



January 31, 2023

VIA E-FILING

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Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
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**Re: Use of Fully Projected Future Test Year, 52 Pa. Code §§ 53.51-53.56a;
Docket No. L-2012-2317273**

**Reply Comments of National Association of Water Companies – Pennsylvania Chapter
on the Clarified Notice of Proposed Rulemaking Order**

Dear Secretary Chiavetta:

Enclosed for filing with the Pennsylvania Public Utility Commission in the above-referenced matter are the Reply Comments of the National Association of Water Companies – Pennsylvania Chapter.

Electronic copies will be sent to the persons listed below.

If you have any question or concern about this filing, please contact me. Thank you.

Sincerely,

COZEN O'CONNOR

By: David P. Zambito
Counsel for *National Association of Water
Companies – Pennsylvania Chapter*

DPZ/kmg
Enclosure

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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

CERTIFICATE OF SERVICE

I hereby certify that I have this 31st day of January, 2023 served the foregoing **Reply Comments of National Association of Water Companies – Pennsylvania Chapter on the Clarified Notice of Proposed Rulemaking Order** upon the parties, listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party).

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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**REPLY COMMENTS OF THE NATIONAL ASSOCIATION OF WATER
COMPANIES – PENNSYLVANIA CHAPTER IN RESPONSE TO THE
CLARIFIED NOTICE OF PROPOSED RULEMAKING ORDER**

AND NOW COMES the National Association of Water Companies – Pennsylvania Chapter (“NAWC”), pursuant to the Clarified Notice of Proposed Rulemaking Order (“NOPR Order”) published in the *Pennsylvania Bulletin* on October 1, 2022, 52 Pa. Bulletin 4926, and the Secretarial Letter dated October 14, 2022 (extending the deadline for filing Reply Comments) to file these Reply Comments with the Pennsylvania Public Utility Commission (“Commission”).

I. GENERAL REPLY COMMENTS

A. An Extensive Revision of the Regulations is Unnecessary

NAWC agrees with the Comments submitted by Aqua Pennsylvania, Inc. (“Aqua”) (p. 5); Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company (the “FirstEnergy Companies”) (p. 5); Peoples Natural Gas and Peoples Gas Company LLC (the “Peoples Companies”) (pp. 1-2); and others, questioning the need to extensively revise the regulations concerning filing requirements for a rate case using a fully projected future test year (“FPFTY”). Dozens of rate cases have been submitted using the existing rules, which seem to be working reasonably well. NAWC agrees that some of the existing regulations should be updated or clarified based on the experience gained in the years since Act

11 was enacted, but NAWC does not believe the extensive changes proposed by the Commission are warranted.

B. The Regulations will not Achieve the Stated Goals

One goal of the proposed regulations is to streamline the filing requirements for major rate cases. NOPR Order p. 9. A recurring theme from the Comments is that the proposed regulations will not achieve this goal. To the contrary, the Energy Association of Pennsylvania (“EAP”) (pp. 4-5, 11-12), Duquesne Light Company (“Duquesne”) (pp. 4-5), UGI Utilities, Inc. – Gas and Electric Division (“UGI”) (p. 3), and others note that the proposal would significantly increase the requirements for filing a rate case. The volume of data produced will be overwhelming. NAWC agrees with these comments. NAWC incorporates by reference its Comments (p. 1), which ask the Commission to reconsider the entire regulatory package to reduce unnecessary requirements and to consider whether the public benefits from the proposal will offset the aggregate costs that will be imposed.

NAWC agrees with the Office of Small Business Advocate (“OSBA”) (p. 2) that the filing requirements do not need to address every conceivable issue that could arise in a rate case. Instead, they should address issues that commonly arise in rate cases. The parties can explore unique issues, or issues that are of particular concern to them in a particular case, through discovery.

NAWC agrees with the FirstEnergy Companies (p. 10) that “the Commission’s assumption that incorporating ‘standard’ data requests into its filing requirements will ease the ‘burden and costs’ to review and litigate a rate case is unsupported and, indeed, contradicted by [experience].” As UGI (pp. 3-4) notes: “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.”

