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December 3, 2013

Rosemary Chiavetta, Esq., Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
Harrisburg, Pennsylvania 17120

2013 DEC 10 PM 4:43

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**RE: COMMENTS OF THE ENERGY ASSOCIATION OF PENNSYLVANIA
TO THE COMMISSION'S PROPOSED RULEMAKING ORDER
RE: REVIEW OF LONG-TERM INFRASTRUCTURE IMPROVEMENT PLAN
Docket No. L-2012-2317274**

Dear Secretary Chiavetta:

Enclosed for filing please find the Comments of the Energy Association of Pennsylvania in the above-referenced docket.

Sincerely,

A handwritten signature in black ink, appearing to read "Donna M. J. Clark", is written over a horizontal line.

Donna M. J. Clark
Vice President and General Counsel

Enc.

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

2013 DEC 10 PM 4: 43

Proposed Rulemaking Order Re: Review of :
Long-Term Infrastructure Improvement Plan : Docket No. L-2012-2317274
:

**COMMENTS OF THE
ENERGY ASSOCIATION OF PENNSYLVANIA
TO THE PROPOSED RULEMAKING ORDER**

I. INTRODUCTION

Governor Corbett signed Act 11 of 2012 (“Act 11”) into law on February 14, 2012, amending the Pennsylvania Public Utility Code to, *inter alia*, authorize electric distribution companies (“EDCs”), natural gas distribution companies or city natural gas operations (“NGDCs”), and water and wastewater utilities to petition the Public Utility Commission (“PUC” or “Commission”) for a distribution system improvement charge (“DSIC”). The DSIC mechanism provides for the timely recovery of reasonable and prudent costs associated with the repair, improvement or replacement of eligible utility infrastructure by reducing the regulatory lag associated with recovery through base rate cases. *See*, 66 Pa. C.S. §1353(a).

Implementation of Act 11 began in early 2012 with a Commission-led stakeholder working group established to discuss key topics outlined in a PUC Secretarial Letter dated March

22, 2012. Following an initial meeting of the working group on April 5, the Commission entered a Tentative Implementation Order for public comment on May 11, 2012. Public comments to the Tentative Order together with additional working group discussions formed the basis for the Final Implementation Order and model tariff which was approved by the Commission on August 2, 2012.

A key component of Act 11 and the DSIC approval process is the filing and review of a Long Term Infrastructure Improvement Plan (“LTIIIP”) under 66 Pa. C.S. §1352. The Final Implementation Order restated the elements of a LTIIIP as set forth in the statute at 66 Pa. C.S. § 1352(a) and further determined, *inter alia*, that the filing would require a workforce management plan to ensure that the utility would have access to a qualified workforce in connection with its repair, improvement and replacement of infrastructure.¹ The Final Implementation Order noted that Act 11 authorized the promulgation of a series of regulations including rules providing for the periodic review of LTIIIPs. 66 Pa. C.S. §1352(b).

The Commission entered a Proposed Rulemaking Order on March 14, 2013 seeking comments within 45 days of publication in the *Pennsylvania Bulletin* on suggested regulatory language relating to the periodic review of LTIIIPS as set forth in Annex A to the Order. In addition to the requirements addressed in Act 11 and the Final Implementation Order, the PUC included two additional elements for a LTIIIP in its March 2013 Proposed Rulemaking Order. Namely, the Commission determined that, in the case of NGDCs, the LTIIIP needed to “address damage prevention, corrosion control, emergency response times and identification of critical valves.” Proposed Rulemaking Order at p. 4. Further and in light of the various infrastructure

¹ The Final Implementation Order also provided a five-to-ten year timeframe for a LTIIIP, concluded that the LTIIIP need only identify the specific property for which it seeks DSIC recovery as eligible property and concluded that a LTIIIP should reflect an acceleration of infrastructure replacement over the utility’s “historic” level of capital improvement.

replacement projects which will occur following approval of any DSIC, the PUC directed a utility to include as part of its LTIP “a description of its outreach and coordination activities with other utilities, Pennsylvania Department of Transportation (PennDOT) and local governments regarding...planned maintenance/construction projects and roadways that may be impacted by the plan.” *Id.* at p. 5. The proposed regulations have been published in the *Pennsylvania Bulletin* and comments are due on December 3, 2013.

The Energy Association of Pennsylvania (“EAP” or “Association”) files these comments to the Proposed Rulemaking Order on behalf of its member electric and natural gas member utilities.²

II. COMMENTS TO REGULATORY LANGUAGE SET FORTH IN ANNEX A

A. § 121.2 - Definitions.

The Commission recognized that circumstances will arise where a utility will deviate from its previously approved LTIP and a termination of its DSIC will not be warranted. Thus, the proposed rules establish a process to allow for flexibility by distinguishing between major and minor modifications. *See*, Proposed Regulation §121.5. Section 121.2 defines a “major modification” using four criteria. EAP requests that these criteria be clarified. With respect to the first criterion, EAP notes that elimination of a category of eligible property from a LTIP may not comprise a major modification depending on whether the repair, improvement or

