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Procedures Before the Pennsylvania Public Utility Commission

Charles J. Streiff*

I. INTRODUCTION

The Pennsylvania Public Utility Commission (PUC) is an administrative agency whose actions are far-reaching and affect nearly every aspect of the lives of Pennsylvania's citizens. It is a unique administrative agency because its subject matter jurisdiction includes the supervision and regulation of such diverse entities as motor vehicle operations, fixed utility operations (including electric, gas, and water) and communications.¹ The Commission's role in the life of each Pennsylvanian is becoming more apparent as news of consumer awareness, deregulation of utilities, and energy shortages dominate the headlines. At the same time, public criticism of the Commission has become ever louder.²

The procedures utilized by the Commission to adjudicate, as provided for in the Public Utility Law and detailed by Commission regulations, are intricate and must be understood before presenting any matter before the Commission. The purpose of this article is to identify the statutory basis of the Commission's adjudicatory procedures, discuss their actual operation, and relate the procedures to the various areas of the Commission's jurisdiction. Particular attention will focus on recent substantial amendments to the Public Utility Law.³ These amendments were the product of intensive study of the Commission by the Pennsylvania legislature, and they greatly improve the procedural handling of Commission matters.

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1. Regulated utilities include railroads, aircraft, buses, taxis, trucks, ferries, and fixed services (electric, gas, pipelines, telephone, telegraph, water, sewage, steam heat, and wharfage). See Eiseman & Carter, *Pennsylvania Public Utility Commission Procedure—The Guidelines*, 36 TEMP. L.Q. 500, 501 n.11 (1963) [hereinafter cited as Eiseman & Carter].

2. See, e.g., *Report and Recommendations of the Pennsylvania Senate Consumer Affairs Committee to Reform the Public Utility Commission*, October, 1975 [hereinafter cited as *Senate Consumer Affairs Report*]; Pontz & Sheller, *The Consumer Interest—Is It Being Protected by the Public Utility Commission?*, 45 TEMP. L.Q. 315 (1972) [hereinafter cited as Pontz & Sheller].

3. Act of October 7, 1976, No. 216, 1976 Pa. Laws 1075; Act of October 7, 1976, No. 215, 1976 Pa. Laws 1057.

II. STATUTES

The organization and operation of the Commission is governed by various statutes which provide a framework for the Commission's business and proceedings. Specifically, the PUC is subject to the Public Utility Law, the Administrative Code of 1929, and the Administrative Agency Law.

A. *Public Utility Law*

The Public Utility Commission was created by statute on April 1, 1937, thereby abolishing the former Public Service Commission of the Commonwealth of Pennsylvania.⁴ The PUC consists of five members appointed by the Governor with the advice and consent of two-thirds of the members of the Senate.⁵ Each member of the Commission must be free from any employment which is incompatible with the work of the Commission,⁶ and is subject to the provisions of the Code of Ethics for the Public Utility Commission.⁷ Any member of the Commission may be removed for inefficiency, neglect of duty, or misconduct in office.⁸ The Commission may appoint such additional personnel as is appropriate to carry out the work of the agency.⁹ Commission meetings are to be open to the public.¹⁰

The enabling legislation, known as the Public Utility Law, codifies the statutory law applicable to the Public Utility Commission.¹¹ The Public Utility Law grants the Commission the general administrative power to supervise and regulate all public utilities doing

4. Act of March 31, 1937, No. 43, 1937 Pa. Laws 160 (current version at PA. STAT. ANN. tit. 66, § 452 (Purdon 1959 & Supp. 1977-1978)).

5. PA. STAT. ANN. tit. 66, § 452(a) (Purdon 1959). The Governor must nominate a qualified person to fill a vacancy on the Commission within ninety days of the vacancy. The Senate is required to act on the nomination within twenty-five legislative days of its submission. If the Senate fails to act on the nomination within the ninety-day period, the nominee takes office as if the appointment had been confirmed by the Senate. See *id.* § 452(e) (Purdon Supp. 1977-1978).

6. *Id.* § 454.

7. *Id.* § 454.1.

8. Removal of a member of the Commission is by the Governor, by and with the consent of two-thirds of all members of the Senate. *Id.* § 455.

9. *Id.* § 457.1(a).

10. *Id.* § 457.1(b). All Commission meetings and proceedings must be held in accordance with the provisions of the Open Meeting Law, PA. STAT. ANN. tit. 65, §§ 261-269 (Purdon Supp. 1977-1978).

11. Act of May 28, 1937, No. 286, 1937 Pa. Laws 1053 (current version at PA. STAT. ANN. tit. 66, §§ 1101-2211 (Purdon 1959 & Supp. 1977-1978)).

business within Pennsylvania.¹² Through the police power,¹³ the Commission may supervise and regulate, provided it does not unreasonably interfere in the management and control of a public utility.¹⁴ Specifically, the Public Utility Law authorizes the Commission to grant certificates of public convenience, regulate public utility rates and ratemaking, regulate public utility service and facilities, and designate the procedures governing the disposition of pertinent matters before the Commission.¹⁵ The Commission is authorized to determine, within the limits of its discretion, when and to what extent an existing utility actually engaged in rendering a public service shall be protected from competition.¹⁶ The Commission's policy has been to promote regulated monopolies as opposed to unrestrained competition. The Public Utility Law also grants the Commission the power to make such regulations, not inconsistent with the Public Utility Law, as may be necessary or proper in the exercise of its powers or performance of its duties.¹⁷ Having published well over 350 pages of regulations in the Pennsylvania Code, the Commission has provided a detailed procedural framework by which to administer the day-to-day regulation of public utilities in Pennsylvania.¹⁸

B. *Administrative Code of 1929*

The Public Utility Law states that the Commission is subject to all provisions of the Administrative Code of 1929¹⁹ and its amend-

12. PA. STAT. ANN. tit. 66, § 1341 (Purdon 1959).

13. Northern Pa. Power Co. v. Pennsylvania Pub. Util. Comm'n, 132 Pa. Super. Ct. 178, 199, 200 A. 866, 876 (1938), *rev'd on other grounds*, 333 Pa. 265, 5 A.2d 133 (1939).

14. City of Pittsburgh v. Pennsylvania Pub. Util. Comm'n, 173 Pa. Super. Ct. 87, 92, 95 A.2d 555, 558 (1953).

15. Each public utility is assessed an annual amount, as specified in the Public Utility Law, to provide the Commission with its "reasonable share" of the expenses of administering the Public Utility Law. PA. STAT. ANN. tit. 66, § 1461 (Purdon Supp. 1977-1978).

16. See Metropolitan Edison Co. v. Public Serv. Comm'n, 127 Pa. Super. Ct. 11, 20, 191 A. 678, 682 (1937). See generally Booser, *The Constitutional Limitations on Public Utility Regulation*, 67 DICK. L. REV. 363 (1963).

17. PA. STAT. ANN. tit. 66, § 1341 (Purdon 1959).

18. See 52 Pa. Code §§ 1.1-67.1. The General Rules of Administrative Practice and Procedure at 1 Pa. Code §§ 31.1-35.251 are applicable unless otherwise indicated in 52 Pa. Code §§ 1.1-67.1. All regulations are promulgated in accordance with the provisions of the Commonwealth Documents Law, PA. STAT. ANN. tit. 45, §§ 1102-1602 (Purdon Supp. 1977-1978). See generally Zeiter, *The New General Rules of Administrative Practice and Procedure and the Commonwealth Documents Law*, 44 PA. B.A.Q. 109 (1972).

19. PA. STAT. ANN. tit. 71, §§ 51-732 (Purdon 1962 & Supp. 1977-1978).

ments.²⁰ The Code provides generally for the organization, powers, and duties of the Commission.²¹

C. *Administrative Agency Law*

The Administrative Agency Law is Pennsylvania's codification of procedures utilized by agencies to adjudicate administrative proceedings.²² The Administrative Agency Law is not generally applicable to PUC proceedings since such proceedings are controlled by the provisions of the Public Utility Law.²³ In regard to procedures involving the appeal of Commission orders to the commonwealth court, however, certain provisions of the Administrative Agency Law are applicable.²⁴

III. JURISDICTION

The Commission has jurisdiction over various public utilities in the areas of transportation, energy, and communication. The PUC regulates and licenses each of these in accordance with the Public Utility Law.

