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January 31, 2023

VIA ELECTRONIC FILING

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

**Re: Use of Fully Projected Future Test Year, 52 Pa. Code
Chapter §§ 53.51 – 53.56a, Docket No. L-2012-2317273**

Dear Secretary Chiavetta:

Enclosed for filing please find the reply comments of the Energy Association of Pennsylvania to the Clarified Notice of Proposed Rulemaking Order at the above-referenced docket.

Sincerely,

A handwritten signature in black ink that reads "Nicole W. Luciano".

Nicole W. Luciano

Manager, Policy & Research

CC, via email:

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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Use of Fully Projected Future Test Year : Docket No. L-2012-2317273
52 Pa. Code Chapter §§ 53.51 – 53.56a

**REPLY COMMENTS OF THE
ENERGY ASSOCIATION OF PENNSYLVANIA
TO OPINION AND ORDER**

I. INTRODUCTION

The Energy Association of Pennsylvania (“EAP” or “Association”) submits the following Reply Comments on behalf of its electric distribution company (“EDC”) and natural gas distribution company (“NGDC”) members¹ to the various parties commenting upon the Pennsylvania Public Utility Commission’s (“PUC” or “Commission”) Notice of Proposed Rulemaking Order (“NOPR”) adopted on August 24, 2022. Initial responses were due to the Commission 30 days following publication in the Pennsylvania Bulletin, i.e., November 15, 2022,

¹ EDC Members include: Citizens’ Electric Company; Duquesne Light Company; Metropolitan Edison Company; PECO Energy Company; Pennsylvania Electric Company; Pennsylvania Power Company; Pike County Light & Power Company; PPL Electric Utilities Corporation; UGI Utilities, Inc. (Electric Division); Wellsboro Electric Company; and West Penn Power Company. NGDC Members include: Columbia Gas of Pennsylvania, Inc.; Pike County Light & Power Company; National Fuel Distribution Corp.; PECO Energy Company; Peoples Natural Gas Company LLC; Philadelphia Gas Works.; UGI Utilities Inc.; and Valley Energy Inc.

with an extension of time for reply comments granted until January 31, 2023.² EAP incorporates its original Comments filed on November 15, 2022 by reference.

The Energy Association of Pennsylvania submits these reply comments to address positions and suggestions raised by certain stakeholders in filed comments. Individual EAP members may also express their views on these issues in separate company filings. EAP will not review the main substantive areas where other commenters have supported proposals contained in the NOPR that EAP opposed (recommended deleting) in its comments or vice versa. Instead, these reply comments aim to highlight main points of consensus as well as primarily address new proposals offered by the commenters.

II. COMMENTS

EAP restates its main thesis from its initial comments that the stated goal of the NOPR – to “standardize and streamline the filing requirements” and “eliminate unnecessary information” to the benefit of utilities and stakeholders – was not met by the text of the proposed regulations. As pointed out by various EDCs, NGDCs, and water utilities – those with the burden of proof – the NOPR proposal, on the whole, *adds* to the amount of information that must be furnished upfront; in many instances this information is not necessary nor broadly relevant to all rate cases to support inclusion in regulation. Given the length of time for which the issue of required filings for use of a FPFTY has remained outstanding since passage of Act 11 of 2012, EAP agrees with Duquesne Light that “the real-world experience of these rate cases”³ should be given more weight than any ‘wish list’ items from the NOPR⁴ or the commenters. Aqua Pennsylvania notes, to similar

² The NOPR originally established a 45 day reply comment period. On October 5, 2022 the Office of Consumer Advocate submitted a letter requesting an extension for the Reply Comment Period. The Commission granted an extension via Secretarial Letter on October 14, 2022.

³ Duquesne Light Company comments to NOPR at p.5.

⁴ PAWC notes that “some of the items that would be required by the proposed amendments are items that PAWC has never been asked to provide during discovery in a rate case.” PAWC comments at p. 2.

effect, that “throughout this timeframe [since the passage of Act 11] and the applicable base rate proceedings contained therein, there has been no indication that the existing industry-specific filing requirements caused any problems with the presentation, review, analysis, litigation, or ultimate resolution of base rate cases supported by fully projected future test year data.”⁵ To the extent any more specific data is deemed necessary or relevant, parties remain able to request such through discovery. The Office of Small Business Advocate (“OSBA”) supports this idea in its comments as well noting, “The Commission ... should not attempt to require every public utility in every base rate proceeding to provide information on every issue that has ever arisen in such a proceeding. Base rate proceedings involve an extensive discovery process, which is better suited to addressing unusual issues that may arise in specific proceedings.”⁶

Pennsylvania-American Water Company (“PAWC”) reiterates that “every item that must be included in a rate filing imposes costs on the filing utility ... These costs will be passed on to ratepayers as rate case expenses.”⁷ EAP echoes PAWC’s call for the Commission to carefully consider “whether every requirement in the proposed amendments has a public benefit that offsets these costs.”⁸ EAP asks the Commission to similarly consider requests made by commenters in their comments to the NOPR that would further add to the filing requirements.

