

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

Public Meeting held May 12, 2022

Commissioners Present:

Gladys Brown Dutrieuille, Chairman
John F. Coleman, Jr., Vice Chairman
Ralph V. Yanora

Use of Fully Projected Future Test Year,
52 Pa. Code Chapter 53.51-53.56a

L-2012-2317273

CLARIFIED NOTICE OF PROPOSED RULEMAKING ORDER

BY THE COMMISSION:

The Pennsylvania Public Utility Commission (Commission) adopts this Notice of Proposed Rulemaking (NOPR) Order, including Annexes A and B to this NOPR Order,¹ and seeks comments on proposed amendments to our regulations at 52 Pa. Code §§ 53.51-53.56 (relating to information to be furnished with the filing of rate changes).

BACKGROUND

On February 14, 2012, Governor Corbett signed into law Act 11, which amended Chapters 3, 13, and 33 of the Public Utility Code (Code). Act 11, *inter alia*, amended Section 315(e) of the Code (relating to use of future test year) and authorized the use of a fully projected future test year (FPFTY) in public utility rate filings. Act 11 also required the Commission to adopt rules and regulations regarding the information and data to be submitted when a public utility uses a FPFTY. 66 Pa.C.S. § 315(e).

¹ The clarifications to this NOPR Order and Annexes were adopted by the Commission in the Order entered on May 12, 2022 at this docket. *See Use of Fully Projected Future Test Year, 52 Pa. Code Chapter 53.51-53.56a*, Docket No. L-2012-2317273 (Order Clarifying Notice of Proposed Rulemaking Order entered on May 12, 2022) (May 12, 2022 Order). For purposes of the rulemaking, this clarified NOPR Order and Annexes A and B will be published in the *Pennsylvania Bulletin*.

Section 315(e), as amended by Act 11, provides:

§ 315(e) Use of future test year.—In discharging its burden of proof the utility may utilize a future test year *or a fully projected future test year, which shall be the 12-month period beginning with the first month that the new rates will be placed in effect after application of the full suspension period permitted under section 1308(d) (relating to voluntary changes in rates)*. The commission shall promptly adopt rules and regulations regarding the information and data to be submitted when and if a future test period *or a fully projected future test year* is to be utilized. Whenever a utility utilizes a future test year *or a fully projected future test year* in any rate proceeding and such future test year *or a fully projected test year* forms a substantive basis for the final rate determination of the commission, the utility shall provide, as specified by the commission in its final order, appropriate data evidencing the accuracy of the estimates contained in the future test year *or a fully projected future test year*, and the commission may after reasonable notice and hearing, in its discretion, adjust the utility's rates on the basis of such data. *Notwithstanding section 1315 (relating to limitation on consideration of certain costs for electric utilities), the commission may permit facilities which are projected to be in service during the fully projected future test year to be included in the rate base.*

66 Pa.C.S. § 315(e) (*emphasis added to reflect Act 11 amendments*).

On December 22, 2017, the Commission entered an Advanced Notice of Proposed Rulemaking Order (ANOPR Order) at this docket, which was published in the *Pennsylvania Bulletin* on January 13, 2018, 48 Pa.B. 276. In the ANOPR Order, we invited stakeholder comments and directed Commission staff to convene stakeholder meetings on the information to be filed by a public utility when the public utility is requesting a general rate increase more than \$1 million using a FPFTY. Stakeholders subsequently requested that the Commission move directly to stakeholder meetings in lieu of comments. By Secretarial Letters dated February 26, 2018,² August 22, 2018,³

² Published in the *Pennsylvania Bulletin* on March 10, 2018, 48 Pa.B. 1422.

³ Published in the *Pennsylvania Bulletin* on September 1, 2018, 48 Pa.B. 5501.

and October 29, 2018, at this docket, we convened numerous stakeholder meetings in 2018 and 2019. The last meeting was held on October 30, 2019.

In addition to the public notice provided in the *Pennsylvania Bulletin*, invitations to participate in a stakeholder process were extended to the Commission’s Office of Administrative Law Judge (OALJ), the Commission’s Bureau of Investigation and Enforcement (I&E), the Office of Consumer Advocate (OCA), the Office of Small Business Advocate (OSBA), the Pennsylvania Utility Law Project (PULP), the Tenant Union Representative Network and Action Alliance of Senior Citizens of Greater Philadelphia (TURN *et al.*), Industrial Energy Consumers of Pennsylvania (IECPA), the National Association of Water Companies – Pennsylvania Chapter (NAWC-PA Chapter), Aqua Pennsylvania, Pennsylvania American Water Company, Pittsburgh Water and Sewer Authority, the Energy Association of Pennsylvania, Citizens’ Electric Company, Duquesne Light Company, Metropolitan Edison Company, PECO Energy Company, Pennsylvania Electric Company, Pennsylvania Power Company, Pike County Light & Power Company, PPL Electric Utilities, UGI Utilities, Inc., Wellsboro Electric Company, West Penn Power Company, Columbia Gas of Pennsylvania, Inc., Leatherstocking Gas Company LLC, National Fuel Gas Distribution Corp., PECO Energy Company, Peoples Natural Gas Company LLC, Peoples Gas Company (formerly Peoples TWP), Philadelphia Gas Works, Pike County Light & Power Company, and Valley Energy Inc.

RATEMAKING PRINCIPLES AND ACT 11

A. General Ratemaking Principles

The Code gives the Commission broad authority and responsibility to ensure that the rates charged by public utilities are just and reasonable and not unduly discriminatory. 66 Pa.C.S. §§ 1301, 1304. Pursuant to this just and reasonable standard, a public utility may obtain “a rate that allows it to recover those expenses that are reasonably necessary to provide service to its customers[,] as well as a reasonable rate of return on its investment.” *City of Lancaster (Sewer Fund) v. Pa. PUC*, 793 A.2d 978, 982 (Pa.

Cmwlth. 2002). There is no single way to arrive at just and reasonable rates. “The [Commission] has broad discretion in determining whether rates are reasonable” and “is vested with discretion to decide what factors it will consider in setting or evaluating a utility’s rates.” *Popowsky v. Pa. PUC*, 683 A.2d 958, 961 (Pa. Cmwlth. 1996) (*Popowsky*).

The Commission is required to investigate all general rate increase filings. *Popowsky*, 683 A.2d at 961. For general rate increases, Section 1308(d) provides the procedures for changing rates, the time limitations for the suspension of the new rates, and the time limitations on the Commission’s actions. 66 Pa.C.S. § 1308(d) (relating to general rate increases).

The “polestar” of ratemaking concerns is the public utility’s “cost of providing service.” *Pa. PUC, et al. v. Columbia Gas of Pennsylvania, Inc.*, Docket No. R-2020-3018835, *et al.* (Order entered February 19, 2021) (*Columbia Order*) at 46, n.17 (citing *Lloyd v. Pa. PUC*, 904 A.2d 1010, 1019-21 (Pa. Cmwlth. 2006) (*Lloyd*)). Inherent in the “cost of providing service” principle of ratemaking is the recognition that public utilities are natural monopolies and that the Commission’s oversight through cost-of-service ratemaking regulation serves as a proxy for a competitive market in appropriately restraining, or exerting downward pressure on, the profit-maximizing prices a monopoly could otherwise charge in the absence of price regulation. *Columbia Order* at 46, n.17.

Other important ratemaking concerns include quality of service,⁴ rate gradualism,⁵ and rate affordability.⁶ *Columbia Order* at 46-47.

The burden of proving the justness and reasonableness of a rate is placed on the public utility. 66 Pa.C.S. § 315(a) (relating to reasonableness of rates). The evidence necessary to meet this burden of proof must be substantial. *Lower Frederick Twp. Water Co. v. Pa. PUC*, 409 A.2d 505, 507 (Pa. Cmwlth. 1980).

