

Comments of the Independent Regulatory Review Commission



Pennsylvania Public Utility Commission Regulation #57-303 (IRRC #3059)

Electronic Access to Pre-Served Testimony

July 16, 2014

We submit for your consideration the following comments on the proposed rulemaking published in the May 17, 2014 *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 (Commission) to respond to all comments received from us or any other source.

1. Determining whether the regulation is in the public interest; Clarity; Reasonableness; and Economic Impact.

The Commission's proposed regulation provides for its staff and all parties of record in an adjudicatory proceeding to have electronic access to public versions of pre-served testimony. Under this proposal, the Commission is not permitting the public to electronically access pre-served testimony via its website. The Commission explains that only its advisory staff and parties of record are aware of the need to consult the transcript for purposes of determining which testimony has been admitted into the official record. The Office of Consumer Advocate (OCA) raises issue with the Commission's decision to exclude the public from electronically accessing pre-served testimony. The OCA points out that if testimony would appear on the Commission's website with any strikeouts, corrections or modifications in place, then the public would not need to refer to the transcript in order to know what the final version of the testimony admitted into the record contains. We ask the Commission to explain how barring the public's electronic access to pre-served testimony is in the public's interest.

There are fourteen footnotes to the Preamble to further explain the requirements in this proposed rulemaking. We question why some of the information provided in the footnotes were not included in the annex. For instance:

- Footnote 1 explains how parties should revise testimony that has been stricken at the hearing.
- Footnote 4 discusses what is excluded from the electronic submission requirements.
- Footnotes 9 and 12 provide that parties of record must have eFiling accounts to have access to certain information.

It seems these explanatory notes are actually requirements for complying with this regulation; however, they are not part of the regulation itself. The Commission should ensure that the Annex to the final-form regulation clearly reflects how a party is to meet the requirements for electronic submission of pre-served testimony. We ask the Commission to include this information in the final-form regulation or explain why its exclusion is reasonable.

Question #21 of the RAF directs the Commission to provide a specific estimate of the cost and/or savings to the state government associated with implementation of the regulation. The Commission responded that costs associated with electronic filing cannot be quantified as they cannot estimate the number of state government entities which may participate in cases before the Commission. We ask the Commission to include in the final-form regulation the anticipated fiscal impact associated with the implementation of this regulation on the Commission itself.

2. Section 5.412a. Electronic submission of pre-served testimony. – Clarity.

Subsection (b)(3) prescribes the labeling of the electronically submitted testimony to the Commission. The OCA suggests that there can be additional pieces of pre-served testimony that are not addressed in this proposed section. Supplemental direct testimony and written rejoinder testimony are two examples of testimony that are not included in this subsection. We ask the Commission to include in the final-form regulation a comprehensive list of the types of testimony that are electronically submitted to the Commission or to explain why the proposed list is adequate in meeting the Commission's record-keeping and/or labeling needs.

Subsection (c) pertains to the submission of paper copies of preserved testimony to the court reporter. We ask the Commission to explain why this provision is located under the section for electronic submission of preserved testimony rather than under Section 5.412 relating to written testimony.