

RULES AND REGULATIONS

Title 52—PUBLIC UTILITIES

PENNSYLVANIA PUBLIC UTILITY COMMISSION

[52 PA. CODE CH. 53]

[L-2014-2411278]

Paper Billing Fees

The Pennsylvania Public Utility Commission (Commission), on October 22, 2015, adopted a final rulemaking order to amend existing regulations to prohibit tariff provisions that charge customers a fee to receive a paper bill.

Executive Summary

Section 1509 of the Public Utility Code imposes the obligation on all energy, water, wastewater and telecommunications utilities, including all varieties of telecommunications utilities certificated by the Public Utility Commission, to send customers a monthly bill and it establishes the right of the customer to receive that bill. 66 Pa.C.S. § 1509. In addition, recovering costs regarding monthly bills allows for an excessive recovery of these costs and failing to provide customers with an itemized monthly bill free of charge constitutes unreasonable and inadequate service, actionable under Section 1501 of the Public Utility Code. 66 Pa.C.S. § 1501. Chapter 30 contains several other important declarations of policy that support the prohibition on allowing jurisdictional public utilities, and particularly telephone utilities, to impose such a charge or fee. 66 Pa.C.S. § 3011. Pursuant to the authority of Sections 501, 1301, 1501, 1509, and 3011 of the Public Utility Code, the Commission is amending its existing regulations in Chapter 53 (Tariffs for Noncommon Carriers) of the Pennsylvania Code to add Section 53.85 as a new section.

On March 20, 2014, the Commission concluded an investigation into the practice of charging a paper billing invoice fee (PBIF), and issued an Order finding that imposing a separate line item charge to recover the costs for the provision of monthly paper bills is not consistent with the Public Utility Code, Commission regulations, long standing precedent, and well-established practices of Pennsylvania public utilities.

Public Meeting held
October 22, 2015

Commissioners Present: Gladys M. Brown, Chairperson; John F. Coleman, Jr., Vice Chairperson; Pamela A. Witmer; Robert F. Powelson; Andrew G. Place

Amendment to 52 Pa. Code Chapter 53; Paper Billing Fees; Doc. No. L-2014-2411278

Final Rulemaking Order

By the Commission:

In accordance with Section 501 of the Public Utility Code, 66 Pa.C.S. § 501, the Commission on December 4, 2014, formally commenced its rulemaking process to amend its existing regulations in Chapter 53 (Tariffs for Noncommon Carriers) of the Pennsylvania Code. On that date, the Commission issued a Proposed Rulemaking Order proposing to add Section 53.85 as a new section to Chapter 53. Comments were filed by various interested parties, including the Independent Regulatory Review

Commission. The Commission has reviewed those comments and issues this Final Rulemaking Order.

Background and Procedural History

Initially, this matter came before the Commission when Cordia Communications Corporation (Cordia) filed, on October 1, 2008, a Petition for Designation as an Eligible Telecommunications Carrier (ETC) for applicable federal universal service funding purposes (Petition). The Office of Consumer Advocate (OCA) filed formal comments to Cordia's Petition, wherein the OCA disclosed that Cordia is charging a fee of \$1.25 to customers who elect to receive a paper bill.

In an Opinion and Order entered June 7, 2010, the Commission denied Cordia's Petition without prejudice, directed the drafting of a policy statement on ETC Standards, and initiated an investigation into the practice of paper invoice charges and whether tariff provisions of certain facility-based and non-facility-based telecommunication carriers for paper billing invoice fees (PBIFs) are inconsistent with the Public Utility Code, Commission billing regulations, and other relevant authority. Petition of Cordia Communication Corp., for Designation as an Eligible Telecommunications Carrier under Section 214(e) of the Telecommunications Act of 1996 and 47 C.F.R. §§ 54.101, 201—207, P-2008-2014444 (June 7, 2010). Pending the results of the investigation, the Commission did not rule on Cordia's tariff in the June 7, 2010 Opinion and Order.

On May 14, 2010, Cavalier Telephone Mid-Atlantic, LLC (Cavalier) filed with the Commission revised local tariff pages for its Telephone Tariff Pa. P.U.C. No. 1, seeking to introduce a PBIF of \$3.95 for business customers who wish to receive paper invoices rather than electronic invoices (Tariff Supplement 35). On May 26, 2010, Cavalier filed revised intrastate interexchange tariff pages for its Tariff Pa. P.U.C. No. 2, seeking to introduce a PBIF for long-distance business customers who wish to receive paper invoices rather than electronic invoices (Tariff Supplement 3). Fixed Utility Services (now Technical Utility Services) Commission staff requested that Cavalier withdraw both proposed tariff supplements because of its belief that Cavalier was in violation of applicable law and regulations.