EAP supports the commonsense suggestions made by the National Association of Water Companies – Pennsylvania Chapter (“NAWC”) to: adopt a more “uniform approach” for the number of years of data required for upfront filing⁹; allow for utility waivers of any particular

⁵ Aqua Pennsylvania comments to NOPR at p.5.

⁶ OSBA comments at p.2.

⁷ PAWC Comments at 2.

⁸ Ibid.

⁹ NAWC comments at p. 2.

filing requirement¹⁰; and make these new regulations effective for rate increase requests filed at least six months after final adoption.¹¹

A. Additional requirements and requests by other commenters

i. Comments of the Industrial Energy Consumers of Pennsylvania (“IECPA”)

EAP strongly opposes relitigating base rate cases via a “Just and Reasonable Rate Review Proceeding” as suggested by IECPA. This suggestion expands on the Commission’s NOPR proposal to submit data following the end of a rate case,¹² creating a full, second proceeding on the same issues and data presented and resolved during the course of the initial case. In the ten years of experience since Act 11 of 2012, the alleged “increased risk” of a utility’s use of a FPFTY has not resulted in any known harm to consumers of any rate class or any punitive action on the part of the Commission to correct grossly misguided projections. Should the Commission believe any remedy is necessary as a utility implements new base rates as a result of an approved case, the Commission retains the ability to seek such remedy under 66 Pa. C.S. § 315. IECPA’s proposal is beyond the scope of this proceeding, as it would amend the Commission’s discretionary review to require a mandatory review of already reviewed and approved rates. Once rates are in effect, they are deemed Commission-approved and are entitled to the legal protections that follow. If IECPA or any other party believes rates are unreasonable or unjust they retain the ability to file a complaint with the Commission on their discrete issue. A blanket requirement to relitigate every resolved or otherwise settled rate case via *another* proceeding does not meet either the statutory requirements

¹⁰ Id., p. 5.

¹¹ Id., p. 6; PAWC comments at p. 6.

¹² EAP comments reject the necessity of a filing requirement that is to occur following the conclusion of the rate case and suggested wholly deleting Section 53.56(c). First Energy comments make the same points in their comments at pp. 19-20.

of Act 11 or the stated goal of the NOPR to streamline the filing of relevant data and reduce regulatory burdens.¹³

IECPA suggests accelerating the Commission's deadline in Proposed Sections 53.56(b) and 53.56a(c) from 30 days to 15 days. In its initial comments, EAP recommended the deletion of these post-case filing requirements, as such proposals extend a regulatory requirement past the conclusion of a resolved rate case based on the information provided therein. A filing requirement is, by nature, prospective; these requirements are retroactive. Should the Commission endeavor to maintain this requirement, EAP recommended changing the proposed 30-day notice to 90 days. A 15-day requirement is unreasonably short and will ultimately result in repeated waiver requests by utilities; this data is not readily available even within the 30 days suggested by the Commission. EAP believes any relevance of post-case data should be determined on a case-by-case basis and accommodate the specifics of the individual utility's bookkeeping timeframes and a corresponding, reasonable data production timeline.

As stated in its initial Comments, EAP does not agree that additional years of filing data are always necessary or relevant and therefore rejects IECPA's request to more than double the historical data to be provided for various elements of the filing utility's balance sheet.¹⁴ EAP similarly rejects the broad applicability of IECPA's suggestion to require utilities to file eleven years of data (i.e., ten years of data prior to the HTY) as it relates to customer counts, customer usage, and sales from customer classes by unit.¹⁵ This amount of data is unduly burdensome without the corresponding degree of benefit to justify the time and expense. It further assumes all utilities have the same record retention policies to be able to provide this data, even if it were

¹³ OSBA makes a similar request for additional information following the conclusion / resolution of a rate case in its comments at p.3. EAP disagrees with this suggestion for the same reasons as stated in this subsection.

¹⁴ IECPA comments at pp. 6-7.

