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April 30, 2003

Honorable Glen Thomas, Chairman  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building, 3rd Floor  
400 North Street  
Harrisburg, PA 17105

Re: Regulation #57-223 (IRRC #2328)  
Pennsylvania Public Utility Commission  
Filing Requirements Relating to Water and Wastewater Public Utilities

Dear Chairman Thomas:

Enclosed are the Commission's Comments for consideration when you prepare the final version of this regulation. These Comments are not a formal approval or disapproval of the regulation. However, they specify the regulatory review criteria that have not been met.

The Comments will be available on our website at [www.irrc.state.pa.us](http://www.irrc.state.pa.us). If you would like to discuss them, please contact my office at 783-5417.

Sincerely,

Robert E. Nyce  
Executive Director

sfn

Enclosure

cc: Honorable Dennis M. O'Brien, Majority Chairman, House Consumer Affairs Committee  
Honorable Joseph Preston, Jr., Democratic Chairman, House Consumer Affairs Committee  
Honorable Robert M. Tomlinson, Chairman, Senate Consumer Protection and Professional  
Licensure Committee  
Honorable Lisa M. Boscola, Minority Chairman, Senate Consumer Protection and Professional  
Licensure Committee

# **Comments of the Independent Regulatory Review Commission**

**on**

## **Pennsylvania Public Utility Commission Regulation No. 57-223**

### **Filing Requirements Relating to Water and Wastewater Public Utilities**

**April 30, 2003**

We submit for your consideration Comments that include references to the criteria in the Regulatory Review Act (71 P.S. § 745.5b) which have not been met. 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regulation is not delivered within two years of the close of the public comment period, the regulation will be deemed withdrawn.

#### **1. Exhibit D - Clarity.**

##### *Test Year*

Section 53.53(b) defines “test year” as “the test year chosen by the utility to support its filing, that is, presumably future test year data would be supplied in most cases.” Our concern is that several different terms are used to reference time frames in Exhibit D, including:

- Data Request II.5 contains the phrase “test year-end and year-end immediately preceding the test year.”
- Data Request III.18 includes the designation “historic and future test years.”
- Data Request IV.11 contains the phrase “test year income taxes or future year income taxes.”
- Data Request IV.18 references “actual test year” and “proposed test year-end.”

We also found differing terms used in Data Requests IV.11, IV.18, V.13, VII.10 and VII.11. Data for rate filings is provided for specific time frames. The use of differing terms is confusing. The regulation should define the time periods, such as “historic test year” and “future test year,” and use those terms consistently throughout Exhibit D.

##### *Vague language*

The proposed rulemaking contains terms that could be subject to misinterpretation. The PUC should amend the regulation so that there is a clear understanding of what information must be filed. Listed below are the terms, an example of their context and citations to where they are found in the regulation.

- “Significant” - For example, Data Request II.6, relating to miscellaneous water revenues, requires “...a monthly breakdown and an explanation of *significant* monthly variances.” (Emphasis added.) How would the reader know what is “significant”? The term “significant” is found in Data Requests II.6, VI.1, X.7, X.9, X.10 and X.11.
- “Major” - For example, Data Request III.9 requires “...a schedule of advertising expense by *major* media categories....” (Emphasis added.) What distinguishes a major media category from a minor one? The term “major” is found in Data Requests I.A.1, III.8, III.9, III.11, III.12, IX.2.a and IX.2.b.

## **2. Section I. Statement of Income - Clarity.**

Data Request I.A.2, Columns 1 and 2 require a “book recorded statement.” These requirements should specify “income statements” to be consistent with the other columns.

Data Request I.A.2, Col. 5 includes the term “requested rates,” whereas Data Request I.4.c contains the term “proposed rates.” One term should be used consistently.

## **3. Section II. Operating Revenues - Clarity.**

In Data Request II.1.b, it is not clear what is meant by the phrase “customer forfeited discount.” The PUC should define this term.

Data Request II.3 requires the utility to “provide increases to customers at various monthly uses....” The term “various” is vague. The regulation should specify in more detail what consumption levels are required.

The first sentence of Data Request II.12 does not specify what rates to apply to the “test year.” This sentence should specify which existing rates the PUC will require.

