



COMMONWEALTH OF PENNSYLVANIA

November 15, 2022

E-FILED

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

Re: Use of Fully Projected Future Test Year, 52 Pa. Code Chapter 53.51-53.56a; Fiscal No. 57-334; IRRC No. 3355; Docket No. L-2012-2317273

Dear Secretary Chiavetta:

Enclosed please find the Comments, filed on behalf of the Office of Small Business Advocate (OSBA), in the above-captioned proceeding.

Copies are being served on all known parties in this proceeding, as indicated on the attached Certificate of Service.

If you have any questions, please do not hesitate to contact me.

Sincerely,

/s/ Steven C. Gray

Steven C. Gray
Senior Supervising
Assistant Small Business Advocate
Attorney I.D. No. 77538

Enclosures

cc: Parties of Record
Mr. Robert Knecht
Renardo L. Hicks, Chief Counsel
Mel El Atieh, Assistant Counsel, PA PUC Law Bureau
Louise Fink Smith, Assistant Counsel, PA PUC Law Bureau
Karen Thorne, Regulatory Review Assistant, PA PUC Law Bureau
Erin L. Laudenslager, Manager, PA PUC Bureau of Technical Utility Services

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**Use of Fully Projected Future Test Year,
52 Pa. Code Chapter 53.51-53.56a Docket : Docket No. L-2012-2317273
No. L-2012-2317273; Fiscal No. 57-334;
IRRC No. 3355**

**COMMENTS OF THE
OFFICE OF SMALL BUSINESS ADVOCATE**

On August 24, 2022, the Commission issued a Clarified Notice of Proposed Rulemaking Order (“NOPR”), with Clarified Annex A (“Annex A”) and Clarified Annex B (“Annex B”), related to public utility filing requirements associated with the use of a fully projected future test year (“FPFTY”) in base rate proceedings.¹ The background for this proposed rulemaking is set forth in the NOPR at 1-3. Interested parties are permitted to submit written comments on the NOPR within 45 days of its publication in the *Pennsylvania Bulletin*. The OSBA respectfully submits the following comments.

General Comments and Caveats

In providing these comments, the OSBA observes that the NOPR relates to filing requirements for base rates proceedings, which necessarily encompass the wide range of topics at issue in those proceedings. In general, the OSBA does not have the resources to undertake exhaustive reviews of all such issues in base rate proceedings, and typically limits its interventions to issues of cost allocation, revenue allocation and rate design, as well as to selected revenue requirement and competitive issues. These comments are similarly limited.

¹ Clarified Notice of Proposed Rulemaking Order, Docket No. L-2012-2317273, Order Entered August 24, 2022 (“NOPR”). Pursuant to Act 11 of 2012, the Commission is empowered “. . . 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).” NOPR at 1

The NOPR indicates that the Commission undertook a stakeholder consultation process in 2018 and 2019 related to these proposed filing requirements.² The OSBA has not heretofore participated in the consultative process.

In offering these comments, the OSBA retains its view that a public utility's revenue requirement for the FPFTY should be based on the average rate base for that calendar period, as well as the forecast volumes, revenues, and costs for that calendar period. Because the FPFTY resolves the problem of regulatory lag, there is no need to rely on year-end rate base, nor is there a need for any revenue or cost annualization calculations. Average rate base, revenue and cost should all reflect the test year period in which the rates will be in effect.

Finally, the OSBA cautions that establishing filing requirements requires a balance from the Commission. Base rate proceedings are technically complex proceedings, involving many details and often requiring substantial information from the public utility. However, not all proceedings involve all these issues. The Commission should recognize that it should not attempt to require every public utility in every base rate proceeding to provide information on every issue that has ever arisen in such a proceeding. Base rate proceedings involve an extensive discovery process, which is better suited to addressing unusual issues that may arise in specific proceedings. The OSBA therefore recommends that the Commission focus on filing requirements for those issues that are common to base rates cases.

Specific Comments

1. Section 53.56a(c):

The NOPR would require that, following the completion of a FPFTY, the public utility provide evidence regarding the accuracy of the forecast estimates used in deriving the approved

² NOPR at 2-3.

FPFTY rates. Such a filing would obviously be well-removed from the case itself because the actual results for the FPFTY will typically not be known until more than a year after the proceeding has concluded.