Another goal of the proposed regulations is to eliminate the filing of unnecessary information. NOPR Order p. 9. NAWC respectfully submits that the proposed regulations instead require the filing of a considerable amount of unnecessary information. For example, NAWC agrees with FirstEnergy, PPL, and others, who argue that the Commission should not require utilities to file information (such as public filings and docket numbers) that are readily available from the Commission’s website.

Finally, the proposal is intended to reduce the regulatory burdens and costs for utilities and other parties involved in the rate-making process. NOPR Order p. 10. For the reasons set forth above, NAWC does not believe that the regulations will achieve this objective. In many cases, the alleged benefits of additional data requirements are vague and unsupported. NAWC is skeptical that reams of additional data will produce benefits that offset the very real costs of gathering, filing and reviewing all of the additional data required.

“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.” NOPR Order p. 8. These worthwhile goals will not be achieved if the filing requirements for a rate case using a FPFTY are so onerous as to discourage public utilities from using a FPFTY.

When the Commission’s proposal is considered as a whole, NAWC respectfully submits that the proposal will substantially increase – not reduce – the costs of rate cases for utilities and other parties. Considering that these costs are passed on to ratepayers in the form of higher rates and higher assessments for the operation of the statutory advocates and the Commission, these

additional costs are concerning because they contribute to concerns about the affordability of utility services.

C. The Commission’s Regulations Should not Prejudice the Substantive Rights of the Parties to the Rate Proceeding

The regulations should be viewed in context. They state the requirements for filing a case at the Commission, which will be subject to an adversarial process. As a number of parties note, the utility filing a rate case bears the burden of proving its case by a preponderance of the evidence. The utility is responsible for presenting its case and should be able to advocate its position as it deems appropriate. NAWC agrees with the EAP (p. 3) that the Commission should not codify particular ways of presenting data.

As stated above, the filing requirements should not address every conceivable issue that could arise in a rate case. The Commission’s Rules of Administrative Practice and Procedure allow parties to serve discovery requests to explore issues that are unique to a specific case, or that are of interest to a particular party. If a party serves a discovery request, the party receiving the request can object to it (*e.g.*, on grounds that the discovery is irrelevant to that particular case). In contrast, a utility cannot object to a regulation establishing a filing requirement. The Commission should not adopt regulations that prejudice the substantive rights of the parties to the case.

D. The Regulations Should Not Require the Submission of Additional Data After the Rate Case is Over

NAWC disagrees with the OSBA (p.2) that the Commission’s filing requirements should require a public utility to file evidence, after a case is concluded, regarding the accuracy of projections in the case. This proposal is out of place in a regulation specifying what must be filed when a utility commences a rate case. Moreover, this proposal is inconsistent with Section 315(e) of the Pennsylvania Public Utility Code (“Code”), which states, in pertinent part:

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.

66 Pa. C.S. § 315(e) (emphasis added). In other words, the Commission's Final Order is to state the data to be filed after the case is concluded, which the utility submits as a compliance filing. The Commission should tailor its Final Order to fit the specific case; it should not routinely require every utility to submit the same data in every rate case. As UGI (p. 7) notes, the data requested in a Final Order may be very different in cases involving "black box settlements" as compared to fully-litigated cases.

Similarly, NAWC disagrees with the Industrial Energy Consumers of Pennsylvania ("IECPA"), who advocate (p. 5) that the Commission initiate a "Just and Reasonable Rate Review Proceeding" after every rate case using a FTY or FPFTY, to assess the accuracy of the utility's projections. Section 315(e) allows the Commission to re-open a rate case if warranted. The Commission should not re-open every rate case as a matter of course. If the Commission re-opened every rate case using a FTY or a FPFTY, the Commission would become bogged down in never-ending rate proceedings and the other important work of the Commission would suffer. In the event that the Commission does reopen a case, the Commission needs to ensure that it avoids retroactive ratemaking. *Cheltenham v. Abington Sewerage Co. v. Pa. Pub. Util. Comm'n*, 25 A.2d 334 (Pa. 1942).