In discharging its burden of proof in general rate increases, a public utility traditionally submits an overall claim of its cost of service, or total revenue requirement, which is established through the following two main components in a test year: (1) the allowed total expense claim, plus (2) the allowed return on investment. *Columbia Order* at 47. The allowed total expense claim typically includes the public utility's operating expenses, depreciation expense, and taxes that are found to be prudent, reasonably necessary, and fully substantiated. *Columbia Order* at 47 (citing *Pa. PUC, et al. v. UGI Utilities, Inc. – Electric Division*, Docket Nos. R-2017-2640058, *et al.* (Order entered October 2, 2018) (*UGI Electric*) at 26, *aff'd McCloskey*, 225 A.3d 192 (Pa. Cmwlth. 2020) (*McCloskey*)). The allowed return on investment is typically determined by multiplying the public utility's allowed rate base claim by the fair rate of return.⁷ The

⁴ See 66 Pa.C.S. § 523(a)-(b) (Commission shall consider the efficiency, effectiveness and adequacy of service when determining just and reasonable rates and shall give effect to this section by making such adjustments to specific components of the utility's claim cost of service as it may determine to be proper and appropriate); see also 66 Pa.C.S. § 526(a) (Commission given authority to reject, in whole or in part, a public utility's rate increase request upon finding that serviced rendered is inadequate in that it fails to meet quantity or quality for the type of service provided).

⁵ See *Lloyd*, 904 A.2d at 1020 (explaining that gradualism is the principle under which utility rates are gradually increased to avoid rate shock, as part of what is overall considered a reasonable rate under the circumstances and is permitted in implementing large rate increases).

⁶ See *Pa. PUC et. al v. Twin Lakes Utilities, Inc.*, Docket No. R-2019-3010958 (Order entered March 26, 2020) at 48, 80 (the ALJ did not err in considering evidence relating to the various quality of service and rate affordability issues in the proceeding and factoring in such evidence as part of her overall determination on which expert witnesses' cost of equity to adopt for setting just and reasonable rates).

⁷ A public utility is entitled to an opportunity to earn a fair rate of return on the value of the property dedicated to public service. *Pennsylvania Gas and Water Co. v. Pa. PUC*, 341 A.2d 239, 251 (Pa.

allowed rate base claim is typically found to be the net plant (gross plant less accumulated depreciation) plus any other capital items reasonably necessary to provide utility service funded with investor capital, as fully substantiated in the test year.

Columbia Order at 47 (citing *UGI Electric* at 26). Meanwhile, the fair rate of return is typically calculated based on the public utility's capital structure and the cost of capital⁸ during the period in issue. *Columbia Order* at 48.

Once the revenue requirement or cost of service is determined, the next steps traditionally are to allocate these costs to customer classes and then design the specific rates. In general rate increases more than \$1 million, a public utility traditionally submits an allocated class cost of service study for the test year, showing the allocation of the overall cost of service to each customer class based on certain allocation method(s). The public utility traditionally submits other supporting evidence relating to the development of specific rate schedules under each customer class. *See Columbia Order* at 185 (citing *Lloyd*, 904 A.2d at 1015; 66 Pa.C.S. §§ 1301, 1304).

B. The Test Year Concept

A test year is a ratemaking concept used in general rate increase filings. A test year is a snapshot of time that reflects assumptions, conditions, revenues, expenses, and capital costs, as delineated by the public utility in discharging its burden of proof.

Cmwlth. 1975) (citations omitted). It is well-established that a fair rate of return allows the utility the opportunity to recover those costs prudently incurred by all classes of capital used to finance the rate base during the prospective period in which its rates will be in effect. *See Bluefield Water Works and Improvement Co. v. Public Service Comm'n of West Virginia*, 262 U.S. 679, 692-93 (1923) (*Bluefield*); *see also Federal Power Commission v. Hope Natural Gas Co.*, 320 U.S. 591, 603 (1944) (*Hope Natural Gas*). Further, “[w]hen determining the cost of capital, the [Commission] must ‘give consideration to the [utilities’] financial structure, credit standing, dividends, interests, risks, regulatory lag, wasting assets and any peculiar features of the utility involved.’” *West Penn Power v. Pa. PUC*, 607 A.2d 1132, 1135 (Pa. Cmwlth. 1992) (*West Penn*).

⁸ The Commission is granted wide discretion, because of its administrative expertise, in determining the cost of capital. *Equitable Gas Co. v. Pa. PUC*, 405 A.2d 1055, 1059 (Pa. Cmwlth. 1979) (determination of cost of capital is basically a matter of judgment which should be left to the regulatory agency and not disturbed absent an abuse of discretion).

McCloskey, 225 A.3d at 196. The Commission is authorized to permit a public utility to elect the type of test year it opts to use in discharging its burden of proving the reasonableness of a rate. 66 Pa.C.S. §§ 315(a), (e).

Historically, a public utility has been permitted to use a historic test year (HTY) or a future test year (FTY). A HTY is what its name suggests – a view of the public utility’s historical financial and operational information. The HTY uses a public utility’s actual financial results experienced in a recent twelve-consecutive month period ending prior to the filing of the rate case. *See McCloskey*, 225 A.3d at 196. When presenting the HTY, the public utility is expected to prepare and present the public utility’s most recent experienced financial data.

Statutory authority to use a FTY was added when the General Assembly amended Section 312 of the former Public Utility Law by Act of October 7, 1976, P.L. 1057, No. 215.⁹ A FTY is a partially forward-looking depiction of a public utility’s operations using a hybrid of actual and estimated results. The FTY is the twelve-consecutive month period starting the day after the end of the HTY. It includes the filing date of the proposed rates and ends before the proposed rates would go into effect. *See McCloskey*, 225 A.3d at 196. The purpose of permitting the use of a FTY in rate proceedings was to reduce the regulatory lag¹⁰ between the HTY and the completion of a rate case. *See Pa. PUC, et al. v. Pennsylvania Electric Company*, Docket Nos. R-00000392, *et al.*, 1978 WL 51034 (Pa.P.U.C) at *1 (Order entered June 28, 1978), slip at 2.¹¹

⁹ The former Public Utility Law was repealed by Act of July 1, 1978, P.L. 598, No. 116, and replaced with Section 315 of the Public Utility Code, 66 Pa.C.S. 315. *See Zucker v. Pa. PUC*, 401 A.2d 1377, n. 2 (Pa. Cmwlth. Ct. 1979).

¹⁰ Regulatory lag is that period between when a utility experiences a change in costs or sales levels [or both] and when the utility can reflect these changes in new rates granted by the Commission. *See Costello, Ken, Future Test Year: Evidence from State Utility Commissions*, National Regulatory Review Institute, NRRI Report 13-10 (October 2013) at 8, n. 24, <https://pubs.naruc.org/pub/FA86C105-05F5-9766-BC78-29829AC50361>, last viewed May 18, 2021. Nevertheless, the use of a FTY in setting rates still creates regulatory lag because by the time the new rates go into effect, they are based in part on historical cost and sales information.

¹¹ The proceeding is also referred to as Pa. PUC Docket No. R.I.D. 392.

C. Act 11

Act 11 authorized the use of a FPFTY as an alternate to use of a HTY or a FTY. *See McCloskey* at 196-197, 200. A FPFTY uses the public utility’s *fully estimated* data for the twelve-month period beginning with the first month that the new rates would be placed in effect, after the expiration of the full suspension period allowed by Section 1308(d). *UGI Electric* at 25. The goal of Act 11, in authorizing the use of a FPFTY, among other things, was to further reduce regulatory lag and encourage future plant investment to replace aging public utility infrastructure. *See Implementation of Act 11 of 2012*, Final Implementation Order, Docket No. M-2012-2293611, 299, P.U.R.4th 367, 2012 WL 3249678 (Pa.P.U.C.) (Order entered August 2, 2012) at 5 (*Act 11 Implementation Order*). Under the FPFTY approach, “the risks associated with regulatory lag will be substantially reduced because the new rates will be consistent with the test year used to establish those rates for at least the first year.” *Id.*

In addition to authorizing the use of the FPFTY, discussed *supra*, Act 11 also authorized the Commission to allow the inclusion in a public utility’s rate base claim new plant projected to be placed in service during the FPFTY. *See McCloskey* at 207. Prior to Act 11, a public utility’s allowed rate base claim in FTY proceeding could only include plant or facilities found to be “used and useful” and “in service to the public” at the time the rate base was being calculated. *See McCloskey*, 225 A.3d at 196 (citing 66 Pa.C.S. § 1315).¹² Act 11 altered the “used and useful” principle by allowing a public

¹² Section 1315 (relating to limitation on consideration of certain costs for electric utilities) provides:

Except for such nonrevenue producing, nonexpense reducing investments as may be reasonably shown to be necessary to improve environmental conditions at existing facilities or improve safety at existing facilities or as may be required to convert facilities to the utilization of coal, the cost of construction or expansion of a facility undertaken by a public utility producing, generating, transmitting, distributing or furnishing electricity shall not be made a part of the rate base nor otherwise included in the rates charged by the electric utility until such time as the facility is used and useful in service to the public. Except as stated in this section, no electric utility property shall be deemed used and useful until it is presently providing actual utility service to the customers.