A. *Public Utility*

The provisions of the Public Utility Law and Commission regulations extend only to those persons or corporations which are "public utilities" within the meaning of the statute.²⁵ The primary distinc-

20. PA. STAT. ANN. tit. 66, § 463 (Purdon 1959).

21. PA. STAT. ANN. tit. 71, §§ 103, 711 (Purdon 1962).

22. *Id.* §§ 1710.1-.51 (Purdon 1962 & Supp. 1977-1978). See generally Ruben, *The Administrative Agency Law—Reform of Adjudicative Procedure and the Revised Model Act*, 36 TEMP. L.Q. 388 (1963) [hereinafter cited as Ruben]. The Administrative Agency Law is hereinafter referred to in the footnotes as "A.A.L."

23. Ruben, *supra* note 22, at 390. See, e.g., PA. STAT. ANN. tit. 66, § 1394 (Purdon 1959).

24. PA. STAT. ANN. tit. 71, § 1710.47 (Purdon Supp. 1977-1978). See note 135 *infra*.

25. A public utility is defined as persons or corporations now or hereafter owning or operating in this Commonwealth equipment, or facilities for:

- (a) Producing, generating, transmitting, distributing or furnishing natural or artificial gas, electricity, or steam for the production of light, heat, or power to or for the public for compensation;
- (b) Diverting, developing, pumping, impounding, distributing, or furnishing water to or for the public for compensation;
- (c) Transporting passengers or property as a common carrier;
- (d) Use as a canal, turnpike, tunnel, bridge, wharf, and the like for the public for compensation;

tion between a public utility and a business which is not a public utility is that a public utility holds itself out to the public generally and may not refuse any legitimate demand for service. A private business, however, may independently determine who it will serve.²⁶ The type of product or service²⁷ or the number of customers to whom the service is offered,²⁸ does not determine whether a business is a public utility. In the final analysis, a utility's public character results from the indefinite and unrestricted quality of its service.²⁹

B. Certificate of Public Convenience

All public utilities subject to the Commission's jurisdiction must be granted a certificate of public convenience prior to commencing operation in Pennsylvania.³⁰ Application is made to the Commission in writing in the form required by the Commission's regulations.³¹ The Commission, in considering the application for a certificate of public convenience, must determine whether the granting of the certificate is necessary for the safety, accommodation, convenience,

(e) Transporting or conveying natural or artificial gas, crude oil, gasoline, or petroleum products, materials for refrigeration, or oxygen or nitrogen, or other fluid substance, by pipe line or conduit, for the public for compensation;

(f) Conveying or transmitting messages or communications by telephone or telegraph or domestic public land mobile radio service including, but not limited to, point-to-point microwave radio service for the public for compensation;

(g) Sewage collection, treatment, or disposal for the public for compensation.

The term "Public Utility" shall not include (a) any person or corporation, not otherwise a public utility, who or which furnishes service only to himself or itself; or (b) any bona fide cooperative association which furnishes service only to its stockholders or members on a nonprofit basis; or (c) any producer of natural gas not engaged in distributing such gas directly to the public for compensation.

PA. STAT. ANN. tit. 66, § 1102(17) (Purdon Supp. 1977-1978).

26. *Commonwealth v. Lafferty*, 426 Pa. 541, 550, 233 A.2d 256, 260 (1967). *See also* *Frank v. Johnston Fuel Supply Co.*, 70 Pa. Super. Ct. 446, 457 (1918).

27. *Borough of Ambridge v. Public Serv. Comm'n*, 108 Pa. Super. Ct. 298, 303, 165 A. 47, 48 (1933).

28. *Drexelbrook Assocs. v. Pennsylvania Pub. Util. Comm'n*, 418 Pa. 430, 439, 212 A.2d 237, 239 (1965); *Aronimink Transp. Co. v. Public Serv. Comm'n*, 111 Pa. Super. Ct. 414, 419-20, 170 A. 375, 377 (1934).

29. *Overlook Dev. Co. v. Public Serv. Comm'n*, 101 Pa. Super. Ct. 217, 225 (1930), *aff'd*, 306 Pa. 43, 158 A. 869 (1932).

30. PA. STAT. ANN. tit. 66, § 1121 (Purdon Supp. 1977-1978). *See id.* § 1304(a) (Purdon 1959) (permit necessary for rendering of service by contract carrier by motor vehicle); *id.* § 1306 (license necessary for engaging in business by a broker). *See also id.* § 1122 (Purdon Supp. 1977-1978) (enumeration of acts requiring certificate).

31. *Id.* § 1123 (Purdon 1959).

or service of the public.³² To decide these questions,³³ the Commission holds such hearings as are necessary,³⁴ and states its findings in writing.³⁵ Upon the granting of a certificate, the Commission may impose upon the grantee just and reasonable limitations.³⁶

C. Rates and Ratemaking

The Public Utility Law vests the Commission with authority to regulate the rates charged by public utilities.³⁷ This portion of the

32. *Id.* It is only necessary to show that the applicant's proposed service is "reasonably" necessary for the accommodation or convenience of the public. *Warminster Township Mun. Auth. v. Pennsylvania Pub. Util. Comm'n*, 185 Pa. Super. Ct. 431, 436-37, 138 A.2d 240, 244 (1958). In determining what is "reasonable" necessity, the Commission considers, *inter alia*, the applicant's managerial organization, experience, fitness, and financial resources. *Pittston Gas Co. v. Pennsylvania Pub. Util. Comm'n*, 190 Pa. Super. Ct. 365, 375, 154 A.2d 510, 515 (1959).

33. PA. STAT. ANN. tit. 66, § 1123 (Purdon 1959). An example of procedure in this area is the Commission's regulations in regard to motor carrier applications for transportation of property and persons. See 52 Pa. Code §§ 3.381-.382. The applicant motor carrier files an application, verified by affidavit, setting forth the type of authority and geographic service area requested. See *id.* § 3.551. Notice of the application is published in the Pennsylvania Bulletin, and any interested person or corporation affected by the application may file a protest with the Commission challenging approval of the application. See 1 *id.* §§ 35.23-.24. If no protests are filed, the Commission may consider the application without holding hearings if it deems the facts in the application, or from any other additional information requested, sufficient. If protests are filed to the application, a hearing is scheduled. At the hearing, the applicant, the applicant's supporting witness, and the protesters have the opportunity to fully participate by presenting evidence and engaging in cross-examination.

The above described procedures were only recently promulgated by the Commission. For a description of motor carrier applications prior to these new procedures, see *Eiseman & Carter, supra* note 1, at 503-06.

34. PA. STAT. ANN. tit. 66, § 1123(b)(Purdon 1959).

35. *Id.* § 1123(a).

36. *Id.*

37. A "rate" is defined as meaning

[e]very individual, or joint fare, toll, charge, rental, or other compensation whatsoever of any public utility, or contract carrier by motor vehicle, made, demanded, or received for any service within this act, offered, rendered, or furnished by such public utility, or contract carrier by motor vehicle, whether in currency, legal tender, or evidence thereof, in kind, in services or in any other medium or manner whatsoever, and whether received directly or indirectly, and any rules, regulations, practices, classifications or contracts affecting any such compensation, charge, fare, toll, or rental.

Id. § 1102(19).

Rates charged by public utilities are reflected in the appropriate tariffs filed with the Commission. *Id.* § 1142. The procedural requirements concerning the proper publication of tariffs are detailed and vary with the type of public utility. Compare 52 Pa. Code §§ 23.1-.149 (common carrier tariffs), with *id.* §§ 53.1-.97 (noncommon carrier tariffs).

A public utility must adhere to the rates published in its tariff; the latest rate specified in the tariff or fixed by the Commission constitutes the lawful rate. See PA. STAT. ANN. tit. 66, §§ 1143, 1149 (Purdon 1959).

