

CHAPTER 1005. FORMAL PROCEEDINGS

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GENERAL PROVISIONS

§ 1005.1. Pleadings allowed.

(a) Except as limited by specific provisions of this part, the pleadings in an action before the Authority include the following:

- (1) Application and protest.
- (2) Formal complaint, answer, new matter and reply to new matter.
- (3) Petition and answer.
- (4) Motion and answer.

(b) Pleadings must be typed or printed in 12-point Times New Roman, except that headings may be in bolded 14-point Times New Roman. Pleadings may not be handwritten.

Cross References

This section cited in 52 Pa. Code § 1005.145 (relating to effect of pleadings).

FORMAL COMPLAINTS

§ 1005.11. Formal complaints generally.

(a) Formal complaints averring an act done or omitted to be done by a person subject to the jurisdiction of the Authority, in violation, or claimed violation of a statute which the Authority has jurisdiction to administer, or of this part or an order of the Authority, may be filed with the Authority by:

- (1) The Enforcement Department.
- (2) The Office of Trial Counsel.
- (3) The PUC.
- (4) Philadelphia law enforcement or licensing officials, as provided under section 5705(b) of the act (relating to contested complaints).

(5) An informal complainant within 30 days of service of a termination letter from the Authority declining further action as provided in §§ 1003.42(c) and 1003.43 (relating to Authority action on informal complaints; and other initiation of formal complaints).

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

(c) A copy of the complaint will be served upon the respondent as follows:

- (1) By the Authority in accordance with § 1001.51 (relating to service by the Authority).
- (2) By a complainant other than the Authority in accordance with § 1001.52 (relating to service by a party).

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

Cross References

This section cited in 52 Pa. Code § 1003.43 (relating to other initiation of formal complaints); 52 Pa. Code § 1005.12 (relating to content of formal complaints); and 52 Pa. Code § 1019.13 (relating to minimum number of medallion taxicab affiliations).

§ 1005.12. Content of formal complaints.

(a) Except as permitted under § 1005.13 (relating to citation complaints by the Authority), a formal complaint must set forth the following:

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

(2) If the complainant is represented by an attorney, the name, mailing address, telephone number, telefacsimile number and Pennsylvania Supreme Court identification number of the attorney and, if available, the electronic mailing address.

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

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

(5) A clear and concise statement of the act or omission being complained of including the result of any informal complaint or informal investigation.

(6) A clear and concise statement of the relief sought, provided that penalties entered in a proceeding initiated as provided in § 1005.11(a)(4) (relating to formal complaints generally) will be consistent with § 1001.61 (relating to penalties).

(7) Except for a document referenced within § 1005.11(b), a document or the material part thereof, or a copy must be attached when a claim is based upon the document, the material part thereof, or a copy. If the document, the material part thereof, or a copy is not accessible, the complaint must set forth that the document, the material part thereof, or the copy is not accessible and the reason, and set forth the substance of the document or material part thereof.

(b) A verification executed in accordance with § 1001.36 (relating to verification and affidavit) must be attached to the formal complaint.

(c) The complaint must reference the act, the regulation or order and quote the pertinent portions thereof.

(d) Subsections (a)—(c) supersede 1 Pa. Code §§ 35.9, 35.10 and 35.14 (relating to formal complaints generally; form and content of formal complaints; and orders to show cause).

Cross References

This section cited in 52 Pa. Code § 1003.41 (relating to form and content of informal complaints).

§ 1005.13. Citation complaints by the Authority.

(a) *Citations.* The Enforcement Department or trial counsel may issue a formal complaint through a form citation for any violation of the act, this part or order of the Authority. The form citation will be filed with the Clerk and include the following relevant information, unless the circumstances of the violation render the information impracticable to obtain at the time of filing:

(1) A unique citation number.

(2) The Authority number issued to the certificate, driver's certificate, registration or other right of the respondent.

(3) If the operation of a motor vehicle is at issue, the following information will be provided, if practicable:

- (i) The driver's name.
 - (ii) The driver's home address.
 - (iii) The driver's gender.
 - (iv) The driver's birth date.
 - (v) The information required under paragraph (4).
- (4) If the incident involves a motor vehicle, the following information will be provided, if practicable:
- (i) The vehicle's make.
 - (ii) The vehicle's model.
 - (iii) The vehicle identification number.
 - (iv) The vehicle's license plate number and state of issuance.
 - (v) The vehicle's color.
 - (vi) The vehicle's dispatcher.
 - (vii) The vehicle's registered owner.
 - (viii) Designation of the vehicle's impoundment, if applicable.
 - (ix) The vehicle's insurer and the policy number.
- (5) The location of the incident.
- (6) The time and date of the incident.
- (7) The meter number and type, if applicable.
- (8) The section of the act, this part or an order of the Authority alleged to have been violated.
- (9) The penalty sought for the violation.
- (10) The date the citation was issued.
- (11) The issuing officer's name, signature and badge number.
- (b) *Answer to citations.* No pleading response to a citation is necessary. Upon receipt of a citation the respondent shall do one of the following:
- (1) Pay the penalty amount identified on the citation within 15 days after the date of service. Payment shall be made as provided in §§ 1001.42 and 1001.43 (relating to mode of payment to the Authority; and Authority fee schedule).
 - (2) File a request with the Clerk for a hearing within 15 days after the date of service. A correctly filed request for hearing shall be deemed a denial of each averment made in the citation. Requests for hearings may be made by completing the applicable portion of the citation and serving it upon the Clerk or by appearing at TLD Headquarters and completing a hearing request form.
- (c) *Default orders.*
- (1) If payment of a citation is not made or a request for a hearing is not filed as provided in subsection (b), a default order will be issued by the Authority or a presiding officer sustaining the complaint and assessing the penalty, as proposed in the complaint, against the respondent.
 - (2) If a respondent fails to appear at a hearing requested under subsection (b), without good cause shown, the Authority or presiding officer, upon review of evidence of service of the Authority's hearing notice upon the respondent,

will issue a default order sustaining the complaint and assessing the fine, as proposed in the complaint, against the respondent.

(d) *Hearing.* Hearings conducted under this section will otherwise proceed under this subpart.

(e) *Supersession.* Subsections (a)—(d) supersede 1 Pa. Code §§ 35.9, 35.10 and 35.14 (relating to formal complaints generally; form and content of formal complaints; and orders to show cause).

Cross References

This section cited in 52 Pa. Code § 1003.32 (relating to out of service designation); 52 Pa. Code § 1003.74 (relating to enforcement department); 52 Pa. Code § 1005.12 (relating to content of formal complaints); 52 Pa. Code § 1005.113 (relating to failure to appear, proceed or maintain order in proceedings); 52 Pa. Code § 1017.52 (relating to impoundment of vehicles and equipment); and 52 Pa. Code § 1055.32 (relating to impoundment of vehicles and equipment).

§ 1005.14. Joinder of formal complaints.

(a) Two or more complainants may join in one complaint if they are complaining against the same respondent, and if the subject matter and relief sought is substantially the same.

(b) Subsection (a) supersedes 1 Pa. Code § 35.11 (relating to joinder of formal complaints).

§ 1005.15. Satisfaction of formal complaints.

(a) If the respondent satisfies a complaint either before or after a hearing, a statement to that effect signed by the complainant shall be filed with the Clerk setting forth that the complaint has been satisfied and requesting dismissal or withdrawal of the complaint. Except when requested by the parties, the Authority or presiding officer will not be required to render a final order upon the satisfaction of a complaint.

(b) Subsection (a) supersedes 1 Pa. Code § 35.41 (relating to satisfaction of complaints).

PETITIONS

§ 1005.21. Petitions generally.

(a) Petitions are pleadings that may be filed by the trial counsel, an Authority division, parties, applicants, certificate holders, registrants, drivers and other persons authorized by the Authority. Petitions shall be filed with the Clerk.

(b) Petitions must be in writing, state clearly and concisely the grounds for the petition, the interest of the petitioner in the subject matter, the facts and any legal argument relied upon and the relief sought and otherwise comply with §§ 1001.31—1001.36.

(c) Petitions must conform to § 1001.6 (relating to filing generally) and be served on all persons directly affected.

(d) Subsection (a)—(c) supplement 1 Pa. Code §§ 35.17 and 35.18 (relating to petitions generally; and petitions for issuance, amendment, waiver or deletion of regulations).

