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December 23, 2004

VIA HAND DELIVERY

James J. McNulty, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

Re: Proposed 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

Dear Secretary McNulty:

Enclosed for filing please find an original and 15 copies of the "Comments of Practitioners' Group Regarding Proposed Revisions to Commission's Rules of Practice and Procedure" in the above-referenced matter. The Practitioners' Group consists of the utility practice groups of Kirkpatrick & Lockhart LLP, McNees Wallace & Nurick LLC, Morgan, Lewis & Bockius LLP, Rhoads & Sinon LLP, Saul Ewing LLP, Thomas, Thomas, Armstrong & Niesen, with the assistance of former Chief Administrative Law Judge Robert A. Christianson.

Please date stamp the extra copy and return it with our courier. Thank you for your attention in this matter. Please do not hesitate to contact me if you have any questions.

Sincerely,

David P. Zambito

DPZ/clj
Enclosure

bc: Chairman Wendell F. Holland
Vice-Chairman Robert K. Bloom
Commissioner Kim Pizzingrilli
Commissioner Glen R. Thomas
Administrative Law Judge Weismandel
Administrative Law Judge Colwell
Eric Rohrbaugh, Office of Administrative Law Judge
John Herzog (Bureau of Transportation & Safety)
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Robert A. Christianson, Esquire

BEFORE THE PENNSYLVANIA
PUBLIC UTILITY COMMISSION

Proposed 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

COMMENTS OF PRACTITIONERS' GROUP REGARDING PROPOSED REVISIONS TO COMMISSION'S RULES OF PRACTICE AND PROCEDURE

The utility practice groups of Kirkpatrick & Lockhart LLP, McNees Wallace & Nurick LLC, Morgan, Lewis & Bockius LLP, Rhoads & Sinon LLP, Saul Ewing LLP, and Thomas, Thomas, Armstrong & Niesen, with the assistance of former Chief Administrative Law Judge Robert A. Christianson, (collectively "Practitioners' Group") hereby provide the following comments regarding the proposed revisions to the rules of practice and procedure of the Pennsylvania Public Utility Commission ("Commission"), as published at 34 Pa. Bulletin 5895. In addition to hours of individual review and analysis of the proposed revisions, representatives of the Practitioners' Group met on five occasions to analyze and debate the Commission's proposed revisions. The comments below are intended to improve the efficiency, effectiveness, clarity and basic fairness of the Commission's rules of practice and procedures. We offer a series of general and specific comments for consideration. Only those comments which have the unanimous consent of the Practitioners' Group have been included.

General Comments

1. ***Electronic Filing.*** The Commission's proposed rulemaking contemplates the Commission's transition to electronic filing, while not explicitly permitting electronic filing. By these Comments, the Practitioners' Group encourages the Commission to facilitate electronic filing with all due deliberate speed. Although the Practitioners' Group recognizes and appreciates the budget investment that developing and implementing such a system entails, experience in other jurisdictions has demonstrated the tangible benefits of enhanced electronic access to regulatory submissions and issuances that can be gained by electronic filing. Examples of successful electronic filing initiatives may be found at both the federal and state levels. The Federal Energy Regulatory Commission ("FERC") operates an electronic filing system (www.ferc.gov) that does not, in large measure, require any hard copy filings to be submitted. The FERC's website then provides access to electronic versions of all FERC submissions and issuances through a searchable docket database. The State of Connecticut's Department of Public Utility Control ("DPUC") also utilizes an electronic filing system (www.state.ct.us/dpuc) that, in contrast to the FERC, does require a hard copy follow-up to be sent to the DPUC's Executive Secretary. As with the FERC, the DPUC's website provides easy electric access to all documents filed and issued in a particular docket.

The Practitioners' Group appreciates the Commission's recent efforts to improve web access to electronic versions of Commission documents. However, we believe that the public interest would benefit by additional transparency. By virtue of web access to Commission docket activity, stakeholders' ability to monitor developments and access information regarding the rapidly changing utility industries will be greatly enhanced, promoting judicial efficiency and cost-effective litigation.

In anticipation of the Commission's transition to electronic filing, the Practitioners' Group has several concerns regarding the proposed rulemaking, particularly when the technical details of such an initiative have not been (at least publicly) finalized. By way of illustration, proposed Section 1.11 regarding "date of filing" is revised to provide direction on the date of filing for electronically filed documents. The Practitioners' Group questions the advisability, however, of promulgating regulations for a system that does not currently exist. Proposed Section 1.37(c) also may be premature when the technical specifications of the electronic filing system are not known.

Other proposed regulations may similarly present problems. Electronic filing may impact proposed Section 1.24(b)(1), which provides that an attorney who signs an initial pleading in a representative capacity shall be considered to have entered an appearance in a proceeding. It is not clear that the proposed regulation contemplates an electronic filing system that requires no hard copy filing and, thus, no actual attorney signature. The Commission should also consider revising proposed Section 1.32(d) regarding electronically submitted documents to require such submission in a "tamper-proof format, to the extent practicable or unless otherwise requested by a presiding officer."

2. ***Approval of Forms.*** The proposed modifications would remove forms from the rules. In particular, the specific information requirements contained at Sections 3.501 (relating to water/wastewater certificates) and 3.601 (relating to registration of securities) would be eliminated. 52 Pa. Code §§ 3.501, 3.601. Instead, forms would be made available by the Secretary and on the Commission's website.

While the Practitioners' Group appreciates the Commission's need for flexibility in adopting and modifying forms, the Group is concerned that forms could be used to establish binding norms, *i.e.* regulations, in circumvention of the Commonwealth Documents Law, 45 P.S. §§ 1102-1602, and the Regulatory Review Act, 71 P.S. §§ 745.1-745.15.

At a minimum, the public should be afforded notice and an opportunity to comment before a form is adopted. Moreover, the authority to approve a form should not be delegated to the Staff level. The Commissioners themselves should act upon the form at Public Meeting. By doing so, the Commission will protect due process interests and provide additional levels of review in order to improve the ultimate quality of the forms.

3. ***Internet Broadcast of Public Meetings.*** Although this matter is not addressed in the Commission's proposed rulemaking, the Practitioners' Group believes the Commission should consider video broadcasting of its public meetings live on the Internet. Video broadcasting ("webcast") of meetings using the Internet is not technologically difficult. A local school district has webcasted all of its public meetings since 1999.[1] The FCC webcasts its meetings. A separate page could be added to the Commission's website which would be activated with the live telecast on the day of a scheduled public meeting. The school district broadcasts its meetings using fixed cameras in the ceiling of the room which do not disrupt the board meeting. Webcasting the Commission's meetings would allow people unable to travel to Harrisburg to actually see and hear the public meetings and would raise the Commission's visibility among the regulated community.

