

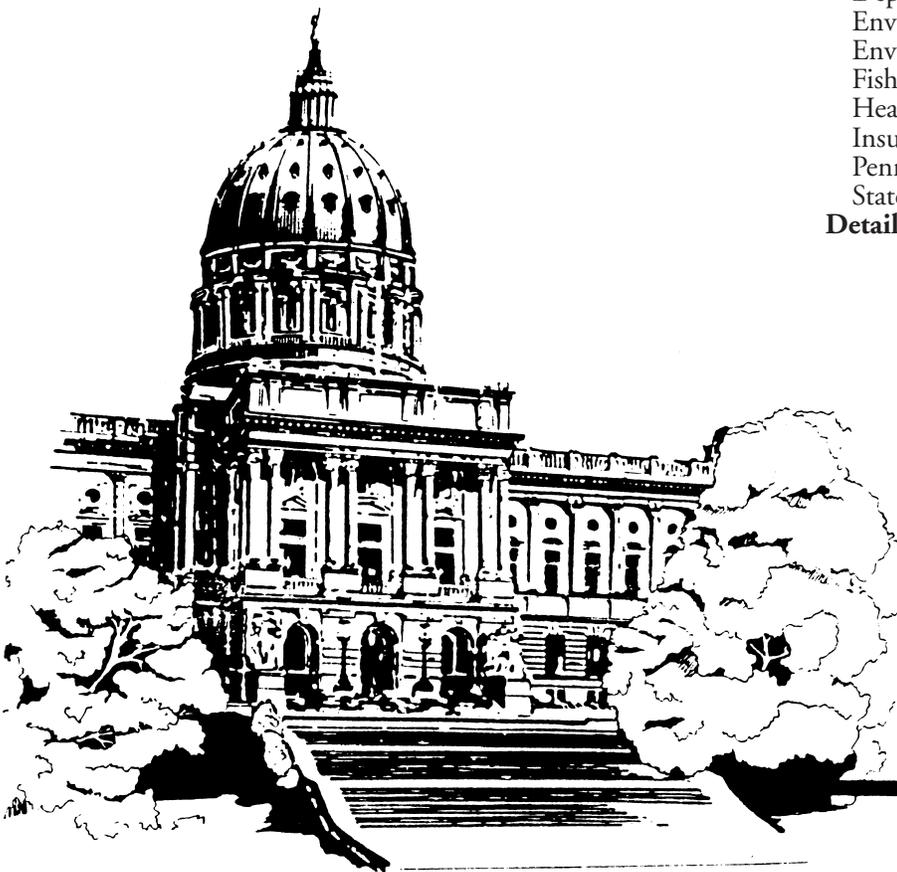
PENNSYLVANIA BULLETIN

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PENNSYLVANIA PUBLIC UTILITY COMMISSION

[52 PA. CODE CH. 91]

[L-2018-3004948]

The Commission's Regulation Governing the Consumer Advisory Council; Advanced Notice of Proposed Rulemaking

Public Meeting held
October 25, 2018

Commissioners Present: Gladys M. Brown, Chairperson; Andrew G. Place, Vice Chairperson, statement follows, dissenting; Norman J. Kennard; David W. Sweet; John F. Coleman, Jr.

The Commission's Regulation Governing the Consumer Advisory Council, 52 Pa. Code Ch. 91; L-2018-3004948

Advance Notice of Proposed Rulemaking

By the Commission:

The Pennsylvania Public Utility Commission (Commission) enters this Advance Notice of Proposed Rulemaking Order (ANOPR) to invite comment on the Commission's regulation, 52 Pa. Code §§ 91.1 et seq., regarding the Consumer Advisory Council (CAC or Council). After more than 40 years of operation under the present regulations, the Commission is interested in exploring changes to the CAC regulations in order to improve its efficiency as an advisory body and to clarify its duties and role.

