

RULES AND REGULATIONS

Title 52—PUBLIC UTILITIES

PENNSYLVANIA PUBLIC UTILITY COMMISSION

[52 PA. CODE CHS. 1 AND 5]

[L-2012-2296005]

Rules of Practice and Procedure

The Pennsylvania Public Utility Commission (Commission), on June 13, 2013, adopted a final rulemaking order which improves clarity and operation of Commission procedures and also reduces paper copy requirements for Commission filings.

Executive Summary

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

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

Public Meeting held
June 13, 2013

Commissioners Present: Robert F. Powelson, Chairperson; John F. Coleman, Jr., Vice Chairperson; Wayne E. Gardner; James H. Cawley; Pamela A. Witmer

Amendment of Public Utility Commission Rules of Practice and Procedure; 52 Pa. Code Chapters 1, 3 and 5; Doc. No. L-2012-2296005

Final Rulemaking Order

By the Commission:

On July 19, 2012, the Pennsylvania Public Utility Commission (Commission) issued a Proposed Rulemaking Order inviting comment to our proposed amendments regarding our administrative Rules of Practice and Procedure at 52 Pa. Code Chapters 1, 3 and 5. These amendments to our regulations implement changes to certain procedural rules that govern the conduct of proceedings before the Commission and its Administrative Law Judges. The Commission proposed these changes to the rules in order to improve the clarity and operation of our procedures as well as to reduce paper copy requirements for Commission filings. Based upon our review and

consideration of the comment filed in this rulemaking proceeding by the Independent Regulatory Review Commission (IRRC) and the comments filed in support of the rulemaking on behalf of the Energy Association of Pennsylvania (EAP), we shall adopt the final regulations as set forth in Annex A to this Order.

Background

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

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

Discussion

§ 5.365. Orders to limit availability of proprietary information.

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

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

We agree with IRRC that adding the phrase "petition for" to the last sentence of Subsection 5.365(b) will better provide the type of protection originally contemplated by this subsection regarding information filed with the Commission during the pendency of a protective order re-

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

§ 1.37. *Number of copies.*

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

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

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on February 22, 2013, the Commission submitted a copy of the notice of proposed rulemaking, published at 43 Pa.B. 1273 (March 9, 2013), to IRRC and the Chairpersons of the House Consumer Affairs Committee and the Senate Consumer Protection and Professional Licensure Committee for review and comment.

Under section 5(c) of the Regulatory Review Act, IRRC and the House and Senate Committees were provided with copies of the comments received during the public comment period, as well as other documents when requested. In preparing the final-form rulemaking, the Department has considered all comments from IRRC, the House and Senate Committees and the public.

Under section 5.1(j.2) of the Regulatory Review Act (71 P. S. § 745.5a(j.2)), on July 31, 2013, the final-form rulemaking was deemed approved by the House and Senate Committees. Under section 5.1(e) of the Regulatory Review Act, IRRC met on August 1, 2013, and approved the final-form rulemaking.

Conclusion

The final amendments to the Rules of Practice and Procedure contained within our regulations as set forth in Annex A simplify practice before the Commission and diminish the burden upon parties appearing before the Commission by reducing the amount of paper they must file with the agency. The Commission, therefore, formally adopts the final regulations as set forth in Annex A to this Order.

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

It Is Ordered That:

1. The regulations of the Commission, 52 Pa. Code Chapters 1 and 5, are amended by adding §§ 5.365 and 5.424, deleting §§ 5.373 and 5.423 and amending §§ 1.8, 1.37, 1.56, 5.44, 5.72, 5.94, 5.101, 5.342 and 5.533 to read as set forth in Annex A, with ellipses referring to the existing text of the regulations.
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 by the designated standing committees of both houses of the General Assembly, and for review and approval by the Independent Regulatory Review Commission.
5. The Secretary shall duly certify this order and Annex A with the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.
6. These regulations shall become effective upon publication in the *Pennsylvania Bulletin*.
7. This order and Annex A be posted on the Commission’s web site.
8. A copy of this order and Annex A shall be served on the Bureau of Investigation and Enforcement, the Office of Consumer Advocate, the Office of Small Business Advocate, and jurisdictional public utility industry and licensee trade associations.

