

COMMONWEALTH OF PENNSYLVANIA



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3032

December 3, 2013

Rosemary Chiavetta, Secretary  
PA Public Utility Commission  
Commonwealth Keystone Bldg.  
400 North Street  
Harrisburg, PA 17101

2013 DEC 10 PM 4:43

RECEIVED  
IRRC

RE: Proposed Rulemaking for Review of  
Long-Term Infrastructure Improvement Plans  
Docket No. L-2012-2317274

Dear Secretary Chiavetta:

Attached for electronic filing please find the Comments of the Office of Consumer Advocate in the above-referenced proceeding.

Copies have been served on the parties as indicated on the enclosed Certificate of Service. If you have any questions, please feel free to contact us.

Respectfully submitted,

A handwritten signature in cursive script that reads "Christine Maloni Hoover".

Christine Maloni Hoover  
Senior Assistant Consumer Advocate  
PA Attorney I.D. # 50026

Attachment

cc: Bohdan R. Pankiw, Law Bureau  
David Screven, Law Bureau  
[RA-Act11@pa.gov](mailto:RA-Act11@pa.gov) (via Email only)

177202.doc

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RECEIVED  
IRRC

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION 2013 DEC 10 PM 4: 43

Re: Proposed Rulemaking :  
for Review of Long-Term Infrastructure : L-2012-2317274  
Improvement Plans :

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COMMENTS OF THE  
OFFICE OF CONSUMER ADVOCATE

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Dated: December 3, 2013  
177115

## I. INTRODUCTION

On February 14, 2012, Governor Corbett signed Act 11 of 2012 (Act 11 or Act) into law. Act 11 amended, *inter alia*, Chapter 13 of the Public Utility Code to permit water and wastewater utilities, electric distribution companies, natural gas distribution companies and city natural gas distribution operations to petition for implementation of a Distribution System Improvement Charge (DSIC). See 66 Pa. C.S. §§ 1350-1360 (Act 11). In order to qualify for DSIC recovery, a utility must submit a Long-Term Infrastructure Improvement Plan (LTIIP) for Public Utility Commission (Commission) approval. See 66 Pa. C.S. § 1352. See also In re: Implementation of Act 11 of 2012, Docket No. M-2012-2293611, Final Implementation Order at 21 (Aug. 2, 2012) (Final Implementation Order).

The following seven elements must be included in a utility's LTIIP: (1) types and age of eligible property; (2) schedule for its planned repair and replacement; (3) location of the eligible property; (4) reasonable estimate of the quantity of property to be improved; (5) projected annual expenditures and measures to ensure the plan is cost effective; (6) manner in which replacement of aging infrastructure will be accelerated and how repair, improvement or replacement will maintain safe and reliable service; and (7) a workforce management training plan designed to ensure that the utility will have access to a qualified workforce to perform work in a cost-effective, safe and reliable manner. See 66 Pa. C.S. § 1352(a). See also Final Implementation Order at 17-19. It is the utility's burden to demonstrate that its proposed LTIIP and associated expenditures are reasonable, cost-effective and designed to maintain safe, adequate and reliable service to customers. Final Implementation Order at 20. The OCA submits that when a utility seeks recovery of costs expended pursuant to its LTIIP in a future proceeding, the utility must demonstrate, *inter alia*, that the costs were reasonably and prudently incurred. Further, the utility

will have to demonstrate that there is no overlap of costs already reflected in base rates with costs expended pursuant to an LTIP. 66 Pa. C.S. § 1357(a)(1)(i).

A utility must file its proposed LTIP with the Public Utility Commission (Commission) and serve copies on statutory advocates and all active parties in the utility's last base rate case. See Final Implementation Order at 20. Once filed, a utility's proposed LTIP is assigned to the Commission's Bureau of Technical Utility Services (TUS) for analysis. TUS is to make a recommendation to the Commission and, under the proposed regulation, other parties may file comments to a proposed LTIP within twenty days of the date it was filed. Id. If any party's comments raise issues of material fact, the proposed LTIP is to be referred to the Office of Administrative Law Judge for hearing and decision, to be accomplished within 120 days. Id.