Cavalier filed a Petition for Review and Answer to a Material Question (Petition for Review) on June 11, 2010. The question presented was "[s]hould Cavalier's proposed Tariff Supplements introducing a Paper Bill Invoice Fee ("PBIF") for business customers be permitted to become effective on July 1, 2010?" On June 21, 2010, Cavalier filed a Brief in Support of its Petition for Review, in which it reiterated and expanded upon the arguments made in its Petition for Review and Answer to a Material Question. In its Brief, Cavalier also noted that its proposed tariff supplements would apply only to business customers, as distinguished from residential customers in the Cordia's ETC Petition.

In an Order entered July 29, 2010, the Commission, inter alia, permitted Cavalier's proposed tariff supplements to go into effect, subject to the results of a final Commission Order in Investigation of Practice of Paper Invoice Charges (Investigation) at Docket No. I-2010-2181481. *Pennsylvania Public Utility Commission v. Cavalier Telephone Mid-Atlantic, L.L.C.*, R-2010-2176403 and R-2010-2179527 (July 29, 2010). The Commission also ordered that the Investigation include additional

issues referenced in the body of the Order. Finally, Cavalier's Petition for Review was granted in part, and denied in part, consistent with the July 29, 2010 Order, without prejudice to the right of Cavalier to raise the PBIF issues in the Investigation at Docket No. I-2010-2181481. Id at pages 6-7.

The Commission followed this with a Notice of Investigation secretarial letter, published August 14, 2010, in the *Pennsylvania Bulletin* (40 Pa.B. 4728). The Notice identified the PBIF issues and sought comment from interested parties. On September 8, 2010, as part of this Investigation, the Commission issued a secretarial letter that enclosed a questionnaire seeking information on paper billing practices of all telecommunication carriers.

The Notice sought comments about billing practices in general. Comments were sought from interested parties on the issues of "tariff parity," the legality of the application of paper billing fees for customers receiving bundled services, whether the paper billing fee is a price deregulated rate, and the effect of the ETA on the interpretation of Section 1509. Comments were received from Verizon Companies (Verizon),¹ AT&T,² Cavalier, the OCA, the Pennsylvania Utility Law Project (PULP), and the Pennsylvania Telephone Association (PTA). OCA, Cavalier, Verizon, and AT&T also filed reply comments.

On March 20, 2014, an Order was issued resolving the Investigation. Investigation of Practice of Paper Invoice Charges (Investigation Order), Docket No. I-2010-2181481 (March 20, 2014).³ The Commission concluded that imposing a separate line item charge to recover the costs for the provision of monthly paper bills is not consistent with the Public Utility Code, Commission regulations, long standing precedent, and well-established practices of Pennsylvania public utilities. The Commission also concluded that recovering costs regarding monthly bills allows for an excessive recovery of these costs and failing to provide customers with an itemized monthly bill free of charge constitutes unreasonable and inadequate service, actionable under Section 1501 of the Public Utility Code. 66 Pa.C.S. § 1501.

On April 4, 2014, Verizon filed a Petition for Reconsideration of the Commission's March 20, 2014 Investigation Order. See 52 Pa. Code § 5.572. Verizon argued that the Order contravenes the plain language of the Public Utility Code and exceeds the Commission's legal authority. On July 24, 2014, the Commission denied Verizon's Petition for Reconsideration and found that the regulation of paperless billing is clearly within the bounds of the law and the Commission's legal authority (Reconsideration Order). On October 23, 2014, the Commission issued an Order addressing Cavalier's outstanding tariff issue by declaring the supplement unlawful and ordering Cavalier to remove the tariff provision that allowed the Company to charge a PBIF to its local and long distance business customers.

The Commission's March 20, 2014 Investigation Order directed Law Bureau to prepare a narrowly focused Notice of Proposed Rulemaking addressing the paper

billing fee issue. Therefore, on December 4, 2014, the Commission issued a Proposed Rulemaking Order to formally commence this rulemaking proceeding to amend existing regulations; the rulemaking proposed adding 52 Pa. Code § 53.85 to prohibit tariff provisions that charge customers a fee to receive a bill. The proposed regulation identified in Annex A to the Proposed Rulemaking Order is applicable to the entire telecommunications industry and implements the Commission's March 20, 2014 Investigation Order to prohibit the charging of a fee for paper bills. In addition, 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 Proposed Rulemaking Order was published in the *Pennsylvania Bulletin* on March 14, 2015, with comments to be filed within 30 days. Comments to the Proposed Rulemaking Order were timely filed by Verizon, the OCA, the PTA, the Pennsylvania Consumer Advisory Council, AT&T Corp. and Teleport Communications America, LLC (collectively AT&T), the American Forest & Paper Association (AF&PA), and the Consumers for Paper Options. Finally, the Independent Regulatory Review Commission (IRRC) filed comments in preparation of the final version of this regulation. The IRRC comments are not a formal approval or disapproval of the regulation but specify the regulatory review criteria that have not been met.

