

Regulatory Analysis Form

(Completed by Promulgating Agency)

INDEPENDENT REGULATORY
REVIEW COMMISSION

(All Comments submitted on this regulation will appear on IRRRC's website)

(1) Agency
Public Utility Commission

(2) Agency Number: L-2012-2296005
Identification Number: 57-290

IRRC Number: 2984

(3) PA Code Cite: 52 Pa. Code §§ 1.8, 1.37, 1.56, 5.44, 5.72, 5.94, 5.101, 5.342, 5.365, 5.373, 5.423, 5.424, and 5.533.

(4) Short Title: Amendment of Public Utility Commission Rules of Practice and Procedure; 52 Pa. Code Chapters 1, 3 and 5

(5) Agency Contacts (List Telephone Number and Email Address):

Primary Contact: Krystle Sacavage (717)-787-5262 ksacavage@pa.gov

Secondary Contact: Eric Rohrbaugh (717) 787-5534 errohrbaug@pa.gov

(6) Type of Rulemaking (check applicable box):

- Proposed Regulation
 Final Regulation
 Final Omitted Regulation

- Emergency Certification Regulation;
 Certification by the Governor
 Certification by the Attorney General

(7) Briefly explain the regulation in clear and nontechnical language. (100 words or less)

The amendments to the Commission's regulations are intended to simplify practice before the PUC for attorneys representing persons and companies with business before the Commission. The amendments also greatly reduce the amount of paper copies of pleadings filed with the Commission by eliminating the need for copies beyond an original.

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(8) State the statutory authority for the regulation. Include specific statutory citation.

66 Pa. C.S. §§ 501, 504, 523, 1301, 1501, and 1504; Sections 201 and 202 of the Act of July 31, 1968, P.L. 769 No. 240, 45 P.S. §§ 1201-1202; 1 Pa. Code §§ 7.1, 7.2, and 7.5; Section 204(b) of the Commonwealth Attorneys Act, 71 P.S. § 732.204(b); Section 745.5 of the Regulatory Review Act, 71 P.S. § 745.5; Section 612 of the Administrative Code of 1929, 71 P.S. § 232

(9) Is the regulation mandated by any federal or state law or court order, or federal regulation? Are there any relevant state or federal court decisions? If yes, cite the specific law, case or regulation as well as, any deadlines for action.

The amended regulations are not mandated by any federal or state law or court order, or federal regulation.

(10) State why the regulation is needed. Explain the compelling public interest that justifies the regulation. Describe who will benefit from the regulation. Quantify the benefits as completely as possible and approximate the number of people who will benefit.

This is not a new regulation. It makes changes to the PUC's Rules of Procedure to make them easier to follow. More importantly, it eliminates the requirement for additional paper copies of pleadings to be filed by parties appearing before the Commission. The PUC regulates approximately 6,000 utilities and licensees. These utilities, and those parties who participate in proceedings before the Commission regarding these utilities, will see substantial reductions in costs relating to printing, postage and copying. These cost reductions cannot be quantified.

(11) Are there any provisions that are more stringent than federal standards? If yes, identify the specific provisions and the compelling Pennsylvania interest that demands stronger regulations.

These regulations pertain strictly to filings and practice before the Pennsylvania PUC and, therefore, there are no federal standards for filings and practice before the Pennsylvania PUC. To the extent federal agencies still require paper copies to be filed in their own proceedings, these regulations are less stringent.

(12) How does this regulation compare with those of the other states? How will this affect Pennsylvania's ability to compete with other states?

These regulations do not affect the ability of Pennsylvania to compete with other states.

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

The regulation will not affect any other regulations of the PUC or other state agencies.

(14) Describe the communications with and solicitation of input from the public, any advisory council/group, small businesses and groups representing small businesses in the development and drafting of the regulation. List the specific persons and/or groups who were involved. (“Small business” is defined in Section 3 of the Regulatory Review Act, Act 76 of 2012.)

In order to further review the Commission’s Rules of Practice and Procedure and to determine whether the rules needed clarification, changes or improvements based on experience, the PUC convened a Procedural Rules Committee consisting of outside practitioners and internal staff. The membership of the Procedural Rules Committee was comprised of private attorneys who represent clients before the Commission, the Office of Consumer Advocate, the Office of Small Business Advocate, and internal staff from the Commission’s Office of Administrative Law Judge, Law Bureau and the Bureau of Investigation and Enforcement (formerly Office of Trial Staff). The private attorneys included: Benjamin C. Dunlap, Jr., Bradley Bingaman, Robert Christianson, Daniel Clearfield, Daniel Delaney, David MacGregor, Craig Doll, Harry Geller, Janet Miller, John Povilaitis, Pamela Polacek, Todd Stewart, and David R. Zambito.

(15) Identify the types and number of persons, businesses, small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012) and organizations which will be affected by the regulation. How are they affected?

The PUC regulates approximately 6,000 utilities or licensees who will be affected by the regulation. The number of paper copies filed when these entities make filings before the PUC will be significantly reduced.

