

**CHAPTER 5. FORMAL PROCEEDINGS**

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**Source**

The provisions of this Chapter 5 adopted October 12, 1984, effective January 1, 1985, 14 Pa.B. 3819, unless otherwise noted.

**Cross References**

This chapter cited in 52 Pa. Code § 1.4 (relating to filing generally); 52 Pa. Code § 1.21 (relating to appearance in person); 52 Pa. Code § 1.32 (relating to filing specifications); 52 Pa. Code § 1.34 (relating to single pleading or submittal covering more than one matter); 52 Pa. Code § 1.91 (relating to applications for waiver of formal requirements); 52 Pa. Code § 27.7 (relating to modification of certificates and suspension of rules); 52 Pa. Code § 56.174 (relating to ability to pay proceedings); 52 Pa. Code § 56.404 (relating to ability to pay proceedings); 52 Pa. Code § 57.39 (relating to informal consultation and Commission proceedings); 52 Pa. Code § 64.153 (relating to Commission informal complaint procedures); 52 Pa. Code § 64.161 (relating to general rule); and 52 Pa. Code § 77.5 (relating to resolution of disputes).

**Subchapter A. PLEADINGS AND OTHER PRELIMINARY MATTERS**

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**GENERAL PROVISIONS****§ 5.1. Pleadings allowed.**

- (a) The pleadings in an action before the Commission include the following:
- (1) Application and protest.
  - (2) Formal complaint, answer, new matter and reply to new matter.
  - (3) Order to show cause and answer.
  - (4) Petition and answer.
  - (5) Preliminary objections.
  - (6) Motions.
- (b) A pleading except a preliminary objection may be subject to a preliminary objection as set forth in § 5.101 (relating to preliminary objections).

**Authority**

The provisions of this § 5.1 amended under the Public Utility Code, 66 Pa.C.S. § 501, 504—506, 1301 and 1501.

**Source**

The provisions of this § 5.1 adopted October 12, 1984, effective January 1, 1985, 14 Pa.B. 3819; amended April 28, 2006, effective April 29, 2006, 36 Pa.B. 2097. Immediately preceding text appears at serial page (225637).

**Cross References**

This section cited in 52 Pa. Code § 1.5 (relating to amendment to rules); and 52 Pa. Code § 5.405 (relating to effect of pleadings).

**APPLICATIONS****§ 5.11. Applications generally.**

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

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

**Authority**

The provisions of this § 5.11 amended under the Public Utility Code, 66 Pa.C.S. §§ 501, 504—506, 1301 and 1501.

**Source**

The provisions of this § 5.11 adopted October 12, 1984, effective January 1, 1985, 14 Pa.B. 3819; amended January 24, 1997, effective January 25, 1997, 27 Pa.B. 414. Immediately preceding text appears at serial pages (215937) to (215938).

**Cross References**

This section cited in 52 Pa. Code § 1.5 (relating to amendment to rules); 52 Pa. Code § 3.501 (relating to certificate of public convenience as a water supplier or wastewater collection, treatment and disposal provider); and 52 Pa. Code § 63.324 (relating to commission approval of a general rule transaction subject to 66 Pa.C.S. §§ 1102(a)(3) and 1103).

**§ 5.12. Contents of applications.**

(a) Applications must conform to this section unless a form or other specific requirements are provided in Chapter 3 (relating to special provisions). Applications must :

- (1) Be in writing.
- (2) State clearly and concisely the authorization or permission sought.
- (3) Cite by appropriate reference the statutory provisions, regulations or other authority under which the Commission authorization or permission is sought.

(4) Set forth, in the order indicated, the following—unless otherwise provided by this chapter or in Chapter 3 for the specific type of application involved:

- (i) The exact legal name of the applicant.
- (ii) The jurisdiction under the statutes of which the applicant was created or organized and the location of the principal place of business of the applicant, when the applicant is a corporation, trust, association or other entity.
- (iii) The name, title, mailing address, telephone number and electronic mail address, if available, of the person to whom correspondence or communication in regard to the application is to be addressed. The Commission will

serve, when required, notices, orders and other papers upon the person named, and service will be deemed to be service upon the applicant.

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

**Authority**

The provisions of this § 5.12 amended under the Public Utility Code, 66 Pa.C.S. §§ 501, 504—506, 1301 and 1501.

**Source**

The provisions of this § 5.12 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 pages (225638) and (281569).

**Cross References**

This section cited in 52 Pa. Code § 3.381 (relating to applications for transportation of property, household goods in use and persons); 52 Pa. Code § 63.324 (relating to commission approval of a general rule transaction subject to 66 Pa.C.S. §§ 1102(a)(3) and 1103); and 52 Pa. Code § 63.325 (relating to commission approval of a pro forma transaction subject to 66 Pa.C.S. §§ 1102(a)(3) and 1103).

**§ 5.13. Applications for construction or alteration of crossings.**

(a) Applications for construction, relocation, alteration, protection or abolition of a crossing under section 2702 of the act (relating to construction, relocation, suspension, and abolition of crossings) must comply substantially with the requirements as to crossing complaints as set forth in § 3.361 (relating to crossing complaints).

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

**Authority**

The provisions of this § 5.13 amended under the Public Utility Code, 66 Pa.C.S. §§ 501, 504—506, 1301 and 1501.

**Source**

The provisions of this § 5.13 adopted October 12, 1984, effective January 1, 1985, 14 Pa.B. 3819; amended April 28, 2006, effective April 29, 2006, 36 Pa.B. 2097. Immediately preceding text appears at serial page (281569).

**Cross References**

This section cited in 52 Pa. Code § 63.324 (relating to commission approval of a general rule transaction subject to 66 Pa.C.S. §§ 1102(a)(3) and 1103).

**§ 5.14. Applications requiring notice.**

(a) *General rule.* Notice of applications to the Commission for authority under the act must be published in the *Pennsylvania Bulletin* and as may otherwise be required by the Commission.

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

- (1) Publication in a newspaper of general circulation serving the geographical territory affected by the application.
- (2) Actual notification to the parties affected by the application.
- (3) Another form of actual or constructive notification, including service of the application on interested persons.

(c) *Protest deadlines.* The time for filing protests to applications is governed by § 5.53 (relating to time of filing).

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

- (1) To initiate fixed utility service to the public, including the following:
  - (i) Electric.
  - (ii) Gas.
  - (iii) Telephone.
  - (iv) Water.
  - (v) Wastewater.
  - (vi) Pipeline.
  - (vii) Radio-telephone common carrier service.
- (2) To initiate, in a different nature or to a different territory than is currently authorized, fixed utility service to the public, including the following:
  - (i) Electric.
  - (ii) Gas.
  - (iii) Telephone.
  - (iv) Water.
  - (v) Wastewater.
  - (vi) Pipeline.
  - (vii) Radio-telephone common carrier service.
- (3) To abandon, in whole or in part, fixed utility service to the public, including to the following:
  - (i) Electric.
  - (ii) Gas.
  - (iii) Telephone.
  - (iv) Water.
  - (v) Wastewater.
  - (vi) Pipeline.
  - (vii) Radio-telephone common carrier service.
- (4) To initiate rail utility service to the public.

- (5) To initiate, in a different nature or to a different territory than is currently authorized, rail utility service to the public.
- (6) To abandon, in whole or in part, rail utility service to the public.
- (7) To acquire or transfer tangible or intangible utility property through sale, merger, consolidation, lease or transfer of stock.
- (8) To acquire 5% or more of the voting stock of another corporation.
- (9) To secure exemption under section 619 of the Pennsylvania Municipalities Planning Code (53 P. S. § 10619).
- (10) To construct, alter or abandon, in whole or in part, or to change the status of a rail utility agency station or team track.

#### Authority

The provisions of this § 5.14 amended under the Public Utility Code, 66 Pa.C.S. §§ 501, 504—506, 1301 and 1501.

#### Source

The provisions of this § 5.14 adopted December 2, 1988, effective January 3, 1989, 18 Pa.B. 5451; amended January 24, 1997, effective January 25, 1997, 27 Pa.B. 414; amended February 13, 1998, effective February 14, 1998, 28 Pa.B. 801; amended April 28, 2006, effective April 29, 2006, 36 Pa.B. 2097. Immediately preceding text appears at serial pages (281569) to (281570).

#### Cross References

This section cited in 52 Pa. Code § 5.74 (relating to filing of petitions to intervene); 52 Pa. Code § 54.35 (relating to publication of notice of filing); 52 Pa. Code § 54.36 (relating to protests to applications); 52 Pa. Code § 62.107 (relating to publication of notice of filing); 52 Pa. Code § 62.108 (relating to protests to applications); 52 Pa. Code § 63.324 (relating to commission approval of a general rule transaction subject to 66 Pa.C.S. §§ 1102(a)(3) and 1103); and 52 Pa. Code § 63.325 (relating to commission approval of a pro forma transaction subject to 66 Pa.C.S. §§ 1102(a)(3) and 1103).

## FORMAL COMPLAINTS

### § 5.21. Formal complaints generally.

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

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

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

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

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

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

#### Authority

The provisions of this § 5.21 amended under the Public Utility Code, 66 Pa.C.S. §§ 501, 504—506, 1301 and 1501.

#### Source

The provisions of this § 5.21 adopted October 12, 1984, effective January 1, 1985, 14 Pa.B. 3819; amended January 24, 1997, effective January 25, 1997, 27 Pa.B. 414. Immediately preceding text appears at serial pages (215940) and (222431).

#### Notes of Decisions

##### *Hearings*

The Pennsylvania Public Utility Commission's decision to dismiss a complaint or protest regarding an application for certificate of public convenience, without conducting a hearing, will be reversed by Commonwealth Court only if there was an abuse of discretion. *Chester Water Authority v. Pennsylvania Public Utility*, 822 A.2d 146 (Pa. Cmwlth. 2003); appeal granted 854 A.2d 968 (Pa. 2004); order reversed 868 A.2d 384 (Pa. 2005). Where issues of material fact are raised, however, a hearing is required to protect due process concerns. *Id.* at 152.

##### *Standing*

Gas marketing company had standing to file a formal complaint against utility on behalf of its 150 customers who were also customers of the utility, alleging that the utility's proposed MSSS rate would adversely affect the customers' operating costs and would permit impermissible discrimination against some of those customers in violation of section 1304 of the Public Utility Code. *Interstate Gas Marketing, Inc. v. Pennsylvania Public Utility Commission*, 679 A.2d 1349 (Pa. Cmwlth. 1996); reargument denied (1996).

#### Cross References

This section cited in 52 Pa. Code § 5.22 (relating to content of formal complaint); 52 Pa. Code § 30.52 (relating to commencement of complaints); 52 Pa. Code § 62.111 (relating to bonds or other security); 52 Pa. Code § 62.142 (relating to standards of conduct); and 52 Pa. Code § 63.144 (relating to remedies).

### § 5.22. Content of formal complaint.

- (a) A formal complaint must set forth the following:
- (1) The name, mailing address, telephone number, telefacsimile number and electronic mailing address, if applicable, of the complainant.



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

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

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

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

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

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

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

(c) A complaint brought by a public utility or other person licensed by the Commission regarding the act, a regulation or order of the Commission must be substantially in the form prescribed by subsection (a). The complaint must reference the act, the regulation or order and shall quote the pertinent portions thereof.

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

#### Authority

The provisions of this § 5.22 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 § 5.22 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 (318334) and (225643).

#### Notes of Decisions

##### *Pleadings*

The fact that a letter contained all information required by this section was not enough to make it a “formal complaint.” It must contain an affidavit, and notify the Pennsylvania Public Utility Commission that it was intended to be a formal complaint. *Schellhammer v. Pennsylvania Public Utility Commission*, 629 A.2d 189 (Pa. Cmwlth. 1993).

**Cross References**

This section cited in 52 Pa. Code § 3.111 (relating to form and content of informal complaints); 52 Pa. Code § 5.31 (relating to staff-initiated complaints); 52 Pa. Code § 30.52 (relating to commencement of complaints); 52 Pa. Code § 56.173 (relating to formal complaint procedures other than appeals from mediation decisions of the Bureau of Consumer Services); 52 Pa. Code § 62.111 (relating to bonds or other security); and 52 Pa. Code § 64.163 (relating to formal complaint procedures).

**§ 5.23. Joinder of formal complaints.**

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

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

**Source**

The provisions of this § 5.23 adopted October 12, 1984, effective January 1, 1985, 14 Pa.B. 3819.

**Cross References**

This section cited in 52 Pa. Code § 30.52 (relating to commencement of complaints).

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

(a) If the respondent satisfies a formal complaint either before or after a hearing, the complainant shall file with the Commission a certified statement to that effect. The certified statement must set forth that the complaint is satisfied and that the complaint docket should be marked closed. The presiding officer is not required to render a decision upon submission of the certified statement concerning the satisfaction of a complaint unless the parties request one for good cause.

(b) In lieu of the certified statement required by subsection (a), the respondent may provide a certified writing to the Commission that it has addressed the complaint and at least one of the following:

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

(c) In the case of certification of satisfaction under subsection (b), the respondent shall simultaneously serve a copy of the respondent's certified writing, including a statement informing the complainant of the complainant's right to object in writing within 10 days, upon the complainant. Unless the complainant objects, in writing, to the certification within 10 days of its filing, the complaint docket will be marked closed.

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

**Authority**

The provisions of this § 5.24 amended under the Public Utility Code, 66 Pa.C.S. §§ 501, 504—506, 1301 and 1501.

**Source**

The provisions of this § 5.24 adopted October 12, 1984, effective January 1, 1985, 14 Pa.B. 3819; amended April 28, 2006, effective April 29, 2006, 36 Pa.B. 2097. Immediately preceding text appears at serial page (225643).

**Cross References**

This section cited in 52 Pa. Code § 30.52 (relating to commencement of complaints).

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

(a) A Commission bureau may commence a proceeding pursuant to statutory or regulatory authority or pursuant to delegation by the Commission by filing a complaint in accordance with § 5.22 (relating to content of formal complaint). The complaint will contain a statement of the particular matter about which the bureau is complaining or inquiring, and the complaint will require that the respondent named file a written answer in the form required by § 5.61 (relating to answers to complaints, petitions and motions).

(b) A Commission bureau filing a complaint under this section involving a fixed utility or licensee will provide a copy to the Office of Trial Staff, the Chief Counsel, the Office of Consumer Advocate, and the Office of Small Business Advocate.

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

**Authority**

The provisions of this § 5.31 amended under the Public Utility Code, 66 Pa.C.S. §§ 501, 504—506, 1301 and 1501.

**Source**

The provisions of this § 5.31 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 (225644).

**§ 5.32. Complaints in rate proceedings.**

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

(b) *After suspension.* A person filing a complaint during the suspension of a proposed general rate increase shall take the record of the suspended rate proceeding as it stands at the time of the complaint's filing.

**Authority**

The provisions of this § 5.32 amended under the Public Utility Code, 66 Pa.C.S. §§ 501, 504—506, 1301 and 1501.

**Source**

The provisions of this § 5.32 adopted April 28, 2006, effective April 29, 2006, 36 Pa.B. 2097.

**PETITIONS****§ 5.41. Petitions generally.**

(a) *General requirements.* Petitions for relief under the act or other statute that the Commission administers, must be in writing, state clearly and concisely the interest of the petitioner in the subject matter, the facts and law relied upon, and the relief sought. Petitions for relief must comply with § 1.51 (relating to Instructions for service, notice, and protest).

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

(c) *Copies.* Copies shall also be served as directed by the Commission.

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

**Authority**

The provisions of this § 5.41 amended under the Public Utility Code, 66 Pa.C.S. §§ 501, 504—506, 1301 and 1501.

**Source**

The provisions of this § 5.41 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 pages (225644) and (287757).

**Notes of Decisions**

Letter from corporate officer requesting reinstatement of Certificate of Public Convenience was properly considered although not in formal compliance with regulations. *P-I-E Nationwide, Inc. v. Pennsylvania Public Utility Commission*, 567 A.2d 1124 (Pa. Cmwlth. 1989).

**Cross References**

This section cited in 52 Pa. Code § 3.2 (relating to petitions for issuance of emergency orders); 52 Pa. Code § 3.4 (relating to hearings following issuance of emergency); 52 Pa. Code § 3.6 (relating to petitions for interim emergency orders); 52 Pa. Code § 3.601 (relating to general); 52 Pa. Code § 5.211 (relating to notice of rulemaking proceedings); 52 Pa. Code § 5.232 (relating to settlement petitions and stipulations of fact); and 52 Pa. Code § 57.86 (relating to exceptions).

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

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

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

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

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

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

**Authority**

The provisions of this § 5.42 amended under the Public Utility Code, 66 Pa.C.S. §§ 501, 504—506, 1301 and 1501.

**Source**

The provisions of this § 5.42 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 pages (287757) to (287758).

**Cross References**

This section cited in 52 Pa. Code § 3.4 (relating to hearings following issuance of emergency); 52 Pa. Code § 3.601 (relating to general); and 52 Pa. Code § 5.41 (relating to petitions generally).

**Notes of Decisions***Hearings*

Where petitioner's only attempt to seek evidentiary hearing was a letter dated 2 days before the Commission's order, the Commission did not err in making a decision without hearing, as it was petitioner's obligation to state in its petition all facts necessary to support its petition. *Professional Paramedical Services, Inc. v. Pennsylvania Public Utility Commission*, 525 A.2d 1274 (Pa. Cmwlth. 1987); appeal denied 538 A.2d 879 (Pa. 1988).

**§ 5.43. Petitions for issuance, amendment, repeal, or waiver of Commission regulations.**

(a) A petition to the Commission for the issuance, amendment, waiver or repeal of a regulation must set forth clearly and concisely the interest of the petitioner in the subject matter, the specific regulation, amendment, waiver or repeal requested, and cite by appropriate reference the statutory provision or other authority involved. The petition must set forth the purpose of, and the facts claimed to constitute the grounds requiring the regulation, amendment, waiver or

repeal. Petitions for the issuance or amendment of a regulation shall incorporate the proposed regulation or amendment.

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

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

(d) Subsection (a) is identical to 1 Pa. Code § 35.18 (relating to petitions for issuance, amendment, waiver or repeal of regulations).

#### Authority

The provisions of this § 5.43 amended under the Public Utility Code, 66 Pa.C.S. §§ 501, 504—506, 1301 and 1501.