[1] The West Shore School District located in Lewisberry, PA. The district broadcasts both its study sessions and board meetings on a page of its website located at www.wssd.k12.pa.us/.

4. ***Consistent Use of Numbers.*** The Practitioners' Group observes that the use of numbers throughout Chapters 1, 3 and 5 of Title 52 are sometimes stated in numeric form and other times stated in Arabic/written form. For consistency, it is suggested that numbers appear in a consistent format throughout.

5. ***"Mailing" v. "Post Office" Address.*** The Practitioners' Group observes that the terms "mailing address" and "post office address" both appear throughout Chapters 1, 3 and 5 of Title 52. While the proposed modifications have added "mailing" to address in some instances, other uses of the term "post office address" remain. For consistency, it is suggested that term appear in a consistent format throughout. It is suggested that the term "mailing address" as in Section 1.24(b)(2)(i)(A) prevail, and that "post office address" in Sections 1.35(a) and 5.12(a)(4)(iii) be so modified.

6. ***Use of Bureau of Consumer Services Informal Decisions.*** The Practitioners' Group recommends that the Commission specifically address the propriety of attaching a Bureau of Consumer Services (BCS) Decision on Informal Complaint to a formal complaint appealing the decision or to the Respondent's responsive pleading to the formal complaint. The experience of the Practitioners' Group suggests that while some presiding officers in a formal proceeding specifically request that a copy of the BCS decision be provided, others have indicated displeasure with the attachment of the decision, citing to the *de novo* nature of the appeal. This rulemaking provides the Commission an opportunity to provide clarity and direction on this issue.

7. ***Systematic review of rules.*** The Commission should make a conscious attempt to revise its rules of practice and procedure on a more frequent basis. In this way, the Commission can avoid lengthy and time-consuming rulemaking proceedings such as the current one. The Practitioners' Group recommends that the Commission establish a standing "Rules Committee," consisting of Commission attorneys, public advocates, and private practitioners, that would report to the Commission on an annual basis. The Committee would be able to recommend changes as needed and in a timely fashion. The Commission could look to the Environmental Hearing Board for an example. *See* 35 P.S. § 7515.

Specific Section Comments

8. ***Section 1.8 ("Definitions").*** The definition of "Mediation" is overly optimistic. While a mutually acceptable resolution is desirable, it is not always achievable. Recommended language: "*Mediation* – An informal, non-adjudicative Commission process through which a neutral third party (the mediator) assists the parties in their attempt to reach a mutually acceptable resolution."

9. ***Section 1.11 ("Date of Filing").*** It is suggested that subsection (a)(1-4) be separated by semi-colons with "or" after (3).

10. ***Section 1.15(2)(b) ("Extension of time and continuances").*** This Section could be condensed by removing "timely filed with the Commission" at line 4 and replacing it with "filed at least 5 days prior to the hearing date." The final sentence could then be deleted.

11. ***Section 1.21(d) ("Appearance").*** This Section refers to "informal proceedings brought under Chapters 56 and 64." However, the term "informal proceeding" has never been defined. Upon review of Sections 3.111 to 3.113 of Title 52, it is suggested that the term intended is "informal *complaint*" rather than "informal proceeding" since Section 3.113 suggests that the term "informal proceeding," as set forth in the title to Subchapter B, also encompasses informal investigations, which are unrelated to standards and billing practices under Chapter 56 and 64. Moreover, if "informal complaints" is a reference to complaints filed with the Bureau of Consumer Services," then that nexus should be expressed. Whether informal proceedings or informal complaints, the term should be more specifically defined given the Commission's inclination to permit representation by other than licensed attorneys in such matters.

12. ***Section 1.22 ("Appearance by attorney or certified legal intern").*** In an apparent oversight, Section 1.22(a) suggests that all persons shall be represented by an attorney, precluding the *pro se* representation described in Section1.21(a). Recommended language: "Subject to the provisions of Section 1.21, an attorney...."

13. ***Section 1.24(a) ("Notice of appearance or withdrawal").*** A *pro se* individual's change of address must be reported to the Secretary. The individual should also be required to notify other active parties. Recommended language: "A change in address which occurs during the course of a proceeding shall be reported to the Secretary and active parties promptly."

14. ***Section 1.24(b)(1) ("Notice of appearance or withdrawal").*** The Practitioners' Group does not support the proposed rule that only the attorney who actually signs the initial pleading is

considered to have entered an appearance. This departure from traditional Commission practice would create unnecessary delay and confusion. In many instances, clients (particularly public utility clients) indicate in correspondence or other filings who their attorneys are. In the vast majority of cases, there is no confusion. In the case where a client mistakenly lists an attorney, the situation easily can be rectified by the client or attorney filing a letter of clarification. By requiring an actual signature, the Commission may also be creating an obstacle to electronic filing. Most electronic filings systems do not require an actual signature.

If the Commission elects to maintain the proposed signature requirement, the Commission should clarify that the attorney's co-counsel should be considered to have entered an appearance as well. Recommended language: "An attorney who signs an initial pleading, as well as the attorney's listed co-counsel, shall be considered to have entered an appearance in that proceeding."

15. ***Section 1.24(b)(2)(ii)(B) ("Notice of appearance or withdrawal").*** An attorney's change of address must be reported to the Secretary. The attorney should also be required to notify other active parties. Recommended language: "A change in address which occurs during the course of the proceeding shall be reported to the Secretary and active parties promptly."

16. ***Section 1.25 ("Form of notice of appearance").*** This provision should be clarified to indicate whether a request for an electronic copy is in place of, or in addition to, a request for service by a hard copy. In our view, attorneys should have the option to receive both electronic service and hard copy service, if technically feasible. In this regard, the form directs an attorney to "CHECK ONE" of three options: hard copy, electronic copy, or no copy. Deleting the

"CHECK ONE" requirement will enable attorneys to indicate their request for a hard copy, electronic copy or both. In addition, the form of "Notice of Appearance" does not request an attorney's facsimile number. All other requests for contact information within the proposed regulations include a request for a facsimile number, and the form of the Notice of Appearance should be consistent. Recommended language: Delete "CHECK ONE" and include a line after "Telephone Number (including area code)" for "Facsimile Number (including area code)."

17. ***Section 1.31(b) ("Requirements for documentary filings").*** The use of the term "exhibits" in the first sentence may lead to confusion. In some instances, it may be more appropriate to refer to an attached document as an "attachment" or "appendix." Some discretion should be left to practitioners so that they are able to label attached documents in the most logical manner. Recommended language: "Copies of documents relied upon in the pleadings shall be identified and attached."

