

**INDEPENDENT REGULATORY REVIEW COMMISSION
PUBLIC MEETING MINUTES**

10:00 A.M.

Thursday, May 1, 2014
14th Floor Conference Room
333 Market Street

I. CALL OF THE MEETING

The May 1, 2014 public meeting of the Independent Regulatory Review Commission (Commission) was called to order by Chairman Mizner at 10:00 a.m. in the 14th Floor Conference Room, 333 Market Street, Harrisburg, PA.

Commissioners Present: John F. Mizner, Esq., Chairman
George D. Bedwick, Vice Chairman
Dennis A. Watson, Esq.

Telephone: W. Russell Faber
Lawrence J. Tabas, Esq.

II. APPROVAL OF THE APRIL 10, 2014 PUBLIC MEETING MINUTES

Chairman Mizner asked for a motion for approval of the April 10, 2014 public meeting minutes, as submitted. Commissioner Watson made the motion and Vice Chairman Bedwick seconded, and the motion passed 5-0.

III. NEW BUSINESS

A. ACTION ITEMS

1. No. 2930 Environmental Quality Board #7-469: Flexible Packaging Printing Presses, Offset Lithographic Printing Presses and Letterpress Printing Presses, Adhesives, Sealants, Primers and Solvents

Scott Schalles, Regulatory Analyst, explained that the regulation limits emissions of volatile organic compounds from the use and application of inks, coatings, adhesives, fountain solutions, and cleaning materials used in various types of printing processes.

Vince Brisini, Deputy Secretary for Waste, Air, Radiation and Remediation, and Kristen Furlan, Assistant Director and Mediation Coordinator, Bureau of Regulatory Counsel, Department of Environmental Protection (DEP) were present to answer any questions.

Mr. Brisini noted that 697 tons of volatile organic compound reductions could be achieved annually with the use of add on pollution control devices and compliant printing material and explained the economic impact is expected to be minimal. "DEP has developed a

final-form rulemaking that satisfies federal obligations as well as concerns raised by industry,” he stated. “These amendments will be submitted to the Environmental Protection Agency [(EPA)] for approval as a revision to the state implementation plan.”

Commissioner Watson said there are efforts to comply with 2008 ozone standards by 2015 and questioned if there will be other industries that will face changes in order to reach the 2008 standards. Mr. Brisini stated “yes there will be” and indicated that there is a proposal for reasonably available control technology for “major sources.” In terms of electric generating units, Mr. Brisini noted that the United States Supreme Court has upheld the cross-state air pollution rule and will be making additional reductions as well. “We’re not sure what that will look like because it’s likely the EPA will be reconstituting their previous rule to reflect the 2008 ozone standards,” he stated.

Commissioner Watson noted that 2008 set higher standards than 1997 and questioned if that standard will be changed as well. Mr. Brisini stated “that is very much a potential. There has been a recommendation made that the standard should be something between 60 to 70 parts per billion.” He noted a regulation for Tier 3 gasoline has been finalized by the EPA and will address nitrogen oxide and organic compounds from mobile sources.

Commissioner Watson said there are 17 counties that do not meet the 2008 standards. Brisini stated “they are not designated as attainment but based on the monitoring data collected between 2011 and 2013, we are actually measuring attainment of the ozone standard in 30 of the 37 counties in which monitors are located.”

Commissioner Watson made a motion for approval. Vice Chairman Bedwick seconded, and the motion passed 5-0.

2. No 3022 Environmental Quality Board #7-483: Oil and Gas Well Fee Amendments

Michelle Elliott, Regulatory Analyst, explained the regulation changes the unconventional well permit fee schedule from a sliding fee schedule based on well bore length to a fixed fee of \$5,000 for non-vertical unconventional wells and \$4,200 for vertical unconventional wells. She noted that the current sliding fee schedule for vertical wells will remain unchanged and will be categorized as “conventional.”

Scott Perry, Deputy Secretary for Office of Oil and Gas Management, Kurt Klapkowski, Director, Bureau of Oil and Gas Planning and Program Management, and Trisha Salvia, Counsel, DEP, were present to answer any questions.

Mr. Perry explained that without adjusting the oil and gas program it would be insolvent. “Combined with that insolvency we also evaluated our regulatory responsibilities particularly in light of two statutory amendments: Act 9 and Act 13,” he stated. “We determined it was necessary to adjust the fee for unconventional wells only . . . switching from a sliding scale will result, on average, in a \$1,800 per well increase for unconventional operations.”

Vice Chairman Bedwick questioned if most of the licensees for conventional wells are small businesses. Mr. Perry stated “absolutely, I would struggle to identify a single conventional well developer that would fall within the category of large business.”

Chairman Mizner made a motion for approval. Vice Chairman Bedwick seconded, and the motion passed 5-0.

3. No. 3019 Department of Public Welfare #14-535: Supplemental Ventilator Care Payment for Medical Assistance Nursing Facilities

James Smith, Regulatory Analyst, explained the regulation changes to the Department of Public Welfare's (DPW) methods and standards for payment of Medical Assistance Nursing Facilities. The regulation recognizes the new category of supplemental ventilator care payment and, in response to comments, also recognizes tracheostomy care payment.

Judith Patrick, Policy Manager, Office of Long Term Living, and Edward Cherry, Deputy Chief Counsel, DPW, were present to answer any questions.

Commissioner Watson noted that a care facility has to meet two standards: number of patients and percentage of patients, in order to qualify for the payment. He questioned why the facilities are required to meet both standards. Ms. Patrick stated “we wanted to set a standard so that it would promote the growth of ventilator care for those residents, and we thought a two-pronged approach would be better able to do that.”

