



Barry A. Naum
Direct Dial (717) 795-2742
bnaum@spilmanlaw.com

January 31, 2023

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

VIA ELECTRONIC FILING

Re: Advance Notice of Proposed Rulemaking Order Re: Use of Fully Projected Future Test Year, 52 Pa. Code Chapter 53; Docket No. L-2012-2317273

Dear Secretary Chiavetta:

Please find enclosed for filing with the Pennsylvania Public Utility Commission ("PUC" or "Commission") the Reply Comments of Industrial Energy Consumers of Pennsylvania ("IECPA"), in the above-referenced matter.

This document was filed electronically with the Commission on this date. All parties are being served a copy of this document in accordance with the enclosed Certificate of Service.

Please contact me if you have any questions concerning this filing.

Sincerely,

SPILMAN THOMAS & BATTLE, PLLC

By 

Derrick Price Williamson
Barry A. Naum

BAN/sds
Enclosures

c: Louise Fink Smith, Assistant Counsel, Law Bureau (via E-mail)
Melanie J. El Atieh, Assistance Counsel, Law Bureau (via E-mail)
Erin Laudenslager, Manager, Bureau of Technical Utility Services (via E-mail)
Karen Thorne, Regulatory Review Assistant, Law Bureau (via E-mail)
RA-PC-FPPTY2317273E@pa.gov (via E-mail)
Certificate of Service

Spilman Thomas & Battle, PLLC

1100 Bent Creek Boulevard | Suite 101 | Mechanicsburg, Pennsylvania 17050 | P 717.795.2740 | F 717.795.2743
West Virginia | North Carolina | Pennsylvania | Virginia | spilmanlaw.com

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Advance Notice of Proposed Rulemaking :
Order Re: Use of Fully Projected Future : Docket No. L-2012-2317273
Test Year, 52 Pa. Code Chapter 53 :

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing document upon the following parties to this proceeding in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by participant).

VIA E-MAIL

Allison C. Kaster, Esquire
Bureau of Investigation & Enforcement
Pennsylvania Public Utility Commission
400 North Street, 2nd Floor
P.O. Box 3265
Harrisburg, PA 17105-3265
akaster@pa.gov

David T. Evrard, Esquire
Aron J. Beatty, Esquire
Barrett C. Sheridan, Esquire
Christine Maloni Hoover, Esquire
Morgan N. DeAngelo
Office of Consumer Advocate
5th Floor, Forum Place
555 Walnut Street
Harrisburg, PA 17101
deverard@paoca.org
abeatty@paoca.org
bsheridan@paoca.org
choover@paoca.org
mdeangelo@paoca.org

Steven C. Gray, Esquire
Office of Small Business Advocate
300 North Second Street
Suite 202
Harrisburg, PA 17101
sgray@pa.gov

Lindsay A. Baxter
Manager, Regulatory and Clean Energy
Strategy
Duquesne Light Company
411 Seventh Avenue, Mail Drop 15-7
Pittsburgh, PA 15219
lbaxter@duqlight.com

Darshana Signh, Esquire
Tori L. Giesler, Esquire
FirstEnergy Service Company
2800 Pottsville Pike
P.O. Box 16001
Reading, PA 19612-6001
signhd@firstenergycorp.com
tgiesler@firstenergycorp.com

Kimberly A. Klock, Esquire
Michael J. Shafer, Esquire
PPL Services Corporation
Two North Ninth Street
Allentown, PA 18101
kklock@pplweb.com
mjshafer@pplweb.com

Pamela C. Polacek, Esquire
C&T Enterprises, Inc.
P.O. Box 129
Venetia, PA 15367
ppolacek@ctenterprises.org

Michael S. Swerling, Esquire
UGI Corporation
460 North Gulph Road
King of Prussia, PA 19406
Swerlingm@ugicorp.com