18. ***Section 1.31(c) ("Requirements for documentary filings").*** Within the identifying information, since it is believed that the terms "title" and "caption" are intended to refer to different information, subsection (c)(2) should reference the caption of the proceeding and subsection (c)(3) should reference the title of the document. Recommended language for (c)(2): "The caption of the proceeding before the Commission." Recommended language for (c)(3): "Within the title of the document, ..."

19. ***Section 1.36 ("Verification").*** The change proposed in this section to permit a verification by an authorized company employee is a good modification but it should also be extended to

affidavits. The affidavit form contained in this section should be modified to add language that the affiant is either an officer of the corporation or authorized to provide the affidavit on behalf of the corporation. This modification can be made to the affidavit form by the use of this language within the parenthetical on the second and third lines of the proposed affidavit form. (I am authorized to make this affidavit on behalf of _____ corporation, being the holder of the office of _____, with that corporation, and that, or I am an employee of _____ corporation and have been authorized to make this affidavit on its behalf, and that...). The Practitioners' Group also recommends a minor modification to the last sentence of proposed Section 1.36 which now states "When verification is permitted, notarization is not necessary." The use of the word "permitted" suggests that there is a formal requirement for the use of a verification in lieu of an affidavit. To the best of our knowledge, there is no specific provision in the Commission's rules directing the use of a verification or an affidavit in specified circumstances. To avoid any confusion on this issue, we recommend that the word "permitted" be removed from this sentence and the term "utilized" be used instead.

20. ***Section 1.38 ("Rejection of filings").*** The Commission indicates that it is adding this section to conform to existing practice. However, the phrase "delinquent in its regulatory obligations" is extremely vague. It is unclear whether this refers only to outstanding fines or assessments, or is intended to encompass other unspecified matters. The phrase also does not include any standard of materiality. In our experience, the Commission has never rejected a filing due to minor delinquencies in payments of fines or assessments. In addition, if the Commission is going to codify standards for rejection of filings, the Commission should identify the reasons for rejection, and should establish a time limit for Commission action. Such

provisions currently exist with respect to Commission action to reject the filing of a tariff or tariff supplement. *See* 52 Pa. Code § 53.51(c). Finally, if a filing is rejected under this provision, the filing entity should be able to refile, upon curing the noncompliance or deficiency, without repayment of any necessary filing fee. The following revised language is suggested:

> The Commission may reject a filing if it does not comply with any applicable statute, regulation or order, or if the filing utility is otherwise materially delinquent in payment of fines or regulatory assessments. In the event a filing is rejected pursuant to this section, the Secretary will notify the sender within 10 days after the filing and will, in the notice, set forth specifically the reasons for rejection. Upon curing any noncompliance or deficiency, the sender may refile the filing without payment of additional filing fees. This section shall not apply to perfection of tariff filings, which are subject to the provisions of 52 Pa. Code § 53.51(c).

21. ***Section 1.53(b)(1) ("Service by the Commission").*** As proposed, this section excludes service by mail to a person's residence (for example, the residential address of a *pro se* complainant). It also references the "initial pleading" which should be clarified to mean the person's initial pleading, which could be a responsive or other subsequent pleading to the pleading that initiated the proceeding. Moreover, even a person's residence, principal office or place of business may not necessarily be the address provided at the time the document was filed. Recommended language: "*First Class Mail.* Service may be made by mailing a copy thereof to the person to be served, addressed to the person and at the residence, principal office or place of business designated in the person's initial pleading, submittal or notice of appearance. [at the person's principal office or place of business.]"

22. ***Section 1.56(a)(5) ("Date of service").*** This provision should be clarified to avoid confusion. Recommended language: "The document is transmitted electronically as provided in § 1.54 (relating to service by a party) prior to 4:30 p.m. local time."

23. ***Section 1.59(b) ("Number of copies to be served").*** Given the proposed revisions to the term "parties," this section should specifically indicate that documents need only be served on active parties. Recommended language: "The following number of copies of documents shall be served on other active parties in a proceeding: ...."

24. ***Section 1.76 ("Tariffs, minutes of public meetings and annual reports").*** The reference in this section to the "Office of the Secretary" should be change to "Secretary's Bureau" and "business hours" should be changed to "office hours" to be consistent with Sections 1.6 and 1.86. Recommended language: "Tariffs, minutes of public meetings and annual reports shall be available for public inspection and copying upon request to the Secretary's Bureau during the Commission's office hours."

25. ***Sections 3.1, 3.2, 3.3, 3.4 & 3.5 ("Emergency relief").*** These sections continue to refer to the "Director of Operations." While the Public Utility Code refers to the "Director of Operations," 66 Pa. C.S. § 305, the position is, and has been, commonly referred to as the "Executive Director." In order to avoid confusion (particularly among practitioners who are not familiar with the Commission management system), either the Sections should be changed to refer to the "Executive Director" or the "Executive Director" should henceforth be referred to as the "Director of Operations." Consistency in the use of terms is important.

In addition, the Commission has a "Deputy Executive Director." These sections should be amended to reflect whether the "Deputy Executive Director" (or "Deputy Director of Operations") has the authority to issue an emergency order.

26. ***Sections 3.111-3 ("Action on informal complaints").*** At the present time, BCS decisions on informal complaint are not always entered in written form. Rather, in some instances, BCS matters are "verbally closed" by investigators. It would be helpful if the BCS would enter and serve its decisions on informal complaint in written form in all circumstances. It is suggested that this be expressly stated under "Resolution of informal investigations" at Section 3.113.

27. ***Section 3.501 ("Certificate of public convenience").*** Subsection (a) indicates that the provisions of this section apply to applications for certificates of public convenience as a new supplier. However, the references in subsection (c) include applications involving existing utilities. The word "new" should be stricken from subsection (a).

28. ***Section 5.14 ("Applications requiring notice").*** The revised section removes a list of all the applications in the existing section which the Secretary would be required to provide notice on and substitutes a general provision for notice in the *Pennsylvania Bulletin* and additional notice as directed by the Secretary. Relying upon the Secretary's discretion for notice requirements could lead to inconsistent notice requirements and result in inadequate notice of important applications which could prejudice parties and lead to litigation. Concerns of this type were the reason that the existing regulation contained a list of applications and a specification of the type of public notice required. The Practitioners' Group believes listing the types of application

requiring notice will provide certainty to practitioners and the public concerning public notice of applications. The Practitioners' Group therefore submits that the section should continue to specify the types of notice required for particular applications with the addition of requiring other notice, as applicable (for example, a CLEC application for authority in rural service territory requires publication pursuant to Commission order).

29. ***Section 5.22(a)(5) ("Content of formal complaint").*** It would be helpful if it was specifically set forth in the formal complaint whether it was an appeal of an informal complaint. Recommended language: "A clear and concise statement of the act or omission being complained of, including whether it is an appeal of an informal complaint."

