

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

**Petition of the Office of Consumer  
Advocate, the Office of Small Business  
Advocate, and the Pennsylvania Utility  
Law Project Requesting Initiation of a  
Proceeding on Federal Funding  
Opportunities for Utilities Under the  
Infrastructure Investment and Jobs Act**

**Public Meeting held March 2, 2023  
3032929-TUS  
Docket No. P-2022-3032929**

**STATEMENT OF COMMISSIONER RALPH V. YANORA AND  
COMMISSIONER JOHN F. COLEMAN, JR.**

Before the Pennsylvania Public Utility Commission (Commission or PUC) for consideration and disposition is the Petition of the Office of Consumer Advocate, the Office of Small Business Advocate, and the Pennsylvania Utility Law Project (Petition), requesting the initiation of a proceeding on federal funding opportunities for utilities under the Federal Infrastructure Investment and Jobs Act.<sup>1</sup>

In response, Citizens' Electric Company; Duquesne Light Company; Energy Association of Pennsylvania; West Penn Power Company; Metropolitan Edison Company; Pennsylvania Power Company; Pennsylvania Electric Company; National Association of Water Companies – Pennsylvania Chapter;<sup>2</sup> PPL Electric Utilities Corporation; UGI Utilities, Inc – Electric Division and Gas Division; Valley Energy; Verizon; Pennsylvania Telephone Association; and Wellsboro Electric Company generally opposed the Petition and requested that it be denied, primarily for the following reasons:

1. The Commission may not act as a “super board of directors” to preempt utility management decision making regarding financing and capital projects, contrary to well-established case law.
2. Accepting IIJA funding may impose unreasonably burdensome financial and/or operational costs whose obligations ratepayers would be forced to bear.
3. Public reporting of IIJA funding receipt encourages unproductive competition for limited grant funding with unregulated utilities or utilities in other states.
4. Imposing reporting requirements absent clear objectives would divert limited staff resources, impose ratepayer costs, and risk delays and missed deadlines in the application process.

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<sup>1</sup> Pub. L. No. 117-58, 135 Stat. 429 (2021) (IIJA).

<sup>2</sup> The members of NAWC are: Aqua Pennsylvania, Inc., Columbia Water Company, Newtown Artesian Water Company, Pennsylvania-American Water Company, The York Water Company, and Veolia Water Pennsylvania, Inc. (f/k/a SUEZ Water Pennsylvania Inc.).

We recognize that the IIJA presents opportunities for federal funding that, if received, may offset the costs of investments recovered from ratepayers. Our expectation is that public utilities will make reasonable efforts to review and consider whether pursuit of IIJA funding would aid in the provision of utility service at just and reasonable rates. However, we do recognize and accept the concerns raised by public utilities regarding the operational considerations that come with the acceptance of federal funds. Accordingly, we agree with the staff recommendation that denial of the Petition is appropriate because a general utility management decision on whether to pursue IIJA funding is not within the Commission's purview.

Additionally, we acknowledge the concern that a utility should not be required to publicly disclose pursuit of IIJA funding due to the potential for such disclosure to create unproductive competition to obtain federal funding. In any event, we remind utilities that disclosures of trade secrets, confidential research, development, or commercial information may be filed confidentially with the Commission and will not be disclosed.<sup>3</sup>

Also, we do not support requiring Pennsylvania public utilities to report the receipt of IIJA funds. We note that the cost of reporting receipt of IIJA funds will be passed on to ratepayers. As such, ratepayers should not be required to pay for the costs of annual utility reporting of IIJA funding if the Commission does not explain what follow-up action it may take on such reports. While the Commission may desire to "coordinate" IIJA funding efforts among federal and state agencies, it should not do so by implementing unnecessary and costly administrative burdens.<sup>4</sup>

Regarding the Commission's coordination efforts, we note that in the water and wastewater industry, Commission staff has already been actively engaged with the Department of Environmental Protection, PENNVEST, and other stakeholders through our Small Water Company Task Force (SWCTF) on how to best provide outreach and education on the IIJA and other funding opportunities available to small water and wastewater utilities. We commend our staff for their plans to continue this education and coordination effort through the SWCTF and other methods, such as providing information on our PUC website.

Additionally, as Co-Vice Chair of the National Association of Regulatory Utility Commissioners (NARUC) Committee on Water, I highlight that, on November 15, 2022, the NARUC Board of Directors adopted a Resolution urging Congress and the states "to take steps and make any necessary program modifications in federal and state law to assure that customers served by private utilities have fair and equal access to federal and state water and wastewater programs."<sup>5</sup> Through this Resolution, the NARUC Committee on Water committed to assist state and federal agencies with identifying and addressing barriers which could limit utility customer access to water and wastewater funding programs. I am committed to ensuring that

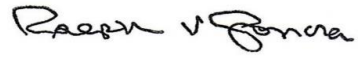
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<sup>3</sup> See generally 52 Pa. Code § 5.362 and § 5.365.

<sup>4</sup> Also, requiring Pennsylvania's Incumbent Local Exchange Carriers to report receipt of IIJA funds may conflict with Chapter 30 of the Public Utility Code, 66 Pa. C.S. §§ 3001-3019.

<sup>5</sup> NARUC Committee on Water *Resolution Supporting Fair and Equal Customer Access to Federal and State Drinking Water and Wastewater Funding Programs* (adopted November 15, 2022).

grant funding serving water and wastewater customers is expansive and to work for equal access for IIA funding opportunities, which should not be subject to unnecessary and discriminatory reporting requirements.



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**RALPH V. YANORA**  
**COMMISSIONER**



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**JOHN F. COLEMAN, JR.**  
**COMMISSIONER**

**DATE: March 2, 2023**