

Regulatory Analysis Form

(Completed by Promulgating Agency)

**INDEPENDENT REGULATORY
REVIEW COMMISSION**

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

(1) Agency
Public Utility Commission

(2) Agency Number: L-2014-2406251
Identification Number: 57-303

IRRC Number: 3059

(3) PA Code Cite: 52 Pa. Code §§ 5.412 and 5.412a.

(4) Short Title: Electronic Access to Pre-Served Testimony

(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)

On January 10, 2013, the Commission issued an Implementation Order regarding Electronic Access to Pre-Served Testimony which required parties serving pre-served testimony in proceedings pending before the Commission to, within thirty days after the final hearing in an adjudicatory proceeding, either (electronically) eFile with or provide to the Secretary's Bureau a (compact disc) CD containing all testimony furnished to the court reporter during the proceeding. On March 20, 2014, the Commission issued a Proposed Rulemaking Order soliciting comments regarding this requirement. By this rulemaking, the Commission proposes to implement new final regulations to outline the details of this electronic submission requirement.

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

66 Pa. C.S. §§ 332, 333, and 501; 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 proposed final 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.

Requiring parties to electronically submit pre-served testimony will allow Commission staff, as well as parties of record in an adjudicatory proceeding, to have electronic access to parties' pre-served testimony through the Commission's case and document management system. The proposed regulations will set forth and clarify the specific procedures to be followed for the electronic submission of pre-served testimony. The Commission currently regulates approximately 6,000 utilities and licensees. These utilities, and those parties who participate in proceedings before the Commission regarding these utilities, will have the convenience of electronic access to pre-served testimony.

(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.

The proposed final regulations pertain strictly to the filing of pre-served testimony with the Commission. Accordingly, there are no provisions in the proposed regulations that are more stringent than federal standards.

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

The Commission is aware that several other states utilize some type of electronic filing system. However, the proposed final 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 proposed final regulations will not affect any other regulations of the Commission 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 review the Commission’s procedural regulations to determine whether changes or improvements were needed, the Commission formed the Efficient Work Group. The Efficient Work Group is comprised of internal staff from the Commission’s Office of Administrative Law Judge, Secretary’s Bureau, Law Bureau, Bureau of Investigation and Enforcement (formally Office of Trial Staff), Bureau of Consumer Services, Bureau of Technical Utility Services, Office of Special Assistants and Management Information Services. After a period of study and discussion, the Efficient Work Group determined that Commission staff, as well as parties of record in an adjudicatory proceeding, would benefit from having electronic access to parties’ pre-served testimony.

On November 8, 2012, the Commission issued a Secretarial Letter proposing that parties serving pre-served testimony be required to either eFile with or provide to the Secretary’s Bureau a CD containing all testimony furnished to the court reporter during an adjudicatory proceeding. Comments to that Secretarial Letter were filed by the Pennsylvania Department of Transportation; the Office of Consumer Advocate; PECO Energy Company; Eckert Seamans Cherin & Mellot, LLC; and, jointly, Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company. The Commission addressed these comments in its Implementation Order regarding Electronic Access to Pre-Served Testimony issued on January 10, 2013, at Docket No. M-2013-2331973.

On March 20, 2014, the Commission issued a Proposed Rulemaking Order proposing to implement new regulations to require parties serving pre-served testimony to, within thirty days after the final hearing in an adjudicatory proceeding, either electronically file (eFile) with or provide to the Commission’s Secretary’s Bureau a compact disc (CD) or other technology as prescribed by the Commission containing all testimony furnished to the court reporter during the proceeding. In response to our proposed regulations set forth in the March 20, 2014 Proposed Rulemaking Order and Annex A thereto, the Commission received formal comments from PECO Energy Company, the Office of Consumer Advocate and the Independent Regulatory Review Commission. The Commission has addressed these comments in the attached Final Rulemaking Order.

(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 Commission currently regulates approximately 6,000 utilities or licensees. These utilities, and those parties who participate in proceedings before the Commission regarding these utilities, will have the convenience of electronic access to pre-served testimony.