Commission's jurisdiction, perhaps more than any other, is controversial and administratively difficult.³⁸ The ratemaking issues presented to the Commission are complex and the proceedings to consider such issues are lengthy and tedious. The complexity is particularly apparent in the area of fixed utilities. There, the Commission must resolve such esoteric but necessary issues as the determination of rate base, the proper rate of return on the rate base, and the applicable rate structure.³⁹

Public utilities are permitted to realize a reasonable return on the fair value of that property which is devoted to public service. Of course, this requires that rates be sufficient to cover legitimate operating expenses.⁴⁰ The Public Utility Law gives the PUC the discretion to decide whether a rate charged by a public utility is just and reasonable.⁴¹ To determine the reasonableness of a rate, the Commission must weigh the public utility's proper rate base, its operating expenses, and the amount of return necessary to ensure the public utility's continued adequate service and financial integrity.⁴² Thus, the Commission, after affording the public utility and any other interested party the opportunity to present their cases, is required to judge the reasonableness of the assailed rates by the application of reasonable and scientific methods.⁴³

The Public Utility Law prohibits public utilities from establishing or maintaining any unreasonable difference in the rates charged—either between localities or between classes of service. A public utility may not extend any unreasonable preference or advantage to a party; nor may it subject a party to any unreasonable prejudice or disadvantage.⁴⁴ Therefore, the Commission, in ascertaining whether a rate is unduly discriminatory, determines whether any inequality of charges among a public utility's customers is justified by a difference of circumstances and situations.⁴⁵

38. See generally Pontz & Sheller, *supra* note 2.

39. *Id.* at 316-35. See PA. STAT. ANN. tit. 66, § 1151 (Purdon Supp. 1977-1978) (valuation of property of a public utility). See also Eiseman & Carter, *supra* note 1, at 506-11.

40. *City of Pittsburgh v. Pennsylvania Pub. Util. Comm'n*, 182 Pa. Super. Ct. 551, 565, 128 A.2d 372, 378-79 (1957).

41. PA. STAT. ANN. tit. 66, § 1141 (Purdon 1959).

42. *Lower Paxton Township v. Pennsylvania Pub. Util. Comm'n*, 13 Pa. Commw. Ct. 135, 141, 317 A.2d 917, 921 (1974).

43. *City of Johnstown v. Pennsylvania Pub. Util. Comm'n*, 184 Pa. Super. Ct. 56, 63, 133 A.2d 246, 250 (1957).

44. PA. STAT. ANN. tit. 66, § 1144 (Purdon 1959).

45. *United States v. Pennsylvania Pub. Util. Comm'n*, 184 Pa. Super. Ct. 380, 390, 135

Any party affected by an existing public utility rate may file a complaint. The Commission, acting upon a complaint or upon its own motion, will consider the appropriateness of the rate after providing reasonable notice to the interested parties and an opportunity for hearing. Upon finding that assailed rates are unreasonable, unjust, or otherwise unlawful, the Commission will determine the just and reasonable rates to be observed.⁴⁶

Similarly, when a public utility proposes a change in rates, the Commission, acting upon a complaint or upon its own motion, may, after reasonable notice to all interested parties, hold a hearing concerning the lawfulness of the new rate.⁴⁷ While the hearing is pending, the Commission may suspend the proposed rates for the period specified in the Public Utility Law.⁴⁸ During the period of suspension, the rates which were in force at the time the tariff stating the new rates was filed continue in force. Upon the ultimate determination that the proposed rates are unjust, unreasonable, or otherwise unlawful, the Commission will determine the just and reasonable rates to be observed.⁴⁹

D. *Service and Facilities*

The Commission is granted the power to regulate all matters concerning the service and facilities of public utilities.⁵⁰ The Commission, through its regulatory actions, must ensure that every public utility furnishes and maintains adequate, efficient, safe, and reasonable service and facilities for the accommodation, convenience, and safety of its patrons, employees, and the public.⁵¹

A.2d 93, 98 (1957), *rev'd on other grounds*, 393 Pa. 537, 143 A.2d 341, *cert. denied*, 358 U.S. 884 (1958).

46. PA. STAT. ANN. tit. 66, § 1149 (Purdon 1959). A public utility customer may also petition for the arbitration of claims for billing and collecting services. 52 Pa. Code § 3.391.

47. PA. STAT. ANN. tit. 66, §§ 1148(b),(e) (Purdon Supp. 1977-1978).

48. *Id.* Petition for suspension must be filed in writing at least 15 days before the effective date of the tariff. 52 Pa. Code § 3.131. The Public Utility Law also grants the Commission the authority to, after reasonable notice and hearing, fix and prescribe temporary rates to be charged by a public utility, pending the final determination of a rate proceeding. PA. STAT. ANN. tit. 66, § 1150 (Purdon 1959 & Supp. 1977-1978). The Commission may order a public utility to refund any excess amount paid by a public utility's customer. *Id.* § 1153.

49. PA. STAT. ANN. tit. 66, § 1148(c) (Purdon 1959).

50. *Id.* §§ 1171-1190, 1342 (Purdon 1959 & Supp. 1977-1978). *See also* Behrend v. Bell Tel. Co., 431 Pa. 63, 66, 243 A.2d 346, 347 (1968).

51. PA. STAT. ANN. tit. 66, § 1171 (Purdon Supp. 1977-1978). A public utility may abandon service only upon cause shown and with the consent of the Commission. *Id.* § 1122(b). *See*

To meet these standards, a public utility's service must be reasonably continuous and without unnecessary interruptions or delay. The utility's service must conform with the regulations and orders of the Commission.⁵² Where service is found to be unreasonable, the Commission may compel the public utility to make repairs, changes, alterations, substitutions, extensions, or improvements.⁵³ Although the Public Utility Law strives for equality,⁵⁴ the PUC does permit some discrimination in service and facilities between classes of customers; however, such discrimination must be justified by an ascertainable and reasonable basis.⁵⁵

E. *Complaints and Investigations*

The Public Utility Law permits any party having a complaint against a public utility to file a written statement with the Commission setting forth the alleged wrongful act or omission. In the same manner, any party, including a public utility, may file a written statement of complaint concerning any regulations or order promulgated by the Commission.⁵⁶ After a complaint is filed with the Commission, it must be served by the complainant in accordance with the Commission's regulations. The Commission, in turn, has the duty to serve the complained-of party with notice that it is obliged to satisfy the complaint, or, in the alternative, to answer the com-

New York Cent. R.R. v. Pennsylvania Pub. Util. Comm'n, 188 Pa. Super. Ct. 647, 650, 149 A.2d 562, 564 (1959).

52. The Public Utility Law provides specific standards covering service and facilities in regard to common carriers, PA. STAT. ANN. tit. 66, §§ 1173-1177 (Purdon 1959) and rail crossings, *id.* §§ 1179-1182 (Purdon 1959 & Supp. 1977-1978). Further service standards are provided by Commission regulations. *See, e.g.*, 52 Pa. Code §§ 57.1-.67 (electric service); *id.* §§ 59.1-.51 (gas service); *id.* §§ 63.1-.36 (telephone service).

53. PA. STAT. ANN. tit. 66, § 1183 (Purdon 1959). *See* Pennsylvania Pub. Util. Comm'n v. Borough of Souderton, 210 Pa. Super. Ct. 22, 30-31, 231 A.2d 875, 879 (1967). In proceedings upon motion of the Commission, the burden of proving reasonable and adequate service and facilities is upon the public utility. PA. STAT. ANN. tit. 66, § 1190 (Purdon 1959).

54. PA. STAT. ANN. tit. 66, § 1172 (Purdon 1959).

55. United Natural Gas Co. v. Pennsylvania Pub. Util. Comm'n, 153 Pa. Super. Ct. 252, 263-64, 33 A.2d 752, 757 (1943). For a thoughtful critique of the Commission's past inadequate attempts to regulate the quality and quantity of service provided by public utilities to its Pennsylvania customers, see Pontz & Sheller, *supra* note 2, at 338-44.

