



August 28, 2023

VIA E-FILING

David P. Zambito

Direct Phone 717-703-5892

Direct Fax 215-989-4216

dzambito@cozen.com

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

Re: Proposed Water Audit Methodology Regulation 52 Pa. Code § 65.20a – Water Conservation Measures; Docket No. L-2020-3021932

Comments of the National Association of Water Companies - Pennsylvania Chapter

Dear Secretary Chiavetta:

Enclosed for filing with the Pennsylvania Public Utility Commission are the comments of the National Association of Water Companies – Pennsylvania Chapter in the above-referenced matter. Word versions of the comments will be submitted to the Commission's contact persons listed below.

Please contact me if you have any questions or concerns about this filing.

Sincerely,

COZEN O'CONNOR

David P. Zambito, Esq.
Counsel for *National Association of Water Companies – Pennsylvania Chapter*

DPZ:kmg
Enclosure

cc: Per Certificate of Service
Stephanie Wilson, Esq. (*Law Bureau*)
Colin W. Scott, Esq. (*Law Bureau*)
Karen Thorne (*Law Bureau*)
ra-pcpcregreview@pa.gov
Marc Lucca, Chair, NAWC-PA

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Proposed Water Audit Methodology Regulation 52 Pa. : Docket No. L-2020-3021932
Code § 65.20a – Water Conservation Measures :

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing **Comments of the National Association of Water Companies – Pennsylvania Chapter**, upon the parties of record in this proceeding in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant), in the manner and upon the persons listed below:

Service by E-mail and First Class Mail:

Patrick M. Cicero, Consumer Advocate
Office of Consumer Advocate
555 Walnut Street
Forum Place, 5th Floor
Harrisburg, PA 17101-1923
ra-OCA@paoca.org

NazAarah Sabree, Small Business Advocate
Office of Small Business Advocate
555 Walnut Street
Forum Place, 1st Floor
Harrisburg, PA 17101-1923
ra-sba@pa.gov

Richard A. Kanaskie, Esq.
Director and Chief Prosecutor
Pennsylvania Public Utility Commission
Bureau of Investigation and Enforcement
Commonwealth Keystone Building
400 North Street, 2 West
Harrisburg, PA 17120
rkanaskie@pa.gov

Andrew D. Dehoff, Executive Director
Susquehanna River Basin Commission
4423 N. Front Street
Harrisburg, PA 17110-1788
srbc@srbc.net

George Kunkel, Principal
Kunkel Water Efficiency Consulting
30 Clark Rd.
Hershey, PA 17033-2112
kunkelwaterefficiency@gmail.com

Service by First Class Mail:

Beth Pearsall Powell
Fluid Conservation Systems
1960 Old Gatesburg Road, Suite 150
State College, PA 16803

Respectfully,



David P. Zambito, Esq.
Counsel for *National Association of Water
Companies – Pennsylvania Chapter*

Date: August 28, 2023

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Proposed Water Audit Methodology Regulation :
52 Pa. Code § 65.20a – Water Conservation Measures : Docket No. L-2020-3021932

COMMENTS OF THE NATIONAL ASSOCIATION OF WATER
COMPANIES – PENNSYLVANIA CHAPTER

AND NOW COMES the National Association of Water Companies – Pennsylvania Chapter (“NAWC”), to submit these Comments in response to the Order of the Pennsylvania Public Utility Commission reopening the public comment period on the proposed water audit methodology rulemaking. The Commission’s Order was entered on July 13, 2023 and published in the *Pennsylvania Bulletin* on July 29, 2023, 53 *Pa.B.* 3973. NAWC appreciates the opportunity to submit these Comments.

I. INTRODUCTION

NAWC is a trade organization whose members are investor-owned water utilities in Pennsylvania that are regulated by the Commission.¹ Among other functions, NAWC provides members with a vehicle for expressing their position on legislative and regulatory developments before the General Assembly, the Commission and other regulatory agencies, as well as the courts. NAWC commends the Commission for studying water loss in the Commonwealth. This topic is a matter of great importance for the industry due to the cost of treating water that is ultimately lost

¹ The members of NAWC are: Aqua Pennsylvania, Inc. (“Aqua”); Columbia Water Company (“Columbia”); Newtown Artesian Water Company (“Newtown Artesian”); Pennsylvania-American Water Company (“PAWC”); The York Water Company (“York”); and, Veolia Water Pennsylvania, Inc. (“Veolia”). Newtown Artesian Water Company is a Class B water utility; the remaining members of NAWC are Class A water utilities. In addition to water operations, several NAWC members operate Commission-regulated wastewater systems.

or unaccounted for. In addition, water utilities have an interest in preserving supplies of this precious resource, especially during periods of drought.

II. PROCEDURAL HISTORY

By Order entered on January 24, 2013 (the “2013 Order”), the Commission requested comments on appropriate revisions to the Commission’s Statement of Policy at 52 Pa. Code § 65.20. *Advance Notice of Proposed Rulemaking for Revision of the Commission’s Regulations on Water Conservation Measures at 52 Pa. Code § 65.20*, Docket No. L-2012-2319361. On April 4, 2013, NAWC submitted comments (the “2013 Comments”).²

On September 17, 2020, the Commission entered an Advanced Notice of Proposed Rulemaking Order (“ANOPR Order”) at this docket, published in the *Pennsylvania Bulletin* on October 10, 2020, 50 *Pa.B.* 5657. In the ANOPR Order, the PUC invited comments, including comments regarding the benefits and costs of the proposed methodology and the scope of the regulation. NAWC, together with Aqua Pennsylvania, Inc., provided comments (the “2020 Comments”).

The November 18, 2021 NOPR stated:

The proposed regulation as set forth in Annex A would replace and supersede the current Water Conservation Policy Statement at 52 Pa. Code § 65.20. In addition to proposing a methodology, this NOPR also proposes to promulgate as regulations the other recommendations in the Water Conservation Policy Statement.

NOPR at 7. The NOPR was published in the *Pennsylvania Bulletin* on August 6, 2022, with comments due 45 days later. NAWC filed comments on September 20, 2022 (the “2022 Comments”). The Susquehanna River Basin Commission (“SRBC”) and a committee of the

² For ease of reference, and to eliminate redundancy, NAWC’s prior Comments and Reply Comments are attached hereto as Appendices 1-4.

American Water Works Association (“AWWA”) also filed comments. NAWC filed Reply Comments (the “Reply Comments”) on November 4, 2022.

III. COMMENTS

The Commission asks stakeholders to address specific questions. NAWC’s responses are based on the unique facts faced by NAWC’s members. These unique facts will be discussed first, in order to provide context for the comments that follow.

A. Background

On November 10, 2008, the Commission entered a Tentative Opinion and Order³ (the “November 2008 Order”) inviting jurisdictional water utilities to voluntarily participate in a pilot program to implement the International Water Association (“IWA”) and the American Water Works Association (“AWWA”) water audit methodology. *In Re: Pilot Project to Implement The International Water Association/American Water Works Association Water Audit Methodology*, Docket No. M-2008-2062697. The Commission stated that it expected large water utilities to participate in the pilot program. Aqua, York, PAWC, Superior Water Company (“Superior”),⁴ and United Water Pennsylvania, Inc.⁵ voluntarily participated in the pilot program. The pilot program lasted for 24 months, and each utility participating in the pilot program was required to file two water audit summaries (each for a twelve-month period).

³ This Opinion and Order became Final on December 10, 2008.

⁴ Superior was subsequently acquired by Aqua, Docket Nos. A-2015-2472472 and A-2015-2472473, and was merged into Aqua. Docket Nos. A-2018-3004108 *et al.*

⁵ United Water Pennsylvania, Inc. became a subsidiary of SUEZ S.A., and changed its name to SUEZ Water Pennsylvania Inc. Docket No. A-210013F0017. It was subsequently acquired by Veolia Environnement S.A. and is now known as Veolia Water Pennsylvania, Inc. Docket Nos. A-2021-3026515 *et al.* (Order entered December 2, 2021).

By Tentative Opinion and Order entered on November 10, 2011 (the “2011 Order”),⁶ the Commission made the pilot program permanent. The Commission ordered the five companies that participated in the pilot program to continue to submit annual water audit summaries. In addition, it ordered the following utilities to submit annual water audit summaries beginning in 2013: Columbia, Newtown Artesian, CAN DO, Inc.-Water Division, United Water Bethel, Inc.⁷ and Audubon Water Company. As a result, all of NAWC’s members have extensive experience using the AWWA water audit methodology.

B. Responses to the PUC’s Questions

1. What are the expected benefits of the proposed regulation? What are the possible adverse effects of the proposed regulation? What alternative do you recommend?

