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November 15, 2022

VIA ELECTRONIC FILING

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

**Re: Use of a Fully Projected Future Test Year, 52 Pa. Code § 53.51-53.56a;
L-2012-2317273**

Dear Secretary Chiavetta:

Please find UGI Utilities Inc. - Gas and Electric Divisions' Comments to the Clarified Notice of Proposed Rulemaking Order in the above-referenced docket. If you have any questions, please contact me directly at (610) 992-3763.

Very truly yours,

/s/ Michael S. Swerling
Michael S. Swerling
Counsel for UGI

Enclosure

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Use of Fully Projected Future	:	
Test Year, 52 Pa. Code Chapter	:	Docket No. L-2012-2317273
53.51-53.56a	:	

**UGI UTILITIES, INC. – GAS DIVISION’S AND ELECTRIC DIVISION’S
COMMENTS TO THE COMMISSION’S CLARIFIED NOTICE OF PROPOSED
RULEMAKING ORDER**

I. INTRODUCTION

On August 24, 2022, the Pennsylvania Public Utility Commission (“Commission”) entered a Clarified Notice of Proposed Rulemaking Order (“Clarified NOPR”) in Docket No. L-2012-2317273¹, proposing revisions and amendments to 52 Pa. Code §§ 53.51-53.56. These new requirements specify the information and data for submission with rate change filings in excess of \$1 million (“Rate Filings”) that are based on a Fully Projected Future Test Year (“FPFTY”).² With these amendments, the Commission aims to standardize and streamline base rate case filing requirements, including discovery requests, in a consistent manner across all utility types.

Additionally, the Commission intends to eliminate unnecessary information in Rate Filings, and reduce regulatory burdens and costs in preparing and litigating general rate increases under 66 Pa. C.S. § 1308 (Clarified NOPR at 9). Annex A to the Clarified NOPR contains proposed revisions and additions to 52 Pa. Code §§ 53.51-53.56a. In the Clarified NOPR, the

¹ See *Use of Fully Projected Future Test Year, 52 Pa. Code Chapter 53.51-53.56a*, Docket No. M-2012-2293611 (Clarified NOPR entered August 24, 2022).

² On February 14, 2012, Governor Corbett signed into law Act 11, which amended Chapters 3, 13, and 33 of the Public Utility Code. Act 11 amended Section 315(e) of the Code (relating to use of future test year) and authorized the use of a FPFTY in rate filings. Act 11 also required the Commission to adopt rules and regulations regarding the information and data to be submitted when using a FPFTY. 66 Pa.C.S. § 315(e).

Commission proposed replacing Exhibits A, C and D, contained in 52 Pa. Code §§ 53.53 (a)(1-4), with proposed Exhibit E to 52 Pa. Code § 53.53 (a), which contains data requests that must be submitted with a Rate Filing when using a Future Test Year (“FTY”) or FPFTY. UGI Utilities, Inc. – Gas and Electric Division (collectively referred to herein as “UGI” or the “Company”) provides the following comments in response to the Clarified NOPR.

II. COMMENTS

A. UGI Supports the Comments of the Energy Association of Pennsylvania

UGI appreciates the Commission’s efforts to: (1) standardize and streamline the Rate Filing process; and (2) reduce regulatory burdens and costs. Moreover, UGI fully supports the comments, and redlined versions of Annexes A and B, filed by the Energy Association of Pennsylvania (“EAP”) in response to the Clarified NOPR. UGI’s comments to the Clarified NOPR supplement those filed by EAP. Specifically, UGI agrees with EAP that more than doubling the number of data requests currently included in Sections 53.51-53.56, does not achieve reduced regulatory burdens and costs. Moreover, as EAP demonstrates, there are many redundant data requests in the proposed Annexes to the Clarified NOPR. A streamlined process should eliminate such redundancies.

In many instances, the proposed data requests in Annex B would require utilities to include information and data in the initial Rate Filing that are normally provided in discovery. By requiring information that was historically obtained through discovery, to be submitted upfront with the Initial Rate filing, the Commission in some circumstances is “putting the cart before the horse” as the discovery phase is merged into the filing preparation phase. As such, utilities will be required to submit information with the initial Rate Filing that ultimately may not be relevant to the proceeding. However, frontloading discovery into the Rate Filing, does not

reduce the overall discovery phase burden through any limitations on the number or types of questions that can be propounded. Therefore, the new process may not streamline or reduce the burden of the Rate Filing process; rather it may do just the opposite.

