

CHAPTER 3. SPECIAL PROVISIONS

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Cross References

This chapter cited in 52 Pa. Code § 1.32 (relating to filing specifications); 52 Pa. Code § 1.91 (relating to applications for waiver of formal requirements); 52 Pa. Code § 5.12 (relating to contents of applications); 52 Pa. Code § 5.103 (relating to hearing motions); 52 Pa. Code § 5.231 (relating to offers of settlement); 52 Pa. Code § 5.233 (relating to refusal to make admissions or stipulate); 52 Pa. Code § 5.409 (relating to copies and form of documentary evidence); 52 Pa. Code § 57.39 (relating to informal consultation and Commission proceedings); 52 Pa. Code § 64.161 (relating to general rule); and 52 Pa. Code § 77.5 (relating to resolution of disputes).

Subchapter A. SPECIAL COMMISSION ACTIONS

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EMERGENCY RELIEF

§ 3.1. Definitions.

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

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

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

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

Authority

The provisions of this § 3.1 amended under the Public Utility Code, 66 Pa.C.S. §§ 309—311, 315, 331—335, 501, 504—506, 701—703, 1101—1103, 1301 and 1501.

Source

The provisions of this § 3.1 amended October 12, 1984, effective January 1, 1985, 14 Pa.B. 3819; amended November 21, 1986, effective November 22, 1986, 16 Pa.B. 4564; amended December 2, 1988, effective January 3, 1988, 18 Pa.B. 5451; amended January 24, 1997, effective January 25, 1997, 27 Pa.B. 414; amended April 28, 2006, effective April 29, 2006, 36 Pa.B. 2097. Immediately preceding text appears at serial page (263604).

Notes of Decisions

Emergency Relief

Homeowners association had no clear right to emergency relief as each condominium unit is a separate electric-consuming facility and not a part of the association. *Glade Park East Home Owners Association v. Pennsylvania Public Utility Commission*, 628 A.2d 468 (Pa. Cmwlth. 1993).

Practice and Procedure

Since the rules and regulations governing practice and procedure before the PUC do not contain provisions regarding the timeliness of filings and the date of issuance of orders for agency purposes, sections 31.11 and 31.13 of the General Rules of Administrative Practice and Procedure, 1 Pa. Code §§ 31.11, 31.13, are controlling for these purposes. *Carol Lines, Inc. v. Pennsylvania Public Utility Commission*, 481 A.2d 990 (Pa. Cmwlth. 1984).

Cross References

This section cited in 52 Pa. Code § 3.384 (relating to disposition of applications for ETA and TA).

EX PARTE EMERGENCY ORDERS**§ 3.2. Petitions for issuance of emergency orders.**

(a) To the extent practicable, a petition for emergency order must be in the form of a petition as set forth in § 5.41 (relating to petitions generally) and shall be served on the persons directly affected by the application.

(b) A petition for emergency order must be supported by a verified statement of facts which establishes the existence of an emergency, including facts to support the following:

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

Authority

The provisions of this § 3.2 amended under the Public Utility Code, 66 Pa.C.S. §§ 309—311, 315, 331—335, 501, 504—506, 701—703, 1101—1103, 1301 and 1501.

Source

The provisions of this § 3.2 amended October 12, 1984, effective January 1, 1985, 14 Pa.B. 3819; amended December 2, 1988, effective January 3, 1989, 18 Pa.B. 5451; amended January 24, 1997, effective January 25, 1997, 27 Pa.B. 414; amended April 28, 2006, effective April 29, 2006, 36 Pa.B. 2097. Immediately preceding text appears at serial pages (263604) and (225589).

§ 3.3. Disposition of ex parte emergency orders.

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

(b) *Form.* An emergency order will be issued in writing and filed with the Secretary with copies to Commissioners and the Director of Operations.

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

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

Authority

The provisions of this § 3.3 amended under the Public Utility Code, 66 Pa.C.S. §§ 309—311, 315, 331—335, 501, 504—506, 701—703, 1101—1103, 1301 and 1501.

Source

The provisions of this § 3.3 amended October 12, 1984, effective January 1, 1985, 14 Pa.B. 3819; amended December 2, 1988, effective January 3, 1989, 18 Pa.B. 5451; amended January 24, 1997, effective January 25, 1997, 27 Pa.B. 414; amended April 28, 2006, effective April 29, 2006, 36 Pa.B. 2097. Immediately preceding text appears at serial page (225589).

§ 3.4. Hearings following issuance of emergency orders.

(a) A person against whom an emergency order is issued may file a petition for an expedited hearing to determine whether the emergency order will remain in effect. The petition must conform to the form and service requirements in §§ 5.41—5.44 (relating to petitions generally).

(b) The petition for expedited hearing shall be filed with the Secretary and a copy served upon the Chief Administrative Law Judge.

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

(d) If the emergency order is issued by a single Commissioner or the Director of Operations or by the Commission's Secretary, the presiding officer will have the authority to stay the effect of the order until the next scheduled public meeting.

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

Authority

The provisions of this § 3.4 amended under the Public Utility Code, 66 Pa.C.S. §§ 309—311, 315, 331—335, 501, 504—506, 701—703, 1101—1103, 1301 and 1501.

Source

The provisions of this § 3.4 amended March 14, 1975, effective March 15, 1975, 5 Pa.B. 479; amended October 12, 1984, effective January 1, 1985, 14 Pa.B. 3819; amended December 2, 1988, effective January 3, 1989, 18 Pa.B. 5451; amended January 24, 1997, effective January 25, 1997, 27 Pa.B. 414; amended April 28, 2006, effective April 29, 2006, 36 Pa.B. 2097. Immediately preceding text appears at serial pages (225589) to (225590).

§ 3.5. [Reserved].

Source

The provisions of this § 3.5 amended April 16, 1976, effective April 17, 1976, 6 Pa.B. 911; amended October 12, 1984, effective January 1, 1985, 14 Pa.B. 3819; amended January 24, 1997, effective January 25, 1997, 27 Pa.B. 414; reserved April 28, 2006, effective April 29, 2006, 36 Pa.B. 2097. Immediately preceding text appears at serial page (225590).

INTERIM EMERGENCY RELIEF**§ 3.6. Petitions for interim emergency orders.**

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

(b) To the extent practicable, a petition for an interim emergency order must be in the form of a petition as set forth in § 5.41 (relating to petitions generally). A petition for an interim emergency order must be supported by a verified statement of facts which establishes the existence of the need for interim emergency relief, including facts to support the following:

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

(c) Allegations set forth in the petition shall be deemed to have been denied by the opposing parties, and an answer is not required. A party may file an answer in the form set forth in § 5.61 (relating to answers to complaints, petitions and motions) no later than 5 days after service of a copy of the petition.

(d) Other pleadings, memoranda or briefs related to a petition for interim emergency order are not permitted unless specifically requested by the presiding officer.

Authority

The provisions of this § 3.6 amended under the Public Utility Code, 66 Pa.C.S. §§ 309—311, 315, 331—335, 501, 504—506, 701—703, 1101—1103, 1301 and 1501.

Source

The provisions of this § 3.6 adopted November 21, 1986, effective November 22, 1986, 16 Pa.B. 4564; amended December 2, 1988, effective January 3, 1989, 18 Pa.B. 5451; amended January 24, 1997, effective January 25, 1997, 27 Pa.B. 414; amended April 28, 2006, effective April 29, 2006, 36 Pa.B. 2097. Immediately preceding text appears at serial pages (225590) and (263605).

Cross References

This section cited in 52 Pa. Code § 3.7 (relating to issuance of interim emergency orders).

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

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

Authority

The provisions of this § 3.6a issued under the Public Utility Code, 66 Pa.C.S. §§ 501, 504—506, 1301 and 1501.

Source

The provisions of this § 3.6a adopted April 28, 2006, effective April 29, 2006, 36 Pa.B. 2097.

§ 3.7. Issuance of interim emergency orders.

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

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

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

Authority

The provisions of this § 3.7 amended under the Public Utility Code, 66 Pa.C.S. §§ 309—311, 315, 331—335, 501, 504—506, 701—703, 1101—1103, 1301 and 1501.

Source

The provisions of this § 3.7 adopted November 21, 1986, effective November 22, 1986, 16 Pa.B. 4564; amended December 2, 1988, effective January 3, 1989, 18 Pa.B. 5451; amended January 24, 1997, effective January 25, 1997, 27 Pa.B. 414; amended April 28, 2006, effective April 29, 2006, 36 Pa.B. 2097. Immediately preceding text appears at serial pages (263605) to (263606).

Notes of Decisions*Economic Losses*

Although monetary losses generally are insufficient to support an emergency order, economic losses can satisfy the rule's irreparable injury requirement. *West Penn Power Co. v. Pennsylvania Public Utility Commission*, 615 A.2d 951 (Pa. Cmwlth. 1992); appeal denied 655 A.2d 520 (Pa. 1993); cert. denied 115 S. Ct. 311 (U. S. 1994).

Economic detriment alone does not constitute the existence of an emergency for purposes of issuing a temporary interim emergency order. *Peoples Natural Gas v. Pennsylvania Public Utility Commission*, 555 A.2d 288 (Pa. Cmwlth. 1989).

§ 3.8. Form of interim emergency orders.

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

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

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

Authority

The provisions of this § 3.8 amended under the Public Utility Code, 66 Pa.C.S. §§ 501, 504—506, 1301 and 1501.

Source

The provisions of this § 3.8 adopted November 21, 1986, effective November 22, 1986, 16 Pa.B. 4564; amended January 24, 1997, effective January 25, 1997, 27 Pa.B. 414; amended April 28, 2006, effective April 29, 2006, 36 Pa.B. 2097. Immediately preceding text appears at serial page (263606).

§ 3.9. [Reserved].**Source**

The provisions of this § 3.9 adopted November 21, 1986, effective November 22, 1986, 16 Pa.B. 4564; amended December 2, 1988, effective January 3, 1989, 18 Pa.B. 5451; reserved April 28, 2006, effective April 29, 2006, 36 Pa.B. 2097. Immediately preceding text appears at serial page (263606).

§ 3.10. Commission review of interim emergency orders.

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

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

Authority

The provisions of this § 3.10 amended under the Public Utility Code, 66 Pa.C.S. §§ 309–311, 315, 331–335, 501, 504–506, 701–703, 1101–1103, 1301 and 1501.

Source

The provisions of this § 3.10 adopted November 21, 1986, effective November 22, 1986, 16 Pa.B. 4564; amended December 2, 1988, effective January 3, 1989, 18 Pa.B. 5451; amended January 24, 1997, effective January 25, 1997, 27 Pa.B. 414; amended April 28, 2006, effective April 29, 2006, 36 Pa.B. 2097. Immediately preceding text appears at serial pages (263606) and (225593).

§ 3.11. Duration of interim emergency orders.

An interim emergency order shall expire upon entry of the final Commission order which ends the pending proceeding unless otherwise specified.

Source

The provisions of this § 3.11 adopted November 21, 1986, effective November 22, 1986, 16 Pa.B. 4564.

§ 3.12. Applicability to transportation proceedings.

