

## What is This? The Importance of Procedure in Pennsylvania Public Utility Commission Proceedings



Jonathan Nase

Member

[jnase@cozen.com](mailto:jnase@cozen.com)  
Phone: (717) 773-4191  
Fax: (717) 703-5901

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John Wooden, the legendary basketball coach at UCLA, said, “It’s the little details that are vital. Little things make big things happen.” That’s as true in the practice of law as it is in sports. Little things, like an appreciation of the importance of procedure, make big things happen.

The analysis to be applied to a filing frequently depends on the nature of the filing. In a recent case in the Pennsylvania Public Utility Commission (PUC), a party filed a petition for issuance of an interim emergency order pursuant to 52 Pa. Code § 3.6. To obtain such relief, the PUC’s regulations require a petitioner to establish each of the following four elements: the petitioner’s right to relief is clear; the need for relief is immediate; the injury would be irreparable if relief is not granted, and the relief requested is not injurious to the public interest. In briefs, the petitioner argued that it introduced evidence establishing each of these elements. It also argued that, if the PUC found that the petitioner did not establish any of the elements required for an interim emergency order, the PUC should treat the filing as a petition pursuant to the PUC’s general regulation for petitions at 52 Pa. Code § 5.41. A petitioner requesting relief under this section need only prove its case by a preponderance of the evidence. The petitioner contended that it satisfied this standard, even if it did not satisfy the standard for an interim emergency order. The PUC, however, only analyzed the filing as a petition for issuance of an interim emergency order and denied it because it failed to meet three of the four required elements.<sup>1</sup>

The PUC has authority under its regulations to overlook procedural errors (particularly procedural errors by *pro se* parties) and tries to apply the correct analysis to a pleading, even if that pleading is mislabeled by the party filing it. The PUC’s authority to overlook procedural errors, however, is limited. 52 Pa. Code § 1.2(a) states: “The Commission or presiding officer at any stage of an action or proceeding may disregard an error or defect of procedure *which does not affect the substantive rights of the parties.*” (emphasis added).

Therefore, if a party files exceptions to an administrative law judge’s decision after the PUC has issued a final order in the case, the PUC will analyze those exceptions using the legal standards that apply to a petition for reconsideration — not the legal standards that apply to exceptions. This is because rescinding the administrative law judge’s decision in order to analyze late-filed exceptions as exceptions would affect the substantive rights of the other parties to the case.

The PUC’s procedural rules are very different from the General Rules of Administrative Practice and Procedure (GRAPP),<sup>2</sup> which apply in proceedings before many other Pennsylvania state agencies. For example, GRAPP does not expressly permit pre-hearing discovery and the courts have held that discovery similar to that permitted by the Pennsylvania Rules of Civil Procedure is not generally available in administrative proceedings.<sup>3</sup> The PUC, in contrast, allows extensive discovery in its proceedings.<sup>4</sup>

The PUC’s unique procedural rules sometimes put municipal solicitors and other practitioners new to PUC proceedings at a disadvantage when facing an experienced public utility practitioner. Reviewing the applicable procedural rules is important for every practitioner, but is particularly important for those venturing into a niche field like public utility law. By doing a little thing like becoming familiar with the PUC’s procedural rules, or working with someone who is, practitioners and their clients can make big things happen in PUC proceedings.

<sup>1</sup> *Petition of Twin Lakes Utilities, Inc. for a Commission Order Authorizing the Acquisition of Twin Lakes Utilities, Inc. by a Certified Public Utility Pursuant to 66 Pa.*

<sup>2</sup> 1 Pa. Code §§ 1.31 *et seq.*

<sup>3</sup> *Weinberg v. Comm., Ins. Dept.*, 398 A.2d 1120, 1121 (Pa. Cmwlth. 1979).

<sup>4</sup> See 52 Pa. Code § 5.321 *et seq.*