



September 20, 2022

VIA E-FILING

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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 ~~Those 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,



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Date: September 20, 2022