

Prepared Testimony of
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Thank you, Chairman Folmer and Chairman Williams, along with others members of the Committee.

I am thankful for the opportunity, as Chairman of the Pennsylvania Public Utility Commission (PUC), on behalf of my fellow Commissioners and the dedicated staff at the PUC, to comment on the potential impact of Senate Bill 413.

While we appreciate the stated goal of this legislation – to establish a structure that ensures impartial adjudications and protects the independence of administrative law judges – we believe those important protections already exist within the PUC’s Office of Administrative Law Judge (OALJ). Additionally, we are concerned that the drastic changes proposed in SB 413 would have a far-reaching negative impact on the thousands of cases that come before the Commission every year. This would be detrimental not only to the interests of Pennsylvania consumers and ratepayers, but also for the interests of public utilities that provide critical services and infrastructure within Pennsylvania.

PUC Overview

While well-intended, the creation of a pool of Administrative Law Judges (ALJs) for all Commonwealth agencies runs counter to the fundamental reason that administrative agencies were created in the first instance; that is, to develop and utilize expertise in regulating complex areas of law, such as securities, insurance, environmental and public utility regulation. Indeed, forcing the PUC to utilize the services of a statewide Office of Administrative Law Judge dilutes

the expertise of the PUC and would not likely benefit the agency, consumers or stakeholders subject to the PUC's regulatory jurisdiction and responsibility.

As an agency, the PUC has over a century of expertise in the regulation of public utilities. At present the PUC regulates in the areas of water, waste water, transportation, rail crossings, retail electric distribution and supply, retail natural gas distribution and supply, natural gas pipeline safety and telecommunications. As such, regulating public utilities and utility markets requires substantial expertise in areas ranging from utility economics and accounting to infrastructure engineering, capital investment and Wall Street finance. This expertise takes years to develop. The advent of competitive electric generation and natural gas supply, and competitive telecommunications and transportation services, has further complicated the regulatory tasks faced by the PUC, and the corresponding case adjudications that are handled by our expert ALJs.

PUC's Independent Expertise

The Commonwealth, the General Assembly and the public have relied on the PUC to provide a fair, flexible and efficient forum to resolve contested utility matters for many years, including major rate increase cases, energy efficiency programs, implementation of competitive markets and other complex subject matters within the sphere of public utility law. At the same time, the PUC has worked to develop independent and informed administrative law judges who are expert in public utility matters and are skilled at addressing public health and safety issues.

Moreover, due to our expertise, the appellate courts of this Commonwealth grant the PUC deference in the interpretation of utility tariffs and other technical matters. This bill contemplates forcing the PUC to abruptly switch to utilizing judges who, though perhaps

competent jurists, are nevertheless unfamiliar with the complexity of utility regulation. This would not produce a net benefit to the public, and would jeopardize the deference the PUC currently receives from the courts.

PUC Office of Administrative Law Judge

The evolution of the PUC's OALJ represents an organic response to the need for a forum for informed, expert, and efficient resolution of utility-related disputes for the benefit of utility consumers and public utilities alike. The judges handle a significant number of cases each year – approximately 2,000 cases came before OALJ last year, which resulted in the scheduling of 1,500 hearings and the issuance of 610 written decisions. These cases range from large utility requests for approval of complex rate cases, demand side management programs and intercarrier compensation issues to individual consumer cases concerning inability to pay, incorrect billing and service quality and reliability.

The PUC expert ALJs are well-versed in handling complaint adjudications from ordinary consumers who do not have legal representation (*pro se* complainants). These ALJs not only maintain the integrity and the impartiality of these adjudications, but also assist in explaining the complexities of the process to ordinary Pennsylvanians who have no schooling in law and public utility regulation. This vital consumer service will not be available if the PUC must rely on the resources of separate and distinct ALJ pool that may lack the requisite expertise.

For utility consumers and stakeholders the practical effect of the proposed legislation is the dismantling of a well-organized and respected system, in exchange for an untested centralized pooling program with few clearly identified benefits over existing practice. While it is possible

that other Commonwealth agencies may benefit, SB 413 is a “solution” in search of problems that do not exist within the PUC.