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

ROSEMARY CHIAVETTA,
Secretary

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 43 Pa.B. 4821 (August 17, 2013).)

Fiscal Note: Fiscal Note 57-290 remains valid for the final adoption of the subject regulations.

Annex A

TITLE 52. PUBLIC UTILITIES

PART I. PUBLIC UTILITY COMMISSION

Subpart A. GENERAL PROVISIONS

CHAPTER 1. RULES OF ADMINISTRATIVE PRACTICE AND PROCEDURE

Subchapter A. GENERAL PROVISIONS

§ 1.8. Definitions.

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

* * * * *

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

* * * * *

Subchapter D. DOCUMENTARY FILINGS

§ 1.37. Number of copies.

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

(1) 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.

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

(3) A filing, including attachments, exceeds 5 megabytes, in addition to filing the requisite number of hard copies in accordance with this subpart, a CD-ROM or DVD containing the filing and an index to the filing shall be filed with the Commission.

(b) *Electronic filings.*

(1) When the qualified document, including attachments, is 250 pages or less and does not exceed 5 megabytes, the filing user may file one electronic copy on the electronic filing system and is not required to file paper copies.

(2) When the qualified document, including attachments, exceeds 250 pages, but does not exceed 5 megabytes, the filing user may file one electronic copy on the electronic filing system and shall also file the original in paper form with the Commission. The original in paper form shall be filed no later than 3 business days after the electronic filing is submitted. The filing date for the qualified document in paper form will be determined in accordance with § 1.11(a)(1)—(3) (relating to date of filing).

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

Subchapter F. SERVICE OF DOCUMENTS

§ 1.56. Date of service.

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

(1) The document is deposited in the United States mail.

(2) The document is deposited with an overnight express package delivery service.

(3) The document is delivered in person.

(4) The document is transmitted by telefacsimile or electronic mail as provided in § 1.54(b) (relating to service by a party) prior to 4:30 p.m. local prevailing time in the Eastern Time Zone (United States of America).

(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 prevailing time in the Eastern Time Zone (United States of America).

(b) Unless otherwise prescribed by the Commission or presiding officer, whenever a party is required or permitted to do an act within a prescribed period after service of a document upon the 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.

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

CHAPTER 5. FORMAL PROCEEDINGS

Subchapter A. PLEADINGS AND OTHER PRELIMINARY MATTERS

PETITIONS

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

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

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

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

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

INTERVENTION

§ 5.72. Eligibility to intervene.

(a) *Persons.* A petition to intervene may be filed by a person claiming a right to intervene or an interest of such nature that intervention is necessary or appropriate to the administration of the statute under which the proceeding is brought. The right or interest may be one of the following:

(1) A right conferred by statute of the United States or of the Commonwealth.

(2) An interest which may be directly affected and which is not adequately represented by existing participants, and as to which the petitioner may be bound by the action of the Commission in the proceeding.

(3) Another interest of such nature that participation of the petitioner may be in the public interest.

(b) *Commonwealth.* The Commonwealth or an officer or agency thereof may intervene as of right in a proceeding subject to subsection (a)(1)—(3).

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

AMENDMENT AND WITHDRAWAL OF PLEADINGS

§ 5.94. Withdrawal of pleadings in a contested proceeding.

(a) Except as provided in subsection (b), a party desiring to withdraw a pleading in a contested proceeding may file a petition for leave to withdraw the appropriate document with the Commission and serve it upon the other parties. The petition must set forth the reasons for the withdrawal. A party may object to the petition within 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 notice of withdrawal directed to the Commission or the presiding officer. The notice must state that the protest is withdrawn and provide the reasons for the withdrawal.

(c) Withdrawal or termination of an uncontested proceeding is governed by § 1.82 (relating to withdrawal or termination).

(d) Subsections (a)—(c) supersede 1 Pa. Code § 35.51 (relating to withdrawal of pleadings).