#### Source

The provisions of this § 5.43 adopted October 12, 1984, effective January 1, 1985, 14 Pa.B. 3819; amended April 28, 2006, effective April 29, 2006, 36 Pa.B. 2097. Immediately preceding text appears at serial page (287758).

#### Cross References

This section cited in 52 Pa. Code § 3.4 (relating to hearings following issuance of emergency); 52 Pa. Code § 3.601 (relating to general); 52 Pa. Code § 5.41 (relating to petitions generally); 52 Pa. Code § 57.63 (relating to promotional activities); 52 Pa. Code § 54.184 (relating to default service provider obligations); and 52 Pa. Code § 57.64 (relating to promotional allowances).

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

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

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

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

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

#### Authority

The provisions of this § 5.44 amended under the Public Utility Code, 66 Pa.C.S. §§ 501, 504—506, 1301 and 1501.

#### Source

The provisions of this § 5.44 adopted October 12, 1984, effective January 1, 1985, 14 Pa.B. 3819; amended April 28, 2006, effective April 29, 2006, 36 Pa.B. 2097; amended September 20, 2013, effective September 21, 2013, 43 Pa.B. 5593. Immediately preceding text appears at serial page (337308).

#### Cross References

This section cited in 52 Pa. Code § 3.4 (relating to hearings following issuance of emergency); 52 Pa. Code § 3.112 (relating to action on informal complaints); 52 Pa. Code § 3.501 (relating to certificate of public convenience as a water supplier or wastewater collection, treatment or disposal pro-

vider); 52 Pa. Code § 3.601 (relating to general); 52 Pa. Code § 5.41 (relating to petitions generally); 52 Pa. Code § 57.198 (relating to inspection and maintenance standards); 52 Pa. Code § 62.111 (relating to bonds or other security); 52 Pa. Code § 63.324 (relating to commission approval of a general rule transaction subject to 66 Pa.C.S. §§ 1102(a)(3) and 1103); 52 Pa. Code § 63.325 (relating to commission approval of a pro forma transaction subject to 66 Pa.C.S. §§ 1102(a)(3) and 1103); 52 Pa. Code § 75.17 (relating to process for obtaining Commission approval of customer-generator status); and 52 Pa. Code § 75.64 (relating to alternative energy credit program administrator).

## PROTESTS

### § 5.51. Protest to an application.

(a) A person objecting to the approval of an application filed with the Commission may file a protest to the application.

(b) Protests to motor carrier property applications are not permitted. See § 3.381(c) (relating to applications for transportation of property, household goods in use and persons).

(c) Subsection (a) supersedes 1 Pa. Code § 35.23 (relating to protest generally).

#### Authority

The provisions of this § 5.51 amended under the Public Utility Code, 66 Pa.C.S. §§ 501, 504—506, 1301 and 1501.

#### Source

The provisions of this § 5.51 adopted October 12, 1984, effective January 1, 1985, 14 Pa.B. 3819; amended November 20, 1998, effective November 21, 1998, 28 Pa.B. 5769; amended April 28, 2006, effective April 29, 2006, 36 Pa.B. 2097. Immediately preceding text appears at serial page (281571).

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

(a) *Form.* A protest to an application must:

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

(2) State the grounds of the protest .

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

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

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

#### Authority

The provisions of this § 5.52 amended under the Public Utility Code, 66 Pa.C.S. §§ 501, 504—506, 1301 and 1501.

#### Source

The provisions of this § 5.52 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 (281571).

#### Cross References

This section cited in 52 Pa. Code § 62.108 (relating to protests to applications).

### § 5.53. Time of filing.

A protest shall be filed within the time specified in the published notice of the application. If no protest time is specified, the protest shall be filed within 60 days of publication of the notice.

**Authority**

The provisions of this § 5.53 amended under the Public Utility Code, 66 Pa.C.S. §§ 501, 504—506, 1301 and 1501.

**Source**

The provisions of this § 5.53 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 pages (281571) to (281572).

**Cross References**

This section cited in 52 Pa. Code § 5.14 (relating to applications requiring notice); and 52 Pa. Code § 5.74 (relating to filing of petitions to intervene).

**§ 5.54. [Reserved].****Source**

The provisions of this § 5.54 adopted October 12, 1984, effective January 1, 1985, 14 Pa.B. 3819; reserved April 28, 2006, effective April 29, 2006, 36 Pa.B. 2097. Immediately preceding text appears at serial page (281572).

**ANSWERS****§ 5.61. Answers to complaints, petitions, motions and preliminary objections.**

(a) *Time for filing.* Unless a different time is prescribed by statute, the Commission, or the presiding officer, answers to complaints and petitions shall be filed with the Commission within 20 days after the date of service.

(1) Answers to motions shall be filed within the 20 days provided by §§ 5.102 and 5.103 (relating to motions for summary judgment and judgment on the pleadings; and motions).

(2) Answers to preliminary objections shall be filed within the 10 days provided by § 5.101 (relating to preliminary objections).

(b) *Form of answers to complaints.* The answer must be in writing and:

(1) Set forth in paragraphs numbered to correspond with the complaint.

(2) Advise the parties and the Commission as to the nature of the defense.

(3) Admit or deny specifically all material allegations of the complaint.

(4) State concisely the facts and matters of law relied upon.

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

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

(d) *Answers to complaints in rate proceedings.* For complaints which are docketed with Commission-instituted rate proceedings, an answer may be filed within 10 days of date of service. However, an answer is not required, except as may be directed by the Commission or the presiding officer.

(e) *Form of answers to petitions.* The answer must be in writing and:

(1) Advise the parties and the Commission of the parties' position on the issues raised in the petition.



- (2) State the parties' standing to participate in any Commission proceeding resulting from the petition.
- (3) State concisely the facts and matters of law relied upon.
- (4) Include a copy of a document, or the material part of a document when relied upon in the answer. If the writing or a copy is not available, the answer must set forth that the document is not available and the reason, and set forth the substance of the document.
- (f) *Supersession.* Subsections (b)—(e) supersede 1 Pa. Code § 35.35 (relating to answers to complaints and petitions).

#### Authority

The provisions of this § 5.61 amended under the Public Utility Code, 66 Pa.C.S. §§ 501, 504—506, 1301 and 1501.

#### Source

The provisions of this § 5.61 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 pages (281572) and (225649).

#### Cross References

This section cited in 52 Pa. Code § 3.6 (relating to petitions for interim emergency orders); 52 Pa. Code § 3.391 (relating to arbitration of claims for billing and collecting services); 52 Pa. Code § 5.31 (relating to staff-initiated complaints); 52 Pa. Code § 5.101 (relating to preliminary objections); 52 Pa. Code § 5.101 (relating to preliminary objections); 52 Pa. Code § 56.173 (relating to formal complaint procedures other than appeals from mediation decisions of the Bureau of Consumer Services); and 52 Pa. Code § 64.163 (relating to formal complaint procedures).

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

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

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

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

#### Authority

The provisions of this § 5.62 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 § 5.62 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 page (225649).

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

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

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

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

**Authority**

The provisions of this § 5.63 amended under the Public Utility Code, 66 Pa.C.S. §§ 501, 504—506, 1301 and 1501.

**Source**

The provisions of this § 5.63 adopted October 12, 1984, effective January 1, 1985, 14 Pa.B. 3819; amended April 28, 2006, effective April 29, 2006, 36 Pa.B. 2097. Immediately preceding text appears at serial page (225649).

**§ 5.64. [Reserved].****Source**

The provisions of this § 5.64 adopted October 12, 1984, effective January 1, 1985, 14 Pa.B. 3819; reserved January 24, 1997, effective January 25, 1997, 27 Pa.B. 414. Immediately preceding text appears at serial pages (215947) to (215948).

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

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

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

**Authority**

The provisions of this § 5.65 amended under the Public Utility Code, 66 Pa.C.S. §§ 501, 504—506, 1301 and 1501.

**Source**

The provisions of this § 5.65 adopted October 12, 1984, effective January 1, 1985, 14 Pa.B. 3819; amended April 28, 2006, effective April 29, 2006, 36 Pa.B. 2097. Immediately preceding text appears at serial page (225650).

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

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

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

**Authority**

The provisions of this § 5.66 amended under the Public Utility Code, 66 Pa.C.S. §§ 501, 504—506, 1301 and 1501.

**Source**

The provisions of this § 5.66 adopted October 12, 1984, effective January 1, 1985, 14 Pa.B. 3819; amended April 28, 2006, effective April 29, 2006, 36 Pa.B. 2097. Immediately preceding text appears at serial page (225650).

**Cross References**

This section cited in 52 Pa. Code § 5.75 (relating to notice, service and action on petitions to intervene).

**INTERVENTION****§ 5.71. Initiation of intervention.**

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

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

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

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

**Authority**

The provisions of this § 5.71 amended under the Public Utility Code, 66 Pa.C.S. §§ 501, 504—506, 1301 and 1501.

**Source**

The provisions of this § 5.71 adopted October 12, 1984, effective January 1, 1985, 14 Pa.B. 3819; amended January 24, 1997, effective January 25, 1997, 27 Pa.B. 414. Immediately preceding text appears at serial page (215949).

**Cross References**

This section cited in 52 Pa. Code § 1.8 (relating to definitions); 52 Pa. Code § 3.502 (relating to protests to applications for certificate of public convenience as a water supplier or a wastewater collection, treatment and disposal provider); and 52 Pa. Code § 5.41 (relating to petitions generally).

**§ 5.72. Eligibility to intervene.**

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

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

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

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

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

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

**Authority**

The provisions of this § 5.72 amended under the Public Utility Code, 66 Pa.C.S. §§ 501, 504—506, 523, 1301, 1501 and 1504.

**Source**

The provisions of this § 5.72 adopted October 12, 1984, effective January 1, 1985, 14 Pa.B. 3819; amended September 20, 2013, effective September 21, 2013, 43 Pa.B. 5593. Immediately preceding text appears at serial page (319146).

**Cross References**

This section cited in 52 Pa. Code § 1.8 (relating to definitions); and 52 Pa. Code § 5.41 (relating to petitions generally).

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

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

(1) The facts from which the alleged intervention right or interest of the petitioner can be determined.

(2) The grounds of the proposed intervention.

(3) The petitioner's position regarding the issues in the proceeding.

(b) When the circumstances warrant, petitions to intervene filed on behalf of more than one person may be required to list those persons and entities comprising the represented group.

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

**Authority**

The provisions of this § 5.73 amended under the Public Utility Code, 66 Pa.C.S. §§ 501, 504—506, 1301 and 1501.

**Source**

The provisions of this § 5.73 adopted October 12, 1984, effective January 1, 1985, 14 Pa.B. 3819; amended April 28, 2006, effective April 29, 2006, 36 Pa.B. 2097. Immediately preceding text appears at serial pages (225651) to (225652).

**Cross References**

This section cited in 52 Pa. Code § 1.8 (relating to definitions); and 52 Pa. Code § 5.41 (relating to petitions generally).

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

(a) Petitions to intervene may be filed following the filing of an application, petition, complaint or other document seeking Commission action.

(b) Petitions to intervene shall be filed:

(1) No later than the date fixed for the filing of responsive pleadings in an order or notice with respect to the proceedings but not less than the notice and protest period established under §§ 5.14 and 5.53 (relating to applications requiring notice; and time of filing) absent good cause shown.

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

(3) In accordance with § 5.53 if no deadline is set in an order or notice with respect to the proceedings.

(4) A statutory advocate may exercise a right of participation or file a notice of intervention consistent with law at any time in a proceeding. A statutory advocate exercising a right of participation or filing a notice of intervention following expiration of any protest or intervention period shall take the record as developed unless determined otherwise in exceptional circumstances for good cause shown.

(c) Except with regard to statutory advocates under subsection (b)(4), intervention will not be permitted once an evidentiary hearing has concluded absent extraordinary circumstances.

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

(e) Subsections (a)—(d) supersede 1 Pa. Code § 35.30 (relating to filing of petitions to intervene).

**Authority**

The provisions of this § 5.74 amended under the Public Utility Code, 66 Pa.C.S. §§ 501, 504—506, 1301 and 1501.

**Source**

The provisions of this § 5.74 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 (225652).

**Cross References**

This section cited in 52 Pa. Code § 1.8 (relating to definitions); 52 Pa. Code § 5.41 (relating to petitions generally); and 52 Pa. Code § 5.75 (relating to notice, service and action on petitions to intervene).

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

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

(b) *Action on petitions.* As soon as practicable after the expiration of the time for filing answers to petitions as provided in § 5.66 (relating to answers to petitions to intervene), the Commission or presiding officer will grant or deny the petition in whole or in part or may, if found to be appropriate, authorize limited participation.

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

(d) *Actions on petitions filed after a hearing has commenced.* Except with regard to statutory advocates under § 5.74(b)(4) (relating to filing of petitions to intervene), petitions to intervene may be filed or will be acted upon during a hearing unless prohibited by the Commission or presiding officer after opportunity for all parties to object.

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

**Authority**

The provisions of this § 5.75 amended under the Public Utility Code, 66 Pa.C.S. §§ 501, 504—506, 1301 and 1501.

**Source**

The provisions of this § 5.75 adopted October 12, 1984, effective January 1, 1985, 14 Pa.B. 3819; amended April 28, 2006, effective April 29, 2006, 36 Pa.B. 2097. Immediately preceding text appears at serial pages (225652) to (225653).

**Cross References**

This section cited in 52 Pa. Code § 1.8 (relating to definitions); 52 Pa. Code § 5.41 (relating to petitions generally); and 52 Pa. Code § 5.243 (relating to presentation by participants).

**§ 5.76. Limitation of participation in hearings.**

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

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

**Source**

The provisions of this § 5.76 adopted October 12, 1984, effective January 1, 1985, 14 Pa.B. 3819.

**Cross References**

This section cited in 52 Pa. Code § 1.8 (relating to definitions); 52 Pa. Code § 5.41 (relating to petitions generally); and 52 Pa. Code § 5.243 (relating to presentation by participants).

**CONSOLIDATION****§ 5.81. Consolidation.**

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

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

**Source**

The provisions of this § 5.81 adopted October 12, 1984, effective January 1, 1985, 14 Pa.B. 3819.

**AMENDMENT AND WITHDRAWAL OF PLEADINGS****§ 5.91. Amendments of pleadings generally.**

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

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

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

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

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

**Authority**

The provisions of this § 5.91 amended under the Public Utility Code, 66 Pa.C.S. §§ 501, 504—506, 1301 and 1501.

**Source**

The provisions of this § 5.91 adopted October 12, 1984, effective January 1, 1985, 14 Pa.B. 3819; amended April 28, 2006, effective April 29, 2006, 36 Pa.B. 2097. Immediately preceding text appears at serial page (225654).

**Cross References**

This section cited in 52 Pa. Code § 5.65 (relating to answers to amendments of pleadings); and 52 Pa. Code § 5.101 (relating to preliminary objections).

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

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

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

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

(d) *Continuance following objection.* A continuance may be granted by the Commission or the presiding officer under § 1.15 (relating to extensions of time and continuances) when necessary to allow the objecting party to address new issues and evidence.

(e) *Notice of amendment.* If an amendment adopted under this section has the effect of broadening the issues in the proceeding, notice of the amendment shall be given in the same manner as notice was given at the commencement of the proceeding and to the same persons who received the notice.

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

**Authority**

The provisions of this § 5.92 amended under the Public Utility Code, 66 Pa.C.S. §§ 501, 504—506, 1301 and 1501.

**Source**

The provisions of this § 5.92 adopted October 12, 1984, effective January 1, 1985, 14 Pa.B. 3819; amended April 28, 2006, effective April 29, 2006, 36 Pa.B. 2097. Immediately preceding text appears at serial pages (225654) to (225655).

**§ 5.93. Directed amendments.**

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

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



**Authority**

The provisions of this § 5.93 amended under the Public Utility Code, 66 Pa.C.S. §§ 501, 504—506, 1301 and 1501.

**Source**

The provisions of this § 5.93 adopted October 12, 1984, effective January 1, 1985, 14 Pa.B. 3819; amended April 28, 2006, effective April 29, 2006, 36 Pa.B. 2097. Immediately preceding text appears at serial page (225655).

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

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

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

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

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

**Authority**

The provisions of this § 5.94 amended under the Public Utility Code, 66 Pa.C.S. §§ 309—311, 315, 331—335, 501, 504—506, 523, 701—703, 1101—1103, 1301, 1501 and 1504.

**Source**

The provisions of this § 5.94 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 April 28, 2006, effective April 29, 2006, 36 Pa.B. 2097; amended September 20, 2013, effective September 21, 2013, 43 Pa.B. 5593. Immediately preceding text appears at serial page (319151).

**Cross References**

This section cited in 52 Pa. Code § 1.82 (relating to withdrawal or termination); 52 Pa. Code § 121.4 (relating to filing and Commission review procedures); and 52 Pa. Code § 121.7 (relating to periodic review of an LTIP).

**PRELIMINARY OBJECTIONS****§ 5.101. Preliminary objections.**

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

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

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

- (3) Insufficient specificity of a pleading.
  - (4) Legal insufficiency of a pleading.
  - (5) Lack of capacity to sue, nonjoinder of a necessary party or misjoinder of a cause of action.
  - (6) Pendency of a prior proceeding or agreement for alternative dispute resolution.
  - (7) Standing of a party to participate in the proceeding.
- (b) *Notice to plead.* A preliminary objection must contain a notice to plead which states that an answer to the objection shall be filed within 10 days of the date of service of the objection.
- (c) *General rule.* Preliminary objections shall be raised at one time. The preliminary objections must be set forth in numbered paragraphs, state with specificity the legal and factual grounds relied upon, and may be inconsistent. Two or more preliminary objections may be raised in one pleading.
- (d) *Time for filing and form.* Preliminary objections shall be filed as a separate document and within the same 20 days provided for in § 5.61 (relating to answers to complaints, petitions, motions and preliminary objections). Except as provided for in subsection (e), the filing of preliminary objections may not eliminate the requirement to file an answer to the complaint or other initiating pleading.
- (e) *Preliminary objection regarding insufficient specificity.*
- (1) If a preliminary objection regarding insufficient specificity in a pleading is filed, an answer is not required until further directed by the presiding officer or the Commission.
  - (2) When an amended pleading is filed in response to a preliminary objection alleging insufficient specificity in a pleading, the preliminary motion will be deemed to be moot in accordance with § 5.91 (relating to amendment of pleadings generally).
- (f) *Answer to a preliminary objection.*
- (1) *Time for filing.* An answer to a preliminary objection may be filed within 10 days of date of service.
  - (2) *Form.* The answer must be in writing and in numbered paragraphs to correspond with the preliminary objection, and address the legal and factual grounds relied on in the preliminary objection.
- (g) *Decision by presiding officer.* A preliminary objection will be decided within 30 days of the assignment of the preliminary objection to the presiding officer.
- (h) *Amended pleading.* If a preliminary objection is granted, the party who submitted the stricken pleading has the right to file an amended pleading within 10 days of service of the order.
- (i) *Supersession.* Subsections (a)—(h) supersede 1 Pa. Code §§ 35.54 and 35.55 (relating to motions as to complaint; and motions as to answer).