(16) List the persons, groups or entities, including small businesses, that will be required to comply with the regulation. Approximate the number that will be required to comply.

Beyond the approximately 6,000 utilities and licensees regulated by the PUC, the Commission cannot estimate the number of parties who participate in proceedings involving these entities.

(17) Identify the financial, economic and social impact of the regulation on individuals, small businesses, businesses and labor communities and other public and private organizations. Evaluate the benefits expected as a result of the regulation.

The amendments to the existing regulations are intended to make practice before the Commission easier. They will also reduce the amount of paper copies filed with the PUC, which will reduce the expenses involved in filing before the Commission.

(18) Explain how the benefits of the regulation outweigh any cost and adverse effects.

The PUC is unaware of any adverse effects of the amendment to the regulations.

(19) Provide a specific estimate of the costs and/or savings to the **regulated community** associated with compliance, including any legal, accounting or consulting procedures which may be required. Explain how the dollar estimates were derived.

The amendments to the regulations create no new costs. The savings cannot be quantified.

(20) Provide a specific estimate of the costs and/or savings to the **local governments** associated with compliance, including any legal, accounting or consulting procedures which may be required. Explain how the dollar estimates were derived.

Local governments are not affected by these regulations except for those which operate licensed utilities or licensees regulated by the Commission. The amendments to the regulations create no new costs. The savings cannot be quantified.

(21) Provide a specific estimate of the costs and/or savings to the **state government** associated with the implementation of the regulation, including any legal, accounting, or consulting procedures which may be required. Explain how the dollar estimates were derived.

There are no costs imposed upon the state government by the amendments to the regulations. There will be savings consistent with reducing costs related to a reduction in the amount of paper documents handled by the PUC, but these savings cannot be quantified.

(22) For each of the groups and entities identified in items (19)-(21) above, submit a statement of legal, accounting or consulting procedures and additional reporting, recordkeeping or other paperwork, including copies of forms or reports, which will be required for implementation of the regulation and an explanation of measures which have been taken to minimize these requirements.

The amendments to the existing regulations reduce the amount of paper copies filed with the PUC. There are no legal, accounting or consulting procedures, or additional reporting, recordkeeping or other paperwork imposed.

(23) In the table below, provide an estimate of the fiscal savings and costs associated with implementation and compliance for the regulated community, local government, and state government for the current year and five subsequent years. N/A

	Current FY Year	FY +1 Year	FY +2 Year	FY +3 Year	FY +4 Year	FY +5 Year
SAVINGS:	\$ N/A	\$ N/A	\$ N/A	\$ N/A	\$ N/A	\$ N/A
Regulated Community						
Local Government						
State Government						
Total Savings						
COSTS:						
Regulated Community						
Local Government						
State Government						
Total Costs						
REVENUE LOSSES:						
Regulated Community						
Local Government						
State Government						
Total Revenue Losses						

(23a) Provide the past three year expenditure history for programs affected by the regulation. N/A

Program	FY -3	FY -2	FY -1	Current FY
N/A	N/A	N/A	N/A	N/A

(24) For any regulation that may have an adverse impact on small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012), provide an economic impact statement that includes the following:

- (a) An identification and estimate of the number of small businesses subject to the regulation.
- (b) The projected reporting, recordkeeping and other administrative costs required for compliance with the proposed regulation, including the type of professional skills necessary for preparation of the report or record.
- (c) A statement of probable effect on impacted small businesses.
- (d) A description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation.

The amendment to the existing regulation has no adverse impact on small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012).

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

N/A

(26) Include a description of any alternative regulatory provisions which have been considered and rejected and a statement that the least burdensome acceptable alternative has been selected.

The amendments reduce the amount of copies to be filed with the Commission. There are no less burdensome alternatives that were considered.

(27) In conducting a regulatory flexibility analysis, explain whether regulatory methods were considered that will minimize any adverse impact on small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012), including:

- a) The establishment of less stringent compliance or reporting requirements for small businesses;
- b) The establishment of less stringent schedules or deadlines for compliance or reporting requirements for small businesses;
- c) The consolidation or simplification of compliance or reporting requirements for small businesses;
- d) The establishment of performing standards for small businesses to replace design or operational standards required in the regulation; and
- e) The exemption of small businesses from all or any part of the requirements contained in the regulation.

N/A

(28) If data is the basis for this regulation, please provide a description of the data, explain in detail how the data was obtained, and how it meets the acceptability standard for empirical, replicable and testable data that is supported by documentation, statistics, reports, studies or research. Please submit data or supporting materials with the regulatory package. If the material exceeds 50 pages, please provide it in a searchable electronic format or provide a list of citations and internet links that, where possible, can be accessed in a searchable format in lieu of the actual material. If other data was considered but not used, please explain why that data was determined not to be acceptable.

Data is not the basis for this regulation.

