

# RULES AND REGULATIONS

## Title 25—ENVIRONMENTAL PROTECTION

ENVIRONMENTAL QUALITY BOARD

[25 PA. CODE CH. 265]

[Correction]

### Hazardous Waste Management

An error occurred in the document amending Chapter 265, which appeared at 27 Pa.B. 237 (January 11, 1997). Section 265.82 (relating to administration fees) was incorrectly numbered at 26 Pa.B. 269 as § 265.78.

The correct version of § 265.82 is as follows. The text of § 265.78 (relating to hazardous waste management fee) remains as it currently exists at 25 Pa. Code pages 265-27 to 265-28, serial pages (181077) to (181078).

#### Annex A

### TITLE 25. ENVIRONMENTAL PROTECTION

#### PART I. DEPARTMENT OF ENVIRONMENTAL PROTECTION

#### Subpart D. ENVIRONMENTAL HEALTH AND SAFETY

#### ARTICLE VII. HAZARDOUS WASTE MANAGEMENT

#### CHAPTER 265. INTERIM STATUS STANDARDS FOR HAZARDOUS WASTE MANAGEMENT FACILITIES AND PERMIT PROGRAM FOR NEW AND EXISTING HAZARDOUS WASTE MANAGEMENT FACILITIES

#### Subchapter E. MANIFEST SYSTEM AND DISCREPANCY REPORT

#### § 265.78. Hazardous waste management fee.

*(Editor's Note:* The text of § 265.78 remains as it currently appears in the *Pennsylvania Code* at pages 265-27 and 265-28, serial pages (181077) and (181078)).

#### § 265.82. Administration fees.

(a) The owner or operator of a hazardous waste management facility shall annually pay an administration fee to the Department according to the following schedule:

- (1) Land disposal facilities—\$2,500.
- (2) Surface impoundments—\$2,500.
- (3) Commercial treatment—\$2,000.
- (4) Captive treatment—\$700.
- (5) Storage—\$550.
- (6) Incinerators—\$1,300.

(b) The administration fee shall be in the form of a check made payable to the "Commonwealth of Pennsylvania" and be paid on or before the first of March to cover the preceding year.

(c) If more than one permitted activity is located at a site, or more than one activity occurs, the fee shall be cumulative.

[Pa.B. Doc. No. 97-72. Filed for public inspection January 10, 1997, 9:00 a.m.]

## Title 49—PROFESSIONAL AND VOCATIONAL AFFAIRS

STATE BOARD OF CHIROPRACTIC

[49 PA. CODE CH. 5]

### Radiologic Procedures Examination Fees

The State Board of Chiropractic (Board) amends § 5.6 (relating to fees) pertaining to fees for the radiologic procedures examination of the Board for auxiliary personnel who perform radiologic procedures on the premises of a licensed chiropractor.

Under section 812.1 of The Administrative Code of 1929 (71 P. S. § 279.3a) and section 522(a) of the Chiropractic Practice Act (act) (63 P. S. § 625.522(a)), examinations for licensure must be prepared and administered by a professional testing organization under contract to the Board. The Board contracts with the American Chiropractic Registry of Radiologic Technologists (ACRRT) to provide the Board approved radiologic procedures examination. These amendments will change the fee for the radiologic procedures examination owing to an increase in the contract cost for examination services effective July 1, 1997. The new fee will apply to the examination scheduled to be given in November 1997 and thereafter.

Public notice of intention to amend § 5.6 under procedures specified in sections 201 and 202 of the act of July 31, 1968 (CDL) (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202) has been omitted as authorized under section 204(3) of the CDL (45 P. S. § 1204(3)), because the Board finds that these procedures are, under the circumstances, unnecessary. Public comment is unnecessary because section 812.1 of The Administrative Code of 1929 requires that candidate fees cover the cost of the examination. Persons affected by this amendment have been given actual notice of the Board's intention to amend § 5.6 in advance of final rulemaking under section 204(2) of the CDL.

#### *Compliance with Executive Order 1996-1*

The Board reviewed this rulemaking and considered its purpose and likely impact upon the public and the regulated population under the directives of Executive Order 1996-1, Regulatory Review and Promulgation. The final/proposed omitted regulation addresses a compelling public interest as described in this Preamble and otherwise complies with Executive Order 1996-1.

#### *Statutory Authority*

This amendment is adopted under section 812.1 of The Administrative Code of 1929 and section 1101(a) of the act (63 P. S. § 625.1101(a)).

#### *Fiscal Impact and Paperwork Requirements*

The amendment will have no fiscal impact on the Commonwealth or its political subdivisions. Persons wish-

ing to perform radiologic procedures on the premises of a chiropractor are required to take and pass either a National certification examination or an examination approved by the State Boards of Medicine or Osteopathic Medicine, or the Board under § 5.62 (relating to auxiliary personnel who may perform radiological procedures). Persons who elect to take the Board approved examination will be required to pay an increased fee to cover contract costs for the examination.

#### *Regulatory Review*

Under section 5(f) of the Regulatory Review Act (71 P. S. § 745.5(f)), a copy of the amendment was submitted on October 28, 1996, to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the Senate Committee on Consumer Protection and Professional Licensure and the House Committee on Professional Licensure. In addition, at the same time, the amendment was submitted to the Office of Attorney General for review and comment under the Commonwealth Attorneys Act (71 P. S. §§ 732-101—732-506).

Under section 5(c) of the Regulatory Review Act, the amendment was deemed approved by the House and Senate Committees on November 18, 1996, and by IRRC on November 21, 1996.

#### *Additional Information*

Individuals who desire information are invited to submit inquiries to Deb Orwan, Board Administrator, State Board of Chiropractic, P. O. Box 2649, Harrisburg, PA 17105-2649, (717) 783-7156.

#### *Findings*

The Board finds that:

(1) Public notice of intention to amend § 5.6 as adopted by this order under the procedures specified in sections 201 and 202 of the CDL, has been omitted under the authority contained in section 204(3) of the CDL, because the Board has, for good cause, found that the procedure specified in sections 201 and 202 of the CDL, is in this circumstance, unnecessary, because section 812.1 of The Administrative Code of 1929 requires that candidate fees cover the cost of the examination.

(2) Persons affected by the amendment as adopted by this order have been given actual notice of the Board's intention to amend the regulation in advance of final rulemaking under section 204(2) of the CDL.

(3) The amendment of the regulation of the Board in the manner provided in this order is necessary and appropriate for the administration of its authorizing statute.

#### *Order*

The Board, acting under its authorizing statute, orders that:

(a) The regulations of the Board, 49 Pa. Code Chapter 5, are amended by amending § 5.6 to read as set forth in Annex A.

(b) The Chairperson of the Board shall submit this order and Annex A to the Office of General Counsel and the Office of Attorney General for approval as to legality as required by law.

(c) The Chairperson of the Board shall certify this order and Annex A and deposit them with the Legislative Reference Bureau as required by law.

(d) This order shall become effective immediately upon publication in the *Pennsylvania Bulletin*, and shall apply

to examinations to perform radiologic procedures given after July 1, 1997.

RANDY W. MCCALL, D.C.,  
*Chairperson*

*(Editor's Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 26 Pa.B. 5915 (December 7, 1996).)*

**Fiscal Note:** 16A-437. No fiscal impact; (8) recommends adoption.

#### **Annex A**

### **TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS**

#### **PART I. DEPARTMENT OF STATE**

#### **Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS**

#### **CHAPTER 5. STATE BOARD OF CHIROPRACTIC**

#### **Subchapter A. GENERAL PROVISIONS**

#### **§ 5.6. Fees.**

The Board will charge the following fees:

Oral/Practical Examination in Chiropractic Technic and for May 1996 examination only	\$45
Pennsylvania Chiropractic Law Examination	\$87
Application for Licensure by Examination	\$25
Application for Licensure by Reciprocity	\$65
Biennial Registration	\$210
Limited License	\$30
Adjunctive Procedure Certification	\$25
Certification of Grades or Licensure	\$25
Application for Continuing Education Course Approval	\$30
Radiological Procedures Examination	\$75
License Restoration	\$25

[Pa.B. Doc. No. 97-112. Filed for public inspection January 24, 1997, 9:00 a.m.]

## **Title 52—PUBLIC UTILITIES**

### **PENNSYLVANIA PUBLIC UTILITY COMMISSION**

#### **[52 PA. CODE CHS. 1, 3, 5, 57 AND 59]**

[L-930076]

#### **Rules of Administrative Practice and Procedure**

The Pennsylvania Public Utility Commission (Commission) on July 18, 1996, adopted an order at its public meeting to promulgate final-form regulations regarding its rules of administrative practice and procedure. The amendments will update and amend the approximately 100 sections. Changes range from corrections to punctuation, rewording phrases and correcting references to adding entirely new sections to address perceived problems. The contact person is Susan D. Colwell, Assistant Counsel, Office of Counsel, Law Bureau (717) 783-3459.

At the public meeting of July 18, 1996, the Commission adopted final regulations for the revision of its rules of administrative practice and procedure, appearing at

Chapters 1, 3 and 5 (relating to rules of administrative practice and procedure; special provisions; and formal proceedings).

This will be the third time that the rules have been revised since they were amended in 1984 and 1989. After monitoring the 1989 rules, the Commission noted room for some improvements and initiated this rulemaking by publication of advance notice on March 13, 1993. The proposed amendments were published at 25 Pa.B. 1288 (April 8, 1995) with a 90-day comment period. Numerous comments and recommendations were received and reviewed by an internal committee before the final-form was adopted by the Commission.

Changes range from punctuation and phraseology to the addition of new subsections and sections. The form section has been eliminated to allow the periodic update of Commission-generated forms without requiring a rule-making, thus keeping the forms current with changing laws and policies.

Effective rules of administrative practice and procedure result in more efficient case management, and periodic revisions of the rules are necessary for them to remain effective.

*Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), the Commission submitted a copy of the final rulemaking, which was published as proposed at 25 Pa.B. 1288, and served on March 28, 1995, to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of House Committee Consumer Affairs and the Senate Committee on Consumer Protection and Professional Licensure for review and comment. In compliance with section 5(b.1) of the Regulatory Review Act, the Commission also provided IRRC and the Committees with copies of the comments received, as well as other documentation.

In preparing these final-form regulations, the Commission has considered the comments received from IRRC, the Committees and the public.

These final-form regulations were deemed approved by the House Committee on Consumer Affairs and was approved November 13, 1996, by the Senate Committee on Consumer Protection and Professional Licensure, and was approved by IRRC on November 21, 1996, in accordance with section 5(c) of the Regulatory Review Act.

*Commissioners Present:* John M. Quain, Chairperson; Lisa Crutchfield, Vice Chairperson; John Hanger, Concurring & Dissenting in part-Statement; David W. Rolka, Concurring & Dissenting in part; and Robert K. Bloom

Public Meeting held  
July 18, 1996

**Order**

*By the Commission:*

In 1984, Chapters 1, 3 and 5 were revised and amended to establish comprehensive practice and procedure rules applicable to Commission proceedings. The revised rules became effective on January 1, 1985. Thereafter, the Commission solicited comments on the effectiveness and usefulness of the rules in order to implement timely and necessary revisions. By order entered August 5, 1988, the Commission again amended the procedural regulations effective January 3, 1989.

After monitoring the 1988 rules and noting room for improvement, the Commission decided to initiate a proceeding designed to update, amend and streamline its procedural regulations. On March 13, 1993, the Commission published an advance notice of proposed rulemaking for the Rules of Administrative Practice and Procedure in the *Pennsylvania Bulletin* at 23 Pa.B. 1177. The notice stated that the Commission was considering amending regulations pertaining to the Rules of Administrative Practice and Procedure at Chapters 1, 3 and 5, and that interested persons had 45 days in which to file written comments.

Comments were received from: the law offices of Louis J. Carter; Duquesne Light Company; the Office of Consumer Advocate; Philadelphia Electric Company, now PECO Energy; the law firm of Malatesta Hawke & McKeon; the Bell Telephone Company of Pennsylvania, now Bell Atlantic—PA; the Office of Small Business Advocate; the law firm of Kirkpatrick & Lockhart; and from the Commission's Bureaus of Law and Transportation, and the Offices of Administrative Law Judge and Trial Staff. Based on these comments, preliminary revisions were made and presented to a committee formed from the Commission's bureaus.

In August 1994, a finalized version of the preliminary revisions was sent to committee members for further review. The end product of this internal and external review of the Commission's procedural regulations has resulted in numerous proposed changes to the existing rules as well as an increase in one of the Commission fees. We adopted them as proposed amendments to our procedural regulations at the December 1, 1994, public meeting, and they were published for comment at 25 Pa. B. 1288 (April 25, 1995). Again, we received many useful comments from both inside the Commission and from the industry and utility bar.

Comments to the proposed regulations were received from: Central Pennsylvania Paralegal Association, Pennsylvania Department of Environmental Protection, Duquesne Light Company, the law firms of Kirkpatrick & Lockhart, and Malatesta, Hawke & McKeon, and Raymond A. Thistle, Jr., the National Federation of Paralegal Associations, the Offices of Trial Staff, Consumer Advocate and Small Business Advocate, PECO Energy, Pennsylvania Power Company, Pennsylvania Bar Association, Pennsylvania Gas Association, West Penn Power Company, and from the Commission's Offices of Administrative Law Judge, and Special Assistants and the Bureaus of Audits, Law, and the Secretary.

Throughout the long process necessary to update our procedures, our goal has been to develop and fine-tune our regulations to produce procedural rules of practice before the Commission that are fair, efficient and clearly stated. The final-form regulations we adopt today will improve our rules by clarifying some otherwise murky procedures and will simplify practice before this Commission.

One section which attracted considerable attention was § 1.22 (relating to appearance by attorney or certified legal intern) which deals with appearances and representation before the Commission. We had proposed allowing legal assistants under the supervision of an attorney admitted to practice in this Commonwealth to represent complainants in informal hearings. The wording made it unclear, however, whether we intended to allow such representation before administrative law judges in formal hearings.

We live in a state which has a strict approach to the practice of law. In this Commonwealth, the Supreme Court has the "inherent and exclusive power to regulate the admission to the bar and the practice of law." Bar Admission Rule 103. This regulation by the Supreme Court limits the power of the Legislature and State agencies to act contrary to the rules established by the Court. Currently, the only persons authorized to practice law in this Commonwealth are: (1) those fully admitted to the Pennsylvania bar, (2) those admitted pro hac vice under Rule 301, and (3) those who qualify as certified legal interns under Rule 321.

Federal agencies have the ability to decide whether only lawyers can represent clients before it under the Administrative Procedure Act (5 U.S.C.A. § 555) even if those agencies are located in states which would not otherwise permit nonlawyer representation. *Sperry v. State of Florida ex rel the Florida Bar*, 373 U.S. 379, 83 S.Ct. 1322, 10 L.Ed.2d 428 (1963). State agencies whose Federal funding source requires the agencies to meet Federal statutory requirements as a condition of Federal aid are the only Pennsylvania agencies which allow nonlawyer representation. This Commission is not such an agency.

Whether or not we agree with the Supreme Court's rules for the practice of law and their application to practice before administrative agencies is immaterial; we are bound by the laws of this Commonwealth. A careful review of those laws and the comments received has persuaded us to rework the regulation in order to conform the regulation to reflect Pennsylvania law. New § 1.21(d) addresses our informal practice, specifically providing that paralegals working under the direct supervision of an attorney or another appropriate individual may represent parties in cases brought under Chapters 56 and 64 (relating to standards and billing practices for residential utility service; and residential telephone service). This is allowed since appearances before our Bureau of Consumer Services to address informal consumer complaints under 66 Pa.C.S. § 308(d)(1) (relating to bureaus and offices) do not constitute the practice of law, and parties may have a representative other than an attorney. These informal proceedings are not bound by the same strict rules to which we must adhere in formal hearings before the administrative law judges, and, indeed, are typically conducted over the telephone among a nonattorney utility customer service representative, the BCS representative and the customer. We include the new section to outline an existing practice.

We have added the Office of Prothonotary and the appropriate sections have been changed to reflect the addition. The Office of Prothonotary was created effective April 30, 1996, and is responsible "... for the filing, docketing, safekeeping, control, dissemination, record retention and retrieval of all documents filed with this agency. . . . Additionally, the Prothonotary will have the discretion to reject filings not properly perfected." Notice, 26 Pa.B. 1456 (March 30, 1996).

Our provisions for water and wastewater collection, treatment and disposal applications have been expanded and refined in order to update our regulations in accordance with new laws. Every effort has been made to incorporate the requirements of the Department of Environmental Protection in order to streamline and standardize the requirements for applicants and to reduce their regulatory burden while fulfilling our statutory mandate.

The following is a section-by-section description of the changes made to each section. The Commission thanks all who provided comments and suggestions.

*Chapter 1. Rules of Administrative Practice and Procedure*

*Subchapter A. General Provisions.*

*§ 1.1. Scope of subpart.*

The title is changed from "Scope of chapter."

*§ 1.3. Information and special instructions.*

The changes are the update of the Commission's mailing address by deleting the former zip code and including the correct nine-digit zip code, and by substituting "Prothonotary" as the office within the Commission which will receive filings.

*§ 1.4. Filing generally.*

Subsection (a) was updated to include the Commission's correct nine-digit zip code and the Prothonotary. Subsection (b) reflects the removal of the phrase "relevant file number," which has no independent meaning but is merely repetitive where the more commonly used "docket number" appears. The wording of the section is rearranged for greater clarity.

*§ 1.5. Amendment to rules.*

Here a semi-colon and a comma are removed from locations where they are not necessary.

*§ 1.8. Definitions.*

"Active parties" and "inactive parties" are defined in general rate cases to distinguish those who intend to play an active role at hearings (file testimony, cross-examine witnesses, and the like) from those who do not. The new language also sets forth the rights of "inactive parties" to testify at hearings and to obtain copies of all orders and decisions issued in the proceeding. A definition is added for "Prothonotary."

*§ 1.9. Organization chart.*

This section is deleted to eliminate the need to promulgate a regulation whenever the organization of the agency undergoes a change.

*§ 1.11. Date of filing.*

This rule is amended to add "Prothonotary" and to comply with the rules of the United States Post Office (USPO). The previous rule required attaching the proof of mailing certificate to the original document. The USPO rules, however, do not allow execution of a proof of mailing certificate for an unsealed envelope. Since the two rules were incompatible, this rule is changed.

The certificate of mailing itself is deleted since its periodic updating is beyond the control of the Commission, and its removal eliminates the need to promulgate a regulation whenever the USPO makes a change in the certificate.

A new subsection (c) is added to explicitly prohibit the filing of documents by telecopier facsimile with the Commission. This is to ensure that the Commission's files contain clear and legible original documents. This new provision, however, does not affect the ability of parties to a litigation to agree to accept faxed documents from each other.

The spacing and punctuation are adjusted to facilitate easier reading of this section.

*§ 1.12. Computation of time.*

The existing subsection (a) provides for part-day holidays to be counted as full days for computing due dates. This poses a problem on those days when the Commission's file room is closed for part of the day, such as when employees are sent home due to heavy storms. The case of *Commonwealth v. Koeck*, 360 Pa. Super. 200, 520 A.2d 53 (1987), held that an appeal was not late-filed when the appellant attempted to file on the afternoon of the 30th day but found the office closed for the latter half of the day, and was forced to file on the 31st day. The recommended change merely recognizes that an appellate court would be likely to strike any regulation which cuts short a filing period.

A new subsection (b) is added to spell out the computation of time prescribed or allowed by regulation or statute which is measured by counting a specified number of days backward from a scheduled future act.

*§ 1.13. Issuance of Commission orders.*

The change here reflects the correct citation.

*§ 1.14. Effective dates of Commission orders.*

Terminology is changed to be consistent with the law and practice of the Commission, which recognizes the entry of the order to be the effective date, unless otherwise specifically provided in the order.

*§ 1.15. Extensions of time and continuances.*

The title is changed to more accurately reflect the content of the section.

*§ 1.21. Appearance in person.*

This section is divided into four paragraphs for simplification. The first states that individuals may represent themselves. The second deals with representation before the Commission in adversarial proceedings, and the third concerns nonadversarial proceedings. The changes further define who may represent which type of entity before the Commission.

The fourth specifically spells out that in informal proceedings brought under the chapters relating to standards and billing practices for residential utility service and residential telephone service, parties may be represented by paralegals under the supervision of an attorney or by another appropriate individual.

*§ 1.22. Appearance by attorney or legal intern.*

In subsection (a), the term "a person" is replaced with the phrase "individuals, partnerships, associations, corporations or governmental entities," in order to clarify which entities may be represented by an attorney licensed in another state.

Subsection (b) is added to permit the Commission the discretion of allowing the right to practice before the Commission to a member of the bar of a state which does not grant Pennsylvania bar members reciprocal rights consistent with the Supreme Court Rules relating to admission pro hac vice.

Subsection (c) spells out that law students meeting the requirements of the Pa.B.A.R. No. 321 may represent clients consistent with 322.