Comments to the Proposed Rulemaking Order

The PUC Consumer Advisory Council, AF&PA, the Consumers for Paper Options, and the OCA all support the proposed rulemaking. The Consumer Advisory Council points out that 28% of households in Pennsylvania are occupied by a person at least 65 years old, and they submit that many of these households do not own a computer and have difficulty paying for Internet service. The Consumer Advisory Council believes that imposing an additional charge for paper billing is unreasonable and unjust and that payment for a service warrants receiving an itemized bill regardless of access to the Internet.

According to AF&PA, the Association seeks to advance a sustainable U. S. pulp, paper, packaging, and wood products manufacturing industry through fact-based public policy and marketplace advocacy. Based on a 2013 Census Bureau Report on U. S. computer and Internet use, AF&PA states that the ability to access information electronically is still not readily available to many Americans. AF&PA noted that 25.6% of the U. S. population lacks broadband access at home and, that in a recent Pew Internet Project Report, 41% of Americans age 65 and older do not use the Internet or email. AF&PA argues that Americans of all ages living in all regions of our country deserve to have equal access to information and services, either digitally or on paper, without discriminatory fees. AF&PA supports the Commission for protecting customer interests of those who elect to receive a paper bill without penalty and urges swift implementation of the rule.

Consumers for Paper Options (CPO), a coalition of individuals and organizations advocating for access to paper-based services and information, strongly supports the Commission's proposed rule prohibiting state utilities from charging their customers for paper billing statements. CPO stated that 50% of seniors are without a computer and that 25% of American households are without consistent internet access, according to 2010 U. S. Census data. According to CPO, a 2013 survey found that an overwhelming majority of American adults across all

¹ Verizon Companies filed on behalf of Verizon Pennsylvania, Inc.; Verizon North Retain Co.; Bell Atlantic Communications, Inc. d/b/a Verizon Long Distance; MCI Metro Access Transmission Service, LLC d/b/a Verizon Access Transmission Services, and MCI Communications Services, Inc.

² AT&T filed on behalf of its three Pennsylvania-certificated entities-AT&T Communications of Pennsylvania, LLC, TCG Pittsburgh, and TGG New Jersey Inc. (collectively "AT&T").

³ The full caption of the case is as follows: Investigation of Practice of Paper Invoice Charges, Docket No. R-2010-2181481; *Pennsylvania Public Utility Commission v. Cavalier Telephone Mid-Atlantic, L.L.C.*, Docket Nos. R-2010-2176403 and R-2010-2179527; Petition of Cordia Communications Corp. for Designation as an Eligible Telecommunications Carrier Under Section 214(e) of the Telecommunications Act of 1996 and 47 C.F.R. §§ 54.101, 201-207, Docket No. P-2008-2014447.

demographic groups believe that consumers should not be forced to receive information in an electronic format.

The OCA supports the Commission's proposed regulation, as necessary and appropriate to protect consumers and provide clear guidance to electric, natural gas, water, wastewater, steam, and telecommunications public utilities that the provision of public utility service includes the presentment of a paper bill or invoice, without separate fee, charge, or other rate. The OCA asserts that the Commission's proposed regulation should be adopted without modification as the proposed regulation provides clear and needed notice to the subject public utilities that the imposition of fees for furnishing a paper bill or invoice for public utility service is not allowed. The OCA believes that the proposed regulation is appropriately included in Chapter 53 which applies to electric, natural gas, water, wastewater, steam and telecommunications utilities since the Commission has determined that public utilities have an obligation pursuant to Section 1509 to provide consumers with an itemized monthly bill for recurring public utility services. 66 Pa.C.S. § 1509.

The OCA emphasizes that, in its investigation of paper bill invoice fees practices among telecommunications utilities, the Commission determined that the provision of such public utility service inherently requires the presentment of a monthly bill and the billing itself is not a separate utility service subject to a fee or charge. The OCA submits that the proposed regulation correctly provides notice to public utilities that the act of furnishing a monthly bill for utility services rendered is not, in and of itself, a separate utility service for which the utility may impose a charge, whether by tariffed rate, supplemental fee or otherwise.

Furthermore, OCA believes that the proposed regulation reasonably preserves to consumers one option for receipt of their monthly bill or invoice for public utilities services without the additional cost or burden of an additional fee or the need to purchase Internet access devices and services as the prerequisite to use electronic billing, if offered by the public utility as an alternative. See Investigation Order at 38-39.

Finally, the OCA submits that the Commission's Investigation Order regarding the billing practices of telecommunications public utilities, and the Commission's early consideration of the importance of consumer choice when electronic billing is offered by other public utilities subject to Chapter 56 of the Commission's regulations, provide a sound basis for adoption of the proposed regulation to protect consumers and assure the provision of reasonable public utility service.