(29) Include a schedule for review of the regulation including:

- | | |
|---|--------------------------------|
| A. The date by which the agency must receive public comments: | N/A |
| B. The date or dates on which public meetings or hearings will be held: | June 13, 2013 |
| C. The expected date of promulgation of the proposed regulation as a final-form regulation: | 3 rd quarter 2013 |
| D. The expected effective date of the final-form regulation: | 4 th quarter 2013 |
| E. The date by which compliance with the final-form regulation will be required: | upon publication as final |
| F. The date by which required permits, licenses or other approvals must be obtained: | <u> N/A </u> |

(30) Describe the plan developed for evaluating the continuing effectiveness of the regulations after its implementation.

The Procedural Rules Committee will continue its review of the PUC's Rules of Practice and the Commission's internal staff will propose further reductions to the amount of paper copies filed with the agency.

**FACE SHEET
FOR FILING DOCUMENTS
WITH THE LEGISLATIVE REFERENCE BUREAU**

(Pursuant to Commonwealth Documents Law)

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DO NOT WRITE IN THIS SPACE

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

BY _____
(DEPUTY ATTORNEY GENERAL)

DATE OF APPROVAL

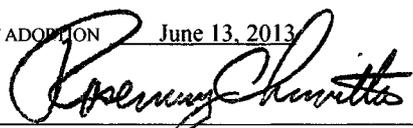
Check if applicable
Copy not approved. Objections attached

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

Pennsylvania Public Utility Commission
(AGENCY)

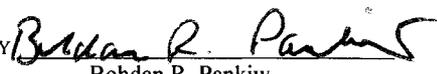
DOCUMENT/FISCAL NOTE NO. L-2012-2296005/57-290

DATE OF ADOPTION June 13, 2013

BY 
Rosemary Chiavetta

TITLE 
(SECRETARY)

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

BY 
Bohdan R. Pankiw
Chief Counsel

6-13-2013
DATE OF APPROVAL

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

L-2012-2296005/57-290
Final Rulemaking
Amendment of PUC Rules of
Practice and Procedure
52 Pa Code, Chapters 1, 3 and 5

The Pennsylvania Public Utility Commission on June 13, 2013, adopted a final rulemaking order which improves clarity and operation of Commission procedures and also reduces paper copy requirements for Commission filings. The contact person is Assistant Counsel Krystle Sacavage, Law Bureau, 717 787-5262.

EXECUTIVE SUMMARY

L-2012-2296005/57-290

Final Rulemaking

**Amendment of Public Utility Commission
Rules of Practice and Procedure,
52 Pa. Code, Chapters 1, 3 and 5**

In order to facilitate a review of its Rules of Practice and Procedure, the Public Utility Commission (Commission or PUC) convened a Procedural Rules Committee consisting of outside practitioners as well as lawyers from other agencies who practiced before the PUC and internal staff. After a period of study and discussion, the Procedural Rules Committee made a number of suggestions to the Commission's Chief Counsel as to regulations which its members agree are problematic and how those rules should be improved. The Commission's staff also made a contemporaneous review of the Rules of Practice and Procedure with regard to changes made in the PUC's internal structure and to reflect a diminished need for copies of paper filings within the PUC because of advancements in electronic filings.

On July 19, 2012, the Commission issued a Proposed Rulemaking Order inviting comment to our proposed amendments regarding our administrative Rules of Practice and Procedure at 52 Pa. Code Chapters 1, 3 and 5. Based upon our review and consideration of the comment filed in this rulemaking proceeding by the Independent Regulatory Review Commission and the comments filed in support of the rulemaking on behalf of the Energy Association of Pennsylvania, the Commission proposes to adopt the final regulations as set forth in Annex A of the Final Rulemaking Order.

The contact persons for this Final Rulemaking are Assistant Counsel Krystle Sacavage (717) 787-5262 and Deputy Chief Counsel Eric A. Rohrbaugh (717) 787-5534.

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

Public Meeting held June 13, 2013

Commissioners Present:

Robert F. Powelson, Chairman
John F. Coleman, Jr., Vice Chairman
Wayne E. Gardner
James H. Cawley
Pamela A. Witmer

Amendment of Public Utility Commission
Rules of Practice and Procedure;
52 Pa. Code Chapters 1, 3 and 5

Docket No. L-2012-2296005

FINAL RULEMAKING ORDER

BY THE COMMISSION:

On July 19, 2012, the Pennsylvania Public Utility Commission (Commission) issued a Proposed Rulemaking Order inviting comment to our proposed amendments regarding our administrative Rules of Practice and Procedure at 52 Pa. Code Chapters 1, 3 and 5. These amendments to our regulations implement changes to certain procedural rules that govern the conduct of proceedings before the Commission and its Administrative Law Judges. The Commission proposed these changes to the rules in order to improve the clarity and operation of our procedures as well as to reduce paper copy requirements for Commission filings. Based upon our review and consideration of the comment filed in this rulemaking proceeding by the Independent Regulatory Review Commission (IRRC) and the comments filed in support of the rulemaking on behalf of the Energy Association of Pennsylvania (EAP), we shall adopt the final regulations as set forth in Annex A to this Order.