## **4. Section III. Operating Expense - Clarity.**

Data Request III.3 states, “Sufficient supporting data must be provided.” The regulation should specify what supporting data must be provided.

In Data Request III.7, the second sentence is missing some words. Should it read, “State the method used to calculate monthly or annual payments.”?

In Data Request III.11, it is not clear what is meant by the phrase “regulatory commission expenses.” This should be clarified, or defined in the final-form regulation.

## **5. Section V. Rate Base – Clarity.**

Data Request V.3 requires companies that make claims for non-revenue producing construction work to include “final completion data” in the claim. The term “final completion data” is unclear. The PUC should provide examples of what data is required.

## **6. Section VI. Depreciation – Clarity.**

Chapter 73 of the PUC’s existing regulation requires annual depreciation report filings. These filings contain virtually identical information to the information requested by proposed Section VI. Also, Subsection 73.9(c) (52 Pa. Code § 73.9) states,

In subsequent ratemaking proceedings, the most recent annual depreciation report or service life study approved or deemed approved for accounting purposes only under this chapter, constitutes a rebuttable presumption as to the reasonableness of the accrued depreciation for ratemaking purposes, and the burden of proving the unreasonableness of the accrued depreciation shall be on the challenging party.

If a utility is required to file under Chapter 73, can the utility incorporate its annual depreciation report by reference pursuant to 52 Pa. Code § 53.53(b)? If so, the regulation should include this provision. If not, the PUC should explain why the Chapter 73 information would not be sufficient to determine just and reasonable rates.

Further, Data Request VI.4 requires a company to provide a comparison of “the respondent’s calculated depreciation reserve v. book reserve.” If a utility has been using a book reserve for ratemaking, what purpose would a calculated depreciation reserve serve?

## **7. Section VII. Rate of Return – Clarity.**

Data Request VII.15.c requires companies to provide “All SEC form 10Q reports issued within last year.” For clarity and consistency, the PUC should include a specific time period such as the term “historic test year.”

Data Request VII.20 states, “The response *should* identify for each projected issuance the date, dollar amount, type of security, and effective cost rate.” (Emphasis added.) Are any or all of these categories optional? If not, the PUC should replace the word “should” with the mandatory “shall.”

Data Request VII.25 provides that submitted financial projections will “be treated in a confidential manner, if requested.” We have two concerns. First, how will the PUC treat these documents in a confidential manner? The final-form regulation should include a cross-reference to the regulations governing the PUC’s confidentiality requirements.

Second, how would a company request confidentiality treatment? This paragraph should include a cross-reference to the PUC’s regulations describing how a company can request confidentiality for its projections.

## **8. Section VIII. Rate Structure and Cost of Service – Clarity.**

Data Request VIII.2 requires companies to “Provide a listing of negotiated special rate contracts.” The term “special rate contracts” is unclear. The PUC should define this term in the final-form regulation.

**9. Section IX. Quality of Service – Reasonableness; Clarity.**

The information required in Data Request IX.1 may already be in the PUC's files under different venues. May a utility exercise 52 Pa Code § 53.53(b) to fulfill these data requests?

The citation to 25 Pa Code § 109.401 in Data Request IX.1.a is incorrect because it is designated as reserved (i.e., it has been deleted by the Environmental Quality Board). The PUC should correct this citation in the final-form regulation or delete this requirement.

The citation to 52 Pa Code § 65.5(a) in Data Request IX.2 refers to interruption of service, rather than pressure standards. What is the correct cite?

## **ERRATA**

### **Related to the Criterion of Clarity**

In the process of reviewing this proposed regulation, we found the following typographical errors and clarity issues. We are bringing these to your attention so that corrections can be made for the submittal of the final-form regulation.

#### **Exhibit D**

##### *Title*

The title “A. WATER AND WASTEWATER UTILITIES” that appears under the heading “I. STATEMENT OF INCOME” is misplaced. Since all of Exhibit D relates to water and wastewater utilities, this title should be moved so that the regulation reads “Exhibit D - WATER AND WASTEWATER UTILITIES.” This would also make the Exhibit D title consistent with Section 53.53(a)(4) which references “Exhibit D - Water and wastewater utilities.”