Nothing in this subchapter shall be construed as preempting or modifying the procedures set forth in §§ 3.383–3.385 (relating to applications for temporary authority and emergency temporary authority; disposition of applications; and rates, fares and charges for TA and ETA authorities).

Source

The provisions of this § 3.12 adopted November 21, 1986, effective November 22, 1986, 16 Pa.B. 4564.

§ 3.21. [Reserved].**Source**

The provisions of this § 3.21 amended April 16, 1976, effective April 17, 1976, 6 Pa.B. 911; reserved October 12, 1984, effective January 1, 1985, 14 Pa.B. 3819. Immediately preceding text appears at serial page (63532).

§ 3.22. [Reserved].**Source**

The provisions of this § 3.22 amended April 16, 1976, effective April 17, 1976, 6 Pa.B. 911; reserved October 12, 1984, effective January 1, 1985, 14 Pa.B. 3819. Immediately preceding text appears at serial pages (63532) to (63534).

§ 3.23. [Reserved].**Source**

The provisions of this § 3.23 reserved October 12, 1984, effective January 1, 1985, 14 Pa.B. 3819. Immediately preceding text appears at serial page (63534).

§ 3.41. [Reserved].**Source**

The provisions of this § 3.41 amended April 16, 1976, effective April 17, 1976, 6 Pa.B. 911; corrected April 23, 1976, effective April 17, 1976, 6 Pa.B. 950; amended December 1, 1978, effective December 2, 1978, 8 Pa.B. 3432; amended August 15, 1980, effective August 16, 1980, 10 Pa.B. 3356; amended September 30, 1981, effective October 1, 1981, 11 Pa.B. 2680; reserved October 12, 1984, effective January 1, 1985, 14 Pa.B. 3819. Immediately preceding text appears at serial pages (63534) to (63536).

§ 3.61. [Reserved].**Source**

The provisions of this § 3.61 reserved October 12, 1984, effective January 1, 1985, 14 Pa.B. 3819. Immediately preceding text appears at serial page (63536).

§ 3.62. [Reserved].**Source**

The provisions of this § 3.62 adopted April 16, 1976, effective April 17, 1976, 6 Pa.B. 911; reserved October 12, 1984, effective January 1, 1985, 14 Pa.B. 3819. Immediately preceding text appears at serial page (63536).

§ 3.81. [Reserved].**Source**

The provisions of this § 3.81 reserved October 12, 1984, effective January 1, 1985, 14 Pa.B. 3819. Immediately preceding text appears at serial page (32839).

§ 3.91. [Reserved].**Source**

The provisions of this § 3.91 adopted April 15, 1977, effective April 16, 1977, 7 Pa.B. 1033; reserved October 12, 1984, effective January 1, 1985, 14 Pa.B. 3819. Immediately preceding text appears at serial page (32839).

§ 3.92. [Reserved].**Source**

The provisions of this § 3.92 adopted April 15, 1977, effective April 16, 1977, 7 Pa.B. 1033; reserved October 12, 1984, effective January 1, 1985, 14 Pa.B. 3819. Immediately preceding text appears at serial pages (32816) to (32817).

§ 3.93. [Reserved].**Source**

The provisions of this § 3.93 adopted April 15, 1977, effective April 16, 1977, 7 Pa.B. 1033; reserved October 12, 1984, effective January 1, 1985, 14 Pa.B. 3819. Immediately preceding text appears at serial pages (32817) to (32818).

§ 3.94. [Reserved].**Source**

The provisions of this § 3.94 adopted April 15, 1977, effective April 16, 1977, 7 Pa.B. 1033; reserved October 12, 1984, effective January 1, 1985, 14 Pa.B. 3819. Immediately preceding text appears at serial page (32818).

§ 3.95. [Reserved].**Source**

The provisions of this § 3.95 adopted April 15, 1977, effective April 16, 1977, 7 Pa.B. 1033; reserved October 12, 1984, effective January 1, 1985, 14 Pa.B. 3819. Immediately preceding text appears at serial page (32818).

§ 3.96. [Reserved].**Source**

The provisions of this § 3.96 adopted April 15, 1977, effective April 16, 1977, 7 Pa.B. 1033; reserved October 12, 1984, effective January 1, 1985, 14 Pa.B. 3819. Immediately preceding text appears at serial page (32818).

§ 3.97. [Reserved].**Source**

The provisions of this § 3.97 adopted April 15, 1977, effective April 16, 1977, 7 Pa.B. 1033; reserved October 12, 1984, effective January 1, 1985, 14 Pa.B. 3819. Immediately preceding text appears at serial page (32818).

**Subchapter B. INFORMAL PROCEEDINGS
GENERALLY****APPLICATIONS**

- Sec.
3.101. Municipal contracts.
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INFORMAL COMPLAINTS AND INVESTIGATIONS

- 3.111. Form and content of informal complaints.
3.112. Action on informal complaints.
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3.161. [Reserved].
3.162. [Reserved].
3.163. [Reserved].
3.181. [Reserved].
3.182. [Reserved].
3.183. [Reserved].
3.184. [Reserved].
3.191. [Reserved].
3.201. [Reserved].
3.221. [Reserved].
3.241. [Reserved].
3.242. [Reserved].
3.261. [Reserved].
3.271. [Reserved].
3.281. [Reserved].
3.282. [Reserved].
3.283. [Reserved].
3.291. [Reserved].
3.301. [Reserved].
3.311. [Reserved].
3.312. [Reserved].
3.321. [Reserved].

APPLICATIONS**§ 3.101. Municipal contracts.**

No formal application need accompany municipal contracts filed under section 507 of the act (relating to contracts between public utilities and municipalities), but an executed copy or reproduction copy of the contract shall be filed with the Commission at least 30 days prior to the effective date of the contract.

Authority

The provisions of this § 3.101 amended under the Public Utility Code, 66 Pa.C.S. §§ 501, 504, 523, 1301, 1501 and 1504.

Source

The provisions of this § 3.101 amended October 12, 1984, effective January 1, 1985, 14 Pa.B. 3819; amended January 10, 2014, effective January 11, 2014, 44 Pa.B. 249. Immediately preceding text appears at serial page (319085).

§ 3.102. [Reserved].**Source**

The provisions of this § 3.102 reserved October 12, 1984, effective January 1, 1985, 14 Pa.B. 3819. Immediately preceding text appears at serial page (87791).

§ 3.103. [Reserved].**Source**

The provisions of this § 3.103 reserved October 12, 1984, effective January 1, 1985, 14 Pa.B. 3819. Immediately preceding text appears at serial page (87791).

INFORMAL COMPLAINTS AND INVESTIGATIONS**§ 3.111. Form and content of informal complaints.**

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

(b) Informal complaints shall be submitted to the Secretary for referral to the appropriate bureau, addressed to the following: Pennsylvania Public Utility Commission, Post Office Box 3265, Harrisburg, Pennsylvania 17105-3265.

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

Authority

The provisions of this § 3.111 amended under the Public Utility Code, 66 Pa.C.S. §§ 501, 504—506, 1301 and 1501.

Source

The provisions of this § 3.111 adopted October 12, 1984, effective January 1, 1985, 14 Pa.B. 3819; amended January 24, 1997, effective January 25, 1997, 27 Pa.B. 414; amended April 28, 2006, effective April 29, 2006, 36 Pa.B. 2097. Immediately preceding text appears at serial page (252037).

Cross References

This section cited in 52 Pa. Code § 57.257 (relating to disputes concerning advanced metering); and 52 Pa. Code § 64.152 (relating to informal complaint filing procedures).

§ 3.112. Action on informal complaints.

(a) *Filing.* The Secretary will place a copy of an informal complaint related to a docketed matter in the official document folder.

(b) *Commission staff review.*

(1) Commission staff will review the informal complaint to determine whether the subject matter is within the Commission's jurisdiction, except as set forth in Chapters 56 and 64 (relating to standards and billing practices for residential utility service; and standards and billing practices for residential telephone service).

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

(3) Commission staff may institute formal action with respect to the subject matter of the informal complaint.

(c) *Commission staff action.* Upon the completion of the Commission's investigation of an informal complaint, the Commission staff will notify the informal complainant of the results of its review and investigation. The submission or withdrawal of an informal complaint is without prejudice to the right of the complainant to file and prosecute a formal complaint.

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

(e) *Further action.* A staff determination made under this provision is appealable under § 5.44 (relating to petitions for appeal from actions of the staff).

(f) *Supersession.* Subsections (a)—(d) supersede 1 Pa. Code §§ 35.6 and 35.7 (relating to correspondence handling of informal complaints; and discontinuance of informal complaints without prejudice).

Authority

The provisions of this § 3.112 amended under the Public Utility Code, 66 Pa.C.S. §§ 309—311, 315, 331—335, 501, 504—506, 701—703, 1101—1103, 1301 and 1501.

Source

The provisions of this § 3.112 adopted October 12, 1984, effective January 1, 1985, 14 Pa.B. 3819; amended December 2, 1988, effective January 3, 1989, 18 Pa.B. 5451; amended January 24, 1997, effective January 25, 1997, 27 Pa.B. 414; amended April 28, 2006, effective April 29, 2006, 36 Pa.B. 2097. Immediately preceding text appears at serial pages (252037) to (252038).

Cross References

This section cited in 52 Pa. Code § 57.257 (relating to disputes concerning advanced metering); and 52 Pa. Code § 64.153 (relating to Commission informal complaint procedures).

§ 3.113. Resolution of informal investigations.

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

(b) Under 65 Pa.C.S. Chapter 7 (relating to Sunshine Act), the Commission's official actions resolving informal investigations will be as follows:

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

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

(3) When the utility, or other person subject to the Commission's jurisdiction, has committed to undertake action to address or remedy a violation or potential violation of the act or to resolve another perceived deficiency at the utility, in the form of a settlement with the Commission staff or other resolution of the matter, the Commission's consideration of the settlement or approval of the utility's action will occur at public meeting. Except for staff reports and other documents covered by a specific legal privilege, documents relied upon by the Commission in reaching its determination shall be made part of the public record. Before the Commission makes a final decision to adopt the settlement or to approve the utility's action, the Commission will provide other potentially affected persons with the opportunity to submit exceptions thereon or to take other action provided for under law.

Authority

The provisions of this § 3.113 amended under the Public Utility Code, 66 Pa.C.S. §§ 501, 504—506, 1301 and 1501.

Source

The provisions of this § 3.113 adopted May 12, 1989, effective May 13, 1989, 19 Pa.B. 2094; amended January 24, 1997, effective January 25, 1997, 27 Pa.B. 414; amended April 28, 2006, effective April 29, 2006, 36 Pa.B. 2097. Immediately preceding text appears at serial pages (252038) and (225599).

§ 3.121. [Reserved].**Source**

The provisions of this § 3.121 reserved October 12, 1984, effective January 1, 1985, 14 Pa.B. 3819. Immediately preceding text appears at serial pages (87791) to (87792).

§ 3.122. [Reserved].**Source**

The provisions of this § 3.122 reserved October 12, 1984, effective January 1, 1985, 14 Pa.B. 3819. Immediately preceding text appears at serial page (87792).