**Authority**

The provisions of this § 5.101 amended under the Public Utility Code, 66 Pa.C.S. §§ 309—311, 315, 331—335, 501, 504—506, 523, 701—703, 1101—1103, 1301, 1501 and 1504.

**Source**

The provisions of this § 5.101 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 April 28, 2006, effective April 29, 2006, 36 Pa.B. 2097; amended September 20, 2013, effective September 21, 2013, 43 Pa.B. 5593. Immediately preceding text appears at serial pages (319151) to (319153).



**Cross References**

This section cited in 52 Pa. Code § 3.381 (relating to applications for transportation of property, household goods in use and persons); 52 Pa. Code § 3.502 (relating to protests to application for certificate of public convenience as a water supplier or wastewater collection, treatment and disposal supplier); 52 Pa. Code § 5.1 (relating to pleadings allowed); and 52 Pa. Code § 5.21 (relating to formal complaints generally); 52 Pa. Code § 5.61 (relating to answers to complaints, petitions, motions and preliminary objections); 52 Pa. Code § 5.65 (relating to answers to amendments of pleadings); and 52 Pa. Code § 5.91 (relating to amendments of pleadings generally).

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

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

(b) *Answers.* An answer to a motion for judgment on the pleadings or summary judgment, including an opposing affidavit or verification to a motion for summary judgment, may be filed within 20 days of the date of service of the motion. The answer to a motion for summary judgment may be supplemented by depositions, answers to interrogatories or further affidavits and admissions.

(c) *Motion for summary judgment.* A motion for summary judgment must be based on the pleadings and depositions, answers to interrogatories, admissions and supporting affidavits. Documents not already filed with the Commission shall be filed with the motion.

(d) *Decisions on motions.*

(1) *Standard for grant or denial on all counts.* The presiding officer will grant or deny a motion for judgment on the pleadings or a motion for summary judgment, as appropriate. The judgment sought will be rendered if the applicable pleadings, depositions, answers to interrogatories and admissions, together with affidavits, if any, show that there is no genuine issue as to a material fact and that the moving party is entitled to a judgment as a matter of law.

(2) *Standard for grant or denial in part.* The presiding officer may grant a partial summary judgment if the pleadings, depositions, answers to interrogatories and admissions, together with affidavits, if any, show that there is no genuine issue as to a material fact and that the moving party is entitled to a judgment as a matter of law on one or more but not all outstanding issues.

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

**Authority**

The provisions of this § 5.102 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 § 5.102 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 (225657) to (225658).

**Cross References**

This section cited in 52 Pa. Code § 5.21 (relating to formal complaints generally); 52 Pa. Code § 5.61 (relating to answers to complaints, petitions, motions and preliminary objections); and 52 Pa. Code § 5.92 (relating to amendments to conform to the evidence).

**§ 5.103. Motions.**

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

(b) *Presentation of motions.* A motion may be made in writing at any time, and a motion made during a hearing may be stated orally upon the record, or the presiding officer may require that an oral motion be reduced to writing and filed separately. Written motions must contain a notice which states that a responsive pleading shall be filed within 20 days of the date of service of the motion.

(c) *Response to motions.* A party has 20 days from the date of service within which to answer or object to a motion, unless the period of time is otherwise fixed by the Commission or the presiding officer.

(d) *Rulings on motions.*

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

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

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

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

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

(e) *Supersession.* Subsection (a) is identical to 1 Pa. Code § 35.177 (relating to scope and contents of motions). Subsection (b) is identical to 1 Pa. Code § 35.178 (relating to presentation of motions). Subsection (c) supersedes 1 Pa. Code § 35.179 (relating to objections to motions). Subsection (d) supersedes 1 Pa. Code § 35.180 (relating to action on motions).

**Authority**

The provisions of this § 5.103 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 § 5.103 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 (225658) and (241191).

**Cross References**

This section cited in 52 Pa. Code § 5.61 (relating to answers to complaints, petitions, motions and preliminary objections); and 52 Pa. Code § 5.633 (relating to certification of interlocutory orders).

**Subchapter B. HEARINGS****GENERAL**

- Sec.  
5.201. Notice of proceeding; hearing; waiver of hearing.  
5.202. Scheduling of hearing.  
5.203. Hearing in rate proceedings.

**NOTICE OF HEARING**

- 5.211. Notice of rulemaking proceedings.  
5.212. Notice of nonrulemaking proceedings.

**PREHEARING AND OTHER CONFERENCES**

- 5.221. Conferences to adjust, settle or expedite proceedings.  
5.222. Initiation of prehearing conferences in nonrate proceedings.  
5.223. Authority of presiding officer at conferences.  
5.224. Prehearing conference in rate proceedings.

**SETTLEMENT AND STIPULATIONS**

- 5.231. Offers of settlement.  
5.232. Stipulations and settlement petitions.  
5.233. Refusal to make admissions or stipulate.  
5.234. Presentation and effect of stipulations.  
5.235. Restrictive amendments to applications for motor carrier of passenger authority.

**HEARINGS**

- 5.241. Attendance.
- 5.242. Order of procedure.
- 5.243. Presentation by participants.
- 5.244. [Reserved].
- 5.245. Failure to appear, proceed or maintain order in proceedings.

**TRANSCRIPT**

- 5.251. Recording of proceedings.
- 5.252. Review of testimony.
- 5.253. Transcript corrections.
- 5.254. Copies of transcripts.

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

(a) When notice and hearing are required under the act, publication in the *Pennsylvania Bulletin* of a notice of application or other initial pleading is sufficient to provide notice of the proceeding. Service on interested persons is also sufficient to provide notice. The notice must fix a reasonable period of time, but not less than 15 days, within which a person desiring to be heard may file a petition to intervene, a protest, complaint or other appropriate pleading. Hearings will be held upon the filing of the pleading, unless waived by the parties.

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

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

**Authority**

The provisions of this § 5.201 amended under the Public Utility Code, 66 Pa.C.S. §§ 501, 504—506, 1301 and 1501.

**Source**

The provisions of this § 5.201 adopted October 12, 1984, effective January 1, 1985, 14 Pa.B. 3819; amended April 28, 2006, effective April 29, 2006, 36 Pa.B. 2097. Immediately preceding text appears at serial page (241192).

**§ 5.202. Scheduling of hearing.**

(a) The Commission will schedule hearings other than those involving the lawfulness of rates and will maintain a hearing calendar of all proceedings set for hearing.



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

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

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

**Authority**

The provisions of this § 5.202 amended under the Public Utility Code, 66 Pa.C.S. §§ 501, 504—506, 1301 and 1501.

**Source**

The provisions of this § 5.202 adopted October 12, 1984, effective January 1, 1985, 14 Pa.B. 3819; amended April 28, 2006, effective April 29, 2006, 36 Pa.B. 2097. Immediately preceding text appears at serial pages (241192) and (225661).

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

(a) Hearing dates in rate proceedings will be fixed by the presiding officer.

(b) The presiding officer will be guided by the requirement of section 315 of the act (relating to burden of proof) that rate cases are to be given preference over all other proceedings, and are to be decided as speedily as possible.

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

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

**Authority**

The provisions of this § 5.203 amended under the Public Utility Code, 66 Pa.C.S. §§ 501, 504—506, 1301 and 1501.

**Source**

The provisions of this § 5.203 adopted October 12, 1984, effective January 1, 1985, 14 Pa.B. 3819; amended April 28, 2006, effective April 29, 2006, 36 Pa.B. 2097. Immediately preceding text appears at serial page (225661).

**NOTICE OF HEARING**

**§ 5.211. Notice of rulemaking proceedings.**

(a) Before the adoption of a regulation, the Commission will publish a general notice as provided in 1 Pa. Code Chapter 7 (relating to procedure for adoption or change of regulations).

(b) The order or notice will recite the statutory or other authority under which the regulation is proposed to be adopted, and include either the terms of the proposed regulation, or a description of the subjects and issues involved to inform interested persons of the nature of the proceeding, to permit interested persons to submit comments relative thereto within the time period required by the act.

(c) The Commission may, upon petition by a person having an interest in the proposed regulations, hold public hearings on the proposed regulations. The petition for hearing shall be in the form set forth in § 5.41 (relating to petitions generally), shall be filed concurrently with the comments and state the reasons for having a hearing and the person's interest in the proposed regulations.

(d) Subsections (a)—(c) supersede 1 Pa. Code § 35.104 (relating to notice of rulemaking proceedings).

#### Authority

The provisions of this § 5.211 amended under the Public Utility Code, 66 Pa.C.S. §§ 309—311, 315, 331—335, 501, 701—703 and 1101—1103.

#### Source

The provisions of this § 5.211 adopted October 12, 1984, effective January 1, 1985, 14 Pa.B. 3819; amended December 2, 1988, effective January 3, 1989, 18 Pa.B. 5451. Immediately preceding text appears at serial pages (95568) to (95569).

### § 5.212. Notice of nonrulemaking proceedings.

(a) The presiding officer, the Office of Administrative Law Judge or the Commission is authorized to schedule prehearing conferences and hearings. Parties shall be given reasonable notice of the time and place of the prehearing conference or hearing. In fixing the time and place of conferences and hearings, regard will be given to the convenience and necessity of the parties or their attorneys so far as time and the proper execution of the functions of the Commission permit.

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

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

#### Authority

The provisions of this § 5.212 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 § 5.212 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 April 28, 2006, effective April 29, 2006, 36 Pa.B. 2097. Immediately preceding text appears at serial page (225662).

**PREHEARING AND OTHER CONFERENCES****§ 5.221. Conferences to adjust, settle or expedite proceedings.**

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

(b) Subsection (a) is identical to 1 Pa. Code § 35.111 (relating to conferences to adjust, settle or expedite proceedings).

**Authority**

The provisions of this § 5.221 amended under the Public Utility Code, 66 Pa.C.S. §§ 501, 504—506, 1301 and 1501.

**Source**

The provisions of this § 5.221 adopted October 12, 1984, effective January 1, 1985, 14 Pa.B. 3819; amended April 28, 2006, effective April 29, 2006, 36 Pa.B. 2097. Immediately preceding text appears at serial pages (225662) to (225663).

**Cross References**

This section cited in 52 Pa. Code § 5.224 (relating to prehearing conference in rate proceedings); and 52 Pa. Code § 5.234 (relating to presentation and effect of stipulations).

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

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

(b) The Commission, or the presiding officer may direct that a prehearing conference be held, and direct the parties to the proceeding to appear to consider the matters enumerated in subsection (c). Notice of the time and place of the conference shall be given to all parties to the proceeding. The conferences may be conducted telephonically.

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

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

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

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

- (4) Other matters that may aid in expediting the orderly conduct and disposition of the proceeding and the furtherance of justice, including the following:
- (i) The simplification of the issues.
  - (ii) The exchange and acceptance of service of exhibits proposed to be offered in evidence.
  - (iii) The obtaining of admissions as to, or stipulations of, facts not remaining in dispute, or the authenticity of documents which might properly shorten the hearing.
  - (iv) The limitation of the number of witnesses.
  - (v) A proposed plan and schedule of discovery which may include specific limitations on the number of written interrogatories and requests for admissions a party may propound on another party.
- (d) Parties and counsel will be expected to attend the conference fully prepared for a useful discussion of all problems involved in the proceeding, both procedural and substantive, and fully authorized to make commitments with respect thereto.
- (1) The preparation must include submission of a prehearing memorandum and list:
- (i) The presently identified issues.
  - (ii) The names and addresses of the witnesses.
  - (iii) The proposed area of testimony of each witness.
- (2) The preparation may include:
- (i) Development of a proposed procedural schedule.
  - (ii) Advance study of all relevant materials.
  - (iii) Advance informal communication between the parties, including requests for additional data and information, to the extent it appears feasible and desirable.
- (e) Failure of a party to attend the conference, after being served with notice of the time and place thereof, without good cause shown, shall constitute a waiver of all objections to the agreements reached and to an order or ruling with respect thereto.
- (f) Subsections (a)—(c) supersede 1 Pa. Code § 35.112 (relating to conferences to expedite hearings). Subsection (d) is identical to 1 Pa. Code § 35.113 (relating to initiation of conferences).

#### Authority

The provisions of this § 5.222 amended under the Public Utility Code, 66 Pa.C.S. §§ 501, 504—506, 1301 and 1501.

**Source**

The provisions of this § 5.222 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 pages (225663) to (225664).

**Cross References**

This section cited in 52 Pa. Code § 5.224 (relating to prehearing conference in rate proceedings); and 52 Pa. Code § 5.234 (relating to presentation and effect of stipulations).

**§ 5.223. Authority of presiding officer at conferences.**

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

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

(c) The presiding officer may participate in settlement discussions upon agreement of all parties. A different presiding officer or a mediator, if appropriate, will be assigned by the Chief Administrative Law Judge to participate in settlement discussions upon the request of a party.

(d) Subsection (a) is identical to 1 Pa. Code § 35.114 (relating to authority of presiding officer at conference) and subsection (b) supplements § 35.114.

**Authority**

The provisions of this § 5.223 amended under the Public Utility Code, 66 Pa.C.S. §§ 501, 504—506, 1301 and 1501.

**Source**

The provisions of this § 5.223 adopted October 12, 1984, effective January 1, 1985, 14 Pa.B. 3819; amended April 28, 2006, effective April 29, 2006, 36 Pa.B. 2097. Immediately preceding text appears at serial pages (255664) to (255665).

**Cross References**

This section cited in 52 Pa. Code § 5.224 (relating to prehearing conference in rate proceedings); and 52 Pa. Code § 5.234 (relating to presentation and effect of stipulations).

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

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

- (1) A first prehearing conference to establish a schedule for discovery and tentative hearing dates, as well as the matters in § 5.222 (relating to initiation of prehearing conferences in nonrate proceedings).
  - (2) Other conferences as deemed necessary.
  - (3) A conference held telephonically, upon agreement of the parties.
- (b) The first prehearing conference shall be held as soon as practicable after the entry of the order of investigation. The parties shall come to the first prehearing conference prepared to discuss the following:
- (1) A proposed plan and schedule of discovery, which may include specific limitations on the number of written interrogatories and requests for admissions a party may propound on another party.
  - (2) Other proposed orders with respect to discovery, including the establishment of sanctions (in addition to those provided by §§ 5.371 and 5.372 (relating to sanctions—general; and sanctions—types)) against any party failing to respond to discovery in a timely manner.
  - (3) Tentative scheduling of evidentiary hearings, close of the record, filing of briefs and other matters deemed appropriate.
- (c) At the first prehearing conference, parties may submit a written statement addressing the issues in subsection (b) and shall list:
- (1) The presently identified issues.
  - (2) The names and addresses of the witnesses.
  - (3) The proposed area of testimony of each witness.
- (d) Following the first prehearing conference, the presiding officer will enter an order establishing a tentative set of hearing dates, establishing a plan and schedule for discovery, determining whether a public input hearing will be held, if that decision has not already been made, and addressing other matters deemed necessary.
- (e) Further prehearing conferences may be scheduled at the discretion of the presiding officer.
- (f) The presiding officer, or the Commission will have the authority to amend the requirements of this section either sua sponte or upon motion of a party.
- (g) The rules applicable to prehearing and other conferences in §§ 5.221—5.223 (relating to conferences to adjust, settle or expedite proceedings; initiation of prehearing conferences in nonrate proceedings; and authority of presiding officer at conferences) are applicable to prehearing conferences in rate cases except to the extent they are inconsistent with this section.

#### Authority

The provisions of this § 5.224 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 § 5.224 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 (225665) to (225666).

**Cross References**

This section cited in 52 Pa. Code § 5.222 (relating to initiation of prehearing conferences in non-rate proceedings); and 52 Pa. Code § 5.234 (relating to presentation and effect of stipulations).

**SETTLEMENTS****§ 5.231. Offers of settlement.**

- (a) It is the policy of the Commission to encourage settlements.
- (b) Nothing contained in this chapter or Chapter 1 or 3 (relating to rules of administrative practice and procedure; and special provisions) preclude a party in a proceeding from submitting, at any time, offers of settlement or proposals of adjustment, or from requesting conferences for that purpose.
- (c) Parties may request that the presiding officer participate in the settlement conferences or that an additional presiding officer or mediator be designated to participate in the settlement conferences.
- (d) Offers of settlement, of adjustment, or of procedure to be followed, and proposed stipulations not agreed to by every party, including proposals intended to resolve discovery disputes, will not be admissible in evidence against a counsel or party claiming the privilege.
- (e) Subsections (a)—(d) supersede 1 Pa. Code § 35.115 (relating to offers of settlement).

**Authority**

The provisions of this § 5.231 amended under the Public Utility Code, 66 Pa.C.S. §§ 501, 504—506, 1301 and 1501.

**Source**

The provisions of this § 5.231 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 (225667).

**§ 5.232. Settlement petitions and stipulations of fact.**

- (a) *Generally.* A settlement petition, which may contain stipulations of fact by all or some of the parties, shall be filed with the Secretary in accordance with § 5.41 (relating to petitions generally).
- (b) *Positions of the parties.* A settlement agreement must specifically identify the parties:
  - (1) Supporting the settlement.
  - (2) Opposing the settlement.
  - (3) Taking no position on the settlement.

(4) Denied an opportunity to enter into the settlement.

(c) *Service.* A copy of each settlement petition, which may contain stipulations of fact by all or some of the parties, shall be served upon each party to the proceeding, and each party shall have the opportunity to comment on the proposed settlement unless otherwise ordered by the presiding officer.