The Commission’s proposal converts an existing program and Policy Statement into a regulation. The Commission is formalizing processes and procedures that currently exist and are working well. However, the Commission should ensure that the new regulations are not duplicative of other sections of its regulations. 2022 Comments p 3.

NAWC has previously discussed the benefits and adverse impacts of the water audit methodology. 2013 Comments, pp. 2-3; 2020 Comments pp. 3-4, 6; 2022 Comments 3-4. In terms of the benefits and adverse effects of the proposed regulation, the proposed regulation is expected to have relatively little impact on NAWC’s members since all members are already required to submit annual water audit summaries. All NAWC members do so using the AWWA software. In addition, the proposed regulation’s sections (d) through (j) are largely based on the

⁶ This Opinion and Order became Final on January 27, 2012.

⁷ United Water Bethel, Inc. became a subsidiary of SUEZ S.A. and changed its name to SUEZ Water Bethel Inc. Docket Nos. A-2021-3026515 *et al.* (Order entered December 2, 2021). It was subsequently acquired by Veolia Environnement S.A. and was recently merged with and into Veolia Water Pennsylvania, Inc. Docket Nos. A-2022-3035967 *et al.* (Order entered February 9, 2023).

Commission’s current Statement of Policy at 52 Pa. Code § 65.20(1) through (7), which NAWC’s members generally follow.

In its 2020 Comments, NAWC’s primary recommendation was that the Commission should study the results of the water audits submitted to date, before promulgating a regulation. NAWC’s secondary recommendation was that, if the Commission promulgates a regulation, the proposed regulation should address several key points. The Commission’s proposal addresses most of those points.

If the Commission proceeds with the promulgation of the proposed regulation at 52 Pa. Code § 65.20a, NAWC continues to urge the Commission to clarify the definition of a “discrete system.” Among other things, clarifying whether the term includes a large interconnected system with multiple water sources could reduce the adverse financial impact of the regulation. 2022 Comments pp. 4-5; Reply Comments p. 4.

To further reduce the adverse financial impact of the regulation, NAWC continues to request that the Commission modify the reporting requirement, so that utilities be given the option of submitting a single document to the Commission, rather than requiring that utilities submit a separate report for each discrete system. 2022 Comments p. 6. The new regulation should not be interpreted to require that a separate water audit be performed, and a separate report be submitted, for each system with a unique PWSID number.⁸

- 2. A commentor recommended that the PUC require all jurisdictional water utilities to complete at least one water loss audit. If the PUC were to require all jurisdictional water utilities to complete one water loss audit, please identify the timeline and reporting schedule that would be feasible for Class B and Class C water public utilities to complete and**

⁸ NAWC respectfully submits that the Commission’s regulation should be consistent with the requirements of other regulatory agencies, such as the Delaware River Basin Commission (“DRBC”) and the Susquehanna River Basin Commission (“SRBC”). The DRBC’s Water Code, Section 2.1.8, requires that each water supply system serving the public with sources or service areas in the Delaware River Basin implement a water audit program using the AWWA water audit methodology. The SRBC’s regulations do not have any similar requirement.

submit the water loss audit to the PUC. Why or why not? If not, what proposal would be feasible?

All NAWC members are currently required to submit annual water audits for the calendar year by April 30 of the following year. NAWC believes this same requirement could apply to Class B and Class C utilities.

- 3. Section 65.20a(c)(2)(viii), 52 Pa. Code § 65.20a(c)(2)(viii), requires an explanation for each reported metric value that varied greater than 10% in either direction from the previous year's reported value and that has not improved over three years of reporting. If stakeholders believe this provision is infeasible or unreasonable, please explain why, and identify an alternative method(s) to require water public utilities to identify significant deviations in year-to-year values reported in the annual water loss reports.**

In its 2022 Comments p. 6, NAWC argued that a 10% variation of a single reported metric is not uncommon, particularly for small discrete systems. To enable the Commission and the industry to focus on substantial changes in water systems, NAWC recommended that an explanation be required for variations of 20% in either direction, which would require additional discussion only where there are atypical metric variations.

In addition, NAWC objected to the need to explain any reported metric that had not improved in three years. “In many cases, explanations of why metrics have not improved in three years would be irrelevant, as many metrics are currently in good standing or are intended to maintain current levels.” *Id.*

Upon further review of the proposed regulation, NAWC respectfully submits that the Commission should simplify the proposed regulation by deleting Subsection (c)(2) and making relatively minor modifications to Subsection (c)(3). As currently written, Subsection (c)(1) requires Class A water utilities to conduct an annual water loss audit and to submit reports to the Commission. Section (c)(3) provides that the completion of a water audit using the AWWA Software will satisfy the requirements of Subsection (c)(1). Subsection (c)(3) also establishes a

procedure for petitioning to use an earlier or later version of the AWWA Software or an alternate methodology (together, an “Alternate Methodology”).

Under these circumstances, it seems that the only purpose of Subsection (c)(2) is to establish criteria for determining if an Alternate Methodology is acceptable. Presumably, the Commission has determined that the AWWA methodology satisfies the criteria in Subsection (c)(2). Consequently, NAWC respectfully submits that an Alternate Methodology should be acceptable if the methodology is substantially similar to the AWWA Software. This approach would ensure that all water loss methodologies produce comparable results.

Requiring a petitioner to demonstrate that an Alternate Methodology is substantially similar to the AWWA Software seems to be a simple and straightforward approach for petitioners and the Commission. This approach eliminates the need for the Commission to develop its own list of criteria that an Alternate Methodology must satisfy in order to be acceptable (which criteria may or may not result in the approval of Alternate Methodologies that are substantially similar to the AWWA Software). Under NAWC’s recommended approach, there is no need to clarify Section 65.20a(c)(2)(viii).

- 4. For municipal water authorities, what are the costs and/or savings associated with complying with the regulation, including any legal, accounting, or consulting procedures which may be required? How are those dollar estimates derived?**

No NAWC members are municipal water authorities. Consequently, NAWC takes no position regarding this question.

- 5. For Class B and Class C water public utilities, what are the costs or savings, or both, associated with complying with the proposed**

regulation, including any legal, accounting, or consulting procedures which may be required? How are those dollar estimates derived?

Since most NAWC members are Class A water public utilities, NAWC takes no position regarding this question.

- 6. A commenter believes that it is "wholly inappropriate" for the PUC to continue to employ the unaccounted-for water (UFW) approach in the proposed regulation. The commenter asserts that the proposed UFW approach under proposed Section 65.20a(d), 52 Pa. Code § 65.20a(d), is "outdated and archaic" and, further, "lacks empirical and scientific legitimacy." Provide responses to the following:**
 - a. What are the advantages and disadvantages of reporting UFW?**
 - b. Can this approach be used by the water utility industry to improve system performance and reduce water loss on a discrete system basis? If so, how is UFW specifically used to identify the most deficient systems and system processes to be improved to achieve measurable results?**
 - c. Is there a reliable correlation between UFW and the condition of a system as quantified by other performance indicators? If so, explain the correlation.**

In its 2022 Comments p. 5, NAWC suggested that the definition of “Unaccounted For Water” be revised. NAWC further recommended that the Commission modify the ambiguous sentence “Levels above 20% have been considered by the Commission to be excessive” with the sentence “Water public utilities should strive to reduce levels to below 20%.” 2022 Comments p. 7. With those revisions, NAWC believes that continuing to report UFW using the current methodology is reasonable.

Nevertheless, NAWC’s members would be open to participating in a working group with AWWA and other interested stakeholders to further explore whether proposed changes to the existing methodology would be appropriate in the future. The AWWA's comments on the NOPR recommended that the Commission convene a working group of stakeholders to draft language for

consideration by the Commission. AWWA Comments p. 2. NAWC supported this proposal. Reply Comments p. 4. *See also* 2020 Comments p. 9.

NAWC continues to support the use of a working group to assist in developing the new regulation. NAWC's members are unfamiliar with the AWWA performance indicator approach and would like additional information regarding this approach. A working group would permit discussions and education regarding this approach. At this time, it is premature for the Commission to adopt a new, untested methodology.

Therefore, if the Commission proceeds with the instant rulemaking at this time, it should not adopt the AWWA's position regarding UFW. Based on the background of this proceeding, the instant rulemaking is intended to formalize an existing program and Policy Statement into a regulation, which means the current UFW methodology should be utilized. As an alternative, the Commission could put the instant rulemaking on hold and convene a working group process to allow the stakeholders to meet and discuss possible changes to the current UFW methodology. Additional information needs to be gathered and reviewed by the parties and the Commission before changes to this methodology may be reasonable.