66 Pa.C.S. § 1315.

utility to include in its rate base those “facilities which are *projected* to be in service *during* the [FPFTY] [n]otwithstanding [S]ection 1315.” See 66 Pa.C.S. § 315(e) (emphasis added); see *McCloskey* at 200, 207. Thus, subject to the Commission’s broad ratemaking discretion and fact-finding authority, a public utility may include in its rate base those fully substantiated “costs of facilities that are not yet in service, but that are projected to be in service *during the 12-month period beginning with the first month* the new rates will be in effect. This 12-month period includes day 1, as well as day 365.” See *McCloskey* at 207 (*emphasis in the original*).

Act 11 also addressed the potential of a public utility to over-project its estimates in the FPFTY. Specifically, as amended, Section 315(e) authorizes the Commission to require a public utility to provide the Commission with “appropriate data evidencing the accuracy of the estimates” used to calculate its cost of service components in a FTY or a FPFTY and to adjust a public utility’s rates based on such data after reasonable notice and a hearing. 66 Pa.C.S. § 315(e).¹³

DISCUSSION

Based on the foregoing, we open this rulemaking to standardize and streamline the filing requirements for information and data related to various ratemaking components for a public utility in a base rate case proceeding. We seek comments on proposed amendments to our Regulations at 52 Pa. Code §§ 53.51-53.56, including the proposed addition of Section 53.51a (relating to definitions) and Section 53.56a (relating to supporting data required if using a FPFTY). Our goal is to develop consistency in filing requirements across public utility types, incorporate the appropriate standard discovery requests, and eliminate the filing of unnecessary information.

¹³ See *Act 11 Implementation Order* at 3 (stating that the Commission “expect[s] that in subsequent base rate cases,” a public utility using a FPFTY would “be prepared to address the accuracy of the [FPFTY] projections made in its prior base rate case.”)

A. Purpose and Benefits of the Proposed Regulation

Public utilities have been able to use a FPFTY since Act 11 became effective, and we anticipate that natural gas, electric, steam, water and wastewater public utilities will continue to use a FPFTY to meet their burden of proof in general rate increase cases.¹⁴ As the use of a FPFTY continues or increases in general rate increases more than \$1 million in annual gross revenues, all affected stakeholders would benefit from the changes proposed in this rulemaking.

Affected stakeholders include the public utilities and public utility consumers, consumer advocates, and other interested intervenors. These stakeholders would benefit from this proposed rulemaking because the proposed regulations would standardize and streamline the required filing information and data related to various ratemaking components of a public utility's rates as based on the public utility's claimed cost of service and proposed cost allocations to customer classes. For public utilities, the new standardized and streamlined filing requirements are expected to reduce the regulatory burden and costs associated with preparing and litigating general rate increase cases. For other stakeholders, these standardized and streamlined filing requirements are expected to lessen the regulatory burden and costs associated with reviewing and litigating general rate increase cases brought by public utilities.

¹⁴ In 1993, the General Assembly passed Act 1993-67 which amended the Pennsylvania Public Utility Code by adding Chapter 30, 66 Pa.C.S. §§ 3001-3009. Chapter 30 provided that the Commission may allow incumbent local exchange carriers (ILECs) to establish rates by the use of alternative forms of regulation in exchange for the accelerated deployment of a broadband capable telecommunications infrastructure. As a result, many of the Chapter 30 ILECs chose to remove themselves from earning based on traditional rate base/rate-of-return methods by filing voluntary plans that committed them to accelerate broadband deployment throughout their respective service territories. A few of the Chapter 30 ILECs are under a streamlined rate base and rate of return regulation, and there are a small number of ILECs that have a Chapter 30 waiver and continue to remain under traditional rate base/rate of return regulation.

B. ANOPR Order Stakeholder Process

The ANOPR Order stakeholder process began with an attempt to simply incorporate new filing requirements for a FPFTY rate case into Section 53.53 by adding a proposed Exhibit E. It soon became apparent that aligning the use of a FPFTY with our existing filing requirements at Sections 53.51—53.56 would require more than merely adding an exhibit dedicated to FPFTY rate cases in Section 53.53.

The ANOPR Order stakeholder process involved a series of meetings and multiple exchanges of written suggestions by participating stakeholders over a two-year period in 2018 and 2019. This included extensive discussions of various procedural and substantive issues relating to the FPFTY filing requirements as well as discussions of existing HTY and FTY obligations. It also drew heavily upon the experiences of public utilities and other stakeholders who had participated in FPFTY rate proceedings at the Commission since 2012.

C. Proposed Revisions to Regulations

We propose revisions to Sections 53.51 through 53.56 of Title 52 of the Pennsylvania Code and the addition of Sections 53.51a and 53.56a to Title 52 of the Pennsylvania Code, governing the information to be furnished with rate change filings. Most of the proposed revisions and additions relate to the use of a FPFTY, but there are also proposed revisions and additions that relate to the use of a HTY and FTY.

1. Section 53.51. General.

a. Existing Provisions

Section 53.51 governs general requirements applicable to public utilities other than common carriers.

b. Proposed Revisions to Existing Provisions

We propose to add Section 53.51(a.1) to clarify the applicability of subchapters 53.51—53.56a to the following jurisdictional entities:

- A public utility, as such term is defined in 66 Pa.C.S. § 102.
- A city natural gas distribution operation, as such term is defined in 66 Pa.C.S. § 102 and used in 66 Pa.C.S. § 2212 (relating to city natural gas distribution operations).
- An Authority, as such term is defined in 66 Pa.C.S. § 3201 and used in the provisions of 66 Pa.C.S. §§ 3202—3209 (relating to water and sewer authorities in cities of the second class).
- A municipal corporation that renders service beyond its corporate limits but only to the extent of its services and facilities furnished or extended beyond its corporate limits, consistent with the jurisdiction given to the Commission under 66 Pa.C.S. § 1501.

In Section 53.51(b), we propose to update the term “utilities” to “public utilities.” This change is a proposed universal change throughout the regulations and includes changing the singular term “utility” to “public utility” where applicable.

In Section 53.51(c), we propose to delete “however, the submission of data regarding trended original cost referred to by this chapter shall be at the option of the public utility” because trended original cost methodology is no longer accepted.

Section 53.51(d) provides that public utilities filing for proposed rate changes shall serve a copy of the proposed rate changes and supporting data on the OCA. We propose to revise this provision to direct service also on the OSBA, the low-income advocates in the public utility’s service territory, the Commission’s I&E, and the Commission’s Bureau of Technical Utility Services (TUS).

2. Proposed New Section 53.51a. Definitions.

We propose to add a new Section 53.51a containing definitions for “test year,” “HTY,” “FTY” and “FPFTY.” In review of the existing regulations at Sections 53.51—53.56, we observed that these terms are not defined in a central location but rather described as they are used. For example, Section 53.52, rather than asking for the operating statement for the public utility in the HTY, asks for the operating statement for “a 12-month period, the end of which may not be more than 120 days prior to the filing.” We propose to replace all incidents of this repetitive descriptive language with appropriate test year terminology. Also, we recognized that “HTY” and “FTY” are defined only within Section 53.53(b) for application in Exhibit D, which provides:

Also, the term “historic test year” as used in these exhibits refers to the test year chosen by the utility to support its filing, that is, presumably future test year data would be supplied in most cases. “Historic test year,” as referred to in Exhibit D, is defined as book figures for the base test year. The term “future test year,” as used in Exhibit D, refers to the adjusted historic test year for known and measurable changes 12 months beyond the book figures for the base year, or the public utility’s final claimed supporting data.

52 Pa. Code § 53.53(b) (last amended effective May 21, 2005, *see* 35 Pa.B. 3024). We propose deleting this provision and consolidating the proposed new definitions in the proposed new Section 53.51a (relating to definitions).

In the new Section 53.51a, we propose adding the following definitions for “FPFTY,” “FTY,” “HTY” and “test year” (appearing in alphabetical order as shown in the proposed new Section 53.51a.), as follows:

FPFTY—Fully projected future test year—A 12-consecutive-month period beginning with the first full month that the new rates will be in effect after the application of the full suspension period permitted under § 1308(d) of the Public Utility Code, 66 Pa.C.S. § 1308 (relating to voluntary changes in rates) and reflecting estimated results of operations of the public utility.