Additionally, UGI supports EAP's proposal to standardize the period in which utilities must submit data prior to the Historic Test Year ("HTY") to a two year look back. Doing so furthers the Commission's goal of streamlining the filing process and reducing regulatory burdens and costs. This would ensure that the FPFTY's estimates are compared against over three years of actuals (i.e., part of the FTY, the HTY and the two years prior). To the extent that parties wish to see older data, they can request it in discovery as part of a narrowly tailored request that is relevant to their specific issues.

B. Annex A to the Clarified NOPR

1) 52 Pa. Code § 53.51a. Definitions

Section 53.51a. proposes a definition for Fully Projected Future Test Year ("FPFTY"), which states:

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.

UGI fully supports the EAP's revisions to the definition of FPFTY. However, in conjunction with EAP's revision to this definition, UGI requests the definition of the FPFTY follow the continuity established by the definition of the FTY. Specifically, as the FTY is linked to begin on the first day following the end of the HTY, likewise the FPFTY should clearly begin on the first day following the end of the FTY. Accordingly, UGI recommends that the FPFTY be defined as:

FPFTY—Fully projected future test year - A 12-consecutive-month period beginning the day after the end of the FTY, or beginning the first 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.

UGI also notes that “full” should be deleted before the “month that new rates will be in effect...” as the effective date of new FPFTY rates regularly falls to time periods other than on a “full” month basis as a result of specific filing dates and the application of suspension periods. This deletion is incorporated within the greater edits of EAP to the definition of FPFTY.

2) 52 Pa. Code § 53.53 (a.1)

Proposed Section 53.53 (a.1) states what data must be filed based on the test year chosen.

UGI supports the revisions proposed by EAP to this section. In addition, UGI cautions against including the specific language proposed by the Commission below:

In all cases, the public utility must also provide the data and information for any specified years preceding or following the applicable test year. 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, the public utility shall provide the information for the years immediately following the FTY.

Where a utility is basing its proposed rate increase on a FPFTY, including details for the HTY, FTY and FPFTY in the initial Rate Filing should be deemed adequate to determine the reasonableness of the proposed increase without further need to provide data which falls beyond the FPFTY. This process has been used by UGI in its Rate Filings since Act 11 was enacted in 2012. Requiring utilities to include projected estimates beyond the FPFTY introduces unnecessary data beyond the test year data used to support the first year of new rates.

Implementation of Act 11 of 2012 Final Order, 299 P.U.R.4th 367 (August 2, 2012), 2012 WL 3249678 (Final Implementation Order). Moreover, requesting data beyond the FPFTY may not

provide a snapshot of time that reflects the typical conditions, revenues, expenses, and capital costs of the utility³, and may be beyond the formal budgeting cycle used by a utility. Therefore, this future-looking information, which may not be available, would be of little value in determining the reasonableness of the revenue requirements of the utility during the FPFTY and would likely result in FPFTY rates not being supported by FPFTY specific information. Accordingly, this proposal should be removed from the proposed regulations.

3) 52 Pa. Code § 53.56 (c) and 52 Pa. Code § 53.56 a.(c)

Proposed Section 53.56 (c) states the following:

(c) Following the completion of the rate proceeding, if the public utility's FTY data forms a substantive basis for the Commission's final rate determination, the public utility shall file with the Commission and serve on the parties of record in the same docketed proceeding in which the final rate determination was entered, the public utility's actual results experienced in the FTY. In this filing, the public utility shall provide appropriate data evidencing the accuracy of its estimates contained in the FTY. This filing shall be submitted within 30 days of the end of the last quarter of the FTY. If the results are not then available, the public utility shall file and serve on the parties of record a status report indicating when the results will be available and file the results as soon thereafter as available.

Proposed Section 53.56 a.(c) has identical language except it applies to the FPFTY instead of the FTY. These sections seek to implement the provisions in 66 Pa. C.S. § 315(e), which states, in relevant part, that:

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.

³ See *Green v. Pa. Pub. Util. Comm'n*, 81 Pa.Cmwlt. 55, 473 A.2d 209, 213-15 (1984).

UGI seeks clarification on whether a “final rate determination” includes Commission approval of a black box settlement. When a rate case is fully litigated, normally, the Commission makes a final determination on the essential aspects of the Rate Filing (e.g., revenue requirement, rate of return, expenses, depreciation, rate base, taxes) as those components are adjusted throughout the proceeding. However, when the parties agree to a black box settlement, each of the above-listed rate case components do not necessarily receive final determinations. For instance, in many black box settlements, the rate of return is not specified, which aids in reaching a full settlement. Moreover, in a black box settlement that does not specify all components, it is unclear what FPFTY estimates should be compared with actual results experienced.