(d) *Review of settlement by the presiding officer.* The settlement petition will be reviewed by the presiding officer, if one has been assigned. If the presiding officer rules on the petition, the ruling will be made in the form of an initial or recommended decision, subject to § 5.537 (relating to rate case settlements), if approved, or in the form of an order, if disapproved. The presiding officer will determine if the settlement is in the public interest.

(e) *Waiver of exceptions.* The exception period may be waived upon agreement of the parties.

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

(g) *Review of a settlement petition by the Commission.* When no presiding officer has been assigned, the Commission will review the settlement. Parties not joining in the settlement may submit objections to the Commission within 20 days of the filing of the petition unless another time period is set by the Commission.

#### Authority

The provisions of this § 5.232 amended under the Public Utility Code, 66 Pa.C.S. §§ 501, 504—506, 1301 and 1501.

#### Source

The provisions of this § 5.232 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 pages (225667) to (225668).

#### Cross References

This section cited in 52 Pa. Code § 5.224 (relating to prehearing conference in rate proceedings); and 52 Pa. Code § 5.411 (relating to oral examination).

### § 5.233. Refusal to make admissions or stipulations.

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

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

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



(b) *Sanctions*. The requesting party may apply to the presiding officer for an order requiring the other party to pay the reasonable expenses incurred in making the proof, including reasonable attorney's fees. The presiding officer will grant an order for sanctions unless the presiding officer finds that there were good reasons for the refusal to admit or stipulate or that the admissions or stipulations sought were of no substantial importance.

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

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

(e) Subsections (a)—(d) supersede 1 Pa. Code § 35.116 (relating to refusal to make admissions or stipulate).

#### Authority

The provisions of this § 5.233 amended under the Public Utility Code, 66 Pa.C.S. §§ 501, 504—506, 1301 and 1501.

#### Source

The provisions of this § 5.233 adopted October 12, 1984, effective January 1, 1985, 14 Pa.B. 3819; amended April 28, 2006, effective April 29, 2006, 36 Pa.B. 2097. Immediately preceding text appears at serial page (225668).

#### Cross References

This section cited in 52 Pa. Code § 5.224 (relating to prehearing conference in rate proceedings).

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

(a) Parties may stipulate to relevant matters of fact or the authenticity of relevant documents. The stipulations may be received in evidence at a hearing, and when so received shall be binding on the parties to the stipulation with respect to the matters therein stipulated.

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

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

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

#### Authority

The provisions of this § 5.234 amended under the Public Utility Code, 66 Pa.C.S. §§ 501, 504—506, 1301 and 1501.

#### Source

The provisions of this § 5.234 adopted October 12, 1984, effective January 1, 1985, 14 Pa.B. 3819; amended April 28, 2006, effective April 29, 2006, 36 Pa.B. 2097. Immediately preceding text appears at serial page (263607).

**Cross References**

This section cited in 52 Pa. Code § 5.411 (relating to oral examination).

**§ 5.235. Restrictive amendments to applications for motor carrier of passenger authority.**

(a) Parties to motor carrier applications for passenger authority may stipulate as to restrictions or modifications to proposed motor carrier rights. Stipulations in the form of restrictive amendments or modifications must:

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

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

**Authority**

The provisions of this § 5.235 amended under the Public Utility Code, 66 Pa.C.S. §§ 501, 504—506, 1102, 1103, 1301 and 1501.

**Source**

The provisions of this § 5.235 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 February 6, 1998, effective February 7, 1998, 28 Pa.B. 647; amended April 28, 2006, effective April 29, 2006, 36 Pa.B. 2097; amended May 22, 2015, effective May 23, 2015, 45 Pa.B. 2468. Immediately preceding text appears at serial page (319166).

**Notes of Decisions***Restrictive Amendment*

The Pennsylvania Public Utility Commission properly ordered all operating rights of a carrier transferred and rejected a proposed stipulation. The proposed stipulation, in which a carrier agreed to transfer only a portion of its operating rights and to abandon the remainder in exchange for protesters withdrawing their protests to the carrier's transfer application; was a restrictive amendment contrary to public interest. *Yellow Cab Co. of Pittsburgh v. Pennsylvania Public Utility Commission*, 618 A.2d 1251 (Pa. Cmwlth. 1992).

**HEARINGS****§ 5.241. Attendance.**

(a) The presiding officer before whom the hearing is held will enter upon the record all parties in attendance.

(b) Subsection (a) supersedes 1 Pa. Code § 35.124 (relating to appearances).

**Authority**

The provisions of this § 5.241 amended under the Public Utility Code, 66 Pa.C.S. §§ 501, 504—506, 1301 and 1501.

**Source**

The provisions of this § 5.241 adopted October 12, 1984, effective January 1, 1985, 14 Pa.B. 3819; amended April 28, 2006, effective April 29, 2006, 36 Pa.B. 2097. Immediately preceding text appears at serial page (263608).

**§ 5.242. Order of procedure.**

(a) In a proceeding, the party having the burden of proof, shall open and close unless otherwise directed by the presiding officer. In a hearing on investigations and in proceedings which have been consolidated for hearing, the presiding officer may direct who will open and close. Oral rejoinder, if proposed by the party with the burden of proof, shall be completed before any cross-examination of the witness is conducted.

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

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

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

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

**Authority**

The provisions of this § 5.242 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 § 5.242 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 page (263608).

**Cross References**

This section cited in 52 Pa. Code § 5.245 (relating to failure to appear, proceed or maintain order in proceedings).

**§ 5.243. Presentation by parties.**

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

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

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

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

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

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

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

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

#### Authority

The provisions of this § 5.243 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 § 5.243 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 page (286037).

#### Notes of Decisions

##### *Nature of Proceedings*

Proceedings before the Commission are judicial in nature, and parties are afforded procedural rights similar to litigants. These protections are sufficient to satisfy the first element of the *Younger* abstention doctrine. *National R.R. Passenger Corp. v. Pennsylvania Public Utility Commission*, 159 F. Supp. 2d 795 (E.D. Pa. 2001).

#### Cross References

This section cited in 52 Pa. Code § 5.242 (relating to order of procedure).

### § 5.244. [Reserved].

#### Source

The provisions of this § 5.244 adopted October 12, 1984, effective January 1, 1985, 14 Pa.B. 3819; reserved December 2, 1988, effective January 3, 1989, 18 Pa.B. 5451. Immediately preceding text appears at serial page (95576).

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

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

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

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

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

**Authority**

The provisions of this § 5.245 amended under the Public Utility Code, 66 Pa.C.S. §§ 501, 504—506, 1301 and 1501.

**Source**

The provisions of this § 5.245 adopted October 12, 1984, effective January 1, 1985, 14 Pa.B. 3819; amended April 28, 2006, effective April 29, 2006, 36 Pa.B. 2097. Immediately preceding text appears at serial page (286038).

**TRANSCRIPT**

**§ 5.251. Recording of proceedings.**

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

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

(c) The transcripts will include a verbatim report of the hearings and nothing will be omitted therefrom except as is directed by the presiding officer. Changes in the transcript must be made as provided in § 5.253 (relating to transcript corrections).

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

**Authority**

The provisions of this § 5.251 amended under the Public Utility Code, 66 Pa.C.S. §§ 331, 501, 504—506, 1301 and 1501.

**Source**

The provisions of this § 5.251 adopted October 12, 1984, effective January 1, 1985, 14 Pa.B. 3819; amended March 8, 1991, effective March 9, 1991, 21 Pa.B. 946; amended April 28, 2006, effective April 29, 2006, 36 Pa.B. 2097. Immediately preceding text appears at serial pages (286038) and (247399).

**§ 5.252. Review of testimony.**

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

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

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

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

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

**Authority**

The provisions of this § 5.252 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 § 5.252 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 March 8, 1991, effective March 9, 1991, 21 Pa.B. 946; amended April 28, 2006, effective April 29, 2006, 36 Pa.B. 2097. Immediately preceding text appears at serial page (247399).

**Cross References**

This section cited in 52 Pa. Code § 5.251 (relating to recording of proceedings).

**§ 5.253. Transcript corrections.**

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

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

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

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

(c) Proposed corrections shall be filed as follows:

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

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

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

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

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

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

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

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

#### Authority

The provisions of this § 5.253 amended under the Public Utility Code, 66 Pa.C.S. §§ 331, 501, 504—506, 1301 and 1501.

#### Source

The provisions of this § 5.253 adopted October 12, 1984, effective January 1, 1985, 14 Pa.B. 3819; amended March 8, 1991, effective March 9, 1991, 21 Pa.B. 946; 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 (247399) to (247400).

#### Cross References

This section cited in 52 Pa. Code § 5.251 (relating to recording of proceedings); and 52 Pa. Code § 5.431 (relating to close of the record).

### § 5.254. Copies of transcripts.

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

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

#### Authority

The provisions of this § 5.254 amended under the Public Utility Code, 66 Pa.C.S. §§ 331 and 501.

#### Source

The provisions of this § 5.254 adopted March 8, 1991, effective March 9, 1991, 21 Pa.B. 946.

#### Notes of Decisions

##### *Reproduction Fee*

The reproduction policy articulated in this section was reasonable as applied to a rate case litigant seeking a transcript, and the litigant was not entitled to be provided copies of transcripts of testimony in the case at the actual cost of reproduction rather than the rate charged by a court reporting firm with which the Pennsylvania Public Utility Commission had contracted to record and transcribe such testimony. *Sierra Club v. Pennsylvania Public Utility Commission*, 702 A.2d 1131 (Pa. Cmwlth. 1997).

**Subchapter C. INTERLOCUTORY REVIEW**

- Sec.  
5.301. Interlocutory review generally.  
5.302. Petition for interlocutory Commission review and answer to a material question.  
5.303. Commission action on petition for interlocutory review and answer.  
5.304. Interlocutory review of discovery matters.  
5.305. Interlocutory review of a material question submitted by a presiding officer.  
5.306. Notification by telephone.

**Cross References**

This subchapter cited in 52 Pa. Code § 5.233 (relating to refusal to make admissions or stipulations).

**§ 5.301. Interlocutory review generally.**

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

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

**Authority**

The provisions of this § 5.301 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 § 5.301 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. Immediately preceding text appears at serial pages (215970) to (215971).

**Cross References**

This section cited in 52 Pa. Code § 5.304 (relating to interlocutory review of discovery matters).

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

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

(b) Within 10 days of service of the petition, each party may submit a brief directed to the Commission supporting or opposing the petition and addressing



the merits of the question for which an answer is requested and whether a stay of proceedings is required to protect the substantial rights of a party. The brief may not exceed 15 pages.

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

(d) Additional briefs are not permitted unless directed by the Commission.

#### Authority

The provisions of this § 5.302 amended under the Public Utility Code, 66 Pa.C.S. §§ 501, 504—506, 1301 and 1501.

#### Source

The provisions of this § 5.302 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 pages (225675) to (225676).

#### Cross References

This section cited in 52 Pa. Code § 5.304 (relating to interlocutory review of discovery matters).

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

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

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

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

#### Authority

The provisions of this § 5.303 amended under the Public Utility Code, 66 Pa.C.S. §§ 501, 504—506, 1301 and 1501.

#### Source

The provisions of this § 5.303 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 (225676).

**Cross References**

This section cited in 52 Pa. Code § 5.304 (relating to interlocutory review of discovery matters); and 52 Pa. Code § 5.482 (relating to disqualification of a presiding officer).

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

(a) *General.* Rulings of presiding officers on discovery are not subject to interlocutory review unless one or more of the following apply:

- (1) Interlocutory review is ordered by the Commission.
- (2) Interlocutory review is certified by the presiding officer.
- (3) The ruling has as its subject matter the deposing of a Commissioner or Commission employee.

(b) *Standard for certification.* A presiding officer may certify that a discovery ruling is appropriate for interlocutory review when the ruling involves an important question of law or policy that should be resolved immediately by the Commission.

(c) *Petition for certification.* A petition for interlocutory review of a presiding officer's ruling on discovery must:

- (1) Be filed within 3 days of the ruling.
- (2) Be in writing.
- (3) State the question to be certified and the reasons why interlocutory review will prevent substantial prejudice or expedite the conduct of the proceedings.
- (4) Be no more than 3 pages in length.
- (5) Be filed with the Secretary and served on all parties and the presiding officer.

(d) *Responsive brief.* A party may file a responsive brief within 7 days of a request for certification, which:

- (1) Either supports or opposes certification.
- (2) Addresses the merits of the question for which certification is requested.
- (3) Addresses whether a stay of proceedings is required to protect the substantial rights of a party.
- (4) Does not exceed 15 pages.

(e) *Presiding officer's decision.* The presiding officer will announce the decision in writing or orally on the record within 5 days of the deadline for filing responsive briefs. The presiding officer's decision will include the reasons why certification has been granted or denied and whether a stay of the proceedings has been granted.

- (1) If the presiding officer denies the request for certification, no further action is required of the presiding officer.
- (2) If the presiding officer's decision is to grant the request for certification, the presiding officer will serve to each Commissioner the certified question within 5 days of the announcement of the decision. The presiding officer

will include the reasons justifying certification, rulings on the certified question and extracts from the record that will assist the Commission in reaching a decision.

(f) *Brief to the Commission following certification.* Parties may submit a brief to the Commission and no other briefs are permitted unless directed by the Commission. A brief may not exceed 15 pages and must address:

- (1) The issue of certification.
- (2) The merits of the certified question.
- (3) The stay of proceedings, when appropriate.

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

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

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

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

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

#### Authority

The provisions of this § 5.304 amended under the Public Utility Code, 66 Pa.C.S. §§ 501, 504—506, 1301 and 1501.

#### Source

The provisions of this § 5.304 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 pages (225677) to (225678).

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

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

- (1) An explanation of the compelling reasons why interlocutory review will prevent prejudice or expedite the conduct of the proceeding.

- (2) A statement as to whether a stay of the proceedings has been placed in effect.
- (3) An extract from the record that will assist the Commission.
- (b) A copy of the question certified and the accompanying information will be served on the parties at the same time it is submitted to the Commission.
- (c) Within 7 days of service of the certification, each party may submit a brief directed to the Commission addressing the merits of the question for which an answer is requested and whether a stay of proceedings is required to protect the substantial rights of a party. The brief may not exceed 15 pages.
- (d) Additional briefs will not be permitted unless directed by the Commission.
- (e) Within 30 days of receipt of the certified question, the Commission will, without permitting oral argument, do one of the following:
  - (1) Continue, revoke or grant a stay of proceedings.
  - (2) Determine that the certification was improper and return the matter to the presiding officer for resolution.
  - (3) Answer the certified question.
- (f) Failure of the Commission to act upon a certified question within 30 days of its receipt will be deemed to be an affirmance of the decision of the presiding officer.

#### Authority

The provisions of this § 5.305 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 § 5.305 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 (225678) to (225679).

#### Cross References

This section cited in 52 Pa. Code § 3.10 (relating to Commission review of interim emergency orders).

### § 5.306. Expedited notification.

A presiding officer may order notification of parties by telephone, telefacsimile or other electronic means when time periods are short and delivery by mail may not prove adequate. Notification by means other than by mail will be confirmed by the presiding officer by service in writing and a filing will be made with the Secretary regarding confirmation.

#### Authority

The provisions of this § 5.306 adopted 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 § 5.306 adopted 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 (225679).

**Subchapter D. DISCOVERY****GENERAL**

- Sec.  
5.321. Scope.  
5.322. Informal agreement regarding discovery or deposition procedure.  
5.323. Hearing preparation material.  
5.324. Discovery of expert testimony.

**TIMING AND SUPPLEMENTAL RESPONSES**

- 5.331. Sequence and timing of discovery.  
5.332. Supplementing responses.

**TYPES OF DISCOVERY**

- 5.341. Written interrogatories to a party.  
5.342. Answers or objections to written interrogatories by a party.  
5.343. Procedures in deposition by oral examination.  
5.344. Approval by presiding officer.  
5.345. Procedure on depositions by written questions.  
5.346. Persons before whom depositions may be taken.  
5.347. Taking of depositions—objections.  
5.348. Transcript of deposition, objections and filing.  
5.349. Requests for documents, entry for inspection and other purposes.  
5.350. Request for admissions.  
5.351. On the record data requests.

**LIMITATIONS**

- 5.361. Limitation of scope of discovery and deposition.  
5.362. Protective orders.  
5.363. Stay of proceedings.  
5.364. Use of depositions at hearing.  
5.365. Orders to limit availability of proprietary information.

**SANCTIONS**

- 5.371. Sanctions—general.
- 5.372. Sanctions—types.
- 5.373. [Reserved].

**GENERAL****§ 5.321. Scope.**

- (a) *Applicability.* This subchapter applies to a proceeding in which:
  - (1) A complaint, protest or other adverse pleading has been filed.
  - (2) The Commission institutes an investigation.
  - (3) The Commission institutes an on-the-record proceeding.
- (b) *Discretion.* The presiding officer may vary provisions of this subchapter as justice requires.
- (c) *Scope.* Subject to this subchapter, a party may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of another party, including the existence, description, nature, content, custody, condition and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of a discoverable matter. It is not ground for objection that the information sought will be inadmissible at hearing if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.
- (d) *Exceptions.* This subchapter does not apply to discovery sought of Commissioners or Commission staff serving in an advisory or adjudicatory capacity.
- (e) *Commission staff.* This subchapter applies equally to Commission staff serving in a prosecutory or party capacity in proceedings before the Commission, with no exceptions other than as specifically set forth in this chapter.
- (f) *Purpose and methods.* A party may obtain discovery for the purpose of preparation of pleadings, or for preparation or trial of a case, or for use at a proceeding initiated by petition or motion, or for any combination of these purposes, by one or more of the following methods:
  - (1) Deposition upon oral examination or written questions.
  - (2) Written interrogatories to a party.
  - (5) On the record data requests in rate cases.
- (g) *Supersession.* Subsections (a)—(e) supersede 1 Pa. Code § 35.145 (relating to depositions).

**Authority**

The provisions of this § 5.321 amended under the Public Utility Code, 66 Pa.C.S. §§ 501, 504—506, 1301 and 1501.

**Source**

The provisions of this § 5.321 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 pages (225680) to (225682).

