

Regulatory Analysis Form

(Completed by Promulgating Agency)

INDEPENDENT REGULATORY
REVIEW COMMISSION

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(All Comments submitted on this regulation will appear on IRRC'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.

(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 paper 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: | 30 days after publication |
| B. The date or dates on which public meetings or hearings will be held: | as needed |
| C. The expected date of promulgation of the proposed regulation as a final-form regulation: | 2 nd 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**

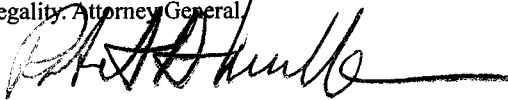
(Pursuant to Commonwealth Documents Law)

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



BY _____
(DEPUTY ATTORNEY GENERAL)

NOV 02 2012

DATE OF APPROVAL

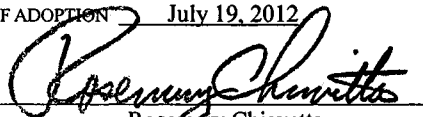
Check if applicable
Copy not approved. Objections attached

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

Pennsylvania Public Utility Commission
(AGENCY)

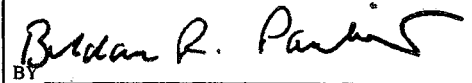
DOCUMENT/FISCAL NOTE NO. L-2012-2296005/57-290

DATE OF ADOPTION July 19, 2012


BY _____
Rosemary Chiavetta

TITLE Secy
(SECRETARY)

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



BY _____
Bohdan R. Pankiw
Chief Counsel

7-19-2012
DATE OF APPROVAL

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

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

The Pennsylvania Public Utility Commission on July 19, 2012, adopted a proposed 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 Lawrence F. Barth, Law Bureau, 717 772-8579.

EXECUTIVE SUMMARY

L-2012-2296005/57-290

Proposed 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 (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. All of these suggested changes are included in this Proposed Rulemaking.

The Commission's staff 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. These changes are also incorporated within this Proposed Rulemaking. The most notable change is the elimination of the filing of paper copies of pleadings before the Commission and its Administrative Law Judges with the exception of the original, signed pleading.

The contact persons for this Proposed 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 July 19, 2012

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

PROPOSED RULEMAKING ORDER

BY THE COMMISSION:

The Pennsylvania Public Utility Commission (Commission) proposes to implement changes to some of the procedural rules that govern the conduct of proceedings before the Commission and its Administrative Law Judges (ALJs). These changes to our administrative Rules of Practice and Procedure at 52 Pa. Code Chapter 1, 3 and 5 address problems identified by lawyers who represent clients before the Commission, ALJs, as well our own internal legal staff. We are making 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.

Background

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 Commission convened a Procedural Rules Committee consisting of outside practitioners and internal staff. The membership of the Procedural Rules Committee is 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).

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. All of the Procedural Rules Committee's suggested changes are incorporated into the rule changes contained within Annex A.

In addition to those changes proposed by the Procedural Rules Committee, Commission staff has identified some problems with the current regulations that are also addressed in this order. Due to the recently completed reorganization of the Commission, advances in technology and the ability of many practitioners to make electronic filings at the Commission, we are eliminating the requirement to file additional paper copies of certain pleadings, beyond a signed original, before the Commission. Although this only involves two regulations, they are universal in operation and will result in savings of time and resources for both parties appearing before the Commission and our staff as well.

Proposed Rulemaking

§ 1.8. Definitions.

Our decision in *Joint Application of Aqua Pennsylvania, Inc. and Country Club Gardens Water Company*, Docket Nos. A-210104F0066 and A-210620F2000, 2006 Pa. PUC LEXIS 30, Opinion and Order entered April 7, 2006, made it apparent that the definition of "person" did not include "municipal corporations." In that proceeding,

Aqua Pennsylvania, Inc. had petitioned for authority to acquire certain water system assets in Lehigh County owned by Country Club Gardens Water Company, Inc. (together Joint Applicants). A number of individuals, municipal entities and municipal authorities protested that petition (Joint Protesters). The Joint Applicants filed a motion to dismiss the protests that we granted in-part, particularly with respect to “municipal corporation” protesters stating:

We note that the definition of “person” in our regulations differs from the definition of “person” in our statute. Section 102, 66 Pa. C. S. § 102, excludes only “corporations” from the definition of “person” but also states that the definition of a “corporation” does not include “municipal corporations.” Therefore, a “municipal corporation” is not excluded from the definition of “person” in our statute. In our regulations, Section 1.8, 52 Pa. Code § 1.8, specifically includes “corporations, partnerships and associations” in the definition of “person” but does not have any specific exclusions. It would seem, therefore, that a municipal corporation can be a “person” under both our statute and regulations. However, we believe that the mere fact that a municipal corporation can fit the legal definition of “person” is not sufficient to confer standing to protest this Application on the municipal entities and the municipal authorities in this proceeding. Therefore, we grant the Joint Protestants’ Exceptions with regard to the definition of “person” as it applies to municipal corporations.

