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INDEPENDENT REGULATORY REVIEW COMMISSION

333 MARKET STREET, 14TH FLOOR, HARRISBURG, PA 17101

May 18, 2017

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Keystone Building, 400 North Street
2nd Floor, North Wing
Harrisburg, PA 17120

Re: Regulation #57-315 (IRRC #3161) L-2015-2508421
Pennsylvania Public Utility Commission
Standards and Billing Practices for Residential Public Utility Service

Dear Secretary Chiavetta:

Enclosed are the Commission's comments for consideration when you prepare the final version of this regulation. These comments are not a formal approval or disapproval of the regulation. However, they specify the regulatory review criteria that have not been met.

The comments will be available on our website at www.irrc.state.pa.us. If you would like to discuss them, please contact me.

Very truly yours,

David Sumner
Executive Director

sfh

Enclosure

cc: Honorable Robert M. Tomlinson, Majority Chairman, Senate Consumer Protection and Professional Licensure Committee
Honorable Lisa M. Boscola, Minority Chairman, Senate Consumer Protection and Professional Licensure Committee
Honorable Robert W. Godshall, Majority Chairman, House Consumer Affairs Committee
Honorable Thomas R. Caltagirone, Minority Chairman, House Consumer Affairs Committee
Amy Elliott, Esq., Office of Attorney General

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Comments of the Independent Regulatory Review Commission



Pennsylvania Public Utility Commission Regulation #57-315 (IRRC #3161)

Standards and Billing Practices for Residential Public Utility Service

May 18, 2017

We submit for your consideration the following comments on the proposed rulemaking published in the February 18, 2017 *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 of statutory provisions – Consistency with statute; Protection of the public; Clarity.

The Public Utility Code, as amended by Act 155 of 2014 (Act 155), states “this chapter shall not apply to victims under a protection from abuse order . . . or a court order issued by a court of competent jurisdiction in this Commonwealth which provides clear evidence of domestic violence against the applicant or customer.” 66 Pa.C.S. § 1417. Sections 56.1 and 56.251 state that Subchapters L-V apply to customers who have been granted protection from abuse orders (PFA) or a court order issued by a court of competent jurisdiction in this Commonwealth which provides clear evidence of domestic violence against the applicant or customer (court order). We fully recognize and support the protection of those under PFAs and similar court orders and our only concern relates to enforcement of the PUC’s regulation.

Nonapplicability

Several portions of the regulation relating to PFAs and court orders reflect Chapter 14 of the Public Utility Code, such as Sections 56.282(4), 56.286, 56.333(b)(3), 56.337(a)(3) and 56.353. We recognize that the nonapplicability provision of Chapter 14 is not new and was expanded upon by Act 155. Therefore, given the importance of the protection of those under PFAs and court orders, we ask the PUC to explain how it has implemented and will enforce provisions in its regulation that reflect Chapter 14 of the Public Utility Code relating to PFAs and court orders.

“A court of competent jurisdiction in this Commonwealth which provides clear evidence of domestic violence against the applicant or customer”

The PUC is adding this phrase from 66 Pa.C.S. § 1417 throughout the regulation and in its order the PUC sought comment on it. Several commentators asked for clarification of portions of the phrase, including “a court of competent jurisdiction,” “clear evidence” and “domestic violence.”

Many commentators volunteered to participate in a work group to clarify the phrase. While these phrases may not be easy to define, we are concerned that the public safety may not be adequately protected if they are not made clear to the regulated community and public affected by them. Therefore, we recommend that the PUC clarify the meaning of these phrases in the final regulation.

2. Sections 56.2 and 56.252. Definitions. – Consistency with statute; Legislative intent; Need; Clarity.

Applicant

This definition differs significantly between Sections 56.2 and 56.252. In particular, the definitions use different time periods in Paragraph (ii) of 30 days versus 60 days. The PUC should explain why the definitions of this term need to differ between Sections 56.2 and 56.252.

Definitions of “Nurse practitioner,” “Physician” and “Physician assistant”

Act 155 added the definition of “Medical certificate” to the Public Utility Code (66 Pa.C.S. § 1403), and the PUC is adding this definition to the regulation. To meet the definition, the medical certificate must be signed by “a licensed physician, nurse practitioner or physician’s assistant.” The PUC’s existing regulation at 52 Pa. Code §§ 56.2 and 56.252 define the terms “Nurse practitioner” and “Physician.” This rulemaking would add a definition of “Physician assistant” to those sections.

By statute, the State Board of Nursing is assigned jurisdiction for nurse practitioners (e.g. - Certified Registered Nurse Practitioners) (63 P.S. § 218.1(a)) and State Boards of Medicine and Osteopathic Medicine are assigned jurisdiction over physicians and physician assistants (63 P.S. § 422.10, 422.13, 422.22, 422.36(b), 271.2 and 271.4). In addition, these Boards have promulgated regulations addressing these professions, qualifications, and standards of practice, including 49 Pa. Code Chapter 17, Subchapter A; Chapter 18, Subchapter D; Chapter 21; Subchapter C and Chapter 25, Subchapter C.