PRELIMINARY OBJECTIONS

§ 5.101. Preliminary objections.

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

(1) Lack of Commission jurisdiction or improper service of the pleading initiating the proceeding.

(2) Failure of a pleading to conform to this chapter or the inclusion of scandalous or impertinent matter.

(3) Insufficient specificity of a pleading.

(4) Legal insufficiency of a pleading.

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

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

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

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

(c) *General rule.* Preliminary objections shall be raised at one time. The preliminary objections must be set forth in numbered paragraphs, state with specificity the legal and factual grounds relied upon, and may be inconsistent. Two or more preliminary objections may be raised in one pleading.

(d) *Time for filing and form.* Preliminary objections shall be filed as a separate document and within the same 20 days provided for in § 5.61 (relating to answers to complaints, petitions, motions and preliminary objections). Except as provided for in subsection (e), the filing of preliminary objections may not eliminate the requirement to file an answer to the complaint or other initiating pleading.

(e) *Preliminary objection regarding insufficient specificity.*

(1) If a preliminary objection regarding insufficient specificity in a pleading is filed, an answer is not required until further directed by the presiding officer or the Commission.

(2) When an amended pleading is filed in response to a preliminary objection alleging insufficient specificity in a pleading, the preliminary motion will be deemed to be moot in accordance with § 5.91 (relating to amendment of pleadings generally).

(f) *Answer to a preliminary objection.*

(1) *Time for filing.* An answer to a preliminary objection may be filed within 10 days of date of service.

(2) *Form.* The answer must be in writing and in numbered paragraphs to correspond with the preliminary objection, and address the legal and factual grounds relied on in the preliminary objection.

(g) *Decision by presiding officer.* A preliminary objection will be decided within 30 days of the assignment of the preliminary objection to the presiding officer.

(h) *Amended pleading.* If a preliminary objection is granted, the party who submitted the stricken pleading has the right to file an amended pleading within 10 days of service of the order.

(i) *Supersession.* Subsections (a)—(h) supersede 1 Pa. Code §§ 35.54 and 35.55 (relating to motions as to complaint; and motions as to answer).

Subchapter D. DISCOVERY

TYPES OF DISCOVERY

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

(a) *Form.* Answers to interrogatories must:

(1) Be in writing.

(2) Identify the name and position of the individual who provided the answer.

(3) Be submitted as an answer and may not be submitted as an exhibit or in another form.

(4) Answer each interrogatory fully and completely unless an objection is made.

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

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

(1) Be served instead of an answer.

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

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

(4) Be signed by the attorney making it.

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

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

(d) *Service of answer.* The answering party shall serve answers on the parties 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 parties.

(e) *Service of objections.* The objecting party shall serve objections within 10 days of service of the interrogatories.

(1) The objecting party shall serve copies of the objection on the parties, along with a certificate of service, which specifically identifies the objectionable interrogatories.

(2) The objecting party shall file a copy of the certificate of service with the Secretary.

(f) *Continuing obligation.* The objecting party shall remain under an obligation to timely provide answers to interrogatories or subparts of interrogatories that were not objected to.

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

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

(2) The presiding officer will rule on the motion as soon as practicable. The motion should be decided within 15 days of its presentation, unless the motion presents complex or novel issues. If it does have complex or novel

issues, the presiding officer will, upon notice to the parties, rule in no more than 20 days of its presentation.

LIMITATIONS

§ 5.365. Orders to limit availability of proprietary information.

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

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

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

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

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

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

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

(c) *Restrictions.*

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

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

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

(4) Prior to the issuance of a protective order, a party may not refuse to provide information which the party

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

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

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

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

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

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

SANCTIONS

§ 5.373. (Reserved).

Subchapter E. EVIDENCE AND WITNESSES SUBPOENAS

§ 5.423. (Reserved).

§ 5.424. **Issuance of subpoenas.**

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

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

Subchapter H. EXCEPTIONS, APPEALS AND ORAL ARGUMENT

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

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

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

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

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

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

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

[Pa.B. Doc. No. 13-1721. Filed for public inspection September 20, 2013, 9:00 a.m.]