

RULES AND REGULATIONS

Title 52—PUBLIC UTILITIES

PENNSYLVANIA PUBLIC UTILITY COMMISSION

[52 PA. CODE CH. 23]

[L-2008-2057661]

Streamlining the Rate Increase Procedures for Small Motor Carriers

The Pennsylvania Public Utility Commission (Commission) on December 2, 2010, adopted a final rulemaking order which streamlines the current procedures for rate increase requests submitted by motor carriers of passengers with gross operating revenues less than \$500,000.

Executive Summary

The Commission acknowledges that some small motor carriers of passengers have had difficulty keeping the detailed business records needed in order to amend their tariffs for the purpose of raising rates and operating revenues. The Commission believes it is appropriate to streamline or simplify the current procedures for rate increase requests submitted by small motor passenger carriers with gross operating revenues less than \$500,000. Accordingly, based upon our experience with small motor passenger carriers, and our recent analysis of rate increase cases filed by them, the Commission amends our existing regulations at Chapter 23 of the *Pennsylvania Code*, which govern common carriers and establish the procedures for rate increase filings.

The Commission amends our existing regulations in order to simplify the rate process for small motor passenger carriers in the following manner:

1. Define small motor carrier of passengers by gross operating revenue. The Commission opines that the gross intrastate operating revenue threshold for the classification of a "small" carrier shall be less than \$500,000.

2. Permit a small motor passenger carrier (i.e. gross intrastate operating revenue less than \$500,000) to request a revenue increase each year without filing detailed, supporting financial information, other than: 1) total gross annual intrastate revenue for the most recent fiscal year, 2) the dollar amount of increased revenue that the projected rate increase is expected to produce, 3) the total projected operating revenue after the revenue increase, 4) the total projected operating expenses, and 5) the resulting operating ratio.

3. Establish a 1-year stay-out provision for small motor passenger carriers that prohibits them from requesting another increase in rates for one year following a prior Commission-approved rate increase. An exception to the 1-year stay-out provision permitting carriers to come in for an increase more often would be included for small carriers with operating ratios above 93%.

Public Meeting held
December 2, 2010

Commissioners Present: James H. Cawley, Chairperson; Tyrone J. Christy, Vice Chairperson; John F. Coleman, Jr.; Wayne E. Gardner; Robert F. Powelson

Final Rulemaking for Streamlining the Rate Increase Procedures for Small Motor Passenger Carriers;
Doc. No. L-2008-2057661

Final Rulemaking Order

By the Commission:

The Commission believes it is appropriate to streamline or simplify the current procedures for rate increase requests submitted by motor carriers of passengers with gross operating revenues less than \$500,000. Accordingly, this order constitutes the final rulemaking which amends our existing regulations at Chapter 23 of the *Pennsylvania Code* that governs common carriers and establishes the procedures for rate increase filings.

Background

The Commission, at its public meeting held April 24, 1987, issued an Order at Docket L-860014 adopting revisions to its existing regulations governing motor carrier filing requirements for proposed increases in rates and operating revenues at 52 Pa. Code §§ 23.63 and 23.64. The amendments required motor carriers to file additional information such as income and expense statements, total interstate and intrastate passenger miles and statements generated from terminals and facilities for the preceding 12 months when proposed rate changes or proposed revenue increase requests were filed with the Commission. The Commission adopted these revised regulations in order to elicit information from carriers that would enable the Commission to process rate matters promptly.

By Order entered January 23, 2009, the Commission initiated this instant rulemaking for the purposes of streamlining the current procedures for rate increase requests submitted by motor carriers of passengers with gross operating revenues less than \$500,000. Our current rules require motor carriers to provide detailed financial information to support their applications for rate increases. The Commission noted that some small motor carriers of passengers have had difficulty keeping the detailed business records needed in order to amend their tariffs for the purpose of raising rates and operating revenues. The Commission further noted that this lack of expertise with the ratemaking process generally resulted in lengthy delays in disposing of a carrier's proposed increase in rates. The Proposed Rulemaking Order was published on March 20, 2010, in the *Pennsylvania Bulletin* at 40 Pa.B. 1531. IRRC filed comments to the proposed regulations. No public comments were filed.