7. **A commenter indicated that the proposed regulations would be improved if performance indicators were defined along with how priority areas are to be determined for a water public utility to address reducing future water loss. Provide responses to the following:**
 - a. **What industry-recognized performance indicators would best characterize the current financial and operational condition of a discrete water system on an annual basis? Why?**
 - b. **How should measurable benchmarks be established for each discrete water system using both operational and financial performance indicators (e.g., AWWA's Real Loss and Loss Cost Rate)?**

- c. **Quantify the proposed targets or goals for any proposed performance indicator and provide a justification for the proposed targets or goals and the timeframe for each proposed target or goal to be achieved.**
- d. **How should the identified specific targets or goals for each performance indicator be utilized by a water public utility in developing its annual or long-term capital improvement plan(s)?**

Please see the answer to Question 3, above. The Commission should revise the proposed regulation to eliminate Subsection 65.20a(c)(2), which discusses “performance indicators.”

See also the answer to Question 6 above. NAWC is open to participating in a working group process including AWWA and other stakeholders regarding these issues.

- 8. **A commenter urged the PUC to include a formal validation process in the proposed regulation and indicated that without data validation, data from "self-reported" water audits can have questionable validity. Provide responses to the following:**
 - a. **What process should a water public utility be required to complete in order to ensure the data provided to the PUC eliminates, to the extent feasible, inaccurate information (e.g., by using the American Water Works Association Level 1 validation process)?**
 - b. **What are the advantages and disadvantages of requiring each water utility to validate its annual water loss audits?**
 - c. **What would be the additional annual expense required to complete a validation process on water loss audits?**

NAWC’s members already employ internal validation processes in completing their water audits. NAWC’s members believe their existing validation procedures are sufficient, but are willing to consider implementing a formal validation process to ensure that the information submitted by a utility is accurate.

The validator could be someone who was not involved in the initial compilation of the data. The validator could be either a utility employee or a third party who is trained in the validation

process. Additional costs would be more likely using a third party as opposed to internal utility resources.

NAWC believes a conversation among stakeholders regarding potential formal validation procedures would be beneficial. To the extent the Commission convenes a working group in this matter, data validation would be another good topic for the working group.

9. Separately identify, describe, and quantify the average annual cost for each component of the water utility's current leak detection, meter testing and replacement, and customer education efforts regarding water loss.

NAWC has limited data on this point given the limited time for members to review their cost records for these efforts. One member company, with water systems located throughout the Commonwealth, reported that its leak detection costs were approximately \$622,000 annually in Southeastern Pennsylvania and \$420,000 annually in the rest of Pennsylvania.⁹ In addition, that member company reported that its annual spending on meter testing was approximately \$268,000.¹⁰ Finally, that member company reported that its average annual communications costs for water conservation customer education efforts are \$30,000 (which includes media outreach, paid social media, other types of paid media and graphic design).

10. Are you a "small business" as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012, 71 P.S. § 745.3?

None of NAWC's members are small businesses.

⁹ These figures are averaged over a three-year period and include labor, benefits and vehicles.

¹⁰ This figure is a three-year average that includes labor, benefits and vehicles.

IV. CONCLUSION

NAWC thanks the Commission for the opportunity to submit these comments on the proposed regulation. NAWC looks forward to continuing to work with the Commission on this issue.

Respectfully submitted,



David P. Zambito (PA ID No. 80017)

Jonathan P. Nase (PA ID No. 44003)

Cozen O'Connor

17 North Second Street, Suite 1410

Harrisburg, PA 17101

Telephone: (717) 703-5892

Facsimile: (215) 989-4216

E-mail: dzambito@cozen.com

E-mail: jnase@cozen.com

Counsel for *National Association of Water Companies – Pennsylvania Chapter*

Date: August 28, 2023

APPENDIX 1



MOVING WATER FORWARD

L-2012-2319361

www.nawc.org

Chair
JT Hand
The York Water Company
130 East Market Street
York, PA 17401
Phone: 717-845-3601
jth@yorkwater.com

Vice Chair
Steve Tambini
Pennsylvania American Water
800 West Hershey Park Drive
Hershey, PA 17033
Phone: 717-531-3370
steve.tambini@amwater.com

Secretary
Louise Knight
Superior Water Company
1885 Swamp Pike
Suite 109
Box 525
Gilbertsville, PA 19525
Phone: (610) 222-4171
lknight@superiorwaterco.com

Treasurer
Kathy Miller
The York Water Company
130 East Market Street
York, PA 17401
Phone: 717-845-3601
kathym@yorkwater.com

Past Chair
David Lewis
Columbia Water Company
220 Locust Street
P.O. Box 350
Columbia, PA 17512-0350
Phone: 717-684-2188
dlewis@pa.net

Governmental Relations
Erik A. Ross
Gmerek Government Relations, Inc.
212 Locust Street
Suite 300
Harrisburg, PA 17101
Cell: 717-574-3963
eross@ggrgov.com

Counsel
Michael D. Klein
Cozen O' Connor
305 N. Front Street, Suite 400
Harrisburg, PA 17101
Phone: 717-703-5903
Cell: 717-439-2564
mklein@cozen.com

April 4, 2013

Rosemary Chiavetta
Secretary
Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

RE: Advance Notice of Proposed Rulemaking for Revision of the
Commission's Regulations on Water Conservation Measures at
Pa. Code § 65.20

Dear Secretary Chiavetta:

The National Association of Water Companies, Pennsylvania Chapter
(Chapter) respectfully submits the following comments regarding the above
mentioned proposed rulemaking:

Background

On January 27, 2012, the Commission's Tentative Opinion and Order
requiring all Class A water utilities (over \$1,000,000 in annual revenues) to
implement the International Water Association (IWA)/American Water Works
Association (AWWA) Water Audit methodology became final. All Class A
water utilities are now required to file the annual Water Audit summaries with
the Secretary of the Commission no later than April 30 of each year. The
remaining question going forward for the Commission and the water industry
is whether the Commission should revise its existing regulations regarding
unaccounted-for-water at 52 Pa. Code § 65.20, or, whether it is necessary for
the Commission to adopt new regulations regarding the Water Audit
methodology.

Section 65.20 of the Code states, in pertinent part:

§ 65.20. Water conservation measures – statement of policy.

In rate proceedings of water utilities, the Commission intends to examine
specific factors regarding the action or failure to act to encourage cost-
effective conservation by their customers. Specifically, the Commission will
review utilities' efforts to meet the criteria in this section when determining
just and reasonable rates and may consider those efforts in other proceedings
instituted by the Commission.

Subsection (4) of this section, which specifically addresses unaccounted-for-

RECEIVED
2013 OCT 29 PM 3:59
PA PUC
SECRETARY'S BUREAU

water, states:

Levels of unaccounted-for-water should be kept within reasonable amounts. Levels above 20% have been considered by the Commission to be excessive.

Specifically, the Commission seeks comments on appropriate revisions to this regulation. In particular, comments are invited on whether it is necessary for the Commission, in light of our adoption of the Water Audit methodology, to adopt new regulations to further advance this methodology. If the comments advocate either revised regulations, or merely a policy statement, we expect the comments to also include proposed language for our consideration and subsequent review by the Independent Regulatory Review Commission.

Additionally, the Commission, as was requested in the 2012 Order, invites comments from the regulated community (particularly the participants in the pilot project and the other Class A water utilities that will be filing their first annual Water Audit by April 30, 2013) and other interested parties on the experienced benefits and costs of the Water Audit methodology.

The benefits experienced by the Chapter's member companies during the pilot project included:

1. It provided a straight-forward, consistent, and repeatable methodology to track water losses.
2. It provides an approximate "cost" for these water losses which gives a water utility a comparative idea of how much money these losses are costing. The utility can then use this information to help allocate resources.

However, our member companies have also expressed the following concerns:

1. **Report systems separately or combined?** – The pilot forced utilities to calculate "unaccounted-for-water" for each system separately instead of rolling them into a single system. Depending on the age, size, and condition of the system, particularly systems that have been acquired, some utilities may struggle with the 20% threshold. Therefore, the Chapter recommends that, for reporting purposes, that the calculation for "unaccounted-for-water" be combined. As a result, regulators won't be spending excessive time and resources reviewing a system that may be well below 1% of revenue for the entire company. This also provides the utility with some flexibility when acquiring a new, but perhaps troubled, water system that could be significantly above 20% water loss.
2. **Subsection (4).** – The American Water Works Association's Manual of Water Supply Practices M36, 3rd Edition, presents guidelines for Use of the Level Infrastructure Leakage Index (ILI) in Table 5-2 on page 112. Target ILI ranges are provided that take into account Water Resources, Operational and Financial Considerations. Therefore, ILI values could be selected for combined or even separate water systems that are fair across the board. This methodology would allow the PUC to customize goals that reflect the uniqueness of each water system(s).

