

# PROPOSED RULEMAKING

## PENNSYLVANIA PUBLIC UTILITY COMMISSION

[52 PA. CODE CHS. 1, 3 AND 5]

[L-00020156]

### Practice and Procedure Before the Commission

The Pennsylvania Public Utility Commission, on May 7, 2004, adopted a proposed rulemaking order revising and updating the Commission's rules of practice and procedure.

#### *Executive Summary*

Periodically, the Commission reevaluates its procedural rules in order to ensure that they effectuate and reflect the Commission's current policies and the current state of the law. On September 12, 2002, the Commission issued an Advance Notice of Proposed Rulemaking to solicit comments from interested persons regarding possible changes and development of the Commission's procedural rules. The Commission received nine sets of comments and additionally incorporated the views of individual Commission Bureaus in evaluating possible changes.

The proposed regulations accomplish a number of Commission objectives. First, the rules are prepared to accommodate electronic filing once such a system becomes available. Second, the rules in many cases are reorganized in order to be more reader friendly and easier to navigate. Third, the Commission made a number of small calibrations to the rules, such as shortening or lengthening time periods for filing various documents and changing terminology to be more in step with the Pennsylvania Rules of Civil Procedure and modern practice. Fourth, the Commission made several changes in order to afford it greater flexibility, such as the proposed changes to section 3.501, wherein the Commission proposes that the substantive requirements for an application be iterated in forms as opposed to the regulation. Taken together, the changes proposed by the Commission should provide for more efficient practice and procedure before the Commission.

#### *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on October 15, 2004, the Commission submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House and Senate Committees. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey any comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections shall specify the regulatory review criteria which have not been met. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the rulemaking, by the Commission, the General Assembly and the Governor of comments, recommendations or objections raised.

Public Meeting held  
May 7, 2004

*Commissioners Present:* Terrance J. Fitzpatrick, Chairperson; Robert K. Bloom, Vice Chairperson; Glen R. Thomas; Kim Pizzingrilli; Wendell F. Holland

*Proposed Rulemaking for the Revision of Chapters 1, 3 and 5 of Title 52 of the Pennsylvania Code Pertaining to Practice and Procedure Before the Commission; Doc. No. L-00020156*

### Proposed Rulemaking Order

*By the Commission:*

On September 12, 2002, the Commission adopted an Advance Notice of Proposed Rulemaking Order announcing our intention to revise the Commission's rules of practice and procedure, 52 Pa. Code Chapters 1, 3 and 5. We noted that the rules were last revised in 1996, and that since then the Commission's jurisdiction and responsibilities have changed significantly. We stated our intention to solicit input regarding proposed revisions and our commitment to carefully consider the views of all interested persons prior to taking any formal action.

Publication in the *Pennsylvania Bulletin* on September 28, 2002 established a sixty-day comment period, and we thank the following for their thoughtful and constructive comments: Metropolitan Edison Company, Pennsylvania Electric Company and Pennsylvania Power Company, combined comments; Superior Water Company; Verizon Pennsylvania and Verizon North Inc., combined comments; Office of Consumer Advocate; the law office of Kirkpatrick & Lockhart, LLP; the law office of Craig A. Doll; Department of Environmental Protection; PUC's Office of Administrative Law Judge; Office of Small Business Advocate; and the PUC's Bureau of Transportation and Safety.

A core committee of Law Bureau and Office of Administrative Law Judge employees reviewed these comments, as well as our own recommendations, and prepared an initial draft of proposed changes. These were presented to a committee formed from the Commission's Bureaus, which suggested additional revisions. With the input and aid of the commentators and Commission staff, a recommendation was developed and is before us for review.

Accordingly, we are publishing the changes as marked in Annex A as a proposed rulemaking, and we once again ask the utility industry and the public utility bar to submit further detailed comments on the specific provisions that we propose.

The following is a description of the substantive changes we propose to make. Sections which are included in Annex A but not discussed here have only ministerial changes proposed to them. Specific changes appear in Annex A, where deletions are bracketed and additions are underlined. We thank those commentators who recommended routine ministerial corrections, but in the interest of brevity we will not address each comment in the discussion below.

Note that the term "participant" is replaced with the term "party" throughout the rules. Ensuring that those who wish to appear before the Commission become parties to the proceeding eliminates the uncertainty associated with the term "participant," which does not firmly establish the status of a person. Each section when this is the only change is noted in the explanations below. Similarly, the word "Prothonotary" is changed to "Secretary" wherever it appears to reflect that the Commission

no longer has a Prothonotary and that the duties previously assigned to that office now belong to the Secretary.

*Chapter 1. Rules of Administrative Practice and Procedure*  
*Subchapter A. General Provisions*

Important changes to this chapter include correcting the Commission's address in Sections 1.3, 1.4 and 1.7, as well as updating the definitions in Section 1.8. These include adding definitions for "individual," meant to permit distinction between the legal term "person" and a human being, and "mediation," which has become an important process at the Commission, and "verification," which is used throughout the rules but has not been defined. As noted above, the term "participant" is removed.

The Commission notes that OCA recommends adding a new section to define each type of order which the Commission issues, such as final order, tentative order, emergency order, and interlocutory order. Since the status of any Commission order is already defined by the state courts, such a regulation is not necessary and could, in fact, be rendered inaccurate should there be any change in case law prior to the next revision of these rules. Therefore, we decline to add the suggested section.

*Subchapter B. Time*

*§ 1.11 Date of filing*

The rule is changed to establish when a filing occurs if the Commission permits filing by electronic means. The requirement specifies that the document must: (1) enter the information processing system, (2) be designated by the Commission for the purpose of receiving documentary filings, (3) be in a form which the Commission is capable of retrieving, and (4) be in a form readable by the system. The revision does not permit electronic filing but it does specify how electronic filing will be achieved if the Commission permits it in the future.

An OCA recommendation to add a subsection informing the recipient of a Commission final order that an appeal may be taken within thirty days to the Commonwealth Court is declined since the appeal period is governed by the rules of the Commonwealth Court, not by Commission rules.

Verizon comments that Section 1.12 should be amended to provide that "in no event shall the inclusion of a Saturday, Sunday or legal holiday, or any combination thereof, within the time period required for any responsive pleading, serve to shorten the time required for such responsive pleading to less than five business days." The Commission has not incorporated this recommendation since the present rules permit the use of the mailbox rule, thus adding three days, and the categories of responsive pleadings affected by this short response time are those which cannot be delayed further.

*Subchapter C. Representation before the Commission*

The Commission received comments regarding this subchapter from Verizon, OSBA, and OALJ. With the exception of OALJ, the commenters suggest that there are some circumstances when it would make sense to permit representation of others by someone other than an attorney licensed in the Commonwealth. As Verizon points out, many cases involve pro se complainants, simple factual issues and no legal issues, therefore not justifying the time, skill or expense of an attorney. OSBA notes the requirement that a business be represented by an attorney can leave a small business unable to pursue an adversarial proceeding with a public utility because of

the cost. OSBA gives a reasoned, intelligent and persuasive argument in favor of permitting representation by someone other than an attorney in certain circumstances.

However, since the practice of law in Pennsylvania is regulated by the Pennsylvania Supreme Court, which has promulgated its own rules, it appears that the PUC lacks authority to promulgate any rule which is not consistent with the Supreme Court rules. Therefore, the proposed rules will not authorize the practice of law by any entity not already so authorized by the Supreme Court.

At the same time, we have attempted to rewrite these sections to make it clear that we are adhering to the rules of the Pennsylvania Supreme Court and to present the sections in a simpler, easier to read format.

The substance of this subchapter is that: (1) individuals, including sole proprietorships, may represent themselves, (2) in adversarial proceedings, any entity other than an individual must be represented by an attorney, (3) in nonadversarial proceedings, entities may be represented as permitted by the rules of corporations in Pennsylvania, and (4) in informal proceedings brought under Chapters 56 and 64 only, representation may be by other than a licensed attorney.

Throughout, the information required to be provided by an attorney includes his or her Supreme Court identification number.

The Commission recognizes that electronic filing and service will be practical in the future. Although the rules do not now grant permission, the proposed revisions will allow electronic service by the Commission for documents when the person agrees to it and provides an e-mail address.

*Subchapter D. Documentary Filings*

This subchapter has been rewritten to set forth the requirements for the form of a documentary filing in a formal case in an easy to read fashion. The format for electronically submitted documents is included.

*§ 1.36. Verification*

A detailed comment submitted by Daniel P. Delaney, Esquire, of Kirkpatrick and Lockhart, points out that verifications or affidavits are to be provided either by a party or an authorized officer of the party if a corporation or association, and that this requirement may cause hardship. Mr. Delaney points out that "utility or corporate employee[s] involved in Commission proceedings are usually managers or mid-level employees who would not also be officers" but they would have the actual knowledge necessary to attest to the facts included in a pleading. Accordingly, we are revising the requirement to read that the facts in a document be personally verified by a party or authorized officer or other authorized employee of the party if a corporation or association.

*§ 1.38. Rejection of Filings*

We are adding this section in order to enunciate the Commission's existing practice of rejecting non-conforming filings and filings by persons who fail to comply with their regulatory obligations.

*Subchapter E. Fees*

Phrasing has been revised to permit additional methods of payment in the future, such as credit cards, when the Commission is prepared to accept such methods.

Subsections (b), (c) and (d) of § 1.43 are removed from the schedule of fees to reflect that the Commission no longer performs testing. The remainder of the fees are not being changed.

OCA comments that the listed prices may still be too high for some people. We are sympathetic to the plight of those who cannot afford to pay, but there are other considerations here as well. It is important to keep in mind that parties to an action are served with documents in the case and pay no fee for them. Therefore, it is only non-parties who would be affected by our fee schedule.

The fee schedule is based on what is reasonable when considering the Commission's actual cost for services provided. The Commission must bear the cost of searching for and locating a file or document, taking the time and pay scale of the Secretary's Bureau employees into consideration, as well as paper and overhead. The Public Utility Code requires the Commission to establish a reasonable cost for copies and certification of documents and files. 66 Pa.C.S. § 317. This is meant to defray the cost of the service. If there were no fees, then the cost of photocopying and certification of records would have to be paid another way. The Commission's only other source of income is by assessment to certificated public utilities, which would have to be increased to pay the difference. Increased assessments would result in increased rates to ratepayers. The Legislature has made it clear, through its promulgation of Section 317 of the Public Utility Code, that it believes that the cost of the service should be paid by those receiving the service, not by the utilities. Therefore, we decline to create a sliding scale at this time.

#### *Subchapter F. Service of Documents*

With the advent of electronic service, it is necessary to amend subsection (a)(4) to Section 1.56, Date of Service, to provide that a faxed document be transmitted prior to 4:30 p.m. local time to thwart any attempt to send documents after offices have closed for the night. Subsection (a)(5) is added to provide for electronic service in the future when agreed to by the parties.

#### *Subchapter G. Matters Before Other Tribunals*

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

Subsection (c) is removed as identical to (d). Language is added to address the category of "licensee." In addition, language is added to require that a licensee or utility whose parent company has declared bankruptcy inform us as well. Language in new (c) gives the Commission the ability to monitor bankruptcy proceedings without the responsibility of acting to approve the bankruptcy plans of certificated utilities.

No substantive changes are made to the remainder of Chapter 1.

#### *Chapter 3. Special Provisions*

All references to the office of Executive Assistant, and its mention, have been removed since it no longer exists at the Commission.

The emergency order sections have been reorganized to have those referring to ex parte emergency orders located together, and those sections referring to interim emergency orders located together. Language has been adjusted to provide parallel standards for both sections. The contents of section 3.5 have been relocated to section 3.3, resulting in the elimination of section 3.5. Section 3.9 has been relocated to section 3.6a for consistency.

#### *Subchapter B. Informal Complaints*

This subheading is changed to read "Informal Complaints and Investigations" to better reflect the content of the section it describes. Subsections have been created

and labeled for ease of reference. Subsection (b) of section 3.112 provides guidance to Commission staff regarding appropriate action upon receipt of an informal complaint.

#### *Subchapter D. Crossing Proceedings*

##### *§ 3.361. Crossing complaints.*

Subsection (a) is revised to require that the owner of the railroad right-of-way, which may be different from the public utility operating over it, be made a party to a Commission proceeding.

##### *§ 3.363. Claims for property damages from crossings.*

Subsection (a)(2) has been modified to reflect that the forms are no longer listed in the regulations but are available from the Secretary.

#### *Subchapter E. Motor Transportation Proceedings*

This subchapter will be dealt with in a separate rulemaking proceeding. The Commission does not propose any changes at this time.

#### *Subchapter G. Water or Wastewater Utility Proceedings*

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

The Pennsylvania Department of Environmental Protection has asked that we include additional requirements in the application, including a county comprehensive plan, municipal comprehensive plan and zoning designations. These issues will be addressed, however the changes will be reflected in forms available from the Secretary rather than in the regulation itself. In the forms to be made available under this section, we will require an applicant to provide a letter wherein it certifies that it is in compliance with the above requirements, instead of having the Commission make that determination.

Additionally, clarifying language has been added to what is now subsection (d). The language was added in order to indicate that the utility shall notify existing customers of a filing by publication once a week for two weeks, as opposed to every day for two weeks.

Finally, Superior Water Company indicated that applications filed under this section should be served on any water or wastewater utility, municipal corporation or authority with a service area within one mile of the proposed new or affected service area. The Commission concurs with Superior's comments; however, because applications made under this section are frequently voluminous, the Commission shall require only that the applicant provide notice. Such nearby utilities will be able to obtain a complete copy of application from the applicant upon request. Utilities abutting the service area affected by the application will continue to receive the complete application without the need for a separate request.

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

In subsection (a), a change has been made to indicate an attorney for a protestant must now supply his or her Pennsylvania attorney identification number.

#### *Subchapter H. Forms*

##### *§ 3.551. Official forms*

This section is replaced with a sentence stating that forms for applications, petitions, complaints and other matters are available on the Commission's website or from the Secretary.

*Subchapter I. Registration of Securities**§ 3.601. General*

The listing of necessary information has been replaced with a notice that a form is available from the Commission.

*§ 3.602. Abbreviated securities certificate*

Subsection (b) regarding the form has additional requirements.

*Chapter 5. Formal Proceedings**Subchapter A. Pleadings and Other Preliminary Matters*

New matter, reply to new matter, and motions have been added to the list of pleadings in section 5.1 to accurately reflect practice.

*Contents of applications.*

Section 5.12 is revised to lay out the requirements for inclusion in an application more clearly. A provision is added to prompt the inclusion of e-mail addresses where available. The Commission notes that OCA's request to require that service be made on OCA is not addressed because new applications are posted on the Commission's web site. OCA can review them on-line, thus avoiding another step for applicants to follow when filing with the Commission. Also, pursuant to section 5.14(b), the Secretary is authorized to direct service of applications upon the OCA and other interested persons in appropriate circumstances.

*Applications requiring notice.*

Section 5.14 is revised to eliminate the listing of those applications which require notice since this factor is subject to change and is not updated as often as the actual requirement changes. The section now sets forth the specific requirements of notice applicable to all applications which require notice. Protests are referred to another section.

*Formal complaints.*

Section 5.22 is revised to specify the requirements of a formal complaint both when the complainant is represented by an attorney and when complainant has no formal representation. An attorney is required to list his or her attorney identification number. Revised language seeks to elicit more detailed and easier to read complaints to facilitate Commission responses.

Section 5.24 is revised to provide for those circumstances in which a complainant does not wish to proceed but neither is the complainant satisfied. With the new language, a complaint can be closed after complainant acknowledges that he or she does not wish to pursue it.

A new section is being proposed at 5.32 to recognize that a complaint may be filed against a proposed rate filing but that a reasonable time limit should be placed on accepting those which will be considered within the context of the rate proceeding.

*Petitions*

No substantive changes are made to section 5.42. However, it is broken down for ease of reference.

*Protests*

Section 5.53 is revised to provide a consistent default filing time for filing protests, and Section 5.54 is deleted as redundant.

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

Sections 5.61, 5.102 and 5.103 are revised to be consistent in providing the twenty day response time. Section 5.66 is also revised to confirm that an answer to a petition to intervene must be filed within 20 days of service.