Cross References

This section cited in 52 Pa. Code § 1001.112 (relating to notice of rulemaking proceedings); 52 Pa. Code § 1003.11 (relating to petitions for issuance of emergency orders); 52 Pa. Code § 1003.13 (relating to hearings following issuance of emergency orders); 52 Pa. Code § 1003.21 (relating to petitions for interim emergency orders); 52 Pa. Code § 1003.23 (relating to issuance of interim emergency orders); 52 Pa. Code § 1005.24 (relating to appeals from actions of the staff); 52 Pa. Code § 1011.4 (relating to annual assessments and renewal fees); and 52 Pa. Code § 1013.23 (relating to invalidation upon execution or seizure).

§ 1005.22. Petitions for declaratory orders.

(a) Petitions for the issuance of a declaratory order to terminate a controversy or remove uncertainty must:

- (1) State clearly and concisely the controversy or uncertainty which is the subject of the petition.
- (2) Cite the statutory provision or other authority involved.
- (3) Include a complete statement of the facts and grounds prompting the petition.
- (4) Include a full disclosure of the interest of the petitioner.

(b) The petitioner shall serve a copy of the petition on the Director, General Counsel, all persons directly affected and on other parties who petitioner believes will be affected by the petition. Service shall be evidenced with a certificate of service filed with the petition.

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

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

§ 1005.23. Petitions for issuance, amendment, repeal or waiver of Authority regulations.

(a) A petition to the Authority for the issuance, amendment, waiver or repeal of a regulation shall be filed with the Clerk and set forth clearly and concisely the interest of the petitioner in the subject matter, the specific regulation, amendment, waiver or repeal requested, and cite by appropriate reference the statutory provision or other authority involved.

(b) A petition under this section must set forth the purpose of and the facts claimed to constitute the grounds requiring the regulation, amendment, waiver or repeal.

(c) In addition to other considerations, the relief sought in a petition under this section will not be granted if the Authority determines that the requested

relief is inconsistent with the purposes of the act, will disrupt or harm taxicab or limousine operations in Philadelphia or will adversely affect the public interest.

(d) A copy of the petition shall be served on all persons directly affected by the petition, the Director, General Counsel, and as otherwise required by the Authority. Service shall be evidenced with a certificate of service filed with the petition.

(e) A petition for the issuance or amendment of a regulation must incorporate the proposed regulation or amendment.

(f) A petition for waiver of a regulation will initially be determined by the Director upon submission of documents. The Director's decision is subject to appeal as provided in § 1005.24 (relating to appeals from actions of the staff).

(g) Subsections (a)—(f) supersede 1 Pa. Code § 35.18 (relating to petitions for issuance, amendment, waiver or deletion of regulations).

Cross References

This section cited in 52 Pa. Code § 1001.7 (relating to amendment to rules); 52 Pa. Code § 1001.101 (relating to applications for waiver of formal requirements); 52 Pa. Code § 1017.4 (relating to age and mileage limitations); and 52 Pa. Code § 1055.3 (relating to limousine age and mileage parameters).

§ 1005.24. Appeals from actions of the staff.

(a) Actions taken by staff, other than a presiding officer, under the act, this part or an order of the Authority will be deemed to be the final action of the Authority unless appealed by petition to the Authority within 15 days after service of notice of the action, unless a different time period is specified in this subpart or in the act. This section does not apply to staff decisions related to informal complaints, which must be addressed as provided in § 1003.43 (relating to other initiation of formal complaints).

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

(c) Petitions for appeal from actions of staff must be filed with the Clerk, served as provided in § 1001.52 (relating to service by a party) and will be assigned to a presiding officer for a recommended decision as provided in §§ 1005.201—1005.204 (relating to recommended decisions).

(d) Petitions for appeal from actions of the staff must set forth any legal basis upon which the petition is based and aver any material factual disputes related to the staff action necessitating an on the record hearing and otherwise comply with § 1005.21 (relating to petitions generally).

(e) A party may file an answer to a petition for appeal with the Clerk 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 parties as provide in § 1001.52.

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

Cross References

This section cited in 52 Pa. Code § 1003.51 (relating to applications generally); 52 Pa. Code § 1005.23 (relating to petitions for issuance, amendment, repeal or waiver of Authority regulations); 52 Pa. Code § 1005.111 (relating to order of procedure); 52 Pa. Code § 1011.11 (relating to record retention); 52 Pa. Code § 1013.23 (relating to invalidation upon execution or seizure); 52 Pa. Code § 1051.10 (relating to record retention); and 52 Pa. Code § 1055.3 (relating to limousine age and mileage parameters).

INTERVENTION

§ 1005.31. Initiation of intervention.

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

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

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

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

Cross References

This section cited in 52 Pa. Code § 1017.52 (relating to impoundment of vehicles and equipment); and 52 Pa. Code § 1055.32 (relating to impoundment of vehicles and equipment).

§ 1005.32. Eligibility to intervene.

(a) *Persons.* A petition to intervene may be filed by a person claiming a right to intervene or an interest of a 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 Authority in the proceeding.

(3) Another interest of a nature so 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).

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

§ 1005.33. Form and content of petitions to intervene.

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

- (1) The facts from which the alleged intervention right or interest of the petitioner can be determined.
 - (2) The grounds of the proposed intervention.
 - (3) The petitioner's position regarding the issues in the proceeding.
- (b) When the circumstances warrant, petitions to intervene filed on behalf of more than one person may be required to list those persons and entities comprising the represented group.
- (c) Subsections (a) and (b) supersede 1 Pa. Code § 35.29 (relating to form and contents of petitions to intervene).

§ 1005.34. Filing of petitions to intervene.

- (a) Petitions to intervene and notices of intervention may be filed with the Clerk at any time following the filing of an application, petition, complaint or other document seeking Authority action, but in no event later than the date fixed for the filing of petitions to intervene or protests in any order or notice with respect to the proceedings published in the *Pennsylvania Bulletin*, unless, in extraordinary circumstances for good cause shown, the Authority or the presiding officer authorizes a late filing. When a person has been permitted to intervene notwithstanding his failure to file his petition within the time prescribed in this section, the Authority or presiding officer may, when the circumstances warrant, permit the waiver under § 1005.149 (relating to copies and form of documentary evidence) with respect to copies of exhibits for the intervener.
- (b) Subsection (a) supersedes 1 Pa. Code § 35.30 (relating to filing of petitions to intervene).

§ 1005.35. Notice, service and action on petitions to intervene.

- (a) *Notice and service.* Petitions to intervene, when filed with the Clerk, must show service thereof upon all parties to the proceeding in conformity with § 1001.52 (relating to service by a party).
- (b) *Action on petitions.* As soon as practicable after the expiration of the time for filing answers to petitions as provided in § 1005.45 (relating to answers to petitions to intervene), the Authority or presiding officer will grant or deny the petition in whole or in part or may, if found to be appropriate, authorize limited participation.
- (c) *Rights upon grant of petition.* Admission as an intervenor will not be construed as recognition by the Authority that the intervenor has a direct interest in the proceeding or might be aggrieved by an order of the Authority in the proceeding. Intervenor is granted no rights which survive discontinuance of a case.
- (d) *Actions on petitions filed after a hearing has commenced.* Petitions to intervene may not be filed or acted upon during a hearing unless permitted by the Authority or presiding officer after opportunity for all parties to object thereto. Only to avoid detriment to the public interest will any presiding officer tenta-

tively permit participation in a hearing in advance of, and then only subject to, the granting by the Authority of a petition to intervene.

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

§ 1005.36. Limitation of participation in hearings.

(a) When there are two or more intervenors having substantially like interests and positions, the Authority or presiding officer may, to expedite the hearing, arrange appropriate limitations on the number of attorneys who will be permitted to cross-examine and make and argue motions and objections on behalf of the intervenors.

(b) Subsection (a) supersedes 1 Pa. Code § 35.32 (relating to limitation of participation in hearings).

ANSWERS

§ 1005.41. Answers to complaints, petitions, motions and other filings requiring a response.

(a) *Time for filing.* Unless a different time is prescribed by statute, the Authority or the presiding officer, answers to complaints, petitions, motions and other filings requiring a response shall be filed with the Clerk and served upon all other parties within 20 days after the date of service.

(b) *Form of answer.* Answers must be in writing and so drawn as fully and completely to advise the parties and the Authority as to the nature of the defense. Answers must admit or deny specifically and in detail each material allegation of the pleading answered, and state clearly and concisely the facts and matters of law relied upon. Answers must be set forth in paragraphs numbered to correspond with the pleading answered and otherwise comply with §§ 1001.31—1001.36.

(c) *Failure to file an answer.* A respondent failing to file an answer within the applicable period may be deemed in default, and relevant facts stated in the pleadings may be deemed admitted.

(d) *Supersession.* Subsections (b)—(c) supersede 1 Pa. Code §§ 35.35 and 35.37 (relating to answers to complaints and petitions; and answers to orders to show cause).