§ 3.131. [Reserved].**Source**

The provisions of this § 3.131 reserved October 12, 1984, effective January 1, 1985, 14 Pa.B. 3819. Immediately preceding text appears at serial page (40743).

§ 3.141. [Reserved].**Source**

The provisions of this § 3.141 reserved October 12, 1984, effective January 1, 1985, 14 Pa.B. 3819. Immediately preceding text appears at serial page (40743).

§ 3.142. [Reserved].**Source**

The provisions of this § 3.142 reserved October 12, 1984, effective January 1, 1985, 14 Pa.B. 3819. Immediately preceding text appears at serial page (40744).

§ 3.143. [Reserved].**Source**

The provisions of this § 3.143 amended April 16, 1976, effective April 17, 1976, 6 Pa.B. 911; reserved October 12, 1984, effective January 1, 1985, 14 Pa.B. 3819. Immediately preceding text appears at serial page (40744).

§ 3.144. [Reserved].**Source**

The provisions of this § 3.144 reserved October 12, 1984, effective January 1, 1985, 14 Pa.B. 3819. Immediately preceding text appears at serial page (40744).

§ 3.151. [Reserved].**Source**

The provisions of this § 3.151 adopted April 16, 1976, effective April 17, 1976, 6 Pa.B. 911; reserved October 12, 1984, effective January 1, 1985, 14 Pa.B. 3819. Immediately preceding text appears at serial page (85893).

§ 3.161. [Reserved].**Source**

The provisions of this § 3.161 reserved October 12, 1984, effective January 1, 1985, 14 Pa.B. 3819. Immediately preceding text appears at serial pages (85893) to (85894).

§ 3.162. [Reserved].**Source**

The provisions of this § 3.162 reserved October 12, 1984, effective January 1, 1985, 14 Pa.B. 3819. Immediately preceding text appears at serial page (85894).

§ 3.163. [Reserved].**Source**

The provisions of this § 3.163 adopted July 15, 1983, effective July 16, 1983, 13 Pa.B. 2199; reserved January 24, 1997, effective January 25, 1997, 27 Pa.B. 414. Immediately preceding text appears at serial pages (132525) to (132526).

Cross References

This section cited in 52 Pa. Code § 53.64 (relating to filing requirements for natural gas distributors with gross intrastate annual operating revenues in excess of \$40 million).

§ 3.181. [Reserved].**Source**

The provisions of this § 3.181 reserved October 12, 1984, effective January 1, 1985, 14 Pa.B. 3819. Immediately preceding text appears at serial page (83542).

§ 3.182. [Reserved].**Source**

The provisions of this § 3.182 amended April 16, 1976, effective April 17, 1976, 6 Pa.B. 911; reserved October 12, 1984, effective January 1, 1985, 14 Pa.B. 3819. Immediately preceding text appears at serial page (83542).

§ 3.183. [Reserved].**Source**

The provisions of this § 3.183 reserved October 12, 1984, effective January 1, 1985, 14 Pa.B. 3819. Immediately preceding text appears at serial page (83542).

§ 3.184. [Reserved].**Source**

The provisions of this § 3.184 reserved October 12, 1984, effective January 1, 1985, 14 Pa.B. 3819. Immediately preceding text appears at serial page (32823).

§ 3.191. [Reserved].**Source**

The provisions of this § 3.191 adopted August 19, 1977, effective August 20, 1977, 7 Pa.B. 2349; reserved October 12, 1984, effective January 1, 1985, 14 Pa.B. 3819. Immediately preceding text appears at serial pages (32823) to (32824), and (82066).

§ 3.201. [Reserved].**Source**

The provisions of this § 3.201 reserved October 12, 1984, effective January 1, 1985, 14 Pa.B. 3819. Immediately preceding text appears at serial pages (82066) to (82067).

§ 3.221. [Reserved].**Source**

The provisions of this § 3.221 amended April 24, 1981, effective April 25, 1981, 11 Pa.B. 1390; reserved October 12, 1984, effective January 1, 1985, 14 Pa.B. 3819. Immediately preceding text appears at serial page (82067).

§ 3.241. [Reserved].**Source**

The provisions of this § 3.241 amended June 3, 1983, effective June 4, 1983, 13 Pa.B. 1848; reserved October 12, 1984, effective January 1, 1985, 14 Pa.B. 3819. Immediately preceding text appears at serial pages (82067) to (82068).

§ 3.242. [Reserved].**Source**

The provisions of this § 3.242 adopted June 3, 1983, effective June 4, 1983, 13 Pa.B. 1848; reserved October 12, 1984, effective January 1, 1985, 14 Pa.B. 3819. Immediately preceding text appears at serial page (82068).

§ 3.261. [Reserved].**Source**

The provisions of this § 3.261 reserved October 12, 1984, effective January 1, 1985, 14 Pa.B. 3819. Immediately preceding text appears at serial page (82068).

§ 3.271. [Reserved].**Source**

The provisions of this § 3.271 adopted May 26, 1978, effective June 26, 1978, 8 Pa.B. 1468; reserved October 12, 1984, effective January 1, 1985, 14 Pa.B. 3819. Immediately preceding text appears at serial page (82069).

§ 3.281. [Reserved].**Source**

The provisions of this § 3.281 reserved October 12, 1984, effective January 1, 1985, 14 Pa.B. 3819. Immediately preceding text appears at serial pages (82069) and (66613).

§ 3.282. [Reserved].**Source**

The provisions of this § 3.282 amended April 16, 1976, effective April 17, 1976, 6 Pa.B. 911; amended February 13, 1981, effective February 14, 1981, 11 Pa.B. 656; reserved October 12, 1984, effective January 1, 1985, 14 Pa.B. 3819. Immediately preceding text appears at serial page (66613).

§ 3.283. [Reserved].**Source**

The provisions of this § 3.283 amended April 16, 1976, effective April 17, 1976, 6 Pa.B. 911; amended November 13, 1981, effective November 14, 1981, 11 Pa.B. 4042; reserved October 12, 1984, effective January 1, 1985, 14 Pa.B. 3819. Immediately preceding text appears at serial pages (66613) to (66614).

§ 3.291. [Reserved].**Source**

The provisions of this § 3.291 adopted April 16, 1976, effective April 17, 1976, 6 Pa.B. 911; reserved October 12, 1984, effective January 1, 1985, 14 Pa.B. 3819. Immediately preceding text appears at serial page (66614).

§ 3.301. [Reserved].**Source**

The provisions of this § 3.301 reserved October 12, 1984, effective January 1, 1985, 14 Pa.B. 3819. Immediately preceding text appears at serial page (85895).

§ 3.311. [Reserved].**Source**

The provisions of this § 3.311 reserved October 12, 1984, effective January 1, 1985, 14 Pa.B. 3819. Immediately preceding text appears at serial page (85895).

§ 3.312. [Reserved].**Source**

The provisions of this § 3.312 reserved October 12, 1984, effective January 1, 1985, 14 Pa.B. 3819. Immediately preceding text appears at serial page (85896).

§ 3.321. [Reserved].**Source**

The provisions of this § 3.321 reserved October 12, 1984, effective January 1, 1985, 14 Pa.B. 3819. Immediately preceding text appears at serial pages (85896) and (80580).

Subchapter C. [Reserved]**Source**

The provisions of this Subchapter C reserved October 12, 1984, effective January 1, 1985, 14 Pa.B. 3819. Immediately preceding text appears at serial pages (80580) to (80581).

§ 3.351. [Reserved].**Source**

The provisions of this § 3.351 reserved October 12, 1984, effective January 1, 1985, 14 Pa.B. 3819. Immediately preceding text appears at serial page (80580).

§ 3.352. [Reserved].**Source**

The provisions of this § 3.352 reserved October 12, 1984, effective January 1, 1985, 14 Pa.B. 3819. Immediately preceding text appears at serial page (80580).

§ 3.353. [Reserved].**Source**

The provisions of this § 3.353 reserved October 12, 1984, effective January 1, 1985, 14 Pa.B. 3819. Immediately preceding text appears at serial pages (80580) to (80581).

§ 3.354. [Reserved].**Source**

The provisions of this § 3.354 reserved October 12, 1984, effective January 1, 1985, 14 Pa.B. 3819. Immediately preceding text appears at serial page (80581).

Subchapter D. CROSSING PROCEEDINGS

Sec.

- 3.361. Crossing complaints.
- 3.362. Reimbursement of damages from crossings.
- 3.363. Claims for property damages from crossings.

§ 3.361. Crossing complaints.

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

(b) In complaint proceedings under section 2702 of the act for the relocation, alteration or abolition of crossings, the complainant shall publish a concise statement of the proceeding which designates the crossing with sufficient particularity to be readily identifiable by owners of property adjacent thereto or affected thereby, with notice of time and place fixed by the Commission for hearing, once a week for 2 consecutive weeks immediately prior to the date of hearing in at least one newspaper of general circulation, in the county in which the crossing is located. Proof of the publication shall be filed with the Commission on or before the date of hearing.

Authority

The provisions of this § 3.361 amended under the Public Utility Code, 66 Pa.C.S. §§ 501, 504—506, 1301 and 1501.

Source

The provisions of this § 3.361 amended April 28, 2006, effective April 29, 2006, 36 Pa.B. 2097. Immediately preceding text appears at serial page (250645).

Cross References

This section cited in 52 Pa. Code § 5.13 (relating to applications for construction or alteration of crossings); and 52 Pa. Code § 5.14 (relating to applications requiring notice).

§ 3.362. Reimbursement of damages from crossings.

Petitions for reimbursement for amounts paid by way of damages, shall be served on the parties of record who have been required in the original order of the Commission to pay the damages on the property, and shall contain as exhibits a certified copy of the order of the court or reference to the Commission order awarding damages and proof of payment of the award. The petition should set out the terms of the order affording the basis for reimbursement.

Cross References

This section cited in 52 Pa. Code § 5.14 (relating to applications requiring notice).

§ 3.363. Claims for property damages from crossings.

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

- (1) Be captioned “ _____ , Plaintiffs, v. Defendants.”
- (2) Follow, in general as to form and content, the form available from the Secretary.
- (3) Name as defendants those charged with the duty of paying the damages under the provisions of the order of the Commission.

(b) A prima facie claim shall first be filed with the Commission. After filing and service and opportunity to answer, the Commission may proceed to resolve the claim, or under section 2704 of the act (relating to compensation for damages occasioned by construction, relocation or abolition of crossings) may submit the matter to the court of common pleas of the proper county. In either case, notice will be given by the Commission to all parties to the claim.

Authority

The provisions of this § 3.363 amended under the Public Utility Code, 66 Pa.C.S. §§ 501, 504—506, 1301 and 1501.

Source

The provisions of this § 3.363 amended April 28, 2006, effective April 29, 2006, 36 Pa.B. 2097. Immediately preceding text appears at serial pages (250645) to (250646).

Cross References

This section cited in 52 Pa. Code § 5.14 (relating to applications requiring notice).

Subchapter E. MOTOR TRANSPORTATION PROCEEDINGS

- Sec.
- 3.381. Applications for transportation of property, household goods in use and persons.
- 3.382. Evidentiary guidelines for applications for passenger, excluding group and party more than 15 passenger, and household goods in use authority.
- 3.383. Applications for temporary authority and emergency temporary authority.
- 3.384. Disposition of applications for ETA and TA.
- 3.385. Rates, fares and charges for TA and ETA authorities.
- 3.386. Registration of intrastate operating authority issued by the Interstate Commerce Commission.

