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January 31, 2023

VIA ELECTRONIC FILING

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

Pursuant to the Pennsylvania Public Utility Commission's revised Fully Projected Future Test Year Rulemaking dated October 1, 2022 in the above-captioned proceeding, enclosed herewith for filing are the Reply Comments of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company.

Please contact me if you have any questions regarding this matter.

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Very truly yours,

Darsh Singh

DS/dml

Enclosures

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Use of Fully Projected Future Test Year, 52 Pa. Code Chapter §§ 53.51-53.56a	: :	**DOCKET NO. L-2012-2317273**

REPLY OF METROPOLITAN EDISON COMPANY, PENNSYLVANIA ELECTRIC COMPANY, PENNSYLVANIA POWER COMPANY AND WEST PENN POWER COMPANY TO COMMENTS FILED ON THE PROPOSED RULEMAKING ORDER REGARDING AMENDMENTS TO 52 PA. CODE §§ 53.51-53.56

On November 15, 2022, Metropolitan Edison Company ("Met-Ed"), Pennsylvania Electric Company ("Penelec"), Pennsylvania Power Company ("Penn Power") and West Penn Power Company ("West Penn") (individually, a "Company" and, collectively, the "Companies") filed their comments in response to the Clarified Notice of Proposed Rulemaking Order ("NOPR Order") of the Pennsylvania Public Utility Commission (the "Commission" or "PUC") at the above-captioned docket regarding proposed amendments to the Commission's rate case data filing requirement regulations at 52 Pa. Code §§ 53.51-53.56 ("Comments").[1] In their Comments, the Companies explained that the proposed amendments would not, in their current form, achieve the Commission's goals to "streamline"[2] the filing requirements and "reduce the regulatory burden and costs"[3] for public utilities. In fact, in many instances, the proposed amendments would further convolute the filing requirements and increase the administrative burden on filing utilities. Along

[1] The original NOPR order, including accompanying annexes with proposed amendments, was entered on June 17, 2021. The NOPR Order with accompanying annexes was entered on August 24, 2022.
[2] NOPR Order, p. 9.
[3] NOPR Order, p. 10.

with their Comments, the Companies provided redlines of the NOPR Order's Annex A and Annex B to identify revisions that, if implemented, would address many of the Companies' concerns.

Comments to the NOPR Order were filed by fourteen other interested parties, including statutory advocates,[4] low-income advocates,[5] consumer representatives,[6] trade groups,[7] and utilities.[8] A wide variety of additional proposals were provided by the commenting parties. Some parties sought to streamline the proposed amendments consistent with the goals of the NOPR Order, while other parties proposed that substantial additional requirements be incorporated.

In these Reply Comments, the Companies describe their opposition to various proposals made by other parties and support for several proposals.[9] The fact that the Companies do not specifically address another party's comment on a specific provision in Annex A or B does not necessarily mean the Companies are in agreement with that comment. The Companies continue to believe that the Commission's goals are not served by increasing the sheer quantity of information that *all* utilities must file every time a rate case is submitted. The Commission cannot foresee or standardize the issues that will arise during a specific rate proceeding, and parties should continue to utilize discovery to probe the case-specific issues that are most important to their particular interests.

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[4] Comments were filed by the Office of Consumer Advocate ("OCA") and the Office of Small Business Advocate ("OSBA").

[5] Comments were filed by the Coalition for Affordable Utility Service and Energy Efficiency in Pennsylvania ("CAUSE-PA").

[6] Comments were filed by the Industrial Energy Consumers of Pennsylvania ("IECPA").

[7] Comments were filed by the Energy Association of Pennsylvania ("EAP") and the National Association of Water Companies ("NAWC").

[8] Comments were filed by Aqua Pennsylvania, Inc. ("Aqua"); Citizens' Electric Company of Lewisburg, PA, Wellsboro Electric Company and Valley Energy, Inc. (collectively "C&T Companies"); Duquesne Light Company ("Duquesne"); Pennsylvania American Water Company ("PAWC"); Peoples Natural Gas Company LLC and Peoples Gas Company LLC (collectively, "the Peoples Companies"); PPL Electric Utilities Corporation ("PPL Electric"); UGI Utilities, Inc. – Gas and Electric Division (collectively "UGI"); and Veolia Water Pennsylvania ("VWPA").

[9] By Secretarial Letter dated October 14, 2022, the Commission extended the due date for reply comments to January 31, 2023.

I. REPLY TO COMMENTS

A. CAUSE-PA Proposals

CAUSE-PA argues that a wide range of additional base rate filing requirements are necessary to understand, among other things, "the continued adequacy of the utility's universal service programming."[10] The Commission, however, has a well-established regulatory framework for monitoring utilities with statutory universal service obligations (large electric distribution companies ("EDCs") and natural gas distribution companies ("NGDCs")). The framework includes data submission to the Commission's Bureau of Consumer Services ("BCS"), publicly-available annual reports, and dedicated universal service proceedings to enable the Commission to "ensure universal service and energy conservation policies, activities and services for residential [electric/gas] customers are appropriately funded and available."[11] Through its proposals, CAUSE-PA is seeking to supplant the Commission's existing universal service reporting requirements and modify customer notice requirements that fall outside the scope of this proceeding. For all these reasons, and as described in more detail below, CAUSE-PA's proposals should be rejected.