PTA, AT&T, and Verizon individually oppose the adoption of the proposed rulemaking. Collectively, however, the arguments are essentially the same: that telecommunication companies should be allowed unfettered discretion and latitude with respect to business practices in responding to the customer demands of the market. Rather than address legal arguments in support of their positions, the opponents advocate for the benefits of paperless billing and continue to maintain there is no legal authority for prohibiting utilities from charging these fees, especially where a public utility directly competes with unregulated alternative service providers.

Verizon has chosen to reargue its position advocated in the Investigation. Verizon maintains that the Commission's decision on paper billing fees opposes the practice of paperless billing and its accompanying benefits like conserving environmental resources and protection against

identify theft. Verizon submits that neither the law nor the record in the Investigation supports the prohibition.

Verizon cites to the lack of any customer complaints about fees to support that customers do not object to the payment of a paper billing fee. Noting that communication services are highly competitive, Verizon argues that customers, not regulations, should drive these choices about paper billing practices.

Verizon again argues, as it did in the Investigation and in its Petition for Reconsideration, there is nothing in the Public Utility Code that prevents imposing a fee for a paper bill. According to Verizon, Section 1509 does not specifically prohibit charging for a paper bill. Moreover, Verizon still maintains that the decision violates the Electronic Transactions Act (ETA), which provides that "[i]f a law requires a record to be in writing, an electronic record satisfies the law." 73 Pa.C.S. § 2260.303(c). Verizon submits that since the Commission allegedly recognizes that an electronic bill can satisfy Section 1509, the Commission relied on the "reasonable service" requirement of Section 1501 to require the offering of a free paper bill. However, Verizon concludes that there are no facts or evidence to support the proposed regulation. Although Verizon admits that it could be unreasonable to charge for a paper bill where the customer does not have Internet access, Verizon still would conclude that this distinction in service does not justify requiring that all customers receive a free paper bill. Verizon finds as speculative the prospect that customers without Internet access would be charged to receive a paper bill.

Finally, Verizon views the proposed regulation as also violating Chapter 30's regulatory parity requirements stating that the Commission would restrict the paper billing programs for "jurisdictional" services, but the majority of voice communications today are provided by companies that are beyond this Commission's authority to regulate. Verizon again raises the argument that this is rate regulation which is contrary to Chapter 30. Verizon believes that the Commission's Investigation Order focused on rates and charges to dictate how a company recovers its billing costs. According to Verizon, if a company wishes to recover its billing costs associated with competitive services in a separate fee, that is a matter within its discretion. Moreover, Verizon does not agree that the bill has anything to do with "the ordering, installation, restoration and disconnection" of those services. 66 Pa.C.S. § 3018(b)(3).

IRRC recommends that the Commission further explain the applicability of the referenced laws and regulations in the final-form regulation. Moreover, IRRC requests that the Commission identify the appropriate statutory authority and intent of the General Assembly for supporting the regulation and include these citations in response to the Regulatory Analysis Form (RAF) question no. 8.

IRRC then notes that Commentators questioned the Commission's statutory authority to preclude them from imposing a supplemental fee for providing paper bills. Again, IRRC requests that the Commission clarify its statutory authority for this provision.

Finally, IRRC recognizes that the new language in the regulation uses the term "public utility." The term is not defined either in Title 52 of the Pa. Code or in Chapter 53, but the statutory definition of "public utility" includes a "common carrier." IRRC believes that including a definition for the term "public utility" that excludes common carriers would improve the clarity of the regulation. IRRC also suggests that the Commission should

include in the final-form regulation a summary of other states' activities regarding monthly paper billing fees.

Discussion of Comments to the Proposed Rulemaking Order

Upon review of the above written comments filed by the interested parties and IRRC, we are ready to issue a final-form regulation. See 45 P.S. § 1202; 66 Pa.C.S. § 501(b) (providing the Commission the power to make regulations, as may be necessary or proper in exercise of its powers and performance of its duties.) The parties opposing the regulation have raised some of the same arguments that were raised in the Investigation and on Reconsideration. We agreed with the OCA's position in the Investigation that the rate regulations under Section 3018(b) applicable to interexchange service do not control the issue of whether a PBIF may be charged to provide customers with the monthly bill required by the Public Utility Code under Section 1509. (Investigation Order at 26). We again do not find any merit with the same arguments expressed here by Verizon.

