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February 23, 2011

VIA HAND DELIVERY

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

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2011 FEB 23 PM 2:33
PA PUC
SECRETARY'S BUREAU

**RE: COMMENTS OF THE ENERGY ASSOCIATION OF PENNSYLVANIA TO THE
WORKING GROUP FINAL REPORT REGARDING AMERICAN RECOVERY AND
REINVESTMENT ACT INVESTIGATION – DOCKET NO. I-2009-2099881**

Dear Ms. Chiavetta:

Enclosed for filing please find an original and 15 copies of the Energy Association of Pennsylvania's Comments to the Working Group Final Report in the above-referenced Docket.

Please do not hesitate to contact me if you have any questions.

Very truly yours,

A handwritten signature in black ink, appearing to read "Donna M.J. Clark", is written over the typed name.

Donna M.J. Clark
Energy Association of PA

Enclosures

CC: James H. Cawley, Chairman (via hand-delivery)
Tyrone J. Christy, Vice Chairman (via hand-delivery)
John F. Coleman, Jr., Commissioner (via hand-delivery)
Wayne E. Gardner, Commissioner (via hand-delivery)
Robert F. Powelson, Commissioner (via hand-delivery)
Steven Bainbridge (via electronic mail to sbainbridg@state.pa.us)

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION
PENNSYLVANIA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

Compliance of Commonwealth :
of Pennsylvania with Section 410(a) : Docket No. I-2009-2099881
of the American Recovery and :
Reinvestment Act of 2009 :

COMMENTS of THE ENERGY ASSOCIATION of PENNSYLVANIA
to the Working Group Final Report

Following the enactment of the American Recovery and Reinvestment Act of 2009, Pub. L 111-5 (“ARRA”), Governor Rendell applied for and received additional state energy grants under ARRA’s Federal State Energy Program which are in excess of the base allocation for the Commonwealth. Receipt of these additional funds was contingent upon a number of conditions including that:

[t]he applicable State regulatory authority will seek to implement, in appropriate proceedings for each electric and gas utility, with respect to which the State regulatory authority has ratemaking authority, a general policy that ensures that utility financial incentives are aligned with helping their customers use energy more efficiently and that provide timely cost recovery and a timely earnings opportunity for utilities associated with cost-effective measureable and verifiable efficiency savings, in a way that sustains or enhances utility customers’ incentives to use energy more efficiently.

ARRA, Pub. L. No. 111-5 §410 (a), 123 Stat.115 (2009).

To meet this contingency, Governor Rendell requested that the Pennsylvania Public Utility Commission (“Commission” or “PUC”) act to ensure that the Commonwealth meets the

conditions of the ARRA.¹ In turn, the Commission initiated the instant investigation into the requirements of Section 410(a) of the ARRA pursuant to an Order entered on May 6, 2009 (“Investigation Order”).

The Investigation Order outlined three general areas for inquiry and further requested interested parties to “address any appropriate actions, orders, policy statements, or regulations that the Commission should adopt to ensure compliance with Section 410(a) of the American Recovery and Reinvestment Act of 2009 or to respond to the potential effect of proposed federal energy legislation, including the issue of rate decoupling and all such measures that have the potential to encourage utility energy efficiency and conservation while ensuring the financial viability of the utilities.” Investigation Order at Ordering Paragraph 2, page 5.

Initial comments and reply comments were filed by various parties in July and August of 2009. Thereafter, on November 19, 2009, the Commission conducted a Technical Conference to which additional reply comments were filed. A Secretarial Letter dated December 18, 2009 formed a working group in this docket to solicit further information regarding “alternative ratemaking structures”. The working group was tasked to meet and consider ratemaking policies that align with the promotion of energy efficiency and conservation so that the Law Bureau might prepare a report to the Commission regarding compliance with the ARRA. The working group met throughout 2010 and those discussions led to the writing of the instant Report which

¹ See letter of Governor Edward G. Rendell to Chairman James H. Cawley, dated March 23, 2009, which provides in pertinent part, that the Commission “consider additional steps the Commonwealth can take to establish appropriate incentives in electric and natural gas utility rates for energy efficiency programs, consistent with state law, the attached statute [the ARRA], and relevant PURPA requirements. These include policies to align interests of utilities to support conservation without raising the cost of conservation and increasing the cost to ratepayers of measurable, verifiable efficiency savings.”

has been released for public comment pursuant to a Commission Order entered on January 24, 2011. The Energy Association of Pennsylvania (“Association” or “EAP”)² actively participated in the working group and files the within general comments to the Report.

Initially, the Association thanks Commission staff for conducting the working group in a manner which encouraged a wide-ranging discussion of the issues identified in the Investigation Order. At the same time, and as is clearly evident from a reading of the Report, the varying positions expressed and information detailed did not result in a consensus on the fundamental issue of whether the ARRA necessitates specific action by the Commission so as to meet the statutory requirement of implementing “a general policy that ensures that utility financial incentives are aligned with helping their customers use energy more efficiently and...[at the same time] provide[s] timely cost recovery and a timely earnings opportunity for utilities associated with cost-effective measurable and verifiable efficiency savings, in a way that sustains or enhances utility customers’ incentives to use energy more efficiently.” ARRA, Pub. L. No. 111-5 §410(a), 123 Stat. 115 (2009). The Working Group Report as presented provides no specific consensus recommendations.