3. **Subsection (4) Levels of unaccounted-for-water should be kept within reasonable amounts. Levels above 20% have been considered by the Commission to be excessive.** – Based on using ILI goals in lieu of “unaccounted-for-water”, this sentence could be deleted entirely.
4. **Subsection (4) Levels of unaccounted-for-water should be kept within reasonable amounts. Levels above 20% have been considered by the Commission to be excessive.** If the Commission prefers to retain a percentage goal, we would contest the simple substitution of the terms “non-revenue water” or “water losses” for “unaccounted-for-water”. This objection is based on the terms not being equivalent. Unaccounted-for-water allows for the reduction of unavoidable leakage on mains, company services and customer services whereas non-revenue water does not. The result is the percentages are not interchangeable. Additional studies would be needed to justify an acceptable correction factor for each system based on its distribution network size, diameter and pressure.
5. **Revenue penalties.** – The methodology results in an annual “Apparent” and “Real” loss cost. These costs may be substantial and although it’s not mentioned in the proposed rulemaking, we are concerned that interested parties may try to link these costs to revenues (i.e., insisting on annual reductions in these costs or attempt to reduce a utility’s revenue requests by these amounts). However, these “costs” are generally spread throughout the distribution system and could be prohibitively expensive to “reduce.” There may also be unusual annual variations in these numbers depending on customer demands, weather, fire demands, flushing projects, etc. This is particularly the case regarding the distribution system infrastructure after a utility makes an acquisition of a troubled water system. The Chapter would oppose any linkage of costs to revenues.
6. **Annual Filing Process.** – During the pilot, utilities had to submit both an electronic and hard copy (CD with worksheet). The Chapter would recommend that filings be submitted electronically.

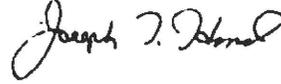
Finally, the Commission invites comments as to whether the Water Audit methodology should be extended to the other jurisdictional water utilities.

The Chapter believes that the methodology should be extended to the other jurisdictional water utilities. The procedure is straight-forward, simple, and the software is free. If all water providers utilized this methodology, it would be beneficial to the system owners, regulators, potential acquirers, and customers. We would also recommend that all water systems regulated by the Department of Environmental Protection (DEP) use this methodology. Finally, if all water utilities use this methodology, the Chapter also recommends that the Commission work with the river basin commissions and request that they also incorporate it into their own reporting requirements so that a water utility is not maintaining up to three “unaccounted-for-water” methodologies (PUC, DEP, river basins).

The Chapter thanks you for allowing us to comment on this advance notice of proposed rulemaking order. If you should have any questions or need further information, please do not hesitate to contact me or our lobbyist Erik Ross.

Rosemary Chiavetta
April 4, 2013
Page 4

Very truly yours,



JT Hand
Chairman

#####

The National Association of Water Companies (NAWC) www.nawc.org/ represents all aspects of the private water service industry including ownership of regulated drinking water and wastewater utilities and the many forms of public-private partnerships and management contract arrangements. The Pennsylvania Chapter consists of 10 member companies that provide safe and adequate drinking water service to approximately 3.1 million Pennsylvanians in 485 communities over 39 counties. In addition, four of our member companies provide wastewater service to over 155,000 Pennsylvanians in 25 communities over 8 counties.

RECEIVED
2013 OCT 29 PM 3:50
PA FWC
SECRETARY'S BUREAU

APPENDIX 2



November 24, 2020

VIA E-FILING

David P. Zambito

Direct Phone 717-703-5892
Direct Fax 215-989-4216
dzambito@cozen.com

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

Re: Proposed Revisions to Water Audit Methodology; 52 Pa. Code § 65.20; Water Conservation Measures – Statement of Policy; Docket No. L-2020-3021932

Comments of National Association of Water Companies – Pennsylvania Chapter and Aqua Pennsylvania, Inc. on Advance Notice of Proposed Rulemaking Order

Dear Secretary Chiavetta:

Enclosed for filing with the Pennsylvania Public Utility Commission (“Commission”) in the above-referenced matter are the comments of the National Association of Water Companies – Pennsylvania Chapter and Aqua Pennsylvania, Inc. (the “NAWC Commenters”).

If you have any question or concern about this filing, please contact me. Thank you.

Sincerely,

COZEN O'CONNOR

By: David P. Zambito
Counsel for *National Association of Water Companies – Pennsylvania Chapter*

DPZ
Enclosure

cc: James A. Mullins, Esq. (Law Bureau)
Stephanie A. Wilson, Esq. (Law Bureau)
Andrew Clarkson, National Association of Water Companies – Pennsylvania Chapter
Alexander Stahl, Esq., Aqua Pennsylvania, Inc.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Proposed Revisions to Water Audit Methodology; Water : L-2020-3021932
Conservation Measures – Statement of Policy :

COMMENTS OF THE NATIONAL ASSOCIATION OF WATER
COMPANIES – PENNSYLVANIA CHAPTER AND AQUA PENNSYLVANIA, INC.
ON THE ADVANCED NOTICE OF PROPOSED RULEMAKING ORDER

AND NOW COMES the National Association of Water Companies – Pennsylvania Chapter (“NAWC”) and Aqua Pennsylvania, Inc. (“Aqua”) (together, the “NAWC Commenters”), pursuant to the Advanced Notice of Proposed Rulemaking Order (“Order”) published in the Pennsylvania Bulletin on October 10, 2020, to file these comments with the Pennsylvania Public Utility Commission (“Commission”). The Order proposes “the replacement of the Policy Statement at 52 Pa. Code § 65.20 with a Commission regulation to implement the International Water Association (IWA)/American Water Works Association (AWWA) Water Audit Methodology (Water Audit Methodology) as a best management practice in water loss control in Pennsylvania.” 50 Pa. B. 5657 (October 10, 2020).

I. INTRODUCTION

NAWC is a trade organization whose members are investor-owned water utilities in Pennsylvania¹ that are regulated by the Commission. Among other functions, NAWC provides

¹ The members of NAWC are: Columbia Water Company, Newtown Artesian Water Company, Pennsylvania-American Water Company, SUEZ Water Pennsylvania Inc., and The York Water Company. In addition to water operations, several of the members operate Commission-regulated wastewater systems throughout the Commonwealth.

members with a vehicle for expressing their position on legislative and regulatory developments before the General Assembly, regulatory agencies, and the courts.

Aqua is a Class A water utility, duly organized and existing under the laws of the Commonwealth of Pennsylvania, operating under Commission issued certificates of public convenience. Aqua serves approximately 443,000 water customers in various counties throughout Pennsylvania.

The NAWC Commenters are supportive of water conservation measures and they strongly believe that they should be good stewards of this precious resource. The NAWC Commenters commend the Commission for studying the issue of public utility water loss in the Commonwealth and thank the Commission for this opportunity to express their views on the Order.

II. BACKGROUND

As noted in the Order, the Commission created a pilot program to implement the Water Audit Methodology (the “Methodology”) in 2008. *In Re: Pilot Project to Implement the International Water Association/American Water Works Association Water Audit Methodology*, Docket No. M-2008-2062697 (Tentative Opinion and Order entered November 10, 2008, which became final on December 10, 2008) (“2008 Order”). In 2011, the Commission concluded that the Methodology is preferable to the pre-existing method of calculating unaccounted for water (“UFW”) and directed the Law Bureau to prepare proposed regulations implementing the Methodology. *In Re: Pilot Project to Implement the International Water Association/American Water Works Association Water Audit Methodology*, Docket No. M-2008-2062697 (Tentative Opinion and Order entered November 10, 2011, which became final on January 27, 2012) (“2012 Order”).

Together, the NAWC Commenters have extensive experience implementing the Methodology. They concur with the Commission that the Methodology is a better tool than the prior method of calculating UFW. The Methodology's strengths include:

- Factoring in the customer density by accounting for the number of customers and miles of pipe for each system;
- Factoring in system pressure;
- Acknowledging that there is some level of unavoidable loss inherent in each system;
- Factoring in the asset renewal rate (i.e., pipe replacement);
- Standardizing the industry and allowing for better comparisons of systems;
- Using better key performance indicators ("KPIs") than the percentages used in calculating UFW; and
- Monetizing losses for each system.

III. COMMISSION QUESTIONS

The Order specifically asked commenters to address certain questions. These questions are considered separately below.

A. What are the Costs/Savings Associated with the Methodology?

The Order asked commenters for information regarding the "specific costs and/or savings associated with implementation of the Water Audit Methodology, including legal, accounting or consulting procedures which may be required." 50 Pa. B. 5660.