30. ***Section 5.44 ("Petitions for appeal from actions of the staff").*** The proposed modifications to this section add additional detail for the procedure to appeal an action of the Staff. The Practitioners' Group recommends that an additional sentence be added to subpart (b) indicating that the Commission will act on the petition and address the Staff action at a public meeting. This additional sentence is designed to completely address the procedure for such appeals within this section. Since actions of the Staff exercising authority delegated by the Commission can have significant impacts on parties subject to the Commission's jurisdiction, it is appropriate that this section indicate that the Commission will act upon the petitions and review the actions of the Staff exercising delegated authority of the Commission.

31. ***Section 5.52(a) ("Content of a protest to an application").*** This provision contains a typographical error. Recommended language: Delete "shall," consistent with the Commission's apparent preference to utilize "must" in its regulations.

32. ***Section 5.53 ("Time of filing").*** The last sentence of this proposed section states that if no protest time is specified in the published notice of an application, then a protest shall be filed within 60 days of the publication date. In the Practitioners Group view, 60 days is too long for a protest period after publication when no date is specified in the notice. The proposed 60-day period could simply delay the administrative processing of applications in circumstances where the application is ultimately unprotested. A more reasonable period would be 30 days after the publication date if no date is otherwise specified in the notice.

33. ***Section 5.62(b) ("Answers seeking affirmative relief or raising new matter").*** Practitioners have been advised by Administrative Law Judges that a "Notice to Plead" should be attached to "New Matter" -- particularly in *pro se* complainant cases. This subsection contains no such requirement. If there is in fact going to be a requirement for a "Notice to Plead," it should be contained in the rules. Recommended language: "New matter shall be accompanied by a 'Notice to Plead'." Similar language may also be warranted with regard to "Preliminary Objections" and "Motions." *See* 52 Pa. Code § 5.101.

34. ***Section 5.66 ("Answers to petitions to intervene").*** Given the proposed revisions to the term "parties," this section should specifically indicate that answers may only be filed by active parties. Recommended language: "An active party may file an answer ...."

35. ***Section 5.94 ("Withdrawal of pleadings in a contested proceeding").*** Given the proposed revisions to the term "parties," this section should specifically refer to "active parties." It is recommended that where "participant" or "participants" has been changed to "party" or "parties," that the word "active" precede it.

36. ***Section 5.101 ("Preliminary Objections").*** The existing section requires that an answer be filed with the preliminary objections except when a motion for a more specific pleading is filed. That requirement is removed in the current proposal. Moreover, the requirement that all preliminary objections to a complaint or other pleading be filed at the same time is also removed. The Practitioners' Group is not aware that the current practice of requiring an answer to be filed with preliminary motions has caused any party undue hardship. The Practitioners' Group believes the requirement should be retained to file an answer with the objections in most circumstances with the existing exception. Moreover, a party should be required to file all of its preliminary objections at the same time or waive them. These provisions should be retained in the proposed section to avoid the possibility that a party with substantial resources could tie up a proceeding by repeatedly filing preliminary objections to a complaint and avoid filing an answer. Permitting the possibility of such behavior in the revised section could substantially add to the expense and delay in filing actions with the Commission and should be avoided.

37. ***Section 5.102 ("Motions for summary judgment and judgment on the pleadings").*** This rewritten section appears to confuse motions for summary judgment with judgment on the pleadings by combining the two with a general procedure. This section should more completely

define the difference between the two motions. Proposed subsection (c) of this section has an adequate description of the requirements for a motion for summary judgment (*i.e.* the motion is supplemented by discovery responses and affidavits). Additional language should be added to the section to indicate that a motion for judgment on the pleadings relies on the pleadings filed by the parties and the motion cannot be supplemented by discovery responses or affidavits alleging additional facts.

38. ***Sections 5.223 & 5.224 ("Conferences").*** Both of these sections address matters to be resolved at prehearing conferences. It is not unusual at prehearing conferences that the longest discussion concerns proposed procedural schedules for the case. Although this may be unavoidable in some circumstances, a better practice would be to have the parties discuss potential scheduling before the prehearing conference. For purposes of efficiently concluding conference discussions on proposed schedules, a subsection should be added that requires the parties to cooperatively develop a procedural schedule and present it to the ALJ in advance of the prehearing if possible.

39. ***Sections 5.231 & 5.232 ("Offers of settlement" & "Settlement petitions").*** These provisions remove the references to stipulations as a possible settlement document. This proposed amendment is inconsistent with current practice since stipulations refer to partial settlements between parties in contested proceedings. See e.g. Petition of Duquesne Light Company for Approval of Plan for Post-Transition Period Provider of Last Resort Service, Commission Dkt. P-00032071 (Order entered August 23, 2004) (Commission adopts in part

partial settlements styled as stipulations in this POLR proceeding). The term "stipulation" should be retained in these sections.

40. ***Section 5.232 ("Settlement petitions").*** Subsection (d)(2) of this revised section states that an ALJ shall hold a hearing on a settlement petition if a timely objection is filed and a hearing is necessary in the public interest. This proposal misstates the current law on when hearings on contested settlements are required. See Petition for Approval of PECO Energy Company's Market Share Threshold Bidding/Assignment Process, Commission Dkt. P-00021984, et seq. (Order entered February 6, 2003) (Commission determines that hearing is unnecessary when settlement objections raise issues of policy and law). An ALJ should hold a hearing on a proposed settlement only if a timely objection raises an issue of material fact to be resolved by hearing or if the ALJ determines that a hearing is necessary in the public interest. Objections to settlements which raise only questions of policy or law should not require ALJs to conduct evidentiary hearings but can be resolved in the ALJ's decision.

41. ***Section 5.242 ("Order of procedure").*** This section should be more detailed on the testimony that can be presented by parties. Case parties have sometimes abused the opportunity to present responsive testimony at the end of evidentiary proceedings by orally presenting new testimony issues and exhibits into the record, often on the last day of hearing, which go beyond responding to other parties' testimony. Language should be added which generally addresses parties' rights to present rebuttal, surrebuttal and rejoinder testimony. The Practitioners' Group recommends that the following language be added to the end of subsection (c). "The party having the burden of proof shall be permitted by the presiding officer to present direct, rebuttal

and rejoinder testimony. The other parties shall have the right to file direct, rebuttal and surrebuttal testimony. Rebuttal, surrebuttal and rejoinder testimony shall respond to the previous testimony of other parties and not introduce new issues into the proceeding." Additional language should also be added to subsection (c) to include the list of pleadings that can be dismissed because of a party's obstinate behavior to include interventions and protests.