Nicole W. Luciano, Esquire
Terrance J. Fitzpatrick
Donna M. J. Clark
Energy Association of Pennsylvania
800 North Third Street
Suite 205
Harrisburg, PA 17102
nluciano@energypa.org
tfitzpatrick@energypa.org
dclark@energypa.org

Amy E. Hirakis, Esquire
Candis Tunilo
Nisource Corporate Services Co.
800 N. Third Street
Harrisburg, PA 17102
ahirakis@nisource.com
ctunilo@nisource.com

Theodore J. Gallagher, Esquire
NiSource Corporation Services Co.
121 Champion Way, Suite 100
Canonsburg, PA 15317
tjgallagher@nisource.com

Sheila Suarez
Jeremy Barber
National Fuel Gas Distribution Corporation
6363 Main Street
Williamsville, NY 14221
suarezs@natfuel.com
barberj@natfuel.com

Nathaniel J. Ehrman, Esquire
National Fuel Gas Distribution Corporation
P.O. Box 2081
Erie, PA 16512
ehrmann@natfuel.com

Meagan Moore, Esquire
Peoples Natural Gas Company
375 North Shore Drive, Suite 600
Pittsburgh, PA 15212
Meagan.moore@peoples-gas.com

William H. Roberts, II, Esquire
Peoples Natural Gas Company
375 North Shore Drive, Suite 600
Pittsburgh, PA 15212
william.h.roberts@peoples-gas.com

Andrew Wachter
Director, Finance and Regulation
Peoples Natural Gas Company
375 North Shore Drive, Suite 600
Pittsburgh, PA 15212
andrew.wachter@peoples-gas.com

Alexander R. Stahl
Aqua Pennsylvania, Inc.
762 W. Lancaster Ave.
Bryn Mawr, PA 19010
astahl@aquaamerica.com

Elizabeth Rose Triscari, Esquire
Pennsylvania-American Water Company
852 Wesley Drive
Mechanicsburg, PA 17055
Elizabeth.triscari@amwater.com

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Susan Simms Marsh, Esquire
Pennsylvania-American Water Company
800 West Hersheypark Drive
Hershey, PA 17033
susan.marsh@amwater.com

Tim Michaelson
Director – Regulatory Business
Veolia Water M&S (Paramus), Inc.
461 From Road, Suite 400
Paramus, NJ 07652

David P. Zambito, Esquire
Jonathan P. Nase, Esquire
Cozen O'Connor
17 North Second Street, Suite 1410
Harrisburg, PA 17101
dzambito@cozen.com
jnase@cozen.com

John W. Sweet, Esquire
Elizabeth R. Marx, Esquire
Ria M. Pereira, Esquire
Lauren Berman, Esquire
Pennsylvania Utility Law Project
118 Locust Street
Harrisburg, PA 17101
pulp@pautilitylawproject.org



Barry A. Naum

Dated: January 31, 2023

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Use of Fully Projected Future : **Docket No. L-2012-2317273**
Test Year, 52 Pa. Code Chapter :
53.54-53.56a :

**REPLY COMMENTS OF
INDUSTRIAL ENERGY CONSUMERS OF PENNSYLVANIA**

On October 1, 2022, the Pennsylvania Public Utility Commission's ("PUC" or "Commission") Clarified Notice of Proposed Rulemaking Order ("CNOPR") in the above-referenced docket was published in the *Pennsylvania Bulletin*. The CNOPR requested that interested parties submit Comments on proposed amendments to regulations relating to information furnished with the filing of rate changes for utilities using a future test year ("FTY") or a fully projected future test year ("FPFTY").

The Industrial Energy Consumers of Pennsylvania ("IECPA")¹ is an association of energy-intensive industrial consumers of electricity and natural gas taking service from regulated utilities in Pennsylvania, including: Duquesne Light Company ("Duquesne"); Metropolitan Edison Company ("Met-Ed"); PECO Energy Company ("PECO"); Pennsylvania Electric Company ("Penelec"); Pennsylvania Power Company ("Penn Power"); PPL Electric Utilities Corporation ("PPL"); and West Penn Power Company ("West Penn"); Columbia Gas of Pennsylvania, Inc.

