering a request for intervention.

The IRRC comment notes that this is a marked departure from prior Commission practice. IRRC wants the Commission to clarify the intent behind this regulation. The OCA states that this provision may be legally or administratively unsound if applied to the OCA. The OCA files a Notice of Intervention as a public representative under a statute. This contrasts with a Petition to Intervene filed by a party under caselaw. The OCA cites numerous times the Commission and the public benefited from their public advocacy interventions even if they occurred well after expiration of the established intervention date.

The Commission agrees with IRRC and the OCA. The final regulation at Section 5.74(b)(4) and 5.74(c) reflect different intervention and participation rights between Statutory Advocates and private litigants. The Statutory Advocates, unlike private litigants, have distinct statutory provisions governing their rights and responsibilities. For example, the Office of Consumer Advocate has statutory authority to file a Notice of Intervention whereas the similar right provided to the other statutory advocates is not called a Notice of Intervention. Section 5.74(b)(4) reflects that difference and provides all Statutory Advocates with the right to file a Notice of Intervention or Right of Participation at any time. Section 5.74(c) provides that right to private litigants although the right is more limited. Finally, the revision provides that any party intervening after expiration of an established protest period takes the record as it exists absent exceptional circumstances. This limitation balances rights with due process, the short timeframe for decisions in rate cases and the need to identify and resolve issues in rate and nonrate proceedings.

**Section 5.75. Notice, service and action on petitions to intervene.** The proposed regulation revised language for clarity. The IRRC and the OSBA comments suggest that the word “permitted” be replaced by “prohibited” in Section 5.75(d) consistent with the Commission’s wording changes in this section. We agree with IRRC and the OSBA. We also deleted the phrase “by the moving party” in Section 5.75(c) for clarity and brevity. Finally, Section 5.75(d) provides for permissive intervention following expiration of any established protest period under Section 5.74(b). This provides a regulatory option to permit intervention past the expiration period in appropriate circumstances. For that reason, the final regulation for Section 5.75(d) is phrased with the more permissive “may” as opposed to the more limiting “shall” in Section 5.74(b).

**Sections 5.91-5.94. Amendment and Withdrawal of Pleadings.** The proposed regulation sets forth revisions intended to reflect the Pennsylvania Rules of Civil Procedure where possible and appropriate.

**Section 5.91 Amendment of pleadings generally.** The proposed regulation made minor language changes and inserted new Section 5.91(b). The new provision addressed amendments in response to preliminary objections.

The IRRC comment suggests that the phrase “insofar as appropriate” in Section 5.91(a) is redundant and wants the Commission to delete it. The Commission agrees with IRRC.

**Section 5.92. Amendments to conform to the evidence.** The proposed language made changes for clarity, brevity, and ease of reading. There are no substantive comments.

**Section 5.93. Directed amendments.** The proposed regulation made minor language changes for clarity and replaced “participant” with “party” as well. There are no substantive comments.

**Section 5.94 Withdrawal of pleadings in a contested proceeding.** The proposed regulation made minor changes for brevity and clarity. The word “participant” is replaced with the word “party” in the provision. The Utility Group suggests that the Commission differentiate between “active” and “inactive” parties. The final regulation uses the term party consistent with the revision in order to avoid differentiating between active and inactive parties.

**Sections 5.101-5.103. Motions.** The proposed rulemaking changed the term “preliminary motion” to “preliminary objection” consistent with the use of that term by practitioners elsewhere.

**Section 5.101. Preliminary objections.** The proposed rulemaking for Section 5.101 contained several revisions.

*Section 5.101(a).* The current regulation specified what preliminary motions are available to parties. The proposed regulation replaced “preliminary motion” with “preliminary objection” where appropriate and rephrases the term “preliminary objection” to more closely model Pa.R.C.P. 1028.

The OSBA asks if the phrase “except motions and prior preliminary objections” should be deleted since the Commission replaces “preliminary motions” with “preliminary objections.”

The final rule retains the phrase. The phrase “except motions and preliminary objections” is retained to reflect the Commission’s long-standing prohibition against responding to a motion or prior preliminary objection with another preliminary objection. This is one place in the final regulations where the word is retained to emphasize the rule

against answering a motion or prior preliminary objection with another preliminary objection. Unlike the courts where private parties typically bear litigation costs, the Commission is a regulatory agency whose costs are ultimately recovered in assessments and rates paid by ratepayers. Retention of this rule discourages additional costs attributable to dilatory litigation practices that such a rule could create at the Commission. The final rule also reorders and rephrases the available preliminary objections to more closely model the Pennsylvania Rules of Civil Procedure at Pa.R.C.P. No. 1028.

*Section 5.101(b).* The current regulation governs the filing of preliminary objections and specifies that all preliminary objections must be raised at one time. The proposed regulation allowed two or more preliminary objections to be raised at one time.

There was considerable comment to the proposal to allow two or more preliminary objections to be raised at one time. The major concern, expressed in the IRRC comment and Utility Group comment, is that the revision could allow a party with significant resources to unreasonably delay a proceeding or cause unnecessary expenditure by not being required to raise all preliminary objections at once. IRRC and the Utility Group suggest revocation of this proposal.

The Commission recognizes the validity of these comments and requires that all preliminary objections be raised at one time in Section 5.101(c).

Section 5.101(b) continues to require that a preliminary objection contain a notice to plead advising the recipient of the option to file an answer within 10 days of the date of service. In turn, Section 5.101(f)(1) specifies that an answer to a preliminary objection may be filed within 10 days and Section 5.101(f)(2) addresses the form for such answers.

*Section 5.101(c).* The current regulation governs more specific pleadings. The proposed revision to Section 5.101(b) governed the filing of an amended pleading in response to a more specific pleading filed under Section 5.101(b).



The OCA comment notes that Section 5.101(c) references Section 5.61(b) although the proposed revision to Section 5.61(b) does not expressly provide that preliminary objections and documents must be filed in 20 days. Section 5.101(d) of the final regulation sets forth a clear response time period.

The Commission agrees with IRRC, the Utility Group, and the OCA that Section 5.101(c) must require a party to raise all preliminary objections at one time. In addition, this subsection now provides that the preliminary objections shall be set forth in numbered paragraphs and that the preliminary objection must state the legal and factual basis for each preliminary objection.

*Section 5.101(d).* The current regulations govern the filing of an answer to a preliminary objection. The proposed regulation retained the 10 day filing period and imposed an obligation to contain a notice to plead stating that any answer shall be filed within 10 days of date of service of the objection.

The IRRC and OSBA comments express concern about the difference in response deadlines and general lack of clarity concerning preliminary objections. IRRC and the OSBA suggest a standard timeframe. IRRC and the OSBA note that the word “motion” should be changed to “objection” consistent with the Commission’s proposed terminology throughout Section 5.101.

The Commission agrees with IRRC. The final regulation at Section 5.101(d) clarifies that preliminary objections must be filed as a separate document and within the same 20 day period relating to answers to complaints, petitions, and motions set forth in Section 5.61. The filing of a preliminary objection does not eliminate the requirement to file an answer to the complaint or other initiating pleading within the 20 day period for answers set forth in Section 5.61(a) except for preliminary objections regarding insufficient specificity in Section 5.101(e). A Section 5.101(e) preliminary objection alleging insufficient specificity does not require an answer until further directed by the presiding officer.

The Commission also agrees with IRRC and the OSBA that a uniform 10-day rule for filing an answer to a preliminary objection is appropriate. That agreement is reflected in the final regulation in Section 5.101(f)(1) as discussed above.

The former Motion for a More Specific Pleading in Section 5.101(a)(4) of our existing regulations is now rephrased as a Preliminary Objection for Insufficient Specificity in Section 5.101(a)(3) of the final regulations. However, a litigant using the term Motion for a More Specific Pleading will not have that pleading rejected on procedural grounds when the motion properly refers to Section 5.101(a)(3). The Commission is unwilling to elevate form over substance in regard to the regulations.

The Commission takes this approach for several reasons. This provides an opportunity for a respondent with counsel to inexpensively reply with something other than an answer or a preliminary motion when a respondent is unclear, and this is frequently the case with *pro se* litigants, about the exact issue in a complaint. On the other hand, the requirement to raise all preliminary objections at once and the prohibition on filing preliminary motions or motions in response to a preliminary objection is particularly relevant when complainant and respondent have counsel.

These two procedural requirements avoid dilatory and expensive litigation before the Commission. The Commission takes this approach because, unlike the courts where litigation is largely a privately-financed matter, litigation before the Commission is borne by the public in the form of assessments and utility rates. Recognition of this crucial difference plays a considerable role in the Commission's procedural rules and practice.

The final regulation for Section 5.101(d) also reflects the Commission's agreement with IRRC and the comments on the need for linguistic clarity and consistency. The revised regulation replaces "preliminary motion" with "preliminary objection" where appropriate.

*Section 5.101(e).* The current regulation at Section 5.101(e) specifies a 30-day period a decision by the presiding officer. The proposed revision to Section 5.101(e) required a decision on preliminary objections within 30 days of filing or termination of

mediation. The final regulation adopts this proposal and requires a presiding officer to render a decision within 30 days of the assignment of the preliminary objection. That provision, however, is moved to a new Section 5.101(g) for greater clarity and consistency.

*Section 5.101(f).* The current regulation at Section 5.101(f) allows the submission of an amended pleading within 10 days by a party whose pleading has been struck. The proposed revisions to Section 5.101(f) specified what happened following a ruling.

The IRRC and OSBA comment note that a party who files a pleading that is stricken has 10 days to file an amended pleading whereas a party who filed an overruled preliminary objection has 20 days to plead over. The OSBA is also concerned about delineating the circumstances in the proposed regulation where a party has the right, but not the duty, to file a responsive pleading. The OSBA suggests that the regulation make clear that a party has the right but not duty to file a responsive pleading. The OCA supports the proposed revision despite the different response times.

The Commission agrees with IRRC. The Commission also disagrees with the OSBA. The final regulation retains a uniform 10 days for filing an amended pleading. This uniform period addresses the concern that disparate filing periods cause confusion. However, the Commission does not agree with the OSBA that the regulation must spell out the detailed circumstances when a party with no duty to file a responsive pleading can exercise their right to file an answer. That determination is better left to the party.

This final regulation is moved to a new Section 5.101(h) for clarity and consistency.

**Section 5.102. Motions for summary judgment and judgment on the pleadings.** The proposed regulation combines a discussion of a Motion for Judgment on the Pleadings and a Motion for Summary Judgment. These are for clarity and brevity.

The Utility Group is concerned that the proposed revisions confuse Summary Judgments, which can be based on the pleadings and supplemental discovery responses and affidavits, with Judgments on the Pleadings, which are confined to the pleadings.

The Commission recognizes the potential for ambiguity. The final regulation at Section 5.102(b) contains the added phrase “to a Motion for Summary Judgment.” This clarifies that a Motion for Summary Judgment can rely on supplemental pleadings and depositions, answers to interrogatories, further affidavits or verifications and admissions appended in support of, and the basis for, the motion.

**Section 5.103. Motions.** The proposed regulation replaced “participant” with “party” in the provision. The proposed regulation to Section 5.103(b) required a written motion to contain a notice to plead stating that a responsive pleading is due within 20 days of service. There are no substantive comments. The final regulation retains the Notice to Plead requirements and adopts the proposed 20-day period for answering or objecting to a motion.

## **SUBCHAPTER B HEARINGS**

**Section 5.201-5.203. General.** The proposed regulation replaced “participant” with “party” in the provisions. There are no substantive comments.

**Sections 5.211-5.212. Notice of Hearing.** The proposed regulation replaced “participant” with “party” in the provisions. There are no substantive comments.

**Sections 5.221-5.224. Prehearing and Other Conferences.** The proposed revisions contained language changes for brevity and clarity. The Utility Group comments suggests that the final regulation contain an express statement requiring the parties to be prepared to cooperatively prepare a procedural schedule at the prehearing conference. The Commission reflects our agreement with this suggestion in Section 5.222(d)(2)(A).

Moreover, a violation could result in sanctions or other action consistent with Section 5.371(a)(1).

**Section 5.222. Initiation of prehearing conferences in nonrate cases.** The final regulation for Section 5.222(d)(1) and (e)(2) lists mandatory and permissive topics for prehearing conferences in nonrate proceedings.

**Section 5.223. Authority of presiding officer at prehearing conferences.** The final regulation for Section 5.223(c) allows a presiding officer to participate in settlement discussion upon agreement of the parties given the importance of having a mediator or presiding officer familiar with a proceeding. However, in recognition of the fact that all parties may not always want the same mediator or presiding officer at a conference and any settlement, the final regulation allows a party to request that a different presiding officer or mediator be assigned upon the request of a party.

**Section 5.224. Prehearing conference in rate proceedings.** The final Section 5.224(c) delineates the mandatory subjects of a rate proceeding. Section 5.224(e) provides the presiding officer with discretion to schedule additional prehearing conferences. The proposed Section 5.224(f) is deleted in response to comments. The final Section 5.224(f) language deletes the phrase “when justice so requires” as a redundant statement of the obvious.

#### **Sections 5.231-5.235. Settlement And Stipulations.**

**Section 5.231. Offers of settlement.** The proposed regulation for Section 5.231 was changed to reflect a regulatory style that limited a Section to one topic. The new Section 5.231(d) provided that a proposal to settle a discovery dispute is not admissible against a counsel or party in response to prior comments.

The Ryan comment repeats an earlier concern that proposals intended to resolve a discovery dispute should be prohibited in any adjudication of the dispute.

The Commission denies the suggested revision. The proposed regulation reflects adoption of most of the previous Ryan comments on this provision. The proposed revision in Section 5.231(d) effectively provides the relief requested. More language could prevent any discussion of any permutation whatsoever of any proposal even remotely related to a proposed resolution. The proposed language is not warranted given this draconian potential.

**Section 5.232. Settlement petitions and stipulations of fact.** The proposed revision to Section 5.232 was changed to “Settlement petitions” and all mention of stipulations is removed. The revision also required filing with the Secretary. Section 5.232(b) required identification of the parties that agreed to the settlement or which did not respond to attempts to secure agreement. Section 5.232(d) provided for review by the presiding officer.

IRRC questions use of the phrase “in the public interest” in the proposed regulation for Section 5.232(d).

The Ryan comment proposes substantial and detailed procedures governing partial, contested, or uncontested settlements. The Ryan comment proposes that an presiding officer receive a settlement if the parties do not want the pleadings withdrawn and that the settlement identify the parties opposing, supporting, or taking no position on the settlement. The Ryan comment also proposes that each party receive a complete copy of any settlement or stipulation and that a hearing be required and findings made on the settlement or stipulations for partial settlements. Finally, the Ryan comment proposes that the settlement come directly to the Commission if the parties waive exception rights.

The Utility Group opposes removal of stipulations as a possible settlement document. This is inconsistent with current practice wherein stipulations are sometimes included in partial and complete settlements. The Utility Group also states that Section 5.232(d)(2) misstates the law by requiring a hearing on a settlement petition if a

timely objection is filed and a hearing is necessary in the public interest. The Utility Group claims that hearings are not required if an objection to a settlement raises only questions of policy or law. In the Utility Group's view, a hearing is required only when a timely objection raises issues of material fact.

The Commission disagrees with IRRC on the need to either eliminate or define the public interest. The presiding officer's obligation to determine whether a settlement is in the public interest is a necessary corollary to the Commission's fundamental statutory obligations under the Public Utility Code, particularly sections 501, 1301 and 1501. 66 Pa. C.S. §§501, 1301 and 1501. In evaluating any matter, the Commission is obligated to balance the interests of consumers in adequate, safe and reliable service at just and reasonable rates with the interests of utilities in a fair return on facilities devoted to public service. The particular balance struck, however, will always be dictated by the specific facts, circumstances, policy, and applicable law. To provide guidance in this area, the Commission has issued a proposed policy statement that sets forth the factors it will consider in evaluating the merits of a settlement involving violations of the Public Utility Code and Commission regulations.<sup>3</sup> As such, crafting a finite definition for public interest in these regulations is not necessary.

Commission agrees with the Utility Group that the final regulation should retain stipulations, be they complete or partial, given the usefulness of partial, complete, or contested settlements. Settlements at the Commission frequently contain stipulations of fact by some or all of the parties. However, the Commission disagrees with the Ryan comment on mandating hearings when there are partial settlements or stipulations of fact.

The Commission must provide the fundamental due process rights of notice and an opportunity to be heard, and must render decision based on the record so the court can review the agency's determination. This does not always require the full panoply of trial-type formalities but, rather, notice and an opportunity to defend in an orderly proceeding adapted to the nature of the case. *Conestoga National Bank v. Patterson*, 442 Pa. 289,

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<sup>3</sup> *Proposed Policy Statement for Litigated and Settled Proceedings Involving Violations of the Public Utility Code and Commission Regulations*, Docket No. M-0005187 (Order adopted Aug. 11, 2005).

275, A.2d 6 (1971). Accordingly, due process is a flexible concept and “calls for such procedural protections as the situation demands.” *Pa. Coal Mining Assoc. v. Insurance Dept.*, 471 Pa. 370 A.2d 685, 690 (1977).

The Commission takes this approach to the issue of hearings in settlements. We decline to specify by regulation what due process is required for settlements and partial settlements. We believe that the appropriate use of a trial-type hearing, as opposed to some other procedure for being heard, such as the filing of written objections or comments, is a decision better made initially by a presiding officer under Section 5.232(d) settlement review and in accordance with the requirements of Pennsylvania law.<sup>4</sup> In addition, there are times, and Section 332(g) rate case proceedings are a good example, where formal objection periods are abbreviated due to the press of time. Consequently, flexibility is the rule.

The Commission does, however, adopt much of the Ryan comment with some modifications. Section 5.232(a) restores stipulations, whole or partial, to the final regulation. Section 5.232(b) requires the settling parties to identify the parties to the settlement that support, oppose, take no position, or did not have an opportunity to enter into the settlement. Section 5.232(c) provides for service of the settlement on the parties with an opportunity for comment. Section 5.232(d) provides for review by a presiding officer. Sections 5.232(e), (f), and (g) provide for an opportunity to comment and review a settlement. Section 232(g) clarifies when, and how, objections to settlements are filed if a case is not assigned to a presiding officer. This balances the competing alternatives of an absolute requirement of hearings with the practical need for flexibility.

**Section 5.233. Refusal to make admissions or stipulations.** The proposed regulation made minor language. There are no substantive comments.

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<sup>4</sup>See, e.g., *Chester Water Authority v. Pa. PUC*, 868 A.2d 384 (Pa. 2005)(constitutional procedural due process is a flexible concept, and thus, implicates procedural protections as each particular situation demands); *Lehigh Valley Power v. Pa. PUC*, 563 A.2d 548 (Pa. Cmwlth. 1989) (trial-type hearing necessary only to resolve disputed questions of fact).



**Section 5.234. Presentation and effect of stipulations.** The proposed regulation made minor language changes. The OSBA comment suggests that stipulations in which only some, not all, of the parties stipulate be binding only on the parties to the stipulation. The Commission agrees with the OSBA. The final regulations clarify that in Section 5.234(a).

**Section 5.235. Restrictive amendments to applications for motor carrier of passenger and household goods in use authority.**

The proposed regulation clarifies the criteria to be addressed when stipulations are used for motor carrier cases. The IRRRC and OSBA comments recommend that the word “shall” in Section 5.235(a) not be bracketed.

The Commission agrees with IRRRC and the OSBA. The final regulation reflects the need for an explanation for restrictive amendments as settlements. These restrictions can reduce, not increase, the number of carriers or even service quality in any given area. For these reasons, an explanation provides the Commission with a better understanding of the value, if any, of a restrictive covenant.

**Sections 5.241-5.245. Hearings.**

**Section 5.241. Attendances.** The proposed regulation contained language changes for brevity and clarity. There are no substantive comments.

**Section 5.242. Order of procedure.** The proposed regulation replaced the word “participant” with “party” throughout the provision. The OCA comment suggests that oral rejoinder, if any, occur before cross-examination is conducted since it is the last opportunity to present direct testimony. The Utility Group urges the Commission to provide more detail on this provision because parties sometimes abuse the opportunity by orally presenting new testimony, issues, and exhibits on the last day of a hearing with minimal opportunity to respond. The Utility Group suggests that the final regulation provide a right to respond if and when that occurs in a hearing.

The Commission understands the comments on this issue as it goes to the heart of procedural due process. The revision to the final regulation at Section 5.242(a) limits the opportunities for abuse. The final revision requires that oral rejoinder by a party with the burden of proof shall be conducted before any cross-examination of the witness.

**Section 5.243. Presentation by parties.** The proposed regulation revised the presentation provisions by requiring an opportunity to respond in Section 5.243(a). Limits are set forth in Section 5.243(b). Section 5.243(f) addresses friendly cross-examination based on the definition set forth in Section 1.8.

The Utility Group asks that friendly cross-examination be prohibited or discouraged because they believe it is repetitious and of minimal value. The final regulation retains the option for friendly cross-examination because that procedure is not always repetitious or of no value. The Commission believes that challenges to the inappropriate use or abuse of friendly cross-examination are better made on a case-by-case basis instead of a general rule. Moreover, Section 5.243(e) reinforces a party’s right to prevent the inappropriate or abuse of presentation rights.

**Section 5.245. Failure to appear, proceed, or maintain order in a proceeding.** The proposed regulation revised the language in the provision for clarity and brevity.

IRRC suggests that the final Section 5.245 rule codify application of this provision to intervenors. The Utility Group states that the Commission should go further and allow a presiding officer to punish obstructive behavior by dismissing any complaint, application, petition, or intervenor. The Ryan comment suggests that the Commission address obstructive behavior in a new regulation at Section 5.246, specifically noncompliance with prehearing orders and discovery, by granting a continuance until the exhibits become available or there is a complete response to the discovery.

We adopt IRRC's requested codification as Section 5.245(c) in the final regulation. We decline to adopt the other suggestions. These issues are better presented to a presiding officer and not in a general rulemaking. Nothing in the current or final regulations prevents counsel from requesting a continuance, seeking dismissal of an application, complaint, petition, or even intervenor.

Our final rules are general rules of future applicability. Final rules are intended to establish general parameters. The final rules should not adopt suggestions that could encourage interlocutory appeals or needlessly narrow a presiding officer's discretion to address failures to appear, determine the order of proceedings, or maintain order.

**Sections 5.251-5.253. Transcript.** The proposed regulation made language changes for brevity and clarity. The word "party" replaced the word "participant" in the provisions. The OCA suggests that the transcript correction period be shortened. The Commission agrees with the OCA. The final regulation at Section 5.253(c) shortens the transcript correction period.

## **SUBCHAPTER C INTERLOCUTORY REVIEW**

**Interlocutory Review: Sections 5.301-5.306.** The proposed regulation made language changes for brevity, clarity and consistency. The word “party” replaced “participant” throughout the provisions. Section 5.306 provided for transmission by telefacsimile when expedited notification proved necessary.

The IRRC comment suggests that Section 5.306 be revised to reflect the Commission’s response to IRRC’s opposition to electronic filing.

The Commission retains the Section 5.306 language. Section 5.306’s reference to electronic filing is not mandatory. The reference is intended for use in exceptional circumstances and is accompanied by a requirement to file a hard copy. Exigent circumstances of the type envisioned by this regulation may, of necessity, require electronic means to accomplish expedited notice. The Commission made ministerial corrections to the final regulatory provisions in Sections 5.304(e) and (f) without changing their meaning.

## **SUBCHAPTER D DISCOVERY**

**Sections 5.321-5.324. General.**

**Section 5.321. General.** The proposed regulation replaced “participant” with “party” throughout the provision. There are no substantive comments. The final regulation adopts the proposed regulation. The final regulation clarifies that Section 5.321(f)(5) applies to rate increase cases.

**Section 5.322. Informal agreement regarding discovery or deposition procedure.** The proposed regulation replaced “participant” with “party” throughout the

provision. There are no substantive comments. The final regulation adds the ministerial phrase “authorized to administer oaths” and adopts the proposed regulation.

**Section 5.323. Hearing preparation material.** The proposed regulation replaced “participant” with “party” throughout the provision. The proposed regulation also added surety, indemnitor, and agent to the list. There are no substantive comments.

**Section 5.324. Discovery of expert testimony.** The proposed regulation replaced “participant” with “party” throughout the provision.

IRRC and the Utility Group identifies an alleged conflict between the language in this provision and the exclusionary language of Section 5.323(a).

The Commission’s final regulations at Section 5.324(a) and 5.323(a) must be read in light of Section 5.321 and Pa.R.C.P. 4003.3 through 4003.5, which formed the basis for these regulations. The apparent “allowance” language of Section 5.324(a) contrasted with the apparent “preclusion” language in Section 5.323(a) is resolved by reference to the Civil Rules and Section 5.321(a). Section 5.321(c) allows discovery not otherwise privileged and identification is provided. These regulations allow the discovery of hearing preparation material and expert testimony so long as they are not privileged. Section 5.321(a) establishes the privilege exclusion, Section 5.323(a) permits discovery so long as the material is not privileged or mental impressions for hearing preparation, and Section 5.324(a) applies the rule for discovery but expands it to hearing preparation material. The rules when read together allow the discovery of opinions so long as they are not privileged. This explains the apparent preclusion in Section 5.323(a) with the apparent inclusion in Section 5.324(a).

**Sections 5.331-5.332. Timing and Supplemental Responses.** The proposed regulation replaced “participant” with “party” throughout the provision. There were no substantive comments.

**Sections 5.341-5.351. Types of Discovery.**

**Section 5.341. Written interrogatories to a party.** The proposed regulation replaced “participant” with “party” throughout the provision.

The Utility Group suggests that the final Section 5.341(b) regulation require service only on “active” parties and a certificate of service with the Secretary. The OCA recommends that the Commission rescind the prohibition against multi-part interrogatories set forth in Section 5.341(d) of the existing regulation.

The Commission does not agree with the Utility Group on the need to differentiate between “active” and “inactive” parties in these general regulations for the reasons discussed throughout this rulemaking. The Commission also rejects the request to rescind the prohibition against multi-part interrogatories. The Commission does so because multi-part interrogatories may seek information on multiple matters that may or may not relate to one specific issue. By prohibiting this approach, the Commission’s rules require the parties to focus on one issue in each interrogatory. In addition, a multi-part interrogatory may produce responses or objections that are so general that it is difficult to identify exactly what part of what multi-part interrogatory the responding party is addressing.

**Section 5.342. Answers or objections to written interrogatories by a party.** The proposed regulation replaced “participant” with “party” throughout the provision. The rule clarified the process for answering or objecting to interrogatories. The proposed rulemaking differentiated between rate cases, subject to Section 1308 of the Public Utility Code, and other proceedings.

*Section 5.342(a).* The Utility Group and the OSBA comments oppose the verification requirement for interrogatories under Section 5.342(a)(6). The Utility Group notes that interrogatories are answered by many persons, particularly in rate cases, and

that it is unwieldy to impose verification. The Utility Group proposes an alternative requirement that a party answer each interrogatory fully, completely, and truthfully. The OSBA wonders whether the attorney or the experts must verify.

The Commission does not agree that verification should be rescinded. Verification is an inexpensive alternative to notarization, enhances the credibility and accountability of the responding party, and better identifies who says what in complex proceedings. Verification provides an incentive for counsel to be even more familiar with a client's responses than might be the case without verification.

*Section 5.342(d).* IRRC and the Utility Group note that Sections 5.342(d) and (d)(1) seem to be contradictory. Section (d) requires the filing of answers and objections on a 15-20 day difference in rate or nonrate proceedings. Section (d)(1) states that objections are to be filed in 10 days for rate cases and 30 days for other cases. IRRC and the Utility Group urge the Commission to rectify the problem. The Utility Group urges the Commission to retain the current rule.

The Commission agrees with IRRC on revising Section 5.342(d) and (d)(1). The final rule deletes substantial portions of the proposed regulation and provides that all objections are to be served within 10 days of service of the interrogatories under Section 5.61(a)(2). A certificate of service must also be filed with the parties and the Secretary. The final rule also retains the difference between rate and nonrate cases whenever possible, in this case the 15-20 day rules for answers to interrogatories, given the statutory limits of Section 332(g) of the Public Utility Code.

**Section 5.343. Procedures in deposition by oral examination.** The proposed rulemaking made ministerial language changes that do not affect the substantive provisions. There are no substantive comments. The Commission adopts the proposed rule as final.

**Section 5.344. Approval by presiding officer.** The proposed rulemaking substituted “party” for “participant” throughout the provision. There are no substantive changes. There are no comments.

**Section 5.345. Procedure on depositions by written questions.** The proposed rulemaking substituted “party” for “participant” throughout the provision. There are no substantive changes. There are no comments.

**Section 5.347. Taking of depositions – objections.** The proposed rulemaking substituted “party” for “participant” throughout the provision. There are no substantive changes. There are no comments.

**Section 5.348. Transcript of deposition, objections, and filing.** The proposed rulemaking substituted “party” for “participant” throughout the provision. There are no substantive changes. There are no comments. The Commission adopts the proposed rule as final.

**Section 5.349. Requests for documents, entry for inspection and other purposes.** The proposed rule replaced “participant” with “party” throughout the provision. The OSBA opposes the verification requirement since the responses are required to only state that inspection and related activities are permitted.

The Commission adopts a final rule by adding the phrase “or notarized, as permitted by Section 1.36” in Section 5.349(d) of the final regulation. Verification is retained in the final regulation given that Section 5.349(b) provides a party with an option to provide copies at the requesting party’s expense or to permit inspection and copying. Verification ensures that the proffered inspection or copying happens in a reasonable and non-obstructive manner.



**Section 5.350. Request for admission.** The proposed rule replaced “participant” with “party” throughout the provision. There are no comments. The Commission adopts the proposed rule as final. The final regulation adds a phrase in Section 5.350(d)(3) stating that “grounds for objections shall be specifically stated.”

**Section 5.351. On the record data requests.** The proposed regulation essentially clarified operation of the current rule. The OSBA comment urges the Commission to clarify that the option to make a request orally or in writing in Section 5.351(a) applies only to the requesting party.

The Commission adopts a rephrased provision for Section 5.351(a). The revision inserts a second sentence to clarify that the “party” making the request in the first sentence can do so orally or in writing. Other ministerial changes are made as well.

**Sections 5.361-5.364. Limitations.** The proposed rule replaced “participant” with “party” throughout the provision. There are no comments. The Commission adopts the proposed rule.

**Sections 5.371-5.373. Sanctions.** The proposed rule replaced “participant” with “party” throughout the provision. The proposed regulation also extended the deadline for Section 5.371(c) decisions from 15 to 20 days. There are no comments. The Commission adopts the proposed rule.