§ 3.381. Applications for transportation of property, household goods in use and persons.

(a) *Applications.*

(1) *Forms.* The following forms may be obtained from the Office of the Secretary of the Commission:

- (i) An application by a common carrier, including a forwarder, for a certificate of public convenience.
- (ii) An application by a contract carrier for a permit.
- (iii) An application by a broker for a license.
- (iv) An application for amendment of a certificate, permit or license.
- (v) An application by a common carrier of passengers or household goods in use to abandon or discontinue service in whole or in part.

(2) *Separate applications.* An applicant desiring to furnish service of more than one class shall file a separate application for each class of service.

(3) *Filing and verification.* An original application shall be filed by the applicant, or an authorized officer or representative, with the Secretary of the Pennsylvania Public Utility Commission, Post Office Box 3265, Harrisburg, Pennsylvania 17105-3265. The application shall be verified under § 1.36 (relating to verification). An application by a common carrier for a certificate of public convenience authorizing the transportation of passengers or household goods in use shall be accompanied by verified statements of the applicant, as set forth in subsection (c)(1)(iii)(A)(II). An application by a contract carrier for a permit authorizing the transportation of passengers or household goods in use may be accompanied by a verified statement of the applicant, as set forth in subsection (c)(1)(iii)(A)(II) and a copy of the bilateral contract or statement of the shipper that it will enter into a bilateral contract with the carrier.

(4) *Filing fee.* A filing fee, as prescribed under the fee schedule in § 1.43 (relating to schedule of fees payable to the Commission), shall accompany an application. The fee shall be paid by certified check or money order made payable to the "Commonwealth of Pennsylvania."

(5) *Abandonment or discontinuance of service.* A motor common carrier of property, contract carrier or broker is not required to file an application to

abandon or discontinue service. Abandonment or discontinuance of service, in whole or in part, by a motor common carrier of property, contract carrier or broker shall require the submission of a letter to the Commission containing a statement that the service is no longer being rendered or that the contract has expired.

(6) *Change in name of motor carrier.*

(i) *Requirements.*

(A) If a motor carrier changes its name, it shall submit a verified letter of notification to the Secretary containing the following information:

(I) The docket number of the motor carrier and the name of the motor carrier as presently shown in Commission records.

(II) A copy of the amended articles of incorporation or revised partnership agreement, if applicable, or other proper evidence of the name change.

(III) The names of the owners of the stock and distribution of shares, if applicable.

(IV) The names of the officers and directors of the corporation, if applicable.

(V) A statement that there has been no change in the ownership or control of the business.

(B) Upon submission of the information in clause (A) to the Commission, the Commission will endorse the existing certificate or permit of the motor carrier in the new name, with no change to the existing docket number.

(ii) *Additions to or change in name.* If a motor carrier makes an addition to or a change of a fictitious trade name, it shall notify the Secretary by letter, identifying the name and docket number of the motor carrier and submitting a copy of the fictitious name registration form filed with the Department of State, under 54 Pa.C.S. § 312 (relating to amendment). Upon notification, the Commission will endorse the existing certificate or permit of the motor carrier in the new fictitious name, with no change to the existing docket number.

(iii) *Change in insurance and tariff filings.* Within 30 days after the Commission's endorsement of an existing certificate or permit of a motor carrier in the new name or new fictitious name, the motor carrier shall effect the name change on its insurance and tariff filings with the Commission.

(7) *Change in entity of motor carrier.*

(i) *Filing of application required.* A change in the entity of a motor carrier, which is accompanied by a change in the ownership or control of the business—for example, through a transfer, merger or addition/deletion of a partner—requires the filing of an application under paragraphs (3) and (4) and § 5.12 (relating to contents of applications). If the Commission approves the application, a new certificate or permit will be issued under a new docket

number, upon receipt of insurance and tariff filings reflecting the change in the entity of the motor carrier.

(ii) *Filing of verified letter of notification required.*

(A) A change in the entity of a motor carrier, which is not accompanied by a change in the ownership or control of the business—for example, through incorporation of a sole proprietorship or partnership—requires the submission of a verified letter of notification to the Secretary containing the following information:

(I) The docket number of the motor carrier and the name of the motor carrier as presently shown in Commission records.

(II) A copy of the articles of incorporation or partnership agreement, if applicable.

(III) The names of the owners of the stock and distribution of shares, if applicable.

(IV) The names of the officers and directors of the corporation, if applicable.

(V) A statement that there has been no change in the ownership or control of the business.

(B) Upon submission of the information in clause (A) to the Commission, the Commission will endorse the existing certificate or permit of the motor carrier in the name of the new entity, with no change to the existing docket number. Within 30 days of the Commission's endorsement, the motor carrier shall effect the change in the entity on its insurance and tariff filings with the Commission.

(8) *Change in the name of shipper of a motor carrier of passengers or household goods in use.*

(i) If a shipper named in the existing or proposed operating authority of a motor carrier of passengers or household goods in use changes its name, the motor carrier shall submit a verified letter of notification to the Secretary containing all of the following information:

(A) The docket number of the motor carrier, specifically identifying the portion of the operating authority involved.

(B) Identification of the name of the shipper as presently specified in the carrier's pertinent operating authority.

(C) A copy of the shipper's amended articles of incorporation or revised partnership agreement, if applicable, or other proper evidence of the shipper's name change.

(D) A statement that there has been no change in the ownership or control of the business.

(ii) If a shipper named in the existing or proposed operating authority of a motor carrier of passengers or household goods in use simply makes an addition to or change of a fictitious trade name, the motor carrier shall notify the Secretary by letter, identifying the name and docket number of the motor

carrier and submitting a copy of the shipper's fictitious name registration form filed with the Department of State under 54 Pa.C.S. § 312.

(9) *Change in entity of named shipper of a motor carrier of passengers or household goods in use.*

(i) A change in the entity of a shipper named in the existing or proposed operating authority of a motor carrier of passengers or household goods in use, which is accompanied by a change in the ownership or control of the shipper's business—for example, through a sale or merger—requires the filing of an application by the motor carrier in accordance with paragraphs (3) and (4) and § 5.12.

(ii) A change in the entity of a shipper named in the existing or proposed operating authority of a motor carrier of passengers or household goods in use, which is not accompanied by a change in the ownership or control of the shipper's business—for example, through the incorporation of a sole proprietorship or partnership—requires the submission by the motor carrier of a verified letter of notification to the Secretary containing all of the following information:

(A) The docket number and name of the motor carrier.

(B) Identification of the portion of the operating authority involved and the name of the shipper as presently specified in the carrier's pertinent operating authority.

(C) A copy of the shipper's amended articles of incorporation or revised partnership agreement, if applicable, or other proper evidence of the shipper's name change.

(D) A statement that there has been no change in the ownership or control of the shipper's business.

(10) *Change in location of named shipper of a motor carrier of passengers or household goods in use.*

(i) A change in the location of an existing facility of a shipper named in the existing or proposed operating authority of a motor carrier of passengers or household goods in use requires the filing of an application under paragraphs (3) and (4) and § 5.12, except as provided in subparagraph (ii).

(ii) A change in the location of an existing facility of a shipper named in the existing or proposed operating authority of a motor contract carrier of passengers or household goods in use, which is not accompanied by a change in ownership or control of the business, requires the submission of a verified letter of notification to the Secretary containing the name and docket number of the motor carrier, and a statement that there is no change in ownership or control of the business.

(b) *Notice.* Applications will be docketed by the Secretary and, with the exception of motor common carrier property and group and party carrier of more than 15 passenger applications, thereafter forwarded for publication in the *Pennsylvania Bulletin*. No other notice to the public or to a carrier, forwarder or bro-

ker is required, except that an applicant filing an application for the discontinuance of the transportation of persons, on a scheduled basis, shall certify to the Commission that it has done the following:

- (1) Notified the local government having jurisdiction over affected areas.
- (2) Posted notice of the proposed discontinuance in a conspicuous place in vehicles engaged in service on affected routes.

(c) *Protests.*

(1) *Applications for passenger or household goods in use authority.*

(i) *Content and effect.*

(A) A person objecting to the approval of an application shall file with the Secretary and serve upon the applicant and the applicant's attorney, if any, a written protest which shall contain all of the following:

- (I) The applicant's name and the docket number of the application.
- (II) The name, business address and telephone number of the protestant.
- (III) The name, business address and telephone number of the protestant's attorney or other representative.
- (IV) A statement of the protestant's interest in the application.
- (V) A list of all Commission docket numbers under which the protestant operates.

(VI) A protest is limited to challenging the fitness of the applicant, including whether the applicant possesses the technical and financial ability to provide the proposed service and whether the applicant lacks a propensity to operate safely and legally.

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

(C) A protest shall be treated as a pleading and the applicant may, within 20 days after the closing date for the filing of protests, file motions to strike, to dismiss, or for amplification as provided in § 5.101 (relating to preliminary objections).

(ii) *Time of filing.* A protest shall be filed within the time specified in the notice appearing in the *Pennsylvania Bulletin*, which shall be no less than 15 days from the date of publication. Failure to file a protest in accordance with this subsection shall bar subsequent participation in the proceeding, except when permitted by the Commission for good cause shown.

(iii) *Failure to file protests.* If no protest is filed with the Commission on or before the date specified in the *Pennsylvania Bulletin* or if all protests have been withdrawn at or prior to the hearing, the Commission may take either of the following actions:

(A) Consider the application without holding an oral hearing if it deems the facts are sufficient as in the application or as determined from additional information as the Commission may require of the applicant. An

application processed under this section, without oral hearing, will be determined on the basis of verified statements submitted by the applicant and other interested parties.

(I) Verified statements will be filed with the Secretary within 30 days of the Commission's request therefor. Failure to file additional information as requested by the Commission may result in dismissal of the application for lack of prosecution.

(II) The applicant's verified statement shall be in paragraph form and shall contain the following information, as applicable:

(-a-) The legal name and domicile of the applicant.

(-b-) The identity and qualifications of the person making the statement for applicant.

(-c-) Whether or not the applicant is affiliated with any other carriers, with a description of the affiliation.

(-d-) The authority sought.

(-e-) The general scope of currently authorized operations—attach copies of pertinent operating rights.

(-f-) Duplicating authority which will result from grant of authority.

(-g-) Dual operations resulting from grant of authority.

(-h-) Pertinent terminal facilities and communications network.

(-i-) Pertinent equipment—make, model, year, owned or leased, and lessor; safety program; service currently provided to supporting witnesses.

(-j-) The type of service offered.

(-k-) Financial data—current balance sheet and income statement for corporations and partnerships and assets and liabilities for individuals.

(-l-) A statement that the applicant has a minimum of 2 years of experience with a licensed household goods carrier or the equivalent. This requirement shall be applicable to all applications for household goods, whether protested or not.

(-m-) Other information deemed pertinent.

(III) There will be the following extensions of time to file verified statements. When extenuating circumstances exist, the Commission will grant up to 45 days to file verified statements. Requests for extensions of time may be granted by the Commission based upon a written request giving reasons for the extension.