56. PA. STAT. ANN. tit. 66, § 1391 (Purdon Supp. 1977-1978). The Public Utility Law also permits the Commonwealth of Pennsylvania, through the Attorney General, to be a complainant before the Commission in any matter solely as an advocate for the Commonwealth as a consumer of public utility services. *Id.* *See* 52 Pa. Code § 3.121 (contents of formal complaints).

plaint in writing.⁵⁷ Upon receipt of the written answer or other responsive pleading,⁵⁸ the Commission establishes appropriate hearing dates and serves notice of the hearing upon all interested parties.⁵⁹ The Commission may dismiss a complaint if it opines that a hearing is not in the public interest.⁶⁰ And, a complaint may be dismissed if the complained-of party satisfies the complaint within the time specified by the Commission.⁶¹

The complaint procedure has been widely used. For example, formal written complaints have been utilized to determine such diverse matters as grade crossing relocations,⁶² reasonableness of rates,⁶³ and adequacy of service and facilities.⁶⁴ In each case, the complaint procedures allow for easy access to a forum for resolving disputes.

Whenever necessary for the performance of its duties, the Commission may, upon its own motion, investigate and examine the condition and management of a public utility.⁶⁵ The Commission may conduct such an investigation with or without a hearing. A final order may not be entered, however, until a hearing has been held.⁶⁶

IV. PROCEDURE

The Commission, as an administrative agency, is bound by the due process provisions of the Constitution and by principles of common fairness.⁶⁷ It is required to extend notice to the interested par-

57. PA. STAT. ANN. tit. 66, § 1392 (Purdon 1959). See 52 Pa. Code § 3.122 (answers to complaints).

58. 52 Pa. Code § 3.151 permits the filing by the complained of party of motions to strike, dismiss, or for amplification, in lieu of an answer to a complaint.

59. PA. STAT. ANN. tit. 66, § 1393(a) (Purdon 1959).

60. *Id.* See, e.g., *White Oak Borough Auth. v. Pennsylvania Pub. Util. Comm'n*, 175 Pa. Super. Ct. 114, 123, 103 A.2d 502, 507 (1954) (hearing not required if question presented is one of law).

61. PA. STAT. ANN. tit. 66, § 1393(b) (Purdon 1959).

62. See, e.g., *City of Arnold v. Pennsylvania Pub. Util. Comm'n*, 192 Pa. Super. Ct. 476, 162 A.2d 77 (1960).

63. See, e.g., *City of Pittsburgh v. Pennsylvania Pub. Util. Comm'n*, 158 Pa. Super. Ct. 229, 44 A.2d 614 (1945).

64. PA. STAT. ANN. tit. 66, § 1183 (Purdon 1959).

65. *Id.* § 1398.

66. *Id.* See *Womelsdorf Consol. Water Co. v. Pennsylvania Pub. Util. Comm'n*, 160 Pa. Super. Ct. 298, 304, 50 A.2d 548, 552 (1947).

67. *Smith v. Pennsylvania Pub. Util. Comm'n*, 192 Pa. Super. Ct. 424, 429, 162 A.2d 80, 83 (1960). See also *Goldberg v. Kelly*, 397 U.S. 254, 266-71 (1970); *Straw v. Pennsylvania*

ties and to provide an opportunity to be heard on the issues, to appraise the evidence submitted, to permit cross-examination of witnesses and the inspection of documents, and to provide the opportunity to offer evidence in explanation or rebuttal.⁶⁸ Various sections of the Public Utility Law and the Commission's regulations mandate observance of these procedural protections which will be discussed in detail below.

A. Parties

The Public Utility Law provides that any person, corporation, or municipal corporation having an "interest" may initiate a complaint against a public utility and be a party to the proceeding.⁶⁹ In addition, any person, corporation, or municipal corporation having an interest in any matter before the Commission, other than a complaint proceeding, may become a party. In either event, the "interest" of the party must be direct, immediate, and pecuniary.⁷⁰

It is clear that a sufficient interest exists where a direct customer of a fixed utility desires to be a party to a proceeding,⁷¹ or where a motor carrier which will suffer direct financial loss if a competing carrier is given authority to operate attempts to intervene in an application proceeding.⁷² Where the subject interest is not clearly direct, however, the extent to which consumers are permitted to intervene is within the discretion of the Commission. Thus, the Commission, reasoning that there was not direct interest, has refused the intervention of a hotel association on behalf of its members, since the association was not itself a subscriber to a telephone company's services.⁷³ Whether the Commission will recognize a

Human Relations Comm'n, 10 Pa. Commw. Ct. 99, 102, 308 A.2d 619, 621 (1973); *Begis v. Industrial Bd. of Dep't of Labor & Indus.*, 9 Pa. Commw. Ct. 558, 560-61, 308 A.2d 643, 645 (1973).

68. *Smith v. Pennsylvania Pub. Util. Comm'n*, 192 Pa. Super. Ct. 424, 429, 162 A.2d 80, 83 (1960).

69. PA. STAT. ANN. tit. 66, § 1391 (Purdon Supp. 1977-1978). See 1 Pa. Code §§ 35.27-32 (petitions to intervene). Compare PA. STAT. ANN. tit. 71, § 1710.2(c) (Purdon 1962) (party must have a direct interest in subject matter of proceeding).

70. *Rydal-Meadowbrook Civic Ass'n v. Pennsylvania Pub. Util. Comm'n*, 173 Pa. Super. Ct. 380, 383-84, 98 A.2d 481, 483 (1953); *Penn-Harris Hotel Co. v. Pennsylvania Pub. Util. Comm'n*, 166 Pa. Super. Ct. 394, 395-96, 71 A.2d 853, 854 (1950).

71. *Penn-Harris Hotel Co. v. Pennsylvania Pub. Util. Comm'n*, 166 Pa. Super. Ct. 394, 395-96, 71 A.2d 853, 854-55 (1950).

72. *Cf. W.J. Dillner Transfer Co. v. Pennsylvania Pub. Util. Comm'n*, 175 Pa. Super. Ct. 461, 470-71, 107 A.2d 159, 164 (1954), *appeal dismissed*, 349 U.S. 903 (1955).

73. *Penn-Harris Hotel Co. v. Pennsylvania Pub. Util. Comm'n*, 166 Pa. Super. Ct. 394,

trade association or consumer group purporting to represent its members before the Commission will be decided in the future. Many consumer groups have formed in opposition to increased rates and poor service standards. Since these groups are not direct customers of the fixed utilities, it is questionable whether they are proper parties to appear before the PUC.⁷⁴

B. Notice

The Public Utility Law requires that notice of all hearings, investigations, and proceedings before the Commission shall be given as prescribed by the Commission.⁷⁵ The Commission has held that the determination of what constitutes proper notice depends upon the facts involved in each case.⁷⁶ Where a complaint is initiated by a party, the Commission must serve notice on the person or corporation against whom the complaint was filed, directing the party to satisfy or answer the complaint.⁷⁷ The Commission must also serve notice of the time and place of hearing upon all parties in interest.⁷⁸

C. Prehearing Conferences

Prehearing conferences may be held upon the motion of the presiding officer or upon the request of a party to the proceeding.⁷⁹ However, prehearing conferences are held in complex cases only—particularly at the initiation of fixed utility rate proceedings. The prehearing conference provides for the exchange of evidentiary exhibits and witness lists, the discussion of settlement, the filing of

395-96, 71 A.2d 853, 854 (1950). See also *Arsenal Bd. of Trade v. Pennsylvania Pub. Util. Comm'n*, 166 Pa. Super. Ct. 548, 551-52, 72 A.2d 612, 615 (1950); *City of Pittsburgh v. Pennsylvania Pub. Util. Comm'n*, 153 Pa. Super. Ct. 83, 86-87, 33 A.2d 641, 642-43 (1943).

74. See *NAACP v. Pennsylvania Pub. Util. Comm'n*, 5 Pa. Commw. Ct. 312, 328, 290 A.2d 704, 712 (1972) (intervention by a private association not permitted merely because of the association's status as a public interest body).

75. PA. STAT. ANN. tit. 66, § 1404 (Purdon 1959). See 52 Pa. Code §§ 3.61, .62 (service of documents).

76. *Armour Transp. Co. v. Pennsylvania Pub. Util. Comm'n*, 138 Pa. Super. Ct. 243, 250-51, 10 A.2d 86, 90 (1939).