(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 Commission, the Commission cannot estimate the number of parties who participate in proceedings before the Commission 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 proposed final regulations are intended to make practice before the Commission easier by providing electronic, and thus searchable, access to pre-served testimony. Thus, the utilities regulated by the Commission, and those parties who participate in proceedings before the Commission regarding these utilities, will have the convenience of electronic access to pre-served testimony.

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

Many utilities and parties practicing before the Commission are already making electronic filings with the Commission (either by eFiling or via CD). Any added costs of electronic filing of pre-served testimony are outweighed by the benefit of providing electronic, and thus searchable, access to pre-served testimony to both Commission staff and parties of record in an adjudicatory proceeding.

(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.

Any additional costs associated with electronic filing cannot be quantified as many utilities and parties practicing before the Commission are already making electronic filings with the Commission. Additionally, the convenience of providing electronic access to pre-served testimony 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.

Any additional costs associated with electronic filing to local governments cannot be quantified as the Commission cannot estimate the number of local government entities which may participate in cases before the Commission.

(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.

Any additional costs associated with electronic filing to state governments cannot be quantified as the

Commission cannot estimate the number of state government entities which may participate in cases before the Commission.

Regarding the Commission itself, the electronic submission of testimony will allow Commission staff to have electronic access to parties' pre-served testimony through the Commission's computerized case and document management system. This will result in a significant savings of time for Commission staff when reviewing electronically submitted testimony as staff will have access to "searchable" Portable Document Format (PDF) testimony (as opposed to reviewing paper form testimony documents). As such, work productivity and efficiency will be increased because there will no longer be any delays in obtaining copies of pre-served testimony documents for review and specific testimony can be more easily searched and utilized (using "copy and paste" function) in producing staff work product.

To be specific, the Commission has five Commissioner offices, each with multiple assistants/staff who are required to review pre-served testimony prior to advising their Commissioner on a specific proceeding. Often these assistants/staff are required to review this testimony under strict statutory deadlines which necessitates each assistant obtaining their own copy of pre-served testimony (as opposed to sharing one or two copies of such testimony between multiple assistants). The proposed final regulations will allow Commission assistants/staff to review electronically submitted testimony documents on their personal computers rather than in paper format. As such, the Commission will no longer be required to produce multiple copies of pre-served testimony documents for Commission staff to review.

Allowing Commission staff to review pre-served testimony electronically rather than in paper format will result in significant savings of time and resources for the Commission. Specifically, the staff in the Commission's Secretary's Bureau will no longer be required to duplicate pre-served testimony documents for distribution to Commission staff in the Commissioner offices. This will result in savings for the Commission in terms of time (labor costs for duplication) and resources (copying and paper costs).

(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.

There are no legal, accounting or consulting procedures, or additional reporting, recordkeeping or other paperwork imposed by the proposed final regulations.

(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

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(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 proposed final regulations have 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.

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 these proposed regulations.

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

- | | |
|---|--------------------------------|
| A. The date by which the agency must receive public comments: | <u> N/A </u> |
| 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: | 1 st quarter 2015 |
| D. The expected effective date of the final-form regulation: | upon publication as final |
| 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 Efficient Work Group, working specifically with the Commission's Office of Administrative Law Judge, will continue to evaluate the functionality of our procedures regarding the electronic submission of pre-served testimony, set forth in the proposed regulations, to determine whether additional regulations are required to clarify the electronic submission process.

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)

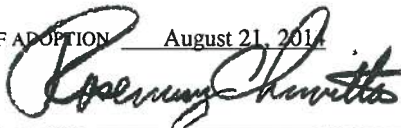
DATE OF APPROVAL

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-2014-2406251/57-303

DATE OF ADOPTION August 21, 2014

BY 
Rosemary Chiavetta

TITLE 
(SECRETARY)

Check if applicable
Copy not approved. Objections attached

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


Bogdan R. Parkiw
Chief Counsel

8-21-2014
DATE OF APPROVAL

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

L-2014-2406251/57-303
Final Rulemaking
Electronic Access to Pre-Served Testimony
52 Pa Code, Chapter 5

The Pennsylvania Public Utility Commission on August 21, 2014, adopted a final rulemaking order proposing regulations regarding procedures to be followed for the electronic submission of testimony. The contact person is Assistant Counsel Krystle Sacavage, Law Bureau, 717 787-5262.