*Intervention*

In response to comments indicating that there is some frustration with being faced with an unknown intervenor, a new subsection (b) is added to Section 5.73 to require that petitions to intervene filed on behalf of more than one person list those persons and entities comprising the represented group. Our revision to Section 5.74 sets a default deadline for filing a petition to intervene in order to have a clear limit on the time for intervention and the subsections are set up to notify the ALJ of the appropriate standard to use in considering a request for intervention.

*Consolidation*

No changes are recommended for the only section under this heading.

*Amendment and Withdrawal of Pleadings*

Sections starting here are revised to reflect the civil rules of procedure where possible and appropriate.

*Motions*

This rulemaking proposes to change the term "preliminary motion" to "preliminary objection," to utilize the name recognized by practitioners elsewhere. In addition, section 5.101 is revised to accomplish a number of tasks. Subsection (c) refers back to § 5.91, which is revised to provide that an amended pleading filed in response to a motion for a more specific pleading shall result in the motion being deemed to be moot. An addition to subsection (d) requires that a preliminary motion contain a notice to plead. Amended subsection (e) emphasizes that the preliminary objections be decided within 30 days of filing or termination of mediation. Subsection (f) specifies what will happen after a ruling is issued.

*Settlement and Stipulations*

The format in Section 5.231 is changed to reflect the better regulatory style of limiting a subsection to one topic. In addition, new subsection (d) provides that a proposal to settle a discovery dispute is not admissible against a counsel or party, in response to the concern raised by FirstEnergy in its comments.

The title to section 5.232 is changed to "Settlement petitions" and all mention of stipulations is removed. The section is revised to require filing with the Secretary. Subsection (b) requires identification of the parties which agreed to the settlement or which didn't respond to the attempts to secure agreement. Subsection (d) provides for review by the presiding officer, who is charged with determining and taking appropriate action. Our thanks to FirstEnergy for their detailed comments and proposed language in this section.

The remaining revisions are largely ministerial with very few substantive changes.

Accordingly, under 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, 7.2, and 7.5, the Commission proposes adoption of the proposed regulations for revisions of the rules pertaining to practice and procedure

before the Commission, as noted and set forth in Annex A; *Therefore,*

*It Is Ordered that:*

1. This docket be continued to consider proposed regulations 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 review and comment by the designated standing committees of both houses of the General Assembly, and for review and comment by the Independent Regulatory Review Commission.

5. The Secretary shall deposit this order and Annex A with the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*. Interested persons may submit written comments, an original and 15 copies to James J. McNulty, Secretary, Pennsylvania Public Utility Commission, P. O. Box 3265, Harrisburg, PA 17105-3265 and shall have 60 days from the date this order is published to submit comments.

6. The contact person for this rulemaking is W. Blair Hopkin, Law Bureau, (717) 783-6152. Alternate formats of this document are available to persons with disabilities and may be obtained by contacting Sherri DelBiondo, Regulatory Coordinator, Law Bureau, (717) 772-4597.

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

JAMES J. MCNULTY,  
*Secretary*

**Fiscal Note:** 57-236. No fiscal impact; (8) recommends adoption.

**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**

**§ 1.2. Liberal construction.**

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(c) The Commission or presiding officer at any stage of an action or proceeding may waive a requirement of this subpart when necessary or appropriate, if the waiver does not adversely affect a substantive right of a [ **participant** ] party.

\* \* \* \* \*

**§ 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:

**By first-class mail:**

[ **Prothonotary** ] **Secretary**  
Pennsylvania Public Utility Commission  
Post Office Box 3265  
[ **North Office Building** ]  
Harrisburg, Pennsylvania [ **17120-3265** ] **17105-3265**

**In person or by mail other than first-class:**

**Secretary**  
**Pennsylvania Public Utility Commission**  
**Commonwealth Keystone Building**  
**400 North Street**  
**Harrisburg, Pennsylvania 17120**

\* \* \* \* \*

**§ 1.4. Filing generally.**

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

**By first-class mail:**

[ **Prothonotary** ] **Secretary**  
Pennsylvania Public Utility Commission  
Post Office Box 3265  
[ **North Office Building** ]  
**Harrisburg, Pennsylvania 171015-3265**

**In person or by mail other than first-class:**

**Secretary**  
**Pennsylvania Public Utility Commission**  
**Commonwealth Keystone Building**  
**400 North Street**  
**Harrisburg, Pennsylvania 17120**

\* \* \* \* \*

**§ 1.7. Sessions of the Commission.**

Public meetings of the Commission ordinarily will be held in its offices in the [ **North Office** ] **Commonwealth Keystone** Building, Harrisburg. Schedules for public meetings can be obtained from the Commission Secretary **or viewed on the Commission website.**

**§ 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:

\* \* \* \* \*

*Formal record*—The pleadings and submittals in a matter or proceeding, a notice or Commission order initiating the matter or proceeding, and if a hearing is held, the following: the designation of the presiding officer, transcript of hearing, exhibits received in evidence, [ **exhibits offered but not received in evidence,** ] offers of proof, motions, stipulations, subpoenas, proofs of service, references to the Commission and determinations made by the Commission thereon, certifications to the Commission, and anything else upon which action of the presiding officer or the Commission may be based.

*Friendly cross-examination*—Cross-examination of a witness by a [ **participant** ] party who does not disagree with the witness' position on an issue.

*Individual*—A natural person.

\* \* \* \* \*

[ **Intervenors** ] *Intervenor*—[ **Persons** ] A person intervening or petitioning to intervene as provided by §§ 5.71—5.76 (relating to intervention)[, **when admitted as a participant to a proceeding** ].

*Mediation*—An informal, nonadjudicative Commission process through which a neutral third

party (the mediator) assists the parties in reaching a mutually acceptable resolution.

\* \* \* \* \*

[ Participant—A party, Office of Trial Staff prosecutor, Law Bureau staff counsel or another person admitted by the Commission to limited participation in a proceeding. Except as otherwise provided in specific provisions of this part, participants have the same rights granted to parties by this part. ]

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 ]. Inactive parties 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. The Commission will serve inactive parties with copies of all orders and decisions issued in the case.

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

\* \* \* \* \*

Pleading—An application, complaint, petition, answer, motion, preliminary objection, protest, reply, order to show cause, new matter and reply to new matter or other similar document filed in a proceeding.

\* \* \* \* \*

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

\* \* \* \* \*

Secretary—The Secretary of the Commission, who is the Commission officer with whom pleadings and other documents are filed and by whom official records are kept.

\* \* \* \* \*

Submittal—An application, amendment, exhibit or similar document filed in an ex parte or other [ nonadversary ] nonadversarial proceeding.

\* \* \* \* \*

Verification—When used in reference to a written statement of fact by the signer, means supported by

oath or affirmation or made subject to the penalties of 18 Pa.C.S. § 4904 (relating to unsworn falsification to authorities).

\* \* \* \* \*

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 ] Secretary.

(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 ] noted 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.

(4) On the date that it enters an information processing system designated by the Commission for the purpose of receiving documentary filings and from which the Commission is able to retrieve the electronic record and is in a form capable of being processed by that system, if prior to 4:30 p.m. local time. On the following date, if after 4:30 p.m. local time.

(b) Failure to include a legible delivery receipt with [ the ] a document submitted in accordance with the methods specified in subsection (a)(2) may result in an untimely filing.

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

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§ 1.15. Extensions of time and continuances.

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

\* \* \* \* \*

(2) [ Request's ] Requests 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 for a continuance should be submitted at least 5 days prior to the hearing date.

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**Subchapter C. REPRESENTATION BEFORE THE COMMISSION**

**§ 1.21. Appearance [ in person ].**

\* \* \* \* \*

(b) [ In adversarial proceedings, partnerships, corporations, trusts, associations, agencies, political subdivisions and government entities ] Except as provided in subsection (a), persons in adversarial proceedings shall be represented [ only under ] in accordance with § 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). ] persons may be represented in the following manner:

- (1) A partner may represent the partnership.
- (2) A bona fide officer of a corporation, trust or association may represent the corporation, trust or association.
- (3) An officer or employee of an agency, political subdivision or government entity may represent the agency, political subdivision or government entity.

(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 ] A paralegal working under the direct supervision of an attorney admitted to the Pennsylvania Bar.
- (2) [ Another ] An appropriate individual.

\* \* \* \* \*

**§ 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 ] An attorney at law admitted to practice before the Supreme Court of Pennsylvania shall represent persons in Commission proceedings.

(b) An attorney not 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) ] in accordance with the Pennsylvania Bar Admission Rules.

(c) [ Law students ] A law student meeting the requirements of [ PA ] 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).

\* \* \* \* \*

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

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

- (1) As ] 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. ]

\* \* \* \* \*

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

(a) *Individuals.* An individual appearing without legal representation before the Commission or a presiding officer shall file with the [ Prothonotary ] Secretary 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 ] Secretary promptly.

(b) *Attorneys.*

(1) *Appearance by initial pleading.* An attorney [ whose name and address appear ] who signs an initial pleading 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.

(2) *Appearance in all other instances.* An attorney [ who enters the matter at a later stage of the proceeding ] shall file with the [ Prothonotary ] Secretary a [ writtennotice ] written notice of [ the ] appearance[ , which shall state his ].

(i) *Content of notice.* Initial pleadings, entries of appearance and notices of withdrawal shall include:

- (A) The attorney's name, mailing address and [ telephone number and the ] electronic mailing address, if applicable.
- (B) Pennsylvania attorney identification number or, if not licensed in this Commonwealth, identification of the jurisdictions in which the attorney is licensed to practice law.
- (C) Telephone number and telefacsimile number, if applicable.
- (D) The name and address of the person [ on whose behalf he appears ] represented.

(ii) *Filing.*

(A) *Appearance.* The notice [ shall ] of appearance must be served on the [ participants in ] parties to the proceeding, and a certificate of service shall be filed with the Secretary.

(B) **Change in address.** A change in address which occurs during the course of the proceeding [ shall ] must be reported to the [ Prothonotary ] Secretary 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) ] (3) **Withdrawal.** An attorney [ who wishes to ] may withdraw an appearance [ shall file with the Prothonotary ] by filing a written notice of withdrawal with the Secretary. The notice shall be served on the [ participants ] parties and the presiding officer, if one has been designated.

[ (e) ] (c) **Supersession.** Subsections (a)—[ (d) ] (e) supersede 1 Pa. Code § 31.24 (relating to notice of appearance).

§ 1.25. **Form of notice of appearance.**

(Editor's Note: For purposes of this section, brackets contained within the form are contained in the existing format of the form, and are not indicative of language to be deleted, with one exception. The term "participant" is being replaced with the term "party.")

(a) The form of notice of appearance is as follows:

COMMONWEALTH OF PENNSYLVANIA  
BEFORE THE PENNSYLVANIA PUBLIC UTILITY  
COMMISSION

In the Matter of:

[File, Docket or other identifying No.:]

NOTICE OF APPEARANCE

Please enter my appearance in the above-designated matter on behalf of \_\_\_\_\_ .

I am authorized to accept service on behalf of said [ participant ] party in this matter.

[ CHECK ONE ]

[ ] On the basis of this notice, I request a copy of each document hereafter issued by the Commission in this matter.

[ ] I request that a copy of each document hereafter issued by the Commission in this matter be transmitted electronically to the electronic mail address listed below in instances where service by electronic means is permitted.

[ ] I am already receiving or have access to a copy of each document issued by the Commission in this matter (alone, or in a consolidated proceeding) and do not on the basis of this notice require an additional copy.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name (Printed)

\_\_\_\_\_  
P. O. address

\_\_\_\_\_  
City, state and zip code

\_\_\_\_\_  
Telephone Number (including area code)

\_\_\_\_\_  
Attorney I.D. No.

\_\_\_\_\_  
Electronic Mail Address

\* \* \* \* \*

Subchapter D. DOCUMENTARY FILINGS

§ 1.31. [ Form of ] Requirements for documentary filings [ generally ].

(a) **Form.** [ Applications, petitions, complaints, answers or similar documents shall ] Pleadings must be divided into numbered paragraphs.

(b) **Attachments.** Copies of [ contracts, agreements, certificates, permits or other writings referred to ] documents relied upon in the [ application or petition, shall ] pleadings must be attached as exhibits. Copies of writings or orders already of record with the Commission need not be attached to the [ application or petition ] pleading if reference by docket number is made to the proceeding in which they were filed in accordance with § 1.33 (referring to incorporation by reference).

(c) **Identifying information.** [ Pleadings, submissions or other documents ] Documents filed with the Commission in a proceeding [ shall ] must clearly [ show ] contain the following information:

(1) The docket number or similar identifying symbols, if any [ , and ].

(2) The title or caption of the proceeding before the Commission.

(3) [ They shall also show, in the title of a particular pleading, submittal or other document filed, ] Within the title, the name of the person on whose behalf the filing is made. If more than one person is involved, only a single name [ only need be included in the title ] is necessary.

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

§ 1.32. **Form of documents.**

\* \* \* \* \*

(d) **Electronically submitted documents.** Margins, spacing and type size of electronically submitted documents must be in accordance with the requirements in subsections (a) and (b).

[ (d) ] (e) \* \* \*

§ 1.33. **Incorporation by reference.**

(a) [ Except as otherwise provided in subsection (b), documents ] Documents on file with the Commission may be incorporated by reference into a [ subsequently filed ] subsequent 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 ] Documents on file with the Commission [ for a period of more than 20 years ] may not be incorporated by reference in a current document unless the person filing the current document first [ makes inquiry to the Prothonotary office and ] ascertains that the earlier document continues to be readily available in the active records of the Commission.

§ 1.35. Execution.

(a) Signature. [ Except as may be otherwise ordered or requested by the Commission, the original copy of a ] A pleading, submittal or other document [ shall ] must be signed in ink by the party in interest, or by [ his ] the party's attorney, as required by subsection (b), and show the office and post office address of the party or attorney. [ Other ]

(1) An original hard copy must be signed, and other copies filed shall conform thereto unless otherwise ordered by the Commission.

(2) If the Commission permits a document to be submitted in electronic form, the document may be signed electronically using a method preapproved by the Commission.

(b) [ Subscription ] Signatory.

(1) A pleading, submittal or other document filed with the Commission [ shall ] must be [ subscribed ] signed by one of the following:

\* \* \* \* \*

(2) A document filed by a corporation, trust, association or other organized group, may be required to be supplemented by appropriate evidence of the authority of the officer or attorney [ subscribing ] signing the documents.

(c) Effect.

(1) The signature of the [ person subscribing ] individual signing a document filed with the Commission constitutes a certificate by the individual that:

(i) The [ person ] individual has read the document being [ subscribed ] signed and filed, and knows the contents thereof.

(ii) The document has been [ subscribed ] signed and executed in the capacity specified upon the document with full power and authority to do so, if executed in a representative capacity.

(iii) The document is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification or reversal of existing law, to the best of the [ person's ] individual's knowledge, information and belief formed after reasonable inquiry.

\* \* \* \* \*

(2) If a document is signed in violation of this subsection, the presiding officer or the Commission, upon motion or upon its own initiative, may impose upon the [ person ] individual who signed it, a represented party, or both, an appropriate sanction, which may include striking the document, dismissal of the proceeding or the imposition of civil penalties under section 3301 of the act (relating to civil penalties for violations).

(d) Supersession. Subsections (a)—(c) [ are identical to ] supersede 1 Pa. Code § 33.11 (relating to execution).

§ 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 ] must be personally verified by a party thereto or by an authorized officer or other authorized employee 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 ] When verification is [ required ] permitted, notarization is not necessary.

\* \* \* \* \*

(c) When an affidavit is used, it must be notarized and 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 ] 2 \_\_\_\_.

\_\_\_\_\_  
(Signature of official administering oath)

(My Commission Expires)

\* \* \* \* \*

§ 1.37. Number of copies.

(a) General rule. [ An ] When a pleading, submittal or document other than correspondence is submitted in hard copy, an original and three copies of [ pleadings, submittals or documents other than correspondence shall ] each, including the cover letter, must 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; filing and service of briefs; and procedure to except to initial, tentative and recommended decisions) ].

(b) Exceptions.

(1) [ In the case of applications and petitions ] When the document is an application or petition, one [ of the copies filed with the Commission ] copy may be filed without exhibits.

[ (c) In the case of complaints ]

(2) When the document is a complaint or [ petitions, when ] petition and more than one respondent is

named, an additional copy of the complaint or petition [ shall ] must be filed for each additional respondent.