The instant rulemaking is required by the Act. See 66 Pa. C.S. § 1352(b)(1). On March 14, 2013, the Commission adopted the Proposed Rulemaking Order setting forth proposed regulations for filing LTIPs. On Saturday, October 19, 2013, the Proposed Rulemaking regarding review of LTIPs was published in the Pennsylvania Bulletin. 43 Pa.B. 6206. Pursuant to the Proposed Rulemaking Order accompanying the proposed rulemaking as published, the OCA offers the following Comments concerning the proposed regulations regarding the review of LTIPs.

## II. COMMENTS

### A. Summary of the Proposed Regulation Requirements

The requirements set forth in the Final Implementation Order are reflected as well in the Proposed Regulations. Sections 121.1 and 121.2 comprise the purpose and the definitions of words and terms used in the proposed regulations, respectively. The Section 121.2 Definitions mirror the definitions in Act 11, 66 Pa.C.S. Section 1351. Similarly, the LTIIP definition refers to the section of Act 11 that sets forth the specific requirements for the plans. Each of the proposed regulation sections describing the LTIIP elements, the Annual Asset Optimization Plans (AAO Plans), periodic review of the submissions and enforcement of LTIIP implementation track the language of the pertinent sections of Act.

The proposed regulations also include Section 121.8, entitled “Enforcement of LTIIP implementation.” This section restates the utility’s obligation to comply with the schedule and other elements contained within the plan; calls for multi-year review by the Commission, and allows for the submission of complaints for non-compliance. Section 121.8(a)-(b). The final subsection states that the remedies for non-compliance “may include civil penalties, revocation of the DSIC and other remedies as may be appropriate based on the record developed in the enforcement proceeding.” Section 121.8(c).

Having reviewed the proposed regulations, the Final Implementation Order and the Act, the OCA has concluded that the proposed regulations are substantially consistent with the requirements of Act 11, as codified at 66 Pa.C.S §1350, *et seq.*, with the exception of the section pertaining to enforcement. The OCA will propose recommendations to implement the enforcement provisions of the Act and to clarify or strengthen certain other sections. These recommendations, if adopted by the Commission, would require the revisions to the proposed

regulations reflected by the strike-outs and underlines that are reflected in the text set forth in OCA Appendix A.

B. OCA Recommendations.

1. Proposed Sections 121.2 – 121.3.

The Final Implementation Order and the Proposed Rulemaking Order state that, pursuant to Section 1360 of Act 11, 66 Pa.C.S. § 1360, “water utilities with previously-approved DSICs are not required to file an LTIP unless otherwise directed by the Commission.” 42 Pa. Bulletin 6207. It is the understanding of the OCA that the water utilities that have existing DSICs implemented pursuant to 66 Pa.C.S. §1307(g)(now repealed by Act 11) have not submitted LTIPs as of this time, as they have not been specifically directed by the Commission to do so. The OCA submits that, as an initial matter, the Commission should now require water utilities with existing DSIC mechanisms to file an LTIP on a schedule established by the Commission. In the same order or directive, the Commission should make clear that, once the initial LTIP is filed and approved, the water utilities must adhere to the regulations on a going-forward basis.

The Commission has correctly included water utilities within the definition of utilities for purposes of these regulations, and it has correctly defined the term LTIP to mean a plan that a utility must file to be eligible for a DSIC mechanism. Proposed Section 121.2 (Definition of Utility and LTIP). But the terms as defined and as utilized in Section 121.3 do not provide clarity as to the filing of an LTIP by a utility that had an existing DSIC mechanism at the time of enactment of the statute.

The OCA submits that it is just as important for the water utilities with existing DSIC mechanisms as it is for the natural gas, electric, wastewater, and water utilities without an existing DSIC mechanism to meet the requirements of the statute and to demonstrate that the

DSIC-eligible infrastructure replacement plans are cost-effective, accelerated and necessary to maintain and ensure adequate, efficient, safe, reliable and reasonable service to customers under the Public Utility Code. The LTIP process is the mechanism set forth in the statute and regulations to ensure compliance with each of these requirements.