E. The Regulations Should Not be Effective Until at least Six Months after Publication of the Final Regulations in the *Pennsylvania Bulletin*

In its Comments (p. 6), NAWC argued that the Commission should not make the regulations effective until at least six months after the final regulations are published in the

Pennsylvania Bulletin. Duquesne, Peoples and other commenters offered similar recommendations. NAWC reiterates the importance of giving utilities ample notice of the effective date of the new regulations, to avoid the situation in which a utility starts to prepare its rate case based on the existing regulations, and then has to re-do the work to comply with the new regulations.

II. REPLIES TO COMMENTS OF SPECIFIC PARTIES

A. Replies to the Comments of the Coalition for Affordable Utility Service and Energy Efficiency in Pennsylvania (“CAUSE-PA”)

CAUSE-PA (pp. 7-8) asks that all utilities be required to provide extensive, detailed data regarding terminations and collections. CAUSE-PA (p. 11) also asks that water and wastewater utilities be required to submit universal service data with any 1308(d) rate filing. Finally, CAUSE-PA (p. 12) asks the Commission to require that utilities operating a rate assistance program be required to provide a statement about the impact of the proposed rate increase on program participant bills. CAUSE-PA discusses the benefits that this information would yield, but fails to acknowledge the extensive information that utilities already provide on these topics. NAWC does not believe the extensive additional data being requested would fill a material gap in the data that is already being provided. The incremental cost of providing all the additional requested information would not be warranted by the marginal benefits of that information.

CAUSE-PA (pp. 14-15) asks the Commission to expand the information contained in customer notices. In addition to the information that is already being provided, CAUSE-PA asks that the notice be required to include: (a) information about annual and monthly bill impacts at multiple specific levels of usage and types, (b) a discussion of bill impacts for CAP customers, (c) an explanation of where customers can find their usage rate on their bill, and (d) instructions

on how to access tariff filings on line. NAWC is concerned that these recommendations may be counterproductive. Many people today are overwhelmed with information. Adding too much material to the consumer notice may make it too long and intimidating, discouraging consumers from reading the notice at all. The notice should remain short and to the point. It should alert customers to the filing, give them basic information about it, and direct them to sources of additional information about the filing if they desire additional information.

B. Replies to the Comments of EAP

NAWC agrees with EAP (p. 11) that the Commission should modify the proposed definition of Uniform System of Accounts because FERC does not prescribe a system of accounts for water and wastewater utilities.

NAWC also agrees with EAP (p. 16), Peoples (pp. 5-6) and others, who commented that the Commission should remove most of the filing requirements regarding the utility's parent company. The parent company generally is not subject to Commission jurisdiction and most of the requested information is irrelevant for establishing the utility's rates.

In addition, NAWC agrees with EAP (pp. 19, 22) that the Commission should remove filing requirements concerning the distribution system improvement charge, the long-term infrastructure investment plan and the annual asset optimization plan. The Commission reviews those proposals in other proceedings, and parties should not be permitted to use rate cases to re-litigate those cases.

Further, NAWC agrees with EAP (p.6), PPL (p. 7), and others who recommend allowing the electronic filing and service of rate cases. Considering the voluminous filings involved in a rate case using a FPFTY, this method of filing and service would be faster, more efficient, and less expensive than requiring the filing and service of paper copies.

NAWC, however, disagrees with EAP (p. 18) that proposed Exhibit E, Section III.I.4(e) (regarding actual expenses of the immediately preceding three base rate cases) should be modified to pertain to rate cases filed in the previous three years. Although NAWC shares a concern about data being stale (and therefore skewed by the value of the dollar), NAWC believes the Commission should consider rate case expenses in a representative sample of cases. A utility may not have enough rate cases in the previous three years to provide a reasonable sample of cases.