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

(4) When the document is subject to the requirements of § 5.409, § 5.502 or § 5.533 (relating to copies and form of documentary evidence; filing and service of briefs; and procedure to except to initial, tentative and recommended decisions), the filing shall conform to the requirements set forth in the applicable section.

(c) *Electronic filing.* When permitted by the Commission or the Office of Administrative Law Judge, a single copy of a document may be submitted electronically to the Secretary's Bureau for filing.

\* \* \* \* \*

§ 1.38. Rejection of filings.

The Commission may reject a filing if it does not comply with any applicable statute, regulation or order, or if the filing utility is otherwise delinquent in its regulatory obligations.

Subchapter E. FEES

§ 1.42. Mode of payment of fees.

(a) Fees [ shall ] must be paid by money order or check made payable to the Commonwealth of Pennsylvania or by any method currently acceptable to the Commission. The Secretary's Bureau should be contacted prior to submitting payment in a form other than money order or check. Cash is sent at the risk of the sender.

\* \* \* \* \*

§ 1.43. Schedule of fees payable to the Commission.

\* \* \* \* \*

[ (b) *Fees for testing.* The fees fixed by section 317 of the act (relating to fees for services rendered by commission) to be charged and collected from public utilities for the testing of their instruments of precision and measuring apparatus are as follows:

<i>Description</i>	<i>(in dollars)</i>
Testing each watt-hour meter	\$16
Testing each indicating instrument	10
Testing each transformer	10
Testing each standard cell	5
Testing each standard resistance	10
Testing each potentiometer	50
Testing each gas meter prover	35
Testing each calorimeter tested at the gas company's plant	35
Testing each calorimeter tested at the Commission laboratory	10
Each water meter testing apparatus tested at the company's plant	15
Each water meter tested at the Commission laboratory	3

(c) *Condensation and steam flow meters.*

(1) The schedule of fees for testing condensation and steam flow meters is as follows:

(i) For condensation meters having an outlet not exceeding 2 inches—\$5.

(ii) For condensation meters having an outlet in excess of 2 inches—\$10.

(iii) For steam flow meters—\$25.

(2) Upon receipt of complete specifications, the Commission will determine the fees for testing those meters located so that the cost is out of proportion to the fee specified or those not included in the classification in this subsection

(d) *Water meters.*

(1) The schedule of fees for testing meters is as follows:

(i) For each water meter having an outlet not exceeding 1 inch—\$5.

(ii) For other water meters having an outlet not exceeding 2 inches—\$10.

(2) Rates for testing other meters, including those which are located so that the cost is out of proportion to the fee specified, will be furnished by the Commission upon the receipt of complete specifications.

(e) [ (b) *Supersession.* [ Subsections ] Subsection (a) [ —(d) supersede ] supersedes 1 Pa. Code §§ 33.21(b) and 33.23 (relating to filing fees; and copy fees).

Subchapter F. SERVICE OF DOCUMENTS

§ 1.51. Instructions for service and notice.

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

§ 1.53. Service by the Commission.

(a) [ Except when service by another method is specifically required by the Commission, ] *Applicability.* This section applies to service of 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 ] except when the Commission specifically requires a different form of service.

(b) *Forms of service.*

(1) *First class mail.* Service may be made 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 person's principal office or place of business.

(2) *Personal.* [ When service is not accomplished by mail, it ] Service may be [ effected ] made personally by anyone authorized by the Commission.

(3) *Electronic.* Service may be made electronically, when the recipient has specifically authorized electronic service in the matter.

[ (b) ] (c) *Registered or certified mail.* 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 ] must be by registered or certified mail, return receipt requested.

**[(c)] (d) Change of address.** It is the duty of a **[participant] party** to apprise the Commission promptly of changes to the **[participant] party's** current address.

**[(d)] (e) Alternative service.** If the Commission is unable to serve a **[participant] party** by mail at the **[participant's] party's** last known address, the Commission may **[serve the participant] make service** by publication in a newspaper of general circulation in the same area as the **[participant's] party'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)] (f) Supersession. [Subsection] Subsections (a)–(e) [supersedes] supersede** 1 Pa. Code § 33.31 (relating to service by the agency).

§ 1.54. Service by a **[participant] party**.

(a) Pleadings, submittals, briefs and other documents, filed in proceedings pending before the Commission **[shall] must** be served upon **[participants] parties** in the proceeding and **upon** 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.]** made by one of the following methods:

(1) **First class mail.** Service may be made by mailing the requisite number of copies to each party as provided in § 1.59 (relating to number of copies to be served), properly addressed with postage prepaid.

(2) **Personal.** Service may be made personally.

(3) **Electronic.** Service may be made electronically, to those parties who have agreed to accept service in that manner. Documents served electronically need not be followed by service of a hard copy if the parties have so agreed.

(4) **Telefacsimile.** Service may be made by telefacsimile to those parties who have agreed to accept service in that manner. Documents served by telefacsimile need not be followed by service of a hard copy if the parties have so agreed.

(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)] and (b) supersede** 1 Pa. Code § 33.32 (relating to service by a **[participant] party**).

§ 1.55. Service on attorneys.

(a) **[In a proceeding where an attorney has filed a pleading or submittal on behalf of a client or has entered an appearance under § 1.24(b) (relating to notice of appearance or withdrawal), a notice or other written communication required to be served upon or furnished to the client shall be served upon or furnished to the attorney—or one attorney if the client is represented by more than one attorney—] When an attorney enters an appearance under § 1.24 (relating to notices of appearances or withdrawals), service must be directed to the attorney in the same manner as prescribed for his client.**

(b) When a **[participant has appeared] party is** represented by an attorney, service upon the attorney shall be deemed service upon the **[participant and separate] party. Separate** service on the **[participant] party** may be omitted.

\* \* \* \* \*

§ 1.56. Date of service.

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

\* \* \* \* \*

(4) The document is transmitted by **[telecopier] telefacsimile** as provided in § 1.54 (relating to service by a **[participant] party**) **prior to 4:30 p.m. local time.**

(5) **The document enters an information processing system designated by the recipient for the purpose of receiving service and from which the recipient is able to retrieve the served document in a form capable of being processed by the recipient's system prior to 4:30 p.m. local time.**

(b) Unless otherwise prescribed by the Commission or presiding officer, whenever a **[participant] party** is required or permitted to do an act within a prescribed period after service of a document upon the **[participant] party** and the document is served by **first-class mail by the United States Postal Service**, 3 days shall be added to the prescribed period.

\* \* \* \* \*

§ 1.58. Form of certificate of service.

(a) The form of certificate of service shall be as follows:

I hereby certify that I have this day served a true copy of the foregoing document upon the **[participants] parties**, listed below, in accordance with the requirements of § 1.54 (relating to service by a **[participant] party**).

(List names and addresses of **[participants] parties** served.)

Dated this \_\_\_\_\_ day of \_\_\_\_\_, **[ 19 ] 2** \_\_\_\_\_.

\_\_\_\_\_  
(Signature)

Counsel for

\* \* \* \* \*

§ 1.59. Number of copies to be served.

\* \* \* \* \*

(b) The following number of copies of documents shall be served on other [ participants ] parties in a proceeding:

- (1) Briefs:
  - (i) Service of hard copies—two copies.
  - (ii) Service by electronic means, when permitted—one copy.
  - (iii) Service by telefacsimile, when permitted—one copy.

\* \* \* \* \*

Subchapter G. MATTERS BEFORE OTHER TRIBUNALS

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

\* \* \* \* \*

(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. ] Upon filing of a petition for bankruptcy under the United States Bankruptcy Code (11 U.S.C.A. §§ 701—766, 901—946, 1101—1174 and 1301—1330) by a jurisdictional utility or licensee or by a parent, affiliate, or direct or indirect subsidiary of a utility or licensee, the utility or licensee shall file a copy of the petition with the Commission, the Office of Consumer Advocate and the Office of Small Business Advocate.

(c) [ A public utility which is subject to the regulatory jurisdiction of the Commission, or the public utility 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 ] jurisdictional utility [ which ] that is subject to the regulatory jurisdiction of the Commission, or its trustee in bankruptcy, shall file a [ petition for Commission approval of a ] copy of the reorganization plan [ as to the public interest therein and the fairness thereof, accompanied by a copy of the plan ] for itself or for its bankrupt parent, subsidiary or affiliate for Commission review 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) ] (d) If the reorganization plan submitted under subsection (c) contemplates the abandonment of service, the [ petition shall ] submittal must include an application under [ section 1102(a)(2) ] Chapter 11 of the act (relating to [ enumeration of acts requiring certificate ] certificates of public convenience). If a licensee's reorganization plan includes the abandonment of the license, the submittal shall include the appropriate pleading under Chapters 22 and 28 of the act (relating to natural gas competition; and restructuring of electric utility industry).

[ (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

§ 1.71. Statement of objectives.

The [ Commission intends to establish a ] Commission's records maintenance system [ which allows ] is intended to provide for the greatest degree of public access to Commission documents that is consistent with the exercise of the functions of the Commission under the act and other applicable laws. [ A ] The Commission's system is [ hereby created ] designed to meet that objective and to give public notice of which classes of documents are available for inspection. The system provides a predictable standard, which nevertheless permits the Commission to take cognizance of the circumstances of individual requests for documents which may militate in favor of or against disclosure.

§ 1.72. [ Formal ] Content and review of formal case files.

\* \* \* \* \*

§ 1.73. Fiscal records.

(a) Except as provided in subsection (b), an account, voucher or contract dealing with the receipt or disbursement of funds by the Commission or its acquisition, use or disposal of services or supplies, materials, equipment or other property shall be available during normal Commission business hours upon request made to the Commission fiscal office. Fiscal records are retained in accordance with time periods set by applicable statutory, regulatory and administrative requirements.

\* \* \* \* \*

§ 1.76. Tariffs, minutes of [ the ] public [ meeting ] meetings and annual reports.

Tariffs, minutes of [ the ] public [ meeting ] meetings and annual reports [ shall ] must be available for public inspection and copying upon request to the Office of the Secretary during normal Commission business hours.

Subchapter I. AMENDMENTS [ TO ] OR WITHDRAWALS OF SUBMITTALS

§ 1.81. Amendments.

(a) An amendment to a submittal or pleading may be tendered for filing at any time and [ shall ] will be deemed filed [ as of the date of tender ] in accordance with § 1.11 (relating to date of filing) unless the Commission otherwise orders.

\* \* \* \* \*

§ 1.82. Withdrawal or termination.

(a) A party, which desires to terminate an uncontested matter or proceeding before final decision by the Commission or otherwise desires to withdraw a submittal or pleading, shall file a petition for leave to withdraw the appropriate document. If no [ participant ] party objects to the petition within 10 days of service, the matter may be stricken by the Commission or by the presiding officer. If upon review the presiding officer or the Commission determines that the public interest requires continuation of the proceedings, the petition [ shall ] will be denied and the staff may be directed to participate.

\* \* \* \* \*

Subchapter J. DOCKET

§ 1.86. Docket.

(a) The [ Prothonotary ] Secretary 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.

\* \* \* \* \*

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 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.

\* \* \* \* \*

EX PARTE EMERGENCY ORDERS

§ 3.2. [ Issuance ] Petitions for issuance of emergency [ order ] orders.

[ (a) ] To the extent practicable, a petition for emergency [ relief shall ] order must be:

(1) In the form of a petition as set forth in § 5.41 (relating to petitions generally) and shall be served on the persons directly affected by the application.

(2) [ Supported ] A petition for emergency order shall be supported by [ an affidavit verifying ] a verified statement of facts which [ establish ] establishes the existence of an emergency[. ], including facts to support the following:

(i) The petitioner's right to relief is clear.

(ii) The need for relief is immediate.

(iii) The injury would be irreparable if relief is not granted.

(iv) The relief requested is not injurious to the public interest.

[ (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 ] Disposition of ex parte emergency [ order ] orders.

(a) Authority. The Chairperson, a Commissioner, the Commission's Director of Operations and the Commission's Secretary have the authority to issue an emergency order.

(b) Form. An emergency order shall be issued in writing and shall be filed with the [ Prothonotary ] Secretary with copies to Commissioners, and the Director of Operations.

(c) Ratification. An emergency order or the denial of a petition for emergency order issued by a single Commissioner or the Director of Operations 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.

(d) Service. An emergency order or the denial of a petition for emergency order will be served by the Secretary as expeditiously as practicable upon the persons directly affected by the decision with copies to the Commissioners and the Director of Operations.

§ 3.4. [ Hearing on ] Hearings following issuance of emergency [ order ] orders.

(a) [ Upon petition by a ] A person against whom an emergency order is issued[ , ] may file a petition for 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 must conform to the form and service requirements in §§ 5.41—5.44 (relating to petitions generally).

(b) The petition for expedited hearing shall be [ served upon the Commission with ] filed with the Secretary and a copy [ to ] served upon 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. ]

(c) **The hearing will be held before a presiding officer within 10 days of receipt of the petition by the Secretary.**

**[ (b) ] (d)** 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.

(e) The decision of the presiding officer will constitute a **[ recom-mended ] recommended** decision to be acted upon by the Commission at its next scheduled public meeting.

§ 3.5. **[ Ratification of emergency order ] (Reserved).**

**[ (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. ]

#### INTERIM EMERGENCY RELIEF

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

(a) A party may submit a petition for an interim emergency order during the course of a proceeding. The petition must be filed with the Secretary and served contemporaneously on the Chief Administrative Law Judge and on the parties.

(b) 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 ]** must be supported by **[ an affidavit verifying ]** a verified statement of facts which **[ establish ]** establishes the existence of the need for interim emergency relief[. ], including facts to support the following:

- (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 allegation contained ]**

(c) Allegations set forth in the petition shall be deemed to have been denied by the opposing parties, and an answer is not required. **[ If a participant desires, ]** A party may file 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 ]** service of a copy of the petition.

**[ (c) No other ]**

(d) Other pleadings, memoranda or briefs related to a petition for interim emergency **[ orders ]** order are not 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. ]**

§ 3.6a. **Hearing on petitions for interim emergency orders.**

An interim emergency order may not be issued until the presiding officer holds a hearing on the merits of the petition. The hearing must be held within 10 days of the filing of the petition.

§ 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. ]

(a) A presiding officer will issue an order granting or denying interim emergency relief within 15 days of the filing of the petition.

(b) An order granting a petition for interim emergency relief will set forth the findings required by § 3.6(b) (relating to hearing on petitions for interim emergency orders).

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

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

**[ 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. ]

(a) An order following a hearing on a petition for interim emergency relief must include:

- (1) A brief description of the evidence presented.
- (2) A grant or denial of the petition.

(b) An order following a hearing on a petition for interim emergency relief may require a bond to be filed in a form satisfactory to the Secretary and must specify the amount of the bond.

§ 3.9. [ Hearings on petitions for interim emergency orders ] (Reserved).

[ No interim emergency order may be issued until the presiding officer holds a hearing on the merits of the petition. The hearing shall be held within 10 days of the receipt of the petition. ]

§ 3.10. Commission review of interim emergency orders.

\* \* \* \* \*

(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 ] grant 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 ] parties and the Commission shall follow the procedures in § 5.305, if applicable.

**Subchapter B. INFORMAL PROCEEDINGS  
GENERALLY**

**INFORMAL COMPLAINTS AND INVESTIGATIONS  
APPLICATIONS**

**INFORMAL COMPLAINTS**

§ 3.111. Form and content of informal complaints.

\* \* \* \* \*

(b) Informal complaints [ in rate cases should be filed with ] shall be submitted to the [ Prothonotary. Other informal complaints must be filed with the ] Secretary for referral to the appropriate bureau, addressed to the following: Pennsylvania Public Utility Commission, [ Bureau of Consumer Services, ] Post Office Box 3265, Harrisburg, Pennsylvania 17105-3265.

\* \* \* \* \*

§ 3.112. Action on informal complaints.

(a) [ Upon receipt of ] *Filing*. The Secretary will place a copy of an informal complaint related to a docketed matter[, a copy of the informal complaint will be placed ] in the official document folder.

(b) *Commission staff review*.

(1) [ Except ] Commission staff will review the informal complaint to determine whether the subject matter is within the Commission's jurisdiction, 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 ].

(2) Commission staff will evaluate the allegations of the complaint, and, if warranted, institute an informal investigation.