*§ 1.23. Other representation prohibited at hearings.*

For consistency, the same substitution of "individuals, partnerships, associations, corporations or governmental units" is made for the word "person" that was made in the previous two sections.

*§ 1.24. Notice of appearance or withdrawal.*

In this section, which deals with who should file a notice of appearance or withdrawal, the phrase "in a particular proceeding which involves a hearing or an opportunity for hearing" was deleted to cut down on excess verbiage without changing the meaning of the section, and "him" is replaced with "the individual" to promote gender neutral phraseology. Further, additional language spells out that a change in address which occurs during the course of a proceeding shall be reported to the Secretary promptly.

*§ 1.27. Suspension and disbarment.*

Subsection (a) is altered to insert commas and to further define conduct which may result in suspension or disbarment from practice before the Commission. Subsection (a)(4) is added to specifically provide that the repeated failure to follow directives constitutes behavior which may be subject to discipline, as is "contemptuous" conduct, added in subsection (a)(3).

The definition of practice before the Commission is detailed more fully to include "appearances at any hearing before the Commission or a presiding officer" in the newly added subsection (b)(3).

*§ 1.31. Form of documentary filings generally.*

The word "file" is replaced with the more commonly used "docket," and the word "on" replaces the formerly-used "in."

*§ 1.33. Incorporation by reference.*

The words "and docket number" are added to clarify that the docket number should be used whenever a party wishes to incorporate a previously filed document by reference. Deleted language was excess verbiage, and the deletion did not change the meaning. "Prothonotary" is added to denote the correct office for checking the availability of a document.

*§ 1.34. Single pleading or submittal covering more than one matter.*

This section is revised to permit the submittal of one filing fee when a pleading refers to one or more related transactions to promote consolidation of filings and reduce administrative burdens while facilitating comprehensive analysis of related matter. However, the Commission may, upon review, determine that the transaction should be refiled as two or more separate filings requiring additional fees if, in the Commission's judgment, the transactions are not closely related or otherwise properly joined.

*§ 1.36. Verification.*

This section is rearranged to facilitate easier understanding by beginning with a list of documents which require verification, then defining verification, and finally giving examples of a verification and an affidavit. The verification for motor carrier applicants now includes those transporting passengers.

*§ 1.37. Number of copies.*

The words are rearranged to allow easier reading of this section, and the number of copies to be submitted to the Commission has been increased from an original and two to an original and three.

*§ 1.43. Schedule of fees payable to the Commission.*

Following a cost study performed in-house, the fee for copies of microfilm per roll is being raised from \$25 to \$80 to reflect actual costs.

*§ 1.51. Instructions for service and notice.*

“Prothonotary” is added to denote the proper office within the Commission.

*§ 1.52. Reserved.*

The contents of this regulation are moved to Section 1.53(b) since it contains an exception to that section rather than a rule which should stand on its own.

*§ 1.53. Service by the Commission.*

Phraseology of subsection (a) is rearranged to facilitate easier understanding but the actual requirements have not changed. New subsection (b) is essentially old Section 1.52, providing the enumeration of those instances which require service by certified mail.

*§ 1.54. Service by a participant.*

Subsection (a) is divided into subsections (a), (b) and (c) for easier reference. In addition, subsection (c) now permits parties to serve each other by telecopier, but only if that method of service is agreed upon in advance. Service of a hard copy must follow the faxed copy.

*§ 1.56. Date of service.*

Subsection (a) is divided into smaller subsections for easier reading, and a fourth method of computing the date of service has been added to reflect the allowance of service by telecopier between parties.

*§ 1.57. Proof of service.*

The wording of this sentence is rearranged to make the section easier to understand but the meaning is unchanged.

*§ 1.61. Notice and filing of copies of pleadings before other tribunals.*

Subsection (b) now requires that public utilities filing for bankruptcy notify the Offices of Consumer Advocate and Small Business Advocate as well as the Commission. Subsection (c) has been deleted since the Commission does not hold hearings on bankruptcy plans as a practice, and the requirement that a public utility which has filed for bankruptcy notify the Commission is included in the following subsection.

New subsection (c), formerly (d), clarifies which noun the word “its” modifies by replacing it with the phrase “the public utility’s.” Otherwise, the section remains the same.

*§ 1.72. Formal case files.*

The designation of the contents of testimony folders is changed to eliminate depositions, responses to interrogatories, admissions and other information obtained through discovery which do not belong in the official record unless admitted into evidence at hearing.

*§ 1.76. Tariffs, minutes of the public meeting and annual reports.*

Pursuant to a comment received, this section is changed to specifically add that tariffs, minutes and annual reports shall be available for copying during business hours.

*§ 1.77. Extensions of time to review folders.*

The name of this section is changed to more accurately reflect the nature of the section.

*Subchapter I. Amendments or Withdrawals of Submittals.*

The word “or” replaces the word “to” in the title for greater accuracy.

*§ 1.86. Docket.*

Excess wording is eliminated without changing the meaning of the section, and “Prothonotary” is added.

*§ 1.91. Applications for waiver of formal requirements.*

The language is rearranged so that the subject of the section appears at the beginning instead of the middle. The meaning remains the same.

*§ 1.96. Unofficial statements and opinions by Commission personnel.*

The introductory phrase and last sentence are eliminated as unnecessary. “Reports drafted by Commission bureaus” are added to the list of items which this section specifically mentions as not having the force and effect of law and are not binding on the Commission.

*Chapter 3*

*§ 3.1. Definitions.*

The definition of “emergency order” is changed to reflect the current Commission practice of issuing emergency orders signed by the Commission Secretary when a Commissioner or the Director of Operations is not available.

*§ 3.2. Issuance or denial of emergency order.*

The list of Commission officials who are authorized to issue emergency orders is enlarged to include the Commission’s Secretary, and the section now provides for procedures for denial of petitions for emergency order when denial is by less than the full Commission.

*§ 3.3. Form of emergency order.*

A copy of emergency orders shall be served upon the Prothonotary for inclusion in the formal record.

*§ 3.4. Hearing on emergency order.*

For easier reading, this section is divided into two subsections. The Commission’s Secretary has been added to the list of Commission personnel whose order may be stayed by the presiding officer. The substance of the section has not been changed. New subsection (b) specifies that a petition for emergency order denied by less than the full Commission will be deemed ratified as denied if not acted upon at the next public meeting following service of denial.

*§ 3.5. Ratification of emergency order.*

The Commission’s Secretary is added to the list of personnel whose orders will be affirmed or revoked at the public meeting following issuance.

*§ 3.6. Petitions for interim emergency orders.*

Subsection (d) now provides for filing with the Prothonotary.

*§ 3.7. Issuance of interim emergency orders.*

Subsection (b) is changed with the substitution of the word “will” for the existing “shall.”

*§ 3.10. Commission review of interim emergency orders.*

Wording is changed to clarify that the presiding officer will certify the question of granting or denying the relief requested whether he or she grants or denies it. Previous wording left some question whether certification was necessary if the question were denied.

*§ 3.111. Form and content of informal complaints.*

Section references are clarified, and the requirement that informal complaints be filed with the Commission’s

Bureau of Consumer Services except in rate cases is added. Complaints filed in rate cases shall be filed with the Prothonotary.

*§ 3.112. Action on informal complaints.*

Subsection (a) now provides that a copy of an informal complaint filed in a matter which is already docketed will be placed in the folder of that docket, and a reference to Chapter 64 is added. Subsection (c) is added to state clearly that the filing of an informal complaint does not entitle complainant to a formal hearing.

*§ 3.113. Resolution of informal investigations.*

Language is added to specify that Commission staff may conduct informal investigations and that staff may also initiate formal investigations. This language change eliminates the implication that the Commissioners might initiate a formal investigation that is prosecutory in nature.

*§ 3.163. Policy statement concerning public input hearings in rate proceedings.*

This policy statement is deleted from the rules of practice and will be placed in Chapter 69 with the other policy statements.

*§ 3.501. Certificate of public convenience as a water or waste water collection, treatment and disposal supplier.*

The section is expanded to cover wastewater treatment suppliers. Although more detail is required, most of the requirements can be met by submitting the same documents to the Commission as must be submitted to DEP. Alternate forms may be used if the applicant elects not to submit the DEP forms. Subsection (a) now provides that applicants not submitting the DEP Business Plan must use the current form available from the Commission and spells out the filing requirements for these applications.

Subsection (b) spells out that incomplete applications can be rejected. Subsection (d) requires service of applications upon the Office of Consumer Advocate, Office of Small Business Advocate and the Department of Environmental Protection. The protest section has been removed and made into new § 3.502.

*§ 3.502. Protests to applications for certificate of public convenience as a water or wastewater collection, treatment and disposal supplier.*

This new section is added to replace and expand the protest subsection removed from § 3.501. Requirements for filing protests are now set out in more detail and include filing with the Prothonotary.

*§ 3.551. Official forms.*

Forms from this section have been removed and replaced with a list of those forms which will be available to the public from a central form repository at the Commission.

*Subchapter I. Registration of Securities*

*§ 3.601. General.*

This new section contains information which presently appears in Form L but should be in regulatory form. None of the information is new although some has been deleted to reflect the changes in the law over the years.

*§ 3.602. Abbreviated securities certificate.*

This section is added to relocate information which presently appears in Form M, which will be removed. This information should be in regulatory form. None of

the information is new although some has been deleted to reflect actual practice of the Commission, including filing with the Prothonotary.

*Chapter 5*

*§ 5.11. Applications generally.*

Wording of this section is changed to permit more flexibility in applications while providing guidance to applicants by suggesting that applications conform to official forms and subchapter requirements.

*§ 5.12. Contents of applications.*

This section reflects that the forms have been removed from the regulations but that specific requirements appearing in the regulations shall be followed.

*§ 5.14. Applications requiring notice.*

Subsection (b) is changed to point out the specific provision of § 3.501 which refers to a different time period than is provided here. Prothonotary is substituted to reflect the correct office to direct filing.

*§ 5.21. Formal complaints generally.*

Subsection (c) now requires a complainant to serve a copy of the complaint on the Commission's Office of Trial Staff, as well as the Office of Consumer Advocate and Office of Small Business Advocate, if the complaint proposes to change an existing or proposed tariff.

New subsection (d) spells out that the filing of a formal complaint generally entitles complainant to a formal trial-type hearing unless the Commission dismisses it, and it refers litigants to the appropriate sections governing motions.

Subsection (e) has been added to spell out that no party is directly responsible for answering complaints that are filed against the Commission. Issues will be determined prior to a hearing by prehearing conference memos with no party acting on behalf of the Commission itself.

*§ 5.22. Contents of formal complaint.*

A new subsection (b) has been added to require that a verification be attached to the complaint.

*§ 5.31. Staff-initiated complaints.*

Formerly entitled "Order to show cause," this subsection (a) is adapted to include new Commission procedures developed as a result of *Lyness v. State Board of Medicine*, 529 Pa. 535, 605 A.2d 1204 (1992). New procedures provide for Commission staff to initiate complaints before the Commission. A new subsection (b) has been added to spell out the Commission's procedure when a party files a petition.

*§ 5.41. Petitions generally.*

A new subsection (b) has been added to require that petitions shall be served upon the Office of Consumer Advocate, the Office of Trial Staff, and the Office of Small Business Advocate.

*§ 5.42. Petitions for declaratory orders.*

Subsection (b) requires that service include a copy to the Office of Trial Staff and the Office of Small Business Advocate.

*§ 5.52. Content of a protest to an application.*

"Prothonotary" is substituted to reflect the proper office for filing the application. Nothing else is changed.

*§ 5.53. Time of filing.*

Reference to a water and wastewater collection, treatment and disposal supplier section is added.

*§ 5.61. Answers to complaints, petitions and motions.*

Subsection (a) has been altered to include motions. The wording has been changed in subsection (b) to clarify it without changing its meaning.

Subsection (c) specifically exempts complaints which are docketed with Commission-instituted rate investigations from vulnerability to default judgments. A new subsection (d) specifies that answers may be filed to complaints filed in Commission-instituted rate investigations but that they are not required unless ordered by the Commission or presiding officer.

*§ 5.62. Answers seeking affirmative relief or raising new matter.*

Time for filing a reply to new matter is increased from 10 to 20 days. Wording is added to specify that failure to file a timely reply to new matter shall be deemed in default and that relevant facts stated in the new matter may be deemed to be admitted.

*§ 5.64. Answers to orders to show cause.*

This section is deleted to reflect that Commission procedures no longer include orders to show cause. Under *Lyness*, Commission prosecutory staff files complaints, and answers to complaints are discussed § 5.61.

*§ 5.71. Initiation of intervention.*

Grammatical changes are made without changing the meaning of the section.

*§ 5.74. Filing of petitions to intervene.*

The main paragraph is divided into two smaller sections for ease of reference. Language is added to provide that intervention will not be permitted once an evidentiary hearing has concluded absent extraordinary circumstances.

*§ 5.102. Motions for summary judgment and judgment on the pleadings.*

Subsection (c) is divided into two parts to clarify the procedure to be followed when motions for summary judgment and judgment on the pleadings are filed. Subsection (c)(2) is added to allow the administrative law judge to grant a partial summary judgment under certain circumstances.

*§ 5.103. Motions.*

This section now applies to all motions not covered elsewhere instead of being limited to hearing motions.

Subsection (d) is revised for clarity, and subsection (d)(3) provides that a presiding officer may render a final determination with regard to a motion prior to the termination of hearings by issuing an initial or recommended decision when a motion involves a question of jurisdiction, the establishment of a prima facie case or standing.

*§ 5.222. Initiation of prehearing conferences in nonrate proceedings.*

Subsection (c)(4)(v) is replaced by a more detailed subsection regarding discovery to be addressed at prehearing conferences.

*§ 5.224. Prehearing conference in rate proceedings.*

A sentence in subsection (b) is deleted because it was unnecessary and added nothing to the paragraph. Subsec-

tions (b)(1) and (2) have been expanded to suggest details regarding discovery requests for prehearing conferences in rate proceedings. Subsection (d) provides that the presiding officer may identify the active parties for purposes of service and may determine whether a public input session should be held, if that decision has not already been made.

Subsection (f) references specific authority provisions for presiding officers and then provides that the officer or a mediator may participate in settlement discussions.

*§ 5.231. Offers of settlement.*

A sentence is added providing that participants may request that the presiding officer or an additional presiding officer or mediator be appointed to participate in settlement negotiations.

*§ 5.232. Stipulations and settlements.*

Wording is adjusted to clarify the section, and a sentence is added to require that settlements identify the other participants which were provided or denied an opportunity to enter into the subject stipulation or settlement.

*§ 5.235. Motor carrier restrictive amendments.*

A phrase is added to specify that the section applies only to motor carrier applications for passenger or household goods in use authority to comply with Federal law.

*§ 5.242. Order of procedure.*

A new subsection is added to specifically allow the presiding officer the right to direct the order of participants for purposes of cross-examination.

*§ 5.243. Presentation by participants.*

Subsection (e) is expanded to include partial settlements.

*§ 5.253. Transcript corrections.*

This section is clarified to spell out a procedure for proposing transcript corrections and under what conditions they can be allowed. Subsection (f) states that an unopposed request for corrections not acted upon within 30 days will be deemed granted.

*§ 5.301. Interlocutory review generally.*

Only grammatical changes are made to this section.

*§ 5.302. Petition for interlocutory Commission review and answer to a material question.*

A grammatical change is made to subsection (a), and the maximum allowed length of the petition has been increased from one to three pages.

*§ 5.303. Commission action on petition for interlocutory review and answer.*

The word "interlocutory" is inserted in the title to clarify the subject of the section, a minor adjustment is made to the wording in subsection (a) without changing the meaning.

*§ 5.304. Interlocutory review of discovery matters.*

The maximum length of a request for interlocutory review of a ruling on discovery is increased from one to three pages, and any brief either in support or opposition is now limited to 15 pages. The changes in subsection (a)(4) and (5) clarify the actions required of the presiding officer, and new subsection (e) provides that the failure of the Commission to act on a certified question within 30 days is deemed to be an affirmance of the decision of the presiding officer.



§ 5.305. *Interlocutory review of a material question submitted by a presiding officer.*

Subsection (f) is added to provide that the failure of the Commission to act upon a certified question within 30 days will be deemed to be an affirmation of the decision of the presiding officer.

§ 5.306. *Notification by telephone.*

This section provides that any telephone notification ordered by a presiding officer will be confirmed by the presiding officer by service in writing.

§ 5.321. *Scope.*

Subsection (a) is expanded to provide more detail regarding which types of proceedings fall within this section.

§ 5.324. *Discovery of expert testimony.*

New language states that the answer, report or testimony signed by the expert shall be deemed to be provided under oath in accordance with 66 Pa.C.S. § 333(d) (relating to prehearing procedures).

§ 5.331. *Sequence and timing of discovery.*

Subsection (d) is altered to provide that initial discovery directed to data supplied by the public utility at the time of the initiation of the proceeding shall be submitted to the utility within 10 working days following the first prehearing conference.

§ 5.332. *Supplementing responses.*

In paragraphs (1) and (2), the word "seasonably" is replaced with the word "continuing," which is more accurate. The meaning of the subchapter has not been changed.

§ 5.342. *Answers or objections to written interrogatories by a participant.*

Subsection (d) is divided into two more sections for ease of reference. A phrase is added to make clear that discovery shall only be filed with the Prothonotary if there is an objection.

§ 5.343. *Procedures in deposition by oral examination.*

A phrase is added to specifically recognize that another provision exists for the taking of depositions.

§ 5.345. *Procedure on depositions by written questions.*

The word "trial" is replaced with the more commonly used "hearing" in the interests of consistency in subsection (c). Subsection (d) requires that following completion of the deposition questions, the deposed shall return the deposition to the sender instead of filing it with the Commission. The requirement that the Secretary notify other participants of the receipt of the deposition is eliminated.

§ 5.346. *Persons before whom depositions may be taken.*

The word "insular" is removed as unnecessary.

§ 5.348. *Transcript of deposition, objections and filing.*

The requirement that a deposition be filed with the Secretary is deleted since the official file no longer contains depositions.

§ 5.349. *Requests for documents, entry for inspection and other purposes.*

In subsection (a)(1), computer records are added to the list of documents which are discoverable. The Offices of Small Business Advocate and Trial Staff are now included

with the Office of Consumer Advocate to receive copies of discoverable materials from regulated utilities at no charge.

§ 5.371. *Sanctions generally.*

Two new subsections are added to provide a set time period for answering and deciding motions for sanctions.

§ 5.401. *Admissibility of evidence.*

The word "men" is replaced with the gender-neutral "persons."

§ 5.413. *Reserved.*

Formerly "Fees of witnesses," the substance of this section is placed in § 5.421, where it is more appropriate.

*Subpoenas and Protective Orders*

The title is expanded to state that the section covers protective orders as well.

§ 5.421. *Subpoenas.*

A sentence is added to subsection (a) to state that the proposed subpoena may be attached to the application. Subsection (b) now provides that a copy of an application for a subpoena of a Commission employe must be served on the Commission's Law Bureau.

Subsection (c) is divided into two sections for ease of reference and provides that service by mail may be accomplished by any form of mail requiring a return receipt. Service is complete upon delivery of the mail to the participant or according to Pa.R.C.P. No. 402(a)(2).

Subsection (d), instead of referring to § 5.413, now replaces it by providing that witnesses be paid the same fees and mileage as witnesses in courts of common pleas.

§ 5.431. *Close of the record.*

A reference to § 5.402(b) is inserted to draw attention to the provision which sets out the requirements for admission of evidence following the close of the record. The substance of this section is not changed.

§ 5.482. *Disqualification of a presiding officer.*

This section is expanded and set out in an easy-to-read format. It details the procedure under which a party may request that a presiding officer be removed from a case.

§ 5.483. *Authority of presiding officers.*

The addition to this section expands the authority of a presiding officer to include the scheduling and imposition of reasonable limitations on discovery as discussed in the earlier sections relating to discovery.

§ 5.502. *Filing and service of briefs.*

The incorrect room number of the New Filing Section is removed from this section.

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

Subsection (b) changes the format requirement from stating each exception in a numbered paragraph to simply numbering the exceptions, which allows more than one paragraph per exception. Only grammatical changes were made to subsection (c). New subsection (e) specifically states that the 3-day mailbox rule does not apply to exceptions.

§ 5.536. *Effect of failure to file exceptions.*

In subsection (a), the word "will" is changed to "may" since there are decisions issued by administrative law judges which will not become final without some action by the Commission.

§ 5.539. *Withdrawal of appeals.*

This section is divided into two subsections. The first is new and spells out that filing of exceptions is an appeal of a recommended or initial decision to the Commission. The second section provides that an appeal to the Commission may be withdrawn at any time, and if an appeal of an order not otherwise subject to Commission review is withdrawn, then the order becomes final upon withdrawal of the appeal.

§ 5.572. *Petitions for relief following a final decision.*

These sections are rearranged to clarify that petitions for reconsideration, rehearing, reargument, clarification, and supersedeas must be filed within 15 days of entry of an order, and that petitions for rescission and amendment may be filed at any time. No substantive changes are made.