1. Termination and Collections Data and "Updated" Universal Service Reporting Data

CAUSE-PA argues that all utilities proposing an increase to residential rates should have to submit detailed historic and projected residential collections and termination data by customer income status.[12] CAUSE-PA further contends that large EDCs and NGDCs should submit "updated" universal service data and *five years* of raw universal service data previously reported to BCS.[13]

[10] CAUSE-PA Comments, p. 6.
[11] 52 Pa. Code § 54.71;52 Pa. Code § 62.1.
[12] CAUSE-PA Comments, pp. 7-8.
[13] CAUSE-PA Comments, pp. 9-10.

The Companies oppose the imposition of standard rate filing requirements related to this type of data. Many of the recommended historic data points, including terminations, reconnections, customer assistance program ("CAP") enrollment and grant assistance, are already collected by the Commission for large EDCs and NGDCs and made publicly available in annual reports.[14] CAUSE-PA argues this reporting is not sufficient due to the "significant lag" between data reporting and annual report publication.[15] In reality, the data is typically published five to nine months after its BCS submission due date,[16] with the "lag" representing time for BCS to complete a "data-cleaning and error-checking process."[17] Further, the proposal to require five years of "raw" data is unnecessary when over 20 years of annual reports, which contain data vetted through Commission processes, are publicly available on the Commission's website.

Regarding CAUSE-PA's recommendation to require the submission of certain projections, the Companies note that a utility's publicly available Universal Service and Energy Conservation Plan ("USECP") already includes enrollment and cost projections related to universal service programs.[18] Many of the other projections identified by CAUSE-PA are so granular in nature (e.g., the number and timing of reconnections disaggregated by customer income status) that utilities are unlikely to be able to produce fully projected future test year ("FPFTY") projections without investing substantial time and effort. CAUSE-PA has also failed to provide a concrete explanation of why such granular information, which the Commission does not currently require as part of its general universal service oversight, is necessary in a base rate proceeding. Given the substantial

[14] *See* https://www.puc.pa.gov/filing-resources/reports/universal-service-reports/
[15] CAUSE-PA Comments, pp. 9-10.
[16] On April 1 of each year, data must be submitted to BCS for the prior year. Since 2018, the longest period between submission and publication has been eight months (a December publication) and the shortest period has been five months (a September publication).
[17] *See* 2021 Universal Service Program and Collections Performance, 2021 Report, p. 1 https://www.puc.pa.gov/media/2145/2021_universal_service_report_final.pdf
[18] *See* https://www.puc.pa.gov/electricity/universal-service/

burden of providing such projections, there is no justification for requiring a utility to produce them as a matter of course in every base rate proceeding.

In sum, the existing regulatory framework is already designed to monitor and assess the performance of utilities with statutory universal service obligations. The Commission reviews and compiles utility data and then publishes a publicly-available annual report. CAUSE-PA has not provided a reasonable basis for the imposition of a separate reporting obligation stemming from a base rate filing which may be duplicative (e.g., data on terminations), more onerous (e.g., five years of "raw" data), or more granular (e.g., projected reconnections) than existing requirements. If a party has a need for universal service information beyond what is already collected and published by the Commission, discovery remains the appropriate tool to obtain such information during a base rate proceeding.

2. Particularized Impact Statements

CAUSE-PA recommends that all utilities operating a rate assistance program be required to provide a statement about the "impact that the proposed rate increase will have on [program participants]."[19] The Companies object to this proposal as the scope of "impact" is unclear, and there are no limits on the usage, income or program level permutations for which an "impact" should be provided.

3. Standardized Rate Filing Formats

CAUSE-PA recommends that "standardized naming conventions and content requirements" along with a "plain language executive summary" of filing contents should be

[19] CAUSE-PA Comments, p. 12.

required for utility rate filings to "improve public accessibility."[20] CAUSE-PA further recommends that "each exhibit should be provided in an individual, searchable PDF…".[21]

The Companies oppose the creation of standardized content requirements or other requirements that would restrict the manner in which a utility is able to utilize (and organize) testimony and exhibits to satisfy the utility's burden of proof under 66 Pa. C.S. § 315. Utilities should, for example, retain the flexibility to use their first witness to guide readers by having that witness introduce key issues and identify the other utility witnesses and key exhibits. Further, the Companies question whether segmenting an initial filing into potentially hundreds of individually-labelled PDFs would improve the public's ability to navigate an initial base rate filing.

4. Customer Notices Governed by 52 Pa. Code § 53.45

As explained previously, the NOPR Order concerns proposed amendments to the Commission's regulations at 52 Pa. Code §§ 53.51-53.56. CAUSE-PA, however, dedicates several pages of its comments to a different regulatory provision – the customer notice obligations under 52 Pa. Code § 53.45. CAUSE-PA recommends a variety of customer notice revisions, including requiring: (1) availability in non-English languages; (2) provision of more detailed bill impact information; (3) provision of information about online access to tariff filings; and (4) electronic distribution to certain customers.[22]

The Commission should reject all of CAUSE-PA's customer notice recommendations because they are outside the scope of this proceeding. The merits and feasibility of any changes to 52 Pa. Code § 53.45 should be assessed in a separate, properly noticed rulemaking proceeding.

