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January 16, 2008

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PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

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

Re: Proposed Rulemaking for the Electronic Filing
of Documents with the Pa. Public Utility Commission
Docket No. L-00070187/57-258

Dear Secretary McNulty:

Enclosed for filing are an original and fifteen (15) copies of the Office of Consumer Advocate's Comments in the above-captioned proceeding pursuant to the Pennsylvania Public Utility Commission's November 17, 2007 notice in the *Pennsylvania Bulletin*.

Sincerely,

Christine Maloni Hoover
Senior Assistant Consumer Advocate
PA Attorney I.D. # 50026

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INDEPENDENT REGULATORY
REVIEW COMMISSION

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

PROPOSED RULEMAKING FOR THE :
ELECTRONIC FILING OF DOCUMENTS : L-00070187
WITH THE PAPUC :

**COMMENTS OF THE
OFFICE OF CONSUMER ADVOCATE**

The Office of Consumer Advocate (OCA) files these Comments in response to the August 30, 2007 Proposed Rulemaking Order which sets forth amendments to the Pennsylvania Public Utility Commission's (PUC or Commission) procedural regulations to accommodate electronic filing. This Order was entered by the PUC on September 10, 2007 and published in the Pennsylvania Bulletin for comment on November 17, 2007 (37 Pa.B. 6112).

I. INTRODUCTION

The OCA supports the Commission's efforts to permit greater use of electronic filing and service. Electronic filing should improve public access to documents, reduce cost, enhance efficiency, and benefit the environment by cutting back on paper copies. The OCA also appreciates the collaborative process used by the Commission to develop the Information Management and Access Project (InfoMAP) and the electronic filing regulations, and the opportunity to participate in that process. The OCA looks forward to continuing to work with the Commission and other stakeholders to resolve the difficult details surrounding the electronic filing process.

The Proposed Rulemaking is a transitional step toward electronic filing by allowing participants in Commission proceedings to submit certain documents electronically without

filing paper copies at the Commission. The Commission will utilize its InfoMAP system to post public documents on the Commission's website that are currently only available in the Secretary's Bureau. Consumers, utilities and practitioners can then access the Commission's website to review the documents.

In the instant rulemaking, the Commission proposes to amend certain procedural regulations in 52 Pa. Code Chapters 1 and 5 to accommodate electronic filing. These regulations relate to administrative practice and procedure as well as to formal proceedings. The OCA generally supports the use of electronic filing as a means of easier access to documents filed with the Commission. In its comments, the OCA will address areas of concern where clarification or modification may be necessary to ensure both public access and user-friendliness. The OCA has three general comments regarding Proposed Rulemaking as drafted and also provides specific comments on certain provisions.¹

II. COMMENTS

A. General Comments

1. Public Access

The Commission has stated that the goal of InfoMAP is to "allow for more efficient access by consumers, utilities and practitioners to documents filed with and produced by the Commission..." 37 Pa.B. 6112. The OCA supports the Commission's efforts to allow anyone to view documents on its website. Although the proposed regulations do not specifically mention such public access, the OCA submits that the Commission should adopt an open-access system

¹ The OCA's proposed amendments/ additions to the regulations are shown with underlines. The OCA's proposed deletions from the regulations are shown with strike-outs.

similar to the ones used in Illinois, Ohio, Indiana and Kentucky.² That is, once a document is posted by the Commission, it should be available to the public on the Commission's website without the need for any special registration or user ID.

The OCA would note, however, that this access must be subject to at least two exceptions. The first exception is for confidential and proprietary information. The Commission-proposed regulations have addressed this issue and, at this time, the PUC will not accept electronic filings of confidential and proprietary information nor post it on the Commission's website.³ The OCA supports this exception. The OCA would also suggest that a second exception is needed for Formal Complaints filed by consumers. Much of the information contained in Formal Complaints filed by individual consumers is also of a sensitive nature. For example, Formal Complaints contain customer contact information such as addresses and telephone numbers, account numbers, bill histories, possible medical histories or financial information and other sensitive or identifying information. Most Complainants would not want this information to be readily available to the general public on the World Wide Web.