§ 5.591. *Reports of compliance.*

"Prothonotary" is substituted for "Secretary."

§ 5.592. *Compliance with orders prescribing rates.*

An additional reference is added to subsection (a), but the meaning is unchanged.

§ 57.26. *Construction and maintenance of facilities.*

This section sets the standards for maintenance and construction of facilities according to the most recent National Electrical Safety Code rather than a particular edition.

§ 57.45. *Preservation of records.*

Public utilities are now required to keep records according to the most recent publication of the National Association of Regulatory Utility Commissioners rather than the publication of a particular year.

§ 59.45. *Preservation of records.*

Gas utilities are required to keep records according to the current publication applicable rather than that of a particular year.

Accordingly, under sections 501, 504—506, 1301 and 1501 of the Public Utility Code, 66 Pa.C.S. §§ 501, 504—506, 1301 and 1501, and the Commonwealth Documents Law (45 P.S. § 1201 et seq.), and the regulations promulgated thereunder at 1 Pa. Code §§ 7.1—7.4, the Commission adopts final-form regulations pertaining to practice and procedure before the Commission to read as set forth in Annex A, *Therefore*,

*It is Ordered that:*

1. The Commission's regulations, 52 Pa. Code Chapters 1, 3 and 5, are amended by:

(a) adding §§ 3.502, 3.601 and 3.602;

(b) deleting §§ 1.9, 1.52, 3.163, 5.64 and 5.413; and

(c) amending §§ 1.1, 1.3—1.5, 1.8, 1.11—1.15, 1.21—1.24, 1.27, 1.31, 1.33, 1.34, 1.36, 1.37, 1.43, 1.51, 1.53, 1.54, 1.56, 1.57, 1.61, 1.72, 1.76, 1.77, 1.86, 1.91, 1.96, 3.1—3.8, 3.10, 3.111—3.113, 3.501, 3.551, 5.11, 5.12, 5.14, 5.21, 5.22, 5.31, 5.41, 5.42, 5.52, 5.53, 5.61, 5.62, 5.71, 5.74, 5.102, 5.103, 5.222, 5.224, 5.231, 5.232, 5.235, 5.242,

5.243, 5.253, 5.301—5.306, 5.321, 5.324, 5.331, 5.332, 5.342, 5.343, 5.345, 5.346, 5.348, 5.349, 5.371, 5.401, 5.412, 5.421, 5.431, 5.482, 5.483, 5.502, 5.533, 5.536, 5.539, 5.572, 5.591, 5.592, 57.26, 57.45 and 59.45, to read as set forth in Annex A.

2. The Secretary shall submit this order and Annex A to the Office of Attorney General for approval as to legality.

3. The Secretary shall submit this order and Annex A to the Governor's Budget Office for review of fiscal impact.

4. The Secretary shall submit this order and Annex A for formal review by the designated standing committees of both Houses of the General Assembly, and for formal review and approval by IRRC.

5. The Secretary shall deposit this order and Annex A with the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*, effective upon publication.

6. A copy of this order shall be served upon all persons who submitted comments in this rulemaking proceeding.

JOHN G. ALFORD,  
*Secretary*

*Statement of Commissioner John Hanger*

One issue in this proceeding requires attention because it is a barrier to due process before this Commission.

Regulation 1.21 should be amended to make clear that nonattorneys may be witnesses presenting factual testimony in adversarial hearings before an ALJ without having to hire an attorney to sponsor testimony. As written, Regulation 1.21 requires attorney representation for partnerships, corporations, trust, associations, agencies, political subdivisions, and governmental entities in all adversarial proceedings. While attorneys should be required to represent others in matters requiring the practice of law, the existing requirement, as codified in the revised regulation, has been applied in inconsistent and incoherent ways. In particular, the owners of incorporated taxi cab companies are regularly prevented from even appearing as a witness to respond to allegations that a violation of the medallion act has occurred unless they hire an attorney to sponsor them.

Owners of incorporated cab companies and other closely-held utilities can responsibly appear as witness to provide testimony without difficulty and without reaching any "legal issues", let alone without practicing law. The ALJ should have the authority to require attorney representation if a case should ever involve legal matters.

Refusal to permit cab owners to testify without hiring an attorney to represent them routinely results in dismissal of the cases. Certainly, now that an attorney representation requirement is being imposed on incorporated medallion owners, many cab owners probably just go ahead and pay the fine even if they believe they have committed no violation. In short, small businesses are being deprived of their right to defend against an enforcement action, because it costs more money to defend the case than it does to pay the fine. That is wrong.

Ironically, these very same medallion cases, before the very same ALJs, are prosecuted by nonattorneys representing the Public Utility Commission and the Commonwealth of Pennsylvania. No Commission prosecutory law-

yers present the testimony of the police officers who initiated the complaint. Why? Because the Commission considers it too expensive to do so. Of course, the Commission is right. Why should the prosecutor, who inherently must argue that a violation of the law occurred, be permitted to be a nonattorney when the respondent, who need only say what happened, hire an attorney? It is simply unfair and denies access to this Commission.

On the other hand, this Commission has routinely permitted municipal officials, corporate executives and other appropriate persons to appear on behalf of municipalities, governmental agencies, corporations and other entities in public input hearings during adversarial rate cases. While it is entirely appropriate to allow this practice in my view, this practice violates Regulation 1.21 as written and as interpreted by the Commission. After all, these individuals appear without counsel to provide factual testimony and make argument on behalf of their employers.

Regulation 1.21 harms the taxi industry, small water companies and other small, closely-held utilities. For example, most taxi cabs are owned by corporations although the ownership of the corporation is limited to one or a few individuals who in fact run the business and frequently drive cabs themselves. There usually are no outside shareholders.

Yet, this Commission continues to insist that to permit the medallion owners to appear before an ALJ as a witness without an attorney would be to condone the unauthorized practice of law, risking prosecution and the disbarment of our judges. Why is this any more the unauthorized practice of law than testimony at public input hearings in adversarial rate cases?

Certainly the issues are much more complex with much more money at stake in rate cases than in medallion cases. Medallion cases usually involve a proposed fine of no more than a few hundred dollars for violations of medallion regulations such as failing to maintain a current log, failure to display the taxi-driver certificate, or driving on worn tires or having a dirty trunk. The testimony provided by the witness is likely to include such statements as, "the windshield was cracked because a rock hit it right before my cab was inspected," or "I was on my way to the shop to have my taillight fixed when I was pulled over," or "I was not on duty. I was picking my son up from school."

The basis for the general rule requiring attorney representation in all adversarial cases is that only an attorney may represent another in the practice of law. Corporations and the other nonindividual parties specified are separate legal entities. To constitute the "practice of laws," however the activity must include representation of others in legal matters. Permitting a witness to provide factual testimony simply is not a legal matter. "Practicing law" requires at least some degree of holding oneself out to the public to provide representation in legal matters. Allowing the owners of these small businesses to present factual matters concerning their own business simply is not the practice of law.

This Commission must not erect unnecessary and expensive barriers to participation in our proceedings.

*(Editor's Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 26 Pa.B. 5915 (December 7, 1996).)*

**Fiscal Note:** Fiscal Note 57-156 remains valid for the final adoption of the subject regulations.

**Annex A**

**TITLE 52. PUBLIC UTILITIES**

**PART I. PUBLIC UTILITY COMMISSION**

**Subpart A. GENERAL PROVISIONS**

**CHAPTER 1. RULES OF ADMINISTRATIVE PRACTICE AND PROCEDURE**

**Subchapter A. GENERAL PROVISIONS**

**§ 1.1. Scope of subpart.**

(a) This subpart governs the practice and procedure before the Commission.

(b) This subpart is intended to supersede the applicability of 1 Pa. Code Part II (relating to general rules of administrative practice and procedure) to practice and procedure before the Commission.

**§ 1.3. Information and special instructions.**

(a) Information as to procedures under this subpart, and instructions supplementing this subpart in special instances, will be furnished upon application to:

Prothonotary  
 Pennsylvania Public Utility Commission  
 Post Office Box 3265  
 North Office Building  
 Harrisburg, Pennsylvania 17105-3265

(b) Subsection (a) is identical to 1 Pa. Code § 31.4 (relating to information and special instructions).

**§ 1.4. Filing generally.**

(a) Submittals, pleadings and other documents filed with the Commission should be addressed as follows:

Prothonotary  
 Pennsylvania Public Utility Commission  
 Post Office Box 3265  
 North Office Building  
 Harrisburg, Pennsylvania 17105-3265

(b) Submittals, pleadings and other documents filed with the Commission should clearly designate the docket number or similar identifying symbols, if any, employed by the Commission, and should set forth a short title. The identity of the individual making the submission, including name, mailing address, and status (for example, party, attorney for a party, and the like) shall appear on the document, along with any special instructions for communication by other than first class mail.

(c) Submittals and pleadings, including documents filed under Chapter 5 (relating to formal proceedings) shall also comply with Subchapter D (relating to documentary filings).

(d) In a proceeding when, upon inspection, the Commission is of the opinion that a submittal or pleading tendered for filing does not comply with this subpart or this title or, if it is an application or similar document, does not sufficiently set forth required material or is otherwise insufficient, the Commission may decline to accept the document for filing and may return it unfiled, or the Commission may accept it for filing and advise the person tendering it of the deficiency and require that the deficiency be corrected.

(e) The Commission may order redundant, immaterial, impertinent or scandalous matter stricken from documents filed with it.

(f) Subsections (a)—(e) are identical to 1 Pa. Code § 31.5 (relating to communications and filings generally).

**§ 1.5. Amendment to rules.**

(a) Persons may file an application under §§ 5.1 and 5.11 (relating to pleadings allowed; and applications generally) requesting a general and permanent change in this subpart.

(b) Subsection (a) supersedes 1 Pa. Code § 31.6 (relating to amendments to rules).

**§ 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:

\* \* \* \* \*

*Party*—A person who appears in a proceeding before the Commission who has a direct interest in the subject matter of the proceeding.

(i) Active parties to a general rate case are those who intend to fully participate in the litigation of a case, which may include presenting witnesses, cross-examining witnesses from the other parties, making motions, conducting discovery, filing briefs, participating in settlement negotiations, and the like. Active parties to a general rate case are not required to serve any documents on inactive parties. The Commission will serve inactive parties with copies of all orders and recommended decisions issued in the case.

(ii) Inactive parties to a general rate case are those who do not intend to be active parties. Inactive parties have the right to testify at a hearing, including a public input hearing, but do not have the right to present other witnesses, cross-examine witnesses from other parties, make motions, conduct discovery, file briefs or participate in settlement negotiations.

\* \* \* \* \*

*Prothonotary*—The Commission officer with whom pleadings and other documents are filed and by whom official records are kept.

\* \* \* \* \*

**§ 1.9. (Reserved).**

**Subchapter B. TIME**

**§ 1.11. Date of filing.**

(a) Whenever a pleading, submittal, or other document is required or permitted to be filed under this title or by statute, it will be deemed to be filed on one of the following dates:

(1) On the date actually received in the office of the Prothonotary.

(2) On the date deposited with an overnight express package delivery service as shown on the express delivery receipt attached to or included within the envelope containing the document.

(3) On the date deposited in the United States mail as shown by the United States Postal Service stamp on the envelope or on a United States Postal Service Form 3817 certificate of mailing. A mailing envelope stamped by an in-house postage meter is insufficient proof of the date of mailing.

(b) Failure to include a legible delivery receipt with the document may result in an untimely filing.

(c) A document transmitted by telecopier to the Commission will not be accepted for filing within the meaning of this section.

(d) Subsection (a) supersedes 1 Pa. Code § 31.11 (relating to timely filing required).

**§ 1.12. Computation of time.**

(a) Except as otherwise provided by statute, in computing a period of time prescribed or allowed by this title or by statute, the day of the act, event or default after which the designated period of time begins to run is not included. The last day of the period is included, unless it is Saturday, Sunday or a legal holiday in this Commonwealth, in which event the period shall run until the end of the next day which is neither a Saturday, Sunday or holiday. A part-day holiday shall be considered as a holiday. Intermediate Saturdays, Sundays and legal holidays shall be included in the computation.

(b) Except as otherwise provided by statute, in computing a period of time prescribed or allowed by this title or by statute which is measured by counting a specified number of days backward from a scheduled future act, event or default, the day of the scheduled future act, event or default is not included. The day on which the prescribed or allowed action is to occur shall be included, unless it is a Saturday, Sunday or a legal holiday in this Commonwealth, in which event the day of the prescribed or allowed action shall run until the next preceding day which is neither a Saturday, Sunday or holiday. A part-day holiday shall be considered as a holiday. Intermediate Saturdays, Sundays and legal holidays are included in the computation.

(c) Subsection (a) supersedes 1 Pa. Code § 31.12 (relating to computation of time).

**§ 1.13. Issuance of Commission orders.**

(a) In computing a period of time involving the date of the issuance of an order by the Commission, the day of issuance of an order will be the date the Secretary enters the order. An order will not be made public prior to its entry except where, in the Commission's judgment, the public interest so requires. The date of entry of an order may or may not be the day of its adoption by the Commission. The Secretary will clearly indicate on each order the date of its adoption by the Commission and the date of its entry.

(b) At the time a decision of a presiding officer becomes effective as an adjudication of the Commission in the absence of Commission review as provided for in section 332(h) of the act (relating to procedures in general) the Secretary will issue and serve upon the parties of record an appropriate notice of the date the adjudication became effective as a Commission order.

(c) The date of entry of an order which is subject to review by Commonwealth Court is governed by Pa.R.A.P. No. 108. The date of issuance of any other order shall be deemed to be the date of entry for the purposes of

computing the time for appeal under an applicable statute relating to judicial review of Commission action.

(d) Subsections (a) and (b) are identical to 1 Pa. Code § 31.13 (relating to issuance of agency orders).

**§ 1.14. Effective dates of Commission orders.**

(a) An order of the Commission promulgating regulations shall be effective upon publication in the *Pennsylvania Bulletin* unless otherwise specially provided in the order.

(b) Except as provided in subsection (a), an order of the Commission shall be effective as of the date of entry unless otherwise specially provided in the order.

(c) Subsections (a) and (b) supersede 1 Pa. Code § 31.14 (relating to effective dates of agency orders).

**§ 1.15. Extensions of time and continuances.**

(a) Extensions of time shall be governed by the following:

(1) Except as otherwise provided by statute, whenever under this title or by order of the Commission, or notice given thereunder, an act is required or allowed to be done at or within a specified time, the time fixed or the period of time prescribed may, by the Commission, the presiding officer or other authorized person, for good cause be extended upon motion made before expiration of the period originally prescribed or as previously extended. Upon motion made after the expiration of the specified period, the act may be permitted to be done where reasonable grounds are shown for the failure to act.

(2) Request's for the extension of time in which to file briefs shall be filed at least 5 days before the time fixed for filing the briefs unless the presiding officer, for good cause shown allows a shorter time.

(b) Except as otherwise provided by statute, requests for continuance of hearings or for extension of time in which to perform an act required or allowed to be done at or within a specified time by this title or by order of the Commission or the presiding officer, shall be by motion in writing, timely filed with the Commission, stating the facts on which the application rests, except that during the course of a proceeding, the requests may be made by oral motion in the hearing before the Commission or the presiding officer. Only for good cause shown, will requests for continuance be considered. The requests should be submitted at least 5 days prior to the hearing date.

(c) Subsections (a) and (b) supersede 1 Pa. Code § 31.15 (relating to extensions of time).

**Subchapter C. REPRESENTATION  
BEFORE THE COMMISSION**

**§ 1.21. Appearance in person.**

(a) Individuals may represent themselves.

(b) In adversarial proceedings, partnerships, corporations, trusts, associations, agencies, political subdivisions and government entities shall be represented only under § 1.22 (relating to appearance by attorneys and legal intern). For purposes of this section, any request for a general rate increase under section 1307(f) or 1308(d) of the act (relating to sliding scale of rates; adjustments; and voluntary changes in rates) shall be considered to be an adversarial proceeding.

(c) In nonadversarial proceedings, a member of a partnership may represent the partnership, a bona fide officer of a corporation, trust or association may represent the

corporation, trust or association, and an officer or employe of another agency, a political subdivision or governmental entity may represent the agency or political subdivision in presenting a submittal to the Commission subject to this chapter and Chapter 5 (relating to formal proceedings).

(d) In informal proceedings brought under Chapters 56 and 64 (relating to standards and billing practices for residential utility service; and standards and billing practices for residential telephone service), parties may be represented by one of the following:

(1) Paralegals working under the direct supervision of an attorney admitted to the Pennsylvania Bar.

(2) Another appropriate individual.

(e) Subsection (a) supersedes 1 Pa. Code § 31.21 (relating to appearance in person).

**§ 1.22. Appearance by attorney or certified legal intern.**

(a) Individuals, partnerships, associations, corporations or governmental entities may be represented in a proceeding by an attorney at law admitted to practice before the Supreme Court of Pennsylvania.

(b) An attorney licensed in a jurisdiction which does not accord like privileges to members of the bar of this Commonwealth may appear before the Commission with the permission of the presiding officer or the Commission consistent with Pa.B.A.R. No. 301 (relating to admission pro hac vice).

(c) Law students meeting the requirements of PA.B.A.R. No. 321 (relating to requirements for formal participation in legal matters by law students) may appear in a Commission proceeding consistent with Pa.B.A.R. No. 322 (relating to authorized activities of certified legal interns).

(d) Subsection (a) supersedes 1 Pa. Code § 31.22 (relating to appearance by attorney).

**§ 1.23. Other representation prohibited at hearings.**

(a) Participants, individuals, partnerships, associations, corporations or governmental entities may not be represented at a hearing before the Commission or a presiding officer except:

(1) As stated in § 1.21 or § 1.22 (relating to appearance in person; and appearance by attorney or certified legal intern).

(2) As otherwise permitted by the Commission in a specific case.

(b) Subsection (a) supersedes 1 Pa. Code §§ 31.23 (relating to other representation prohibited at hearings).

**§ 1.24. Notice of appearance or withdrawal.**

(a) An individual appearing without representation before the Commission or a presiding officer shall file with the Prothonotary an address for service of a notice or other written communication. A change in address which occurs during the course of the proceeding shall be reported to the Prothonotary promptly.

(b) An attorney whose name and address appear in a representative capacity on an initial pleading filed with the Prothonotary or a presiding officer shall be considered to have entered an appearance in that proceeding. An attorney who enters the matter at a later stage of the proceeding shall file with the Prothonotary a written

notice of the appearance, which shall state his name, address and telephone number and the name and address of the person on whose behalf he appears. The notice shall be served on the participants in the proceeding. A change in address which occurs during the course of the proceeding shall be reported to the Prothonotary promptly.

(c) A person appearing or practicing before the Commission in a representative capacity may be required to file a power of attorney with the Commission showing his authority to act in that capacity.

(d) An attorney who wishes to withdraw an appearance shall file with the Prothonotary a written notice of withdrawal. The notice shall be served on the participants and the presiding officer, if one has been designated.

(e) Subsections (a)—(d) supersede 1 Pa. Code § 31.24 (relating to notice of appearance).

### § 1.27. Suspension and disbarment.

(a) The Commission may deny, temporarily or permanently, the privilege of appearing or practicing before it in any way to a person who is found by the Commission, after notice and opportunity for hearing in the matter, to have done one or more of the following:

(1) Lacked the requisite qualifications to represent others.

(2) Lacked the requisite technical education, training or experience for a particular project or type of project submitted for Commission approval.

(3) Engaged in unethical, contemptuous or improper conduct before the Commission.

(4) Repeatedly failed to follow Commission or presiding officer directives.

(b) For the purpose of subsection (a), practicing before the Commission shall include:

(1) Transacting business with the Commission.

(2) The preparation of a statement, opinion or other paper by an attorney, accountant, engineer or other expert, filed with the Commission in a pleading, submittal or other document with the consent of the attorney, accountant, engineer or other expert.

(3) Appearances at a hearing before the Commission or a presiding officer.

(c) Subsections (a) and (b) are identical to 1 Pa. Code § 31.28 (relating to suspension and disbarment).

## Subchapter D. DOCUMENTARY FILINGS

### § 1.31. Form of documentary filings generally.

(a) Applications, petitions, complaints, answers or similar documents shall be divided into numbered paragraphs.

(b) Copies of contracts, agreements, certificates, permits or other writings referred to in the application or petition, shall be attached as exhibits. Copies of writings or orders already of record with the Commission need not be attached to the application or petition if reference by docket number is made to the proceeding in which they were filed.

(c) Pleadings, submittals or other documents filed with the Commission in a proceeding shall clearly show the docket number or similar identifying symbols, if any, and

title of the proceeding before the Commission. They shall also show, in the title of a particular pleading, submittal or other document filed, the name of the person on whose behalf the filing is made. If more than one person is involved, a single name only need be included in the title.

