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INDEPENDENT REGULATORY REVIEW COMMISSION
333 MARKET STREET, 14TH FLOOR, HARRISBURG, PA 17101

May 4, 2000

Honorable John M. Quain, Chairman
Pennsylvania Public Utility Commission
104 North Office Building
Harrisburg, PA 17105

Re: IRRC Regulation #57-212 (#2094)
Pennsylvania Public Utility Commission
Reporting Requirements for Universal Service and Energy Conservation Programs

Dear Chairman Quain:

Enclosed are our Comments on the subject regulation. They are also available on our website at <http://www.irrc.state.pa.us>.

Our Comments list objections and suggestions for consideration when you prepare the final version of this regulation. We have also specified the regulatory criteria which have not been met. These Comments are not a formal approval or disapproval of the proposed version of this regulation.

If you would like to discuss these Comments, please contact Chris Markham at 772-3455.

Sincerely,

Robert E. Nyce
Executive Director

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Enclosure

cc: Kathryn G. Sophy
Janice K. Hummel
Sherri DelBiondo
Office of General Counsel
Office of Attorney General
Lee Ann Labecki

Comments of the Independent Regulatory Review Commission

on

Pennsylvania Public Utility Commission Regulation No. 57-212

Reporting Requirements for Universal Service and Energy Conservation Programs

May 4, 2000

We submit for your consideration the following objections and recommendations regarding this regulation. Subsections 5.1(h) and 5.1(i) of the Regulatory Review Act (71 P.S. § 745.5a(h) and (i)) list the criteria the Commission must use to determine if the regulation is in the public interest. The Pennsylvania Public Utility Commission (PUC) must respond to these Comments when it submits the final-form regulation. If the final-form regulation is not delivered by April 4, 2002, the regulation will be deemed withdrawn.

1. Section 62.2. Definitions. - Consistency with statute; Clarity.

NGDC – Natural gas distribution company

The regulation defines an NGDC as: “[T]he public utility providing facilities and related services for the jurisdictional distribution of natural gas to retail customers.” This definition differs from the definition of this term in the Natural Gas Choice and Competition Act (Act) (66 Pa. C.S. § 2202).

We object to a definition in the regulation which differs from the definition in the Act. Instead, the PUC should reference the statutory definition in Section 2202 of the Act.

Universal service and energy conservation

The definition of this term is identical to the definition included in Section 2202 of the Act. The PUC should consider simply referencing the definition in the Act, rather than repeating the definition.

CAP benefits

The definition of this term references “CAP credits,” which is not a defined term. For clarity, the PUC should define “CAP credits” in the final-form regulation.

Additionally, the definition references “arrearage forgiveness.” It is our understanding that arrearage forgiveness is not an element of every NGDC’s CAP program. Consequently, the PUC should consider adding “if applicable” after “arrearage forgiveness.”

CARES benefits

This definition references “kinds of referrals.” For clarity, the PUC should specify the types of referrals encompassed by this definition.

Confirmed low-income residential account

This term is defined as “Accounts where the NGDC has obtained information that would reasonably place the customer in a low-income designation.” (Emphasis added.) For improved clarity, the PUC should specify the type of “information” that would qualify a customer for a low-income designation.

Low-income customer

This definition applies to a “customer whose household income is at or below 150% of the Federal poverty guidelines.” In its comments, the Office of Consumer Advocate (OCA) asserts that “gross” should be inserted before “household income” to be consistent with how the federal poverty level is determined. We agree. The PUC should consider making the revision suggested by OCA. Additionally, the PUC should clarify how gross household income is determined, including the impact of food stamps, housing subsidies and other benefit programs.

2. Section 62.3. Universal service and energy conservation program goals. - Clarity.

Subsection (a)

This subsection states that the PUC “will determine if the NGDC meets the goals of universal service and energy conservation programs.” However, the regulation is silent on how and with what standards the PUC will make its determination. Will the PUC rely only on the independent evaluation required by Section 62.6? Additionally, what consequences apply to an NGDC if the PUC determines it has not met the universal service and energy conservation program goals? We request the PUC address these issues when it submits the final-form regulation.

3. Section 62.4. Universal service and energy conservation plans. - Economic and fiscal impact; Reasonableness; Clarity.

Paragraph (1) Plan submission

Subsection (a)(1) requires each NGDC to submit an updated universal service and energy conservation plan every three years. How was the three-year time frame determined?

Paragraphs (5) and (6) Plan evaluation

Subsection (a)(5) outlines what steps will be taken if the PUC rejects an NGDC’s updated universal service and energy conservation plan. Subsection (a)(6) describes the timeline the PUC will follow in evaluating a plan.

The sequence of these two subsections is confusing. For increased clarity, the PUC should consider reversing the order of Paragraphs (5) and (6) in the final-form regulation.

Subsection (b) Plan contents

This subsection outlines the contents of universal service and energy conservation plans. We have two concerns with these requirements.

One, Paragraph (3) requires NGDCs to report “[T]he projected needs assessment.” The phrase “needs assessment” is vague. For clarity, the PUC should define the phrase in this paragraph.

Two, Paragraph (8) requests “[A]n explanation of any differences between the NGDC’s approved plan and the implementation of that plan.” Additionally, the PUC is requiring submission of a plan that addresses those differences. Is the PUC asking for a comparison between the proposed plan and previously approved plans? Additionally, what must be included in the plan that addresses the differences? Is the PUC requiring a second plan, in addition to the NGDC’s universal service and energy conservation plan? The PUC should explain.