[20] CAUSE-PA Comments, pp. 12-13.
[21] CAUSE-PA Comments, p. 13.
[22] CAUSE-PA Comments, pp. 14-16.

B. IECPA Proposals

1. After-The-Fact "Just And Reasonable Rate Review"

The Commission initiated this proceeding to solicit comments on proposed amendments to its regulations at 52 Pa. Code §§ 53.51-53.56, which deal with data filing requirements for "general rate increases" as defined in 66 Pa.C.S. §1308(d).[23] Notwithstanding the limited purpose stated in the NOPR Order,[24] IECPA has submitted comments that, while ostensibly directed to revisions of Sections 53.56(c) and 53.56a(c), attempt to expand this proceeding far beyond its permissible scope.

Specifically, IECPA requests that the Commission establish a comprehensive set of procedures to be implemented *after* the Commission enters its final order in a general base rate case that would: (1) reconcile a utility's projections of future test year ("FTY") and FPFTY plant additions to its "actual test year monthly results";[25] and (2) require, in every general base rate case, an after-the-fact "Just and Reasonable Rate Review Proceeding" to "assess the accuracy of the utility's projections for the FTY and FPFTY" and "adjust the utility's rates according to the accuracy of its costs."[26] As described by IECPA, this elaborate process would be intentionally asymmetrical: the only "adjustments" permitted would be refunds (if a utility's actual plant additions are less than its projections), while a utility's additional investment (and associated increase in fixed costs) would be ignored if its actual plant additions exceeded the projections in its previously adjudicated base rate case.

[23] *See* NOPR Order, p. 9.
[24] *Id.*, pp. 9-10.
[25] IECPA Comments, pp. 4-5.
[26] *Id.*

IECPA tries to justify interjecting its proposal for after-the-fact review by referring to language in Section 315(e) that permits the Commission, in its final rate case order, to require a utility that employs a FTY or FPFTY to submit evidence of the accuracy of its projections and, at the Commission's discretion and after "reasonable notice and hearing," to adjust the utility's rates on the basis of that evidence. IECPA's attempted reliance on Section 315(e) underscores how far outside the scope of this proceeding its proposal lies. There is nothing in the initial or clarified NOPR Order that suggests this is the appropriate proceeding to consider a generic framework for a comprehensive reconciliation and rate adjustment mechanism that would apply to *all* utilities that employ a FTY or FPFTY. The Commission should, therefore, reject IECPA's attempt to divert this proceeding from the important issues directly related to its stated purpose.

While the IECPA's proposal should be rejected for that reason alone, it suffers from other fundamental defects. The part of Section 315(e) IECPA relies upon to justify a mandatory after-the-fact reconciliation of projected-to-actual plant additions and accompanying rate adjustments was *not* added to the Public Utility Code by Act 11 of 2012 ("Act 11"). That language was added to the Code in 1976, when Section 315(e) was amended to permit the use of a FTY. Act 11 simply inserted "or a fully projected future test year" to the pre-existing language that already applied to FTYs.[27] IECPA's comments create the mistaken impression that its proposed after-the-fact reconciliation and rate adjustment mechanism is somehow triggered by Act 11's authorization of

[27] The relevant passage from Act 11 (Act of Feb. 14, 2012, P.L. 72, No. 11) is shown below, with additions made by the Act bolded:

> Whenever a utility utilizes a future test year or a fully projected future test year in any rate proceeding and such future test year **or a fully projected test year** forms a substantive basis for the final rate determination of the commission, the utility shall provide, as specified by the commission in its final order, appropriate data evidencing the accuracy of the estimates contained in the future test year **or a fully projected future test year**, and the commission may after reasonable notice and hearing, in its discretion, adjust the utility's rates on the basis of such data.

FPFTYs when, in fact, that is not the case. To the contrary, the language in Section 315(e) that IECPA relies upon has been part of the Code for over 45 years, and at no point during that interval was it interpreted or applied in the manner IECPA proposes.

IECPA also ignores the plain language of Section 315(e). That section does not mandate a comprehensive, generic framework for post-final order review of FTY or FPFTY estimates. To the contrary, Section 315(e) explicitly states that post-decision evidence of the accuracy of rate case estimates by a utility that employs a FTY or FPFTY may be required only "as specified by the commission in *its final order*" (emphasis added). In short, the language of Section 315(e) itself requires a case-by-case, utility-by-utility determination by the Commission of whether to require "evidence" of the "accuracy" of any FTY or FPFTY "estimates." The statutory language does not authorize, let along require, a generic mandate to apply in every case, as IECPA proposes. For this reason, the Companies' Comments recommend deleting the proposed revisions to Sections 53.56(c) and 53.56a(c) set forth in Annex A of the NOPR Order.[28]

Additionally, and contrary to the IECPA's erroneous interpretation, Section 315(e) properly reflects the finality of a Commission order establishing base rates, as required by Section 316 of the Code, which provides: "Whenever the commission shall make any rule, regulation, finding, determination or order, the same shall be prima facie evidence of the facts found and shall remain conclusive upon all parties affected thereby, unless set aside, annulled or modified on judicial review." Significantly, Section 316 is the statutory embodiment of the commission-made

