

Commission to preserve Chapter 91 and to maintain and strengthen the powers currently vested in the Council.

II. Whether to Repeal Chapter 91 and Concomitantly Establish the Council Via Commission Order

In its ANOPR the Commission stated that “repealing Chapter 91 and concomitantly establishing the Council through a Commission Order would allow the Commission, in the future, to amend the authority and composition of the [Council] outside the formal rulemaking process [...]”. ANOPR at 3. Commenting on the ANOPR, the Council supports the Commission’s objective of improving the effectiveness of the [Council] as an advisory body, but argues that repealing Chapter 91 would not further that goal. Comments of Consumer Advisory Council at 1. According to the Council, repealing the regulations establishing and governing the Council would weaken, not strengthen, the Council’s ability to serve as an advisory body. *Id.* As the Council states, “rooting the [Council] in regulations ensures continuity of the body over time notwithstanding changes of personnel or priorities at the Commission.” *Id.* at 2. The Council posits that the Commission could create a flexible process for the Commission to adjust the rules and directives for the Council – without repealing the regulatory foundation of the Council. *Id.* The Council agreed with the Commission that ministerial concerns surrounding the Council should not have to be addressed by changes in regulations, but believes these concerns should be handled through Commission orders and/or through the establishment of Council by-laws. *Id.*

The Consumer Advisory Council represents an important consumer voice that must be preserved. *TURN et al.* agree with the Council’s comments and strongly encourage the Commission not to repeal Chapter 91. As the Commission notes, the Council has operated for

more than 40 years under the present regulations. ANOPR at 1. The Council is broadly empowered to advise the Commission upon matters relating to the protection of consumer interests. 52 Pa. Code § 91.2. Although the Commission has stated that if it were to repeal Chapter 91 it could concomitantly establish the Council by Commission Order, TURN *et al.* agree with the Council that preserving the regulatory foundation of the Council is preferable and more likely to ensure its continued existence. Even if the Commission were to reestablish the Council by Commission Order, without an enabling regulation, there would be little to prevent a future Commission from simply abolishing the Council by Commission Order. Interested parties would then be limited in how to express their disagreement – for example, through a comment process and not through the current multi-layered rulemaking process.

The Commission appears concerned with its ability to expeditiously address ministerial concerns and give the Commission greater latitude to engage the Council. ANOPR at 3. But repealing Chapter 91 is not necessary or appropriate for this purpose. TURN *et al.* agree with the Council that these Commission objectives can be achieved without repealing Chapter 91. For example, the Commission can address any ministerial concerns with the Council’s functioning through Commission Order or the establishment of Council by-laws.

III. Operational Efficiency of the Consumer Advisory Council

The Commission invited comments on how the Council might best “make periodic reports to the Commission regarding the actions of the Council and its recommendations as to how the Commission may better serve the public and, particularly, the interest of ratepayers” as required by 52 Pa. Code § 91.3(b). ANOPR at 4-5. The Commission suggests that Chapter 91 currently requires the Council to communicate its actions in ways that the Commission views as

out-of-date. ANOPR at 4. However, TURN *et al.* agree with the Council that the requirements in the regulations should be followed, and that there is a real difference between something being filed at a docket than on a website. Comments of Consumer Advisory Council at 3. TURN *et al.* also agree that these sort of changes to improve the Council's ability to report and make recommendations to the Commission can be addressed through Commission Order or Council-by-laws and do not need to be included in regulations. Id.

IV. Information Sharing Between the Commission and the Consumer Advisory Council

The Commission invited comments regarding the most effective ways the Council can connect with its constituencies. Section 91.3 of the Commission's Regulations requires the Council to regularly bring consumers' concerns and feedback to the Commission's attention. The Commission also invited comments on whether the Council requires the ability to conduct investigations and receive public comments from interested parties and the general public as authorized by 52 Pa. Code § 91.3(c). The Commission noted that the Council has not recently utilized these procedures and that these procedures may be duplicative of work done by other Commission bureaus or financially prohibitive. ANOPR at 6. Despite this, however, TURN *et al.* agree with the Council that it should retain all of the specific powers that are enumerated in either regulation or Commission Order, including the ability to conduct investigations and receive public comments from interested parties and the general public. Comments of Consumer Advisory Council at 4. TURN *et al.* believe it appropriate to give considerable weight to the Council's stated desire to preserve the investigation and information sharing procedures currently available to it.