¹ For the purpose of this matter, IECPA's membership consists of: Air Products & Chemicals, Inc.; Benton Foundry, Inc.; Carpenter Technology Corporation; Cleveland-Cliffs Inc.; East Penn Manufacturing Company; Keystone Cement Company; Knouse Foods Cooperative, Inc.; Linde, LLC; Marathon Petroleum Corporation; Proctor & Gamble Paper Products Company; and United States Gypsum Company.

("Columbia"); Peoples Gas Company, LLC ("Peoples Gas"); Peoples Natural Gas Company LLC ("Peoples Natural Gas"); and UGI Utilities, Inc. – Gas Division.

IECPA offers these Reply Comments in response to Comments filed by other parties in this matter, specifically the Comments of Aqua Pennsylvania Inc. ("Aqua"), Duquesne, Energy Association of Pennsylvania ("EAP"), Met-Ed, Penelec, Penn Power, and West Penn (together, "FirstEnergy Companies"), National Association of Water Companies ("NAWC"), UGI Utilities Inc. – Gas and Electric Divisions ("UGI"), PPL, Citizens' Electric Company of Lewisburg, PA, Wellsboro Electric Company, and Valley Energy Company (together, "C&T Enterprises"), Peoples Natural Gas Company LLC and Peoples Gas Company LLC (together, "Peoples Companies") (collectively, "Utility Parties"), Office of Consumer Advocate ("OCA"), and Office of Small Business Advocate ("OSBA"). The absence of a response by IECPA in these Reply Comments to a specific issue raised by any filers' Initial Comments does not constitute a change of position from IECPA's Initial Comments or endorsement of any Initial Comments presented by other stakeholders. IECPA maintains its recommended proposed modifications to the FTY and FPFTY filing requirements from its Initial Comments.

A. The Utility Parties' Initial Comments are Inconsistent with the Commission's Goals of Reducing the Regulatory Burden and Costs Associated with Litigating General Rate Cases and Ignore the Fact that the Existence of an FTY or FPFTY Mechanism Significantly Reduces Utility Risks at the Expense of Customers.

IECPA reiterates its general support and recommended modifications to the Commission's proposed amendments to the FTY and FPFTY filing requirements presented in the CNOPR. To avoid repetition by responding to the Utility Parties' Initial Comments subsection by subsection, IECPA generally responds to thematic proposals provided by the Utility Parties. As acknowledged

by the Utility Parties,² the Commission's goal in amending the FTY and FPFTY filing requirements is to streamline the rate filing process and to "lessen the regulatory burden and costs associated with reviewing and litigating general rate increase cases brought by public utilities."³ IECPA believes that two of the Utility Parties' main proposed modifications to the FTY and FPFTY filing requirements run counter to these goals.

1. The Utility Parties' proposals to limit the amount of data provided in their filing requirements when using an FTY or FPFTY ignores the fact that these mechanisms shift risk from utilities to their customers.

The Utility Parties generally recommend limiting their filing requirements and propose reductions from the Commission draft requirements to the amount and types of information utilities should include when filing an FTY or FPFTY. For instance, in areas where IECPA recommends expanding reporting requirements from two years to five years of preceding data,⁴ the Utility Parties propose limiting such time frames.⁵ EAP specifically argues that limiting the filing of preceding data "goes to the overall goal of reducing data requests and limiting what is required to only what is most necessary and relevant."⁶ EAP additionally suggests that, "[i]f information for additional prior years is deemed relevant by a party, discovery is available to request it."⁷ IECPA has at least two main concerns with this reasoning and these proposals to limit the data provided when filing an FTY or FPFTY.

² See, e.g., EAP Initial Comments, p. 3; FirstEnergy Companies Initial Comments, p. 7; UGI Initial Comments, p. 3.

³ CNOPR, p. 10.