While the OCA submits that the Commission should allow the submission of Formal Complaints electronically, these Complaints should not be posted on the Commission's website.⁴ The Commission currently maintains summary information for customer complaints online. The OCA submits that the information that is currently available online—the Complaint docket number, Commission-authored summary of the Complaint, and the name of the utility and the Complainant—should remain all that is publicly available on the Commission's website.

² This open-access format, which does not require enrolling as a user, is currently used by many state commissions. See, e.g. Illinois (<http://www.icc.illinois.gov/e-docket/>); Ohio (<http://dis.puc.state.oh.us/>); Indiana (<http://www.in.gov/iurc/portal/>); Kentucky (<http://psc.ky.gov/sitemap.htm#EC>).

³ See Section 1.32(b)(4) below.

⁴ For further discussion, see Section 1.8 below.

2. Paper Filing

The Commission has stated that “Electronic filing will be optional, rather than mandatory, at the onset....” 37 Pa.B. 6112 (emphasis added). The OCA submits that some form of paper filing option must be retained indefinitely. The OCA is concerned that electronic filing may not be feasible for many customers and urges that paper filing be retained as an option—particularly for *pro se* individual consumers. Many customers who wish to file complaints do not have ready access to a computer or the internet or to PDF-writing software.⁵ Further, many customers do not have individual email addresses at which they can receive filed documents, printers at which they can print the documents, or e-mail accounts able to receive documents of the size that are sent in many Commission proceedings. The OCA would note that it is often the neediest members of our society, those with the lowest incomes, who most need the help of the Commission. Those same people are the least able to afford computers or internet access. The OCA would not support any measure taken that would limit or block any customer’s ability to file complaints or access necessary documents at the Commission.

3. Mandatory Service of Filings on Statutory Advocates

The OCA has identified a concern regarding the impact of these proposed regulations on other Commission regulations regarding the service of certain documents on the OCA. The OCA and OSBA, by regulation, currently receive copies of documents such as rate case filings, applications, and petitions.⁶ It is essential that the OCA continue to receive these documents and

⁵ The proposed regulations require that all documents filed electronically be filed in PDF form. 52 Pa. Code § 1.32(b)(2)(iii).

⁶ See, e.g. 52 Pa. Code § 53.51(d) (relating to rate cases over \$1,000,000), 52 Pa. Code § 5.501(f)(3) (relating to applications for certificate of public convenience as a water supplier or wastewater collector), 52 Pa. Code § 5.41(b) (relating to petitions). This list is not exhaustive.

that the Proposed Rulemaking not be read to supersede this obligation in any way. It is incumbent upon the OCA to represent the interests of utility consumers, and the notification the OCA receives of these proceedings allows it to effectively and efficiently represent those interests.⁷ The OCA therefore requests that Commission confirm that the proposed rules do not modify or revoke these requirements.

B. Specific Provisions at Issue

1. 52 Pa. Code § 1.8- Definitions

Subsection 1.8(a) defines a “qualified document” and then provides that “[t]he Commission will determine by order the documents that constitute qualified documents.” 52 Pa. Code § 1.8(a). The OCA submits that the Commission should tentatively determine what documents are “qualified” and allow for comments on that determination before any electronic filing regulations take effect. If, in the future, the Commission proposes revisions to the qualified documents list, it should provide for comments before the proposed revisions take effect. Of particular concern to the OCA is that without clarity as to the type of document that is to be retained or scanned and placed online at the inception of the Regulations, materials could be mistakenly posted online that might contain individual customer information.

As noted in our general comments above, although the OCA strongly supports broad access for the public through electronic filing, there remains certain individual customer information filed at the Commission that is not appropriate for public access through the World Wide Web. Specifically, the OCA submits that while Formal Complaints filed by consumers

⁷ The Consumer Advocate is authorized “to represent the interests of consumers as a party, or otherwise participate for the purpose of representing an interest of consumers, before the commission in any matter property before the commission...” 71 P.S. § 309-4(a) (emphasis added).

should be recognized as “qualified documents” for the purpose of electronic filing with the Commission, they should not be posted on the Commission’s website. The OCA and Commission alike value the protection of customer information. With the inception of electronic access to documents, the OCA is concerned that sensitive customer information contained in Formal Complaints would be available to the public if these filings were publicly available on the Commission’s website. As the OCA noted in its general comments, the only individual customer Complaint information that should be available online is the Complaint docket number, Commission-authored summary of the Complaint, and the name of the utility and the Complainant.

