

PENNSYLVANIA PUBLIC UTILITY COMMISSION
Harrisburg, Pennsylvania 17105-3265

**Petition of the Office of Consumer
Advocate, the Office of Small Business
Advocate, and the Pennsylvania Public
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
P-2022-3032929**

**JOINT MOTION OF VICE CHAIRMAN STEPHEN M. DeFRANK AND
COMMISSIONER KATHRYN L. ZERFUSS**

On June 10, 2022, the Office of Consumer Advocate, the Office of Small Business Advocate, and the Pennsylvania Public Utility Law Project (collectively, Joint Petitioners) filed a Petition requesting that the Pennsylvania Public Utility Commission (Commission) initiate a proceeding to require utilities to file reports and allow interested parties to file comments to the Commission related to federal programs and funding available to Pennsylvania utilities under the federal Infrastructure Investment and Jobs Act (IIJA).¹ The IIJA was enacted on November 15, 2021, and provides for the availability of substantial federal funds for investment in utility infrastructure. Some of the programs authorized by the IIJA implicate public utilities, including:

- Grants to assist entities in carrying out efforts to harden the electricity grid, reduce risks of power lines causing wildfires, and reduce the likelihood and consequences of disruptive events, including those caused by weather or natural disaster.²
- A program to encourage innovative approaches to transmission, storage, and distribution infrastructure to improve resilience and reliability, and to encourage new approaches to enhance regional grid resilience.³
- A Transmission Facilitation Program under which eligible transmission owners can receive loans from the Department of Energy (DOE) for new or replacement transmission lines or upgrades of existing lines.⁴

¹ Pub. L. No. 117-58, 135 Stat. 429 (2021).

² IIJA § 40101.

³ IIJA § 40103.

⁴ IIJA § 40106.

- An expansion of the Smart Grid Investment Matching Grant Program established by Section 1306(a) of the Energy Independence and Security Act of 2007, which allows for investment in technology to enhance grid flexibility.⁵
- Grants and technical assistance to enable small and rural electric utilities to deploy advanced cybersecurity technologies.⁶
- Grants to provide assistance to small and disadvantaged community water systems to purchase point-of-entry or point-of-use filters and filtration systems; or make investments necessary for providing information regarding use and maintenance of these devices, as well as options for replacing lead service lines or removing other lead sources.⁷
- Grants pursuant to a newly established Midsize and Large Drinking Water System Infrastructure Resilience and Sustainability Program to enable these systems to improve resilience to natural hazards and extreme weather events as well as address cybersecurity vulnerabilities.⁸
- Grants for rural and Low-Income Water Assistance Pilot programs to maintain access to drinking water and wastewater treatment.⁹

The jurisdictional public utilities that responded to the Petition request that it be denied, primarily for the following reasons: (1) the Petition, if granted, would impermissibly place the Commission in the role of a “super board of directors” regarding utilities’ decisions to pursue funding programs and capital projects, in contravention of well-established case law;¹⁰ (2) some IJJA funding opportunities may impose upon grant recipients temporal project obligations, contracting commitments, and other detailed requirements. The utilities assert that these factors are best weighed by the utility’s management using its managerial discretion;¹¹ (3) the reporting requirements sought by the Joint Petitioners would divert public utility resources and risk delays and missing deadlines in the grant application process;¹² and (4) the public nature of a formal docket poses an additional risk in that utilities outside of Pennsylvania would have an

⁵ IJJA § 40107.

⁶ IJJA § 40124.

⁷ IJJA § 50104.

⁸ IJJA § 50107.

⁹ IJJA § 50109.

¹⁰ *Northern Pa. Power Co. v. Pa. Pub. Util. Comm’n*, 5 A.2d 133, 134 (Pa. 1939) overruled on other grounds by *City of York v. Pa. Pub. Util. Comm’n*, 295 A.2d 825 (Pa. 1972); See also *Bell Telephone Co. of Pa. v. Driscoll*, 21 A.2d 912, 916 (Pa. 1941); Citizens’ Electric Company (Citizens) Answer at 2; The Energy Association of Pennsylvania (EAP) Answer at 3; PPL Electric Utilities Corporation (PPL) Answer at 5-6.

¹¹ Citizens Answer at 3; PECO Energy Company (PECO) Answer at 3-4.