## **SUBCHAPTER E EVIDENCE AND WITNESSES**

**Sections 5.401-5.409. Evidence.** The proposed regulation replaced “participant” with “party” throughout the provisions. The proposed regulation also revised Section 5.402(b).

The IRRC and OCA comments suggest deletion of the word “By” in Section 5.401(b)(2)(iii) in the phrase “By considerations of undue delay or waste of time.” The Commission agrees.

**Sections 5.411-5.414. Witnesses.** The proposed regulation replaced “participant” with “party” throughout the provisions. Other ministerial language changes are made as well.

The OSBA suggests that Section 5.412(f) contain a revision establishing a general process for developing the record in a proceeding. The OSBA suggests that when the utility has the burden of proof, the utility files its written testimony followed sequentially by intervenor direct testimony, rebuttal testimony by all the parties, and surrebuttal testimony by all parties.

The Commission appreciates the OSBA’s concerns about witness procedure. This concern varies from case to case and for that reason is better addressed by a presiding officer.

**Sections 5.421-5.431. Subpoenas and Protective Orders.** The proposed regulation replaced “participant” with “party” throughout the provisions. This proposed regulation is ministerial and does not impact the substantive meaning.

The OSBA reference to the word “answer” in their comment suggests that a party could file an answer to a subpoena in addition to appearing, objecting, or producing documents. The Utility Group suggests a provision be added to Section 5.423 to include requests for a protective order for submittals in non-adversarial proceedings.

The Commission’s reference to “answer” is for timeframe and content only. The word should not be read to authorize an answer as an alternative to objecting, making an appearance, or producing documents set forth in Section 5.421(b)(1). For that reason, the final regulation at Section 5.421(b)(3) specifies that a “response” shall be filed with the Commission and presiding officer within 10 days of service. This avoids ambiguity and is consistent with the OSBA’s comment for a 10 day reply period.

The Commission agrees with the Utility Group. The final rule contains a new Section 5.423(b) crafting a general rule for non-adversarial proceedings. The final regulation refers such requests to the Commission's Law Bureau for a recommended disposition. The remaining sections are revised to reflect inclusion of this request.

**Sections 5.431. Close of the Record.** The proposed regulation revised the provision for clarity and brevity. No comments were filed. The final rule adopts the proposed regulation with some additional ministerial language that does not change the substantive provisions.

## **SUBCHAPTER F PRESIDING OFFICERS**

**Sections 5.481-5.486. Presiding Officers.** The current regulation governs the authority of a presiding officer. The current regulation in Section 5.485(a) authorizes a presiding officer to note on the record a participant or counsel of record's disregard of a presiding officer's rulings on matters of order and procedure. The presiding officer may also prepare a special written report to the Commission when necessary.

The proposed regulation revised the language without a substantive change. There are no comments.

The final regulation adopts the proposed revisions. The final regulation does not require the presiding officer to note noncompliance as is the case in the current regulation. Instead, the final regulation changes "shall" to "may" so that a presiding officer has the ability to distinguish between minor infractions compared to major infractions that are subject to the notation on the record rule.

## **SUBCHAPTER G BRIEFS**

**Sections 5.501-5.502. Briefs.** The proposed rulemaking intended to clarify the existing distinction between rate cases and nonrate cases. Rate cases are shortened proceedings subject to Section 332(g) of the Public Utility Code. Nonrate cases are not. Consequently, the linguistic distinction and regulations often makes these distinctions throughout the regulations. Section 5.502(d) is one such place.

Main or Reply briefs are filed in rate cases. Initial or Response briefs are filed in nonrate cases. The Utility Group notes that the revision to Section 5.502(d) inadvertently removes references to the filing of Initial Briefs. IRRC questions whether this is intentional. The OSBA comment requests insertion of language specifically referencing the number of copy obligation for parties in the final regulation. The OSBA also identified typographical errors.

The Commission agrees with IRRC, the Utility Group, and the OSBA. The final regulation for Section 5.502(a) requires that copies be served in compliance with Section 1.59(b)(1). Sections 5.502(b) and 5.502(c) are revised to reflect the continuing difference between nonrate and rate case filings. In response to the Utility Group comment in Section 5.535 regarding the misuse of reply exceptions, Section 5.502(d) now allows the filing of *amicus curiae* briefs. This will minimize any misuse of Section 5.535 reply exceptions and maximizes due process opportunities to provide information on issues of interest to the Commission. Section 5.502(e) inserts the word "Initial" to include this brief as one of the briefs subject to filing deadlines.

## **SUBCHAPTER H. EXCEPTIONS, APPEALS AND ORAL ARGUMENT.**

**Section 5.532. Oral argument before presiding officer.** The proposed regulation substituted "party" for "participant" throughout the provision. There are no comments.

**Section 5.533. Procedure to except to initial, tentative, and recommended decisions.** The proposed regulation substituted “party” for “participant” throughout the provision. IRRC suggests insertion of a bracket in the third sentence of Section 5.533(c) wherein the existing word “shall” appears after “exception” and before “exceptions shall” in the proposed regulation. The Commission agrees with IRRC and brackets the word. There are no other comments.

**Section 5.535. Replies.** The proposed regulation substituted “party” for “participant” throughout the provision. The IRRC comment suggests that the word “shall” be bracketed and the word “must” be in bold type in Section 5.535(a). The Utility Group comment urges the Commission to insert language permitting a party to file a reply in support of a party’s position and prohibit a party from raising new arguments in support thereof.

The OSBA comment notes that the current Section 5.535(b) seems to conflict with Section 5.533(e). Section 5.535(b) allows last-day filing of reply exceptions subject to the three-day rule. Section 5.533(e) prohibits last-day filing of reply exceptions and the use of the three-day rule.

The Commission agrees with IRRC. The final regulation deletes the word shall consistent with our agreement.

The Commission also recognizes the Utility Group’s concern that due process should allow a party to respond to new supporting arguments not raised by a party let alone in another reply raising new issues or arguments in the guise of allegedly supporting a party’s position. The final regulations address the Utility Group’s concern about new material and due process in two ways. Section 5.535(a) expressly prohibits the raising of new arguments or issues in a reply by limiting a reply to arguments or issues identified in an exception. Section 5.502(d) allows the filing of *amicus curiae* briefs to facilitate the raising of views that might otherwise appear as new arguments or

issues in Section 5.535 replies. Any exception or replies that transgresses these prohibitions are subject to a Motion to Strike.

The Commission recognizes the OSBA's argument about possible contradiction between Section 5.533(e) and Section 5.535. In response to this concern, the general rule in Section 5.535(b) provides that the mailbox rule cannot be used for reply exceptions unless the Commission determines otherwise. This language now mirrors the language in Section 5.533(e) of the existing regulation addressing replies. The Commission also recognizes that in appropriate circumstances, such as when the Commission suspends the normal exception and reply periods, the mailbox rule may be appropriate.

**Section 5.538. Oral argument before the Commission.** The proposed regulation contained no substantive revisions to this section.

The Ryan comment urges the Commission to insert a new Section 5.538(d) on oral argument before the Commission. The Ryan comment requests a governing process for granting oral argument before the Commission given the evolving nature of utility regulation and issues. The Ryan comment recognizes the existing regulation at Section 5.538 but notes that parties rarely request it and the Commission rarely orders it *sua sponte*. The Ryan comment recommends a process similar to the Act 294 process wherein two Commissioners can request oral argument.

The Commission declines to adopt this suggestion. It is not clear if only two should have the authority to compel three other Commissioners to participate in oral argument. It is also not clear if any oral argument granted can be revoked based on a majority vote, if only two Commissioners are required to grant review, or upon a majority vote of the majority voting to grant review. Is it really unclear if the majority or two that granted oral argument can then vote to rescind any oral argument they originally supported. Finally, the infrequent use of the existing regulation undermines any professed need for an additional regulation.

**SUBPART I  
REOPENING, RECONSIDERATION  
AND REHEARING**

**Sections 5.571-5.572.** The proposed regulation revised the language without substantive change to the provisions. There are no comments.

**APPENDIX J  
REPORTS OF COMPLIANCE**

**Sections 5.591-5.592.** The proposed regulation in Section 5.591(a) required a party that had to do or perform an act to file a notice within 30 days of the effective date stating that the requirement has or has not been met. Section 5.592 deletes the existing reference to Sections 1307 and 1308 of the Public Utility Code. Both provisions change “participant” to “party” as well.

The OCA comment suggests a revision to Section 5.592(d) stating that rates cannot go into effect in a compliance tariff filing if an exception is filed. The OCA further suggests that the Commission should review and make a determination on the exceptions in order to avoid the additional cost and burden of permitting rates to go into effect and then issuing a subsequent order amending or denying portions of the compliance filing. The OSBA comment seeks a regulatory mandate that a clean and red-lined electronic copy be required so the parties can quickly identify the changes.

The Commission rejects these proposals. The Commission’s long-standing practice in cases wherein complex exceptions are filed to a voluminous rate case is to allow a rate to sometimes go into effect, depending on the circumstances, to avoid undue harm to the utility or the consumers. These determinations are fact and issue based. As with the Ryan comment seeking detailed provisions on obstructive behavior, the OCA seeks a general rule of uniform applicability when a case-by-case approach is better.

The OSBA’s suggestion about red-lined and original copies is a good idea in an electronic filing regulation. The Commission is reluctant to mandate a red-lined copy because many tariff filings are made by smaller companies that lack the technological

means to inexpensively provide a red-lined copy. Moreover, the issue of a red-lined copy can be made to the presiding officer during the proceeding, requested in the exceptions as part of the Commission's order, or ordered by the Commission in the Final Order. For these reasons, the Commission is not imposing this requirement.

## **SUBCHAPTER K APPEALS TO COURT**

**Sections 5.631-5.632.** The proposed regulation revised the language without substantive change to the provisions. There are no comments.

Accordingly, under 66 Pa. C.S. §§ 501, 504-506, 1301 and 1501, and the Commonwealth Documents Law, 45 P.S. § § 1201 et seq., and the regulations promulgated hereunder at 1 Pa. Code §§ 7.1, 7.2, and 7.5, the Commission proposes adoption of the final regulations as revisions of the rules pertaining to practice and procedure before the Commission at Chapters 1, 3, and 5, as noted and set forth in Annex A; **THEREFORE,**

### **IT IS ORDERED:**

1. That this docket adopt the final regulations in Annex A .
2. That the Secretary shall submit this order and Annex A to the Office of Attorney General for approval as to legality.
3. That the Secretary shall submit this order and Annex A to the Governor's Budget Office for review of fiscal impact.



4. That the Secretary shall submit this order and Annex A for review by the designated standing committees of both houses of the General Assembly, and for review by the Independent Regulatory Review Commission.

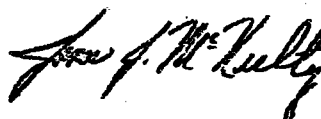
5. That the Secretary shall deposit this order and Annex A with the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.

6. That the revisions to Chapters 1, 3, and 5 embodied in Annex A shall become effective upon publication in the *Pennsylvania Bulletin*.

7. That the contact person for this rulemaking is Joseph K. Witmer, Esq., 717-787-3663 or Jaime M. McClintock, Esq., 717-783-2811. Alternate formats of this document are available to persons with disabilities and may be obtained by contacting Sherri DelBiondo, Regulatory Coordinator, Law Bureau, 717-772-4597.

8. That a copy of this order shall be served upon all persons who submitted comments in this rulemaking proceeding.

BY THE COMMISSION,



James J. McNulty  
Secretary

(SEAL)

ORDER ADOPTED: December 15, 2005

ORDER ENTERED: JAN 04 2006



**ANNEX A**  
**TITLE 52. PUBLIC UTILITIES**  
**PART I. PUBLIC UTILITY COMMISSION**  
**Subpart A. GENERAL PROVISIONS**  
**CHAPTER 1. RULES OF ADMINISTRATIVE PRACTICE AND PROCEDURE**  
**Subchapter A. GENERAL PROVISIONS**

\* \* \* \* \*

**§1.2. Liberal construction.**

\* \* \* \* \*

(c) The Commission or presiding officer at any stage of an action or proceeding may waive a requirement of this subpart when necessary or appropriate, if the waiver does not adversely affect a substantive right of a [participant]party.

(D) THESE LIBERAL CONSTRUCTION PROVISIONS SHALL APPLY WITH PARTICULARITY IN PROCEEDINGS INVOLVING PRO SE LITIGANTS.

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

\* \* \* \* \*

**§1.3. Information and special instructions.**

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

By first-class mail:

[Prothonotary]Secretary  
Pennsylvania Public Utility Commission  
Post Office Box 3265  
[North Office Building]  
Harrisburg, Pennsylvania 17105-3265

In person or by mail other than first-class:

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

\* \* \* \* \*

**§1.4. Filing generally.**

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

By first-class mail:

[Prothonotary] Secretary  
Pennsylvania Public Utility Commission  
Post Office Box 3265  
[North Office Building]  
Harrisburg, Pennsylvania 171045-3265

In person or by mail other than first-class:

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

\* \* \* \* \*

**§1.7. Sessions of the Commission.**

Public meetings of the Commission ordinarily will be held in its offices in the [North Office] Commonwealth Keystone Building, Harrisburg. Schedules for public meetings can be obtained from the Commission Secretary or viewed on the Commission 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:

\* \* \* \* \*

***ADVERSARIAL PROCEEDING*** – A PROCEEDING INITIATED BY A PERSON IN ORDER TO SEEK AUTHORITY, APPROVALS, TARIFF CHANGES, ENFORCEMENT, FINES, REMEDIES OR OTHER RELIEF FROM THE COMMISSION WHICH IS CONTESTED BY ONE OR MORE OTHER PERSONS AND WHICH WILL BE DECIDED ON THE BASIS OF A FORMAL RECORD.

***ELECTRONIC MAIL***– A MEANS OF DISPATCHING OR RECEIVING A SUBMITTAL IN RELATION TO A COMMISSION MATTER THROUGH ELECTRONIC MEANS.

***FORMAL COMPLAINT*** –A VERIFIED WRITTEN DOCUMENT FILED WITH THE COMMISSION PURSUANT TO 66 PA.C.S. § 701 REQUESTING A LEGAL PROCEEDING BEFORE A PRESIDING OFFICER OR A MEDIATOR.

**FORMAL INVESTIGATION**—A MATTER INITIATED BY THE COMMISSION OR COMMISSION STAFF THAT RESULTS IN A FORMAL RECORD.

**FORMAL PROCEEDING**—A MATTER INTENDED TO PRODUCE A FORMAL RECORD.

**Formal Record**—The pleadings and submittals in a matter or proceeding, a notice or Commission order initiating the matter or proceeding, and if a hearing is held, the following: the designation of the presiding officer, transcript of hearing, exhibits received in evidence, [exhibits offered but not received in evidence,] offers of proof, motions, stipulations, subpoenas, proofs of service, references to the Commission and determinations made by the Commission thereon, certifications to the Commission, and anything else upon which action of the presiding officer or the Commission may be based.

**Friendly cross-examination**- Cross-examination of a witness by a [participant] party who does not disagree with the witness' position on an issue.

Individual – a natural person.

\* \* \* \* \*

**INFORMAL COMPLAINT** – A DOCUMENT OR COMMUNICATION TO THE COMMISSION SEEKING ACTION ON A MATTER THAT LACKS THE LEGAL OR OTHER REQUIREMENTS OF A FORMAL COMPLAINT UNDER 66 P.A.C.S. § 701 AND DOES NOT INVOLVE A LEGAL PROCEEDING BEFORE A PRESIDING OFFICER OR MEDIATOR.

**INFORMAL INVESTIGATION** – A MATTER INITIATED BY THE COMMISSION STAFF THAT MAY RESULT IN A FORMAL COMPLAINT, A SETTLEMENT OR OTHER RESOLUTION OF THE MATTER, OR TERMINATION BY LETTER.

**INFORMAL PROCEEDING**—A MATTER NOT INTENDED TO PRODUCE A FORMAL RECORD.

**[Intervenors] Intervenor**—[Persons] A person intervening or petitioning to intervene AS A PARTY as provided by §§ 5.71—5.76 (relating to intervention)[, when admitted as a participant to a proceeding].

Mediation – An informal, nonadjudicative Commission process through which a COMMISSION-DESIGNATED MEDIATOR ~~neutral third party (the mediator)~~ assists the parties in AN ATTEMPT TO REACH reaching a mutually acceptable resolution.

**MEDIATOR – AN INDIVIDUAL DESIGNATED TO CONDUCT A MEDIATION.**

\* \* \* \* \*

**NON-ADVERSARIAL PROCEEDING – A PROCEEDING INITIATED BY A PERSON WHICH IS NOT CONTESTED OR A PROCEEDING INITIATED BY THE COMMISSION OR AT THE REQUEST OF A PERSON TO DEVELOP REGULATIONS, POLICIES, PROCEDURES, TECHNICAL RULES OR INTERPRETATIONS OF LAW.**

*[Participant—A party, Office of Trial Staff prosecutor, Law Bureau staff counsel or another person admitted by the Commission to limited participation in a proceeding. Except as otherwise provided in specific provisions of this part, participants have the same rights granted to parties by this part.]*

*Party—A person who appears in a proceeding before the Commission ~~who has a direct interest in the subject matter of the proceeding.~~*

*~~(i) Active parties [to a general rate case] are those who intend to fully participate in the litigation of a case, which may include presenting witnesses, cross-examining witnesses from the other parties, making motions, conducting discovery, filing briefs, participating in settlement negotiations, and the like. Active parties [to a general rate case] are not required to serve any documents on inactive parties. [The Commission will serve inactive parties with copies of all orders and recommended decisions issued in the case.]~~*

*~~(ii) Inactive parties [to a general rate case] are those who do not intend to be active parties. Inactive parties have the right to testify at a [hearing, including a] public input hearing[but]. Inactive parties do not have the right to present other witnesses, cross-examine witnesses from other parties, make motions, conduct discovery, file briefs or participate in settlement negotiations. The Commission will serve inactive parties with copies of all orders and decisions issued in the case.~~*

*Person—Except as otherwise provided in this subpart or in the act, the term includes individuals, corporations, partnerships, [and] associations, joint ventures, other business organizations, trusts, trustees, legal representatives, receivers, agencies, GOVERNMENTAL ENTITIES, municipalities or other political subdivisions.*

\* \* \* \* \*

*Pleading—An application, complaint, petition, answer, motion, preliminary objection, protest, reply, order to show cause, new matter and reply to new matter or other similar document filed in a FORMAL proceeding.*

\* \* \* \* \*

**PRESIDING OFFICER – A PERSON DESIGNATED BY THE COMMISSION TO PRESIDE OVER A MATTER.**

*[Prothonotary—The Commission officer with whom pleadings and other documents are filed and by whom official records are kept.]*

\* \* \* \* \*

*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.*

**STATUTORY ADVOCATE – THE OFFICE OF TRIAL STAFF, THE OFFICE OF CONSUMER ADVOCATE, AND THE OFFICE OF SMALL BUSINESS ADVOCATE.**

\* \* \* \* \*

*Submittal—An application, amendment, exhibit or similar document INVOLVING MATTERS filed in an ADVERSERIAL ~~ex parte~~ or other [nonadversary] nonadversarial 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.**

\* \* \* \* \*

*Verification—When used in reference to a written statement of fact by the signer, means supported by oath or affirmation or made subject to the penalties of 18 Pa.C.S. § 4904 (relating to unsworn falsification to authorities).*

\* \* \* \* \*

## **Subchapter B. TIME**

### **§1.11. Date of filing.**

(a) Whenever a pleading, submittal[,] or other document is required or permitted to be filed under this title or by statute, it will be deemed to be filed on one of the following dates:

- (1) On the date actually received in the office of the [Prothonotary]Secretary.
- (2) On the date deposited with an overnight express [package] delivery service as shown on the express delivery receipt attached to or included within the envelope containing the document.

(3) On the date [deposited in the United States mail as shown by the United States Postal Service stamp on the envelope or] DEPOSITED IN THE UNITED STATES MAIL AS SHOWN BY THE UNITED STATES POSTAL SERVICE STAMP ON THE ENVELOPE OR noted on a United States Postal Service Form 3817 certificate of mailing. A mailing envelope stamped by an in-house postage meter is insufficient proof of the date of mailing.

~~(4) On the date that it enters an information processing system designated by the Commission for the purpose of receiving documentary filings and from which the Commission is able to retrieve the electronic record and is in a form capable of being processed by that system, if prior to 4:30 p.m. local time. On the following date, if after 4:30 p.m. local time.~~

(b) Failure to include a legible delivery receipt with [the] a document submitted in accordance with the methods specified in subsection (a)(2) OR (A)(3) may result in an untimely filing.

(c) A document transmitted by [telecopier]telefacsimile to the Commission will not be accepted for filing within the meaning of this section.

\* \* \* \* \*

### **§1.15. Extensions of time and continuances.**

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

\* \* \* \* \*

(2) [Request's] Requests for the extension of time in which to file briefs shall be filed at least 5 days before the time fixed for filing the briefs unless the presiding officer, for good cause shown, allows a shorter time.

(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 submitted at least five days prior to the hearing date.

\* \* \* \* \*

## **Subchapter C. REPRESENTATION BEFORE THE COMMISSION**

### **§1.21. Appearance[ in person].**

\* \* \* \* \*

(b) [In adversarial proceedings, partnerships, corporations, trusts, associations, agencies, political subdivisions and government entities] Except as provided in subsection (a), persons in adversarial proceedings shall be represented [only under] in accordance with § 1.22 (relating to appearance by attorneys and legal intern). For purposes of this section, any request for a general rate increase under ~~section~~ §§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.

(c) In nonadversarial proceedings, [a member of a partnership may represent the partnership, a bona fide officer of a corporation, trust or association may represent the corporation, trust or association, and an officer or employe of another agency, a political



subdivision or governmental entity may represent the agency or political subdivision in presenting a submittal to the Commission subject to this chapter and Chapter 5 (relating to formal proceedings).] persons 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.

(d) In informal proceedings brought under Chapters 56 and 64 OF THESE REGULATIONS AND CHAPTER 14 OF THE ACT (relating to standards and billing practices for residential utility service; and standards and billing practices for residential telephone service), parties may be represented by one of the following:

(1) [Paralegals] A paralegal working under the direct supervision of an attorney admitted to the Pennsylvania Bar.

(2) [Another] An appropriate individual INCLUDING A FAMILY MEMBER OR OTHER INDIVIDUAL OR ENTITY WITH ORAL OR WRITTEN AUTHORITY.

\* \* \* \* \*

#### **§1.22. Appearance by attorney or certified legal intern.**

(a) [Individuals, partnerships, associations, corporations or governmental entities may be represented in a proceeding by an] SUBJECT TO THE PROVISIONS OF § 1.21(A), ~~AN~~ AN attorney at law admitted to practice before the Supreme Court of Pennsylvania shall represent persons in Commission proceedings.

(b) An attorney not licensed in [a jurisdiction which does not accord like privileges to members of the bar of] this Commonwealth may appear before the Commission [with the permission of the presiding officer or the Commission consistent with Pa.B.A.R. No. 301 (relating to admission pro hac vice)] in accordance with the Pennsylvania Bar Admission Rules.

(c) [Law students] A law student meeting the requirements of [PA] 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).

\* \* \* \* \*

#### **§1.23. Other representation prohibited at hearings.**

(a) [Participants, individuals, partnerships, associations, corporations or governmental entities] Persons may not be represented at a hearing before the Commission or a presiding officer except[

(1) As]as stated in § 1.21 or § 1.22 (relating to appearance in person; and appearance by attorney or certified legal intern).

[(2) As otherwise permitted by the Commission in a specific case.]

\* \* \* \* \*

**§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 [Prothonotary]Secretary an address for service of a notice or other written communication. A change in address which occurs during the course of the proceeding shall be reported to the [Prothonotary]Secretary promptly.

(b) Attorneys.

(1) Appearance by initial pleading. An attorney [whose name and address appear] who signs an initial pleading in a representative capacity [on an initial pleading filed with the Prothonotary or a presiding officer] shall be considered to have entered an appearance in that proceeding.

(2) Appearance in all other instances. An attorney [who enters the matter at a later stage of the proceeding] shall file with the [Prothonotary]Secretary a [written notice] written notice of [the] appearance[, which shall state his].

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

(A) The attorney's name, mailing address and [telephone number and the electronic mailing address, if applicable] AVAILABLE.

(B) Pennsylvania attorney identification number or, if not licensed in the Commonwealth, identification of the jurisdictions in which the attorney is licensed to practice law.

(C) Telephone number and telefacsimile number, if applicable.

(D) The name and address of the person [on whose behalf he appears] represented.

(ii) Filing.

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

(B) Change in address. A change in address which occurs during the course of the proceeding [shall] must be reported to the [Prothonotary]Secretary AND THE PARTIES promptly.

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

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

(e)(c) Supersession. Subsections (a)—[(d)](e) supersede 1 Pa. Code § 31.24 (relating to notice of appearance).

**§1.25. Form of notice of appearance.**

*(Editor's Note: For purposes of Section 1.25, brackets contained within the form are existing format of the form, and are not indicative of language to be deleted, with one exception. The term "participant" is being replaced with the term "party.")*

(a) The form of notice of appearance is as follows:

COMMONWEALTH OF PENNSYLVANIA  
BEFORE THE PENNSYLVANIA [PBULIC]PUBLIC UTILITY  
COMMISSION

In the Matter of:

[File, Docket or other identifying No.:]

NOTICE OF APPEARANCE

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

I am authorized to accept service on behalf of said [participant]party in this matter

[CHECK ONE]

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

~~I request that a copy of each document hereafter issued by the Commission in this matter be transmitted electronically to the electronic mail address listed below in instances where service by electronic means is permitted.~~

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

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name (Printed)

\_\_\_\_\_  
P.O. address

\_\_\_\_\_  
City, state and zip code

\_\_\_\_\_  
Telephone Number  
(including area code)

---

TELEFACSIMILE NUMBER  
INCLUDING AREA CODE

---

PENNSYLVANIA Attorney I.D. No./  
OTHER JURISDICTION(S) ADMITTED

---

Electronic Mail Address  
(OPTIONAL)

\* \* \* \* \*

### Subchapter D. DOCUMENTARY FILINGS

#### §1.31. [Form of] Requirements for documentary filings [generally].

(a) Form. [Applications, petitions, complaints, answers or similar documents shall] Pleadings must be divided into numbered paragraphs.

(b) Attachments. Copies of [contracts, agreements, certificates, permits or other writings referred to] documents relied upon in the [application or petition, shall] pleadings must be attached as exhibits IDENTIFIED AND ATTACHED. Copies of REPORTED COURT DECISIONS, writings or orders already of record with the Commission need not be attached to the [application or petition] pleading if reference by docket number is made to the proceeding in which they were filed in accordance with § 1.33 (referring to incorporation by reference).

(c) Identifying information. [Pleadings, submittals or other documents] Documents filed with the Commission in a proceeding [shall] must clearly [show] contain the following information:

(1) The docket number or similar identifying symbols, if any[, and].

(2) The title or caption of the proceeding before the Commission.

(3) [They shall also show, in the title of a particular pleading, submittal or other document filed, ]Within the title OF THE DOCUMENT, the name of the person on whose behalf the filing is made. If more than one person is involved, only a single name [only need be included in the title] is necessary.

(d) Supersession. Subsections (a)—(c) supersede 1 Pa. Code § 33.1 (relating to title).

#### §1.32. Form of documents.

\* \* \* \* \*

~~(d) Electronically submitted documents. Margins, spacing and type size of electronically submitted documents must be in accordance with the requirements in subsections (a) and (b).~~

~~[(d)] (e) \* \* \*~~

### §1.33. Incorporation by reference.

(a) [Except as otherwise provided in subsection (b), documents] Documents on file with the Commission may be incorporated by reference into a [subsequently filed] subsequent pleading, submittal or other document. A document may be so incorporated only by reference to the specific document and to the prior filing and docket number at which it was [physically] filed.

(b) [No document which has been] Documents on file with the Commission [for a period of more than 20 years] **FOR A PERIOD OF MORE THAN 20 YEARS** may not be incorporated by reference in a current document unless the person filing the current document first [makes inquiry to the Prothonotary office and] ascertains that the earlier document continues to be readily available in the active records of the Commission.

\* \* \* \* \*

### §1.35. Execution.

(a) *Signature.* [Except as may be otherwise ordered or requested by the Commission, the original copy of a] A pleading, submittal or other document [shall] must be signed in ink by the party in interest, or by [his] the party's attorney, as required by subsection (b), and show the office and ~~post-office~~ MAILING address of the party or attorney. [Other].

(1) An original hard copy must be signed, and other copies filed shall conform thereto unless otherwise ordered by the Commission.

~~(2) If the Commission permits a document to be submitted in electronic form, the document may be signed electronically using a method preapproved by the Commission.~~

(b) [*Subscription*] Signatory.

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

\* \* \* \* \*

(2) A document filed by a corporation, trust, association or other organized group, may be required to be supplemented by appropriate evidence of the authority of the officer or attorney [subscribing] signing the documents.

(c) *Effect.*

(1) The signature of the [person subscribing] individual signing a document filed with the Commission constitutes a certificate by the individual that:

(i) The [person] individual has read the document being [subscribed] signed and filed, and knows the contents thereof.

(ii) The document has been [subscribed] signed and executed in the capacity specified upon the document with full power and authority to do so, if executed in a representative capacity.

(iii) The document is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification or reversal of existing law, to the best of the [person's] individual's knowledge, information and belief formed after reasonable inquiry.

\* \* \* \* \*

(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 [person]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 (relating to civil penalties for violations).

(d) *Supersession.* Subsections (a)-(c) [are identical to] supersede 1 Pa. Code § 33.11 (relating to execution).

**§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 [shall] 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). [If] When verification is [required] permitted, notarization is not necessary.

\* \* \* \* \*

(c) When an affidavit is used, it must be notarized and the form should comply substantially with the following:

**AFFIDAVIT**

I, \_\_\_\_\_ (Affiant) being duly sworn (affirmed) according to law, depose and say that (I am authorized to make this affidavit on behalf of \_\_\_\_\_ corporation, being the holder of the office of \_\_\_\_\_ with that corporation, and that, I am an employee or agent of \_\_\_\_\_ and have been authorized to make this affidavit on its behalf and that) the facts above set forth are true and correct (or are true and correct to the best of my knowledge, information and belief) and (I or corporation) expect to be able to prove the same at any hearing hereof.

\_\_\_\_\_  
(Signature of affiant)

Sworn and subscribed before me this \_\_\_\_ day of \_\_\_\_\_, [19]2\_\_\_\_\_.