FTY—Future test year—A 12-consecutive-month period beginning the day after the end of the HTY and reflecting in part estimated results of operations of the public utility based on adjustments to HTY amounts for known and measurable changes or other adjustments as supported by data.

HTY—Historic test year—The experienced 12-consecutive-month period that reflects actual results of operations of a public utility based on book values, corresponding to one of the following time frames:

(1) For a small water or small wastewater public utility, the experienced 12-consecutive month period ending no later than 180 days prior to the rate filing.

(2) For a public utility not subject to (1) above, either of the following:

(A) The public utility’s most recent experienced 12-consecutive month fiscal period ending prior to the rate filing.

(B) The experienced 12-consecutive month period ending no later than 120 days prior to the rate filing.

Test year—12-consecutive-month period used by the utility in discharging its burden of proof under 66 Pa.C.S. § 315(a) (relating to burden of proof), including the HTY, the FTY and the FPFTY.

The proposed definition for “FPFTY” tracks the statutory provisions in 66 Pa.C.S. §§ 315(e) and 2212(c) while clarifying that a FPFTY would reflect a public utility’s *estimated* results of operations. The proposed definition does not expand or contract the meaning of “FPFTY” as established by Sections 315(e) or 2212(c). We fully recognize that a city natural gas distribution operation may file to request a waiver relative to the start of a FPFTY granted pursuant to 66 Pa.C.S. § 2212(c). *See Pa. PUC, et al. v. PGW*, Docket No. R-2020-3017206, *et al.* (order entered on November 19, 2020) at 6. A similar option for waiver is available under 66 Pa.C.S. § 3029(b) for an authority as such term is defined in 66 Pa.C.S. § 3201 and used in the provisions of 66 Pa.C.S. §§ 3202-3209.

Section 53.53(b) currently describes the FTY, “as used in Exhibit D, [as] refer[ing] to the adjusted historic test year for known and measurable changes 12 months beyond the book figures for the base year, or the utility’s final claimed supporting data.” The proposed definition for “FTY” is the 12-consecutive-month period beginning the day after the end of the HTY and reflecting in part the public utility’s estimated results of operations based on adjustments to HTY amounts for known and measurable changes or other adjustments as supported by data. This is consistent with how the term is used under the existing regulations.

We propose to define “HTY” as the 12-consecutive-month period that reflects actual results of operations of the public utility based on book values. Consistent with the detail in Section 53.52, we propose that the dates for the HTY may correspond to: (1) for a small water or a small wastewater public utility, the experienced 12-consecutive-month period, the end of which may not be more than 180 days prior to the filing, and (2) for public utilities not covered by (1), (A) the public utility’s most recent experienced 12-month fiscal period or (B) the experienced 12-consecutive-month period, the end of which may not be more than 120 days prior to the filing of the rate change. Further, the proposed definition is consistent with waivers granted by the Commission relative to the start of a HTY. *See, e.g., Request of Citizens’ Electric, et al.*, Docket Nos. R-2019-3008212, *et al.* (Sec. Letter issued March 25, 2019).

We propose to define “test year” as the 12-consecutive-month period used by the public utility in discharging its burden of proof under 66 Pa.C.S. § 315(a), regardless of whether the public utility predicates its proposed rates on a HTY, a FTY or a FPFTY.

We also propose consolidating into Section 53.51a definitions for “Artificial gas,” “EMOF—Emergency maintenance and operation fund,” “Reserve account,” “Small

wastewater public utility,” and “Small water public utility.” Further, we propose a definition for “artificial gas.”

3. Section 53.52. Applicability; public utilities other than canal, turnpike, bridge and wharf companies.

a. Existing Provisions

Section 53.52 governs the information to be provided by a public utility, other than a canal, turnpike, tunnel, bridge or wharf company, when it files a tariff, revision or supplement either (1) effecting changes in the terms and conditions of service; or (2) increasing or decreasing bills to its customers. With respect to bill increases or decreases, Section 53.52 requires the public utility to provide information and data using the public utility’s HTY.

b. Proposed Revisions to Existing Provisions

In Section 53.52(a) and (b), we propose housekeeping updates to clarify language and remove redundant language.

Section 53.52(a)(7) uses the term “subsection” to refer to itself, and Section 53.52(a)(8) uses “paragraph” to refer to itself. As a housekeeping update in this section, we propose to use “paragraph” for both internal references.

In Sections 53.52(b) and (c), we propose to replace descriptive language of the HTY with the actual defined term “HTY,” where applicable.

In Section 53.52(d), we propose a housekeeping revision to clarify that the reference to (c)(2) is to Section 53.52(c)(2).

4. Section 53.53. Information to be furnished with proposed general rate increase filings in excess of \$1 million.

a. Existing Provisions

Section 53.53¹⁵ governs the information and data to be provided by a public utility, other than a canal, turnpike, tunnel, bridge or wharf company, when it files a general rate increase under 66 Pa.C.S. § 1308(d) in excess of \$1 million in gross annual revenues. There are four exhibits, Exhibits A, B, C, and D, containing sets of filing requirements according to the utility type indicated and seeking information and data for the public utility's HTY and FTY. In relevant part,¹⁶ Exhibit A to that section addresses the information and data to be provided by public utilities other than telecommunications, electric, water, and wastewater public utilities. Effectively, Exhibit A applies to public utilities providing natural gas, artificial gas and steam heat.¹⁷ Exhibit C addresses electric

¹⁵ The provisions of Section 53.53 were adopted September 2, 1977, 7 Pa.B. 2527; amended through March 29, 1985, effective for rate increase requests filed on and after July 1, 1985. Those public utilities meeting the filing requirements in the new regulations were permitted, upon request, to file under the new regulations at an earlier date, 15 Pa.B. 1178; amended October 23, 1987, effective November 23, 1987, 17 Pa.B. 4221; corrected May 13, 1994, effective December 3, 1983, 24 Pa.B. 2533; amended May 20, 2005, effective May 21, 2005, 35 Pa.B. 3024.

¹⁶ Exhibit B is not at issue as it refers to telecommunications utilities, which are not affected by Act 11. Among other things, 66 Pa.C.S. §§ 3011—3019, Chapter 30 (2004), instituted alternative rate setting processes for incumbent local exchange carriers (ILECs) that allowed them to move away from traditional rate base/rate-of-return regulation. Similarly, competitive local exchange carriers (CLECs) are currently not regulated on a rate base/rate-of-return basis. Also, to a degree, Section 53.59 (relating to cost support requirements and effective filing dates for tariff filings of noncompetitive services) has replaced Section 53.53 Exhibit B. Section 53.59 governs the filing requirements and information that needs to be filed for a rate increase for both ILECs and CLECs. *See* 30 Pa.B. 6202. Further, Section 53.59 and other telecommunications sections in Title 52 of the Pennsylvania Code are now under review in the Commission's pending rulemaking at Docket No. L-2018-3001391 regarding Chapters 53, 63 and 64. Parties are invited to comment on whether, *inter alia*, to withdraw Exhibit B entirely as part of this rulemaking, to defer that consideration to Docket No. L-2018-3001391, to amend Exhibit B, or to leave Exhibit B as it is.

¹⁷ We note an anomaly regarding the existing Exhibit A, which is proposed for deletion. While Exhibit A is applicable to utilities "except communications, electric, water and wastewater utilities," it contains the following section pertaining to telephone utilities with filing requirements appearing thereunder. (The filing requirements themselves are not reproduced below):

B. TELEPHONE UTILITIES ONLY, IN ADDITION TO PROVIDING THE INFORMATION REQUESTED IN "A." HEREINABOVE, PROVIDE THE FOLLOWING ADDITIONAL INFORMATION IF YOU PROCURE MATERIALS, SUPPLIES, OR SERVICES FROM A MANUFACTURING SUBSIDIARY

public utilities. Exhibit D addresses water and wastewater public utilities.¹⁸ These three exhibits provide the initial filing requirements and framework for the provision of information and data in support of a public utility's general rate increase request in the HTY and FTY. Section 53.53 also requires the public utility to file direct testimony in support of the public utility's positions.

b. Proposed Revisions to Existing Provisions

In Section 53.53(a), we propose adding language directing public utilities to provide the filing information in the Exhibit according to their utility type. A new Section 53.53(a)(5) is added to refer to the new Exhibit E being proposed, which is discussed further below.

As noted above, in Section 53.53(b) we propose deleting the language identified above relating to the terms HTY and FTY, since the need for the language would be replaced by the definitions in the new Section 53.51a.