As such, the OCA submits that water utilities with previously-approved DSICs should, in the context of this proposed rulemaking, be explicitly directed by the Commission to meet the same LTIP and AAO Plan requirements as the other utilities subject to the statute. Such a requirement would bring the water utilities within the same purview and enable the Commission to ensure that they too demonstrate compliance with Act 11 and continued eligibility to impose a DSIC on their customers.

For these reasons, the OCA proposes that, in conjunction with a specific directive by the Commission to those water utilities that have previously-approved DSICs to submit LTIPs, two changes be made to the proposed regulations. First, the Section 121.2 definition of LTIP should be clarified as follows:

**LTIP—Long-term infrastructure improvement plan**—The plan and supporting documents identified in 66 Pa. C.S. § 1352(a) that must be submitted to and approved by the Commission, and updated at no less than five-year intervals, in order for a utility to implement and continue to be eligible to recover costs from a DSIC mechanism and which includes information regarding the utility's eligible property and its repair and replacement schedule.

Proposed Section 121.2 (Definitions), OCA Appendix A, at 2. This change will clarify that the LTIP must be filed to demonstrate *continuing* eligibility to impose the DSIC.

Second, Proposed Section 121.3(a) should be modified to also make clear that an LTIP must be filed to both implement and continue a DSIC mechanism. The modification would read as follows:

(a) An LTIP shall be filed by a utility to implement or continue a DSIC mechanism . . .

Proposed Section 121.3(a), OCA Appendix A, at 2.

With these two changes, the Commission can make clear that water utilities with existing DSIC mechanisms at the time of enactment of Act 11 must also file an LTIP to ensure that they are in compliance with the requirements of the Act. As discussed in Section B.3. below, the OCA is recommending additional changes to Proposed Section 121.3(a) to address the filing schedule for LTIPs.

2. Proposed Sections 121.4(c), 121.5(a), 121.6(a)

The proposed regulations allow for only a twenty-day comment period following the submission of an LTIP (Section 121.4(c)) or the modification of an LTIP (Section 121.5). The proposed regulations do not specify any time frame for comment regarding the annual filing of an AAO Plan. The OCA submits that, particularly in the event that many eligible utilities submit the LTIPs simultaneously or within a short period, a twenty-day period is an insufficient amount of time to allow for thorough review and comment by interested parties. Similarly, a twenty-day day period is not sufficient time to review modifications to the LTIP. Therefore, the OCA submits that the twenty-day comment periods in Sections 121.4(c) and 121.5(a) should be modified. The OCA proposes that interested parties should have at least sixty days to review the LTIP itself rather than twenty, and at least thirty days to respond to a petition for a major modification to an LTIP pursuant to Section 121.5. The OCA has reflected these modified time frames in OCA Appendix A at 4-5.



Additionally, the OCA submits that interested parties should be given an opportunity to comment on the AAO Plans and a time period for these comments should be specified.<sup>1</sup> The parties should have the opportunity to comment on the AAO Plan since the Commission will utilize it to determine whether the utility has adhered to the approved LTIP. Interested parties should be provided 45 days to review and comment on an AAO Plan filing submitted pursuant to Section 121.6. These proposed changes are also reflected in OCA Appendix A, at 6.

3. Proposed Sections 121.3 and 121.6.

With respect to the timing of the Act 11 requirements, the OCA submits that the Commission should publish a schedule that allows for the phased filing of these submissions. The OCA recommends that the Commission publish a schedule in the Pennsylvania Bulletin, as it does for the purpose of phasing the purchased gas cost filings for the natural gas utilities. This phasing requirement, in conjunction with the longer review and comment periods for the Act 11 submissions, would also work to facilitate more thorough and meaningful review by interested persons and the statutory advocates.