Upon review, we do not find the PUC’s definitions of “nurse practitioner,” “physician” and “physician assistant” to be completely consistent with the respective professional Boards’ definitions which can introduce uncertainty to the required qualifications. We further question the need for the PUC’s regulatory definitions to specify the qualifications for these professions. For these reasons, we suggest that the PUC consider using cross-references to the appropriate definitions in the professional Boards’ regulations instead. We recommend that the PUC review and amend the definitions of “nurse practitioner,” “physician” and “physician assistant” for consistency with statutes, legislative intent and existing definitions of the State Board of Nursing, the State Board of Medicine and the State Board of Osteopathic Medicine that are found both in statute and regulation.

Additionally, we note that Act 155 uses the term “nurse practitioner,” whereas The Professional Nursing Law includes several types of nurse licensures. Based on the context, there appears to be a presumption that the professional that can sign a medical certificate is a licensed Certified Registered Nurse Practitioner. However this should be made clear in the PUC’s regulation. In its regulatory definition of its statutory term “nurse practitioner,” the PUC should clarify which

licensure(s) under the State Board of Nursing qualify under the Public Utility Code to sign medical certificates.

3. Section 56.32. Security and cash deposits. – Consistency with statute; Clarity.

Subsection (a)

This subsection uses the phrase “in accordance with Commission regulations.” This phrase should be replaced with a cross-reference to the specific PUC regulation that applies.

Subsection (d)

There are two concerns. First, as amended by Act 155, Section 1404(e) of the Public Utility Code reads “. . . if the applicant or customer fails to pay” (Emphasis added.) To be consistent with the statute, Subsection (d) should include the phrase “or customer.”

Second, this subsection ends with the phrase “. . . within the time period under Subsection (a).” Subsection (a) provides a 90-day period. Some commentators questioned what a utility should do if the applicant fails to pay a scheduled portion of the deposit during the 90-day period. The regulation should clarify whether failure to pay a portion of the deposit during the 90-day period would require the utility to continue to provide service or not.

Subsection (e)

As amended by Act 155, Section 1404(a.1) of the Public Utility Code reads “. . . may not require a customer or applicant that is determined to be eligible” (Emphasis added.) To be consistent with the statute, Subsection (e) should include the phrase “or applicant.”

4. Section 56.38. Payment period for deposits by applicants. – Clarity.

Subsection (a)

There are two concerns. First, a commentator questioned what a utility should do if the applicant fails to pay a portion of the deposit during the 90-day period. The regulation should clarify whether failure to pay a scheduled portion of the deposit during the 90-day period would require the utility to continue to provide service or not.

Second, this subsection is amended to reflect statutory language found at 66 Pa.C.S. §1404(a). We recommend that the PUC clarify the phrase “. . . in accordance with Commission regulations” so that it is clear which regulations apply.

5. Section 56.42. Payment period for deposits by customers. – Clarity.

Subsections (b), (c) and (d)

Subsection (d) is proposed to be amended so that it is similar to existing Subsections (b) and (c). Related to our comment on Subsection 56.38(a), we recommend rewriting Subsections (b), (c) and (d). We have four clarity concerns. First, as amended, the first sentence of Subsection (d) is

not clear regarding who makes the determination that the deposit may be required in three installments. Second, the last sentence of Subsection (d) is also not clear regarding what specific due date applies. Third, noting this subsection provides a customer with the option to pay the full amount, we question if that option can be exercised by a customer who fails to pay one of the three installment payments. Fourth, we note that the deadlines in the first sentence are stated as “billed upon determination by the public utility that the deposit is required,” whereas the deadline in the last sentence is “the due date.” We recommend that the PUC clarify Subsections (b), (c) and (d) in conjunction with its consideration of our comments on Subsection 56.38(a) so that the final regulation is clear regarding who determines the method by which the deposit is paid, the due date for all payment options and what actions are triggered when a customer does not make a valid payment on any of the three installments.

6. Section 56.57. Interest rate. – Clarity.

Paragraphs (2) and (3)

These paragraphs describe how interest rates are to be applied to customer deposits. We have two clarity concerns with these paragraphs relating to what interest rate is applied and when.

First, Paragraph (2) provides the interest rate shall remain in effect “until the date the deposit is refunded or credited, or December 31, whichever is later.” While we do not believe it is the PUC’s intent, December 31 by default would always be the later of the three dates. Similarly, if the interest rate on a deposit remains in effect until December 31, it is not clear at what date the accrual of interest on a deposit ends.

Second, Paragraph (3) states “the new interest rate for that year will apply to the deposit.” The language of the regulation is not clear as to whether this is a different interest rate than the “interest rate in effect when the deposit is required,” in Paragraph (2).

While we recognize Paragraphs (2) and (3) reflect 66 Pa.C.S. §§ 1404(c)(6)(ii) and (iii), we recommend that the PUC clarify in the final regulation what specific interest rate it intends to be applied in each circumstance.