⁴ See IECPA Initial Comments, p. 6. In other instances, IECPA recommends expanding reporting from five to ten years. See *id.*, p. 9.

⁵ See, e.g., NAWC Initial Comments, p. 3; FirstEnergy Companies Initial Comments, p. 23; EAP Initial Comments, p. 15; Duquesne Initial Comments, p. 4.

⁶ EAP Initial Comments, p. 15.

⁷ *Id.* at 16.

First, in its Final Implementation Order of Act 11 of 2012, the Commission clearly affirmed that "[u]nder this [FTY/FPFTY] approach, the risks associated with regulatory lag will be substantially reduced because the new rates will be consistent with the test year used to establish those rates for at least the first year."⁸ While the FTY/FPFTY mechanism reduces regulatory lag and encourages future plant investment, it also shifts the risk from utility shareholders onto customers by requiring customers to pay for utility plant and services before they are "used and useful" to their benefit. This utility risk reduction exposes customers to the increased risk of faulty projections and excess, unjustified rates, which in turn should result in measures that attempt to counter this shift to the benefit of ratepayers.⁹

IECPA believes that additional filing requirements assist to counterbalance this shifting of risk. By increasing initial filing requirements, stakeholders will have access to a significant amount of information relevant to the proceeding without needing to request it through discovery. By requiring utilities to submit more information, rather than less, it is likely that the final FTY or FPFTY will produce more accurate results based on greater comparative data and thus result in a greater likelihood of just and reasonable rates.

While IECPA does not believe additional required information fully counteracts the shift in risk to customers when an FTY or FPFTY is used, it at least affords the best opportunity for those at risk (*i.e.*, customers) to fully review a utility's proposed filing and the reasonableness of resulting rates. Importantly, as even EAP concedes, this is data that parties in rate proceedings are apt to request through discovery, anyway.

⁸ *Implementation of Act 11 of 2012*, Docket No. M-2012-2293611, Final Implementation Order (Aug. 2, 2012), p. 5.

⁹ For this reason, IECPA also submits that it is generally justifiable to authorize lower returns on equity for utilities taking advantage of the benefits of an FTY or FPFTY.

In the event, however, that the Commission rejects IECPA's additional requested look back data or other information recommendations, any reduction or limitation of the proposed filing requirements should have no impact on the ability of a stakeholder party in a future rate proceeding to request and receive such relevant information through discovery. In other words, if the Commission declines to adopt IECPA's recommendations or otherwise adopts the recommendations of the Utility Parties, the Commission should also state clearly that its findings do not preclude parties from seeking additional data through discovery in any relevant case.

Second, contrary to EAP's claims and as already noted, limiting look back data would not reasonably reduce data requests, as parties would now be required to ask for specific years of data through discovery. Not only would this *increase* the litigation burden on stakeholders, it would similarly burden utilities to respond and provide such data during the course of litigation. If additional years of preceding data is instead provided at the outset, as recommended by IECPA, then utilities would have the same burden as if they had to provide the information in discovery, though without the burden of meeting discovery timelines, while stakeholders would have a reduced burden of needing to ask for additional information during the litigation process. Utility Parties' arguments regarding the imposed burden of providing such information at the outset is overstated. Much of the information in the proposed filing requirements can be collected and compiled in the normal course of business and be readily available when a utility decides to file a rate case; this is simply a task of preserving data in certain files for use in rate cases.¹⁰ More initial information provides for a more streamlined process for all interested parties to review and

¹⁰ Since this may require an adjustment to the methods by which utilities preserve and file information, IECPA has no objection to certain Utility Parties' recommendations to allow a certain amount of transition time (*i.e.*, six months) after the final rules are adopted before the rules become effective.

evaluate a utility's filing.¹¹ This streamlined process, in turn, reduces the administrative burden on the Commission, consistent with the CNOPR's goal.

