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OFFICE OF SMALL BUSINESS ADVOCATE

INDEPENDENT REGULATORY
REVIEW COMMISSION

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December 28, 2007

HAND DELIVERED

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

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PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

**Re: Proposed Rulemaking Regarding Implementation of the Public Utility
Confidential Security Information Disclosure Protection Act
Docket No. L-00070185
Implementation of the Public Utility Confidential Security Information
Disclosure Protection Act
Docket No. M-00072014**

Dear Secretary McNulty:

I am delivering for filing the original plus fifteen copies of the comments on behalf of the Office of Small Business Advocate on the Proposed Rulemaking.

If you have any questions, please contact me.

Sincerely,

William R. Lloyd, Jr.
Small Business Advocate

Enclosure

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Proposed Rulemaking Regarding : Docket No. L-00070185
Implementation of the Public Utility :
Confidential Security Information :
Disclosure Protection Act :

Implementation of the Public Utility : Docket No. M-00072014
Confidential Security Information :
Disclosure Protection Act :

PA PUBLIC UTILITY COMMISSION
SECRETARIAT & BUREAU

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

By Proposed Rulemaking Order entered September 4, 2007, the Pennsylvania Public Utility Commission ("Commission") sought comments on proposed regulations to implement the act of November 29, 2006 (P.L. 1435, No. 156), known as the Public Utility Confidential Security Information Disclosure Protection Act. Ordering Paragraph 5 specifies that comments are due within 30 days of publication of the proposed regulations in the *Pennsylvania Bulletin*. That publication occurred on December 8, 2007. The Office of Small Business Advocate ("OSBA") submits the following comments in response to that publication.

COMMENTS

§5.423. Orders to limit availability of proprietary information.

Act 156 is limited to "confidential security information" which is actually filed with the Commission or some other agency. Proposed Section 5.423(g) provides that proposed Chapter 102 will govern challenges to the designation of such "confidential

security information” and requests to examine such information. Therefore, any challenge to a utility’s refusal to disclose information not filed with the Commission presumably will be governed by Section 5.423(a)-(f).

The primary focus of existing Section 5.423 is on information which a utility or other entity refuses to disclose because of competitive concerns. Although disputes over a refusal to disclose information for security reasons can probably be fit within the existing language of Section 5.423, a separate procedure for such disputes would likely reduce the amount of, or at least simplify, future litigation. Therefore, the OSBA recommends that Section 5.423 be amended to include explicit language regarding the adjudication of disputes when a utility refuses to disclose information for security reasons and that information is not filed with the Commission.

§102.4. Challenge procedures to confidentiality designation.

1. Challenges by Statutory Advocates

Proposed Section 102.4(a) provides a procedure for “a member of the public other than a statutory advocate” to challenge the designation of particular information as “confidential security information.” Although proposed Section 102.4(f) addresses the OSBA and the other statutory advocates, proposed Section 102.4(f) does not either spell out a procedure by which a statutory advocate may challenge such a designation or indicate that a statutory advocate may follow the procedure spelled out in proposed Section 102.4(a) to challenge such a designation.

Accordingly, the OSBA recommends that proposed Section 102.4 be amended to provide a specific procedure by which a statutory advocate may challenge a utility's designation of particular information as "confidential security information."

2. Disputes over "need" for access to "confidential security information"

Proposed Section 102.4(f) provides for access to "confidential security information" by the OSBA and the other statutory advocates. To obtain access, a statutory advocate must "provide the public utility with a justification for the *need* of the information" (emphasis added) However, proposed Section 102.4(f) does not spell out a procedure for resolving a dispute between a statutory advocate and a utility over whether there actually is a "need" for the statutory advocate to have access to particular "confidential security information."

In contrast, proposed Section 102.4(a) does provide a procedure for "a member of the public other than a statutory advocate" to challenge a utility's denial of access to such information.

Accordingly, the OSBA recommends that proposed Section 102.4 be amended to provide a specific procedure for a statutory advocate to resolve disputes with a utility over whether the statutory advocate has a "need" for access to particular "confidential security information."

3. Applicability to consultants

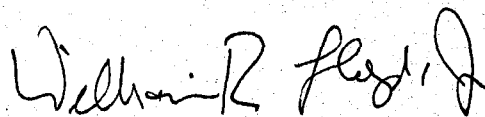
Proposed Section 102.4(f) provides for "[a]uthorized individuals . . . *employed* by the statutory advocates" (emphasis added) to obtain "access to confidential security information" Although the OSBA's attorneys are employees, the OSBA's consultants/expert witnesses are independent contractors.

Accordingly, the OSBA recommends that proposed Section 102.4(f) be amended to include independent contractors of the statutory advocates among the "individuals" authorized to obtain access to "confidential security information" upon execution of an appropriate confidentiality agreement.

CONCLUSION

The OSBA respectfully requests that the Commission revise the proposed regulations to incorporate the foregoing recommended changes.

Respectfully submitted,



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Dated: December 28, 2007