EXECUTIVE SUMMARY

L-2014-2406251/57-303

Final Rulemaking

Electronic Access to Pre-Served Testimony

On January 10, 2013, the Commission issued an Implementation Order regarding Electronic Access to Pre-Served Testimony at Docket No. M-2012-2331973 which proposed to require parties, serving pre-served testimony in certain proceedings, to comply with certain electronic filing requirements. On March 20, 2014, the Pennsylvania Public Utility Commission (Commission) issued a Proposed Rulemaking Order proposing to implement new regulations to specifically require parties serving pre-served testimony to, within thirty days after the final hearing in an adjudicatory proceeding, either electronically file (eFile) with or provide to the Commission's Secretary's Bureau a compact disc (CD) or other technology as prescribed by the Commission containing all testimony furnished to the court reporter during the proceeding.

The Commission proposed to implement these new regulations in order to allow Commission staff, as well as parties of record in an adjudicatory proceeding, to have electronic access to parties' public pre-served testimony through the Commission's case and document management system. Based upon our review and consideration of the comments filed in response to our March 20, 2014 Proposed Rulemaking Order by the PECO Energy Company, the Office of Consumer Advocate and the Independent Regulatory Review Commission, the Commission proposes to adopt the final regulations as set forth in Annex A of the Final Rulemaking Order.

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 August 21, 2014

Commissioners Present:

Robert F. Powelson, Chairman
John F. Coleman, Jr., Vice Chairman
James H. Cawley
Pamela A. Witmer
Gladys M. Brown

Electronic Access to Pre-Served Testimony

Docket No. L-2014-2406251

FINAL RULEMAKING ORDER

BY THE COMMISSION:

On March 20, 2014, the Pennsylvania Public Utility Commission (Commission) issued a Proposed Rulemaking Order proposing to implement new regulations to require parties serving pre-served testimony to, within thirty days after the final hearing in an adjudicatory proceeding, either electronically file (eFile) with or provide to the Commission's Secretary's Bureau a compact disc (CD) or other technology as prescribed by the Commission containing all testimony furnished to the court reporter during the proceeding. The Commission proposed to implement these new regulations in order to allow Commission staff, as well as parties of record in an adjudicatory proceeding, to have electronic access to parties' public pre-served testimony through the Commission's case and document management system. Based upon our review and consideration of the comments filed by the PECO Energy Company (PECO), the Office of Consumer Advocate (OCA) and the Independent Regulatory Review Commission (IRRC), we shall adopt the final regulations as set forth in Annex A to this Order.

DISCUSSION

In response to our proposed regulations set forth in the March 20, 2014 Proposed Rulemaking Order and Annex A thereto, the Commission received formal comments from PECO, the OCA and IRRC.¹ In its comments, PECO commends the Commission in its efforts to find new and useful ways to take advantage of the Commission's eFiling system through providing electronic access to pre-served testimony.² PECO specifically comments that utilizing the Commission's eFiling system effectively affords interested parties proper and easy access to documents, with pre-served testimony being a prime example of that documentation.

The OCA also generally supports the Commission's proposed regulations. Through its comments, the OCA seeks clarification of the certain procedures to be followed for the electronic submission of pre-served testimony. The OCA first comments that Section 5.412a(b)(3) of the proposed regulations prescribes the labeling of pre-served testimony submitted to the Commission. The OCA, however, notes that there can be additional pieces of pre-served testimony that are not addressed in this section of the proposed regulations, such as "supplemental direct testimony" and "written rejoinder testimony." The Commission agrees that there are additional pieces of pre-served testimony that are not specifically set forth in Section 5.412a(b)(3) of the proposed regulations. As the purpose of this proposed section is to ensure that parties consistently label their pre-served testimony filed with the Commission, the Commission is merely providing examples of its preferred formatting for the labeling of pre-served testimony. Accordingly, the Commission will revise Section 5.412a(b)(3) of the proposed regulations to state as follows:

¹ We also received informal internal comments from the Commission's Administrative Law Judge Susan D. Colwell.

² Although PECO filed its comments in response to the March 20, 2014 Proposed Rulemaking Order after the filing deadline, the Commission considered these comments as no party or entity, including the Commission, were prejudiced by this delay.