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

\* \* \* \* \*

**§1.37. Number of copies.**

(a) General rule. [An] When a pleading, submittal or document other than correspondence is submitted in hard copy, an original and three copies of [pleadings, submittals or documents other than correspondence shall] each, including the cover letter, must be furnished to the Commission at the time of filing[, except as may be otherwise required by statute or ordered or requested by the Commission, and except as required by §§ 5.409, 5.502 and 5.533 (relating to copies and form of documentary evidence; filing and service of briefs; and procedure to except to initial, tentative and recommended decisions)].

(b) Exceptions.

(1) [In the case of applications and petitions]When the document is an application or petition, one [of the copies filed with the Commission] copy may be filed without exhibits.

[(c) In the case of complaints]

(2) When the document is a complaint or [petitions, when]petition and more than one respondent is named, an additional copy of the complaint or petition [shall] must be filed for each additional respondent.

(3) When the document is subject to a statutory requirement or is otherwise ordered or requested by the Commission, a different number of copies may be designated.

(4) When the document is subject to the requirements of §§ 5.409, 5.502 or 5.533 (relating to copies and form of documentary evidence; filing and service of briefs; and procedure to except to initial, tentative and recommended decisions), the filing shall conform to the requirements set forth in the applicable section.

~~(e) Electronic filing. When permitted by the Commission or the Office of Administrative Law Judge, a single copy of a document may be submitted electronically to the Secretary's Bureau for filing.~~

\* \* \* \* \*

**§1.38. Rejection of Filings.**

The Commission may reject a filing if it does not comply with any applicable statute, regulation or order OF THE COMMISSION. , or if the filing utility is otherwise delinquent in its regulatory obligations.

**Subchapter E. FEES**

\* \* \* \* \*

**§1.42. Mode of payment of fees.**

(a) Fees [shall] must be paid by money order or check made payable to the Commonwealth of Pennsylvania or by any method currently acceptable to the Commission. FOR PAYMENTS OTHER THAN MONEY ORDER OR CHECK, The THE Secretary's Bureau should SHALL be contacted FOR prior to APPROVAL BEFORE submitting payment in a form other than money

order or check. PAYMENTS BY CASH ARE NOT ACCEPTED WITHOUT PRIOR SECRETARY APPROVAL AND REMAIN ~~Cash is sent~~ at the risk of the sender.

\* \* \* \* \*

**§1.43. Schedule of fees payable to the Commission.**

\* \* \* \* \*

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

<i>Description</i>	<i>Fee (in dollars)</i>
Testing each watthour meter	\$16
Testing each indicating instrument	10
Testing each transformer	10
Testing each standard cell	5
Testing each standard resistance	10
Testing each potentiometer	50
Testing each gas meter prover	35
Testing each calorimeter tested at the gas company's plant	35
Testing each calorimeter tested at the Commission laboratory	10
Each water meter testing apparatus tested at the company's plant	15
Each water meter tested at the Commission laboratory	3

(c) *Condensation and steam flow meters.*

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

- (i) For condensation meters having an outlet not exceeding 2 inches—\$5.
- (ii) For condensation meters having an outlet in excess of 2 inches—\$10.
- (iii) For steam flow meters—\$25.

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

(d) *Water meters.*

(1) The schedule of fees for testing meters is as follows:

- (i) For each water meter having an outlet not exceeding 1 inch—\$5.
- (ii) For other water meters having an outlet not exceeding 2 inches—\$10.

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

e] (b) *Supersession*. [Subsections] Subsection (a) [—(d) supersede] supersedes 1 Pa. Code §§ 33.21(b) and 33.23 (relating to filing fees; and copy fees).



## Subchapter F. SERVICE OF DOCUMENTS

### §1.51. Instructions for service , notice, and protest.

(a) Upon [receipt of] receiving an application or petition, the [Prothonotary] Secretary will instruct the applicant or petitioner concerning the required service and public notice CONSISTENT WITH THIS SECTION.

\* \* \* \* \*

### §1.53. Service by the Commission.

(a) [Except when service by another method is specifically required by the Commission,] Applicability. This section applies SHALL APPLY to service of an order, notice or other document originating with the Commission [, including forms of Commission action and similar process,] and other documents designated by the Commission, [shall be served by the Commission] except when the Commission specifically requires a different form of service.

#### (b) Forms of service.

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

(2) Personal. [When service is not accomplished by mail, it] Service may be [effected] made personally by anyone authorized by the Commission.

~~(3) Electronic. Service may be made electronically, when the recipient has specifically authorized electronic service in the matter.~~

[b](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) [shall] must be by registered or certified mail, return receipt requested.

[c](d) Change of address. It is the duty of a [participant] party to apprise the Commission promptly of changes to the [participant] party's current address.

[d](e) Alternative service. If the Commission is unable to serve a [participant] party by mail at the [participant's] party's last known address, the Commission may [serve the participant] make service by publication in a newspaper of general circulation in the same area as the [participant's] party's last known address. In the alternative, service may also be accomplished by publication in the Pennsylvania Bulletin or by service on the Secretary of the Commonwealth, if appropriate.

[e](f) Supersession. [Subsection] Subsections (a)-(e) supercede 1 Pa. Code §33.31 (relating to service by the agency).

**§1.54. Service by a [participant]party.**

(a) Pleadings, submittals, briefs and other documents, filed in proceedings pending before the Commission [shall] must be served upon [participants]parties in the proceeding and upon the presiding officer, if one has been assigned.

(b) Service may be [in person, by available delivery service, by mail or as otherwise directed by the Commission. Service may also be by telecopier to those parties who have agreed to accept service in that manner.] 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.

(2) Personal. Service may be made personally.

(3) Electronic. Service may be made electronically, to those parties who have agreed to accept service in that manner. Documents served electronically need not be followed by service of a hard copy to the parties if the parties have so agreed. A FINAL VERSION IN HARD COPY SHALL BE STAMPED ON THE DATE DUE FOR FILING WITH THE SECRETARY REGARDLESS OF ANY AGREEMENT AMONG THE PARTIES. ANY SUBSEQUENT CORRECTED VERSION NOT OTHERWISE SUBSTANTIVELY ALTERING THE FINAL VERSION IN HARD COPY MAY BE FILED UPON APPROVAL OF THE ADMINISTRATIVE LAW JUDGE.

(4) Telefacsimile. Service may be made by telefacsimile to those parties who have agreed to accept service in that manner. Documents served electronically need not be followed by service of a hard copy if the parties have so agreed.

(c) [Service by mail shall be made by delivering the requisite number of copies to each participant as provided in §1.59 (relating to number of copies to be served), properly addressed with postage prepaid, and first class mail shall be utilized. Service by telecopier shall be followed by service of a hard copy either by mail, by available delivery service or in person.

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

(e)]

(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.

(D) Subsections (a)[—(c)] and (b) supersede 1 Pa. Code §33.32 (relating to service by a [participant]party).

**§1.55. Service on attorneys.**

(a) [In a proceeding where an attorney has filed a pleading or submittal on behalf of a client or has entered an appearance under §1.24(b) (relating to notice of appearance or withdrawal, a notice or other written communication required to be served upon or furnished to the client shall be served upon or furnished to the attorney—or one attorney if the client is represented by more than one attorney—]When an attorney enters an appearance under §1.24 (relating to notices of appearances or withdrawals), service must be directed to the attorney in the same manner as prescribed for his client.

(b) When a [participant has appeared] party is represented by an attorney, service upon the attorney shall be deemed service upon the [participant]party. Separate service on the [participant]party may be omitted.

\* \* \* \* \*

**§1.56. Date of service.**

(a) The date of service shall be the day when the document served meets one of the following conditions:

\* \* \* \* \*

(4) The document is transmitted by [telecopier]telefacsimile OR ELECTRONIC MAIL as provided in §1.54(b) (relating to service by a [participant]party) prior to 4:30 p.m. local PREVAILING time.

(5) The document enters an information processing system designated by the recipient for the purpose of receiving service and from which the recipient is able to retrieve the served document in a form capable of being processed by the recipient's system prior to 4:30 p.m. local time.

(b) Unless otherwise prescribed by the Commission or presiding officer, whenever a [participant]party is required or permitted to do an act within a prescribed period after service of a document upon the [participant]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.

\* \* \* \* \*

**§1.58. Form of certificate of service.**

(a) The form of certificate of service shall be as follows:

I hereby certify that I have this day served a true copy of the foregoing document upon the [participants]parties, listed below, in accordance with the requirements of §1.54 (relating to service by a [participant]party).

(List names and addresses of [participants]parties served.)

Dated this \_\_\_\_\_ day of \_\_\_\_\_, [19]2\_\_\_\_\_.

\_\_\_\_\_  
(Signature)

Counsel for

---

\* \* \* \* \*

**§1.59. Number of copies to be served.**

(b) The following number of copies of documents shall be served on other [participants] parties in a proceeding:

(1) Briefs:

(i) Service of hard copies—two copies.

(ii) Service by electronic means, when permitted—one copy.

(iii) Service by telefacsimile, when permitted—one copy.

SERVICE BY TELEFACSIMILE OR ELECTRONIC MAIL, WHEN PERMITTED – ONE COPY.

\* \* \* \* \*

**Subchapter G. MATTERS BEFORE OTHER TRIBUNALS**

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

\* \* \* \* \*

(b) [A public utility subject to the jurisdiction of the Commission which files a petition under Chapter 7, 9, 11 or 13 of the United States Bankruptcy Code (11 U.S.C.A. § § 701—766, 901—946, 1101—1174 and 1301—1330), its supplements and amendments, or against which the petition is filed, shall, within 10 days of the filing thereof or notification of the filing, file a copy of the petition with the Commission and with the Office of Consumer Advocate, 1425 Strawberry Square, Harrisburg, Pennsylvania 17120 and with the Office of Small Business Advocate Suite 1102 Commerce Building, 300 North Second Street, Harrisburg, Pennsylvania 17101.] Upon filing of a petition for bankruptcy under the United States Bankruptcy Code (11 U.S.C.A. §§ 701-766, 901-946, 1101-1174 and 1301-1330) by a jurisdictional utility or licensee or by a parent, affiliate, or direct or indirect subsidiary of a utility or licensee, the utility or licensee shall file a copy of the petition with the Commission, AND SERVE THE OFFICE OF TRIAL STAFF, the Office of Consumer Advocate and the Office of Small Business Advocate.

(c) [A public utility which is subject to the regulatory jurisdiction of the Commission, or the public utility trustee in bankruptcy, shall file a petition for Commission approval of a reorganization plan as to the public interest therein and the fairness thereof, accompanied by a copy of the plan within 10 days after the debtor has filed the plan, its supplements and amendments, or has received notice that the plan has been filed with the court.

(d) A AN ENTITY [public] ~~jurisdictional utility~~ [which] ~~that~~ is subject to the regulatory jurisdiction of the Commission, or its trustee in bankruptcy, shall file a [petition for Commission approval of a] copy of the reorganization plan for itself or for its bankrupt parent, subsidiary or

affiliate for Commission review [as to the public interest therein and the fairness thereof, accompanied by a copy of the plan] within 10 days after the debtor has filed the plan, its supplements and amendments, or has received notice that the plan has been filed with the court.

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

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

(3)(d) If the reorganization plan submitted under subsection (c) contemplates the abandonment of service, the [petition shall] submittal must include an application under [section 1102(a)(2)] Chapter 11 of the act (relating to [enumeration of acts requiring certificate] certificates of public convenience). If a licensee's reorganization plan includes the abandonment of the license, the submittal shall include the appropriate pleading under Chapters 22 and 28 of AS REQUIRED BY the act (relating to natural gas competition and restructuring of electric utility industry).

[(4) The Commission will make a finding and certify its approval or disapproval of the plan to the bankruptcy court in which the petition is filed.]

\* \* \* \* \*

## Subchapter H. PUBLIC ACCESS TO COMMISSION RECORDS

### §1.71. Statement of objectives.

The [Commission intends to establish a] Commission's records maintenance system [which allows] 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 and other applicable laws. [A] The Commission's system is [hereby created] 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. [Formal] Content and review of formal case files.

\* \* \* \* \*

### §1.73. Fiscal records.

(a) Except as provided in subsection (b), an account, voucher or contract dealing with the receipt or disbursement of funds by the Commission or its acquisition, use or disposal of services or supplies, materials, equipment or other property shall be available during normal Commission business hours upon request made to the Commission fiscal office. Fiscal records are retained in accordance with time periods set by applicable statutory, regulatory and administrative requirements.

\* \* \* \* \*

**§1.76. Tariffs, minutes of [the] public [meeting] meetings and annual reports.**

Tariffs, minutes of [the] public [meeting] meetings and annual reports [shall] must be available for public inspection and copying upon request to the ~~Office of the Secretary~~ SECRETARY'S BUREAU during THE ~~normal Commission~~ COMMISSION'S OFFICE business hours.

\* \* \* \* \*

**Subchapter I. AMENDMENTS [TO]OR WITHDRAWALS OF SUBMITTALS**

**§1.81. Amendments.**

(a) An amendment to a submittal or pleading may be tendered for filing at any time and [shall] will be deemed filed [as of the date of tender] in accordance with §1.11 (relating to date of filing) unless the Commission otherwise orders.

\* \* \* \* \*

**§1.82. Withdrawal or termination.**

(a) A party, ~~which~~ THAT desires to terminate an uncontested matter or proceeding before final decision by the Commission or otherwise desires to withdraw a submittal or pleading, shall file a petition for leave to withdraw the appropriate document. If no [participant] party objects to the petition within 10 days of service, the matter may be stricken by the Commission or by the presiding officer. If upon review the presiding officer or the Commission determines that the public interest requires continuation of the proceedings, the petition [shall] will be denied and the staff may be directed to participate.

\* \* \* \* \*

**Subchapter J. DOCKET**

**§1.86. Docket.**

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

\* \* \* \* \*

**CHAPTER 3. SPECIAL PROVISIONS**

**Subchapter A. SPECIAL COMMISSION ACTIONS**

**EMERGENCY RELIEF**

**§ 3.1. Definitions.**

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

\* \* \* \* \*

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

\* \* \* \* \*

**EX PARTE EMERGENCY ORDERS**

**§ 3.2. [Issuance] Petitions for issuance of emergency [order] orders.**

[(a)] (A) ~~(1)~~ To the extent practicable, a petition for emergency [relief shall] order must be:

~~(1)~~ In IN the form of a petition as set forth in § 5.41 (relating to petitions generally) and shall be served on the persons directly affected by the application.

(B) ~~(2)~~ [Supported] A petition for emergency order shall be supported by [an affidavit verifying] a verified statement of facts which [establish] establishes the existence of an emergency[.], including facts to support the following:

- |                  |     |  |
|------------------|-----|--|
| <del>(i)</del>   | (1) | <u>The petitioner's right to relief is clear.</u>                    |
| <del>(ii)</del>  | (2) | <u>The need for relief is immediate.</u>                             |
| <del>(iii)</del> | (3) | <u>The injury would be irreparable if relief is not granted.</u>     |
| <del>(iv)</del>  | (4) | <u>The relief requested is not injurious to the public interest.</u> |

[(3)] Served on the persons directly affected by the application.

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

(c) An emergency order shall be served as expeditiously as practicable upon the persons directly affected by the order.

(d) Notice of denial of a petition for emergency order by less than the full Commission shall be served by the Secretary with copies to Commissioners.]

**§ 3.3. [Form] Disposition of ex parte emergency [order] orders.**

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

(b) Form. An emergency order shall be issued in writing and shall be filed with the [Prothonotary] Secretary with copies to Commissioners, and the Director of Operations.

(c) Ratification. An emergency order or the denial of a petition for emergency order issued by a single Commissioner or the Director of Operations 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 with copies to the Commissioners and the Director of Operations.

**§ 3.4. [Hearing on] Hearings following issuance of emergency [order] orders.**

(a) [Upon petition by a] A person against whom an emergency order is issued[,] may file a petition for an expedited hearing [before a presiding officer will be conducted within 10 days] to determine whether [or not] the emergency order will remain in effect. The petition must conform to the form and service requirements in §§ 5.41-5.44 (relating to petitions generally).

(b) The petition for expedited hearing shall be [served upon the Commission with] filed with the Secretary and a copy [to] served upon the Chief Administrative Law Judge. [The presiding officer will take into account the irreparable harm, if any, which staying or continuing the emergency order would cause the public interest or the person directly affected.]

(c) The hearing will be held before a presiding officer within 10 days of receipt of the petition by the Secretary.

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

(e) The decision of the presiding officer will constitute a [recom-mended] recommended decision to be acted upon by the Commission at its next scheduled public meeting.

**§ 3.5. [Ratification of emergency order] (Reserved).**

[(a) An emergency order issued by a single Commissioner or the Director of Operations or the Executive Assistant 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.

(b) When a petition for emergency order has been denied by less than the full Commission, the denial will be deemed ratified by the Commission if the Commission does not act to the contrary during the first public meeting after the Secretary served the notice of its denial.]

**INTERIM EMERGENCY RELIEF**

**§ 3.6. Petitions for interim emergency orders.**

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



**(b)** To the extent practicable, a petition for an interim emergency order shall be in the form of a petition as set forth in § 5.41 (relating to petitions generally). A petition for an interim emergency order [may be submitted by a participant during the pendency of a proceeding and, to the extent practicable, shall] must be supported by [an affidavit verifying] a verified statement of facts which [establish] establishes the existence of the need for interim emergency relief[.], including facts to support the following:

- (1)** The petitioner's right to relief is clear.
- (2)** The need for relief is immediate.
- (3)** The injury would be irreparable if relief is not granted.
- (4)** The relief requested is not injurious to the public interest.

**[(b) An allegation contained]**

**(c)** Allegations set forth in the petition shall be deemed to have been denied by the opposing parties, and an answer is not required. [If a participant desires,] A party may file an answer in the form set forth in § 5.61 (relating to answers to complaints, petitions and motions) [may be filed] no later than 5 days after [receipt] service of a copy of the petition.

**[(c) No other]**

**(d)** Other pleadings, memoranda or briefs related to a petition for interim emergency [orders] order are not permitted unless specifically requested by the presiding officer.

**[(d) A copy of the petition shall be served on the Chief Administrative Law Judge at the same time the petition is filed with the Prothonotary and served on the participants.]**

### **§ 3.6a. Hearing on petitions for interim emergency orders.**

An interim emergency order may not be issued until the presiding officer holds a hearing on the merits of the petition. The hearing must be held within 10 days of the filing of the petition.

### **§ 3.7. Issuance of interim emergency orders.**

**[(a) A presiding officer may issue an interim emergency order upon finding that the following exist:**

- (1)** The petitioner's right to relief is clear.
- (2)** The need for relief is immediate.
- (3)** The injury would be irreparable if relief is not granted.
- (4)** The relief requested is not injurious to the public interest.

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

**(c) An interim emergency order or an order denying interim emergency relief shall be served as expeditiously as practicable on the participants.]**

(a) A presiding officer will issue an order granting or denying interim emergency relief within 15 days of the filing of the petition.

(b) An order granting a petition for interim emergency relief shall set forth the findings required by § 3.6(b) (relating to hearing on petitions for interim emergency orders).

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

### **§ 3.8. Form of interim emergency orders.**

[An order granting or denying interim emergency relief shall:

(1) Contain a brief description of the evidence presented in support of or in opposition to the petition and shall specify how that evidence meets or fails to meet the criteria in § 3.7 (relating to the issuance of interim emergency orders).

(2) If relief is granted, determine whether or not a bond – in form satisfactory to the Chief Administrative Law Judge—shall be posted by the petitioner.

(3) If a bond is required, determine the amount of the bond.]

(a) An order following a hearing on a petition for interim emergency relief must include:

(1) A brief description of the evidence presented.

(2) A grant or denial of the petition.

(b) An order following a hearing on a petition for interim emergency relief may require a bond to be filed in a form satisfactory to the Secretary and must specify the amount of the bond.

### **§ 3.9. [Hearings on petitions for interim emergency orders.] (Reserved).**

[No interim emergency order may be issued until the presiding officer holds a hearing on the merits of the petition. The hearing shall be held within 10 days of the receipt of the petition.]

### **§ 3.10. Commission review of interim emergency orders.**

\* \* \* \* \*

(b) When the presiding officer rules upon the petition for an interim emergency order, the presiding officer shall also certify the question of the [granting] grant or denial of relief to the Commission as a material question in the form set forth in § 5.305 (relating to interlocutory review of a material question submitted by a presiding officer). Thereafter, the [participants]parties and the Commission shall follow the procedures in § 5.305, if applicable.

\* \* \* \* \*

## **Subchapter B: INFORMAL PROCEEDINGS GENERALLY**

## **INFORMAL COMPLAINTS AND INVESTIGATIONS**

### **APPLICATIONS**

\* \* \* \* \*

### **INFORMAL COMPLAINTS**

#### **§ 3.111. Form and content of informal complaints.**

\* \* \* \* \*

(b) Informal complaints [in rate cases should be filed with] shall be submitted to the [Prothonotary. Other informal complaints must be filed with the] Secretary for referral to the appropriate bureau, addressed to the following: Pennsylvania Public Utility Commission, [Bureau of Consumer Services,] Post Office Box 3265, Harrisburg, Pennsylvania 17105-3265.

\* \* \* \* \*

#### **§ 3.112. Action on informal complaints.**

(a) [Upon receipt of] Filing. The Secretary will place a copy of an informal complaint related to a docketed matter[, a copy of the informal complaint will be placed] in the official document folder.

(b) Commission staff review.

(1) [Except] Commission staff will review the informal complaint to determine whether the subject matter is within the Commission's jurisdiction, except as set forth in Chapters 56 and 64 (relating to standards and billing practices for residential utility service; and standards and billing practices for residential telephone service)[, the Commission staff will review the material submitted, and if the matter complained of appears to lie within the jurisdiction of the Commission, perform additional investigation necessary or proper to corroborate].

(2) Commission staff will evaluate the allegations of the complaint, and, if warranted, institute an informal investigation OR INFORMAL PROCEEDING.

(3) [Upon completion of the review and investigation, the] Commission staff may institute formal action with respect to the subject matter of the informal complaint.

[(b)](c) Commission staff action. Upon the completion of the Commission's investigation of an informal complaint, the Commission staff will notify the informal complainant of the results of its review and investigation [and of the staff recommendation, if any, to the Commission]. The [filing]submission or [a] withdrawal of an informal complaint is without prejudice to the right of the complainant to file and prosecute a formal complaint.

[(c)](d) Caveat. The [filing]submission of an informal complaint does not entitle complainant to a formal hearing before the Commission.

**(E) FURTHER ACTION. A STAFF DETERMINATION MADE PURSUANT TO THIS PROVISION IS APPEALABLE UNDER § 5.44 (RELATING TO PETITIONS FOR APPEAL FROM ACTIONS OF THE STAFF).**

[(d)](e) (F) Supersession. [Subsection] Subsections (a)-(d) [supersedes] supercede 1 Pa. Code § § 35.6 and 35.7 (relating to correspondence handling of informal complaints; and discontinuance of informal complaints without prejudice).

### § 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 [or corporation] 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) [The Legislature has found that secrecy in public affairs undermines the faith of the public in government and the public's effectiveness in fulfilling its role in a democratic society. The Sunshine Act (65 P. S. §§ 271—286), therefore requires that] Under 65 Pa.C.S. Chapter 7 (relating to Sunshine Act), the Commission's official actions [take place at a public meeting, subject to certain limited exceptions.] resolving informal INVESTIGATIONS ~~complaints~~ will be as follows:

[(c) To reconcile the Commission's authority to undertake informal investigations or informal proceedings with or without hearing and the Legislature's findings regarding the adverse consequences of secrecy in public affairs, the Commission will proceed as follows when a quorum of its members meet to discuss termination of an informal investigation:]

\* \* \* \* \*

(3) When the utility, or other person [ or corporation] subject to [its]the Commission's jurisdiction, has committed to undertake action [in order] 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 [adoption]consideration of the settlement or approval of the utility's action will [be considered]occur at public meeting. Except for staff reports [which advise the Commission as to the action it should take] 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's~~ **THE COMMISSION MAKES A FINAL decision to adopt the settlement or to approve the utility's action, will be in the form of a tentative decision that recites the relevant facts and the Commission's conclusions, and THE COMMISSION WILL PROVIDE** provides other potentially affected persons with the opportunity to submit exceptions thereon or to take other action provided for under law.

\* \* \* \* \*

## Subchapter D. CROSSING PROCEEDINGS

### § 3.361. Crossing complaints.

(a) Whenever a complaint is made under ~~section~~ § 2702 of the act (relating to construction, relocation, suspension and abolition of crossings) that a crossing is dangerous or inadequate and requires reconstruction, relocation, alteration or abolition, public utilities, owners of the railroad

right-of-way and municipal corporations concerned and, if applicable, the Department of Transportation of this Commonwealth, will be made parties respondent.

\* \* \* \* \*

**§ 3.363. Claims for property damages from crossings.**

\* \* \* \* \*

(2) Follow, in general as to form and content, the [Form F set forth in § 3.551 (relating to official forms)]form available from the Secretary.

\* \* \* \* \*

**Subchapter G. WATER OR WASTEWATER UTILITY  
PROCEEDINGS**

**§ 3.501. Certificate of public convenience as a water supplier or wastewater collection, treatment [and] or disposal provider [supplier].**

(A) *APPLICANT.* AN APPLICANT FOR A CERTIFICATE OF PUBLIC CONVENIENCE AS A PUBLIC WATER OR WASTEWATER COLLECTION, TREATMENT OR DISPOSAL PROVIDER, INCLUDING NON-CERTIFICATED UTILITIES, SHALL PROVIDE A COPY OF THE BUSINESS PLAN REQUIRED BY THE DEPARTMENT OF ENVIRONMENTAL PROTECTION (DEP) AT 25 PA. CODE § 109.503(A)(3) (RELATING TO PUBLIC WATER SYSTEM CONSTRUCTION PERMITS). THE COMMISSION MAY REJECT AN APPLICATION WHICH FAILS TO INCLUDE THE REQUIRED INFORMATION AND DOCUMENTS. THE FOLLOWING ADDITIONAL INFORMATION, OR DOCUMENTS, IF NOT INCLUDED IN THE BUSINESS PLAN, SHALL ALSO BE INCLUDED IN THE APPLICATION, USING THE CURRENT FORMS AND SCHEDULES SPECIFIED BY THE COMMISSION.

(1) *PLANT IN SERVICE.*

(I) PROPOSED UTILITIES SHALL PROVIDE:

(A) A FULL DESCRIPTION OF THE PROPOSED WATERWORKS OR WASTEWATER COLLECTION, TREATMENT AND DISPOSAL FACILITIES AND THE MANNER, INCLUDING THE TIMING, IN WHICH THE PROPOSED SERVICE AREA AND UTILITY WILL BE CONSTRUCTED.

(B) A BREAKDOWN OF THE COST OF CONSTRUCTION, BY MAJOR PLANT CATEGORY, INCLUDING THE SOURCES OF FUNDS USED TO CONSTRUCT THE FACILITIES.

(II) UTILITIES THAT HAVE BEEN PROVIDING SERVICE SHALL PROVIDE:

(A) THE ORIGINAL COST, BY YEAR AND MAJOR PLANT CATEGORY, OF USED AND USEFUL PLANT IN SERVICE AND RELATED ACCRUED DEPRECIATION CALCULATIONS.

(B) A BREAKDOWN OF THE SOURCES OF FUNDS USED TO FINANCE THE CONSTRUCTION OF THE FACILITIES.

(2) *MAP OF SERVICE AREA.* A MAP OR PLAN OF SUITABLE SCALE HIGHLIGHTING THE BOUNDARIES OF THE PROPOSED SERVICE AREA, INCLUDING:

(I) A COURSES AND DISTANCES OR METES AND BOUNDS DESCRIPTION.

(II) THE LOCATION OR ROUTE OF THE PROPOSED WATERWORKS OR WASTEWATER COLLECTION, TREATMENT OR DISPOSAL FACILITIES.

(III) THE APPROXIMATE TIME SCHEDULE FOR INSTALLATION OF THE VARIOUS COMPONENT FACILITIES.

(IV) THE ELEVATIONS OF MAJOR FACILITIES AND SERVICE AREAS.

(V) THE DEP PERMITTED PRODUCTIVE OR TREATMENT CAPACITY OF SOURCES OR TREATMENT FACILITY AND THE PIPE SIZES AND MATERIAL USED FOR CONSTRUCTION FOR ALL TRANSMISSION AND DISTRIBUTION OR COLLECTION FACILITIES.

(VI) A COPY OF THE COUNTY COMPREHENSIVE PLAN, MUNICIPAL COMPREHENSIVE PLAN AND APPLICABLE ZONING DESIGNATIONS, IF REQUESTED.

(3) *CUSTOMERS.*

(I) PROPOSED UTILITIES SHALL PROVIDE AN ESTIMATE OF THE NUMBER OF CUSTOMER CONNECTIONS BY CLASS IN THE FIRST, FIFTH AND TENTH YEARS, AND COMPLETED DEVELOPMENT ANTICIPATED, AS WELL AS ESTIMATED WATER USAGE OR GALLONS OF WASTEWATER TREATED IN EACH OF THE ABOVE YEARS.

(II) UTILITIES THAT HAVE BEEN PROVIDING SERVICE SHALL SUBMIT THE ACTUAL NUMBER OF CUSTOMERS BY CLASS AND RELATED CONSUMPTION OR GALLONS TREATED IN THE CURRENT CALENDAR YEAR AND FUTURE NUMBER OF CONNECTIONS ANTICIPATED FOR THE NEXT 10 YEARS.

(III) EACH UTILITY SHALL DEMONSTRATE ITS ABILITY TO PROVIDE ADEQUATE WATER SUPPLY, TREATMENT, STORAGE AND DISTRIBUTION OR ADEQUATE WASTEWATER COLLECTION, TREATMENT OR DISPOSAL CAPACITY TO MEET PRESENT AND FUTURE CUSTOMER DEMANDS.