UGI believes that Administrative Law Judge (“ALJ”) Mary D. Long (“ALJ Long”), correctly interpreted the reporting requirement in 66 Pa. C.S. § 315 (e) in her Recommended Decision in *P.A. P.U.C. v. Aqua Pa. Wastewater, Inc.*, Docket No. R-2021-3027385 (the “Aqua Case”). In the Aqua Case, ALJ Long stated the following:

The Company did not challenge I&E’s recommendation to continue to provide the requested updates in this proceeding; therefore, I recommend that I&E’s reporting request should be approved. This requirement is also consistent with Section 315(e) of the Public Utility Code, 66 Pa.C.S. § 315(e), which requires that when a utility utilizes a FPFTY in any rate proceeding and such FPFTY forms a substantive basis for the Commission’s final rate determination, the utility shall provide, **as specified by the Commission in its Final Order, appropriate data evidencing the accuracy of the estimates contained in the FPFTY.**

ALJ Long concluded that the Commission’s final order in a rate case proceeding should specify the appropriate FPFTY elements for comparison with actual results. Especially in the context of a black box settlement, any reporting requirements related to 66 Pa. C.S. § 315(e) should be those specified by the parties in a settlement, and ultimately those approved by the Commission in its rate case final orders.

6. Legal Standard/Review Language

There are various places in the proposed revisions and amendments to Section 53.53 that maintain or expand the existing legal standard applicable to rate cases. Some legal standard language casually exists in a few places of the existing regulations and UGI recommends removing it. The legal standard applicable to Rate Filings is well established and applied (by statute and case law decisions). Therefore, the existing legal standard and review applicable to Rate Filings will continue to exist, notwithstanding its absence in these regulations. Specifically, as stated in the Opinion and Order in UGI Electric's 2018 rate case⁴: "In deciding this or any other general rate increase case brought under Section 1308(d) of the Code, 66 Pa. C.S. § 1308(d), certain general principles always apply." (Opinion and Order at 5).

The applicable standard that utilities must meet is set forth in 66 Pa. C.S. § 315(a), which states that any proposed rate increase must be just and reasonable. (Opinion and Order at 6). The Pennsylvania Commonwealth Court has stated that: "It is well-established that the evidence adduced by a utility to meet this burden must be substantial." *Id.*

Table 1 below recites the proposed revisions to Section 53.53, which contain legal standard language. In existing Section 53.53, the legal standard language is applied in an inconsistent manner. By including this inconsistent legal language in the regulations, it appears that the legal standard applies more stringently to the specified sections in Table 1 below. To resolve this discrepancy, UGI recommends deleting the language in Table 1 below, that is bracketed, bolded, italicized and underlined. The language in Table 1 below, that is bracketed, bolded, italicized and underlined, is not needed and should be stricken for the purposes of establishing the final rule.

⁴ See *Pa. P.U.C. v. UGI Electric*, Docket No. R-2017-2640058 et al., (Opinion and Order entered October 4, 2018).

Table 1

Proposed Code Section (Annex A)	Legal Standard Review Language
52 Pa. Code § 53.53(c)(2)	If adjustments from the test year are proposed, the public utility’s witness testimony shall also include a complete explanation and justification of any claims which depart from the unadjusted test year results of operations, including the methodology and rationale. The public utility’s witness testimony, explanation and documentation of the proposed adjustments [<u>shall enable a reasonably informed party to determine how the amount was calculated and to understand why the amount is being claimed</u>].
52 Pa. Code § 53.56 (a.1)	If a FTY is used, it shall be based on [<u>fully substantiated estimates</u>]. The estimates for a FTY shall be of the same or similar type, quantum and nature as required to be submitted for a HTY and shall describe the methodology, data and material used as the basis for the estimates.
52 Pa. Code § 53.56a. (b)	If a FPFTY is used, it shall be based on [<u>fully substantiated estimates</u>]. The estimates for a FPFTY shall be of the same or similar type, quantum and nature as required to be submitted for a HTY and a FTY and describe the methodology, data and material used as the basis for the estimates.
Proposed Code Section (Annex B)	Legal Standard Review Language
Section M. Rate Structure, Cost of Service Allocation Study, Bill Frequency Analysis, and Special Rate Contracts. 2(d)	Provide a statement along with the necessary data [<u>showing how the rate structure is fair and equitable to all customer classes</u>].

