

Comments of the Independent Regulatory Review Commission



Pennsylvania Public Utility Commission Regulation #57-298 (IRRC #3041)

Household Goods in Use Carriers and Property Carriers

January 22, 2014

We submit for your consideration the following comments on the proposed rulemaking published in the November 23, 2013 *Pennsylvania Bulletin*. Our comments are based on criteria in Section 5.2 of the Regulatory Review Act (71 P.S. § 745.5b). Section 5.1(a) of the Regulatory Review Act (71 P.S. § 745.5a(a)) directs the Pennsylvania Public Utility Commission (PUC) to respond to all comments received from us or any other source.

1. Implementation procedures; Clarity; Reasonableness.

This proposal amends nine sections of the PUC's existing regulations and also a statement of policy related to evidentiary criteria used to decide motor common carrier applications found at § 41.14. As described by the PUC, the intent of these amendments is to better reflect the competitive marketplace in the household goods carrier industry. The amendment that has garnered the most opposition from the regulated community is the elimination of the requirement that an applicant for a certificate of public convenience to transport household goods need not establish that the proposed service to be provided is responsive to a public demand or need. This amendment is found under the cited statement of policy. The PUC notes that the authority to eliminate the public need requirement has been considered and affirmed by the Pennsylvania Supreme Court. *Elite Industries, Inc. v. Pa. P.U.C.*, 832 A.2d 428 (Pa. 2003).

Regulations have the full force and effect of law and establish a binding norm between an agency and the regulated community. Statements of policy, unlike regulations, provide guidance by which agencies carry or will carry out their duties authorized by state law. A statement of policy does not expand upon the plain meaning of a statute and is not binding upon third parties. We note that the amendments to the statement of policy under this proposal include mandatory provisions that are regulatory in nature. We believe that the opening of the household goods carrier marketplace via amendments to regulations and a statement of policy that has binding provisions could create a confusing and unclear regulatory environment. We ask the PUC to explain why it believes this approach to opening the household goods carrier marketplace is the most appropriate way to implement these changes. While we do not question the policy of the PUC as it moves the household goods carrier industry to a more open and competitive market place, we do question the reasonableness of deregulating via amendments to a statement of policy. In order to create a more stable and less potentially litigious regulatory environment, we suggest that the statement of policy be promulgated as a regulation.

2. Determining whether the regulation is in the public interest; Economic or fiscal impacts; Direct and indirect costs to the Commonwealth and to the private sector; Adverse effects on prices of services or competition; Compliance with the Regulatory Review Act.

Section 5.2 of the Regulatory Review Act (RRA) (71 P.S. § 745.5b) directs this Commission to determine whether a regulation is in the public interest. When making this determination, the Commission considers criteria such as economic or fiscal impact and reasonableness. To make that determination, the Commission must analyze the text of the proposed rulemaking and the reasons for the new or amended language. The Commission also considers the information a promulgating agency is required to provide under Section 5 of the RRA in the Regulatory Analysis Form (RAF) (71 P.S. § 745.5(a)).

Many of the questions on the RAF address the fiscal impact on the regulated community and small businesses. The PUC's responses to several of these questions are not sufficient to allow this Commission to determine if the regulation is in the public interest. Specifically, we seek answers to the following questions:

- What is the approximate number of prospective household goods carriers that will seek a certificate of public convenience under the new standards established by this rulemaking? (#10)
- What is the regulatory environment in other states, especially states that border on Pennsylvania? Why does the PUC believe this regulation will not affect Pennsylvania's ability to compete with other states? (#12)
- What type of and how many small businesses will be affected? Include a citation to the relevant provisions of the federal definition of small business that were reviewed in the development of the rulemaking and an analysis of their applicability/inapplicability to the regulation. (#15)
- What impact will the regulation have financially and economically on small businesses, especially small businesses that currently have a certificate of public convenience? (#17)
- What are the specific estimated costs and/or savings to the regulated community? How are these amounts derived? We note that some commentators contend that they have invested a significant amount of money in obtaining certificates of public convenience and this rulemaking will render those certificates valueless. We ask the PUC to quantify the average cost associated with obtaining a certificate under the existing rulemaking and address the contentions raised by commentators pertaining to their value under the new rulemaking. (#19)
- Why does the PUC believe that the information requested under #23 and #23a is not applicable to this rulemaking? We ask for complete responses to these questions.
- What is the probable effect on impacted small businesses, especially existing certificate holders? (#24)
- Given the concerns raised by commentators, why does the PUC believe the rulemaking will not have any adverse impacts on small businesses, especially existing certificate holders? (#27)

We ask the PUC to provide more detailed information in the RAF submitted with the final-form regulation in response to these questions.

3. Section 3.381. Applications for transportation of property, household goods in use and persons. – Protection of the public health, safety and welfare; Reasonableness; Implementation procedures; Clarity.

Subsection (c) allows parties to file objections to the approval of applications for passenger or household goods in use authority. New language is being added that limits challenges to household goods in use applications to the fitness of the applicant and whether the applicant “lacks a propensity to operate safely and legally.” This phrase lacks clarity. What criteria will the PUC use to determine if an applicant lacks the propensity to operate safely and legally? We recommend that the standards be included in the final-form regulation.

Subsection (e) establishes conditions for approval for passenger and household goods in use authority. Under Subsection (e)(1), applicants that have been approved by the PUC but do not possess a current satisfactory rating issued by the United States Department of Transportation or by a state with safety regulations comparable to the Commonwealth must complete a safety review conducted by PUC staff. The review must be conducted within 180 days of the day of approval of the application. Failure to achieve a satisfactory evaluation will result in the immediate suspension of the certificate of public convenience. We have two concerns with Subsection (e)(1). First, who will determine if the safety regulations of another state are comparable? Has the PUC already determined the adequacy of the safety regulations of every other state? We ask the PUC to explain how this provision will be implemented. Second, we question the reasonableness of this provision and ask how it adequately protects the health, safety and welfare of Pennsylvania citizens. What is the PUC’s rationale for conducting safety reviews after a certificate of public convenience has been issued?