The Commission’s ALJs are statutorily mandated within the Public Utility Code, with specific employment and ethical considerations, including civil service protections. While SB 413 contains extensive language regarding the recusal of judges with the appearance of bias, parties before the PUC generally do not question the independence of PUC judges because of the already existing Title 66 provisions. This reflects the fact that PUC ALJs are professionalized and are key to the administrative processes performed by the Commission.

Furthermore, given the tight statutory deadlines for certain complex cases, such as base rate cases, default service cases and natural gas cost rate cases, the PUC's ALJs work closely with other bureaus within the Commission to ensure that cases are promptly assigned, that the relevant issues are delineated for review and the procedural schedule is adequate to allow for exceptions and PUC Commissioner-level review within the tight statutory deadlines for these complex matters.

At the PUC, all ALJ Initial Decisions and Recommended Decisions are considered and ruled upon by the Commission. In addition, Title 66 permits parties to request rulings or interlocutory reviews on certain questions of law from the Commission during on-going proceedings. To replace our current ALJs with a pooled set of ALJs who are not familiar with, or experienced with, PUC regulatory work and administrative proceedings would damage due process and efficiency, especially when coupled with the proposed provision that would effectively transfer jurisdiction away from the PUC during the pendency of the matter. Any shortcomings in the pooled ALJ system with respect to public utility regulation will inevitably increase the workload of the agency, and will enhance the risk of appellate court remanded decisions. This outcome

would produce administrative inefficiencies and regulatory uncertainty for both public utilities and consumers.

PUC ALJs as Standard Bearers

A critical and little understood aspect of service as a PUC ALJ is their work "on the road."

When the PUC addresses, for example, an emergency quality of service issue or a rate case, the Commission often sends an ALJ to conduct a formal on-the-record public input hearing in each affected area, no matter how remote the location or time of year. In this way, PUC ALJs work to ensure constituent access to government and public participation in our adjudicatory process.

The public input hearings provide valuable input from Pennsylvania consumers on which the Commission relies to determine specific rate structures, customer programs and settlement agreements of complex utility issues.

In addition, having our own professional ALJ staff gives the PUC the flexibility it needs to respond rapidly and professionally to important local issues of public health, safety and welfare.

Material Concerns

Making an independent agency, such as the PUC, essentially a client of the contemplated Office of Administrative Hearings, raises a number of material concerns and may infringe on the PUC's statutory duties – impacting public utilities that the PUC regulates and the public that they serve – while other proposed provisions undermine the concept of administrative finality for PUC decisions, especially when it comes to their appellate review. Simply put, complex administrative case litigation and relevant financial uncertainty for both public utilities and their

consumer rate payers cannot continue for prolonged periods of time when non-litigated issues can suddenly appear anew in a *de novo* appellate court review of a PUC decision.

Additionally, the PUC and its OALJ maintain strict standards of independent decision making, professional conduct and accountability. Thus, we question under what parameters the contemplated Office of Administrative Hearings and its Chief ALJ can accept “money for the benefit of the office and deposit the money into the State Treasury subject to future appropriation” without defining who can make such monetary contributions and how they can be made.

Closing

Again, the Public Utility Commission appreciates the opportunity to comment on the potential impact of this legislation. We believe it is essential to preserve the existing PUC’s Office of Administrative Law Judge in order to safeguard the interests of the Commonwealth’s consumers and other stakeholders.

In our view, the drastic changes proposed in SB 413 would, if applied to PUC cases, have a negative impact on the cases that come before the Commission – impairing our ability to meet statutory deadlines, diluting our agency’s expertise and risking the deference that the PUC now enjoys from the appellate courts on various complex technical utility issues. For these reasons, and if SB 413 was to be adopted as proposed, the PUC should be exempted from the scope of the proposed legislation.

The PUC stands ready to address any questions you may have and is available to assist, to the best of our ability, the Committee's efforts ensure impartial and independent case review in Pennsylvania.