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L-2018-3004948

The Commission's Regulation Governing the Consumer  
Advisory Council,  
52 Pa. Code Ch. 91

**Comments of Harry S. Geller**

These Comments are submitted in response to the Commission's Order to this Docket entered on October 25, 2018, requesting that interested parties comment on the Advance Notice of Proposed Rulemaking (ANOPR) regarding the regulations governing the Commission's Consumer Advisory Council (CAC or Council) found at 52 PA. CODE CH. 91. The Commission's ANOPR was published on Saturday, November 10, 2018, at 48 Pa.B. 7122. By Secretarial Letter, dated December 7, 2018, the due date for Comments to the above-referenced ANOPR was extended to Friday, February 8, 2019.

I submit these comments as an individual who served over a period of two decades on the CAC. I was honored to be appointed and reappointed by the Commission. During my service on the Council I was elected by fellow Council members to serve as Vice-Chair and Chair of the Council. I chaired numerous subcommittees of the CAC, was appointed by the CAC to represent it at Commission stakeholder meetings, at public forum, and as a member of the Commission's Council on Utility Choice. I have a half-century of experience representing the interests of consumers, the last 30 of which have been dedicated exclusively to representing the interests of low-income residential utility and energy consumers.

Through these Comments, I assert support for the continued existence of the CAC as a regulatory mandated entity and to strongly oppose the repeal of Chapter 91. Indeed, I believe that there are few, if

any, regulations which provide the opportunity for a more dynamic and meaningful exercise of democracy, consumer involvement and input within a governmental entity. Simply because the CAC structure has been around for decades does not lessen the need for its continuance as a regulatorily mandated, independent Council with an ongoing mission “to advise the Commission upon matters relating to the protection of consumer interests.” I respectfully submit that it is precisely through continuation of the strong mandate provided by the current regulations that the ultimate purpose and independence of the CAC may be assured. As the Commission undergoes its examination of whether any of the regulations within Chapter 91 need to be amended to fulfill consumer, public, and Commission purposes, I strongly recommend that any potential modification be closely reviewed to ensure continued adherence to the current directive that “(N)nothing in this chapter shall prevent or discourage advice on any subject which will aid the Commission in pursuance of its regulatory duties.”

Chapter 91, enacted in 1977 and amended in 1994, is a straightforward, streamlined regulatory chapter consisting of but 5 sections. These sections mandate in concise and clear format the Council’s creation, purposes, powers and duties, composition, and salaries and expenses of members. They were enacted with the high public purpose of ensuring that there is a publicly open, structured, and protected process to bring together individuals of diverse consumer interests to meet, investigate, receive, and consider information regarding issues of relevance to the Commission which affect the public and particularly ratepayers. The Council is then both empowered and mandated to publicly report and to publish its activities, recommendations, and actions. These sections maintain their purpose, relevance, efficiency, importance, and effectiveness today as they have had over the past decades. In short, there is no need to repeal the current regulations and to do so would be counterproductive to the public interest.

The Commission’s intent that irrespective of whether the Commission ultimately proposes to repeal Chapter 91, a Commission rulemaking seeking to update the Council’s regulations and to explore

the ways in which the CAC can meaningfully advise the Commission is commendable. After a period of over 40 years, any organization may stand to benefit from external and internal reevaluation. To be sure, the Commission maintains the responsibility to revisit and update regulations periodically and to ensure that the CAC receives the support and resources necessary for it to be relevant, vibrant, and function in the most effective manner. However, I respectfully submit that such a review should take particular care to determine and distinguish matters which may be most productively resolved through improved communication between the Commission and the CAC, as well as between the Commission and elected officials, as opposed to matters which require regulatory amendment. Should the Commission choose to undertake any regulatory amendment, I strongly urge that the current regulatory requirement that “nothing shall prevent or discourage advice on any subject which will aid the Commission in pursuance of its regulatory duties” be maintained as polestar guidance within any revisions. It is to be hoped that the review will result in an empowered, revitalized Council which has the ear and respect of the Commission.

I have reviewed the CAC comments dated January 22, 2019, filed to this docket. I find them to be practical, thoughtful, and capable of achieving the goals which the Commission articulated in the ANOPR. I endorse its arguments and conclusions, and respectfully recommend that the Commission undertake more direct communication and dialogue with the Council prior to embarking on a path of regulatory amendment<sup>1</sup>.

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<sup>1</sup> A review of recent CAC meeting minutes indicates that the central issues raised by the Commission, as well as the intention to issue the ANOPR, were not brought to the attention of the Council for consideration, discussion, and comment prior to the issuance of the ANOPR. Undertaking such a dialogue now, prior to embarking on a process of regulatory amendment, would be an efficient, respectful, and productive process.

- **The Council should maintain the ability to conduct investigations and solicit and receive public comments from interested parties and the general public.**

Council members, regardless of the depth or breadth of professional background or personal experience, do not come to the Council with a total fount of knowledge or information regarding the current or potential issues which may be within the regulatory duties of the Commission. In addition, Commission staff alone are not the complete repository of the various perspectives, backgrounds, or experiences which will affect the important and diverse areas of advice which the CAC may provide to the Commission affecting consumer issues. The Council should therefore maintain the ability to conduct investigations and solicit and receive public comments from interested parties and the general public in order to be more fully informed and to provide the most meaningful advice.

In the past, solicitation of information and investigation have brought a more informed perspective to the background information and the deliberations of the Council. As a result, the Commission has benefitted and has acted favorably upon the advice provided. Such a process should continue.