BACKGROUND

In our July 19, 2012 Proposed Rulemaking Order, the Commission proposed a number of changes to our current regulations that would overall improve the operation and clarity of our procedures for parties appearing before the Commission. In addition to these changes, the Commission also specifically proposed to eliminate the requirement to file additional paper copies of certain documents, beyond a signed original, in order to generally reduce the amount of paper copies filed with the Commission.

In response to our proposed amendments set forth in the July 19, 2012 Proposed Rulemaking Order and Annex A thereto, the Commission received comments in support of the rulemaking from EAP, as well as a comment from IRRC. In its comments, EAP applauded the Commission's initiative to review and streamline its procedural regulations for document filings and supports the amendments contained within Annex A. IRRC made a suggestion for clarification in its comment. We have reviewed and addressed IRRC's comment below.

DISCUSSION

§ 5.365. Orders to limit availability of proprietary information.

In our July 19, 2012 Proposed Rulemaking Order, the Commission proposed to relocate and renumber 52 Pa. Code § 5.423 (regarding orders to limit the availability of proprietary information), which appeared to be a "misplaced orphan." Although 52 Pa. Code § 5.423 concerned proprietary information, it was contained in a group of sections within our regulations labeled "Sanctions." Accordingly, we proposed that this section more properly belongs under "TYPES OF DISCOVERY" and, therefore, relocated it to and renumbered it as 52 Pa. Code § 5.365.

Although the Commission did not propose any changes to the existing language of this regulation, IRRC's single comment questions whether the last sentence of Subsection 5.365(b) (relating to the general rule to limit the availability of proprietary information in nonadversarial proceedings) provides broad enough protection of information filed with the Commission prior to the issuance of a Commission protective order. The last sentence of Subsection 5.365(b) states that "[t]he Commission will not disclose any material that is the subject of a protective order under this provision during the pendency of such a request." 52 Pa. Code § 5.365(b). To provide broader protection of information filed with the Commission during the pendency of a protective order request, IRRC suggested that the Commission consider adding the phrase "petition for" so that Subsection 5.365(b) would state ". . . will not disclose any material that is the subject of a **petition for** protective order" (New language in bold).

We agree with IRRC that adding the phrase "petition for" to the last sentence of Subsection 5.365(b) will better provide the type of protection originally contemplated by this subsection regarding information filed with the Commission during the pendency of a protective order request. Because the last sentence of Subsection 5.365(b) provides that the Commission will not disclose information *during the pendency of a request* for a protective order, the information to be protected by this subsection must be the information that is subject to a *petition for* protective order, as opposed to the information subject to the protective order itself, as a protective order could not have issued during the pendency of such a request. We also agree with IRRC that adding this phrase makes the last sentence of Subsection 5.365(b) more consistent with the language and intent of the first sentence, which specifically references "a petition for protective order." Therefore, we have added the phrase "petition for" to the last sentence of Subsection 5.365(b) to reflect IRRC's comment and have revised Annex A to this Order accordingly.

§ 1.37. Number of copies.

In our July 19, 2012 Proposed Rulemaking Order, the Commission proposed to eliminate the requirement to file additional paper copies of certain documents, beyond a signed original, in order to generally reduce the amount of paper copies filed with the Commission. Specifically, the Commission proposed to eliminate the additional paper copy filing requirements contained in our regulations at 52 Pa. Code § 1.37 (requiring the filing of three additional paper copies, beyond a signed original, of pleadings, submittals and other documents) and 52 Pa. Code § 5.533 (requiring the filing of nine additional paper copies, beyond a signed original, of exceptions to our orders).

In addition to proposing the elimination of these additional paper copy filing requirements, we also noted that the Commission would continue to review our regulations to determine whether we can eliminate other rules regarding the filing of additional paper copies of various forms and pleadings. Since the issuance of the July 19, 2012 Proposed Rulemaking Order, the Commission has reviewed its regulations and identified numerous other rules where we can eliminate additional paper copy filing requirements. On February 28, 2013, the Commission issued a Proposed Rulemaking Order, Docket Nos. L-2012-2324073, L-2012-2296005, L-00070187, M-2012-2317481 and M-2008-2072592, proposing the elimination of the additional paper copy filing requirements contained within those rules. The Commission has also encouraged interested parties filing comments in response to its February 28, 2013 Proposed Rulemaking Order to point out any additional regulations containing paper copy filing requirements they feel should be eliminated.

CONCLUSION

The final amendments to the Rules of Practice and Procedure contained within our regulations as set forth in Annex A simplify practice before the Commission and

diminish the burden upon parties appearing before the Commission by reducing the amount of paper they must file with the agency. The Commission, therefore, formally adopts the final regulations as set forth in Annex A to this Order.