(B) Schedule the unprotested application for oral hearing at a time, date and place to be set, thereafter notifying the applicant by letter of the scheduling.

(2) *Applications for motor common carrier of property and group and party service for more than 15 passenger authority.* No protests to applications

for motor common carrier property and group and party carrier more than 15 passenger authority may be filed.

(d) *Hearings on protested applications and applications for motor carrier of property authority when safety issues are raised.*

(1) *Applications for passenger, excluding group and party service more than 15 passenger, or household goods in use authority.*

(i) *Scheduling hearings.*

(A) *Applications for passenger authority.* The applications to which timely protests were filed will not be acted on by the Commission for 20 days after the closing date for filing of protests to permit the applicant to make restrictive amendments leading to the withdrawal of protests. If all protests are withdrawn upon amendment, the Commission may dispose of the application in accordance with subsection (c). If the application is still subject to protest, then after the expiration of the 20-day waiting period, the Commission will set the application for hearing and will notify all parties thereof. Absent good cause shown, no further amendments to the application will be considered after expiration of the 20-day period or the commencement of hearings.

(B) *Applications for passenger and household goods in use authority.* Applications for passenger and household goods in use authority to which timely protests were filed will be set for hearing with notice to the parties.

(ii) *Requests for postponements.* If any scheduled hearing is postponed for any reason prior to the date thereof, notice of postponement and the date, time and place of the continued hearing will be given by the presiding officer of the Commission to all parties. Requests for hearing postponements shall be submitted in writing to the Secretary of the Commission and the presiding officer with copies to parties of record, no later than 5 days prior to hearing. Hearings will not be postponed absent good cause.

(iii) *Prehearing conferences.* The presiding officer may, in his discretion or at the written request of any party of record, set any protested application for prehearing conference, to simplify the issues prior to hearing.

(2) *Applications for motor common carrier of property and group and party service for more than 15 passenger authority.*

(i) *Scheduling hearings.* If the Commission's prosecutory staff determines that conditional or unsatisfactory safety ratings from other jurisdictions or adverse decisions in safety related proceedings before other tribunals exist, prosecutory staff shall enter an appearance and refer the matter to the Office of Administrative Law Judge for hearing on the applicant's safety fitness. A determination by the Commission, after hearing, that the applicant possesses the necessary safety fitness will result in the application being processed as though the applicant possessed a satisfactory safety rating.

(ii) *Requests for postponement.* Requests for postponement shall be made and disposed of in accordance with paragraph (1)(ii).

(iii) *Prehearing conferences.* Prehearing conferences shall be conducted in accordance with paragraph (1)(iii).

(e) *Compliance: conditions for approval for passenger and household goods in use authority.* When the Commission approves operation by a motor common carrier of passengers or household goods in use, forwarder, broker, or motor contract carrier of passengers or household goods in use, the applicant will be notified of the approval by registered or certified mail. The applicant shall file with the Commission within 60 days of receipt of the notice, a certificate of insurance or other security required by this title, relating to insurance and security for the protection of the public. In addition, motor common carriers of passengers or household goods in use shall file tariffs of their applicable rates and charges, and contract carriers of passengers or household goods in use shall file schedules of actual charges. When all of these requirements have been met, the Commission will issue the certificate, permit or license as the case may be. Failure by an applicant to comply with this section within the 60-day period may result in the dismissal of the application and rescission of prior approval, unless the Commission has, upon written request demonstrating good cause, extended the time for compliance.

(1) An applicant for household goods in use authority that does not possess a current satisfactory safety rating issued by the United States Department of Transportation or by a state with safety regulations comparable to the Commonwealth shall complete a safety fitness review conducted by Commission staff. The safety fitness review must be scheduled and completed within 180 days of the date of approval of the application. If the applicant fails to attain a satisfactory safety evaluation within the 180-day period, the applicant will be given an additional 90 days to correct the deficiencies. Failure to achieve a satisfactory evaluation within the 90-day period will result in immediate suspension of the certificate of public convenience and in proceedings to revoke the certificate.

(2) Safety fitness reviews shall take place at the applicant's primary place of business in this Commonwealth. Out-of-State carriers without facilities in this Commonwealth shall have reviews conducted at the nearest Commission office. Out-of-State carriers shall provide Commission enforcement officers with sufficient records to enable meaningful examination of the applicant's safety related programs.

(3) In the course of a safety fitness review, Commission enforcement staff will examine an applicant's management policies, records and equipment to ensure that the applicant understands and will comply with Chapter 37 (relating to safety code for transportation of property and passengers).

(f) *Compliance: conditions for approval for motor common carrier property and group and party more than 15 passenger authority.* If the Commission's prosecutory staff determines that a hearing is not required, as provided in subsection (d)(2), the Commission will act on applications as follows:

(1) A compliance letter will be issued directing that the applicant file a Form E Uniform Motor Carrier Bodily Injury and Property Liability Certificate of Insurance and a Form H Uniform Cargo Insurance Certificate, if applicable. Temporary evidence of insurance may be filed in the form of an insurance identification card for vehicles registered in this Commonwealth, a copy of the declaration page of the insurance policy, a copy of a valid binder of insurance or a copy of a valid application for insurance to the Pennsylvania Automobile Insurance Plan. The temporary evidence of insurance shall be replaced by the required certificates within 60 days. A carrier may begin operations upon filing acceptable evidence of insurance.

(2) Once acceptable Form E and Form H certificates of insurance have been filed, a certificate of public convenience will be issued authorizing the transportation of property, not including household goods in use or group and party more than 15 passenger authority, between points in this Commonwealth.

(3) Applicants which do not possess a current satisfactory safety rating issued by the United States Department of Transportation or a state with safety regulations comparable to the Commonwealth shall complete a safety fitness review conducted by Commission staff. The safety fitness review shall be scheduled and completed within 180 days of the date of the compliance letter. If the applicant fails to attain a satisfactory safety evaluation within the 180-day period, it will be given an additional 90 days to correct the deficiencies. Failure to achieve a satisfactory evaluation within the 90-day period will result in immediate suspension of the certificate of public convenience and in proceedings to revoke the certificate.

(4) Safety fitness reviews will take place at the applicant's primary place of business in this Commonwealth. Out-of-State carriers without facilities in this Commonwealth will have reviews conducted at the nearest Commission office. Out-of-State carriers shall provide Commission endorsement officers with sufficient records to enable meaningful examination of the applicant's safety related programs.

(5) In the course of a safety fitness review, Commission enforcement staff will examine an applicant's management policies, records and equipment to ensure that the applicant understands and will comply with Chapter 37.

(g) *New applications: conditions for reconsideration.* Applications filed within 6 months of the date of an order refusing or dismissing, on the merits, an application for the same rights filed by the same party shall set forth any new facts or changed conditions not previously presented to the Commission for consideration. The Commission may, in its administrative discretion, either accept or refuse the filing of the application.

Authority

The provisions of this § 3.381 amended under the Public Utility Code, 66 Pa.C.S. §§ 501, 504, 523, 1102, 1103, 1301, 1501 and 1504.

Source

The provisions of this § 3.381 amended April 16, 1976, effective April 17, 1976, 6 Pa.B. 911; amended February 25, 1977, effective February 26, 1977, 7 Pa.B. 522; amended October 14, 1977, effective October 15, 1977, 7 Pa.B. 3082; amended June 29, 1979, effective June 30, 1979, 9 Pa.B. 2152; amended November 23, 1979, effective November 24, 1979, 9 Pa.B. 3865; corrected December 7, 1979, effective November 24, 1979, 9 Pa.B. 3983; amended June 3, 1983, effective June 4, 1983, 13 Pa.B. 1848; amended July 14, 1989, effective July 15, 1989, 19 Pa.B. 3037; amended February 6, 1998, effective February 7, 1998, 28 Pa.B. 647; amended November 20, 1998, effective November 21, 1998, 28 Pa.B. 5769; amended January 10, 2014, effective January 11, 2014, 44 Pa.B. 249; amended May 22, 2015, effective May 23, 2015, 45 Pa.B. 2468; amended June 2, 2017, effective June 3, 2017, 47 Pa.B. 3099. Immediately preceding text appears at serial pages (376843) to (376852).

Cross References

This section cited in 52 Pa. Code § 3.383 (relating to applications for temporary authority and emergency temporary authority); 52 Pa. Code § 5.51 (relating to protest to an application); and 52 Pa. Code § 5.52 (relating to content of a protest to an application).

§ 3.382. Evidentiary guidelines for applications for passenger, excluding group and party more than 15 passenger, and household goods in use authority.

An applicant for a motor carrier certificate or permit for the transportation of passengers or household goods in use, though not required to offer testimony as to the rates proposed to be charged, may do so if it is otherwise competent. The weight to be attributed to the evidence will depend upon the extent to which it is accompanied by cost evidence demonstrating that the prospective rates would be compensatory, that is, that the prospective rates would be adequate to enable the applicant to recover its costs and realize a reasonable return either on investment or under operating ratio standards. The demeanor and credibility of a witness offering the evidence will also be considered in evaluating the weight to be attributed to the evidence.

Authority

The provisions of this § 3.382 amended under the Public Utility Code, 66 Pa.C.S. §§ 501, 1102, 1103 and 1501.

Source

The provisions of this § 3.382 adopted July 28, 1978, effective July 29, 1978, 8 Pa.B. 2102; amended February 6, 1998, effective February 7, 1998, 28 Pa.B. 647; amended May 22, 2015, effective May 23, 2015, 45 Pa.B. 2468; amended June 2, 2017, effective June 3, 2017, 47 Pa.B. 3099. Immediately preceding text appears at serial page (376853).

Notes of Decisions

Evidence

Evidence of requests for service received by an applicant could be excluded as hearsay if they are made to the daughters of the applicant, but they will not be excluded if they are not the only basis for a necessary finding of fact. *Modad Taxi Co. v. Pennsylvania Public Utility Commission*, 415 A.2d 126 (Pa. Cmwlth. 1980).

§ 3.383. Applications for temporary authority and emergency temporary authority.

(a) *Controlling legislation.* The provisions of 66 Pa.C.S. §§ 1103(d) and 2509 (relating to procedure to obtain certificates of public convenience; and temporary permits and licenses) are as follows:

“§ 1103(d) Temporary authority—Except during the threat or existence of a labor dispute, the commission under such regulations as it shall prescribe may, without hearing, in proper cases, consider and approve applications for certificates of public convenience, and in emergencies grant temporary certificates under this chapter, pending action on permanent certificates; but no applications shall be denied without right of hearing thereon being tendered to the applicant.”

“§ 2509 Temporary permits and licenses—The commission, under such regulations as it shall prescribe, may, without hearing, in proper cases, consider and approve applications for permits and licenses, and in emergencies grant temporary permits and licenses under this chapter, pending action on permanent permits or licenses; but no application shall be denied without right of hearing thereon being tendered the applicant.”

(b) *Definitions and applicability.*

(1) The following words and terms, when used in relation to applications for temporary authority and emergency temporary authority, have the following meanings:

Carrier—Includes motor common carriers of passengers and motor contract carriers of passengers, brokers and forwarders.