V. The Consumer Advisory Council's Ability to File Comments with the Commission

In its ANOPR the Commission noted that Chapter 91 does not expressly provide the Council with the ability to file comments as a party to Commission proceedings but there is “lengthy precedent” of the Commission permitting the Council to file comments. ANOPR at 6. The Commission invited comments on whether the Council should be explicitly authorized to file comments in Commission proceedings. In its comments, the Council stated that filing public comments is an important function of the Council that should continue to be permitted. Comments of Consumer Advisory Council at 4. The Commission should continue to permit the Council to submit comments in Commission proceedings and can provide explicit authorization for such via regulation, Commission Order, or the establishment of Council by-laws. The filing of comments permits the Council to share its views with the Commission and the public on a broad array of Commission matters.

VI. The Diversity of Consumer Advisory Council Membership

Chapter 91 requires the Council's composition to reflect a reasonable geographic representation of the Commonwealth and to include low income individuals and members of minority groups. 52 Pa. Code § 91.4(c)(1). In its ANOPR, the Commission invited comments regarding “organizations from which to include representatives in the future, ideas for recruiting Council members from minority communities, and whether the diversity obligation should be amended to allow for representatives or organizations that advocate low-income consumers' interests or if low-income consumers should be sought directly for Council membership.” ANOPR at 7. According to the Commission, the Council is reasonably representative from a

geographic perspective although it does not currently include a member from the City of Philadelphia. *Id.* The Council stated that it is happy to work with the Commission regarding appointments and that ideally membership would include low income consumers. Comments of Consumer Advisory Council at 5-6. The Council does not believe that these issues need to be the subject of regulations and could be addressed through Commission Order and/or the development of Council by-laws. *Id.* at 6.

TURN *et al.* commend the Commission for inviting discussion on how to improve the diversity of Council membership. TURN *et al.* encourage the Commission to invite interested parties to meet to discuss issues of representation and recruitment for the Council. TURN *et al.* believe it is imperative to ensure that the Council always include low income individuals and members of racial and ethnic minorities, as such members who can present diverse perspectives on the benefits and consequences of various Commission actions.¹ TURN *et al.* also believe that it is critical for the Council to always include a representative from the City of Philadelphia. As Pennsylvania's largest city and the nation's poorest big city, Philadelphia communities are uniquely impacted by Commission actions. TURN *et al.* believe that the Commission should preserve the commitment to diversity currently enshrined in Chapter 91.

VII. Consumer Advisory Council Members Interaction with the Media or at Public Forums

The Commission invited comments on whether Commission approval should be required before Council members speak publicly about the work of the Council. ANOPR at 7. Current

¹ A recent report from the American Council for an Energy Efficient Economy (ACEEE) found that African American and Latino households have disproportionately high energy burdens. See Ariel Dreihobl and Lauren Ross, *Lifting the High Energy Burden in America's Largest Cities: How Energy Efficiency Can Improve Low Income and Underserved Communities* (April 2016) at 4.

practice prohibits a Council member from speaking on behalf of the Council without authorization from a quorum of the Council. Comments of Consumer Advisory Council at 6. In its comments, the Council stated that it would not support “any requirement for Commission approval whenever a Council member – who speaks with the authority of the Council – wishes to comment on a matter regarding the Council or the Commission.” Id. at 6. The Council believes that such a requirement would be “unwieldy and inappropriate.” Id. at 7. *TURN et al.* agree with the Council. Such a requirement could severely limit the work of the Council and could restrict the Council’s ability to timely comment on matters that are of importance to consumers. The current practice of requiring Council members to seek the authorization of a quorum of Council members is adequate to ensure that Council members speak with a unified voice on matters of importance to the Council.

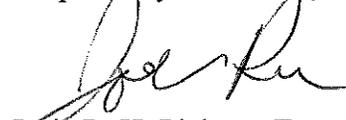
VIII. Ministerial Changes to the Council Including the Frequency of Council Meetings and Evaluating the Council’s Composition

TURN et al. agree with the Council that ministerial issues regarding the operation of the Council can be addressed through Commission Order and/or the development of by-laws and do not need to be the subject of regulations. Comments of Consumer Advisory Council at 7.

IX. Conclusion

TURN et al. thank the Commission for providing interested parties with an opportunity to comment on Chapter 91 and the efficiency and functioning of the Consumer Advisory Council. *TURN et al.* agree with the Council that Chapter 91 should be retained and that efforts to improve the functioning of the Council should be addressed in Commission orders and/or through the establishment of Council by-laws.

Respectfully Submitted,



Josie B. H. Pickens, Esq., PA ID: 309422

Joline R. Price, Esq., PA ID: 315405

Robert W. Ballenger, Esq., PA ID: 93434

Counsel for TURN and Action Alliance
Community Legal Services, Inc.
1410 W. Erie Avenue
Philadelphia, PA 19140
(215) 227-2400