42. ***Section 5.243 ("Presentation by parties").*** Subsection (f) proposes a procedure if a party conducts friendly cross-examination of a witness. The Practitioners' Group submits that friendly cross-examination usually is repetitious of points made in the witness's direct testimony and generally provides no benefit to the Presiding Officer or Commission in deciding the case. Language should be added to this section which states that friendly cross-examination should be generally prohibited or discouraged. The procedure contained in the existing subsection (f) can be retained with the condition that if friendly cross-examination occurs, then the procedure identified could be followed as a remedy.

43. ***Section 5.245 ("Failure to appear, proceed or maintain order in proceedings").*** Revised subsection (c) allows a presiding officer to punish a party's obstructive behavior by taking action which includes dismissal of complaints, applications or petitions if the action is that of the moving party. This section should be broadened to include dismissal of a party from the case for obstructive behavior if that party is an intervenor.

44. ***Section 5.324(a) ("Discovery of expert testimony").*** There seems to be an inherent conflict between the proposed addition to this section and the existing exclusionary language of Section 5.323(a).

45. ***Section 5.341(b) ("Written interrogatories to a party").*** Given the proposed revisions to the term "parties," this section should specifically indicate that discovery need only be served on active parties. Recommended language: "The party propounding interrogatories shall serve a copy on the other active parties and shall file a certificate of service with the Secretary."

46. ***Section 5.342 ("Answers or objections to written interrogatories by a party").*** Subsection (a)(6) has added a new requirement that answers to interrogatories be verified. Particularly in rate proceedings, answers to interrogatories are sponsored by many individuals, and often a number of responses are filed at the same time. It would be unwieldy to require each individual to provide a signed verification each time responses are served, and yet no single individual is likely to have sufficient knowledge to sign a verification covering all responses. Rather than require verification, it is suggested that subsection (a)(4) be revised as follows:

> (4) Answer each interrogatory fully, completely and truthfully unless an objection is made.

Subsections (d) and (d)(1) appear to contain several inadvertent contradictions. Subsection (d) provides for filing answers and objections within 15 days of service for rate proceedings and 20 days for other cases. However, subsection (d)(1) states that objections are to be filed within 10 days of service for rate cases and 30 days for other cases. The current rule, which provides for objections to be filed within 10 days of service in all cases, should be retained

to allow discovery to proceed in an orderly and prompt fashion. In no event should the time for serving objections be later than the date for serving answers.

47. ***Section 5.423 ("Orders to limit availability of proprietary information").*** Another subsection should be added to this section concerning requests for a protective order for document submittals in non-adversarial filings such as applications. Another subsection should be added called "Proprietary Information in Non-adversarial Proceedings" which would provide for applications for protective orders in cases involving matters such as unprotested applications or petitions which would be administratively decided without hearings. The protective order application could be referred to the Office of ALJ for the issuance of a protective order while the matter is being considered by the Commission's advisory Staff. If any subsequent protestant or intervenor objects to the request for proprietary treatment, the ALJ could decide the protective order apart from the Staff's review of the application.

48. ***Section 5.502 ("Filing and service of briefs").*** Subsections (b) and (c) define the types of briefs in nonrate (initial and response) and rate (main and reply) proceedings, respectively. Subsection (d), deadlines, inadvertently removes references to the filing of initial briefs. The subsection should read:

> (d) Deadlines. Initial briefs, main briefs, responsive briefs and reply briefs must be filed and served within the time fixed by the presiding officer. If no specific times are fixed, initial briefs or main briefs shall be filed and served within 30 days after the date of service of notice of the filing of the transcript and responsive briefs or reply briefs shall be filed within 50 days after date of service of the notice of the filing of the transcript.

49. ***Section 5.535 ("Replies").*** This section guarantees a party the right to file a reply to an exception. In some cases, parties have filed "replies to exceptions" which do not reply to adverse arguments of other parties but actually adopt and support arguments of other parties with the same interest in the proceeding. Since replies to exceptions are usually the final pleadings permitted in a case, this practice denies opposing parties a right and opportunity to further respond to this adoption and support of other parties' arguments. See Petition of Core Communications, Inc., Commission Dkt. A-310922F7000, 2003 Pa. PUC LEXIS 21, *9 (Order entered May 27, 2003) (Commission strikes new issues raised in reply to exceptions which denied other parties opportunity to respond). Additional language should be added to this section that, while a party may indicate support of another party's exception, the reply shall not raise new arguments in support thereof.

Conclusion

The Practitioners' Group thanks the Commission for its efforts in updating its rules of practice and procedure and for providing this opportunity to submit comments. In general, the proposed revisions will help to improve the rules; however, the Practitioners' Group respectfully requests consideration of the comments provided above.

Respectfully submitted,

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DATED: December 23, 2004

(2)

Original: 2441

COMMONWEALTH OF PENNSYLVANIA

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December 23, 2004

HAND DELIVERED

James J. McNulty, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

Re: Proposed Rulemaking for Revisions 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

Dear Secretary McNulty:

I am delivering for filing today the original plus fifteen copies of the Comments on behalf of the Office of Small Business Advocate in the above-captioned matter.

If you have any questions, please contact me.

Sincerely,

William R. Lloyd, Jr.

William R. Lloyd, Jr.
Small Business Advocate

Enclosures
cc: W. Blair Hopkin, Esquire
Law Bureau

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Proposed 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

COMMENTS ON BEHALF OF THE OFFICE OF SMALL BUSINESS ADVOCATE ON THE PROPOSED RULEMAKING

INTRODUCTION

By Order entered May 10, 2004, the Pennsylvania Public Utility Commission ("Commission" or "PUC") adopted a proposed rulemaking to revise and update the Commission's rules of practice and procedure at 52 Pa. Code Chs. 1, 3, and 5.

Ordering paragraph 5 invited written comments on the proposed rulemaking and set the deadline for those comments as 60 days from the date of publication of the Order in the Pennsylvania Bulletin. On October 30, 2004, the Order was published in the Pennsylvania Bulletin, Volume 34, No. 44 (34 Pa. B. 5895). Therefore, the deadline for comments is December 29, 2004.

