

COMMONWEALTH OF PENNSYLVANIA



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February 8, 2019

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

Re: The Commission's Regulation Governing
the Consumer Advisory Council,
52 Pa. Code Chapter 91
Docket No. L-2018-3004948

Dear Secretary Chiavetta:

Attached for electronic filing are the Comments of the Office of Consumer Advocate in the above-referenced proceeding.

Copies have been served per the attached Certificate of Service.

Respectfully Submitted,

/s/ Barrett C. Sheridan
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Enclosures:

cc: Colin W. Scott, Law Bureau
Tom Charles, Office of Communications
Certificate of Service
*266233

CERTIFICATE OF SERVICE

Re: The Commission's Regulation Governing :
the Consumer Advisory Council, : Docket No. L-2018-3004948
52 Pa. Code Chapter 91 :

I hereby certify that I have this day served a true copy of the following document, the Office of Consumer Advocate's Comments, upon parties of record in this proceeding in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant), in the manner and upon the persons listed below:

Dated this 8th day of February 2019.

SERVICE BY E-MAIL & INTER-OFFICE MAIL

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Dated: February 8, 2019
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**§BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

The Commission’s Regulations Governing :
the Consumer Advisory Council, : Docket No. L-2018-3004948
52 Pa. Code, Chap. 91 :

**THE OFFICE OF CONSUMER ADVOCATE
COMMENTS**

I. INTRODUCTION

The Office of Consumer Advocate (OCA) offers these Comments in response to the Public Utility Commission’s (PUC or Commission) October 25, 2018 Advance Notice of Proposed Rulemaking (ANOPR) request for comments on the Commission’s regulation regarding the Consumer Advisory Council, 52 Pa. Code §§ 91.1, *et seq.* (48 Pa.B. 7122 (Nov. 10, 2018))(Council or CAC). The first of several questions posed by the ANOPR is “whether to repeal Chapter 91 and concomitantly reestablish the Council via Commission Order.”

In reply to the Commission’s primary question, the OCA submits that the Commission should preserve Chapter 91 as the regulatory authority for the Council and statement of the Council’s purpose. See, also Comments of the Consumer Advisory Council at 2 (submitted Jan. 22, 2019). While the OCA sees value in updating the regulations, the Commission should retain Chapter 91 and only amend Chapter 91 to update the basic framework for the Council’s purpose, performance, communications,

and resources, as needed. Administrative and operational details, which may require change from time to time, may be set forth in Council by-laws. The OCA addresses below the concerns presented by the ANOPR and Vice-Chairman Andrew G. Place's Statement regarding how to strengthen and improve the Council as advisory body.

II. COMMENTS

A. The Commission Should Preserve Sections 91.1 "Creation of the Council" and Section 91.2 "Purposes of the Council," Which Establish the Consumer Advisory Council

The Commission "seeks greater flexibility" for itself so the Commission can quickly "adjust rules and directives for the Council...." ANOPR at 3. The Commission also "seeks ways to better instruct the CAC about how [the CAC] might more effectively advise the Commission." *Id.* From the ANOPR, it is unclear what directives the Commission would impose on the Council, but for the provisions of Chapter 91. Regardless, the OCA submits that the Council's existence as a regulatory body is a strength and benefit for Pennsylvania, as evidenced by its some forty years of service.

The OCA recommends that the Commission preserve Section 91.1 "Creation of the Council" and Section 91.2 "Purposes of the Council," which state:

§ 91.1. Creation of the Council.

The Consumer Advisory Council to the Pennsylvania Public Utility Commission is hereby created, and shall be known in this subpart as the Council.

§ 91.2. Purposes of the Council.

The purpose of the Council shall be to advise the Commission upon matters relating to the protection of consumer interests as those interests are affected by the Commission's exercise of its jurisdiction as provided

by law. Nothing in this chapter shall prevent or discourage advice on any subject which will aid the Commission in pursuance of its regulatory duties.

These regulatory provisions are a strong, affirmative declaration of the purpose of the Council's existence: "to advise the Commission upon matters relating to the protection of consumer interests" all in the context of "the Commission's exercise of its jurisdiction as provided by law" and the Commission's pursuit "of its regulatory duties." The Council's advisory role is anchored by its focus on consumer interests but otherwise the Council's mission maps the bounds of the Commission's jurisdiction. For example, as the Commission's jurisdiction extends to new entities such as the Pittsburgh Water and Sewer Authority, the Council is well-positioned to advise on related consumer issues that may be presented.

