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| **PENNSYLVANIA****PUBLIC UTILITY COMMISSION****Harrisburg, PA 17105-3265** |

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|  | Public Meeting held January 24, 2013  |
| Commissioners Present: |  |

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| Robert F. Powelson, Chairman |  |
| John F. Coleman, Jr., Vice Chairman |  |
| Wayne E. Gardner |  |
| James H. Cawley |  |
| Pamela A. Witmer |  |
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| Advance Notice of Proposed Rulemaking for Revision of the Commission’s Regulations on Water Conservation Measures at 52 Pa. Code § 65.20  | L-2012-2319361 |

**ADVANCE NOTICE OF PROPOSED RULEMAKING ORDER**

**BY THE COMMISSION:**

**The 2008 Tentative Order**

On November 10, 2008, the Pennsylvania Public Utility Commission (PUC or Commission) issued a Tentative Opinion and Order at Docket No. M-2008-2062697 (2008 Tentative Order) regarding a pilot program to implement the International Water Association (IWA)/American Water Works Association (AWWA) Water Audit methodology (Water Audit methodology). By way of the 2008 Tentative Order, the Commission invited all jurisdictional water utilities to voluntarily participate in a pilot program to implement the new IWA/AWWA methodology. The 2008 Tentative Order became final on December 10, 2008 (2008 Order).

The purpose of the 2008 Order was to implement, on a pilot basis, the Water Audit methodology. This methodology was established by the IWA and the AWWA. Implementation of this methodology by the Commission’s jurisdictional water utilities was expected to achieve a number of public interest benefits, including furthering overall infrastructure reliability, preserving water resources, limiting water leakage, reducing overall company risk, and enhancing customer service.

The 2008 Order explained that participation in this pilot program by Pennsylvania’s largest water utilities was expected for a number of reasons. First, their larger size, in terms of water industry standards, their resources, and their overall viability lend themselves to straightforward adaptation of the new procedure. Second, all viable water utilities should constantly strive to improve operational efficiency. Initiation of the pilot program was to further this ongoing effort. Third, the Water Audit methodology is consistent with current challenges facing the water industry, namely: (1) rising cost challenges imposed by the need to rehabilitate aging infrastructure; (2) increased energy costs for pumping; (3) increased costs of chemicals and other treatment necessary to meet the more stringent Safe Drinking Water Act requirements; and (4) the limited availability and higher costs for developing new sources of supply, among others.

 As stated in the 2008 Order, a critical aspect of efficient operations involves tracking levels of unaccounted-for water (UFW).[[1]](#footnote-1) Maintaining low levels of UFW helps prevent waste of a precious resource, avoids lost revenue, and indicates a well-managed water utility. Both the PUC and the Department of Environmental Protection (DEP) monitor levels of UFW on an annual basis. In addition, as part of the Commission’s rate case review process, expenses for power and chemicals may be disallowed when levels of UFW exceed 20 percent. Indeed, the Commission’s comprehensive Policy Statement on Conservation strongly suggests that an ongoing leak detection and repair program is an integral part of maintaining low levels of UFW.[[2]](#footnote-2)

For many years, the determination of UFW used by this Commission, jurisdictional water utilities, and throughout the country was a combination of a methodology established by William D. Hudson and a procedure set forth in the AWWA Training Manual.[[3]](#footnote-3) Over time, however, it became apparent that differing interpretations and adjustments, along with the incorporation of different components, led to less than representative results. Ineffective planning and an inability to employ corrective measures are the likely consequences of inaccurate levels of UFW.

As stated in the 2008 Order, an enhanced, more comprehensive method has since been developed, which gives every indication that it offers superior data and indicators for improved operational accountability. The Water Audit methodology not only assists utilities in identifying where the losses are occurring, but also expresses by volume how much is lost and at what cost.[[4]](#footnote-4) The term “unaccounted-for water” has been replaced with the term “water audit” based on the concept and underlying procedure that virtually all water can be “accounted-for.” The Water Audit methodology was developed jointly by a five-country group formed by the IWA and the AWWA in 1997. In 2003, the AWWA’s Water Loss Control Committee identified the Water Audit methodology as a world-wide best management practice in water loss control.[[5]](#footnote-5) In 2006, the AWWA released a Water Audit software package that is available free of charge on its website, broadening the new procedure’s accessibility.[[6]](#footnote-6) A year later, the AWWA Research Foundation designated the Water Audit methodology as the current best practice.[[7]](#footnote-7) Today, its use continues to expand, consistent with widespread efforts to increase water supply sustainability, infrastructure remediation, and overall service reliability.