We addressed the issue when we specifically declared that "PBIFs are not rates or charges within the meaning of 66 Pa.C.S. § 3018(b)" (Investigation Order at 27). Because providing a monthly bill is not a separate, stand-alone service, "prohibiting a paper bill fee is not the act of fixing or prescribing an interexchange competitive service rate or charge that is otherwise prohibited under Chapter 30." (See Reconsideration Order at 10). We explained that providing a monthly bill is not a stand-alone service, but a "practice necessary to receive uninterrupted telecommunication service," thus buttressing our conclusion that billing obligations under Section 1509 relate to the "ordering and disconnection" of service, services that are still under our jurisdiction under Chapter 30. Investigation Order at 26-27; 66 Pa.C.S. § 3018(b). Our position that the imposition of paper billing fees did not involve rate regulation was clear and in direct opposition to Verizon's interpretation of Chapter 30. However, since neither Verizon nor any other party chose to appeal the Investigation Order or the Reconsideration Order, the issue is resolved, and we shall decline to reconsider the matter in a rulemaking.

Verizon argues again in this rulemaking (Verizon Comments, page 5) that prohibiting a separate paper billing fee violates the regulatory parity declaration of policy in Chapter 30.⁴ We note, however, that Chapter 30 contains several other important declarations of policy that support the prohibition on allowing jurisdictional public utilities, and particularly telephone utilities, to impose such a charge or fee.

Chapter 30 expressly declares that it is the policy of the Commonwealth to maintain universal service at affordable rates⁵ and to ensure that such service is available to customers on a nondiscriminatory basis.⁶ Separate charges or fees for a paper bill increase costs to consumers, particularly those low-income consumers who already face challenges in maintaining telecommunications service. Those challenges are compounded in situations where consumers lack reliable broadband access to the Internet or cannot afford it.⁷

Also, under Chapter 30, we retain jurisdiction over the ordering, installation, suspension, termination, and restoration of a telecommunications service, regardless of whether the service is price regulated or competitive.⁸ A paper bill often conveys useful information related to the ordering and disconnection, suspension, termination, and restoration of any price regulated or competitive service provided by a jurisdictional telephone utility. Thus, receiving a paper bill at no additional charge helps ensure that customers, especially those without Internet access or those who are unable to purchase Internet access, continue to have access to information critical to maintaining uninterrupted telecommunications service in a nondiscriminatory fashion.

As previously explained, Chapter 30 provides the Commission with additional legal authority to prohibit jurisdictional telephone utilities from imposing a separate paper billing fee. Specifically, the Commission retains jurisdiction over the ordering, installation, suspension, termination, and restoration of a telecommunications service,⁹ regardless of whether the service is price regulated or competitive. Billing is not a separate, stand-alone service, and the right to receive a bill and to know the amount owed for services rendered is a prerequisite to avoiding suspension/termination of service and, if need be, to reconnecting service. Given the relationship of billing to the ordering, installation, suspension, termination, or restoration of service that are matters within our regulatory purview, we believe the Commission maintains appropriate jurisdiction over whether customers should pay a separate paper billing fee.

The Commission also retains authority under Chapter 30 to establish additional requirements necessary to protect customers.¹⁰ As previously discussed, we view the prohibition of a separate paper billing fee as necessary to protect customers and ensure that service is available on a nondiscriminatory basis, especially for those without Internet access or who are unable to purchase Internet access.

The facts in the record support this conclusion. For example, 28% of Pennsylvanians are aged 65 or older.¹¹ Moreover, 50% of elderly Americans lack a computer or consistent broadband access while 25% of Americans lack consistent Internet access.¹² Finally, a 2014 record survey by the U.S. Postal Service shows that over 80% of Americans oppose receiving a bill for utility service in electronic format only, and over 90% prefer to receive their utility bill by mail, clearly including those who have Internet access or can afford to buy it.¹³ A mandatory fee for all classes of consumers directly impacts universal service for those without Internet access or an ability to buy Internet service even if it is available. It also overlooks the overwhelming public opposition to mandatory electronic billing, including members of the public who have Internet access.

The Commission concludes that these specific provisions applicable to jurisdictional telecommunications public utilities and Sections 501, 1301, 1501, and 1509, collectively, provide the Commission with authority to prohibit a separate paper billing fee because billing is an

Eligible for Support, Docket No. 09-197, and In re: Connect America Fund, Docket No. 10-90. See also In re: Lifeline Support, Comments of the Pa. PUC (August 31, 2015).

⁸ See 66 Pa.C.S. § 3019(b)(2).

⁹ 66 Pa.C.S. § 3019(b)(2). We note that the Commission has similar authority over the ordering, installation, etc. of electric, gas, water/wastewater service, and steam heat service under Chapter 14 of the Code and Chapter 56 of the Commission's regulations.

¹⁰ 66 Pa.C.S. § 3019(b)(3).

¹¹ Comments of the Public Utility Consumer Advisory Counsel, pp. 1-3.

¹² Comments of the Consumers For Paper Options, pp. 1-3.