Several filing sections should be modified to provide for a phased filing approach. First, Section 121.3 should be modified to address the point that after the approval of the initial LTIP, subsequent LTIPs must be filed in accordance with the Commission's phased filing schedule. Putting together the OCA's recommended changes to Section 121.3 discussed in Section II.B.1 with these recommendations, Section 121.3 would read as follows:

An LTIP shall be filed by a utility to implement or continue a DSIC mechanism. Following the initial LTIP filing, the utility shall file its subsequent LTIPs in accordance with a schedule established by the Commission, as published in the Pennsylvania Bulletin. The LTIP shall include the following elements:...

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<sup>1</sup> In Proposed Section 121.6(e), a reference to "adverse comments . . . within sixty days" is made but the proposed regulation does not otherwise specify a comment period.

OCA Appendix A at 2.

With regard to the submission of Annual Asset Optimization Plans, the Commission should also establish a phased filing approach to ensure that Commission Staff and interested parties can properly review the AAO Plans. As such, Section 121.6(a) should be revised as follows:

A utility with an approved DSIC shall file with the Commission, for informational purposes, an AAO plan. The AAO plan shall be filed ~~on or before March 1<sup>st</sup> of each year~~ once a year in accordance with the schedule established by the Commission, as published in the *Pennsylvania Bulletin* prior to the first day of January of each year. ~~following the implementation of the utility's DSIC mechanism.~~

Proposed Section 121.6(a), OCA Appendix A at 6.

4. Proposed Section 121.4(b)

In Proposed Section 121.4(b), the Commission allows a utility to request proprietary and confidential treatment of the LTIP. The proposed regulation, however, does not specify the time frame in which this proprietary treatment should be sought. Given the short time frames for review and comment, even under the OCA's proposals here, the OCA submits that the regulations should be made clear that proprietary treatment must be sought and received prior to the filing of the LTIP. The OCA proposes as follows:

(b) An LTIP shall be considered a public document. If a utility believes that any portion of the information contained in the LTIP qualifies as confidential security information under 35 P.S. § 2141, or should be afforded proprietary and confidential treatment, the utility shall request proprietary treatment of such information pursuant to a protective order prior to the date of filing. . . .

Proposed Section 121.4(b), OCA Appendix A at p. 4.

5. Proposed Section 121.5(c)

In its Orders, the Commission recognizes that a new LTIP will be filed with the Commission on a periodic basis. Proposed Section 121.5(c). The proposed regulation does not specify a time frame for this filing, however. The OCA submits that the minimum five-year interval for LTIPs should be expressly stated in the regulations. Thus, the OCA proposes that Sections 121.5(c) governing the filing of a new LTIP be modified to include references to the five-year filing. In addition, this section should include language indicating that the filing time frames will be in accordance with a phased schedule established by the Commission. Proposed Section 121.5(c) should be modified to read:

(c) A utility shall file a new LTIP every five (5) years in accord with the schedule established by the Commission as published in the Pennsylvania Bulletin. The new LTIP shall be filed with the Commission at least 120 days prior to the expiration of a currently-effective LTIP. The new LTIP shall also contain the elements set forth in subsection 121.3(a) above.

Proposed Section 121.5(c), OCA Appendix A at 5.

6. Proposed Section 121.8.

The final section pertaining to enforcement reads as follows:

The remedies for non-compliance with an approved LTIP *may include* civil penalties, revocation of the DSIC and other remedies as may be appropriate based on the record developed in the enforcement proceeding.

Proposed Section 121.8 (emphasis added). The OCA submits that this provision of the regulation is not consistent with the statute, which reads in pertinent part, as follows:

(b) Periodic review.—

- (1) The commission shall promulgate regulations for the periodic review at least one every five years of long-term infrastructure plans. The regulation may authorize a utility to revise, update or resubmit a plan as appropriate.