Accordingly, pursuant to Sections 501, 504, 505, 506, 1501, 3009(b),(d), and 2801, *et seq.*, and the regulations promulgated thereunder at 52 Pa. Code §§ 57.191-57.197; and sections 201 and 202 of the act of July 31, 1968 P.L. 769, No. 240, 45 P.S. §§ 1201 and 1202, and the regulations promulgated thereunder at 1 Pa. Code §§ 7.1, 7.2 and 7.5; section 204(b) of the Commonwealth Attorneys Act, 71 P.S. § 732.204(b); section 745.5 of the Regulatory Review Act, 71 P.S. § 745.5 and Section 612 of the Administrative Code of 1929, 71 P.S. § 232, and the regulations promulgated thereunder at 4 Pa. Code §§ 7.231-7.234, we will adopt as final the amendments to the regulations as set forth in Annex A, attached hereto; **THEREFORE,**

IT IS ORDERED:

1. That the Commission adopt the final regulations as set forth in Annex A.
2. That the Secretary shall submit this order and Annex A to the Office of Attorney General for approval as to legality.
3. That the Secretary shall submit this order and Annex A to the Governor's Budget Office for review of fiscal impact.
4. That the Secretary shall submit this order and Annex A for review by the designated standing committees of both houses of the General Assembly, and for review and approval by the Independent Regulatory Review Commission.

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

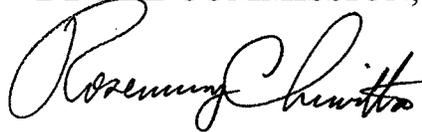
6. That these regulations shall become effective upon publication in the *Pennsylvania Bulletin*.

7. That this order and Annex A be posted on the Commission's website.

8. That a copy of this order and Annex A shall be served on the Bureau of Investigation and Enforcement, the Office of Consumer Advocate, the Office of Small Business Advocate, and jurisdictional public utility industry and licensee trade associations.

9. That the contact person for legal matters for this final rulemaking is Krystle J. Sacavage, Assistant Counsel, Law Bureau, (717) 787-5000. Alternate formats of this document are available to persons with disabilities and may be obtained by contacting Sherri DelBiondo, Regulatory Coordinator, Law Bureau, 717-772-4597.

BY THE COMMISSION,



Rosemary Chiavetta
Secretary

(SEAL)

ORDER ADOPTED: June 13, 2013

ORDER ENTERED: June 13, 2013

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

§ 1.8. Definitions

(a) Subject to additional definitions contained in subsequent sections which are applicable to specific chapters or subchapters, the following words and terms, when used in this subpart, have the following meanings, unless the context clearly indicates otherwise:

* * * * *

Person—Except as otherwise provided in this subpart or in the act, the term includes individuals, corporations, partnerships, associations, joint ventures, other business organizations, trusts, trustees, legal representatives, receivers, agencies, governmental entities, municipalities, municipal corporations or other political subdivisions.

* * * * *

Subchapter D. DOCUMENTARY FILINGS

* * * * *

§ 1.37. Number of copies.

(a) *Paper filing* . When a pleading, submittal or document other than correspondence is submitted in hard copy, an original and [three copies of each, including] the cover letter[,] shall be furnished to the Commission at the time of filing, except when:

(1) [The document is an application or petition, one copy may be filed without exhibits.

(2) The document is a complaint or petition and more than one respondent is named, an additional copy of the complaint or petition shall be filed for each additional respondent.

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

[(4)](2) The document is subject to § 5.502 or § 5.533 (relating to [copies and form of documentary evidence;] filing and service of briefs; and procedure to except to initial, tentative and recommended decisions), the filing must conform to the requirements in the applicable section.

[(5)](3) 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.

* * * * *

Subchapter F. SERVICE OF DOCUMENTS

* * * * *

§ 1.56. Date of service.

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

* * * * *

CHAPTER 5. FORMAL PROCEEDINGS

Subchapter A. PLEADINGS AND OTHER PRELIMINARY MATTERS

PETITIONS

§ 5.44. Petitions for [appeal] reconsideration from actions of the staff.

(a) Actions taken by staff, other than a presiding officer, under authority delegated by the Commission, will be deemed to be the final action of the Commission unless [appealed to]reconsideration is sought from the Commission within 20 days after service of notice of the action, unless a different time period is specified in this chapter or in the act.

(b) An action taken by staff under delegated authority will note the parties' right to [appeal] seek reconsideration of the action under this section.

(c) Petitions for [appeal] reconsideration from the actions of the staff will be addressed by the Commission at public meeting.

* * * * *

INTERVENTION

§ 5.72. Eligibility to intervene.

* * * * *

(c) *Supersession.* Subsections (a) and (b) [are identical to] supersede 1 Pa. Code § 35.28 (relating to eligibility to intervene).

AMENDMENT AND WITHDRAWAL OF PLEADINGS

§ 5.94. Withdrawal of pleadings in a contested proceeding.