The OSBA strongly supports this requirement, with clarifications and enhancements.

The OSBA observes that many Pennsylvania public utility base rates proceedings are resolved by settlement, where there may be no specific agreement as to which specific components of the revenue requirement are included in rates. The OSBA does not believe that a settlement should be a bar to utility compliance with the Commission's proposed requirement. In the event of a "black box" settlement, the OSBA recommends that the Commission require the utility to submit a comparison of actual results relative to the utility's filed position.

In addition, the OSBA respectfully suggests that the requirement would be strengthened by making it clear that the public utility filing should include all aspects of the estimated revenue requirement, including average and year-end rate base, volumes by rate class, rate revenues by rate class, miscellaneous revenues, and operating, maintenance, administrative and depreciation expenses.³ Moreover, in addition to simply providing the comparison, the OSBA recommends that the Commission require the public utility to explain material variances between forecast and actual values.

2. Annex B, II. Definitions, "Billing Determinant"

The OSBA respectfully observes that the term "detailed customer usage data per unit of consumption" could be clarified. Perhaps "... detailed customer usage data for each measure of consumption or demand used by the public utility for billing, for example, kWh and kW for

³ The OSBA does not believe that it is necessary for the utility to file a cost of service allocation study based on actual volumes and costs, as the OSBA believes that such an undertaking would be unduly burdensome and of relatively little value in evaluating the accuracy of the FPFTY estimates.

electric utilities, Mcf and Mcf per day for gas utilities, or other measures of consumption for water or wastewater, as specified by a public utility in its tariff.”

3. Annex B. Section III. M. 2.: Revenue Allocation

In the OSBA’s experience, the process of translating a public utility’s revenue requirement into tariff charges in a base rates proceeding consists of three steps: cost allocation, revenue allocation, and rate design. Cost allocation is the process of determining the share of the revenue requirement that is caused by each customer class. Revenue allocation is the process of assigning the proposed revenue requirement and rate increase among the customer classes, based on the cost of service allocation study and other criteria. Rate design is the process of setting the specific tariff charges within each rate schedule in order to recover the revenue requirement assigned to each customer class.

The NOPR does not explicitly recognize the revenue allocation step, despite its wide applicability in Pennsylvania base rates proceedings. The OSBA suggests that Section III. M. 2. be modified to include the following requirement, between paragraphs c. and d.:

Provide a statement along with the necessary data showing how the utility’s proposed assignment of the overall rate change among customer classes is consistent with the results of the cost of service allocation study and other established regulatory criteria.

4. Annex B, Section III. H., Proof of Revenues

In OSBA’s experience in Pennsylvania base rate proceedings, utilities generally file a “proof of revenues” exhibit which, for the FPPTY and for each rate schedule, shows the billing determinant for each tariff charge, the current tariff charge, the current revenues, the proposed tariff charge and the proposed revenues. Annex B does not refer to a proof of revenues filing

requirement, and it is unclear where such information would be provided under the requirements detailed in Annex B. (Such information appears to be contemplated in Section III. H. 4. and III. M. 1. c., but neither section appears to encompass the usual filed information.) The OSBA recommends that the filing requirements make this filing explicit, by modifying Section III. H. 4. as follows:

For the test year used for ratemaking, provide a “proof of revenues” schedule of present rates and proposed rates by rate schedule and customer class. For each tariff charge within each rate schedule (including tax surcharges), provide the billing determinant, present tariff charge, revenues at the present tariff charge, proposed tariff charge and revenues at the proposed tariff charge. Prepare a comparative schedule of monthly (or quarterly where applicable) billings at present rates and at proposed rates to demonstrate the impact of proposed rates over a range of usages.

The OSBA’s recommendation for Section III.H.4. excludes the Commission’s proposed requirements related to rate design, as the OSBA believes those requirements are adequately reflected in Section III.M. The OSBA further observes that this requirement may obviate the need for the requirements of Section III.M.1.c.

5. Annex B, Section II Definitions, “Customer Class” and “Rate Schedule”

The OSBA is concerned that the definitions of “Customer Class” and “Rate Schedule” as used in the NOPR and Annex B are unclear and potentially inconsistent.