(2) *The regulations shall ensure that a distribution system improvement charge shall terminate if the commission determines that the utility is not in compliance with the approved plan.*

66 Pa.C.S. §1352(b)(emphasis added). Clearly, the legislative language concerning termination of the DSIC is mandatory in instances where the Commission determines that the utility is not in compliance with the plan as approved. The proposed regulation states that remedies “may include. . . revocation of the distribution system improvement charge,” which essentially makes termination of the DSIC an option in instances of noncompliance. The OCA submits that this subsection of the regulation is inconsistent with the express statutory language and should be reworded as follows:

The remedies for non-compliance with an approved LTIP may include civil penalties, ~~revocation of the DSIC~~ and other remedies as the Commission may deem be appropriate based upon the record developed in the enforcement proceeding; however, if based upon the record developed in the enforcement proceeding the Commission determines that the utility is not in compliance with the approved plan, the Commission shall issue an order terminating the DSIC.

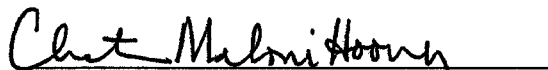
Proposed Section 121.8(c). This change will bring the regulation into conformity with the requirement of the statute that the DSIC mechanism terminate if the Commission finds that a utility is not in compliance with its plan.

### III. CONCLUSION

In summation, the Office of Consumer Advocate recommends that the Commission incorporate the following recommendations with regard to the proposed LTIP review regulations:

1. Clarify that water utilities which have had DSICs in place must also comply with the LTIP requirements prospectively, to demonstrate continuing eligibility for a DSIC;
2. Extend the time that the Commission staff and public advocates have to review the LTIP plans and AAO Plans;
3. Publish a schedule to allow for phasing of the LTIP and AAO Plan filing deadlines for the utilities with DSIC tariffs, similar to the phasing of the submission of the Section 1307(f) gas cost rate change filings, to allow for more meaningful and thorough review by interested parties;
4. Specify the timeframe by which proprietary treatment of an LTIP must be sought;
5. Specify a five-year timeframe for the filing of LTIPs; and
6. Modify the language in Section 121.8 to make it consistent with 66 Pa.C.S. §1352(b)(2).

Respectfully submitted,



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Dated: December 3, 2013  
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## **OCA Appendix A**

## OCA Appendix A

**TITLE 52. PUBLIC UTILITIES**  
**PART I. PUBLIC UTILITY COMMISSION**  
**Subpart G. DISTRIBUTION SYSTEM IMPROVEMENT CHARGE**  
**CHAPTER 121. LONG-TERM INFRASTRUCTURE IMPROVEMENT PLAN**

**§ 121.1. Purpose.** In order to be eligible to recover the reasonable and prudently incurred costs related to the repair, improvement and replacement of eligible property from a Distribution System Improvement Charge (DSIC), 66 Pa. C.S. § 1353, each a utility shall submit a Long-Term Infrastructure Improvement Plan (LTIIP) to be approved by the Commission, with updated LTIIPS to be submitted at five-year intervals. The Each LTIIP must show that the acceleration of the replacement of aging infrastructure by the utility and ~~must be~~ is sufficient to ensure and maintain adequate, efficient, safe, reliable and reasonable service to customers.

**§121.2. Definitions.**

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

**AAO Plan—Annual asset optimization plan**—The plan and supporting documents identified in 66 Pa. C.S. § 1356 that specify all the eligible property repaired, improved or replaced by a utility pursuant to its Commission-approved LTIIP.

**DSIC—Distribution system improvement charge** --A charge imposed by a utility to recover the reasonable and prudent costs incurred to repair, improve or replace eligible property that is part of the utility's distribution system pursuant to 66 Pa. C.S. § 1353.

**Eligible property**—Property as defined in 66 Pa. C.S. § 1351 (relating to definitions).



**LTIP—Long-term infrastructure improvement plan**—The plan and supporting documents identified in 66 Pa. C.S. § 1352(a) that must be submitted to and approved by the Commission, and updated at no less than five-year intervals, in order for a utility to implement and continue to be eligible to recover costs from a DSIC mechanism and which includes information regarding the utility's eligible property and its repair and replacement schedule.