(a) Except as provided in subsection (b), a party desiring to withdraw a pleading in a contested proceeding may file a petition for leave to withdraw the appropriate document with the Commission and serve it upon the other parties. The petition must set forth the reasons for the withdrawal. A party may object to the petition within [20] 10 days of service. After considering the petition, an objection thereto and the public interest, the presiding officer or the Commission will determine whether the withdrawal will be permitted.

* * * * *

PRELIMINARY OBJECTIONS

§ 5.101. Preliminary objections.

(a) *Grounds.* Preliminary objections are available to parties and may be filed in response to a pleading except motions and prior preliminary objections. Preliminary objections must be accompanied by a notice to plead, must state specifically the legal and factual grounds relied upon and be limited to the following:

* * * * *

(6) Pendency of a prior proceeding or agreement for alternative dispute resolution.

(7) Standing of a party to participate in the proceeding.

(b) *Notice to plead.* A preliminary objection must contain a notice to plead which states that an answer to the objection shall be filed within 10 days of the date of service of the objection.

* * * * *

Subchapter D. DISCOVERY

TYPES OF DISCOVERY

§ 5.342. Answers or objections to written interrogatories by a party.

* * * * *

(c) *Objections.* An objection shall be prepared, filed and served in the same manner provided for an answer, except that an objection shall be contained in a document separate from an answer as required by the time provisions of subsection (e). An objection must:

(1) Be served instead of an answer.

(2) Restate the interrogatory or part thereof deemed objectionable and the specific ground for the objection.

[2](3) Include a description of the facts and circumstances purporting to justify the objection.

[3](4) Be signed by the attorney making it.

[4](5) Not be valid if based solely on the claim that an answer will involve an opinion or contention that is related to a fact or the application of law to fact.

[5](6) Not excuse the answering party from answering the remaining interrogatories or subparts of interrogatories to which no objection is stated.

* * * * *

(g) *Motion to compel.* Within 10 days of service of an objection to interrogatories, the party submitting the interrogatories may file a motion requesting the presiding officer to dismiss an objection and compel that the interrogatory be answered. The motion to compel must include the interrogatory objected to and the objection. If a motion to compel is not filed within 10 days of service of the objection, the objected to interrogatory will be deemed withdrawn.

* * * * *

LIMITATIONS

§ 5.365. Orders to limit availability of proprietary information.

(a) General rule for adversarial proceedings. A petition for protective order to limit the disclosure of a trade secret or other confidential information on the public record will

be granted only when a party demonstrates that the potential harm to the party of providing the information would be substantial and that the harm to the party if the information is disclosed without restriction outweighs the public's interest in free and open access to the administrative hearing process. A protective order to protect trade secrets or other confidential information will apply the least restrictive means of limitation which will provide the necessary protections from disclosure. In considering whether a protective order to limit the availability of proprietary information should be issued, the Commission or the presiding officer should consider, along with other relevant factors, the following:

(1) The extent to which the disclosure would cause unfair economic or competitive damage.

(2) The extent to which the information is known by others and used in similar activities.

(3) The worth or value of the information to the party and to the party's competitors.

(4) The degree of difficulty and cost of developing the information.

(5) Other statutes or regulations dealing specifically with disclosure of the information.

(b) *General rule for nonadversarial proceedings* . A petition for a protective order limiting the disclosure of a trade secret or other confidential information in a nonadversarial proceeding shall be referred to the Law Bureau for recommended disposition by the Commission. The Commission will not disclose material that is the subject of a PETITION FOR protective order under this provision during the pendency of such a request.

(c) *Restrictions*.

(1) A protective order to restrict disclosure of proprietary information may require that a party receive, use or disclose proprietary information only for the purposes of preparing or presenting evidence, cross-examination or argument in the proceeding, or may restrict its inclusion in the public record.

(2) A protective order may require that parts of the record of a proceeding which contain proprietary information including exhibits, writings, direct testimony, cross-examination, argument and responses to discovery will be sealed and remain sealed unless the proprietary information is released from the restrictions of the protective order by agreement of the parties, or pursuant to an order of the presiding officer or the Commission.

(3) A public reference to proprietary information by the Commission or by a party afforded access thereto shall be to the title or exhibit reference in sufficient detail to permit persons with access to the proprietary information to fully understand the reference and not more. The proprietary information must remain a part of the record, to the extent admitted, for purposes of administrative or judicial review.

(4) Prior to the issuance of a protective order, a party may not refuse to provide information which the party reasonably believes to be proprietary to a party who agrees to treat the information as if it were covered by a protective order until the presiding officer or the Commission issues the order or determines that issuance of the order would not be appropriate. The party claiming the privilege shall file a petition for protective order under subsection (a) within 14 days of the date the request for information was received.

(5) A party receiving proprietary information under this section retains the right, either before or after receipt of the information, to challenge the legitimacy of the claim that the information is proprietary and to challenge the admissibility of the proprietary information.

