

**INDEPENDENT REGULATORY REVIEW COMMISSION  
PUBLIC MEETING MINUTES**

10:00 A.M.

Thursday, November 6, 2014  
14<sup>th</sup> Floor Conference Room  
333 Market Street

**I. CALL OF THE MEETING**

The November 6, 2014 public meeting of the Independent Regulatory Review Commission (Commission) was called to order by Chairman Mizner at 10:03 a.m. in the 14<sup>th</sup> Floor Conference Room, 333 Market Street, Harrisburg, PA.

Commissioners Present:     John F. Mizner, Esq., Chairman  
                                      George D. Bedwick, Vice Chairman  
                                      W. Russell Faber

Telephone:                     Lawrence J. Tabas, Esq.

Absent:                         Dennis A. Watson, Esq.

**II. APPROVAL OF THE OCTOBER 23, 2014 PUBLIC MEETING MINUTES**

Chairman Mizner asked for a motion for approval of the October 23, 2014 public meeting minutes, as submitted. Commissioner Faber made the motion and Commissioner Tabas seconded, and the motion passed 3-0, with Vice Chairman Bedwick abstaining.

**III. NEW BUSINESS**

**A.     ACTION ITEMS**

**1.   No. 3047 Department of Labor and Industry #12-99: Special Rules of Administrative Practice and Procedure Before the Workers' Compensation Appeal Board and Workers' Compensation Judges**

Michelle Elliott, Regulatory Analyst, explained the regulation clarifies and updates requirements related to practice and procedure and litigation to better coordinate procedural requirements. One comment on the final regulation was received from the Insurance Federation of Pennsylvania, which supported the regulation but requested clarification from the Department of Labor and Industry (L & I) on a few issues. The regulation was deemed to be approved by the legislative standing committees.

Elizabeth Crum, Director of Adjudication, Thomas Kuzma, Deputy Chief Counsel, and John McTiernan, Chair, Rules Committee, L & I, were present to answer any questions.

Ms. Crum provided clarification on the three concerns raised by the Insurance Federation. She explained the Insurance Federation first wanted assurance that the intent of section 111.11 is not to disallow partial appeals, which she confirmed. Second, regarding section 131.53b, the Insurance Federation questioned whether a filing party would have the ability to re-file or file an amended motion if the judge decides not to rule. Ms. Crum stated the filer would be able to file subsequent documents if the judge does not act on the motion during that 30-day period. Finally, the Insurance Federation asked that the provisions of section 131.91 that require injured workers to sign stipulations of fact presented to the judge be monitored to ensure that the provisions do not result in unnecessary delay, which L & I agreed to do.

Vice Chairman Bedwick offered a number of issues for L & I to “think about.” Regarding section 131.91, he questioned why employers are not also required to sign stipulations regardless of representation. Mr. McTiernan explained the distinction between the employee and employer was made because the attorney who represents the employer is empowered to act on behalf of that individual. He said it is imperative to protect injured workers and make sure they understand what they are agreeing to and noted they have to sign even if they have representation. Vice Chairman Bedwick also raised an issue relating to uninsured employers and the information that is first given to a claimant at the first hearing. He questioned if this provides a sufficient amount of time for a claimant to make a decision of whether to file a claim against the emergency fund. Mr. Kuzma noted the regulation provides for the judge to stay the proceedings until the claimant decides what to do. Vice Chairman Bedwick asked if it is possible that the claimant could be aware earlier in the process that the employer is uninsured. Mr. Kuzma confirmed L & I will provide information to a claimant if it does not identify that the employer has an insurer when reviewing the notice of claim. The documents provided include information on the fund and other services available. Ms. Crum added that in most instances the claimant will have prior knowledge that the employer is uninsured, as L & I attempts to identify insurers prior to the hearing, but they are not always 100 percent successful in that effort. Mr. Kuzma also noted that the majority of Uninsured Employers Guaranty Fund claimants are represented by counsel. Vice Chairman Bedwick surmised that the number of instances of delay will be minimal. Ms. Crum opined the regulation will streamline the process.

Samuel Marshall, President and CEO, Insurance Federation of Pennsylvania, expressed his pleasure with the clarifications and asked that the approval order reflect the clarifications. He expressed his hope that L & I will ensure the signature requirements will not become cumbersome.