¹⁵ IECPA comments at p. 9.

relevant. The final regulations should be broadly applicable to all utilities without rigid determinants of how any individual utility elects to meet its burden of proof.

IECPA's comments highlight the Commission's proposal in the NOPR¹⁶ to require utilities to include a lead-lag study of working capital with their filings. IECPA at 7. EAP opposes such a requirement, as there are other ways to establish cash working capital, including the "1/8 method" which has been accepted by the Commission previously and deemed reasonable. The filing utility should retain discretion as part of its burden of proof as to which method to use for this calculation.

IECPA requests the Commission require utilities to file "specific metrics for the incentive compensation and bonus compensation plan." IECPA at 10. EAP opposes this suggestion as it both assumes all incentive compensation plans include such metrics and that this material is broadly relevant to a utility's burden of proof. The structure of any compensation plan is under the managerial discretion of utility management and/or board of directors. It is inappropriate for regulatory filing requirements to impose substantive requirements on utilities regarding the design of employee compensation plans.

ii. Comments of the Office of Small Business Advocate ("OSBA")

As noted in response to IECPA's recommendation *supra*, EAP again rejects the suggestion by OSBA in support and expansion of the NOPR's proposed post-case filings at Sections 53.56(c) 53.56a(c) for the reasons previously stated. OSBA's recommendation to require "comparison of actual results relative to the utility's filed position" in a "black box" settlement should likewise be rejected. The Commission stated in the NOPR that the requirement applies if the FTY data forms a "substantive basis"¹⁷ for the *Commission's* rate determination. In a "black box" settlement, the Commission is not explicitly determining the rates. Instead, the parties to the settlement are

¹⁶ Proposed Subsection III.D.5

¹⁷ NOPR Proposed Section 53.56(c).

determining rates and the Commission is deciding whether the settlement (including the rates) is reasonable and in the public interest. OSBA's proposal that the utility file a comparison of actual vs. filed results has no relevance because no party, including the Commission, has any settlement-related basis upon which to evaluate that data.

Further, OSBA's position on expanding these requirements to include average rate base¹⁸ is contrary to the Pennsylvania Commonwealth Court's recent precedent and should be rejected. *McCloskey v. Pa PUC*, 225 A. 3d 192; 2020 WL 215931. The *McCloskey* case rejected the use of average rate base to establish FPFTY-informed rates, finding instead that the year-end value must be used. Similarly, in any post-case informational filings only year-end balances are necessary.

EAP rejects OSBA's proposal to require an explicit "proof of revenues" exhibit.¹⁹ Given the extensive nature of the proposal contained in the NOPR, EAP assumes the Commission did not include such an exhibit intentionally. Past practice has not established a clear, consensus definition of "proof of revenues." Much of what OSBA suggests here is captured by other items in the filing.

OSBA's comments highlight a perceived inconsistency between the terms "customer class" and "rate schedule." OSBA at 5. EAP believes these terms should remain broad in the regulations, consistent with existing PUC guidance.²⁰ "Customer class" and "rate schedule" as used in many utility tariffs are interchangeable and this flexibility should remain. Further segmentation would be administratively infeasible without the level of accompanying benefit that would counterbalance the effort required to do so. Relatedly, OSBA asks for clarification that

¹⁸ OSBA comments at p.3.

¹⁹ OSBA comments at p.4-5.

²⁰ "A Guide to Utility Ratemaking" by James H. Cawley and Norman J. Kennard (2018 Edition) pp. 141-142. https://www.puc.pa.gov/General/publications_reports/pdf/Ratemaking_Guide2018.pdf

“information provided by customer category in the filing requirements refer either to rate schedule or to customer class.” OSBA at 8. This request erroneously assumes complete parity across all a utility’s financial and budgeting systems, billing systems, and tariffs. The filing utility therefore provides the level of detail it has available with the understanding that stakeholders may need to translate it. Granting this request would present a significant administrative burden and needs to be rejected; the cost required to create uniformity of data (e.g., changing the methods utilities use to store, track, and report across these various systems) is not equivalent to the public benefit, if any, from such an endeavor. As previously stated, these types of requests purport to tell the utility – the entity with sole burden of proof – *how* to present its data, which remains at its discretion. These types of requests as made from the various commenters in this proceeding should be rejected outright as beyond the reach of these proposed regulations.