Joint Application of Aqua Pennsylvania at 7. The Procedural Rules Committee maintains that “municipal corporations” should be listed in Section 1.8 as a “person.” We agree that adding “municipal corporations” to the definition of “person” would eliminate confusion as to the status of such entities although, it would not necessarily grant them a direct interest in a proceeding where appropriate.

§ 1.37. Number of copies.

As noted above, with the advent of electronic transmission, storage and filing of documents, it is now possible for the Commission to reduce the number of copies which are required to be filed and, correspondingly, the burden on persons with business before the agency. Therefore, we are eliminating the requirement to file additional copies, beyond the signed original, with regard to the Commission's rules regarding litigation conducted before us. As we continue to review our regulations, we will no doubt be eliminating other rules regarding the filing of copies of various forms and pleadings as well.

§ 1.56. Date of service.

The present wording of this regulation provides that the date of service of a document is when "one" of certain conditions is met. The Procedural Rules Committee proposed that rule be amended so that the date of service is the earliest date that one of the conditions is met. This eliminates any ambiguity as to which of the conditions applies.

§ 5.44. Petitions for reconsideration from actions of the staff.

This regulation is somewhat confusing in its present form. It deals with the procedures for obtaining an "appeal" from actions of the staff. "Appeals" generally refer to Petitions for Review that are filed before Commonwealth Court in order to obtain judicial review of a decision by the Commission. *See*, 2 Pa. C.S. § 702. Generally, the term "appeal" connotes a formal proceeding before another tribunal. However, Rule 5.44 deals with our procedures to be followed within the agency when seeking Commission review of a decision by its staff. In order to bring some clarity to this vagueness and reconcile the differences between seeking a formal appeal of an agency's final decision and a review of action by our staff, we are changing the regulation to refer to obtaining

“reconsideration” of an action of the staff by the Commission. In all other respects, the procedures for obtaining reconsideration remain the same.

§ 5.72. Eligibility to intervene.

The supersession at subsection (c) is incorrect since the existing sections are not identical to those appearing in 1 Pa. Code § 35.28 (Eligibility to intervene). 1 Pa. Code § 35.28 is part of the Commonwealth’s General Rules of Administrative Practice and Procedure. Our own regulation at section 5.72, while very similar to § 35.28, is more specifically tailored to governing persons who may wish to participate in PUC proceedings. The change to the regulation proposed by the Procedural Rules Committee would more accurately note that our regulation supersedes the more general rule at § 35.28.

§ 5.94. Withdrawal of pleadings in a contested proceeding.

Section 5.94 allows 20 days to file an objection to a petition to withdraw a pleading in a contested proceeding. This is inconsistent with 52 Pa. Code § 5.24, Satisfaction of formal complaints, which allows only 10 days for the filing of an objection. In order to ensure uniformity and predictability, it is preferable to make these time periods consistent. The proposed amendment would set the period of time in which to object at 10 days in both rules.

§ 5.101. Preliminary objections.

Apparently during the last revision of this rule in 2005, the lack of standing as a ground for a preliminary objection was eliminated without notice or discussion. Insofar as a lack of standing of a party is a reason for rejecting a claim, it would stand to reason that a party should be able to assert this defense as a preliminary objection. The legal practitioners on the Procedural Rules Committee were in agreement to reinsert standing as a basis for preliminary objection in subsection 5.101(a)(7).

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

The Procedural Rules Committee identified an area where some attorneys may have been taking advantage of the rules to “game” the system during the preparation for hearings. Prior to a hearing, parties are able to serve written discovery requests seeking data and documents on other parties to the case. The rules require that a party who is served with written interrogatories may object within 10 days of service of the interrogatory. 52 Pa. Code § 5.342(e). Answers to the interrogatory must be served within 20 days (Except for base rate cases). 52 Pa. Code § 5.342(d).