Commissioner Watson made a motion for approval. Vice Chairman Bedwick seconded, and the motion passed 5-0.

4. No. 2938 Pennsylvania Public Utility Commission #57-288: Licensing Requirements for Natural Gas Suppliers

Ms. Elliott said the regulation updates the licensing requirements for natural gas suppliers to establish clear procedures and processes regarding the entities that must be licensed. She explained that the amendments include definitions for aggregator, broker and non-selling marketer, a revised definition of non-traditional marketer and a continuing licensure exemption for non-traditional marketers.

Colin Scott, Assistant Counsel, and David Screven, Assistant Counsel, Pennsylvania Public Utility Commission (PUC), were present to answer any questions.

Vice Chairman Bedwick thanked and commended Commission staff for their work. “This is probably the most professional staff I’ve dealt with in my years in Harrisburg,” he stated.

Vice Chairman Bedwick made a motion for approval. Commissioner Watson seconded, and the motion passed 5-0.

5. No. 2992 Philadelphia Parking Authority #126-3: Impoundment of Vehicles and Equipment

Mr. Schalles explained that the regulation codifies procedures related to regulatory impoundments for taxicabs and limousines.

Vice Chairman Bedwick noted that comments were issued on May 29, 2013 and questioned if there was anything that prevented the Philadelphia Parking Authority (PPA) from coming back May 30, 2013 with a final-form regulation. Leslie Lewis Johnson, Chief Counsel, responded “no, as long as they responded to all of the comments; they could have come back in a month, the next week, after our comments were issued.” Vice Chairman Bedwick asked if the regulation being considered a year after the fact is the fault of the Commission. Ms. Johnson stated “no it is not.”

Dennis Weldon, General Counsel, Bill Schmidt, Director, Enforcement, and James Ney, Director, Taxicab and Limousine Division, PPA, were present to answer any questions.

Mr. Weldon urged the Commission to approve the regulation. “One of the reasons we are doing this is to provide guidance to the regulated community for the reasons vehicles may be impounded,” he stated. “It should be narrow, there should be limited purposes. These are not for small infractions. They have always been for significant things but there has never been clarification identifying that. We also want to clarify post-impoundment due process procedures.”

Mr. Weldon acknowledged that there has been one comment opposed to the regulation by the Germantown Cab Company and cited a number of court cases that side with the PPA in their dealings with the company.

Vice Chairman Bedwick expressed concern with a comment made by PPA staff in a philly.com article which placed the blame on the Commission for taking a long time to finalize the regulation. “Hopefully over time the authority will recognize that there is benefit in the review process and it can be done quickly and we try on our end to do everything we can to make the process as comfortable and efficient as possible for the agencies,” Vice Chairman Bedwick stated. Mr. Weldon commended the Commission for their work and apologized that the comment was made. Chairman Mizner emphasized “from the moment we get something our people move on it immediately, as quickly and as responsibly as they can.”

Joseph Gabbay, Owner, Germantown Cab Company, urged the Commission to vote against the regulation. He argued that the company should not be regulated by the PPA because the PUC already regulates the company and shared the business’s ongoing struggles and court cases with the PPA. “Do not approve regulations that permit the PPA to seize property for territorial violations or minor regulatory violations,” he stated. “We are particularly concerned that the PPA will use these regulations to single out Germantown Cab for impoundments in retaliation for legal challenges Germantown has initiated against the PPA.”

Chairman Mizner said it is not unusual for a business to have responsibilities to a number of government entities and noted that the PPA has said that it attempts to have impound hearings conducted that day or within two days. Mr. Gabbay said “that is inaccurate; I have five instances in the last year that the hearings either occurred after ten days or more or did not occur at all.” He noted that if a vehicle gets impounded on Friday night, he may not get it back until Tuesday. “This is basically taking people’s property and making them beg to get it back,” Mr. Gabbay stated.

Mr. Weldon emphasized that territorial violation is not subject to impoundment. “What this regulation does is take a potentially very broad field of what can cause an impoundment and constricts it down to a relative few,” he stated. Chairman Mizner questioned if he owns a cab and it gets impounded at 5:15 p.m. on a Friday, when could he get the vehicle back. Mr. Weldon said for a regulatory impound, the first opportunity for a hearing would be on a Monday because a judge is necessary to hold the hearing. Mr. Schmidt indicated that the enforcement section is open seven days a week “I bend over backwards for everybody in the industry,” he stated. “So far this year not one Germantown car has been impounded by the PPA. There have been quite a few impounded by the Pennsylvania State Police and there have been quite a few impounded by the Philadelphia Police Department.”

Vice Chairman Bedwick questioned if a hearing must be held within two days. Mr. Weldon stated “correct.”

Vice Chairman Bedwick made a motion for approval. Commissioner Watson seconded, and the motion passed 4-0, with Commissioner Tabas abstaining.

IV. OTHER BUSINESS

Approval of Vouchers

Commissioner Faber made motions to approve vouchers and expenses for the period April 10, 2014 through April 30, 2014. Vice Chairman Bedwick seconded, and the motions passed 5-0.

V. DATE AND PLACE OF SUBSEQUENT MEETING

Chairman Mizner announced the next public meeting is scheduled for Thursday, May 22, 2014, at 10:00 a.m. in the 14th Floor Conference Room, 333 Market Street, Harrisburg.

VI. EXECUTIVE SESSION ANNOUNCEMENTS

Chairman Mizner announced that no executive session would be held.

VII. ADJOURNMENT

Chairman Mizner announced the meeting adjourned at 11:06 a.m.