**Major modification**—A change or deviation to a utility's previously approved LTIP which:

- (1) Eliminates a category of eligible property from the plan.
- (2) Extends the schedule for repair, improvement or replacement of a category of eligible property by more than two years.
- (3) Increases the *total* estimated cost of the plan by more than 15%.
- (4) Otherwise reflects a substantial change to the current Commission-approved LTIP.

**Utility**—A natural gas distribution company, electric distribution company, water or wastewater utility or city natural gas distribution operation subject to the jurisdiction of the Commission.

**§121.3. Long-term infrastructure improvement plan (LTIP).**

- (a) An LTIP shall be filed by a utility to implement or continue a DSIC mechanism. Following the initial LTIP filing, the utility shall file its subsequent LTIPs in accordance with a schedule established by the Commission, as published in the *Pennsylvania Bulletin*. The LTIP shall include the following elements:

- (1) Identification of types and age of eligible property owned and operated by the utility for which it is seeking DSIC recovery.

- (2) An initial schedule for planned repair and replacement of eligible property.
- (3) A general description of location of eligible property.
- (4) A reasonable estimate of quantity of eligible property to be improved or repaired.
- (5) Projected annual expenditures and means to finance the expenditures.
- (6) A description of the manner in which infrastructure replacement will be accelerated and how repair, improvement or replacement will ensure and maintain adequate, efficient, safe, reliable and reasonable service to customers.
- (7) A workforce management and training program designed to ensure that the utility will have access to a qualified workforce to perform work in a cost-effective, safe and reliable manner.
- (8) A description of a utility's outreach and coordination activities with other utilities, ~~PennDOT~~ Pennsylvania Department of Transportation and local governments regarding their planned maintenance/construction projects and roadways that may be impacted by the plan.
- (9) For a natural gas distribution company, a description of the plan to address damage prevention, corrosion control, emergency response times, and identification of the NGDC's critical valves.

(b) The LTIP shall address only the specific property eligible for DSIC recovery.

**§121.4. Filing and Commission review procedures.**

- (a) An LTIP shall be filed with the Commission's Secretary's Bureau with copies served upon the Bureau of Investigation and Enforcement, the Office of Consumer Advocate, the Office of Small Business Advocate and the parties in the utility's

most recent base rate case. Service shall be evidenced by a certificate of service filed with the LTIP.

- (b) An LTIP shall be considered a public document. If a utility believes that any portion of the information contained in the LTIP qualifies as confidential security information under 35 P.S. § 2141, or should be afforded proprietary and confidential treatment, the utility shall request proprietary treatment of such information pursuant to a protective order prior to the date of filing. See 52 Pa. Code § 5.423 (Propriety Information) and 52 Pa. Code §§ 102.1 – 102.4 (Confidential Security Information). Confidential security information appearing within the LTIP shall be marked confidential by the utility and excluded from the public version of the filing.
- (c) LTIP filings shall be subject to a ~~20~~-60-day comment period. The LTIP will be reviewed by Commission staff. If comments raise material factual issues, the LTIP shall be referred to the Office of Administrative Law Judge for hearings and a decision.
- (d) A utility has the burden of proof to demonstrate that its proposed plan and associated expenditures are reasonable, cost effective and are designed to ensure and maintain efficient, safe, adequate, reliable and reasonable service to consumers.
- (e) The Commission will review the LTIP and determine whether:
  - (1) The long-term infrastructure improvement plan accelerates or maintains an accelerated rate of infrastructure replacement.
  - (2) The plan is sufficient to ensure and maintain adequate, efficient, safe, reliable and reasonable service.

- (f) If the plan does not meet the above criteria, the Commission will order the utility to file a new or revised LTIP.