In terms of the costs associated with implementation of the Methodology, in the experience of the NAWC Commenters, preparing a water audit is significantly more costly than calculating UFW. Data must be collected for each system to properly calculate a water audit with input coming from the finance and rates groups, maintenance, engineering, GIS and operations. The combined effort to collect the data and file the report for each system is estimated to require 50 hours or more throughout the year and cost around \$2,500 per report (roughly \$50 per hour in

wages and benefits on average). To contract out this task to an engineering firm would likely be double this amount and still require some time from the utility.

In addition, the NAWC Commenters urge the Commission to consider the costs for a utility to take corrective action if the water loss is considered to be too high. These costs include hiring additional staff to look for and repair water leaks, hiring consultants to investigate and engineer solutions, and investing in system renewal projects that were not anticipated prior to the audit.

In terms of the savings associated with the implementation of the Methodology, the NAWC Commenters estimate that reducing the avoidable loss of water will save utilities on production costs of roughly \$500 per million gallons for surface water systems and \$250 per million gallons for well systems.

B. Who should be Subject to the Methodology?

The Order invited comments “as to whether the Water Audit Methodology should be extended to the other jurisdictional water utilities.” 50 *Pa. B.* 5660. As discussed in the Order, Class A water utilities are currently required to conduct a water audit annually, using the Methodology, and to submit an annual summary to the Commission.

The NAWC Commenters believe that the loss of water by utilities is an industry-wide issue. Additionally, the NAWC Commenters encourage a level playing field in the regulation of utilities. The NAWC Commenters therefore encourage the Commission to coordinate its actions in this area with those of the Pennsylvania Department of Environmental Protection (“DEP”), so that all public water supply systems in the Commonwealth, whether investor-owned or publicly owned, ultimately will be required to submit at least one water audit using the Methodology. Additionally, coordinated action between regulatory agencies is desirable to ensure that regulatory requirements are consistent among agencies.

IV. REPLACEMENT OF THE STATEMENT OF POLICY WITH A REGULATION

The Order explicitly requested comments “regarding the replacement of its Policy Statement at § 65.20 with a Commission regulation which will enable the Commission to more comprehensively address public utility water loss in the Commonwealth.” 50 *Pa. B.* 5660.

A. **The NAWC Commenters’ Primary Recommendation: Treat the Existing Requirement for Class A Utilities to Use the Methodology as a Pilot Program**

The NAWC Commenters do not oppose the promulgation of a regulation addressing public utility water loss in the future. However, the NAWC Commenters believe it is premature to adopt such a regulation at this time. The 2008 Order created a pilot program in which certain Class A utilities would complete water audits using the Methodology and file reports with the Commission. All Class A utilities were subsequently ordered to complete water audits using the Methodology. Unfortunately, the NAWC Commenters have been unable to locate any publication analyzing the data that has been submitted to the Commission. Such data would be helpful for addressing many of the issues that should be addressed in the regulation.

A regulation (like the present statement of policy) should include a benchmark for utilities. At this time, the NAWC Commenters do not believe there is an adequate empirical foundation for establishing a benchmark. The Delaware River Basin Commission (“DRBC”) has published several analyses of the water audits filed with the DRBC using the Methodology.² The DRBC’s report on the data for 2016 states that 15% of non-revenue water has historically been used as a benchmark for regulatory action, but 155 of 277 systems (or 56%) had levels of non-revenue water

² Analyses of the data submitted to the DRBC during calendar years 2012, 2014 and 2016 can be found at <https://www.state.nj.us/drbc/programs/supply/water-audit-program.html>.

greater than or equal to 15%.³ Under these circumstances, the NAWC Commenters question whether another benchmark (such as the infrastructure leak index (“ILI”), gallons per day lost per customer, or normalized water losses) would be more useful than the percentage of non-revenue water.

As discussed above, the regulation should also state which jurisdictional systems are required to complete a water audit using the Methodology. This decision should be informed by empirical considerations as well as public policy considerations. For example, the Methodology’s calculation of unavoidable real losses (“UARL”) is not valid for systems with fewer than 3,000 connections.

In this regard, the NAWC Commenters believe it is important for the Commission to note that the Methodology:

- Does not factor in the range of pressures and the number of times water is pumped to/through pressure zones, which can contribute to pressure spikes that contribute to main breaks;
- Does not differentiate between very large complex systems and small systems;
- Does not factor in the relative age of the system (i.e., the overall age of the pipe);
- Relies on estimates for some inputs (e.g., the length of services to the customer’s building), which can skew the results; and
- Does not include any method for verifying the data.

Additional empirical information on the constraints of the Methodology would be helpful in deciding how to draft the regulation.

Consequently, the NAWC Commenters’ primary recommendation is that the Commission not proceed with a rulemaking implementing the Methodology at this time. Instead, the NAWC Commenters recommend that the Commission treat the existing requirement for Class A utilities to implement the Methodology as a pilot program. The Commission should gather the information

³ Delaware River Basin Commission, Analysis of Calendar Year 2016 Water Audit Data from Public Water Supply Systems in the Delaware River Basin (February 2018), pp. 9-10.

filed with the Commission, analyze it, and publish the results. This would give the Commission, as well as the regulated community, a better empirical foundation for drafting the regulation.

B. The NAWC Commenters' Secondary Recommendation: If the Commission Promulgates a Regulation at this Time, the Regulation Should Address Several Key Points

If, however, the Commission proceeds with the proposal to promulgate a regulation at this time, the NAWC Commenters believe that the regulation should address several key points. First, the regulation should specify what Methodology must be used. The NAWC Commenters recommend that the regulation adopt the Methodology as it exists at the time the regulation is approved by the Commission because the Commission arguably lacks authority to promulgate a regulation that adopts versions of the Methodology that the IWA/AWWA may develop in the future. *Cf., Protz v. Worker's Compensation Appeal Bd. (Derry Area School District)*, 639 Pa. 645, 664, 161 A.3d 827, 838-839 (Pa. 2017) (“[T]he non-delegation doctrine prohibits the General Assembly from incorporating, sight unseen, subsequent modifications to such standards without also providing adequate criteria to guide and restrain the exercise of the delegated authority.”). If the Methodology is updated in the future, the Commission can consider whether to adopt that revision.

Second, the regulation should specify who must complete a water audit using the Methodology and how often they must complete it. The NAWC Commenters recommend that the Commission require all jurisdictional water utilities to complete at least one such audit.⁴ Medium and large utilities (*i.e.*, utilities with more than 10,000 customers) should be required to complete water audits using the Methodology annually. Smaller utilities should be permitted to complete

⁴ As discussed above, the NAWC Commenters recommend that the Commission work together with DEP, so that all Pennsylvania public water supply systems are required to complete a water audit using the Methodology.

such audits less frequently, perhaps once every five years, so long as the audit yields acceptable results.

Third, the regulation should include a reporting requirement. Among other things, the Commission should address how the data should be reported. Many utilities own multiple water systems, some of which are quite small. Reporting the results for each system separately would be unduly burdensome and costly. The NAWC Commenters recommend that utilities be required to complete a water audit using the Methodology for all their systems, but they should be permitted to submit a single document to the Commission that includes (a) reports of the audits completed for each large system, together with (b) reports of the audits completed for collections of systems that are proximately located and operate under the same management structure or unit.

Fourth, as discussed above, the regulation should specify a benchmark. The regulation, like the existing statement of policy, should also address the consequences in the event that a particular system exceeds the benchmark. The NAWC Commenters do not believe that exceeding the benchmark in a single year should give rise to a complaint proceeding and a possible civil penalty. The Commission should consider trends over time, rather than initiating a proceeding based on a single data point. Moreover, consistent with the management discretion doctrine,⁵ utility management should have an opportunity to investigate and address the situation based on that particular system's own specific facts and circumstances. Utilities have competing needs for capital, such as addressing lead service lines and emerging contaminants as well as leak detection and prevention efforts. Some utilities charge a distribution system improvement charge ("DSIC") based on a Long-Term Infrastructure Improvement Plan focused on replacing distribution pipe. Other utilities do not have such a mechanism for financing infrastructure improvements. Finally,

⁵ See, e.g., *Metropolitan Edison Company v. Pa. Pub. Util. Comm'n*, 437 A.2d 76 (Pa Cmwlth. 1981).

for some systems (particularly small systems), it may not be cost effective to make improvements suggested by the model (the costs of the infrastructure upgrades would not justify the savings from making those upgrades).

The NAWC Commenters recommend that the regulation include language similar to the existing statement of policy, to the effect that the results of the water audit will be considered in rate proceedings and other Commission proceedings (such as management audits completed by Commission staff). By using the Methodology in this manner, the Commission would consider the result of a water audit in the context of the other facts and circumstances pertaining to each particular system owned by the utility. Additionally, the NAWC Commenters encourage the Commission to favor bringing utilities into compliance with the benchmark, rather than imposing penalties on non-compliant utilities.