The OCA acknowledges that other specialized boards and task forces have in the past or currently provide the Commission with advice and information, without exercise of the Commission's Section 501(a) rulemaking authority. See, 66 Pa.C.S. § 501(a). However, these specialized task forces and advisory boards are created as an outgrowth of legislative or regulatory change, or the creation of special purpose funds, or identification of the need for multi-agency cooperation. The Council fulfills a different, important role as a forum for appointed representatives of consumers interests from around the Commonwealth to bring forward concerns and advise the Commission on matters relating to the protection of consumer interests.

B. The Commission Should Amend Portions of Section 91.3 "Powers and Duties of the Council"

In the ANOPR, the Commission seeks comments: a) how to improve and enhance the effectiveness of the flow of information from consumers and constituencies, and b)

how to strike “the appropriate balance” between the flow of information between the Council and Commission. ANOPR at 3, 5. The ANOPR also questions whether the Council needs the Section 91.3(c) authority to investigate, solicit and receive comments from the public. *Id.* at 6. The ANOPR notes that certain provisions in Section 91.3 are out of date, due to changes in the Commission’s organization and operations. *Id.* at 4. The OCA recommends that Commission make limited amendments to Section 91.3. The Commission should preserve the affirmative statement of powers and duties, including Section 91.3(a). The Commission should amend Section 91.3(b) to broaden the ways in which the Council may communicate its advice and recommendations to the Commission. The Commission should preserve the Council’s Section 91.3(c) power to conduct investigations and solicit consumer comments.

1. Section 91.3(a) and (c)

The OCA will address Subparts (a), (b), and (c) of Section 91.3 first. The first portion of Section 91.3 currently states:

§ 91.3. Powers and duties of the Council.

(a) The Council shall consider all matters within the scope of § 91.2 (relating to purposes of the council) which arise from:

- (1) Consumer inquiry or request;
- (2) Commission inquiry or request; or
- (3) The proceedings, deliberations, or motions of the Council itself.

(b) The Council shall 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.

(c) The Council, in considering matters within its jurisdiction, may conduct investigations and may solicit and receive comments from interested parties and the general public.

The OCA supports preservation of Sections 91.3(a) and (c) as written. These two provisions establish the framework for the flow of queries and information both from consumers and communities to the Council members and from the Commission to the Council, such as through Staff presentations.

The OCA does not share the Commission's concern that the Council's Section 91.3(c) authority to conduct investigations and solicit and receive comments from interested parties and the general public is unnecessary or the potential source of duplication of inquiries conducted by Commission bureaus or offices. See, ANOPR at 6. Section 91.3(c) allows Council members to make inquiries. This may be as simple as a Council member attending an outreach event and the Council member having a discussion with a consumer. Another Council member may attend a community meeting or a business roundtable and discuss with other attendees public matters. A Council member might invite a consumer or community representative to make a presentation to the Council. Repeal of Section 91.3(c) would unreasonably limit Council members to their personal knowledge and information provided by the Commission, impairing the Council's ability to provide meaningful recommendations and advice to the Commission.

As to how the Council might improve the flow of information from consumers and constituencies to the Council (ANOPR at 5), the Commission might offer resources to the Council, such as an e-mail address or social media resources to facilitate consumer communications to the Council. Developments in communications technology make it easier for remote groups to communicate, as evidenced by the Commission's conduct of

smart hearings. The Commission may want to identify positive examples of how the Council has optimized communications from consumers or constituencies in past, as an illustration of best practices to inspire future Council membership.

Similarly, Section 91.3(a)(2) allows the Council to consider matters which arise from a Commission inquiry or request. Section 91.3(a)(3) should not be amended. The ANOPR's target "appropriate balance" may vary as the Commission implements new legislation or exercises jurisdiction over a type of utility service providers, giving rise for the need for Staff presentations to the Council. Through Council by-laws, the Council can set forth more particular guidelines for the conduct and content of Council public meetings, to supplement the regulatory meeting requirement currently set forth in Section 91.3(d) and (e), as discussed below.

2. Section 91.3(b) Council Reports to the Commission

The OCA recommends that Chapter 91 continue to establish the Council's obligation to report "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." As currently phrased, Section 91.3(b) states the "Council shall make periodic reports..." The ANOPR observes that the Council has on occasion filed comments with the Commission Secretary in proceedings open for public comment, although Chapter 91 is silent on this point. ANOPR at 6.