(3) [ 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) ] (c) *Commission staff action*. 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 ] submission or [ a ] withdrawal of an informal complaint is without prejudice to the right of the complainant to file and prosecute a formal complaint.

[ (c) ] (d) *Caveat*. The [ filing ] submission of an informal complaint does not entitle complainant to a formal hearing before the Commission.

[ (d) ] (e) *Supersession*. [ Subsection ] Subsections (a)—(d) [ supersedes ] supersede 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 ] Under 65 Pa.C.S. Chapter 7 (relating to Sunshine Act), the Commission's official actions [ take place at a public meeting, subject to certain limited exceptions. ] resolving informal complaints will be as follows:

[ (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: ]

\* \* \* \* \*

(3) When the utility, or other person [ or corporation ] subject to [ its ] the Commission's 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 ] consideration of the settlement or approval of the utility's action will [ be considered ] occur 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.

**Subchapter D. CROSSING PROCEEDINGS**

**§ 3.361. Crossing complaints.**

(a) Whenever a complaint is made under section 2702 of the act (relating to construction, relocation, suspension and abolition of crossings) that a crossing is dangerous or inadequate and requires reconstruction, relocation, alteration or abolition, public utilities, **owners of the railroad right-of-way** and municipal corporations concerned and, if applicable, the Department of Transportation of this Commonwealth, will be made parties respondent.

\* \* \* \* \*

**§ 3.363. Claims for property damages from crossings.**

(a) Claims for property damage for property taken, injured or destroyed shall conform with all the following requirements:

\* \* \* \* \*

(2) Follow, in general as to form and content, the [ **Form F set forth in § 3.551 (relating to official forms) ] form available from the Secretary.**

\* \* \* \* \*

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

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

(a) *Applicability.* This section applies to utilities, including de facto utilities, that seek a certificate of public convenience as a new water supplier, wastewater collection treatment or disposal provider.

(b) *Application requirements.* Applications under this section must conform to §§ 1.31 and 1.32 (relating to requirements for documentary filings; and form of documents), and include a mode of payment as prescribed by § 1.42 (relating to mode of payment of fees) and in the amount delineated in § 1.43 (relating to schedule of fees payable to the Commission). The Commission may reject an application which fails to conform to this subsection or which fails to include the required information and documents, as further specified in the forms in subsection (c). An affidavit of service showing the identity of those served under subsection (d) must accompany the original and the copies of the application filed with the Commission.

(c) *Application forms and filing.* Application forms are available from the Secretary and include the following:

(1) Application for a certificate of public convenience as a water supplier or wastewater collection, treatment or disposal provider.

(2) Application by a certificated public utility for approval to begin to offer and supply service to an additional territory.

(3) Application for a certificate of public convenience to abandon service.

(4) Application for Commission approval to transfer all tangible or intangible assets used or useful in the public service.

[ (c) ] (d) *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, **once a week** 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) ] (e) *Copies.*

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

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

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

(2) The applicant shall provide notice of filing of the application to a water or wastewater utility, municipal corporation or authority which provides water or wastewater collection, treatment or disposal service to the public and whose service area is within 1 mile of the service area proposed in the

application. Upon request, the applicant shall provide a complete copy of the application and exhibits to these persons.

\* \* \* \* \*

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

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

\* \* \* \* \*

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

\* \* \* \* \*

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

\* \* \* \* \*

#### 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.

(15) Application for electricity or electric generation supplier license.

(16) Application for natural gas supplier license. ] Forms for applications, petitions, complaints and other matters are available on the Commission's website or from the Secretary of the Commission, Post Office Box 3265 Harrisburg, Pennsylvania 17105-3265; (717) 772-7777.

#### Subchapter I. REGISTRATION OF SECURITIES

##### § 3.601. General.

\* \* \* \* \*

(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 ] in a form consistent with §§ 1.31 and 1.32 (relating to requirements for documentary filings; and form of documents), accompanied by [ a money order, certified check or bank cashier's check made payable to the Commonwealth of Pennsylvania ] payment in the amount provided in § 1.43 (relating to schedule of fees payable to the Commission) and in a payment mode provided for in § 1.31.

(c) *Form.* The securities certificate shall [ be consistent with ] provide information required by the form available from the Commission [ and shall include the following information ] or shown on its Web site 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 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.

\* \* \* \* \*

(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.** ] Secretary and setting forth the following information:

- (1) The name and address of the public utility.
- (2) The title or capacity of the representative of the public utility executing the letter.
- (3) The designation of the securities to be issued or assumed and the approximate number of shares, principal amount, or other units proposed to be issued or assumed.
- (4) A statement setting forth the specific subsections that qualifies the issuance of the abbreviated procedure together with the underlying calculations, where applicable.
- (5) A verification or affidavit conforming to § 1.36 (relating to verifications and affidavits) in compliance with section 1902 of the act.

(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** ] Secretary. [ **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** ]

(1) 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 ] if no order of rejection has been entered after 10 days from the filing of a securities certificate.

(2) Prior to the expiration of the 10-day period, the Secretary may extend the 10-day consideration period to not more than a total of 30 days upon notification of the public utility served. Further extension to the period shall be by the order of the Commission.

\* \* \* \* \*

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

§ 5.1. Pleadings allowed.

(a) The pleadings in an action before the Commission [shall] include the following:

\* \* \* \* \*

(2) Formal complaint [and], answer, new matter and reply to new matter.

\* \* \* \* \*

(5) Preliminary [motions] objections.

(6) Motions.

(b) A pleading except a preliminary [motion] objection may be subject to a preliminary [motion] objection as set forth in § 5.101 (relating to preliminary [motion] objections).

APPLICATIONS

§ 5.12. Contents of applications.

(a) [If] Applications shall conform to this section unless 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]:

(1) Be in writing[,].

(2) [shall state] State clearly and concisely the authorization or permission sought[,].

(3) [shall cite] Cite by appropriate reference the statutory provisions, regulations or other authority under which the Commission authorization or permission is sought[, and shall].

(4) [set] 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)] (i) The exact legal name of the applicant[, and, if the applicant is a corporation, trust, association or other entity, the].

(ii) 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, when the applicant is a corporation, trust, association or other entity.

[(2)] (iii) The name, title [and], post office address, telephone number and electronic mail address, if available, of the person to whom correspondence or [communications] communication in regard to the application [are] is to be addressed. The Commission will serve, [where] when required, notices, orders and other papers upon the person named, and service shall be deemed to be service upon the applicant.

\* \* \* \* \*

§ 5.13. Applications for construction or alteration of crossings.

\* \* \* \* \*

(b) Plans submitted for the construction, relocation, alteration, protection or abolition of a crossing complained against shall be accompanied by the names and post office addresses of the record owners of all property necessary to be acquired in the execution thereof, and shall, when directed by the Commission, be supplemented by a description by metes and bounds of all property necessary to be acquired.

§ 5.14. Applications requiring notice.

(a) [An application] Notice of applications 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 Secretary under § 1.51 (relating to instructions for service and notice):] must be published in the Pennsylvania Bulletin.

(b) The Secretary may require additional publication or notification in one or more of the following ways:

(1) Publication in [the Pennsylvania Bulletin].

(2) Publication in [a newspaper of general circulation serving the geographical territory affected by the application.

[(3)] (2) \* \* \*

[(4)] (3) Another form of actual or constructive notification [as may be required by the Secretary], including service of the application on interested persons.

[(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 and 57.74—57.77 or as otherwise provided by the Secretary, application to the Commission for the following types of authority shall be published in the Pennsylvania Bulletin and, as directed by the Secretary, 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) Wastewater.

(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) Wastewater.
- (vi) Pipeline.
- (vii) Radio-telephone common carrier service.

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

- (i) Electric.
- (ii) Gas.
- (iii) Telephone.
- (iv) Water.
- (v) Wastewater.
- (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. ]

(c) Deadlines for filing protests to applications are governed by § 5.53 (relating to time of filing for protests).

**FORMAL COMPLAINTS**

§ 5.22. [ Contents ] Content of formal complaint.

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

(1) The name [ and ], mailing address, telephone number, telefacsimile number, and electronic mailing address, if applicable, of the complainant [ and ].

(2) If complainant is represented by an attorney, the name, mailing address, telephone number, telefacsimile number and attorney identification number of the attorney [ of the complainant ].

[ (2) ] (3) The name [ and ], mailing address and certificate or license number of the respondent complained against, if known, and the nature and character of its business.

[ (3) ] (4) \* \* \*

[ (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 and concise statement of the act or omission being complained of.

[ (5) ] (6) A clear and concise statement of the relief sought.

(7) Except as provided in § 5.21(b) (relating to formal complaints generally), a copy of a writing, or the material part thereof, must be attached when a claim is based upon a writing. If the writing or a copy is not accessible, the complaint must set forth that the writing is not accessible and the reason, and set forth the substance of the writing.

\* \* \* \* \*

(c) A complaint brought 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, ] licensed by the Commission regarding the act, a regulation or order of the Commission shall be substantially in the form prescribed by subsection (a) [ and ]. The complaint must reference [ shall be made to the particular ] the regulation[ , ] or order [ or part thereof complained against ] and shall quote the pertinent portions thereof.

\* \* \* \* \*

**§ 5.24. Satisfaction of formal complaints.**

(a) If the respondent satisfies a formal complaint either before or after a hearing, [ a statement to that effect signed by ] the complainant shall [ be filed ] file with the Commission [ setting ] a statement to that effect. The statement shall set forth that the complaint [ has been setting ] is satisfied and that the complaint [ is withdrawn ] docket should be marked closed. [ Except as requested by the parties, the ] The presiding officer [ will ] is not [ be ] required to render a decision upon the satisfaction of a complaint unless the parties request one for good cause.

(b) In lieu of the statement [ set forth in ] required by subsection (a), the respondent may certify to the Commission that it has satisfied the complaint and one of the following:

(1) [ that ] That the complainant has acknowledged satisfaction to the respondent.

(2) That the complainant has acknowledged to the respondent that the complainant no longer wishes to pursue the complaint.

(c) In [ such ] the case of certification of satisfaction under subsection (b), the respondent shall serve a copy of its certification upon the complainant. Unless the complainant objects to the certification within 10 days of its filing, the complaint docket shall be [ withdrawn ] marked closed.

[ (c) ] (d) Subsections (a) [ and (b) ]—(c) supersede 1 Pa. Code § 35.41 (relating to satisfaction of complaints).

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

(a) A Commission bureau may commence a proceeding [ under ] pursuant to statutory or [ other ] regulatory authority [ against a person ] or pursuant to delegation by the Commission by filing a complaint [ setting forth the grounds for the action ]. The

complaint [will] shall 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] file a written answer in the form required by § 5.61 (relating to answers to complaints, petitions and motions).

\* \* \* \* \*

§ 5.32. Rate complaints.

(a) Prior to suspension. A person may file a complaint against a general rate increase within the meaning of section 1308(d) of the act (relating to voluntary changes in rates) within the time period specified in the notice provided to customers of the tariff filing.

(b) After suspension. A person may file a complaint within 45 days of the suspension date of a proposed general rate increase within the meaning of section 1308(d) of the act. A complaint filed after the 45 day suspension has expired will be accepted for good cause shown.

PETITIONS

§ 5.41. Petitions generally.

\* \* \* \* \*

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

(d) 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]:

(1) State clearly and concisely the controversy or uncertainty which is the subject of the petition[, shall cite].

(2) Cite the statutory provision or other authority involved [and shall include].

(3) Include a complete statement of the facts and grounds prompting the petition[, together with].

(4) Include a full disclosure of the interest of the petitioner.

(b) [A] The petitioner shall serve 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] Service shall be evidenced with a certificate of service filed with the petition.

\* \* \* \* \*

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

(a) [Unless otherwise provided in this part, actions] Actions taken by [a subordinate officer] staff, other than a [hearing] presiding officer, under authority delegated by the Commission [may be appealed to the Commission by filing a petition within 10], will be deemed to be the final action of the Commission unless appealed to the Commission

within 20 days after service of notice of the action, unless a different time period is specified in this chapter or in the act.

(b) An action taken by staff under delegated authority must note the parties' right to appeal the action under this section.

(c) [Subsection] Subsections (a) and (b) [supercedes] supersede 1 Pa. Code § 35.20 (relating to appeals from actions of the staff).

PROTESTS

§ 5.51. Protest to an application.

(a) A person objecting to the approval of an application [under consideration by the] filed with the Commission may file a protest to the application.

\* \* \* \* \*

§ 5.52. Content of a protest to an application.

(a) Form. A protest to an application shall [on its face set] must:

(1) Set out clearly and concisely the facts from which the alleged interest or right of the protestant can be determined[ , ].

(2) State the grounds of the protest [and].

(3) Set forth the facts establishing the protestant's standing to protest.

(b) Motor carrier. [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] Protests in motor carrier cases must conform with [the requirements of] § 3.381(c)(1) (relating to applications for transportation of property and persons).

(c) Filing and service. A protest shall be filed with the Secretary and served upon the applicant or the applicant's attorney, if any.

§ 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)] the published notice of the application. If no protest time is specified, the protest must be filed within 60 days of the date of publication of the notice.

§ 5.54. [Failure to file a protest to an application] (Reserved).

[If no protest is filed with the Commission on or before the date specified in the Pennsylvania Bulletin, the Commission may, in its discretion, take action specified in § 3.381(e) (relating to applications for transportation of property and persons).]

ANSWERS

§ 5.61. Answers to complaints, petitions [and], motions and preliminary objections.

(a) Time for filing. Unless a different time is prescribed by statute, by the Commission, or by the presiding officer:

(1) 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.

(2) **Answers to preliminary objections shall be filed in accordance with § 5.101 (relating to preliminary objections).**

(b) **General form.** The answer shall be in writing and [ shall be ]:

(1) **Be set forth in paragraphs numbered to correspond with the [ complaint ] pleading being answered, if possible.**

(2) **[ Answers shall advise ] Advise** the parties and the Commission as to the nature of the defense.

(3) **[ They shall admit ] Admit** or deny specifically all material allegations of the pleading answered[, and state ].

(4) **State** concisely the facts and matters of law upon which they rely.

(5) **Include a copy of a document, or the material part of a document when relied upon in the answer. If the writing or a copy is not accessible, the answer must set forth that the document is not accessible and the reason, and set forth the substance of the document.**

(c) **Failure to file an answer.** [ Except for complaints which are docketed with Commission-instituted rate proceedings, a ] 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. **This subsection does not apply to complaints docketed pursuant to Commission-instituted rate proceedings.**

(d) **Rate proceedings.** For complaints which are docketed with Commission-instituted rate proceedings, an answer may be filed within the time specified in § 5.32 (relating to rate proceedings). However, no answer is required, except as may be directed by the Commission or the presiding officer.

(e) **Supersession.** 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) **Answers seeking affirmative relief.** In its answer, a respondent may seek relief against other parties in a proceeding [ by reason of the presence of ] if common questions of law or fact are present. **The answer shall conform to this chapter for answers generally and shall set forth [ in its answer the ]:**

(1) **The facts constituting the grounds of complaint[ , the ].**

(2) **The provisions of the statutes, rules, regulations or orders relied upon[ , the ].**

(3) **The injury complained of [ and of the ].**

(4) **The relief sought. [ The answer shall conform to the requirements of this chapter for answers generally. ]**

(b) **Answers raising new matter.** 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 ].**

**§ 5.63. Replies to answers seeking affirmative relief or new matter.**

(a) Unless otherwise ordered by the Commission, replies to answers seeking affirmative relief [ shall ] or to **new matter must** be filed with the Commission and served within 20 days after date of service of the answer, but not later than 5 days prior to the date set for the commencement of the hearing.

(b) **Failure to file a timely reply to new matter will be deemed in default, and relevant facts stated in the new matter may be deemed to be admitted.**

(c) **[ Subsection ] Subsections (a) and (b) [ is identical to ] supersede 1 Pa. Code § 35.39** (relating to replies to respondents seeking affirmative relief).

**§ 5.65. Answers to amendments of pleadings.**

(a) **[ A participant may file ] Except as provided under § 5.101 (referring to preliminary objections), an answer to an amendment, modification or supplement to an application, complaint, petition or other pleading set forth under § 5.91 (referring to amendments of pleadings generally)[ . If made, answers shall ] must** be filed with the Commission within 20 days after the date of service of the amendment, modification or supplement, unless for cause the Commission or presiding officer with or without motion [ shall prescribe ] **prescribes** a different time.