77. PA. STAT. ANN. tit. 66, § 1392 (Purdon 1959).

78. *Id.* § 1393. But see *Al Zeffiro Transfer & Storage Co. v. Pennsylvania Pub. Util. Comm'n*, 195 Pa. Super. Ct. 214, 217, 171 A.2d 800, 802 (1961) (public notice not required of Commission investigation on its own motion of whether carrier could lawfully transport certain commodities).

79. PA. STAT. ANN. tit. 66, §§ 458.4(a), .4(c) (Purdon Supp. 1977-1978). See *Eiseman & Carter*, *supra* note 1, at 509-11.

stipulations among the parties, the scheduling of discovery, and any other matters pertinent to the orderly conduct and disposition of a proceeding.⁸⁰

D. Hearings

The Public Utility Law provides that all hearings before the Commission, or its representative, shall be public and shall be construed in accordance with the regulations prescribed by the Commission.⁸¹ Required hearings⁸² are scheduled by the Commission, except for rate proceedings, which are fixed by the presiding officer.⁸³

The Commission has the authority to designate who shall preside over any investigation, inquiry, or hearing.⁸⁴ Prior to the recent amendments to the Public Utility Law, the Commission appointed hearing examiners to preside over these proceedings. The hearing examiners were vested with the power to administer oaths, examine witnesses, and receive evidence, but were denied the power to rule on developed facts.⁸⁵ As a result, the hearing examiners served only as presiding officers and were not empowered to analyze testimony or make decisions for the Commission.⁸⁶ After presiding over a hearing or other proceeding, the hearing examiner forwarded the record to the Commission for a determination of the issues.

80. 52 Pa. Code §§ 3.141-.144 (conferences in formal proceedings).

81. PA. STAT. ANN. tit. 66, § 1394 (Purdon 1959). See 52 Pa. Code §§ 3.181-.184 (hearings). Compare PA. STAT. ANN. tit. 71, § 1710.31 (Purdon 1962) (hearing and record).

82. Various statutory provisions require that hearings be held on particular matters. See, e.g., PA. STAT. ANN. tit. 66, § 1123 (Purdon 1959) (certificates of public convenience); *id.* § 1152 (Purdon Supp. 1977-1978) (rate proceedings); *id.* § 1181 (railroad crossings); *id.* §§ 1182, 1183 (Purdon 1959) (service and facilities); *id.* § 1211 (systems of accounts); *id.* § 1271.1 (Purdon Supp. 1977-1978) (contracts for services); *id.* §§ 1304, 1313 (Purdon 1959) (contract carrier permits); *id.* § 1393 (complaints); *id.* § 1403 (informal hearings). But see *White Oak Borough Auth. v. Pennsylvania Pub. Util. Comm'n*, 175 Pa. Super. Ct. 114, 123, 103 A.2d 502, 507 (1954) (hearing not required if question presented is one of law).

83. 52 Pa. Code § 3.161, .162. See PA. STAT. ANN. tit. 66, § 1393 (Purdon 1959).

84. The Public Utility Law provides that "[t]here shall preside at the taking of evidence (1) the commission, (2) one or more commissioners, or (3) one or more administrative law judges appointed as provided in this act. . . ." PA. STAT. ANN. tit. 66, § 458.2(a) (Purdon Supp. 1977-1978). The person or persons presiding over the taking of evidence are referred to throughout the Public Utility Law as the "presiding officers," and will so be referred to throughout this article. See *Eiseman & Carter, supra* note 1, at 511-12.

85. See PA. STAT. ANN. tit. 66, § 1399 (Purdon 1959).

86. *J. Benkart & Sons v. Pennsylvania Pub. Util. Comm'n*, 137 Pa. Super. Ct. 5, 12, 7 A.2d 584, 587-88 (1939) (Keller, P.J., concurring); *In re Joseph W. Emig*, 45 Pa. P.U.C. 786, 791 (1972).

The relative powerlessness of the hearing examiner's position had been the object of intense criticism in the past⁸⁷ which resulted in an extensive review of the hearing examiner's position by the Pennsylvania legislature and culminated in the recent amendments to the Public Utility Law. The legislature abolished the position of hearing examiner and established the Office of Administrative Law Judge.⁸⁸

Endeavoring to develop law judges to serve as the trial court of the Commission,⁸⁹ the legislature patterned the Office of Administrative Law Judge after the federal system of administrative law judges. The office is presided over by the Chief Administrative Law Judge who is responsible for the assignment of a hearing judge when required for proceedings before the Commission.⁹⁰ Each administrative law judge must meet minimum requirements prior to appointment,⁹¹ and is subject to the provisions of the Code of Ethics for the Public Utility Commission.⁹²

In addition to the powers previously granted to hearing examiners, the administrative law judge may issue subpoenas, rule upon offers of proof and receive relevant evidence, take or cause depositions to be taken, hold prehearing conferences, regulate the course of a hearing, hold other conferences when necessary, dispose of procedural issues, and most importantly, make and recommend initial decisions in proceedings for the Commission.⁹³ In order to prevent substantial prejudice to any party or to expedite the conduct of the proceeding, the administrative law judge may allow an interlocutory appeal to be taken to the Commission on any material question

87. *Senate Consumer Affairs Report*, *supra* note 2, at 19-21.

88. PA. STAT. ANN. tit. 66, § 457.2 (Purdon Supp. 1977-1978).

89. *Senate Consumer Affairs Report*, *supra* note 2, at 19.

90. PA. STAT. ANN. tit. 66, § 457.2(d) (Purdon Supp. 1977-1978).

91. *Id.* § 457.2(c) provides that "[a]ll judges must meet the following minimum requirements: (1) An attorney in good standing before the Pennsylvania Supreme Court. (2) Three years of practice before administrative agencies or equivalent experience. (3) Such other requirements as shall be established by the commission."

92. *Id.* § 454.1. Administrative law judges are prohibited from consulting with any person or party on any fact in issue unless all parties have notice and opportunity to participate. They are also prohibited from supervising or directing any officer, employee or agent engaged in the performance of investigative or prosecuting functions for the Commission or engaging in ex parte communications. Ex parte communications are off-the-record communications to or by an administrative law judge regarding the merits or any fact in issue of any matter pending before the Commission in a contested on-the-record proceeding. *Id.* §§ 458.5(b), 5(c).

93. *Id.* § 458.2(b).

arising in the course of a proceeding. The administrative law judge may stay the proceedings if necessary to protect the substantial rights of any of the parties, and the Commission must determine the appealed issue forthwith.⁹⁴

The institution of the Office of Administrative Law Judge represents a major change in the procedural framework governing the adjudication of proceedings before the Commission. The administrative law judges will provide a full-time, experienced cadre of trial judges empowered to conduct proceedings and to render initial decisions when appropriate. However, as of the writing of this article, it is not yet clear what regulations and provisions will be developed to implement the orderly promulgation of the powers granted to the administrative law judges. Moreover, it is not yet possible to ascertain the impact of the administrative law judge's authority to render initial decisions on the decision-making function of the Commission.

An examination of the federal system of administrative law judges may be instructive as to what might be expected in regard to the performance of the Commission's newly created administrative office. The experience in the federal system demonstrates that decisions rendered by administrative law judges are not often permitted to become final without an agency decision.⁹⁵ This is because the administrative law judge's decision is subject to appeal to the agency, and on appeal, the agency has all the powers on review that it would have in making the initial decision.⁹⁶ The agency generally reviews all the evidence. As a result, the administrative law judge's decision may in essence become a recommendation. Similarly, the recent amendment to the Public Utility Law grants the Commission all of the powers on review that it would have had in making the initial decision.⁹⁷ Thus, it would appear, based on the federal experience, that the PUC will tend to treat the administrative law judge's decision merely as a recommendation. Such a development would certainly subvert the intention of the Pennsylvania legislature to provide a corps of "trial judges" for the Commission. It would fur-

94. *Id.* §§ 458.2(c), .4(h).

95. For a discussion of the effect of administrative law judges' decisions on agency review in the federal system see K. DAVIS, *ADMINISTRATIVE LAW TREATISE* §§ 10.1, .3 (Supp. 1970 & Supp. 1976).