(3) *Labeling of electronically submitted testimony.* Pre-served testimony electronically submitted to the Commission shall be labeled consistent with the following examples:

- (i) “__ St. No. __ Direct Testimony of ____.”
- (ii) “__ St. No. __ -R Rebuttal Testimony of ____.”
- (ii) “__ St. No. __ -SR Surrebuttal Testimony of ____.”

In its comments, IRRC echoes the comments of the OCA in that there may be additional pieces of pre-served testimony that may be electronically filed which were not originally addressed in Section 5.412a(b)(3) of the proposed regulations. Because we have revised this section of our proposed regulation to clearly indicate that pre-served testimony must merely be labeled *consistent with the examples* set forth therein, the Commission believes that it has satisfied the OCA’s and IRRC’s concerns regarding the labeling of pre-served testimony documents.

Next, the OCA comments that Section 5.412a(c) of the proposed regulations requires parties to continue to submit two paper copies of the electronically submitted pre-served testimony to the court reporter at the hearing. In its comments, the OCA suggests that only one paper version of the electronically submitted pre-served testimony be provided to the court reporter. Upon further review of the electronic submission of pre-served testimony process, the Commission’s Secretary’s Bureau has confirmed that the Commission only requires one paper version of the pre-served testimony it receives from the court reporter. Therefore, the Commission will revise Section 5.412a(c) of the proposed regulations to require only one paper version of the electronically submitted pre-served testimony to be provided to the court reporter at hearing.

On a related note, IRRC points out that subsection (c) of the proposed regulations pertains to the submission of paper copies of pre-served testimony to the court reporter at hearing and asks why this provision is located under proposed Section 5.412a (relating to the electronic submission of pre-served testimony) rather than under Section 5.412 (relating to written testimony). We note that Section 5.412(g) of the Commission's regulations refers to the requirement for parties to provide copies of *testimony* to the court reporter at hearing when filing *written testimony* with the Commission whereas proposed Section 5.412a(c) requires parties to provide a copy of *pre-served testimony* to the court reporter at hearing when electronically submitting *pre-served testimony* to the Commission. Accordingly, by our proposed regulations regarding electronic access to pre-served testimony, the Commission has made a distinction between certain testimony documents, which may still be filed via hard copy, and pre-served testimony documents, which must be filed electronically. Accordingly, the Commission believes that the requirement to provide a copy of pre-served testimony to the court reporter at hearing when filing such testimony with the Commission should remain under proposed Section 5.412a as this section specifically relates to electronic filing of pre-served testimony, as distinguished from the filing of written testimony.³ We will, however, revise Section 5.412a(c) of the proposed regulations to clarify that such requirements regarding the submission of a paper copy of pre-served testimony to the court reporter at hearing are specifically applicable when electronically filing pre-served testimony with the Commission.

The OCA's next comment concerns access to pre-served testimony to the public through the Commission's website. In its May 20, 2014 Proposed Rulemaking Order, the Commission proposed that both Commission staff and all parties of record in an adjudicatory proceeding will have electronic access to pre-served testimony. The

³ By separate rulemaking, the Commission intends to propose the future revision of Section 5.412(g) of our regulations to require parties to submit only one paper original, rather than two paper copies, of written testimony documents filed with the Commission to the court reporter at hearing for consistency with the requirements set forth in this Final Rulemaking Order.

Commission specifically noted that the Commission's advisory staff is aware of the need to consult the transcript for purposes of determining which electronically submitted testimony has been admitted into the official record. Similarly, the Commission is confident that parties of record in an adjudicatory proceeding are equally aware of the need for such consultation. However, while the Commission is confident that Commission staff and parties of record in an adjudicatory proceeding are aware of the need to consult the transcript for purposes of determining which electronically submitted testimony was admitted into the official record, the Commission is not certain that the public is similarly aware of the need for such consultation. Accordingly, the Commission did not propose to extend electronic access to pre-served testimony to the public at this time.