(d) Subsections (a)—(c) supersede 1 Pa. Code § 33.1 (relating to title).

### § 1.33. Incorporation by reference.

(a) Except as otherwise provided in subsection (b), documents on file with the Commission may be incorporated by reference into a subsequently filed pleading, submittal or other document. A document may be so incorporated only by reference to the specific document and to the prior filing and docket number at which it was physically filed.

(b) No document which has been on file with the Commission for a period of more than 20 years may be incorporated by reference in a current document unless the person filing the current document first makes inquiry to the Prothonotary's office and ascertains that the earlier document continues to be readily available in the active records of the Commission.

### § 1.34. Single pleading or submittal covering more than one matter.

(a) Except as otherwise provided under this chapter and Chapter 5 (relating to formal proceedings), a single pleading or submittal may be accepted for filing with respect to a particular transaction and one or more related transactions and shall be deemed to be a single filing for purposes of the computation of fees under § 1.43 (relating to schedule of fees payable to the Commission).

(b) If, upon review, the Commission determines that the transactions are not closely related or otherwise properly joined, the Commission will direct that the single pleading be refiled as two or more separate pleadings each subject to a separate filing fee.

(c) Subsection (a) supersedes 1 Pa. Code § 33.4 (relating to single pleading or submittal covering more than one matter).

### § 1.36. Verification.

(a) Applications, petitions, formal complaints, motions and answers thereto containing an averment of fact not appearing of record in the action or containing a denial of fact shall be personally verified by a party thereto or by an authorized officer of the party if a corporation or association. Verification means a signed written statement of fact supported by oath or affirmation or made subject to the penalties of 18 Pa.C.S. § 4904 (relating to unsworn falsification to authorities). If verification is required, notarization is not necessary.

(b) The verification form should comply substantially with the following:

#### VERIFICATION

I, \_\_\_\_\_, hereby state that the facts above set forth are true and correct (or are true and correct to the best of my knowledge, information and belief) and that I expect to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa.C.S. § 4904 (relating to unsworn falsification to authorities).

Date: \_\_\_\_\_  
(Signature)

(c) When an affidavit is used, the form should comply substantially with the following:

**AFFIDAVIT**

I, \_\_\_\_\_ (Affiant) being duly sworn (affirmed) according to law, depose and say that (I am authorized to make this affidavit on behalf of \_\_\_\_\_ corporation, being the holder of the office of \_\_\_\_\_ with that corporation, and that) the facts above set forth are true and correct (or are true and correct to the best of my knowledge, information and belief) and (I or corporation) expect to be able to prove the same at any hearing hereof.

\_\_\_\_\_  
(Signature of affiant)

Sworn and subscribed before me this \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_\_.

\_\_\_\_\_  
(Signature of official administering oath)  
(My Commission Expires)

(d) An applicant for motor carrier rights shall include in the verification the following statement:

Applicant is not now engaged in intrastate transportation of property or passengers for compensation in this Commonwealth except as authorized by the Pennsylvania Public Utility Commission certificate or permit, and will not engage in the transportation for which approval is herein sought, unless and until the transportation is authorized by your Honorable Commission.

(e) An individual who executes a pleading, submittal or other document knowing that it contains a false statement and who causes it to be filed in the Commission shall be subject to prosecution for the commission of a misdemeanor of the second degree in violation of 18 Pa.C.S. § 4904(a).

(f) Subsections (a)—(e) supersede 1 Pa. Code § 33.12 (relating to verification).

**§ 1.37. Number of copies.**

(a) An original and three copies of pleadings, submittals or documents other than correspondence shall be furnished to the Commission at the time of filing, except as may be otherwise required by statute or ordered or requested by the Commission, and except as required by §§ 5.409, 5.502 and 5.533 (relating to copies and form of documentary evidence; documentary evidence; filing and service of briefs; and procedure to except to initial, tentative and recommended decisions).

(b) In the case of applications and petitions, one of the copies filed with the Commission may be filed without exhibits.

(c) In the case of complaints or petitions, when more than one respondent is named, an additional copy of the complaint or petition shall be filed for additional respondent.

(d) Subsections (a)—(c) supersede 1 Pa. Code § 33.15 (relating to number of copies).

**Subchapter E. FEES**

**§ 1.43. Schedule of fees payable to the Commission.**

(a) *Fees for service.* The fees for services rendered by the Commission are as follows:

<i>Description</i>	<i>Fee (in dollars)</i>
* * * * *	
Copies of microfilm per roll	\$80
* * * * *	

**Subchapter F. SERVICE OF DOCUMENTS**

**§ 1.51. Instructions for service and notice.**

Upon receipt of an application or initial petition, the Prothonotary will instruct the applicant or petitioner concerning the required service and public notice.

**§ 1.52. (Reserved).**

**§ 1.53. Service by the Commission.**

(a) Except when service by another method is specifically required by the Commission, an order, notice or other document originating with the Commission, including forms of Commission action and similar process, and other documents designated by the Commission, shall be served by the Commission by mailing a copy thereof to the person to be served, addressed to the person designated in the initial pleading, submittal or notice of appearance at the principal office or place of business. When service is not accomplished by mail, it may be effected by anyone authorized by the Commission.

(b) Service of a petition under § 3.391 (relating to arbitration of claims for billing and collecting services), and service of a complaint under section 702 of the act (relating to service of complaint on parties) shall be by registered or certified mail, return receipt requested.

(c) It is the duty of a participant to apprise the Commission of changes to the participant's current address.

(d) If the Commission is unable to serve a participant by mail at the participant's last known address, the Commission may serve the participant by publication in a newspaper of general circulation in the same area as the participant's last known address. In the alternative, service may also be accomplished by publication in the *Pennsylvania Bulletin* or by service on the Secretary of the Commonwealth, if appropriate.

(e) Subsection (a) supersedes 1 Pa. Code § 33.31 (relating to service by the agency).

**§ 1.54. Service by a participant.**

(a) Pleadings, submittals, briefs and other documents, filed in proceedings pending before the Commission shall be served upon participants in the proceeding and the presiding officer, if one has been assigned.

(b) Service may be in person, by available delivery service, by mail or as otherwise directed by the Commission. Service may also be by telecopier to those parties who have agreed to accept service in that manner.

(c) Service by mail shall be made by delivering the requisite number of copies to each participant as provided in § 1.59 (relating to number of copies to be served), properly addressed with postage prepaid, and first class mail shall be utilized. Service by telecopier shall be followed by service of a hard copy either by mail, by available delivery service or in person.

(d) In a proceeding in which only some of the participants participate actively, the active participants, with the authorization of the presiding officer, may serve documents upon the other active participants and to inactive participants which state of record on the record or request in writing that they wish to be served.

(e) Subsections (a)—(c) supersede 1 Pa. Code § 33.32 (relating to service by a participant).

**§ 1.56. Date of service.**

(a) The date of service shall be the 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 telecopier as provided in § 1.54 (relating to service by a participant).

(b) Unless otherwise prescribed by the Commission or presiding officer, whenever a participant is required or permitted to do an act within a prescribed period after service of a document upon the participant and the document is served by mail, 3 days shall be added to the prescribed period.

(c) Subsection (a) supersedes 1 Pa. Code § 33.34 (relating to date of service).

**§ 1.57. Proof of service.**

(a) A certificate of service in the form prescribed by § 1.58 (relating to form of certificate of service) shall accompany and be attached to the original and all copies of pleadings, submittals or other documents filed with the Commission when service is required to be made by the parties.

(b) Subsection (a) supersedes 1 Pa. Code § 33.35 (relating to proof of service).

**Subchapter G. MATTERS BEFORE OTHER TRIBUNALS**

**§ 1.61. Notice and filing of copies of pleadings before other tribunals.**

(a) When matters over which the Commission may have jurisdiction under the act are raised in proceedings filed with a court or other regulatory body by a person subject to the act, either an appropriate application or petition, or notice of the proceedings and copies of the material pleadings filed therein, shall be filed simultaneously with the Commission so that it may have sufficient notice and time for proper consideration of the matters within its jurisdiction.

(b) A public utility subject to the jurisdiction of the Commission which files a petition under Chapter 7, 9, 11 or 13 of the United States Bankruptcy Code (11 U.S.C.A. §§ 701—766, 901—946, 1101—1174 and 1301—1330), its supplements and amendments, or against which the petition is filed, shall, within 10 days of the filing thereof or notification of the filing, file a copy of the petition with the Commission and with the Office of Consumer Advocate, 1425 Strawberry Square, Harrisburg, Pennsylvania 17120 and with the Office of Small Business Advocate, Suite 1102 Commerce Building, 300 North Second Street, Harrisburg, Pennsylvania 17101.

(c) A public utility which is subject to the regulatory jurisdiction of the Commission, or the public utility's trustee in bankruptcy, shall file a petition for Commission approval of a reorganization plan as to the public interest therein and the fairness thereof, accompanied by a copy of the plan within 10 days after the debtor has filed the plan, its supplements and amendments, or has received notice that the plan has been filed with the court.

(d) A public utility which is subject to the regulatory jurisdiction of the Commission, or its trustee in bankruptcy, shall file a petition for Commission approval of a reorganization plan as to the public interest therein and the fairness thereof, accompanied by a copy of the plan within 10 days after the debtor has filed the plan, its supplements and amendments, or has received notice that the plan has been filed with the court.

(1) The petition shall contain a concise statement of the relevant facts and set forth the grounds upon which Commission approval should be granted.

(2) If the reorganization plan contemplates the issuance of new securities or a change in the terms and conditions of securities already outstanding, the record shall be developed to show the same information which the Commission requires in securities certificates.

(3) If the reorganization plan contemplates the abandonment of service, the petition shall include an application under section 1102(a)(2) of the act (relating to enumeration of acts requiring certificate).

(4) The Commission will make a finding and certify its approval or disapproval of the plan to the bankruptcy court in which the petition is filed.

**Subchapter H. PUBLIC ACCESS TO COMMISSION RECORDS**

**§ 1.72. Formal case files.**

(a) *Format.* Format for filing records in formal cases shall conform with the following:

(1) The files for formal cases initiated prior to May 15, 1977, shall contain a records, correspondence and testimony folder.

(2) The files for formal cases initiated on or after May 15, 1977, shall contain a document, report and testimony folder.

(b) *Contents.* Contents of folders in formal cases shall conform with the following:

(1) Formal cases initiated prior to May 15, 1977, shall conform with the following:

(i) *Testimony folder.* This folder shall contain hearing transcripts and exhibits.

\* \* \* \* \*

(2) Formal cases initiated on or after May 15, 1977, shall conform with the following:

(i) *Testimony folder.* This folder shall contain the same material as described in subsection (b)(1)(i).

\* \* \* \* \*

**§ 1.76. Tariffs, minutes of the public meeting and annual reports.**

Tariffs, minutes of the public meeting and annual reports shall be available for public inspection and copy-



ing upon request to the Office of the Secretary during normal Commission business hours.

**§ 1.77. Extensions of time to review folders.**

For good cause the Commission may extend the time limits applicable to requests for access to documents. In the case of documents displaying no need for confidentiality, or, conversely, documents containing information which the Commission considers improper for public inspection, the Commission may direct the appropriate treatment thereof, notwithstanding contrary provisions in §§ 1.71—1.76.

**Subchapter I. AMENDMENTS OR WITHDRAWALS OF SUBMITTALS**

**Subchapter J. DOCKET**

**§ 1.86. Docket.**

(a) The Prothonotary will maintain a docket of all proceedings, and each proceeding as initiated shall be assigned an appropriate designation. The docket shall be available for inspection and copying by the public during the Commission's office hours.

(b) Subsection (a) is identical to 1 Pa. Code § 33.51 (relating to docket).

**Subchapter K. WAIVER OF RULES**

**§ 1.91. Applications for waiver of formal requirements.**

(a) A request for waiver of, or exception to, any provision of this chapter or Chapter 3 or 5 (relating to special provisions; and formal proceedings) or a regulation or requirement with which the document tendered is in conflict or does not conform may accompany a pleading, submittal or other document subject to rejection under § 1.4 (relating to filing generally). The request shall show the nature of the waiver or exception desired and set forth the reasons in support thereof. Unacceptable filings may be returned by the Commission with an indication of the deficiencies thereof and the reasons for nonacceptance and return.

(b) Unless the Commission expressly orders, acceptance for filing will not waive a failure to comply with this title or other applicable requirements, and the failure may be cause for striking all or any part of the filings.

(c) Subsections (a) and (b) are identical to 1 Pa. Code § 33.61 (relating to applications for waiver of formal requirements).

**Subchapter L. UNOFFICIAL STATEMENTS AND OPINIONS**

**§ 1.96. Unofficial statements and opinions by Commission personnel.**

Statements contained in formal opinions of the Commission or in decisions of a presiding officer which are not necessary in resolving the case, and informal opinions, whether oral or written, expressed by Commissioners, presiding officers, legal counsel, employes or representatives of the Commission and reports drafted by Commission bureaus are only considered as aids to the public, do not have the force and effect of law or legal determinations, and are not binding upon the Commonwealth or the Commission.

**CHAPTER 3. SPECIAL PROVISIONS**

**Subchapter A. SPECIAL COMMISSION ACTIONS**

**EMERGENCY RELIEF**

**§ 3.1. Definitions.**

The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise:

*Emergency*—A situation which presents a clear and present danger to life or property or which is uncontested and requires action prior to the next scheduled public meeting.

*Emergency order*—An ex parte order issued by a single Commissioner, the Commission, the Commission's Director of Operations or Executive Assistant, or the Commission's Secretary in response to an emergency.

*Interim emergency order*—An interlocutory order issued by a presiding officer which is immediately effective and grants or denies injunctive relief during the pendency of a proceeding.

**§ 3.2. Issuance of emergency order.**

(a) To the extent practicable, a petition for emergency relief shall be:

(1) In the form of a petition as set forth in § 5.41 (relating to petitions generally).

(2) Supported by an affidavit verifying facts which establish the existence of an emergency.

(3) Served on the persons directly affected by the application.

(b) When there is an actual or declared emergency, the Chairman, a Commissioner, the Commission's Director of Operations and the Executive Assistant, and the Commission's Secretary have the authority to issue an emergency order.

(c) An emergency order shall be served as expeditiously as practicable upon the persons directly affected by the order.

(d) Notice of denial of a petition for emergency order by less than the full Commission shall be served by the Secretary with copies to Commissioners.

**§ 3.3. Form of emergency order.**

An emergency order shall be issued in writing and shall be filed with the Prothonotary with copies to Commissioners, and the Director of Operations.

**§ 3.4. Hearing on emergency order.**

(a) Upon petition by a person against whom an emergency order is issued, an expedited hearing before a presiding officer will be conducted within 10 days to determine whether or not the emergency order will remain in effect. The petition shall be served upon the Commission with a copy to the Chief Administrative Law Judge. The presiding officer will take into account the irreparable harm, if any, which staying or continuing the emergency order would cause the public interest or the person directly affected.

(b) If the emergency order is issued by a single Commissioner or the Director of Operations or the Executive Assistant, or by the Commission's Secretary, then the presiding officer will have the authority to stay the effect of the order until the next scheduled public meeting. The decision of the presiding officer will constitute a recom-

mended decision to be acted upon by the Commission at its next scheduled public meeting.

**§ 3.5. Ratification of emergency order.**

(a) An emergency order issued by a single Commissioner or the Director of Operations or the Executive Assistant or the Commission's Secretary will be ratified, modified or rescinded by the Commission at the next scheduled public meeting after issuance of the order.

(b) When a petition for emergency order has been denied by less than the full Commission, the denial will be deemed ratified by the Commission if the Commission does not act to the contrary during the first public meeting after the Secretary served the notice of its denial.

**§ 3.6. Petitions for interim emergency orders.**

(a) To the extent practicable, a petition for an interim emergency order shall be in the form of a petition as set forth in § 5.41 (relating to petitions generally). A petition for an interim emergency order may be submitted by a participant during the pendency of a proceeding and, to the extent practicable, shall be supported by an affidavit verifying facts which establish the existence of the need for interim emergency relief.

(b) An allegation contained in the petition shall be deemed to have been denied by the opposing parties, and an answer is not required. If a participant desires, an answer in the form set forth in § 5.61 (relating to answers to complaints, petitions and motions) may be filed no later than 5 days after receipt of a copy of the petition.

(c) No other pleadings, memoranda or briefs related to a petition for interim emergency orders are permitted unless specifically requested by the presiding officer.

(d) A copy of the petition shall be served on the Chief Administrative Law Judge at the same time the petition is filed with the Prothonotary and served on the participants.

**§ 3.7. Issuance of interim emergency orders.**

(a) A presiding officer may issue an interim emergency order upon finding that the following exist:

- (1) The petitioner's right to relief is clear.
- (2) The need for relief is immediate.
- (3) The injury would be irreparable if relief is not granted.
- (4) The relief requested is not injurious to the public interest.

(b) An order granting or denying interim emergency relief will be issued within 15 days of receipt of the petition.

(c) An interim emergency order or an order denying interim emergency relief shall be served as expeditiously as practicable on the participants.

**§ 3.8. Form of interim emergency order.**

An order granting or denying interim emergency relief shall:

- (1) Contain a brief description of the evidence presented in support of or in opposition to the petition and shall specify how that evidence meets or fails to meet the criteria in § 3.7 (relating to the issuance of interim emergency orders).

(2) If relief is granted, determine whether or not a bond—in form satisfactory to the Chief Administrative Law Judge—shall be posted by the petitioner.

(3) If a bond is required, determine the amount of the bond.

**§ 3.10. Commission review of interim emergency orders.**

(a) An order granting or denying interim emergency relief is immediately effective upon issuance by the presiding officer. No stay of the order will be permitted while the matter is being reviewed by the Commission.

(b) When the presiding officer rules upon the petition for an interim emergency order, the presiding officer shall also certify the question of the granting or denial of relief to the Commission as a material question in the form set forth in § 5.305 (relating to interlocutory review of a material question submitted by a presiding officer). Thereafter, the participants and the Commission shall follow the procedures in § 5.305, if applicable.

**Subchapter B. INFORMAL PROCEEDINGS  
GENERALLY**

**§ 3.111. Form and content of informal complaints.**

(a) Informal complaints may be by letter or other writing. No form of informal complaint is suggested, except as set forth in §§ 56.162 and 64.152 (relating to informal complaint filing procedures), but in substance the letter or other writing shall contain the essential elements of a formal complaint as specified in § 5.22 (relating to contents of formal complaint).

(b) Informal complaints in rate cases should be filed with the Prothonotary. Other informal complaints must be filed with the Pennsylvania Public Utility Commission, Bureau of Consumer Services, Post Office Box 3265, Harrisburg, Pennsylvania 17105-3265.

(c) Subsection (a) supersedes 1 Pa. Code § 35.5 (relating to form and content of informal complaints).

**§ 3.112. Action on informal complaints.**

(a) Upon receipt of an informal complaint related to a docketed matter, a copy of the informal complaint will be placed in the official document folder. Except as set forth in Chapters 56 and 64 (relating to standards and billing practices for residential utility service; and standards and billing practices for residential telephone service), the Commission staff will review the material submitted, and if the matter complained of appears to lie within the jurisdiction of the Commission, perform additional investigation necessary or proper to corroborate the allegations of the complaint. Upon completion of the review and investigation, the Commission staff may institute formal action with respect to the subject matter of the informal complaint.

(b) Upon the completion of the Commission's investigation of an informal complaint, the Commission staff will notify the informal complainant of the results of its review and investigation and of the staff recommendation, if any, to the Commission. The filing or a withdrawal of an informal complaint is without prejudice to the right of the complainant to file and prosecute a formal complaint.

(c) The filing of an informal complaint does not entitle complainant to a formal hearing before the Commission.

(d) Subsection (a) supersedes 1 Pa. Code §§ 35.6 and 35.7 (relating to correspondence handling of informal complaints; and discontinuance of informal complaints without prejudice).

**§ 3.113. Resolution of informal investigations.**

(a) The Commission staff may conduct informal investigations in appropriate circumstances regarding the condition and management of a public utility or other person or corporation subject to its jurisdiction. The informal investigations are typically undertaken to gather data or to substantiate allegations of potential violations of the act and may be conducted with or without hearing.

(b) The Legislature has found that secrecy in public affairs undermines the faith of the public in government and the public's effectiveness in fulfilling its role in a democratic society. The Sunshine Act (65 P. S. §§ 271—286) therefore requires that the Commission's official actions take place at a public meeting, subject to certain limited exceptions.

(c) To reconcile the Commission's authority to undertake informal investigations with or without hearing and the Legislature's findings regarding the adverse consequences of secrecy in public affairs, the Commission will proceed as follows when a quorum of its members meet to discuss termination of an informal investigation:

(1) When the Commission staff determines that no violation or potential violation of the act has occurred, the informal investigation will be terminated by letter.

(2) When the Commission staff determines that a violation or potential violation of the act has occurred and when formal action is deemed to be warranted, the Commission staff will initiate a docketed on-the-record proceeding to resolve the issues.