[28] *See* Companies' Comments, pp. 19-20. As explained by the Companies, the NOPR-proposed filing requirement does not set forth any data or information that could be submitted with a public utility's rate filing. Instead, it purports to establish requirements for submitting data after a base rate proceeding has been completed and a final order issued by the Commission. In prior base rate proceedings where a public utility employed a FPFTY, the parties reached agreement on actual data the public utility should submit, which described the data in a manner tailored to the facts and circumstances of each case, just as Section 315(e) envisions. This approach allows the parties and the Commission to identify the data to be furnished with greater specificity than the general and overly broad request for "actual results experienced in the [FTY/FPFTY]" set forth in the filing requirement proposed in Annex A of the NOPR Order.

rate doctrine established by Pennsylvania's appellate courts.[29] For that reason, a mandatory procedure that ignores the finality of a Commission order by requiring, in every case, a post-final order reconciliation of "estimates" to actual plant additions (or other elements of revenue requirement) cannot be lawfully implemented. This important principle is recognized in Section 315(e) itself, which provides that base rates, once established by a Commission final order, can only be changed "after reasonable notice and hearing." In short, base rates cannot be altered until after a utility has been afforded due process in a proceeding analogous to a rate case in which *all* the elements of a utility's revenue requirement are examined to determine if its rates are just and reasonable. To do otherwise would violate the well-established filed rate doctrine and the prohibition against retroactive and single-issue ratemaking.[30]

Also, as previously noted, IECPA's proposal is unfairly asymmetrical because the potential inaccuracy of estimates relative to actual plant additions (or other costs) could only generate "refunds." But it is equally plausible that a utility's estimates could understate its actual plant investment (or other costs). If that were the case, the corresponding "adjustment" necessary to recognize that the utility may be entitled to increase it rates would be ignored under the IECPA's proposal. The inequity of such asymmetry is evident. It also underscores the complexity of the

[29] *Cheltenham & Abington Sewerage Co. v. Pa. P.U.C.*, 25 A.2d 334, 337 (Pa. 1942) ("[A] commission-made rate furnishes the applicable law for the utility and its customers until a change is made by the commission."). *See also West Penn Power Co. v. Pa. P.U.C.*, 100 A.2d 110, 114 (Pa. Super. 1953) (The Commission "could not give retroactive effect" to a rate determination and "direct refunds to consumers" for charges billed pursuant to "previously approved" rates.).

[30] *See Phila. Elec. Co. v. Pa. P.U.C.,* 502 A.2d 722, 727-728 (Pa. Cmwlth. 1985) (The "general rule" under Pennsylvania law is that "there may be no line by line examination" of "particular items of expense or revenue," and variations in "an isolated item of revenue or expense" may not "without more" support "a Commission order of refund or recovery").

after-the-fact review and rate adjustment mechanism the IECPA is trying to interject in this proceeding, which was never intended to address such out-of-scope issues.[31]

2. Proposed Requirement For Five Years Of Data (Exhibit E – Sections III.B.3 And III.B.4)

IECPA has proposed revisions to Sections III.B.3(d) and III.B.4(d) to more than double (from two years to five years) the historical data to be provided for various elements of the filing utility's balance sheet. This expansion of historical data is neither necessary nor appropriate. Consequently, IECPA's requested expansion of the historical balance sheet data should be rejected. Moreover, these sections should be restructured and refocused in the manner proposed at pages 26-27 of the Companies' Comments.

Sections III.B. of Exhibit E is designed and intended to be a "Summary" that, as its title implies, furnishes an overview of the rate filing, with more detailed information provided in subsequent data filing requirements. The various subsections of Section III.B., as drafted, are inconsistent with the stated purpose of this section because they would require the entire filing to be substantially reproduced in utilities' responses. Accordingly, the Companies have proposed revisions that will provide information appropriate to an overview of the filing: a discussion of the principal reasons for the requested rate change, the revenue requirement effect of major changes driving the need for the proposed increase and summary level data to accompany those explanations (*see* Attachment B to the Companies' Comments, pp. 5-7 for these proposed revisions).

[31] The IECPA's proposal, which is not supported by the plain language of Section 315(e), more closely resembles a form of alternative ratemaking such as those rate mechanisms described in Section 1330 of the Code. That section, not Section 315(e), provides the authority for the Commission to establish procedures for approving an application by a utility for an alternative ratemaking mechanism.

With specific reference to Sections III.B.3(d) and III.B.4(d), the detailed information requested for the "balance sheet" for even two years – let alone five years as IECPA requests – is particularly out of place for a "summary" of the filing. Moreover, as drafted, these filing requirements seek data that will be provided in later filing requirements asking for information about the specific elements that underlie the balance sheet and have a meaningful connection to the development of revenue requirement (such as changes in plant-in-service, accumulated depreciation, accumulated deferred income taxes, and changes in owners' equity). Because all such detailed information is provided elsewhere in the filing requirements, the request for the same information as elements of the balance sheet in the "summary" section of Exhibit B does not serve any useful purpose and should be eliminated.

3. Proposed Requirement For Ten Years Of Data Prior To The HTY (Exhibit E – Sections III.H.6 and III.H.13)

Section III.H.6, as set forth in Annex B to the NOPR Order, states as follows:

> Provide for the HTY, the two years immediately preceding the HTY, the FTY and the FPFTY the following by customer class:
>
> a. Monthly customer counts; and
> b. Monthly customer usage.