In accordance with ordering paragraph 5, the Office of Small Business Advocate ("OSBA") submits the following comments on the proposed rulemaking:

COMMENTS

Electronic Filing

1. The Commission's Executive Summary states that "the rules are prepared to accommodate electronic filing once such a system becomes available." Supplementing service of written documents with an e-mail copy has become part of standard procedure for the utility bar. However, the Commission should not implement mandatory electronic

filing without a separate rulemaking to resolve policy questions and address practical problems, such as the following:

a. Although the utility bar is accustomed to exchanging documents by e-mail, attorneys who do not practice regularly before the Commission may not be. In fact, many of these attorneys may be located in parts of the Commonwealth without high-speed Internet access. Imposing an electronic filing requirement on such attorneys and their clients could increase the litigation costs for small business customers and put those consumers at an unfair disadvantage in proceedings against utilities.

b. Even within the utility bar, it is occasionally impossible to open documents sent by e-mail. Furthermore, in major cases, lengthy documents frequently overload the e-mail in-box.

c. If a utility is permitted to file a general rate case electronically without providing written copies to other parties, the utility will be able to shift a substantial copying cost onto the OSBA and its expert witnesses.

d. Under programming in common use, it is possible for a recipient of an electronic filing to discover the edits an adverse party made in the filing prior to transmission. That possibility raises potential problems regarding privileges applicable to the attorney-client relationship and to an attorney's work product.

e. If electronic documents are to be distributed to the parties during the course of a proceeding, the file names of those documents must be clear and helpful. Naming a document in a proprietary, or otherwise obscure, manner may be clear and helpful to the party which produces the document, but the file name will not mean anything to others involved in the proceeding.

Representation before the Commission

2. Under current 52 Pa. Code §1.21(a), "individuals" are allowed to represent themselves before the Commission. "Individuals" include businesses which are "sole proprietorships." Current Section 1.21(b) requires "partnerships" and "corporations" to be represented by counsel but does not impose a similar requirement on "sole proprietorships." Proposed Section 1.21(b) deletes the language specifically requiring that "partnerships" and "corporations" be represented by counsel and substitutes language requiring a "person" in an adversarial proceeding to be represented by counsel unless the person is exempted from that requirement by Section 1.21(a). Presumably, the Commission intends to continue allowing "sole proprietors" to represent themselves. Therefore, to avoid any confusion which may arise in a proceeding involving a "sole proprietorship," the OSBA recommends that Section 1.21(a) be amended as follows: "Individuals**, including sole proprietorships,** may represent themselves."

3. Under current Section 1.24(b)(1), an appearance is entered on behalf of multiple attorneys listed on the initial pleading, even though only one of them actually signs the pleading. In contrast, under proposed Section 1.24(b)(1), an appearance is entered only by the attorney who actually signs the initial pleading. Under current practice, any of the multiple attorneys listed on the initial pleading may represent the party at a subsequent prehearing conference or public hearing without filing a separate notice (under Section 1.25) entering an appearance. The Commission may intend to accept completion of the appearance sheet as adequate to enter an appearance without the need to make any other filing with the Commission. However, to avoid any confusion which may arise, the OSBA recommends that the Commission either maintain the status

quo or include language specifying that filing the form described in Section 1.25 is unnecessary if the attorney completes the appearance sheet. If the Commission does not intend the appearance sheet to be a substitute for notice under Section 1.25, the OSBA recommends an amendment which automatically enters the appearance of each attorney listed on the initial pleading, regardless of which one signed the pleading.

Documentary Filings

4. Proposed Section 1.31(a) requires all pleadings to be divided into numbered paragraphs. However, a similar requirement in current Section 1.31(a) is routinely ignored. In many instances, a party supplements a numbered-paragraph pleading with a lengthy unnumbered preamble, the content of which is closer to a brief than to a pleading. In some other instances, a party's pleading actually includes no numbered paragraphs. Pleading by unnumbered paragraphs complicates the drafting of responses and increases the risk that the responding party will inadvertently fail to address some alleged fact or legal argument which the presiding officer or the Commission ultimately deems to be critical. Accordingly, the OSBA recommends that proposed Section 1.31(a) be amended, either to prohibit pleading by unnumbered paragraph or to address with specificity how a party is to respond to a pleading with extensive material in unnumbered paragraphs.

5. Proposed Section 1.31(b) requires copies of documents relied upon in a pleading to be attached as exhibits unless the documents are "writings or orders already of record with the Commission." The Commission presumably does not intend to require parties to attach copies of reported court decisions which are readily available in bound case reporters or through electronic legal research services. Accordingly, the OSBA

recommends that proposed Section 1.31(b) be amended to make clear that reported court opinions do not need to be attached to a pleading as long as the pleading provides complete citations.

6. Under current Section 1.33(b), a document previously filed with the Commission may be incorporated by reference, provided that the document was filed within the last 20 years. If the document was filed more than 20 years ago, it may be incorporated by reference only if the party ascertains that the document continues to be in the Commission's active records. In contrast, proposed Section 1.33(b) prohibits incorporation of any document by reference (regardless of when filed) unless the party ascertains that the document is in the Commission's active records. The OSBA appreciates the Commission's desire to archive or destroy older documents. However, requiring parties to contact the Commission to confirm that even a recently filed document remains in the active records will impose an additional administrative burden on the Commission as well as on the parties. Therefore, the OSBA recommends that Section 1.33(b) be amended to specify some number of years (shorter than 20) for which parties may presume that a document continues to be in the active records.

Service of Documents

7. Proposed Section 1.53(b)(1) reads as follows: "***First class mail.*** **Service may be made** mailing a copy thereof to the person served . . . ." To correct an apparent oversight, the OSBA recommends that the word "**by**" be inserted after the word "**made.**"

8. Proposed Section 1.56(a)(5) provides for electronic service by "4:30 p.m. local time." However, it is unclear whether service is accomplished simply by sending an

e-mail by 4:30 P.M. or whether service requires that a lengthy or complex document be sent in time for the recipient to download, open, and reproduce it by 4:30 P.M. It is also unclear whether "local time" refers to the sender's time or the recipient's time. Accordingly, the OSBA recommends that the language be clarified.

Water or Wastewater Utility Proceedings

9. Current Section 3.501(d) requires that an application for a certificate of public convenience be served upon (1) municipalities; (2) other local utilities; and (3) the OSBA, the Office of Consumer Advocate, and the regional office of the Department of Environmental Protection. The proposed rulemaking changes Section 3.501(d) to Section 3.501(e) and renumbers current (d)(1) and (d)(2) as (e)(1)(i) and (e)(1)(ii). However, the proposed rulemaking neither renumbers nor repeals current (d)(3). Therefore, the OSBA recommends that the Commission insert and renumber current (d)(3) as (e)(1)(iii).

10. Current Section 3.502(c) specifies that a protest to an application for a certificate of public convenience is subject to motions, as provided in current Section 5.101. However, the proposed rulemaking transforms current Section 5.101 from a provision dealing with preliminary motions into a provision dealing with preliminary objections. Therefore, the OSBA recommends that Section 3.502(c) be amended to conform with the changes in Section 5.101.