(3) When the utility, or other person or corporation subject to its jurisdiction, has committed to undertake action in order to address or remedy a violation or potential violation of the act or to resolve another perceived deficiency at the utility, in the form of a settlement with the Commission staff or other resolution of the matter, the Commission's adoption of the settlement or approval of the utility's action will be considered at public meeting. Except for staff reports which advise the Commission as to the action it should take and other documents covered by a specific legal privilege, documents relied upon by the Commission in reaching its determination shall be made part of the public record. The Commission's decision to adopt the settlement or to approve the utility's action will be in the form of a tentative decision that recites the relevant facts and the Commission's conclusions, and provides other potentially affected persons with the opportunity to submit exceptions thereon or to take other action provided for under law.

**§ 3.163. (Reserved).**

**Subchapter G. WATER OR WASTEWATER UTILITY PROCEEDINGS**

**§ 3.501. Certificate of public convenience as a water or wastewater collection, treatment and disposal supplier.**

(a) *Applicant.* An applicant for a certificate of public convenience as a public water or wastewater collection, treatment and disposal supplier shall provide a copy of the business plan required by the Department of Environmental Protection (DEP) at 25 Pa. Code

§ 109.503(a)(3) (relating to public water system construction permits). The following information, or documents, if not included in the business plan, shall be included in the application, using the current forms and schedules specified by the Commission's Bureau of Fixed Utility Services:

(1) *Plant in service.*

(i) Proposed utilities shall provide:

(A) A full description of the proposed waterworks or wastewater collection, treatment and disposal facilities and the manner, including the timing, in which the proposed service area and utility will be constructed.

(B) A breakdown of the cost of construction, by major plant category, including the sources of funds used to construct the facilities.

(ii) Utilities that have been providing service shall provide:

(A) The original cost, by year and major plant category, of used and useful plant in service and related accrued depreciation calculations.

(B) A breakdown of the sources of funds used to finance the construction of the facilities.

(2) *Map of service area.* A map or plan of suitable scale highlighting the boundaries of the proposed service area, including:

(i) A courses and distances or metes and bounds description.

(ii) The location or route of the proposed waterworks or wastewater collection, treatment and disposal facilities.

(iii) The approximate time schedule for installation of the various component facilities.

(iv) The elevations of major facilities and service areas.

(v) The DEP permitted productive or treatment capacity of sources or treatment facility and the pipe sizes and material used for construction for all transmission and distribution or collection facilities.

(3) *Customers.*

(i) Proposed utilities shall provide an estimate of the number of customer connections by class in the first, fifth and tenth years, and completed development anticipated, as well as estimated water usage or gallons of wastewater treated in each of the above years.

(ii) Utilities that have been providing service shall submit the actual number of customers by class and related consumption or gallons treated in the current calendar year and future number of connections anticipated for the next 10 years.

(iii) Each utility shall demonstrate its ability to provide adequate water supply, treatment, storage and distribution or adequate wastewater collection, treatment and disposal capacity to meet present and future customer demands.

(4) *Rates.*

(i) Proposed utilities shall provide a list of proposed rates (classified rate schedule).

(ii) Utilities which have been providing service shall provide an initial tariff which reflects rates and terms of service that conform to the Commission's regulations and the act. The utility shall notify the existing customers of the filing of the application and the rates filed.

(5) *Cost of service.*

(i) Proposed utilities shall provide a 1, 5 and 10-year estimate of operating revenues, operation and maintenance expenses, annual depreciation and taxes. If operating income reflects a loss, proposed utilities shall provide a detailed explanation of the source of funds to be used to subsidize the estimated losses in support of future viability.

(ii) Utilities that have been providing service shall file the two most recent Federal income tax returns (corporation) or related Schedule C forms (partnership or individual). If tax returns reflect an operating loss, utilities shall describe in detail how the operating losses are subsidized, supported by an analysis of the future viability of the utility.

(6) Proof of compliance with applicable design, construction and operation standards of the DEP, formerly the Department of Environmental Resources (DER), or of the County Health Department, or both, including:

(i) Copies of Public Water Supply/Water Quality Management or National Pollution Discharge Elimination System (NPDES) permits if applicable.

(ii) Valid certified operators' certificates.

(iii) Utilities that have been providing service shall submit a 5-year compliance history with DER/DEP with an explanation of each violation.

(iv) A DER/DEP 5-year compliance history of other utilities owned or operated, or both, by the applicant, including affiliates, and their officers and parent corporations with regard to the provision of utility service.

(7) If applicable, a copy of documents, excluding, if desired, documents duplicated in paragraphs (1)–(6), showing compliance with the requirements of the Delaware River Basin Commission, or other documents filed with the Delaware River Basin Commission, the Susquehanna River Basin Commission, the Ohio River Basin Commission or the Great Lakes Commission relating to the propose provision of service.

(8) The identity of public utilities, municipalities, municipal authorities, cooperatives and associations which provide public water supply service or wastewater collection, treatment and disposal service within each municipality, or a municipality directly adjacent to the municipalities, in which the applicant seeks to provide service situated within 1 mile of applicant's proposed facilities.

(9) Demonstrate compliance with the DEP regulations at 25 Pa. Code § 109.503(a)(3) or section 5 of the Pennsylvania Sewage Facilities Act requirements (35 P. S. § 750.5), whichever is applicable; or whether the applicant has contacted each public water supplier or wastewater collection, treatment and disposal supplier in paragraph (8), and one of the following applies:

(i) Whether a supplier is willing and able to serve the area which applicant seeks to serve either directly or through the bulk sale of water to applicant, or treatment of waste water to applicant.

(ii) If one or more such supplier is willing to serve the area (either directly or through the bulk sale of water to applicant), the applicant should demonstrate that, when considering both the cost of service and the quality of service, the ultimate consumer would be better served by the applicant than by the other water suppliers.

(10) A verification that the water sources and customers are metered in accordance with § 65.7 (relating to

metered service). If unmetered water service is currently provided, the applicant shall provide a metering plan on forms provided by the Commission.

(b) *Filing.* The applicant shall file with the Commission the original and three copies of the application. An application which fails to include the information and documents outlined in subsection (a), as further specified in the current forms and schedules for water and wastewater collection, treatment and disposal companies developed by the Bureau of Fixed Utility Services, is subject to rejection by the Commission. The original and three copies shall contain exhibits. An affidavit of service showing the identity of those served under subsection (d) shall accompany the original and the copies of the application filed with the Commission.

(c) *Notice.* The application will be docketed by the Secretary of the Commission and thereafter forwarded for publication in the *Pennsylvania Bulletin*. The applicant shall also publish the notice of application as supplied by the Secretary, for 2 consecutive weeks in one newspaper of general circulation located in the territory covered by the application and shall submit proof of publication to the Commission.

(d) *Copies.* At the time of filing, the applicant shall cause a complete copy of the application with exhibits to be served by registered or certified mail, return receipt requested, upon:

(1) Each city, borough, town, township, county and related planning office which is included, in whole or in part, in the proposed service area.

(2) A water or wastewater utility, municipal corporation or authority which provides water or wastewater collection, treatment and disposal service to the public and whose service area abuts the service area proposed in the application.

(3) The Office of Consumer Advocate, the Office of Small Business Advocate, and the DEP's appropriate regional office.

(e) *References.* Subsection (a) supplements § 5.11 (relating to applications generally).

\* \* \* \* \*

### **§ 3.502. Protests to applications for certificate of public convenience as a water supplier or wastewater collection, treatment and disposal supplier.**

(a) *Protests generally.* A person objecting to the application shall file with the Prothonotary and serve upon the applicant or applicant's attorney, if any, a written protest which shall contain the following:

(1) The applicant's name and the docket number of the application.

(2) The name, business address and telephone number of the protestant.

(3) The name, business address and telephone number of the protestant's attorney or other representative.

(4) A statement of the nature of the protestant's interest in the application.

(b) *Participation in proceeding.* Upon the filing of a timely protest, the protestant will be allowed to participate in the proceeding as a party intervenor.

(c) *Motions.* A protest will be treated as a pleading; and the applicant may, within 20 days after the closing date for the filing of protests, file motions to strike, to dismiss,

or for amplification as provided in § 5.101 (relating to preliminary motion).

(d) *Protests: time of filing.* A protest shall be filed within the time specified in the notice appearing in the *Pennsylvania Bulletin*, which shall be no less than 60 days from the date of publication thereof except where the need for the proposed service or other exigent circumstances supports a request for a shorter protest period. Failure to file the protest in accordance with this subsection shall be a bar to subsequent participation in the proceeding, except if permitted by the Commission for good cause shown or as provided in § 5.71 (relating to initiation of intervention).

**Subchapter H. FORMS**

**§ 3.551. Official forms.**

The following is a list of forms which can be obtained from the Office of the Secretary of the Commission:

- (1) Application by a proposed public utility for approval to begin to offer, render, furnish or supply service.
- (2) Application for Commission finding and determination of propriety of proposed service by an electric public utility.
- (3) Application for temporary authority to transport persons or household goods in use by motor vehicles.
- (4) Application for approval of transfer and exercise of common or contract carrier rights for the transportation of passengers or household goods in use.
- (5) Application for approval of installation, removal or substitution of warning device of a public crossing under section 2701 of the act (relating to railroad connections with sidetracks and laterals).
- (6) Petition for damages for property taken, injured or destroyed in a railroad crossing proceeding under section 2704 of the act (relating to compensation for damages occasioned by construction, relocation or abolition of crossings).
- (7) Application for approval of construction, alteration or relocation or abolition of any crossing at grade or above or below grade under section 2702 of the act (relating to construction, relocation, suspension and abolition of crossings).
- (8) Application for brokerage license.
- (9) Statement and map for preemption of territory by electric cooperative association.
- (10) Proof of publication of notice of hearing.
- (11) Securities certificate.
- (12) Abbreviated securities certificate.
- (13) Nonpublic utility registration form.
- (14) Formal complaint form.

**Subchapter I. REGISTRATION OF SECURITIES**

**§ 3.601. General.**

(a) *Scope.* A public utility shall file with the Commission and receive from it notice of registration of a securities certificate before the public utility shall issue or assume securities.

(b) *Format.* A securities certificate shall be typewritten or printed on paper 8 1/2 inches wide by 11 inches long and shall be submitted in triplicate, accompanied by a money order, certified check or bank cashier's check made

payable to the Commonwealth of Pennsylvania in the amount provided in § 1.43 (relating to schedule of fees payable to the Commission).

(c) *Form.* The securities certificate shall be consistent with the form available from the Commission and shall include the following information as well as additional information required by the Commission:

- (1) The name and address of the public utility filing the securities certificate.
- (2) The name and address of the public utility's attorney.
- (3) A brief corporate history of the public utility, a general description of the territory in which it actually furnishes service to the public, and of the kind of service rendered therein.
- (4) Whether the public utility is controlled by a corporation, and, if so:
  - (i) The name of the controlling corporation.
  - (ii) The form and manner of control.
  - (iii) The extent of control.
  - (iv) Whether control is direct or indirect.
  - (v) The names of intermediaries through which control, if indirect, is held. When control is in a holding company organization, there shall be shown the chain of ownership or control to the main parent company.

(5) The following information regarding the securities which the public utility proposes to issue or assume:

- (i) The exact title of security.
- (ii) The aggregate par value, or if no par value then the number of shares, or the principal amount to be issued or assumed.
- (iii) In the case of stock certificates, as applicable: the par value, dividend rate and payment dates, redemption value, liquidation value, voting powers, preferences as to assets and dividends, cumulative and participating dividend provisions, callability and conversion provision.

(iv) In the case of evidences of indebtedness, as applicable: nominal date of issue, date of maturity, interest rate and payment dates, extent to which taxes on securities are assumed by the issuer, callability and conversion provisions, maintenance, depreciation and sinking or other fund provision, name and address of trustee and whether affiliated with the public utility.

(6) The method by which the public utility proposes to dispose of the securities, giving pertinent details as to date and manner of sale, exchange or other disposition. If sale, include minimum net price to the public utility, maximum commission or fee to be paid to investment bankers, brokers or others, and whether securities are to be sold on an underwriting or take-down basis. State whether or not those negotiating or arranging the sale are in any way affiliated with the utility. If a private sale, state whether the purchasers are in any way affiliated with the utility. Show in tabular form an estimate in reasonable detail of the expenses to be incurred in issuing the securities, including, by groups, legal fees, fees and documentary taxes to governmental authorities, printing expenses, underwriting or brokerage commission, duplicate interest and other expenses.

(7) The purpose for which the public utility proposes to issue or assume the securities.

(i) If the purpose is the acquisition of all or part of the assets of a going concern, state:

(A) The name and address of vendor, docket number of Commission approval of the acquisition.

(B) A brief description of property, and whether all or part of a completed system.

(C) The full consideration to be paid, including any indebtedness to be assumed by the utility.

(D) The manner of determining consideration.

(E) The manner in which acquisition is to be recorded on the public utility's books.

(F) The original cost of physical property to be acquired, stated according to plant accounts prescribed by the classification of accounts applicable to the public utility.

(G) The depreciation applicable thereto as recorded on the books of the vendor.

(H) The manner of determining the original cost and depreciation.

(i) An income statement for the latest available 12 months applicable to the operation of the property being acquired.

(ii) If the purpose is the purchase or construction of new facilities, or the betterment of existing facilities, give:

(A) A brief description of such new facilities or betterments.

(B) A list of plant accounts prescribed by the classification of accounts applicable to the utility to be charged with the new facilities or betterments, showing opposite each account the estimated cost to be charged.

(C) A list of the accounts and the amounts to be credited thereto for the retirements of any property resulting from the purchase or construction of new facilities or betterments.

(D) The manner of determining amounts at which retired property is to be credited.

(E) The date when it is expected that such purchase or construction or betterment will be completed.

(iii) If the purpose is to obtain working capital, explain any unusual condition which exists, or will exist, in the public utility's current assets or current liabilities, stating:

(A) The approximate cost of average materials and supplies inventory which the public utility expects to carry.

(B) The average time elapsing between the date when the public utility furnishes or begins a period of furnishing service to customers and the date when collection is made from customers for such service.

(C) The minimum bank balance requirements.

(D) A statement, by accounts, of the operating expenses for the latest available 12 months.

(iv) If the purpose is to refund obligations, describe obligations in detail.

(A) Explain purpose for which obligations were issued, or refer to number of securities certificate, securities application or certificate of notification in which the purpose appears.

(B) State the date of last disposition of obligation, the amount disposed of and the price received.

(C) State whether refunding is to meet maturity, or to effect saving in interest or other annual charges; if to effect saving, state date when, and price at which obligations are to be called, and submit statement showing saving to be effected as a result of refunding.

(D) State disposition to be made of any discount or expense remaining unamortized on the obligations to be refunded and of any premium included in the call price.

(E) State whether any unamortized debt discount and expense was originally incurred in connection with securities not now outstanding, and if so, give amount applicable to each issue.

(v) If the purpose is reimbursement for moneys already expended, state the purpose for which the moneys were expended in as complete detail as if the securities now being issued were for that purpose as required by this subsection and by subsections (a), (b) and (d).

(A) List the names and principal amounts of any securities already issued against the expenditures.

(B) State the dates upon or between which the expenditures were made.

(8) State whether a registration statement, application or declaration has been filed or will be filed with the Securities and Exchange Commission in respect to the securities herein proposed to be issued or assumed. If so, state:

(i) The date filed.

(ii) The nature of application or declaration.

(iii) The closing date before the Securities and Exchange Commission.

(9) The public utility shall attach to each securities certificate:

(i) A balance sheet of the public utility set up by ledger accounts and not by groupings dated within at least 3 months of the date of securities certificate, including any transactions which have occurred between the date of the balance sheet and the date of filing the securities certificate and an explanation of any major contingent liabilities faced by the public utility.

(ii) An income account of the public utility set up by general ledger accounts, not by groupings, showing in detail the other credits and charges made to surplus during the year, for the 12-month period ending by the date of the balance sheet.

(iii) A statement with respect to the plant accounts appearing on the balance sheet showing the following:

(A) A summary by the detailed plant accounts prescribed in the system of accounts applicable to the public utility.

(B) The portion of the plant account balance representing increments in plant book values resulting from the acquisition of property through purchase, merger and consolidation or reorganization.

(C) The portion of the plant account balance representing increases in plant book values resulting from the recording of appraised values by the public utility unless the public utility has filed with the Commission an original cost study.

(iv) A statement of securities of other corporations owned by the public utility, including:

(A) The name of the issuer.

(B) The exact title of the security.

- (C) The amount owned.
- (D) The date acquired.
- (E) The price paid.
- (F) The book value.
- (G) The market value.
- (H) The cost to the affiliate, if acquired from an affiliate.

(v) A statement showing the status of the funded debt of the public utility outstanding at the date of the balance sheet, plus particulars of any important changes in the funded debt outstanding which have taken place since that date. The statement shall be in the form available from the Commission.

(vi) A statement showing the status of outstanding capital stock of the public utility as of the date of the balance sheet, including any important changes in the capital stock outstanding which have taken place since the date of the balance sheet according to the form available from the Commission.

(vii) A copy of the registration statement filed by the public utility with the Securities and Exchange Commission under the Securities Act of 1933 (15 U.S.C.A. §§ 77a—77aa) with respect to the proposed issuance or assumption of securities.

(viii) Copies of applications and declarations filed by the public utility with the Securities and Exchange Commission with respect to the proposed issuance or assumption of securities, under the Public Utility Holding Company Act of 1935 (15 U.S.C.A. §§ 79—79 z-6).

(ix) A copy of the resolution of the board of directors of the public utility authorizing the proposed issuance or assumption of securities.

(x) A copy of the stock certificate or other security proposed to be issued or assumed. Bonds or other evidences of indebtedness secured by mortgage, collateral trust agreement or other underlying instrument. This exhibit shall be a copy of the underlying instrument, rather than of the evidence of indebtedness itself.

(xi) A statement showing, in journal entry form, all charges and credits to be made on the books of account of the public utility as a result of the proposed issuance or assumption of securities.

(xii) An affidavit in form prescribed by §§ 1.35 and 1.36 (relating to execution; and verification).

**§ 3.602. Abbreviated securities certificate.**

(a) *Scope of rule.* The abbreviated procedure of subsections (b) and (c) applies to an issuance or assumption of a security which meets one of the following requirements:

- (1) The issuance or assumption of securities has been authorized by another state commission having primary jurisdiction.
- (2) The financing is provided by an agency of a state or the United States government.
- (3) The issuance or assumption of securities is by a utility having a presence in this Commonwealth of less than 10% as measured by either:
  - (i) The ratio of gross investment within this Commonwealth to the utility's total gross investment.
  - (ii) The ratio of gross operating revenues from service rendered during the immediately preceding fiscal year under tariffs filed with the Commission for intrastate service to the total gross operating revenues of the public

utility during the fiscal year from all service, wherever rendered, of the type described in section 102 of the act (relating to definitions).

(b) *Form.* At the election of the issuing public utility, a securities certificate relating to an issuance of securities within the scope of this rule may consist of two copies of a letter addressed to the Prothonotary consistent with the form available from the Commission.

(c) *Filing and registration.* An abbreviated securities certificate under this section, together with the filing fee specified in § 1.43 (relating to schedule of fees payable to the Commission), shall be filed with the Prothonotary. If, at the end of 10 days after the filing of a securities certificate under this section, no order of rejection has been entered, the certificate shall be deemed, in fact and in law, to have been registered; provided that the Prothonotary may, by notice to the public utility served before the expiration of the 10-day period, extend the 10-day consideration period to not more than a total of 30 days. Further extension to the period shall be by the order of the Commission.

(d) *Exemption.* The filing of a securities certificate with this Commission under Chapter 19 of the act (relating to securities and obligations), relating to an issuance or assumption of securities is not required of a public utility which owns or operates facilities within this Commonwealth, but which has received no gross operating revenues for service rendered during the immediately preceding fiscal year and 12-month period under tariffs filed with the Commission for intrastate service within this Commonwealth.

**CHAPTER 5. FORMAL PROCEEDINGS**  
**Subchapter A. PLEADINGS AND OTHER PRELIMINARY MATTERS**

**§ 5.11. Applications generally.**

(a) Applications for authorization or permission filed with the Commission should conform to the requirements of this chapter. To the extent practicable, applications should conform to the requirements of § 3.551 (relating to official forms).

(b) Subsection (a) supersedes 1 Pa. Code § 35.1 (relating to applications generally).

**§ 5.12. Contents of applications.**

(a) If a form or other specific requirements are not provided for in Chapter 3 (relating to special provisions), applications shall conform to this section. Applications shall be in writing, shall state clearly and concisely the authorization or permission sought, shall cite by appropriate reference the statutory provisions, regulations or other authority under which the Commission authorization or permission is sought, and shall set forth, in the order indicated, the following—unless otherwise provided by this chapter or in Chapter 3 for the specific type of application involved:

- (1) The exact legal name of the applicant, and, if the applicant is a corporation, trust, association or other entity, the jurisdiction under the statutes of which the applicant was created or organized and the location of the principal place of business of the applicant.
- (2) The name, title and post office address of the person to whom correspondence or communications in regard to the application are to be addressed. The Commission will serve, where required, notices, orders and other papers upon the person named, and service shall be deemed to be service upon the applicant.