Cross References

This section cited in 52 Pa. Code § 1003.21 (relating to petitions for interim emergency orders); 52 Pa. Code § 1003.32 (relating to out of service designation); 52 Pa. Code § 1017.52 (relating to impoundment of vehicles and equipment); and 52 Pa. Code § 1055.32 (relating to impoundment of vehicles and equipment).

§ 1005.42. Answers seeking affirmative relief or raising new matter.

(a) *Answers seeking affirmative relief.* In its answer, a respondent may seek relief within the jurisdiction of the Authority against other parties in a proceeding if common questions of law or fact are present. The answer must conform to this chapter for answers generally and set forth:

- (1) The facts constituting the grounds of complaint.

- (2) The provisions of the statutes, rules, regulations or orders relied upon.
- (3) The injury complained of.
- (4) The relief sought.

(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) *Supersession.* Subsections (a) and (b) supersede 1 Pa. Code § 35.38 (relating to respondents seeking affirmative relief).

§ 1005.43. Replies to answers seeking affirmative relief or new matter.

(a) Unless otherwise ordered by the Authority, replies to answers seeking affirmative relief or to new matter shall be filed with the Clerk 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 may be deemed in default, and relevant facts stated in the new matter may be deemed to be admitted.

(c) Subsections (a) and (b) supersede 1 Pa. Code § 35.39 (relating to replies to respondents seeking affirmative relief).

§ 1005.44. Answers to amendments of pleadings.

(a) An answer to an amendment, modification or supplement to an application, complaint, petition or other pleading under § 1005.61 (relating to amendments of pleadings generally) shall be filed with the Clerk within 20 days after the date of service of the amendment, modification or supplement, unless for cause the Authority or presiding officer with or without motion prescribes a different time.

(b) Subsection (a) supersedes 1 Pa. Code § 35.40 (relating to answers to amendments of pleadings).

§ 1005.45. Answers to petitions to intervene.

(a) A 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 parties.

(b) Subsection (a) supersedes 1 Pa. Code § 35.36 (relating to answers to petitions to intervene).

Cross References

This section cited in 52 Pa. Code § 1005.35 (relating to notice, service and action on petitions to intervene).

CONSOLIDATION**§ 1005.51. Consolidation.**

(a) The Authority or presiding officer, with or without motion, may order proceedings involving a common question of law or fact to be consolidated. The Authority or presiding officer may make orders concerning the conduct of the proceeding as may avoid unnecessary costs or delay.

(b) Subsection (a) supersedes 1 Pa. Code §§ 35.45 and 35.122 (relating to consolidation; and consolidation of formal proceedings).

AMENDMENT AND WITHDRAWAL OF PLEADINGS**§ 1005.61. 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 must comply with the requirements in this chapter relating to the pleading amended.

(b) *Limitation.* An amendment to a pleading may not be filed more than 20 days after the date an answer or other response to the original pleading was due to be filed with the Clerk, unless directed or permitted by the Authority or the presiding officer after opportunity for all parties to be heard thereon.

(c) *Supersession.* Subsections (a) and (b) supersede 1 Pa. Code § 35.48 (relating to amendments of pleadings generally).

Cross References

This section cited in 52 Pa. Code § 1005.44 (relating to answers to amendments of pleadings).

§ 1005.62. Amendments to conform to the evidence.

(a) *Amendment by consent.* When the parties introduce issues at a hearing not raised in the pleadings without objection of any party, the issues shall be treated in all respects as if they had been raised in the pleadings.

(b) *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 Authority 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, the rights of a party and that the omission of the amended information was not calculated to delay the proceedings.

(c) *Continuance following objection.* A continuance may be granted by the Authority or the presiding officer under § 1001.15 (relating to extensions of time and continuances) when necessary to allow the objecting party to address new issues and evidence.

(d) *Notice of amendment.* If an amendment adopted under 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.

(e) *Supersession.* Subsections (a)—(d) supersede 1 Pa. Code § 35.49 (relating to amendments to conform to the evidence).

§ 1005.63. Directed amendments.

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

(b) Subsection (a) supersedes 1 Pa. Code § 35.50 (relating to directed amendments).

§ 1005.64. Withdrawal of pleadings in a contested proceeding.

(a) Except as provided in subsections (b) and (c), a party desiring to withdraw a pleading in a contested proceeding may file a petition for leave to withdraw the appropriate document with the Authority or presiding officer and serve it upon the other parties. The petition must set forth the reasons for the withdrawal. A party may object to the petition within 20 days of service. After considering the petition, an objection thereto and the public interest, the Authority or presiding officer will determine whether the withdrawal will be permitted.

(b) In an enforcement proceeding initiated by the Authority, trial counsel may withdraw any pleading upon notice to the respondent to be provided under § 1001.51 (relating to service by the Authority).

(c) A protest to an application may be withdrawn by filing a notice of withdrawal directed to the Authority or the presiding officer. The notice must state that the protest is withdrawn and provide the reasons for the withdrawal.

(d) Withdrawal or termination of an uncontested proceeding is governed under § 1001.82 (relating to withdrawal or termination of uncontested matter or proceeding).

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

Cross References

This section cited in 52 Pa. Code § 1001.82 (relating to withdrawal or termination of uncontested matter or proceeding).

MOTIONS**§ 1005.71. Motions.**

(a) *Scope and content.* A request may be made by motion for relief desired, except as may be otherwise expressly provided in this subpart. A motion must set forth the ruling or relief sought, and state the grounds therefore and the statutory or other authority upon which it relies.

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

(d) *Rulings on motions.*

(1) The Authority or presiding officer will rule upon motions when an immediate ruling is essential in order to proceed with the hearing.

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

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

(e) *Preliminary motions.*

(1) Preliminary motions are available to parties and may be filed in response to a pleading, except the following:

(i) Motions.

(ii) Answers to motions.

(2) Preliminary motions must state specifically the legal and factual grounds relied upon and be limited to the following:

(i) Lack of Authority jurisdiction or improper service of the pleading initiating the proceeding.

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

(iii) Insufficient specificity of a pleading.

(iv) Legal insufficiency of a pleading.

(v) Lack of capacity to sue or nonjoinder of a necessary party.

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

(f) *Supersession.* Subsection (a) supersedes 1 Pa. Code § 35.177 (relating to scope and contents of motions). Subsection (b) supersedes 1 Pa. Code § 35.178 (relating to presentation of motions). Subsection (c) supersedes 1 Pa. Code § 35.179 (relating to objections to motions). Subsection (d) supersedes 1 Pa. Code § 35.180 (relating to action on motions). Subsection (e) supersedes 1 Pa. Code §§ 35.54 and 35.55 (relating to motions as to complaints; and motions as to answer).

Cross References

This section cited in 52 Pa. Code § 1005.243 (relating to certification of interlocutory orders).

Subchapter B. HEARINGS

GENERAL

- Sec.
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1005.82. Scheduling of hearing.
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HEARING CONFERENCES

- 1005.91. Conferences generally.

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- 1005.101. Presentation and effect of stipulations.
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HEARINGS

- 1005.111. Order of procedure.
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TRANSCRIPT

- 1005.121. Transcripts generally.
1005.122. Review of testimony.
1005.123. Transcript corrections.
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Cross References

This subchapter cited in 52 Pa. Code § 1005.114 (relating to electronic testimony); and 52 Pa. Code § 1005.203 (relating to appeal hearings).

GENERAL**§ 1005.81. Notice of proceeding; hearing; waiver of hearing.**

(a) When notice and hearing are required under the act, publication in the *Pennsylvania Bulletin* of a notice of application or other initial pleading is sufficient to provide notice of the proceeding. Service on interested persons is also sufficient to provide notice. Hearings will be held upon the filing of the pleading, unless waived by the parties.

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

(c) Subsections (a) and (b) supersede 1 Pa. Code §§ 35.101, 35.103 and 35.121 (relating to waiver of hearing; preliminary notice to Department of Justice; and initiation of hearings).

§ 1005.82. Scheduling of hearing.

(a) A hearing calendar of all matters set for hearing will be maintained by the Clerk and will be in order of assignment as far as practicable. All matters will be heard at TLD Headquarters, unless a different site is designated by the Authority or the presiding officer. The Authority or the presiding officer, in its discretion with or without motion, for cause may at any time with due notice to the parties advance or postpone any proceeding on the hearing calendar.

(b) Hearings will be held before the Authority or presiding officer and all appearances, including staff counsel participating, will be entered upon the record, with a notation on whose behalf each appearance is made. A notation will be made in the record of the names of the members of the staff of the Authority participating, including accountants, and other experts, who are assisting in the investigation of the matter. This subsection supersedes 1 Pa. Code §§ 35.123 and 35.125 (relating to conduct of hearings; and order of procedure).