In Section 53.53(c), we propose to delete the existing language and replace it with more succinct and clear language relating to the filing of direct testimony.

Under the Commission's existing Regulations, when a public utility elects to use a FTY in discharging its burden of proof, the public utility is also required to provide actual data for the experienced HTY. *See* 52 Pa. Code §§ 53.52, 53.53, 53.56. When a public uses a FTY, the HTY serves as a base year or baseline to connect a public utility's experienced results with its future estimates in the FTY. In the absence of this historical information and data, the ability to evaluate the validity of a public utility's forecasts or estimates is constrained. Thus, as part of the existing standard filing requirements in rate cases, Sections 53.52, 53.53 and 53.56 require a public utility to provide information and

¹⁸ As noted above, Exhibit B is not at issue as it refers to telecommunications utilities, which are not affected by Act 11.

data for the HTY as well as for the FTY. Based on the foregoing, we take the same approach for the FPFTY. We propose that a public utility electing to use a FPFTY be required to provide experienced data for the HTY and the FTY as well as its estimated data for the FTY. The provision of this historical data in the HTY and FTY as well as the intervening estimated data for the FTY will enable a thorough evaluation by the Commission of the validity of a public utility's forecasts for the FPFTY.

Accordingly, under our proposed approach of eliminating Exhibits A, C and D, as discussed below, the new Section 53.53(a.1) would direct public utilities using the proposed new Exhibit E, in all cases, to provide the information requested for the HTY and any years prior to the HTY. It further would direct that if the public utility uses a FTY in discharging its burden of proof, it must provide the data requested in Exhibit E for the FTY but not for the FPFTY. It would further clarify that if the public utility uses a FPFTY, it would have to provide the data requested in Exhibit E for the FTY and the FPFTY and any years following the FPFTY. We expect that the HTY and FTY data and information would be provided in proximity and association with the data and support provided for the FPFTY. Section 53.53(a.1) would clarify that if a public utility elects to use a FTY and a question in Exhibit E requests information for the year(s) immediately following the FPFTY, then the public utility would be required to provide the information for the years immediately following the FTY (instead of the FPFTY). We invite comments on this approach.

c. Exhibits A, B, C, and D

We note that the ANOPR Order did not contemplate changes to Exhibit A, B, C, or D, except for a housekeeping change proposed to Exhibit D.¹⁹ We considered preserving the requirements of Exhibits A, B, C, and D for rate cases in which a utility, in

¹⁹ Specifically, in Exhibit D—52 Pa. Code § 5.423 is referenced in Section VII.25. Section 5.423 has, however, been replaced by 52 Pa. Code § 5.365 (relating to orders to limit availability of proprietary information), effective September 21, 2013, 43 Pa.B. 5593. If Exhibit D is retained, we would continue to propose to update that cross reference.

discharging its burden of proof, uses a HTY or a FTY and does not use a FPFTY. We also considered adapting the existing Exhibits A, C and D to add FPFTY provisions to them. We note, however, that there is little consistency among Exhibits A, C, and D regarding what the exhibits require. Further, we have learned, at least anecdotally, that depending on the industry generally and on the public utility particularly, some public utilities voluntarily include significantly more information with their rate case filings than others, thereby significantly reducing the need for discovery, saving both time and money for all parties concerned. To update all provisions in Exhibits A, B, C, and D would in essence require a near-complete re-writing of each of them.

We now propose to eliminate Exhibits A, C, and D,²⁰ and replace them solely with the proposed new Exhibit E, attached to this NOPR as Annex B. As discussed further below, we currently view the proposed new Exhibit E as an overall improvement upon the existing data requirements in Exhibits A, C, and D by standardizing, streamlining, and supplementing those requirements.

Finally, we are not currently proposing to eliminate or amend Exhibit B because the stakeholder process did not have participation by telecommunications stakeholders. However, Section 53.59 (relating to cost support requirements and effective filing dates for tariff filings of noncompetitive services) has in large measure replaced Section 53.53 Exhibit B for telecommunications public utilities that use alternate rate making. Section 53.59 governs the filing requirements and information that needs to be filed for a rate increase for both Incumbent Local Exchange Carriers (ILECs) and Competitive Local Exchange Carriers (CLECs). *See* 30 Pa.B. 6202. Further, Section 53.59 and other telecommunications sections in Title 52 of the Pennsylvania Code are now under review in the Commission's pending rulemaking at Docket No. L-2018-3001391 regarding

²⁰ Due to their large sizes, the existing Exhibits A, C, and D currently in 52 Pa. Code § 53.53 are not printed in full in the Annex A to this NOPR Order as a proposed deletion and also are not being published in full as a proposed deletion in the *Pennsylvania Bulletin*.

Chapters 53, 63 and 64. Parties are invited to comment in this proceeding on whether, *inter alia*, to withdraw Exhibit B entirely as part of this rulemaking, to leave Exhibit B as it is, or to incorporate provisions for telecommunications public utilities into the proposed Exhibit E.

d. Proposed New Exhibit E

Attached as Annex B to this NOPR, we propose a new Exhibit E – *Filing requirements for public utilities seeking a general rate increase above \$1 million in annual gross revenues* to Section 53.53. The proposed Exhibit E would require a public utility to furnish certain information and data addressing rate base, rate of return, financial statements, operating revenues, operating expenses, depreciation expense, interest expense, taxes, and employee costs, pension and other benefits expense, rate structure, cost of service allocation, and the public utility’s Commission-approved Long-Term Infrastructure Improvement Plan (LTIIIP) and Annual Asset Optimization Plan (AAO Plan).²¹

The proposed Exhibit E applies to natural gas, artificial gas, electricity, steam, water and wastewater public utility types, as well as stormwater provided by water and sewer authorities in cities of the second class, and includes both (1) general filing requirements, applying equally to these utility types, and (2) industry-specific filing requirements, applicable to a particular public utility type as indicated.²²

²¹ While implementation issues related to a public utility’s distribution system improvement charge (DSIC), as authorized under Act 11, have been addressed in other Commission-docketed proceedings, the proposed Exhibit E requires a public utility to furnish relevant documentation relating to its LTIIIP and AAO Plans. *See* 66 Pa.C.S. §§ 1352-1360; *see also Act 11 Implementation Order*; *see also Review of LTIIIP*, Docket No. 2012-2317274 (Order entered May 23, 2014) (establishing regulations at 52 Pa. Code §§ 121.1-121.8 relating to LTIIIPs).

²² Telecommunications stakeholders did not participate in the ANOPR Order stakeholder process. As noted above, Exhibit B refers to telecommunications utilities, which are subject to Chapter 30 (2004). Chapter 30 (2004) instituted alternative rate setting processes for ILECs that allowed them to move away from traditional rate base/rate-of-return regulation. Similarly, CLECs are currently not regulated on a rate base/rate-of-return basis. Also, to a degree, Section 53.59 (relating to cost support requirements and

In drafting the proposed Exhibit E, we attempted to streamline, update, standardize and supplement the filing requirements across the various public utility types using Exhibits A, C, and D to formulate the structure of the proposed new Exhibit E. To that, we note that there are several points of divergence between the data and supporting information required by the existing Exhibits A, C, and D for the various utility types. Some of these differences are preserved in the proposed Exhibit E as industry-specific information filing requirements while others are standardized as general filing requirements. We also incorporated many of the items commonly sought through discovery by interested parties in voluntary rate filings.

Accordingly, in the proposed Exhibit E, Subsections E.III.A.—E.III.N. provide common filing requirements for the electricity, natural and artificial gas, steam, water, wastewater and stormwater public utility industries. Subsections E.IV.A.— E.IV.D. provide further filing requirements specific to public utility industries, specifically water, wastewater, stormwater, natural gas, artificial gas and steam heat public utilities.

Below is an overview of the proposed new Exhibit E:

Exhibit E – Filing requirements for public utilities seeking a general rate increase above \$1 million in annual gross revenues.

Subsection E.I. Applicability.

Subsection E.II. Definitions.

Subsection E.III. General filing requirements that delineate the following:

effective filing dates for tariff filings of noncompetitive services) has replaced Section 53.53 Exhibit B. Section 53.59 governs the filing requirements and information that needs to be filed for a rate increase for both ILECs and CLECs. *See* 30 Pa.B. 6202. Further, Section 53.59 and other telecommunications sections in Title 52 of the Pennsylvania Code are now under review in the Commission’s pending rulemaking at Docket No. L-2018-3001391 regarding Chapters 53, 63 and 64. Parties are invited to comment on whether, *inter alia*, to withdraw Exhibit B entirely as part of this rulemaking, to defer that consideration to Docket No. L-2018-3001391, to amend Exhibit B, or to leave Exhibit B as it is.