(b) Subsection (a) [ is identical to ] **supersedes 1 Pa. Code § 35.40** (relating to answers to amendments of pleadings).

**§ 5.66. Answers to petitions to intervene.**

(a) A [ participant ] party may file an answer to a petition to intervene **within 20 days of service**, and in default thereof, may be deemed to have waived objection to the granting of the petition. Answers shall be served upon all other [ participants ] parties.

\* \* \* \* \*

#### INTERVENTION

**§ 5.73. Form and content of petitions to intervene.**

(a) Petitions to intervene shall set out clearly and concisely the **following**:

(1) **The facts from which [ the nature of ] the alleged intervention right or interest of the petitioner can be determined[ , the ].**

(2) **The grounds of the proposed intervention[ , and the ].**

(3) **The petitioner's position [ of the petitioner ] regarding the issues in the proceeding [ , so as fully**



and completely to advise the participants and the Commission as to the specific issues of fact or law to be raised or controverted ] .

(b) **Petitions to intervene filed on behalf of more than one person must list those persons and entities comprising the represented group.**

(c) [ Subsection ] Subsections (a) and (b) [ supersedes ] supersede 1 Pa. Code § 35.29 (relating to form and contents of petitions to intervene).

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

(a) Petitions to intervene and [ notice ] notices of intervention may be filed following the filing of an application, petition, complaint or other document seeking Commission action [ , but no ] .

(b) **Petitions to intervene and notices of intervention shall be filed:**

(1) **No later than the date fixed for the filing of [ petitions to intervene ] responsive pleadings in an order or notice with respect to the proceedings [ or, except for good cause shown, ] .**

(2) **No later than the date fixed for filing protests as published in the Pennsylvania Bulletin, except for good cause shown.**

(3) **In accordance with § 5.53 (relating to time of filing of protests) if no deadline is set in an order or notice with respect to the proceedings.**

(c) Intervention will not be permitted once an evidentiary hearing has concluded absent extraordinary circumstances.

[ (b) ] (d) The Commission or presiding officer may, [ Where ] when 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) ] (e) Subsections (a) [ and (b) ]—(d) supersede 1 Pa. Code § 35.30 (relating to filing of petitions to intervene).

**§ 5.75. Notice, service and action on petitions to intervene.**

(a) *Notice and service.* Petitions to intervene, when tendered to the Commission for filing, shall show service thereof upon all [ participants ] parties to the proceeding in conformity with § 1.54 (relating to service by a [ participant ] party).

\* \* \* \* \*

(c) *Rights upon grant of petition.* Admission as an intervenor will not be construed as recognition by the Commission that the intervenor has a direct interest in the proceeding or might be aggrieved by an order of the Commission in the proceeding. **Intervenor are granted no rights which survive discontinuance of a case by the moving party.**

(d) *Actions on petitions filed after a hearing has commenced.* [ No petitions ] Petitions to intervene may be filed or will be acted upon during a hearing unless permitted by the Commission or presiding officer after opportunity for all parties to object.

[ (c) ] (e) *Supersession.* Subsections (a) [ and (b) ]—(d) supersede 1 Pa. Code § 35.31 (relating to notice and action on petitions to intervene).

**AMENDMENT AND WITHDRAWAL OF PLEADINGS**

**§ 5.91. Amendments of pleadings generally.**

(a) *Generally.* A modification of or supplement to an application, complaint, petition [ , ] or other pleading shall be deemed as an amendment to the pleading, and shall comply with the requirements of this subchapter relating to the pleading amended insofar as appropriate.

(b) *Amendments in response to preliminary objections.* **A party may file an amended pleading as of course within 20 days after service of a copy of a preliminary objection filed under § 5.101 (referring to preliminary objections). If a party has filed an amended pleading as of course, the preliminary objections to the original pleading will be deemed moot.**

[ (b) ] (c) *Limitation.* Except as otherwise provided in this subchapter, no amendment to a pleading may be filed within 5 days preceding the commencement of or during a hearing unless directed or permitted by the Commission or the presiding officer after opportunity for all parties to be heard thereon.

[ (c) ] (d) *Exception in rate cases.* This section does not apply to an increase in the aggregate amount of a general rate increase request.

[ (d) ] (e) Subsections (a)—[ (c) ] (d) supersede 1 Pa. Code § 35.48 (relating to amendments of pleadings generally).

**§ 5.92. Amendments to conform to the evidence.**

(a) *Amendment by consent.* When [ , ] the parties introduce issues at a hearing [ , issues ] not raised by the pleadings [ are introduced ] whether by express or implied consent of the [ participants, they ] parties, the issues shall be treated in all respects as if they had been raised in the pleadings.

(b) *Amendments by motion.* Amendments of the pleadings as may be necessary to cause them to conform to the evidence and to raise new issues may be made upon motion of a [ participant ] party at any time during the hearing as set forth in § 5.102 (relating to motions for summary judgment and judgment on the pleadings).

(c) *Amendment following objection.* If evidence upon new issues is objected to on the ground that it is not within the issues raised by the pleadings, the Commission or the presiding officer may allow the pleadings to be amended and the evidence to be received, when it appears that the presentation of the merits of the proceedings will be served thereby without prejudicing the public interest or the rights of a [ participant ] party.

(d) *Continuance following objection.* [ When, in the discretion of the Commission or the presiding officer, a continuance is necessary in order to enable the objecting participant to meet the new issues and evidence, a ] A continuance may be granted by the Commission or the presiding officer under § 1.15 (relating to extensions of time and continuances) when necessary to allow the objecting party to meet new issues and evidence.

[ (b) ] (e) *Notice of amendment.* If an amendment adopted under [ subsection (a) ] this section has the effect of broadening the issues in the proceeding, notice of the amendment shall be given in the same manner as

notice was given at the commencement of the proceeding and to the same persons who received the notice.

**[(c)] (f) Supersession.** Subsections (a) **[and (b) are identical to]—(e) supersede** 1 Pa. Code § 35.49 (relating to amendments to conform to the evidence).

**§ 5.93. Directed amendments.**

(a) The Commission may at any time, or during a hearing, presiding officers may on their own motion or the motion of a **[participant] party**, direct **[participants] parties** to state their case by way of amendment more fully or in more detail. The amendment shall be reduced to writing and filed within the time fixed by the Commission or the presiding officer.

\* \* \* \* \*

**§ 5.94. Withdrawal of pleadings in a contested proceeding.**

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

(b) A protest to an application may be withdrawn by filing a **[letter] notice of withdrawal** directed to the Commission or the presiding officer. The **[letter] notice** shall state that the protest is withdrawn and provide the reasons for the withdrawal.

\* \* \* \* \*

**MOTIONS**

**§ 5.101. Preliminary [motion] objections.**

(a) **[A preliminary motion is] Preliminary objections are available to [participants] parties and may be filed in response to a pleading except motions and prior preliminary objections. [The preliminary motion] Preliminary objections** shall state specifically the grounds relied upon, the standing of the party and shall be limited to the following grounds:

(1) **[A motion questioning the] Lack of Commission jurisdiction [of the Commission] over the subject matter of the proceeding or the person of a party, or improper service of the pleading initiating the proceeding.**

(2) **[A motion to strike a pleading that is insufficient as to form] Failure of a pleading to conform to this chapter or the inclusion of scandalous or impertinent matter.**

(3) **[A motion to dismiss a pleading that is insufficient as to substance, that does not indicate on its face the standing of the party to participate in the proceeding or that fails to join an indispensable party] Insufficient specificity in a pleading.**

(4) **[A motion for a more specific pleading] Legal insufficiency of a pleading (demurrer).**

(5) **Lack of capacity to sue, nonjoinder of a necessary party or misjoinder of a cause of action.**

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

(b) **[Except when a motion for a more specific pleading is filed, a preliminary motion shall be filed along with an answer] Preliminary objections must be filed together** within the time period prescribed by § 5.61 (relating to answers to complaints, petitions **[and]**, motions and preliminary objections). **[All preliminary motions shall be raised at the same time.] Two or more preliminary objections may be raised in one pleading.**

(c) **[If a motion for more specific pleading is filed, no answer may be filed until further directed by the presiding officer or the Commission. A motion for more specific pleading shall be filed within the time period prescribed by § 5.61.] A party may file an amended pleading as of course within 20 days following service of preliminary objections. When an amended pleading is filed as of course, the preliminary objections shall be deemed to be moot in accordance with § 5.91 (relating to amendments of pleadings generally). Objections to an amended pleading shall be made by filing new preliminary objections.**

(d) An answer to a preliminary **[motion] objection** may be filed within 10 days of date of service. A **preliminary motion must contain a notice to plead which states that an answer to the objection shall be filed within 10 days of the date of service of the objections.**

(e) A preliminary **[motion] objection** shall be decided **[by the presiding officer or the Commission]** within 30 days of the **[filing of the motion] assignment of the preliminary objection or within 30 days of the termination of mediation.**

(f) **The party filing preliminary objections has no duty to file an answer or other responsive pleading prior to a ruling on the preliminary objections.**

(1) If a preliminary **[motion to strike] objection** is granted, the **[participant] party** who submitted the stricken pleading has the right to file an amended pleading within 10 days of service of the order.

(2) **If a preliminary objection is overruled, the objecting party shall have the right to plead over within 20 days after notice of the order or within such other time as the presiding officer or the Commission fix.**

\* \* \* \* \*

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

(a) **[Motion for judgment on the pleadings] Generally.** After the pleadings are closed, but within a time so that the hearing is not delayed, a **[participant] party** may move for judgment on the pleadings or summary judgment. A motion must contain a notice which states that an answer or other responsive pleading shall be filed within 20 days of service of the motion.

(b) **Answers.** An answer to a motion for judgment on the pleadings or summary judgment, including an

opposing affidavit or verification to a motion for summary judgment, may be filed within 20 days of the date of service of the motion. The answer may be supplemented by pleadings and depositions, answers to interrogatories or further affidavits or verifications and admissions.

**[(b)] (c) 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] A motion for summary judgment must be 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)] (d) Decisions on motions.**

**(1) Standard for grant or denial on all counts.** 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] party** 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) Standard for grant or denial in part.** 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] party** 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.]**

**(3) Form of decision.** The presiding officer will grant, in whole or in part, the motion in the form of an initial or recommended decision which shall be subject to exceptions as set forth in § 5.533 (relating to exceptions). Denial of a motion will be in the form of a written order.

**§ 5.103. Motions.**

\* \* \* \* \*

**(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. **Written motions shall contain a notice which states that a responsive pleading shall be filed within 20 days of the date of service of the motion.**

**(c) Response to motions.** A **[participant] party** has **[10] 20** 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.

\* \* \* \* \*

**Subchapter B. HEARINGS**

**GENERAL**

**§ 5.201. Notice of proceeding; hearing; waiver of hearing.**

\* \* \* \* \*

**(b)** If the appropriate pleading is not filed within the set period of time, or **[where] when** the **[participants] parties** have waived hearings, the Commission may dispose of the matter without a hearing upon the basis of the pleadings or submittals and the studies and recommendations of the staff.

\* \* \* \* \*

**§ 5.202. Scheduling of hearing.**

\* \* \* \* \*

**(b)** Proceedings pending on the calendar will be heard so far as practicable, in their order of assignment to the calendar at the times and places fixed by the Commission or presiding officer, giving regard to the convenience and necessity of the **[participants] parties** and their attorneys.

**(c)** The Commission or the presiding officer in the exercise of discretion, for cause, may advance or postpone **[proceeding] proceedings** on the hearing calendar with notice to the **[participants] parties**.

\* \* \* \* \*

**§ 5.203. Hearing in rate proceedings.**

\* \* \* \* \*

**(b) [Ordinarily, hearings in rate proceedings will be scheduled with regard to the convenience of the parties, attorneys and witnesses, as well as that of the presiding officer and the Commission staff. In scheduling hearings, however, the] The** presiding officer will be guided by the requirement of section 315 of the act (relating to burden of proof) that rate cases are to be given preference over all other proceedings, and are to be decided as speedily as possible.

**(c)** The presiding officer may continue a scheduled hearing upon his own motion or upon the request of a party for good cause shown. Mere convenience or other engagements of counsel **[shall] will** not ordinarily constitute grounds for continuance.

**[(c)] (d)** Subsections (a) **[and (b)]—(c)** supersede 1 Pa. Code §§ 35.121 and 35.123 (relating to initiation of hearings; and conduct of hearings).

**NOTICE OF HEARING**

**§ 5.212. Notice of nonrulemaking proceedings.**

**(a)** The presiding officer, the Office of Administrative Law Judge or the Commission is authorized to schedule prehearing conferences and hearings. **[Participants] Parties** shall be given reasonable notice of the time and place of the prehearing conference or hearing. In fixing the time and place of conferences and hearings, regard will be given to the convenience and necessity of the

[ participants ] parties or their attorneys so far as time and the proper execution of the functions of the Commission permit.

\* \* \* \* \*

PREHEARING AND OTHER CONFERENCES

§ 5.221. Conferences to adjust, settle or expedite proceedings.

(a) [ In order to ] To provide opportunity for the submission and consideration of facts, arguments, offers [ or ] of settlement or proposals of adjustment, for settlement of a proceeding, or the issues therein, or consideration of means by which the conduct of the hearing may be facilitated and the disposition of the proceeding expedited, conferences between the [ participants ] parties may be held at any time prior to or during hearings as time, the nature of the proceeding, and the public interest permit.

\* \* \* \* \*

§ 5.222. Initiation of prehearing conferences in nonrate proceedings.

(a) [ In order to ] 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 ] parties 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 ] parties 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 ] parties 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:

\* \* \* \* \*

(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 ] party contemplates asking another [ participant ] party 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:

\* \* \* \* \*

(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 ] party may propound on another [ participant ] party.

(d) [ Participants ] Parties 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 ] parties, including requests for additional data and information, to the extent it appears feasible and desirable. Failure of a [ participant ] party 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.

\* \* \* \* \*

§ 5.223. Authority of presiding officer at conferences.

(a) The presiding officer at a conference may dispose of procedural matters which he is authorized to rule upon during the course of the proceeding. [ Where ] When it appears that the proceeding would be substantially expedited by distribution of proposed exhibits and written prepared testimony reasonably in advance of the hearing session, the presiding officer, at his discretion, and with regard for the convenience and necessity of the [ participants ] parties, may direct advance distribution by a prescribed date. The rulings of the presiding officer made at the conference shall control the subsequent course of the hearing, unless modified for good cause shown.

(b) The presiding officer will have authority to participate in the discussions, to arrange for recording stipulations or agreements reached at conference, to fix the date of initial hearing and the date for additional hearings which may be required to dispose of the proceeding, and otherwise to assist the [ participants ] parties to reach agreement that will expedite the proceeding and serve the ends of justice.

\* \* \* \* \*

§ 5.224. Prehearing conference in rate proceedings.

\* \* \* \* \*

(b) The first prehearing conference shall be held as soon as practicable after the entry of the order of investigation. The [ participants ] parties 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 ] party may propound on another [ participant ] party.

\* \* \* \* \*

(c) At the first prehearing conference, [ participants ] parties 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:

\* \* \* \* \*

(3) Incorporate stipulations in the record.

\* \* \* \* \*

(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 and] settlement petitions; and refusal to make admissions or [stipulate] stipulations), 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] Parties, except the filing utility, shall file and serve on all other [participants] parties, 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] party 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] party when justice so requires.

\* \* \* \* \*

**[ SETTLEMENT AND STIPULATIONS ]**  
**SETTLEMENTS**

**§ 5.231. Offers of settlement.**

\* \* \* \* \*

(b) Nothing contained in this chapter or Chapter 1 or 3 (relating to rules of administrative practice and procedure; and special provisions) precludes a [participant] party in a proceeding from submitting, at any time, offers of settlement or proposals of adjustment, or from requesting conferences for that purpose.

(c) [Participants] Parties 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.

(d) Proposals of settlement, of adjustment, or of procedure to be followed, and proposed stipulations not agreed to by every [participant] party, including proposals intended to resolve discovery disputes, will not be admissible in evidence against a counsel or [participant] party claiming the privilege.

[ (b) Subsection ] (e) Subsections (a)—(d) [supersedes] supercede 1 Pa. Code § 35.115 (relating to offers of settlement).