7. Section 56.93. Personal contact – Protection of the public safety.

Subsection (a)

This subsection is amended to reflect 66 Pa.C.S. § 1406(b) relating to personal contact by allowing contact to be made “electronically with the customer’s consent.” We agree with commentators that it is not clear whether the electronic notice must meet the requirements of Subsections (b) and (c). We also agree with public comments questioning how this contact must be made if it is discovered an email address or phone number for a text message is no longer valid. One commentator suggested that if the electronic contact is not successful, the personal contact requirement should revert to contact in person or by phone. The PUC should clarify in the regulation how a valid personal contact can be accomplished if the electronic contact is not successful.

8. Section 56.94. Procedures immediately prior to termination. – Clarity.

Paragraph (3)

The opening sentence refers to attempted telephone contact as provided in Section 56.93. Since “contact by email, text message or other electronic messaging format” was added as Paragraph 56.93(a)(3), Paragraph (3) of this section should be amended to include all the contact methods in Subsection 56.93(a).

9. Section 56.113. Medical certifications. – Consistency with statute; Protection of the public safety; Economic impact.

We have two concerns. First, the statutory definition of the term “Medical certificate” begins with the phrase “A written document, in a form approved by the commission [PUC] . . . ” 66 Pa.C.S. § 1403. The requirement for this form to be approved by the PUC should be added to this section.

Second, 66 Pa.C.S. §§ 1403 and 1406(f) of the Public Utility Code establish clear circumstances where a public utility “shall not terminate service when a customer has submitted a medical certificate to the public utility.” These afflicted individuals are “seriously ill or diagnosed with a medical condition which requires the continuation of service to treat the condition.” We note that medical certificates are not new and were in the Public Utility Code and PUC regulation prior to Act 155.

Several electric utilities commented with concerns that medical certificate fraud might increase and for that reason certificates should not be readily available on their websites. Their comments suggest adding more requirements to the medical certificate such as requiring the medical professional’s license number and requiring information on the medical professional’s letterhead.

The protection of those who are legitimately ill and submit a medical certificate is expressly stated in the Public Utility Code, and was reinforced by Act 155. Act 155 also established annual reporting to the PUC relating to the number of medical certificates and renewals. 66 Pa.C.S. § 1410.1(4). While fraud is frustrating, it is not clear from the comments to what degree this fraud has existed or might exist. We ask the PUC to explain its historic experience with medical certificates including how many medical certificates are on file each year in relation to the overall number of customers, how medical certificate fraud has affected uncollectible accounts, and what proportion of the utility’s overall revenue the impact of fraudulent medical certificates represent. We further ask the PUC to explain how the medical certificate provisions in the final regulation are reasonable and in the public interest relative to the PUC’s experience in this area.

10. Section 56.302. Deposit hold period and refund. – Economic impact; Clarity.

Paragraph (4)

Subsection 56.53(a) is amended to delete the maximum period of 24 months. Should the same amendment be made to Paragraph (4)?

11. Section 56.333. Personal contact – Protection of the public safety.

Subsection (a)

This subsection is amended to allow personal contact to be made “electronically with the customer’s consent.” We question how this contact must be made if it is discovered an email address or text message connection is no longer valid. If the electronic contact is not successful, should the personal contact requirement revert to contact in person or by phone? The PUC should clarify in the regulation how a valid personal contact can be accomplished if the electronic contact is not successful.

12. Section 56.353. Medical certifications. – Protection of the public safety.

We have two concerns. First, is the medical certificate form required to be approved by the PUC? If so, the regulation should include this requirement.

Second, Section 56.113 was amended to only permit medical certificates to be in writing. Should a similar amendment be made to this section? The PUC should explain why Sections 56.113 and this section differ.

13. PUC request for comment on certain topics.

The PUC’s order seeks comments from parties relating to:

- The protection from abuse (PFA) subchapters L-V and the language in the amended 66 Pa.C.S. § 1417, "or a court order issued by a court of competent jurisdiction in this Commonwealth, which provides clear evidence of domestic violence against the applicant or customer."
- Material that should be included in the Commission's privacy guidelines. Amended Chapter 14 referenced the Commission's privacy guidelines at 66 Pa.C.S. § 1406(b)(1)(ii)(D) (relating to notice of termination of service) that emails, text messages or other electronic messaging must be consistent with the Commission's privacy guidelines.
- A specific estimate of the costs and/or savings associated with compliance with these proposed changes, including any legal, accounting, or consulting procedures which may be required and explain how the dollar estimates were derived.

Our comments above summarize areas where our review of language in Annex A raised questions or concerns. However, in these areas where the PUC is seeking comment, there is no specific language to review. We are particularly interested in the economic and fiscal impact of this regulation because it relates to the criteria that we must consider in determining whether the final regulation is in the public interest. Therefore, we will review the PUC responses and final position on these topics, as well as any amendment to the language in Annex A the PUC makes in the final regulation.