#### **Section II. Operating Revenues**

Data Request II.6 requires an “analysis” of miscellaneous water revenues. It is not clear what analysis could be done on miscellaneous water revenues. Is the intent to require a breakdown of the dollar amounts?

#### **Section III. Operating Expense**

Data Request III.5.h requires “any deferred income and consultant fee.” Should the conjunction be “or”?

Data Request III.9.c uses the abbreviation “etc.” The regulation should specify what other information is required.

#### **Section IV. Taxes**

Data Request IV.1 includes the phrases “PA corporate tax report” and “PA corporate tax settlement.” Data Request IV.15 contains the phrase “Pennsylvania taxes.” For consistency, the PUC should use “Pennsylvania” consistently throughout this section, as well as the rest of this regulation.

Data Request IV.13 lacks clarity. We have four concerns. First, the word “thereunder” is repetitive and should be deleted.

Second, the closing sentence should not be in parentheses. Third, the phrase “so state” should be replaced with “provide an explanation.” Finally, the term “interrogatory” is inconsistent with Section 53.53(a) which states the exhibits contain “data requests.”

## **Section V. Rate Base**

Data Requests V.2, .3 and .5 contain sentences and phrases in parenthesis. The parentheses are not needed, and should be deleted.

Data Requests V.7.c, .d and .e contain the abbreviation “Pa.” As noted above, the PUC should use Pennsylvania consistently throughout the regulation.

The phrase “in providing water service” in Data Request V.15 appears to be incomplete. As this regulation applies to water and wastewater public utilities, the term “wastewater” should be added to this paragraph.

## **Section VII. Rate of Return**

Data Request VII.16 contains the phrase “month/quarter.” It is not clear whether the slash (“/”) denotes “and” or “or.” The PUC should amend this language in the final-form regulation.

The PUC should not use the construction and/or in a regulation, as found in Data Request VII.22. For clarity, the PUC should replace “and/or” with specific filing requirements.

Data Request VII.32 includes the phrase “data of company and/or parent.” The regulation should not use the construction “and/or.” For clarity, the regulation should specify which information is required and under what conditions.

## **Section VIII. Rate Structure and Cost of Service**

Data Request VIII.1 contains the phrase “...approximately three years...” The term “approximately” is vague. The PUC should include a definitive time frame in the final-form regulation.

## **Section XI. Other Data**

Data Request XI.1 requires companies to submit monthly balance sheets and income statements for each month. Why is this requirement included in this section, as opposed to elsewhere in the regulation, such as Section I?

### **Other**

#### *Acronyms*

Acronyms are used in Exhibit D, but are not defined. We found the following:

- Data Request IV.4 includes the acronym “ADR.”
- Data Request V.12.m contains the acronyms “PA-DEP” and “EPA.”
- Data Requests VII.6, .12.b, .12c, .28.d and .32.e contain the acronym “AFUDC.”

For clarity, the PUC should define these acronyms.

### *Grammar and punctuation*

- Data Request III.5.g states, “Support the annualized pension cost figures.” The phrase “by providing the following:” should be added.
- In Data Request III.6.c, the word “the” should be added so that it reads “Explain the basis....”
- In Data Request III.9, the phrase “national and institutional” should be modified to replace the word “and” with a comma.
- In Data Request III.28, the word “the” should be added so that it reads “...for the test year....”
- For clarity, a “the” should be inserted between the words “determining” and “claim” in the last sentence of Data Request V.5.
- Data Request VI.1 contains the phrase “utilized in calculating.” For clarity and readability, the PUC should replace the phrase “utilized in calculating” with the phrase “used to calculate.”
- Data Request VI.4 uses the term “respondent’s.” For consistency with the other requirements in the regulation, the term “respondent’s” should be deleted.
- Data Request VII.1 is missing a closed parenthesis.
- An “a” should be inserted between the words “attach” and “chart” in Data Request VII.13.
- For readability, the phrase “This would” should be deleted in Data Request VII.19.
- For clarity and readability, the words “the “ and “its” should be inserted before “company” and “parent,” respectively in Data Request VII.32.