96. Administrative Procedure Act, § 8, 5 U.S.C. § 557(b) (1970).

97. PA. STAT. ANN. tit. 66, § 458.6(a) (Purdon Supp. 1977-1978).

ther promote "regulatory lag" since every proceeding handled by an administrative law judge would be reviewed in detail.

E. Evidence

The Public Utility Law provides that every party is entitled to present his case or defense by oral or documentary evidence, to submit rebuttal evidence, and to conduct such cross-examination as may be required for a full and true disclosure of the facts.⁹⁸ The Commission, in considering this evidence, is not bound by the technical rules of evidence, but essential evidentiary principles are enforced and the Commission must apply the fundamental rules of judicial proof.⁹⁹ The application of these fundamental rules includes the exclusion of all irrelevant, immaterial, or unduly repetitious evidence.¹⁰⁰

Evidence may be submitted by the parties in either oral or written form, as prescribed by the Commission. Written evidence, properly authenticated by the witness under oath, is submitted in question and answer form. It is subject to the same rules of admissibility and cross-examination of the sponsoring witness as evidence presented orally.¹⁰¹ The use of written, direct testimony and immediate cross-examination, particularly in connection with the testimony of expert witnesses, is urged by the Commission. Written evidence is used extensively in complex cases such as fixed utility rate proceedings and much time is saved by the distribution of written evidence prior to a hearing; all parties are to be afforded sufficient time for proper and concise cross-examination. In light of its advantages, the use of written testimony in simpler cases should be fostered by the Commission where appropriate.

Prehearing discovery through depositions and other methods has been available to parties to Commission proceedings.¹⁰² However,

98. *Id.* § 458.3(c). See 52 Pa. Code § 3.261 (admission of exhibits).

99. *Pittsburgh & Lake Erie R.R. v. Pennsylvania Pub. Util. Comm'n*, 170 Pa. Super. Ct. 411, 422-23, 85 A.2d 646, 653 (1952). Compare PA. STAT. ANN. tit. 71, § 1710.32 (Purdon 1962) (agency shall not be bound by technical rules of evidence at agency hearings).

100. PA. STAT. ANN. tit. 66, § 458.3(b) (Purdon Supp. 1977-1978). The Commission, upon written notice to all interested parties, may take "official notice" of material facts. *Id.* §§ 458.2(e), .3(e).

101. 52 Pa. Code § 3.201 (written testimony).

102. PA. STAT. ANN. tit. 66, § 1400 (Purdon 1959) (depositions). See *Einhorn v. Philadelphia Elec. Co.*, 410 Pa. 630, 635, 190 A.2d 569, 572 (1963) (discovery permitted before the Commission). For a concise description of discovery before the Commission prior to the recent

except for fixed utility rate proceedings and certain other highly complex proceedings, prehearing depositions have generally been employed. That parties do not reap the advantages of prehearing discovery has been attributed to the failure of the Commission to recognize the value of discovery and to mandate the procedures necessary for its proper use.¹⁰³ Recognizing the value inherent in the orderly and complete development of a proceeding through the proper use of prehearing discovery, the Pennsylvania legislature has remedied this procedural shortcoming by amending the Public Utility Law to include detailed provisions for depositions and interrogatories.

For the discovery of relevant, unprivileged information, the recent amendments to the Public Utility Law permit, upon oral examination or written questioning,¹⁰⁴ the deposition of witnesses and the serving of written interrogatories upon the opposing parties.¹⁰⁵ The parties seeking to take depositions must apply to the presiding officer for an order to do so, and in all cases, the opposing parties have the opportunity to file objections. An order to take a deposition is enforceable through the issuance of a subpoena ad testificandum. Written interrogatories may be served on any party to a proceeding, may be objected to, and the presiding officer may grant an order compelling answers. Depositions and written interrogatories may be served upon Commission employees, but only upon a finding by the Commission that the evidence sought is significant, unprivileged information, not discoverable by alternative means.¹⁰⁶ The presiding officer has the authority, upon motion by party or by the person from whom discovery is sought, to make any order necessary to protect such party or person.¹⁰⁷

The Commission can subpoena witnesses for appearance at proceedings and can issue a subpoena duces tecum requiring the production, inspection, copying or photographing of necessary, designated documents.¹⁰⁸ The presiding officer may issue subpoenas ad

amendments to the Public Utility Law see Carter, *PUC Rate Hearings Minus Discovery Equals Delay*, 43 PA. B.A.Q. 260 (1972) [hereinafter cited as Carter].

103. Carter, *supra* note 102, at 263-64.

104. PA. STAT. ANN. tit. 66, § 458.4(b) (Purdon Supp. 1977-1978).

105. *Id.* § 458.4(d).

106. *Id.* A party to a proceeding may make written requests for admission of any relevant, unprivileged and undisputed fact. *Id.* § 458.4(e). See also 52 Pa. Code § 3.241 (stipulations).

107. PA. STAT. ANN. tit. 66, § 458.4(i) (Purdon Supp. 1977-1978).

108. *Id.* § 1399 (Purdon 1959).

testificadum and duces tecum at any time during the course of a proceeding.¹⁰⁹ One who disobeys a subpoena is subject to a summary conviction and fine.¹¹⁰

In addition to presiding over the taking of evidence in a proceeding, the presiding officer has the duty, as finder of fact, to review and harmonize the contradictory evidence. The presiding officer must consider the credibility of the witnesses and determine the weight to be accorded competent testimony.¹¹¹ And, prior to reaching a decision, the presiding officer must determine if the appropriate party has met its burden of proof.

Generally, the burden of proof is upon the proponent of a rule or order.¹¹² However, in any case involving an alleged violation by a public utility of any lawful determination or order of the Commission, the burden of proof is upon the public utility to show compliance with the Commission determination or order.¹¹³ And, where a proceeding is the result of a voluntary change in rates and a Commission investigation, the public utility has the burden of proving that the rates are just and reasonable.¹¹⁴

At the conclusion of proceedings, or at other appropriate times indicated by the presiding officer, the parties may submit briefs and reply briefs in accordance with the rules established by the Commission.¹¹⁵ Upon application to the Commission, oral arguments may be heard if deemed appropriate by the Commission.¹¹⁶

F. Decisions

Prior to reaching a decision in a proceeding, the Commission or its presiding officer must consider the entire record or such portions

109. *Id.* §§ 458.2(b), .4(j) (Purdon Supp. 1977-1978). See 52 Pa. Code § 3.221 (petition for issuance of subpoenas). See also *Merz White Way Tours v. Pennsylvania Pub. Util. Comm'n*, 204 Pa. Super. Ct. 43, 51, 201 A.2d 446, 451 (1964) (granting of subpoenas duces tecum is a matter of Commission discretion).

110. PA. STAT. ANN. tit. 66, § 1497 (Purdon 1959).

111. *Pennsylvania R.R. v. Pennsylvania Pub. Util. Comm'n*, 135 Pa. Super. Ct. 5, 10, 4 A.2d 622, 624 (1939).

112. PA. STAT. ANN. tit. 66, § 458.3(a) (Purdon Supp. 1977-1978).

113. *Id.* § 1361 (Purdon 1959).

114. *Id.* § 1152 (Purdon Supp. 1977-1978). See also *id.* § 1190 (Purdon 1959) (burden of proof upon public utilities to show that services and facilities involved are adequate, efficient, safe, and reasonable).

115. *Id.* § 458.3(d) (Purdon Supp. 1977-1978). See 52 Pa. Code § 3.281, .382 (briefs). Compare PA. STAT. ANN. tit. 71, § 1710.33 (Purdon 1962) (briefs; oral argument).