The OCA further encourages the Commission to permit the electronic filing of Formal Complaints, but to allow those who have e-filed to opt-out of electronic service if they so wish. This would enable a customer, for example, to file a complaint electronically at a public library, but then receive paper copies of future documents at home. As was mentioned above, some Complainants have limited access to the internet, and by allowing Complainants to file documents online while still receiving paper service, the Commission will provide another means of access to its processes for these persons.⁸

2. 52 Pa. Code § 1.32- Filing Specifications

Subsection 1.32(b)(4)

Proposed Rule 52 Pa. Code § 1.32(b)(4) states:

Filings containing confidential information, including confidential security information, as defined in section 2 of the Public Utility Confidential Security Information Disclosure Protection Act (35 P.S. § 2141.2) may not be filed electronically. Filings containing confidential information shall be filed in paper form. Redacted,

⁸ Proposed language encapsulating this amendment is located below in Subsection 1.32(b)(4).

public versions of the filings shall be filed in paper form on a CD-ROM or DVD. The Commission will post redacted, public versions on the electronic filing system.

The OCA agrees that electronic filing of proprietary or confidential material should be prohibited, at least initially. Until the Commission can be assured that documents posted automatically on the Commission's website do not contain such material, the OCA agrees that it is appropriate to treat proprietary/confidential information separately. The OCA is concerned, however, with the scope of this prohibition. Under the Regulations as proposed, "filings" containing confidential information may not be filed electronically, and the redacted, public versions are to be filed in paper form or on CD-ROM or DVD. *Id.* It is unclear if the "filing" constitutes the document as a whole (e.g. an application or petition) or if the document can be filed electronically without including the sub-document (e.g. testimony, exhibit) which contains the confidential information. It is also unclear if a case can proceed "electronically" where the first document filed in the case (e.g. an application or petition) is filed in hard copy (due to confidential information or the choice of the filing party). The OCA respectfully requests that the Commission clarify the scope of the term "filing" as used in this provision.

As was mentioned above, the OCA encourages the Commission to accept the electronic filing of Formal Complaints, but to allow those who have e-filed to opt-out of electronic service if they so wish. The OCA submits that 52 Pa. Code § 1.32(b)(4) be modified as follows to include this provision:

1.32(b)(4)- (i) Filings containing confidential information, including confidential security information, as defined in section 2 of the Public Utility Confidential Security Information Disclosure Protection Act (35 P.S. § 2141.2) may not be filed electronically. Filings containing confidential information shall be filed in paper form. Redacted, public versions of the filings shall be filed in paper form on a CD-ROM or DVD. The Commission will post redacted, public versions on the electronic filing system.

(ii) Formal Complaints filed by individual consumers may be filed electronically or in paper form but shall not be posted on the Commission's website. For Formal Complaints filed by individual consumers, the only information which will be posted online is the Complaint docket number, Commission-authored summary of the Complaint and the name of the utility and Complainant.

Subsection 1.32(b)(5)(i)

Subsection 1.32(b)(5)(i) states: "Filing users may revoke their participation in the electronic filing system for all Commission proceedings by filing a notice of revocation with the Secretary." 52 Pa. Code § 1.32(b)(5)(i) (emphasis added). The practical implications of such notice are that the Commission will cancel the user ID and password. *Id.* Given the use of the phrase "all Commission proceedings" in the proposed regulations, however, it is unclear if filing users may remove their consent to electronic filing in one proceeding without doing so in other proceedings in which they may be involved. It is also unclear whether parties may continue to receive electronic service from other parties in a proceeding if they revoke their participation in the Commission's electronic filing system.

The OCA submits that filing users should be able to revoke their participation in the electronic filing system on a case-by-case basis. There could be many reasons why use of the electronic filing system may not be appropriate in individual cases, but this should not impact a user's other cases.

Additionally, the proposed regulation is unclear as to whether the revocation of participation in the electronic filing system is also intended to revoke any agreement for electronic service among parties. Parties should retain the right to continue with electronic service among themselves even if the electronic filing system is not used.