Chairman Mizner made a motion for approval. Vice Chairman Bedwick seconded, and the motion passed 4-0.

## **2. No. 3032 Pennsylvania Public Utility Commission #57-294: Review of Long Term Infrastructure Improvement Plan**

Scott Schalles, Regulatory Analyst, explained that the regulation implements provisions of Act 11 of 2012 which allow various utilities to petition the Public Utility Commission (PUC) for the implementation of a distribution system improvement charge for the recovery of reasonably incurred costs. He said utilities that seek to impose the surcharge must file long-term

infrastructure improvement plans and annual asset optimization plans with the PUC and said the regulation sets forth the elements of the plans and outlines procedures and processes for filing and review of the plans with PUC. The Commission did not receive any comments on the final regulation and it was deemed to be approved by the legislative standing committees.

David E. Screven, Assistant Counsel, PUC, was present to answer any questions. He briefly provided an overview of Act 11 of 2012 and said the final form regulation reflects the comments received at the proposed stage.

Chairman Mizner made a motion for approval. Commissioner Faber seconded, and the motion passed 4-0.

### **3. No. 3059 Pennsylvania Public Utility Commission #57-303: Electronic Access to Pre-Served Testimony**

Corinne Brandt, Regulatory Analyst, explained the regulation amends PUC's procedural regulations to require parties to either electronically file with or provide a CD of all pre-served testimony to the Secretary's Bureau. The Commission did not receive any comments on the final regulation and it was deemed to be approved by the legislative standing committees.

Commissioner Tabas noted Commission staff had issued a comment to the proposed regulation regarding labeling of pre-served testimony and asked if the comment was addressed in the final regulation. Ms. Brandt confirmed the issue has been resolved.

Krystle Sacavage, Assistant Counsel, PUC, was present to answer any questions. Ms. Sacavage explained that the regulation sets forth the procedures for electronic submission of pre-served testimony. She said the regulation was proposed to allow staff and parties to have electronic and searchable access to these documents, which will result in great efficiencies in time and resources.

Commissioner Tabas asked why public access is not provided for in the regulation. Ms. Sacavage explained PUC staff and parties of record are aware of the need to consult the transcript for a full picture of the record, but the public is not necessarily aware of this need. Further, she said, the PUC's court recording contracts do not allow them to make the transcripts publicly accessible. She said allowing public access to the pre-served testimony could result in the public unknowingly viewing documents that were stricken or modified. Ms. Sacavage pointed out that the public may view hard copies of transcripts at the PUC offices and indicated that in some instances the public may be permitted to make copies of testimony and changes referenced in the transcript. Upon additional questions from Commissioner Tabas, Ms. Sacavage added that the public can also purchase a copy of the transcript from the court reporter's office. She indicated it cannot be requested from the PUC via mail.

Commissioner Tabas made a motion for approval. Commissioner Faber seconded, and the motion passed 4-0.

**4. No. 3073 Environmental Hearing Board #106-11: Environmental Hearing Board Rules of Practice and Procedure**

James Smith, Regulatory Analyst, explained the regulation clarifies practice and procedure regulations and “is essentially a corrective amendment on the coattails of a larger rulemaking.” One comment in support of the regulation was received from the Pennsylvania State Association of Township Supervisors and it was deemed to be approved by the legislative standing committees.

Honorable Richard Mather, Judge, Environmental Hearing Board (EHB), was present to answer any questions. He explained the regulation is the result of an error by the EHB in which the previous regulation was formatted incorrectly and this portion was inadvertently omitted.

Chairman Mizner made a motion for approval. Vice Chairman Bedwick seconded, and the motion passed 4-0.

**IV. OTHER BUSINESS**

**Approval of Vouchers**

Commissioner Faber made motions to approve vouchers and expenses for the period September 19, 2014 through October 24, 2014. Vice Chairman Bedwick seconded, and the motions passed 4-0.

**V. DATE AND PLACE OF SUBSEQUENT MEETING**

Chairman Mizner announced the next public meeting is scheduled for Thursday, November 20, 2014, at 10:00 a.m. in the 14<sup>th</sup> 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 10:32 a.m.