(c) Subsections (a) and (b) supersede 1 Pa. Code § 35.102 (relating to hearing calendar).

§ 1005.83. Notice of nonrulemaking proceedings.

(a) The Authority or presiding officer is authorized to schedule prehearing conferences and hearings. Parties will 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 parties or their attorneys so far as time and the proper execution of the functions of the Authority permit.

(b) A protestant shall attend the initial hearing or prehearing conference, if one has been scheduled. Failure to attend may result in the dismissal of the protest by the Authority or presiding officer.

(c) Subsection (a) supersedes 1 Pa. Code §§ 35.105 and 35.106 (relating to notice of nonrulemaking proceedings; and contents of notice of nonrulemaking proceedings).

HEARING CONFERENCES

§ 1005.91. Conferences generally.

Conferences will be scheduled and conducted in accordance with 1 Pa. Code §§ 35.111—35.116 (relating to prehearing conferences).

Cross References

This section cited in 52 Pa. Code § 1005.101 (relating to presentation and effect of stipulations); and 52 Pa. Code § 1005.151 (relating to oral examination).

STIPULATIONS

§ 1005.101. Presentation and effect of stipulations.

(a) Parties may stipulate 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 parties to the stipulation with respect to the matters therein stipulated.

(b) The parties may make stipulations independently of orders or rulings issued under § 1005.91 (relating to conferences generally).

(c) The Authority or presiding officer may disregard in whole or in part a stipulation of facts under this section but may grant further hearing if requested by a party to the stipulation within 15 days after issuance of an Authority order disregarding the stipulation of fact.

(d) Subsections (a)—(c) supersede 1 Pa. Code § 35.155 (relating to presentation and effect of stipulations).

Cross References

This section cited in 52 Pa. Code § 1005.151 (relating to oral examination).

§ 1005.102. Restrictive amendments to applications for rights issued by the Authority.

(a) Parties to an application for Authority rights may stipulate as to restrictions or modifications to the proposed rights. Stipulations in the form of restrictive amendments or modifications must:

- (1) Be in writing.
- (2) Explain why the stipulation is in the public interest.
- (3) Be signed by each party to the stipulation.
- (4) Be submitted to the Director for insertion into the document folder.

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

Authority

The provisions of this § 1005.102 temporarily amended under 53 Pa.C.S. § 57B02.

Source

The provisions of this § 1005.102 temporarily amended May 5, 2017, effective February 25, 2017, expire upon promulgation of final-form regulations or on November 5, 2018, whichever is later, as set forth in 53 Pa.C.S. § 57B02(b), 47 Pa.B. 2558. Immediately preceding text appears at serial pages (360378) to (360379).

HEARINGS

§ 1005.111. Order of procedure.

(a) In a proceeding, the 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 will open and close. Oral rejoinder, if proposed by the party with the burden of proof, shall be completed before any cross-examination of the witness is conducted.

(b) The presiding officer will conduct a de novo review for proceedings held under § 1005.24 (relating to appeals from actions of the staff) and the burden of proof rests with the filing party.

(c) Except when the presiding officer determines that it is necessary to develop a comprehensive evidentiary record, the participation of a person granted the right to intervene in a proceeding will be limited to the presentation of evidence through the submission of testimony under § 1005.151 (relating to oral examination).

(d) In proceedings when the evidence is peculiarly within the knowledge or control of another party, the order of presentation in subsections (a) and (c) may be varied by the presiding officer.

(e) The presiding officer may direct the order of parties for purposes of cross-examination, subject to § 1005.112(f) (relating to presentation by parties).

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

Authority

The provisions of this § 1005.111 temporarily amended under 53 Pa.C.S. § 57B02.

Source

The provisions of this § 1005.111 temporarily amended May 5, 2017, effective February 25, 2017, expire upon promulgation of final-form regulations or on November 5, 2018, whichever is later, as set forth in 53 Pa.C.S. § 57B02(b), 47 Pa.B. 2558. Immediately preceding text appears at serial page (360379).

Cross References

This section cited in 52 Pa. Code § 1005.113 (relating to failure to appear, proceed or maintain order in proceedings).

§ 1005.112. Presentation by parties.

(a) A party has the right of presentation of evidence, cross-examination, objection, motion and argument subject to the limitations of this subpart. The taking of evidence and subsequent proceedings shall proceed with reasonable diligence and with the least practicable delay.

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

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

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

(e) A party will not be permitted to introduce evidence during a rebuttal phase which:

- (1) Is repetitive.
- (2) Should have been included in the party's case-in-chief.
- (3) Substantially varies from the party's case-in-chief.

(f) If a party conducts friendly cross-examination of a witness, the presiding officer may permit the other 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.

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

Cross References

This section cited in 52 Pa. Code § 1005.111 (relating to order of procedure).

§ 1005.113. Failure to appear, proceed or maintain order in proceedings.

(a) Except as provided in § 1005.13(c) (relating to citation complaints by the Authority), after being notified, a party who fails to be represented at a scheduled conference or hearing in a proceeding will:

- (1) Be deemed to have waived the opportunity to participate in the conference or hearing.
- (2) Not be permitted thereafter to reopen the disposition of a matter accomplished at the conference or hearing.
- (3) Not be permitted to recall witnesses who were excused from further examination.

(b) Subsection (a) does not apply if the presiding officer determines that the failure to be represented was unavoidable and that the interests of the other parties and of the public would not be prejudiced by permitting the reopening or fur-

ther examination. Counsel shall be expected to go forward with the examination of witnesses at the hearing under § 1005.111 (relating to order of procedure), or as has been otherwise stipulated or has been directed by the presiding officer.

(c) If the Authority or the presiding officer finds, after notice and opportunity for hearing, that the actions of a party, including an intervenor, in a proceeding obstruct the orderly conduct of the proceeding and are inimical to the public interest, the Authority or the presiding officer may take appropriate action, including dismissal of the complaint, application or petition, if the action is that of complainant, applicant or petitioner.

§ 1005.114. Electronic testimony.

(a) *Purpose, scope and definitions.*

(1) The following term, when used in this section, has the following meaning, unless the context clearly indicates otherwise:

Electronic testimony witness—

(A) An individual offered to provide testimony or other evidence at a hearing conducted under Chapter 1005, Subchapter B (relating to hearings) in an enforcement proceeding by telephone or audio-visual means.

(B) This term does not apply to an individual who is one of the following:

(I) An Authority employee.

(II) A regulated party.

(III) An agent or employee of a regulated party.

(2) In-person testimony is normally preferable to testimony by telephone or audio-visual means. There can be reasons to justify receiving testimony by telephone or audio-visual means, including the transitory nature of many of the users of taxicabs and limousines. This section is promulgated to provide the conditions under which testimony by telephone or audio-visual means will be scheduled and received, to safeguard the due process rights of the parties, and to ensure that testimony by telephone or audio-visual means is received under uniformly applied rules.

(3) When the general rules of this subpart conflict with this section, this section controls.

(4) This section applies to the use of an electronic testimony witness in enforcement proceedings initiated by Trial Counsel or the Enforcement Department, or both.

(b) *Scheduling of telephone or audio-visual testimony.*

(1) Scheduling of electronic testimony witnesses shall proceed as follows:

(i) The party seeking to present an electronic testimony witness shall file a written notice with the Clerk. The notice shall be filed more than 20 days before the scheduled hearing date. The notice must contain the name of the proposed electronic testimony witness, the reason an exemption from standard in-person testimony is requested and an offer of proof as to the pro-

posed testimony. A form of notice of intent to use a proposed electronic testimony witness may be obtained on the Authority's web site at www.philapark.org/tld or from TLD Headquarters.

(ii) A party may file written objections to the use of an electronic testimony witness with the Clerk within 10 days of the filing of the notice required under paragraph (2)(i). The objection must set forth the reasons in support thereof.

(iii) The notice required under this paragraph, and any objection thereto, shall be served as provided in Chapter 1001, Subchapter F (relating to service of documents) on the same day the document is filed with the Clerk. A certificate of service shall be filed with the Clerk.

(iv) If a timely objection is not filed under this paragraph, the parties will be deemed to consent to the use of the electronic testimony witness.

(v) The parties may mutually agree to waive the time limitations in this paragraph.

(2) It is within the sole discretion of the presiding officer to permit the use of an electronic testimony witness in consideration of the notice and objection, if any, required under this section. The presiding officer will consider the following factors prior to scheduling the testimony of an electronic testimony witness:

(i) The value of the proposed witness in developing a full and complete record.

(ii) The reason the proposed witness is unable to testify. Particular consideration will be given to reasonable conflicts or challenges associated with employment, childcare, transportation, mobility issues or health reasons.