OSBA suggests that where customer charges are differentiated within a rate schedule, that the utility provide a cost basis for the differentials. OSBA at 7. This represents an additional ask compared to what is presently suggested in the NOPR in Section III.M.2.h (“Provide a detailed cost analysis supporting the customer charges, showing all direct and indirect costs included.”) OSBA’s expansion would require the utility’s cost-of-service study to further break down classes based on customer usage. This amount of data would create too many distinctions without difference; many utilities do not have the data that would be required to break customer classes down further as OSBA suggests, and to do so would require expensive system upgrades. OSBA further suggests that rate schedules may be combined into customer classes “upon demonstration that the customers in the combined rate schedules have similarities in usage patterns, cost to serve, service quality requirements.” OSBA at 7. Again, this is beyond the proposal contained in the NOPR allowing that “Tariff rate schedules may be combined for this purpose provided they are of

a similar supply or end use nature.” NOPR Section III.M.2.a. Without a cost-of-service study, it will be difficult for utilities to provide supporting documentation to explain the similarities in the “cost to serve” required by the OSBA proposal. Further, it is unclear what is meant by a “service quality requirement” or how that would be determined or established.

EAP opposes OSBA’s suggestion to amend Section III.M.4 to include information regarding “special rate contracts.” OSBA at 9-10. Such a broad requirement to include “supporting evidence” – even under a protective order – potentially violates the confidentiality provisions of negotiated agreements that can cause competitive damage to other parties. EAP believes any information tied to these types of contracts between utilities and their customers ultimately deemed appropriate for rate case review should be submitted under a protective order, not at the time of an initial filing. Utilities are under no obligation to reveal the identity of such customers to third parties. Should the Commission wish to adopt some form of this suggestion by OSBA, EAP recommends the additional language in bold: “For each negotiated rate customer, provide the utility’s justification and supporting evidence for the **magnitude of the** specific negotiated rate discount provided to that customer.” OSBA suggested language at 10.

iii. Comments of the Office of Consumer Advocate (“OCA”)

EAP does not agree with OCA’s additional language suggested for Section 53.52 (a)(4) which adds a requirement regarding effect of the proposed rate change to “include[e] impact at usage levels for typical low, medium, and high usage for residential customers.”²¹ The terms “typical,” “low,” “medium,” and “high” are all subjective and without further clarification would not necessarily provide useful information.

²¹ OCA comments at p.4.

EAP disagrees with OCA's suggestion that supporting worksheets be provided in "live or working electronic format with all formula intact." OCA at 5. Historical, accepted practice has been for utilities to file in PDF format, partially due to the size limitations of online filing that would preclude the upload of large Excel files to the Commission's system. EAP reiterates its point that the manner of data presentation is up to the discretion of the utility and should not be dictated in regulation. Much of what OCA is requesting may be subject to confidentiality or proprietary rules and contain non-public information. Should further detail be deemed relevant, such information can be provided after a protective agreement is established by the intervening party.

OCA recommends that tariff changes not only be provided in redline, but that the redline tariff provided be a full tariff. OCA at 8. EAP previously suggested striking this proposed requirement altogether in its redline to the NOPR's Annex B. This requirement is unduly burdensome, as a utility's tariff is already publicly available. Filing an already public document is inherently duplicative and undermines the NOPR's stated goal of "streamlining" regulatory requirements.

OCA also recommends the addition of two more years of projections for "growth patterns of usage and customer numbers" be provided as part of the requirement in Section III.H.7. OCA at 9. EAP rejects this proposal as the meaning of "growth patterns" is not clear from OCA's comments or the NOPR itself.

OCA expands on the Commission's NOPR proposals to request even more detailed information in Section J. Payroll, Employee Benefits and Retiree Costs. OCA at 10-11. On the whole, these additional requests are beyond excessive and inappropriate. Specifically, the new subsection (d) requesting information regarding "expected" changes due to various contingencies

is completely speculative. The information OCA is requesting may contain business-sensitive data and does not contemplate the impacts of the government, utility shareholder, or employee notices that may be required. Lastly, should the elements of suggested subsection (e) be deemed relevant, this information is better provided after parties intervene and sign a protective order, not at the initial case filing stage.

iv. Comments of the Coalition for Affordable Utility Service and Energy Efficiency in Pennsylvania (“CAUSE-PA”)

As stated in its comments, EAP does not agree that any non-statutory stakeholder should be called out for service of rate case materials in regulation. Unlike the other expressly named parties (Office of Small Business Advocate (“OSBA”), the Office of Consumer Advocate (“OCA”), the Commission’s Bureau of Investigation and Enforcement (“BI&E”) and the Commission’s Bureau of Technical Utility Services (“TUS”)), “low-income advocates” such as CAUSE-PA are not statutorily-created offices or bureaus within the Commonwealth, nor is there an easily identifiable list of “low-income advocates” that utilities can use for service. Organizations or associations that intervene in base rate proceedings in a representational capacity on behalf of low-income residential customers do so in private (i.e., non-governmental) capacities. The impact of rates on all customers is inherent to the role of the Commission during the course of the proceeding.