**Notes of Decisions***Notice and Hearing*

The procedures used by the Public Utility Commission were sufficient to satisfy 66 Pa.C.S. § 519 requirement that the Commission provide “reasonable notice and hearing” when considering an application for an electric generating unit fueled by oil or natural gas. Given the Commonwealth Court’s limited scope of review of a decision of the Commission and the implicit discretion of the presiding officer to interpret the phrase “reasonably possible,” the court cannot conclude that it erred in denying the energy company’s motion to compel discovery as untimely. *Diamond Energy Inc. v. Pennsylvania Public Utility Commission*, 653 A.2d 1360 (Pa. Cmwlth. 1995).

**Cross References**

This section cited in 52 Pa. Code § 5.323 (relating to trial preparation material); 52 Pa. Code § 5.324 (relating to discovery of expert testimony); 52 Pa. Code § 5.341 (relating to written interrogatories to a party); 52 Pa. Code § 5.349 (relating to requests for documents, entry for inspection and other purposes); 52 Pa. Code § 5.350 (relating to request for admissions); and 52 Pa. Code § 5.351 (relating to on the record data requests).

**§ 5.322. Informal agreement regarding discovery or deposition procedure.**

The parties may by agreement provide that depositions may be taken before a person authorized to administer oaths, at any time or place, upon any notice, and in any manner, and when so taken may be used like other depositions. The parties may modify the procedures provided by this chapter for methods of discovery and, notwithstanding any provisions of this subchapter, parties are encouraged to exchange information on an informal basis.

**Authority**

The provisions of this § 5.322 amended under the Public Utility Code, 66 Pa.C.S. §§ 501, 504—506, 1301 and 1501.

**Source**

The provisions of this § 5.322 adopted October 12, 1984, effective January 1, 1985, 14 Pa.B. 3819; amended April 28, 2006, effective April 29, 2006, 36 Pa.B. 2097. Immediately preceding text appears at serial page (225682).

**Cross References**

This section cited in 52 Pa. Code § 5.343 (relating to procedures in deposition by oral examination); 52 Pa. Code § 5.350 (relating to request for admissions); and 52 Pa. Code § 5.351 (relating to on the record data requests).

**§ 5.323. Hearing preparation material.**

(a) *Generally.* Subject to this subchapter and consistent with Pa. R.C.P. 4003.3 (relating to scope of discovery trial preparation material generally), a party may obtain discovery of any matter discoverable under § 5.321(b) (relating to scope) even though prepared in anticipation of litigation or hearing by or for another party or by or for that other party's representative, including his attorney, consultant, surety, indemnitor, insurer or agent. The discovery may not include disclosure of the mental impressions of a party's attorney or his conclusions, opinions, memoranda, notes, summaries, legal research or legal theories. With respect to the representative of a party other than the party's attorney, discovery may not include disclosure of his mental impressions, conclusions or opinions respecting the value or merit of a claim or defense or respecting strategy, tactics or preliminary or draft versions of written testimony or exhibits, whether or not final versions of the testimony or exhibits are offered into evidence.

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

- (1) A written statement signed or otherwise adopted or approved by the person making it.
- (2) A stenographic, mechanical, electrical or other recording, or a transcription thereof, which is a substantially verbatim recital of an oral statement by the person making it and contemporaneously recorded.

**Authority**

The provisions of this § 5.323 amended under the Public Utility Code, 66 Pa.C.S. §§ 501, 504—506, 1301 and 1501.

**Source**

The provisions of this § 5.323 adopted October 12, 1984, effective January 1, 1985, 14 Pa.B. 3819; amended April 28, 2006, effective April 29, 2006, 36 Pa.B. 2097. Immediately preceding text appears at serial pages (225682) to (225683).

**Cross References**

This section cited in 52 Pa. Code § 5.341 (relating to written interrogatories to a party); 52 Pa. Code § 5.349 (relating to requests for documents, entry for inspection and other purposes); 52 Pa. Code § 5.350 (relating to request for admissions); and 52 Pa. Code § 5.351 (relating to on the record data requests).

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

(a) Consistent with Pa.R.C.P. 4003.5 (relating to discovery of expert testimony trial preparation material), discovery of facts known and opinions held by



an expert, otherwise discoverable under § 5.321 (relating to scope), including that acquired or developed in anticipation of litigation or for hearing, may be obtained as follows:

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

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

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

(2) If the party against whom discovery is sought, under paragraph (1)(ii), responds by the filing of written direct testimony, the response shall be considered timely, regardless of § 5.342 (relating to answers or objections to written interrogatories by a party), if the written direct testimony is served on all parties at least 20 days prior to the date on which the expert is scheduled to testify or in accordance with the schedule for the submission of written testimony established by the presiding officer. However, the party shall still comply with paragraph (1)(i) within the time otherwise applicable.

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

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

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

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

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

#### Authority

The provisions of this § 5.324 amended under the Public Utility Code, 66 Pa.C.S. §§ 501, 504—506, 1301 and 1501.

#### Source

The provisions of this § 5.324 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 pages (225683) to (225684).

#### Cross References

This section cited in 52 Pa. Code § 5.324 (relating to discovery of expert testimony); 52 Pa. Code § 5.332 (relating to supplementing responses); 52 Pa. Code § 5.341 (relating to written interrogatories to a party); 52 Pa. Code § 5.344 (relating to approval by presiding officer); 52 Pa. Code § 5.349 (relating to requests for documents, entry for inspection and other purposes); 52 Pa. Code § 5.350 (relating to request for admissions); and 52 Pa. Code § 5.411 (relating to oral examination).

### TIMING AND SUPPLEMENTAL RESPONSES

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

- (a) A party to the Commission proceeding may conduct discovery.
- (b) A party shall initiate discovery as early in the proceedings as reasonably possible. In a proceeding, the right to discovery commences when a complaint, protest or other adverse pleading is filed or when the Commission institutes an investigation or on the record proceeding, whichever is earlier.
- (c) Commission staff may initiate discovery at an earlier time. Commission staff discovery prior to formal Commission action to initiate a proceeding shall be designated as “Staff data requests” and shall be answered fully and completely by the utility within the time periods specified in § 5.342(d) (relating to answers or objections to written interrogatories by a party). Unless a presiding officer has been designated, objections and motions to compel shall be ruled upon by the Chief Administrative Law Judge.
- (d) In a rate proceeding, initial discovery directed to data or information supplied by the public utility at the time of the initiation of the proceeding shall be submitted to the utility within 10 working days following the first prehearing conference. The presiding officer may establish reasonable limitations upon the timing of discovery.
- (e) Unless the presiding officer upon motion, for the convenience of parties and witnesses and in the interests of justice, orders otherwise, methods of discovery may be used in any sequence and the fact that a party is conducting discovery will not operate to delay another party’s discovery.

**Authority**

The provisions of this § 5.331 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 § 5.331 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 (225684) to (225685).

**Notes of Decisions***Discovery Denied*

The procedures used by the Public Utility Commission were sufficient to satisfy 66 Pa.C.S. § 519 requirement that the Commission provide “reasonable notice and hearing” when considering an application for an electric generating unit fueled by oil or natural gas. Given the Commonwealth Court’s limited scope of review of a decision of the Commission and the implicit discretion of the presiding officer to interpret the phrase “reasonably possible,” the court cannot conclude that it erred in denying the energy company’s motion to compel discovery as untimely. *Diamond Energy Inc. v. Pennsylvania Public Utility Commission*, 653 A.2d 1360 (Pa. Cmwlth. 1995).

**Cross References**

This section cited in 52 Pa. Code § 5.351 (relating to on the record data requests).

**§ 5.332. Supplementing responses.**

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

- (1) A party is under a continuing duty to supplement responses with respect to a question directly addressed to the identity and location of persons having knowledge of discoverable matters and the identity of each person expected to be called as an expert witness at hearing, the subject matter on which the expert is expected to testify and the substance of the testimony as provided in § 5.324(a)(1) (relating to discovery of expert testimony).
- (2) A party or an expert witness is under a continuing duty to amend a prior response upon discovering that the response is incorrect or incomplete.
- (3) A duty to supplement responses may be imposed by order of the presiding officer, agreement of the parties, or at a time prior to hearing through new requests to supplement prior responses.

**Authority**

The provisions of this § 5.332 amended under the Public Utility Code, 66 Pa.C.S. §§ 501, 504—506, 1301 and 1501.

**Source**

The provisions of this § 5.332 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 (225686).

**TYPES OF DISCOVERY****§ 5.341. Written interrogatories to a party.**

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

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

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

(d) Each interrogatory should be limited to a single question or request for information.

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

**Authority**

The provisions of this § 5.341 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 § 5.341 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 April 28, 2006, effective April 29, 2006, 36 Pa.B. 2097. Immediately preceding text appears at serial pages (225686) to (225687).

**Cross References**

This section cited in 52 Pa. Code § 5.349 (relating to requests for documents, entry for inspection and other purposes).

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

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

- (1) Be in writing.

- (2) Identify the name and position of the individual who provided the answer.
  - (3) Be submitted as an answer and may not be submitted as an exhibit or in another form.
  - (4) Answer each interrogatory fully and completely unless an objection is made.
  - (5) Restate the interrogatory which is being answered or be inserted in the spaces provided in the interrogatories.
  - (6) Be verified in accordance with § 1.36 (relating to verification).
- (b) *Use.* An answer may be used by a party for an appropriate purpose, if admissible under the applicable rules of evidence. An answer may not be offered into evidence by the party who provided it, except through the sworn oral testimony of the person who provided the answer.
- (c) *Objections.* An objection shall be prepared, filed and served in the same manner provided for an answer, except that an objection must be contained in a document separate from an answer as required by the time provisions of subsection (e). An objection must:
- (1) Be served instead of an answer.
  - (2) Restate the interrogatory or part thereof deemed objectionable and the specific ground for the objection.
  - (3) Include a description of the facts and circumstances purporting to justify the objection.
  - (4) Be signed by the attorney making it.
  - (5) Not be valid if based solely on the claim that an answer will involve an opinion or contention that is related to a fact or the application of law to fact.
  - (6) Not excuse the answering party from answering the remaining interrogatories or subparts of interrogatories to which no objection is stated.
- (d) *Service of answer.* The answering party shall serve answers on the parties within 15 days for rate proceedings, and 20 days after service of the interrogatories for other cases. Time periods may be modified by the presiding officer, on motion or by agreement of the parties.
- (e) *Service of objections.* The objecting party shall serve objections within 10 days of service of the interrogatories.
- (1) The objecting party shall serve copies of the objection on the parties, along with a certificate of service, which specifically identifies the objectionable interrogatories.
  - (2) The objecting party shall file a copy of the certificate of service with the Secretary.
- (f) *Continuing obligation.* The objecting party shall remain under an obligation to timely provide answers to interrogatories or subparts of interrogatories that were not objected to.
- (g) *Motion to compel.* Within 10 days of service of an objection to interrogatories, the party submitting the interrogatories may file a motion requesting the presiding officer to dismiss an objection and compel that the interrogatory be answered. The motion to compel must include the interrogatory objected to and

the objection. If a motion to compel is not filed within 10 days of service of the objection, the objected to interrogatory will be deemed withdrawn.

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

(2) The presiding officer will rule on the motion as soon as practicable. The motion should be decided within 15 days of its presentation, unless the motion presents complex or novel issues. If it does have complex or novel issues, the presiding officer will, upon notice to the parties, rule in no more than 20 days of its presentation.

#### Authority

The provisions of this § 5.342 amended under the Public Utility Code, 66 Pa.C.S. §§ 309—311, 315, 331—335, 501, 504—506, 523, 701—703, 1101—1103, 1301, 1501 and 1504.

#### Source

The provisions of this § 5.342 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; amended September 20, 2013, effective September 21, 2013, 43 Pa.B. 5593. Immediately preceding text appears at serial pages (319184) to (319186).

#### Cross References

This section cited in 52 Pa. Code § 5.324 (relating to discovery of expert testimony); 52 Pa. Code § 5.331 (relating to sequence and timing of discovery); 52 Pa. Code § 5.349 (relating to requests for documents, entry for inspection and other purposes); and 52 Pa. Code § 5.351 (relating to on the record data requests).

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

(a) A party desiring to take the deposition of a person upon oral examination, other than under § 5.322 (relating to informal agreement regarding discovery or deposition procedure), shall give 20 days notice in writing to the active party and to the presiding officer. A party noticed to be deposed is required to appear without subpoena. A person who is not a party is not required to appear unless subpoenaed.

(b) The notice must conform with subsections (c)—(f) and § 5.344 (relating to approval by presiding officer) and state the time and place of taking the deposition and the name and address of each person to be examined if known, and if the name is not known, a general description sufficient to identify him or the particular class or group to which he belongs.

(c) The notice must include a brief statement of the matters for which inquiry is being made.

(d) If the person to be examined is a party, the notice may include a request made in compliance with § 5.349 (relating to requests for documents, entry for

inspection and other purposes) for the production of documents and tangible things at the taking of the deposition. If the person to be examined is not a party, and is to be served with a subpoena duces tecum to provide designated materials, the notice shall specify the materials to be produced.

(e) A party may in his notice and in a subpoena, if issued, name as the deponent a public or private corporation, a partnership or association or a governmental agency. In that event, the organization named shall file within 10 days of service a designation of one or more officers, directors or managing agents, or other persons who consent to testify on its behalf, and may set forth, for the persons designated, the matters on which he will testify. A subpoena shall advise a nonparty organization of its duty to make a designation. The person designated shall testify as to matters known or reasonably available to the organization. This subsection does not preclude taking a deposition by other procedures authorized in this chapter.

(f) An objection to the notice of deposition may be filed within 10 days of service of the notice. A copy of the objection shall be served upon the presiding officer and the parties. A notice of deposition which is served upon a nonparty must state that the nonparty may file objections within 10 days of service and identify the persons—names and addresses—to whom the objections shall be sent.

(g) Subsections (a)—(f) supersede 1 Pa. Code §§ 35.142, 35.145 and 35.146 (relating to subpoenas; depositions; and notice and application).

#### Authority

The provisions of this § 5.343 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 § 5.343 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 (225688) to (225690).

#### Cross References

This section cited in 52 Pa. Code § 5.344 (relating to approval by presiding officer); 52 Pa. Code § 5.345 (relating to procedure on depositions by written questions); 52 Pa. Code § 5.364 (relating to use of depositions at hearing); and 52 Pa. Code § 5.411 (relating to oral examination).

### § 5.344. Approval by presiding officer.

(a) Notice of the deposition served upon the presiding officer, under § 5.343(a) (relating to procedures in deposition by oral examination), constitutes an application for an order to take a deposition under section 333(b) of the act (relating to prehearing procedures). The copy served on the presiding officer shall

have attached a proposed order containing the following language: “Application granted. So Ordered this \_\_\_ day of \_\_\_\_\_. ” and bear a signature line for the presiding officer.

(b) The application will be granted by the presiding officer, except as provided in § 5.324(a)(3) (relating to discovery of expert testimony), or for failure to comply with § 5.343 or subsection (c), or if objected to within 10 days. The presiding officer will consider a timely filed objection and §§ 5.324(a)(3), 5.343 and subsection (c) before ruling upon the application.

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

(d) Subsections (a)—(c) supersede 1 Pa. Code § 35.147 (relating to authorization of taking deposition).

#### Authority

The provisions of this § 5.344 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 § 5.344 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 April 28, 2006, effective April 29, 2006, 36 Pa.B. 2097. Immediately preceding text appears at serial page (225690).

#### Cross References

This section cited in 52 Pa. Code § 5.343 (relating to procedures in deposition by oral examination); 52 Pa. Code § 5.347 (relating to depositions—objections); and 52 Pa. Code § 5.411 (relating to oral examination).

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

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

(b) The questions must contain a notice stating the name and address of each person to be examined if known, and, if the name is not known, a general description sufficient to identify him or the particular class or group to which he belongs. A deposition upon written questions may be taken of a public or private corporation, a partnership or association, or a governmental agency in accordance with § 5.343(e) (relating to procedures in deposition by oral examination).

(c) Objections to the form of questions are waived unless filed and served upon the party propounding them within the time allowed for serving the suc-



ceeding cross or other questions or within 10 days after service of the last questions. Other objections may be made at the hearing except as otherwise provided by §§ 5.346—5.348 (relating to persons before whom depositions may be taken; taking of depositions-objections; and transcript of deposition, objections and filing).

(d) A copy of questions for the taking of a deposition, as well as a signature page and envelope bearing the caption and marked “Deposition of \_\_\_\_\_” (name of witness), shall be transmitted to the person being deposed who shall complete, certify and return the completed deposition to the sender.

(e) After the service of questions and prior to the taking of the testimony of the deponent, the presiding officer, on motion promptly made by a party or a deponent, may make an order in accordance with § 5.362 (relating to protective orders) or an order that the deposition may not be taken except upon oral examination.

#### Authority

The provisions of this § 5.345 amended under the Public Utility Code, 66 Pa.C.S. §§ 501, 504—506, 1301 and 1501.

#### Source

The provisions of this § 5.345 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 pages (225690) to (225691).

#### Cross References

This section cited in 52 Pa. Code § 1.8 (relating to definitions); 52 Pa. Code § 5.364 (relating to use of depositions at hearing); and 52 Pa. Code § 5.411 (relating to oral examination).

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

(a) Within the United States or within a territory or possession subject to the dominion of the United States, depositions other than by interrogatories shall be taken before an officer authorized to administer oaths by the laws of the United States, of the Commonwealth or of the place where the examination is held, or before a person appointed by the presiding officer. A person so appointed shall have power to administer oaths and take testimony.

(b) No deposition may be taken before a person who is a relative, employe or attorney of any of the parties, who is a relative or employe of the attorney, or who is financially interested in the action.

(c) Depositions by written questions need only be answered under oath and notarized.

(d) Attendance of a witness at a deposition may be compelled by subpoena.

(e) Subsections (a)—(d) supersede 1 Pa. Code § 35.148 (relating to officer before whom deposition is taken).

**Authority**

The provisions of this § 5.346 amended under the Public Utility Code, 66 Pa.C.S. §§ 501, 504—506, 1301 and 1501.

**Source**

The provisions of this § 5.346 adopted October 12, 1984, effective January 1, 1985, 14 Pa.B. 3819; amended January 24, 1997, effective January 25, 1997, 27 Pa.B. 414. Immediately preceding text appears at serial pages (215985) to (215986).

**Cross References**

This section cited in 52 Pa. Code § 1.8 (relating to definitions); 52 Pa. Code § 5.345 (relating to procedure on depositions by written questions); and 52 Pa. Code § 5.411 (relating to oral examination).