**(4) RATES.**

**(I) PROPOSED UTILITIES SHALL PROVIDE A PROPOSED INITIAL TARIFF WHICH INCLUDES RATES, PROPOSED RULES, AND CONDITIONS OF SERVICE IN THE FORMAT SPECIFIED BY THE COMMISSION (CLASSIFIED RATE SCHEDULE).**

**(II) UTILITIES WHICH HAVE BEEN PROVIDING SERVICE SHALL PROVIDE A PROPOSED INITIAL TARIFF WHICH INCLUDES RATES, PROPOSED RULES, AND CONDITIONS OF SERVICE. THE UTILITY SHALL NOTIFY THE CUSTOMERS OF THE UTILITY OF THE FILING OF THE APPLICATION AND THE RATES FILED.**

**(5) COST OF SERVICE.**

**(I) PROPOSED UTILITIES SHALL PROVIDE A 1, 5 AND 10-YEAR ESTIMATE OF OPERATING REVENUES, OPERATION AND MAINTENANCE EXPENSES, ANNUAL DEPRECIATION AND TAXES. IF OPERATING INCOME REFLECTS A LOSS, PROPOSED UTILITIES SHALL PROVIDE A DETAILED EXPLANATION OF THE SOURCE OF FUNDS TO BE USED TO SUBSIDIZE THE ESTIMATED LOSSES IN SUPPORT OF FUTURE VIABILITY.**

**(II) UTILITIES THAT HAVE BEEN PROVIDING SERVICE SHALL FILE THE TWO MOST RECENT FEDERAL INCOME TAX RETURNS (CORPORATION) OR RELATED SCHEDULE C FORMS (PARTNERSHIP OR INDIVIDUAL). IF TAX RETURNS REFLECT AN OPERATING LOSS, UTILITIES SHALL DESCRIBE IN DETAIL HOW THE OPERATING LOSSES ARE SUBSIDIZED, SUPPORTED BY AN ANALYSIS OF THE FUTURE VIABILITY OF THE UTILITY.**

**(6) PROOF OF COMPLIANCE. PROOF OF COMPLIANCE WITH APPLICABLE DESIGN, CONSTRUCTION AND OPERATION STANDARDS OF THE DEP OR OF THE COUNTY HEALTH DEPARTMENT, OR BOTH, INCLUDING:**

**(I) COPIES OF PUBLIC WATER SUPPLY/WATER QUALITY MANAGEMENT OR NATIONAL POLLUTION DISCHARGE ELIMINATION SYSTEM (NPDES) PERMITS IF APPLICABLE.**

**(II) VALID CERTIFIED OPERATORS' CERTIFICATES APPROPRIATE TO THE FACILITIES BEING OPERATED.**

**(III) UTILITIES THAT HAVE BEEN PROVIDING SERVICE SHALL SUBMIT A 5-YEAR COMPLIANCE HISTORY WITH DEP WITH AN EXPLANATION OF EACH VIOLATION.**

**(IV) A DEP 5-YEAR COMPLIANCE HISTORY OF OTHER UTILITIES OWNED OR OPERATED, OR BOTH, BY THE APPLICANT, INCLUDING AFFILIATES, AND THEIR OFFICERS AND PARENT CORPORATIONS WITH REGARD TO THE PROVISION OF UTILITY SERVICE.**

**(7) ADDITIONAL DOCUMENTATION.** IN ADDITION TO A COPY OF THE DOCUMENTS SUBMITTED UNDER PARAGRAPHS (1)-(6), THE APPLICANT SHALL SUBMIT A LETTER ADDRESSING ALL THE APPLICABLE REQUIREMENTS OR MANDATES OF THE FOLLOWING GOVERNMENTAL ENTITIES. THE LETTER SHALL ALSO APPEND COPIES OF CERTIFICATION ISSUED BY THE FOLLOWING GOVERNMENTAL ENTITIES CONFIRMING THAT THE APPLICANT DOES OR DOES NOT MEET ALL THE APPLICABLE REQUIREMENTS OR MANDATES OF:

**(I) THE DEPARTMENT OF ENVIRONMENTAL PROTECTION;**

**(II) THE DELAWARE RIVER BASIN COMMISSION, THE SUSQUEHANNA RIVER BASIN COMMISSION, THE OHIO RIVER BASIN COMMISSION, AND THE GREAT LAKES COMMISSION;**

**(III) THE REQUIREMENTS OF ANY STATEWIDE WATER PLAN, INCLUDING ANY LOCAL WATERSHED AREAS, AND**

**(IV) THE REQUIREMENTS OF ANY OFFICIALLY ADOPTED COUNTY COMPREHENSIVE PLANS, MUNICIPAL COMPREHENSIVE PLANS, AND APPLICABLE ZONING DESIGNATIONS, INCLUDING ANY NECESSARY AMENDMENTS.**

**(8) AFFECTED PERSONS.** THE IDENTITY OF PUBLIC UTILITIES, MUNICIPALITIES, MUNICIPAL AUTHORITIES, COOPERATIVES AND ASSOCIATIONS WHICH PROVIDE PUBLIC WATER SUPPLY SERVICE OR WASTEWATER COLLECTION, TREATMENT OR DISPOSAL SERVICE WITHIN EACH MUNICIPALITY, OR A MUNICIPALITY DIRECTLY ADJACENT TO THE MUNICIPALITIES, IN WHICH THE APPLICANT SEEKS TO PROVIDE SERVICE THAT ABUTS OR IS SITUATED WITHIN 1 MILE OF APPLICANT'S PROPOSED FACILITIES.

**(9) OTHER REQUIREMENTS.** DEMONSTRATE COMPLIANCE WITH THE DEP REGULATIONS AT 25 PA. CODE § 109.503(A)(3) OR SECTION 5 OF THE PENNSYLVANIA SEWAGE FACILITIES ACT REQUIREMENTS (35 P. S. § 750.5), WHICHEVER IS APPLICABLE; OR WHETHER THE APPLICANT HAS CONTACTED EACH PUBLIC WATER SUPPLIER OR WASTEWATER COLLECTION, TREATMENT OR DISPOSAL SUPPLIER IN PARAGRAPH (8), AND ONE OF THE FOLLOWING APPLIES:

**(I) WHETHER A SUPPLIER IS WILLING AND ABLE TO SERVE THE AREA WHICH APPLICANT SEEKS TO SERVE EITHER DIRECTLY OR THROUGH THE BULK SALE OF WATER TO APPLICANT, OR TREATMENT OF WASTEWATER TO APPLICANT.**

**(II) IF ONE OR MORE SUCH SUPPLIER IS WILLING TO SERVE THE AREA (EITHER DIRECTLY OR THROUGH THE BULK SALE OF WATER TO APPLICANT), THE APPLICANT SHOULD DEMONSTRATE THAT, WHEN CONSIDERING BOTH THE COST OF SERVICE AND THE QUALITY OF SERVICE, THE ULTIMATE CONSUMER WOULD BE BETTER SERVED BY THE APPLICANT THAN BY THE OTHER WATER SUPPLIERS.**



**(10) VERIFICATION. A VERIFICATION THAT THE WATER SOURCES AND CUSTOMERS ARE METERED IN ACCORDANCE WITH § 65.7 (RELATING TO METERED SERVICE). IF UNMETERED WATER SERVICE IS CURRENTLY PROVIDED, THE APPLICANT SHALL PROVIDE A METERING PLAN TO THE COMMISSION.**

**[ (a) Applicant. An applicant for a certificate of public convenience as a public water or wastewater collection, treatment and disposal supplier shall provide a copy of the business plan required by the Department of Environmental Protection (DEP) at 25 Pa. Code § 109.503(a)(3) (relating to public water system construction permits). The following information, or documents, if not included in the business plan, shall be included in the application, using the current forms and schedules specified by the Commission's Bureau of Fixed Utility Services:**

**(1) Plant in service.**

**(i) Proposed utilities shall provide:**

**(A) A full description of the proposed waterworks or wastewater collection, treatment and disposal facilities and the manner, including the timing, in which the proposed service area and utility will be constructed.**

**(B) A breakdown of the cost of construction, by major plant category, including the sources of funds used to construct the facilities.**

**(ii) Utilities that have been providing service shall provide:**

**(A) The original cost, by year and major plant category, of used and useful plant in service and related accrued depreciation calculations.**

**(B) A breakdown of the sources of funds used to finance the construction of the facilities.**

**(2) Map of service area. A map or plan of suitable scale highlighting the boundaries of the proposed service area, including:**

**(i) A courses and distances or metes and bounds description.**

**(ii) The location or route of the proposed waterworks or wastewater collection, treatment and disposal facilities.**

**(iii) The approximate time schedule for installation of the various component facilities.**

**(iv) The elevations of major facilities and service areas.**

**(v) The DEP permitted productive or treatment capacity of sources or treatment facility and the pipe sizes and material used for construction for all transmission and distribution or collection facilities.**

**(3) Customers.**

**(i) Proposed utilities shall provide an estimate of the number of customer connections by class in the first, fifth and tenth years, and completed development anticipated, as well as estimated water usage or gallons of wastewater treated in each of the above years.**

(ii) Utilities that have been providing service shall submit the actual number of customers by class and related consumption or gallons treated in the current calendar year and future number of connections anticipated for the next 10 years.

(iii) Each utility shall demonstrate its ability to provide adequate water supply, treatment, storage and distribution or adequate wastewater collection, treatment and disposal capacity to meet present and future customer demands.

**(4) Rates.**

(i) Proposed utilities shall provide a list of proposed rates (classified rate schedule).

(ii) Utilities which have been providing service shall provide an initial tariff which reflects rates and terms of service that conform to the Commission's regulations and the act. The utility shall notify the existing customers of the filing of the application and the rates filed.

**(5) Cost of service.**

(i) Proposed utilities shall provide a 1, 5 and 10-year estimate of operating revenues, operation and maintenance expenses, annual depreciation and taxes. If operating income reflects a loss, proposed utilities shall provide a detailed explanation of the source of funds to be used to subsidize the estimated losses in support of future viability.

(ii) Utilities that have been providing service shall file the two most recent Federal income tax returns (corporation) or related Schedule C forms (partnership or individual). If tax returns reflect an operating loss, utilities shall describe in detail how the operating losses are subsidized, supported by an analysis of the future viability of the utility.

(6) Proof of compliance with applicable design, construction and operation standards of the DEP, formerly the Department of Environmental Resources (DER), or of the County Health Department, or both, including:

(i) Copies of Public Water Supply/Water Quality Management or National Pollution Discharge Elimination System (NPDES) permits if applicable.

(ii) Valid certified operators' certificates.

(iii) Utilities that have been providing service shall submit a 5-year compliance history with DER/DEP with an explanation of each violation.

(iv) A DER/DEP 5-year compliance history of other utilities owned or operated, or both, by the applicant, including affiliates, and their officers and parent corporations with regard to the provision of utility service.

(7) If applicable, a copy of documents, excluding, if desired, documents duplicated in paragraphs (1)—(6), showing compliance with the requirements of the Delaware River Basin Commission, or other documents filed with the Delaware River Basin Commission, the Susquehanna River Basin Commission, the Ohio River Basin Commission or the Great Lakes Commission relating to the propose provision of service.

(8) The identity of public utilities, municipalities, municipal authorities, cooperatives and associations which provide public water supply service or wastewater collection, treatment and disposal service within each municipality, or a municipality directly

adjacent to the municipalities, in which the applicant seeks to provide service situated within 1 mile of applicant's proposed facilities.

(9) Demonstrate compliance with the DEP regulations at 25 Pa. Code § 109.503(a)(3) or section 5 of the Pennsylvania Sewage Facilities Act requirements (35 P. S. § 750.5), whichever is applicable; or whether the applicant has contacted each public water supplier or wastewater collection, treatment and disposal supplier in paragraph (8), and one of the following applies:

(i) Whether a supplier is willing and able to serve the area which applicant seeks to serve either directly or through the bulk sale of water to applicant, or treatment of waste water to applicant.

(ii) If one or more such supplier is willing to serve the area (either directly or through the bulk sale of water to applicant), the applicant should demonstrate that, when considering both the cost of service and the quality of service, the ultimate consumer would be better served by the applicant than by the other water suppliers.

(10) A verification that the water sources and customers are metered in accordance with § 65.7 (relating to metered service). If unmetered water service is currently provided, the applicant shall provide a metering plan on forms provided by the Commission.]

**(B) ADDITIONAL CONSIDERATIONS.** THE COMMISSION WILL CONSIDER AND MAY RELY UPON THE COMPREHENSIVE PLANS, MULTIMUNICIPAL PLANS, ZONING ORDINANCES AND JOINT MUNICIPAL ZONING ORDINANCES, CONSISTENT WITH THE AUTHORITY IN SECTIONS 619.2 AND 1105 OF THE MUNICIPALITIES PLANNING CODE, 53 P.S. 10619.2, 10105, WHEN REVIEWING APPLICATIONS FOR A CERTIFICATE OF PUBLIC CONVENIENCE AS A PUBLIC WATER SUPPLIER OR WASTEWATER COLLECTION, TREATMENT OR DISPOSAL PROVIDER.

**(C) FILING.** APPLICATIONS UNDER THIS SECTION MUST CONFORM TO §§ 1.31 AND 1.32 (RELATING TO REQUIREMENTS FOR DOCUMENTARY FILINGS; AND FORM OF DOCUMENTS), AND INCLUDE A MODE OF PAYMENT AS PRESCRIBED BY § 1.42 (RELATING TO MODE OF PAYMENT OF FEES) AND IN THE AMOUNT DELINEATED IN §1.43 9 (RELATING TO SCHEDULE OF FEES PAYABLE TO THE COMMISSION). THE APPLICANT SHALL FILE WITH THE COMMISSION THE ORIGINAL AND THREE COPIES OF THE APPLICATION. AN APPLICATION WHICH FAILS TO INCLUDE THE INFORMATION AND DOCUMENTS OUTLINED IN SUBSECTION (A) AND (B), AS SPECIFIED BY THE COMMISSION FOR WATER AND WASTEWATER COLLECTION, TREATMENT OR DISPOSAL COMPANIES, IS SUBJECT TO REJECTION BY THE COMMISSION. THE ORIGINAL AND THREE COPIES SHALL CONTAIN EXHIBITS. AN AFFIDAVIT OF SERVICE SHOWING THE IDENTITY OF THOSE SERVED UNDER SUBSECTION (F) SHALL ACCOMPANY THE ORIGINAL AND THE COPIES OF THE APPLICATION FILED WITH THE COMMISSION.

**(D) NOTICE.** THE APPLICATION WILL BE DOCKETED BY THE SECRETARY OF THE COMMISSION AND THEREAFTER FORWARDED FOR PUBLICATION IN THE

PENNSYLVANIA BULLETIN WITH A 60-DAY PROTEST PERIOD. THE APPLICANT SHALL ALSO PUBLISH NOTICE OF APPLICATION AS SUPPLIED BY THE SECRETARY, DAILY FOR 2 CONSECUTIVE WEEKS IN ONE NEWSPAPER OF GENERAL CIRCULATION LOCATED IN THE TERRITORY COVERED BY THE APPLICATION AND SHALL SUBMIT PROOF OF PUBLICATION TO THE COMMISSION. IN ADDITION, THE UTILITY OR APPLICANT SHALL INDIVIDUALLY NOTIFY EXISTING CUSTOMERS OF THE FILING OF THE APPLICATION.

(E) *APPLICATION FORM.* THE COMMISSION MAY PROVIDE A STANDARD APPLICATION FORM FOR USE BY AN APPLICANT FOR § 3.501 AND SHALL, TO THE EXTENT PRACTICABLE, PROVIDE THE APPLICATION FORM ON THE COMMISSION'S WEBSITE.

(1) ANY STANDARD APPLICATION FORM DEVELOPED FOR PURPOSES OF § 3.501 THAT INVOLVES A MATTER OF AN INTERAGENCY NATURE SHALL BE DEVELOPED OR REVISED ONLY AFTER NOTICE IS PUBLISHED IN THE PENNSYLVANIA BULLETIN, POSTED ON THE COMMISSION WEBSITE TO THE EXTENT PRACTICABLE, AND AFTER CONSULTATION WITH INTERESTED PERSONS OR AGENCIES IS CONDUCTED.

(2) ANY STANDARD APPLICATION FORM DEVELOPED FOR PURPOSES OF § 3.501 THAT INVOLVES MATTERS OTHER THAN THOSE GOVERNED BY § 3.501(E)(1) SHALL BE DEVELOPED OR REVISED ONLY AFTER NOTICE IS PUBLISHED IN THE PENNSYLVANIA BULLETIN, POSTED ON THE COMMISSION WEBSITE TO THE EXTENT PRACTICABLE, AND AFTER CONSULTATION WITH ANY INTERESTED PERSONS OR AGENCIES IS CONDUCTED.

(3) ANY STANDARD APPLICATION FORM DEVELOPED FOR PURPOSES OF § 3.501 SHALL BE DEVELOPED BY THE COMMISSION STAFF AND MAY BE SUBJECT TO FORMAL APPROVAL BY THE COMMISSION. ANY STANDARD APPLICATION FORM DEVELOPED FOR PURPOSES OF § 3.501 NOT FORMALLY APPROVED BY THE COMMISSION SHALL BE SUBJECT TO § 5.44 OF THE COMMISSION'S RULES.

(F) *COPIES.* AT THE TIME OF FILING, THE APPLICANT SHALL CAUSE A COMPLETE COPY OF THE APPLICATION WITH EXHIBITS TO BE SERVED BY REGISTERED OR CERTIFIED MAIL, RETURN RECEIPT REQUESTED, UPON:

(1) EACH CITY, BOROUGH, TOWN, TOWNSHIP, COUNTY AND RELATED PLANNING OFFICE WHICH IS INCLUDED, IN WHOLE OR IN PART, IN THE PROPOSED SERVICE AREA.

(2) A WATER OR WASTEWATER UTILITY, MUNICIPAL CORPORATION OR AUTHORITY WHICH PROVIDES WATER OR WASTEWATER COLLECTION, TREATMENT OR DISPOSAL SERVICE TO THE PUBLIC AND WHOSE SERVICE AREA

ABUTS OR IS WITHIN ONE MILE OF THE SERVICE AREA PROPOSED IN THE APPLICATION.

(3) THE STATUTORY ADVOCATES AND THE DEPARTMENT OF ENVIRONMENTAL PROTECTION'S CENTRAL AND REGIONAL OFFICES.

(G) REFERENCES. SUBSECTION (A) SUPPLEMENTS § 5.11 (RELATING TO APPLICATIONS GENERALLY).

[(b) *Filing.* The applicant shall file with the Commission the original and three copies of the application. An application which fails to include the information and documents outlined in subsection (a), as further specified in the current forms and schedules for water and wastewater collection, treatment and disposal companies developed by the Bureau of Fixed Utility Services, is subject to rejection by the Commission. The original and three copies shall contain exhibits. An affidavit of service showing the identity of those served under subsection (d) shall accompany the original and the copies of the application filed with the Commission.]

~~(a) *Applicability.* This section applies to utilities, including de facto utilities, that seek a certificate of public convenience as a new water supplier, wastewater collection treatment or disposal provider.~~

~~(b) *Application requirements.* Applications under this section must conform to §§ 1.31 and 1.32 (relating to requirements for documentary filings; and form of documents), and include a mode of payment as prescribed by § 1.42 (relating to mode of payment of fees) and in the amount delineated in § 1.43 (relating to schedule of fees payable to the Commission). The Commission may reject an application which fails to include the required information and documents, as further specified in the forms in subsection (c). An affidavit of service showing the identity of those served under subsection (d) must accompany the original and the copies of the application filed with the Commission.~~

~~(c) *Application forms and filing.* Application forms are available from the Secretary and include the following:~~

~~—(1) Application for a certificate of public convenience as a water supplier or wastewater collection, treatment or disposal provider.~~

~~—(2) Application by a certificated public utility for approval to begin to offer and supply service to an additional territory.~~

~~—(3) Application for a certificate of public convenience to abandon service.~~

~~—(4) Application for Commission approval to transfer all tangible or intangible assets used or useful in the public service.~~

~~[(e)](d) *Notice.* The application will be docketed by the Secretary of the Commission and thereafter forwarded for publication in the *Pennsylvania Bulletin*. The applicant shall also publish the notice of application as supplied by the Secretary, once a week for 2 consecutive weeks in one newspaper of general circulation located in the territory covered by the application and shall submit proof of publication to the Commission.~~

~~[(d)](e) Copies.~~

~~(1) At the time of filing, the applicant shall [cause] serve a complete copy of the application with exhibits [to be served] by registered or certified mail, return receipt requested, upon:~~

~~[(1)] (i) Each city, borough, town, township, county and each related planning office which is included, in whole or in part, in the proposed service area.~~

~~[(2)] (ii) A water or wastewater utility, municipal corporation or authority which provides water or wastewater collection, treatment [and] or disposal service to the public and whose service area abuts the service area proposed in the application.~~

~~(2) The applicant shall provide notice of filing of the application to a water or wastewater utility, municipal corporation or authority which provides water or wastewater collection, treatment or disposal service to the public and whose service area is within one mile of the service area proposed in the application. Upon request, the applicant shall provide a complete copy of the application and exhibits to these persons.~~

**3.502. Protests to applications for certificate of public convenience as a water supplier or wastewater collection, treatment [and] or disposal [supplier] provider.**

(a) *Protests generally.* A person objecting to the application shall file with the [Prothonotary] Secretary and serve upon the applicant or applicant's attorney, if any, a written protest which [shall] must contain the following:

\* \* \* \* \*

(3) The name, business address, Pennsylvania attorney identification number and telephone number of the protestant's attorney or other representative.

(4) A statement of the nature of the protestant's interest in the application.

(b) *Participation in a proceeding.* Upon the filing of a timely protest ~~in appropriate and legally sufficient form~~, the protestant will be allowed to participate in the proceeding as a party intervenor. Statutory advocates participate in any proceeding based on their statutory right of participation.

\* \* \* \* \*

## Subchapter H. FORMS

### § 3.551. Official forms.

[The following is a list of forms which can be obtained from the Office of the Secretary of the Commission:

(1) Application by a proposed public utility for approval to begin to offer, render, furnish or supply service.

(2) Application for Commission finding and determination of propriety of proposed service by an electric public utility.

(3) Application for temporary authority to transport persons or household goods in use by motor vehicles.

(4) Application for approval of transfer and exercise of common or contract carrier rights for the transportation of passengers or household goods in use.

(5) Application for approval of installation, removal or substitution of warning device of a public crossing under section 2701 of the act (relating to railroad connections with sidetracks and laterals).

(6) Petition for damages for property taken, injured or destroyed in a railroad crossing proceeding under section 2704 of the act (relating to compensation for damages occasioned by construction, relocation or abolition of crossings).

(7) Application for approval of construction, alteration or relocation or abolition of any crossing at grade or above or below grade under section 2702 of the act (relating to construction, relocation, suspension and abolition of crossings).

(8) Application for brokerage license.

(9) Statement and map for preemption of territory by electric cooperative association.

(10) Proof of publication of notice of hearing.

(11) Securities certificate.

(12) Abbreviated securities certificate.

(13) Nonpublic utility registration form.

(14) Formal complaint form.

(15) Application for electricity or electric generation supplier license.

(16) Application for natural gas supplier license. 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 Harrisburg, PA 17105-3265; (717) 772-7777.

## Subchapter I. REGISTRATION OF SECURITIES

### § 3.601. General.

\* \* \* \* \*

(b) *Format.* A securities certificate shall be [typewritten or printed on paper 8 1/2 inches wide by 11 inches long and shall be submitted in triplicate] in a form consistent with §§ 1.31 and 1.32 (relating to requirements for documentary filings; and form of documents), accompanied by [a money order, certified check or bank cashier's check made payable to the

Commonwealth of Pennsylvania] payment in the amount provided in § 1.43 (relating to schedule of fees payable to the Commission) and in a payment mode provided for in 52 Pa. Code § 1.31.

~~(e) Form. The securities certificate shall [be consistent with] provide information required by the form available from the Commission [and shall include the following information] or shown on its Web site as well as additional information required by the Commission.:~~

- (1) The name and address of the public utility filing the securities certificate.
- (2) The name and address of the public utility's attorney.
- (3) A brief corporate history of the public utility, a general description of the territory in which it actually furnishes service to the public, and of the kind of service rendered therein.
- (4) Whether the public utility is controlled by a corporation, and, if so:
  - (i) The name of the controlling corporation.
  - (ii) The form and manner of control.
  - (iii) The extent of control.
  - (iv) Whether control is direct or indirect.
  - (v) The names of intermediaries through which control, if indirect, is held. When control is in a holding company organization, there shall be shown the chain of ownership or control to the main parent company.
- (5) The following information regarding the securities which the public utility proposes to issue or assume:
  - (i) The exact title of security.
  - (ii) The aggregate par value, or if no par value then the number of shares, or the principal amount to be issued or assumed.
  - (iii) In the case of stock certificates, as applicable: the par value, dividend rate and payment dates, redemption value, liquidation value, voting powers, preferences as to assets and dividends, cumulative and participating dividend provisions, callability and conversion provision.
  - (iv) In the case of evidences of indebtedness, as applicable: nominal date of issue, date of maturity, interest rate and payment dates, extent to which taxes on securities are assumed by the issuer, callability and conversion provisions, maintenance, depreciation and sinking or other fund provision, name and address of trustee and whether affiliated with the public utility.
- (6) The method by which the public utility proposes to dispose of the securities, giving pertinent details as to date and manner of sale, exchange or other disposition. if sale, include minimum net price to the public utility, maximum commission or fee to be paid to investment bankers, brokers or others, and whether securities are to be sold on an underwriting or take-down basis. State whether or not those negotiating or arranging the sale are in any way affiliated with the utility. if a private sale, state whether the purchasers are in any way affiliated with the utility. Show in tabular form an estimate in reasonable



detail of the expenses to be incurred in issuing the securities, including, by groups, legal fees, fees and documentary taxes to governmental authorities, printing expenses, underwriting or brokerage commission, duplicate interest and other expenses.

(7) The purpose for which the public utility proposes to issue or assume the securities.

(i) if the purpose is the acquisition of all or part of the assets of a going concern, state:

(A) The name and address of vendor, docket number of commission approval of the acquisition.

(B) A brief description of property, and whether all or part of a completed system.

(C) The full consideration to be paid, including any indebtedness to be assumed by the utility.

(D) The manner of determining consideration.

(E) The manner in which acquisition is to be recorded on the public utility's books.

(F) The original cost of physical property to be acquired, stated according to plant accounts prescribed by the classification of accounts applicable to the public utility.

(G) The depreciation applicable thereto as recorded on the books of the vendor.

(H) The manner of determining the original cost and depreciation.

(i) An income statement for the latest available 12 months applicable to the operation of the property being acquired.

(ii) If the purpose is the purchase or construction of new facilities, or the betterment of existing facilities, give:

(A) A brief description of such new facilities or betterments.

(B) A list of plant accounts prescribed by the classification of accounts applicable to the utility to be charged with the new facilities or betterments, showing opposite each account the estimated cost to be charged.

(C) A list of the accounts and the amounts to be credited thereto for the retirements of any property resulting from the purchase or construction of new facilities or betterments.

(D) The manner of determining amounts at which retired property is to be credited.

(E) The date when it is expected that such purchase or construction or betterment will be completed.

(iii) If the purpose is to obtain working capital, explain any unusual condition which exists, or will exist, in the public utility's current assets or current liabilities, stating:

(A) The approximate cost of average materials and supplies inventory which the public utility expects to carry.

(B) The average time elapsing between the date when the public utility furnishes or begins a period of furnishing service to customers and the date when collection is made from customers for such service.

(C) The minimum bank balance requirements.

(D) A statement, by accounts, of the operating expenses for the latest available 12 months.

(iv) If the purpose is to refund obligations, describe obligations in detail.

(A) Explain purpose for which obligations were issued, or refer to number of securities certificate, securities application or certificate of notification in which the purpose appears.

(B) State the date of last disposition of obligation, the amount disposed of and the price received.

(C) State whether refunding is to meet maturity, or to effect saving in interest or other annual charges; if to effect saving, state date when, and price at which obligations are to be called, and submit statement showing saving to be effected as a result of refunding.

(D) State disposition to be made of any discount or expense remaining unamortized on the obligations to be refunded and of any premium included in the call price.

(E) State whether any unamortized debt discount and expense was originally incurred in connection with securities not now outstanding, and if so, give amount applicable to each issue.

(v) If the purpose is reimbursement for moneys already expended, state the purpose for which the moneys were expended in as complete detail as if the securities now being issued were for that purpose as required by this subsection and by subsections (a), (b) and (d).

(A) List the names and principal amounts of any securities already issued against the expenditures.

(B) State the dates upon or between which the expenditures were made.

(8) State whether a registration statement, application or declaration has been filed or will be filed with the securities and exchange commission in respect to the securities herein proposed to be issued or assumed. if so, state:

(i) The date filed.

(ii) The nature of application or declaration.

(iii) The closing date before the securities and exchange commission.

(9) The public utility shall attach to each securities certificate:

(i) A balance sheet of the public utility set up by ledger accounts and not by groupings dated within at least 3 months of the date of securities certificate, including any transactions which have occurred between the date of the balance sheet and the date of filing the securities certificate and an explanation of any major contingent liabilities faced by the public utility.

(ii) An income account of the public utility set up by general ledger accounts, not by groupings, showing in detail the other credits and charges made to surplus during the year, for the 12-month period ending by the date of the balance sheet.

(iii) A statement with respect to the plant accounts appearing on the balance sheet showing the following:

(A) A summary by the detailed plant accounts prescribed in the system of accounts applicable to the public utility.

(B) The portion of the plant account balance representing increments in plant book values resulting from the acquisition of property through purchase, merger and consolidation or reorganization.

(C) The portion of the plant account balance representing increases in plant book values resulting from the recording of appraised values by the public utility unless the public utility has filed with the commission an original cost study.

(iv) A statement of securities of other corporations owned by the public utility, including:

(A) The name of the issuer.

(B) The exact title of the security.

(C) The amount owned.

(D) The date acquired.

(E) The price paid.

(F) The book value.

(G) The market value.

(H) The cost to the affiliate, if acquired from an affiliate.

(v) A statement showing the status of the funded debt of the public utility outstanding at the date of the balance sheet, plus particulars of any important changes in the funded debt outstanding which have taken place since that date. The statement shall be in the form available from the commission.

(vi) A statement showing the status of outstanding capital stock of the public utility as of the date of the balance sheet, including any important changes in the capital stock outstanding which have taken place since the date of the balance sheet according to the form available from the commission.

(vii) A copy of the registration statement filed by the public utility with the securities and exchange commission under the securities act of 1933 (15 u.s.c.a. § § 77a—77aa) with respect to the proposed issuance or assumption of securities.

(viii) Copies of applications and declarations filed by the public utility with the securities and exchange commission with respect to the proposed issuance or assumption of securities, under the public utility holding company act of 1935 (15 u.s.c.a. § § 79—79 z-6).

(ix) A copy of the resolution of the board of directors of the public utility authorizing the proposed issuance or assumption of securities.

(x) A copy of the stock certificate or other security proposed to be issued or assumed. bonds or other evidences of indebtedness secured by mortgage, collateral trust agreement or other underlying instrument. this exhibit shall be a copy of the underlying instrument, rather than of the evidence of indebtedness itself.

(xi) A statement showing, in journal entry form, all charges and credits to be made on the books of account of the public utility as a result of the proposed issuance or assumption of securities.