C. REQUEST FOR A WORKING GROUP

The NAWC Commenters anticipate that the Commission will receive a wide variety of comments in response to its Order. If the Commission decides to promulgate a regulation at this time, the NAWC Commenters suggest that the Commission not rely exclusively on these comments. Instead, the Commission should convene a working group of stakeholders to review the Statement of Policy and draft an appropriate regulation regarding water loss by public utilities.

V. CONCLUSION

The NAWC Commenters thank the Commission for the opportunity to submit these comments on the Order. The NAWC Commenters look forward to working with the Commission and other stakeholders on the issues raised in the Order.

Respectfully submitted,



David P. Zambito (PA ID No. 80017)
Michael D. Klein (PA ID No. 23854)
Jonathan P. Nase (PA ID No. 44003)
Cozen O'Connor
17 North Second Street, Suite 1410
Harrisburg, PA 17101
Telephone: (717) 703-5892
E-mail: dzambito@cozen.com
E-mail: mklein@cozen.com
E-mail: jnase@cozen.com
Counsel for *National Association of Water
Companies – Pennsylvania Chapter*



Alexander Stahl (PA ID No. 317012)
Regulatory Counsel
Aqua Services, Inc.
762 West Lancaster Avenue
Bryn Mawr, PA 19010
Telephone: (610) 645-1130
E-mail: astahl@aquaamerica.com
Counsel for *Aqua Pennsylvania, Inc.*

Date: November 24, 2020

APPENDIX 3



September 20, 2022

VIA E-FILING

David P. Zambito

Direct Phone 717-703-5892
Direct Fax 215-989-4216
dzambito@cozen.com

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

Re: Proposed Water Audit Methodology Regulation 52 Pa. Code § 65.20a – Water Conservation Measures; Docket No. L-2020-3021932

Notice of Proposed Rulemaking Order; Comments of the National Association of Water Companies - Pennsylvania Chapter

Dear Secretary Chiavetta:

Enclosed for filing with the Pennsylvania Public Utility Commission are the comments of the National Association of Water Companies – Pennsylvania Chapter in the above-referenced Notice of Proposed Rulemaking Order.

Please contact me if you have any questions or concerns about this filing.

Sincerely,

COZEN O'CONNOR

Counsel for *National Association of Water Companies*

DPZ:kmg
Enclosure

cc: James A. Mullins, Esq. (*Law Bureau*)
Stephanie Wilson, Esq. (*Law Bureau*)
Karen Thorne (*Law Bureau*)
JT Hand, President, NAWC

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Proposed Water Audit Methodology Regulation :
52 Pa. Code § 65.20a – Water conservation measures : Docket No. L-2020-3021932
:

COMMENTS OF THE NATIONAL ASSOCIATION OF WATER
COMPANIES – PENNSYLVANIA CHAPTER

AND NOW COMES the National Association of Water Companies – Pennsylvania Chapter (“NAWC”), in response to the Notice of Proposed Rulemaking Order (“NOPR”) that the Pennsylvania Public Utility Commission (“Commission”) entered on November 18, 2021 and published in the *Pennsylvania Bulletin* on August 6, 2022, 52 Pa.B. 4926. NAWC appreciates the opportunity to comment on the Commission’s proposal to adopt a regulation that would replace the existing Statement of Policy at 52 Pa. Code § 65.20 (“Water conservation measures”).

I. INTRODUCTION

NAWC is a trade organization whose members are investor-owned water utilities in Pennsylvania that are regulated by the Commission.¹ Among other functions, NAWC provides members with a vehicle for expressing their position on legislative and regulatory developments before the General Assembly, the Commission and other regulatory agencies, as well as the courts. NAWC commends the Commission for studying water loss in the Commonwealth. This topic is a matter of great importance for the industry due to the cost of treating water that is ultimately lost

¹ The members of NAWC are: Aqua Pennsylvania, Inc.; Columbia Water Company; Newtown Artesian Water Company; Pennsylvania-American Water Company; The York Water Company; and, Veolia Water Pennsylvania, Inc. (f/k/a SUEZ Water Pennsylvania Inc.). Newtown Artesian Water Company is a Class B water utility; the remaining members of NAWC are Class A water utilities. In addition to water operations, several members operate Commission-regulated wastewater systems.

or unaccounted for. In addition, water utilities have an interest in preserving supplies of this precious resource, especially during periods of drought.

On September 17, 2020, the Commission entered an Advanced Notice of Proposed Rulemaking Order (“ANOPR Order”) at this docket, published in the *Pennsylvania Bulletin* on October 10, 2020, 50 *Pa.B.* 5657. In the ANOPR Order, the PUC invited comments to include proposed regulatory language, benefits and costs of the proposed methodology, and the scope of the regulation. The ANOPR Order did not contain draft language of a proposed regulation. NAWC provided comments together with Aqua Pennsylvania, Inc.

The November 18, 2021 NOPR states that the “proposed regulation as set forth in Annex A would replace and supersede the current Water Conservation Policy Statement at 52 Pa. Code § 65.20. In addition to proposing a methodology, this NOPR also proposes to promulgate as regulations the other recommendations in the Water Conservation Policy Statement.” NOPR at 7.

II. COMMENTS

A. General Comments

NAWC does not oppose the Commission’s proposal to adopt a regulation to replace the existing statement of policy. A regulation establishes a binding norm and has the full force and effect of law, whereas a statement of policy “merely serves as an announcement to the public of a policy which the agency hopes to implement in future rulemaking or adjudications.” *Manor v. Dep’t of Pub. Welfare*, 796 A.2d 1020, 1026 (Pa. Cmwlth. 2002). Based on this change, however, NAWC submits that the Commission can delete some portions of the proposal as unnecessary.

The Commission has authority to enforce its regulations and to impose penalties if a public utility violates a regulation. 66 Pa. C.S. § 3301(a). Consequently, NAWC questions the need for

Subsections (a) (“The Commission will review a water public utility’s efforts to meet the criteria in this section when determining just and reasonable rates and may consider the water public utility’s efforts in other proceedings.”) and (k) (“If a water public utility fails to file the information or undertake the actions required by this section in compliance with this section, the water public utility may be subject to a penalty as provided under 66 Pa. C.S. § 3301. Continued failure to comply or to file annual reports may result in additional penalties.”).

Additionally, several provisions in the proposed regulation appear to duplicate the requirements of existing regulations. For example, Subsection (g) (“Mandatory conservation contingency plan”) appears to repeat at least some of 52 Pa. Code § 65.11 (“Mandatory conservation measures”). Adopting the proposed regulation would allow a utility to be prosecuted for violating two regulations for the same behavior. If the intention is to add a new requirement that is not currently included in Section 65.11, the Commission should clarify the instant proposal.

In addition, NAWC urges the Commission to consider the costs associated with its proposal to require the production and validation of audits for each discrete system. These costs would include:

- the hiring of additional staff to prepare water loss audits for each system and to locate and repair leaks;
- the hiring of consultants to validate audit results for each system and engineer solutions; and
- the additional investment in system renewal projects that were not anticipated prior to the audit.

NAWC further urges the Commission to consider the value of the potential water loss against the costs that would be incurred to produce and validate audits for each system. While NAWC estimates that the reduction of avoidable loss of water will incur savings on production costs of roughly \$500 per million gallons for surface water systems and \$250 per million gallons for well systems, the potential costs associated with additional staff and program implementation

would diminish the savings associated with reduced avoidable water loss. For some systems (particularly small systems), the costs of the infrastructure upgrades would not justify the savings from making those upgrades.

B. Comments Regarding Specific Subsections of the Proposed Regulation

1. Subsection (b) “Definitions”

NAWC notes that there is a difference between some of the terms, as defined in this section, and the terms used elsewhere in the proposal. For example, this section defines the term “large customer” as a non-residential customer meeting certain criteria, but Subsection (j) uses the term “large nonresidential customer.” To avoid confusion, NAWC recommends that the defined terms be used throughout the proposed regulation.

Discrete system – NAWC suggests several clarifications in this definition. To avoid confusion, the Commission should clarify whether a “stand-alone pipe network” includes treatment works. Based on the definition of “water supplied” (“Water that is treated, leaves the plant, and is distributed into the system”), it appears that a “stand-alone pipe network” does not include treatment works.