The problem is that some attorneys are objecting to interrogatories on day 10, but providing answers to the interrogatory on day 20. This gives the propounding counsel zero days to determine whether the answer filed is complete enough to satisfy the discovery request, or is deficient so as to warrant filing a motion to compel. One member of the Committee opined that objecting to, but then answering a discovery request was a device to limit the response to the request. The solution set forth in the proposed amendment to the regulation would eliminate the device of objecting to an interrogatory and then providing an answer. It does this by requiring that objections be served in lieu of an answer.

§ 5.365. Orders to limit availability of proprietary information.

The staff has identified two sections which appear to be misplaced orphans. The first section, 52 Pa. Code § 5.423 concerns proprietary information, but is contained in a group of sections labeled “Sanctions.” We believe this section more properly belongs under “TYPES OF DISCOVERY” and, therefore, we have renumbered it as 52 Pa. Code § 5.365.

§ 5.424. Issuance of subpoenas.

The second section, 52 Pa. Code § 5.373, “Subpoenas,” is in a group of sections which are labeled “Sanctions” and deal with that subject. All rules dealing with a single

subject should be grouped together as far as practicable so that persons may find the rules they need to follow in a single place as opposed to reading through an entire chapter. We solve this problem by renumbering this rule as 52 Pa. Code § 5.424 which places it in a group of sections dealing with "SUBPOENAS." To accommodate this change it is necessary to rename the section "Issuance of subpoenas" since 52 Pa. Code § 5.421 is already entitled "Subpoenas" and because "Issuance of subpoenas" more accurately describes the function of this subsection.

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

As discussed above, we are eliminating the requirement to file additional copies of exceptions to our orders, beyond the signed original.

CONCLUSION

The proposed amendments to the Rules of Practice and Procedure contained within our regulations and issued for comment by this order are intend to simplify practice before the Commission and to 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 commences its rulemaking process to amend its existing regulations consistent with Annex A to this Order.

Accordingly, pursuant to Sections 501, 504, 523, 1301, 1501, and 1504, of the Public Utility Code, 66 Pa. C.S. §§ 501, 504, 523, 1301, 1501, and 1504, and Sections 201 and 202 of the Act of July 31, 1968, P.L. 769 No. 240, 45 P.S. §§ 1201-1202, 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 are considering adopting the proposed regulations as set forth in Annex A, attached hereto; **THEREFORE,**

IT IS ORDERED:

1. That a proposed rulemaking be opened to consider the regulations set forth in Annex A.

2. That the Secretary shall submit this proposed rulemaking Order and Annex A to the Office of Attorney General for review as to form and legality and to the Governor's Budget Office for review of fiscal impact.

3. That the Secretary shall submit this proposed rulemaking Order and Annex A for review and comments to the Independent Regulatory Review Commission and the Legislative Standing Committees.

4. That the Secretary shall certify this proposed rulemaking Order and Annex A and deposit them with the Legislative Reference Bureau to be published in the *Pennsylvania Bulletin*.

5. That an original and 15 copies of any written comments referencing the docket number of the proposed regulations be submitted within 30 days of publication in the *Pennsylvania Bulletin* to the Pennsylvania Public Utility Commission, Attn: Secretary, P.O. Box 3265, Harrisburg, PA 17105-3265.

6. That a copy of this proposed rulemaking 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.

7. That the contact person for legal matters for this proposed rulemaking is Krystle Sacavage, Assistant Counsel, Law Bureau, (717) 787-5262. Alternate formats of this document are available to persons with disabilities and may be obtained by contacting Sherri DelBiondo, Regulatory Coordinator, Law Bureau, 717-772-4579.

BY THE COMMISSION,


Rosemary Chiavetta
Secretary

(SEAL)

ORDER ADOPTED: July 19, 2012

ORDER ENTERED: July 19, 2012

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:

- (1) The document is deposited in the United States mail.
- (2) The document is deposited with an overnight express package delivery service.
- (3) The document is delivered in person.
- (4) The document is transmitted by telefacsimile or electronic mail as provided in § 1.54(b) (relating to service by a party) prior to 4:30 p.m. local prevailing time.
- (5) The document enters an information processing system designated by the recipient for the purpose of receiving service and from which the recipient is able to retrieve the served document in a form capable of being processed by the recipient's system prior to 4:30 p.m. local time.