As noted in the 2008 Order, experience with the Water Audit methodology throughout the country has been growing. It has been adopted by, among others: (1) the Texas Water Development Board, which has oversight over 2,000 water utilities; (2) the Metropolitan North Georgia Water Planning district, which oversees more than 60 water utilities in the Atlanta area; (3) the California Urban Water Conservation Council; and (4) the Office of the State Engineer, in New Mexico, which not only adopted the methodology but also sponsored a pilot audit. In Pennsylvania, the Philadelphia Water Department has been pioneering the procedure since its inception in 2000 and has achieved notable success.[[8]](#footnote-8)

**The 2012 Order**

 On November 10, 2011, the Commission issued a Tentative Opinion and Order at M-2008-2062697 (2011 Tentative Order) wherein the Commission ordered all Class A water utilities (over $1,000,000 in annual revenues) to implement the Water Audit methodology. The Tentative Opinion and Order became final January 27, 2012 (2012 Order).[[9]](#footnote-9) Specifically, the Commission concluded:

 Based upon this Commission’s tradition of establishing

 groundbreaking regulatory tools, such as the DSIC or

 single tariff pricing, we will order the implementation

 of this Water Audit methodology which will help achieve

 a number of public interest benefits, such as increased

 infrastructure reliability, help preserve water resources,

 limit water leakage, reduce overall company risk, and

 enhance customer service. We believe that this practice

 is a better tool than the current unaccounted-for-water

 method and in the public interest.

To this end, the Commission ordered the five participating water utilities, namely, Aqua Pennsylvania, Inc., Pennsylvania-American Water Company, Superior Water Company, York Water Company and United Water Pennsylvania, Inc., to file annual Water Audit summaries with the Secretary of the Commission for the year ended December 31, 2011, no later than April 30, 2012, and on subsequent years no later than April 30.

 In addition to ordering the five participating water utilities to file annual Water Audit summaries by April 30, 2012, the Commission specifically directed in the 2012 Order:

That all other Class A water utilities (over $1,000,000 in annual

 revenues) commence to file the annual Water Audit summaries with

 the Secretary of the Commission for the year ended December 31, 2012

 no later than April 30, 2013, and on subsequent years no later than

 April 30. These other Class A water utilities presently include

 Columbia Water Company, Newtown Artesian Water Company,

 CAN DO, Inc.-Water Division, United Water Bethel, Inc., and

 Audubon Water Company.

Accordingly, the Water Audit methodology has now been adopted by this Commission and all Class A water utilities are now required to file the annual Water Audit summaries with the Secretary of the Commission no later than April 30 of each year.

 While the Commission has formally adopted the Water Audit methodology and also has directed all Class A water utilities to file the annual Water Audit summaries no later than April 30th of each year, a remaining question going forward for the Commission and the water industry is whether the Commission should revise its existing regulations regarding unaccounted-for-water at 52 Pa. Code § 65.20, or, whether it is necessary for the Commission to adopt new regulations regarding the Water Audit methodology.

 Section 65.20 of the Code states, in pertinent part:

####  § 65.20. Water conservation measures—statement of policy.

  In rate proceedings of water utilities, the Commission intends to examine specific factors regarding the action or failure to act to encourage cost- effective conservation by their customers. Specifically, the Commission will review utilities’ efforts to meet the criteria in this section when determining just and reasonable rates and may consider those efforts in other proceedings instituted by the Commission.

Subsection (4) of this section, which specifically addresses unaccounted-for-water, states:

 Levels of unaccounted-for-water should be kept within reasonable amounts. Levels above 20% have been considered by the Commission to be excessive.

 By way of this advance notice of proposed rulemaking order, the Commission seeks comments from all interested parties on appropriate revisions to this regulation. In particular, comments are invited on whether it is necessary for the Commission, in light of our adoption of the Water Audit methodology, to adopt new regulations to further advance this methodology. If the comments advocate either revised regulations, or merely a policy statement, we expect the comments to also include proposed language for our consideration and subsequent review by the Independent Regulatory Review Commission. The Commission’s evaluation will include a review of similar regulations in other jurisdictions that have adopted the Water Audit methodology so that the Commission can develop best practices on these issues.