¹³ Id. at notes 4 and 5.

⁴ 66 Pa.C.S. § 3011(13).

⁵ 66 Pa.C.S. § 3011(2). Universal service is part of the Commission's legal mandate. It is required of jurisdictional telecommunications public utilities with Carrier of Last Resort obligations, which includes the provision of retail services to anyone who requests them and the rendering of various network access functionalities (e.g., ability to make 911/E911 calls).

⁶ See 66 Pa.C.S. § 3011(3).

⁷ See *infra* notes 9-12; accord, In re: Lifeline and Link-Up America Reform, Docket No. 11-42 and In re: Lifeline, Docket No. 11-42, In re: Telecommunications Carriers

integral part of utility service, not a separate service. That prohibition must be considered in conjunction with the impact on universal service set out in the Investigation Order and the responses to IRRC's questions that are contained in the final rulemaking order being adopted today, especially for that considerable percentage of consumers who lack Internet service or who do not use the Internet.¹⁴ The Commission's legal and policy conclusions that charging for a paper bill is unreasonable and inadequate service, given the impact on consumers, including those without Internet access or who are unable to purchase Internet access, are more than supported by these additional provisions addressing universal, adequate, and reliable service.

On the issue of the application of Section 1501, we determined that consumers are entitled to adequate information regarding billing for jurisdictional and non-jurisdictional services. Based on that analysis, we maintain our position that failing to provide customers with an itemized monthly bill free of charge constitutes a lack of adequate information and thus, is unreasonable service under Section 1501.¹⁵ 66 Pa.C.S. § 1501. For example, it was clear to this Commission that "charging a customer who does not have Internet access and the technological ability to receive an electronic bill for a paper bill is not reasonable and adequate service." Investigation Order at 28. Specific comments filed on this proposed rulemaking bolster that conclusion. See, e.g., AF&PA Comments.

Moreover, consistent with our conclusion reached in the Investigation Order (page 27), we conclude that requiring utilities to provide customers with monthly paper bills by mail without an additional charge does not violate the ETA. It is questionable whether the ETA even applies to the practice of charging a PBIF because our decision does not hold that utilities cannot utilize electronic bills or that customers cannot request electronic bills. The ETA clearly establishes that an electronic bill has legal effect and enforceability under the ETA if the customer consents to receiving the bill electronically (73 Pa.C.S. § 2260.301(b)), and the Investigation Order (pages 27-30) cites the ETA to support the Commission's conclusion that the issue in the Investigation is not about our acceptance of electronic bills. Moreover, the decision does not preclude a customer from seeking an electronic bill in lieu of a paper bill. Rather, the Investigation addressed whether a fee can be charged for a paper bill if a customer refuses to or is unable to receive an electronic bill. The Order does not prohibit the usage of electronic bills, but answers "no" to the question of whether a fee can be charged for a paper bill if a customer refuses or is unable to receive an electronic bill. Therefore, because electronic billing may be used in accordance with the ETA to satisfy the Section 1509 obligation to send customers an itemized monthly bill, the ETA has no impact on the application of Section 1509.

A summary of the ETA provisions further supports our conclusion that the proposed regulation does not violate the ETA. The ETA establishes that consumer rights under existing laws should be protected, compliance with other applicable substantive laws must be followed, and if a record is to be communicated by a specific method, that requirement must be followed. See 73 Pa.C.S. §§ 2260.14,

2260.102(3), and 2260.304(b), respectively. In fact, allowing a fee to be charged to receive a paper bill would be contrary to the ETA's declaration of protecting the rights of consumers under existing laws.¹⁶ See 73 Pa.C.S. § 2260.102(3). This includes the preservation of consumer rights existing under Sections 1501 and 1509 of the Public Utility Code.

Furthermore, the ETA does not apply unless both parties consent to a bill in electronic form. If accepting an electronic bill is the only way for a customer to avoid incurring additional costs, we do not believe the customer's actions are voluntary. 73 Pa.C.S. § 2260.301(b); Investigation Order at 30. If a customer's actions are not voluntary, the customer has not consented, and the ETA would not apply. Moreover, the Commission does support and encourage online billing, provided consumers are protected. See e.g., Rulemaking to Amend the Provisions of 52 Pa. Code, Chapter 56, Docket No. L-00060182, Proposed Rulemaking Order, Attachment A at 76 (September 26, 2008). This protection includes ensuring that customers are not coerced into accepting an electronic bill to avoid incurring additional costs.

On the issue of recovering paper billing invoice costs, we determined that the "costs of providing a monthly paper bill are ordinary operating costs that should be included in the service rate, not a separate line item paper billing fee to customers." Investigation Order at 34. We then questioned whether these billing costs are even unrecovered by the utility, as these costs have always been recovered "using traditional cost recovery methodologies." Id.