ETA—Emergency temporary authority—Limited duration operating authority issued under 66 Pa.C.S. §§ 1103(d) and 2509 to authorize the transportation of passengers to meet an emergency situation and when time or circumstances do not reasonably permit the filing and processing of an application for TA.

TA—Temporary authority—Limited duration operating authority issued under 66 Pa.C.S. §§ 1103(d) and 2509 to authorize the transportation of passengers to meet an emergency situation.

(2) ETA and TA are not available to motor common carriers of property, household goods in use, and group and party carriers transporting more than 15 passengers.

(c) *Filing of applications.* An application shall be filed as follows:

(1) *How and where filed.* An original of each application for TA or ETA (Form C) is to be filed with the Secretary, Pennsylvania Public Utility Com-

mission, Harrisburg, Pennsylvania 17105-3265. The envelope containing the application shall be clearly marked: "TA" APPLICATION or "ETA" APPLICATION.

(2) *Filing fees.* An application for TA, ETA and extensions of ETA shall be accompanied by a filing fee, as prescribed under the fee schedule in § 1.43 (relating to schedule of fees payable to the Commission).

(3) *Supporting statements.* An application shall be accompanied by supporting statements of the applicant. A statement shall contain a certification of its accuracy and shall be signed by the person submitting the statement. The applicant's statement, which shall be prepared by the applicant or an authorized representative of the applicant, shall contain all of the following information:

(i) A description of the equipment which will be used to render service, including a statement of whether it is specialized equipment.

(ii) A description of the applicant's terminal facilities and personnel.

(iii) A statement of whether the filing of the application resulted from a warning, road check or investigation by the Commission.

(iv) A telephone number at which the applicant or an authorized representative of the applicant may be contacted.

(v) A statement of the proposed rates, fares or charges and schedule provisions.

(vi) A statement of whether there are under suspension rates, fares or charges published for its account or whether an application for special permission to file its rates, fares or charges on less than 30 days' notice in connection with another ETA, TA or permanent authority application covering the same territory has been granted or denied.

(vii) Proof of ability to comply with the Commission's insurance requirements, or in the case of an authorized carrier, a statement indicating that it currently has evidence of insurance on file with the Commission.

(viii) Names and addresses of labor unions which represent, or which within the past 12 months have represented, or which have filed a petition to represent the employees of the applicant with the National Labor Relations Board or the Pennsylvania Labor Relations Board. If the application seeks the temporary approval of a transfer of rights under a certificate of public convenience, this information shall be supplied for the transferor and the transferee.

(4) *Procedures for filing ETA application.* Procedures for filing ETA applications are as follows:

(i) An ETA application may normally be filed only when a corresponding application for permanent authority has been filed and emergency conditions exist which do not permit sufficient time to afford the notice required by paragraph (5)(i). If the application demonstrates the existence of emergency conditions, the Bureau of Technical Utility Services will make a reasonable effort to identify and communicate with those carriers who may hold

the authority to provide the emergency service being sought by the applicant and those unions described in paragraph (3)(viii). An ETA application will be granted for an initial period not to exceed 60 days.

(ii) The filing of ETA applications by telephone shall be acceptable in exigent circumstances. Confirmation shall be made by filing written application—Form C—with the supporting statements, within 5 working days from the filing by telephone.

(iii) If an emergency continues beyond the initial 60-day period, the ETA may be extended pending disposition of the TA application. Extensions of ETA may be obtained in the following ways:

(A) *Filing the ETA application simultaneously with the corresponding applications for TA and permanent authority.* The simultaneous filing of ETA, TA and permanent authority applications automatically extends the grant of ETA pending disposition of the TA application. No filing fee for ETA extension is required under these circumstances.

(B) *Filing corresponding TA and permanent authority applications within 15 days of the date of filing the ETA application.* The filing of corresponding TA and permanent authority applications within 15 days of the filing of the ETA application automatically extends the grant of ETA pending disposition of the TA application, if the applicant states the following on the ETA application: “Applicant certifies that, within 15 days of the date of filing this application, corresponding TA and permanent authority applications will be filed, and hereby requests that an automatic extension be granted of the ETA.” No filing fee for ETA extension is required under these circumstances.

(C) *If the corresponding TA and permanent authority applications are neither filed simultaneously with nor within 15 days of the date of filing the ETA application.* A request for an extension of ETA which does not comply with clause (A) or (B) shall be accompanied by corresponding applications for TA and permanent authority and a filing fee, as prescribed under the fee schedule in § 1.43 in addition to the appropriate filing fees for TA and permanent authority applications, and shall be filed with the Bureau of Technical Utility Services, prior to the expiration date of the ETA.

(5) *Procedures for filing TA applications.* An application for TA shall be accompanied by a corresponding application for permanent authority. Unless otherwise specified in the TA application, it will be considered as proposing service pending disposition of the permanent authority application.

(i) *Notice to interested persons.*

(A) *Publication in Pennsylvania Bulletin.* Notice of the filing of a TA application and an application for permanent authority will be given by simultaneous publication in the *Pennsylvania Bulletin*.

(B) *Service on unions.* Service of temporary authority applications shall be made by certified mail upon the unions described in paragraph (3)(viii).

(ii) *Filing of protests.*

(A) A person who can and will provide all or part of the proposed service may file a protest to the TA application. Protests shall be consistent with § 3.381 (relating to applications for transportation of property, household goods in use and persons). The protest shall indicate whether it protests the application for TA or for permanent authority, or both.

(B) A union which represents the employees of a motor carrier or supporting shipper, which may be affected by the approval of an application for TA, may file a protest to the application. The protest shall be limited to the issue of whether a threatened or existing labor dispute precludes Commission consideration and approval of the TA application.

(C) Protests shall be filed with the Secretary of the Public Utility Commission.

(iii) *Revocation of ETA upon approval of TA applications.* Approval of a TA application is effective upon compliance with the Commission order, which results in the automatic revocation of corresponding ETA.

Authority

The provisions of this § 3.383 issued under the Public Utility Code, 66 Pa.C.S. §§ 501, 1103 and 2509; amended under the Public Utility Code, 66 Pa.C.S. §§ 501, 504, 523, 1102, 1103, 1301, 1501, 1504, 2503 and 2504.

Source

The provisions of this § 3.383 adopted December 2, 1983, effective December 3, 1983, 13 Pa.B. 3756; amended January 23, 1987, effective January 24, 1987, 17 Pa.B. 387; amended July 14, 1989, effective July 15, 1989, 19 Pa.B. 3037; amended February 6, 1998, effective February 7, 1998, 28 Pa.B. 647; amended January 10, 2014, effective January 11, 2014, 44 Pa.B. 249; amended May 22, 2015, effective May 23, 2015, 45 Pa.B. 2468; amended June 2, 2017, effective June 3, 2017, 47 Pa.B. 3099. Immediately preceding text appears at serial pages (376854) to (376858).

Cross References

This section cited in 52 Pa. Code § 3.12 (relating to applicability to transportation proceedings).

§ 3.384. Disposition of applications for ETA and TA.

(a) *General.* Initial determination of ETA and TA applications will be made by the Bureau of Technical Utility Services with the approval of the Commission.

(b) *Standards.*

(1) *General.* Grants of TA or ETA shall be made upon the establishment of an emergency as defined in § 3.1 (relating to definitions) which requires new carrier service before an application for permanent authority can be filed and processed.

(2) *General bases for disapproval.* Applications for TA or ETA may be denied for the following reasons:

- (i) Failure to meet statutory standards and this title.
- (ii) Unfitness of the applicant.

(c) *Determination of fitness issues in motor carrier applications.* The following standards shall be used in the initial or appellate determination of fitness issues in applications by motor carriers for TA or ETA:

(1) Unless there is a particularly urgent transportation need, an application will normally be denied when the applicant has been found unfit or in substantial noncompliance with Chapter 37 (relating to safety code for transportation of property and passengers) or 67 Pa. Code Part I (relating to Department of Transportation). An application may, however, be approved if the carrier has re-established compliance or if the application contains sufficient evidence to establish that the carrier has taken significant steps to remedy its deficiencies and is now in substantial compliance.

(2) Alleged violations of statute or regulations or a pending fitness investigation when no formal proceeding has been instituted may not be used as grounds for denial unless the Commission has evidence that the carrier applicant has a history of willful or flagrant violation of the statute or regulations. If authority is denied for lack of fitness on this basis, the decision will state the basis for denial.

(3) The granting of ETA or TA will not give rise to a presumption regarding the applicant's fitness.

(4) A grant of authority may be later revoked by the Commission if it determines that the applicant is unfit under this subsection. The Commission may revoke a carrier's ETA or ETA extension. The denial of a TA application will have the effect of automatically revoking the corresponding ETA or ETA extension.

Authority

The provisions of this § 3.384 issued under the Public Utility Code, 66 Pa.C.S. §§ 501, 1103 and 2509; amended under the Public Utility Code, 66 Pa.C.S. §§ 501, 1102, 1103 and 1501.

Source

The provisions of this § 3.384 adopted December 2, 1983, effective December 3, 1983, 13 Pa.B. 3756; amended January 23, 1987, effective January 24, 1987, 17 Pa.B. 387; amended February 6, 1998, effective February 7, 1998, 28 Pa.B. 647; amended May 22, 2015, effective May 23, 2015, 45 Pa.B. 2468; amended June 2, 2017, effective June 3, 2017, 47 Pa.B. 3099. Immediately preceding text appears at serial pages (376858) to (376859).

Cross References

This section cited in 52 Pa. Code § 3.12 (relating to applicability to transportation proceedings).

§ 3.385. Rates, fares and charges for TA and ETA authorities.

(a) *Rates requirements of motor carriers—publish on less than 30 days' notice.* Under § 23.42 (relating to establishment of new rates), rates, fares, charges and related provisions may be established by motor carriers upon not less than 1 day's notice to apply on shipments transported under TA.

(b) *Insurance—motor carriers.* A carrier may not render transportation services until it has complied with the provisions concerning the filing of evidence of insurance.

(c) *Publication of rates and charges.* A motor carrier who has been granted ETA or TA may not render transportation services until it has complied with the rate filing requirements as stated in the Commission order.

Authority

The provisions of this § 3.385 issued under the Public Utility Code, 66 Pa.C.S. §§ 501, 1103 and 2509.

Source

The provisions of this § 3.385 adopted December 2, 1983, effective December 3, 1983, 13 Pa.B. 3756; amended January 23, 1987, effective January 24, 1987, 17 Pa.B. 387; amended February 6, 1998, effective February 7, 1998, 28 Pa.B. 647. Immediately preceding text appears at serial page (225620).

Cross References

This section cited in 52 Pa. Code § 3.12 (relating to applicability to transportation proceedings).

§ 3.386. Registration of intrastate operating authority issued by the Interstate Commerce Commission.

Motor common and contract carriers of passengers which are granted intrastate operating authority to provide transportation service within this Commonwealth by the Interstate Commerce Commission under 49 U.S.C.A. §§ 10922 and 10923 (relating to certificates of motor and water common carriers and permits of motor carriers respectively) shall, not later than 30 days after the date on which the carrier first begins providing the authorized service, file a copy of the authority granted by the Interstate Commerce Commission and, for common carriers, a copy of the tariff in force for the authority with the Public Utility Commission. Common carriers shall file supplements to tariffs filed under this section when changes occur in tariffs or supplements or both previously filed.