C. Annex B to the Clarified NOPR

- 1) 52 Pa. C.S. § 53.53, Exhibit E

III. General Filing Requirements

A. *General. Subpart 5.*

This proposed section directs utilities to provide supplemental information, required by this regulation and in response to each discovery request, in base rate cases. More specifically, Subpart 5(a) seeks data for the HTY and the first year that new rates were effective from the immediately preceding rate case, if that information is not already included in the proceeding. Next, Subpart 5(b) seeks an explanation for the difference in projections and adjustments made for the immediately preceding rate case, as compared to the current one. Finally, Subpart 5(c) seeks reconciliations and adjustments from the immediately preceding rate case and an explanation if they were rolled into base rates of the current case. If not, the utility is to explain if these past reconciliations and adjustments will be included anew in the current proceeding.

The EAP proposes deleting subparts 5(a)-(c) and UGI supports that deletion for the following reasons. Section 315 of the Public Utility Code only requires a comparison between the FPFTY's estimates and actuals for one case. It does not require that utilities tie and align each rate filing in perpetuity. Each rate case takes on a life of its own with various adjustments and many end in black box settlements. Additionally, the operating conditions are different between cases, which can make such ongoing comparisons difficult/irrelevant.

Further, a final determination on the various adjustments, posed by each party in rate cases, is lacking in many instances. In such instances, there is little value in attempting to reconcile past and present rate cases together, especially since each party likely would look at the comparisons through their own lens – i.e., through the adjustments they pleaded in the cases, but were never ruled on.

Here, the Commission is attempting to extend the reach of Section 315 beyond the statutory language. There is no support in Section 315 for this new process that would require ongoing adjustments and reconciliations between rate cases, regardless of whether final determinations were made on these adjustments/reconciliations in past cases. Further, this new standard lacks structure and predictability regarding what data adjustments and reconciliations are to be compared between rate cases. Accordingly, adopting this new standard without any legal support would require the Commission to regulate in an arbitrary and capricious manner, which should be avoided. This kind of information request is better suited for the discovery phase of a rate case, where such requests can be reviewed for reasonableness under an established procedural process.

A. General. Subpart 8.

This proposed section requires utilities to include with their Rate Filings live electronic schedules in Microsoft Excel with all formulas intact. These schedules support the proposed revenue requirement, rate structure and cost allocation. The Commission also envisions the filing of all schedules (in a live Excel format) that support responses to the data requests contained in Section 53.53. UGI agrees that it is important to provide the parties with live spreadsheets for the proposed revenue requirement, rate structure and cost allocation. However, it may not be feasible to do so upon filing, especially with the more extensive filing requirements under consideration in these proposed regulations. UGI requests that utilities be given flexibility to either upload these documents to the Commission's secured site or provide parties access to these documents by way of the utility's secured process. UGI requests that utilities be given at least seven business days post-filing to upload these documents.

Additionally, some of the underlying Excel spreadsheets supporting specific public elements of the case (for the revenue requirement, rate structure or cost allocation) may include Confidential information that should only be provided to and accessible by parties that have executed a non-disclosure agreement or an approved Motion for Protective Order. To the extent utilities are required to file such Confidential information in the Commission's secured site, access can only be provided to parties under executed non-disclosure agreements or Protective Orders.

Regarding the filing of schedules (in a live Excel format) that support responses to the data requests contained in Section 53.53, such an endeavor could be extremely time consuming. This is an overly broad request because no context is provided in the proposed regulation or Clarified NOPR as to what kinds or types of schedules, supporting the data requests, must be filed in a live Excel format. Adopting such an overly broad requirement contradicts the Commission's goals in the Clarified NOPR – to streamline the filing process, and reduce filing costs and burdens. A better approach is to delete this requirement and let parties address it in discovery, where more narrowly tailored requests can identify the parties' needs.

J. Payroll, Employee Benefits and Retiree Cost, Subpart 2b

This section seeks information regarding payroll expense increases for the HTY, FTY and FPFTY. It also seeks payroll increase information that is not attributable to routine cost of living wage rate increases or union contracts. Routine cost of living wage rate is defined in this section to be between 1-3%. UGI recommends deleting the 1-3% range for routine wage increases as it may be overly specific and not representative of applicable costs. No support was provided in the Clarified NOPR for this range. Also, market forces could change this range over

time to make it out-of-touch with reality in the future. Finally, cost of living wage increases, including the levels thereof, are appropriately within the management discretion of the public utility.