- A. General
- B. Summary of Filing
- C. Description of Public Utility Operations
- D. Rate Base
- E. Rate of Return
- F. Balance Sheet
- G. Income Statement and Cash Flow Statement
- H. Operating Revenue
- I. Operating Expenses
- J. Employee Costs, including Related Costs such as Benefits and Retiree Costs
- K. Depreciation
- L. Taxes
- M. Rate Structure, Cost of Service Allocation Study, Bill Frequency Analysis, and Special Rate Contracts
- N. Long Term Infrastructure Improvement Plan and Annual Asset Optimization Plan

Subsection E.IV. Industry Specific Filing Requirements

- A. Water, Wastewater and Stormwater Public Utilities Only
- B. Gas Public Utilities
- C. Manufactured Gas Public Utilities
- D. Steam Public Utilities

For discussion, we note that in certain areas of the filing requirements, certain financial information and data is sought not just for the public utility but also its parent company and the consolidated group. We propose to add definitions for the terms affiliated company, consolidated group, parent company, public utility, and subsidiary company, as follows (in alphabetical order as appearing in the proposed Exhibit E in NOPR Annex B):

Affiliated company—A company in any chain of successive ownership of stock or membership interest, regardless of the tier, under the parent company.

Consolidated group—The public utility and its parent company and affiliated companies.

Parent company—The beneficial holder of the largest voting interest in the public utility or the company listed at the top of a corporate hierarchy structure with ultimate controlling interest in the public utility. Includes the municipality if the public utility is a municipal utility subject to Commission regulation.

Public utility—For purposes of this Exhibit E, the filing entity using a FPFTY pursuant to this subchapter (relating to rates).

Subsidiary company—A company in which the public utility is the beneficial holder of the largest voting interest.

We note these definitions were not proposed or discussed during the ANOPR Order stakeholder process. As for the definition of “parent company,” this proposed definition recognizes that the direct parent company of a public utility may be a holding company and not the ultimate controlling parent for which the data is being sought. We invite comment on these proposed definitions and the use of these defined terms in the filing requirements.

We noted the frequent use of other undefined terms in the filing requirements that resulted from the ANOPR Order stakeholder process. We anticipate that it would bring clarity to assign definitions to such terms. Accordingly, we propose to define the following terms in Exhibit E in NOPR Annex B as follows:

AFUDC—Allowance for funds used during construction—The capitalized cost of debt and equity funds used to finance an addition of public utility plant to rate base while the plant is under construction.

Billing determinant—The detailed customer usage data per unit of consumption by rate schedule needed to bill customers at present rates, for example, kWh for electric utilities, Mcf for gas utilities, or other unit of consumption for water or wastewater, as specified by the public utility in an approved tariff.

CWIP—Construction work in progress—A holding account for capitalizing construction costs of public utility plant not yet ready to be placed in service.

Customer class—A broad rate group that is used to allocate costs for rate design, such as residential, commercial and industrial classifications.

Customer charge—A flat monthly charge to cover fixed costs incurred to provide public utility service to a customer.

Pro forma—Calculations of financial results using certain projections or assumptions as delineated by the public utility which provide information about the public utility’s potential financial performance in a test year.

Rate schedule—A specific rate group within a customer class defined in the public utility’s tariff.

Tariff—A document, on file with, and approved by, the Commission, establishing the types of rates charged for specific public utility services and the general terms and conditions under which such services will be provided.

USoA—Uniform System of Accounts—An accounting system prescribed by FERC and adopted by the Commission applicable to public utilities regulated by the Commission. The accounting system prescribes the manner and form by which public utility accounts shall be maintained.

Again, we note these definitions were not proposed or discussed during the ANOPR Order stakeholder process. We invite comment on these proposed definitions and the use of these defined terms in the filing requirements. We also invite comments on whether additional definitions are needed.

We have largely refrained from referring specifically to stakeholder discussions, but we note, without specific attribution, that the proposed Exhibit E, subsection III.D. Rate Base, Requirement 11, generated an extensive discussion during the stakeholder process. At this stage, we propose inclusion of this requirement as we understand that it is intended to obtain information and data pertaining to projected plant additions during the FPFTY. The proposed requirement would require a public utility to:

Provide a schedule that shows a breakdown of plant additions and retirements by plant account for the FTY and the FPFTY, showing the following:

- a. Account number;
- b. Description of the addition;
- c. Project number;
- d. Addition amount;
- e. Completion date;
- f. Description of retirement;
- g. Retirement amount; and
- h. Grand totals.

The information that would be required could permit further discovery by parties to a general rate increase case as well as permit an evidence-based determination by the Commission on the merits of including or excluding the plant for rate recovery. Specifically, the proposed data would appear to go to the question of whether a projected plant addition appears certain to occur in the FPFTY and whether it would be reasonable for inclusion in rate recovery from consumers or. The proposed data would, in the alternative, appear to address whether the projected plant addition is speculative or in the preliminary planning stages and thus should be excluded from rate base. *See UGI Electric* at 28, 31 (denying the inclusion of a \$13.4 million Operations Center in rate base because based on the evidence presented there was too much uncertainty surrounding the proposed building to conclude with reasonable certainty that it would be operational in the FPFTY). We anticipate extensive comment on this issue.

The following terms, as proposed for use in Exhibit E, are sourced from the existing exhibits but are not clearly defined in the existing exhibits: “investment tax credits” and “job development credits.” Parties are requested to provide their understanding, including citations, of these terms as they would be used in Exhibit E.

We have proposed for use in Section III.K.31 of proposed Exhibit E the following language:

III.E.31. Regarding responses to these filing requirements on income taxes paid on the HTY operating statement, reconcile data from both federal and state income taxes showing effects due to normalization, yearly write-offs of past years, income tax deferrals and normalization of investment tax and development credits.

This proposal draws upon the following provision in the existing exhibits:

Reconcile all data given any answers to questions on income taxes charged on the HTY operating statement with regard income taxes paid, income taxes charged because of normalization and credits due to yearly write-offs of past years income tax deferrals and from normalization of investment tax and development credits both federal and state income taxes.

Parties are requested to address the proposed filing requirement as it would be used in Exhibit E.

We have proposed for use in Section III.K.8 of proposed Exhibit E the following language:

III.K.8. Provide a table showing the cumulative depreciated original cost by year of installation for public utility plant by asset type in service at the end of the HTY, the FTY and the FPFTY (depreciable plant only) as claimed in the measures of value. Formulate the table as follows:

- a. Column 1: Year installed;
- b. Column 2: Original cost;

- c. Column 3: Accrued depreciation;
- d. Column 4: Depreciated original cost (which is original cost minus accrued depreciation); total this column;
- e. Column 5: Cumulative depreciated original cost, increased year by year; and
- f. Column 6: Cumulative depreciated original cost, year by year, divided by the total of column 4, shown as a percent.

This proposal draws upon multiple references in the existing exhibits to “measures of value,” “depreciated original cost,” “surviving cost,” “survivor curve,” “calculated depreciation reserve,” and “annual depreciation accruals” as well as other elements to be provided in various formats and tables to arrive at cumulative depreciated original cost by year. Parties should comment on how this table should be structured including definitions for the terms used in the table if existing terms are not clear.

Section IV.A.6.c.i would use the term “acute” to modify the term “violation.” This term is used only once and is drawn from the existing Exhibit D. Parties are requested to provide their understanding, including citations, of the term “acute” as it would be used in Exhibit E or propose alternative language.

In proposed sections IV.B.8 and IV.B.9 of Exhibit E, we propose the following two requirements:

- 8. To the extent applicable, provide the annual recorded expenses by USoA for the HTY and as projected for the FTY and FPFTY by account. Identify all accounts used but not specifically listed in B.9 below.
- 9. Natural gas production expenses: To the extent applicable, provide the annual recorded expenses by USoA for the HTY and as projected for the FTY and FPFTY by the following accounts: . . .

It is possible that these two proposed requirements are covered by proposed section III.B.11 in proposed Exhibit E. Parties are requested to address whether the proposed

sections IV.B.8 and IV.B.9 of Exhibit E are redundant or whether they would require information not otherwise addressed in the proposed Exhibit E.