The OCA proposes that Subsection 1.32(b)(5)(i) be modified, as follows, to allow users to retain their accounts and separate agreements for electronic service even after modifying their service preferences with the Commission:

~~1.32(b)(5)(i)- Filing users may revoke their participation in the electronic filing system for all any Commission proceedings by filing a notice of revocation with the Secretary. Upon receipt of the notice, the Commission will cancel the filing user's user ID and password. Filing users who are parties in an active Commission proceeding at the time of revocation and who have agreed to receive electronic service, shall serve the other parties to the proceeding with a notice of revocation. The filing user requesting the revocation shall serve the other parties with the notice of revocation. This revocation is applicable only to the proceeding in which the notice of revocation is filed and will not change the user's status in any other proceeding. The revocation notice should specify if the party will continue with electronic service.~~

Subsection 1.32(b)(5)(ii)

52 Pa. Code § 1.32(b)(5)(ii), deals with Commission's revocation of a user's participation in the electronic filing system. The Commission places the obligation to notify the other parties in the proceeding on the user whose rights have been revoked. The proposed regulation states, "Filing users who are parties in an active Commission proceeding at the time of revocation [by the Commission] and who have agreed to receive electronic service, shall serve the other parties to the proceeding with a notice of revocation." The OCA submits that, where the Commission revokes the filing user's participation in the electronic filing system, the Commission should serve the other parties to the proceeding with the notice of revocation. The fact that the Commission has had to revoke a user's rights is an indication of a problem. In this instance, it should not be left to the user to notify other parties. The OCA proposes the following language:

1.32(b)(5)(ii)- The Commission may revoke a filing user's participation in the electronic filing system and may cancel the filing user's user ID and password, after providing the filing user

with notice, when the Commission determines that the filing user is abusing the electronic filing privileges. ~~Filing users who are parties in an active Commission proceeding at the time of revocation and who have agreed to receive electronic service, shall serve the other parties to the proceeding with a notice of revocation.~~ If the filing user is a party in an active Commission proceeding at the time of revocation and has agreed to receive electronic service, the Commission will send notice to the other parties to the proceeding of the revocation.

3. 52 Pa. Code § 1.35(a)

Subsection 1.35(a)(2) states:

An electronic filing must include an electronic signature when it is filed on the Commission's electronic filing system by a filing user or authorized agent by means of a user ID and password. A filing must include: (i) A notation on the first page that it has been electronically filed. (ii) A signature block and the name, office and e-mail address of the filing user.

The proposed regulations further state that "a filing user may not knowingly permit or cause to permit a user ID to be used by anyone other than an authorized agent of the filing user." 52 Pa. Code § 1.35(b)(3). The filing regulations are unclear with respect to who is required to register for a user ID. For example, in the case of the OCA, both attorneys and support staff (on behalf of those attorneys) will need to file documents at the Commission. The Commission should clarify if each attorney will need an ID or if the office as a whole will have a general ID. Further, although the Regulations as proposed allow for an authorized agent of the filing user to utilize the ID, the OCA submits that Commission should clarify if those agents will be able to "sign" the filed documents as is required under § 1.35(a). This is especially important given that the Proposed Regulations define the "Filing User ID" as being "deemed to be the individual's signature." 52 Pa. Code § 1.8.

4. 52 Pa. Code § 1.37- Number of copies

The Proposed Rulemaking, at 52 Pa. Code § 1.37, lays out a set of rules regarding the size of documents which are eligible for electronic filing. Section 1.37(a)(5) provides: “[when] A filing, including attachments, exceeds 5 megabytes, in addition to filing the requisite number of hard copies in accordance with this subpart, a CD-ROM or DVD containing the filing and an index to the filing shall be filed with the Commission.” Any filings exceeding 5 megabytes will clearly be voluminous in size, and active parties to a case may also want to review the information electronically. Currently, parties to proceedings often enter into agreements to receive voluminous information via CD-ROM or DVD, both for ease of access and conservation of resources. Accordingly, the OCA submits that Section 1.37(a)(5) should be amended, as follows, to allow parties to request a CD-ROM or DVD in situations where the filing is voluminous:

1.37(a)(5)- [when] A filing, including attachments, exceeds 5 megabytes, in addition to filing the requisite number of hard copies in accordance with this subpart, a CD-ROM or DVD containing the filing and an index to the filing shall be filed with the Commission. In this instance, the other parties to the case may also request a CD-ROM or DVD directly from the filing party.

