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VIA EMAIL

July 25, 2022

Rosemary Chiavetta, Esq., Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
Harrisburg, Pennsylvania 17120

**Re: Answer of the Energy Association of Pennsylvania to Petition of the Office of
Consumer Advocate, the Office of Small Business Advocate, and the Pennsylvania Utility
Law Project, Docket P-2022-3032929**

Dear Secretary Chiavetta:

Attached for filing, please find the Energy Association of Pennsylvania's Answer to the
Petition in the above referenced proceeding.

Sincerely,

A handwritten signature in blue ink, reading "Donna M.J. Clark". The signature is written in a cursive, flowing style.

Donna M.J. Clark
Vice President & General Counsel

Enclosure

Cc: Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Petition Requesting Initiation of a
Proceeding on Federal Funding Opportunities
For Utilities under the Infrastructure
Investment and Jobs Act

:
:

Docket. No. P-2022-3032929

**ANSWER OF THE ENERGY ASSOCIATION OF PENNSYLVANIA TO PETITION OF
THE OFFICE OF CONSUMER ADVOCATE, THE OFFICE OF SMALL BUSINESS
ADVOCATE, AND THE PENNSYLVANIA UTILITY LAW PROJECT**

I. INTRODUCTION AND BACKGROUND

Pursuant to 52 Pa. Code § 5.61(e), the Energy Association of Pennsylvania (“EAP” or “Association”)¹ hereby answers the Petition Requesting Initiation of a Proceeding on Federal Funding Opportunities for Utilities under the Infrastructure Investment and Jobs Act (“Petition”) filed on June 10, 2022 by the Office of consumer Advocate (“OCA”), the Office of Small business Advocate (“OSBA”) and the Pennsylvania Utility Law Project (“PULP”) (hereinafter collectively referenced as the “Petitioners”).² Petitioners seek two types of relief in their Petition which they

¹ EAP is a trade association whose members include major electric and natural gas distribution companies operating in the Commonwealth. EAP provides this answer in its individual capacity and not as a legal representative of its individual members. To the extent its answers raise concerns of its members, EAP offers them as it traditionally does in the form of comments in policy and non-litigated proceedings initiated at the Commission.

² The Petition was served via email on June 10, 2022 on EAP, OSBA, PULP, the Pennsylvania Public Utility Commission’s Bureau of Investigation & Enforcement (“I&E”), the Pennsylvania Telephone Association and the York Water Company as the representative of the Pennsylvania Chapter of the National Association of Water Companies. As a trade organization, EAP does not represent its members individually in legal proceedings. Service was not made initially on individual electric utility distribution company members of EAP which would be impacted by the outcome sought by Petitioners. EAP contends that those utilities are indispensable parties. Improper service was corrected with the issuance of a Secretarial Letter dated June 23, 2022 by which the Commission served all Pennsylvania jurisdictional fixed utilities.

contend could form the basis for Commission oversight of individual electric utility and water utility company decisions to apply for federal funding.³

First, Petitioners request that the Pennsylvania Public Utility Commission (“Commission” or “PUC”) initiate a formal proceeding to mandate utilities to file reports at the Commission related to utility efforts to apply for federal funds available under the Infrastructure Investment and Jobs Act (“IIJA”) Pub. L. No. 117-58, 135 Stat. 429 (2021). Specifically, the Petitioner’s seek relief that would direct “utilities to file regular reports documenting their efforts – past, current, and future – to obtain IIJA funding, the purposes for which they are seeking funding, and the status of applications, and conditions that must be met to obtain funding.” Petition at p. 5.

Second, Petitioners seek a “process for reviewing utility plans” that would provide for public comments to (1) identify all possible programs under the IIJA available to Commission regulated utilities; (2) recommend actions utilities should take with respect to those programs; and (3) recommend actions the Commission should take to facilitate utility “application, receipt, and deployment of available federal funds.” Petition at p. 5. Overall, Petitioners ask the Commission to exercise its supervisory authority to manage and steer the internal decision-making process of electric and water utilities regarding whether to apply for a variety of federal funding to use in specific capital investments identified under the IIJA. As set forth below, EAP disagrees with Petitioners objective based on a number of concerns.

³ Petitioners identify a number of federal grant and loan programs in the Petition available to electric utilities and water utilities.