The Commission seeks comment on 52 Pa. Code Chapter 91 regarding the following: (1) whether to repeal Chapter 91 and concomitantly reestablish the Council via Commission Order; (2) what improvements are needed for CAC operational efficiency; (3) information sharing between Commission Staff and the Council; (4) the Council's ability to file comments in proceedings before the Commission; (5) the diversity of Council membership; (6) Consumer Advisory Council members interactions with the media or at public forums; (7) clarification to the General Assembly and the Governor's Office regarding the appointments and biennial terms of the Council; and (8) ministerial changes to the Council including examining the frequency of meetings and evaluating the Council's composition. Additionally, the Commission proposes to update and revise the CAC's underlying authority and reporting structure to align administratively with current Commission practices.

Background

The Consumer Advisory Council to the Commission was created in 1977 through the adoption of 52 Pa. Code Chapter 91. The Commission's regulations regarding the Council have not been revised or updated since 1994. The purpose of the CAC is to advise the Commission on matters relating to the protection of consumer interests as such interests are affected by the Commission's exercise of its jurisdiction. 52 Pa. Code § 91.2. The Council considers all matters within the scope of Section 91.2 arising from: (1) Consumer inquiry or request; (2) Commission inquiry or request; or (3) the proceedings, deliberations, or motions of the Council. 52 Pa. Code § 91.3.

On June 14, 2017, the Commission made or ratified twelve appointments to the CAC for a two-year term beginning on July 1, 2017 and ending June 30, 2019. Chapter 91 does not provide for a maximum number of

Council members, however, six of the twelve current members were appointed by the Commission to reflect a reasonable geographic representation of the Commonwealth as well as various classes of consumers. 52 Pa. Code § 91.4(c)(1). As required by the current regulation, the remaining six members were appointed by the following public officials: (1) the Governor; (2) the Lieutenant Governor; (3) the Majority Chairperson of the Senate Consumer Protection and Professional Licensure Committee; (4) the Minority Chairperson of the Senate Consumer Protection and Professional Licensure Committee; (5) the Majority Chairperson of the House Consumer Affairs Committee; and (6) the Minority Chairperson of the House Consumer Affairs Committee. 52 Pa. Code § 91.4(c)(3).

Whether to Repeal Chapter 91 and Concomitantly Establish the Council via Commission Order

The Commission seeks greater flexibility in how quickly it can adjust rules and directives for the Council in a changing, ever-evolving public utility landscape and seeks ways to better instruct the CAC about how it might more effectively advise the Commission. To achieve these goals, the Commission first seeks comments from interested parties on whether it should repeal Chapter 91 of the Commission's regulations and reestablish the Council through a Commission Order. The CAC is not a statutorily-created body; rather, it is a general advisory committee created by regulation. In preparing the instant ANOPR, Staff to the Council reached out to several States and determined that no commission that responded had a similar counterpart to the CAC.¹ 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 CAC outside the formal rulemaking process using its power pursuant to 66 Pa.C.S. § 501(a).

Reestablishing the Council via Commission Order allows the Commission to expeditiously address ministerial concerns surrounding the CAC that Staff to the Council has consistently faced in recent years (e.g., the frequency of Council meetings, the rules constituting a quorum, and the number of Council members). A Commission Order may also give the Commission greater latitude to engage the Council, seek the CAC's input on various topics, amend the ways the Council communicates with the Commission to respond to technological trends (e.g., the Commission's website), and address how consumers access and receive information.

Irrespective of whether the Commission ultimately proposes to repeal Chapter 91, a Commission rulemaking seeking to update the Council's regulations will continue to explore the ways in which the CAC can meaningfully advise the Commission.

Operational Efficiency of the Consumer Advisory Council

The Commission seeks to bring governance and additional effectiveness of the Council up-to-date with the current configuration and structure of the Commission. Much of this work involves ministerial updates to the rules that govern the Council to reflect internal changes at the Commission in the previous two decades. The Commission acknowledges that Chapter 91 currently requires the Council to communicate its actions in ways that are out-of-date, including the requirement that notice of all Council meetings be made to the media through

¹ The following states in 2017 advised Staff to the Council that they did not have a similar counterpart to the CAC: California, Colorado, Florida, Georgia, Iowa, Kentucky, Maine, Michigan, New York, Oregon, South Carolina, Texas and Virginia. Admittedly, some states identified having groups tailored to a specific issue in their purview.

the now-defunct Public Information Office of the Commission. 52 Pa. Code § 91.3(e). Additionally, the Commission no longer requires CAC actions to be filed with the Secretary of the Commission and the Bureau of Consumer Services (BCS). 52 Pa. Code § 91.3(f). Rather, Council actions are now posted to the Commission's website² and communicated to the Commissioners' Offices by the Commission's Office of Communications.