In addition to violating Commission policy and industry practice, we ultimately reached the conclusion that recovery of billing invoice costs through a separate fee would also allow the utility to "overly or excessively recover these costs." Id. Billing is a necessary administrative function that is part of providing the utility service. The expense of creating and providing a bill to each utility customer traditionally has been included in the operating expenses of the utility. Sending your customers a bill is no more a separate service than maintaining registrations and inspections on maintenance vehicles. In other words, billing is a part of providing service, and these normal operating costs should be included in the "rates for services and not imposed as a separate line item charge." Investigation Order at 35.

IRRC raised an issue with respect to statutory authority and conformity with legislative intent. IRRC has also suggested that we improve the clarity for our statutory authority to preclude imposing a supplemental fee for providing paper bills. Finally, IRRC believes that including a definition for the term "public utility" that excludes common carrier would improve clarity of the regulation, and IRRC asked that the PUC compare the proposed rulemaking to other states. We shall address these matters raised by IRRC.

The general powers provision of the Public Utility Code, 66 Pa.C.S. § 501, authorizes or empowers the Commission to make regulations. Clearly, this section, under paragraph (a), authorizes the Commission to "carry out, by its regulations" the provisions of the Public Utility Code. Additionally, the Commission, under paragraph (b), has administrative power to regulate all public utilities and make regulations necessary to perform that duty. See 66 Pa.C.S. § 501(a) and (b). Providing a bill is a necessary element of providing reasonable utility service pur-

¹⁴ Comments of the Office of Consumer Advocate; Comments of the Consumers For Paper Options, and Comments of the Public Utility Commission Consumer Advisory Council.

¹⁵ The term "service" is used in its broadest and most inclusive sense and includes all acts done by the public utility. 66 Pa.C.S. § 102. Under Code Section 1501, utility "service" is not confined to providing the underlying service, but rather, includes any and all acts related to that function. See *PECO Energy Co. v. Township of Upper Dublin*, 922 A.2d 996 (Pa. Cmwlth. 2007). This includes the act of billing the customer for the utility service being provided.

¹⁶ See also the Uniform Law Comment to 73 Pa.C.S. §§ 2260.102(3) regarding the intent to preserve the right of a party to refuse electronics.

suant to the Public Utility Code. Thus, the prohibition of paper billing fees, which are included in a carrier's operating expenses, is necessary in the exercise of our powers and the performance of our duties to enforce the Public Utility Code. 66 Pa.C.S. § 501(b).

Section 1301 of the Public Utility Code requires rates to be just and reasonable, and our decision to not allow charging for a paper bill will prevent public utilities from over-recovery of billing costs. 66 Pa.C.S. § 1301. In addition, Section 1501 requires utility service, which includes billing, to be reasonable and adequate, and charging a customer to receive a paper bill because the customer, for example, does not have access to the Internet is not reasonable service. Finally, Section 1509 establishes a public utility's billing obligations and a customer's right to receive monthly and itemized bills. These statutes support the subject regulation, and other citations will be removed from the RAF.

We explained in the Background and Procedural History that this rulemaking is the product of an Investigation. Comments to the Investigation were filed by four interested parties who opposed the prohibition of charging a fee to receive a paper bill. Those comments and accompanying arguments were addressed in our Investigation Order. Therein, we established the statutory authority for our decision and addressed the issues again on Reconsideration. The Investigation Order, which established the Commission's statutory authority under Sections 501, 1301, 1501, and 1509 to preclude these telecommunication industry commentators from imposing a supplemental fee for providing paper bills, was not appealed and is final.

Finally, as established in Annex A, the new regulation will be located in Subpart C. Fixed Service Utilities and under Chapter 53. Tariffs for Noncommon Carriers. Therefore, IRRC correctly points out that the location shall make the prohibition applicable to all noncommon carrier public utility industries. Rulemaking Re Amendment to 52 Pa. Code Chapter 53; Paper Billing Fee, Docket No. L-2014-2411278 (Proposed Rulemaking Order issued December 4, 2014), page 5. In addition, IRRC notes that the regulatory language of the provision uses the term "public utility," but the statutory definition under Section 102 of the Public Utility Code, 66 Pa.C.S. § 102, covers "transporting passengers or property as a common carrier." IRRC recommends including a definition for the term "public utility" that excludes "common carriers" to improve the clarity of the regulation.

We understand the concerns of IRRC, but we are reluctant to establish a definition of "public utility" that differs in any way from the statutory definition provided under the Public Utility Code. Application of the regulation addressing paper billing fees is necessarily limited to fixed service utilities by virtue of its placement under Subpart C Fixed Service Utilities, Chapter 53. Tariffs for Noncommon Carriers. Accordingly, Section 53.85 would not apply to utilities that transport passengers or property as common carriers.