(d) Access to representatives of parties. Proprietary information provided to a party under this section shall be released to the counsel and eligible outside experts of the receiving party unless the party who is releasing the information demonstrates that the experts or counsel previously violated the terms of a recent protective order issued by the Commission. To be eligible to receive proprietary information, the expert, subject to the following exception, may not be an officer, director, stockholder, partner, owner or employee of a competitor of the producing party. An expert who is a stockholder, partner or owner of a competitor or affiliate is eligible unless the ownership interest is valued at more than \$ 10,000 or constitutes a more than 1% interest, or both. Other persons may not have access to the proprietary information except as authorized by order of the Commission or of the presiding officer.

(e) Special restrictions. A protective order which totally prohibits the disclosure of a trade secret or other confidential information, limits the disclosure to particular parties or representatives of parties, except as permitted by subsection (c), or which provides for more restrictive rules than those permitted in subsections (b) and (c), will be issued only in extraordinary circumstances and only when the party from whom the information is sought demonstrates that a greater restriction is necessary to avoid severe and extreme prejudice.

(f) Return of proprietary information. A party providing proprietary information under this section may request that the parties receiving the information return the information and the copies thereof to the party at the conclusion of the proceeding, including appeals taken.

(g) Confidential security information. Challenges to a public utility's designation of confidential security information or requests in writing to examine confidential security information in nonadversarial proceedings are addressed in Chapter 102 (relating to confidential security information).

SANCTIONS

§ 5.373. [Subpoenas] (Reserved).

[(a) If issuance of a subpoena is required by operation of this chapter, or because a party or witness has not otherwise appeared, issuance of the subpoena shall be in accordance with § 5.421 (relating to subpoenas).

(b) Subsection (a) supersedes *1 Pa. Code § 35.142* (relating to subpoenas).]

Subchapter E. EVIDENCE AND WITNESSES

SUBPOENAS

§ 5.423. [Orders to limit availability of proprietary information] (Reserved).

[(a) *General rule for adversarial proceedings.* A petition for protective order to limit the disclosure of a trade secret or other confidential information on the public record will be granted only when a party demonstrates that the potential harm to the party of providing the information would be substantial and that the harm to the party if the information is disclosed without restriction outweighs the public's interest in free and open access to the administrative hearing process. A protective order to protect trade secrets or other confidential information will apply the least restrictive means of limitation which will provide the necessary protections from disclosure. In considering whether a protective order to limit the availability of proprietary information should issue, the Commission or the presiding officer should consider, along with other relevant factors, the following:

(1) The extent to which the disclosure would cause unfair economic or competitive damage.

(2) The extent to which the information is known by others and used in similar activities.

(3) The worth or value of the information to the party and to the party's competitors.

(4) The degree of difficulty and cost of developing the information.

(5) Other statutes or regulations dealing specifically with disclosure of the information.

(b) *General rule for nonadversarial proceedings.* A petition for protective order limiting the disclosure of a trade secret or other confidential information in a nonadversarial proceeding shall be referred to the Law Bureau for recommended

disposition by the Commission. The Commission will not disclose any material that is the subject of a protective order under this provision during the pendency of such a request.

(c) *Restrictions.*

(1) A protective order to restrict disclosure of proprietary information may require that a party receive, use or disclose proprietary information only for the purposes of preparing or presenting evidence, cross-examination or argument in the proceeding, or may restrict its inclusion in the public record.

(2) A protective order may require that parts of the record of a proceeding which contain proprietary information including, but not limited to, exhibits, writings, direct testimony, cross-examination, argument and responses to discovery, will be sealed and remain sealed unless the proprietary information is released from the restrictions of the protective order by agreement of the parties, or pursuant to an order of the presiding officer or the Commission.

(3) A public reference to proprietary information by the Commission or by a party afforded access thereto shall be to the title or exhibit reference in sufficient detail to permit persons with access to the proprietary information to fully understand the reference and not more. The proprietary information shall remain a part of the record, to the extent admitted, for purposes of administrative or judicial review.

(4) Prior to the issuance of a protective order, a party may not refuse to provide information which the party reasonably believes to be proprietary to a party who agrees to treat the information as if it were covered by a protective order until the presiding officer or the Commission issues the order or determines that issuance of the order would not be appropriate. The party claiming the privilege shall file a petition for protective order under subsection (a) within 14 days of the date the request for information was received.

(5) A party receiving proprietary information under this section retains the right, either before or after receipt of the information, to challenge the legitimacy of the claim that the information is proprietary, and to challenge the admissibility of the proprietary information.

(d) *Access to representatives of parties* . Proprietary information provided to a party under this section shall be released to the counsel and eligible outside experts of the receiving party unless the party who is releasing the information demonstrates that the experts or counsel previously violated the terms of a recent protective order issued by the Commission. To be eligible to receive proprietary information, the expert, subject to the following exception, may not be an officer, director, stockholder, partner, owner or employee of a competitor of the producing party. An expert will not be ineligible on account of being a stockholder, partner or owner of a competitor or affiliate unless the ownership interest is valued at more than \$ 10,000 or constitutes a more than 1% interest, or both. No other persons may have access to the proprietary information except as authorized by order of the Commission or of the presiding officer.