² Citizens’ Electric Company; Columbia Gas of Pennsylvania; Duquesne Light Company; Equitable Gas Company, LLC; Metropolitan Edison Company, Pennsylvania Electric Company; Pennsylvania Power Company; National Fuel Gas Distribution Corp.; PECO Energy Company; Peoples Natural Gas Company; Peoples TWP, LLC; Philadelphia Gas Works; Pike County Light & Power Company; PPL Electric Utilities Corporation; UGI Utilities, Inc.; UGI Penn Natural Gas, Inc.; UGI Central Penn Gas, Inc.; Valley Energy Company, Wellsboro Electric Company; and, West Penn Power Company. For purposes of these comments “NGDC” is intended to include PGW unless otherwise stated.

replacement is actually a substantial portion of the work to be achieved under the LTIP or is a substantial percentage of the projected expenditures. Likewise, extending the schedule by more than two years for a specific category of eligible property may not be a major modification depending on whether that particular category of property represents a substantial portion of the work under the LTIP.

Further, the proposed regulations require that any change in an approved LTIP, whether considered minor or major, will be reported to the Commission and subject to scrutiny under either §121.5 (a) (a utility filed petition seeking a major modification) or §121.5 (b) (an Annual Asset Optimization plan filed by the utility). EAP suggests, therefore, that the Commission consider adjusting the proposed definition of “major modification” by eliminating criterion one and the reference to “category of eligible property” in criterion two. EAP believes that the final criterion is general and would cover other circumstances which the Commission may view as major modifications following submittal of the Annual Asset Optimization (“AAO”) plan under proposed regulation §121.6.

B. § 121.3 - Long-term Infrastructure Improvement Plan (LTIP).

The use of the word “shall” in section 121.3 (a) and throughout the proposed regulations when referring generally to the filing of a LTIP should be replaced with the word “may” so as not to infer that all utilities are required to file a LTIP. Act 11 requires a LTIP filing in connection with the filing of a petition seeking approval of a DSIC.

As proposed, section 121.3(a)(6) would require a LTIP to include a description of the manner in which infrastructure replacement will be accelerated, with no provision to account for utilities that have already engaged in such accelerated infrastructure replacement. In its

discussion of these proposed regulations, the Commission referred to the Final Implementation Order, which noted that “some utilities have taken substantial steps recently to increase prudent capital investment to address their aging infrastructure and we believe that the five-to-ten year timeframe established for a LTIP should reflect how the DSIC will maintain or augment acceleration of infrastructure replacement and prudent capital investment.” Proposed Rulemaking Order at p. 6. Accordingly, EAP suggests a modification to proposed section 121.3(a)(6) to include a “description either of the manner in which infrastructure replacement will be accelerated or the manner in which previously accelerated infrastructure replacement will be maintained....” The additional language would be consistent with proposed section 121.4(e), under which the Commission will determine whether a LTIP “accelerates or maintains an accelerated rate of infrastructure replacement.”

Proposed section 121.3 (a) (8) requires that utilities include a description of planned outreach and coordination activities with other utilities, PennDOT and local governments regarding the work outlined in the LTIP. EAP believes that this concept is better suited to a guideline or policy statement and suggests that it be eliminated from the proposed regulations. While every attempt to coordinate infrastructure initiatives with other affected parties will be made, the very nature of such coordination involves numerous moving parts (weather, schedule, trained workforce, availability of equipment and replacement property) that continually evolve and change. Attempting to delineate this type of activity in a forward-looking plan is difficult and may not in the course of LTIP implementation prove to be a reliable depiction of the actual practice. Further, EAP contends that this additional requirement falls outside the scope of the LTIP under Act 11. EAP is particularly concerned that a deviation from a described outreach

and coordination plan as set forth in a utility LTIP not be grounds for termination of a DSIC under 66 Pa. C.S. §1352(b)(2).

Section 121.3 (a)(9) proposes that NGDCs include a description of plans “to address damage prevention, corrosion control, emergency response times and identification of critical valves” in their LTIP filings. This requirement is not enumerated in the statute and should not be the basis of an order disapproving a LTIP. Moreover, such information is evaluated in the context of the Distribution Integrity Management Plan that is required to be prepared and available under federal regulations to both federal authorities and state regulatory agencies. Requiring such information to be included in a LTIP filed only by NGDCs exceeds the parameters set forth in Act 11 and should not form the basis for a termination of a DSIC under 66 Pa. C.S. §1352(b)(2) without specific statutory authority.

C. § 121.4 Filing and Commission Review procedures.

Section 121.4 (a) sets forth administrative and due process procedures for filing the LTIP with the Commission and other statutory parties. The proposed regulation suggests that copies of the LTIP filing be served on “parties in the utility’s most recent base rate case.” Proposed Rulemaking Order at p. 16. EAP seeks clarification of the term “parties” as used in this section and throughout the proposed regulations in the context of effectuating service. EAP believes the term “parties” should include the statutory advocates and those persons who formally intervened and participated in the most recent base rate case proceeding so as to reduce the burden and unnecessary cost of providing copies to persons who might have commented or provided input in the most recent case but were not litigants.