**§ 5.347. Taking of depositions—objections.**

(a) Objection to taking a deposition because of the disqualification of the person before whom it is to be taken is waived unless made before the taking of the deposition begins or as soon thereafter as the disqualification becomes known or could be discovered with reasonable diligence.

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

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

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

(e) Subsections (a)—(d) supersede 1 Pa. Code § 35.151 (relating to status of deposition as part of record).

**Authority**

The provisions of this § 5.347 amended under the Public Utility Code, 66 Pa.C.S. §§ 501, 504—506, 1301 and 1501.

**Source**

The provisions of this § 5.347 adopted October 12, 1984, effective January 1, 1985, 14 Pa.B. 3819; amended April 28, 2006, effective April 29, 2006, 36 Pa.B. 2097. Immediately preceding text appears at serial pages (225692) to (225693).

**Cross References**

This section cited in 52 Pa. Code § 5.345 (relating to procedure on depositions by written questions); 52 Pa. Code § 5.364 (relating to use of depositions at hearing); and 52 Pa. Code § 5.411 (relating to oral examination).

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

(a) The person before whom the deposition is taken shall put the witness on oath or affirmation and shall personally, or by someone acting under his direction and in his presence, record the testimony of the witness.

(b) The testimony of the witness shall be transcribed. Objections to the manner of preparation or the correctness of the transcript are waived unless they are filed in writing with the presiding officer promptly after the grounds of objection become known or could have been discovered with reasonable diligence.

(c) When the testimony is fully transcribed, a copy of the deposition with the original signature page shall be submitted to the witness for inspection and signing and shall be read to or by him and shall be signed by him unless the witness is ill or cannot be found or refuses to sign. Changes which the witness desires to make shall be entered upon the deposition by the person before whom it was taken with a statement of the reasons given by the witness for making the changes. If the deposition is not signed by the witness within 30 days of its submission to him, the person before whom the deposition was taken shall sign it and state on the record why it was not signed. The deposition may then be used as fully as though signed, unless the presiding officer holds that the reasons given for the refusal to sign require rejection of the deposition in whole or in part.

(d) The person before whom the deposition is taken shall certify on the deposition that the witness was sworn by the person and the deposition is a true record of the testimony given by the witness.

(e) In lieu of participating in the oral examination, parties served with notice of taking a deposition may transmit written questions to the person taking the deposition, who shall propound them to the witness and record the answers verbatim.

(f) Upon payment of reasonable charges, the person before whom the deposition was taken shall furnish a copy thereof to parties or to the deponent.

(g) Subsections (a)—(f) supersede 1 Pa. Code § 35.149 (relating to oath and reduction to writing).

**Authority**

The provisions of this § 5.348 amended under the Public Utility Code, 66 Pa.C.S. §§ 501, 504—506, 1301 and 1501.

**Source**

The provisions of this § 5.348 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 pages (225693) to (225694).

**Cross References**

This section cited in 52 Pa. Code § 5.345 (relating to procedure on depositions by written questions); and 52 Pa. Code § 5.411 (relating to oral examination).

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

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

(1) To produce and permit the party making the request, or someone acting on the party's behalf, to inspect and copy designated documents—including writings, drawings, graphs, charts, photographs, computer records and other compilations of data from which information can be obtained, translated, if necessary, by the respondent through detection devices into reasonable usable form—or to inspect a copy, test or sample tangible things which constitute or contain matters within the scope of §§ 5.321(b), 5.323 and 5.324 (relating to scope; hearing preparation material; and discovery of expert testimony) and which are in the possession, custody or control of the party upon whom the request is served.

(2) To permit entry upon designated land or other property in the possession or control of the party upon whom the request is served for the purpose of inspecting and measuring, surveying, photographing, testing or sampling the property or a designated object or operation thereon, within the scope of §§ 5.321(b), 5.323 and 5.324.

(b) As an alternative to permission to inspect and copy, and if requested by the party seeking discovery, the party against whom discovery is sought shall reproduce the designated documents at the requesting party's expense. Regulated utilities shall provide copies of requested materials to Commission staff, which includes the Office of Trial Staff, the Office of Consumer Advocate and the Office of Small Business Advocate at no charge.

(c) The request must set forth the items to be inspected either by individual item or by category, describe items and categories with reasonable particularity, and specify a reasonable time, place and manner of making the inspection and performing the related acts.

(d) The party upon whom the request is served shall serve a written response within 10 days for rate proceedings, and 20 days after service of the request for all other cases. Time periods may be modified by the presiding officer or by agreement of the parties. The response shall be verified or notarized, as permitted by § 1.36 (relating to verification), and state that inspection and related activities will be permitted as requested. If the request is objected to, the objection shall be made in the manner described in § 5.342 (relating to answers or objections to written interrogatories by a party). A party may request another party to produce or inspect documents as part of interrogatories filed under § 5.341 (relating to written interrogatories to a party). The party submitting the request may move for

an order under § 5.342(e) with respect to an objection or to other failure to respond to the request or any part thereof, or failure to permit inspection as requested.

(e) This section does not apply to official files of the Commission, or materials which are the product of or within the control of Commission advisory or adjudicatory staff, but applies only to materials within the control of staff as may be participating in the action as a party. Access to official files of the Commission shall be as prescribed in §§ 1.71—1.77 (relating to public access to Commission records).

#### Authority

The provisions of this § 5.349 amended under the Public Utility Code, 66 Pa.C.S. §§ 501, 504—506, 1301 and 1501.

#### Source

The provisions of this § 5.349 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 pages (225694) to (225695).

#### Cross References

This section cited in 52 Pa. Code § 5.341 (relating to written interrogatories to a party); and 52 Pa. Code § 5.343 (relating to procedures in deposition by oral examination).

### § 5.350. Request for admissions.

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

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

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

(d) *Response.*

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

(2) *Denial.* A denial shall fairly meet the substance of the requested admission, and when good faith requires that a party qualify an answer or deny only a part of the matter of which an admission is requested, the party shall specify

so much of it as is true and qualify or deny the remainder. An answering party may not give lack of information or knowledge as a reason for failure to admit or deny unless the party states he has made reasonable inquiry and that the information known or readily obtainable by him is insufficient to enable him to admit or deny.

(3) *Objection.* Grounds for objections must be specifically stated. A party who considers that a matter of which an admission has been requested presents a genuine issue for hearing may not, on that ground alone, object to the request.

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

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

#### Authority

The provisions of this § 5.350 amended under the Public Utility Code, 66 Pa.C.S. §§ 501, 504—506, 1301 and 1501.

#### Source

The provisions of this § 5.350 adopted October 12, 1984, effective January 1, 1985, 14 Pa.B. 3819; amended April 28, 2006, effective April 29, 2006, 36 Pa.B. 2097. Immediately preceding text appears at serial pages (225695) to (225696).

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

(a) A party may request that a witness provide information or documents at a later time as part of the witness' response to a question posed during cross-examination in the course of a rate proceeding. The request may be made orally or in writing and shall be presented at the time the witness appears for cross-examination.

(b) Answers shall be supplied as directed by the presiding officer. If no time period is set, the response period may be no later than 10 days after the request is made.

(c) Objections to a request shall be made at the time that the request is made.

#### Authority

The provisions of this § 5.351 amended under the Public Utility Code, 66 Pa.C.S. §§ 501, 504—506, 1301 and 1501.

**Source**

The provisions of this § 5.351 adopted October 12, 1984, effective January 1, 1985, 14 Pa.B. 3819; amended April 28, 2006, effective April 29, 2006, 36 Pa.B. 2097; corrected June 16, 2006, effective April 29, 2006, 36 Pa.B. 2971. Immediately preceding text appears at serial pages (319194) to (319195).

**LIMITATIONS****§ 5.361. Limitation of scope of discovery and deposition.**

(a) Discovery or deposition is not permitted which:

- (1) Is sought in bad faith.
- (2) Would cause unreasonable annoyance, embarrassment, oppression, burden or expense to the deponent, a person or party.
- (3) Relates to matter which is privileged.
- (4) Would require the making of an unreasonable investigation by the deponent, a party or witness.

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

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

**Authority**

The provisions of this § 5.361 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 § 5.361 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 April 28, 2006, effective April 29, 2006, 36 Pa.B. 2097. Immediately preceding text appears at serial page (263609).

**Notes of Decisions***Abuse of Discretion*

The Commission did not abuse its discretion in limiting city's discovery request, seeking cost-of-service data from water company where city was financially and technically capable of performing the requested studies. *City of Pittsburgh v. Pennsylvania Public Utility Commission*, 526 A.2d 1243 (Pa. Cmwlth. 1987).

*Scope of Discovery*

This section limits the scope of discovery and prohibits discovery which would cause an unreasonable burden, expense or investigation by a participant. *City of Pittsburgh v. Pennsylvania Public Utility Commission*, 526 A.2d 1243 (Pa. Cmwlth. 1987); appeal denied 538 A.2d 880 (Pa. 1988).

**Cross References**

This section cited in 52 Pa. Code § 5.341 (relating to written interrogatories to a party).

**§ 5.362. Protective orders.**

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

(1) The discovery or deposition shall be prohibited.

(2) The discovery or deposition shall be only on specified terms and conditions, including a designation of the method, time or place.

(3) The scope of discovery or deposition shall be limited and that certain matters may not be inquired into.

(4) Discovery or deposition shall be conducted with no one present except persons designated by the presiding officer.

(5) A deposition shall be sealed and shall be opened only by order of the presiding officer.

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

(7) A trade secret or other confidential research, development or commercial information may not be disclosed or be disclosed only in a designated way. Protective orders to protect or limit this type of information shall be issued under § 5.423 (relating to orders to limit availability of proprietary information).

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

(c) During the taking of a deposition on motion of a party or of the deponent, the presiding officer or other administrative law judge may order the officer conducting the examination to cease from taking the deposition, or may limit the scope and manner of the taking of the deposition as provided in subsection (a). Upon demand of the objecting party or deponent, the taking of the deposition shall be suspended for the time necessary to make a motion for an order and to obtain the presiding officer's ruling.

**Authority**

The provisions of this § 5.362 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 § 5.362 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 April 28, 2006, effective April 29, 2006, 36 Pa.B. 2097. Immediately preceding text appears at serial pages (263609) to (263610).



**Cross References**

This section cited in 52 Pa. Code § 5.345 (relating to procedure on depositions by written questions).

**§ 5.363. Stay of proceedings.**

The filing of a motion for a protective order shall stay the deposition, production, entry on land or other discovery to which the motion is directed until the presiding officer rules on the motion or for a period of 10 days, whichever is shorter, where the presiding officer does not rule on the motion by the tenth day after its filing, the stay will be deemed lifted and the discovery shall proceed.

**Source**

The provisions of this § 5.363 adopted October 12, 1984, effective January 1, 1985, 14 Pa.B. 3819.

**§ 5.364. Use of depositions at hearing.**

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

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

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

(3) The deposition of a witness may be used by a party for a purpose if the presiding officer finds one of the following:

(i) The witness is dead.

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

(iii) The witness is unable to attend or testify because of age, sickness, infirmity or imprisonment.

(iv) The party offering the deposition has been unable to procure the attendance of the witness by subpoena.

(v) Upon application and notice that exceptional circumstances exist to make it desirable, in the interest of justice and with regard to the importance of presenting the witnesses in hearing, to allow the deposition to be used.

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

(b) Subject to § 5.347(b) (relating to taking of depositions—objections), objection may be made at the hearing to receiving in evidence deposition for reasons which would require the exclusion of the evidence if the witness were then present and testifying.

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

#### Authority

The provisions of this § 5.364 amended under the Public Utility Code, 66 Pa.C.S. §§ 501, 504—506, 1301 and 1501.

#### Source

The provisions of this § 5.364 adopted October 12, 1984, effective January 1, 1985, 14 Pa.B. 3819; amended April 28, 2006, effective April 29, 2006, 36 Pa.B. 2097. Immediately preceding text appears at serial pages (225699) to (225700).

### § 5.365. Orders to limit availability of proprietary information.

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

- (1) The extent to which the disclosure would cause unfair economic or competitive damage.
- (2) The extent to which the information is known by others and used in similar activities.
- (3) The worth or value of the information to the party and to the party's competitors.
- (4) The degree of difficulty and cost of developing the information.
- (5) Other statutes or regulations dealing specifically with disclosure of the information.

(b) *General rule for nonadversarial proceedings.* A petition for a protective order limiting the disclosure of a trade secret or other confidential information in a nonadversarial proceeding shall be referred to the Law Bureau for recommended disposition by the Commission. The Commission will not disclose mate-

rial that is the subject of a petition for protective order under this provision during the pendency of a request.

(c) *Restrictions.*

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

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

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

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

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

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

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

(f) *Return of proprietary information.* A party providing proprietary information under this section may request that the parties receiving the information

return the information and the copies thereof to the party at the conclusion of the proceeding, including appeals taken.

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

#### Authority

The provisions of this § 5.365 issued under the Public Utility Code, 66 Pa.C.S. §§ 501, 504—506 and 1501.

#### Source

The provisions of this § 5.365 adopted September 20, 2013, effective September 21, 2013, 43 Pa.B. 5593.

#### Notes of Decisions

This section requires the Commission to balance the alleged proprietary nature against the public interest in disclosure. Proprietary nature is viewed against a public policy favoring access to the administrative process. *Lyft, Inc. v. Pennsylvania Public Utility Commission*, 145 A.3d 1235 (Pa. Cmwlth. 2016).

Aggregated data are not the type of data generally protected under this section. *Lyft, Inc. v. Pennsylvania Public Utility Commission*, 145 A.3d 1235 (Pa. Cmwlth. 2016).

#### Cross References

This section cited in 52 Pa. Code § 121.4 (relating to filing and Commission review procedures).

## SANCTIONS

### § 5.371. Sanctions—general.

(a) The Commission or the presiding officer may, on motion, make an appropriate order if one of the following occurs:

(1) A party fails to appear, answer, file sufficient answers, file objections, make a designation or otherwise respond to discovery requests, as required under this subchapter.

(2) A party deponent or an officer or managing agent of a party refuses to obey or induces another to refuse to obey an order of a presiding officer respecting discovery, or induces another not to appear.

(b) A motion for sanctions may be answered within 5 days of service or, in the alternative, the motion may be answered orally at a hearing if a timely hearing has been scheduled within the same 5-day period.

(c) The presiding officer will rule on the motion as soon as practicable. The motion should be decided within 20 days of its presentation.

(d) A failure to act described in subsection (a) may not be excused on the ground that the discovery sought is objectionable unless the party failing to act has filed an appropriate objection or has applied for a protective order.

(e) If a deponent refuses to be sworn or to answer a question, the deposition shall be completed on other matters or adjourned, as the proponent of the question may prefer. Thereafter, on reasonable notice to persons affected thereby, the proponent may apply to the presiding officer for an order compelling the witness to be sworn or to answer.

**Authority**

The provisions of this § 5.371 amended under the Public Utility Code, 66 Pa.C.S. §§ 501, 504—506, 1301 and 1501.

**Source**

The provisions of this § 5.371 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 pages (225700) to (225701).

**Cross References**

This section cited in 52 Pa. Code § 5.224 (relating to prehearing conference in rate proceedings); and 52 Pa. Code § 5.372 (relating to sanctions—types).

**§ 5.372. Sanctions—types.**

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

(1) An order that the matters regarding which the questions were asked, the character or description of the thing or land, the contents of the paper, or other designated fact shall be taken to be established for the purposes of the action in accordance with the claim of the party obtaining the order.

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

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

(4) An order with regard to the failure to make discovery as is just.

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

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

**Authority**

The provisions of this § 5.372 amended under the Public Utility Code, 66 Pa.C.S. §§ 501, 504—506, 1301 and 1501.

**Source**

The provisions of this § 5.372 adopted October 12, 1984, effective January 1, 1985, 14 Pa.B. 3819; amended April 28, 2006, effective April 29, 2006, 36 Pa.B. 2097. Immediately preceding text appears at serial page (225701).

**Cross References**

This section cited in 52 Pa. Code § 5.224 (relating to prehearing conference in rate proceedings).

**§ 5.373. [Reserved].****Authority**

The provisions of this § 5.373 amended under the Public Utility Code, 66 Pa.C.S. §§ 501, 504—506, 1301 and 1501; reserved under the Public Utility Code, 66 Pa.C.S. §§ 501, 504—506 and 1501.

**Source**

The provisions of this § 5.373 adopted October 12, 1984, effective January 1, 1985, 14 Pa.B. 3819; amended April 28, 2006, effective April 29, 2006, 36 Pa.B. 2097; reserved September 20, 2013, effective September 21, 2013, 43 Pa.B. 5593. Immediately preceding text appears at serial page (319200).

**Subchapter E. EVIDENCE AND WITNESSES****EVIDENCE**

- Sec.  
5.401. Admissibility of evidence.  
5.402. Admission of evidence.  
5.403. Control of receipt of evidence.  
5.404. Additional evidence.  
5.405. Effect of pleadings.  
5.406. Public documents.  
5.407. Records of other proceedings.  
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**WITNESSES**

- 5.411. Oral examination.  
5.412. Written testimony.  
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5.413. [Reserved].  
5.414. Offers of proof.

**SUBPOENAS**

- 5.421. Subpoenas.  
5.423. [Reserved].  
5.424. Issuance of subpoenas.

**CLOSE OF THE RECORD**

- 5.431. Close of the record.

**EVIDENCE****§ 5.401. Admissibility of evidence.**

- (a) Relevant and material evidence is admissible subject to objections on other grounds.
- (b) Evidence will be excluded if:
- (1) It is repetitious or cumulative.
  - (2) Its probative value is outweighed by:
    - (i) The danger of unfair prejudice.
    - (ii) Confusion of the issues.
    - (iii) Considerations of undue delay or waste of time.
- (c) Subsections (a) and (b) supersede 1 Pa. Code § 35.161 (relating to form and admissibility of evidence).

**Authority**

The provisions of this § 5.401 amended under the Public Utility Code, 66 Pa.C.S. §§ 501, 504—506, 1301 and 1501.

**Source**

The provisions of this § 5.401 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, effective April 29, 2006, 36 Pa.B. 2097. Immediately preceding text appears at serial page (225703).