The Association believes that adoption of a general policy tracking the language of §410(a) of the ARRA so as to encourage the proposal of alternative ratemaking mechanisms by utilities in future proceedings would meet the general intent of the ARRA. Such a policy

² EAP is a trade association representing the interests of the major regulated natural gas and electric distribution companies in the Commonwealth, including Allegheny Power, Citizens’ Electric Co., Columbia Gas of PA, Duquesne Light Co., Equitable Gas Co., Metropolitan Edison Company, National Fuel Gas Distribution Corp., PECO Energy Company, Pennsylvania Electric Company, Pennsylvania Power Company, Peoples Natural Gas, Philadelphia Gas Works, Pike County Light & Power Company, PPL Electric Utilities, UGI Central Penn Gas, UGI Penn Natural Gas, UGI Utilities, Inc., Valley Energy, Inc., and Wellsboro Electric Company. The instant investigation seeks to implement policies and actions which will impact both the natural gas and electric distribution companies operating in Pennsylvania.

statement could provide flexibility to the Commission to consider the role of a variety of proposed mechanisms in the context of aligning financial incentives with the promotion by utilities of energy efficiency and conservation. A policy statement recognizing the impact of a decrease in use and demand for energy by consumers on the fiscal health of utilities under the current ratemaking regime would meet the conditions established under ARRA for the receipt of additional state energy grants by Pennsylvania.³ At the same time, a policy statement providing general guidance would not preclude the examination of any issues which may be raised in a particular proceeding by a party opposing the particular proposed alternative ratemaking mechanism.

On the other hand, maintaining that the status quo in Pennsylvania satisfies the ARRA condition relied upon by Governor Rendell to obtain state energy grants is an unnecessary risk after having already taken advantage of the additional grant opportunity. Moreover, as government at all levels continues to encourage energy efficiency and net metering so as to reduce demand and the amount of energy used for a variety of policy reasons (i.e., reducing carbon emissions and environmental impact, energy independence and lower wholesale prices), it undercuts the assumptions for the traditional volumetric approach to base rate ratemaking, necessitating a shift in approach.

Expecting utilities to encourage consumers to reduce energy usage while operating under a system which pays based on the amount of energy consumed can be viewed as wishful thinking. The current rate structure creates a disincentive for utilities to actively promote

³ In addition to energy efficiency. AEPS requirements and net metering policies are contributing to a reduction in energy usage and revenues for EDCs, while EDCs must continue to invest in their transmission and distribution systems to ensure the safe and reliable delivery of electricity.

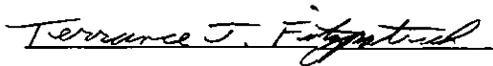
increased conservation by customers and undermines public policy goals. An innovative approach to ratemaking as encouraged by the ARRA becomes essential to achieve policy goals. Further, the Commission has the authority to consider and approve a variety of ratemaking mechanisms which could work to align financial incentives with the promotion of energy efficiency. Section 523 of the Public Utility Code already provides the Commission with authority to consider “the efficiency, effectiveness and adequacy of service of each utility when determining just and reasonable rates...[and to specifically consider the] action or failure to act to encourage the development of cost-effective energy supply alternatives such as conservation or load control management...” 66 Pa. C. S. §523(a) and (b)(4). Existing law provides by implication for consideration of ratemaking mechanisms which promote energy efficiency. Therefore, the issuance of a policy statement encouraging utilities to propose ratemaking approaches which better align financial interests with the encouragement of energy efficiency and conservation is not anathema to public utility law as a number of the participants in the current Working Group would have the Commission believe.

The instant investigation has resulted in a wide ranging discussion and a sharing of knowledge on a variety of possible mechanisms which a utility, depending on its individual circumstances, may propose in a particular proceeding. A policy statement which encourages consideration of such mechanisms could provide a means to incentivize further promotion of conservation through cost-effective measurable and verifiable efficiency measures while assuring timely cost recovery and allowing for a timely earnings opportunity.

Further, any such policy adopted by the Commission should acknowledge the need for flexibility and recognize that the mechanism which individual utilities may propose to meet

current public policy concerns regarding conservation will necessarily differ. The Association also believes that the ARRA calls for a positive incentive and the recognition that promotion of programs which negatively impact revenue can only be sustained over long periods if coupled with an opportunity to offset lost revenue. Capturing lost revenue so as to maintain safe, reliable and cost-effective service to Pennsylvania consumers is a key component if current public policy objectives are to be achieved. Providing for flexibility in proposing particular ratemaking mechanisms, for positive incentives and for timely recovery of costs are all tools which the Commission could identify in a policy statement aimed at encouraging utilities to promote energy efficiency to customers and assuring compliance with the ARRA.

Respectfully Submitted,



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Dated: February 23, 2011

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