* * * * *

**TITLE 52. PUBLIC UTILITIES
PART I. PUBLIC UTILITY COMMISSION
Subpart A. GENERAL PROVISIONS
CHAPTER 5. FORMAL PROCEEDINGS
Subchapter A. Pleadings and other Preliminary Matters**

* * * * *

§ 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.

(d) Subsections (a) -- (c) supersede *1 Pa. Code § 35.20* (relating to appeals from actions of the staff).

* * * * *

§ 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).

* * * * *

§ 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.

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§ 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:

- (1) Lack of Commission jurisdiction or improper service of the pleading initiating the proceeding.
- (2) Failure of a pleading to conform to this chapter or the inclusion of scandalous or impertinent matter.
- (3) Insufficient specificity of a pleading.
- (4) Legal insufficiency of a pleading.
- (5) Lack of capacity to sue, nonjoinder of a necessary party or misjoinder of a cause of action.
- (6) Pendency of a prior proceeding or agreement for alternative dispute resolution.
- (7) Standing of a party to participate in the proceeding.

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Subchapter D. DISCOVERY

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§ 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 in lieu of an answer.

[1](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 shall 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.

(1) The party against whom the motion to compel is directed shall file an answer within 5 days of service of the motion absent good cause or, in the alternative, respond orally at the hearing if a timely hearing has been scheduled within the same 5-day period.

(2) The presiding officer will rule on the motion as soon as practicable. The motion should be decided within 15 days of its presentation, unless the motion presents complex or novel issues. If it does have complex or novel issues, the presiding officer will, upon notice to the parties, rule in no more than 20 days of its presentation.

* * * * *

§ 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 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).

* * * * *

[§ 5.373. 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 E. EVIDENCE AND WITNESSES

* * * * *

[§ 5.423. 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 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).

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Subchapter H. EXCEPTIONS, APPEALS AND ORAL ARGUMENT

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

(a) In a proceeding, exceptions may be filed by a party and served within 20 days after the initial, tentative or recommended decision is issued unless some other exception period is provided. Exceptions may not be filed with respect to an interlocutory decision.

(b) Each exception must be numbered and identify the finding of fact or conclusion of law to which exception is taken and cite relevant pages of the decision. Supporting reasons for the exceptions shall follow each specific exception.

(c) The exceptions must be concise. The exceptions and supporting reasons must be limited to 40 pages in length. Statements of reasons supporting exceptions must, insofar as practicable, incorporate by reference and citation, relevant portions of the record and passages in previously filed briefs. A separate brief in support of or in reply to exceptions may not be filed with the Secretary under § 1.4 (relating to filing generally).

(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).

(e) Unless otherwise ordered by the Commission, the provisions of §§ 1.11(a)(2) and (3) and 1.56(b) (relating to date of filing; and date of service) will not be available to extend the time periods for filing exceptions.

(f) Subsections (a) -- (e) supersede 1 Pa. Code §§ 35.211 and 35.212 (relating to procedure to except to proposed report; and content and form of briefs on exceptions).



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

February 22, 2013

ROBERT F. POWELSON
CHAIRMAN

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 1 copy of the proposed rulemaking and the Regulatory Analysis Form prepared in compliance with Executive Order 1996-1, "Regulatory Review and Promulgation." Pursuant to Section 5(a) of the Regulatory Review Act of June 30, 1989 (P.L. 73, No. 19) (71 P.S. §§745.1-745.15), the Commission is submitting today a copy of the proposed rulemaking and Regulatory Analysis Form to the Chairman of the House Committee on Consumer Affairs and to the Chairman of the Senate Committee on Consumer Protection and Professional Licensure.

The purpose of this proposal is to improve the clarity and operation of Commission procedures and reduce paper copy requirements for Commission filings. The contact person is Assistant Counsel Krystle Sacavage, Law Bureau, 787-5262.

The proposal has been deposited for publication with the Legislative Reference Bureau.

Sincerely,

Robert F. Powelson
Chairman

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


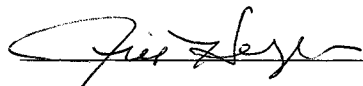


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TYPE OF REGULATION

- Proposed Regulation
- Final Regulation with Notice of Proposed Rulemaking Omitted.
- 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>
2/15/13		HOUSE COMMITTEE (Godshall) Consumer Affairs
2-22-13		SENATE COMMITTEE (Tomlinson) Consumer Protection and Professional Licensure
2/22/13		Independent Regulatory Review Commission Attorney General
2/22/13		Legislative Reference Bureau