The Commission seeks comment 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," pursuant to the current regulation at 52 Pa. Code § 91.3(b).

Information Sharing Between the Commission and the Consumer Advisory Council

The Commission continually seeks the appropriate balance between the Commission presenting overviews to the Council made by Commission Staff regarding topics of material interest in utility regulation, trending utility issues, and activities of the Commission, and then separately the responsibility of Council members to gather and report on consumer concerns in their respective communities and constituencies. Chapter 91 requires the Council to make periodic reports to the Commission regarding the activities of the Council and its recommendations as to how the Commission may better serve the public and, particularly, the interest of ratepayers. 52 Pa. Code § 91.3(b). Council members in the current term, and during the previous two terms, have convened via conference call—as a subcommittee—in months the full Council has not met and have actively participated in certain Commission proceedings (e.g., rulemakings) that have sought comments from interested parties.³ At other times, the Council has operated for lengthy periods without any formal action, merely receiving Staff presentations. Therefore, the Commission seeks comments regarding the most effective ways the Council can connect with its constituencies to fulfill the requirement of Section 91.3 to regularly bring consumers' concerns and feedback to the Commission's attention.

Additionally, Chapter 91 currently enables the Council to "conduct investigations and . . . solicit and receive comments from interested parties and the general public." 52 Pa. Code § 91.3(c). While the allowance to conduct investigations and solicit comments have not been previously utilized, at least not recently, by the CAC, the Commission is concerned that these provisions may be duplicative of the work conducted by other bureaus and offices in the Commission and that there may be budgetary difficulties should the Council decide to use these mechanisms. The Commission seeks comments on whether the directive and charge of the Council—to provide advice to the Commission regarding matters of protecting consumer interests—requires the ability to conduct investigations and solicit and receive public comments from interested parties and the general public.

² http://www.puc.pa.gov/about_puc/consumer_advisory_council.aspx.

³ See Comments of the CAC re: Chapter 14 Implementation (66 Pa.C.S. §§ 1401–1419), Docket No. M-2014-2448824 (March 2, 2015); Comments of the CAC re: Amending 52 Pa. Code Chapter 53 to Prohibit Public Utilities from Charging Customers a Fee to Receive a Printed Utility Bill, Docket No. L-2014-2411278 (April 13, 2015); Comment of the CAC re: Standards and Billing Practices for Residential Utility Service at Chapter 56, Docket No. L-2015-2508421 (April 18, 2017); Comments of the CAC Supporting the Commission's Decision to Require Regulated Utilities to Provide Information Necessary to Determine the Impact to Consumers of the Tax Cuts and Jobs Act of 2017 (March 9, 2018).

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

Chapter 91 of the Commission's regulations requires the Council to make periodic reports to the Commission regarding the activities of the Council and its recommendations as to how the Commission may better serve the public and the interest of ratepayers.⁴ However, the current regulation does not expressly provide the Council with the ability to file comments as a party to Commission proceedings. There is a lengthy precedent of the Commission permitting the CAC to provide electronically-filed comments—facilitated by the Office of Communications—in rulemakings and other public proceedings. Otherwise, the Council provides advice and makes reports to the Commission through motions recorded in CAC meeting minutes and uploaded to the Commission's website. The Commission seeks comments on whether the Council should be empowered and explicitly authorized to file comments in public proceedings before the Commission.