(b) Subsection (a) supersedes 1 Pa. Code § 35.2 (relating to contents of applications).

**§ 5.14. Applications requiring notice.**

(a) An application to the Commission for authority under sections 1101, 1102, 2503 and 2505 of the act or as otherwise provided by the act, is subject to one or more of the following notice requirements as directed by the Prothonotary under § 1.51 (relating to instructions for service and notice):

- (1) Publication in the *Pennsylvania Bulletin*.
- (2) Publication in a newspaper of general circulation serving the geographical territory affected by the application.
- (3) Actual notification to the parties affected by the application.
- (4) Another form of actual or constructive notification as may be required by the Prothonotary.

(b) Except as set forth in §§ 3.361—3.363, 3.381, 3.501(f) (as relating to the 60 day protest period) and 57.71, 57.72, 57.74—57.77 or as otherwise provided by the Prothonotary, application to the Commission for the following types of authority shall be published in the *Pennsylvania Bulletin* and, as directed by the Prothonotary, in a newspaper of general circulation serving the geographical territory affected by the application and shall be subject to a 15 day protest period.

(1) To initiate fixed utility service to the public, including the following:

- (i) Electric.
- (ii) Gas.
- (iii) Telephone.
- (iv) Water.
- (v) Sewer.
- (vi) Pipeline.
- (vii) Radio-telephone common carrier service.

(2) To initiate, in a different nature or to a different territory than is currently authorized, fixed utility service to the public, including the following:

- (i) Electric.
- (ii) Gas.
- (iii) Telephone.
- (iv) Water.
- (v) Sewer.
- (vi) Pipeline.
- (vii) Radio-telephone common carrier service.

(3) To abandon, in whole or in part, fixed utility service to the public, including the following:

- (i) Electric.
- (ii) Gas.
- (iii) Telephone.
- (iv) Water.
- (v) Sewer.
- (vi) Pipeline.
- (vii) Radio-telephone common carrier service.

(4) To initiate rail utility service to the public.

(5) To initiate, in a different nature or to a different territory than is currently authorized, rail utility service to the public.

(6) To abandon, in whole or in part, rail utility service to the public.

(7) To acquire or transfer tangible or intangible utility property through sale, merger, consolidation, lease or transfer of stock.

(8) To acquire 5% or more of the voting stock of another corporation.

(9) To secure exemption under section 619 of the Pennsylvania Municipalities Planning Code (53 P.S. § 10619).

(10) To construct, alter or abandon, in whole or in part, or to change the status of a rail utility agency station or team track.

**FORMAL COMPLAINTS**

**§ 5.21. Formal complaints generally.**

(a) A person complaining of an act done or omitted to be done by a person subject to the jurisdiction of the Commission, in violation, or claimed violation of a statute which the Commission has jurisdiction to administer, or of a regulation or order of the Commission, may file a formal complaint with the Commission.

(b) If the complaint relates to a provision in a tariff, regulation, report or other similar document on file with the Commission as a matter of public record, the document should be identified.

(c) A copy of the complaint will be served by the Commission, by certified mail, upon the respondent. If the complaint proposes to change an existing or proposed tariff rate of a fixed public utility subject to the jurisdiction of the Commission, a copy of the complaint will be served by the Commission on the Office of Trial Staff, Office of Consumer Advocate and Office of Small Business Advocate.

(d) The filing of a formal complaint entitles the complainant to a formal hearing before the Commission except that the Commission may dismiss any complaint without a hearing if, in its opinion, a hearing is not necessary in the public interest. Motions may be filed in accordance with §§ 5.101 and 5.102 (referring to preliminary motion; and motions for summary judgment and judgment on the pleadings).

(e) With respect to complaints filed against the Commission, no answer need be filed. The issues in the proceeding will be determined by prehearing conference memoranda or as specified by the presiding officer.

(f) Subsections (a)—(e) supersede 1 Pa. Code § 35.9 (relating to formal complaints generally).

**§ 5.22. Contents of formal complaint.**

(a) A formal complaint shall set forth the following:

(1) The name and address of the complainant and the attorney of the complainant.

(2) The name and address of the respondent complained against and the nature and character of its business.

(3) The interest of the complainant in the subject matter—for example, customer, competitor, and the like.

(4) The act or thing done or omitted to be done or about to be done or omitted to be done by the respondent in violation, or claimed violation, of a statute which the



Commission has jurisdiction to administer, or of a regulation or order of the Commission.

(5) A clear statement of the relief sought.

(b) A verification executed in accordance with § 1.36 (relating to verification) shall be attached to the formal complaint.

(c) A complaint by a public utility or other person or corporation subject to the act against a regulation or order of the Commission, which the complainant is or has been required to observe or carry into effect, shall be substantially in the form prescribed by subsection (a) and reference shall be made to the particular regulation, order or part thereof complained against and shall quote the pertinent portions thereof.

(d) Subsections (a) and (c) supersede 1 Pa. Code § 35.10 (relating to form and content of formal complaints).

**§ 5.31. Staff-initiated complaints.**

(a) A Commission bureau may commence a proceeding under statutory or other authority against a person by filing a complaint setting forth the grounds for the action. The complaint will contain a statement of the particular matter about which the bureau is complaining or inquiring, and the complaint will require that the respondent named respond in writing as provided in § 5.61 (relating to answers to complaints, petitions and motions).

(b) Whenever a party petitions the Commission to commence an action, the Secretary will refer the petition to the appropriate bureau for evaluation and disposition.

(c) Subsections (a) and (b) supersede 1 Pa. Code § 35.14 (relating to orders to show cause).

**§ 5.41. Petitions generally.**

(a) Petitions for relief, other than those covered by §§ 5.42—5.44 (relating to petitions for declaratory orders; petitions for issuance, amendment, waiver or repeal of regulations; and petitions for appeal from actions of the staff) under the act or other statute that the Commission administers, shall be in writing, shall state clearly and concisely the grounds of interest of the petitioner in the subject matter, the facts relied upon and the relief sought. Petitions to intervene shall conform to the requirements of §§ 5.71—5.76 (relating to intervention).

(b) A copy of the petition shall be served on all persons directly affected and on other parties whom petitioner believes will be affected by the petition, including the Office of Consumer Advocate, the Office of Small Business Advocate and the Office of Trial Staff. The service shall be evidenced with a certificate of service filed with the petition.

(c) Subsection (a) supersedes 1 Pa. Code § 35.17 (relating to petitions generally).

**§ 5.42. Petitions for declaratory orders.**

(a) Petitions for the issuance of a declaratory order to terminate a controversy or remove uncertainty shall state clearly and concisely the controversy or uncertainty which is the subject of the petition, shall cite the statutory provision or other authority involved and shall include a complete statement of the facts and grounds prompting the petition, together with a full disclosure of the interest of the petitioner.

(b) A copy of the petition shall be served on the Office of Consumer Advocate, Office of Trial Staff, Office of Small Business Advocate and all persons directly affected and on other parties whom petitioner believes will be

affected by the petition. The service shall be evidenced with a certificate of service filed with the petition.

(c) Copies shall also be served in compliance with Commission direction.

(d) Subsections (a)—(c) supersede 1 Pa. Code § 35.19 (relating to petitions for declaratory orders).

**PROTESTS**

**§ 5.52. Content of a protest to an application.**

(a) A protest to an application shall on its face set out clearly and concisely the facts from which the alleged interest or right of the protestant can be determined, the grounds of the protest and the facts establishing protestant's standing to protest.

(b) A person objecting to the approval of an application shall file with the Prothonotary and serve upon the applicant and applicant's attorney, if any, a written protest to the application which shall conform with the requirements of § 3.381(c)(1) (relating to applications for transportation of property and persons).

**§ 5.53. Time of filing.**

A protest shall be filed within the time specified in § 3.381(d) or § 3.502(d) (relating to applications for transportation of property and persons; and protests to applications for certificate of public convenience as a water supplier or wastewater collection, treatment and disposal supplier).

**ANSWERS**

**§ 5.61. Answers to complaints, petitions and motions.**

(a) Answers to complaints, petitions and motions shall be filed with the Commission within 20 days after the date of service, unless a different time is prescribed by statute or by the Commission.

(b) The answer shall be in writing and shall be set forth in paragraphs numbered to correspond with the complaint. Answers shall advise the parties and the Commission as to the nature of the defense. They shall admit or deny specifically all material allegations of the pleading answered, and state concisely the facts and matters of law upon which they rely.

(c) Except for complaints which are docketed with Commission-instituted rate proceedings, a respondent failing to file an answer within the applicable period shall be deemed in default, and relevant facts stated in the complaint or petition may be deemed admitted.

(d) For complaints which are docketed with Commission-instituted rate proceedings, an answer may be filed within the time specified. However, no answer is required, except as may be directed by the Commission or the presiding officer.

(e) Subsections (a)—(d) supersede 1 Pa. Code § 35.35 (relating to answers to complaints and petitions).

**§ 5.62. Answers seeking affirmative relief or raising new matter.**

(a) In its answer, a respondent may seek relief against other parties in a proceeding by reason of the presence of common questions of law or fact and shall set forth in its answer the facts constituting the grounds of complaint, the provisions of the statutes, rules, regulations or orders relied upon, the injury complained of and of the relief sought. The answer shall conform to the requirements of this chapter for answers generally.

(b) An affirmative defense shall be pleaded in an answer or other responsive pleading under the heading of "New Matter." A party may set forth as new matter another material fact which is not merely a denial of the averments of the preceding pleading.

(c) A reply to new matter shall be filed within 20 days of the date of service of the answer or other pleading raising the new matter. Failure to file a timely reply to new matter shall be deemed in default, and relevant facts stated in the new matter may be deemed admitted.

**§ 5.64. (Reserved).**

**INTERVENTION**

**§ 5.71. Initiation of intervention.**

(a) Participation in a proceeding as an intervenor may be initiated as follows:

(1) By the filing of a notice of intervention by another agency of the Commonwealth which is authorized by statute to participate in the proceeding.

(2) By order of the presiding officer or the Commission upon grant of a petition to intervene.

(b) Subsection (a) supersedes 1 Pa. Code § 35.27 (relating to initiation of intervention).

**§ 5.74. Filing of petitions to intervene.**

(a) Petitions to intervene and notice of intervention may be filed following the filing of an application, petition, complaint or other document seeking Commission action, but no later than the date fixed for the filing of petitions to intervene in an order or notice with respect to the proceedings or, except for good cause shown, the date fixed for filing protests as published in the *Pennsylvania Bulletin*. Intervention will not be permitted once an evidentiary hearing has concluded absent extraordinary circumstances.

(b) The Commission or presiding officer may, where the circumstances warrant, permit the waiver of the requirements of § 5.409 (relating to copies and form of documentary evidence) with respect to copies of exhibits for the intervenor.

(c) Subsections (a) and (b) supersede 1 Pa. Code § 35.30 (relating to filing of petitions to intervene).

**MOTIONS**

**§ 5.102. Motions for summary judgment and judgment on the pleadings.**

(a) *Motion for judgment on the pleadings.* After the pleadings are closed, but within a time so that the hearing is not delayed, a participant may move for judgment on the pleadings. An answer to a motion for judgment on the pleadings may be filed within 20 days of the date of service of the motion.

(b) *Motion for summary judgment.* After the pleadings are closed, but within a time so that the hearing is not delayed, a participant may move for summary judgment based on the pleadings and depositions, answers to interrogatories, admissions and supporting affidavits. Documents not already filed with the Commission shall be filed with the motion.

(1) An answer, including an opposing affidavit to a motion for summary judgment, may be filed within 20 days of the date of service of the motion.

(2) The answer may be supplemented by pleadings and depositions, answers to interrogatories or further affidavits and admissions.

(c) *Decisions on motions.*

(1) The presiding officer will grant or deny a motion for judgment on the pleadings or a motion for summary judgment, as appropriate. The judgment sought will be rendered if the pleadings, depositions, answers to interrogatories and admissions, together with affidavits, if any, show that there is no genuine issue as to a material fact and that the moving participant is entitled to a judgment as a matter of law. If a motion is granted, the presiding officer will do so in the form of an initial or recommended decision which shall be subject to exceptions. As in the case of other initial or recommended decisions, the procedures regarding exceptions to the Commission apply. If the motion is denied, the presiding officer will do so in the form of a written order.

(2) The presiding officer may grant a partial summary judgment if the pleadings, depositions, answers to interrogatories and admissions, together with affidavits, if any, show that there is no genuine issue as to a material fact and that the moving participant is entitled to a judgment as a matter of law on one or more but not all outstanding issues. The presiding officer will grant or deny the motion in the form of an order, or initial or recommended decision.

**§ 5.103. Motions.**

(a) *Scope and content.* A request may be made by motion for relief desired, except as may be otherwise expressly provided in this chapter and Chapters 1 and 3 (relating to rules of administrative practice and procedure; and special provisions). A motion shall set forth the ruling or relief sought, and state the grounds therefor and the statutory or other authority upon which it relies.

(b) *Presentation of motions.* A motion may be made in writing at any time, and a motion made during a hearing may be stated orally upon the record, or the presiding officer may require that an oral motion be reduced to writing and filed separately.

(c) *Response to motions.* A participant has 10 days from the date of service within which to answer or object to a motion, unless the period of time is otherwise fixed by the Commission or the presiding officer.

(d) *Rulings on motions.*

(1) The presiding officer is authorized to rule and will rule upon motions:

(i) Not formerly acted upon by the Commission prior to the commencement of the hearing where an immediate ruling is essential in order to proceed with the hearing.

(ii) Filed or made after the commencement of the hearing and prior to the submission of a decision in the proceeding.

(2) A motion made during the course of hearing, which if granted would otherwise dispose of parties' rights, should be acted upon by the presiding officer prior to taking further testimony if, in the opinion of the presiding officer, the action is warranted.

(3) If a motion involves a question of jurisdiction, the establishment of a prima facie case or standing, the presiding officer may render a final determination with regard to a motion prior to the termination of hearings by issuing an initial or recommended decision.

(e) *Supersession.* Subsection (a) is identical to 1 Pa. Code § 35.177 (relating to scope and contents of motions). Subsection (b) is identical to 1 Pa. Code § 35.178 (relating to presentation of motions). Subsection (c) supersedes

1 Pa. Code § 35.179 (relating to objections to motions). Subsection (d) supersedes 1 Pa. Code § 35.180 (relating to action on motions).

**Subchapter B. HEARINGS**

**PREHEARING AND OTHER CONFERENCES**

**§ 5.222. Initiation of prehearing conferences in nonrate proceedings.**

(a) In order to make possible a more effective use of hearing time in formal proceedings, other than rate proceedings which are governed by § 5.224 (relating to prehearing conference in rate proceedings), to otherwise expedite the orderly conduct and disposition of the proceedings and to serve the ends of justice and the public interest, it is the policy of the Commission to arrange for conferences between participants to the proceedings prior to the commencement of hearings.

(b) The Commission, or the presiding officer, with or without motion, and after consideration of the probability of beneficial results to be derived therefrom, may direct that a prehearing conference be held, and direct the participants to the proceeding to appear there to consider the matters enumerated in subsection (c). Notice of the time and place of the conference shall be given to all participants to the proceeding. Upon agreement of all the parties, the conferences may be conducted telephonically.

(c) The following matters shall be considered at prehearing conference:

(1) The possibilities for settlement of the proceeding, subject to the approval of the Commission.

(2) The amount of hearing time which will be required to dispose of the proceeding and the establishment of a schedule of hearing dates.

(3) Arrangements for the submission of direct testimony of witnesses in writing in advance of hearing to the extent practicable, and for the submission in advance of hearing or written requests for information which a participant contemplates asking another participant to present at hearing.

(4) Other matters that may aid in expediting the orderly conduct and disposition of the proceeding and the furtherance of justice, including, but not limited to, the following:

(i) The simplification of the issues.

(ii) The exchange and acceptance of service of exhibits proposed to be offered in evidence.

(iii) The obtaining of admissions as to, or stipulations of, facts not remaining in dispute, or the authenticity of documents which might properly shorten the hearing.

(iv) The limitation of the number of witnesses.

(v) A proposed plan and schedule of discovery which may include specific limitations on the number of written interrogatories and requests for admissions a participant may propound on another participant.

(d) Participants and counsel will be expected to attend the conference fully prepared for a useful discussion of all problems involved in the proceeding, both procedural and substantive, and fully authorized to make commitments with respect thereto. The preparation should include, among other things, advance study of all relevant materials, and advance informal communication between the participants, including requests for additional data and information, to the extent it appears feasible and desirable. Failure of a participant to attend the conference,

after being served with notice of the time and place thereof, without good cause shown, shall constitute a waiver of all objections to the agreements reached, and an order or ruling with respect thereto.

(e) Subsections (a)—(c) supersede 1 Pa. Code § 35.112 (relating to conferences to expedite hearings). Subsection (d) is identical to 1 Pa. Code § 35.113 (relating to initiation of conferences).

**§ 5.224. Prehearing conference in rate proceedings.**

(a) In a rate proceeding, the presiding officer may schedule the following:

(1) A first prehearing conference to establish a schedule for discovery and tentative hearing dates, as well as the matters in § 5.222 (relating to initiation of prehearing conferences in nonrate proceedings).

(2) Other conferences as deemed necessary.

(3) A conference held telephonically, upon agreement of the parties.

(b) The first prehearing conference shall be held as soon as practicable after the entry of the order of investigation. The participants shall come to the first prehearing conference prepared to discuss the following:

(1) A proposed plan and schedule of discovery, which may include specific limitations on the number of written interrogatories and requests for admissions a participant may propound on another participant.

(2) Other proposed orders with respect to discovery, including the establishment of sanctions (in addition to those provided by §§ 5.371 and 5.372 (relating to sanctions—general; and sanctions—types)) against any party failing to respond to discovery in a timely manner.

(3) Tentative scheduling of evidentiary hearings, close of the record, filing of briefs and other matters deemed appropriate.

(c) At the first prehearing conference, participants may submit a written statement addressing the issues in subsection (b).

(d) Following the first prehearing conference, the presiding officer will enter an order establishing a tentative set of hearing dates, establishing a plan and schedule for discovery, identifying the active participants for purposes of service of documents, determining whether a public input hearing will be held, if that decision has not already been made, and addressing other matters deemed necessary.

(e) The second prehearing conference should be scheduled not fewer than 10 days prior to the first scheduled evidentiary hearings to do the following:

(1) Resolve outstanding discovery disputes.

(2) Schedule order of witnesses.

(3) Incorporate stipulations in record.

(4) Resolve other matters.

(f) Combined with the second prehearing conference should be a settlement conference for the purpose of discussing settlement of the case or stipulation of certain issues, or both. In addition to the authority conferred by §§ 5.223(b), 5.232 and 5.233 (relating to authority of presiding officer at conferences; stipulations made in conferences; and refusal to make admissions or stipulate), if all parties agree, the presiding officer or a mediator may participate in the settlement discussions. A different judge or mediator will be assigned to participate in settlement discussions upon the request of a party. Participants, except the filing utility, shall file and serve on

all other participants, on or before the date of the conference, a statement of position which identifies the issues as they appear. Also included shall be a listing of the names and addresses of the witnesses each participant intends to call and their proposed area of testimony.

(g) The presiding officer, or the Commission will have the authority to amend the requirements of this section either sua sponte or upon motion of a participant when justice so requires.

(h) The rules applicable to prehearing and other conferences in §§ 5.221—5.223 (relating to conferences to adjust, settle or expedite proceedings; initiation of prehearing conferences in nonrate proceedings; and authority of presiding officer at conferences) are applicable to prehearing conferences in rate cases except to the extent they are inconsistent with this section.

#### § 5.231. Offers of settlement.

(a) It is the policy of the Commission to encourage settlements. Nothing contained in this chapter or Chapter 1 or 3 (relating to rules of administrative practice and procedure; and special provisions) precludes a participant in a proceeding from submitting, at any time, offers of settlement or proposals of adjustment, or from requesting conferences for that purpose. Participants may request that the presiding officer participate in the settlement conferences or that an additional presiding officer or mediator be designated to participate in the settlement conferences. Proposals of settlement, of adjustment, or of procedure to be followed, and proposed stipulations not agreed to by every participant, will not be admissible in evidence against a counsel or participant claiming the privilege.

(b) Subsection (a) supersedes 1 Pa. Code § 35.115 (relating to offers of settlement).

#### § 5.232. Stipulations and settlement petitions.

(a) When the participants to a proceeding other than a general rate increase seek to settle the proceeding, but do not seek to have the underlying pleadings withdrawn, a stipulation or settlement petition shall be presented to the presiding officer, if one has been assigned. Otherwise, the stipulation or settlement petition shall be filed with the Prothonotary. If the petition is presented to the presiding officer, the Prothonotary shall also be served with three copies.