(xii) An affidavit in form prescribed by §§ 1.35 and 1.36 (relating to execution; and verification).]

(C) **FORM. THE SECURITIES CERTIFICATE SHALL PROVIDE INFORMATION REQUIRED BY THE COMMISSION ON A FORM AVAILABLE FROM THE COMMISSION OR SHOWN ON ITS WEB SITE AS WELL AS ADDITIONAL INFORMATION REQUIRED BY THE COMMISSION. THE SECURITIES CERTIFICATE SHALL CONTAIN THE FOLLOWING INFORMATION:**

(1) **THE NAME AND ADDRESS OF THE PUBLIC UTILITY FILING THE SECURITIES CERTIFICATE.**

(2) **THE NAME AND ADDRESS OF THE PUBLIC UTILITY'S ATTORNEY.**

(3) **A BRIEF CORPORATE HISTORY OF THE PUBLIC UTILITY, A GENERAL DESCRIPTION OF THE TERRITORY IN WHICH IT ACTUALLY FURNISHES SERVICE TO THE PUBLIC, AND OF THE KIND OF SERVICE RENDERED.**

(4) **WHETHER THE PUBLIC UTILITY IS CONTROLLED BY A CORPORATION, AND, IF SO:**

(I) **THE NAME OF THE CONTROLLING CORPORATION.**

(II) **THE FORM AND MANNER OF CONTROL.**

(III) **THE EXTENT OF CONTROL.**

(IV) **WHETHER CONTROL IS DIRECT OR INDIRECT.**

(V) **THE NAMES OF INTERMEDIARIES THROUGH WHICH CONTROL, IF INDIRECT, IS HELD. WHEN CONTROL IS IN A HOLDING COMPANY ORGANIZATION, SHOW THE CHAIN OR OWNERSHIP OR CONTROL TO THE MAIN PARENT COMPANY.**

(5) **THE FOLLOWING INFORMATION REGARDING THE SECURITIES WHICH THE PUBLIC UTILITY PROPOSES TO ISSUE OR ASSUME:**

(I) **THE EXACT TITLE OF SECURITY.**

(II) THE AGGREGATE PAR VALUE, OR IF NO PAR VALUE THEN THE NUMBER OF SHARES, OR THE PRINCIPAL AMOUNT TO BE ISSUED OR ASSUMED.

(III) IN THE CASE OF STOCK CERTIFICATES, AS APPLICABLE: THE PAR VALUE, DIVIDEND RATE AND PAYMENT DATES, REDEMPTION VALUE, LIQUIDATION VALUE, VOTING POWERS, PREFERENCES AS TO ASSETS AND DIVIDENDS, CUMULATIVE AND PARTICIPATING DIVIDEND PROVISIONS, CALLABILITY AND CONVERSION PROVISION.

(IV) IN THE CASE OF EVIDENCES OF INDEBTEDNESS, AS APPLICABLE: NOMINAL DATE OF ISSUE, DATE OF MATURITY, INTEREST RATE AND PAYMENT DATES, EXTENT TO WHICH TAXES ON SECURITIES ARE ASSUMED BY THE ISSUER, CALLABILITY AND CONVERSION PROVISIONS, MAINTENANCE, DEPRECIATION AND SINKING OR OTHER FUND PROVISION, NAME AND ADDRESS OF TRUSTEE AND WHETHER AFFILIATED WITH THE PUBLIC UTILITY.

(6) THE METHOD BY WHICH THE PUBLIC UTILITY PROPOSES TO DISPOSE OF THE SECURITIES, GIVING PERTINENT DETAILS AS TO DATE AND MANNER OF SALE, EXCHANGE OR OTHER DISPOSITION. IF SALE, INCLUDE MINIMUM NET PRICE TO THE PUBLIC UTILITY, MAXIMUM COMMISSION OR FEE TO BE PAID TO INVESTMENT BANKERS, BROKERS OR OTHERS, AND WHETHER SECURITIES ARE TO BE SOLD ON AN UNDERWRITING OR TAKE-DOWN BASIS. STATE WHETHER OR NOT THOSE NEGOTIATING OR ARRANGING THE SALE ARE IN ANY WAY AFFILIATED WITH THE UTILITY. IF A PRIVATE SALE, STATE WHETHER THE PURCHASERS ARE IN ANY WAY AFFILIATED WITH THE UTILITY. SHOW IN TABULAR FORM AN ESTIMATE IN REASONABLE DETAIL OF THE EXPENSES TO BE INCURRED IN ISSUING THE SECURITIES, INCLUDING, BY GROUPS, LEGAL FEES, FEES AND DOCUMENTARY TAXES TO GOVERNMENTAL AUTHORITIES, PRINTING EXPENSES, UNDERWRITING OR BROKERAGE COMMISSION, DUPLICATE INTEREST AND OTHER EXPENSES.

(7) THE PURPOSE FOR WHICH THE PUBLIC UTILITY PROPOSES TO ISSUE OR ASSUME THE SECURITIES.

(I) IF THE PURPOSE IS THE ACQUISITION OF ALL OR PART OF THE ASSETS OF A GOING CONCERN, STATE:

(A) THE NAME AND ADDRESS OF VENDOR, DOCKET NUMBER OF COMMISSION APPROVAL OF THE ACQUISITION.

(B) A BRIEF DESCRIPTION OF PROPERTY, AND WHETHER ALL OR PART OF A COMPLETED SYSTEM.

(C) THE FULL CONSIDERATION TO BE PAID, INCLUDING ANY INDEBTEDNESS TO BE ASSUMED BY THE UTILITY.

(D) THE MANNER OF DETERMINING CONSIDERATION.

(E) THE MANNER IN WHICH ACQUISITION IS TO BE RECORDED ON THE PUBLIC UTILITY'S BOOKS.

(F) THE ORIGINAL COST OF PHYSICAL PROPERTY TO BE ACQUIRED, STATED ACCORDING TO PLANT ACCOUNTS PRESCRIBED BY THE CLASSIFICATION OF ACCOUNTS APPLICABLE TO THE PUBLIC UTILITY.

(G) THE DEPRECIATION APPLICABLE THERETO AS RECORDED ON THE BOOKS OF THE VENDOR.

(H) THE MANNER OF DETERMINING THE ORIGINAL COST AND DEPRECIATION.

(I) AN INCOME STATEMENT FOR THE LATEST AVAILABLE 12 MONTHS APPLICABLE TO THE OPERATION OF THE PROPERTY BEING ACQUIRED.

(II) IF THE PURPOSE IS THE PURCHASE OR CONSTRUCTION OF NEW FACILITIES, OR THE BETTERMENT OF EXISTING FACILITIES, GIVE:

(A) A BRIEF DESCRIPTION OF SUCH NEW FACILITIES OR BETTERMENTS.

(B) A LIST OF PLANT ACCOUNTS PRESCRIBED BY THE CLASSIFICATION OF ACCOUNTS APPLICABLE TO THE UTILITY TO BE CHARGED WITH THE NEW FACILITIES OR BETTERMENTS, SHOWING OPPOSITE EACH ACCOUNT THE ESTIMATED COST TO BE CHARGED.

(C) A LIST OF THE ACCOUNTS AND THE AMOUNTS TO BE CREDITED THERETO FOR THE RETIREMENTS OF ANY PROPERTY RESULTING FROM THE PURCHASE OR CONSTRUCTION OF NEW FACILITIES OR BETTERMENTS.

(D) THE MANNER OF DETERMINING AMOUNTS AT WHICH RETIRED PROPERTY IS TO BE CREDITED.

(E) THE DATE WHEN IT IS EXPECTED THAT SUCH PURCHASE OR CONSTRUCTION OR BETTERMENT WILL BE COMPLETED.

(III) IF THE PURPOSE IS TO OBTAIN WORKING CAPITAL, EXPLAIN ANY UNUSUAL CONDITION WHICH EXISTS, OR WILL EXIST, IN THE PUBLIC UTILITY'S CURRENT ASSETS OR CURRENT LIABILITIES, STATING:

(A) THE APPROXIMATE COST OF AVERAGE MATERIALS AND SUPPLIES INVENTORY WHICH THE PUBLIC UTILITY EXPECTS TO CARRY.

(B) THE AVERAGE TIME ELAPSING BETWEEN THE DATE WHEN THE PUBLIC UTILITY FURNISHES OR BEGINS A PERIOD OF FURNISHING SERVICE TO CUSTOMERS AND THE DATE WHEN COLLECTION IS MADE FROM CUSTOMERS FOR SUCH SERVICE.

(C) THE MINIMUM BANK BALANCE REQUIREMENTS.

(D) A STATEMENT, BY ACCOUNTS, OF THE OPERATING EXPENSES FOR THE LATEST AVAILABLE 12 MONTHS.

(IV) IF THE PURPOSE IS TO REFUND OBLIGATIONS, DESCRIBE OBLIGATIONS IN DETAIL.

(A) EXPLAIN PURPOSE FOR WHICH OBLIGATIONS WERE ISSUED, OR REFER TO NUMBER OF SECURITIES CERTIFICATE, SECURITIES APPLICATION OR CERTIFICATE OF NOTIFICATION IN WHICH THE PURPOSE APPEARS.

(B) STATE THE DATE OF LAST DISPOSITION OF OBLIGATION, THE AMOUNT DISPOSED OF AND THE PRICE RECEIVED.

(C) STATE WHETHER REFUNDING IS TO MEET MATURITY, OR TO EFFECT SAVING IN INTEREST OR OTHER ANNUAL CHARGES; IF TO EFFECT SAVING, STATE DATE WHEN, AND PRICE AT WHICH OBLIGATIONS ARE TO BE CALLED, AND SUBMIT STATEMENT SHOWING SAVING TO BE EFFECTED AS A RESULT OF REFUNDING.

(D) STATE DISPOSITION TO BE MADE OF ANY DISCOUNT OR EXPENSE REMAINING UNAMORTIZED ON THE OBLIGATIONS TO BE REFUNDED AND OF ANY PREMIUM INCLUDED IN THE CALL PRICE.

(E) STATE WHETHER ANY UNAMORTIZED DEBT DISCOUNT AND EXPENSE WAS ORIGINALLY INCURRED IN CONNECTION WITH SECURITIES NOT NOW OUTSTANDING, AND IF SO, GIVE AMOUNT APPLICABLE TO EACH ISSUE.

(V) IF THE PURPOSE IS REIMBURSEMENT FOR MONEYS ALREADY EXPENDED, STATE THE PURPOSE FOR WHICH THE MONEYS WERE EXPENDED IN AS COMPLETE DETAIL AS IF THE SECURITIES NOW BEING ISSUED WERE FOR THAT PURPOSE AS REQUIRED BY THIS SUBSECTION AND BY SUBSECTIONS (A), (B) AND (D).

(A) LIST THE NAMES AND PRINCIPAL AMOUNTS OF ANY SECURITIES ALREADY ISSUED AGAINST THE EXPENDITURES.

(B) STATE THE DATES UPON OR BETWEEN WHICH THE EXPENDITURES WERE MADE.

(8) STATE WHETHER A REGISTRATION STATEMENT, APPLICATION OR DECLARATION HAS BEEN FILED OR WILL BE FILED WITH THE SECURITIES AND EXCHANGE COMMISSION IN RESPECT TO THE SECURITIES HEREIN PROPOSED TO BE ISSUED OR ASSUMED. IF SO, STATE:

(I) THE DATE FILED.

(II) THE NATURE OF APPLICATION OR DECLARATION.

(III) THE CLOSING DATE BEFORE THE SECURITIES AND EXCHANGE COMMISSION.

**(9) THE PUBLIC UTILITY SHALL ATTACH TO EACH SECURITIES CERTIFICATE:**

**(I) A BALANCE SHEET OF THE PUBLIC UTILITY SET UP BY LEDGER ACCOUNTS AND NOT BY GROUPINGS DATED WITHIN AT LEAST 3 MONTHS OF THE DATE OF SECURITIES CERTIFICATE, INCLUDING ANY TRANSACTIONS WHICH HAVE OCCURRED BETWEEN THE DATE OF THE BALANCE SHEET AND THE DATE OF FILING THE SECURITIES CERTIFICATE AND AN EXPLANATION OF ANY MAJOR CONTINGENT LIABILITIES FACED BY THE PUBLIC UTILITY.**

**(II) AN INCOME ACCOUNT OF THE PUBLIC UTILITY SET UP BY GENERAL LEDGER ACCOUNTS, NOT BY GROUPINGS, SHOWING IN DETAIL THE OTHER CREDITS AND CHARGES MADE TO SURPLUS DURING THE YEAR, FOR THE 12-MONTH PERIOD ENDING BY THE DATE OF THE BALANCE SHEET.**

**(III) A STATEMENT WITH RESPECT TO THE PLANT ACCOUNTS APPEARING ON THE BALANCE SHEET SHOWING THE FOLLOWING:**

**(A) A SUMMARY BY THE DETAILED PLANT ACCOUNTS PRESCRIBED IN THE SYSTEM OF ACCOUNTS APPLICABLE TO THE PUBLIC UTILITY.**

**(B) THE PORTION OF THE PLANT ACCOUNT BALANCE REPRESENTING INCREMENTS IN PLANT BOOK VALUES RESULTING FROM THE ACQUISITION OF PROPERTY THROUGH PURCHASE, MERGER AND CONSOLIDATION OR REORGANIZATION.**

**(C) THE PORTION OF THE PLANT ACCOUNT BALANCE REPRESENTING INCREASES IN PLANT BOOK VALUES RESULTING FROM THE RECORDING OF APPRAISED VALUES BY THE PUBLIC UTILITY UNLESS THE PUBLIC UTILITY HAS FILED WITH THE COMMISSION AN ORIGINAL COST STUDY.**

**(IV) A STATEMENT OF SECURITIES OF OTHER CORPORATIONS OWNED BY THE PUBLIC UTILITY, INCLUDING:**

**(A) THE NAME OF THE ISSUER.**

**(B) THE EXACT TITLE OF THE SECURITY.**

**(C) THE AMOUNT OWNED.**

**(D) THE DATE ACQUIRED.**

**(E) THE PRICE PAID.**

**(F) THE BOOK VALUE.**

**(G) THE MARKET VALUE.**

**(H) THE COST TO THE AFFILIATE, IF ACQUIRED FROM AN AFFILIATE.**



(V) A STATEMENT SHOWING THE STATUS OF THE FUNDED DEBT OF THE PUBLIC UTILITY OUTSTANDING AT THE DATE OF THE BALANCE SHEET, PLUS PARTICULARS OF ANY IMPORTANT CHANGES IN THE FUNDED DEBT OUTSTANDING WHICH HAVE TAKEN PLACE SINCE THAT DATE. THE STATEMENT SHALL BE IN THE FORM AVAILABLE FROM THE COMMISSION.

(VI) A STATEMENT SHOWING THE STATUS OF OUTSTANDING CAPITAL STOCK OF THE PUBLIC UTILITY AS OF THE DATE OF THE BALANCE SHEET, INCLUDING ANY IMPORTANT CHANGES IN THE CAPITAL STOCK OUTSTANDING WHICH HAVE TAKEN PLACE SINCE THE DATE OF THE BALANCE SHEET ACCORDING TO THE FORM AVAILABLE FROM THE COMMISSION.

(VII) A COPY OF THE REGISTRATION STATEMENT FILED BY THE PUBLIC UTILITY WITH THE SECURITIES AND EXCHANGE COMMISSION UNDER THE SECURITIES ACT OF 1933 (15 U.S.C.A. § § 77A—77AA) WITH RESPECT TO THE PROPOSED ISSUANCE OR ASSUMPTION OF SECURITIES.

(VIII) COPIES OF APPLICATIONS AND DECLARATIONS FILED BY THE PUBLIC UTILITY WITH THE SECURITIES AND EXCHANGE COMMISSION WITH RESPECT TO THE PROPOSED ISSUANCE OR ASSUMPTION OF SECURITIES, UNDER THE PUBLIC UTILITY HOLDING COMPANY ACT OF 1935 (15 U.S.C.A. § § 79—79 Z-6).

(IX) A COPY OF THE RESOLUTION OF THE BOARD OF DIRECTORS OF THE PUBLIC UTILITY AUTHORIZING THE PROPOSED ISSUANCE OR ASSUMPTION OF SECURITIES.

(X) A COPY OF THE STOCK CERTIFICATE OR OTHER SECURITY PROPOSED TO BE ISSUED OR ASSUMED. BONDS OR OTHER EVIDENCES OF INDEBTEDNESS SECURED BY MORTGAGE, COLLATERAL TRUST AGREEMENT OR OTHER UNDERLYING INSTRUMENT. THIS EXHIBIT SHALL BE A COPY OF THE UNDERLYING INSTRUMENT, RATHER THAN OF THE EVIDENCE OF INDEBTEDNESS ITSELF.

(XI) A STATEMENT SHOWING, IN JOURNAL ENTRY FORM, ALL CHARGES AND CREDITS TO BE MADE ON THE BOOKS OF ACCOUNT OF THE PUBLIC UTILITY AS A RESULT OF THE PROPOSED ISSUANCE OR ASSUMPTION OF SECURITIES.

(XII) AN AFFIDAVIT IN FORM PRESCRIBED BY §§ 1.35 AND 1.36 (RELATING TO EXECUTION; AND VERIFICATION).

(D) *FORMAT FORM.* THE COMMISSION MAY PROVIDE A STANDARD FORMAT FORM FOR USE BY AN APPLICANT FOR § 3.601 AND WILL, TO THE EXTENT PRACTICABLE, PROVIDE SUCH FORMAT FORM ON THE COMMISSION'S WEBSITE.

(1) ANY STANDARD FORMAT FORM DEVELOPED FOR PURPOSES OF § 3.601 THAT INVOLVES A MATTER OF AN INTERAGENCY NATURE SHALL BE DEVELOPED OR REVISED ONLY AFTER NOTICE IS

PUBLISHED IN THE PENNSYLVANIA BULLETIN, POSTED ON THE COMMISSION WEBSITE TO THE EXTENT PRACTICABLE, AND AFTER CONSULTATION WITH AN INTERESTED AGENCY IS CONDUCTED.

(2) ANY STANDARD FORMAT FORM DEVELOPED FOR PURPOSES OF § 3.601 THAT INVOLVES MATTERS OTHER THAN THOSE GOVERNED BY § 3.601(D)(1) SHALL BE DEVELOPED OR REVISED ONLY AFTER NOTICE IS PUBLISHED IN THE PENNSYLVANIA BULLETIN, POSTED ON THE COMMISSION WEBSITE TO THE EXTENT PRACTICABLE, AND AFTER CONSULTATION WITH AN INTERESTED AGENCY IS CONDUCTED.

(3) ANY STANDARD FORMAT FORM DEVELOPED FOR PURPOSES OF § 3.601 SHALL BE DEVELOPED BY STAFF AND MAY BE SUBJECT TO FORMAL APPROVAL BY THE COMMISSION. ANY STANDARD FORMAT FORM DEVELOPED FOR PURPOSES OF § 3.601 NOT OTHERWISE SUBJECT TO FORMAL APPROVAL BY THE COMMISSION SHALL BE SUBJECT TO §§ 5.41-5.44 OF THE COMMISSION'S RULES.

**§ 3.602. Abbreviated securities certificate.**

(a) *Scope of rule.* The abbreviated procedure of subsections (b) and (c) applies to an issuance or assumption of a security which meets one of the following requirements:

\* \* \* \* \*

(4) THE DECLARATION BY A UTILITY OF A STOCK SPLIT IF THERE IS NO IMPACT ON THE CONTROL OF THE UTILITY OR NEGATIVE IMPACT ATTRIBUTABLE TO COMMINGLING OF COMPETITIVE ENTERPRISES WITH NONCOMPETITIVE ENTERPRISES.

(5) THE ISSUANCE OF A DIVIDEND BY A UTILITY IN THE FORM OF THE UTILITY'S STOCK IF THERE IS NO IMPACT ON THE CONTROL OF THE UTILITY OR NEGATIVE IMPACT ATTRIBUTABLE TO COMMINGLING OF COMPETITIVE ENTERPRISES WITH NONCOMPETITIVE ENTERPRISES.

(b) *Form.* At the election of the issuing public utility, a securities certificate relating to an issuance of securities within the scope of this rule may consist of two copies of a letter addressed to the [Prothonotary consistent with the form available from the Commission.] Secretary and setting forth the following information:

- (1) The name and address of the public utility.
- (2) The title or capacity of the representative of the public utility executing the letter.
- (3) The designation of the securities to be issued or assumed and the approximate number of shares, principal amount, or other units proposed to be issued or assumed.
- (4) A statement setting forth the specific subsections that qualifies the issuance of the abbreviated procedure together with the underlying calculations, where applicable.

(5) A verification or affidavit conforming to § 1.36 ( relating to verifications and affidavits) in compliance with section 1902 of the act.

(c) *Filing and registration.* An abbreviated securities certificate under this section, together with the filing fee specified in § 1.43 (relating to schedule of fees payable to the Commission), shall be filed with the [Prothonotary]Secretary. [If, at the end of 10 days after the filing of a securities certificate under this section, no order of rejection has been entered, the]

(1) The certificate shall be deemed, in fact and in law, to have been registered [; provided that the Prothonotary may, by notice to the public utility served before]if no order of rejection has been entered after ~~10-20~~ days from the filing of a securities certificate.

(2) Prior to the expiration of the ~~10-20~~-day period, the Secretary may extend the ~~10-20~~-day consideration period to not more than a total of ~~30~~ 40 days upon notification of the public utility served. Further extension to the period shall be by the order of the Commission.

\* \* \* \* \*

## CHAPTER 5. FORMAL PROCEEDINGS

### Subchapter A. PLEADINGS AND OTHER PRELIMINARY MATTERS

#### GENERAL PROVISIONS

##### §5.1 Pleadings allowed.

(a) The pleadings in an action before the Commission [shall] include the following:

- (1) Application and protest.
- (2) Formal complaint, [and] answer, new matter and reply to new matter.
- (3) Order to show cause and answer.
- (4) Petition and answer.
- (5) Preliminary [motions] objections.
- (6) Motions.

(b) A pleading except a preliminary [motion] objection may be subject to a preliminary [motion] objection as set forth in § 5.101 (relating to preliminary [motion] objections).

#### APPLICATIONS

\* \* \* \* \*

##### § 5.12. Contents of applications.

(a) Applications shall conform to this section unless [If] a form or other specific requirements are [not] provided [for] in Chapter 3 (relating to special provisions)[, applications shall conform to this section]. Applications shall [be]:

(1) Be in writing[.].

(2) [shall state] State clearly and concisely the authorization or permission sought[.].

(3) [ shall cite] Cite by appropriate reference the statutory provisions, regulations or other authority under which the Commission authorization or permission is sought[, and shall].

(4) [set] 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:

[(1)] (i) The exact legal name of the applicant[.].

(ii)[and, if the applicant is a corporation, trust, association or other entity, the] The jurisdiction under the statutes of which the applicant was created or organized and the location of the principal place of business of the applicant, when the applicant is a corporation, trust, association or other entity.

[(2)](iii) The name, title, [and] post-office MAILING address, telephone number and electronic mail address, if available, of the person to whom correspondence or [communications] communication in regard to the application [are] is to be addressed. The Commission will serve, [where] when required, notices, orders and other papers upon the person named, and service shall be deemed to be service upon 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 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.** [An application] Notice of applications to the Commission for authority under[sections 1101, 1102, 2503 and 2505 of] the act [or as otherwise provided by the act, is subject to the following notice and protest requirements as directed by the Secretary under Section 1.51 (relating to general instructions for service and notice): ] must be published in the Pennsylvania Bulletin AND AS MAY OTHERWISE BE REQUIRED BY THE COMMISSION.

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

(1) Publication in [the *Pennsylvania Bulletin*].

(2) Publication in] a newspaper of general circulation serving the geographical territory affected by the application.

[(3)](2) Actual notification to the parties affected by the application.

[(4)](3) Another form of actual or constructive notification, including service of the application on interested persons [as may be required by the Secretary].

**(C) PROTEST DEADLINES. THE TIME FOR FILING PROTESTS TO APPLICATIONS ARE GOVERNED BY § 5.53 (RELATING TO TIME OF FILING OF PROTESTS).**

**[(b) Except as set forth in §§ 3.361-3.363, 3.381, 3.501(f) as relating to the 60 day protest period, and §§ 57.71, 57.72, and 57.74-57.77 or as otherwise provided by the secretary, application to the commission for the following types of authority shall 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.]
- ~~(e) Deadlines for filing protests to applications are governed by § 5.53 (relating to time of filing for protests).~~

(D) EXCEPT AS SET FORTH IN §§ 3.361-3.363, 3.501, AND §§ 57.71- 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 SHALL 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.

\* \* \* \* \*

**§ 5.22. [Contents] Content of formal complaint.**

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

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

(2) If complainant is represented by an attorney, the name, mailing address, telephone number, telefacsimile number, and PENNSYLVANIA SUPREME COURT attorney identification number of the attorney [of the complainant] AND, IF AVAILABLE, THE ELECTRONIC MAILING ADDRESS.

[(2)] (3) The name, [and] mailing address and certificate or license number of the respondent complained against, if known, and the nature and character of its business.

[(3)] (4) The interest of the complainant in the subject matter—for example, customer, competitor, and the like.



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

(5) A clear and concise statement of the act or omission being complained of INCLUDING THE RESULT OF ANY INFORMAL COMPLAINT OR INFORMAL INVESTIGATION.

[(5)] (6) A clear and concise statement of the relief sought.

(7) Except as provided in FOR A DOCUMENT REFERENCED WITHIN § 5.21(b) (relating to formal complaints generally), a copy of a writing, A DOCUMENT, or the material part thereof, OR A COPY must be attached when a claim is based upon a writing THE DOCUMENT, THE MATERIAL PART THEREOF, OR A COPY. If the writing DOCUMENT, THE MATERIAL PART THEREOF, or a copy is not accessible, the complaint must set forth that the writing DOCUMENT, THE MATERIAL PART THEREOF, OR THE COPY is not accessible and the reason, and set forth the substance of the writing DOCUMENT OR MATERIAL PART THEREOF.

(b) A verification executed in accordance with § 1.36 (relating to verification) shall be attached to the formal complaint.

(c) A complaint brought by a public utility or other person [or corporation subject to the act against a regulation or order of the Commission, which the complainant is or has been required to observe or carry into effect,] licensed by the Commission regarding the act, a regulation or order of the Commission shall be substantially in the form prescribed by subsection (a). [and] The complaint must reference THE ACT, [shall be made to the particular] the regulation[, ] or order [or part thereof complained against] and shall quote the pertinent portions thereof.

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

\* \* \* \* \*

#### **§ 5.24. Satisfaction of formal complaints.**

(a) If the respondent satisfies a formal complaint either before or after a hearing, [a statement to that effect signed by] the complainant shall [be filed] file with the Commission a CERTIFIED statement to that effect. [setting] The CERTIFIED statement shall set forth that the complaint [has been] is satisfied and that the complaint [is withdrawn] docket should be marked closed. [Except as requested by the parties, the] The presiding officer [will] is not [be] required to render a decision upon SUBMISSION OF THE CERTIFIED STATEMENT CONCERNING the satisfaction of a complaint unless the parties request one for good cause.

(b) In lieu of the CERTIFIED statement [set forth in] required by subsection (a), the respondent may PROVIDE A CERTIFIED WRITING certify to the Commission that it HAS ADDRESSED has satisfied the complaint and AT LEAST one of the following:

(1) [that] 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 [such] the case of certification of satisfaction under subsection (b), the respondent shall SIMULTANEOUSLY serve a copy of its certification upon the complainant THE RESPONDENT'S CERTIFIED WRITING, INCLUDING A STATEMENT INFORMING THE COMPLAINANT OF THE COMPLAINANT'S RIGHT TO OBJECT IN WRITING WITHIN 10 DAYS, UPON THE COMPLAINANT. Unless the complainant objects, IN WRITING, to the certification within 10 days of its filing, the complaint docket shall be [withdrawn] marked closed.

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

### **§ 5.31. Staff-initiated complaints.**

(a) A Commission bureau may commence a proceeding [under] pursuant to statutory or regulatory [other] authority or pursuant to delegation by the Commission [against a person] by filing a complaint IN ACCORDANCE WITH §5.22 [setting forth the grounds for the action]. The complaint [will] shall contain a statement of the particular matter about which the bureau is complaining or inquiring, and the complaint will require that the respondent named [respond in writing as provided in] file a written answer in the form required by § 5.61 (relating to answers to complaints, petitions and motions).

(B) A COMMISSION BUREAU FILING A COMPLAINT UNDER THIS SECTION INVOLVING A FIXED UTILITY OR LICENSEE SHALL PROVIDE A COPY TO THE OFFICE OF TRIAL STAFF, THE CHIEF COUNSEL, THE OFFICE OF CONSUMER ADVOCATE, AND THE OFFICE OF SMALL BUSINESS ADVOCATE.

~~(b) Whenever a party petitions the commission to commence an action, the secretary will refer the petition to the appropriate bureau for evaluation and disposition.~~

\* \* \* \* \*

### **§5.32. Rate complaints. COMPLAINTS IN RATE PROCEEDINGS.**

(a) Prior to suspension. A person may file a complaint against a general rate increase within the meaning of Section § 1308(d) of the act (relating to voluntary changes in rates) within the time period specified in the notice provided to customers of the tariff filing.

(b) After suspension. A person may file FILING a complaint within 45 days DURING of the suspension date of a proposed general rate increase within the meaning of section 1308(d) of the act. A complaint filed after the 45 day suspension has expired will be accepted for good cause shown SHALL TAKE THE RECORD OF THE SUSPENDED RATE PROCEEDING AS IT STANDS AT THE TIME OF THE COMPLAINT'S FILING.

