

Comments of the Independent Regulatory Review Commission



Pennsylvania Public Utility Commission Regulation #57-308 (IRRC #3087)

Paper Billing Fees

May 13, 2015

We submit for your consideration the following comments on the proposed rulemaking published in the March 14, 2015 *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. Citations to statutory authority. - Clarity and lack of ambiguity.

When reviewing a regulation, and as required by the Regulatory Review Act (71 P.S. §§745.1-745.14), this Commission must first and foremost determine whether the agency has the statutory authority to promulgate the regulation and whether the regulation conforms to the intention of the General Assembly. (71 P.S. § 745.5b.) In response to question #8 of the Regulatory Analysis Form (RAF) submitted with the rulemaking, the PUC has identified several sections of the Public Utility Code and other statutes and regulations to support its statutory authority. However, it is unclear how most of those citations apply to such authority and why they are included. In the Preamble to the final-form regulation, the PUC should explain the applicability of the referenced laws and regulations.

The PUC cites Section 1509 of the Public Utility Code in the Executive Summary as a statutory basis for amending this regulation. The PUC does not list this section in its response to RAF question #8. In order to assist this Commission in determining if the regulation is consistent with the PUC's statutory authority and intent of the General Assembly, we request the PUC identify the appropriate authority and include those citations in its response to RAF question #8.

2. Section 53.85. Paper billing fees. - Statutory authority; and Reasonableness.

The proposed rulemaking states that "A public utility may not impose a supplemental fee, charge or other rate for furnishing a paper bill or invoice for the services provided by the public utility." Commentators representing the telecommunications industry questioned the PUC's statutory authority to preclude them from imposing a supplemental fee for providing paper bills.

We request the PUC clarify its statutory authority for this provision.

3. Miscellaneous clarity.

The PUC explains in the Preamble that the “language and location of the proposed regulation in Subpart C. Fixed Service Utilities shall make the prohibition applicable to all Noncommon carrier public utility industries.” The new language however uses the term “public utility.” The term is not defined either in Title 52 of the Pa. Code or in Chapter 53. The statutory definition of “public utility” includes a common carrier. We believe including a definition for the term “public utility” that excludes common carriers would improve the clarity of the regulation.

RAF Question #12 asks the PUC to compare the proposed rulemaking with those of other states. The PUC responded that “The proposed regulation will prohibit utilities from benefitting from an excessive recovery of these monthly billing costs.” The PUC should include in the final-form regulation a summary of other states’ activities regarding monthly paper billing fees.