(e) *Special restrictions* . A protective order which totally prohibits the disclosure of a trade secret or other confidential information, limits the disclosure to particular parties or representatives of parties -- except as permitted by subsection (c) -- or which provides for more restrictive rules than those permitted in subsections (b) and (c), will be issued only in extraordinary circumstances and only when the party from whom the information is sought demonstrates that a greater restriction is necessary to avoid severe and extreme prejudice.

(f) *Return of proprietary information* . A party providing proprietary information under this section may request that the parties receiving the information return the information and the copies thereof to the party at the conclusion of the proceeding, including appeals taken.

(g) *Confidential security information* . Challenges to a public utility's designation of confidential security information or requests in writing to examine confidential security information in nonadversarial proceedings are addressed in Chapter 102 (relating to confidential security information).]

§ 5.424. Issuance of subpoenas.

(a) If issuance of a subpoena is required by operation of this chapter, or because a party or witness has not otherwise appeared, issuance of the subpoena shall be in accordance with § 5.421 (relating to subpoenas).

(b) Subsection (a) supersedes 1 Pa. Code § 35.142 (relating to subpoenas).

Subchapter H. EXCEPTIONS, APPEALS AND ORAL ARGUMENT

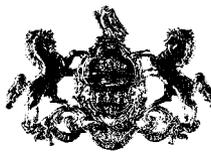
§ 5.533. Procedure to except to initial, tentative and recommended decisions.

* * * * *

(d) An original [and nine copies of the exceptions filed as paper documents] shall be filed with the Secretary under § 1.4. Filing users may file electronically as provided by § 1.37(b) (relating to number of copies).

* * * * *

TERRENCE J FITZPATRICK
DONNA M J CLARK
ENERGY ASSN OF PA
800 N THIRD ST
SUITE 205
HARRISBURG PA 17102



COMMONWEALTH OF PENNSYLVANIA
PUBLIC UTILITY COMMISSION
400 NORTH STREET
HARRISBURG, PA 17120

ROBERT F. POWELSON
CHAIRMAN

June 18, 2013

The Honorable Silvan B. Lutkewitte, III
Chairman
Independent Regulatory Review Commission
14th Floor, Harristown II
333 Market Street
Harrisburg, PA 17101

Re: L-2012-2296005/57-290; Amendment of PUC Rules of Practice and Procedure; 52 Pa. Code, Chapters 1, 3 and 5

Dear Chairman Lutkewitte,

Enclosed please find one (1) copy of the regulatory documents concerning the above-captioned rulemaking. Under Section 745.5(a) of the Regulatory Review Act, the Act of June 30, 1989 (P.L. 73, No. 19) (71 P.S. §§745.1-745.15) the Commission, on February 22, 2013, submitted a copy of the Notice of Proposed Rulemaking to the Senate Committee on Consumer Protection and Professional Licensure, the House Consumer Affairs Committee and the Independent Regulatory Review Commission (IRRC). This notice was published at 43 *Pa.B.* 1273 on March 9, 2013. The Commission also provided the Committees and IRRC with copies of all comments received in compliance with Section 745.5(b.1).

In preparing this final form rulemaking, the Commission has considered all comments received from the Committees, IRRC and the public.

Sincerely,

Robert F. Powelson

Enclosures

pc: The Honorable Robert M. Tomlinson
The Honorable Lisa Boscola
The Honorable Robert Godshall
The Honorable Peter J. Daley, II
Commissioner Witmer
Legislative Affairs Director Perry
Chief Counsel Pankiw
Assistant Counsel Sacavage
Regulatory Coordinator DelBiondo

TRANSMITTAL SHEET FOR REGULATIONS SUBJECT
TO THE REGULATORY REVIEW ACT

ID Number: L-2012-2296005/57-290

Subject: Final Rulemaking Re Amendment of PUC Rules of
Practice and Procedure; 52 Pa. Code Chapters 1, 3 and 5
Pennsylvania Public Utility Commission

2013 JUN 18 AM 11:17

RECEIVED
IRRC

TYPE OF REGULATION

- _____ Proposed Regulation
- _____ Final Regulation with Notice of Proposed Rulemaking
Omitted.
- X Final Regulation
- _____ 120-day Emergency Certification of the Attorney General
- _____ 120-day Emergency Certification of the Governor

FILING OF REPORT

<u>Date</u>	<u>Signature</u>	<u>Designation</u>
6/18/13		<u>HOUSE COMMITTEE</u> (Godshall) Consumer Affairs
6/18/13		<u>SENATE COMMITTEE</u> (Tomlinson) Consumer Protection and Professional Licensure
6/18/13		Independent Regulatory Review Commission
_____	_____	Attorney General
_____	_____	Legislative Reference Bureau