In its comments, the OCA requests public access to electronically submitted pre-served testimony that was admitted into the record through the Commission's website. The OCA specifically comments that if electronically submitted pre-served testimony is shown on the Commission's website with any strikeouts, corrections or modifications in place, then the public would not need to refer to the transcript in order to know what the final version of the testimony admitted into the record contains. However, as discussed in the March 20, 2014 Proposed Rulemaking Order, because presiding officers of the Commission maintain different practices regarding the submission of testimony containing words and/or provisions that have been modified or stricken at hearing, the testimony required to be electronically submitted to the Commission must match exactly the copy of the testimony that the presiding officer has required to be submitted to the court reporter at hearing. Accordingly, if a presiding officer does not require parties to make modifications to testimony before submitting the testimony to the court reporter (even though portions of that testimony are stricken during the hearing), that party will

electronically submit to the Commission a clean copy of the testimony containing the stricken material.⁴

As a result of this requirement for parties to file an exact copy of the pre-served testimony that was submitted to the court reporter at hearing, the electronically submitted testimony that is submitted to the Commission which would be published for public viewing on the Commission's website may contain material which was not admitted into the official record. As the Commission is not able to provide the public with electronic access to hearing transcripts (per our court reporting contracts) in order for the public to determine which material was admitted into the official record, it is possible that the public might be viewing testimony that was not admitted into the record. As viewing testimony which was not admitted into the official record in a proceeding will likely be misleading and cause confusion to the public, the Commission does not agree with the OCA that electronically submitted testimony should be published on the Commission's website for public viewing at this time.⁵

In its comments, IRRC has specifically asked the Commission to explain how "barring" the public's electronic access to pre-served testimony is in the public's interest. It is important to note, however, that the Commission has never provided the public with *electronic* access to pre-served testimony documents through its website. Accordingly, the Commission is not taking away electronic access to pre-served testimony documents from the public, but rather providing electronic access to the Commission staff and parties of record in an adjudicatory proceeding for convenience purposes. In addition, electronic access to these documents by the public from the Commission's website could

⁴ When reviewing this type of electronically submitted testimony, both Commission staff and parties of record are provided with copies of the hearing transcript in order to appropriately determine which testimony has been admitted into the official record.

⁵ Additionally, the Commission does not currently have the resources required for its staff to manually modify all electronically submitted pre-served testimony to ensure such testimony contains only material which was admitted into the official record (by reviewing all transcript modifications) before making this testimony available to the public on the Commission's website.

result in pre-served testimony documents containing text that has been subsequently stricken to be widely distributed in error. Thus, the benefit of immediate website access to the public must be measured against the detriment of distributing pre-served testimony documents containing stricken material.

Although the public will not be provided with electronic access to these documents, the public can continue to access pre-served testimony documents in paper form (along with the hearing transcripts) through the Commission's Secretary's Bureau. As mentioned previously, the Commission is not permitted to place hearing transcripts provided by the court reporter on our website for public viewing. Therefore, the Commission believes that it is in the best interest of the public to continue to allow the public to access pre-served testimony documents in paper form (along with the transcripts) through the Commission's Secretary's Bureau rather than causing confusion by providing the public with electronic access to pre-served testimony documents without having electronic access to hearing transcripts.

In its comments, the OCA also asks how parties of record with Commission eFiling accounts would be able to access pre-served testimony on the Commission's website. However, the only documents placed on the Commission's website are those available for public viewing. As previously mentioned, the Commission is not providing access to electronically submitted pre-served testimony to the public at this time. Accordingly, parties of record may only obtain electronic access to parties' electronically submitted pre-served testimony through the Commission's case and document management system.

In its comments, IRRC asks that the Commission incorporate certain details contained in footnotes in the March 20, 2014 Proposed Rulemaking Order into our proposed regulations regarding the electronic submission of pre-served testimony so that parties are better able to meet the requirements for the submission of such testimony.

Specifically, IRRC first requests that we explain in further detail how parties should revise testimony that has been stricken and/or modified at hearing prior to electronically submitting the testimony to the Commission. To address the specific details of these requirements, we will add subsections (b)(2)(i) and (ii) to our proposed regulations. Second, IRRC requests that we specifically discuss the types of documents excluded from our proposed electronic submission requirements. The Commission will specifically set forth the documents excluded from our proposed electronic submission requirements by adding an additional sentence to the end of Section 5.412a(b) of our proposed regulations. Third, IRRC requests that the Commission specifically provide in our proposed regulations that in order to view electronically submitted testimony and to receive action alerts that testimony has been electronically submitted to the Commission, parties must have an eFiling account with the Commission. To inform parties that they must have an eFiling account to view such testimony and to receive daily action alerts that such testimony has been submitted to the Commission, we will add subsection (f) to our proposed regulations.