 Additionally, the Commission, as was requested in the 2012 Order, invites comments from the regulated community (particularly the participants in the pilot project and the other Class A water utilities that will be filing their first annual Water Audit by April 30, 2013) and other interested parties on the experienced benefits and costs of the Water Audit methodology.

 Finally, the Commission invites comments as to whether the Water Audit methodology should be extended to the other jurisdictional water utilities.

 Accordingly, pursuant to 66 Pa. C.S. §§ 501 and 2804, the Commission issues this Advance Notice of Proposed Rulemaking for comment**; THEREFORE,**

**IT IS ORDERED:**

1. That this Advance Notice of Proposed Rulemaking be issued to solicit comments regarding revisions to the Commission’s existing regulations regarding unaccounted-for-water at 52 Pa. Code § 65.20(4).

 2. That this Advance Notice of Proposed Rulemaking be published in the *Pennsylvania Bulletin* for review and comment, with comments due 60 days from the date of publication and reply comments due 30 days thereafter.

 3. That any comments or reply comments be served upon the Secretary, Pennsylvania Public Utility Commission, P.O. Box 3265, Harrisburg, PA 17105-3265.

 4. That the contact persons for this proposed rulemaking are Stanley E. Brown, Assistant Counsel, Law Bureau, (717) 783-3968, and Kenneth R. Stark, Assistant Counsel, Law Bureau, (717) 787-5558.

5. That a copy of this Advance Notice of Proposed Rulemaking shall be served on the Office of Consumer Advocate, the Office of Small Business Advocate, the Bureau of Investigation and Enforcement, all jurisdictional water utilities; the National Association of Water Companies - Pennsylvania Chapter; the Department of Environmental Protection, the Office of Regulatory Counsel; all regional offices; the Division of Water Use Planning; the Delaware River Basin Commission; the Susquehanna River Basin Commission; and the American Water Works Association, Pennsylvania Chapter.



 **BY THE COMMISSION**

Rosemary Chiavetta

Secretary

(SEAL)

ORDER ADOPTED: January 24, 2013

ORDER ENTERED: January 24, 2013

1. UFW is, essentially, the amount of water that is “lost,” when compared with the volume produced and the volume sold, taking into account, based on an estimated formula of water used, but not measured, in fire-fighting, hydrant and main flushing, and building construction, and/or due to theft, inaccurate meter recording and faulty meters, among other reasons. Ongoing leakage, particularly in older systems, is the most prevalent cause of UFW. [↑](#footnote-ref-1)
2. *See* 52 Pa. Code § 65.20. [↑](#footnote-ref-2)
3. Kozloff, Carol Allen (*formerly*, Allen, Carol J.), Smith, Roland Y. and Blatt, Harold C., *The Pennsylvania Public Utility Commission Analysis and Rate Treatment of Unaccounted-For Water*,May 1986. [↑](#footnote-ref-3)
4. Texas Water Development Board, *Water Loss Audit Manual for Texas Utilities*,March 2008. [↑](#footnote-ref-4)
5. Journal AWWA, *Applying World-wide Best Management Practices in Water Loss Control*, August 2003. [↑](#footnote-ref-5)
6. See http://www.awwa.org/WaterWiser/waterloss/Docs/WaterAuditSoftware.cfm. [↑](#footnote-ref-6)
7. American Water Works Association Research Foundation Project 2811, *Evaluating Water Loss and Planning Loss Reduction Strategies Report*, March 2007. [↑](#footnote-ref-7)
8. George Kunkle P.E., who serves as Philadelphia Water Department’s Assistant Chief, Water Conveyance Section, must be acknowledged for his ongoing efforts to develop and implement the Water Audit Methodology. Mr. Kunkle served on the IWA/AWWA Committee, which initiated the new procedure, helped develop the AWWA software, and actively helps promote its implementation. Furthermore, Mr. Kunkle has given Water Audit presentations to the National Association of Regulatory Utility Commissioners Committee on Water, before Public Utility Commission Staff and interested stakeholders. [↑](#footnote-ref-8)
9. A Secretarial Letter finalizing the 2011 Tentative Order was issued on January 27, 2012, at Docket No. M-2008-2062697, after the only comments filed to the 2011 Tentative Order was withdrawn. [↑](#footnote-ref-9)