Section III.H.13, as set forth in Annex B to the NOPR Order, states as follows:

> Provide a schedule showing sales from all customer classes by unit per month for the HTY and for each of the three years immediately preceding the HTY. Provide the projections for the FTY and the FPFTY.[32]

In its Comments (p. 9), IECPA proposes expanding the scope of Sections III.H.6 and III.H.13 to encompass ten years prior to the HTY (i.e., eleven years of historical data including the

[32] The Companies propose revising Section III.H.13 to provide the requested historical data "for each of the two years immediately preceding the HTY," which would conform the time period established in this section to Sections III.H.1., 5 and 6. *See* Companies' Comments, p. 34.

HTY). Such a dramatic increase in requested historical data is unnecessary and imposes data collection burdens that far outweigh the benefits – if any – to reviewing parties from providing such information.

IECPA asserts that its proposed increase in historical data is appropriate "to fully appreciate customer counts and usage per customer on a longitudinal basis" and provide "more clarity and transparency." However, this purported justification is stated at such a high level of generality that it constitutes no meaningful support at all for IECPA's proposal. Monthly customer counts, monthly customer usage and monthly customer sales by unit for periods as much as ten years prior to the HTY have little or no relevance to test year sales and revenues, nor has IECPA provided any concrete explanation of how those data could be relevant. Given the substantial burden of producing monthly customer counts, usage and sales by unit for ten years, there is no justification for requiring such extensive historical data as a matter of course in the Commission's filing requirements. If a legitimate need for such data should arise in a rate proceeding, discovery is available to obtain that data. IECAP's proposed expansion of the historical period data in Sections III.H.6 and III.H.13 should, therefore, be rejected.

4. Affiliate Charges (Exhibit E – Section III.I.5)

IECPA proposes a revision to Section III.I.5 to require a filing utility to provide "total affiliate charges and the specific charges allocated or assigned to the utility." The request for "total affiliate charges" should not be adopted. As written, this requirement is vague and open-ended because it could encompass information about total affiliate charges within an entire holding company system without regard to whether any of such charges are claimed for recovery by the filing utility. For the same reasons, as explained in Section I.E.1, *infra*, the Companies agree with Aqua's proposal that the Commission strike the requirement for information relating to "all affiliated companies not receiving [an] allocation and explain why there is no allocation."

5. Consolidated Tax Agreements (Exhibit E – Section III.L.34)

Subheading o. at the top of page 11 of IECPA's Comments identifies Section III.M.34 as the filing requirement IECPA proposes to amend by adding "[i]f a consolidated tax agreement is in force with the public utility's parent company, the public utility must identify and provide the agreement." There is no subsection 34 to Section III.M, which, in any event, pertains to rate structure, cost of service and related rate design matters. Apparently, IECPA's proposed revision is addressed to Section III.L.34, which deals with income taxes.

IECPA's proposed revision should be rejected. A consolidated tax agreement allocates the economic effects of federal income tax benefits and liabilities among the companies constituting a "consolidated group" that is permitted to file a consolidated federal income tax return. *See* Section 1504(a) of the Internal Revenue Code. Since Section 1301.1 was added to the Code by Act 40 of 2016, consolidated income tax adjustments are not authorized for ratemaking purposes in Pennsylvania and each utility's federal income tax liability must be determined on a "stand alone" basis. Accordingly, consolidated tax agreements are not relevant to the calculation of income taxes or the determination of any other element of a utility's revenue requirement, and there is no valid reason to require submission of such agreements as part of the Commission' filing requirements. As more fully explained in the Companies' Comments at page 42, because of the enactment of Section 1301.1, subsection 34 of Section III.L. is irrelevant in its entirety and should, therefore, be deleted.

C. OCA Proposals

1. Additions to Rate Base-related Filing Requirements (Exhibit E – Section III.D.11 and III.D.16)

OCA proposes the following additions to rate base-related filing requirements: (1) in the plant addition / retirement schedule required under Section III.D.11, provide the original and

budgeted cost broken down by allowance for funds used during construction ("AFUDC") and non-AFUDC components; and (2) in the plant-in-service schedules required by Section III.D.16, provide projected monthly plant balances for the FTY and FPFTY.[33]

The Companies oppose the first recommendation as unduly burdensome. OCA's proposal could be interpreted to require the filing utility to identify each item of plant included in its plant in service for the FTY and FPFTY or estimated to be recorded for plant not yet in service and provide the amount, by plant addition, of the AFUDC recorded or estimated. This process would require substantial effort by the utility, and the information it appears to request would not have sufficient value to require its submission as part of a filing for every utility in every case. If this information were to become relevant (for example, if particular large plant additions are claimed in rate base), properly focused discovery is the appropriate tool to develop information for analyzing the utility's claims.

The Companies also oppose OCA's proposal to require the provision of monthly plant balances for the FTY and FPFTY for the reasons discussed in Section I.D.1 *infra*.

2. Additions to Operating Revenue-related Filing Requirements (Exhibit E – Section III.H.4 and III.H.7)

OCA proposes that utilities be required to provide a redline of their full tariff, not just the pages that the utility is proposing to change, in order to provide reviewing parties with "full context". [34] The PUC should reject this requirement because it is neither necessary nor appropriate. The purpose of a tariff or tariff supplement redline is to display the changes proposed by the utility. If a party wishes to review tariff provisions which are not the subject of utility proposals, the utility's complete tariff is publicly available online and can be easily obtained.