- **The Council should continue to be empowered to file comments in public proceedings before the Commission.**

It has been my experience that the Council has for several decades, and perhaps during its entire existence, filed comments in public proceedings before the Commission. The right to take such action has been assumed by all parties to be implicitly authorized by current regulations. Public comment by any interested party in such proceedings is part of the democratic process. Certainly the intent of current regulations is that the CAC is an interested party regarding matters affecting the public and ratepayers which are in the Commission's jurisdiction. I am unaware that this practice has ever been the subject of objection by any Commissioner, interested party, or the general public. In fact, at times, the Commission has specifically invited the CAC to file comments and to participate and provide input at public

hearings. The practice should continue and to the extent that the Commission views that the right to provide such comments needs to be explicitly authorized by regulation, the Commission should do so. However, in authorizing such comments, the Commission should not in any way prevent or discourage advice in the form of comments on any subject which will aid the Commission in pursuance of its regulatory duties.

- **Council membership should reflect diversity, including, but not limited to persons who, as a group, reflect a reasonable geographic representation, include low-income individuals, members of minority groups, various classes of consumers, and consumer advocacy organizations representing the low-income as well as other hard-to-reach populations.**

The Council and the Commission benefit from the involvement of a broad spectrum of consumer experience and expertise. Diversity in CAC membership appointment is to be encouraged in the appointments made by elected officials as well as the “at-large” appointments of members made by the Commission. The current regulations do not appear to impede in any manner the development of such a diverse membership, nor does it limit the Commission in its efforts to achieve such a goal. In fact the Commission itself regularly appoints the majority of Council members for each two-year term. Prior to the current CAC term, during the ten year period 2007-2016 (5 full biennial terms) the Commission appointed either 8 or 9 at-large members, in addition to the 6 appointments of elected officials. It would appear through the education of elected officials regarding the need for diversity in appointments, and the ability of the Commission to make at-large appointments, diversity can be achieved within the current regulatory framework.

- **Commission approval should not be a prerequisite before Council members speak publicly in their individual capacity or on behalf of the Council about the work of the Council or the Commission.**

No CAC member, Commissioner, or Commission staff person should speak on behalf of the Council without prior authority provided by a quorum of the Council. However, individual members should not

be precluded or edited when expressing personal opinions or providing the public information regarding matters before the Council or the Commission.

- **The Commission should consider revising the beginning and ending dates of the biennial terms of Council members to dates more amenable to elected officials making appointments to the CAC.**

The Commission correctly notes that CAC membership appointments by elected officials may sometimes be delayed and that such delays in achieving a full CAC may be deleterious to the most productive functioning of the Council. The Commission may want to review whether its current practice of making appointments in June of odd numbered years and beginning Council member terms in July are the dates most likely to achieve punctual appointments by elected officials. It may be that the June to July periods, when the annual budget process in Harrisburg is usually most frenetic for the elected officials who are authorized to make appointments to CAC, is simply not conducive to their consideration of candidates and making timely appointments. It is therefore suggested that the Commission consider the modifying the expected dates which it as well as the Governor's and Lieutenant Governor's Offices and the General Assembly make biennial appointments, in addition to its consideration of how to best advise and remind those elected officials of the dates when Council appointments are expected to be made.

- **The frequency, length, method of conducting CAC meetings, attendance frequency, officer selection, subcommittee formation, what constitutes a quorum, and other issues regarding the conducting of Council business should be determined by a vote by CAC membership. These are not issues that should be imposed by regulation, or by the Commission, or its staff.**

The issue of how to best empower the Council to be an efficient and productive entity which best represents the public and ratepayer interests and therefore provides the utmost benefit to the Commission is at the heart of this ANOPR. It is respectfully submitted that many of the issues which are now of concern to the Commission are the result not of CAC determination or choice, but rather of

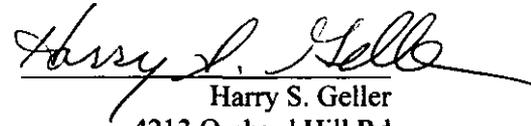
Commission or staff imposition. The current reduction in frequency, length, form of meetings (telephonic as opposed to in person), staff support, reimbursement levels, and the modification to not formally file CAC motions or actions, but rather institute staff summaries of meetings, have each been imposed or set into action by staff or the Commission, rather than at the initiation, request, or consent of the Council. It is respectfully submitted that it is the CAC itself which is most capable of determining its internal functioning and that such respect and empowerment will result in enabling the CAC to provide to the Commission the most productive and beneficial advice and recommendations.

- **The Commission and the CAC should jointly determine the most beneficial ways to staff and support the Council to enable it to achieve its purpose.**

In my experience, Commission staffing and liaison support to the Council has changed over time as a result of Commission determined priorities. It has varied from staffing and support directly from the staff of the Commissioners, to that of the Bureau of Consumer Services, to the present staffing by the Office of Communications and Law Bureau. The entity which provides direct support to the Council as well as the base of knowledge and function of that entity greatly affects the capabilities, functioning, and results achieved. It is respectfully submitted that a reappraisal of how best to staff and support the Council should be undertaken jointly and directly by the CAC and the Commissioners. Enabling the CAC to function most effectively may require support and staffing provided to the Council which it does not presently receive.

I Thank the Commission for the opportunity to provide these comments and hope that they may be of assistance.

Respectfully submitted,



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