(iii) The rebuttable presumption that a police officer within the definition of 234 Pa. Code Rule 103 (relating to definitions) should be permitted to testify by telephone or audio-visual means in matters related to the impoundment of a taxicab or limousine, a vehicle acting as a taxicab or limousine, or the alleged criminal conduct of a regulated party.

(iv) If the probative value of the proposed electronic testimony is substantially outweighed by the danger of an unfair prejudice to the opposing party.

(3) Only a witness scheduled to testify by telephone or audio-visual means may testify by telephone or audio-visual means. The testimony of each other witness shall be received in person.

(4) A witness scheduled to testify by telephone or audio-visual means will be permitted to testify in person.

(c) *Hearing process.*

(1) At the start of the hearing, the presiding officer will state on the record the time and telephone or audio-visual numbers at which the presiding officer initiates the contact with an electronic testimony witness.

(2) The presiding officer will permit parties a reasonable opportunity to question electronic testimony witnesses for the purpose of verifying the identity of these witnesses. Falsification of identity is prohibited.

(3) This section does not create special procedures or standards for the presentation, cross-examination, exclusion or weighing of the testimony of an electronic testimony witness or for establishing the creditability of a witness once the witness is scheduled by the presiding officer.

(4) The oath or affirmation administered to an electronic testimony witness shall indicate that the witness will not testify from documents that are not in the record.

(5) The presiding officer, the electronic testimony witness and persons in the room in which the presiding officer is present while telephone or audio-visual testimony is presented shall be able to hear and speak to one another through the telephone or audio-visual connection used to submit testimony under this section.

Source

The provisions of this § 1005.114 adopted May 31, 2013, effective June 1, 2013, 43 Pa.B. 2992.

TRANSCRIPT

§ 1005.121. Transcripts generally.

(a) If required by law, hearings will be stenographically recorded by the Authority's official reporter.

(b) Notwithstanding the review provisions in § 1005.122 (relating to review of testimony), the hearing transcript 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. Changes in the transcript shall be made as provided in § 1005.123 (relating to transcript corrections).

(d) Subsections (a)—(c) supersede 1 Pa. Code § 35.131 (relating to recording of proceedings).

§ 1005.122. Review of testimony.

(a) In proceedings when testimony was electronically recorded and subsequently transcribed, a party may review the recording to ensure it was transcribed accurately.

(b) Review will not be permitted except upon written request within 20 days after the transcript has been filed with the Authority.

(c) Upon request for review, the Authority or presiding officer will schedule a time and place for the review which shall be open to all parties. The court

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reporter 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.

(d) Actual costs associated with making the tapes available for review, including the time of the court reporter, shall be paid by the party requesting review.

(e) Nothing in this section requires the electronic recording of testimony.

Cross References

This section cited in 52 Pa. Code § 1005.121 (relating to transcripts generally).

§ 1005.123. Transcript corrections.

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

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

(c) Proposed corrections shall be filed as follows:

(1) Within 10 days after the transcript has been filed with the Clerk.

(2) Within 10 days after the electronically recorded testimony has been reviewed.

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

(d) Objections or other comments to the proposed corrections shall be filed within 10 days of service of the proposed corrections.

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

(f) The presiding officer will rule upon a proposed correction of a transcript within 20 days of its receipt. A request for corrections not acted upon within 20 days is deemed to be:

(1) Denied if opposed in a timely manner.

(2) Granted if unopposed.

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

Cross References

This section cited in 52 Pa. Code § 1005.121 (relating to transcripts generally).

§ 1005.124. Copies of transcripts.

(a) A party or other person desiring copies of the transcript may obtain copies from the official reporter upon payment of the fees fixed therefore.

(b) Subsection (a) supersedes 1 Pa. Code § 35.133 (relating to copies of transcripts).

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Subchapter C. INTERLOCUTORY REVIEW

Sec.
1005.131. Interlocutory review generally.

§ 1005.131. Interlocutory review generally.

Interlocutory review will be conducted in accordance with 1 Pa. Code § 35.190 (relating to appeals to agency head from rulings of presiding officers). For purposes of implementing this section, the agency head is the Board.

Cross References

This section cited in 52 Pa. Code § 1005.183 (relating to disqualification of a presiding officer); 52 Pa. Code § 1017.52 (relating to impoundment of vehicles and equipment); and 52 Pa. Code § 1055.32 (relating to impoundment of vehicles and equipment).

Subchapter D. EVIDENCE AND WITNESSES

EVIDENCE

- Sec.
1005.141. Admissibility of evidence.
1005.142. Admission of evidence.
1005.143. Control of receipt of evidence.
1005.144. Additional evidence.
1005.145. Effect of pleadings.
1005.146. Public documents.
1005.147. Records of other proceedings.
1005.148. Official and judicial notice of fact.
1005.149. Copies and form of documentary evidence.

WITNESSES

- 1005.151. Oral examination.
1005.152. Written testimony.
1005.153. Offers of proof.

SUBPOENAS

- 1005.161. Subpoenas.
1005.162. Depositions.

CLOSE OF THE RECORD

- 1005.171. Close of the record.

EVIDENCE

§ 1005.141. Admissibility of evidence.

(a) In oral and documentary proceedings, neither the Authority nor the presiding officer will be bound by technical rules of evidence, and all relevant evidence of reasonably probative value may be received. Reasonable examination and cross-examination will be permitted at all oral hearings.

(b) In the discretion of the Authority or presiding officer, evidence may be excluded if:

- (1) It is repetitious or cumulative.
- (2) Its probative value is outweighed by:

- (i) The danger of unfair prejudice.
 - (ii) Confusion of the issues.
 - (iii) Considerations of undue delay or waste of time.
- (c) Subsections (a) and (b) supersede 1 Pa. Code § 35.161 (relating to form and admissibility of evidence).

§ 1005.142. Admission of evidence.

- (a) The Authority or presiding officer will rule on the admissibility of evidence and otherwise control the reception of evidence so as to confine it to the issues in the proceeding.
- (b) For an exhibit to be received into evidence, it will be marked for identification and moved into evidence.
- (c) Subsections (a) and (b) supersede 1 Pa. Code § 35.162 (relating to reception and ruling on evidence).

§ 1005.143. Control of receipt of evidence.

- (a) The Authority or presiding officer has all necessary authority to control the receipt of evidence, including the following:
- (1) Ruling on the admissibility of evidence.
 - (2) Confining the evidence to the issues in the proceeding and impose, when appropriate:
 - (i) Limitations on the number of witnesses to be heard.
 - (ii) Limitations of time and scope for direct and cross-examinations.
 - (iii) Limitations on the production of further evidence.
 - (iv) Other necessary limitations.
- (b) The Authority or presiding officer will actively employ these powers to direct and focus the proceedings consistent with due process.
- (c) Subsections (a) and (b) supersede 1 Pa. Code §§ 35.127, 35.162 and 35.163 (relating to limiting number of witnesses; reception and ruling on evidence; and designation of relevant portions of documentary evidence).

§ 1005.144. Additional evidence.

- (a) At any stage of the hearing or thereafter, the Authority or the presiding officer may call for further admissible evidence upon an issue and require that the evidence be presented by the parties concerned, either at the hearing or at the adjournment thereof. If a hearing has adjourned, the Authority or presiding officer will reconvene the hearing to receive additional evidence. Notice of the intent to reconvene a hearing will be provided to the parties under § 1001.51 (relating to service by the Authority).
- (b) Subsection (a) supersedes 1 Pa. Code § 35.128 (relating to additional evidence).

§ 1005.145. Effect of pleadings.

(a) Pleadings listed in § 1005.1 (relating to pleadings allowed) will, without further action, be considered as part of the record as pleadings.

(b) Except as provided in subsection (c) and in the case of a noncontested proceeding, a pleading or any part thereof may not be considered as evidence of a fact other than that of filing thereof unless offered and received into evidence.

(c) A fact admitted by a 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.

(d) Subsections (a) and (b) supersede 1 Pa. Code § 35.125(d) (relating to order of procedure). Subsection (c) supersedes 1 Pa. Code § 35.35 (relating to answers to complaints and petitions).

§ 1005.146. Public documents.

(a) A report, decision, opinion or other document or part thereof need not be produced or marked for identification, but may be offered in evidence as a public document by specifying the document or part thereof and where it may be found, if the document is one of the following:

(1) A report or other document on file with the Authority.

(2) An official report, decision, opinion, published scientific or economic statistical data or similar public document which is issued by a governmental department, agency, committee, Authority or similar entity which is shown by the offeror to be reasonably available to the public.

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

(c) Subsections (a) and (b) supersede 1 Pa. Code §§ 35.164, 35.165 and 35.166 (relating to documents on file with agency; public documents; and prepared expert testimony).