Without additional information to counterbalance utilities' use of an FTY or FPFTY, customers and stakeholders will be at an increased information disadvantage that will significantly burden them during the regulatory review process. The Utility Parties are understandably trying to unburden themselves by limiting the information they provide over the course of a rate proceeding, but the shifting of risk from utility shareholders to utility customers when using an FTY or FPFTY cannot be understated. More strenuous filing requirements would serve to help offset some of those risks. By requiring additional information, the FTY/FPFTY filing requirements will be consistent with the Commission's goals of streamlining the filing process and reducing the discovery and litigation burden on all parties. Otherwise, requiring intervening stakeholders to seek such information through discovery while a utilities' rate filing is under review will only serve to shift more risk, in the form of litigation burden, to parties who will have less time to review projected costs and revenues and compare those with actual costs and revenues.

2. The Utility Parties' objections to the filing of data evidencing the accuracy of estimates contained in an FTY or FPFTY are contrary to Section 315(e).

Some of the Utility Parties recommend removing or modifying proposed Sections 53.56(c) and 53.56a(c) of the CNOPR,¹² which as drafted would require utilities to publicly file "appropriate data evidencing the accuracy of its estimates contained in the [FTY or FPFTY]." Specifically, both Aqua and EAP recommend deleting these sections as inappropriate filing requirements after

¹¹ Relatedly, to further streamline the filing process and avoid subsequent discovery, IECPA strongly agrees with and supports the OCA's recommendation that supporting worksheets should be provided in live or working electronic format with all formulas intact. *See* OCA Initial Comments, p. 5.

¹² *See* Aqua Initial Comments, p. 7; FirstEnergy Initial Comments, pp. 19-20; EAP Initial Comments, p. 10.

the conclusion of a resolved rate case.¹³ Certain Utility Parties also indicate that FTY and FPFTY mechanisms have already been used without issue, thus seeming to further imply there is no need for changes to the filing requirements or specific requirements to be delineated state-wide.¹⁴ While IECPA understands that FTY and FPFTY mechanisms have already been used, the fact that utilities have not identified any issues in the course of those proceedings is irrelevant to the current CNOPR seeking to streamline and improve the FTY and FPFTY regulatory process for all stakeholders, not just utilities. Section 315(e) of the Public Utility Code specifically, and appropriately, contemplates the potential for reviewing utility test year data after the conclusion of a future test year; thus, the CNOPR is fully justified in requiring and standardizing the filing of data supporting the accuracy of an FTY or FPFTY.

As expressed above, the ability of a utility to utilize an FTY or FPFTY shifts risk from utility shareholders directly onto customers. This shifting of risk requires counterbalancing offsets to ensure that utilities are charging just and reasonable rates that are not unduly discriminatory. Without data evidencing the accuracy of a utility's FTY or FPFTY, the Commission and the utility's customers would have no way of knowing whether rates resulting from the FTY/FPFTY are just and reasonable. The evidence that an FTY or FPFTY produced accurate results is a critical and necessary component of this counterbalance in the interest of ratepayers. Additionally, Section 315(e) explicitly authorizes the Commission to require a public utility to provide such data evidencing the accuracy of a utility's estimates.¹⁵ There simply is no reason to abandon this

¹³ NAWC also criticizes the proposed filing requirement that includes projections for five years after the FPFTY, stating that "projections so far into the future can be unreliable." NAWC Initial Comments, p. 3. IECPA would also note that a single year FTY or FPFTY projection can also be unreliable, thus creating and justifying the need for utilities to submit data evidencing the accuracy of their estimates.

¹⁴ See, e.g., PPL Initial Comments, p. 4; EAP Initial Comments, p. 5.

¹⁵ 66 Pa.C.S. § 315(e).

principle, even if in prior proceedings utilities anecdotally have not experienced any issues with the information they have provided *ad hoc*. The Commission is justified in taking steps to ensure that future parties have reasonable, delineated expectations of these requirements going forward.