M. Rate Structure, Cost of Service Allocation Study, Bill Frequency Analysis, and Special Contracts. Subparts 2 (i) and (j)

If adopted, these proposed sections would require cost of service studies to include average day, maximum day and maximum hour deliveries to the distribution system as adjusted for storage with supporting documentation. Similar language exists in Section 53.53, Exhibit D.

VIII. Rate Structure and Cost of Service, which states:

1.(c) Supply the average day, the maximum day and the maximum hour deliveries to the system adjusted for storage for the historic test year and 2 prior years. Also provide workpapers, analyses, comparative data or other documentation supporting the estimated maximum day and peak hour demands by customer class reflected in the company's cost of service study.

This existing requirement applies to water and wastewater utilities. However, in proposed Section M. 2(i) and (j), the Commission seeks to more broadly apply this requirement to other utility types. UGI recommends that this requirement not apply to natural gas distribution companies ("NGDC") to streamline the filing process and reduce burdens associated with Rate Filings. NGDCs currently provide similar data in their annual Section 1307(f) Purchased Gas Cost ("PGC") proceedings. NGDCs should not be required to double report PGC information. Nor should rate case proceedings be expanded to address PGC issues.

N. Long Term Infrastructure Improvement Plan and Annual Asset Optimization Plan, Subparts 1-3.

UGI proposes excluding all of Section N from the proposed revisions to Section 53.53. Proposed Subpart 1 to Section N would require utilities to include the docket numbers for any current and pending Long Term Infrastructure Improvement Plan (“LTIIIP”) filings. Subpart 2 similarly seeks docket numbers for current and pending Asset Optimization Plans (“AOP”). Finally, Subpart 3 seeks a schedule that compares anticipated and experienced impacts that LTIIIPs and AOPs have on safety and reliability.

Regarding the docket numbers for LTIIIPs and AOPs, this information is in the public realm. As the EAP states in its comments, this Clarified NOPR is proposing to raise the number of required data filings from approximately 70 to over 180 for Rate Filings. Moreover, the Clarified NOPR is intended to streamline the filing process and reduce burdens associated with Rate Filings. If parties can obtain the docket numbers associated with LTIIIPs and AOPs, and filing burdens are to be reduced, these proposed information requirements should be excluded from Section 53.53.

Regarding the proposed schedule that compares LTIIIP and AOP experiences to reliability and safety enhancements, UGI also proposes excluding this requirement. If adopted, the Commission would require utilities to provide the same information in two separate proceedings, *i.e.*, LTIIIP and rate case proceedings. Requiring such double reporting contradicts the Clarified NOPR’s intended goals to streamline the filing process and reduce burdens associated with Rate Filings.

To the extent the Commission intends this schedule to report information that is not included in existing LTIIIP or AOP filings, it would amount to a new reporting requirement that is not contemplated in 66 Pa. C.S. §§ 1353-1360. According to 52 Pa. Code § 121.4(d), in LTIIIP proceedings, “[a] utility has the burden of proof to demonstrate that its proposed LTIIIP and

associated expenditures are reasonable, cost effective and are designed to ensure and maintain efficient, safe, adequate, reliable and reasonable service to consumers.” The Commission makes such determinations in LTIIP proceedings and permits interested parties to file comments.⁵ The only LTIIP reporting requirement contemplated under the applicable statute (at 66 Pa. C.S. § 1356) and the regulations (at 52 Pa. Code § 121.6) are related to AOPs. Any additional reporting requirements for LTIIPs would require statutory and regulatory revisions to 66 Pa. C.S. §§ 1353, *et al.* and 52 Pa. Code § 121, *et al.*, respectively. Accordingly, Section N, Subpart 3 should be excluded to avoid double reporting of LTIIP information and to avoid adopting a reporting requirement that lacks statutory authority.

IV. Industry-Specific Filing Requirement.

B. Natural Gas Public Utilities, Subparts 1-7.

UGI recommends eliminating Subparts 1-7 from proposed Section IV. N. to streamline the filing process and reduce burdens associated with Rate Filings. All of these sections would require NGDCs to provide information in rate cases that is currently provided and addressed in annual Section 1307(f) PGC proceedings. NGDCs should not be required to double report PGC information. Nor should rate case proceedings be expanded to address PGC issues.

III. CONCLUSION

The Company appreciates the opportunity to provide comments to the Clarified Notice of Proposed Rulemaking Order and asks that the Commission favorably consider its comments to this rulemaking.

⁵ 52 Pa. Code § 121.4(c).

Respectfully submitted,

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November 15, 2022