First, the Commission uses the terms “tariff rate,” “tariffed rate,” “rate schedule” and “tariff rate schedule” in various places in the NOPR and Annexes. The OSBA recommends that, if these terms all refer to the same concept, the same defined term should be used throughout the

order and the regulations. To the extent that the Commission interprets these terms differently, the OSBA recommends that the Commission include a definition.

Second, the OSBA finds the definition of “Customer Class” to be potentially problematic for a couple of reasons. The definition of Customer Class indicates that the term applies to a group of customers that are aggregated for cost allocation purposes, an approach the OSBA does not oppose if it is done consistently. However, the definition appears to encourage utilities to define customer classes broadly and by business categorization, and it does not require that customer classes recognize individual rate schedules. In OSBA’s view, rates schedules and customer classes should be aggregated based on homogeneity in cost to serve and usage characteristics. Also, while the definition of customer class appears to anticipate that the term is specifically related to cost allocation categories, Section III M 2 b. of Annex B indicates that cost allocation should be performed for each rate schedule *and* each customer class, and Section III M 2 a. of Annex B indicates that rate schedules can be combined for cost allocation purposes.

Third, “Rate Schedule” is defined as a subset of a customer class, whereas the OSBA believe it would be more reasonable to define “Customer Class” as consisting of one or more rate schedules, where rate schedules are defined by the utility’s tariff.

To address these concerns, the OSBA proposes the following definitions:

Customer class – *A group of customers taking service under one or more rate schedules, used to allocate costs for revenue allocation and rate design purposes.*

Rate schedule -- *A group of customers with specific eligibility requirements as defined in the public utility’s tariff that are subject to the same set of service conditions and tariff charges.*

The OSBA suggests further that Sections III. M. 2. a. and III. M. 2. b. be modified to the following:

- a. *Provide a cost of service allocation study allocating the rate base and claimed total cost of service, or revenue requirement, to each proposed tariff rate schedule. Rate schedules may be combined into customer classes for this purpose upon demonstration that the customers in the combined rate schedules have similarities in usage patterns, cost to serve, service quality requirements, and/or end-use nature. Provide a statement describing which rate schedules were combined and the supporting explanations.*
- b. *Provide a comparative schedule showing the revenues, fully allocated costs, and rate of return for each customer class, and service area, if applicable, at both present rates and proposed rates. If the study considers revenue sources other than base rate revenues, provide an explanation of other revenue sources included and reasons therefor.*

In addition, the term “Customer Class” is used in various places in Annex B where “Rate Schedule” would appear to be more appropriate, because Customer Class is defined only for cost allocation purposes. The OSBA makes specific reference to Section III. C.2., Section III. H.1., Section III. H.4., Section III. H.6, Section III. H.7., Section III. H.13., Section IV. B. 2, all of which use “customer class” instead of “rate schedule.”

Finally, it is OSBA’s experience that public utilities will often prepare analyses using customer categories that are not consistent with either rate schedules or customer class definitions in the cost allocation study. For example, load forecasting is often prepared for residential/commercial/industrial groups, even though rate schedules may not be defined using

these criteria. Because such analyses must then be translated to rate schedules for cost allocation and rate design purposes, this approach can add complexity and confusion, often requiring extensive discovery. Thus, the OSBA respectfully recommends that references to information provided by customer category in the filing requirements refer either to rate schedule or to customer class, as those terms are defined in Annex B.

6. Annex B Section III. M. 2. h.: Rate Design

The proposed NOPR would require the public utility to submit the cost basis for the monthly customer charge. In general, the OSBA observes that this requirement may be sufficient for residential class tariffs, which are often limited to a flat monthly charge and a variable commodity/energy charge. General service customers, however, represent a more heterogeneous mixture of customer sizes and load patterns than do residential customers. These differences are often reflected in various differentiated tariff charges, which should be similarly based on sound cost analysis.

For example, some utilities establish different customer charges by customer size within a particular general service rate schedule, such that larger customers within the schedule face a higher customer charge than smaller customers. In addition, public utilities may rely on declining block commodity/demand/load factor charges, which effectively differentiate rates based on the size or load patterns of the customer. Utilities may also have differentiated rates for customers who are and are not demand-metered within a particular rate schedule. Finally, in at least one case, utilities have tariff charges that are completely differentiated within a particular rate schedule based on the relative size of the customer.⁴

⁴ See, e.g., Docket No. R-2022-3031113, OSBA Statement No. 1 at 33-38.