Moreover, issues of affordability of utility service for low-income customers are dealt with in separate Universal Service and Energy Conservation Plan (“USECP”) submissions under review and subject to approval by the PUC. To that end, EAP further rejects the suggestion made by CAUSE-PA to “produce data related to the impact of a proposed rate increase on low-income customers as a part of the revised Exhibit E.” CAUSE-PA at 5-6. Data on items such as “number of estimated low-income customers,” “number of customers terminated,” “number of customers

enrolled in the utility’s CAP or other bill assistance or rate discount program” and “amount of grant assistance distributed through the utility’s grant assistance or hardship fund program”²² are already reported annually to the Commission pursuant to the Universal Service regulations at 52 Pa. Code § 54.75 and § 62.5 and made publicly available for download and review on the Commission’s website. As stated previously, to the extent any additional or more granular level data is deemed necessary and relevant to a base rate case, discovery remains available.

The CAUSE-PA comments to the NOPR acknowledge the relevant Universal Service Reporting regulations yet go on to request expansion of base rate case filing regulations to include additional universal-service-related reporting requirements. EAP encourages the Commission to reject these requests as extraneous to the issues at hand. The Commission has an open review of Universal Service regulations, including reporting requirements, at Docket No. L-2019-3012600; issues relating to utility universal service programs and energy affordability are best left to that proceeding. “Raw data” and “five years”²³ worth of universal service report data²⁴ is not necessary or relevant to each utility’s rate case and the benefit of providing all data upfront in the instance it might be is not cost effective or reductive to regulatory burdens.

CAUSE-PA encourages the Commission, via this proceeding, to “further standardize the format of utility rate filings.” CAUSE-PA at 12-13. As with the similar OCA suggestion,²⁵ EAP rejects the notion that such standardization is in the public interest when time and costs to achieve it are properly accounted for. EAP opposes the creation of an arbitrary standard as it relates to the content of the filing that would restrict the manner in which a utility is able to utilize (and organize)

²² CAUSE-PA comments at pp.7-8.

²³ CAUSE-PA comments at p.9.

²⁴ OCA comments make a similar request at pp. 11-12.

²⁵ *Supra*, p. 9-10.

testimony and exhibits to satisfy its burden of proof. Furthermore, segmenting the filing into hundreds of PDFs would not inherently help the public's ability to understand the filing.

CAUSE-PA recommends the Commission "require that notice be distributed in both English and Spanish." CAUSE-PA at 14. EAP does not agree that such a requirement is broadly applicable given the demographics of each individual utility's customer base. Customer notice is beyond the scope of this proceeding; however, if this suggestion is adopted it should reflect existing regulation at 52 Pa Code 56.91(b)(17) which requires information in Spanish (or another language) "when census data indicates that 5% or more of the residents of the public utility's service territory are using that language."

III. CONCLUSION

EAP asks the Commission to review all comments in light of the NOPR's stated goal of standardizing and streamlining the required filing information so as to *reduce* the regulatory burden and costs associated with preparing and litigating rate cases. Many of the Commission's own suggestions contained in the NOPR miss this mark, and the commenters' suggestions would further exacerbate the initial time and cost involved in preparing for a rate case. To the extent suggestions go *far* beyond existing filing requirements, as noted by EAP and other parties in their comments, EAP asks the Commission to carefully weigh the costs of such changes against the purported benefits. Precedent has proved successful in navigating the use of a FPFTY since 2012 without many of these additional, proscriptive requirements.

EAP does not believe the Commission should strive to address any and all possible or potential issues in the final regulations governing the initial filing. Base rate proceedings remain open to discovery, and discrete, relevant issues can still be addressed during the course of the case. Nor should the Commission allow the final regulations to dictate the manner and method by which

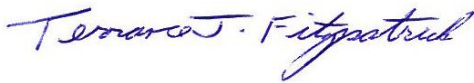
a utility meets the filing requirement as suggested in many places by the commenters, as the burden of proof remains solely with the utility regardless of test year utilized.

EAP requests that the Commission consider these reply comments as it finalizes regulations pursuant to Act 11 of 2012.

Respectfully submitted,



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Date: January 31, 2023