Authority

The provisions of this § 3.386 issued under the Public Utility Code, 66 Pa.C.S. §§ 501 and 1103.

Source

The provisions of this § 3.386 adopted July 17, 1987, effective July 18, 1987, 17 Pa.B. 3028.

Subchapter F. ARBITRATION OF DISPUTES

Sec.
3.391. Arbitration of claims for billing and collecting services.

§ 3.391. Arbitration of claims for billing and collecting services.

(a) Each petition for arbitration of a dispute under section 4 of the act of April 14, 1949 (P. L. 482, No. 98) (53 P. S. § 2264) shall set forth the following:

- (1) The name and address of petitioner, and the name and address of his attorney, if any.
- (2) The name and address of respondent.
- (3) The interest of petitioner in the subject matter.
- (4) The nature of the dispute, that is, cost of shut off of service, amount of water revenues lost; provisions of any agreement between the parties.
- (5) The existence, if any, of an agreement between the parties; a copy thereof shall be attached to the petition.
- (6) A concise summary of material facts on which petitioner relies.
- (7) A concise summary of efforts made to settle the dispute.
- (8) The determination desired.

(b) Included with a copy of the petition served on the respondent shall be a notice that an answer thereto shall be filed as provided by § 5.61 (relating to answers to complaints, petitions and motions).

(c) Every answer to a petition under this section shall contain the name and address of the attorney for respondent, if any, a categorical answer to factual averments contained in the petition, a concise summary of material facts on which respondent relies, and the determination desired by respondent.

Source

The provisions of this § 3.391 adopted April 16, 1976, effective April 17, 1976, 6 Pa.B. 911.

Cross References

This section cited in 52 Pa. Code § 1.53 (relating to service by the Commission).

Subchapter G. WATER OR WASTEWATER UTILITY PROCEEDINGS

Sec.
3.501. Certificate of public convenience as a water supplier or wastewater collection, treatment or disposal provider.
3.502. Protests to applications for certificate of public convenience as a water supplier or wastewater collection, treatment and disposal provider.

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

(a) *Applicant.* An applicant for a certificate of public convenience as a public water or wastewater collection, treatment or disposal provider, including noncertificated utilities, shall provide a copy of the business plan required by the Department of Environmental Protection (DEP) in 25 Pa. Code § 109.503(a)(3) (relating to public water system construction permits). The Commission may reject an application which fails to include the required information and documents. The following additional information, or documents, if not included in the business plan, shall also be included in the application, using the current forms and schedules specified by the Commission.

(1) *Plant in service.*

(i) Proposed utilities shall provide:

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

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

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

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

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

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

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

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

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

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

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

(vi) A copy of the county comprehensive plan, municipal comprehensive plan and applicable zoning designations, if requested.

(3) *Customers.*

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

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

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

(4) *Rates.*

(i) Proposed utilities shall provide a proposed initial tariff which includes rates, proposed rules, and conditions of service in the format specified by the Commission (classified rate schedule).

(ii) Utilities which have been providing service shall provide a proposed initial tariff which includes rates, proposed rules, and conditions of service. The utility shall notify the customers of the utility of the filing of the application and the rates filed.

(5) *Cost of service.*

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

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

(6) *Proof of compliance.* Proof of compliance with applicable design, construction and operation standards of DEP or of the county health department, or both, including:

(i) Copies of public water supply/water quality management or National Pollution Discharge Elimination System (NPDES) permits if applicable.

(ii) Valid certified operators' certificates appropriate to the facilities being operated.

(iii) A 5-year compliance history with DEP with an explanation of each violation for utilities that have been providing service.

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

(7) *Additional documentation.* In addition to a copy of the documents submitted under paragraphs (1)—(6), the applicant shall submit a letter addressing all the applicable requirements or mandates of the following governmental entities. The letter must also append copies of certification issued by the fol-

lowing governmental entities confirming that the applicant does or does not meet all the applicable requirements or mandates of the following:

(i) DEP.

(ii) The Delaware River Basin Commission, the Susquehanna River Basin Commission, the Ohio River Basin Commission and the Great Lakes Commission.

(iii) The requirements of any Statewide water plan, including any local watershed areas.

(iv) The requirements of any officially adopted county comprehensive plans, municipal comprehensive plans, and applicable zoning designations, including any necessary amendments.

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

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

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

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

(10) *Verification.* A verification that the water sources and customers are metered in accordance with § 65.7 (relating to metered service). If unmetered water service is currently provided, the applicant shall provide a metering plan to the Commission.

(b) *Additional considerations.* The Commission will consider and may rely upon the comprehensive plans, multimunicipal plans, zoning ordinances and joint municipal zoning ordinances, consistent with the authority in sections 619.2 and 1105 of the Municipalities Planning Code (53 P. S. §§ 10619.2 and 11105), when reviewing applications for a certificate of public convenience as a public water supplier or wastewater collection, treatment or disposal provider.

(c) *Filing.* Applications under this section must conform to §§ 1.31 and 1.32 (relating to requirements for documentary filings; and filing specifications), and

include a mode of payment as prescribed by § 1.42 (relating to mode of payment of fees) and in the amount delineated in § 1.43 (relating to schedule of fees payable to the Commission). The applicant shall file with the Commission the original of the application. An application which fails to include the information and documents outlined in subsections (a) and (b), as specified by the Commission for water and wastewater collection, treatment or disposal companies, is subject to rejection by the Commission. The original must contain exhibits. An affidavit of service showing the identity of those served under subsection (f) shall accompany the original application filed with the Commission.

(d) *Notice.* The application will be docketed by the Secretary of the Commission and thereafter forwarded for publication in the *Pennsylvania Bulletin* with a 60-day protest period. The applicant shall also publish notice of application as supplied by the Secretary, daily for 2 consecutive weeks in one newspaper of general circulation located in the territory covered by the application and shall submit proof of publication to the Commission. In addition, the utility or applicant shall individually notify existing customers of the filing of the application.

(e) *Application form.* The Commission may provide a standard application form for use by an applicant for this section and will, to the extent practicable, provide the application form on the Commission's website.

(1) Any standard application form developed for purposes of this section that involves a matter of an interagency nature will be developed or revised only after notice is published in the *Pennsylvania Bulletin*, posted on the Commission's website to the extent practicable, and after consultation with interested persons or agencies is conducted.

(2) Any standard application form developed for purposes of this section that involves matters other than those governed by paragraph (1) will be developed or revised only after notice is published in the *Pennsylvania Bulletin*, posted on the Commission's website to the extent practicable, and after consultation with any interested persons or agencies is conducted.

(3) Any standard application form developed for purposes of this section will be developed by the Commission staff and may be subject to formal approval by the Commission. Any standard application form developed for purposes of this section not formally approved by the Commission shall be subject to § 5.44 (relating to petitions for appeal from actions of the staff).

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

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

(2) A water or wastewater utility, municipal corporation or authority which provides water or wastewater collection, treatment or disposal service to the public and whose service area abuts or is within 1 mile of the service area proposed in the application.

(3) The statutory advocates and DEP's central and regional offices.

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

Authority

The provisions of this § 3.501 amended under the Public Utility Code, 66 Pa.C.S. §§ 501, 504—506, 523, 1301, 1501 and 1504.

Source

The provisions of this § 3.501 amended April 16, 1976, effective April 17, 1976, 6 Pa.B. 911; amended October 21, 1983, effective October 22, 1983, 13 Pa.B. 3221; amended January 24, 1997, effective January 25, 1997, 27 Pa.B. 414; amended April 28, 2006, effective April 29, 2006, 36 Pa.B. 2097; amended January 10, 2014, effective January 11, 2014, 44 Pa.B. 249. Immediately preceding text appears at serial pages (319113) to (319117).

Cross References

This section cited in 52 Pa. Code § 5.14 (relating to applications requiring notice).

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

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

- (1) The applicant's name and the docket number of the application.
- (2) The name, business address and telephone number of the protestant.
- (3) The name, business address, Pennsylvania attorney identification number and telephone number of the protestant's attorney or other representative.
- (4) A statement of the nature of the protestant's interest in the application.

(b) *Participation in a proceeding.* Upon the filing of a timely protest the protestant will be allowed to participate in the proceeding as a party intervenor. Statutory advocates participate in any proceeding based on their statutory right of participation.

(c) *Motions.* A protest will be treated as a pleading; and the applicant may, within 20 days after the closing date for the filing of protests, file motions to strike, to dismiss, or for amplification as provided in § 5.101 (relating to preliminary motion).

(d) *Protests: time of filing.* A protest shall be filed within the time specified in the notice appearing in the *Pennsylvania Bulletin*, which shall be at least 60 days from the date of publication thereof except when the need for the proposed service or other exigent circumstances supports a request for a shorter protest period. Failure to file the protest in accordance with this subsection shall be a bar

to subsequent participation in the proceeding, except if permitted by the Commission for good cause shown or as provided in § 5.71 (relating to initiation of intervention).

Authority

The provisions of this § 3.502 issued under the Public Utility Code, 66 Pa.C.S. §§ 501, 504—506, 1301 and 1501.

Source

The provisions of this § 3.502 adopted January 24, 1997, effective January 25, 1997, 27 Pa.B. 414; amended April 28, 2006, effective April 29, 2006, 36 Pa.B. 2097. Immediately preceding text appears at serial pages (225625) to (225626).

Cross References

This section cited in 52 Pa. Code § 5.53 (relating to time of filing).

Subchapter H. FORMS

Sec.
3.551. Official forms.

§ 3.551. Official forms.

Forms for applications, petitions, complaints and other matters are available on the Commission's website or from the Secretary of the Commission, P. O. Box 3265 Harrisburg, Pennsylvania, 17105-3265; (717) 772-7777.

Authority

The provisions of this § 3.551 issued under the Public Utility Code, 66 Pa.C.S. §§ 501, 1102, 1103 and 2509; amended under the Public Utility Code, 66 Pa.C.S. §§ 309—311, 315, 331—335, 501, 504—506, 701—703, 1101—1103, 1301 and 1501; amended under the Electricity Generation Customer Choice and Competition Act, 66 Pa.C.S. §§ 501, 2806(g)(3), 2203(12), 2208 and 2809.

Source

The provisions of this § 3.551 amended May 28, 1976, effective May 29, 1976, 6 Pa.B. 1226; amended April 29, 1977, effective April 30, 1977, 7 Pa.B. 1173; corrected May 20, 1977, effective April 30, 1977, 7 Pa.B. 1346; amended June 3, 1983, effective June 4, 1983, 13 Pa.B. 1848; amended through January 13, 1984, effective December 3, 1983, 14 Pa.B. 165; amended July 17, 1987, effective July 18, 1987, 17 Pa.B. 3028; amended April 3, 1992, effective April 4, 1992, 22 Pa.B. 1554; amended January 24, 1997, effective January 25, 1997, 27 Pa.B. 414; amended August 7, 1998, effective August 8, 1998, 28 Pa.B. 3760; amended July 20, 2001, effective July 21, 2001, 31 Pa.B. 3943; amended April 28, 2006, effective April 29, 2006, 36 Pa.B. 2097. Immediately preceding text appears at serial pages (225626) and (281567).