[33] OCA Comments, pp. 6-7.
[34] OCA Comments, pp. 8-9.

Further, complete tariffs can be over 100 pages and requiring a full tariff redline is not consistent with the Commission's desire to streamline filing requirements.

OCA also proposes that two additional years of projections for "growth patterns of usage and customer numbers" be provided as part of the requirement in Section III.H.7.[35] Consistent with the Companies' Comments (p. 35), the Companies believe that this data requirement should be deleted in its entirety. It is unclear what "growth patterns" means, and the previous requirement (Section III.H.6) already addresses historical, FTY and FPFTY customer usage and customer-count information.

3. Additions to Operating Expense-related Filing Requirements (Exhibit E – Section III.I.5)

OCA proposes the following additions to operating expense-related filing requirements: (1) in the list of charges by affiliates required under Section III.I.5, provide each component and amounts comprising the expense as well as detail the initial source of and reasoning for each charge; and (2) in the claimed expense schedules required under Section III.I.8, provide an explanation of variances of 15% or more between the HTY and two preceding 12-month period as well as for the FTY and FPFTY.[36]

The Companies object to these proposals as unduly burdensome. Developing affiliate charge breakdowns and providing explanatory narratives for all affiliate charges as well as for all expense variations of 15% or more would require substantial utility effort and would be unlikely to produce information that is material to a base rate request, especially if the expense item itself is relatively small. If a party is interested in specific affiliate charges or particular expense variances, the party may issue such discovery during the base rate proceeding.

[35] OCA Comments, p. 9.
[36] OCA Comments, pp. 9-10.

4. Additions to Payroll, Employee Benefits and Retiree Costs-related Filing Requirements (Exhibit E – Section III.J.1)

OCA proposes to make several additions to the employee count information required under Section III.J.1, including requiring: (1) detailed information about individual historic variances; (2) detailed information about the cause of "employment changes"; and (3) copies of all wage, salary, incentive compensation, benefits, leave, insurance, pension or similar-type documents.[37]

The Companies object to these additions as both burdensome and vague. The identification and provision of information about individual historic vacancies would require substantial utility effort and is not necessary in light of the information that will already be provided as part of Section III.J.1(a) and (b). Further, the scope of "employment changes" is unclear and it could be very burdensome for the utility to investigate the cause of each and every "employment change." Finally, copies of all payroll, employee benefits and retiree plan documents should not routinely be required for every base rate filing. Discovery is available to obtain a particular plan document if that document becomes relevant in a particular case, subject to applicable discovery rules and appropriate protection of the confidential and proprietary nature of such information.

[37] OCA Comments, pp. 10-11.

5. Additions to Rate Structure, Cost of Service Allocation Study, Bill Frequency Analysis and Special Rate Contracts-related Filing Requirements (Exhibit E – Section III.M.1.c.iii)

The OCA proposes that utilities estimate the number of customers enrolled in the utility's low-income programs whose charges will be increased or decreased as a result of the requested change in base rates.[38] The Companies object to this recommendation as unduly burdensome. As many low-income programs have benefits that vary by income tier, a very granular projection not only of potential enrollees, but also the projected income of those enrollees, could be required by the utility. A party may use discovery to obtain information about bill impacts for customers with different income, usage and program enrollment characteristics.

OCA also proposes that EDCs and NGDCs be required to provide copies of their most recently filed: (1) quality of service data; and (2) universal service reporting data. OCA states that there is "some lag" between the filing of such data and the data being made publicly available.[39] For the reasons discussed in Section I.A.1, the Companies disagree that there is a material "lag" in the public release of universal service data. In addition, quality of service data (e.g., consumer complaints and payment arrangement requests) is published on a quarterly basis by BCS with very limited "lag" (e.g., data for the third quarter of 2022 was available in the fourth quarter of 2022).[40] Because existing regulatory frameworks already appropriately provide for the collection and publication of quality of service and universal service data, the OCA's recommendations should be rejected.

D. OSBA Proposals

[38] OCA Comments, p. 12.
[39] OCA Comments, pp. 11-12.
[40] https://www.puc.pa.gov/filing-resources/reports/consumer-activities-report-evaluation/

Preceding its recommendations on specific filing requirements, the OSBA offers "General Comments and Caveats" pertaining to the Commission's NOPR. The Companies agree with the sentiments expressed on page 2 of OSBA's Comments that establishing filing requirements requires "balance" because, although rate proceedings involve numerous complex issues, "not all proceedings involve all these issues." Consequently, the OSBA made points consistent with those in the Companies' Comments (*see* pp. 9-11) in stating:

> The Commission should recognize that it should not attempt to require every public utility in every base rate proceeding to provide information on every issue that has ever arisen in a proceeding. Base rate proceedings involve an extensive discovery process, which is better suited to addressing unusual issues that arise in specific proceedings.