As a part of our rulemaking process, and in conjunction with IRRC's comments, we have reviewed how neighboring states are addressing the issue of fees for paper billing. We have contacted the Public Utility Commissions of New York, New Jersey, Maryland, and Ohio regarding monthly paper billing fees. In New York, no utilities charge these fees but some utilities give a small credit if the customer agrees to receive billing statements and process payments electronically. In New Jersey, the consumer advocate has taken the position that the customer

has the right to receive a paper bill without additional charges, and utilities that have tariff language allowing such a charge are asked to remove the language from the tariff. Similarly, Maryland has not allowed utilities to charge this fee to receive a paper bill. In Ohio, utilities do not charge a customer a fee to receive a paper bill unless the customer wants both electronic billing and paper billing.

To summarize, this rulemaking was necessary: (1) to maintain billing as part of the basic utility service provided and not as a separate service; (2) to protect customers from being double charged for certain operational expenses; (3) to prohibit the disparate treatment of customers without the means to receive an electronic bill; and (4) to prevent customers from being coerced into accepting electronic billing.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on February 27, 2015, the Commission submitted a copy of the notice of proposed rulemaking, published at 45 Pa.B. 1264 (March 14, 2015), to IRRC and the Chairpersons of the House Consumer Affairs Committee and the Senate Consumer Protection and Professional Licensure Committee (House and Senate Committees) for review and comment.

Under section 5(c) of the Regulatory Review Act, the Commission shall submit to IRRC and the House and Senate Committees copies of comments received during the public comment period, as well as other documents when requested. In preparing the final-form rulemaking, the Commission has considered all comments from IRRC, the House and Senate Committees and the public.

Under section 5.1(j.2) of the Regulatory Review Act (71 P.S. § 745.5a(j.2)), on March 9, 2016, the final-form rulemaking was deemed approved by the House and Senate Committees. Under section 5.1(e) of the Regulatory Review Act, IRRC met on March 10, 2016, and approved the final-form rulemaking.

Conclusion

Accordingly, under sections 501, 1301, 1501 and 1509 of the Public Utility Code (66 Pa.C.S. §§ 501, 1301, 1501 and 1509); sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P.S. §§ 1201 and 1202) and the regulations promulgated thereunder, 1 Pa. Code §§ 7.1, 7.2 and 7.5; section 204(b) of the Commonwealth Attorneys Act (71 P.S. § 732.204(b)); section 5 of the Regulatory Review Act (71 P.S. § 745.5); and section 612 of The Administrative Code of 1929 (71 P.S. § 232) and the regulations promulgated thereunder at 4 Pa. Code §§ 7.231—7.234, we are adopting the final regulations set forth in Annex A; *Therefore*,

It Is Ordered That:

1. The regulations of the Commission, 52 Pa. Code Chapter 53, are amended by adding § 53.85 to read as set forth in Annex A.

2. The Secretary shall serve a copy of this Final Rulemaking Order and Annex A on the Office of Consumer Advocate, the Office of Small Business Advocate, and the Pennsylvania Telephone Association. The Order shall be posted and made available electronically on the Commission's website.

3. The Secretary shall certify this Final Rulemaking Order and Annex A and deposit them with the Legislative Reference Bureau to be published in the *Pennsylvania Bulletin*.

4. The Secretary shall submit this Final Rulemaking Order and Annex A to the Office of Attorney General for approval as to legality.

5. The Secretary shall submit this Final Rulemaking Order and Annex A to the Governor's Budget Office for review of fiscal impact.

6. The Secretary shall submit this Final Rulemaking Order and Annex A for review by the designated standing committees of both houses of the General Assembly, and for review and approval by the Independent Regulatory Review Commission.

7. The final regulations become effective upon publication in the *Pennsylvania Bulletin*.

8. The contact person for this proposed rulemaking is Terrence J. Buda, Assistant Counsel, Law Bureau, (717) 787-5000. Alternate formats of this document are available to persons with disabilities and may be obtained by contacting the Regulatory Coordinator, Law Bureau, (717) 787-5000.

ROSEMARY CHIAVETTA,
Secretary

(Editor's Note: See 45 Pa.B. 1623 (March 26, 2016) for IRRC's approval order.)

Fiscal Note: Fiscal Note 57-308 remains valid for the final adoption of the subject regulation.

Annex A

TITLE 52. PUBLIC UTILITIES

PART I. PUBLIC UTILITY COMMISSION

Subpart C. FIXED SERVICE UTILITIES

CHAPTER 53. TARIFFS FOR NONCOMMON CARRIERS

PAYMENTS, DEPOSITS AND CHARGES

§ 53.85. Paper billing fees.

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.

[Pa.B. Doc. No. 16-593. Filed for public inspection April 8, 2016, 9:00 a.m.]