(b) A settlement agreement shall specifically identify the other participants that were provided or denied an opportunity to enter into the settlement.

(c) A copy of each stipulation or settlement petition shall be served upon each participant to the proceeding, and each participant shall have the opportunity to comment on the proposed settlement unless otherwise ordered by the presiding officer.

(d) The stipulation or settlement petition will be reviewed by the presiding officer, if one has been assigned, and otherwise will be reviewed by the Commission. If the presiding officer rules on the petition, the ruling will be made in the form of an initial or recommended decision, subject to § 5.537 (relating to rate case settlements).

(e) Upon agreement of the parties to waive the exception period, the presiding officer may present the recommended decision or initial decision directly to the Commission for review.

(f) If timely exceptions are filed, they will be considered in a ruling made on the settlement petition.

#### § 5.235. Motor carrier restrictive amendments.

(a) The participants to motor carrier applications for passenger or household goods in use authority may stipulate as to restrictions or modifications to proposed motor carrier rights. Stipulations in the form of restrictive amendments or modifications shall be in writing, signed by each participant to the stipulation, and a copy submitted to the Prothonotary for insertion into the document folder.

(b) Restrictive amendments shall be binding on the parties but not on the Commission should it determine they are not in the public interest. If a restrictive amendment is not accepted by the Commission, it may remand the matter for appropriate proceedings.

#### § 5.242. Order of procedure.

(a) In a proceeding, the complainant, petitioner or other participant having the burden of proof, shall open and close unless otherwise directed by the presiding officer. In a hearing on investigations and in proceedings which have been consolidated for hearing, the presiding officer may direct who shall open and close.

(b) Intervenors shall follow the participants on whose behalf the intervention is made. If the intervention is not in support of an original participant, the presiding officer will designate at what stage the intervenor will be heard.

(c) In proceedings where the evidence is peculiarly within the knowledge or control of another participant, the order of presentation set forth in subsections (a) and (b) may be varied by the presiding officer.

(d) The presiding officer may direct the order of participants for purposes of cross-examination, subject to the requirements of § 5.243(f) (relating to presentation by participants).

(e) Subsections (a)—(d) supersede 1 Pa. Code § 35.125 (relating to order of procedure).

#### § 5.243. Presentation by participants.

(a) A participant, subject to the limitations in §§ 5.75 and 5.76 (relating to notice, service and action on petitions to intervene; and limitation of participation in hearings), has the right of presentation of evidence, cross-examination, objection, motion and argument. The taking of evidence and subsequent proceedings shall proceed with reasonable diligence and with the least practicable delay.

(b) When an objection to the admission or exclusion of evidence before the Commission or the presiding officer is made, the ground relied upon shall be stated briefly. A formal exception is unnecessary and may not be taken to rulings thereon.

(c) The presiding officer may require or allow a factual statement of the scope of a pleading or the position of a participant in the proceeding. Facts admitted on record by a participant or by testimony, exhibits or in writing, need not be further proved.

(d) The Commission or the presiding officer may limit appropriately the number of witnesses who may be heard upon an issue.

(e) No participant will be permitted to introduce evidence during a rebuttal phase which is repetitive, which should have been included in the participant's case-in-chief or which substantially varies from the participant's case-in-chief unless the evidence is introduced in support of a proposed full or partial settlement between or among any of the participants.

(f) If a participant conducts friendly cross-examination of a witness, the presiding officer may permit the other participants a second opportunity to cross-examine after friendly cross-examination is completed. The recross-examination shall be limited to the issues on which there was friendly cross-examination.

(g) Subsections (a)—(f) supersede 1 Pa. Code § 35.126 (relating to presentation by the parties).

**§ 5.253. Transcript corrections.**

(a) A correction in the official transcript may be made only to make it conform to the evidence presented at the hearing and to speak the truth.

(b) Proposed corrections of a transcript may be submitted by either of the following means:

(1) By written stipulation by the participants of record who were present when the transcription was taken.

(2) Upon written request of one or more participants of record present when the transcription was taken.

(c) Proposed corrections shall be filed as follows:

(1) Within 30 days after the transcript has been filed with the Commission.

(2) Within 15 days after the electronically recorded testimony has been reviewed.

(3) Upon permission of the presiding officer granted prior to the closing of the record.

(d) Objections or other comments to the proposed corrections shall be filed within 15 days of service of the proposed corrections.

(e) Proposed corrections and objections or other comments shall be served upon the participants of record present when the original transcription was taken.

(f) The presiding officer will rule upon a proposed correction of a transcript within 30 days of its receipt. A request for corrections not acted upon within 30 days is deemed to be:

- (1) Denied if opposed in a timely manner.
- (2) Granted if unopposed.

(g) Subsections (a)—(f) supersede 1 Pa. Code § 35.132 (relating to transcript corrections).

**Subchapter C. INTERLOCUTORY REVIEW**

**§ 5.301. Interlocutory review generally.**

(a) The Commission will not permit interlocutory review of rulings made by a presiding officer during the course of proceedings, except as permitted by the act and as specified in this subchapter.

(b) Subsection (a) supersedes 1 Pa. Code § 35.190 (relating to appeals to agency head from rulings of presiding officers).

**§ 5.302. Petition for interlocutory Commission review and answer to a material question.**

(a) During the course of a proceeding, a participant may file a timely petition directed to the Commission requesting review and answer to a material question which has arisen or is likely to arise. The petition shall be in writing with copies served on all participants and the presiding officer and shall state, in not more than three pages, the question to be answered and the compelling reasons why interlocutory review will prevent substantial prejudice or expedite the conduct of the proceeding.

(b) Within 7 days of service of the petition, each participant may submit a brief directed to the Commission supporting or opposing the petition and addressing the merits of the question for which an answer is requested and whether a stay of proceedings is required to protect the substantial rights of a participant. The brief may not exceed 15 pages.

(c) The participant petitioning for Commission review and answer shall also provide with the brief rulings on its question and extracts from the record as will assist the Commission in reaching a decision.

(d) No additional briefs are permitted unless directed by the Commission.

**§ 5.303. Commission action on petition for interlocutory review and answer.**

(a) Within 30 days of receipt of the petition, the Commission will, without permitting oral argument, do one of the following:

- (1) Continue, revoke or grant a stay of proceedings if necessary to protect the substantial rights of the participants.
- (2) Determine that the petition was improper and return the matter to the presiding officer.
- (3) Decline to answer the question.
- (4) Answer the question.

(b) The Commission will act promptly on petitions. Petitions for Commission review and answer which are not granted within 30 days of filing will be deemed to be denied.

**§ 5.304. Interlocutory review of discovery matters.**

(a) Unless otherwise ordered by the Commission in exceptional situations, rulings of presiding officers on discovery are not subject to interlocutory review absent certification by the presiding officer that the ruling involves an important question of law or policy that should be resolved immediately by the Commission, except that an order of a presiding officer regarding the deposing of a Commissioner or Commission employe will be subject to interlocutory appeal to the Commission as provided in §§ 5.301—5.303 (relating to interlocutory review generally; petition for Commission review and answer to a material question; and Commission action on petition for review and answer).

(1) Participants desiring interlocutory review of a presiding officer's ruling on discovery shall, within 3 days of the ruling, petition the presiding officer to certify the question to the Commission. The request shall be in writing with copies served on all participants and shall state, in not more than three pages, the question to be certified and the reasons why interlocutory review will prevent substantial prejudice or expedite the conduct of the proceedings.

(2) Within 7 days of a request for certification, each participant may submit a brief to the presiding officer supporting or opposing certification and, in addition, addressing the merits of the question for which certification is requested and whether a stay of proceedings is required to protect the substantial rights of a participant. The brief may not exceed 15 pages.

(3) The presiding officer will, within 3 days of the deadline for filing briefs, announce the decision in writing or orally on the record, with the reasons why certification has been granted or denied and whether a stay of proceedings has been granted.

(4) If the presiding officer denies the request for certification, then no further action is required of the presiding officer.

(5) If the presiding officer's decision is to grant the request for certification, and unless the moving participant has withdrawn the request for certification, the presiding officer will, within 4 days of the announcement of the decision, deliver to the Commission and serve to each Commissioner the certified question, the reasons justifying certification, rulings on the certified question, and extracts from the record that will assist the Commission in reaching a decision.

(b) Each participant may, on or before the date the presiding officer is required to file the certification, submit a brief, not to exceed 15 pages, directed to the Commission addressing the issue of certification, the merits of the certified question, and the stay of proceedings. No additional briefs are permitted unless directed by the Commission.

(c) Upon the expiration of the time provided for filing briefs, the Secretary will schedule the certified question for consideration at the next meeting of the Commission.

(d) Within 30 days of receipt of the certified question by the Secretary, the Commission will, without permitting oral argument, do one of the following:

- (1) Continue, revoke or grant a stay of proceedings.
- (2) Determine that the certification was improper and return the matter to the presiding officer for resolution.
- (3) Answer the certified question.

(e) Failure of the Commission to act on a certified question within 30 days of its receipt will be deemed to be an affirmance of the decision of the presiding officer.

(f) An interlocutory appeal from the ruling of the presiding officer on discovery will not result in a stay of the proceedings except upon a finding by the presiding officer or the Commission that extraordinary circumstances exist, or to protect the substantial rights of the participants.

**§ 5.305. Interlocutory review of a material question submitted by a presiding officer.**

(a) During the course of a proceeding, a presiding officer may certify to the Commission for review and answer a material question which has arisen or is likely to arise. The question shall be accompanied by the following:

- (1) An explanation of the compelling reasons why interlocutory review will prevent prejudice or expedite the conduct of the proceeding.
- (2) A statement as to whether a stay of the proceedings has been placed in effect.
- (3) An extract from the record that will assist the Commission.

(b) A copy of the question certified and the accompanying information shall be sent to the participants at the same time it is submitted to the Commission.

(c) Within 7 days of service of the certification, each participant may submit a brief directed to the Commission addressing the merits of the question for which an answer is requested and whether a stay of proceedings is required to protect the substantial rights of a participant. The brief may not exceed 15 pages.

(d) No additional briefs are permitted unless directed by the Commission.

(e) Within 30 days of receipt of the certified question, the Commission will, without permitting oral argument, do one of the following:

- (1) Continue, revoke or grant a stay of proceedings.
- (2) Determine that the certification was improper and return the matter to the presiding officer for resolution.
- (3) Answer the certified question.

(f) Failure of the Commission to act upon a certified question within 30 days of its receipt will be deemed to be an affirmance of the decision of the presiding officer.

**§ 5.306. Notification by telephone.**

A presiding officer may order notification of participants by telephone when time periods are short and delivery by mail may not prove adequate. A telephone notification will be confirmed by the presiding officer by service in writing.

**Subchapter D. DISCOVERY**

**§ 5.321. Scope.**

(a) *Applicability.* This subchapter applies to a proceeding in which:

- (1) A complaint, protest or other adverse pleading has been filed.
- (2) The Commission institutes an investigation.
- (3) The Commission institutes an on-the-record proceeding.

(b) *Discretion.* The presiding officer may vary provisions of this subchapter as justice requires.

(c) *Scope.* Subject to this subchapter, a participant may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of another party or participant, including the existence, description, nature, content, custody, condition and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of a discoverable matter. It is not ground for objection that the information sought will be inadmissible at hearing if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

(d) *Exceptions.* This subchapter will not apply to discovery sought of Commissioners or Commission staff serving in an advisory or adjudicatory capacity.

(e) *Commission staff.* This subchapter shall apply equally to Commission staff serving in a prosecutory or party capacity in proceedings before the Commission, with no exceptions other than as specifically set forth in this chapter.

(f) *Purpose and methods.* A participant may obtain discovery for the purpose of preparation of pleadings, or for preparation or trial of a case, or for use at a proceeding initiated by petition or motion, or for any combination of these purposes, by one or more of the following methods:

- (1) Deposition upon oral examination or written questions.
- (2) Written interrogatories to a participant.
- (3) Production of documents and things and entry for inspection and other purposes.
- (4) Requests for admission.

(5) On the record data requests.

(g) *Supersession.* Subsections (a)—(e) supersede 1 Pa. Code § 35.145 (relating to depositions).

**§ 5.324. Discovery of expert testimony.**

(a) Discovery of facts known and opinions held by an expert, otherwise discoverable under § 5.321 (relating to scope), may be obtained as follows:

(1) A participant may through interrogatories require both of the following:

(i) The other participant to identify each person whom the participant expects to call as an expert witness at hearing and to state the subject matter on which the expert is expected to testify.

(ii) The other participant to have each expert identified by the participant state the substance of the facts and opinions to which the expert is expected to testify and a summary of the grounds for each opinion. The participant answering the interrogatories may file as the answer a report of the expert, have the interrogatories answered by the expert or provide written direct testimony of the expert. The answer, separate report or testimony shall be signed by the expert and shall be deemed to be provided under oath in accordance with section 333(d) of the act (relating to prehearing procedures).

(2) If the participant against whom discovery is sought, under paragraph (1)(ii), responds by the filing of written direct testimony, the response shall be considered timely, regardless of § 5.342 (relating to answers or objections to written interrogatories by a participant), if the written direct testimony is served on all participants at least 10 days prior to the date on which the expert is scheduled to testify or in accordance with the schedule for the submission of written testimony established by the presiding officer. However, the participant shall still comply with paragraph (1)(i) within the time otherwise applicable.

(3) Upon cause shown, the presiding officer may order further discovery by other means, subject to restrictions as to scope and provisions concerning fees and expenses as he may deem appropriate.

(b) If the identity of an expert witness is not disclosed in compliance with subsection (a)(1), the witness will not be permitted to testify on behalf of the defaulting participant at hearing. If the failure to disclose the identity of the witness is the result of extenuating circumstances beyond the control of the defaulting participant, the presiding officer may grant a continuance or other appropriate relief.

(c) To the extent that the facts known or opinions held by an expert have been developed in discovery proceedings under subsection (a), the expert's direct testimony at hearing may not be inconsistent with or go beyond the fair scope of his testimony in the discovery proceedings as set forth in his deposition, answer to an interrogatory, separate report, written direct testimony or supplement thereto. The expert will not be prevented from testifying as to facts or opinions on matters on which he has not been interrogated in the discovery proceedings.

(d) The answering participant may supplement answers only to the extent that facts, or opinions based on those facts, can reasonably be shown to have changed after preparation of the answer or where additional facts or information have become known to the answering participant or where the interest of justice otherwise requires.

(e) Subsections (a)—(d) supersede 1 Pa. Code § 35.152 (relating to fees of officers and deponents).

**TIMING AND SUPPLEMENTAL RESPONSES**

**§ 5.331. Sequence and timing of discovery.**

(a) A participant or a person who has formally applied to the Commission for participant status may conduct discovery.

(b) A participant shall endeavor to initiate discovery as early in the proceedings as reasonably possible. In a proceeding, the right to discovery commences when a complaint, protest or other adverse pleading is filed or when the Commission institutes an investigation or on the record proceeding, whichever is earlier.

(c) Commission staff may initiate discovery at an earlier time. Commission staff discovery prior to formal Commission action to initiate a proceeding shall be designated as "data requests" and shall be answered fully and completely by the utility within the time periods specified at § 5.342(d) (relating to answers or objections to written interrogatories by a participant). Unless a presiding officer has been designated, objections and motions to compel shall be ruled upon by the Chief Administrative Law Judge.

(d) In a rate proceeding, initial discovery directed to data or information supplied by the public utility at the time of the initiation of the proceeding shall be submitted to the utility within 10 working days following the first prehearing conference. Discovery directed to other matters shall be available until the close of evidentiary hearings. In other proceedings, the presiding officer, upon motion of a participant, may establish reasonable limitations upon the timing of discovery.

(e) Unless the presiding officer upon motion, for the convenience of participants and witnesses and in the interests of justice, orders otherwise, methods of discovery may be used in any sequence and the fact that a participant is conducting a discovery will not operate to delay another participant's discovery.

**§ 5.332. Supplementing responses.**

A participant or an expert witness who has responded to a request for discovery with a response that was complete when made is under a duty to supplement a response to include information thereafter acquired, as follows:

(1) A participant is under a continuing duty to supplement responses with respect to a question directly addressed to the identity and location of persons having knowledge of discoverable matters and the identity of each person expected to be called as an expert witness at hearing, the subject matter on which the expert is expected to testify and the substance of the testimony as provided in § 5.324(a)(1) (relating to discovery of expert testimony).

(2) A participant or an expert witness is under a continuing duty to amend a prior response upon discovering that the response is incorrect or incomplete.

(3) A duty to supplement responses may be imposed by order of the presiding officer, agreement of the participants, or at a time prior to hearing through new requests to supplement prior responses.

**§ 5.342. Answers or objections to written interrogatories by a participant.**

(a) An answer to an interrogatory shall be in writing and the answer shall identify the name and position of

the individual who provided the answer. An answer shall be submitted as an answer and may not be submitted as an exhibit or in another form. Each interrogatory shall be answered fully and completely unless an objection is made. The answer shall first restate the interrogatory which is being answered.

(b) An answer may be used by a participant for an appropriate purpose, if admissible under the applicable rules of evidence. An answer may not be offered into evidence by the participant who provided it, except through the sworn oral testimony of the person who provided the answer.

(c) If objected to, the reasons for the objection to an interrogatory shall be stated in lieu of an answer. 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 (d). An objection shall restate the interrogatory or part thereof deemed objectionable and the specific ground for the objection. The objection shall include a description of the facts and circumstances purporting to justify the objection. The objection shall be signed by the attorney making it. An interrogatory otherwise proper is not objectionable solely because an answer will involve an opinion or contention that is related to a fact or the application of law to fact. The statement of an objection does not excuse the answering participant from answering the remaining interrogatories or subparts of interrogatories to which no objection is stated.

(d) The answering participant shall serve interrogatories and answers within 15 days for rate proceedings, and 20 days after service of the interrogatories for other cases. Time periods may be modified by the presiding officer, on motion or by agreement of the participants.

(1) An objection shall be served within 10 days of service of the interrogatories, except as agreed by the participants or as ordered by the presiding officer. Within the time periods prescribed in this subsection, the answering or objecting participant shall serve copies of the answer and the objection, if any, on the active participants. If there is an objection, then the objecting participant shall file copies of the objection with the Prothonotary, along with a certificate of service, which shall identify specifically the interrogatories to which an answer and objection have been provided. A copy of the objection shall also be served upon the presiding officer.

(2) The participant against whom the interrogatories are directed shall remain under a duty to meet the time requirements for answering or objecting to the interrogatories or subpart of interrogatories for which the time period for response has not been modified specifically.

(e) The participant submitting the interrogatories may move that the presiding officer dismiss an objection and direct that the interrogatory be answered.

(1) The participant against whom the motion to compel is directed may file an answer within 5 days of service of the motion 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 shall rule on the motion as soon as practicable; however, 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 shall, upon notice to the participants, rule in no more than 20 days of its presentation.

### § 5.343. Procedures in deposition by oral examination.

(a) A participant desiring to take the deposition of a person upon oral examination, other than under § 5.322 (relating to informal agreement regarding discovery or deposition procedure), shall give 20 days notice in writing to the active participant and to the presiding officer. A participant, or witness within the control of a participant, noticed to be deposed is required to appear without subpoena. A nonparticipant is not required to appear unless subpoenaed.

(b) The notice shall conform with the requirements in subsections (c)—(f) and § 5.344 (relating to approval by presiding officer) and shall state the time and place of taking the deposition and the name and address of each person to be examined if known, and if the name is not known, a general description sufficient to identify him or the particular class or group to which he belongs.

(c) The notice shall include a brief statement of the matters for which inquiry is being made.

(d) If the person to be examined is a participant, the notice may include a request made in compliance with § 5.349 (relating to requests for documents, entry for inspection and other purposes) for the production of documents and tangible things at the taking of the deposition. If the person to be examined is not a participant, and is to be served with a subpoena duces tecum to provide designated materials, the notice shall specify the materials to be produced.

(e) A participant may in his notice and in a subpoena, if issued, name as the deponent a public or private corporation, a partnership or association or a governmental agency. In that event, the organization named shall file within 10 days of service a designation of one or more officers, directors or managing agents, or other persons who consent to testify on its behalf, and may set forth, for the persons designated, the matters on which he will testify. A subpoena shall advise a nonparticipant organization of its duty to make a designation. The person designated shall testify as to matters known or reasonably available to the organization. This subsection does not preclude taking a deposition by other procedures authorized in this chapter.

(f) An objection to the notice of deposition may be filed within 10 days of service of the notice. A copy of the objection shall be served upon the presiding officer and the active participants. A notice of deposition which is served upon a nonparticipant shall state that the nonparticipant may file objections within 10 days of service and identify the persons—names and addresses—to whom the objections shall be sent.

(g) Subsections (a)—(f) supersede 1 Pa. Code §§ 35.142, 35.145 and 35.146 (relating to subpoenas; depositions; and notice and application).