In addition, because of the use of the term “discrete system” in Section 65.20(c)(1)(i) (concerning water loss audits and reports), NAWC recommends that the definition of “discrete system” be revised to include a large interconnected system with multiple water sources. Data must be collected for each system to properly perform a water audit, with input coming from internal finance, rates, maintenance, engineering, GIS and operations departments. The combined effort to collect the data and file the report for each system is estimated to require 50 hours or more throughout the year and cost around \$2,500 per report. To engage a third-party consultant would likely double the amount and still require considerable review time from the utility. This change

in the definition of “discrete system” will reduce the cost impact of the regulation on utilities and their ratepayers.

Large customer – NAWC suggests that each utility be able to determine how to designate a large customer, because the utility’s tariff may not designate “large usage” as described and suggested by the proposed regulation.

Real loss – NAWC recommends the following change to this definition to improve clarity: “*Real loss*—A physical loss of water that has been treated and placed in the distribution system but does not provide usefulness of benefit. A real loss may be a measured volume or a calculated volume.”

UFW—Unaccounted-for water – NAWC recommends the following change to this definition to improve clarity: “*UFW—Unaccounted-for water*—The amount of water that is ‘lost’ when comparing the volume of water that is produced with the volume of water that is sold with known and authorized uses, and industry acceptable allowances for unavoidable losses. ~~This amount is adjusted~~ Specifically, UFW is calculated by taking into account a number of factors based on in a formula to estimate that includes the amount of water used in known and authorized capacities but not measured, in addition to industry acceptable allowances for unavoidable losses. Authorized uses, although not measured can be reasonably quantified and ~~These factors include~~ firefighting, hydrant flushing, main flushing, analyzer waste and building construction. Examples of unavoidable losses would be: theft, inaccurate meter recording, faulty meters, and background leakage, among other reasons. Ongoing leakage, particularly in older systems, is the most prevalent cause of UFW. Another term for UFW is UAW.”

2. Subsection (c) “Water loss audit for a Class A water public utility”

NAWC suggests that utilities be permitted to submit a single document to the Commission, rather than a separate report for each discrete system as directed under this subsection. Each utility’s report should include: (a) reports of the audits completed for each large system, together with (b) reports of the audits completed for collections of systems that are proximately located and operate under the same management structure or unit.

NAWC also suggests that the Commission define “performance indicators” as used in Subsection (c)(2)(vii) to ensure the comparability of financial calculations and operational efficiency calculations submitted by different utilities.

In addition, NAWC recommends that the Commission modify Subsection (c)(2)(viii)(A), which requires an explanation for each reported metric value that varies by more than 10% in either direction from the previous year’s value. Particularly for small “discrete systems,” such a variation is not uncommon. NAWC recommends that a variation of 20% be used to trigger the explanation requirement.

Similarly, NAWC does not support requiring an explanation of each reported metric that has not improved in three years, as required by Section 65.20(c)(2)(viii)(B). In many cases, explanations of why metrics have not improved in three years would be irrelevant, as many metrics are currently in good standing or are intended to maintain current levels.

Additionally, NAWC questions the need for Section 65.20(c)(2)(ix) (directing that the water loss audit include “an indication of the statistical confidence in the validity and accuracy of the values reported for each required metric and a summation of the overall validity and accuracy of the data reported”). As a practical matter, assigning a validity value for the metrics in Section 65.20(c)(2)(i)-(vii) would be overly time consuming and costly.

NAWC questions the need for Section 65.20(c)(2)(x) (requiring a “description of priority areas the water public utility intends to address to reduce future water loss”). Neither the Delaware River Basin Commission (“DRBC”) nor the Susquehanna River Basin Commission (“SRBC”) require that reports include descriptions of priority areas that the utility intends to address. If the Commission retains this requirement, NAWC suggests that it clarify whether the “priority area” should be a specific segment of a specific system or a more generalized area within the utility’s service territory.

3. Subsection (d) “Unaccounted-for water”

NAWC generally agrees with this subsection, allowing utilities to continue to use Schedule 500 of the Annual Financial Report to the Commission required under Section 65.19. However, NAWC requests that the Commission clarify that the Schedule 500 report filed with the Commission is on a company-wide basis, and not by “discrete system.”

Although the present statement of policy states “Levels above 20% have been considered by the Commission to be excessive,” NAWC does not believe this statement should be included in a regulation because the term “excessive” is ambiguous. Instead, NAWC recommends striking this sentence and replacing it with: “Water public utilities should strive to reduce levels to below 20%.”

4. Subsection (f) “Metering”

This subsection is unclear. Is the “metering program” required here the same as the metering required by 52 Pa. Code § 65.8? If so, this section is unnecessary. If not, this section should be clarified to indicate what the “metering program” should entail. If the Commission retains this section, NAWC recommends that the subsection begin with a phrase such as “unless

otherwise required by the Commission,” because the Commission has waived the need for metering of some systems.

In addition, the last sentence of this paragraph, stating that the metering obligations of Section 65.8 include metering sources of supply, seems to be an amendment of Section 65.8. It should not be included in this regulation. NAWC also believes that this sentence is inconsistent with the rest of the proposal, which focuses on the loss of water after it has been treated. Metering the source of supply is more appropriately addressed by the DRBC and the SRBC.

5. Subsections (h) “Efficiency plumbing fixtures” and (i) “Education”

The statement of policy currently requires water utilities to provide customers with information about efficient water use practices and efficient plumbing fixtures. Since utilities may have already developed the necessary customer education materials, NAWC suggests that the proposed regulation be re-phrased to permit or encourage (rather than require) utilities to consult with the Commission’s Communications Office and Bureau of Consumer Services about these materials.

6. Subsection (j) “Water audit for a large nonresidential customer”

The statement of policy currently states that large nonresidential customers “should receive, or be directed to the availability of the large water user audit procedure.” NAWC disagrees with the proposal to create a regulation requiring utilities to provide this information on a large customer’s bill annually. This change seems unnecessary because many large nonresidential customers are sophisticated businesses that already take steps to control utility expenses. NAWC recommends that the current permissive language continue to be used.

However, as previously stated, NAWC believes that each utility should be able to determine how to designate a large customer, as the utility's tariff may not designate "large usage" as described and suggested by the proposed regulation.

7. Subsection (k) "Penalty"

NAWC continues to encourage the Commission to favor bringing utilities into compliance with the Pennsylvania Public Utility Code, Commission regulations and Orders, rather than imposing penalties on non-compliant utilities. Various factors outside the utility's control (such as customer-owned service line leaks) can impact the utility's compliance with the proposed regulation.

III. CONCLUSION

NAWC thanks the Commission for the opportunity to submit these comments on the important topic of water conservation. NAWC looks forward to continuing to work with the Commission on this issue.

Respectfully submitted,



David P. Zambito (PA ID No. 80017)

Jonathan P. Nase (PA ID No. 44003)

Cozen O'Connor

17 North Second Street, Suite 1410

Harrisburg, PA 17101

Telephone: (717) 703-5892

Facsimile: (215) 989-4216

E-mail: dzambito@cozen.com

E-mail: jnase@cozen.com

Counsel for *National Association of Water Companies – Pennsylvania Chapter*

Date: September 20, 2022

APPENDIX 4



November 4, 2022

VIA E-FILING

David P. Zambito

Direct Phone 717-703-5892
Direct Fax 215-989-4216
dzambito@cozen.com

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

Re: Proposed Water Audit Methodology Regulation 52 Pa. Code § 65.20a – Water Conservation Measures; Docket No. L-2020-3021932

Reply Comments of National Association of Water Companies – Pennsylvania Chapter

Dear Secretary Chiavetta:

Enclosed for filing with the Pennsylvania Public Utility Commission (“Commission”) in the above-referenced matter are the Reply Comments of the National Association of Water Companies – Pennsylvania Chapter. Copies are being served as shown on the attached Certificate of Service.

If you have any question or concern about this filing, please contact me. Thank you.