## **PETITIONS**

**§ 5.41. Petitions generally.**

~~(a) Petitions for relief, other than those covered by §§ 5.42—5.44 (relating to petitions for declaratory orders; petitions for issuance, amendment, waiver or repeal of regulations; and petitions for appeal from actions of the staff) under the act or other statute that the Commission administers, shall be in writing, shall state clearly and concisely the grounds of interest of the petitioner in the subject matter, the facts relied upon and the relief sought. Petitions to intervene shall conform to the requirements of §§ 5.71—5.76 (relating to intervention).~~

~~(b) 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, including the Office of Consumer Advocate, the Office of Small Business Advocate and the Office of Trial Staff. The service shall be evidenced with a certificate of service filed with the petition.~~

**(A) GENERAL REQUIREMENTS.** PETITIONS FOR RELIEF UNDER THE ACT OR OTHER STATUTE THAT THE COMMISSION ADMINISTERS, SHALL BE IN WRITING, SHALL STATE CLEARLY AND CONCISELY THE INTEREST OF THE PETITIONER IN THE SUBJECT MATTER, THE FACTS AND LAW RELIED UPON, AND THE RELIEF SOUGHT. PETITIONS FOR RELIEF SHALL 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, 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~~ **AS DIRECTED BY THE Commission direction.**

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

**§ 5.42. Petitions for declaratory orders.**

**(a)** Petitions for the issuance of a declaratory order to terminate a controversy or remove uncertainty shall [state]:

**(1)** State clearly and concisely the controversy or uncertainty which is the subject of the petition[, shall cite].

**(2)** Cite the statutory provision or other authority involved [and shall include].

**(3)** Include a complete statement of the facts and grounds prompting the petition[, together with].

**(4)** Include a full disclosure of the interest of the petitioner.

(b) ~~[A]~~The petitioner shall serve a copy of the petition~~[shall be served]~~ on the OFFICE OF TRIAL STAFF, Office of Consumer Advocate, ~~Office of Trial Staff,~~ Office of Small Business Advocate [and], all persons directly affected and on other parties ~~whom~~ WHO petitioner believes will be affected by the petition. ~~[The service]~~ Service shall be evidenced with a certificate of service filed with the petition.

\* \* \* \* \*

**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, 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.

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

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

(a) ~~[Unless otherwise provided in this part, actions]~~ Actions taken by [a subordinate officer]~~staff~~, other than a [hearing]~~presiding~~ officer, under authority delegated by the Commission, [may be appealed to the Commission by filing a petition within 10] will be deemed to be the final action of the Commission unless appealed to the Commission within 20 days after service of notice of the action, unless a different time period is specified in this chapter or in the act.

(b) An action taken by staff under delegated authority must note the parties' right to appeal the action under this section.

(c) PETITIONS FOR APPEAL FROM THE ACTIONS OF THE STAFF WILL BE ADDRESSED BY THE COMMISSION AT PUBLIC MEETING.

(D) ~~[Subsection]~~ Subsections (a) and (b) – (C)~~[supersedes]~~ supersede 1 Pa. Code § 35.20 (relating to appeals from actions of the staff).

**PROTESTS**

**§ 5.51. Protest to an application.**

(a) A person objecting to the approval of an application [under consideration by the] filed with the Commission may file a protest to the application.

\* \* \* \* \*

**§ 5.52. Content of a protest to an application.**

(a) Form. A protest to an application shall [on its face] must:

(1) Set out clearly and concisely the facts from which the alleged interest or right of the protestant can be determined[.].

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

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

(b) Motor carrier. [A person objecting to the approval of an application shall file with the Prothonotary and serve upon the applicant and applicant's attorney, if any, a written protest to the application which shall] Protests in motor carrier cases must conform with [the requirements of] § 3.381(c)(1) (relating to applications for transportation of property and persons).

(c) Filing and service. A protest shall MUST be filed with the Secretary and served upon the applicant or the applicant's attorney, if any.

**§ 5.53. Time of filing.**

A protest shall be filed within the time specified in [§ 3.381(d) or § 3.502(d) (relating to applications for transportation of property and persons; and protests to applications for certificate of public convenience as a water supplier or wastewater collection, treatment and disposal supplier).] the published notice of the application. If no protest time is specified, the protest must be filed within 60 days of publication of the notice.

**§ 5.54. [Failure to file a protest to an application.]Reserved.**

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

**ANSWERS**

**§ 5.61. Answers to complaints, petitions, [and] motions, and preliminary objections.**

(a) Time for filing. Unless a different time is prescribed by statute, by the Commission, or by the presiding officer, (1) Answers ANSWERS to complaints, AND petitions, and motions shall be filed with the Commission within 20 days after the date of service unless a different time is prescribed by statute or by the Commission.

~~(1) Answers to complaints, petitions and motions shall be filed with the Commission within 20 days after the date of service, unless a different time is prescribed by statute or by the Commission.~~

(1) ANSWERS TO MOTIONS SHALL BE FILED WITHIN THE 20 DAYS PROVIDED BY §5.102 (RELATING TO MOTIONS FOR SUMMARY JUDGMENT AND JUDGMENT ON THE PLEADINGS) AND §5.103 (RELATING TO MOTIONS).

(2) Answers to preliminary objections shall be filed WITHIN THE 10 DAYS PROVIDED BY ~~in accordance with § 5.101 (relating to preliminary objections).~~

(b) ~~General Form~~ **FORM OF ANSWERS TO COMPLAINTS.** The answer shall be in writing and [shall be]:

(1) Be set forth in paragraphs numbered to correspond with the COMPLAINT [complaint] ~~pleading being answered, if possible.~~

(2) [Answers shall advise] Advise the parties and the Commission as to the nature of the defense.

(3) [They shall admit] Admit or deny specifically all material allegations of the COMPLAINT ~~pleading answered [and state].~~

(4) State concisely the facts and matters of law RELIED upon ~~which they rely.~~

(5) Include a copy of a document, or the material part of a document when relied upon in the answer. If the writing or a copy is not available, the answer shall set forth that the document is not available and the reason, and shall set forth the substance of the document.

(c) Failure to file an answer TO A COMPLAINT. [Except for complaints which are docketed with Commission-instituted rate proceedings, a] A respondent failing to file an answer within the applicable period shall MAY be deemed in default, and relevant facts stated in the pleadings may be deemed admitted. ~~This subsection does not apply to complaints docketed pursuant to Commission-initiated rate proceedings.~~

(d) ANSWERS TO COMPLAINTS IN RATE Rate proceedings. For complaints which are docketed with Commission-instituted rate proceedings, an answer may be filed within 10 DAYS OF DATE OF SERVICE ~~the time specified in §5.61(A)(2) § 5.32 (relating to rate proceedings).~~ However, no answer is required, except as may be directed by the Commission or the presiding officer.

(E) **FORM OF ANSWERS TO PETITIONS.** THE ANSWER SHALL BE IN WRITING AND:

(1) ADVISE THE PARTIES AND THE COMMISSION OF THE PARTIES' POSITION ON THE ISSUES RAISED IN THE PETITION.

(2) STATE THE PARTIES' STANDING TO PARTICIPATE IN ANY COMMISSION PROCEEDING RESULTING FROM THE PETITION.

(3) STATE CONCISELY THE FACTS AND MATTERS OF LAW RELIED UPON.

(4) INCLUDE A COPY OF A DOCUMENT, OR THE MATERIAL PART OF A DOCUMENT WHEN RELIED UPON IN THE ANSWER. IF THE WRITING OR A COPY IS NOT AVAILABLE, THE ANSWER SHALL SET FORTH THAT THE DOCUMENT IS NOT AVAILABLE AND THE REASON, AND SHALL SET FORTH THE SUBSTANCE OF THE DOCUMENT.

(e) (F) Supersession. Subsections (a) — (d) (B) — (E) supersede 1 Pa. Code § 35.35 (relating to answers to complaints and petitions).

**§ 5.62. Answers raising new matter or counterclaim SEEKING AFFIRMATIVE RELIEF OR RAISING NEW MATTER.**

(a) Answers seeking affirmative relief. In its answer, a respondent may seek relief against other parties in a proceeding [by reason of the presence of] if common questions of law or fact are present. The answer shall conform to this chapter for answers generally and shall set forth [in its answer the]:

(1) The facts constituting the grounds of complaint[, the].

(2) The provisions of the statutes, rules, regulations or orders relied upon[, the].

(3) The injury complained of. [and of the]

(4) The relief sought. [The answer shall conform to the requirements of this chapter for answers generally.]

(b) Answers raising new matter. An affirmative defense shall be pleaded in an answer or other responsive pleading under the heading of “New Matter.” A party may set forth as new matter another material fact which is not merely a denial of the averments of the preceding pleading.

[(c) A reply to new matter shall be filed within 20 days of the date of service of the answer or other pleading raising the new matter. Failure to file a timely reply to new matter shall be deemed in default, and relevant facts stated in the new matter may be deemed admitted].

**§ 5.63. Replies to answers seeking affirmative relief or new matter.**

(a) Unless otherwise ordered by the Commission, replies to answers seeking affirmative relief or to new matter [shall] must be filed with the Commission and served within 20 days after date of service of the answer, but not later than 5 days prior to the date set for the commencement of the hearing.

(b) Failure to file a timely reply to new matter shall MAY be deemed in default, and relevant facts stated in the new matter may be deemed to be admitted.

(c) [Subsection] Subsections (a) and (b) [is identical to] supersede 1 Pa. Code § 35.39 (relating to replies to respondents seeking affirmative relief).

\* \* \* \* \*

**§ 5.65. Answers to amendments of pleadings.**

(a) Except as provided under § 5.101 (referring to preliminary objections). [A participant may file] an answer to an amendment, modification or supplement to an application, complaint, petition or other pleading set forth under § 5.91 (referring to amendments of pleadings generally) [ . If made, answers shall] must be filed with the Commission within 20 days after the date of

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

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

#### § 5.66. Answers to petitions to intervene.

(a) A [participant] party may file an answer to a petition to intervene within 20 days of service, and in default thereof, may be deemed to have waived objection to the granting of the petition. Answers shall be served upon all other [participants] parties.

\* \* \* \* \*

#### INTERVENTION

\* \* \* \* \*

#### § 5.73. Form and content of petitions to intervene.

(a) Petitions to intervene shall set out clearly and concisely the following:

(1) The facts from which [the nature of] the alleged intervention right or interest of the petitioner can be determined[, the].

(2) The grounds of the proposed intervention[, and the].

(3) The petitioner's position [of the petitioner] regarding the issues in the proceeding [, so as fully and completely to advise the participants and the Commission as to the specific issues of fact or law to be raised or controverted].

(b) WHERE THE CIRCUMSTANCES WARRANT, ~~Petitions~~ PETITIONS to intervene filed on behalf of more than one person MAY BE REQUIRED TO must list those persons and entities comprising the represented group.

(c) [Subsection] Subsections (a) and (b) [supersedes] supercede 1 Pa. Code § 35.29 (relating to form and contents of petitions to intervene).

#### § 5.74. Filing of petitions to intervene.

(a) Petitions to intervene and [notice] ~~notices of intervention~~ may be filed following the filing of an application, petition, complaint or other document seeking Commission action[, but no].

(b) ~~Petitions to intervene and notices of intervention shall be filed:~~

(1) No later than the date fixed for the filing of [petitions to intervene] responsive pleadings in an order or notice with respect to the proceedings BUT NOT LESS THAN THE NOTICE AND PROTEST PERIOD ESTABLISHED PURSUANT TO § 5.14 (RELATING TO APPLICATIONS REQUIRING NOTICE) AND § 5.53 (RELATING TO TIME OF FILING) ABSENT GOOD CAUSE SHOWN.

(2) [or, except for good cause shown,] No later than the date fixed for filing protests as published in the *Pennsylvania Bulletin* except for good cause shown.



(3) In accordance with § 5.53 (relating to time of filing of protests) if no deadline is set in an order or notice with respect to the proceedings.

(4) A STATUTORY ADVOCATE MAY EXERCISE A RIGHT OF PARTICIPATION OR FILE A NOTICE OF INTERVENTION CONSISTENT WITH LAW AT ANY TIME IN A PROCEEDING. A STATUTORY ADVOCATE EXERCISING A RIGHT OF PARTICIPATION OR FILING A NOTICE OF INTERVENTION FOLLOWING EXPIRATION OF ANY PROTEST OR INTERVENTION PERIOD SHALL TAKE THE RECORD AS DEVELOPED UNLESS DETERMINED OTHERWISE IN EXCEPTIONAL CIRCUMSTANCES FOR GOOD CAUSE SHOWN.

(c) EXCEPT WITH REGARD TO STATUTORY ADVOCATES UNDER SUBPART (B)(4), ~~Intervention~~ INTERVENTION will not be permitted once an evidentiary hearing has concluded absent extraordinary circumstances.

[(b)] (d) The Commission or presiding officer may, [where] when the circumstances warrant, permit the waiver of the requirements of § 5.409 (relating to copies and form of documentary evidence) with respect to copies of exhibits for the intervenor.

[(c)] (e) Subsections (a) [and (b)]-(d) supersede 1 Pa. Code § 35.30 (relating to filing of petitions to intervene).

#### **§ 5.75. Notice, service and action on petitions to intervene.**

(a) *Notice and service.* Petitions to intervene, when tendered to the Commission for filing, shall show service thereof upon all [participants] parties to the proceeding in conformity with § 1.54 (relating to service by a [participant]party).

(b) *Action on petitions.* As soon as practicable after the expiration of the time for filing answers to petitions as provided in § 5.66 (relating to answers to petitions to intervene), the Commission or presiding officer will grant or deny the petition in whole or in part or may, if found to be appropriate, authorize limited participation.

(c) Rights upon grant of petition. Admission as an intervenor will not be construed as recognition by the Commission that the intervenor has a direct interest in the proceeding or might be aggrieved by an order of the Commission in the proceeding. Intervenors are granted no rights which survive discontinuance of a case by the moving party.

(d) Actions on petitions filed after a hearing has commenced. [No petitions] EXCEPT WITH REGARD TO STATUTORY ADVOCATES UNDER SUBPART (B)(4), Petitions to intervene may be filed or will be acted upon during a hearing unless ~~permitted~~-PROHIBITED by the Commission or presiding officer after opportunity for all parties to object.

[(c)](e) *Supersession.* Subsections (a) [and (b)]-(d) supersede 1 Pa. Code § 35.31 (relating to notice and action on petitions to intervene).

\* \* \* \* \*

### **AMENDMENT AND WITHDRAWAL OF PLEADINGS**

#### **§ 5.91. Amendments of pleadings generally.**

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

(b) Amendments in response to preliminary objections. A party may file an amended pleading as of course within 20 days after service of a copy of a preliminary objection filed pursuant to § 5.101 (referring to preliminary objections). If a party has filed an amended pleading as of course, the preliminary objections to the original pleading shall be deemed moot.

[(b)] (c) Limitation. Except as otherwise provided in this subchapter, no amendment to a pleading may be filed within 5 days preceding the commencement of or during a hearing unless directed or permitted by the Commission or the presiding officer after opportunity for all parties to be heard thereon.

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

[(d)](e) Subsections (a)—[(c)] (d) supersede 1 Pa. Code § 35.48 (relating to amendments of pleadings generally).

#### § 5.92. Amendments to conform to the evidence.

(a) Amendment by consent. When[,] the parties introduce issues at a hearing[, issues] not raised by the pleadings [are introduced] whether by express or implied consent of the [participants] parties, [they] the issues shall be treated in all respects as if they had been raised in the pleadings.

(b) Amendments by motion. Amendments of the pleadings as may be necessary to cause them to conform to the evidence and to raise new issues may be made upon motion of a [participant] party at any time during the hearing as set forth in § 5.102 (relating to motions for summary judgment and judgment on the pleadings).

(c) Amendment following objection. If evidence upon new issues is objected to on the ground that it is not within the issues raised by the pleadings, the Commission or the presiding officer may allow the pleadings to be amended and the evidence to be received, when it appears that the presentation of the merits of the proceedings will be served thereby without prejudicing the public interest or the rights of a [participant] party.

(d) Continuance following objection. [When, in the discretion of the Commission or the presiding officer, a continuance is necessary in order to enable the objecting participant to meet the new issues and evidence, a] A continuance may be granted by the Commission or the presiding officer under § 1.15 (relating to extensions of time and continuances) when necessary to allow the objecting party to meet ADDRESS new issues and evidence.

[(b)] (e) Notice of amendment. If an amendment adopted under [subsection (a)] this section has the effect of broadening the issues in the proceeding, notice of the amendment shall be given in the same manner as notice was given at the commencement of the proceeding and to the same persons who received the notice.

[(c)](f) Supersession. Subsections (a) [and (b) are identical to] ~~-(e)~~ supersede 1 Pa. Code § 35.49 (relating to amendments to conform to the evidence).

**§ 5.93. Directed amendments.**

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

\* \* \* \* \*

**§ 5.94. Withdrawal of pleadings in a contested proceeding.**

(a) Except as provided in subsection (b), a [participant] party desiring to withdraw a pleading in a contested proceeding may file a petition for leave to withdraw the appropriate document with the Commission and serve it upon the other [participants] parties. The petition shall set forth the reasons for the withdrawal. A [participant] party may object to the petition within 20 days of service. After considering the petition, an objection thereto and the public interest, the presiding officer or the Commission will determine whether the withdrawal will be permitted.

(b) A protest to an application may be withdrawn by filing a [letter] notice of withdrawal directed to the Commission or the presiding officer. The [letter] notice shall state that the protest is withdrawn and provide the reasons for the withdrawal.

\* \* \* \* \*

**MOTIONS PRELIMINARY OBJECTIONS**

**§ 5.101. Preliminary [motion] objections.**

(a) *GROUND*S. [A preliminary motion is] Preliminary objections are available to [participants] parties and may be filed in response to a pleading except motions and prior preliminary objections. [The preliminary motion] Preliminary objections shall BE ACCOMPANIED BY A NOTICE TO PLEAD, SHALL state specifically the LEGAL AND FACTUAL grounds relied upon, the standing of the party, and shall be limited to the following grounds:

(1) [A motion questioning the] Lack of Commission jurisdiction [of the Commission] over the subject matter of the proceeding or the person of a party, or improper service of the pleading initiating the proceeding.

(2) [A motion to strike a pleading that is insufficient as to form] Failure of a pleading to conform to this chapter or the inclusion of scandalous or impertinent matter.

(3) **INSUFFICIENT SPECIFICITY OF A PLEADING.**

(3) (4) [A motion to dismiss a pleading that is insufficient as to substance, that does not indicate on its face the standing of the party to participate in the proceeding or that fails to join an indispensable party] Insufficient specificity in a pleading **LEGAL INSUFFICIENCY OF A PLEADING.**

(4) [~~A motion for a more specific pleading~~] Legal insufficiency of a pleading (demurrer).

(5) Lack of capacity to sue, nonjoinder of a necessary party or misjoinder of a cause of action.

(6) Pendency of a prior proceeding or agreement for alternative dispute resolution.

**(B) NOTICE TO PLEAD.** A PRELIMINARY OBJECTION SHALL CONTAIN A NOTICE TO PLEAD WHICH STATES THAT AN ANSWER TO THE OBJECTION SHALL BE FILED WITHIN 10 DAYS OF THE DATE OF SERVICE OF THE OBJECTION.

~~(b) [Except when a motion for a more specific pleading is filed, a preliminary motion shall be filed along with an answer] Preliminary objections must be filed together within the time period prescribed by § 5.61 (relating to answers to complaints, petitions [and], motions, and preliminary objections). [All preliminary motions shall be raised at the same time.] Two or more preliminary objections may be raised in one pleading.~~

~~(e) [If a motion for more specific pleading is filed, no answer may be filed until further directed by the presiding officer or the Commission. A motion for more specific pleading shall be filed within the time period prescribed by § 5.61.] A party may file an amended pleading as of course within 20 days following service of preliminary objections. When an amended pleading is filed as of course, the preliminary objections shall be deemed to be moot in accordance with § 5.91 (relating to amendments of pleadings generally). Objections to an amended pleading shall be made by filing new preliminary objections.~~

**(C) GENERAL RULE.** ALL PRELIMINARY OBJECTIONS SHALL BE RAISED AT ONE TIME. THE PRELIMINARY OBJECTIONS SHALL BE SET FORTH IN NUMBERED PARAGRAPHS, SHALL STATE WITH SPECIFICITY THE LEGAL AND FACTUAL GROUNDS RELIED UPON, AND MAY BE INCONSISTENT. TWO OR MORE PRELIMINARY OBJECTIONS MAY BE RAISED IN ONE PLEADING.

**(D) TIME FOR FILING AND FORM.** PRELIMINARY OBJECTIONS SHALL BE FILED AS A SEPARATE DOCUMENT AND WITHIN THE SAME 20 DAYS PROVIDED FOR IN § 5.61 (RELATING TO ANSWERS TO COMPLAINTS, PETITIONS, AND MOTIONS). EXCEPT AS PROVIDED FOR IN SUBSECTION (E), THE FILING OF PRELIMINARY OBJECTIONS MAY NOT ELIMINATE THE REQUIREMENT TO FILE AN ANSWER TO THE COMPLAINT OR OTHER INITIATING PLEADING.

**(E) PRELIMINARY OBJECTION REGARDING INSUFFICIENT SPECIFICITY.**

(1) IF A PRELIMINARY OBJECTION REGARDING INSUFFICIENT SPECIFICITY IN A PLEADING IS FILED, NO ANSWER IS REQUIRED UNTIL FURTHER DIRECTED BY THE PRESIDING OFFICER OR THE COMMISSION.

(2) WHEN AN AMENDED PLEADING IS FILED IN RESPONSE TO A PRELIMINARY OBJECTION ALLEGING INSUFFICIENT SPECIFICITY IN A PLEADING, THE PRELIMINARY MOTION SHALL BE DEEMED TO BE MOOT IN ACCORDANCE WITH § 5.91 (RELATING TO AMENDMENT OF PLEADINGS GENERALLY).

**(F) ANSWER TO A PRELIMINARY OBJECTION.**

~~(d) (1) TIME FOR FILING.~~ An answer to a preliminary [motion] objection may be filed within 10 days of date of service. ~~A preliminary motion must contain a notice to plead which~~

states that an answer to the objection shall be filed within 10 days of date of service of the objections.

(2) *FORM.* THE ANSWER SHALL BE IN WRITING AND IN NUMBERED PARAGRAPHS TO CORRESPOND WITH THE PRELIMINARY OBJECTION, AND SHALL ADDRESS THE LEGAL AND FACTUAL GROUNDS RELIED ON IN THE PRELIMINARY OBJECTION.

~~(e)~~ (G) A preliminary [motion] objection shall be decided [by the presiding officer or the Commission] within 30 days of the [filing of the motion] assignment of the preliminary objection or within 30 days of the termination of mediation TO THE PRESIDING OFFICER.

~~(f)~~ The party filing preliminary objections has no duty to file an answer or other responsive pleading prior to a ruling on the preliminary objections.

(1) (H) If a preliminary [motion to strike] objection is granted, the [participant] party who submitted the stricken pleading has the right to file an amended pleading within 10 days of service of the order.

~~(2) If a preliminary objection is overruled, the objecting party shall have the right to plead over within 20 days after notice of the order or within such other time as the presiding officer of the Commission fix.~~

~~(g)~~ (I) SUBSECTIONS (A)-(H) SUPERSEDE 1 PA. CODE §§ 35.54 AND 35.55 (RELATING TO MOTIONS AS TO COMPLAINT; AND MOTIONS AS TO ANSWER).

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

(a) *Generally.* [Motion for judgment on the pleadings.] After the pleadings are closed, but within a time so that the hearing is not delayed, a [participant] party may move for judgment on the pleadings or summary judgment. A motion shall contain a notice which states that an answer or other responsive pleading shall be filed within 20 days of service of the motion.

~~(b)~~ *Answers.* An answer to a motion for judgment on the pleadings or summary judgment, including an opposing affidavit or verification to a motion for summary judgment, may be filed within 20 days of the date of service of the motion. The answer TO A MOTION FOR SUMMARY JUDGMENT may be supplemented by pleadings and depositions, answers to interrogatories or further affidavits or verifications and admissions.

~~(b)~~ (c) *Motion for summary judgment.* [After the pleadings are closed, but within a time so that the hearing is not delayed, a participant may move for] A motion for summary judgment shall be based on the pleadings and depositions, answers to interrogatories, admissions and supporting affidavits. Documents not already filed with the Commission shall be filed with the motion.

[(1)] An answer, including an opposing affidavit to a motion for summary judgment, may be filed within 20 days of the date of service of the motion.

(2) The answer may be supplemented by pleadings and depositions, answers to interrogatories or further affidavits and admissions.

(c) (d) *Decisions on motions.*

(1) Standard for grant or denial on all counts. The presiding officer will grant or deny a motion for judgment on the pleadings or a motion for summary judgment, as appropriate. The judgment sought will be rendered if the APPLICABLE pleadings, depositions, answers to interrogatories and admissions, together with affidavits, if any, show that there is no genuine issue as to a material fact and that the moving [participant] party is entitled to a judgment as a matter of law. [If a motion is granted, the presiding officer will do so in the form of an initial or recommended decision which shall be subject to exceptions. As in the case of other initial or recommended decisions, the procedures regarding exceptions to the Commission apply. If the motion is denied, the presiding officer will do so in the form of a written order.]

(2) Standard for grant or denial in part. The presiding officer may grant a partial summary judgment if the pleadings, depositions, answers to interrogatories and admissions, together with affidavits, if any, show that there is no genuine issue as to a material fact and that the moving [participant] party is entitled to a judgment as a matter of law on one or more but not all outstanding issues. [The presiding officer will grant or deny the motion in the form of an order, or initial or recommended decision.]

(3) Form of decision. The presiding officer will grant, in whole or in part, the motion in the form of an initial or recommended decision which shall be subject to exceptions as set forth in § 5.533 (relating to exceptions). Denial of a motion shall be in the form of a written order.

### § 5.103. Motions.

\* \* \* \* \*

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

(c) Response to motions. A [participant] party has [10] 20 days from the date of service within which to answer or object to a motion, unless the period of time is otherwise fixed by the Commission or the presiding officer.

\* \* \* \* \*

## Subchapter B. HEARINGS

### GENERAL

### § 5.201. Notice of proceeding; hearing; waiver of hearing.

\* \* \* \* \*

(b) If the appropriate pleading is not filed within the set period of time, or [where] when the [participants] parties have waived hearings, the Commission may dispose of the matter

without a hearing upon the basis of the pleadings or submittals and the studies and recommendations of the staff.

\* \* \* \* \*

**§ 5.202. Scheduling of hearing.**

\* \* \* \* \*

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

(c) The Commission or the presiding officer in the exercise of discretion, for cause, may advance or postpone proceedings on the hearing calendar with notice to the [participants] parties.

\* \* \* \* \*

**§ 5.203. Hearing in rate proceedings.**

\* \* \* \* \*

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

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

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

**NOTICE OF HEARING**

\* \* \* \* \*

**§ 5.212. Notice of nonrulemaking proceedings.**

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

\* \* \* \* \*

**PREHEARING AND OTHER CONFERENCES**

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

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

\* \* \* \* \*

**§ 5.222. Initiation of prehearing conferences in nonrate proceedings.**

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

(b) The Commission, or the presiding officer, ~~with or without motion, and after consideration of the probability of beneficial results to be derived therefrom,~~ may direct that a prehearing conference be held, and direct the [participants] parties to the proceeding to appear ~~there~~ to consider the matters enumerated in subsection (c). Notice of the time and place of the conference shall be given to all [participants] parties to the proceeding. ~~Upon agreement of all the parties, the~~ THE conferences may be conducted telephonically.

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

\* \* \* \* \*

(3) Arrangements for the submission of direct testimony of witnesses in writing in advance of hearing to the extent practicable, and for the submission in advance of hearing or written requests for information which a [participant] party contemplates asking another [participant] party to present at hearing.

(4) Other matters that may aid in expediting the orderly conduct and disposition of the proceeding and the furtherance of justice, including, [but not limited to,] the following:

\* \* \* \* \*

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

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

(1) The preparation ~~SHALL should include, among other things,~~ SUBMISSION OF A PREHEARING MEMORANDUM AND SHALL LIST:

(I) THE PRESENTLY IDENTIFIED ISSUES.



- (II) THE NAMES AND ADDRESSES OF THE WITNESSES.
- (III) THE PROPOSED AREA OF TESTIMONY OF EACH WITNESS.
- (2) THE PREPARATION MAY INCLUDE:
  - (I) DEVELOPMENT OF A PROPOSED PROCEDURAL SCHEDULE.
  - (II) ADVANCE ~~advance~~ study of all relevant materials, ~~and~~.
  - (III) ADVANCE ~~advance~~ informal communication between the [participants] parties, including requests for additional data and information, to the extent it appears feasible and desirable.

(E) Failure of a [participant] party to attend the conference, after being served with notice of the time and place thereof, without good cause shown, shall constitute a waiver of all objections to the agreements reached, and TO an order or ruling with respect thereto.

\* \* \* \* \*

**§ 5.223. Authority of presiding officer at conferences.**

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

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

(C) THE PRESIDING OFFICER MAY PARTICIPATE IN SETTLEMENT DISCUSSIONS UPON AGREEMENT OF ALL PARTIES. A DIFFERENT PRESIDING OFFICER OR A MEDIATOR, IF APPROPRIATE, WILL BE ASSIGNED BY THE CHIEF ADMINISTRATIVE LAW JUDGE TO PARTICIPATE IN SETTLEMENT DISCUSSIONS UPON THE REQUEST OF A PARTY.

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

**§ 5.224. Prehearing 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 [participants] parties shall come to the first prehearing conference prepared to discuss the following:

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

\* \* \* \* \*

(c) At the first prehearing conference, [participants] parties may submit a written statement addressing the issues in subsection (b) AND SHALL LIST: -

- (1) THE PRESENTLY IDENTIFIED ISSUES.
- (2) THE NAMES AND ADDRESSES OF THE WITNESSES.
- (3) THE PROPOSED AREA OF TESTIMONY OF EACH WITNESS.

(d) Following the first prehearing conference, the presiding officer will enter an order establishing a tentative set of hearing dates, establishing a plan and schedule for discovery, [identifying the active participants for purposes of service of documents,] determining whether a public input hearing will be held, if that decision has not already been made, and addressing other matters deemed necessary.

(e) ~~The FURTHER second prehearing conference~~ CONFERENCES MAY should be scheduled AT THE DISCRETION OF THE PRESIDING OFFICER. ~~not fewer than 10 days prior to the first scheduled evidentiary hearings to do the following:~~

- ~~(1) — Resolve outstanding discovery disputes.~~
- ~~(2) — Schedule order of witnesses.~~
- ~~(3) — Incorporate stipulations in the record.~~
- ~~(4) — Resolve other matters.~~

~~(f) Combined with the second prehearing conference should be a settlement conference for the purpose of discussing settlement of the case or stipulation of certain issues, or both. In addition to the authority conferred by §§ 5.223(b), 5.232 and 5.233 (relating to authority of presiding officer at conferences; stipulations and settlement petitions; and refusal to make admissions or stipulate), if all parties agree, the presiding officer or a mediator may participate in the settlement discussions. A different judge or mediator will be assigned to participate in settlement discussions upon the request of a party. [Participants] Parties, except the filing utility, shall file and serve on all other [participants] parties, on or before the date of the conference, a statement of position which identifies the issues as they appear. Also included shall be a listing of the names and addresses of the witnesses each [participant] party intends to call and their proposed area of testimony.~~

~~(g) The presiding officer, or the Commission will have the authority to amend the requirements of this section either sua sponte or upon motion of a [participant] party when justice so requires.~~

\* \* \* \* \*

## [SETTLEMENT AND STIPULATIONS] SETTLEMENTS

**§ 5.231. Offers of settlement.**

(a) It is the policy of the Commission to encourage settlements.