116. PA. STAT. ANN. tit. 66, § 458.3(b) (Purdon Supp. 1977-1978). See 52 Pa. Code § 3.283 (oral argument).

thereof as may be cited by any party.¹¹⁷ A full and complete record must be kept of all proceedings before the Commission, and all testimony must be recorded by a Commission-appointed reporter.¹¹⁸ The transcript of testimony and exhibits, together with all papers and requests filed in the proceeding, constitute the exclusive record for a decision and is available for inspection by the public.¹¹⁹

All Commission decisions must be supported by appropriate findings, which in turn must be supported by reliable, probative, and substantial evidence.¹²⁰ The findings are required so that the affected parties may determine if a deprivation of legal rights has taken place and whether the proper weight was given to the evidence.¹²¹ Any findings made by the Commission serve as prima facie evidence of the facts found and remain conclusive unless set aside, annulled, or modified by an appeal.¹²²

The Commission's decision is made a part of the record. It must include a statement of findings and conclusions and the reasons or basis thereof, on all material issues of fact, law, or discretion presented on the record. The decision must also contain the appropriate rule, order, sanction, relief, or denial thereof.¹²³

The recent amendments to the Public Utility Law have completely revised the former method of determining decisions and proceedings before the Commission. Prior to the amendments, the hearing examiner at a proceeding would, at the completion of the proceeding, forward the record without an initial or recommended decision to the Commission. The Commission then issued the initial and final decision, which was subject to petitions for rehearing or appeal.¹²⁴

The Public Utility Law now provides that after the presiding officer initially decides a case, he forwards the decision to the Com-

117. PA. STAT. ANN. tit. 66, § 458.3(b) (Purdon Supp. 1977-1978).

118. *Id.* § 1394 (Purdon 1959).

119. *Id.* § 458.3(d) (Purdon Supp. 1977-1978).

120. *Department of Environmental Resources v. Pennsylvania Pub. Util. Comm'n*, 18 Pa. Commw. Ct. 558, 562, 335 A.2d 860, 863 (1975) (substantial evidence is such relevant evidence as a reasonable mind can accept as adequate to support a conclusion). *See also* *Gradison Auto Bus Co. v. Pennsylvania Pub. Util. Comm'n*, 199 Pa. Super. Ct. 303, 306-07, 184 A.2d 334, 337 (1962).

121. PA. STAT. ANN. tit. 66, § 1395 (Purdon 1959).

122. *Id.* § 1442 (Purdon Supp. 1977-1978).

123. *Id.* § 458.6(b). Compare PA. STAT. ANN. tit. 71, § 1710.34 (Purdon 1962) (all adjudications shall be in writing, shall contain findings, and the reasons for the adjudications).

124. *Eiseman & Carter*, *supra* note 1, at 511-13.

mission for review. In reviewing the initial decision, the Commission has all the powers which it would have had in making the initial decision. It may, however, limit the issues on notice or by rule. The presiding officer's initial decision may be adopted by the Commission or the Commission may disregard the initial decision and issue its own decision.¹²⁵

The agency may require the entire record, without an initial decision by the presiding officer, to be certified to the Commission. In those instances where the Commission presides at the reception of the evidence, the initial decision is issued by the Commission.¹²⁶ In rate proceedings, the presiding officer is limited to making a recommended decision to the Commission; the Commission issues the initial and final decision. The Commission may also, when appropriate, issue a tentative decision.¹²⁷

Before a recommended, initial, or tentative decision is issued, the parties are entitled to a reasonable opportunity to submit for consideration by the Commission their proposed findings and conclusions. The parties may also submit exceptions to decisions with supporting reasons for the exceptions. The record must then reflect the ruling on each finding, conclusion, or exception presented.¹²⁸

The effect of the recent amendments concerning the determination of the Commission decisions has not become fully apparent. The Commission has not yet issued any definitive regulations detailing the procedures to be followed in implementing the provisions of the amendments; however, the decisions published since the effective date of the amendments do indicate that the new procedures will further delay the issuance of final decisions and orders by the Commission.¹²⁹ It seems likely that since the procedures add

125. PA. STAT. ANN. tit. 66, § 458.6(a) (Purdon Supp. 1977-1978).

126. *Id.* The recent amendments to the Public Utility Law also permit the Commission, when appropriate, to issue a declaratory order to terminate a controversy or remove uncertainty. *Id.* § 458.2(d).

127. *Id.*

128. *Id.* § 458.6(b).

129. Although the Commission has not publicized the procedures utilized in the implementation of the decision-making process mandated by the recent amendments to the Public Utility Law, the Commission has, by means of the publication of various decisions since the effective date of the amendments, and by correspondence, indicated the procedures it intends to follow.

When a proceeding is assigned to an administrative law judge, the judge's initial decision or order is in the nature of a preliminary decision, and is not a final decision or order until it is reviewed and approved by the Commission. *See id.* § 458.6(a). Upon the filing of the

another round of pleadings and oral arguments to the decision-making process, it will further delay final Commission action and extend the period of "regulatory lag."¹³⁰ While the apparent purpose of the amended procedures is to fulfill the requirements of due process, the Commission should endeavor to ensure the timely disposition of all proceedings.

G. Rehearing

After an order has been issued by the Commission, any party to the proceedings may, within fifteen days after the service of the order, apply for a rehearing in respect to any matters determined in the proceedings.¹³¹ Generally, it is necessary for the moving party to show that its position or circumstances have changed and that the evidence to be offered was not available at the original hearing.¹³² The grant or refusal of a petition for rehearing, however, is a matter within the discretion of the Commission.¹³³ Upon the grant of a petition for rehearing, the Commission may affirm, rescind, or modify its original order.¹³⁴

H. Appeal

A party may appeal any Commission order, within thirty days after its entry, to the Pennsylvania Commonwealth Court.¹³⁵ The

administrative law judge's initial decision, the Commission then circulates the initial decision to all parties for comments, to be submitted to the Commission within twenty days. *See id.* § 458.6(b). However, at present, it is not clear whether such comments rise to the full status of exceptions. *See* 1 Pa. Code §§ 35.211-.214.

The initial decision and comments of the parties are then submitted to the Commission for review and preparation of a final decision and order. Upon the issuance of the final order, the parties may file an application for rehearing or reconsideration. *See* 1 Pa. Code § 35.241.

130. For example, in a proceeding involving the application by a motor carrier for the grant of a certificate of public convenience and necessity, the certificate will not be issued, despite a favorable initial decision by the administrative law judge, until review of the initial decision and the issuance of a final order by the Commission.

131. PA. STAT. ANN. tit. 66, § 1396 (Purdon 1959). A petition for rehearing does not operate as a supersedeas. *See* Eiseman & Carter, *supra* note 1, at 512-13.

132. Department of Transp. v. Pennsylvania Pub. Util. Comm'n, 3 Pa. Commw. Ct. 554, 559-60, 284 A.2d 330, 333 (1971).

133. W. J. Dillner Transfer Co. v. Pennsylvania Pub. Util. Comm'n, 175 Pa. Super. Ct. 472, 481, 107 A.2d 164, 169 (1954), *appeal dismissed*, 349 U.S. 903 (1955).

134. PA. STAT. ANN. tit. 66, § 1396 (Purdon 1959).

135. PA. R. APP. P. 1512(a). The provisions of the Public Utility Law, PA. STAT. ANN. tit. 66, §§ 1431-1436 (Purdon 1959), dealing with appeals, were repealed by the Act of October 7, 1976, 1976 Pa. Laws 1057, No. 215, § 20. Thus, the right and standard of review of Commission

period of appeal is strictly enforced by the commonwealth court,¹³⁶ and may not be circumvented by petitions for further proceedings and consideration of the Commission's order.¹³⁷ The right to appeal a Commission order is limited to those parties who have a "direct interest" in the adjudication.¹³⁸ This phrase has been interpreted to include formal parties to the proceeding before the Commission, but only if they are affected by the appealed order.¹³⁹ Only final orders can be appealed to the commonwealth court.¹⁴⁰ All administrative remedies available must have been pursued and exhausted.¹⁴¹ An appeal lies from the PUC's refusal to rescind or amend a previous order,¹⁴² or from its denial of a petition to reopen a proceeding.¹⁴³

The procedures for appeal of a Commission order to the commonwealth court are outlined in the Pennsylvania Rules of Appellate Procedure.¹⁴⁴ An appeal is initiated by the filing of a petition for

orders arises from the Administrative Agency Law, PA. STAT. ANN. tit. 71, § 1710.47 (Purdon Supp. 1977-1978), which provides in pertinent part: "where the applicable acts of assembly are silent on the question of judicial review, any person aggrieved by such adjudication, who has a direct interest in such adjudication may nevertheless appeal the same in the manner provided by sections 41 through 44 of this act . . ." See also *id.* § 1710.51(c).