The Diversity of Consumer Advisory Council Membership

Pursuant to Section 91.4(c)(1), "[t]he Council shall be composed of persons who, as a group, reflect a reasonable geographic representation of this Commonwealth and shall include low-income individuals, members of minority groups and various classes of consumers." The Council is reasonably representative of the Commonwealth from a geographic perspective—although, admittedly, there is currently no member from the City of Philadelphia—and is comprised of members who advocate for low-income consumers as well as various other consumer classes. Still, to continue meeting these diversity of membership mandates, the Commission seeks 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. Further, the Commission requests comments on whether the appointments by the Governor, Lieutenant Governor, and the General Assembly should be derived from certain organizations.

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

Presently, no Council member may speak on behalf of the CAC without a quorum of the Council granting such authority. Nothing in the current regulation limits a Council member from speaking in their capacity as an individual in their respective community. However, Chapter 91 is silent about whether Commission approval is required before Council members speak publicly to persons in the media or at events like community meetings and public input hearings. The Commission seeks comments on whether the Commission's approval should be a prerequisite and what parameters need to exist, if any, before Council members speak publicly about the work of the Council or the Commission.

Clarifying to the General Assembly and the Governor's Office the Biennial Terms of the Consumer Advisory Council

Chapter 91 is also silent as to when CAC terms begin and end biennially. The Commission's present practice, which has been used for a number of years, is to make or ratify appointments at a Public Meeting every other June to become effective for a two-year term beginning July 1

⁴ 52 Pa. Code § 91.3(b).

of the same year. No matter how the Commission may decide to amend the governance and efficiency of the Council, the Commission believes its current practice for CAC terms beginning July 1 of a certain year should be specified so that the Governor's and Lieutenant Governor's Offices and the General Assembly are aware and know when they can be expected to make their Council appointments. The Commission invites comments regarding these biennial terms.

Ministerial Changes to the Council Including the Frequency of Council Meetings and Evaluating the Council's Composition

Section 91.3(d) of the regulation states, in pertinent part, that "[t]he Council shall hold regular meetings not less than quarterly." Currently, the entire Council meets bi-monthly and, as mentioned above, a subcommittee meets via conference call during the other months; this has been the practice for roughly seven years. Prior to this schedule, the CAC met monthly. However, in recent years the Council has often struggled to reach a quorum during its regular meetings, meaning the CAC cannot act, even to take cursory actions like approving the minutes from the previous meeting. The Commission seeks comments on whether it may be prudent to examine the frequency of Council meetings and whether regular meetings should be held monthly, bi-monthly, quarterly, or at the call of the Chairperson.

A quorum of the CAC consists of one more than half of the appointed members;⁵ thus, in the current term a quorum is seven Council members. At times in recent terms the Council has struggled to reach a quorum for its general meetings, which means that ministerial and administrative tasks like approving the meeting agenda or the minutes from the previous meeting cannot be completed. Staff to the Council has also been tasked occasionally with trying to glean how many CAC members will be participating in a given meeting to determine whether the meeting should even take place. Given these recent difficulties, the Commission seeks comment on whether a simple majority vote of Council members present during general meetings should be satisfactory to approve meeting minutes. Further, the Commission seeks comment on whether the Council's rules regarding what constitutes a quorum should be amended and, if so, how a quorum should be deemed convened. The Commission welcomes any additional comments about quorum and how the CAC and the Commission can encourage greater attendance for Council meetings.

There is no provision in Chapter 91 that directs how many Council members should be appointed for each two-year term. As stated above, currently the CAC is comprised of twelve members. In recent terms, the Council has consisted of as many as sixteen members. Noting the concerns described herein about reaching a quorum regularly, the Commission seeks comments from interested parties about whether there should be minimum membership and/or maximum membership for the Council each term. If so, the Commission seeks input about what those membership requirements should be.