§ 1005.147. Records of other proceedings.

(a) When a portion of the record in another proceeding before the Authority 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 § 1005.149 (relating to copies and form of documentary evidence), unless both of the following occur:

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

(2) The portion is specified with particularity so as to be readily identified, and upon motion is admitted into evidence by reference to the records of the other proceedings.

(b) Subsection (a) supersedes 1 Pa. Code § 35.167 (relating to records in other proceedings).

§ 1005.148. Official and judicial notice of fact.

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

(b) When the decision of the Authority or the presiding officer rests on official notice or judicial notice of a material fact not appearing in the evidence in the record, 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 Authority 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) Subsections (a)—(d) supersede 1 Pa. Code § 35.173 (relating to official notice of facts).

§ 1005.149. Copies and form of documentary evidence.

(a) Except as otherwise provided in this subpart, when exhibits of a documentary character are offered in evidence, copies shall be furnished to the presiding officer and to the 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 Authority unless otherwise directed by the presiding officer.

(b) Whenever practicable, all exhibits of a documentary character received in evidence must be on paper of good quality and so prepared as to be plainly legible and durable, whether printed, typewritten or otherwise reproduced, and conform to Chapter 1001, Subchapter D (relating to documentary filings) whenever practicable.

(c) Subsection (a) supersedes 1 Pa. Code § 35.169 (relating to copies to parties and agency). Subsection (b) supersedes 1 Pa. Code § 35.168 (relating to form and size of documentary evidence).

Cross References

This section cited in 52 Pa. Code § 1005.34 (relating to filing of petitions to intervene); and 52 Pa. Code § 1005.149 (relating to records of other proceedings).

WITNESSES

§ 1005.151. Oral examination.

(a) Witnesses shall be examined orally unless the testimony is taken by deposition as permitted by the Authority or presiding officer or the facts are stipulated

in the manner provided in § 1005.91 or § 1005.101 (relating to conferences generally; and presentation and effect of stipulations) or the testimony of expert witnesses is submitted in prepared written form as permitted by the Authority or presiding officer. Witnesses whose testimony is to be taken shall be sworn, or shall affirm, before their testimony shall be deemed evidence in the proceeding or any questions are put to them.

(b) Subsection (a) supersedes 1 Pa. Code § 35.137 (relating to oral examination).

Cross References

This section cited in 52 Pa. Code § 1005.111 (relating to order of procedure).

§ 1005.152. Written testimony.

(a) *General.* Use of written testimony in Authority proceedings is encouraged, especially in connection with the testimony of witnesses determined by the Authority or presiding officer to be experts. Written direct testimony is required of expert witnesses testifying in rate cases.

(b) *Use.* The Authority or presiding officer may direct that expert testimony to be given upon direct examination be submitted as prepared written testimony. A reasonable period of time will be allowed 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.* Cross-examination of the witness presenting written testimony shall proceed at the hearing at which testimony is authenticated if service of the written testimony is made upon each party of record at least 20 days prior to the hearing, unless the presiding officer for good cause otherwise directs. In a rate proceeding, the presiding officer or the Authority will establish the schedule for the filing and authentication of written testimony, and for cross-examination by other parties.

(e) *Form.* Written testimony must 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 party offering prepared written testimony shall insert line numbers in the left-hand margin on each page. A 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 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 Clerk.

(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).

§ 1005.153. Offers of proof.

(a) An offer of proof may be requested when opposing counsel contends the witness is not competent to testify to the subject matter or that the evidence to be offered is inadmissible. An offer of proof also may be made when the presiding officer has sustained an objection to the admission of testimony or tangible evidence. If the proffered evidence is tangible, it shall be marked for identification and constitute the offer of proof. If the proffered evidence is oral testimony, the offer of proof shall consist of a summary of the evidence which counsel contends would be adduced by the testimony. The presiding officer may also request a statement of the basis for admissibility of the evidence.

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

SUBPOENAS

§ 1005.161. Subpoenas.

Matters related to subpoenas shall be as provided in 1 Pa. Code § 35.142 (relating to subpoenas).

§ 1005.162. Depositions.

Matters related to depositions shall be as provided in 1 Pa. Code §§ 35.145—35.152 (relating to depositions).

CLOSE OF THE RECORD

§ 1005.171. Close of the record.

(a) The record will be closed at the conclusion of the hearing unless otherwise directed by the Authority or presiding officer.

(b) After the record is closed, additional matter may not be relied upon or accepted into the record unless allowed for good cause shown by the Authority or presiding officer upon motion.

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

Subchapter E. PRESIDING OFFICERS

Sec.

1005.181. Designation of presiding officer.

1005.182. Qualifications.

1005.183. Disqualification of a presiding officer.

1005.184. Authority of presiding officer.

1005.185. Restrictions on duties and activities.

1005.186. Manner of conduct of hearings.

1005.187. Unavailability of presiding officer.

§ 1005.181. Designation of presiding officer.

(a) When evidence is to be taken in a proceeding, either the Authority, a standing presiding officer appointed under § 1003.73(b) (relating to Adjudication Department) or an Authority representative appointed according to law and qualified as provided in § 1005.182 (relating to qualifications) may preside at the hearing.

(b) Subsection (a) supersedes 1 Pa. Code § 35.185 (relating to designation of presiding officers).

Cross References

This section cited in 52 Pa. Code § 1005.182 (relating to qualifications).

§ 1005.182. Qualifications.

(a) An authority representative appointed as provided in § 1005.181 (relating to designation of presiding officer) will be one of the following:

(1) A member of the Authority.

(2) The Director.

(3) An attorney admitted to practice law before the Supreme Court of Pennsylvania for at least 7 years prior to the date of designation.

(b) A presiding officer appointed to preside over an enforcement proceeding shall meet the qualifications in subsection (a)(3).

Cross References

This section cited in 52 Pa. Code § 1005.181 (relating to designation of presiding officer).

§ 1005.183. Disqualification of a presiding officer.

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

(b) A presiding officer may withdraw from a proceeding when deemed disqualified in accordance with law.

(c) A motion for disqualification shall be filed with the Clerk and served on the presiding officer and the parties to the proceeding.

(d) The presiding officer will rule upon a motion for disqualification within 30 days of receipt. Failure to rule upon a motion for disqualification within 30 days of its receipt will be deemed to be a denial of the motion.

(e) The ruling of the presiding officer on a motion for disqualification is subject to the interlocutory appeal procedure in § 1005.131 (relating to interlocutory review generally).

(f) Subsections (a)—(e) supersede 1 Pa. Code § 35.186 (relating to disqualification of a presiding officer).

Cross References

This section cited in 52 Pa. Code § 1005.181 (relating to designation of presiding officer).

§ 1005.184. Authority of presiding officer.

(a) The presiding officer will have the authority, within the powers of the act, this part or an order of the Authority. This authority includes, but is not limited to, the power to exclude irrelevant, immaterial or unduly repetitive evidence, to prevent excessive examination of witnesses, to schedule and impose reasonable limitations on discovery and to otherwise regulate the course of the proceeding.

(b) Upon the conclusion of a proceeding, the presiding officer will have the authority to issue a decision. Each decision of a presiding officer will be considered a recommended decision as provided in § 1005.201 (relating to recommended decisions generally), except as provided in section 5705(a) of the act (relating to contested complaints).

(c) Subsections (a) and (b) supersede 1 Pa. Code § 35.187 (relating to authority delegated to presiding officers).

§ 1005.185. Restrictions on duties and activities.

(a) Presiding officers will not perform duties inconsistent with their duties and responsibilities as such.

(b) Except as required for the disposition of ex parte matters not prohibited by the act, a presiding officer will not consult a person or party on a fact in issue unless upon notice and opportunity for all parties to participate.

(c) Subsections (a) and (b) supersede 1 Pa. Code § 35.188 (relating to restrictions on duties and activities).

§ 1005.186. Manner of conduct of hearings.

(a) The presiding officer will conduct a fair and impartial hearing and maintain order.

(b) The presiding officer may note on the record a party's disregard of a ruling. When necessary, the presiding officer may submit a report to the Authority recommending suspension and disbarment of the offending person as provided by § 1001.27 (relating to suspension and disbarment).

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

§ 1005.187. Unavailability of presiding officer.

(a) If a presiding officer becomes unavailable, the Adjudication Department's supervising presiding officer may either designate another qualified standing presiding officer to prepare the initial or recommended decision or cause the record to be certified to the Authority for decision.

(b) Subsection (a) supersedes 1 Pa. Code § 35.203 (relating to unavailability of presiding officer).

Subchapter F. BRIEFS

Sec.