Section 315(e) further authorizes the Commission to adjust a public utility's rates based on such data after reasonable notice and hearing. IECPA thus not only disagrees with the proposals to eliminate this filing requirement, but also believes the Commission should, consistent with Section 315(e), initiate a "Just and Reasonable Rate Review Proceeding" to assess the accuracy of the utility's projections. As detailed in IECPA's Initial Comments, the Just and Reasonable Rate Review would permit the Commission to adjust the utility's rates to reconcile any potential over-recovery the utility may have incurred as a result of inaccurate projections. This proceeding would allow ratepayers to be made whole should the utility be found to have over-projected its costs; this would be the just counter-balance to the risk shifting that the FTY and FPFTY provide to the benefit of utilities. To be clear, in the event that a utility has under-recovered, IECPA is not recommending that the Commission adjust these rates upward after a Just and Reasonable Rate Review; rather, under existing regulations, a utility can simply file a rate case and be made whole. Customers paying unjust rates based on faulty FTY/FPFTY projections do not have a comparable opportunity.

As such, not only should the Commission reject any proposals to eliminate or otherwise modify Sections 53.56(c) and 53.56a(c), but the Commission should also incorporate IECPA's proposal for a Just and Reasonable Rate Review Proceeding after an FTY or FPFTY. Any utility that is not willing to subject itself to this type of review can file a rate case supported by a Historical Test Year, instead.

B. The Confidentiality of Negotiated Special Contracts Should be Protected from Public Disclosure.

In its Initial Comments, the OSBA recommends that the Commission require utilities to provide justification and supporting evidence for each negotiated rate contract they have with customers.¹⁶ On review of the OSBA's recommendation and the proposed amendments in the CNOPR regarding special contracts, IECPA initially recommends that any "comparison of revenues for special contracts and under tariff rates" should be reported only in the aggregate for the rate class rather than individually.¹⁷ Of note, the Commission's current rate case filing requirements do not require filing of evidence related to special contracts for electric and natural gas utilities; the regulations only pertain to filing information for water and wastewater special contracts. Expanding this filing requirement to electric and gas utilities through the CNOPR, and thereby electric and gas customers, already produces a greater risk of exposure of utility customers' confidential information, including usage data. Certainly, requiring justification of individual special contracts would compound this risk.

Negotiated special rate contracts are statutorily approved "to meet the specific needs of a utility customer and to address competitive alternatives."¹⁸ This is based on the general principle that it is better for a utility's entire system, including the entirety of the utility's customer base, to retain a large consumer on its system rather than lose that customer to competitive alternatives at the expense of every other customer. Due to the confidential nature of negotiated special rate contracts between the customer and the public utility, IECPA therefore urges an aggregate comparison of revenues in order to protect that confidentiality while still allowing for a necessary

¹⁶ See OSBA Initial Comments, pp. 9-10.


¹⁷ Exhibit E – Subsection III.M.4.b.

¹⁸ 66 Pa.C.S. § 2806(h); *see also* 66 Pa.C.S. § 2807(e)(5).

comparison of revenues. An aggregate comparison of revenues achieves the appropriate objective of this data in a manner that does not inadvertently expose special contract customers to competitive risk through the divulgence of sensitive, individualized information. Thus, IECPA opposes the OSBA's recommendation to require a public utility to provide justification and supporting evidence for each negotiated rate discount,¹⁹ as doing so would further risk exposure of the confidentiality of those contracts.

Respectfully submitted,

SPILMAN, THOMAS & BATTLE, PLLC

By 
Derrick Price Williamson (I.D. No. 69274)
Barry A. Naum (I.D. No. 204869)
1100 Bent Creek Boulevard, Suite 101
Mechanicsburg, PA 17050
Phone: (717) 795-2740
Fax: (717) 795-2743
dwilliamson@spilmanlaw.com
bnaum@spilmanlaw.com

Counsel to Industrial Energy Consumers of Pennsylvania

Dated: January 31, 2023

¹⁹ See OSBA Initial Comments, pp. 9-10.