**§ 5.232. [Stipulations and settlement] Settlement petitions.**

(a) **Generally.** [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 ] A settlement petition shall be filed with the [Prothonotary] Secretary in ac-

cordance with § 5.41 (relating to petitions generally). [If the petition is presented to the presiding officer, the Prothonotary shall also be served with three copies. ]

(b) **Representation of other parties' agreement.** A settlement agreement shall specifically identify the other [participants] parties supporting the settlement, opposing or taking no position on the settlement, if known, and the other parties that were provided or denied an opportunity to enter into the settlement.

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

(d) **Review.** 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.

(1) **The presiding officer will determine if the settlement is in the public interest.**

(2) **The presiding officer will hold a hearing if a timely objection is filed and the hearing is necessary in the public interest.**

(3) 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), if approved, or in the form of an order, if disapproved.

(e) **Waiver of exceptions.** [Upon] The exception period may be waived 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) **Disposition of exceptions.** If timely exceptions are filed, they will be considered in a ruling made on the settlement petition.

**§ 5.233. Refusal to make admissions or [stipulate] stipulations.**

(a) **Generally.** A party may move for sanctions under subsection (b) when the following conditions are satisfied:

(1) [If a] A party [attending] refuses to admit or stipulate to the genuineness of documents or the truth of matters of fact during a conference convened under this chapter and Chapter 1 or 3 (relating to rules of administrative practice and procedure; and special provisions) [refuses to admit or stipulate the genuineness of documents or the truth of matters of fact and if the participant ].

(2) **The party** requesting the admissions or stipulations thereafter proves the genuineness of the document or the truth of a matter of fact[ , he ].

(b) **Sanctions.** The requesting party may apply to the presiding officer for an order requiring the other party to pay [him] the reasonable expenses incurred in making the proof, including reasonable attorney's fees. [Unless] The presiding officer will grant an order for sanctions unless the presiding officer finds that

there were good reasons for the refusal to admit or stipulate or that the admissions or stipulations sought were of no substantial importance[ , the order will be made ] .

(c) **Appeal.** An interlocutory appeal may be taken to the Commission immediately from the order made by a presiding officer **under Subchapter C (relating to interlocutory review).**

(d) **Compliance.** If a party refuses to comply with the order after it becomes final, the [ agency ] **Commission or presiding officer** may strike all or part of the pleadings of the party or limit or deny further participation by the party.

[ (b) Subsection ] (e) **Subsections (a)—(d) [ is identical to ]** supersede 1 Pa. Code § 35.116 (relating to refusal to make admissions or stipulate).

§ 5.234. **Presentation and effect of stipulations.**

(a) [ **Independently of the orders or rulings issued as provided by §§ 5.221—5.224 (relating to prehearing and other conferences) the participants ] Parties** may stipulate [ as ] to relevant matters of fact or the authenticity of relevant documents. The stipulations may be received in evidence at a hearing, and when so received shall be binding on the [ **participants ] parties** with respect to the matters therein stipulated.

(b) **The parties may make stipulations independently of orders or rulings issued under §§ 5.221—5.224 (relating to prehearing and other conferences).**

[ (b) ] (c) \* \* \*

[ (c) ] (d) [ **Subsection ] Subsections (a) and (b) [ is identical to ]** supersede 1 Pa. Code § 35.155 (relating to presentation and effect of stipulations). Subsection [ (b) ] (c) supplements 1 Pa. Code § 35.155.

§ 5.235. **Restrictive amendments to applications for motor carrier of passenger and household goods in use authority.**

(a) [ **The participants ] Parties** to motor carrier applications for passenger and 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 ]:**

- (1) **Be** in writing[ , ].
- (2) **Explain why the stipulation is in the public interest.**
- (3) **Be** signed by each [ **participant ] party** to the stipulation[ , and a copy ].
- (4) **Be** submitted to the Secretary for insertion into the document folder.

\* \* \* \* \*

**HEARINGS**

§ 5.241. [ **Appearances ] Attendance.**

(a) The presiding officer before whom the hearing is held shall enter upon the record all [ **appearances, with a notation on whose behalf each appearance is made ] parties in attendance.**

\* \* \* \* \*

§ 5.242. **Order of procedure.**

(a) In a proceeding, the [ **complainant, petitioner or other participant ] party** 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 ] party** on whose behalf the intervention is made. If the intervention is not in support of an original [ **participant ] party**, 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 ] party**, 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 ] parties** for purposes of cross-examination, subject to [ **the requirements of ] § 5.243(f)** (relating to presentation by [ **participants ] parties**).

\* \* \* \* \*

§ 5.243. **Presentation by [ participants ] parties.**

(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), ] party** has the right of presentation of evidence, cross-examination, objection, motion and argument **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).** The taking of evidence and subsequent proceedings shall proceed with reasonable diligence and with the least practicable delay.

\* \* \* \* \*

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

\* \* \* \* \*

(e) [ **No participant ] A party** will not be permitted to introduce evidence during a rebuttal phase which [ **is ]:**

- (1) **Is** repetitive[ , which should ].
- (2) **Should** have been included in the [ **participant's ] party's** case-in-chief [ **or which substantially ]**.

(3) **Substantially** varies from the [ **participant's ] party'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 ] party** conducts friendly cross-examination of a witness, the presiding officer may permit the other [ **participants ] parties** 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.

\* \* \* \* \*

**§ 5.245. Failure to appear, proceed or maintain order in proceedings.**

(a) After being notified, a [ participant ] party who fails to be represented at a scheduled conference or hearing in a proceeding shall [ be ]:

(1) Be deemed to have waived the opportunity to participate in the conference or hearing[, and shall not ].

(2) Not be permitted thereafter to reopen the disposition of a matter accomplished at the conference or hearing[, or ].

(3) Not be permitted to recall [ for further examination of ] witnesses who were excused[, unless ] for further examination.

(b) Subsection (a)(1)–(3) does not apply if the presiding officer determines that the failure to be represented was unavoidable and that the interests of the other [ participants ] parties and of the public would not be prejudiced by permitting the reopening or further examination. Counsel shall be expected to go forward with the examination of witnesses at the hearing under § 5.242 (relating to order of procedure), or as has been otherwise stipulated or has been directed by the presiding officer.

[ (b) If the actions of a participant in a proceeding are determined by ] (c) If the Commission or the presiding officer finds, after notice and opportunity for hearing, [ to be obstructive to ] that the actions of a party in a proceeding obstruct the orderly conduct of the proceeding and are inimical to the public interest, the Commission or the presiding officer may take appropriate action, including [ but not limited to, where appropriate, ] dismissal of the complaint, application, or petition, if the action is that of complainant, applicant[, ] or petitioner.

**TRANSCRIPT**

**§ 5.251. Recording of proceedings.**

(a) If required by law, hearings will be stenographically reported by the Commission’s official reporter.

(b) Notwithstanding the review provisions of § 5.252 (relating to review of testimony), the hearing transcript [ of the report ] will be a part of the record and the sole official transcript of the proceeding.

(c) The transcripts will include a verbatim report of the hearings and nothing will be omitted therefrom except as is directed by the presiding officer. [ After the closing of the record, there will not be received in evidence or considered as part of the record a document except as provided in § 5.404 (relating to additional evidence) or changes ] Changes in the transcript must be made as provided in § 5.253 (relating to transcript corrections).

[ (b) Subsection ] (d) Subsections (a)–(c) [ is identical to ] supersede 1 Pa. Code § 35.131 (relating to recording of proceedings).

**§ 5.252. Review of testimony.**

\* \* \* \* \*

(c) Upon request for review, the Office of Administrative Law Judge [ shall ] will schedule a time and place for the review which shall be open to all [ participants of record ] parties. The court reporting firm shall submit the tapes and equipment necessary for the review and shall arrange for the court reporter responsible for transcribing the tapes to be present at the review.

\* \* \* \* \*

**§ 5.253. Transcript corrections.**

(a) A correction in the official transcript may be made only to make it [ conform to ] accurately reflect 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 ] parties of record who were present when the transcription was taken.

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

\* \* \* \* \*

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

\* \* \* \* \*

**Subchapter C. INTERLOCUTORY REVIEW**

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

(a) During the course of a proceeding, a [ participant ] party 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 ] must be in writing with copies served on all [ participants ] parties and the presiding officer and shall [ 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 ] party 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 ] party. The brief may not exceed 15 pages.

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

\* \* \* \* \*

**§ 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 ] parties.

\* \* \* \* \*

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

(a) *General.* [ Unless otherwise ordered by the Commission in exceptional situations, rulings ] Rulings of presiding officers on discovery are not subject to interlocutory review [ absent certification ] unless one or more of the following apply:

(1) Interlocutory review is ordered by the Commission.

(2) Interlocutory review is certified by the presiding officer [ that ].

(3) The ruling has as its subject matter the deposing of a Commissioner or Commission employee.

(b) *Standard for certification.* A presiding officer may certify that a discovery ruling is appropriate for interlocutory review when 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 employee will be subject to interlocutory appeal to the Commission as provided in §§ 5.301–5.303 (relating to interlocutory review generally; petition for interlocutory Commission review and answer to a material question; and Commission action on petition for review and answer) ].

[ (1) ] (c) *Petition for certification.* [ Participants desiring ] A petition for interlocutory review of a presiding officer's ruling on discovery [ shall, ] must:

(1) Be filed within 3 days of the ruling [ , petition the presiding officer to certify the question to the Commission. The request shall be ].

(2) Be in writing [ with copies served on all participants and shall state, in not more than three pages, ].

(3) State the question to be certified and the reasons why interlocutory review will prevent substantial prejudice or expedite the conduct of the proceedings.

(4) Be no more than 3 pages in length.

(5) Be filed with the Secretary and served on all parties and the presiding officer.

[ (2) ] (d) *Responsive brief.* [ Within ] A party may file a responsive brief within 7 days of a request for certification, [ each participant may submit a brief to the presiding officer supporting or opposing ] which:

(1) Either supports or opposes certification [ and, in addition, addressing ].

(2) Addresses the merits of the question for which certification is requested [ and ].

(3) Addresses whether a stay of proceedings is required to protect the substantial rights of a [ participant ] party.

(4) [ The brief may ] May not exceed 15 pages.

[ (3) ] (e) *Presiding officer's decision.* The presiding officer will [ , within 3 days of the deadline for filing briefs, ] announce the decision in writing or orally on the record [ , with ] within 3 days of the deadline for filing responsive briefs. The presiding officer's announcement will include the reasons why certification has been granted or denied and whether a stay of proceedings has been granted.

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

[ (5) ] (2) 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 [ , ] within 4 days of the announcement of the decision. The presiding officer will include the reasons justifying certification, rulings on the certified question [ , ] and extracts from the record that will assist the Commission in reaching a decision.

[ (b) ] (f) *Brief to the Commission following certification.* [ Each participant may, on or before the date the presiding officer is required to file the certification, ] Parties may submit a brief [ , not to exceed 15 pages, directed ] to the Commission [ addressing ] and no other briefs are permitted unless directed by the Commission. A brief must:

(1) Address the issue of certification [ , and ].

(2) Address the merits of the certified question [ , and ].

(3) Address the stay of proceedings, when appropriate.

(4) Not exceed 15 pages. No additional briefs are permitted unless directed by the Commission.

[ (c) ] (g) *Scheduling of certified question.* 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) ] (h) *Action by the Commission.* Within 30 days of receipt of the certified question by the Secretary, the Commission will, without permitting oral argument, do one of the following:

\* \* \* \* \*

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

[ (f) ] (j) *Effect on proceedings.* 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 ] parties.

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

\* \* \* \* \*



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

(c) Within 7 days of service of the certification, each [participant] party 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] party. The brief may not exceed 15 pages.

\* \* \* \* \*

§ 5.306. [Notification by telephone] Expedited notification.

A presiding officer may order notification of [participants] parties by telephone, telefacsimile or other electronic means when time periods are short and delivery by mail may not prove adequate. [A telephone notification] Notification by means other than by mail will be confirmed by the presiding officer by service in writing.

Subchapter D. DISCOVERY
GENERAL

§ 5.321. Scope.

\* \* \* \* \*

(c) Scope. Subject to this subchapter, a [participant] party 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] does not apply to discovery sought of Commissioners or Commission staff serving in an advisory or adjudicatory capacity.

(e) Commission staff. This subchapter [shall apply] applies 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] party 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:

\* \* \* \* \*

(2) Written interrogatories to a [participant] party.

\* \* \* \* \*

§ 5.322. Informal agreement regarding discovery or deposition procedure.

The [participants] parties may by agreement provide that depositions may be taken before a person, at

any time or place, upon any notice, and in any manner, and when so taken may be used like other depositions. The [participants] parties may modify the procedures provided by this chapter for methods of discovery and, notwithstanding any provisions of this subchapter, [participants] parties are encouraged to exchange information on an informal basis.

§ 5.323. [Trial] Hearing preparation material.

(a) Generally. Subject to this subchapter, a [participant] party may obtain discovery of any matter discoverable under § 5.321(b) (relating to scope) even though prepared in anticipation of litigation or hearing by or for another [participant] party or by or for that other [participant's] party's representative, including his attorney, consultant, surety, indemnitor, insurer or agent. The discovery may not include disclosure of the mental impressions of a [participant's] party's attorney or his conclusions, opinions, memoranda, notes, summaries, legal research or legal theories. With respect to the representative of a [participant] party other than the [participant's] party's attorney, discovery may not include disclosure of his mental impressions, conclusions or opinions respecting the value or merit of a claim or defense or respecting strategy, tactics or preliminary or draft versions of written testimony or exhibits, whether or not final versions of the testimony or exhibits are offered into evidence.

(b) Statements. Upon written request, a [participant] party is entitled to immediate receipt of a photostatic copy or like reproduction of a statement concerning the action or its subject matter previously made by that [participant] party, another [participant] party or a witness. If the statement is not provided, the [participant] party may move for an order from the presiding officer. For purposes of this subsection, a statement previously made is one of the following:

\* \* \* \* \*

§ 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), including that acquired or developed in anticipation of litigation or for hearing, may be obtained as follows:

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

(i) The other [participant] party to identify each person whom the [participant] party 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] party to have each expert [identified by the participant] so identified 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] party 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 ] party 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 ] party), if the written direct testimony is served on all [ participants ] parties 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 ] party shall still comply with paragraph (1)(i) within the time otherwise applicable.

\* \* \* \* \*

(b) [ If the identity of an ] An expert witness whose identity is not disclosed in compliance with subsection (a)(1)[ , the witness ] will not be permitted to testify on behalf of the defaulting [ participant ] party 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 ] party, the presiding officer may grant a continuance or other appropriate relief.

\* \* \* \* \*

(d) The answering [ participant ] party 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 ] when additional facts or information have become known to the answering [ participant ] party or where the interest of justice otherwise requires.

\* \* \* \* \*

**TIMING AND SUPPLEMENTAL RESPONSES**

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

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

(b) A [ participant ] party 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 "Staff 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 ] party). 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 ] The presiding officer, upon his own motion or motion of

a [ participant ] party, may establish reasonable limitations upon the timing of discovery.

(e) Unless the presiding officer upon motion, for the convenience of [ participants ] parties 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 ] party is conducting [ a ] discovery will not operate to delay another [ participant's ] party's discovery.

**§ 5.332. Supplementing responses.**

A [ participant ] party 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 ] party 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 ] party 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 ] parties, or at a time prior to hearing through new requests to supplement prior responses.

**TYPES OF DISCOVERY**

**§ 5.341. Written interrogatories to a party.**

(a) Subject to the limitations provided by § 5.361 (relating to limitation of scope of discovery and deposition), a [ participant ] party may serve upon another [ participant ] party written interrogatories to be answered by the [ participant ] party served or, if the [ participant ] party served is a public or private corporation, similar entity or a partnership or association, by an officer or agent, who shall furnish the information as is available to the [ participant ] party.

(b) The party propounding interrogatories shall serve a copy on the parties and shall file a certificate of service with the Secretary. Interrogatories may not be filed with the Commission. [ A copy of interrogatories shall be served on the active participants. ]

(c) Interrogatories may relate to matters which can be inquired into under §§ 5.321, 5.323 and 5.324 (relating to scope; [ trial ] hearing preparation material; and discovery of expert testimony) and may include requests that the answering party provide copies of documents without making a separate request for the production of documents under § 5.349 (relating to requests for documents, entry for inspection and other purposes).