1005.191. Content and form of briefs.

1005.192. Filing and service of briefs.

Cross References

This subchapter cited in 52 Pa. Code § 1005.204 (relating to briefs and oral argument before presiding officer).

§ 1005.191. Content and form of briefs.

(a) When briefs are required by this part or upon direction of the Authority or presiding officer in a proceeding, the brief must contain the following:

(1) A concise statement or counter-statement of the case.

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

(3) An argument preceded by a summary. The party with the burden of proof shall, in its main or initial brief, completely address, to the extent possible, every issue raised by the relief sought and the evidence adduced at hearing.

(4) A conclusion with requested relief.

(b) Briefs must also contain the following, if and as directed by the presiding officer:

(1) A statement of the questions involved.

(2) Proposed findings of fact with references to transcript pages or exhibits where evidence appears, together with proposed conclusions of law.

(3) Proposed ordering paragraphs specifically identifying the relief sought.

(c) Exhibits should not be reproduced in the brief, but may, if desired, be reproduced in an appendix to the brief.

(d) Briefs of more than 20 pages must contain on their front leaves a table of contents with page references and a table of citations, which may be prepared without pagination.

(e) Briefs must be as concise as possible and, except for briefs in rate cases, be limited to 60 pages in length, unless some other limitation is imposed or allowed by the presiding officer. The length of briefs in rate cases will be controlled by the presiding officer.

(f) Subsections (a)—(e) supersede 1 Pa. Code § 35.192 (relating to content and form of briefs).

§ 1005.192. Filing and service of briefs.

(a) *Service.* Copies shall be served on the parties in accordance with § 1001.57 (relating to number of copies to be served).

(b) *Number of copies.* An original and 12 copies of a brief shall be filed with the Clerk in proceedings before the Authority, with only 3 copies filed in proceedings before a presiding officer.

(c) *Filing of briefs in nonrate proceedings.*

(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.

(d) *Filing 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.

(e) *Filing of amicus curiae briefs.* A person interested in the issues involved in an Authority proceeding, although not a party, may, without applying for leave to do so, file amicus curiae briefs with the Clerk in regard to those issues. Unless otherwise ordered, amicus curiae briefs shall be filed and served in the manner and number required and within the time allowed by this section, absent good cause.

(f) *Deadlines.* Initial briefs, main briefs, responsive briefs and reply briefs shall be filed and served within the time fixed by the presiding officer. If no specific times are fixed, initial briefs or main briefs shall be filed and served within 20 days after the date of service of notice of the filing of the transcript and responsive briefs or reply briefs shall be filed within 20 days after date of service of the notice of the filing of the transcript.

(g) *Late-filed briefs.* Briefs not filed and served on or before the dates fixed therefore will not be accepted, except by special permission of the Authority or the presiding officer as permitted under § 1001.15 (relating to extensions of time and continuances).

(h) *Supersession.* Subsections (a)—(g) 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 G. RECOMMENDED DECISIONS AND APPEALS**RECOMMENDED DECISIONS**

Sec.

- 1005.201. Recommended decisions generally.
- 1005.202. Certification of record without decision.
- 1005.203. Appeal hearings.
- 1005.204. Briefs and oral argument before presiding officer.

EXCEPTIONS TO RECOMMENDED DECISIONS

- 1005.211. Exceptions to recommended decisions.
- 1005.212. Replies.
- 1005.213. Final orders and effect of failure to file exceptions.
- 1005.214. Oral argument before the Authority.
- 1005.215. Withdrawal of appeals.

RECOMMENDED DECISIONS**§ 1005.201. Recommended decisions generally.**

- (a) This subchapter applies only to proceedings referred to a presiding officer for a recommended decision by a provision of this part or order of the Authority.
- (b) The Authority will employ the use of recommended decisions in lieu of proposed reports.

Cross References

This section cited in 52 Pa. Code § 1003.54 (relating to protests); 52 Pa. Code § 1003.73 (relating to Adjudication Department); 52 Pa. Code § 1005.24 (relating to appeals from actions of the staff); 52 Pa. Code § 1005.184 (relating to authority of presiding officer); 52 Pa. Code § 1005.202 (relating to certification of record without decision); and 52 Pa. Code § 1011.4 (relating to annual assessments and renewal fees).

§ 1005.202. Certification of record without decision.

- (a) If a proceeding is referred to a presiding officer as provided in § 1005.201 (relating to recommended decisions generally), that officer will normally file a decision. The record will be certified to the Authority without a decision of the presiding officer only as required or allowed by the Authority.
- (b) Subsection (a) supersedes 1 Pa. Code §§ 35.201—35.207 (relating to proposed reports generally).

Cross References

This section cited in 52 Pa. Code § 1003.54 (relating to protests); 52 Pa. Code § 1003.73 (relating to Adjudication Department); 52 Pa. Code § 1005.24 (relating to appeals from actions of the staff); and 52 Pa. Code § 1011.4 (relating to annual assessments and renewal fees).

§ 1005.203. Appeal hearings.

In the event a matter is referred to a presiding officer with instructions to conduct hearings to develop an evidentiary record or if the petition for appeal avers a material factual dispute which the presiding officer determines necessitates a hearing, the hearing will be conducted as provided in Subchapter B (relating to hearings).

Cross References

This section cited in 52 Pa. Code § 1003.54 (relating to protests); 52 Pa. Code § 1003.73 (relating to Adjudication Department); 52 Pa. Code § 1005.24 (relating to appeals from actions of the staff); and 52 Pa. Code § 1011.4 (relating to annual assessments and renewal fees).

§ 1005.204. Briefs and oral argument before presiding officer.

(a) In matters which do not require a hearing to develop an evidentiary record, the presiding officer may issue a recommended decision upon review of the petition and answer, if any.

(b) On the presiding officer's own motion or at the request of a party, the presiding officer may order the filing of briefs in a form consistent with Subchapter F (relating to briefs) on a schedule the presiding officer deems appropriate.

(c) In the event briefs are filed, on the presiding officer's own motion or at the request of a party the presiding officer may order the presentation of oral argument and impose limits on the argument that are deemed appropriate. When determining the propriety of oral argument the presiding officer will consider the limitations of time, the nature of the proceedings, the complexity or importance of the issues of fact or law involved and the public interest.

(d) Subsections (a)—(c) supersede 1 Pa. Code § 35.204 (relating to oral argument before presiding officer).

Cross References

This section cited in 52 Pa. Code § 1003.54 (relating to protests); 52 Pa. Code § 1003.73 (relating to Adjudication Department); 52 Pa. Code § 1005.24 (relating to appeals from actions of the staff); and 52 Pa. Code § 1011.4 (relating to annual assessments and renewal fees).

EXCEPTIONS TO RECOMMENDED DECISIONS**§ 1005.211. Exceptions to recommended decisions.**

(a) Subject to subsection (f), a party may file written exceptions to the recommended decision of a presiding officer with the Clerk within 15 days after the 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 must follow each specific exception.

(c) The exceptions must be concise. The exceptions and supporting reasons must be limited to 20 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 Clerk.

(d) An original and 12 copies of the exceptions shall be filed with the Clerk.

(e) Unless otherwise ordered by the Authority, §§ 1001.11 and 1001.54 (relating to date of filing; and date of service) will not be available to extend the time periods for filing exceptions.

(f) A presiding officer's decision related to an enforcement proceeding will not be subject to exception or administrative appeal, except as provided in section 5705(a) of the act (relating to contested complaints).

(g) Subsections (a)—(f) 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).

Cross References

This section cited in 52 Pa. Code § 1003.13 (relating to hearings following issuance of emergency orders); 52 Pa. Code § 1003.25 (relating to Authority review of interim emergency orders); 52 Pa. Code § 1003.32 (relating to out of service designation); 52 Pa. Code § 1003.51 (relating to applications generally); 52 Pa. Code § 1005.213 (relating to final orders and effect of failure to file exceptions); 52 Pa. Code § 1005.214 (relating to oral argument before the Authority); and 52 Pa. Code § 1011.4 (relating to annual assessments and renewal fees).

§ 1005.212. Replies.

(a) A party has the right to file a reply to an exception in proceedings before the Authority. Unless otherwise directed by the Authority or presiding officer, a reply shall be filed within 10 days of the date that an exception is filed and be limited to 20 pages in length and in paragraph form. A reply must be concise and incorporate by reference relevant passages in previously filed briefs. A reply may not raise new arguments or issues, but be limited to responding to the arguments or issues in the exception.

(b) Unless otherwise ordered by the Authority, §§ 1001.11 and 1001.54 (relating to date of filing; and date of service) will not be available to extend the time periods for filing replies to an exception.