Sincerely,

COZEN O'CONNOR

By: David P. Zambito
Counsel for *National Association of Water Companies – Pennsylvania Chapter*

DPZ/kmg
Enclosure

cc: James A. Mullins, Esq. (*Law Bureau*)
Stephanie Wilson, Esq. (*Law Bureau*)
Karen Thorne (*Law Bureau*)
Per Certificate of Service
JT Hand, President, NAWC

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Proposed Water Audit Methodology Regulation 52 : Docket No. L-2020-3021932
Pa. Code § 65.20a – Water Conservation Measures :

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing **Reply Comments of the National Association of Water Companies – Pennsylvania Chapter**, upon the parties of record in this proceeding in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant), in the manner and upon the persons listed below:

Service by E-mail and First Class Mail:

Patrick M. Cicero, Consumer Advocate
Office of Consumer Advocate
555 Walnut Street
Forum Place, 5th Floor
Harrisburg, PA 17101-1923
pcicero@paoca.org

Richard A. Kanaskie, Esq.
Director and Chief Prosecutor
Pennsylvania Public Utility Commission
Bureau of Investigation and Enforcement
Commonwealth Keystone Building
400 North Street, 2 West
Harrisburg, PA 17120
rkanaskie@pa.gov

George Kunkel, Principal
Kunkel Water Efficiency Consulting
30 Clark Rd.
Hershey, PA 17033-2112
kunkelwaterefficiency@gmail.com

NazAarah Sabree, Small Business
Advocate
Office of Small Business Advocate
555 Walnut Street
Forum Place, 1st Floor
Harrisburg, PA 17101-1923
ra-sba@pa.gov
tereswagne@pa.gov

Andrew D. Dehoff, Executive Director
Susquehanna River Basin Commission
4423 N. Front Street
Harrisburg, PA 17110-1788
srbc@srbc.net

Respectfully,



David P. Zambito, Esq.
Counsel for *National Association of Water
Companies – Pennsylvania Chapter*

Date: November 4, 2022

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Proposed Water Audit Methodology Regulation :
52 Pa. Code § 65.20a – Water Conservation Measures : Docket No. L-2020-3021932

REPLY COMMENTS OF THE NATIONAL ASSOCIATION OF WATER
COMPANIES – PENNSYLVANIA CHAPTER

AND NOW COMES the National Association of Water Companies – Pennsylvania Chapter (“NAWC”), in response to the Notice of Proposed Rulemaking Order (“NOPR”) that the Pennsylvania Public Utility Commission (“Commission”) entered on November 18, 2021 and published in the *Pennsylvania Bulletin* on August 6, 2022, 52 Pa.B. 4926. NAWC appreciates the opportunity to submit these Reply Comments

I. INTRODUCTION

NAWC is a trade organization whose members are investor-owned water utilities in Pennsylvania that are regulated by the Commission.¹ Among other functions, NAWC provides members with a vehicle for expressing their position on legislative and regulatory developments before the General Assembly, the Commission and other regulatory agencies, as well as the courts. NAWC commends the Commission for studying water loss in the Commonwealth. This topic is a matter of great importance for the industry due to the cost of treating water that is ultimately lost or unaccounted for. In addition, water utilities have an interest in preserving supplies of this precious resource, especially during periods of drought.

¹ The members of NAWC are: Aqua Pennsylvania, Inc.; Columbia Water Company; Newtown Artesian Water Company; Pennsylvania-American Water Company; The York Water Company; and, Veolia Water Pennsylvania, Inc. (f/k/a SUEZ Water Pennsylvania Inc.). Newtown Artesian Water Company is a Class B water utility; the remaining members of NAWC are Class A water utilities. In addition to water operations, several members operate Commission-regulated wastewater systems.

On September 17, 2020, the Commission entered an Advanced Notice of Proposed Rulemaking Order (“ANOPR Order”) at this docket, published in the *Pennsylvania Bulletin* on October 10, 2020, 50 *Pa.B.* 5657. In the ANOPR Order, the PUC invited comments, to include proposed regulatory language, benefits and costs of the proposed methodology, and the scope of the regulation. The ANOPR Order did not contain draft language of a proposed regulation. NAWC provided comments together with Aqua Pennsylvania, Inc.

The November 18, 2021 NOPR stated:

The proposed regulation as set forth in Annex A would replace and supersede the current Water Conservation Policy Statement at 52 Pa. Code § 65.20. In addition to proposing a methodology, this NOPR also proposes to promulgate as regulations the other recommendations in the Water Conservation Policy Statement.

NOPR at 7.

NAWC filed comments on September 20, 2022. The Susquehanna River Basin Commission (“SRBC”) and a committee of the American Water Works Association (“AWWA”) also filed comments. NAWC offers this brief reply to the comments submitted by the SRBC and the AWWA.

II. REPLY COMMENTS

A. Replies to the SRBC

The SRBC recommends that the Commission define Class A, Class B and Class C water utilities in Subsection 65.20a(b) because a Class A public utility is currently defined differently in different regulations. *Compare* 52 Pa. Code § 65.16 (defining a Class A water utility as a water utility with an annual operating revenue of \$750,000 or more) and 52 Pa. Code § 56.2 (defining a Class A water utility as a water utility with annual revenues greater than \$1,000,000). Although the SRBC’s comment accurately reflects existing law, the Commission has proposed modifying Section 65.16 to resolve this inconsistency. *Application of 52 Pa. Code § 3.501 to Certificated*

Water and Wastewater Utility Acquisitions, Mergers and Transfers, Docket No. L-2020-3017232 (Notice of Proposed Rulemaking Order entered December 16, 2021). In order to avoid future instances of inconsistent regulations, NAWC recommends that the Commission incorporate by reference the definition of Class A, Class B and Class C water utilities as set forth in 52 Pa. Code § 65.16.

The SRBC also recommends that the Commission simplify its proposal regarding unaccounted-for water (“UFW”) to read: “Levels of UFW shall not exceed 20% of the total volume of water produced or purchased.” SRBC Comments p. 3. NAWC opposes this proposal because such mandatory language could result in civil penalties for a water utility with UFW exceeding 20% -- regardless of the facts and circumstances of the particular case and the progress being made by the water utility. Moreover, the SRBC’s proposed language could have the adverse consequence of discouraging qualified water utilities from acquiring troubled systems with high levels of UFW. The acquiring water utility could be in immediate non-compliance with the UFW requirement upon closing of the transaction. In order to avoid such results, NAWC reiterates its proposal that the Commission’s regulation state “Water public utilities should strive to reduce [UFW] levels to below 20%.” NAWC Comments, p. 7.

The SRBC also recommends that the Commission adopt the proposed language in Subsection 65.20a(f) (“Metering”). The SRBC further recommends that the Commission consider developing metering requirements specifically for sources of supply. AWWA Comments p. 3. For the reasons set forth in NAWC’s Comments, p. 8, NAWC disagrees with these proposals. Procedurally, it is improper to amend Section 65.8 by adopting a new regulation at Section 65.20a. Additionally, this rulemaking focuses on the loss of water after it has been treated. The

Commission provides no justification for requiring the metering of sources of supply. NAWC recommends that the Commission delete the reference to metering sources of supply.

B. Replies to the AWWA

The AWWA recommends that the Commission convene a working group of stakeholders to draft improved language to offer to the Commission. AWWA Comments p. 2. NAWC supports this recommendation in order to obtain greater public input on the proposal. If the Commission convenes such a working group, NAWC asks to be invited to participate in it.

In addition, the AWWA recommends that water loss reports be completed for each discrete water system with a discrete Public Water System Identification (“PWSID”) number. AWWA Comments p. 4. This comment seems to be advocating a change in the Commission’s proposed definition of a “discrete system.” NAWC does not believe such a change is necessary and it would impose unreasonable burdens and costs upon the water utility. NAWC reiterates its Comments, p. 4, supporting the Commission’s proposed definition of a “discrete system,” with minor clarifications, as well as NAWC’s Comments p. 6, advocating that utilities have the flexibility to determine what constitutes a “discrete system” within their operations, which could include a large interconnected system with multiple water sources or a division consisting of multiple public water systems.

The Commission proposes retaining the language currently found in the Commission’s Water conservation measures – statement of policy, 52 Pa. Code § 65.20(4), stating that unaccounted-for water levels above 20% have been considered by the Commission to be excessive. The AWWA recommends rejecting the 20% UFW benchmark and instead recommends analyzing AWWA performance factors.

The AWWA's proposal is too vague to be adopted at the present time. The Commission is proposing the adoption of a regulation, which carries the force and effect of law. Public utilities can be subjected to civil penalties for failing to comply with a regulation. Consequently, they need to know exactly what is required of them.

NAWC would like additional details about AWWA's proposal before taking a position on its merits. For example, NAWC would like information about the specific performance indicators that AWWA believes the Commission should use for benchmarking purposes, and what standards the AWWA believes a utility should be required to meet. Accordingly, AWWA's performance indicators should not be adopted at this time but, instead, should be discussed in the context of the stakeholder working group that is being proposed by AWWA.

III. CONCLUSION

NAWC thanks the Commission for the opportunity to submit these reply comments on the important topic of water conservation. NAWC looks forward to continuing to work with the Commission on this issue.

Respectfully submitted,



David P. Zambito (PA ID No. 80017)

Jonathan P. Nase (PA ID No. 44003)

Cozen O'Connor

17 North Second Street, Suite 1410

Harrisburg, PA 17101

Telephone: (717) 703-5892

Facsimile: (215) 989-4216

E-mail: dzambito@cozen.com

E-mail: jnase@cozen.com

Counsel for *National Association of Water Companies – Pennsylvania Chapter*

Date: November 4, 2022