\* \* \* \* \*

(e) A [ participant ] party should use a logical and sequential numbering system for interrogatories.

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

(a) *Form.* [ An answer ] Answers to [ an interrogatory shall be ] interrogatories must:

- (1) Be in writing [ and the answer shall identify ].
- (2) Identify the name and position of the individual who provided the answer.
- (3) [ An answer shall be ] Be submitted as an answer and may not be submitted as an exhibit or in another form.
- (4) [ Each interrogatory shall be answered ] Answer each interrogatory fully and completely unless an objection is made.
- (5) [ The answer shall first restate ] Restate the interrogatory which is being answered or be inserted in the spaces provided in the interrogatories.

(6) Be verified in accordance with § 1.36 (relating to verification).

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

(c) *Objections.* [ 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 ]:

- (1) Restate the interrogatory or part thereof deemed objectionable and the specific ground for the objection.
- (2) [ The objection shall include ] Include a description of the facts and circumstances purporting to justify the objection.
- (3) [ The objection shall be ] Be signed by the attorney making it.
- (4) [ An interrogatory otherwise proper is not objectionable solely because ] Not be valid if based solely on the claim that an answer will involve an opinion or contention that is related to a fact or the application of law to fact.

(5) [ The statement of an objection does not ] Not excuse the answering [ participant ] party from answering the remaining interrogatories or subparts of interrogatories to which no objection is stated.

(d) *Service of answer and objections.* The answering [ participant ] party shall serve [ interrogatories ] objections 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 ] parties.

(1) An objection shall be served within 10 days for rate proceedings, and 30 days of service of the interrogatories in other cases, except as agreed by the [ participants ] parties or as ordered by the presiding officer.

(2) [ Within the time periods prescribed in this subsection, the ] The answering or objecting [ participant ] party shall serve copies of the answer and the objection, if any, on the active [ participants ] parties.

(3) [ If there is an objection, then the ] The objecting [ participant ] party shall file copies of the objection with the [ Prothonotary ] Secretary, along with a certificate of service, which [ shall identify ] identifies 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) ] (4) The [ participant ] party 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) *Motion to compel.* [ The participant ] Within 10 days of service of an objection to interrogatories, the party submitting the interrogatories may move that the presiding officer dismiss an objection and [ direct ] compel that the interrogatory be answered. If a motion to dismiss an objection to interrogatories is not filed within 10 days of service of the objection, the objected to interrogatory will be deemed withdrawn.

(1) The [ participant ] party 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 ]. 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 ] parties, rule in no more than 20 days of its presentation.

§ 5.343. Procedures in deposition by oral examination.

(a) A [ participant ] party 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 ] party and to the presiding officer. A [ participant, or witness within the control of a participant, ] party noticed to be deposed is required to appear without subpoena. A [ nonparticipant ] person who is not a party is not required to appear unless subpoenaed.

\* \* \* \* \*

(d) If the person to be examined is a [ participant ] party, 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 ] party, 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** ] **party** 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** ] **nonparty** 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** ] **parties**. A notice of deposition which is served upon a [ **nonparticipant** ] **nonparty** shall state that the [ **nonparticipant** ] **nonparty** may file objections within 10 days of service and identify the persons—names and addresses—to whom the objections shall be sent.

\* \* \* \* \*

§ 5.344. Approval by presiding officer.

\* \* \* \* \*

(c) If a [ **participant** ] **party** provides notice scheduling the taking of a deposition prior to an expiration of 20 days after initiation of the proceedings, the [ **participant** ] **party** shall set forth the facts requiring the expedited discovery, and the presiding officer shall consider whether expedited discovery is warranted.

\* \* \* \* \*

§ 5.345. Procedure on depositions by written questions.

(a) A [ **participant** ] **party** taking a deposition by written questions shall serve the questions upon the deponent and serve a copy upon each other [ **participant** ] **party** or his attorney of record. Within 30 days thereafter the [ **participant** ] **party** served and other [ **participants** ] **parties** may serve cross questions upon the deposing [ **participant** ] **party** and upon each other [ **participant** ] **party** or [ **his** ] the attorney of record. Reply questions [ **shall** ] **must** be similarly served by a [ **participant** ] **party** within 10 days of the service of cross questions.

\* \* \* \* \*

(c) Objections to the form of questions are waived unless filed and served upon the [ **participant** ] **party** 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).

\* \* \* \* \*

(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** ] **party** 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.

§ 5.347. Taking of depositions—objections.

\* \* \* \* \*

(b) Objections to the competency of a witness or to the competency, relevancy or materiality of the testimony are not waived by failure to make them before or during the taking of the deposition, unless the ground for the objection is one which was known to the objecting [ **participant** ] **party** and which might have been obviated or removed if made at that time.

(c) Errors and irregularities occurring at the oral examination in the manner of taking the deposition, in the form of oral questions or answers, in the oath or affirmation or in the conduct of [ **participants** ] **parties** and errors which might have been obviated, removed or cured if objections had been promptly made, are waived unless reasonable objection is made at the taking of the deposition.

(d) Errors and irregularities in the notice for taking a deposition are waived unless written objection is served upon the [ **participant** ] **party** giving the notice under § 5.344 (relating to approval by presiding officer).

\* \* \* \* \*

§ 5.348. Transcript of deposition, objections and filing.

\* \* \* \* \*

(e) In lieu of participating in the oral examination, [ **participants** ] **parties** 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** ] **parties** or to the deponent.

\* \* \* \* \*

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

(a) A [ **participant** ] **party** may serve on another [ **participant** ] **party** a request for either of the following:

(1) To produce and permit the [ **participant** ] **party** making the request, or someone acting on the [ **participant's** ] **party'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** ] **hearing** preparation material; and discovery of expert testimony) and which are in the possession, custody or control of the [ **participant** ] **party** upon whom the request is served.

(2) To permit entry upon designated land or other property in the possession or control of the [ **participant** ] **party** upon whom the request is served for the purpose of inspecting and measuring, surveying, photo-

graphing, 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** ] party seeking discovery, the [ **participant** ] party against whom discovery is sought shall reproduce the designated documents at the requesting [ **participant's** ] party'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.

\* \* \* \* \*

(d) The [ **participant** ] party 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** ] parties. The response shall be **verified** and 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** ] party). A [ **participant** ] party may request another [ **participant** ] party to produce or inspect documents as part of interrogatories filed under § 5.341 (relating to written interrogatories to a party). The [ **participant** ] party 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** ] party. Access to official files of the Commission shall be as prescribed in §§ 1.71—1.77 (relating to public access to Commission records).

**§ 5.350. Request for admissions.**

(a) **General.** A [ **participant** ] party may serve upon another [ **participant** ] party a written request for the admission of the truth of any matters, within the scope of §§ 5.321—5.324 (relating to general), set forth in the request, that relate to statements or opinions of fact or of the application of law to fact, including the genuineness, authenticity, correctness, execution, signing, delivery, mailing or receipt of a document described in the request. Copies of documents shall be served with the request unless they have been or are otherwise furnished or available for inspection and copying.

(b) **Form.** Each matter of which an admission is requested shall be separately set forth.

(c) **Failure to admit.** The matter is admitted unless, within 20 days after service of the request, the [ **participant** ] party to whom the request is directed answers or makes an objection to the matter, signed by the [ **participant** ] party or by his attorney.

(d) **Response.** [ **If objection is made, the reasons shall be stated.** ]

(1) **Answer.** The answer shall admit or deny the matter or set forth in detail the reasons why the answering [ **participant** ] party cannot truthfully do so.

(2) **Denial.** A denial shall fairly meet the substance of the requested admission, and when good faith requires that a [ **participant** ] party qualify [ **his** ] an answer or deny only a part of the matter of which an admission is requested, [ **he** ] the party shall specify so much of it as is true and qualify or deny the remainder. An answering [ **participant** ] party may not give lack of information or knowledge as a reason for failure to admit or deny unless [ **he** ] the party states he has made reasonable inquiry and that the information known or readily obtainable by him is insufficient to enable him to admit or deny.

(3) **Objection.** Objections shall be supported by reasons. A [ **participant** ] party who considers that a matter of which an admission has been requested presents a genuine issue for hearing may not, on that ground alone, object to the request.

[ (c) ] (e) **Motion to determine sufficiency of response.** The [ **participant** ] party who has requested the admission may move to determine the sufficiency of the answer or objection. Unless the presiding officer determines that an objection is justified, [ **he** ] the presiding officer will order that an answer be served. If the presiding officer determines that an answer does not comply with the requirements of this section, [ **he** ] the presiding officer may order either that the matter is admitted or may determine that final disposition of the request be made at a prehearing conference or at a designated time prior to hearing.

[ (d) ] (f) **Effect of admission.** A matter admitted under this section is conclusively established unless the presiding officer on motion permits withdrawal or amendment of the admission. An admission by a [ **participant** ] party under this section is for the purpose of the pending action only and is not an admission by him for another purpose. An admission may not be used against a [ **participant** ] party in another proceeding.

**§ 5.351. On the record data requests.**

(a) [ **During the course of a rate proceeding a participant** ] A party may request that a witness provide information or documents at a later time as part of the witness' response to a question posed during cross-examination in the course of a rate proceeding.

(1) **Oral request.** [ **The** ] A request [ **may be** ] made orally [ **or in writing so long as the written request is presented at the time the witness appears for cross-examination.** An oral request ] may be confirmed in writing by the [ **participant** ] party making the request.

(2) **Written request.** A written request shall be presented at the time the witness appears for cross-examination.

(b) The procedures for written interrogatories in § 5.342 (relating to answers or objections to written interrogatories by a [ **participant** ] party) [ **is applicable** ] applies to on the record data requests except [ **that answers** ]:

(1) Answers shall be supplied as soon as possible [ **after the request but in any event no** ]. The

response period may not extend later than 10 days after the request is made [ , unless the ].

(2) The presiding officer [ modifies ] may modify the time period for good cause shown.

(c) Objections to a request shall be made at the time that the request is made. Limitations established in §§ 5.321, 5.322, 5.323 and 5.331(b) [ are applicable ] apply to on the record data requests.

LIMITATIONS

§ 5.361. Limitation of scope of discovery and deposition.

(a) [ No discovery ] Discovery or deposition is not permitted which:

\* \* \* \* \*

(2) Would cause unreasonable annoyance, embarrassment, oppression, burden or expense to the deponent, a person or [ participant ] party.

\* \* \* \* \*

(4) Would require the making of an unreasonable investigation by the deponent, a [ participant ] party or witness.

(b) In rate proceedings, discovery is not limited under subsection (a) solely because the discovery request requires the compilation of data or information which the answering [ participant ] party does not maintain in the format requested, in the normal course of business, or because the discovery request requires that the answering [ participant ] party make a special study or analysis, if the study or analysis cannot reasonably be conducted by the [ participant ] party making the request.

(c) If the information requested has been previously provided, the answering [ participant ] party shall specify the location of the information.

§ 5.362. Protective orders.

(a) Upon motion by a [ participant ] party or by the person from whom discovery or deposition is sought, and for good cause shown, the presiding officer may make an order which justice requires to protect a [ participant ] party or person from unreasonable annoyance, embarrassment, oppression, burden or expense, including one or more of the following:

\* \* \* \* \*

(6) That the [ participants ] parties simultaneously [ shall ] file specified documents or information enclosed in sealed envelopes to be opened as directed by the presiding officer.

\* \* \* \* \*

(b) If the motion for a protective order is denied in whole or in part, the presiding officer may order that a [ participant ] party or person provide or permit discovery.

(c) During the taking of a deposition on motion of a [ participant ] party or of the deponent, the presiding officer or other [ Administrative Law Judge ] administrative law judge may order the officer conducting the examination to cease from taking the deposition, or may limit the scope and manner of the taking of the deposition as provided in subsection (a). Upon demand of the objecting [ participant ] party or deponent, the taking

of the deposition shall be suspended for the time necessary to make a motion for an order and to obtain the presiding officer's ruling.

§ 5.364. Use of depositions at hearing.

(a) At hearing, part or all of a deposition, so far as admissible under 42 Pa.C.S. § 6101—6112 (relating to rules of evidence), may be used against a [ participant ] party who was present or represented at the taking of the deposition or who had notice thereof if required, in accordance with one of the following provisions:

(1) A deposition may be used by a [ participant ] party for the purpose of contradicting or impeaching the testimony of deponent as a witness.

(2) The deposition of a [ participant ] party or of anyone who at the time of taking the deposition was an officer, director or managing agent of a [ participant ] party or a person designated under §§ 5.343(e) or 5.345(a)(2) (relating to procedures in deposition by oral examination; and procedure on depositions by written questions) to testify on behalf of a public or private corporation, partnership, association or governmental agency which is a [ participant ] party, may be used by an adverse [ participant ] party for any purpose.

(3) The deposition of a witness [ , whether or not a participant, ] may be used by a [ participant ] party for a purpose if the presiding officer finds one of the following:

\* \* \* \* \*

(ii) That the witness is outside this Commonwealth, unless it appears that the absence of the witness was procured by the [ participant ] party offering the deposition.

\* \* \* \* \*

(iv) That the [ participant ] party offering the deposition has been unable to procure the attendance of the witness by subpoena.

\* \* \* \* \*

(4) If only part of a deposition is offered in evidence by a [ participant ] party, another [ participant ] party may require him to introduce all of it which is relevant to the part introduced, and a [ participant ] party may introduce other parts.

\* \* \* \* \*

(c) A [ participant ] party may not be deemed to make a person his own witness for any purpose by taking his deposition. The introduction in evidence of the deposition or a part thereof for a purpose other than that of contradicting or impeaching the deponent makes the deponent the witness of the party introducing the deposition [ , but this ]. This does not apply to the use by an adverse [ participant ] party of a deposition as described in subsection (a)(2). At the hearing, a [ participant ] party may rebut relevant evidence contained in a deposition whether introduced by him or by another [ participant ] party.

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 ] party 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 ] party deponent or an officer or managing agent of a [ participant ] party refuses to obey or induces another to refuse to obey an order of a presiding officer respecting discovery, or induces another not to appear.

\* \* \* \* \*

(c) The presiding officer shall rule on the motion as soon as practicable[; however, the ] The motion should be decided within [ 15 ] 20 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 ] party failing to act has filed an appropriate objection or has applied for a protective order.

\* \* \* \* \*

§ 5.372. Sanctions—types.

(a) The presiding officer, when acting under § 5.371 (relating to sanctions—general), may make one of the following:

\* \* \* \* \*

(2) An order refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting [ him ] the party from introducing in evidence designated documents, things or testimony.

(3) An order striking out pleadings or parts thereof, staying further proceedings until the order is obeyed, or entering a judgment against the disobedient [ participant ] party or [ party ] individual advising the disobedience.

\* \* \* \* \*

(b) In addition to the sanctions described in subsection (a), in rate proceedings, when a [ participant ] party fails to answer discovery requests on the date due, the presiding officer may issue an order that the hearing schedule be modified, that the deadline for the filing of other [ participants' ] parties' written testimony be extended, or that provides other relief that will allow the other [ participants ] parties a sufficient and reasonable opportunity to prepare their cases.

(c) A witness whose identity has not been revealed as provided in this chapter will not be permitted to testify on behalf of the defaulting party at hearing on the action. If the failure to disclose the identity of the witness is the result of extenuating circumstances beyond the control of the defaulting [ participant ] party, the presiding officer may grant a continuance or other appropriate relief.

§ 5.373. Subpoenas.

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

\* \* \* \* \*

Subchapter E. EVIDENCE AND WITNESSES  
EVIDENCE

§ 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 ].

(b) Evidence shall be excluded if:

(1) It 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 ].

(2) Its probative value is outweighed by:

(i) The danger of unfair prejudice.

(ii) Confusion of the issues.

(iii) By considerations of undue delay or waste of time.

[ (b) Subsection ] (c) Subsections (a) and (b) [ supercedes ] supersede 1 Pa. Code § 35.161 (relating to form and admissibility of evidence).

§ 5.402. Admission of evidence.

(a) A [ participant ] party shall move the admission of evidence into the record upon presentation of the sponsoring witness, and after opportunity for other [ participants ] parties to examine the [ qualifications of the ] witness.

(b) [ In order for ] For an exhibit to be received into evidence, it [ shall ] must be marked for identification and moved into evidence. [ If a motion to move an exhibit into evidence is made after the close of the record, it shall be in writing and be subject to the same objections which could have been made at the hearing. ]

\* \* \* \* \*

§ 5.404. Additional evidence.