1. Post-Final Order Information Requirement (Section 53.56(c))

As drafted in Attachment A of the NOPR Order, Section 53.56(c) states as follows:

> Following the completion of the rate proceeding, if the public utility's FPFTY data forms a substantive basis for the Commission's final rate determination, the public utility shall file with the Commission and serve on the parties of record in the same docketed proceeding in which the final rate determination was entered, the public utility's actual results experienced in the FPFTY. In this filing, the public utility shall provide appropriate data evidencing the accuracy of its estimates contained in the FPFTY. This filing shall be submitted within 30 days of the end of the last quarter of the FPFTY. If the results are not then available, the public utility shall file a status report indicating when the results will be available and file the results as soon thereafter as available.

The OSBA supports the filing requirement set forth in Section 53.56(c) and proposes expanding the required data set to include "average" as well as "year-end" FPFTY rate base (even where the utility's rate case is based on year-end rate base) as well as "all aspects of the estimated

revenue requirement."[41] The Companies oppose the OSBA's recommendation. The Companies also recommend that Section 53.56(c) and Section 53.56a(c)) be deleted in their entirety. As explained in the Companies' Comments (pp. 19-20) and in Section I.B.1., *supra*, the submission of post-final order data comparing a utility's projections to its actual performance at the conclusion of the FPFTY should be addressed by agreement of the parties or, absent such an agreement, by the Commission in its final order. By so doing, the information required may be properly tailored to the specific facts and circumstances in each case. This approach has been employed by the Companies and other utilities in many prior rate cases since the enactment of Act 11. It is also the approach that properly conforms to the plain language of Section 315(e) (*see* Section I, B.1, *supra*).

Significantly, the OSBA mistakenly assumes that resolving a rate case by a "black box" settlement would preclude the parties (by agreement) or the Commission (by a company-specific final order approving a settlement) from requiring the submission of post-FPFTY data to assess the accuracy of FPFTY projections. This is clearly not the case. Parties have been including provisions for post-final order comparisons of a utility's projections to its actual FPFTY performance in Joint Petitions for Settlement for many years since Act 11 was enacted, and those provisions have been uniformly approved by the Commission.[42] Additionally, because Section

[41] The OSBA's insistence on the presentation of "average" rate base data reflects its contention that "a public utility's revenue requirement for the FPFTY should be based on the average rate base for that calendar period as well as the forecast volumes, revenues, and costs for that calendar period" (OSBA Comments, p. 2). However, the Commonwealth Court has definitively ruled to the contrary. *McCloskey v. Pa. P.U.C.*, 225 A.3d 192, 207 (Pa. Cmwlth. 2020) ("We may not disregard the General Assembly's intent when it is clearly stated within the statutory language in question. 1 Pa. C.S. § 1921(b). The Commission reviewed this language and concluded . . . that a year-end methodology could be applied to the FPFTY for UGI's rate case. This interpretation is supported not only by Section 315(e)'s plain language, but also by the purposes of Act 11, which were to mitigate the risks of regulatory lag and to aid in the resolution of the aged and aging nature of Pennsylvania's utility infrastructure."); *see also Pa. P.U.C. v. UGI Utilities, Inc. – Electric Division*, Docket No. R-2017-2640058 (Order entered Oct. 25, 2018).

[42] For example, Paragraph 18 of the Joint Petition for Settlement of Met-Ed's 2016 base rate case at Docket No. R-2016-2537349, which employed a FPFTY ended December 31, 2016, provides as follows (consistent with provisions in the settlements of the other Companies' 2016 base rate cases):

53.56(c) does not set forth any data or information that could be submitted with a public utility's rate filing, it is not properly within the scope of rate case *filing* requirements and, therefore, should be addressed on a case-specific and company-specific basis. *See* Companies' Comments, pp. 19-20.

2. Rate Design (Intra-Class Effects) (Exhibit E – Section III.M.2.h)

As previously noted, the OSBA cogently observed in its General Comments and Caveats that the Commission's filing requirements should not attempt to address "every issue that has ever arisen" in a rate proceeding. The OSBA, however, does not recognize that its previously expressed caveat applies to its recommendation to require additional supporting data for rate design nuances within particular rate schedules because of concerns about possible "intra-class" differentials that arose in some prior rate cases.

A blanket imposition of such a requirement is not justified where its likely application in rate proceedings is limited to individualized rate design characteristics internal to specific rate schedules of a few utilities. It is not appropriate to burden all utilities with the obligation to submit detailed information about specific rate schedule distinctions that may or may not give rise to a material "intra-class rate differential." This is another area where, as the OSBA noted in its

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> On or before May 1, 2017, the Company will provide to the statutory advocates an update to Met-Ed Exhibit RAD-47, which will include actual capital expenditures, plant additions, and retirements by month for the twelve months ended December 31, 2016. On or before May 1, 2018, the Company will provide to the statutory advocates an update to Met-Ed Exhibit RAD-46, which will include actual capital expenditures, plant additions, and retirements by month for the twelve months ended December 31, 2017. In the Company's next base rate proceeding, the Company will prepare a comparison of its actual expenses and rate base additions for the twelve months ended December 31, 2017 to its projections in this case. However, it is recognized by the Joint Petitioners that this is a black box settlement that is a compromise of Joint Petitioners' positions on various issues.