Pleadings and other Preliminary Matters

11. Proposed Section 5.1(a)(5) eliminates confusion under the current regulations by changing "preliminary motions" to "preliminary objections." Proposed

Section 5.61 authorizes answers to preliminary objections. Therefore, the OSBA recommends that Section 5.1(a)(5) be amended to make clear that "answers to preliminary objections" are allowable pleadings.

12. Proposed Section 5.52(a) reads as follows: "A protest to an application shall **[on its face set] must** : . . ." To correct an oversight, the OSBA recommends that "shall" be included within the brackets.

13. Proposed Section 5.61(b)(1) requires an answer to any pleading to be set forth in numbered paragraphs corresponding to the numbered paragraphs of the pleading to which the answer is the response. However, similar requirements in current Sections 1.31(a) and 5.61(b)(1) are routinely ignored. In many instances, a party supplements a numbered-paragraph pleading with a lengthy unnumbered preamble, the content of which is closer to a brief than to a pleading. In some other instances, a party's pleading actually includes no numbered paragraphs. Pleading by unnumbered paragraphs complicates the drafting of responses and increases the risk that the responding party will inadvertently fail to address some alleged fact or legal argument which the presiding officer or the Commission ultimately deems to be critical. Accordingly, the OSBA recommends that proposed Section 5.61(b)(1) be amended to relieve a party of having to answer a pleading, or a part of a pleading, which is set forth in unnumbered paragraphs.

14. Proposed Section 5.61(b)(5) requires that a copy of a document be included with an answer if the answer relies upon the document. In contrast, Section 5.21(b) and proposed Section 5.22(a)(7) do not require a document to be included with a complaint if that document is on file with the Commission and is appropriately identified

in the complaint. Therefore, the OSBA recommends that proposed Section 5.61(b)(5) be amended to conform with Section 5.21(b) and proposed Section 5.22(a)(7).

15. Proposed Section 5.75(d) reads as follows: "**[No petitions] Petitions** to intervene may be filed or will be acted upon during a hearing unless permitted by the Commission or presiding officer after opportunity for all parties to object." The Commission presumably intends to allow a person to file and obtain action on a petition to intervene unless the Commission or the presiding officer dictates otherwise. However, as stated, the proposed subsection appears to be contradictory, in that the language allows petitions to be filed or acted upon unless permitted by the Commission or the presiding officer. Accordingly, the OSBA recommends that "permitted" be changed to "prohibited."

16. Under proposed Section 5.101, the party initiating a pleading has the option of filing an answer to preliminary objections within 10 days (under §5.101(d)) or filing an amended pleading within 20 days (under §5.101(c)). The OSBA recommends that the same time period (preferably, 20 days) be allowed for answers and amended pleadings.

17. The second sentence of proposed Section 5.101(d) specifies that a preliminary "motion" must contain a notice to plead. In order to avoid confusion, the OSBA recommends that the word "motion" be replaced by the word "objection."

18. Under proposed Section 5.101(f)(1), a party whose pleading is stricken because of a preliminary objection has only 10 days to file an amended pleading. However, under proposed Section 5.101(f)(2), a party whose preliminary objection is

overruled has 20 days to plead over. The OSBA recommends that the same time period (preferably 20 days) be allowed in both instances.

19. Proposed Section 5.101(f) specifies that the party filing preliminary objections has no duty to file an answer or any other responsive pleading. However, it is unclear under what circumstances the objecting party has the right to file a responsive pleading. An answer to preliminary objections may contain new matter or legal arguments to which a response is prudent. Therefore, the OSBA recommends that the language be amended to make clear that the party filing preliminary objections has the right to respond to an answer to those preliminary objections. In the alternative, the OSBA recommends an amendment permitting the filing of briefs in support of preliminary objections and briefs in opposition to preliminary objections.

20. Under both current and proposed Section 5.234(a), parties are bound by stipulations with respect to the matters therein. In a proceeding with multiple complainants or multiple intervenors, there is the potential for the petitioner or applicant and one complainant or intervenor to stipulate to a "fact" which the other complainants or intervenors dispute. Accordingly, the OSBA recommends that Section 5.234(a) be amended to make clear that a stipulation is binding on only the parties to the stipulation and not on the non-stipulating party or parties.

21. There appears to be an error in the second sentence of proposed Section 5.235(a). To correct the problem, the OSBA recommends that "shall" be placed outside the brackets rather than within the brackets.

Types of Discovery

22. Proposed Section 5.342(a)(6) requires verification of answers to interrogatories. The purpose of this requirement is unclear. It also is unclear whether verification may be provided by counsel or must be provided by the expert who actually prepares the answer. If the latter is required, a party which utilizes an expert witness who is not in the same city or state as the counsel who serves the answer will be disadvantaged. Specifically, the expert for such a party will have less time to gather the information requested, in that the answer and verification presumably will have to be conveyed to counsel in writing rather than electronically. Accordingly, the OSBA recommends deletion of the verification requirement.

23. Proposed Section 5.349(d) requires verification of responses to requests for documents. The purpose of the verification is unclear, in that the responses are required to state only that inspection and related activities will be permitted. Accordingly, the OSBA recommends deletion of the verification requirement.

24. Under current Section 5.351(a), an on-the-record data request may be made either orally or in writing. In contrast, proposed Section 5.351(a) provides for both oral and written requests but does not make clear that the choice rests with the requesting party. Accordingly, the OSBA recommends that proposed Section 5.351(a) be amended to read as follows: "**[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. A party may make such a request either orally or in writing, in accordance with the following:**"

Witnesses

25. Proposed Section 5.412(f) states that "[w]ritten testimony shall be served upon the presiding officer and **[active participants] parties** in the proceeding in accordance with the schedule established by this chapter." However, the chapter does not establish such a schedule. The OSBA recommends that proposed Section 5.412(f) be amended to state that, as a general rule in all formal proceedings in which the utility has the burden of proof, the utility will file its written direct testimony to be followed sequentially by intervenor direct testimony, rebuttal testimony by all parties, and surrebuttal testimony by all parties. The amendment should provide that this general rule applies unless a party demonstrates to the presiding officer that good cause exists for deviating from the schedule required by the rule. Establishing this general rule would be consistent with 52 Pa. Code § 69.405(a)(2), which sets this same schedule for the filing of testimony in rate proceedings involving amounts of $1 million or less.

Subpoenas and Protective Orders

26. Proposed Section 5.421(c)(4) deletes language requiring notice that an application for a subpoena may be challenged by filing an answer or an objection within 10 days. In order to provide for challenges to subpoenas, the OSBA recommends that the deleted language regarding an answer or an objection within 10 days be restored.