(a) At any stage of the hearing or thereafter, the Commission or the presiding officer may call for further admissible evidence upon an issue and require that the evidence be presented by the [ participants ] parties concerned, either at the hearing or at the adjournment thereof.

\* \* \* \* \*

§ 5.405. Effect of pleadings.

(a) [ Applications, complaints, orders to show cause, answers and similar formal documents upon which hearings are fixed ] Pleadings listed in § 5.1 (relating to pleadings allowed) shall, without further action, be considered as part of the record as pleadings.

\* \* \* \* \*

(c) A fact admitted by a [ participant ] party in an answer, filed under oath, to a numbered allegation in a pleading may be considered as evidence of the fact without the pleading and answer being offered and received into evidence.

\* \* \* \* \*

§ 5.406. Public documents.

\* \* \* \* \*

(b) Upon the request of a [ participant ] party and at the direction of the presiding officer or the Commission, a party who incorporates by reference a pleading shall provide a copy of the pleading to the [ participant ] party requesting one.

\* \* \* \* \*

§ 5.407. Records of other proceedings.

(a) When a portion of the record in another proceeding before the Commission is offered in evidence and shown to be relevant and material to the instant proceeding, a true copy of the record shall be presented in the form of an exhibit, together with additional copies as provided in § 5.409 (relating to copies and form of documentary evidence), unless both of the following occur:

(1) The [ participant ] party offering the record agrees to supply, within a period of time specified by the Commission or the presiding officer, the copies at his own expense, if any, when so required.

\* \* \* \* \*

§ 5.408. Official and judicial notice of fact.

(a) Official notice or judicial notice of facts may be taken by the Commission or the presiding officer.

(b) When the decision of the Commission or the presiding officer rests on official notice or judicial notice of a material fact not appearing in the evidence in the record, [ upon ] the parties will be so notified.

(c) Upon notification that facts are about to be or have been noticed, a party adversely affected shall have the opportunity upon timely request to show that the facts are not properly noticed or that alternative facts should be noticed.

(d) The Commission or the presiding officer in its discretion will determine whether written presentations suffice, or whether oral argument, oral evidence or cross-examination is appropriate in the circumstances.

(e) The Commission or presiding officer may also give official notice as the term is defined in section 331(g) of the act (relating to powers of commission and administrative law judges).

[ (b) Subsection ] (f) Subsections (a)—(e) [ is identical to ] supersede 1 Pa. Code § 35.173 (relating to official notice of facts).

§ 5.409. Copies and form of documentary evidence.

(a) Except as otherwise provided in this chapter, Chapters 1 and 3 (relating to rules of administrative practice and procedure; and special provisions), when exhibits of a documentary character are offered in evidence, copies shall be furnished to the presiding officer and to the [ participants ] parties present at the hearing, unless the presiding officer otherwise directs. Two copies of each exhibit of documentary character shall be furnished for the use of the Commission unless otherwise directed by the presiding officer.

\* \* \* \* \*

WITNESSES

§ 5.412. Written testimony.

(a) General. 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) Use. [ Whenever in the circumstances of a particular case it is deemed necessary or desirable, the ] The presiding officer may direct that expert testimony to be given upon direct examination [ shall ] be [ reduced to the form of ] submitted as prepared written testimony. A reasonable period of time will be allowed [ for the preparation of ] to prepare written testimony.

(c) Rules regarding use. 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) Cross-examination. [ Except in a rate proceeding, cross ] 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 ] party of record at least 20 days prior to the hearing, unless the presiding officer for good cause otherwise directs. [ Unless the Commission by rule or order establishes otherwise, in ] In a rate proceeding, the presiding officer or the Commission will establish the schedule for the filing and authentication of written testimony, and for cross-examination by other [ participants ] parties.

(e) Form. 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 ] party offering prepared written testimony shall insert line numbers in the left-hand margin on each page. A [ participant ] party should also use a logical and sequential numbering system to identify the written testimony of individual witnesses.

(f) Service. Written testimony shall be served upon the presiding officer and [ active participants ] parties in the proceeding in accordance with the schedule established by this chapter. At the same time the testimony is served, a certificate of service for the testimony shall be filed with the [ Prothonotary ] Secretary.

(g) Copies. 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) Supersession. 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).

SUBPOENAS AND PROTECTIVE ORDERS

§ 5.421. Subpoenas.

(a) Issuance.

(1) A subpoena [ for the attendance of witnesses or for the production of documentary evidence, unless directed ] may be issued by the Commission upon its own motion [ , ].

(2) Other than under paragraph (1), a subpoena 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.

(b) **Form.** The written application [ shall ]:

(1) **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 ].

(2) **Shall list** the facts to be proved by the documents in sufficient detail to indicate the necessity of the documents.

(3) **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.**

(4) **Shall include a certificate of service.**

(5) [ The ] **May have the** proposed subpoena [ may be ] attached to the application.

[ (b) **Notice** ] (c) **Service.** An application for a subpoena [ shall ] **must** be filed with the Commission and copies served by the petitioner upon [ the affected participant, the ]:

(1) **The person to be subpoenaed.**

(2) **The** presiding officer[, active participants of record, and if the subpoena is directed to a Commission employe, to the ].

(3) **Active parties.**

(4) **The Commission's Law Bureau, if the subpoena is directed to a Commission employee. [ 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 ]**

(5) **The person for whom the subpoena is sought when the person is not a party to the case.** When the person for whom a subpoena is sought is not a party to the case, the application shall identify the person—names and addresses—including the Secretary and presiding officer, to whom the answer or objection shall be sent.

[ (c) ] (d) **Service and return.**

\* \* \* \* \*

(2) **Service by mail.** Service of a subpoena upon a [ participant ] party may also be accomplished by mail under §§ 1.54 and 1.55 (relating to service by a [ participant ] party; 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 ] party or the persons referred to in Pa.R.C.P. No. 402(a)(2) (relating to manner of service acceptance of service).

[ (d) ] (e) **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 ] party

shall be paid the same fees by the [ participant ] party. 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) ] (f) **Supersession.** Subsections (a)—[ (d) ] (e) supersede 1 Pa. Code § 35.142 (relating to subpoenas).

**§ 5.423. Orders to limit availability of proprietary information.**

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

\* \* \* \* \*

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

\* \* \* \* \*

(b) **Restrictions.**

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

\* \* \* \* \*

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

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

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

etary information [ and to object to the production of proprietary information on a proper ground ] .

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

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

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

CLOSE OF THE RECORD

§ 5.431. Close of the record.

(a) In a contested proceeding before a presiding officer, the record shall be closed at the conclusion of the hearings unless otherwise directed by presiding officer or the Commission.

(b) [ Once the record is closed, no additional ] Additional evidence may not be introduced or relied upon by a [ participant ] party unless allowed for good cause shown by the Commission or presiding officer upon motion of a [ participant ] party 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) or upon motion of the presiding officer or Commission as provided under § 5.71 (relating to initiation of intervention).

[ (b) Subsection ] (c) Subsections (a)—(b) [ supercedes ] supersede 1 Pa. Code §§ 35.231 and 35.232 (relating to reopening on application of party; and reopening by presiding officer).

Subchapter F. PRESIDING OFFICERS

§ 5.481. Designation of presiding [ officers ] officer.

\* \* \* \* \*

§ 5.482. Disqualification of a presiding officer.

(a) A [ participant ] party may file a motion for disqualification of a presiding officer which shall be accompanied by affidavits alleging personal bias or other disqualification.

\* \* \* \* \*

(c) A motion for disqualification shall be served on the presiding officer and the [ participants ] parties to the proceeding.

\* \* \* \* \*

§ 5.483. Authority of presiding [ officers ] officer.

\* \* \* \* \*

§ 5.484. Restrictions on duties and activities.

\* \* \* \* \*

(b) Save to the extent required for the disposition of ex parte matters not prohibited by the act, no presiding officer will consult a person or [ participant ] party on a fact in issue unless upon notice and opportunity for all [ participants ] parties to participate.

\* \* \* \* \*

§ 5.485. Manner of conduct of hearings.

(a) [ It is the duty of the ] The presiding officer [ to ] shall conduct a fair and impartial hearing and [ to ] maintain order. [ Disregard by participants or counsel of rulings of the presiding officer on matters of order and procedure will be noted on the record, and where he deems it necessary, will be made the subject of a special written report to the Commission. In the event that participants or counsel should be guilty of disrespectful, disorderly or contumacious language or conduct in connection with a hearing, the presiding officer immediately may submit to the Commission his report thereon, together with his recommendations, and in his discretion suspend the hearing. ]

(b) The presiding officer shall note on the record a party's disregard of a ruling. When necessary, the presiding officer may submit a report to the Commission recommending suspension and disbarment of the offending person as provided by § 1.27 (referring to suspension and disbarment).

(c) [ Subsection ] Subsections (a) and (b) [ is identical to ] supersede 1 Pa. Code § 35.189 (relating to manner of conduct of hearings).

§ 5.486. Unavailability of presiding officer.

(a) If a presiding officer becomes unavailable, the chief administrative law judge may either designate another qualified officer to prepare the initial or recommended decision or cause the record to be certified to the Commission for decision.

\* \* \* \* \*

Subchapter G. BRIEFS

§ 5.501. Content and form of briefs.

(a) Briefs shall contain the following:

\* \* \* \* \*

(2) [ Where evidence is relied upon by the participant filing the brief, he shall make reference ]

Reference to the pages of the record or exhibits where the evidence **relied upon by the filing party** appears.

\* \* \* \* \*

§ 5.502. Filing and service of briefs.

(a) **Number of copies.** An original and nine copies of a brief shall be filed with the Commission under § 1.4 (relating to filing generally).

(b) **Types of briefs in nonrate proceedings.** [ 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. ]

(1) **Initial brief.** An initial brief shall be filed by the party with the burden of proof except as provided by agreement or by direction of the presiding officer.

(2) **Response brief.** A party may file a response brief to the initial brief.

(c) **Types of briefs in rate proceedings.**

(1) **Main brief.** A main brief may be filed by a party except as provided by agreement or by direction of the presiding officer.

(2) **Reply brief.** A party may file a reply brief to a main brief regardless of whether the party filed a main brief.

(d) **Deadlines.** [ An initial brief, responding ] Main briefs, responsive briefs and reply [ brief shall ] briefs must be filed and served within the time fixed by the presiding officer. If no specific times are fixed, [ initial ] main briefs shall be filed and served within 30 days after the date of service of notice of the filing of the transcript and [ responding ] responsive briefs or reply briefs shall be filed within 50 days after date of service of the notice of the filing of the transcript.

[ (c) ] (e) Briefs not filed and served on or before the dates fixed therefore will not be accepted, except by special permission of the Commission or the presiding officer as permitted under § 1.15 (relating to extensions of time and continuances).

[ (d) ] (f) Subsections (a)—[ (c) ] (e) 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

§ 5.532. Oral argument before presiding officer.

(a) When, in the opinion of the presiding officer, time permits and the nature of the proceedings, the complexity or importance of the issues of fact or law involved, and the public interest warrant, the presiding officer may, either on the presiding officer's own motion or at the request of a [ participant ] party, allow and fix a time for the presentation of oral argument, imposing limits on the argument that are deemed appropriate.

\* \* \* \* \*

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

(a) In a proceeding, exceptions may be filed by a [ participant ] party and served within 20 days after

the initial, tentative or recommended decision is issued unless some other exception period is provided. [ No exceptions ] Exceptions may not be filed with respect to an interlocutory decision.

\* \* \* \* \*

(c) The exceptions shall be concise. The exceptions and supporting [ reason shall ] reasons shall be limited to 40 pages in length. Statements of reasons supporting [ the exception ] shall exceptions shall, insofar as practicable, incorporate by reference and citation, relevant portions of the record and passages in previously filed briefs. [ No ] A separate brief in support of or in reply to exceptions [ shall ] may not be filed with the [ Prothonotary ] Secretary under § 1.4 (relating to filing generally).

(d) An original and nine copies of the exceptions shall be filed with the [ Prothonotary ] Secretary under § 1.4.

\* \* \* \* \*

§ 5.535. Replies.

(a) A [ participant ] party has the right to file a reply to an exception in proceedings before the Commission. Unless otherwise directed by the presiding officer or Commission, a reply shall be filed within 10 days of the date that an exception is due and be limited to 25 pages in length and in paragraph form. A reply shall must be concise and incorporate by reference relevant passages in previously filed briefs.

\* \* \* \* \*

(c) [ Subsection ] Subsections (a) and (b) [ supercedes ] supersede 1 Pa. Code § 35.211 (relating to procedure to except to proposed report).

Subchapter I. REOPENING, RECONSIDERATION AND REHEARING

§ 5.571. Reopening prior to a final decision.

(a) After the record closes, documents will not be received in evidence or considered as part of the record or changes made in the transcript, except as provided in §§ 5.404 and 5.253 (relating to additional evidence; and transcript corrections).

(b) At any time after the record is closed but before a final decision is issued, a [ participant ] party may file a petition to reopen the proceeding for the purpose of taking additional evidence.

[ (b) ] (c) \* \* \*

[ (c) ] (d) Within 10 days following the service of the petition, another [ participant ] party may file an answer thereto.

[ (d) ] The presiding officer, before issuance of the presiding officer's decision or certification of the record to the Commission, otherwise the Commission, upon notice to the participants, ] (e) The record may [ reopen the ] be reopened upon notification to the parties in a proceeding for the reception of further evidence if there is reason to believe that conditions of fact or of law have so changed as to require, or that the public interest requires, the reopening of the proceeding.

**(1) The presiding officer may reopen the record if the presiding officer has not issued a decision or has not certified the record to the Commission.**

**(2) The Commission may reopen the record after the presiding officer has issued a decision or certified the record to the Commission.**

**[(e)] (f)** Subsections (a)—**[(d)] (e)** supersede 1 Pa. Code §§ 35.231—35.233 (relating to reopening of record).

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

\* \* \* \* \*

(b) A copy of every petition covered by subsection (a) shall be served upon each **[ participant ] party** to the proceeding.

\* \* \* \* \*

**Subchapter J. REPORTS OF COMPLIANCE**

**§ 5.591. Reports of compliance.**

(a) **[ When a ]** A person subject to the jurisdiction of the Commission **who** is required to do or perform an act by a Commission order, permit or license provision **[ , there ]** shall **[ be filed ]** file with the **[ Prothonotary within 30 days following the date when the requirement becomes effective, ]** Secretary a notice **[ , ]** stating that the requirement has or has not been met or complied with.

(b) **The notice shall be filed within 30 days following the date when the requirement becomes effective**, unless the Commission, by regulation, by order or by making specific provision **[ therefor ]** thereof in a license or permit, provides otherwise for compliance or proof of compliance. **The notice must be accompanied by a verification in accordance with § 1.36 (relating to verification and affidavit).**

**[(b) Subsection ] (c) Subsections (a)—(b) [ is identical to ]** supersede 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 ] parties** 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 ] 2** \_\_\_\_\_ at \_\_\_\_\_.”

(c) Exceptions to a tariff revision under this section may be filed by a **[ participant ] party** 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.

\* \* \* \* \*

**Subchapter K. APPEALS TO COURT**

**§ 5.631. Notice of taking appeal.**

When an appeal is taken from an order of the Commission to the Commonwealth Court, the appellant shall immediately give notice of the appeal to all **[ participants ] parties** to the Commission proceeding as provided by § 1.54 (relating to service by a **[ participant ] party**).

**§ 5.632. Preparation and certification of records.**

**[ No ]** A record will **not** be certified as complete until copies of exhibits or other papers have been furnished **[ where ]** when necessary to complete the Commission file. Copies will be requested by the Commission.

**§ 5.633. Certification of interlocutory orders.**

(a) When the Commission has made an order which is not a final order, a **[ participant ] party** may by motion request that the Commission find, and include the findings in the order by amendment, that the order involves a controlling question of law as to which there is a substantial ground for difference of opinion and that an immediate appeal to Commonwealth Court from the order may materially advance the ultimate termination of the matter. The motion shall be filed within 10 days after service of the order, and is procedurally governed by § 5.103(a)—(c) (relating to hearing motions). Unless the Commission acts within 30 days after the filing of the motion, the motion **[ shall ] will** be deemed denied.

\* \* \* \* \*

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