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INDEPENDENT REGULATORY
REVIEW COMMISSION

OFFICE OF SMALL BUSINESS ADVOCATE
Suite 1102, Commerce Building
300 North Second Street
Harrisburg, Pennsylvania 17101

COPY

William R. Lloyd, Jr.
Small Business Advocate

2649

(717) 783-2525
(717) 783-2831 (FAX)

January 16, 2008

HAND DELIVERED

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

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JAN 16 2008

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

**Re: Proposed Rulemaking to Permit Electronic Filing
Docket No. L-00070187**

Dear Secretary McNulty:

I am delivering for filing today the original plus 15 copies of the Comments, on behalf of the Office of Small Business Advocate, in the above-captioned matter. As directed in the Order, I am also sending an electronic copy of these comments to Michael Stephens at the Independent Regulatory Review Commission.

If you have any questions, please contact me.

Sincerely,

A handwritten signature in black ink that reads "William R. Lloyd, Jr.".

William R. Lloyd, Jr.
Small Business Advocate
Attorney ID No. 16452

Enclosures

cc: Michael Stephens
IRRC

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

Proposed Rulemaking to :
Permit Electronic Filing : Docket No. L-00070187

**COMMENTS
OF THE OFFICE OF SMALL BUSINESS ADVOCATE
ON THE PROPOSED REGULATIONS**

By Order entered September 10, 2007, the Pennsylvania Public Utility Commission (“Commission”) initiated a proposed rulemaking to permit electronic filing. By Ordering Paragraph No. 5, the Commission invited comments within 60 days of publication in the *Pennsylvania Bulletin*.

The September 10, 2007, Order was published in the *Pennsylvania Bulletin* on November 17, 2007, at 37 *Pa.B.* 6112. Therefore, comments are due by January 16, 2008.

In response to the Commission’s invitation, the Office of Small Business Advocate (“OSBA”) submits the following comments:

1. The OSBA welcomes the Commission’s decision to make electronic filing optional, rather than mandatory, at the outset. *See* proposed 52 Pa. Code §1.32(b)(1). That approach will enable the Commission to “work the bugs out of the system” before imposing the electronic filing requirement on all parties in major proceedings. That

approach will also provide time for the OSBA to obtain the additional personnel and technology necessary to file electronically.

2. The Commission intends to use a procedure other than a rulemaking to designate the documents which may be filed electronically. *See* definition of “qualified document” in proposed 52 Pa. Code §1.8. The OSBA assumes that the Commission intends to seek input from interested parties before initially designating what documents will be “qualified documents” and before amending that initial list. For purposes of clarification, the OSBA recommends that the proposed regulations be amended to include an affirmative statement to the effect that the Commission will issue a tentative order before designating the initial list and will issue tentative orders before subsequently adding to, or subtracting from, the list.

3. The Commission apparently intends to allow access to the electronic filing system only by a person who is registered to use the system or by another person who is authorized to act on behalf of the registered person. *See* definitions of “filing user” and “authorized agent” in proposed 52 Pa. Code §1.8. The implication is that the OSBA would be limited to one “filing user” and one “authorized agent.” Such a limitation could cause significant problems.

Specifically, the OSBA enters or initiates a proceeding by filing a complaint, notice of intervention, or petition. The Small Business Advocate himself signs those initial pleadings. In addition, the attorney who will be representing the OSBA in the proceeding enters an appearance pursuant to 52 Pa. Code §1.24(b)(2). Although that attorney then becomes the person to make and receive official service on behalf of the OSBA, the OSBA’s Administrative Officer actually is the individual who mails the

electronic copy of interrogatories, testimony, briefs, and exceptions. The Administrative Officer presumably would qualify as the "authorized agent." However, it is unclear whether the Small Business Advocate or the attorney of record in the proceeding would be the "filing user"; if the latter is intended, the OSBA would have different "filing users" from case to case. One possible solution would be to designate the Small Business Advocate himself as the "filing user" and to allow multiple "authorized agents," *i.e.*, the Administrative Officer and all of the OSBA's attorneys.

A similar problem would arise with regard to the OSBA's expert witnesses. Once again, a possible solution would be to allow each of the OSBA's witnesses to function as an "authorized agent."

The OSBA would not object to designating only one individual as its "filing user" and one individual as its "authorized agent." Under that scenario, however, it would be critical that the "authorized agent" be permitted to forward the "link" to the appropriate attorney and witness for an individual proceeding and that that attorney and that witness be able to access the electronic filing system and open the relevant documents.

4. The Commission intends to mail a paper copy of an initial decision or a recommended decision to those parties who are not filing users or who have not otherwise agreed to accept electronic service. *See* proposed 52 Pa. Code §1.16. In addition to the mailing, the OSBA encourages the Commission to post such decisions on the Commission's website. In that way, parties who are not filing users will have access to the decisions on the same day as the parties who are served electronically.

5. A filing user would not be required to serve a hard copy of a document which is 250 pages or less if the party being served also is a filing user and has consented to

electronic service. *See* proposed 52 Pa. Code §1.54(c). It is unclear whether “250” refers to the total number of pages in the filing or to the number of pages in each particular document which is part of the filing. For example, if the 250-page limit applies to the entire filing (which the OSBA believes it should), then the utility would continue to be required to serve a hard copy of the entire “box” of documents which is part of the filing in a major rate case. On the other hand, if the 250-page limit applies to each individual document in that filing, it is likely that a complainant would be responsible for printing most, if not all, of the contents of the “box.” Shifting responsibility for printing an entire rate case filing to the complainant would constitute false economy with regard to a statutory advocate, because the rate case expenses of both the statutory advocate and of the utility are ultimately borne by the ratepayers. In fact, because of economies of scale, the cost to ratepayers would probably be lower if the utility printed hard copies of the entire filing for each of the statutory advocates and their witnesses.

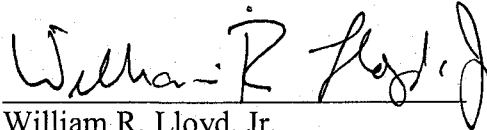
6. It has been standard procedure for parties to agree to accept electronic service to meet the time deadlines, provided that the electronic copy is followed by a hard copy. Because the proposed regulations do not explicitly address that practice, the Commission’s intention is unclear. As a further source of uncertainty, the proposed regulations appear to convert the current practice into *official* service for non-filing users who have consented to be served electronically, but only with regard to “[d]ocuments *not* filed with the Commission [*e.g.*, discovery and testimony].” (emphasis added) *See* proposed 52 Pa. Code §1.54(b)(3)(i). In contrast, documents which are filed with the Commission may be served electronically only on filing users. *See* proposed 52 Pa. Code §1.54(b)(3)(ii). It is unclear whether the Commission intends to eliminate electronic

service of some documents (e.g., briefs and exceptions) on non-filing users.

Accordingly, it is recommended that the proposed regulations be amended to continue the practice of electronic service (followed by a hard copy) 1) between a party who is a filing user and a party who is not a filing user and 2) between two parties who are not filing users.

WHEREFORE, the OSBA respectfully requests that the proposed regulations be amended as recommended herein by the OSBA before the proposed rulemaking is submitted in final form.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "William R. Lloyd, Jr.", written over a horizontal line.

William R. Lloyd, Jr.
Small Business Advocate
Attorney ID No. 16452

Office of Small Business Advocate
Suite 1102, Commerce Building
300 North Second Street
Harrisburg, PA 17101
(717) 783-2525

Dated: January 16, 2008