Finally, IRRC requests that the Commission include the anticipated fiscal impact associated with the implementation of our proposed electronic submission of pre-served testimony regulations on the Commission itself. The Commission will include an analysis of such fiscal impact on the Regulatory Analysis Form submitted to IRRC along with this Final Rulemaking Order.

CONCLUSION

Requiring parties to, within thirty days after the final hearing in an adjudicatory proceeding (unless such time period is otherwise modified by the presiding officer), either eFile with or provide to the Secretary's Bureau a CD (or other prescribed technology) containing all testimony furnished to the court reporter during the proceeding will accommodate the need to provide Commission staff and parties of record electronic

access to pre-served testimony through the Commission's case and document management system. The regulations contained in Annex A to this Order set forth the specific procedures to be followed for the electronic submission of pre-served testimony. The Commission, therefore, formally adopts the final regulations as set forth in Annex A to this Order.

Accordingly, pursuant to Sections 332, 333 and 501 of the Public Utility Code, 66 Pa. C.S. §§ 332, 333 and 501; 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 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*.

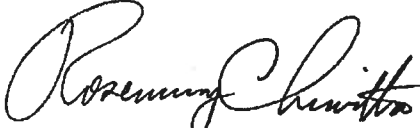
6. That these regulations shall become effective upon publication in the *Pennsylvania Bulletin*.

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 all parties who commented on the March 20, 2014 Proposed Rulemaking Order.

9. That the contact person for legal matters for this final rulemaking is Krystle J. 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) 772-4597.

BY THE COMMISSION,


Rosemary Chiavetta
Secretary

(SEAL)

ORDER ADOPTED: August 21, 2014

ORDER ENTERED: August 22, 2014

ANNEX A
TITLE 52. PUBLIC UTILITIES
PART I. PUBLIC UTILITY COMMISSION
Subpart A. GENERAL PROVISIONS
CHAPTER 5. FORMAL PROCEEDINGS
Subchapter E. EVIDENCE AND WITNESSES

WITNESSES

§ 5.412. Written testimony.

* * * * *

(f) *Service.* Written testimony shall be served upon the presiding officer and parties in the proceeding in accordance with the schedule established by this chapter. At the same time the testimony is served, a certificate of service for the testimony shall be filed with the Secretary. All pre-served PRE-SERVED testimony furnished to the court reporter during an adjudicatory proceeding before the Commission shall be filed with the Commission as required under § 5.412a (relating to electronic submission of pre-served testimony).

* * * * *

§ 5.412a. Electronic submission of pre-served testimony.

(a) General requirement for electronic submission. Parties A PARTY serving pre-served testimony in proceedings pending before the Commission under § 5.412(f) (relating to written testimony) are IS required, within 30 days after the final hearing in an adjudicatory proceeding, unless such time period is otherwise modified by the presiding officer, to electronically file with, under § 1.32(b) (relating to filing specifications), or provide to the Secretary's Bureau a compact disc or technology prescribed by the Commission containing the testimony furnished BY THE PARTY to the court reporter during the proceeding.

(b) Form of electronic submission. Electronically submitted testimony must be limited to pre-served testimony documents and be in Portable Document Format. Exhibits attached to pre-served testimony documents may be electronically submitted to the Commission in accordance with subsection (a). Exhibits not electronically submitted with pre-served testimony shall be submitted in paper form to the court reporter at hearing. THE ELECTRONIC SUBMISSION REQUIREMENTS SET FORTH IN THIS SECTION DO NOT APPLY TO DISCOVERY REQUESTS OR RESPONSES, OR PRE-FILED TESTIMONY, INCLUDING TESTIMONY FILED PURSUANT TO § 53.53(C)

(RELATING TO INFORMATION TO BE FURNISHED WITH PROPOSED GENERAL RATE INCREASE FILINGS IN EXCESS OF \$1 MILLION).