Briefs

27. Section 5.502 spells out many of the requirements for the filing and service of briefs. However, neither current nor proposed Section 5.502 includes the

requirement that a party serve two hard copies of its briefs on each of the other parties. Although that requirement is spelled out in Section 1.59(b)(1), the OSBA is occasionally served with only one copy. In an effort to improve compliance with the requirement to serve two copies of a brief, the OSBA recommends that Section 5.502 be amended to include a cross-reference to Section 1.59(b)(1).

28. Proposed Section 5.502(b) provides for the filing of "initial" briefs and "response" briefs in non-rate proceedings. Proposed Section 5.502(c) provides for the filing of "main" briefs and "reply briefs" in rate proceedings. However, proposed Section 5.502(d) sets filing deadlines for "main briefs, responsive briefs and reply briefs" but does not set a deadline for an "initial" brief. To avoid possible confusion, the OSBA recommends that proposed Section 5.502(d) be amended to address a deadline for the filing of "initial" briefs.

29. The third sentence of proposed Section 5.533(c) contains an apparent typographical error. In order to correct this error, the OSBA recommends that the word "shall" where it appears the first time be placed inside the brackets.

30. The third sentence of proposed Section 5.535(a) contains an apparent typographical error. In order to correct this error, the OSBA recommends that the word "shall" be boldfaced and placed within brackets and that the word "must" be boldfaced.

31. Current Section 5.535(b) appears to conflict with current Section 5.533(e). Specifically, unless the Commission directs otherwise in a particular case, Section 5.535(b) allows last-day filing of reply exceptions by mail or overnight express and recognizes the three-day rule in determining when reply exceptions are due. In contrast, current Section 5.533(e) prohibits last-day filing of reply exceptions by mail or overnight

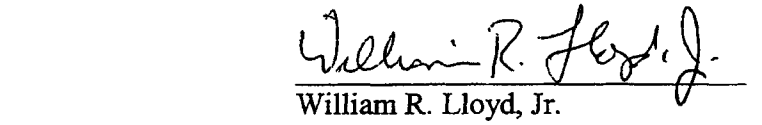
express and the use of the three-day rule unless the Commission orders otherwise. To eliminate this conflict, the OSBA recommends that the sections be amended to provide a uniform default rule.

Reports of Compliance

32. Proposed Section 5.592 makes technical changes regarding compliance filings. The OSBA recognizes the need for a compliance filing in a rate proceeding to include a "clean" copy of the amended pages of the tariff. However, in view of the tight timetable for review of compliance filings in rate cases, the OSBA recommends that, in addition to a "clean" copy, a compliance filing also be required to contain a "redlined" version to assist the non-utility parties in promptly identifying, and analyzing, all of the changes.

WHEREFORE, the OSBA respectfully requests that the Commission amend the proposed rulemaking consistent with the foregoing comments.

Respectfully submitted,



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Dated: December 23, 2004

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Original: 2441

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CHARLES E. THOMAS
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January 14, 2005

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Harrisburg, PA 17105-3265

In re: Proposed Rulemaking for the Revision of Chapters 1, 3 and 5 of Title 52 of the 00020156 Pennsylvania Code Pertaining to Practice and Procedure Before the Commission
Docket No. L-00020156

Dear Secretary McNulty:

Enclosed for filing on behalf of Thomas, Thomas, Armstrong & Niesen are an original and fifteen (15) copies of their late-filed comments regarding proposed revisions to the Commission's Rules of Practice and Procedure. We respectfully request that these comments be accepted nunc pro tunc, and, in support thereof, aver that no party is prejudiced by the acceptance of said filing.

Should you have any questions, please do not hesitate to contact me.

Sincerely,

THOMAS, THOMAS, ARMSTRONG & NIESEN

By

Michael L. Swindler

Enclosures

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BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

Proposed 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

LATE-FILED COMMENTS OF THOMAS, THOMAS, ARMSTRONG & NIESEN REGARDING PROPOSED REVISIONS TO COMMISSION'S RULES OF PRACTICE AND PROCEDURE

The law firm of Thomas, Thomas, Armstrong & Niesen (TTAN), hereby provides the following supplemental[1], late-filed[2] comments regarding the proposed revisions to the rules of practice and procedure of the Pennsylvania Public Utility Commission ("Commission"), as published at 34 *Pennsylvania Bulletin* 5895. The comments herein are intended to further improve the efficiency and effectiveness of the Commission's rules of practice and procedure.

The Commission has gone to great lengths to fashion proposed revisions to its rules of practice and procedure that are intended to better serve the Commission, the utilities, utility practitioners and others. TTAN commends the

[1] The within comments supplement the comments submitted by Thomas, Thomas, Armstrong & Niesen as a participating party in the Practitioners' Group which filed comments on December 22, 2004.

[2] Pursuant to the Proposed Rulemaking Order of the Pennsylvania Public Utility Commission at Docket No. L-00020156 entered May 10, 2004, interested persons were provided 60 days from the date the Order was published in the *Pennsylvania Bulletin* to submit comments. The Order was published in the *Pennsylvania Bulletin* at Volume 34, Number 44, on October 30, 2004. Accordingly, comments were due to be filed on or before December 29, 2004.

Commission for affording interested parties an opportunity to submit further detailed comments to the revisions as set forth in the Commission's proposed rulemaking.

The Commission's consideration of the within comments, although filed slightly beyond the due date for comments to the Commission's Proposed Rulemaking Order, would not prejudice any party or hamper the Commission's efforts to move forward with its formal action to revise the Commission's rules. Rather, an issue regarding the topic of the within comments only recently came to the attention of TTAN which TTAN deems to be of sufficient relevance and importance to pass on to the Commission for its consideration, given the Commission's endeavor to improve the very rules which govern this matter.

Specific Section Comments

1. ***Section 3.602 ("Abbreviated Securities Certificate").*** The scope of the abbreviated procedure should be broadened to include instances where a stock split is declared or a dividend in the form of the utility's stock is issued and there is otherwise no impact on the control of the utility. Both issuances appear to be excellent candidates for inclusion in Section 3.602 due to their relative simplicity and ease of filing and nonexistent impact upon the utility's financial ownership or position. The result would greatly simplify the filing requirements for utilities as well as remove the unnecessary burden of extensive Commission staff review in such matters.

Recommended language:

"(a) *Scope of rule.* The abbreviated procedure of subsections (b) and (c) applies to an issuance or assumption of a security which meets one or more of the following requirements:

(4) The declaration by a utility of a stock split.

(5) The issuance of a dividend by a utility in the form of the utility's stock.

Conclusion

TTAN thanks the Commission for its efforts in updating its rules of practice and procedure and for providing this opportunity to submit further comments. TTAN believes that the within comments represent a practical and reasonable modification of the rules as they currently exist and respectfully request this Commission's consideration thereof.

Respectfully submitted,

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DATED: January 14, 2005