**§ 5.402. Admission of evidence.**

- (a) A party shall move the admission of evidence into the record upon presentation of the sponsoring witness, and after opportunity for other parties to examine the witness.
- (b) For an exhibit to be received into evidence, it shall be marked for identification and moved into evidence.
- (c) Subsections (a) and (b) supersede 1 Pa. Code § 35.162 (relating to reception and ruling on evidence).

**Authority**

The provisions of this § 5.402 amended under the Public Utility Code, 66 Pa.C.S. §§ 501, 504—506, 1301 and 1501.

**Source**

The provisions of this § 5.402 adopted October 12, 1984, effective January 1, 1985, 14 Pa.B. 3819; amended April 28, 2006, effective April 29, 2006, 36 Pa.B. 2097. Immediately preceding text appears at serial page (225703).

**Cross References**

This section cited in 52 Pa. Code § 5.431 (relating to close of the record).

**§ 5.403. Control of receipt of evidence.**

- (a) The presiding officer shall have all necessary authority to control the receipt of evidence, including the following:
- (1) Ruling on the admissibility of evidence.
  - (2) Confining the evidence to the issues in the proceeding and impose, where appropriate:
    - (i) Limitations on the number of witnesses to be heard.
    - (ii) Limitations of time and scope for direct and crossexaminations.

- (iii) Limitations on the production of further evidence.
- (iv) Other necessary limitations.
- (b) The presiding officer will actively employ these powers to direct and focus the proceedings consistent with due process.
- (c) Subsections (a) and (b) supersede 1 Pa. Code §§ 35.127, 35.162 and 35.163 (relating to limiting number of witnesses; reception and ruling on evidence; and designation of relevant portions of documentary evidence).

**Source**

The provisions of this § 5.403 adopted October 12, 1984, effective January 1, 1985, 14 Pa.B. 3819.

**§ 5.404. Additional evidence.**

- (a) At any stage of the hearing or thereafter the Commission or the presiding officer may call for further admissible evidence upon an issue and require that the evidence be presented by the parties concerned, either at the hearing or at the adjournment thereof.
- (b) Subsection (a) supersedes 1 Pa. Code § 35.128 (relating to additional evidence).

**Authority**

The provisions of this § 5.404 amended under the Public Utility Code, 66 Pa.C.S. §§ 501, 504—506, 1301 and 1501.

**Source**

The provisions of this § 5.404 adopted October 12, 1984, effective January 1, 1985, 14 Pa.B. 3819; amended April 28, 2006, effective April 29, 2006, 36 Pa.B. 2097. Immediately preceding text appears at serial page (225704).

**Cross References**

This section cited in 52 Pa. Code § 5.251 (relating to recording of proceedings).

**§ 5.405. Effect of pleadings.**

- (a) Pleadings listed in § 5.1 (relating to pleadings allowed) shall, without further action, be considered as part of the record as pleadings.
- (b) Except as provided in subsection (c) and in the case of a noncontested proceeding, a pleading, or any part thereof may not be considered as evidence of a fact other than that of filing thereof unless offered and received into evidence.
- (c) A fact admitted by a party in an answer, filed under oath, to a numbered allegation in a pleading may be considered as evidence of the fact without the pleading and answer being offered and received into evidence.
- (d) Subsections (a) and (b) supersede 1 Pa. Code § 35.125(d) (relating to order of procedure). Subsection (c) supersedes 1 Pa. Code § 35.35 (relating to answers to complaints and petitions).

**Authority**

The provisions of this § 5.405 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 § 5.405 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 April 28, 2006, effective April 29, 2006, 36 Pa.B. 2097. Immediately preceding text appears at serial pages (225704) to (225705).



**§ 5.406. Public documents.**

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

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

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

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

(c) Subsections (a) and (b) supersede 1 Pa. Code §§ 35.165 and 35.166 (relating to public documents; and prepared expert testimony).

**Authority**

The provisions of this § 5.406 amended under the Public Utility Code, 66 Pa.C.S. §§ 501, 504—506, 1301 and 1501.

**Source**

The provisions of this § 5.406 adopted October 12, 1984, effective January 1, 1985, 14 Pa.B. 3819; amended April 28, 2006, effective April 29, 2006, 36 Pa.B. 2097. Immediately preceding text appears at serial page (225705).

**§ 5.407. Records of other proceedings.**

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

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

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

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

**Authority**

The provisions of this § 5.407 amended under the Public Utility Code, 66 Pa.C.S. §§ 501, 504—506, 1301 and 1501.

**Source**

The provisions of this § 5.407 adopted October 12, 1984, effective January 1, 1985, 14 Pa.B. 3819; amended April 28, 2006, effective April 29, 2006, 36 Pa.B. 2097. Immediately preceding text appears at serial page (225705).

**§ 5.408. Official and judicial notice of fact.**

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

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

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

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

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

(f) Subsections (a)—(e) supersede 1 Pa. Code § 35.173 (relating to official notice of facts).

**Authority**

The provisions of this § 5.408 amended under the Public Utility Code, 66 Pa.C.S. §§ 501, 504—506, 1301 and 1501.

**Source**

The provisions of this § 5.408 adopted October 12, 1984, effective January 1, 1985, 14 Pa.B. 3819; amended April 28, 2006, effective April 29, 2006, 36 Pa.B. 2097. Immediately preceding text appears at serial page (225706).

**§ 5.409. Copies and form of documentary evidence.**

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

(b) Whenever practicable, all exhibits of a documentary character received in evidence must be on paper of good quality and so prepared as to be plainly legible and durable, whether printed, typewritten or otherwise reproduced, and conform to Chapter 1, Subchapter D (relating to documentary filings) whenever practicable.

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

**Authority**

The provisions of this § 5.409 amended under the Public Utility Code, 66 Pa.C.S. §§ 501, 504—506, 1301 and 1501.

**Source**

The provisions of this § 5.409 adopted October 12, 1984, effective January 1, 1985, 14 Pa.B. 3819; amended April 28, 2006, effective April 29, 2006, 36 Pa.B. 2097. Immediately preceding text appears at serial page (225706).

**Cross References**

This section cited in 52 Pa. Code § 5.74 (relating to filing of petitions to intervene); and 52 Pa. Code § 5.407 (relating to records of other proceedings).

**WITNESSES****§ 5.411. Oral examination.**

(a) Witnesses shall be examined orally unless the testimony is taken by deposition as provided in §§ 5.343—5.348 or the facts are stipulated in the manner provided in § 5.232 (relating to stipulations made in conferences) or in § 5.234 (relating to presentation and effect of stipulations) or the testimony is submitted in prepared written form as provided in § 5.324 (relating to discovery of expert testimony). Witnesses whose testimony is to be taken shall be sworn, or shall affirm, before their testimony shall be deemed evidence in the proceeding or any questions are put to them.

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

**Source**

The provisions of this § 5.411 adopted October 12, 1984, effective January 1, 1985, 14 Pa.B. 3819.

**§ 5.412. Written testimony.**

(a) *General.* Use of written testimony in Commission proceedings is encouraged, especially in connection with the testimony of expert witnesses. Written direct testimony is required of expert witnesses testifying in rate cases.

(b) *Use.* The presiding officer may direct that expert testimony to be given upon direct examination be submitted as prepared written testimony. A reasonable period of time will be allowed to prepare written testimony.

(c) *Rules regarding use.* Written testimony is subject to the same rules of admissibility and cross-examination of the sponsoring witness as if it were presented orally in the usual manner.

(d) *Cross-examination.* Cross-examination of the witness presenting written testimony shall proceed at the hearing at which testimony is authenticated if service of the written testimony is made upon each party of record at least 20 days prior to the hearing, unless the presiding officer for good cause otherwise directs. In a rate proceeding, the presiding officer or the Commission will establish the schedule for the filing and authentication of written testimony, and for cross-examination by other parties.

(e) *Form.* Written testimony must normally be prepared in question and answer form, include a statement of the qualifications of the witness and be accompanied by exhibits to which it relates. A party offering prepared written testimony shall insert line numbers in the left-hand margin on each page. A party should also use a logical and sequential numbering system to identify the written testimony of individual witnesses.

(f) *Service.* Written testimony shall be served upon the presiding officer and parties in the proceeding in accordance with the schedule established by this chapter. At the same time the testimony is served, a certificate of service for the testimony shall be filed with the Secretary. Pre-served testimony furnished to the court reporter during an adjudicatory proceeding before the Commission shall be filed with the Commission as required under § 5.412a (relating to electronic submission of pre-served testimony).

(g) *Copies.* At the hearing at which the testimony is authenticated, counsel for the witness shall provide two copies of the testimony to the court reporter.

(h) *Supersession.* Subsections (a)—(g) supersede 1 Pa. Code §§ 35.138, 35.150 and 35.166 (relating to expert witnesses; scope and conduct of examination; and prepared expert testimony).

#### Authority

The provisions of this § 5.412 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 § 5.412 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; amended December 19, 2014, effective December 20, 2014, 44 Pa.B. 7852. Immediately preceding text appears at serial pages (368433) to (368434).

#### Cross References

This section cited in 52 Pa. Code § 5.412a (relating to electronic submission of pre-served testimony).

### § 5.412a. Electronic submission of pre-served testimony.

(a) *General requirement for electronic submission.* A party serving pre-served testimony in proceedings pending before the Commission under § 5.412(f) (relating to written testimony) is required, within 30 days after the final hearing in an adjudicatory proceeding, unless the time period is otherwise modified by the presiding officer, to electronically file with, under § 1.32(b) (relating to filing specifications), or provide to the Secretary's Bureau a compact disc or technology prescribed by the Commission containing the testimony furnished by the party to the court reporter during the proceeding.

(b) *Form of electronic submission.* Electronically submitted testimony must be limited to pre-served testimony documents and be in Portable Document Format. Exhibits attached to pre-served testimony documents may be electronically submitted to the Commission in accordance with subsection (a). Exhibits not electronically submitted with pre-served testimony shall be submitted in paper form to the court reporter at hearing. The electronic submission requirements in this section do not apply to discovery requests or responses, or pre-filed testimony, including testimony filed under § 53.53(c) (relating to information to be furnished with proposed general rate increase filings in excess of \$1 million).

(1) *Electronic submission.* Each piece of pre-served testimony filed through the Commission's electronic filing system shall be uploaded separately. Each piece of pre-served testimony submitted to the Secretary's Bureau on a

compact disc or other technology as prescribed by the Commission may be uploaded onto one compact disc, pending file size limitations.

(2) *Electronic submission of testimony modified at hearing.* Pre-served testimony submitted to the Commission must match exactly the version of testimony the presiding officer has required to be submitted to the court reporter at hearing. When a presiding officer requires a party to make hand-marked modifications to testimony during the hearing before submitting the testimony to the court reporter, the pre-served testimony electronically submitted to the Commission shall be marked to reflect the modifications. When a presiding officer does not require a party to make modifications to testimony at hearing before submitting the testimony to the court reporter, the pre-served testimony electronically submitted to the Commission may not be marked. Testimony not admitted into the record during a hearing may not be electronically submitted to the Commission.

(i) *Electronic submission of testimony stricken at hearing.* Pre-served testimony which was stricken at hearing shall be revised to reflect that which was stricken by containing hand-marked strikethroughs or electronic strikethroughs on the testimony. A party may not completely electronically delete testimony which was stricken at hearing.

(ii) *Pagination of electronically submitted testimony documents.* Striken or modified text on electronically submitted pre-served testimony documents must appear on the same page as the stricken or modified text on the pre-served testimony documents submitted to the court reporter at hearing.

(3) *Labeling of electronically submitted testimony.* Pre-served testimony electronically submitted to the Commission must be labeled consistent with the following examples:

- (i) “\_\_ St. No. \_\_ Direct Testimony of \_\_\_\_\_.”
- (ii) “\_\_ St. No. \_\_-R Rebuttal Testimony of \_\_\_\_\_.”
- (iii) “\_\_ St. No. \_\_-SR Surrebuttal Testimony of \_\_\_\_\_.”

(c) *Submission of paper copies of pre-served testimony to the court reporter when electronically filing pre-served testimony.* When electronically filing pre-served testimony with the Commission, one paper copy of pre-served testimony shall be provided to the court reporter at hearing.

(d) *Electronic submission of confidential or proprietary testimony.* Electronically submitted testimony confidential or proprietary in nature shall be submitted to the Secretary’s Bureau on a compact disc or other technology as prescribed by the Commission. The compact disc must be labeled “CONFIDENTIAL” or “PROPRIETARY.” Confidential or proprietary testimony may not be filed through the Commission’s electronic filing system. Electronically submitted testimony confidential or proprietary in nature must match exactly the version of the confidential or proprietary testimony submitted to the court reporter at hearing.

(e) *Electronic submission of improper testimony.* If a party in an adjudicatory proceeding discovers that improper testimony documents have been electronically submitted to the Commission, the party may raise the improper submission with

the presiding officer assigned to the adjudicatory proceeding. The presiding officer or the Commission will make a determination regarding the submission of improper testimony.

(f) *Electronic access to electronically submitted testimony.* A party shall obtain an eFiling account with the Commission to view electronically submitted pre-served testimony and to receive daily action alerts from the Commission's case and document management database that pre-served testimony has been electronically submitted to the Commission.

**Source**

The provisions of this § 5.412a adopted December 19, 2014, effective December 20, 2014, 44 Pa.B. 7852.

**Cross References**

This section cited in 52 Pa. Code § 5.412 (relating to written testimony).

**§ 5.413. [Reserved].**

**Source**

The provisions of this § 5.413 adopted October 12, 1984, effective January 1, 1985, 14 Pa.B. 3819; reserved January 24, 1997, effective January 25, 1997, 27 Pa.B. 414. Immediately preceding text appears at serial page (216001).

**§ 5.414. Offers of proof.**

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

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

**Source**

The provisions of this § 5.414 adopted October 12, 1984, effective January 1, 1985, 14 Pa.B. 3819.

**SUBPOENAS**

**§ 5.421. Subpoenas.**

(a) *Issuance.*

(1) A subpoena may be issued by the Commission upon its own motion.

(2) Other than under paragraph (1), a subpoena will issue only upon application in writing to the presiding officer, except that during a hearing in a proceeding, the application may be made orally on the record before the presiding officer, who will determine the necessity of issuing the subpoena.

(b) *Form.* The written application:

(1) Must specify as nearly as possible the general relevance, materiality and scope of the testimony or documentary evidence sought, including, as to documentary evidence, specification as nearly as possible of the documents desired.

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

(3) Must contain a notice that a response or objection to the application shall be filed with the Commission and presiding officer within 10 days of service of the application.

(4) Must include a certificate of service.

(5) May attach the proposed subpoena to the application.

(c) *Service.* An application for a subpoena shall be filed with the Commission and copies served by the petitioner upon:

(1) The party, person or individual to be subpoenaed.

(2) The presiding officer.

(3) The parties.

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

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

(d) *Service and return.*

(1) *Personal service.* If service of the subpoena is made by a sheriff, like officer or deputy, service shall be evidenced by the return thereof. If made by another person, the person shall make affidavit thereof, describing the manner in which service was made, and return the affidavit on or with the original subpoena. In case of failure to make service, the reasons for the failure shall be stated on the original subpoena. In making service, a copy of the subpoena shall be exhibited to and left with the person to be served. The original subpoena, bearing or accompanied by the authorized return, affidavit or statement, shall be returned to the Secretary, or, if so directed on the subpoena, to the presiding officer before whom the person named in the subpoena is required to appear.

(2) *Service by mail.* Service of a subpoena upon a party, person or individual may also be accomplished by mail under §§ 1.54 and 1.55 (relating to service by a party; and service on attorneys), or by a form of mail requiring a return receipt, postage prepaid, restricted delivery. Service is complete upon delivery of the mail to the party or the persons referred to in Pa.R.C.P. No. 402(a)(2) (relating to manner of service acceptance of service).

(e) *Fees of witnesses.* A witness subpoenaed by the Commission will be paid the same fees and mileage as paid for the like services in the courts of common pleas. A witness subpoenaed by a party shall be paid the same fees by the party. The Commission, before issuing a subpoena as provided in this section, may require a deposit of an amount adequate to cover the fees and mileage involved or require reasonable surety consistent with § 3.8 (relating to form of interim emergency orders).

(f) *Objections and decision.* A party, person or individual objecting to an application for a subpoena under this section may do so within 10 days in accordance with subsection (b)(3). The administrative law judge will address an objection within 10 days of the assignment of any objection filed under this section.

(g) *Supersession.* Subsections (a)—(e) supersede 1 Pa. Code § 35.142 (relating to subpoenas).

#### Authority

The provisions of this § 5.421 amended under the Public Utility Code, 66 Pa.C.S. §§ 309—311, 315, 331—335, 501, 504—506, 523, 701—703, 1101—1103, 1301, 1501 and 1504.

#### Source

The provisions of this § 5.421 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 (225709) to (225710).

#### Cross References

This section cited in 52 Pa. Code § 5.373 (relating to subpoenas); and 52 Pa. Code § 5.424 (relating to issuance of subpoenas).

### § 5.423. [Reserved].

(*Editor's Note:* This section has been replaced by 52 Pa. Code § 5.365 (relating to orders to limit availability of proprietary information).)

#### Authority

The provisions of this § 5.423 amended under the Public Utility Code, 66 Pa.C.S. §§ 501, 504—506, 1301 and 1501; amended under the Public Utility Confidential Security Information Disclosure Protection Act (35 P.S. §§ 2141.1—2141.6); and 66 Pa.C.S. §§ 501 and 1501; reserved under the Public Utility Code, 66 Pa.C.S. §§ 501, 504—506 and 1501.

#### Source

The provisions of this § 5.423 adopted December 2, 1988, effective January 3, 1989, 18 Pa.B. 5451; amended April 28, 2006, effective April 29, 2006, 36 Pa.B. 2097; amended August 22, 2008, effective August 23, 2008, 38 Pa.B. 4608; reserved September 20, 2013, effective September 21, 2013, 43 Pa.B. 5593. Immediately preceding text appears at serial pages (337312) to (337314).

#### Cross References

This section cited in 52 Pa. Code § 5.362 (relating to protective orders); 52 Pa. Code § 53.64 (relating to filing requirements for natural gas distributors with gross intrastate annual operating revenues in excess of \$40 million); and 52 Pa. Code § 71.9 (relating to financial reports as public documents).