5. Section 53.54. Small water and wastewater utilities.

a. Existing Provisions

In paragraph (6) of Section 53.54(a), a small water or wastewater public utility is defined as having annual gross revenue of less than \$250,000.

Section 53.54 governs the information and data to be furnished by small water and small wastewater utilities to support their rate filings. Small water and wastewater public utilities have been able to request and use short-form rate forms under the existing regulations. *See* Section 53.54(6). The short-form schedules, with instructions, as developed by Commission staff, that are currently available for optional use by small water public utilities and wastewater public utilities, are available for download from the Commission’s website at <https://www.puc.pa.gov/filing-resources/forms/waterwastewater-forms/>.

A small water public utility or a small wastewater public utility is permitted to use an EMOF to cover listed contingencies if they occur with no return on such funds; EMOF funds cannot be claimed as part of a public utility’s rate base. They are subject to strict and extensive Commission oversight regarding use and disbursement. Contributions to an EMOF, which are collected from customers through rates, are treated as an expense. *See Small Water and Sewer Company Rate Methodologies*, Docket No. L-00930082, 27 Pa.B 301.

b. Proposed Revisions to Existing Provisions

We propose to refine the references to small water and small wastewater public utilities consistent with Commission interpretation of this existing subsection and with the proposed definitions of “small water public utility” and “small wastewater public

utility” in Section 53.51a. Throughout Section 53.54, we proposed to update the terms to reflect a small water or a small wastewater public utility.

We also propose to define “EMOF” in Section 53.51a and propose to provide clarity on the use of an EMOF in Annex A.

c. Proposed Use of Short-Form Schedules and Instructions

In Section 53.54(a), we propose to direct small water and small wastewater public utilities to use Short-Form Schedules, to be available on the Commission’s website, as the starting point for their Section 53.54 rate change filings. The use of Short-Form Schedules by a small water or small wastewater public utility would standardize and streamline the filing requirements necessary for these entities. This would also present the potential for increased process efficiency for the Commission Staff responsible for reviewing the rate change filing and preparing a report for Commission action.

We are proposing several revisions to the existing short-form schedules and instructions which are available for download from the Commission’s website at <https://www.puc.pa.gov/filing-resources/forms/waterwastewater-forms/>. The proposed revisions to the Short-Form Schedules and Instructions include:

- (1) Disclaimers that each document is an informal staff opinion, is only an aid to the public utilities and the public, does not have the force and effect of law or legal determination and is not binding on the Commonwealth or the Commission. *See* 52 Pa. Code § 1.96 (relating to unofficial statements and opinions).
- (2) Housekeeping and administrative edits such as changing references to “Office of Trial Staff” to “Bureau of Investigation and Enforcement”.

The proposed revisions to the Short-Form Schedules include:

(3) Adding formulas that calculate adjustments or claims for the adjusted test year, including the following:

(a) The maximum allowable operating revenue increase based on the public utility's claims for expenses, rate base and rate of return compared with operating revenue at present rates.

(b) Cash working capital rate base claim equals (total operating and maintenance expenses minus purchased water or wastewater conveyance and/or treatment and minus non-cash operating and maintenance expenses) divided by 8.

(c) Revenue Factor Adjustment to account for increases in bad debt expense, regulatory expense (that is, Commission, OCA and OSBA assessments) and for state and federal income tax expenses that directly result from increases in operating revenues. Rates for bad debt expense and regulatory commission expense would be based on adjusted test year claims. Federal and state income tax expenses would be based on default rates of 21% and 9.99%, respectively, and would consider the deductibility of state income taxes for federal income tax purposes.

(4) Revising Schedule D—Statements of Income to include additional account numbers from Schedule 407 of the water and wastewater annual report forms including bad debt expense and regulatory commission expense account numbers.

The proposed revisions to the Short Form Schedule Instructions include adding the following directives:

(5) Provide information for proposed changes in terms and conditions of service. *See* 52 Pa. Code § 53.52(a).

(6) Explain how cash working capital is calculated including the formula used to calculate the claim. Exclude the following from cash working capital when the 1/8 method is used:

(a) Exclude income taxes because income taxes are not an operating and maintenance expense, and funds are collected from customers prior to payments being made;

(b) Exclude Purchased Water or Wastewater Conveyance/Treatment expenses because funds are collected from customers prior to payments being made unless the public utility can justify that it is billed in advance for services rather than in arrears; and

(c) Exclude non-cash operating and maintenance expenses, such as depreciation, amortization, and bad debt expenses.

(7) Explain how the revenue factor adjustment is calculated.

(8) Use federal and state income tax rates of 0% if the public utility is not subject to corporate income tax (that is, sole proprietorships, partnerships, certain limited liability corporations, S-Corporations, and municipal corporations).

(9) Schedule D—Statements of Income and the public utility's rate base claim:

(a) Base claims on facility service lives rather than tax lives;

(b) Consider historic service lives that the public utility used for similar facilities and service lives from recent service life studies and/or annual depreciation reports filed with the Commission when selecting service lives for new utility facilities; and

(c) Annualize related depreciation expenses to reflect the actual annual depreciation expense the public utility will incur going forward for facilities that were added or that became fully depreciated, or both, during the test year.

(10) Schedule G—Rate of Return:

(a) Consider using a return on equity that is no greater than the Commission-approved return on equity for water and wastewater utilities for DSIC purposes, as specified in the most recent Bureau of Technical Utility Services Report of the Quarterly Earnings of Jurisdictional Utilities; and

(b) Reduce the rate of return to reflect the fact that the investor is not subject to income taxes if the public utility is a municipal entity.

The proposed revisions to the instructions also would include:

(11) A link to the most recent Bureau of Technical Utility Services Report of the Quarterly Earnings of Jurisdictional Utilities on the Commission's website.

(12) Explanation of the option order process described in 52 Pa. Code § 53.54(a).

(13) Explanation of the option of alternative ratemaking methodologies, such as the operating ratio methodology pursuant to 52 Pa. Code § 53.54(b) and multiyear rate plans pursuant to 66 Pa.C.S. §1330(b).

(14) A sample certificate of service.

(15) A link for *A Guide to Utility Ratemaking* on the Commission's website.

(16) Information regarding posting of customer notices in public utility offices and issuing news releases. *See* 52 Pa. Code §§ 53.45(b)(1) and (3).

(17) Sample customer notice and the telephone number for the Commission's Bureau of Consumer Services.

While we invite comments on the use and content of the Short-Form Schedules and Instructions, we specifically invite comments on whether it would be reasonable for small water or wastewater pass-through entities (that is, entities other municipal corporations) that are not subject to corporate income tax to be permitted to use statutory corporate tax rates when completing the form or for the Commission to consider awarding additional return on equity basis points for such entities.

These short-form schedules and instructions will not be promulgated in the regulations.²³ Rather, after reviewing any comments or reply comments submitted to the Commission in this proceeding relating to the existing schedules and instructions and the

²³ The adoption of a form as a regulation requires an agency to amend the regulation to change the form, even if only a minor change is necessary.

areas of proposed revisions identified above, we intend to adopt final short-form schedules and instructions in a future Commission order. The final short-form schedules and instructions would be available on the Commission’s website and be subject to future modification by Commission order. The final form regulation will list the information to be required and that the information is required to be filed on a form provided by the Commission.

6. Section 53.55. Applicability; canal, turnpike, bridge and wharf companies.

a. Existing Provisions

Section 53.55 governs the information to be provided by a canal, turnpike, tunnel, bridge or wharf company public utility when it files a tariff, revision or supplement increasing or decreasing rates and seeks information and data using the public utility’s HTY.

b. Proposed Revisions to Existing Provisions

We invite comment as to whether this Section 53.55 is being used in contemporary rate cases or rate change filings of canal, turnpike, tunnel, bridge or wharf companies. In conducting our review, we were not able to locate any recent or historical rate cases or rate change filings of canal, turnpike, tunnel, bridge or wharf companies using 52 Pa. Code § 53.55. We ask that commenters address whether this entire section is still necessary or if it can be deleted for lack of use.

If it appears we should keep Section 53.55, like Sections 53.52(b) and (c), we propose in Sections 53.55(a) and (b) to replace descriptive language of the HTY with the actual defined term “HTY,” where applicable. Additionally, if Section 53.55 is retained, we would add a provision to the definition of “HTY” in Section 53.51a that for canal, turnpike, tunnel, bridge and wharf companies, the HTY would be “the 12-consecutive-month period, the end of which may not be more than 60 days prior to the filing.”