General Comments and Caveats, discovery is the proper vehicle for developing information if a legitimate issue about a particular utility's rate design were to emerge. As for the OSBA's claim that other utilities were not as forthcoming in responding to discovery on this issue as the OSBA desired, the correct approach is to pursue the remedies authorized by the Commission's discovery regulations – not to impose an across-the-board filing requirement on all utilities because of the alleged recalcitrance of only a few. The OSBA's recommendation should be rejected.

3. Special Rate Contracts (Exhibit E – Section III.M.4)

Like the proposal addressed in the preceding section, the OSBA's recommendation to require support for competitive alternatives available to customers served on special rate contracts in every rate filing by every utility is unnecessary. This recommendation would, at most, apply to a relatively small number of customers of a few utilities. If support for competitive alternatives were to become a material issue in a particular case, it should be explored through discovery and not elevated to the status of a comprehensive filing requirement.

Moreover, competitive alternatives implicate information that is highly confidential to both the utility and the customers involved. A requirement to submit this sensitive information with every filing creates significant, but avoidable, issues around the preservation of confidentiality. While a utility may seek confidential treatment of information submitted with its initial filing, the better approach is to address such matters through discovery after all parties have had the opportunity to enter into appropriate confidentiality agreements or a comprehensive Protective Order has been entered.

E. Support for Other Proposals

Multiple parties recommended that any amendments resulting from this proceeding be

effective no sooner than six months following the entry of a final order by the Commission.[43] The Companies support this recommendation and agree that utilities will need sufficient time to incorporate amended filing requirements into their rate case preparation processes. The Commission should seek to avoid a situation in which a public utility prepares a rate case, and then has to substantially revise it prior to filing due to amended requirements.

The Companies support for additional proposals made by other parties is discussed in the following subsections.

1. Aqua (Exhibit E- Section III.D.2 and Section III.I.5(d))

Aqua proposes to strike the requirement in Section III.D.2 that a utility explain whether each project will be funded by the utility's Distribution System Improvement Charge ("DSIC").[44] The Companies agree with Aqua that issues pertaining to the use of the DSIC are handled in separate DSIC proceedings and the Companies further note that a utility may not always know at the time of an initial base rate filing which projects will be funded by the DSIC. For these reasons, Aqua's proposed deletion should be accepted by the Commission.

Aqua also proposes to strike a portion of the requirement in Section III.I.5(d) seeking information about affiliated companies to be consistent with the current requirement in Exhibit D, Part III.6 of the existing filing requirements.[45] The Companies agree with Aqua that it is appropriate to strike the language seeking information related to charges that are not being claimed by the utility because it is not relevant to costs actually claimed by the filing utility.

2. EAP (52 Pa. Code § 53.51)

[43] *See, e.g.,* Duquesne Comments, p. 7; NAWC Comments, p. 6; PAWC Comments, p. 6; Peoples Comments, p. 4.
[44] Aqua Comments, p. 10; Aqua Annex B, p. 7.
[45] Aqua Comments, p. 14; Aqua Annex B, pp. 22-23.

EAP proposes that the Commission modify the filing requirements in 52 Pa. Code § 53.51 to expressly allow electronic filing of an initial base rate filing.[46] The Companies agree that the Commission's rules should explicitly permit this filing option, which saves utilities and the Commission time and resources and facilitates sharing filing information with key stakeholders.

3. PPL Electric (Exhibit E – Section III.D.2; 52 Pa. Code § 53.51)

PPL Electric proposes: (1) to strike the requirement in Section III.D.2 for a utility to explain whether each project will be funded by the utility's DSIC;[47] and (2) that the Commission amend 52 Pa. Code § 53.51 to expressly allow electronic filing and service of an initial base rate filing.[48] The Companies support PPL's recommendations for the reasons described in Subsections E.1 and E.2 *supra*.

4. UGI (Exhibit E – Section III.M.2(d))

UGI proposes to strike the cost-of-service allocation requirement in Section III.M.2(d) asking the filing utility to provide "a statement along with the necessary data showing how the rate structure is fair and equitable to all customer cases."[49] As UGI notes, a utility must demonstrate that its proposed rates are "just and reasonable" in accordance with 66 Pa. C.S. § 315(a). The Companies agree with UGI that the proposed legal standard language in Section III.M.2(d) ("fair and equitable") is inconsistent with the applicable statutory standard and therefore this provision should be stricken.

5. Veolia (Exhibit E – Section III.B.10)

Section III.B.10 requests information related to "major" additions to, or removal of, plant or facilities. Veolia proposes that "major" be defined as any specific plant addition or retirement

[46] EAP Comments, pp. 6-7.
[47] PPL Electric Comments, p. 6.
[48] PPL Electric Comments, p. 7.
[49] UGI Comments, pp. 8-9.

representing more than 5% of the change in plant in service since the last rate case filing.[50] The Companies believe that the proposed definition is appropriate and will provide additional clarity to filing utilities.

II. CONCLUSION

The Companies appreciate the opportunity to comment on the NOPR Order and accompanying Annex A and Annex B and, for the reasons discussed in the Companies' Comments and the foregoing Reply Comments, ask that the Commission adopt the Companies' recommended changes to Annex A and Annex B.

Respectfully submitted,

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[50] Veolia Comments, p. 2.

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true and correct copy of the foregoing document upon the individuals listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

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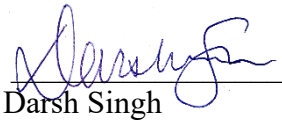

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