(b) Nothing contained in this chapter or Chapter 1 or 3 (relating to rules of administrative practice and procedure; and special provisions) preclude a [participant] party in a proceeding from submitting, at any time, offers of settlement or proposals of adjustment, or from requesting conferences for that purpose.

(c) [Participants] Parties may request that the presiding officer participate in the settlement conferences or that an additional presiding officer or mediator be designated to participate in the settlement conferences.

(d) OFFERS ~~Proposals~~ of settlement, of adjustment, or of procedure to be followed, and proposed stipulations not agreed to by every [participant] party, including proposals intended to resolve discovery disputes, will not be admissible in evidence against a counsel or [participant] party claiming the privilege.

[(b) Subsection] (e) Subsections (a) — (d) [supersedes] supersede 1 Pa. Code § 35.115 (relating to offers of settlement).

**§ 5.232. [Stipulations and settlement] Settlement petitions AND STIPULATIONS OF FACT.**

(a) Generally. [When the participants to a proceeding other than a general rate increase seek to settle the proceeding, but do not seek to have the underlying pleadings withdrawn, a stipulation or settlement petition shall be presented to the presiding officer, if one has been assigned. Otherwise, the stipulation or settlement] A settlement petition, WHICH MAY CONTAIN STIPULATIONS OF FACT BY ALL OR SOME OF THE PARTIES, shall be filed with the [Prothonotary] Secretary in accordance with Section § 5.41 (relating to petitions generally). [If the petition is presented to the presiding officer, the Prothonotary shall also be served with three copies.]

(b) POSITIONS OF THE PARTIES ~~Representation of other parties' agreement.~~ A settlement agreement shall specifically identify:

(1) ~~the other~~ [participants] parties PARTIES supporting the settlement.;

(2) THE PARTIES opposing THE SETTLEMENT.

(3) THE PARTIES ~~or taking no position on the settlement.~~ ;

(4) ~~if known, and the other parties that were provided or~~ THE PARTIES denied an opportunity to enter into the settlement.

(c) Service. A copy of each [stipulation or] settlement petition, WHICH MAY CONTAIN STIPULATIONS OF FACT BY ALL OR SOME OF THE PARTIES, shall be served upon each [participant] party to the proceeding, and each [participant] party shall have the opportunity to comment on the proposed settlement unless otherwise ordered by the presiding officer.

(d) Review OF SETTLEMENT BY THE PRESIDING OFFICER. The [stipulation or] settlement petition will be reviewed by the presiding officer, if one has been assigned, and

~~otherwise will be reviewed by the Commission.~~ IF THE PRESIDING OFFICER RULES ON THE PETITION, THE RULING WILL BE MADE IN THE FORM OF AN INITIAL OR RECOMMENDED DECISION, SUBJECT TO § 5.537 (RELATING TO RATE CASE SETTLEMENTS), IF APPROVED, OR IN THE FORM OF AN ORDER, IF DISAPPROVED. THE PRESIDING OFFICER SHALL DETERMINE IF THE SETTLEMENT IS IN THE PUBLIC INTEREST.

~~(1) The presiding officer shall determine if the settlement is in the public interest.~~

~~(2) The presiding officer shall hold a hearing if a timely objection is filed and the hearing is necessary in the public interest.~~

~~(3) If the presiding officer rules on the petition, the ruling will be made in the form of an initial or recommended decision, subject to § 5.537 (relating to rate case settlements), if approved, or in the form of an order, if disapproved.~~

(e) Waiver of exceptions. [Upon] The exception period may be waived upon agreement of the parties [to waive the exception period, the presiding officer may present the recommended decision or initial decision directly to the Commission for review].

(f) Disposition of exceptions. If timely exceptions are filed, they will be considered in a ruling made on the settlement petition.

G. REVIEW OF A SETTLEMENT PETITION BY THE COMMISSION. WHEN NO PRESIDING OFFICER HAS BEEN ASSIGNED, THE COMMISSION SHALL REVIEW THE SETTLEMENT. PARTIES NOT JOINING IN THE SETTLEMENT MAY SUBMIT OBJECTIONS TO THE COMMISSION WITHIN 20 DAYS OF THE FILING OF THE PETITION UNLESS ANOTHER TIME PERIOD IS SET BY THE COMMISSION.

### § 5.233. Refusal to make admissions or [stipulate] stipulations.

(a) Generally. A party may move for sanctions under subsection (b) of this section when the following conditions are satisfied:

(1) [If a] A party refuses to admit or stipulate to the genuineness of documents or the truth of matters of fact during [attending] a conference convened under this chapter and Chapter 1 or 3 (relating to rules of administrative practice and procedure; and special provisions) [refuses to admit or stipulate the genuineness of documents or the truth of matters of fact and].

(2) [if the participant] The party requesting the admissions or stipulations thereafter proves the genuineness of the document or the truth of a matter of fact[, he].

(b) Sanctions. The requesting party may apply to the presiding officer for an order requiring the other party to pay [him] the reasonable expenses incurred in making the proof, including reasonable attorney's fees. The presiding officer will grant an order for sanctions unless [Unless] the presiding officer finds that there were good reasons for the refusal to admit or stipulate or that the admissions or stipulations sought were of no substantial importance[, the order will be made].

(c) Appeal. An interlocutory appeal may be taken to the Commission immediately from the order made by a presiding officer under Subchapter C (relating to interlocutory review).

(d) Compliance. If a party refuses to comply with the order after it becomes final, the [agency]Commission or presiding officer may strike all or part of the pleadings of the party or limit or deny further participation by the party.

(b) Subsection (e) Subsections (a) — (d) [is identical to]supersede 1 Pa. Code § 35.116 (relating to refusal to make admissions or stipulate).

#### **§ 5.234. Presentation and effect of stipulations.**

(a) [Independently of the orders or rulings issued as provided by § § 5.221—5.224 (relating to prehearing and other conferences) the participants] Parties may stipulate [as] to relevant matters of fact or the authenticity of relevant documents. The stipulations may be received in evidence at a hearing, and when so received shall be binding on the [participants] parties TO THE STIPULATION with respect to the matters therein stipulated.

(b) The parties may make such stipulations independently of orders or rulings issued pursuant to §§ 5.221-5.224 (relating to prehearing and other conferences).

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

(c)(d) [Subsection] Subsections (a)-(b) [is identical to] supersede 1 Pa. Code § 35.155 (relating to presentation and effect of stipulations). Subsection [(b)(c)] supplements 1 Pa. Code § 35.155.

#### **§ 5.235. Restrictive amendments to applications for motor carrier of passenger and household goods in use authority.**

(a) [The participants]Parties to motor carrier applications for passenger and household goods in use authority may stipulate as to restrictions or modifications to proposed motor carrier rights. Stipulations in the form of restrictive amendments or modifications [shall be] SHALL:

- (1) Be in writing[.].
- (2) Explain why the stipulation is in the public interest.
- (3) Be signed by each[participant]party to the stipulation[ ,].
- (4) Be [and a copy] submitted to the Secretary for insertion into the document folder.

\* \* \* \* \*

#### **HEARINGS**

#### **§ 5.241. [Appearances]Attendance.**

(a) The presiding officer before whom the hearing is held shall enter upon the record all [appearances, with a notation on whose behalf each appearance is made]parties in attendance.

\* \* \* \* \*

**§ 5.242. Order of procedure.**

(a) In a proceeding, the [complainant, petitioner or other participant] party having the burden of proof, shall open and close unless otherwise directed by the presiding officer. In a hearing on investigations and in proceedings which have been consolidated for hearing, the presiding officer may direct who shall open and close. **ORAL REJOINDER, IF PROPOSED BY THE PARTY WITH THE BURDEN OF PROOF, SHALL BE COMPLETED BEFORE ANY CROSS-EXAMINATION OF THE WITNESS IS CONDUCTED.**

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

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

(d) The presiding officer may direct the order of [participants] parties for purposes of cross-examination, subject to [the requirements of] § 5.243(f) (relating to presentation by [participants] parties).

\* \* \* \* \*

**§ 5.243. Presentation by [participants] parties.**

(a) A [participant] party, [subject to the limitations in § § 5.75 and 5.76 (relating to notice, service and action on petitions to intervene; and limitation of participation in hearings),] has the right of presentation of evidence, cross-examination, objection, motion and argument subject to the limitations in § § 5.75 and 5.76 (relating to notice, service and action on petitions to intervene; and limitation of participation in hearings). The taking of evidence and subsequent proceedings shall proceed with reasonable diligence and with the least practicable delay.

\* \* \* \* \*

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

\* \* \* \* \*

(e) [No participant] A party will not be permitted to introduce evidence during a rebuttal phase which:

- (1) [is] is repetitive[.].
- (2) [which should] Should have been included in the [participant's] party's case-in-chief [or].
- (3) [which substantially] Substantially varies from the [participant] party's case-in-chief [unless the evidence is introduced in support of a proposed full or partial settlement between or among any of the participants].

(f) If a [participant] party conducts friendly cross-examination of a witness, the presiding officer may permit the other [participants] parties a second opportunity to cross-examine after friendly cross-examination is completed. The recross-examination shall be limited to the issues on which there was friendly cross-examination.

\* \* \* \* \*

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

(a) After being notified, a [participant] party who fails to be represented at a scheduled conference or hearing in a proceeding shall:

(1) [be] Be deemed to have waived the opportunity to participate in the conference or hearing[,and].

(2) [ shall not] Not be permitted thereafter to reopen the disposition of a matter accomplished at the conference or hearing[,or].

(3) Not be permitted to recall [for further examination of] witnesses who were excused[,] for further examination.

(b) Subsection (a)(1)–(3) shall not apply if [unless] the presiding officer determines that the failure to be represented was unavoidable and that the interests of the other [participants] parties and of the public would not be prejudiced by permitting the reopening or further examination. Counsel shall be expected to go forward with the examination of witnesses at the hearing under § 5.242 (relating to order of procedure), or as has been otherwise stipulated or has been directed by the presiding officer.

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

**TRANSCRIPT**

**§ 5.251. Recording of proceedings.**

(a) If required by law, hearings will be stenographically reported by the Commission's official reporter.

(b) Notwithstanding the review provisions of § 5.252 (relating to review of testimony), the hearing transcript [of the report] will be a part of the record and the sole official transcript of the proceeding.

(c) The transcripts will include a verbatim report of the hearings and nothing will be omitted therefrom except as is directed by the presiding officer. [After the closing of the record, there will not be received in evidence or considered as part of the record a document except as provided in § 5.404 (relating to additional evidence) or changes] Changes in the transcript must be made as provided in § 5.253 (relating to transcript corrections).

[(b) Subsection] (d) Subsections (a)-(c) [is identical to] 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 [shall] will schedule a time and place for the review which shall be open to all [participants of record] parties. The court reporting firm shall submit the tapes and equipment necessary for the review and shall arrange for the court reporter responsible for transcribing the tapes to be present at the review.

\* \* \* \* \*

**§ 5.253. Transcript corrections.**

(a) A correction in the official transcript may be made only to make it [conform to] accurately reflect the evidence presented at the hearing and to speak the truth.

(b) Proposed corrections of a transcript may be submitted by either of the following means:

(1) By written stipulation by the [participants] parties of record who were present when the transcription was taken.

(2) Upon written request of one or more [participants] parties of record present when the transcription was taken.

(c) Proposed corrections shall be filed as follows:

(1) Within ~~30~~ 10 days after the transcript has been filed with the Commission.

(2) Within ~~15~~ 10 days after the electronically recorded testimony has been reviewed.

(3) Upon permission of the presiding officer granted prior to the closing of the record.

(d) Objections or other comments to the proposed corrections shall be filed within 10 days of service of the proposed corrections.

(e) Proposed corrections and objections or other comments [shall] must be served upon the [participants] parties of record present when the original transcription was taken.

(f) The presiding officer will rule upon a proposed correction of a transcript within ~~30~~ 20 days of its receipt. A request for corrections not acted upon within ~~30~~ 20 days is deemed to be:

(1) Denied if opposed in a timely manner.

(2) Granted if unopposed.



(g) Subsections (a)—(f) supersede 1 Pa. Code § 35.132 (relating to transcript corrections).

\* \* \* \* \*

## Subchapter C. INTERLOCUTORY REVIEW

\* \* \* \* \*

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

(a) During the course of a proceeding, a [participant] party may file a timely petition directed to the Commission requesting review and answer to a material question which has arisen or is likely to arise. The petition shall be in writing with copies served on all [participants] parties and the presiding officer and [shall] must state, in not more than three pages, the question to be answered and the compelling reasons why interlocutory review will prevent substantial prejudice or expedite the conduct of the proceeding.

(b) Within 7 10 days of service of the petition, each [participant] party may submit a brief directed to the Commission supporting or opposing the petition and addressing the merits of the question for which an answer is requested and whether a stay of proceedings is required to protect the substantial rights of a [participant] party. The brief may not exceed 15 pages.

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

\* \* \* \* \*

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

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

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

\* \* \* \* \*

### § 5.304. Interlocutory review of discovery matters.

(a) General. [Unless otherwise ordered by the Commission in exceptional situations, rulings] Rulings of presiding officers on discovery are not subject to interlocutory review unless one or more of the following apply:

(1) Interlocutory review is ordered by the Commission.

(2) Interlocutory review is certified [absent certification] by the presiding officer.

(3) The ruling has as its subject matter the deposing of a Commissioner or Commission employee.

(b) Standard for certification. A presiding officer may certify that a discovery ruling is appropriate for interlocutory review when [that] the ruling involves an important question of law

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

**[(1)] (c) Petition for certification. [Participants desiring] A petition for interlocutory review of a presiding officer's ruling on discovery [shall] must:**

**(1) Be filed within 3 days of the ruling[.].**

**(2) [petition the presiding officer to certify the question to the Commission. The request shall be] Be in writing.**

**(3) [with copies served on all participants and shall state] State, in not more than three pages,] the question to be certified and the reasons why interlocutory review will prevent substantial prejudice or expedite the conduct of the proceedings.**

**(4) Be no more than 3 pages in length.**

**(5) Be filed with the Secretary and served on all parties and the presiding officer.**

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

**(1) \_\_\_\_\_ [each participant may submit a brief to the presiding officer supporting or opposing] Either supports or opposes certification.**

**(2) \_\_\_\_\_ [and, in addition, addressing] Addresses the merits of the question for which certification is requested.**

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

**(4) \_\_\_\_\_ [The brief may] May not exceed 15 pages.**

**[(3)](e) Presiding officer's decision. The presiding officer will[, within 3 days of the deadline for filing briefs,] announce the decision in writing or orally on the record within 3 5 days of the deadline for filing responsive briefs. The presiding officer's announcement DECISION will include[, with] the reasons why certification has been granted or denied and whether a stay of THE proceedings has been granted.**

**[(4)](1) If the presiding officer denies the request for certification, [then] no further action is required of the presiding officer.**

**[(5)](2) If the presiding officer's decision is to grant the request for certification, [and unless the moving participant has withdrawn the request for certification,] the presiding officer will[, within 4 days of the announcement of the decision, deliver to the Commission and] serve to each Commissioner the certified question [,] within 4 5 days of the announcement of the decision. The presiding officer will include the reasons justifying certification, rulings on the certified question[,] and extracts from the record that will assist the Commission in reaching a decision.**

**[(b)](f) Brief to the Commission following certification. [Each participant may, on or before the date the presiding officer is required to file the certification,] Parties may submit a**

brief [, not to exceed 15 pages, directed] to the Commission and no other briefs are permitted unless directed by the Commission. A brief must NOT EXCEED 15 PAGES AND MUST:

- (1) [addressing] Address the issue of certification[, and].
- (2) Address the merits of the certified question[, and].
- (3) Address [and] the stay of proceedings, when appropriate.
- ~~(4) Not exceed 15 pages. No additional briefs are permitted unless directed by the Commission.~~

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

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

- (1) Continue, revoke or grant a stay of proceedings.
- (2) Determine that the certification was improper and return the matter to the presiding officer for resolution.
- (3) Answer the certified question.

[(e)](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 affirmance of the decision of the presiding officer.

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

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

\* \* \* \* \*

(b) A copy of the question certified and the accompanying information shall be [sent to] served on the [participants] parties at the same time it is submitted to the Commission.

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

\* \* \* \* \*

**§ 5.306. [Notification by telephone] Expedited Notification.**

A presiding officer may order notification of [participants] parties by telephone, telefacsimile or other electronic means when time periods are short and delivery by mail may not prove adequate. [A telephone notification] Notification by means other than by mail will be confirmed by the presiding officer by service in writing and a filing shall be made with the Secretary regarding confirmation.

## Subchapter D. DISCOVERY GENERAL

### § 5.321. Scope.

\* \* \* \* \*

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

(d) *Exceptions.* This subchapter [will] does not apply to discovery sought of Commissioners or Commission staff serving in an advisory or adjudicatory capacity.

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

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

- (1) Deposition upon oral examination or written questions.
- (2) Written interrogatories to a [participant] party.
- (5) On the record data requests IN RATE CASES.

\* \* \* \* \*

### § 5.322. Informal agreement regarding discovery or deposition procedure.

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

### § 5.323. [Trial] Hearing preparation material.

(a) *Generally.* Subject to this subchapter AND CONSISTENT WITH PA. R.C.P. 4003.3 (RELATING TO SCOPE OF DISCOVERY TRIAL PREPARATION MATERIAL GENERALLY), a [participant] party may obtain discovery of any matter discoverable under §

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

(b) *Statements.* Upon written request, a [participant] 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 [participant] party, another [participant] party or a witness. If the statement is not provided, the [participant] party may move for an order from the presiding officer. For purposes of this subsection, a statement previously made is one of the following:

\* \* \* \* \*

#### § 5.324. Discovery of expert testimony.

(a) Consistent with Pa. R.C.P. 4003.5, discovery of facts known and opinions held by an expert, otherwise discoverable under § 5.321 (relating to scope), including that acquired or developed in anticipation of litigation or for hearing, may be obtained as follows:

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

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

(ii) ~~THAT THE~~ The other [participant] party to have each expert [identified by the participant] so identified state the substance of the facts and opinions to which the expert is expected to testify and a summary of the grounds for each opinion. The [participant] party answering the interrogatories may file as the answer a report of the expert, have the interrogatories answered by the expert or provide written direct testimony of the expert. The answer, separate report or testimony shall be signed by the expert and shall be deemed to be provided under oath in accordance with section § 333(d) of the act (relating to prehearing procedures).

(2) If the [participant] party against whom discovery is sought, under paragraph (1)(ii), responds by the filing of written direct testimony, the response shall be considered timely, regardless of § 5.342 (relating to answers or objections to written interrogatories by a [participant] party), if the written direct testimony is served on all [participants] parties at least ~~10~~ 20 days prior to the date on which the expert is scheduled to testify or in accordance with the schedule for the submission of written testimony established by the presiding officer. However, the [participant] party shall still comply with paragraph (1)(i) within the time otherwise applicable.

\* \* \* \* \*

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

\* \* \* \* \*

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

\* \* \* \* \*

## TIMING AND SUPPLEMENTAL RESPONSES

### § 5.331. Sequence and timing of discovery.

(a) A [participant or a person who has formally applied] party to the Commission proceeding [for participant status] may conduct discovery.

(b) A [participant] party shall [endeavor to] initiate discovery as early in the proceedings as reasonably possible. In a proceeding, the right to discovery commences when a complaint, protest or other adverse pleading is filed or when the Commission institutes an investigation or on the record proceeding, whichever is earlier.

(c) Commission staff may initiate discovery at an earlier time. Commission staff discovery prior to formal Commission action to initiate a proceeding shall be designated as “Staff data requests” and shall be answered fully and completely by the utility within the time periods specified at § 5.342(d) (relating to answers or objections to written interrogatories by a [participant] party). Unless a presiding officer has been designated, objections and motions to compel shall be ruled upon by the Chief Administrative Law Judge.

(d) In a rate proceeding, initial discovery directed to data or information supplied by the public utility at the time of the initiation of the proceeding shall be submitted to the utility within 10 working days following the first prehearing conference. [Discovery directed to other matters shall be available until the close of evidentiary hearings. In other proceedings, the] The presiding officer, upon his own motion or motion of a [participant] party, may establish reasonable limitations upon the timing of discovery.

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

### § 5.332. Supplementing responses.

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

(1) A [participant] party is under a continuing duty to supplement responses with respect to a question directly addressed to the identity and location of persons having

knowledge of discoverable matters and the identity of each person expected to be called as an expert witness at hearing, the subject matter on which the expert is expected to testify and the substance of the testimony as provided in §5.324(a)(1) (relating to discovery of expert testimony).

(2) A [participant] party or an expert witness is under a continuing duty to amend a prior response upon discovering that the response is incorrect or incomplete.

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

## TYPES OF DISCOVERY

### § 5.341. Written interrogatories to a party.

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

(b) The party propounding interrogatories shall serve a copy on the parties and shall file a certificate of service with the Secretary. Interrogatories may not be filed with the Commission. [A copy of interrogatories shall be served on the active participants.]

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

\* \* \* \* \*

(e) A [participant] party should use a logical and sequential numbering system for interrogatories.

### § 5.342. Answers or objections to written interrogatories by a [participant] party.

(a) Form. [An answer] Answers to [an interrogatory shall be] interrogatories must :

(1) Be in writing.

(2) [and the answer shall identify] Identify the name and position of the individual who provided the answer.

(3) [An answer shall be] Be submitted as an answer and may not be submitted as an exhibit or in another form.

(4) [Each interrogatory shall be answered] Answer each interrogatory fully and completely unless an objection is made.

(5) [The answer shall first restate] Restate the interrogatory which is being answered or be inserted in the spaces provided in the interrogatories.

(6) Be verified in accordance with § 1.36 (relating to verification).

(b) *Use.* An answer may be used by a [participant] party for an appropriate purpose, if admissible under the applicable rules of evidence. An answer may not be offered into evidence by the [participant] party who provided it, except through the sworn oral testimony of the person who provided the answer.

(c) *Objections.* [If objected to, the reasons for the objection to an interrogatory shall be stated in lieu of an answer.] An objection shall be prepared, filed and served in the same manner provided for an answer, except that an objection shall be contained in a document separate from an answer as required by the time provisions of subsection (d). An objection shall [restate]:

(1) Restate the interrogatory or part thereof deemed objectionable and the specific ground for the objection.

(2) [The objection shall include] Include a description of the facts and circumstances purporting to justify the objection.

(3) [The objection shall be] Be signed by the attorney making it.

(4) [An interrogatory otherwise proper is not] Not [objectionable solely because] be valid if based solely on the claim that an answer will involve an opinion or contention that is related to a fact or the application of law to fact.

(5) [The statement of an objection does not] Not excuse the answering [participant] party from answering the remaining interrogatories or subparts of interrogatories to which no objection is stated.

(d) *Service of answer and objections.* The answering [participant] party shall serve [interrogatories] ~~objections~~ and answers ON THE PARTIES within 15 days for rate proceedings, and 20 days after service of the interrogatories for other cases. Time periods may be modified by the presiding officer, on motion or by agreement of the [participants] parties.

~~(1) An objection shall be served within [10] 15 days for rate proceedings, and 30 days of service of the interrogatories in other cases, except as agreed by the [participants] parties or as ordered by the presiding officer.~~

~~(2) (1) [Within the time periods prescribed in this subsection, the] The answering or objecting [participant] party shall serve copies of the answer and the objection, if any, on the active [participants] parties.~~

~~(3) [If there is an objection, then (1)] The objecting [participant] party shall file copies of the objection with the [Prothonotary] Secretary, along with a certificate of service, which shall identify specifically the interrogatories to which an answer and objection have been provided. [A copy of the objection shall also be served upon the presiding officer.]~~

~~(2) (4) The [participant] party against whom the interrogatories are directed shall remain under a duty to meet the time requirements for answering or objecting to the interrogatories or subpart of interrogatories for which the time period for response has not been modified specifically.~~

(E) **SERVICE OF OBJECTIONS. THE OBJECTING PARTY SHALL SERVE OBJECTIONS WITHIN 10 DAYS OF SERVICE OF THE INTERROGATORIES.**



(1) THE OBJECTING PARTY SHALL SERVE COPIES OF THE OBJECTION ON THE PARTIES, ALONG WITH A CERTIFICATE OF SERVICE, WHICH SHALL SPECIFICALLY IDENTIFY THE OBJECTIONABLE INTERROGATORIES.

(2) THE OBJECTING PARTY SHALL FILE A COPY OF THE CERTIFICATE OF SERVICE WITH THE SECRETARY.

(F) *CONTINUING OBLIGATION.* THE OBJECTING PARTY SHALL REMAIN UNDER AN OBLIGATION TO TIMELY PROVIDE ANSWERS TO INTERROGATORIES OR SUBPARTS OF INTERROGATORIES THAT WERE NOT OBJECTED TO.

(e) (G) *Motion to compel.* Within 10 days of service of an objection to interrogatories, [The participant] The party submitting the interrogatories may FILE A MOTION REQUESTING ~~move~~ that the presiding officer TO dismiss an objection and [direct] compel that the interrogatory be answered. If a motion to COMPEL, ~~dismiss an objection to interrogatories~~ is not filed within 10 days of service of the objection, the objected to interrogatory will be deemed withdrawn.

(1) The [participant] party against whom the motion to compel is directed shall file an answer within 5 days of service of the motion absent good cause or, in the alternative, respond orally at the hearing if a timely hearing has been scheduled within the same 5-day period.

(2) The presiding officer shall rule on the motion as soon as practicable[; however, the]. The motion should be decided within 15 days of its presentation, unless the motion presents complex or novel issues. If it does have complex or novel issues, the presiding officer shall, upon notice to the [participants] parties, rule in no more than 20 days of its presentation.

#### § 5.343. Procedures in deposition by oral examination.

(a) A [participant] party desiring to take the deposition of a person upon oral examination, other than under § 5.322 (relating to informal agreement regarding discovery or deposition procedure), shall give 20 days notice in writing to the active [participant] party and to the presiding officer. A [participant, or witness within the control of a participant,] party noticed to be deposed is required to appear without subpoena. A [nonparticipant] person who is not a party is not required to appear unless subpoenaed.

\* \* \* \* \*

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

(e) A [participant] party may in his notice and in a subpoena, if issued, name as the deponent a public or private corporation, a partnership or association or a governmental agency. In that event, the organization named shall file within 10 days of service a designation of one or more officers, directors or managing agents, or other persons who consent to testify on its behalf, and may set forth, for the persons designated, the matters on which he will testify. A subpoena shall advise a [nonparticipant] non-party organization of its duty to make a designation. The person designated shall testify as to matters known or reasonably available to the organization.

This subsection does not preclude taking a deposition by other procedures authorized in this chapter.

(f) An objection to the notice of deposition may be filed within 10 days of service of the notice. A copy of the objection shall be served upon the presiding officer and the active [participants] parties. A notice of deposition which is served upon a [nonparticipant] non-party shall state that the [nonparticipant] non-party may file objections within 10 days of service and identify the persons—names and addresses—to whom the objections shall be sent.

\* \* \* \* \*

**§ 5.344. Approval by presiding officer.**

\* \* \* \* \*

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

\* \* \* \* \*

**§ 5.345. Procedure on depositions by written questions.**

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

\* \* \* \* \*

(c) Objections to the form of questions are waived unless filed and served upon the [participant] party propounding them within the time allowed for serving the succeeding cross or other questions or within 10 days after service of the last questions. Other objections may be made at the hearing except as otherwise provided by § 5.346—5.348 (relating to persons before whom depositions may be taken; taking of depositions—objections; and transcript of deposition, objections and filing).

\* \* \* \* \*

(e) After the service of questions and prior to the taking of the testimony of the deponent, the presiding officer, on motion promptly made by a [participant] party or a deponent, may make an order in accordance with § 5.362 (relating to protective orders) or an order that the deposition may not be taken except upon oral examination.

\* \* \* \* \*

**§ 5.347. Taking of depositions—objections.**

\* \* \* \* \*

(b) Objections to the competency of a witness or to the competency, relevancy or materiality of the testimony are not waived by failure to make them before or during the taking

of the deposition, unless the ground for the objection is one which was known to the objecting [participant] party and which might have been obviated or removed if made at that time.

(c) Errors and irregularities occurring at the oral examination in the manner of taking the deposition, in the form of oral questions or answers, in the oath or affirmation or in the conduct of [participants] parties and errors which might have been obviated, removed or cured if objections had been promptly made, are waived unless reasonable objection is made at the taking of the deposition.

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

\* \* \* \* \*

#### **§ 5.348. Transcript of deposition, objections and filing.**

\* \* \* \* \*

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

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

\* \* \* \* \*

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

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

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

(2) To permit entry upon designated land or other property in the possession or control of the [participant] party upon whom the request is served for the purpose of inspecting and measuring, surveying, photographing, testing or sampling the property or a designated object or operation thereon, within the scope of § § 5.321(b), 5.323 and 5.324.

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

\* \* \* \* \*

(d) The [participant] party upon whom the request is served shall serve a written response within 10 days for rate proceedings, and 20 days after service of the request for all other cases. Time periods may be modified by the presiding officer[, on motion,] or by agreement of the [participants] parties. The response shall be verified OR NOTARIZED, AS PERMITTED BY § 1.36, and shall state that inspection and related activities will be permitted as requested. If the request is objected to, the objection shall be made in the manner described in § 5.342 (relating to answers or objections to written interrogatories by a [participant] party). A [participant] party may request another [participant] party to produce or inspect documents as part of interrogatories filed under § 5.341 (relating to written interrogatories to a party). The [participant] party submitting the request may move for an order under § 5.342(e) with respect to an objection or to other failure to respond to the request or any part thereof, or failure to permit inspection as requested.

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

#### § 5.350. Request for admissions.

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

(b) Form. Each matter of which an admission is requested shall be separately set forth.

(c) Failure to admit. The matter is admitted unless, within 20 days after service of the request, the [participant] party to whom the request is directed answers or makes an objection to the matter, signed by the [participant] party or by his attorney.

(d) Response. [ If objection is made, the reasons shall be stated.]

(1) Answer. The answer shall admit or deny the matter or set forth in detail the reasons why the answering [participant] party cannot truthfully do so.

(2) Denial. A denial shall fairly meet the substance of the requested admission, and when good faith requires that a [participant] party qualify [his] an answer or deny only a part of the matter of which an admission is requested, [he] the party shall specify so much of it as is true and qualify or deny the remainder. An answering [participant] party may not give lack of information or knowledge as a reason for failure to admit or deny unless [he] the party states he has made reasonable inquiry and that the information known or readily obtainable by him is insufficient to enable him to admit or deny.