Discussion

The Commission's existing rules at 52 Pa. Code §§ 23.63 and 23.64 governing motor carrier requests for increases in rates and operating revenues, require motor carriers to file additional information such as income and expense statements, total interstate and intrastate passenger miles and statements generated from terminals and facilities for the preceding 12 months when proposed rate changes or proposed revenue increase requests were filed with the Commission. Nevertheless, some of the "smaller" motor passenger carriers have had difficulty keeping the detailed business records needed in order to support their efforts to amend their tariffs for the purposes of raising rates and increasing carrier revenue. The failure to have all of the appropriate operational and financial records in order to support the rate increase case often resulted in the outright denial of the rate increase because the carrier failed to provide the required financial documentation. Thus, this lack of expertise and unfamiliarity with the Commission's regulatory ratemak-

ing process in general is one of the main obstacles for small motor passenger carriers when requesting rate increases. Moreover, many such carriers have had to contract with consultants or tariff agents in order to guide them through the process, which is an added expense for such carriers.

Based upon our experience with small motor passenger carriers, and our recent analysis of rate increase cases filed by them, we proposed to amend our existing regulations in order to establish a new stream-lined rate procedure that will allow small motor passenger carriers with gross operating revenues of less than \$500,000 the opportunity to obtain a revenue increase without complying with each of the provisions of section 23.64. We shall discuss the proposed regulation section by section.

Section 23.1. Definitions

The Commission proposed to incorporate the new terms “small motor carrier of passengers” and “operating ratio” into the existing section 23.1 of the *Code*. No comments were received to this section.

Resolution

In this section of the proposed regulation, we attempted to bring clarification and scope to the term “small motor carrier of passengers.” We determined that it would be appropriate to use an objective measure to define what entities are “small” motor carriers and that the gross operating revenues they receive was an appropriate means. We further determined that the gross intrastate operating revenue threshold for the classification of a “small” carrier shall be less than \$500,000. We also defined the term “operating ratio.” Since no comments were filed, we will incorporate these new definitions into section 23.1 of the *Code*.

Section 23.68. Filing requirements for small passenger carriers.

This section of the proposed regulation permits a small motor passenger carrier (i.e. gross intrastate operating revenue less than \$500,000) to request a revenue increase each year without filing detailed, supporting financial information, other than: 1) total gross annual intrastate revenue for the most recent fiscal year, 2) the dollar amount of increased revenue that the projected rate increase is expected to produce, 3) the total projected operating revenue after the revenue increase, 4) the total projected operating expenses, and 5) the resulting operating ratio. No comments were filed in response to this section.

Resolution

The sole purpose of this rulemaking is to reduce the detailed business records that many unsophisticated, smaller motor carriers have to maintain and present to us when requesting a rate increase. We have defined “small motor passenger carriers” based upon their operating revenues (in this case less than \$500,000). Because of the operating revenue of the smaller companies, it may not be necessary for the carrier to present certain information to the Commission. We believe a comparable analogy is that there are different tax forms for individuals that request certain information from them based upon their gross income and overall assets, e.g., 1040EZ, 1040A, etc. Not every person has to submit the same financial information to the IRS. The PUC is attempting to establish less burdensome requirements for small carriers by requiring them to: 1) maintain a more simplistic record keeping system, and 2) allow these operators to make their own rate case presentation by requiring straightforward in-

come and expense information from carriers that still permits the Commission to determine if the revenue increase developed from the proposed raise in rates is justified for the carrier and reasonable for the public. Since no comments were received in response to the section, we will incorporate the proposed section 23.68 in the final-form regulation.

Section 23.69. Stay-out provision.

This proposed section establishes a one-year stay-out provision which prohibits small motor passenger carriers from requesting another increase in rates for one year following a prior Commission-approved rate increase. An exception to the one-year stay-out provision permitting carriers to come in for an increase more often would be included for small carriers with operating ratios above 93%.

Comments

IRRC filed comments to this proposed section. IRRC states that in response to question 11 of the Regulatory Analysis Form, the Commission cites 66 Pa.C.S. §§ 1301 and 1308 as the statutory authority for this regulation. IRRC notes that section 1301 of the Public Utility Code (Code), 66 Pa.C.S. § 1301, requires rates to be reasonable. Additionally, IRRC further notes that section 1308 of the Code, 66 Pa.C.S. § 1308 addresses voluntary changes in rates. IRRC states that the Commission did not cite any direct statutory authority for the one-year stay-out requirement. IRRC suggest that if the Commission is unable to establish direct authority for the stay-out provision, it should delete it.

Resolution

The stay-out provision was instituted so that carriers cannot use the streamlined rate procedure more than once in a short time period, i.e., one year. The Commission has made this a condition for a motor carrier that elects to seek a rate increase by using the streamlined procedures. We have the statutory authority to impose this condition (the stay-out provision) under section 501 of the Code, 66 Pa.C.S § 501(b). We note that a small passenger carrier who utilizes the stream-lined rate process and is granted a rate increase, could request another rate increase previous to the expiration of the one-year stay out provision by filing a general rate increase that complies with the provisions of 66 Pa.C.S., Section 1308, and 52 Pa. Code, Sections 23.61 to 23.64. They just could not use the stream-lined rate procedure set forth in the regulations. Accordingly, we will incorporate this proposed section in the final-form regulation.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on March 4, 2010, the Commission submitted a copy of the notice of proposed rulemaking, published at 40 Pa.B. 1531 (March 20, 2010), to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the House Committee on Consumer Affairs and the Senate Committee on Consumer Protection and Professional Licensure for review and comment.