7. Section 53.56. Supporting data for future test year.

a. Existing Provisions

Section 53.56 permits the use of a FTY in discharging a public utility's burden of proof under Section 315 of the Code, and specifies that if a FTY is used, it shall be in addition to, and not in lieu of, other data and material required to be submitted for the HTY.²⁴ It also provides that a FTY may be based on estimates for a period of 12-consecutive months, beginning on the day following the end of the HTY. If a FTY is used, Section 53.56 requires the public utility to submit for the record, during the rate proceeding, the results of its actual experience in the FTY for each quarter starting with the day following the end of the HTY within 30 days of the end of the quarter or as soon thereafter as available.

b. Proposed Revisions to Existing Provisions

We propose to preserve the major substantive provisions of the existing Section 53.56. We propose some housekeeping updates, however. First, to separate the different concepts being addressed, we propose to separate certain text appearing in subsection (a) into a new subsection (a.1). In the new subsection (a.1), we propose to add "fully substantiated" before estimates to clarify that the FTY shall be based on fully substantiated estimates. Finally, we propose to replace the term future test year with FTY and the descriptive language of the HTY with the actual term "HTY."

We note that the existing Section 53.56(b) requires the public utility, if a FTY is used, to submit for the record, during the rate proceeding, the actual results of its experienced quarter in the FTY, starting with the day following the end of the HTY within 30 days of the end of the quarter or as soon thereafter as available. We propose in a new 53.56(c) that, following the completion of a rate proceeding, the public utility be

²⁴ Section 53.56 became effective January 3, 1989, 18 Pa.B. 5451.

required to also file “appropriate data evidencing the accuracy of the estimates” used to calculate its cost of service components in the FPFTY. Section 53.56(b) and our proposed revisions in 53.56(c), and 53.56a discussed below, are consistent with the requirements in Section 315(e) relating to the potential of a public utility to over-project its estimates in the FTY or the FPFTY:

Whenever a utility utilizes a [FTY] or a [FPFTY] in any rate proceeding and such [FTY] or a [FPFTY] forms a substantive basis for the final rate determination of the commission, the utility shall provide, as specified by the commission in its final order, appropriate data evidencing the accuracy of the estimates contained in the [FTY] or a [FPFTY], and the commission may after reasonable notice and hearing, in its discretion, adjust the utility's rates on the basis of such data.

66 Pa.C.S. § 315(e).

8. Proposed New Section 53.56a. Supporting data for fully projected future test year.

We propose to add a new Section 53.56a regarding supporting data required if a public utility is using a FPFTY. Section 53.56a(a) would provide that if a FPFTY is used, the public utility would also submit information and data for the HTY and FTY. Section 53.56a(b) would provide that if a FPFTY is used, it would be based on fully substantiated estimates and that the estimates for a FPFTY would have to be of the same or similar type, quantum and nature as required to be submitted for a HTY and FTY and would have to describe the methodology, data and material used as the basis for the estimates.

Finally, consistent with the language in Section 315(e) discussed above, Section 53.56a(c) provides that if a public utility submits and uses data for a FPFTY and such FPFTY forms a substantive basis for the final rate determination of the Commission, it shall, following the completion of the proceeding, file with the Commission and serve on

the interested parties in the same docketed proceeding in which the final rate determination was entered, the results of its actual experience in the FPFTY. The results shall be submitted within 30 days of the end of the last quarter of the FPFTY or as soon thereafter as available. The public utility shall submit such data as appropriate evidencing the accuracy of the estimates contained in the FPFTY.

D. Comments and Reply Comments

We invite public utilities and other interested parties to file comments and/or reply comments on this NOPR Order and the proposed changes to our regulations as set forth in NOPR Annex A and NOPR Annex B. Parties may provide comments or reply comments on any existing or proposed provisions, including terms and definitions, of Sections 53.51—53.56a regardless of whether comments are specifically invited. We note that “major” and “significant” are used several times in Annexes. We invite the parties to comment on how to quantify these terms relative to the sections where they are used. Parties may also offer suggestions for additional provisions not covered in the proposed regulations.

We establish a 90-day comment period, consisting of a 45-day comment period and a 45-day reply comment period. Comments will be due within 45 days of publication of this NOPR Order in the *Pennsylvania Bulletin*. Reply comments will be due 45 days after the deadline for comments. This NOPR Order, Annex A and Annex B will be served on all parties to this proceeding, made public on the Commission’s website, and provided to the Governor’s Budget Office and the Office of the Attorney General. Publication of the foregoing in the *Pennsylvania Bulletin* will not occur until after the NOPR Order, Annex A and Annex B have been reviewed by the Governor’s Budget Office and by the Office of the Attorney General. Parties should note that the official versions of the NOPR Order, the proposed Annex A and the proposed Annex B are the versions published in the *Pennsylvania Bulletin*.

CONCLUSION

Accordingly, under Sections 315, 501, 1301, 1304, 1308, 1350-1360 and 1501 of the Public Utility Code, 66 Pa.C.S. §§ 315, 501, 1301, 1304, 1308, 1350-1360, and 1501; the Commonwealth Documents Law, Act of July 31, 1968, P.L. 769, *as amended*, 45 P.S. §§ 1201, *et seq.*; and the regulations promulgated thereunder, at 1 Pa. Code §§ 7.1-7.4; we propose adoption of new regulations at 52 Pa. Code §§ 53.51—53.56a as set forth in Annex A and at 52 Pa. Code § 53.53 as set forth in Annex B; the short-form schedules and instructions for small water public utility and small wastewater public utilities will not be promulgated in the regulations; **THEREFORE,**

IT IS ORDERED:

1. That a proposed rulemaking be opened to consider the regulations set forth in Annex A and Annex B.
2. That the Law Bureau shall submit this Notice of Proposed Rulemaking Order and Annexes A and B to the Office of Attorney General for review and approval and to the Governor's Budget Office for review for fiscal impact.
3. That upon completion of the reviews by the Office of Attorney General and the Governor's Budget Office, the Law Bureau shall submit this Notice of Proposed Rulemaking Order and Annexes A and B for review and comment to the Legislative Standing Committees, the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*, and the Independent Regulatory Review Commission.
4. That interested parties may file written comments referencing Docket No. L-2012-2317273 within 45 days of publication in the *Pennsylvania Bulletin*, and may file

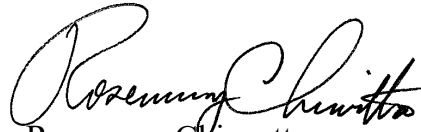
written reply comments within 45 days of the deadline for comments. Comments and Reply Comments are to be filed electronically through the Commission's e-File System. See <https://efiling.puc.pa.gov/> for instructions. Confidential materials should be clearly marked as such and be emailed to Rosemary Chiavetta, Commission Secretary, rchiavetta@pa.gov, in lieu of being eFiled.

5. That the Secretary shall serve this Notice of Proposed Rulemaking Order and Annexes A and B on the Energy Association of Pennsylvania (EAP), the National Association of Water Companies (NAWC), the Pennsylvania Telephone Association (PTA), all jurisdictional electric distribution companies, all jurisdictional natural gas distribution companies, Philadelphia Gas Works, all jurisdictional water and wastewater utilities, Pittsburgh Water and Sewer Authority (PWSA), the Commission's Bureau of Investigation and Enforcement, the Office of Consumer Advocate, the Office of Small Business Advocate, and all other parties of record at this docket.

6. That the Secretary shall publish to the Commission's website this Notice of Proposed Rulemaking Order and Annexes A and B at Docket No. L-2012-2317273.

7. That the contact persons for this rulemaking are Louise Fink Smith, Assistant Counsel, Law Bureau, finksmith@pa.gov; Melanie J. El Atieh, Assistant Counsel, Law Bureau, melatieh@pa.gov; Erin Laudenslager, Manager, Bureau of Technical Utility Services, elaudensla@pa.gov; and Karen Thorne, Regulatory Review Assistant, Law Bureau, kathorne@pa.gov. Parties shall email electronic copies in Microsoft Word®-compatible format of their filings at this docket to these contact persons. Electronic copies in Microsoft Word®-compatible format of all comments and reply comments shall be provided via email to the following Commission email account: RA-PC-FPPTY2317273E@pa.gov.

BY THE COMMISSION


Rosemary Chiavetta
Secretary

(SEAL)

ORDER ADOPTED: May 12, 2022

ORDER ENTERED: August 24, 2022