Vice-Chairman Place supports the ability of the Council to file comments in proceedings before the Commission as in the public interest. The Council's Comments support this position. And the OCA agrees.

The OCA recommends amendments to Section 91.3(b). Section 91.3(b) should be amended to provide the Council with more latitude as to the manner in which it communicates to the Commission a) summaries of the Council’s activities, and b) the Council’s “recommendations as to how the Commission may better serve the public and, particularly, the interest of ratepayers.” The directive that the Council provide “periodic reports” should be broadened. The OCA recommends the following amendments to Section 91.3(b):

(b) The Council shall make ~~periodic reports to the Commission regarding the activities of the Council and its recommendations to the Commission~~ as to how the Commission may better serve the public and, particularly, the interest of ratepayers. **The Council may convey such recommendations to the Commission or Commission Staff during Council meetings, by motion, by submission of written comments in docketed proceedings open for public comment, by report or white paper, or other public process.**

These proposed amendments clarify and affirm the Council’s advisory role to the Commission, while providing latitude so the Council may convey its recommendations in the form best suited to the issue and circumstances.

3. Sections 91.3(d), (e), and (f) – Meetings and Filings

The OCA recommends amendment of certain portions of Section 91.3(d) and (e) to preserve the Council’s obligation to hold periodic meetings open to the public. The details of how notice of the meetings is provided to the public and which Commission bureau or office assists in publicizing the meetings and maintaining records of the Council’s activities may be better set forth in Council by-laws.

Section 91.3 “Powers and duties of the Council,” Subparts (d), (e), and (f) currently state:

(d) The Council shall hold regular meetings not less than quarterly in such places as it may deem appropriate in the performance of its duties.

(e) All meetings of the Council shall be open to the public and shall be preceded by reasonable notice of the date, time, and place thereof. Notice of all Council meetings shall be made to the media through the Public Information Office of the Commission.

(f) Copies of all Council actions shall be filed with the Secretary and the Bureau of Consumer Services.

The OCA recommends that Section 91.3(e) be amended to state that the Commission, rather than the former “Public Information Office of the Commission,” shall provide advance notice of the Council public meetings. The OCA recommends modification of Subpart (f) to distinguish between the Council’s filing of comments in formal proceedings with the Secretary and keeping records of the Council’s meeting minutes and written recommendations to the Commission. The proposed amendments are:

(d) The Council shall hold regular meetings not less than quarterly in such places as it may deem appropriate in the performance of its duties.

(e) All meetings of the Council shall be open to the public and shall be preceded by reasonable notice of the date, time, and place thereof. ~~Notice of all Council meetings shall be made to the media through the Public Information Office of the Commission.~~ **The Commission shall provide notice of all Council meetings to the public and the media.**

(f) Copies of all Council ~~actions~~ **comments** shall be filed with the Secretary. **The Commission shall maintain copies of all Council minutes and written recommendations.** ~~and the Bureau of Consumer Services.~~

The ANOPR questions how often the Council should hold meetings. ANOPR at 8-9. The OCA does not propose to amend the Section 91.3(d) regulatory requirement of “regular meetings not less than quarterly....” However, the OCA supports a goal of more Council meetings per year as a better practice. For example, the Council’s recent practice has been to schedule a public meeting every other month, with the opportunity for

Council subcommittees to meet by conference call in the alternating months. The OCA recommends that more specific operational and administrative details regarding Council meetings should be set forth in Council by-laws. The Council by-laws should: a) encourage bi-monthly Council public meetings as the minimum, b) allow Council members to work as subcommittees, and c) allow Council members or subcommittees to hold meetings in between the scheduled, public meetings.

C. The OCA Supports Review and Limited Amendment of Section 91.4 to Improve the Council and its Efficiency.

The current provisions of Section 91.4 “Composition of the Council” include Subparts (a) Terms and numbers and officers, (b) Quorum, and (c) Qualifications and appointment of Council members. Several ANOPR queries bear on the language and operation of Section 91.4: “(5) the diversity Council membership; ... (7) clarification to the General Assembly and 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.” ANOPR at 1-2.

1. Section 91.4(a) Terms and Numbers and Officers

Section 91.4(a) allow the Council to have members, officers and a Chairperson. Members serve a two-year term, and may be reappointed without limit. Officers may serve a 2-year term. The Council Chairperson may not act for more than 2 consecutive terms. The ANOPR proposes that the Council have both a Chairperson and Vice-Chairperson, which is already authorized by Section 91.4(a)(2). ANOPR at 9-10. The OCA supports this proposal.