5. 52 Pa. Code § 1.51- Instructions for service, notice and protest

The Proposed Rulemaking, at Subsection 1.51(c), provides:

When appropriate, the Commission will make available to filing users on the electronic filing system a notification list for each docket in which they are a participant that contains the names and addresses of interested nonparties, indicates whether or not interested nonparties have agreed to receive electronic notification and provides the e-mail addresses of interested nonparties who have agreed to receive electronic notification.

The implication of this regulation is that, with respect to interested nonparties, it would be the responsibility of the party serving a document to also send the document to those designated as interested nonparties. 52 Pa. Code § 1.51(c).

Parties are not currently required to serve nonparties with documents filed at the Commission. The OCA understands that these nonparties currently contact the Commission directly to request any documents desired. The OCA submits that parties generally should not be responsible for notifying or serving interested nonparties and that this responsibility should properly remain with the Commission. Nonparties may have communicated their preference regarding which documents to receive with the Commission, and they may not want a copy of every document filed in a proceeding or may not want voluminous documents. The Commission is in a better position to determine which documents or notifications, if any, should be sent to these interested nonparties since it has communicated with and received the request from these parties. Accordingly, the OCA submits that Subsection 1.51(c) should be deleted.

In the alternative, the OCA submits that the Commission could establish a system so that nonparties could “subscribe” to a case and receive automatic notice whenever a document is posted on the Commission’s website. This subscription process is currently used in FERC proceedings.⁹ There is no charge for this service. Through a subscription process, the nonparty would receive notice of the filed documents from the Commission and then could determine which documents the nonparty wanted to review. Such a process avoids adding an additional burden on all parties in a proceeding.

⁹ See <http://www.ferc.gov/docs-filing/esubscription.asp>.

6. 52 Pa. Code § 1.53- Service by the Commission

Subsection 1.53(b)(3) addresses the service of documents by the Commission when parties have agreed to use the electronic filing system. The proposed regulation provides that the Commission will send a notice of the posting and a link, but it does not specify any time frame for sending the notice and link. Specifically, proposed regulation 1.53(b)(3) states: “[f]iling users will be sent an electronic mail notice informing them that a document was posted on the Commission’s electronic filing system and providing a link to the document.” Such documents could include Recommended Decisions, Tentative Orders, Final Orders, Secretarial Letters and the like. The OCA is concerned that the regulation is not clear that the notice sent by the Commission is to occur simultaneously with the posting of the Commission document. Any delay in receipt of a Commission document could result in prejudice to the parties by shortening the number of days in which the parties have to respond (i.e. by filing exceptions or comments). For the aforesaid reasons, the OCA would respectfully request that Subsection 1.53(b)(3) be amended as follows to require electronic service on the same day that a Commission document is posted:

1.53(b)(3)- Service may be made electronically to filing users who have agreed to receive electronic service. Filing users will be sent an electronic mail notice informing them that a document was posted on the Commission’s electronic filing system and providing a link to the document: on the same day the document is posted.

7. 52 Pa. Code § 1.54- Service by a party

Section 1.54(b)(3)(ii) requires a party to send a notice to all other parties to a proceeding when an electronic filing is made. The proposed regulations, however, do not require that the document be attached to the notice. The proposed regulations delineate the requirements for Electronic Service by a party as follows:

Service may be made electronically to filing users who have agreed to receive electronic service. Filing users who have agreed to receive electronic service shall be served with an electronic mail notice stating that a document was filed on the electronic filing system. The notice constitutes service.

(A) The electronic mail notice must contain the following provisions: (I) the name of the filing user, (II) the type of document, (III) a brief description of the document, (IV) a link to the document on the electronic filing system, (V) the docket number when available, (VI) an indication that the party is seeking expedited relief, if applicable.