Under section 5(c) of the Regulatory Review Act, IRRC and the House and Senate Committees were provided with copies of the 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 June 15, 2011, 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 June 16, 2011, and approved the final-form rulemaking.

Conclusion

Consistent with our authority and obligations under the Public Utility Code, particularly, 66 Pa.C.S. §§ 501, 1301 and 1308, the Commission is establishing rules and regulations that establish a new stream-lined rate procedure that will allow small motor passenger carriers with gross operating revenues of less than \$500,000 the opportunity to obtain a revenue increase without complying with each of the provisions of section 23.64 of the *Pennsylvania Code*. Accordingly, under sections 501 and 1501 of the Public Utility Code (66 Pa.C.S. §§ 501 and 1501); 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 745.5 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—7.235, we find that the regulations set forth in Annex A should be approved; *Therefore*,

It Is Ordered That:

1. The Secretary shall serve a copy of this order and Annex A upon the Office of Consumer Advocate, the Office of Small Business Advocate, the Office of Trial Staff and all jurisdictional small motor passenger carriers.
2. The Secretary shall certify this order and Annex A and deposit them with the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.
3. The Secretary shall submit this order and Annex A to the Office of Attorney General for approval as to legality.
4. The Secretary shall submit this order and Annex A to the Governor's Budget Office for review of fiscal impact.
5. The Secretary shall submit this order and Annex A for review by the designated standing committees of both houses of the General Assembly, and for review and approval by IRRC.
6. The final regulations become effective upon publication in the *Pennsylvania Bulletin*.
7. That the contact persons for this final-form rulemaking are David E. Screven, Assistant Counsel, (717) 787-2126 (legal) and Michael Hoffman, (717) 783-5010 (technical). Alternate formats of this document are available to persons with disabilities and may be obtained by contacting Sherri DelBiondo, Regulatory Coordinator, Law Bureau, (717) 772-4597.
8. The regulations of the Commission, 52 Pa. Code Chapter 23, are amended by amending § 23.1 and by adding §§ 23.68 and 23.69 to read as set forth in Annex A.

ROSEMARY CHIAVETTA,
Secretary

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 41 Pa.B. 3648 (July 2, 2011).)

Fiscal Note: Fiscal Note 57-267 remains valid for the final adoption of the subject regulations.

Secretarial Letter

April 20, 2011

Re: Final Rulemaking Streamlining the Rate Increase Procedures for Small Motor Passenger Carriers

L-2008-2057661/57-267

To Whom It May Concern:

This Secretarial letter serves as a clarification to the Final Rulemaking Order at L-2008-2057661/57-267. There appears to be a potential ambiguity between section 23.69 of the final regulations and the Preamble as it pertains to the one year stay-out provision. In the Preamble, we stated that "[w]e note that a small passenger carrier who utilizes the stream-lined rate process and is granted a rate increase, could request another rate increase previous to the expiration of the one-year stay out provision by filing a general rate increase that complies with the provisions of 66 Pa.C.S., Section 1308, and 52 Pa. Code, Sections 23.61 to 23.64." See p. 6 of the Final Rulemaking Order. This was not clearly stated at section 23.69 of the final regulations. In order to clarify this perceived ambiguity, we will modify section 23.69. Accordingly, we amend section 23.69 as follows:

§ 23.69. Stay-out provision.

A small passenger carrier will not be permitted to request another increase in rates or operating revenues *under section 23.68* from the Commission for 1 year following a prior Commission approved rate increase *under section 23.68*. A small passenger carrier with gross intrastate operating revenues of less than \$500,000, but with an operating ratio that is 93% or above, shall be excepted from this 1 year stay-out restriction.

The new language is italicized. This is not a substantive change to this section of the final regulations, but rather is only a clarification that a carrier is not permitted to request a rate increase utilizing the streamlined procedures for one year following an approved rate increase under those same procedures. This clarification is consistent with the Preamble's discussion regarding the one year stay-out provision.