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

Cross References

This section cited in 52 Pa. Code § 1003.13 (relating to hearings following issuance of emergency orders); 52 Pa. Code § 1003.25 (relating to Authority review of interim emergency orders); and 52 Pa. Code § 1003.32 (relating to out of service designation).

§ 1005.213. Final orders and effect of failure to file exceptions.

(a) *Enforcement proceedings.* A presiding officer's decision related to an enforcement proceeding will become a final order or adjudication of the Authority as provided in section 5705(a) of the act (relating to contested complaints).

(b) *Other proceedings.* If no exceptions are filed in a proceeding included within § 1005.211(a) (relating to exceptions to recommended decisions), the decision of the presiding officer will become a final order or adjudication of the Authority without further Authority action unless, within 15 days after the decision is issued, two or more members of the Authority request that the General Counsel schedule the decision for Authority review. Authority action on exceptions will be a final order or adjudication.

(c) *Supersession.* Subsections (a) and (b) supersede 1 Pa. Code §§ 35.213 and 35.226 (relating to effect of failure to except to proposed report; and final orders).

Cross References

This section cited in 52 Pa. Code § 1001.13 (relating to issuance of Authority orders); 52 Pa. Code § 1003.13 (relating to hearings following issuance of emergency orders); 52 Pa. Code § 1003.25 (relating to Authority review of interim emergency orders); and 52 Pa. Code § 1003.32 (relating to out of service designation).

§ 1005.214. Oral argument before the Authority.

(a) In a case brought to the Authority by the filing of an exception or appeal, a request for oral argument before the Authority shall be filed in writing together with the appeal.

(b) In a case where exceptions are filed under § 1005.211 (relating to exceptions to recommended decisions), a request for oral argument before the Authority shall be filed in writing together with exceptions to the recommended decision or a reply.

(c) In a case where a recommended decision will not be issued, a request for oral argument before the Authority shall be filed in writing together with the initial or responding brief.

(d) If oral argument is ordered, it shall be limited, unless otherwise specified, to matters properly raised by the briefs.

(e) Subsections (a)—(d) supersede 1 Pa. Code §§ 35.214 and 35.221 (relating to oral argument on exceptions; and briefs and oral argument in absence of proposed report).

Cross References

This section cited in 52 Pa. Code § 1003.13 (relating to hearings following issuance of emergency orders); 52 Pa. Code § 1003.25 (relating to Authority review of interim emergency orders); and 52 Pa. Code § 1003.32 (relating to out of service designation).

§ 1005.215. Withdrawal of appeals.

(a) The filing of exceptions to a recommended decision will be deemed to be an appeal to the Authority of the recommended decision and is subject to review by the Authority.

(b) An appeal to the Authority may be withdrawn at any time. If the presiding officer's previous decision is not otherwise subject to Authority review, it becomes final and effective upon the filing of a notice of withdrawal.

Cross References

This section cited in 52 Pa. Code § 1003.13 (relating to hearings following issuance of emergency orders); 52 Pa. Code § 1003.25 (relating to Authority review of interim emergency orders); and 52 Pa. Code § 1003.32 (relating to out of service designation).

Subchapter H. REOPENING, RECONSIDERATION AND REHEARING

Sec.

1005.221. Reopening prior to a final decision.

1005.222. Petitions for relief.

§ 1005.221. Reopening prior to a final decision.

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

(b) A petition to reopen must set forth clearly the facts claimed to constitute grounds requiring reopening of the proceeding, including material changes of fact or of law alleged to have occurred since the conclusion of the hearing.

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

(d) The record may 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 Authority.

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

(e) Subsections (a)—(e) supersede 1 Pa. Code §§ 35.231—35.233 (relating to reopening of record).

§ 1005.222. Petitions for relief.

(a) Petitions for rehearing, reargument, reconsideration, clarification, rescission, amendment, supersedeas or the like must be in writing and specify, in numbered paragraphs, the findings or orders involved, and the points relied upon by petitioner, with appropriate record references and specific requests for the findings or orders desired.

(b) A copy of every petition covered under subsection (a) shall be served upon each party to the proceeding.

(c) Petitions for reconsideration, rehearing, reargument, clarification, supersedeas or others shall be filed within 10 days after the Authority order involved is entered or otherwise becomes final.

(d) Answers to a petition covered under subsection (a) shall be filed and served within 10 days after service of a petition.

(e) The filing of a petition as provided in this section will not act to toll any period of appeal related to judicial review of an Authority action. The expiration of a period of appeal without action by the Authority will be deemed a denial of the petition by the Authority.

(f) Subsections (a)—(e) supersede 1 Pa. Code § 35.241 (relating to application for rehearing or reconsideration).

Subchapter I. REPORTS OF COMPLIANCE

Sec.

1005.231. Reports of compliance.

1005.232. Compliance with orders prescribing rates.

§ 1005.231. Reports of compliance.

(a) A person subject to the jurisdiction of the Authority who is required to do or perform an act by an Authority order, certificate, registration, driver's certificate or other right shall file with the Director 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 Authority, by regulation, by order or by making specific provision thereof in the certificate, registration, driver's certificate or other right provides otherwise for compliance or proof of compliance. The notice shall be accompanied by a verification in accordance with § 1001.36 (relating to verification and affidavit).

(c) Subsections (a) and (b) supersede 1 Pa. Code § 35.251 (relating to reports of compliance).

§ 1005.232. Compliance with orders prescribing rates.

(a) When the Authority makes a final decision concerning a rate filing and permits or requires the adoption of rates other than the rates originally filed, the certificate holder affected shall file, within 20 days of entry of the final order, a tariff revision consistent with the Authority's decision together with a proof of revenues and supporting calculations. The certificate holder shall simultaneously serve copies of the tariff revision, along with the proof of revenues and supporting calculations, on the parties in the proceeding. A utility may also be required to provide an electronic, red-lined copy of any filing made to assist the parties in promptly identifying and analyzing the filing.

(b) Unless otherwise specified in the order, the tariff revision shall be effective upon statutory notice to the Authority 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 Philadelphia Parking Authority, entered _____ 2 ____ (date) at ____ : ____ (time)."

(c) Exceptions to a tariff revision under this section may be filed by a party to the proceeding within 10 days of the date of service of the compliance filing, and must be strictly limited in scope to the factual issue of alleged deviation from requirements of the Authority order. The utility making the compliance filing may respond to exceptions within 5 days. Further pleadings will not be permitted.

(d) Rates contained in a tariff revision filed in compliance with an Authority order may not be imposed prior to entry of a subsequent order by the Authority approving the compliance filing. Notwithstanding the filing of an exception, the Authority may allow the compliance rates to become effective.

Subchapter J. APPEALS TO COURT

Sec.

1005.241. Notice of taking appeal.

1005.242. Preparation and certification of records.

1005.243. Certification of interlocutory orders.

§ 1005.241. Notice of taking appeal.

When an appeal is taken from an order of the Authority to the Court of Common Pleas of Philadelphia County, the appellant shall immediately give notice of the appeal to all parties to the Authority proceeding, the Clerk and the General Counsel, as provided under § 1001.52 (relating to service by a party).

Authority

The provisions of this 1005.241 temporarily amended under 53 Pa.C.S. § 57B02.

Source

The provisions of this § 1005.241 temporarily amended May 5, 2017, effective February 25, 2017, expire upon promulgation of final-form regulations or on November 5, 2018, whichever is later, as set forth in 53 Pa.C.S. § 57B02(b), 47 Pa.B. 2558. Immediately preceding text appears at serial page (360399).

§ 1005.242. Preparation and certification of records.

A record will not be certified as complete until copies of exhibits or other papers have been furnished when necessary to complete the Authority file. Copies will be requested by the Authority.

§ 1005.243. Certification of interlocutory orders.

(a) When the Authority has made an order which is not a final order, a party may by motion request that the Authority 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 Court of Common Pleas of Philadelphia County 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 under § 1005.71 (relating to motions). Unless the Authority acts within 30 days after the filing of the motion, the motion will be deemed denied.

(b) Neither the filing of a motion under subsection (a), nor the adoption of an amended order containing the requested finding, will stay a proceeding unless otherwise ordered by the Authority or Court of Common Pleas of Philadelphia County.

(c) Subsections (a) and (b) supersede 1 Pa. Code § 35.225 (relating to interlocutory orders).

Authority

The provisions of this § 1005.243 temporarily amended under 53 Pa.C.S. § 57B02.

Source

The provisions of this § 1005.243 temporarily amended May 5, 2017, effective February 25, 2017, expire upon promulgation of final-form regulations or on November 5, 2018, whichever is later, as set forth in 53 Pa.C.S. § 57B02(b), 47 Pa.B. 2558. Immediately preceding text appears at serial page (360400).

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