(3) Objection. GROUNDS FOR OBJECTIONS SHALL BE SPECIFICALLY STATED. Objections shall be supported by reasons. A [participant] party who considers that a

matter of which an admission has been requested presents a genuine issue for hearing may not, on that ground alone, object to the request.

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

~~[(d)](f)~~ Effect of admission. A matter admitted under this section is conclusively established unless the presiding officer on motion permits withdrawal or amendment of the admission. An admission by a [participant] party under this section is for the purpose of the pending action only and is not an admission by him for another purpose. An admission may not be used against a [participant] party in another proceeding.

#### **§ 5.351. On the record data requests.**

(a) ~~\_\_\_\_\_~~ [During the course of a rate proceeding a participant] 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 BE MADE ORALLY OR IN WRITING

~~(1) \_\_\_\_\_~~ Oral request. [The] ~~A request~~ [may be] ~~made orally~~ [or in writing so long as the written request is presented at the time the witness appears for cross-examination. An oral request] ~~may be confirmed in writing by the [participant] party making the request.~~

~~(2) \_\_\_\_\_~~ Written request. A written request AND shall be presented at the time the witness appears for cross-examination.

~~(b) \_\_\_\_\_~~ The procedures for written interrogatories in § 5.342 (relating to answers or objections to written interrogatories by a [participant] party) [is applicable] shall apply to on the record data requests except:

~~(1) \_\_\_\_\_~~ [that answers] (B) Answers shall be supplied as DIRECTED BY THE PRESIDING OFFICER, seen as possible; IF NO TIME PERIOD IS SET, THE ~~The~~ response period may not extend [after the request but in any event no] SHALL BE NO later than 10 days after the request is made.

~~(2) \_\_\_\_\_~~ [ , unless t] The presiding officer [modifies] may modify the time period for good cause shown.

(c) ~~\_\_\_\_\_~~ Objections to a request shall be made at the time that the request is made. Limitations established in § 5.321, 5.322, 5.323 and 5.331(b) are applicable to on the record data requests.

### **LIMITATIONS**

#### **§ 5.361. Limitation of scope of discovery and deposition.**

(a) ~~\_\_\_\_\_~~ [No discovery] Discovery or deposition is not permitted which:

(1) Is sought in bad faith.

- (2) Would cause unreasonable annoyance, embarrassment, oppression, burden or expense to the deponent, a person or [participant] party.
- (3) Relates to matter which is privileged.
- (4) Would require the making of an unreasonable investigation by the deponent, a [participant] party or witness.

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

(c) If the information requested has been previously provided, the answering [participant] party shall specify the location of the information.

**§ 5.362. Protective orders.**

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

\* \* \* \* \*

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

\* \* \* \* \*

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

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

\* \* \* \* \*

**§ 5.364. Use of depositions at hearing.**

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

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

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

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

\* \* \* \* \*

(ii) That the witness is outside this Commonwealth, unless it appears that the absence of the witness was procured by the [participant] party offering the deposition.

\* \* \* \* \*

(iv) That the [participant] party offering the deposition has been unable to procure the attendance of the witness by subpoena.

\* \* \* \* \*

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

\* \* \* \* \*

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

## SANCTIONS

### § 5.371. Sanctions—general.

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

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

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

\* \* \* \* \*

(c) The presiding officer shall rule on the motion as soon as practicable[; however, the] The motion should be decided within [15]20 days of its presentation[, unless the motion presents

complex or novel issues. If it does have complex or novel issues, the presiding officer shall, upon notice to the participants, rule in no more than 20 days of its presentation].

(d) A failure to act described in subsection (a) may not be excused on the ground that the discovery sought is objectionable unless the [participant] party failing to act has filed an appropriate objection or has applied for a protective order.

\* \* \* \* \*

### § 5.372. Sanctions—types.

\* \* \* \* \*

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

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

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

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

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

### § 5.373. Subpoenas.

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

\* \* \* \* \*

## Subchapter E. EVIDENCE AND WITNESSES

### EVIDENCE

#### § 5.401. Admissibility of evidence.

(a) Relevant and material evidence is admissible subject to objections on other grounds[.].

(b) [but there shall be excluded evidence]Evidence shall be excluded if [that]:



- (1) It is repetitious or cumulative[.].
- (2) [or evidence that is not of the kind which would affect reasonable and fair-minded persons in the conduct of their daily affairs.]Its probative value is outweighed by:
  - (i) The danger of unfair prejudice.
  - (ii) Confusion of the issues.
  - (iii) By considerations CONSIDERATIONS of undue delay or waste of time.

~~[(b) Subsection] (c) Subsections (a) and (b) [supersedes] supercede 1 Pa. Code § 35.161 (relating to form and admissibility of evidence).~~

**§ 5.402. Admission of evidence.**

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

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

\* \* \* \* \*

**§ 5.404. Additional evidence.**

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

\* \* \* \* \*

**§ 5.405. Effect of pleadings.**

(a) [Applications, complaints, orders to show cause, answers and similar formal documents upon which hearings are fixed]Pleadings listed in Section § 5.1 (relating to pleadings allowed) shall, without further action, be considered as part of the record as pleadings.

\* \* \* \* \*

(c) A fact admitted by a [participant] party in an answer, filed under oath, to a numbered allegation in a pleading may be considered as evidence of the fact without the pleading and answer being offered and received into evidence.

\* \* \* \* \*

**§ 5.406. Public documents.**

\* \* \* \* \*

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

\* \* \* \* \*

**§ 5.407. Records of other proceedings.**

\* \* \* \* \*

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

\* \* \* \* \*

**§ 5.408. Official and judicial notice of fact.**

(a) Official notice or judicial notice of facts may be taken by the Commission or the presiding officer.

(b) When the decision of the Commission or the presiding officer rests on official notice or judicial notice of a material fact not appearing in the evidence in the record, [upon]the parties will be so notified.

(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.

(d) The Commission or the presiding officer in its discretion will determine whether written presentations suffice, or whether oral argument, oral evidence or cross-examination is appropriate in the circumstances.

(e) The Commission or presiding officer may also give official notice as the term is defined in section § 331(g) of the act (relating to powers of commission and administrative law judges).

[(b) Subsection] (f) Subsections (a) –(e) [is identical to]supersede 1 Pa. Code § 35.173 (relating to official notice of facts).

**§ 5.409. Copies and form of documentary evidence.**

(a) Except as otherwise provided in 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 [participants] parties present at the hearing, unless the presiding officer otherwise directs. Two copies of each exhibit of documentary character shall be furnished for the use of the Commission unless otherwise directed by the presiding officer.

\* \* \* \* \*

**WITNESSES**

**§ 5.412. Written testimony.**

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

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

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

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

(e) Form. Written testimony shall normally be prepared in question and answer form, include a statement of the qualifications of the witness and be accompanied by exhibits to which it relates. A [participant] party offering prepared written testimony shall insert line numbers in the left-hand margin on each page. A [participant] party should also use a logical and sequential numbering system to identify the written testimony of individual witnesses.

(f) Service. Written testimony shall be served upon the presiding officer and [active participants] 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 [Prothonotary] Secretary.

(g) Copies. At the hearing at which the testimony is authenticated, counsel for the witness shall provide two copies of the testimony to the court reporter.

(h) Supersession. Subsections (a)—(g) supersede 1 Pa. Code § § 35.138, 35.150 and 35.166 (relating to expert witnesses; scope and conduct of examination; and prepared expert testimony).

\* \* \* \* \*

## **SUBPOENAS AND PROTECTIVE ORDERS**

### **§ 5.421. Subpoenas.**

(a) Issuance.

(1) \_\_\_\_\_ A subpoena [for the attendance of witnesses or for the production of documentary evidence, unless directed]may be issued by the Commission upon its own motion.

(2) \_\_\_\_\_ Other than under subsection (a)(1), a subpoena[,] will issue only upon application in writing to the presiding officer, except that during a hearing in a proceeding, the application may be made orally on the record before the presiding officer, who will determine the necessity of issuing the subpoena.

(b) Form. The written application[shall]:

(1) Shall specify as nearly as possible the general relevance, materiality and scope of the testimony or documentary evidence sought, including, as to documentary evidence, specification as nearly as possible of the documents desired.

(2) [and] Shall list the facts to be proved by the documents in sufficient detail to indicate the necessity of the documents.

(3) Shall contain a notice that ~~an answer~~ A RESPONSE or objection TO THE APPLICATION thereto shall be filed with the Commission and presiding officer within 10 days of service of the application.

(4) Shall include a certificate of service.

(5) May ATTACH ~~have~~ [The] the proposed subpoena [may be] attached to the application.

[(b) Notice] (c) Service. An application for a subpoena [shall] must be filed with the Commission and copies served by the petitioner upon:

(1) [the affected participant, the] The PARTY, person OR INDIVIDUAL to be subpoenaed.

(2) The presiding officer[, active participants of record, and if the subpoena is directed to a Commission employee, to the].

(3) Active Parties PARTIES.

(4) The Commission's Law Bureau, if the subpoena is directed to a Commission employee. [The application shall contain a notice that an answer or objection thereto shall be filed with the Commission and presiding officer within 10 days of service of the application. When the person for whom a subpoena is sought is not a participant to the case, a copy of the subpoena application shall be served on the person]

(5) The person OR INDIVIDUAL for whom the subpoena is sought when the person is not a party to the case. When the person OR INDIVIDUAL for whom a subpoena is sought is not a party to the case, the application shall identify the persons—names and addresses—including the Secretary and presiding officer, to whom the answer or objection shall be sent.

[(c)](d) Service and return.

\* \* \* \* \*

(2) Service by mail. Service of a subpoena upon a [participant] party, PERSON, OR INDIVIDUAL may also be accomplished by mail under § § 1.54 and 1.55 (relating to service by a [participant] party; and service on attorneys), or by a form of mail requiring a return receipt, postage prepaid, restricted delivery. Service is complete upon delivery of the mail to the [participant] party or the persons referred to in Pa.R.C.P. No. 402(a)(2) (relating to manner of service acceptance of service).

[(d)] (e) Fees of witnesses. A witness subpoenaed by the Commission shall be paid the same fees and mileage as are paid for the like services in the courts of common pleas. A witness subpoenaed by a [participant] party shall be paid the same fees by the [participant] party. The Commission, before issuing a subpoena as provided in this section, may require a deposit of an amount adequate to cover the fees and mileage involved OR REQUIRE REASONABLE

SURETY CONSISTENT WITH § 3.8 (RELATING TO FORM OF INTERIM EMERGENCY ORDERS).

(F) *OBJECTIONS AND DECISION.* A PARTY, PERSON OR INDIVIDUAL OBJECTING TO AN APPLICATION FOR A SUBPOENA UNDER THIS SECTION MAY DO SO WITHIN 10 DAYS IN ACCORDANCE WITH SUBPART (B)(3). THE ADMINISTRATIVE LAW JUDGE SHALL ADDRESS AN OBJECTION WITHIN 10 DAYS OF THE ASSIGNMENT OF ANY OBJECTION FILED UNDER THIS SECTION.

~~[(e)]~~ (G) *Supersession.* Subsections (a)—[(d)](e) supersede 1 Pa. Code § 35.142 (relating to subpoenas).

**§ 5.423. Orders to limit availability of proprietary information.**

(a) *General rule for Adversarial Proceedings.* A PETITION FOR protective order to limit the disclosure of a trade secret or other confidential information on the public record shall be issued GRANTED only when a [participant] party demonstrates that the potential harm to the [participant] party of providing the information would be substantial and that the harm to the [participant] party if the information is disclosed without restriction outweighs the public's interest in free and open access to the administrative hearing process. A protective order to protect trade secrets or other confidential information shall apply the least restrictive means of limitation which will provide the necessary protections from disclosure. In considering whether a protective order to limit the availability of proprietary information should issue, the Commission or the presiding officer should consider, along with other relevant factors, the following:

\* \* \* \* \*

(3) The worth or value of the information to the [participant] party and to the [participant's] party's competitors.

\* \* \* \* \*

(B) *GENERAL RULE FOR NON-ADVERSARIAL PROCEEDINGS.* A PETITION FOR PROTECTIVE ORDER LIMITING THE DISCLOSURE OF A TRADE SECRET OR OTHER CONFIDENTIAL INFORMATION IN A NON-ADVERSARIAL PROCEEDING SHALL BE REFERRED TO THE LAW BUREAU FOR RECOMMENDED DISPOSITION BY THE COMMISSION. THE COMMISSION WILL NOT DISCLOSE ANY MATERIAL THAT IS THE SUBJECT OF A PROTECTIVE ORDER UNDER THIS PROVISION DURING THE PENDENCY OF SUCH A REQUEST.

~~(b)~~ (C) *Restrictions.*

(1) A protective order to restrict disclosure of proprietary information may require that a [participant] party receive, use or disclose proprietary information only for the purposes of preparing or presenting evidence, cross-examination or argument in the proceeding, or may restrict its inclusion in the public record.

\* \* \* \* \*

(3) A public reference to proprietary information by the Commission or by a [participant] party afforded access thereto shall be to the title or exhibit reference in sufficient detail to permit persons with access to the proprietary information to fully understand the

reference and not more. The proprietary information shall remain a part of the record, to the extent admitted, for purposes of administrative or judicial review.

(4) Prior to the issuance of a protective order, a [participant] party may not refuse to provide information which the [participant] party reasonably believes to be proprietary to a [participant] party who agrees to treat the information as if it were covered by a protective order until the presiding officer or the Commission issues the order or determines that issuance of the order would not be appropriate. The [participant] party claiming the privilege shall file a petition for protective order under subsection (a) within 14 days of the date the request for information was received.

(5) A [participant] party receiving proprietary information under this section retains the right, either before or after receipt of the information, to challenge the legitimacy of the claim that the information is proprietary, and to challenge the admissibility of the proprietary information[ and to object to the production of proprietary information on a proper ground].

~~(e)~~-(D) *Access to representatives of [participants] parties.* Proprietary information provided to a [participant] party under this section shall be released to the counsel and eligible outside experts of the receiving [participant] party unless the [participant] party who is releasing the information demonstrates that the experts or counsel previously [has] violated the terms of a recent protective order issued by the Commission. To be eligible to receive proprietary information, the expert, subject to the following exception, may not be an officer, director, stockholder, partner, owner or [employee] employee of a competitor of the producing [participant] party. An expert will not be ineligible on account of being a stockholder, partner or owner of a competitor or affiliate unless the ownership interest is valued at more than \$10,000 or constitutes a more than 1% interest, or both. No other persons may have access to the proprietary information except as authorized by order of the Commission or of the presiding officer.

~~(e)~~ (E) *Special restrictions.* A protective order which totally prohibits the disclosure of a trade secret or other confidential information, limits the disclosure to particular [participants] parties or representatives of [participants] parties—except as permitted by subsection (c)—or which provides for more restrictive rules than those permitted in subsections (b) and (c), [shall] will be issued only in extraordinary circumstances and only when the [participant] party from whom the information is sought demonstrates that a greater restriction is necessary to avoid severe and extreme prejudice.

~~(e)~~ (F) *Return of proprietary information.* A [participant] party providing proprietary information under this section may request that the [participants] parties receiving the information return the information and the copies thereof to the [participant] party at the conclusion of the proceeding, including appeals taken.

## CLOSE OF THE RECORD

### § 5.431. Close of the record.

(a) In a contested proceeding before a presiding officer, the THE record shall be closed at the conclusion of the hearings unless otherwise directed by THE presiding officer or the Commission.

(b) [Once the record is closed, no additional] AFTER THE RECORD IS CLOSED, ~~Additional~~ MATTER evidence may not be introduced or relied upon OR ACCEPTED INTO THE RECORD ~~by a [participant] party~~ unless allowed for good cause shown by the Commission or presiding officer OR THE COMMISSION upon motion. ~~of a [participant] party, under § 5.402(b) (relating to admission of evidence) and § 5.571 (relating to reopening prior to a final decision), consistent with § 5.253 (relating to transcript corrections) or upon motion of the presiding officer or Commission as provided under Section 5.71 (relating to initiation of intervention).~~

[(b) Subsection] (c) Subsections (a)-(b) [supersedes] supercede 1 Pa. Code § § 35.231 and 35.232 (relating to reopening on application of party; and reopening by presiding officer).

## Subchapter F. PRESIDING OFFICERS

### § 5.481. Designation of presiding [officers] officer.

\* \* \* \* \*

### § 5.482. Disqualification of a presiding officer.

(a) A [participant] party may file a motion for disqualification of a presiding officer which shall be accompanied by affidavits alleging personal bias or other disqualification.

\* \* \* \* \*

(c) A motion for disqualification shall be served on the presiding officer and the [participants] parties to the proceeding.

\* \* \* \* \*

### § 5.483. Authority of presiding [officers] officer.

\* \* \* \* \*

### § 5.484. Restrictions on duties and activities.

\* \* \* \* \*

(b) EXCEPT AS ~~Save to the extent~~ required for the disposition of *ex parte* matters not prohibited by the act, no presiding officer will consult a person or [participant] party on a fact in issue unless upon notice and opportunity for all [participants] parties to participate.

\* \* \* \* \*

### § 5.485. Manner of conduct of hearings.

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

(b) The presiding officer MAY shall note on the record a party's disregard of a ruling. Where necessary, the presiding officer may submit a report to the Commission recommending suspension and disbarment of the offending person as provided by section § 1.27 (referring to suspension and disbarment).

(c) [Subsection] Subsections (a)-(b)[is identical to] supersede 1 Pa. Code § 35.189 (relating to manner of conduct of hearings).

**§ 5.486. Unavailability of presiding officer.**

(a) If a presiding officer becomes unavailable, the chief administrative law judge may either designate another qualified officer to prepare the initial or recommended decision or cause the record to be certified to the Commission for decision.

\* \* \* \* \*

**Subchapter G. BRIEFS**

**§ 5.501. Content and form of briefs.**

(a) Briefs shall contain the following:

\* \* \* \* \*

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

\* \* \* \* \*

**§ 5.502. Filing and service of briefs.**

(a) Number of copies. An original and nine copies of a brief shall be filed with the Commission under § 1.4 (relating to filing generally). COPIES SHALL BE SERVED ON THE PARTIES IN ACCORDANCE WITH § 1.59(B)(1).

(b) FILING Types of briefs in non-rate proceedings. [Except for rate proceedings or as provided by agreement or by direction of the presiding officer, the first or initial brief shall be filed by the participants upon whom rests the burden of proof and the other participants may then respond. If briefs are filed simultaneously, reply briefs may be filed. No additional briefs will be accepted. ]

(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.

(c) FILING Types of briefs in rate proceedings.

(1) Main brief. 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.**

**(D) 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 BE FILED AND SERVED IN THE MANNER AND NUMBER REQUIRED AND WITHIN THE TIME ALLOWED BY THIS SECTION, ABSENT GOOD CAUSE.**

**~~(d)~~ (E) Deadlines. [An Initial brief,] INITIAL BRIEFS, Main briefs, [responding] responsive briefs, and reply [brief shall] briefs must be filed and served within the time fixed by the presiding officer. If no specific times are fixed, [initial] INITIAL BRIEFS OR main briefs shall be filed and served within ~~30~~ 20 days after the date of service of notice of the filing of the transcript and [responding] responsive briefs or reply briefs shall be filed within ~~50~~ 40 days after date of service of the notice of the filing of the transcript.**

**[(c)] ~~(e)~~ (F) 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 Section § 1.15 (referring to extensions of time and continuances).**

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

## **Subchapter H. EXCEPTIONS, APPEALS AND ORAL ARGUMENT**

### **§ 5.532. Oral argument before presiding officer.**

**(a) When, in the opinion of the presiding officer, time permits and the nature of the proceedings, the complexity or importance of the issues of fact or law involved, and the public interest warrant, the presiding officer may, either on the presiding officer's own motion or at the request of a [participant] party, allow and fix a time for the presentation of oral argument, imposing limits on the argument that are deemed appropriate.**

\* \* \* \* \*

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

**(a) In a proceeding, exceptions may be filed by a [participant] party and served within 20 days after the initial, tentative or recommended decision is issued unless some other exception period is provided. [No exceptions] Exceptions may not be filed with respect to an interlocutory decision.**

\* \* \* \* \*

**(c) The exceptions shall be concise. The exceptions and supporting [reason shall] reasons shall be limited to 40 pages in length. Statements of reasons supporting [the exception shall] exceptions shall, insofar as practicable, incorporate by reference and citation, relevant portions of the record and passages in previously filed briefs. [No] A separate brief in support of or in reply to exceptions [shall] may not be filed with the [Prothonotary] Secretary under § 1.4 (relating to filing generally).**

(d) An original and nine copies of the exceptions shall be filed with the [Prothonotary] Secretary under § 1.4.

(e) Unless otherwise ordered by the Commission, the provisions of §§ 1.11(a)(2) and (3) and 1.56(b) (relating to date of filing; and date of service) will not be available to extend the time periods for filing exceptions ~~and replies to exceptions.~~

\* \* \* \* \*

### § 5.535. Replies.

(a) A [participant] party has the right to file a reply to an exception in proceedings before the Commission. Unless otherwise directed by the presiding officer or Commission, a reply shall be filed within 10 days of the date that an exception is due and be limited to 25 pages in length and in paragraph form. A reply [shall] must be concise and incorporate by reference relevant passages in previously filed briefs. A REPLY SHALL NOT RAISE NEW ARGUMENTS OR ISSUES, BUT SHALL BE LIMITED TO RESPONDING TO THE ARGUMENTS OR ISSUES IN THE EXCEPTION.

~~(b) In a proceeding in which time is of the essence, the Commission may direct that §§ 1.11(a)(2) and (3) and 1.56(b) (relating to date of filing; and date of service) will not be available to extend the time periods for filing replies to an exception.~~

UNLESS OTHERWISE ORDERED BY THE COMMISSION, THE PROVISIONS OF §§ 1.11(A)(2) AND (3) AND 1.56(B) (RELATING TO DATE OF FILING; AND DATE OF SERVICE) WILL NOT BE AVAILABLE TO EXTEND THE TIME PERIODS FOR FILING REPLIES TO AN EXCEPTION.

(c) [Subsection] Subsections (a)-(b) [supersedes] supercede 1 Pa. Code § 35.211 (relating to procedure to except to proposed report).

\* \* \* \* \*

## Subchapter I. REOPENING, RECONSIDERATION AND REHEARING

### § 5.571. Reopening prior to a final decision.

~~(a) After the record closes, documents will not be received in evidence or considered as part of the record or changes made in the transcript, except as provided in § 5.404 (relating to additional evidence) and § 5.253 (relating to additional evidence; and relating to transcript corrections).~~

~~(b)~~ (A) At any time after the record is closed but before a final decision is issued, a [participant] party may file a petition to reopen the proceeding for the purpose of taking additional evidence.

~~(b)~~ (B) \*\*\*

~~(c)~~ (C) Within 10 days following the service of the petition, another [participant] party may file an answer thereto.

~~(d)~~(D) [The presiding officer, before issuance of the presiding officer's decision or certification of the record to the Commission, otherwise the Commission, upon notice to the participants,] The record may [reopen the] be reopened upon notification to the parties in a proceeding for the reception of further evidence if there is reason to believe that conditions of fact or of law have so changed as to require, or that the public interest requires, the reopening of the proceeding.

(1) The presiding officer may reopen the record if the presiding officer has not issued a decision or has not certified the record to the Commission.

(2) The Commission may reopen the record after the presiding officer has issued a decision or certified the record to the Commission.

~~(e)~~(E) Subsections (a)—~~(d)~~ (e) supersede 1 Pa. Code § § 35.231—35.233 (relating to reopening of record).

#### § 5.572. Petitions for relief [following a final decision].

\* \* \* \* \*

(b) A copy of every petition covered by subsection (a) shall be served upon each [participant] party to the proceeding.

\* \* \* \* \*

### Subchapter J. REPORTS OF COMPLIANCE

#### § 5.591. Reports of compliance.

(a) [When a] A person subject to the jurisdiction of the Commission who is required to do or perform an act by a Commission order, permit or license provision[, there] shall [be filed] file with the [Prothonotary] Secretary [within 30 days following the date when the requirement becomes effective,] a notice[, ] stating that the requirement has or has not been met or complied with.

(b) The notice shall be filed within 30 days following the date when the requirement becomes effective, unless the Commission, by regulation, by order or by making specific provision [therefore] thereof in a license or permit, provides otherwise for compliance or proof of compliance. The notice shall be accompanied by a verification in accordance with § 1.36 (relating to verification and affidavit).

~~(b)~~ Subsection (c) Subsections (a)-(b) [is identical to] supersede 1 Pa. Code § 35.251 (relating to reports of compliance).

#### § 5.592. Compliance with orders prescribing rates.

(a) When the Commission makes a final decision concerning a rate filing[, as defined in sections 1307 and 1308 of the act (relating to sliding scale of rates; adjustments; and voluntary changes in rates)] and permits or requires the adoption of rates other than the rates originally

filed, the public utility affected shall file, within 20 days of entry of the final order, a tariff revision consistent with the Commission's decision together with a proof of revenues and supporting calculations. The utility shall simultaneously serve copies of the tariff revision, along with the proof of revenues and supporting calculations, on the [active participants] parties in the proceeding. A UTILITY MAY ALSO BE REQUIRED TO PROVIDE AN ELECTRONIC, RED-LINED COPY OF ANY FILING MADE IN ORDER TO ASSIST THE PARTIES IN PROMPTLY IDENTIFYING AND ANALYZING THE FILING.

(b) Unless otherwise specified in the order, the tariff revision shall be effective upon statutory notice to the Commission and to the public and, whether made effective on statutory notice or under authority granted in the order, shall bear under the effective date on the title page the following notation: "Filed in compliance with the order of Pennsylvania Public Utility Commission, entered \_\_\_\_\_, [19]2 \_\_\_\_ at \_\_\_\_\_."

(c) Exceptions to a tariff revision under this section may be filed by a [participant] party to the proceeding within 10 days of the date of service of the compliance filing, and shall be strictly limited in scope to the factual issue of alleged deviation from requirements of the Commission order. The utility making the compliance filing may respond to exceptions within 5 days. No further pleadings will be permitted.

\* \* \* \* \*

## Subchapter K. APPEALS TO COURT

### § 5.631. Notice of taking appeal.

When an appeal is taken from an order of the Commission to the Commonwealth Court, the appellant shall immediately give notice of the appeal to all [participants] parties to the Commission proceeding as provided by § 1.54 (relating to service by a [participant] party).

### § 5.632. Preparation and certification of records.

[No ] A record will not be certified as complete until copies of exhibits or other papers have been furnished [where] when necessary to complete the Commission file. Copies will be requested by the Commission.

### § 5.633. Certification of interlocutory orders.

(a) When the Commission has made an order which is not a final order, a [participant] party may by motion request that the Commission find, and include the findings in the order by amendment, that the order involves a controlling question of law as to which there is a substantial ground for difference of opinion and that an immediate appeal to Commonwealth Court from the order may materially advance the ultimate termination of the matter. The motion shall be filed within 10 days after service of the order, and is procedurally governed by §5.103(a)—(c) (relating to hearing motions). Unless the Commission acts within 30 days after the filing of the motion, the motion [shall] will be deemed denied.

\* \* \* \* \*



PENNSYLVANIA PUBLIC UTILITY COMMISSION  
COMMONWEALTH OF PENNSYLVANIA  
HARRISBURG, PENNSYLVANIA

WENDELL F. HOLLAND  
CHAIRMAN

February 9, 2006

The Honorable John R. McGinley, Jr.  
Chairman  
Independent Regulatory Review Commission  
14th Floor, Harristown II  
333 Market Street  
Harrisburg, PA 17101

Re: L-00020156/57-236  
Final Rulemaking  
Chapters 1, 3 and 5 of Title 52 of the  
Pennsylvania Code Pertaining to Practice and  
Procedure Before the Commission  
52 Pa. Code Chapters 1, 3 and 5

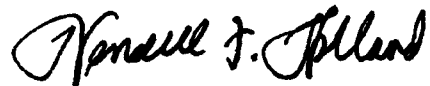
Dear Chairman McGinley:

Enclosed please find one (1) copy of the regulatory documents concerning the above-captioned rulemaking. Under Section 745.5(a) of the Regulatory Review Act, the Act of June 30, 1989 (P.L. 73, No. 19) (71 P.S. §§745.1-745.15) the Commission, on October 15, 2004, submitted a copy of the Notice of Proposed Rulemaking to the House Committee on Consumer Affairs, the Senate Committee on Consumer Protection and Professional Licensure and to the Independent Regulatory Review Commission (IRRC). This notice was published at 34 Pa.B. 5895, on October 30, 2004. In compliance with Section 745.5(b.1) copies of all comments received were provided to your Commission and the Committees.



In preparing this final form rulemaking, the Public Utility Commission has considered all comments received from the Committees, IRRC and the public.

Very truly yours,

A handwritten signature in black ink, appearing to read "Wendell F. Holland". The signature is written in a cursive, flowing style.

Wendell F. Holland  
Chairman

Enclosures

cc: The Honorable Robert M. Tomlinson  
The Honorable Lisa Boscola  
The Honorable Robert J. Flick  
The Honorable Joseph Preston, Jr.  
Legislative Affairs Director Perry  
Chief Counsel Pankiw  
Regulatory Coordinator DelBiondo  
Assistant Counsel McClintock  
Assistant Counsel Witmer  
Ms. Bailets





TRANSMITTAL SHEET FOR REGULATIONS SUBJECT  
TO THE REGULATORY REVIEW ACT

ID Number: L-00020156/57-236

2006 FEB - 2 11:10:45

Subject: Amending 52 Pa. Code Chapters 1, 3 and 5

INDEPENDENT REGULATORY  
REVIEW COMMISSION

Pennsylvania Public Utility Commission

TYPE OF REGULATION

- \_\_\_\_\_ Proposed Regulation
- \_\_\_\_\_ Final Regulation with Notice of Proposed Rulemaking Omitted.
- X  Final Regulation
- \_\_\_\_\_ 120-day Emergency Certification of the Attorney General
- \_\_\_\_\_ 120-day Emergency Certification of the Governor

FILING OF REPORT

<u>Date</u>	<u>Signature</u>	<u>Designation</u>
<u>2-9-09</u>	<u>Teresa Lester</u>	<u>HOUSE COMMITTEE</u> Consumer Affairs
<u>2-9-06</u>	<u>[Signature]</u>	<u>SENATE COMMITTEE</u> Consumer Protection and Professional Licensure
<u>2/9/06</u>	<u>[Signature]</u>	Independent Regulatory Review Commission
_____	_____	Attorney General
_____	_____	Legislative Reference Bureau