### § 5.345. Procedure on depositions by written questions.

(a) A participant taking a deposition by written questions shall serve the questions upon the deponent and serve a copy upon each other participant or his attorney of record. Within 30 days thereafter the participant served and other participants may serve cross questions upon the deposing participant and upon each other participant or his attorney of record. Reply questions shall be similarly served by a participant within 10 days of the service of cross questions.



(b) The questions shall contain a notice stating the name and address of each person to be examined if known, and, if the name is not known, a general description sufficient to identify him or the particular class or group to which he belongs. A deposition upon written questions may be taken of a public or private corporation, a partnership or association, or a governmental agency in accordance with § 5.343(e) (relating to procedures in deposition by oral examination).

(c) Objections to the form of questions are waived unless filed and served upon the participant propounding them within the time allowed for serving the succeeding cross or other questions or within 10 days after service of the last questions. Other objections may be made at the hearing except as otherwise provided by §§ 5.346—5.348 (relating to persons before whom depositions may be taken; taking of depositions—objections; and transcript of deposition, objections and filing).

(d) A copy of questions for the taking of a deposition, as well as a signature page and envelope bearing the caption and marked "Deposition of \_\_\_\_\_" (name of witness), shall be transmitted to the person being deposed who shall complete, certify and return the completed deposition to the sender.

(e) After the service of questions and prior to the taking of the testimony of the deponent, the presiding officer, on motion promptly made by a participant or a deponent, may make an order in accordance with § 5.362 (relating to protective orders) or an order that the deposition may not be taken except upon oral examination.

**§ 5.346. Persons before whom depositions may be taken.**

(a) Within the United States or within a territory or possession subject to the dominion of the United States, depositions other than by interrogatories shall be taken before an officer authorized to administer oaths by the laws of the United States, of the Commonwealth or of the place where the examination is held, or before a person appointed by the presiding officer. A person so appointed shall have power to administer oaths and take testimony.

(b) No deposition may be taken before a person who is a relative, employe or attorney of any of the parties, who is a relative or employe of the attorney, or who is financially interested in the action.

(c) Depositions by written questions need only be answered under oath and notarized.

(d) Attendance of a witness at a deposition may be compelled by subpoena.

(e) Subsections (a)—(d) supersede 1 Pa. Code § 35.148 (relating to officer before whom deposition is taken).

**§ 5.348. Transcript of deposition, objections and filing.**

(a) The person before whom the deposition is taken shall put the witness on oath or affirmation and shall personally, or by someone acting under his direction and in his presence, record the testimony of the witness.

(b) The testimony of the witness shall be transcribed. Objections to the manner of preparation or the correctness of the transcript are waived unless they are filed in writing with the presiding officer promptly after the grounds of objection become known or could have been discovered with reasonable diligence.

(c) When the testimony is fully transcribed, a copy of the deposition with the original signature page shall be submitted to the witness for inspection and signing and shall be read to or by him and shall be signed by him unless the witness is ill or cannot be found or refuses to sign. Changes which the witness desires to make shall be entered upon the deposition by the person before whom it was taken with a statement of the reasons given by the witness for making the changes. If the deposition is not signed by the witness within 30 days of its submission to him, the person before whom the deposition was taken shall sign it and state on the record why it was not signed. The deposition may then be used as fully as though signed, unless the presiding officer holds that the reasons given for the refusal to sign require rejection of the deposition in whole or in part.

(d) The person before whom the deposition is taken shall certify on the deposition that the witness was sworn by the person and the deposition is a true record of the testimony given by the witness.

(e) In lieu of participating in the oral examination, participants served with notice of taking a deposition may transmit written questions to the person taking the deposition, who shall propound them to the witness and record the answers verbatim.

(f) Upon payment of reasonable charges, the person before whom the deposition was taken shall furnish a copy thereof to participants or to the deponent.

(g) Subsections (a)—(f) supersede 1 Pa. Code § 35.149 (relating to oath and reduction to writing).

**§ 5.349. Requests for documents, entry for inspection and other purposes.**

(a) A participant may serve on another participant a request for either of the following:

(1) To produce and permit the participant making the request, or someone acting on the participant's behalf, to inspect and copy designated documents—including writings, drawings, graphs, charts, photographs, computer records and other compilations of data from which information can be obtained, translated, if necessary, by the respondent through detection devices into reasonable usable form—or to inspect a copy, test or sample tangible things which constitute or contain matters within the scope of §§ 5.321(b), 5.323 and 5.324 (relating to scope; trial preparation material; and discovery of expert testimony) and which are in the possession, custody or control of the participant upon whom the request is served.

(2) To permit entry upon designated land or other property in the possession or control of the participant upon whom the request is served for the purpose of inspecting and measuring, surveying, photographing, testing or sampling the property or a designated object or operation thereon, within the scope of §§ 5.321(b), 5.323 and 5.324.

(b) As an alternative to permission to inspect and copy, and if requested by the participant seeking discovery, the participant against whom discovery is sought shall reproduce the designated documents at the requesting participant's expense. Regulated utilities shall provide copies of requested materials to Commission staff, which shall include the Office of Trial Staff, the Office of Consumer Advocate and the Office of Small Business Advocate at no charge.

(c) The request shall set forth the items to be inspected either by individual item or by category, describe items

and categories with reasonable particularity, and specify a reasonable time, place and manner of making the inspection and performing the related acts.

(d) The participant upon whom the request is served shall serve a written response within 15 days for rate proceedings, and 20 days after service of the request for all other cases. Time periods may be modified by the presiding officer, on motion, or by agreement of the participants. The response shall state that inspection and related activities will be permitted as requested. If the request is objected to, the objection shall be made in the manner described in § 5.342 (relating to answers or objections to written interrogatories by a participant). A participant may request another participant to produce or inspect documents as part of interrogatories filed under § 5.341 (relating to written interrogatories to a party). The participant submitting the request may move for an order under § 5.342(e) with respect to an objection or to other failure to respond to the request or any part thereof, or failure to permit inspection as requested.

(e) This section does not apply to official files of the Commission, or materials which are the product of or within the control of Commission advisory or adjudicatory staff, but shall apply only to materials within the control of staff as may be participating in the action as a participant. Access to official files of the Commission shall be as prescribed in §§ 1.71—1.77 (relating to public access to Commission records).

#### SANCTIONS

##### § 5.371. Sanctions—general.

(a) The Commission or the presiding officer may, on motion, make an appropriate order if one of the following occurs:

(1) A participant fails to appear, answer, file sufficient answers, file objections, make a designation or otherwise respond to discovery requests, as required under this subchapter.

(2) A participant deponent or an officer or managing agent of a participant refuses to obey or induces another to refuse to obey an order of a presiding officer respecting discovery, or induces another not to appear.

(b) A motion for sanctions may be answered within 5 days of service or, in the alternative, the motion may be answered orally at a hearing if a timely hearing has been scheduled within the same 5-day period.

(c) The presiding officer shall rule on the motion as soon as practicable; however, 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 shall, upon notice to the participants, rule in no more than 20 days of its presentation.

(d) A failure to act described in subsection (a) may not be excused on the ground that the discovery sought is objectionable unless the participant failing to act has filed an appropriate objection or has applied for a protective order.

(e) If a deponent refuses to be sworn or to answer a question, the deposition shall be completed on other matters or adjourned, as the proponent of the question may prefer. Thereafter, on reasonable notice to persons affected thereby, the proponent may apply to the presiding officer for an order compelling the witness to be sworn or to answer.

#### Subchapter E. EVIDENCE AND WITNESSES

##### § 5.401. Admissibility of evidence.

(a) Relevant and material evidence is admissible subject to objections on other grounds, but there shall be excluded evidence that is repetitious or cumulative, or evidence that is not of the kind which would affect reasonable and fair-minded persons in the conduct of their daily affairs.

(b) Subsection (a) supersedes 1 Pa. Code § 35.161 (relating to form and admissibility of evidence).

##### § 5.412. Written testimony.

(a) Use of written testimony in Commission proceedings is encouraged, especially in connection with the testimony of expert witnesses. Written direct testimony is required of expert witnesses testifying in rate cases.

(b) Whenever in the circumstances of a particular case it is deemed necessary or desirable, the presiding officer may direct that expert testimony to be given upon direct examination shall be reduced to the form of prepared written testimony. A reasonable period of time will be allowed for the preparation of written testimony.

(c) Written testimony is subject to the same rules of admissibility and cross-examination of the sponsoring witness as if it were presented orally in the usual manner.

(d) Except in a rate proceeding, cross-examination of the witness presenting written testimony shall proceed at the hearing at which testimony is authenticated if, not less than 20 days prior to the hearing, service of the written testimony is made upon each participant of record, unless the presiding officer for good cause otherwise directs. Unless the Commission by rule or order establishes otherwise, in a rate proceeding, the presiding officer will establish the schedule for the filing and authentication of written testimony, and for cross-examination by other participants.

(e) Written testimony shall normally be prepared in question and answer form, include a statement of the qualifications of the witness and be accompanied by exhibits to which it relates. A participant offering prepared written testimony shall insert line numbers in the left-hand margin on each page. A participant should also use a logical and sequential numbering system to identify the written testimony of individual witnesses.

(f) Written testimony shall be served upon the presiding officer and active participants 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 Prothonotary.

(g) At the hearing at which the testimony is authenticated, counsel for the witness shall provide two copies of the testimony to the court reporter.

(h) Subsections (a)—(g) supersede 1 Pa. Code §§ 35.138, 35.150 and 35.166 (relating to expert witnesses; scope and conduct of examination; and prepared expert testimony).

##### § 5.413. (Reserved).

#### SUBPOENAS AND PROTECTIVE ORDERS

##### § 5.421. Subpoenas.

(a) *Issuance.* A subpoena for the attendance of witnesses or for the production of documentary evidence,

unless directed by the Commission upon its own motion, will issue only upon application in writing to the presiding officer, except that during a hearing in a proceeding, the application may be made orally on the record before the presiding officer, who will determine the necessity of issuing the subpoena. The written application shall specify as nearly as possible the general relevance, materiality and scope of the testimony or documentary evidence sought, including, as to documentary evidence, specification as nearly as possible of the documents desired and the facts to be proved by the documents in sufficient detail to indicate the necessity of the documents. The proposed subpoena may be attached to the application.

(b) *Notice.* An application for a subpoena shall be filed with the Commission and copies served by the petitioner upon the affected participant, the presiding officer, active participants of record, and if the subpoena is directed to a Commission employe, to the Commission's Law Bureau. The application shall contain a notice that an answer or objection thereto shall be filed with the Commission and presiding officer within 10 days of service of the application. When the person for whom a subpoena is sought is not a participant to the case, a copy of the subpoena application shall be served on the person. When the person for whom a subpoena is sought is not a party to the case, the application shall identify the persons—names and addresses—including the Secretary and presiding officer, to whom the answer or objection shall be sent.

(c) *Service and return.*

(1) *Personal service.* If service of the subpoena is made by a sheriff, like officer or deputy, service shall be evidenced by the return thereof. If made by another person, the person shall make affidavit thereof, describing the manner in which service was made, and shall return the affidavit on or with the original subpoena. In case of failure to make service, the reasons for the failure shall be stated on the original subpoena. In making service, a copy of the subpoena shall be exhibited to and left with the person to be served. The original subpoena, bearing or accompanied by the authorized return, affidavit or statement, shall be returned to the Secretary, or, if so directed on the subpoena, to the presiding officer before whom the person named in the subpoena is required to appear.

(2) *Service by mail.* Service of a subpoena upon a participant may also be accomplished by mail under §§ 1.54 and 1.55 (relating to service by a participant; and service on attorneys), or by a form of mail requiring a return receipt, postage prepaid, restricted delivery. Service is complete upon delivery of the mail to the participant or the persons referred to in Pa.R.C.P. No. 402(a)(2).

(d) *Fees of witnesses.* A witness subpoenaed by the Commission shall be paid the same fees and mileage as are paid for the like services in the courts of common pleas. A witness subpoenaed by a participant shall be paid the same fees by the participant. The Commission, before issuing a subpoena as provided in this section may require a deposit of an amount adequate to cover the fees and mileage involved.

(e) *Supersession.* Subsections (a)—(d) supersede 1 Pa. Code § 35.142 (relating to subpoenas).

**§ 5.431. Close of the record.**

(a) Once the record is closed, no additional evidence may be introduced or relied upon by a participant unless

allowed for good cause shown by the Commission or presiding officer upon motion of a participant under § 5.402(b) (relating to admission of evidence) and § 5.571 (relating to reopening prior to a final decision), consistent with § 5.253 (relating to transcript corrections).

(b) Subsection (a) supersedes 1 Pa. Code §§ 35.231 and 35.232 (relating to reopening on application of party; and reopening by presiding officer).

**Subchapter F. PRESIDING OFFICERS**

**§ 5.482. Disqualification of a presiding officer.**

(a) A participant may file a motion for disqualification of a presiding officer which shall be accompanied by affidavits alleging personal bias or other disqualification.

(b) A presiding officer may withdraw from a proceeding when deemed disqualified in accordance with law.

(c) A motion for disqualification shall be served on the presiding officer and the participants to the proceeding.

(d) The presiding officer will rule upon a motion for disqualification within 30 days of receipt. Failure to rule upon a motion for disqualification within 30 days of its receipt will be deemed to be a denial of the motion.

(e) The ruling of the presiding officer on a motion for disqualification is subject to the interlocutory appeal procedure in § 5.303 (relating to Commission action on petitions for review and answer).

(f) Subsections (a)—(e) supersede 1 Pa. Code § 35.186 (relating to disqualification of a presiding officer).

**§ 5.483. Authority of presiding officers.**

(a) The presiding officer will have the authority specified in the act, subject to this title. This authority includes, but is not limited to, the power to exclude irrelevant, immaterial or unduly repetitive evidence, to prevent excessive examination of witnesses, to schedule and impose reasonable limitations on discovery and to otherwise regulate the course of the proceeding.

(b) Subsection (a) supersedes 1 Pa. Code § 35.187 (relating to authority delegated to presiding officers).

**Subchapter G. BRIEFS**

**§ 5.502. Filing and service of briefs.**

(a) An original and nine copies of a brief shall be filed with the Commission under § 1.4 (relating to filing generally).

(b) Except for rate proceedings or as provided by agreement or by direction of the presiding officer, the first or initial brief shall be filed by the participants upon whom rests the burden of proof and the other participants may then respond. If briefs are filed simultaneously, reply briefs may be filed. No additional briefs will be accepted. An initial brief, responding briefs and reply brief shall be filed and served within the time fixed by the presiding officer. If no specific times are fixed, initial briefs shall be filed and served within 30 days after the date of service of notice of the filing of the transcript and responding briefs or reply briefs shall be filed within 50 days after date of service of the notice of the filing of the transcript.

(c) Briefs not filed and served on or before the dates fixed therefor will not be accepted, except by special permission of the Commission or the presiding officer.

(d) Subsections (a)—(c) supersede 1 Pa. Code §§ 35.191 and 35.193 (relating to proceedings in which briefs are to be filed; and filing and service of briefs).

### Subchapter H. EXCEPTIONS, APPEALS AND ORAL ARGUMENT

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

(a) In a proceeding, exceptions may be filed by a participant and served within 20 days after the initial, tentative or recommended decision is issued unless some other exception period is provided. No exceptions may be filed with respect to an interlocutory decision.

(b) Each exception shall be numbered and shall 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 shall be concise. The exceptions and supporting reason shall be limited to 40 pages in length. Statements of reasons supporting the exception shall, insofar as practicable, incorporate by reference and citation, relevant portions of the record and passages in previously filed briefs. No separate brief in support of or in reply to exceptions shall be filed with the Prothonotary under § 1.4 (relating to filing generally).

(d) An original and nine copies of the exceptions shall be filed with the Prothonotary under § 1.4.

(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 and replies to 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).

#### § 5.536. Effect of failure to file exceptions.

(a) If no exceptions are filed in a proceeding included within § 5.533(a) (relating to procedure to except to initial, tentative and recommended decisions), the decision of the administrative law judge will become final, without further Commission action, unless, within 15 days after the decision is issued, two or more Commissioners request that the Commission review the decision.

(b) A tentative decision, issued by the Commission, subject to exceptions, shall become final, without further Commission action, if no exceptions are filed under § 5.333(a).

(c) Subsections (a) and (b) supersede 1 Pa. Code §§ 35.213 and 35.226 (relating to effect of failure to except to proposed report; and final orders).

#### § 5.539. Withdrawal of appeals.

(a) The filing of exceptions to a recommended or initial decision shall be deemed to be an appeal to the Commission of the recommended or initial decision and is subject to review by the Commission.

(b) An appeal to the Commission may be withdrawn at any time. If the presiding officer's previous decision is not otherwise subject to Commission review, it becomes final and effective upon the filing of a notice of withdrawal.

### Subchapter I. REOPENING, RECONSIDERATION AND REHEARING

#### § 5.572. Petitions for relief following a final decision.

(a) Petitions for rehearing, reargument, reconsideration, clarification, rescission, amendment, supersedeas or the like shall be in writing and shall specify, in numbered

paragraphs, the findings or orders involved, and the points relied upon by petitioner, with appropriate record references and specific requests for the findings or orders desired.

(b) A copy of every petition covered by subsection (a) shall be served upon each participant to the proceeding.

(c) Petitions for reconsideration, rehearing, reargument, clarification, supersedeas or others shall be filed within 15 days after the Commission order involved is entered or otherwise becomes final.

(d) Petitions for rescission or amendment may be filed at any time according to the requirements of section 703(g) of the act (relating to fixing of hearings).

(e) Answers to a petition covered by subsection (a) shall be filed and served within 10 days after service of a petition.

(f) Subsections (a)—(e) supersede 1 Pa. Code § 35.241 (relating to application for rehearing or reconsideration).

### Subchapter J. REPORTS OF COMPLIANCE

#### § 5.591. Reports of compliance.

(a) When a person subject to the jurisdiction of the Commission is required to do or perform an act by a Commission order, permit or license provision, there shall be filed with the Prothonotary within 30 days following the date when the requirement becomes effective, a notice, stating that the requirement has or has not been met or complied with, unless the Commission, by regulation, by order or by making specific provision therefor in a license or permit, provides otherwise for compliance or proof of compliance.

(b) Subsection (a) is identical to 1 Pa. Code § 35.251 (relating to reports of compliance).

#### § 5.592. Compliance with orders prescribing rates.

(a) When the Commission makes a final decision concerning a rate filing, as defined in sections 1307 and 1308 of the act (relating to sliding scale of rates; adjustments; and voluntary changes in rates) and permits or requires the adoption of rates other than the rates originally filed, the public utility affected shall file, within 20 days of entry of the final order, a tariff revision consistent with the Commission's decision together with a proof of revenues and supporting calculations. The utility shall simultaneously serve copies of the tariff revision, along with the proof of revenues and supporting calculations, on the active participants in the proceeding.

(b) Unless otherwise specified in the order, the tariff revision shall be effective upon statutory notice to the Commission and to the public and, whether made effective on statutory notice or under authority granted in the order, shall bear under the effective date on the title page the following notation:

Filed in compliance with the order of Pennsylvania Public Utility Commission, entered \_\_\_\_\_, 19\_\_\_\_, at \_\_\_\_\_.

(c) Exceptions to a tariff revision under this section may be filed by a participant to the proceeding within 10 days of the date of service of the compliance filing, and shall be strictly limited in scope to the factual issue of alleged deviation from requirements of the Commission order. The utility making the compliance filing may respond to exceptions within 5 days. No further pleadings will be permitted.

(d) No rates contained in a tariff revision filed in compliance with a Commission order may be imposed prior to entry of a subsequent order by the Commission approving the compliance filing. Notwithstanding the filing of an exception, the Commission may allow the compliance rates to become effective.

**CHAPTER 57. ELECTRIC SERVICE**

**Subchapter B. SERVICE AND FACILITIES**

**§ 57.26. Construction and maintenance of facilities.**

Overhead and underground transmission and distribution facilities and crossings of the wires or cables of every public utility over or under the facilities of other public utilities, cooperative associations or communication utilities, including parallel or random installation of underground electric supply and communications conductors or cable, shall be constructed and maintained in accordance with safe and reasonable standards, as set forth in the most recent National Electrical Safety Code.

**Subchapter D. ACCOUNTS AND RECORDS**

**§ 57.45. Preservation of records.**

A public utility shall keep and preserve its records in conformity with the provisions applicable to it in the most

recent publication of the National Association of Regulatory Utility Commissioners, entitled "Regulations to Govern the Preservation of Records of Electric, Gas and Water Utilities."

**CHAPTER 59. GAS SERVICE**

**ACCOUNTS AND RECORDS**

**§ 59.45. Preservation of records.**

Each gas utility shall keep and preserve its record in conformity with the provision applicable to it in the current publication of the National Association of Regulatory Utility Commissioners, 1102 ICC Bldg., Post Office Box 684, Washington, D. C. 20044, entitled "Regulations to Govern the Preservation of Records of Electric, Gas and Water Utilities."

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