4. Section 62.5. Annual residential collection and universal service and energy conservation program reporting requirements. - Economic and fiscal impact; Reasonableness; Clarity.

Duplication of existing reporting requirements

Section 62.5 requires NGDCs to “report annually to the Commission on the degree to which universal service and energy conservation programs within its service territory are available and appropriately funded.” To that end, the PUC is requesting data from the NGDCs that contains information on programs and collections.

We understand that some of the data the PUC is requesting is already provided through existing reporting requirements, such as the Chapter 56.231 Report, and the CARES, CAP and Hardship Fund reporting requirements. If so, the PUC should eliminate existing reporting requirements, which duplicate requirements set forth in this proposed rulemaking.

Subsection (a)(1) Collection reporting

Subsection (a)(1) states that “NGDCs should report on the calendar year prior to the reporting year.” The word “should” denotes that submitting reports on the stated time period is optional. We understand it is not. Regulations contain mandates which have the full force and effect of law. Optional provisions should not be included in regulations. Therefore, the PUC should replace “should” with “shall.”

Subsection (a)(1)(iv)-(xii) Residential customers

Subsection (a)(1)(iv)-(xii) requires NGDCs to report various aspects of residential customers, residential revenues and residential accounts on a month-by-month basis. The report is to be submitted annually, with information outlined month-by-month.

We understand that collecting and reporting this information in the format required by the PUC could pose a significant expense to the regulated community in terms of upgrading their computer accounting systems. The PUC should estimate the cost of these requirements to

NGDCs, and explain how these costs will be recovered. Also, the PUC should explain how the benefits derived from these reports justify the associated costs.

Subsection (a)(2)(i)(B) Demographics

The term “family” is used to define the number of low-income customers that reside in the same house. Use of the term “family” is inconsistent with the definition of “low-income customer” in this proposed rulemaking, as well as the Federal poverty guidelines. Both use the term “household.” Therefore, for consistency, the PUC should replace “family” with “household.”

Subsection (a)(2)(ii)(A)(I) LIURP reporting data

Subsection (a)(2)(ii)(A)(I) simply states that LIURP reporting data is due to the PUC by April 30. The PUC should clarify whether that information is required on an annual basis for the preceding year.

Subsections (a)(2)(ii)(A)(II) and (a)(2)(ii)(D)(II)

We have two concerns regarding this subsection. First, the phrases “production data” in Subsection (a)(2)(ii)(A)(II) and “special contributions” in Subsection (a)(2)(ii)(D)(II) are unclear. For clarity, the PUC should consider defining these terms in this subsection, or in Section 62.2. *Definitions*.

Second, Subsection (a)(2)(ii)(A)(I) requires LIURP reporting data be submitted to the PUC by April 30 of each year. By contrast, Subsection (a)(2)(ii)(A)(II) requires “[A]ctual production and spending data for the recently completed program year and projections for the current year” to be submitted annually by April 1 of each year. Why are these two reports not submitted concurrently?

5. Section 62.6. Evaluation reporting requirements. - Reasonableness; Need; Clarity.

Subsection (a) Independent third-party evaluator

Subsection (a) states, “[E]ach NGDC shall have an independent third party conduct an impact evaluation of its universal service....” The term “independent third party” is unclear. The PUC should define this term in either this section, or Section 62.2 (relating to definitions).

Subsection (b) Time period for review

This subsection requires evaluation reports “at no more than 6 year intervals.” We request the PUC explain how the six-year time frame was determined and why it is a reasonable maximum time period between evaluations.

Subsection (c) Independent evaluation

According to this subsection, “[T]o ensure an independent evaluation, neither the NGDC nor the Commission shall exercise control over the content or recommendations contained in the independent evaluation report.” If the PUC does not specify the basic components to be included in the evaluation report, how can the PUC ensure a valid assessment of universal service and energy conservation programs?

It does not appear that specifying the general areas to be assessed would compromise the third-party evaluator's independence. Unless the PUC specifies the minimum content, evaluations among NGDCs could vary widely with regard to the subject areas. Further, without general requirements for evaluation content from the PUC, how will the PUC be able to determine if NGDCs are meeting the goals of universal service and energy conservation programs? The PUC should consider including general content requirements in the final-form regulation, or strike the phrase "content or" in the final-form regulation.

Subsection (d) Redundancy

This subsection requires the impact evaluation to be conducted by an independent third-party evaluator. However, the same provision is contained in Subsection (a). Consequently, Subsection (d) is unnecessary and should be deleted.

6. Section 62.7. NGDCs with less than 100,00 residential accounts. - Clarity.

Subsection (a) Applicability

This subsection exempts NGDCs with fewer than 100,000 residential accounts from the reporting requirements in Sections 54.74 through 54.76. These section references, however, are a typographical error. The PUC should revise this subsection to state that these NGDCs are exempt from the reporting requirements in Sections 62.4 through 62.6 of the proposed regulation.

7. Waiver of survey requirements. - Clarity.

In the preamble, the PUC states that it reserves the right to waive the requirements of this regulation upon petition by an affected party under 52 P. S. § 5.43 (relating to petitions for issuance, amendment, waiver or repeal of regulations). However, waivers are not addressed in the proposed regulation. The PUC should consider adding a section which cross-references the requirements for petitioning for a waiver in Section 5.43.