¹² Citizens Answer at 3-4; Duquesne Light Company Answer at 4; EAP Answer at 4; West Penn Power Company, Metropolitan Edison Company, Pennsylvania Power Company, and Pennsylvania Electric Company (FirstEnergy) Answer at 3-4; National Association of Water Companies – Pennsylvania Chapter (NAWC) Answer at 3-4; PECO Answer at 6-7; PPL Answer at 7-8; and UGI Utilities, Inc. – Electric Division and Gas Division (UGI) Answer at 6-8.

opportunity to review and usurp the ideas of Pennsylvania utilities for their own grant applications in the IJA competitive funding process.¹³

In addition, the Pennsylvania Telephone Association (PTA) and Verizon assert that the Pennsylvania Broadband Development Authority is the agency charged with administering Federal and State funds allocated for the purposes of expanding broadband services in Pennsylvania. Accordingly, the PTA and Verizon do not believe that it is necessary or legally permissible for any potential Commission proceeding to encompass broadband deployment.¹⁴

We agree that the initiation of a formal proceeding that would require utilities to file reports at the Commission related to their efforts to apply for federal funds available under the IJA and provide a comment process for interested parties concerning utilities' IJA grant application plans lacks merit in this instance. It would not be in the public interest to require utilities to disclose in advance of application approval, details concerning their pursuit of IJA funding. This is due to the potential impact such disclosure may have on their competitive position in the grant consideration process. It would not be prudent to require public utilities to reveal proprietary information in the context of a formal proceeding, which could jeopardize their ability to receive funding.

However, due to the potentially substantial amount of funding available to utilities under the IJA, we believe that it is in the public interest to require jurisdictional fixed public utilities to file simple periodic reports identifying the full amount of all public grant monies that have been received pursuant to the IJA in the preceding calendar, the date the funds were received, and the program(s) in which the funding is associated.¹⁵ Pursuant to Section 504 of the Public Utility Code, the Commission is empowered to require public utilities to file periodic reports concerning matters in which the Commission is authorized to inquire or enforce, or to keep itself informed.¹⁶ Moreover, as the Commission has an ongoing duty to protect the public from unjust and unreasonable rates,¹⁷ jurisdictional fixed public utilities that accept monies derived from IJA grants should be directed to provide testimony as to the accounting treatment of the grant money in rate case proceedings filed before the Commission. The periodic reporting and funding disclosure in rate case filings ensure that the Commission is aware of the amount of grant monies received, the purposes for which the funding will be used, and that the grant monies will be accounted for in rate proceedings.

THEREFORE, WE MOVE THAT:

1. The Petition filed by the Office of Consumer Advocate, the Office of Small Business Advocate, and the Pennsylvania Utility Law Project is granted, in part, and denied, in part.

¹³ EAP Answer at 3; FirstEnergy Answer at 4; NAWC Answer at 4; PECO Answer at 7; PPL Answer at 6-7; UGI Answer at 7; Verizon Answer at 2.

¹⁴ PTA Letter at 1-2; Verizon Letter at 1-2.

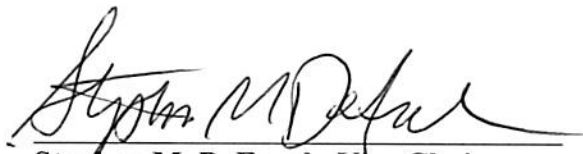
¹⁵ 66 Pa.C.S. § 504 (related to Reports by public utilities).


¹⁶ *Id.*

¹⁷ 66 Pa.C.S. § 1301; *Met. Edison Co.*, 437 A.2d at 80.

2. If a fixed public utility subject to the jurisdiction of the Pennsylvania Public Utility Commission receives any funding deriving from the federal Infrastructure Investment and Jobs Act, the utility shall file a report pursuant to 66 Pa.C.S. § 504 by April 30 of each year indicating the amount and date of the funding received during the preceding calendar year. The report shall identify the program for which the funding is associated. The report shall be filed at this docket, Docket No. P-2022-3032929. The reporting requirement shall commence in 2023 and expire on May 1, 2027.
3. If a fixed public utility subject to the jurisdiction of the Pennsylvania Public Utility Commission receives funding deriving from the federal Infrastructure Investment and Jobs Act, the utility shall provide testimony as to the accounting treatment of the grant money in any filing related to a voluntary change in rates, pursuant to 66 Pa.C.S. § 1308.
4. The Bureau of Technical Utility Services prepare an Opinion and Order consistent with this Motion.
5. The revised Opinion and Order be served on all Pennsylvania jurisdictional fixed utilities, the Energy Association of Pennsylvania, the Pennsylvania Telephone Association, the Office of Consumer Advocate, the Office of Small Business Advocate, the Pennsylvania Utility Law Project, the Commission's Bureau of Investigation and Enforcement and the following other parties: Advanced Energy Economy, Conservation Voters of Pennsylvania, Keystone Energy Efficiency Alliance, Keystone Research Center, League of Women Voters Pennsylvania, Natural Resources Defense Council, Pennsylvania Solar Center, The Philadelphia Solar Energy Association, Pennsylvania Solar & Storage Industries Association, Sustainable Pittsburgh, and Vote Solar.
6. The proceeding at Docket No. P-2022-3032929 remain open until all Pennsylvania jurisdictional fixed utilities file the reports set forth in Paragraph 2.

DATE: March 2, 2023


Stephen M. DeFrank, Vice Chairman


Kathryn L. Zarfuss, Commissioner