Notes of Decisions

The language in paragraph 18 of the application form set forth in § 3.551, Form D does not state or imply that the Commission can no longer act on a application for transfer of certificate once the transferor has withdrawn consent. *P.D.J. Cab Co. v. Pennsylvania Public Utility Commission*, 501 A.2d 342 (Pa. Cmwlth. 1985).

Cross References

This section cited in 52 Pa. Code § 3.363 (relating to claims for property damages from crossings); 52 Pa. Code § 5.11 (relating to applications generally); and 52 Pa. Code § 63.107 (relating to applications for authority).

Subchapter I. REGISTRATION OF SECURITIES

- Sec.
3.601. General.
3.602. Abbreviated securities certificate.

Authority

The provisions of this Subchapter I issued under the Public Utility Code, 66 Pa.C.S. §§ 501, 504—506, 1301 and 1501, unless otherwise noted.

Source

The provisions of this Subchapter I adopted January 24, 1997, effective January 25, 1997, 27 Pa.B. 414; amended April 28, 2006, effective April 29, 2006, 36 Pa.B. 2097, unless otherwise noted. Immediately preceding text appears at serial pages (281567) to (281568) and (225629) to (225633).

§ 3.601. General.

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

(b) *Format.* A securities certificate must be in a form consistent with §§ 1.31 and 1.32 (relating to requirements for documentary filings; and form of documents), accompanied by payment in the amount provided in § 1.43 (relating to schedule of fees payable to the Commission) and in a payment mode provided for in § 1.31.

(c) *Form.* The securities certificate must provide information required by the Commission on a form available from the Commission or shown on its website as well as additional information required by the Commission. The securities certificate must contain the following information:

- (1) The name and address of the public utility filing the securities certificate.
- (2) The name and address of the public utility's attorney.
- (3) A brief corporate history of the public utility, a general description of the territory in which it actually furnishes service to the public, and of the kind of service rendered.

- (4) Whether the public utility is controlled by a corporation, and, if so:
- (i) The name of the controlling corporation.
 - (ii) The form and manner of control.
 - (iii) The extent of control.
 - (iv) Whether control is direct or indirect.
 - (v) The names of intermediaries through which control, if indirect, is held. When control is in a holding company organization, show the chain of ownership or control to the main parent company.
- (5) The following information regarding the securities which the public utility proposes to issue or assume:
- (i) The exact title of security.
 - (ii) The aggregate par value, or if no par value then the number of shares, or the principal amount to be issued or assumed.
 - (iii) In the case of stock certificates, as applicable:
 - (A) Par value.
 - (B) Dividend rate and payment dates.
 - (C) Redemption value.
 - (D) Liquidation value.
 - (E) Voting powers.
 - (F) Preferences as to assets and dividends.
 - (G) Cumulative and participating dividend provisions.
 - (H) Callability and conversion provision.
 - (iv) In the case of evidences of indebtedness, as applicable:
 - (A) Nominal date of issue.
 - (B) Date of maturity.
 - (C) Interest rate and payment dates.
 - (D) Extent to which taxes on securities are assumed by the issuer.
 - (E) Callability and conversion provisions.
 - (F) Maintenance.
 - (G) Depreciation and sinking or other fund provision.
 - (H) Name and address of trustee and whether affiliated with the public utility.
- (6) The method by which the public utility proposes to dispose of the securities, giving pertinent details as to date and manner of sale, exchange or other disposition. If sale, include minimum net price to the public utility, maximum commission or fee to be paid to investment bankers, brokers or others, and whether securities are to be sold on an underwriting or take-down basis. State whether or not those negotiating or arranging the sale are in any way affiliated with the utility. If a private sale, state whether the purchasers are in any way affiliated with the utility. Show in tabular form an estimate in reasonable detail of the expenses to be incurred in issuing the securities, including,

by groups, legal fees, fees and documentary taxes to governmental authorities, printing expenses, underwriting or brokerage commission, duplicate interest and other expenses.

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

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

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

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

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

(D) The manner of determining consideration.

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

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

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

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

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

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

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

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

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

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

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

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

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

- (B) The average time elapsing between the date when the public utility furnishes or begins a period of furnishing service to customers and the date when collection is made from customers for the service.
- (C) The minimum bank balance requirements.
- (D) A statement, by accounts, of the operating expenses for the latest available 12 months.
- (iv) If the purpose is to refund obligations, describe obligations in detail.
 - (A) Explain the purpose for which obligations were issued, or refer to number of securities certificate, securities application or certificate of notification in which the purpose appears.
 - (B) State the date of last disposition of obligation, the amount disposed of and the price received.
 - (C) State whether refunding is to meet maturity, or to effect saving in interest or other annual charges; if to effect saving, state date when, and price at which obligations are to be called, and submit statement showing saving to be effected as a result of refunding.
 - (D) State disposition to be made of any discount or expense remaining unamortized on the obligations to be refunded and of any premium included in the call price.
 - (E) State whether any unamortized debt discount and expense was originally incurred in connection with securities not now outstanding, and if so, give amount applicable to each issue.
- (v) If the purpose is reimbursement for moneys already expended, state the purpose for which the moneys were expended in as complete detail as if the securities now being issued were for that purpose as required by this subsection and by subsections (a), (b) and (d).
 - (A) List the names and principal amounts of any securities already issued against the expenditures.
 - (B) State the dates upon or between which the expenditures were made.
- (8) State whether a registration statement, application or declaration has been filed or will be filed with the Securities and Exchange Commission in respect to the securities herein proposed to be issued or assumed. If so, state:
 - (i) The date filed.
 - (ii) The nature of the application or declaration.
 - (iii) The closing date before the Securities and Exchange Commission.
- (9) The public utility shall attach to each securities certificate:
 - (i) A balance sheet of the public utility set up by ledger accounts and not by groupings dated within at least 3 months of the date of securities certificate, including any transactions which have occurred between the date of the balance sheet and the date of filing the securities certificate and an explanation of any major contingent liabilities faced by the public utility.

- (ii) An income account of the public utility set up by general ledger accounts, not by groupings, showing in detail the other credits and charges made to surplus during the year, for the 12-month period ending by the date of the balance sheet.
- (iii) A statement with respect to the plant accounts appearing on the balance sheet showing the following:
- (A) A summary by the detailed plant accounts prescribed in the system of accounts applicable to the public utility.
 - (B) The portion of the plant account balance representing increments in plant book values resulting from the acquisition of property through purchase, merger and consolidation or reorganization.
 - (C) The portion of the plant account balance representing increases in plant book values resulting from the recording of appraised values by the public utility unless the public utility has filed with the Commission an original cost study.
- (iv) A statement of securities of other corporations owned by the public utility, including:
- (A) The name of the issuer.
 - (B) The exact title of the security.
 - (C) The amount owned.
 - (D) The date acquired.
 - (E) The price paid.
 - (F) The book value.
 - (G) The market value.
 - (H) The cost to the affiliate, if acquired from an affiliate.
 - (V) A statement showing the status of the funded debt of the public utility outstanding at the date of the balance sheet, plus particulars of any important changes in the funded debt outstanding which have taken place since that date. The statement must be in the form available from the Commission.
- (vi) A statement showing the status of outstanding capital stock of the public utility as of the date of the balance sheet, including any important changes in the capital stock outstanding which have taken place since the date of the balance sheet according to the form available from the Commission.
- (vii) A copy of the registration statement filed by the public utility with the Securities and Exchange Commission under the Securities Act of 1933 (15 U.S.C.A. §§ 77a—77aa) with respect to the proposed issuance or assumption of securities.
- (viii) Copies of applications and declarations filed by the public utility with the Securities and Exchange Commission with respect to the proposed issuance or assumption of securities, under the Public Utility Holding Company Act of 1935 (15 U.S.C.A. §§ 79—79z-6).
- (ix) A copy of the resolution of the board of directors of the public utility authorizing the proposed issuance or assumption of securities.

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

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

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

(d) *Format form.* The Commission may provide a standard format form for use by an applicant for this section and will, to the extent practicable, provide the format form on the Commission's website.

(1) Any standard format form developed for purposes of this section that involves a matter of an interagency nature will be developed or revised only after notice is published in the *Pennsylvania Bulletin*, posted on the Commission's website to the extent practicable, and after consultation with an interested agency is conducted.

(2) Any standard format form developed for purposes of this section that involves matters other than those governed by paragraph (1) will be developed or revised only after notice is published in the *Pennsylvania Bulletin*, posted on the Commission's website to the extent practicable, and after consultation with an interested agency is conducted.

(3) Any standard format form developed for purposes of this section will be developed by staff and may be subject to formal approval by the Commission. Any standard format form developed for purposes of this section not otherwise subject to formal approval by the Commission will be subject to §§ 5.41—5.44 (relating to petitions).

§ 3.602. Abbreviated securities certificate.

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

(1) The issuance or assumption of securities has been authorized by another state commission having primary jurisdiction.

(2) The financing is provided by an agency of a state or the United States government.

(3) The issuance or assumption of securities is by a utility having a presence in this Commonwealth of less than 10% as measured by either:

(i) The ratio of gross investment within this Commonwealth to the utility's total gross investment.

(ii) The ratio of gross operating revenues from service rendered during the immediately preceding fiscal year under tariffs filed with the Commis-

sion for intra-State service to the total gross operating revenues of the public utility during the fiscal year from all service, wherever rendered, of the type described in section 102 of the act (relating to definitions).

(4) The declaration by a utility of a stock split if there is no impact on the control of the utility or negative impact attributable to commingling of competitive enterprises with noncompetitive enterprises.

(5) The issuance of a dividend by a utility in the form of the utility's stock if there is no impact on the control of the utility or negative impact attributable to commingling of competitive enterprises with noncompetitive enterprises.

(b) *Form.* At the election of the issuing public utility, a securities certificate relating to an issuance of securities within the scope of this rule may consist of two copies of a letter addressed to the Secretary and setting forth the following information:

(1) The name and address of the public utility.

(2) The title or capacity of the representative of the public utility executing the letter.

(3) The designation of the securities to be issued or assumed and the approximate number of shares, principal amount, or other units proposed to be issued or assumed.

(4) A statement setting forth the specific subsections that qualifies the issuance of the abbreviated procedure together with the underlying calculations, when applicable.

(5) A verification or affidavit conforming to § 1.36 (relating to verifications and affidavits) in compliance with section 1902 of the act (relating to contents of securities certificate).

(c) *Filing and registration.* An abbreviated securities certificate under this section, together with the filing fee specified in § 1.43 (relating to schedule of fees payable to the Commission), shall be filed with the Secretary.

(1) The certificate will be deemed, in fact and in law, to have been registered if no order of rejection has been entered after 20 days from the filing of a securities certificate.

(2) Prior to the expiration of the 20-day period, the Secretary may extend the 20-day consideration period to not more than a total of 40 days upon notification of the public utility served. Further extension to the period will be by the order of the Commission.

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

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