II. INITIATION OF A FORMAL PROCEEDING TO REQUIRE UTILITIES TO FILE PLANS SUBJECT TO PUBLIC INPUT AND COMMISSION APPROVAL PRIOR TO APPLYING FOR FEDERAL FUNDS IS NOT WARRANTED AND WILL CREATE AN UNNECESSARY LAYER OF BUREACRACY

Initially, it is critical to recognize that the federal application process for either a grant or a loan will be a competitive process within each industry group. It is likely that utilities will be competing for the same pot of federal dollars and that some of the information sought in the application process could be viewed as confidential. EAP notes that while the particulars of the application and award process for these funds has yet to be established by the relevant federal agencies, it is reasonable to assume that certain details required in an application, if made public, could be used to advantage the application of a utility competing for the same funds. It is unnecessary and awkward to place Pennsylvania utilities in a situation where they may choose not to apply for federal funding so as to preserve the confidentiality of company information.

Additionally, EAP disagrees with Petitioners broad assertion that the Commission's supervisory authority under the Pennsylvania Public Utility Code extends to directing a regulated utility to apply for federal funds under a particular federal grant or loan program. EAP believes that if the Commission were to require utilities to apply for certain federal grants or loans that are available for specific infrastructure projects, the Commission would be replacing a business decision of that utility with its own view of how that utility should manage its operations and related capital investments. The Commission's supervisory authority does not allow it to micro-manage the internal business decisions of the utilities it regulates or to act as a super board of directors. *Northern Pennsylvania Power Co. v. Pennsylvania Public Utility Commission*, 333 Pa. 265, 5 A.2d 133 (1939).

Opportunities to pursue federal funding for a specific infrastructure project would be considered by a utility following an internal determination that the project itself is appropriate in the context of the utilities' operational goals and plans for capital projects. That internal review would be based on a myriad of facts and circumstances unique to the particular utility.

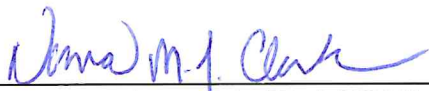
Pennsylvania law recognizes that those decisions along with their inherent risks are within the purview of utility management and not part of the oversight authority provided by statute. *Id. See also, Bell Telephone Co. of Pennsylvania v. Driscoll*, 343 Pa. 109, 21 A.2d 912 (1941) and *Coplay Cement Manufacturing Co. v. Public Service Commission*, 271 Pa. 58, 114 A. 649 (1921).

EAP is also concerned that a formal proceeding as contemplated by the Petitioners would delay and complicate the application process for federal grants and/or loans by requiring utilities to develop plans subject to public input and approval by the Commission prior to beginning the application process itself. This additional process is not contemplated in the federal legislation, adds cost to the application process itself and appears unnecessarily adversarial. EAP does not agree that an additional layer of process creates any identifiable customer benefit nor that the Commission's role should be "to ensure that utilities take advantage of every reasonable opportunity to pursue the IIJA funding available to them". Petition at p. 5. That is the role and decision of utility management. The Commission will determine whether such action or inaction was reasonable in the context of a future rate proceeding and a determination regarding the level of recovery for and return of capital investment.

III. CONCLUSION

For the reasons stated above, EAP requests that the relief requested in the Petition be denied.

Respectfully submitted,



Terrance J. Fitzpatrick (ID # 35287)

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Date: July 25, 2022

BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

**ANSWER OF THE ENERGY ASSOCIATION OF :
PENNSYLVANIA TO PETITION OF THE : Docket No. P-2022-3032929
OFFICE OF CONSUMER ADVOCATE, THE :
OFFICE OF SMALL BUSINESS ADVOCATE, :
AND THE PENNSYLVANIA UTILITY LAW :
PROJECT**

CERTIFICATE OF SERVICE

I hereby certify that I have, on this day, served true and correct copies of the Answer of the Energy Association of Pennsylvania to Petition of the Office of Consumer Advocate, the Office of Small Business Advocate, and The Pennsylvania Utility Law Project in the above captioned matter upon the following persons and in accordance with the requirements of 52 Pa. Code § 1.54.

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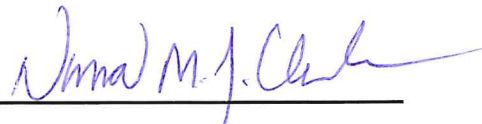
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