**§121.5. Modifications to and expiration of an LTIP.**

- (a) If a utility seeks to modify a Commission-approved LTIP during its term in order to incorporate a major modification to any of the elements listed in subsection 121.3(a) above, the utility shall file a separate petition for modification. The utility shall clearly identify the change and shall explain the operational, financial or other justifications for the change in its petition. The petition shall be subject to notice and an opportunity to be heard by interested parties. Parties shall have ~~20~~ 30 days to file comments to the petition.
- (b) Minor modifications to a LTIP that are changes that do not qualify as major changes as defined in section 121.2 will be addressed concurrent with Commission Staff's review of the utility's AAO plan.
- (c) A utility shall file a new LTIP with the Commission every five (5) years in accord with the schedule established by the Commission as published in the Pennsylvania Bulletin. The new LTIP shall be filed with the Commission at least 120 days prior to the expiration of a currently-effective LTIP. The new LTIP shall also contain the elements set forth in subsection 121.3(a) above.

**§121.6. Annual asset optimization plan filings.**

- (a) A utility with an approved DSIC shall file with the Commission, for informational purposes, an AAO plan. The AAO plan shall be filed ~~on or before March 1<sup>st</sup> of each year~~ once a year in accordance with the schedule established by the Commission, as published in the Pennsylvania Bulletin prior to the first day of January of each year. The utility shall file copies of the plan with the

Commission's Bureau of Investigation and Enforcement, the Office of Consumer Advocate, the Office of Small Business Advocate and the interested parties that were a part of the proceeding in which the initial LTIP was approved. The parties shall have forty-five days in which to submit comments.

(b) An AAO plan shall include the following:

(1) A description of the eligible property repaired, improved and replaced in the prior 12-month period pursuant to the its LTIP.

(2) A description of the eligible property to be improved in the upcoming 12-month period.

(3) System reliability data for the prior 5 years.

(c) If a utility determines that a major modification to its LTIP is necessary once it has finalized its AAO plan, it shall submit a separate petition for modification as set forth in subsection 121.5(a) to the Commission.

(d) An AAO plan will be reviewed by the Commission to determine whether the utility has adhered to its approved LTIP. If the Commission determines that a major modification to the LTIP is necessary to maintain and improve the safety, adequacy and reliability of its existing distribution infrastructure, it will direct the utility to file a petition for modification as outlined in subsection 121.5(a) above.

(e) Absent any major modifications, adverse comments or Commission action within sixty ~~60~~ days, the AAO plan shall be deemed approved. The Commission may extend its consideration period if necessary.

**§121.7. Periodic review of an LTIIP.**

- (a) The Commission will review a utility's updated LTIIP at least once every 5 years, or more frequently if deemed necessary to address safety, reliability or other issues related to the approved LTIIP.
  
- (b) The Commission's review will determine the following:
  - (1) Whether the utility has adhered to its LTIIP.
  - (2) Whether changes to the LTIIP are necessary to maintain and improve the efficiency, safety, adequacy and reliability of its existing distribution infrastructure.
  
- (c) Unless otherwise directed, the Commission's periodic review must commence at the midpoint of the term of the current LTIIP. The Commission will, via a Secretarial Letter, establish a schedule for comments and reply comments to aid in its periodic review.
  
- (d) If the Commission determines, based upon its review, that a utility's approved LTIIP is no longer adequate to ensure and maintain efficient, adequate, safe, reliable and reasonable service, the Commission will direct the utility to revise, update or resubmit its plan as appropriate.

**§121.8. Enforcement of LTIIP implementation.**

- (a) A utility with a Commission-approved LTIIP shall be obligated to comply with the infrastructure replacement schedule and elements of that plan. Compliance with the LTIIP shall be evaluated on a multi-year basis over the life of the plan. Construction expenditure variations in individual years and minor changes or

deviations from the Commission-approved LTIP may not be the basis for an enforcement complaint.

- (b) A Commission-approved LTIP may be subject to enforcement complaints brought by statutory advocates and other interested persons. Enforcement complaints may be referred to the Office of Administrative Law Judge for hearings and a decision, as appropriate.
- (c) The remedies for non-compliance with an approved LTIP may include civil penalties, ~~revocation of the DSIC~~ and other remedies as the Commission may be deem appropriate based on the record developed in the enforcement proceeding; however, if based upon the record developed in the enforcement proceeding, the Commission determines that the utility is not in compliance with the approved plan, the Commission shall issue an order terminating the DSIC.

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