136. *Crooks v. Pennsylvania Pub. Util. Comm'n*, 1 Pa. Commw. Ct. 583, 586, 276 A.2d 364, 366 (1971) (appeal within 30 days from order refusing to reopen proceedings timely). See also *Purolator Courier Corp. v. Pennsylvania Pub. Util. Comm'n*, 13 Pa. Commw. Ct. 444, 447, 319 A.2d 688, 690-91 (1974) (appeal within 30 days from date of service of order rather than from date of entry was untimely).

137. *Department of Transp. v. Pennsylvania Pub. Util. Comm'n*, 3 Pa. Commw. Ct. 554, 559, 284 A.2d 330, 333 (1971). See also *Pennsylvania Pub. Util. Comm'n v. Reading Co.*, 21 Pa. Commw. Ct. 334, 336, 345 A.2d 311, 313 (1975).

138. PA. STAT. ANN. tit. 71, § 1710.47 (Purdon Supp. 1977-1978).

139. *Al Zeffiro Transfer & Storage Co. v. Pennsylvania Pub. Util. Comm'n*, 195 Pa. Super. Ct. 214, 216-17, 171 A.2d 800, 801 (1961); *Smith v. Pennsylvania Pub. Util. Comm'n*, 174 Pa. Super. Ct. 252, 256-57, 101 A.2d 435, 437 (1953); *Arsenal Bd. of Trade v. Pennsylvania Pub. Util. Comm'n*, 166 Pa. Super. Ct. 548, 551-52, 72 A.2d 612, 615 (1950). Parties to a proceeding before the Commission are permitted to intervene as of right. PA. R. APP. P. 1531(a). A non-party to the proceeding before the Commission may file a brief as of right as *amicus curiae*. *Id.* 531(a). See also *id.* 501 (any party who is aggrieved by an appealable order may appeal therefrom).

140. PA. STAT. ANN. tit. 71, § 1710.2 (Purdon Supp. 1977-1978) ("adjudication" means any final order, decree, decision, determination, or ruling by an agency).

141. In *Piltzer v. Independence Fed. Sav. & Loan Ass'n*, 456 Pa. 402, 404, 319 A.2d 677, 678 (1974), the Pennsylvania Supreme Court defined a "final order" to be an order "which ends the litigation, or alternatively, disposes of the entire case [and] effectively puts the defendant 'out of court.'"

142. *Department of Transp. v. Pennsylvania Pub. Util. Comm'n*, 3 Pa. Commw. Ct. 554, 559, 284 A.2d 330, 333 (1971).

143. *Crooks v. Pennsylvania Pub. Util. Comm'n*, 1 Pa. Commw. Ct. 583, 586, 276 A.2d 364, 366 (1971).

144. See PA. R. APP. P. 1501-1561.

review, which must substantially conform to the forms specified in the Rules of Appellate Procedure. It should contain a reference to the order sought to be reviewed and a general statement of the objections to the order.¹⁴⁵ After the petition for review is filed with the prothonotary of the commonwealth court, the record is certified and transmitted to the court by the Commission.¹⁴⁶ The Rules of Appellate Procedure further provide for the filing of the reproduced record and briefs by the parties,¹⁴⁷ and the scheduling of oral argument before the court.¹⁴⁸

The Rules of Appellate Procedure require that the court review the appealed Commission order on the record; no question is to be heard or considered unless it was first raised before the Commission in the original proceeding.¹⁴⁹ After its review, the court may affirm, modify, vacate, set aside, or reverse the assailed Commission order. The court may also remand the matter to the Commission and direct that an appropriate order be entered, or require the holding of further proceedings.¹⁵⁰

Cases have held that a Commission order may be vacated or set aside by the court only upon the finding of an error of law, the lack of substantial evidence to support the Commission's order, or a violation of constitutional rights.¹⁵¹ The court is prohibited from

145. *Id.* 1513. See *Hohensee v. Pennsylvania Pub. Util. Comm'n*, 3 Pa. Commw. Ct. 390, 390-91, 283 A.2d 503, 504 (1971), *cert. denied*, 410 U.S. 913 (1973) (prescribed appellate procedure must be strictly pursued).

146. PA. R. APP. P. 1541. See also 52 Pa. Code §§ 3.311, .312 (appeals).

147. PA. R. APP. P. 1542, 1951-52, 2101-2188.

148. *Id.* 1542, 2311-2323.

149. Exceptions to this rule include:

- (1) Questions involving the validity of a statute.
- (2) Questions involving the jurisdiction of the government unit over the subject matter of the adjudication.
- (3) Questions which the court is satisfied that the petitioner could not by the exercise of due diligence have raised before the government unit. . . .

In addition, "the court shall hear and decide all other matters raised by petition for review with the scope of review provided by law." *Id.* 1551.

Any right to trial by jury is deemed waived unless expressly reserved in the petition for review or an answer thereto. *Id.* 1543. Cf. *Drexelbrook Assocs. v. Pennsylvania Pub. Util. Comm'n*, 418 Pa. 430, 433 n.3, 212 A.2d 237, 238 n.3 (1965) (Pennsylvania Supreme Court would not consider on appeal matter not raised before the Commission).

150. PA. R. APP. P. 1561. Upon allowance, final orders of the commonwealth court may be appealed to the Pennsylvania Supreme Court. See *id.* 1101-1123.

151. *Dutchland Tours v. Pennsylvania Pub. Util. Comm'n*, 19 Pa. Commw. Ct. 1, 7, 337 A.2d 922, 925 (1975); *T.M. Zimmerman Co. v. Pennsylvania Pub. Util. Comm'n*, 195 Pa. Super. Ct. 77, 84, 169 A.2d 322, 325 (1961); PA. STAT. ANN. tit. 71, § 1710.47 (Purdon Supp.

substituting its judgment for that of the Commission, and is limited to determining whether sufficient evidence supports the Commission's adjudication.¹⁵² Unless they are capricious, arbitrary, or so unreasonable as to amount to an error of law, the court should not disturb the Commission's findings.¹⁵³

V. CONCLUSION

The procedures provided by the Public Utility Law and the Commission's regulations for the adjudication of Commission proceedings are broad in scope and detailed in their application. They are necessary to ensure that due process will be afforded all parties before the Commission. The recent amendments to the Public Utility Law greatly improve the procedural handling of Commission matters by modernizing the Commission's procedures. Because of the addition of a number of procedural steps, however, the amendments will foster delay in the issuance of final decisions and orders. Thus, the Commission, in its future implementation of the procedures mandated by the recent amendments to the Public Utility Law, should endeavor to ensure the timely disposition of all proceedings.

1977-1978). See Reader, *Judicial Review of "Final" Administrative Decisions in Pennsylvania*, 67 DICK. L. REV. 1 (1962); Ruben, *supra* note 22, at 402-06.

152. *Department of Transp. v. Pennsylvania Pub. Util. Comm'n*, 3 Pa. Commw. Ct. 405, 410-11, 283 A.2d 313, 317 (1971). The court is also prohibited from weighing evidence and resolving conflicting testimony. *Id.*

153. *Merz White Way Tours v. Pennsylvania Pub. Util. Comm'n*, 204 Pa. Super. Ct. 43, 51-52, 201 A.2d 446, 450 (1964). Findings supported by substantial and competent evidence are binding upon the appellate court. *Pennsylvania Power & Light Co. v. Pennsylvania Pub. Util. Comm'n*, 10 Pa. Commw. Ct. 328, 332, 311 A.2d 151, 158 (1973). This same principle applies to the review of the Commission's interpretation of its own orders. In deference to the Commission's expertise, the appellate court will not vacate or set aside a Commission interpretation of its own order, unless the result is unsupported by the evidence. *Western Hauling v. Pennsylvania Pub. Util. Comm'n*, 185 Pa. Super. Ct. 503, 509-10, 138 A.2d 286, 289 (1958).

Commission rulings on procedural questions are generally not interfered with by the appellate court if the substantive rights of the parties are not affected. *Jones Motor Co. v. Pennsylvania Pub. Util. Comm'n*, 202 Pa. Super. Ct. 134, 141, 195 A.2d 125, 128 (1963).