Finally, Chapter 91 expressly provides for the selection of a Chairperson from the members of the Council and designates that additional officers can be selected as the CAC deems appropriate.⁶ However, these other officers are not named specifically. In practice, a "Vice Chairperson" is elected alongside the Chairperson at the start of each two-year Council term. The Regulation also does not

include a provision for the Council to form subcommittees such as the one that currently exists to help set and create the Council's agendas and priorities, as well as to draft comments when the CAC decides to participate in a public proceeding before the Commission. The Commission seeks comments on whether it would be prudent to formally require the Council to select a Vice Chairperson or other officers for each term. The Commission also seeks comments about whether it should expressly empower the CAC to form subcommittees from its membership to achieve specific, assigned tasks; *Therefore,*

It Is Ordered That:

1. Interested parties are requested to comment on this Advance Notice of Proposed Rulemaking regarding the procedures governing the Commission's Consumer Advisory Council.

2. The Law Bureau shall duly deposit this Order with the Legislative Reference Bureau to be published in the *Pennsylvania Bulletin*.

3. Written comments referencing Docket No. L-2018-3004948 be submitted within 45 days of publication in the *Pennsylvania Bulletin* to the Pennsylvania Public Utility Commission, Attn: Secretary, 400 North Street, Harrisburg, PA 17120. Comments may also be e-filed consistent with the Commission's e-filing instructions at: <http://www.puc.pa.gov/efiling/default/asp>.

4. This Order be served on the Office of Consumer Advocate, the Office of Small Business Advocate, the Commission's Bureau of Investigation and Enforcement, low-income advocates, current Consumer Advisory Council Members, the Energy Association of Pennsylvania, the Pennsylvania Telephone Association, the Governor, Lieutenant Governor and the House Consumer Affairs Committee and the Senate Consumer Protection and Professional Licensure Committee.

5. A copy of this Order shall be posted on the Commission's website.

6. The Law Bureau, in conjunction with the Office of Communications, prepare a recommendation to the Commission regarding a Consumer Advisory Council proposed rulemaking.

7. The contact persons for this matter are Tom Charles, Office of Communications, (717) 787-9504, thcharles@pa.gov; and Colin W. Scott in the Law Bureau, (717) 783-5949, colin.scott@pa.gov.

ROSEMARY CHIAVETTA,
Secretary

Statement of Vice Chairperson Andrew G. Place

Before us today for disposition is an Advance Notice of Proposed Rulemaking regarding the Commission's regulations governing the Consumer Advisory Council (CAC). The Commission is exploring whether any changes, including potentially rescinding the regulations, are warranted to improve the efficiency and role of this advisory body. I believe the Council and its members provide value to the Commission and the consumers they represent, both of which are not served if this group and its accompanying authority are stricken from the regulations.

While I agree that regulations should be periodically reviewed to determine their effectiveness, this review of Chapter 91 considers an outcome of rescinding the Commission's regulations including the Council's governance and operations in total and replacing it via a mechanism other than a formal regulation. Additionally, preserving

⁵ 52 Pa. Code § 91.4(b).

⁶ 52 Pa. Code § 91.4(a)(2)(i)-(ii).

the Council's ability to file comments in proceedings before the Commission and interacting with the media and the public would appear to be of clear public interest. While I encourage comments on these topics, with this understanding, I cannot support the Chapter 91 review.

There are several areas on which the Commission is seeking feedback through the Advance Notice of Proposed Rulemaking. I believe that it would be instructive to receive comments regarding similar consumer advisory councils for other state and/or federal regulatory agencies including the number of their respective members, the scope of their functions, and their interactions with their respective enabling regulatory agencies or other governmental bodies. I am also particularly interested in receiving and reviewing comments that address the additional issues articulated in this Advance Notice of Proposed Rulemaking such as the potential role that the Council

can provide to the Commission. I specifically encourage the Consumer Advisory Council, its individual members, and the specific organizations that these members may represent to submit comments at this docket.

There may indeed be ways in which the Council can increase its effectiveness and I am interested in evaluating those ideas and proposals which are not hinged upon a rescission of the CAC's regulatory language. However, because the potential rescission of this important Council is also part of this proposal, I am dissenting on the issuance of the Advance Notice of Proposed Rulemaking.

ANDREW G. PLACE,
Vice Chairperson

[Pa.B. Doc. No. 18-1746. Filed for public inspection November 9, 2018, 9:00 a.m.]