C. Replies to the Comments of the FirstEnergy Companies

NAWC agrees with the FirstEnergy Companies (p. 12) that the proposed regulation requiring service of a rate filing on “the low-income advocates for the service territory” should be deleted. It is unclear to whom this term refers. It could refer to more than one organization in the public utility’s service territories. Several of NAWC’s members have large service territories and are concerned that, late in a proceeding, some organization could come forth claiming that its due process rights were violated because it was not properly served at the outset of the case.

D. Replies to the Comments of IECPA

In proposed Exhibit E, Section III.I.5., the Commission proposes requiring utilities to file extensive data regarding charges by affiliates. NAWC has no objection to this proposal. However, IECPA (p. 9) recommends that the Commission require utilities to file even more information about charges by affiliates. It is unclear to NAWC what additional information is being requested. Consequently, NAWC recommends that the Commission reject IECPA’s recommendation.

E. Replies to the Comments of the Office of Consumer Advocate (“OCA”)

The OCA (p. 4) asks the Commission to require a utility to include information about the effect of a rate change on the utility’s typical low, medium and high usage residential customers.

NAWC respectfully submits that the information being requested by the OCA is more appropriate in a discovery request in a specific case than a filing requirement that applies to all rate cases.

The OCA (p. 6) contends that, given the special rules for allowance for funds used during construction (“AFUDC”) in 66 Pa. C.S. § 1329(f)(1), the utility should be required to provide specific breakdowns for AFUDC related to Section 1329 acquisitions. NAWC opposes this recommendation. Rather than requiring a further breakdown of AFUDC data, the Commission should simplify the AFUDC data that a public utility must file. NAWC supports Aqua’s proposed edits to Exhibit E, Section III.E.11, which would achieve this simplification.

The OCA also proposes (pp. 11-14) that water and wastewater utilities be required to file extensive information “that is already provided to the Commission, but often is not publicly supplied without some lag in reporting to the Commission.” Most of this information concerns bill discount programs. NAWC respectfully submits that extensive information about bill discount programs is already provided by water and wastewater utilities as part of their rate filing. If additional information is desired, it can be requested in discovery – as is currently being done.

F. Replies to the Comments of the OSBA

The OSBA continues to advocate that a utility’s revenue requirement for the FPFTY be based on the average rate base for that calendar period (p. 2), rather than the rate base at the end of the FPFTY. NAWC opposes this suggestion. This proposal was previously rejected by the Commission in a decision that was affirmed by the Commonwealth Court of Pennsylvania. *McCloskey v. Pa. Pub. Util. Comm’n*, 225 A.3d 192 (Pa. Cmwlth. 2020). There is no need for the Commission to reconsider that decision here.

NAWC also disagrees with the OSBA’s recommendation (pp. 9-10) that the Commission require a public utility to justify the negotiated rate discount for every negotiated rate customer. If

the Commission has previously approved a negotiated rate for a customer, that decision should not be reopened. NAWC recommends that the Commission only require a public utility to justify the negotiated rate discount for those contracts it executed since the last base rate case.

G. Replies to the Comments of UGI

NAWC agrees with UGI (pp. 8-9) that the proposed regulations should not include language pertaining to the legal standard used in a rate case. The applicable legal standard is well-established and need not be restated in the regulations. NAWC agrees with UGI that this language should be removed from the proposed regulations.

NAWC joins with UGI (pp. 11-12) in asking the Commission to delete its proposal in Exhibit E, Section III.A.8 (requiring a utility to file and serve electronic copies of *all* electronic spreadsheets, with formulas intact). NAWC agrees with UGI that this is an overly broad request, which would be an extremely time-consuming undertaking for the filing utility. Additionally, NAWC incorporates its Comments (p. 4), objecting to this proposal on the grounds that the formulas in the electronic files are proprietary information. NAWC continues to recommend that parties exchange proprietary information in discovery subject to stipulated protective agreement or a protective order.

III. CONCLUSION

NAWC thanks the Commission for this opportunity to submit Reply Comments regarding the NOPR Order.

Respectfully submitted,



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