### § 5.424. Issuance of subpoenas.

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

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



**Authority**

The provisions of this § 5.424 issued under the Public Utility Code, 66 Pa.C.S. §§ 501, 504, 523, 1301, 1501 and 1504.

**Source**

The provisions of this § 5.424 adopted September 20, 2013, effective September 21, 2013, 43 Pa.B. 5593.

**CLOSE OF THE RECORD****§ 5.431. Close of the record.**

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

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

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

**Authority**

The provisions of this § 5.431 amended under the Public Utility Code, 66 Pa.C.S. §§ 501, 504—506, 1301 and 1501.

**Source**

The provisions of this § 5.431 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 (287760).

**Subchapter F. PRESIDING OFFICERS**

Sec.

- 5.481. Designation of presiding officers.
- 5.482. Disqualification of a presiding officer.
- 5.483. Authority of presiding officer.
- 5.484. Restrictions on duties and activities.
- 5.485. Manner of conduct of hearings.
- 5.486. Unavailability of presiding officer.

**§ 5.481. Designation of presiding officer.**

(a) When evidence is to be taken in a proceeding, either the Commission or its representative appointed according to law, may preside at the hearing.

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

**Authority**

The provisions of this § 5.481 amended under the Public Utility Code, 66 Pa.C.S. §§ 501, 504—506, 1301 and 1501.

**Source**

The provisions of this § 5.481 adopted October 12, 1984, effective January 1, 1985, 14 Pa.B. 3819; amended April 28, 2006, effective April 29, 2006, 36 Pa.B. 2097. Immediately preceding text appears at serial page (225713).

**§ 5.482. Disqualification of a presiding officer.**

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

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

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

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

(e) The ruling of the presiding officer on a motion for disqualification is subject to the interlocutory appeal procedure in § 5.303 (relating to Commission action on petition for interlocutory review and answer).

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

**Authority**

The provisions of this § 5.482 amended under the Public Utility Code, 66 Pa.C.S. §§ 501, 504—506, 1301 and 1501.

**Source**

The provisions of this § 5.482 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 (225713).

**§ 5.483. Authority of presiding officer.**

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

(b) Subsection (a) supersedes 1 Pa. Code § 35.187 (relating to authority delegated to presiding officers).

**Authority**

The provisions of this § 5.483 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 § 5.483 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 page (225714).

**§ 5.484. Restrictions on duties and activities.**

(a) Presiding officers will perform no duties inconsistent with the act, the rules of the Commission, or with their duties and responsibilities.

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

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

**Authority**

The provisions of this § 5.484 amended under the Public Utility Code, 66 Pa.C.S. §§ 501, 504—506, 1301 and 1501.

**Source**

The provisions of this § 5.484 adopted October 12, 1984, effective January 1, 1985, 14 Pa.B. 3819; amended April 28, 2006, effective April 29, 2006, 36 Pa.B. 2097. Immediately preceding text appears at serial page (225714).

**§ 5.485. Manner of conduct of hearings.**

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

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

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

**Authority**

The provisions of this § 5.485 amended under the Public Utility Code, 66 Pa.C.S. §§ 501, 504—506, 1301 and 1501.

**Source**

The provisions of this § 5.485 adopted October 12, 1984, effective January 1, 1985, 14 Pa.B. 3819; amended April 28, 2006, effective April 29, 2006, 36 Pa.B. 2097. Immediately preceding text appears at serial pages (225714) to (225715).

**§ 5.486. Unavailability of presiding officer.**

(a) If a presiding officer becomes unavailable, the Chief Administrative Law Judge may either designate another qualified officer to prepare the initial or recommended decision or cause the record to be certified to the Commission for decision.

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

**Authority**

The provisions of this § 5.486 amended under the Public Utility Code, 66 Pa.C.S. §§ 501, 504—506, 1301 and 1501.

**Source**

The provisions of this § 5.486 adopted October 12, 1984, effective January 1, 1985, 14 Pa.B. 3819; amended April 28, 2006, effective April 29, 2006, 36 Pa.B. 2097. Immediately preceding text appears at serial pages (225715).

**Subchapter G. BRIEFS**

Sec.

5.501. Content and form of briefs.

5.502. Filing and service of briefs.

**§ 5.501. Content and form of briefs.**

(a) Briefs must contain the following:

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

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

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

(4) A conclusion with requested relief.

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

(1) A statement of the questions involved.

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

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

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

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

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

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

#### Authority

The provisions of this § 5.501 amended under the Public Utility Code, 66 Pa.C.S. §§ 501, 504—506, 1301 and 1501.

#### Source

The provisions of this § 5.501 adopted October 12, 1984, effective January 1, 1985, 14 Pa.B. 3819; amended April 28, 2006, effective April 29, 2006, 36 Pa.B. 2097. Immediately preceding text appears at serial pages (225715) to (225716).

### § 5.502. Filing and service of briefs.

(a) *Service.* Copies shall be served on the parties in accordance with § 1.59(b) and (c) (relating to number of copies to be served).

(b) *Number of copies.*

(1) *Paper filing.* An original of a brief shall be filed with the Commission under § 1.4 (relating to filing generally).

(2) *Electronic filing.*

(i) When the brief, including attachments, is 250 pages or less and does not exceed 5 megabytes, the filing user may file one electronic copy of the brief with the Commission and is not required to file a paper copy.

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

(3) *Voluminous briefs.* When the brief, including attachments, exceeds 5 megabytes, in addition to filing the requisite number of hard copies in accordance with subsection (b)(1), a CD-ROM or DVD containing the brief and an index to the brief shall be filed with the Commission.

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

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

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

(d) *Filing of briefs in rate proceedings.*

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

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

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

(f) *Deadlines.* Initial briefs, main briefs, responsive briefs and reply briefs shall be filed and served within the time fixed by the presiding officer. If no specific times are fixed, initial briefs or main briefs shall be filed and served within 20 days after the date of service of notice of the filing of the transcript and responsive briefs or reply briefs shall be filed within 40 days after date of service of the notice of the filing of the transcript.

(g) *Late-filed briefs.* Briefs not filed and served on or before the dates fixed therefore will not be accepted, except by special permission of the Commission or the presiding officer as permitted under § 1.15 (referring to extensions of time and continuances).

(h) *Supersession.* Subsections (a)—(f) supersede 1 Pa. Code §§ 35.191 and 35.193 (relating to proceedings in which briefs are to be filed; and filing and service of briefs).

#### Authority

The provisions of this § 5.502 amended under the Public Utility Code, 66 Pa.C.S. §§ 501, 504—506, 523, 1301, 1501 and 1504.

#### Source

The provisions of this § 5.502 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; amended September 26, 2008, effective September 27, 2008, 38 Pa.B. 5303; amended January 10, 2014, effective January 11, 2014, 44 Pa.B. 249. Immediately preceding text appears at serial pages (368441) to (368442).

#### Notes of Decisions

##### *Discretion*

There was no abuse of discretion when the administrative law judge accepted and considered a party's initial brief even though it was filed in violation of the briefing order. *Springfield Township v. Pennsylvania Public Utility Commission*, 676 A.2d 304 (Pa. Cmwlth. 1996).

#### Cross References

This section cited in 52 Pa. Code § 1.37 (relating to number of copies).

**Subchapter H. EXCEPTIONS, APPEALS AND ORAL ARGUMENT**

Sec.	
5.531.	Certification of record without decision.
5.532.	Oral argument before presiding officer.
5.533.	Procedure to except to initial, tentative and recommended decisions.
5.534.	[Reserved].
5.535.	Replies.
5.536.	Effect of failure to file exceptions.
5.537.	Rate case settlements.
5.538.	Oral argument before the Commission.
5.539.	Withdrawal of appeals.

**§ 5.531. Certification of record without decision.**

(a) If a proceeding is referred to a presiding officer, that officer will normally file a decision. The record will be certified to the Commission without a decision of the presiding officer only as required or allowed by the Commission.

(b) Subsection (a) supersedes 1 Pa. Code §§ 35.201—35.207 (relating to proposed reports generally).

**Source**

The provisions of this § 5.531 adopted October 12, 1984, effective January 1, 1985, 14 Pa.B. 3819.

**§ 5.532. Oral argument before presiding officer.**

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

(b) Subsection (a) supersedes 1 Pa. Code § 35.204 (relating to oral argument before presiding officer).

**Authority**

The provisions of this § 5.532 amended under the Public Utility Code, 66 Pa.C.S. §§ 501, 504—506, 1301 and 1501.

**Source**

The provisions of this § 5.532 adopted October 12, 1984, effective January 1, 1985, 14 Pa.B. 3819; amended April 28, 2006, effective April 29, 2006, 36 Pa.B. 2097. Immediately preceding text appears at serial page (225717).

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

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

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

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

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

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

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

**Authority**

The provisions of this § 5.533 amended under the Public Utility Code, 66 Pa.C.S. §§ 309—311, 315, 331—335, 501, 504—506, 523, 701—703, 1101—1103, 1301, 1501 and 1504.

**Source**

The provisions of this § 5.533 adopted October 12, 1984, effective January 1, 1985, 14 Pa.B. 3819; amended December 2, 1988, effective January 3, 1989, 18 Pa.B. 5451; corrected April 7, 1989, effective January 3, 1989, 19 Pa.B. 1554; 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 September 26, 2008, effective September 27, 2008, 38 Pa.B. 5303; amended September 20, 2013, effective September 21, 2013, 43 Pa.B. 5593. Immediately preceding text appears at serial page (338489).

**Notes of Decisions***Waiver*

The Pennsylvania Public Utility Commission has the authority to waive the procedural requirement of identifying the specific finding of fact or law to which exception is taken as long as the procedural defects do not affect the substantive rights of the party. *Info Connections, Inc. v. Pennsylvania Public Utility Commission*, 630 A.2d 498 (Pa. Cmwlth. 1993).



**Cross References**

This section cited in 52 Pa. Code § 1.37 (relating to number of copies); 52 Pa. Code § 5.102 (relating to motions for summary judgment and judgment on the pleadings); 52 Pa. Code § 5.536 (relating to effect of failure to file exceptions); and 52 Pa. Code § 5.538 (relating to oral argument before the Commission).

**§ 5.534. [Reserved].****Source**

The provisions of this § 5.534 adopted October 12, 1984, effective January 1, 1985, 14 Pa.B. 3819; reserved December 2, 1988, effective January 3, 1989, 18 Pa.B. 5451. Immediately preceding text appears at serial page (95611).

**§ 5.535. Replies.**

(a) A party has the right to file a reply to an exception in proceedings before the Commission. Unless otherwise directed by the presiding officer or Commission, a reply shall be filed within 10 days of the date that an exception is due and be limited to 25 pages in length and in paragraph form. A reply must be concise and incorporate by reference relevant passages in previously filed briefs. A reply may not raise new arguments or issues, but be limited to responding to the arguments or issues in the exception.

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

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

**Authority**

The provisions of this § 5.535 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 § 5.535 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 April 28, 2006, effective April 29, 2006, 36 Pa.B. 2097. Immediately preceding text appears at serial page (225719).

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

(a) If no exceptions are filed in a proceeding included within § 5.533(a) (relating to procedure to except to initial, tentative and recommended decisions), the decision of the administrative law judge will become final, without further Commission action, unless, within 15 days after the decision is issued, two or more Commissioners request that the Commission review the decision.

(b) A tentative decision, issued by the Commission, subject to exceptions, shall become final, without further Commission action, if no exceptions are filed under § 5.333(a).

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

**Authority**

The provisions of this § 5.536 amended under the Public Utility Code, 66 Pa.C.S. §§ 331, 501, 504—506, 1301 and 1501.

**Source**

The provisions of this § 5.536 adopted October 12, 1984, effective January 1, 1985, 14 Pa.B. 3819; amended January 19, 1990, effective February 19, 1990, 20 Pa.B. 277; amended January 24, 1997, effective January 25, 1997, 27 Pa.B. 414. Immediately preceding text appears at serial pages (216011) to (216012).

**§ 5.537. Rate case settlements.**

Except where all parties to a settlement agree, settlements to rate proceedings will be subject to the same right to file exceptions and replies to exceptions provided in this subchapter.

**Source**

The provisions of this § 5.537 adopted October 12, 1984, effective January 1, 1985, 14 Pa.B. 3819.

**Cross References**

This section cited in 52 Pa. Code § 5.232 (relating to stipulations and settlement petitions).

**§ 5.538. Oral argument before the Commission.**

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

(b) In a case where exceptions are filed under § 5.533(b) (relating to procedure to except to initial, tentative and recommended decisions) a request for oral argument before the Commission shall be filed in writing together with exceptions to the tentative, recommended or initial decision.

(c) In a case where no tentative, recommended or initial decision will be issued, a request for oral argument before the Commission shall be filed in writing together with the initial or responding brief.

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

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

**Source**

The provisions of this § 5.538 adopted October 12, 1984, effective January 1, 1985, 14 Pa.B. 3819.

**§ 5.539. Withdrawal of appeals.**

(a) The filing of exceptions to a recommended or initial decision shall be deemed to be an appeal to the Commission of the recommended or initial decision and is subject to review by the Commission.

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

**Authority**

The provisions of this § 5.539 amended under the Public Utility Code, 66 Pa.C.S. §§ 501, 504—506, 1301 and 1501.

**Source**

The provisions of this § 5.539 adopted October 12, 1984, effective January 1, 1985, 14 Pa.B. 3819; amended January 24, 1997, effective January 25, 1997, 27 Pa.B. 414. Immediately preceding text appears at serial page (216012).

**Subchapter I. REOPENING, RECONSIDERATION AND REHEARING**

Sec.

5.571. Reopening prior to a final decision.

5.572. Petitions for relief following a final decision.

**§ 5.571. Reopening prior to a final decision.**

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

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

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

(d) The record may be reopened upon notification to the parties in a proceeding for the reception of further evidence if there is reason to believe that conditions of fact or of law have so changed as to require, or that the public interest requires, the reopening of the proceeding.

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

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

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

**Authority**

The provisions of this § 5.571 amended under the Public Utility Code, 66 Pa.C.S. §§ 501, 504—506, 1301 and 1501.

**Source**

The provisions of this § 5.571 adopted October 14, 1984, effective January 1, 1985, 14 Pa.B. 3819; amended April 28, 2006, effective April 29, 2006, 36 Pa.B. 2097. Immediately preceding text appears at serial page (275287).

**Cross References**

This section cited in 52 Pa. Code § 5.431 (relating to close of record).

**§ 5.572. Petitions for relief.**

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

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

(c) Petitions for reconsideration, rehearing, reargument, clarification, supersedeas or others shall be filed within 15 days after the Commission order involved is entered or otherwise becomes final.

(d) Petitions for rescission or amendment may be filed at any time according to the requirements of section 703(g) of the act (relating to fixing of hearings).

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

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

**Authority**

The provisions of this § 5.572 amended under the Public Utility Code, 66 Pa.C.S. §§ 501, 504—506, 1301 and 1501.

**Source**

The provisions of this § 5.572 adopted October 14, 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 pages (275287) to (275288).

**Notes of Decisions***Petition for Reconsideration*

Where the petitioners failed to raise new or novel arguments not previously considered by the Pennsylvania Public Utility Commission in the petition for reconsideration, they did not meet the established standard to warrant that the Commission reopen the proceeding. *Pennsylvania Public Utility Commission v. PECO Energy Co.*, M-00960820, P.U.R. 4th, Slip Opinion, (February 12, 1999).

**Subchapter J. REPORTS OF COMPLIANCE**

- Sec.  
5.591. Reports of compliance.  
5.592. Compliance with orders prescribing rates.

**§ 5.591. Reports of compliance.**

(a) A person subject to the jurisdiction of the Commission who is required to do or perform an act by a Commission order, permit or license provision shall file with the Secretary a notice stating that the requirement has or has not been met or complied with.

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

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

**Authority**

The provisions of this § 5.591 amended under the Public Utility Code, 66 Pa.C.S. §§ 501, 504—506, 1301 and 1501.

**Source**

The provisions of this § 5.591 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 pages (275288) and (225723).

**§ 5.592. Compliance with orders prescribing rates.**

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

(b) Unless otherwise specified in the order, the tariff revision shall be effective upon statutory notice to the Commission and to the public and, whether made effective on statutory notice or under authority granted in the order, shall bear under the effective date on the title page the following notation: "Filed in compliance with the order of Pennsylvania Public Utility Commission, entered , 2 \_\_\_\_ at \_\_\_\_\_."

(c) Exceptions to a tariff revision under this section may be filed by a party to the proceeding within 10 days of the date of service of the compliance filing, and shall be strictly limited in scope to the factual issue of alleged deviation from requirements of the Commission order. The utility making the compliance filing may respond to exceptions within 5 days. No further pleadings will be permitted.

(d) No rates contained in a tariff revision filed in compliance with a Commission order may be imposed prior to entry of a subsequent order by the Commission approving the compliance filing. Notwithstanding the filing of an exception, the Commission may allow the compliance rates to become effective.

**Authority**

The provisions of this § 5.592 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 § 5.592 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 page (225723).

**Subchapter K. APPEALS TO COURT**

Sec.

- 5.631. Notice of taking appeal.
- 5.632. Preparation and certification of records.
- 5.633. Certification of interlocutory orders.

**§ 5.631. Notice of taking appeal.**

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

**Authority**

The provisions of this § 5.631 amended under the Public Utility Code, 66 Pa.C.S. §§ 501, 504—506, 1301 and 1501.

**Source**

The provisions of this § 5.631 adopted October 12, 1984, effective January 1, 1985, 14 Pa.B. 3819; amended April 28, 2006, effective April 29, 2006, 36 Pa.B. 2097. Immediately preceding text appears at serial page (225724).

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

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

**Authority**

The provisions of this § 5.632 amended under the Public Utility Code, 66 Pa.C.S. §§ 501, 504—506, 1301 and 1501.

**Source**

The provisions of this § 5.632 adopted October 12, 1984, effective January 1, 1985, 14 Pa.B. 3819; amended April 28, 2006, effective April 29, 2006, 36 Pa.B. 2097. Immediately preceding text appears at serial page (225724).

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

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

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

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

**Authority**

The provisions of this § 5.633 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 § 5.633 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 April 28, 2006, effective April 29, 2006, 36 Pa.B. 2097. Immediately preceding text appears at serial pages (225724) to (225725).

[Next page is 21-1.]