ROSEMARY CHIAVETTA,
Secretary

Annex A

TITLE 52. PUBLIC UTILITIES

PART I. PUBLIC UTILITY COMMISSION

Subpart B. CARRIERS OF PASSENGERS OR PROPERTY

CHAPTER 23. TARIFFS FOR COMMON CARRIERS

GENERAL PROVISIONS

§ 23.1. Definitions and applicability.

(a) *Definitions.* The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

Common carrier or carrier—A person or corporation holding out, offering or undertaking, directly or indirectly, service for compensation to the public for the transportation of passengers or household goods in use, or both, or any class of passengers or household goods in use, between points within this Commonwealth by, through, over, above or under land, water or air, including forwarders, but not motor common carriers of property, contract carriers, brokers or any bona fide cooperative association transporting property exclusively for the members of the association on a nonprofit basis.

Contract carrier—A person or corporation who or which provides or furnishes transportation of passengers or household goods in use, or both, or any class of passengers or household goods in use, between points within this Commonwealth by motor vehicle for compensation, whether or not the owner or operator of the motor vehicle, or who or which provides or furnishes, with or without drivers, any motor vehicle for the transportation, or for use in transportation, other than as a common carrier by motor vehicle, but not including any of the following:

(i) A lessor under a lease given on a bona fide sale of a motor vehicle where the lessor retains or assumes no responsibility for maintenance, supervision or control of the motor vehicle sold.

(ii) A bona fide agricultural, cooperative association transporting property exclusively for the members of the association on a nonprofit basis or any independent contractor hauling exclusively for the association.

(iii) An owner or operator of a farm transporting agricultural products from, or farm supplies to, the farm, or an independent contractor hauling agricultural products or farm supplies, exclusively, for one or more owners or operators of farms.

(iv) Transportation of school children in any motor vehicle owned by any school district, or operated under contract with any school district, for which transportation is lawfully paid by the school district from district funds.

(v) A person or corporation who or which uses, or furnishes for use, dump trucks for the transportation of ashes, rubbish, excavated or road construction materials.

(vi) Transportation of voting machines to and from polling places by any person or corporation for or on behalf of any political subdivision of this Commonwealth for use in any primary, general or special election.

Operating ratio—The operating ratio at present rates shall be calculated as a ratio of intrastate operating expenses to intrastate operating revenues, where the numerator includes operations and maintenance expense, annual depreciation, applicable taxes, and the denominator consists of the utility's intrastate operating revenues at present rates, including all surcharges.

Rate—An individual or joint fare, toll, charge, rental or other compensation of a public utility, other than a motor common carrier of property in its transportation of property, or contract carrier by motor vehicle, made, demanded or received for jurisdictional service, offered, rendered or furnished by the public utility, other than a motor carrier of property in its transportation of property, or contract carrier by motor vehicle, whether in currency, legal tender or evidence thereof, in kind, in services or in

another medium or manner, and whether received directly or indirectly, and rules, regulations, practices, classifications or contracts affecting the compensation, charge, fare, toll or rental.

Small passenger carrier—A person or corporation holding out, offering or undertaking, directly or indirectly, service for compensation to the public for the transportation of passengers or any class of passengers with gross intrastate operating revenues of less than \$500,000.

Tariff—Schedules of rates, rules, regulations, practices or contracts involving any rate, including contracts for interchange of service and, in the case of a common carrier, other than a common carrier of property in the transportation of property, schedules showing the method of distribution of the facilities of the common carrier.

(b) *Applicability*. This chapter applies to motor carriers except common carriers of property.

NOTICE OF CHANGES IN FARES

§ 23.68. Filing requirements for small passenger carriers.

Small passenger carriers with gross annual intrastate revenue of less than \$500,000 do not need to file the substantiating data required under § 23.64 (relating to data required in filing increases in operating revenues) when requesting an increase in rates. Small passenger carriers shall submit a statement with the tariff or tariff supplement stating the following:

- (1) The information required under § 23.63 (relating to data required in filing proposed rate changes).
- (2) The total gross annual intrastate revenue for the most recent fiscal year.
- (3) The dollar amount of increased annual revenue that the rate increase is expected to produce.
- (4) The total projected operating revenue after the revenue increase.
- (5) The total projected operating expenses.
- (6) The projected operating ratio.

§ 23.69. Stay-out provision.

A small passenger carrier will not be permitted to request another increase in rates or operating revenues under § 23.68 (relating to filing requirements for small passenger carriers) from the Commission for 1 year following a prior Commission-approved rate increase under § 23.68. A small passenger carrier with gross intrastate operating revenues of less than \$500,000, but with an operating ratio that is 93% or above, shall be excepted from this 1-year stay-out restriction.

[Pa.B. Doc. No. 11-1273. Filed for public inspection July 29, 2011, 9:00 a.m.]