- (1) Electronic submission. Each piece of pre-served testimony filed through the Commission's electronic filing system shall be uploaded separately. Each piece of pre-served testimony submitted to the Secretary's Bureau on a compact disc or other technology as prescribed by the Commission may be uploaded onto one compact disc, pending file size limitations.
 - (2) Electronic submission of testimony modified at hearing. Pre-served testimony submitted to the Commission must match exactly the version of testimony the presiding officer has required to be submitted to the court reporter at hearing. When a presiding officer requires a party to make hand-marked modifications to testimony during the hearing before submitting the testimony to the court reporter, the pre-served testimony electronically submitted to the Commission shall be marked to reflect the modifications. When a presiding officer does not require a party to make modifications to testimony at hearing before submitting the testimony to the court reporter, the pre-served testimony electronically submitted to the Commission may not be marked. Testimony not admitted into the record during a hearing may not be electronically submitted to the Commission.
- (I) *ELECTRONIC SUBMISSION OF TESTIMONY STRIKEN AT HEARING.* PRE-SERVED TESTIMONY WHICH WAS STRICKEN AT HEARING MUST BE REVISED TO REFLECT THAT WHICH WAS STRICKEN BY CONTAINING HAND-MARKED STRIKETHROUGHS OR ELECTRONIC STRIKETHROUGHS ON THE TESTIMONY. A PARTY MAY NOT COMPLETELY ELECTRONICALLY DELETE TESTIMONY WHICH WAS STRIKEN AT HEARING.
- (II) *PAGINATION OF ELECTRONICALLY SUBMITTED TESTIMONY DOCUMENTS.* STRIKEN OR MODIFIED TEXT ON ELECTRONICALLY SUBMITTED PRE-SERVED TESTIMONY DOCUMENTS MUST APPEAR ON THE SAME PAGE AS THE STRIKEN OR MODIFIED TEXT ON THE PRE-SERVED TESTIMONY DOCUMENTS SUBMITTED TO THE COURT REPORTER AT HEARING.
- (3) Labeling of electronically submitted testimony. Pre-served testimony electronically submitted to the Commission must be labeled as follows CONSISTENT WITH THE FOLLOWING EXAMPLES:

(i) “ St. No. Direct Testimony of .”

CHRISTINE MALONI HOOVER
SR ASST CONSUMER ADVOCATE
OFFICE OF CONSUMER
ADVOCATE
555 WALNUT ST
5TH FLOOR FORUM PLACE
HARRISBURG PA 17101-1923

AMY W NEUFELD
REG AFFAIRS MGR
PECO ENERGY COMPANY
500 N THIRD ST SUITE 800
HARRISBURG PA 17101



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

ROBERT F. POWELSON
CHAIRMAN

October 1, 2014

The Honorable John F. Mizner
Chairman
Independent Regulatory Review Commission
14th Floor, Harrisstown II
333 Market Street
Harrisburg, PA 17101

Re: L-2014-2406251/57-303; Electronic Access to Pre-Served Testimony; 52 Pa. Code, Chapter 5

Dear Chairman Mizner:

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 May 1, 2014, 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 44 *Pa.B.* 2868 on May 17, 2014. 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,

A handwritten signature in black ink that reads "Robert F. Powelson".

Robert F. Powelson

Enclosures

cc: The Honorable Robert M. Tomlinson
The Honorable Lisa Boscola
The Honorable Robert Godshall
The Honorable Peter J. Daley, II
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-2014-2406251/57-303

Subject: Proposed Rulemaking Re Electronic Access to Pre-Served
Testimony
52 Pa. Code, Chapter 5

Pennsylvania Public Utility Commission

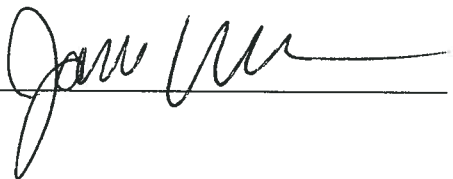


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RECEIVED
IRRC

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>
<u>10-1-14</u>	<u></u>	<u>HOUSE COMMITTEE</u> (Godshall) Consumer Affairs
<u>10-1-14</u>	<u></u>	<u>SENATE COMMITTEE</u> (Tomlinson) Consumer Protection and Professional Licensure
<u>10/1/14</u>	<u></u>	Independent Regulatory Review Commission
_____	_____	Attorney General
_____	_____	Legislative Reference Bureau