The ANOPR also recommends clarification as to start and end date of Council member terms, using July 1 as the start date consistent with the Commission's current practice. ANOPR at 8. The OCA supports the Commission's proposal. These details may be best set forth in Council by-laws, to complement Chapter 91.

2. Section 91.4(b) Quorum

Section 91.4(b) "Quorum" states "For all purposes, a quorum of the Council shall consist of more than half of the members then appointed." The ANOPR notes that some Council meetings have not had sufficient attendance to qualify as a quorum and invites comments on how the Council may approve minutes and take other official action. ANOPR at 9.

The OCA shares the Commission's concern that a lack of quorum as defined may hamper the Council's ability to make forward progress from one meeting to the next. The OCA supports consideration of alternative language to replace or modify Section 91.4(b). The modified language could allow more flexibility, such as defining quorum differently or allowing Council action to proceed based upon a simple majority of those members in attendance at the duly noticed, Council public hearing.

3. Section 91.4(c) – Qualifications and Appointments of Council Members

The ANOPR notes the language in Section 91.4(c)(1) which states "[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." ANOPR at 7. The ANOPR questions whether Section 91.4(c) 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." Id. The ANOPR requests comments on other ways to recruit Council members to reflect the diversity goals of Section 91.4(c)(1).

Some forty years after adoption, and Section 91.4(c)(1) still provides meaningful guidance as to optimal composition of the Council. As to how the Commission might recruit Council members to provide the desired diversity, the OCA acknowledges the challenges the Commission faces. The Commission's community outreach events provide the Commission a means to connect with organizations and individuals and so identify potential Commission appointees to the Council. Continuing to provide the current Council with the needed resources and support to be an effective advisory committee, may make the Council a more appealing volunteer opportunity. Council members may be the Commission's best ambassadors, as Council members engage in communications with consumers and community organizations as part a Council investigation or inquiry.

Section 91.4(c)(3) currently provides the Commission with discretion as to the number of Council members appointed by the Commission. Identification of the optimal number of Council members may also turn on whether a quorum or simple majority is required for official Council actions. The Commission, however, can ensure diversity by setting an appropriate number of Council members to attain the stated goals.

D. The Commission Should Preserve Section 91.5 “Salaries and Expenses of the Council and its Members”

Section 91.5 is the last regulatory provision governing the Council. Section 91.5 states:

The members of the Council shall serve without compensation but shall be entitled to reimbursement for all necessary expenses actually incurred in the discharge of their duties, including travel; and, subject to budgetary restrictions, the Commission will provide the Council reasonable amounts of staff assistance. All costs covered by this section will be borne by the Commission.

The OCA recommends that the Commission preserve Section 91.5. Section 91.5 makes clear that Council members are volunteering to provide their time and expertise to advise the Commission. Section 91.5 also commits the Commission to provide “subject to budgetary restrictions” staff assistance and resources. As stated above, the OCA believes that the Council should exist as a regulatory body, to advise the Commission on matters of protection of consumer interests, including ratepayer interests.

E. Consumer Advisory Council Members Interactions with the Media or at Public Forums

The ANOPR states that 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 or public input hearings.” The ANOPR questions whether Commission approval should be a prerequisite and what parameters would need to exist, if any, before Council members speak publicly about the work of the Council or the Commission.”

Chapter 91’s silence on this issue of Council members speaking publicly is not an omission which requires a regulatory amendment or the crafting of a Commission order

imposing restrictions and conditions. The OCA concurs with Vice-Chairman Place's position that Council members "interacting with the media and the public would appear to be of clear public interest." The Council is comprised of members of the public who offer their time, expertise, wisdom and critical thinking for no compensation other than the satisfaction of providing the Commission with advice and recommendations for the protection of consumer interests and ratepayer interests before the Commission. The Commission should not impose requirements on the ability of Council members to communicate with consumers and the public, including the media. Such constraints would hamper the effectiveness of the Council and chill prospective members from deciding to join the Council.

III. CONCLUSION

WHEREFORE, the Office of Consumer Advocate respectfully provides these Comments and proposed regulatory amendments in response to the Public Utility Commission's Advanced Notice of Proposed Rulemaking Order entered October 25, 2018.

Respectfully Submitted,



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Dated: February 8, 2019

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