In addition, clarification is requested for sections 121.4 (e) and (f). When read together, these sections imply that that if an LTIP is filed, the Commission has the authority to direct a particular work plan or schedule whereas the statute delineates specific criteria which the Commission should consider in determining whether to approve or disapprove the LTIP. It remains the utility's option to either amend the proposed LTIP to meet the statutory requirements or to withdraw the plan and forego the opportunity to use a DSIC. Act 11 does not require any utility to file either a LTIP or to petition for a DSIC; rather it is an incentive or tool to be used at the business discretion of the utility to meet its obligation under the Public Utility Code to provide adequate, safe, reliable and reasonable service to customers.

D. § 121.5 - Modifications to and Expiration of a LTIP.

Section 121.5 (c) establishes the timeline for filing a new LTIP with the Commission prior to expiration of a previously approved plan. EAP requests that this section be amended to clarify that the filing of an LTIP is required only in conjunction with the DSIC. As currently proposed the section implies that once an LTIP is filed by a utility, a plan must always be in place regardless of whether the utility has authority to use a DSIC mechanism. EAP maintains that the business decision to utilize a DSIC which requires the filing of a LTIP remains with the utility.

E. § 121.6 - Annual Asset Optimization plan filings.

Section 121.6 sets forth the requirements and procedures for filing an annual asset optimization plan by utilities following receipt of an approved DSIC. 66 Pa. C.S. §1356. EAP seeks clarification of the term "interested parties" as used in this section. As noted earlier in

Section 121.4, a liberal interpretation of this term to include all parties involved in most recent base rate filing would be unwieldy. The language should be modified so that “interested parties” includes the statutory advocates or those persons who formally intervened and participated in the most recent base case proceeding.

Section 121.6 (a) further identifies the AAO plan filing date as “on or before March 1” of each year. EAP respectfully requests that the Commission consider moving this to April 1 in consideration of the extensive resources already committed by NGDCs during the same timeframe for annual reporting requirements to the U.S. Department of Transportation on March 15.

Section 121.6 (b)(2) requires inclusion in the AAO of a description of the eligible property to be improved in the upcoming 12-month period. Clarification is needed as to whether the 12-month period is a calendar year, a fiscal year or the twelve months beginning with the approval date for the DSIC.

Section 121.6 (b)(3) states that utilities are to include system reliability data for the prior five (5) years in the annual AAO. Pursuant to regulation at 52 Pa. Code § 57.195, the Commission already requires, compiles and reports on electric industry reliability data. EAP assumes that a referral to the annual reliability reports will meet this requirement for EDCs inasmuch as Act 11 does not refer to reliability data as a separate component of an AAO. *Compare*, 66 Pa. C.S. §1356. Further, clarification is needed regarding “system reliability data” for NGDCs and whether the Commission would accept the type of information supplied annually by NGDCs in the context of the Winter Reliability Hearing. In the alternative, EAP suggests removing proposed §121.6 (b)(3) from this subsection.

EAP requests that the term “adverse comments” be eliminated from §121.6 (e) inasmuch as the AAO plan is an annual report to the Commission providing information and is not subject to public comment or approval. EAP maintains that if the AAO plan indicates a deviation from a LTIP which is major, a separate proceeding would inevitably be initiated either by the utility seeking to amend the LTIP or by a statutory advocate petitioning to terminate the DSIC. If the review of the AAO reveals that the utility is compliant with its approved LTIP, EAP understands that no further action would be necessary. While information in the AAO plan may form the basis for an inquiry into whether the DSIC should be terminated, the AAO plan filing itself is informational and not an adversarial or formal proceeding. The use of the term “adverse comments” blurs that distinction, causes confusion and is not necessary.

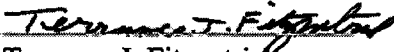
F. § 121.8 – Enforcement of LTIP Implementation

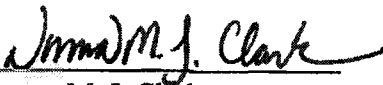
Section 121.8 (c) outlines “remedies” for non-compliance and includes civil penalties for the failure to adhere to an approved LTIP. EAP contends that an LTIP is not a stand-alone obligation but rather a detailed infrastructure replacement plan filed by a utility seeking approval of a DSIC. As such, the statute provides that the appropriate enforcement action for non-compliance to the LTIP should be revocation of, and zeroing-out of, the DSIC. 66 Pa. C.S. §1352 (b)(2). While the Commission always has the authority to assess civil penalties when appropriate, EAP asserts that Act 11 provides a specific and suitable remedy for failure to comply with or effectuate lawful modification of a previously approved LTIP. EAP suggests that the reference to civil penalties and “other remedies” is not in accord with the statutory language and should be removed from the proposed enforcement actions identified in the proposed regulation.

III. CONCLUSION

EAP respectfully requests that the Commission consider the recommendations suggested herein in addition to those set forth in comments filed by its individual members. The Association and its members recognize the effort represented by the proposed regulations and look forward to working further with the Commission to revise the proposed language to establish a periodic review process which is streamlined, cost-effective and adheres to the requirements established under Act 11.

Respectfully Submitted:


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Dated: December 3, 2013