Under the proposed regulations, the notice sent requires only a "link" to the document filed on the electronic filing system, but not an actual copy of the document. The link required, however, may not be simultaneously sent to the filing user when the document is filed at the Commission. Additionally, the document may not be immediately posted and available at the link. The OCA is concerned that this procedure could delay the service of documents and reduce the time available to parties for response.

In order to avoid any unnecessary delay, the OCA submits that the regulations be modified to include a requirement that the notice contain the actual document. The OCA proposes:

1.54(b)(3)(ii)- Service may be made electronically to filing users who have agreed to receive electronic service. Filing users who have agreed to receive electronic service shall be served with an electronic mail notice stating that a document was filed on the electronic filing system. The notice constitutes service.

(A) The electronic mail notice must contain the following provisions: (I) the name of the filing user, (II) the type of document, (III) a brief description of the document, (IV) ~~a link to the document on the electronic filing system~~ an electronic copy of the document, (V) the docket number when available, (VI) an indication that the party is seeking expedited relief, if applicable.

The OCA submits that requiring a filing party to send an electronic copy of the document itself, instead of only a link, will ensure service is completed on the day the document is filed. In fact, it is already a common practice for parties to a Commission proceeding to agree to concurrently serve each other electronically with documents filed at the Commission. This practice should continue.

8. 52 Pa. Code § 1.56- Date of service

The “mailbox rule,” codified at 52 Pa.C.S. § 1.56(b), states “whenever a party is required or permitted to do an act within a prescribed period after service of a document upon the party and the document is served by the United States Postal Service, 3 days shall be added to the prescribed period.” It is unclear if this provision will remain applicable to a person who is registered as a filing user but who has opted not to receive service via email (i.e. still receiving paper service).¹⁰ In order to avoid undue confusion regarding the prescribed period for response, the OCA submits that the Commission should amend the provisions of 52 Pa.C.S. § 1.56(b), as follows, to specifically include any filing user who has opted not to receive e-service in the application of the three-day “mailbox rule.”

1.56(b)- Unless otherwise prescribed by the Commission or presiding officer, whenever a party is required or permitted to do an act within a prescribed period after service of a document upon the party and the document is served by the United States Postal Service, 3 days shall be added to the prescribed period. This provision specifically applies to those registered electronic filing users who have opted to receive paper service and not electronic service.

¹⁰ Section 1.16 of the proposed regulations states that the Secretary will mail Commission decisions to parties who are not filing users “or have not agreed to receive electronic service.” (Emphasis added). This reference indicates that a person will be able to register as a filing user but opt not to receive electronic service.

9. 52 Pa. Code § 5.502- Filing and service of briefs

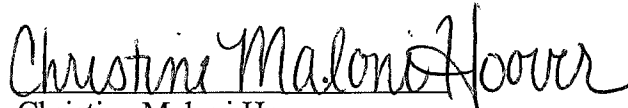
For the same reasons outlined in Section 1.37 (see above), the OCA submits that Section 5.502 (regarding briefs) should be amended to allow parties to request a CD-ROM or DVD in situations where the filing is voluminous:

5.502(b)(3)(iii)- when a brief, including attachments, exceeds 5 megabytes, in addition to filing the requisite number of hard copies in accordance with this subpart, a CD-ROM or DVD containing the filing and an index to the brief shall be filed with the Commission. In this instance, the other parties to the case may also request a CD-ROM or DVD directly from the filing party.

III. CONCLUSION

The OCA appreciates this opportunity to provide Comments on this important topic. Well-reasoned and user-friendly electronic filing requirements are imperative for ease of access to documents that are filed with the Commission and are important for ensuring that customers maintain their ability to voice their concerns about their utility service through the various channels provided by the PUC. The proposed regulations are a significant step, and with the further modifications provided by the OCA, should provide a solid foundation for ensuring that the electronic filing of documents is both efficient and effective.

Respectfully Submitted,



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January 16, 2008
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CERTIFICATE OF SERVICE

Re: Proposed Rulemaking for the Electronic Filing of
Documents with the Pa. Public Utility Commission
Docket No. L-000701287/57-258

I hereby certify that I have this day served a true copy of the foregoing Comments of the Office of Consumer Advocate, upon parties of record in this proceeding in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant), in the manner and upon the persons listed below:

Dated this 16th day of January, 2008.

SERVICE IN PERSON

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