Because cost of service allocation studies generally aggregate a wide variety of general service customers into a small number of customer classes, those studies generally do not provide a cost basis for intra-class rate differentials. In OSBA's experience, it is all too common for a utility to submit a rate filing with little or no cost analysis in support of the intra-class rate differentials for general service customers, defending their approach with arguments akin to "we've always done it that way," and "the Commission has consistently approved it." Thus, even with discovery, the OSBA is often unable to obtain any credible explanation or justification for intra-class general service class rate charge differentials. The OSBA therefore recommends that the Commission require utilities to provide a cost basis for any intra-class rate differentials that it proposes to continue or modify in base rates proceedings. The OSBA respectfully recommends that III. M. 2. h. be modified and expanded to the following:

Provide a detailed cost analysis supporting the customer charges, showing all direct and indirect costs included. Where customer charges are differentiated within a rate schedule, provide a cost basis for the differentials.

Where tariff charges are differentiated within a rate schedule, such as differentiated customer charges or declining block energy/demand charges, provide a rationale for the rate differentials along with cost or other evidence supporting the magnitude of the rate differentials.

7. Annex B, Section III. M. 4.: Special Rate Contracts

The Commission proposes to require public utilities with negotiated rate contracts to acknowledge that such contracts exist and to provide a comparison of negotiated rate revenues with revenues that would be earned under regular tariff rates. The OSBA finds the Commission's requirements to be necessary but not sufficient. The OSBA observes that a

common issue in base rate cases for utilities with negotiated rates is whether the specific magnitudes for the negotiated rate discounts are credibly supported by alternative fuel costs, bypass opportunities, or other such potential justifications. Obtaining this information is often difficult. The OSBA submits that the burden for justifying negotiated rate discounts lies with the public utility. The OSBA therefore respectfully recommends that the following requirement be added to Section III. M. 4.:

For each negotiated rate customer, provide the utility's justification and supporting evidence for the specific negotiated rate discount provided to that customer.

Conclusion

The OSBA appreciates the opportunity to provide these Comments and respectfully requests that the Commission take these Comments into consideration in developing its final regulations.

Respectfully submitted,

/s/ Steven C. Gray

Steven C. Gray
Senior Supervising
Assistant Small Business Advocate
Attorney ID No. 77538

Office of Small Business Advocate
555 Walnut Street
Forum Place, 1st Floor
Harrisburg, PA 17101

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CERTIFICATE OF SERVICE

I hereby certify that true and correct copies of the foregoing have been served via email (*unless other noted below*) upon the following persons, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

Richard A. Kanaskie, Esquire
Pennsylvania Public Utility Commission
Bureau of Investigation & Enforcement
400 North Street
Commonwealth Keystone Building
Harrisburg, PA 17120
rkanaskie@pa.gov

Donna M.J. Clark
Vice President & General Counsel
Energy Association of Pennsylvania
800 N. Third Street, Suite 205
Harrisburg, PA 17102-2025
dclark@energypa.org

Patrick M. Cicero, Consumer Advocate
Christine Maloni Hoover, Esquire
Erin L. Gannon, Esquire
Office of Consumer Advocate
555 Walnut Street, 5th Floor
Harrisburg, PA 17101
PCicero@paoca.org
CHoover@paoca.org
EGannon@paoca.org

David P. Zambito, Esquire
NAWC-Pennsylvania Chapter
Cozen O'Connor
17 North Second Street, Suite 1410
Harrisburg, PA 17101
dzambito@cozen.com

Amy E. Hirakis, Esquire
Nisource Corporate Services Co.
800 N. Third Street
Harrisburg, PA 17102
ahirakis@nisource.com

Candis Tunilo, Esquire
Nisource Corporate Services Co.
800 N. Third Street
Harrisburg, PA 17102
ctunilo@nisource.com

Theodore J. Gallagher
Assistant General Counsel
NiSource Corporate Services Co.
121 Champion Way, Ste. 100
Canonsburg, PA 15317
tjgallagher@nisource.com

DATE: November 15, 2022

/s/ Steven C. Gray

Steven C. Gray
Senior Supervising
Assistant Small Business Advocate
Attorney ID No. 77538