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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 a Fully Projected Future Test Year, 52 Pa. Code § 53.51-53.56a;
L-2012-2317273**

Dear Secretary Chiavetta:

Please find UGI Utilities Inc. - Gas and Electric Divisions' Reply Comments to the Clarified Notice of Proposed Rulemaking Order in the above-referenced docket. If you have any questions, please contact me directly at (610) 992-3763.

Very truly yours,

/s/ Michael S. Swerling
Michael S. Swerling
Counsel for UGI

Enclosure

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**UGI UTILITIES, INC. – GAS AND ELECTRIC DIVISIONS’
REPLY COMMENTS TO THE COMMISSION’S CLARIFIED NOTICE OF
PROPOSED RULEMAKING ORDER**

I. INTRODUCTION

On August 24, 2022, the Pennsylvania Public Utility Commission (“Commission”) entered a Clarified Notice of Proposed Rulemaking Order (“Clarified NOPR”) in Docket No. L-2012-2317273¹, proposing revisions and amendments to 52 Pa. Code § 53.51-53.56. These new requirements specified the information and data for submission with rate change filings in excess of \$1 million (“Rate Filings”), based on a Fully Projected Future Test Year (“FPFTY”). Initial comments were filed by interested parties on November 15, 2022. UGI Utilities, Inc. – Gas and Electric Divisions (collectively referred to herein as “UGI” or the “Company”) provide the following reply comments² in response to the Clarified NOPR.

In addition to its reply comments, below, UGI encourages the Commission to adopt an effective date in its Final Rulemaking that provides utilities enough time to adjust their operations and practices to comply with these new regulations. UGI requests that the Commission’s final rules become effective one year from the date of adoption (i.e., one year

¹ See *Use of Fully Projected Future Test Year, 52 Pa. Code Chapter 53.51-53.56a*, Docket No. M-2012-2293611 (NOPR entered August 24, 2022).

² By Secretarial Letter dated October 14, 2022, the Commission extended the reply comment deadline to January 31, 2023.

after the entry date of the Commission’s final order in this proceeding). Having the filing requirements effective for rate cases filed on or after 12 months after the new regulations are established will not disadvantage current or upcoming rate case proceedings, which have been progressing well without these expanded FPFTY filing requirements. This will provide utilities proper time to comport to the new filing requirements. Utilities begin preparing for rate filings many months in advance of the actual filing date. The new filing requirements will significantly increase the burden on utilities, and adjusting to the new requirements will increase the time to prepare the filing as companies must modify internal processes that have been in use for decades. Significant advance notice of the effective date is necessary in order for utilities to modify their practices to meet the Commission’s new requirements.

II. COMMENTS

A. UGI Supports the Reply Comments of the Energy Association of Pennsylvania

UGI’s reply comments are intended to further the Commission’s efforts to: (1) standardize and streamline the Rate Filing process; and (2) reduce regulatory burdens and costs. Moreover, UGI fully supports the reply comments filed by the Energy Association of Pennsylvania (“EAP”) in response to the Clarified NOPR. UGI’s reply comments to the Clarified NOPR supplement those filed by EAP.

1) Data (Preceding the Historic Test Year)

Some of the revisions proposed by commenters, if approved, would require utilities to include extensive amounts of information in their initial Rate Filings, contrary to the intended purpose of this rulemaking. During rate cases, UGI may receive some narrowly-tailored discovery requests seeking relevant historic data. Normally, such requests involve 2-3 years of

historic data immediately preceding the Historic Test Year (“HTY”). However, in many instances, the Industrial Energy Consumers of Pennsylvania (“IECPA”) would have utilities file 5-10 years’ worth of historic data in their initial Rate Filings. Specifically, as shown in Table 1 below, IECPA recommended that public utilities provide historic data in 5-year increments for five elements (i.e., Income Statements, Cash Flow Statements, Debt-Service Coverage Ratio, Balance Sheets, and Payroll Expenses) and 10-year increments for three elements (i.e., monthly Customer Counts, Usage, and Sales). UGI agrees with EAP that requiring “additional years of filing data are [not] always necessary or relevant” and that the Commission should reject “IECPA’s request to more than double the historical data to be provided for various elements...” EAP Reply Comments at 5. In total, IECPA would have utilities submit 150% to 400% worth of additional historical data with each Rate Filing.

Table 1. Historic Data to be Included in Rate Filings

	Requirement	Proposed Term for Historic Data	IECPA Term	Additional Term of Historic Data
B. Summary of Filing				
III.B.3	Provide the following schedules at Present Rates: Income Statement, Cash Flow Statement, Debt-Service Coverage Ratio, Balance Sheet.	2 years immediately preceding the HTY	5 years immediately preceding the HTY	3 years
III.B.4	Provide the following schedules at Proposed Rates Rates: Income Statement, Cash Flow Statement, Debt-Service Coverage Ratio, Balance Sheet.	2 years immediately preceding the HTY	5 years immediately preceding the HTY	3 years
G. Income Statement & Cash Flow Statement				
III.G.4	Provide comparative income statements with explanations for variances greater than 15% of the summary level account type.	2 years immediately preceding the HTY	5 years immediately preceding the HTY	3 years
H. Operating Revenues				
III.H.6	Provide by customer class: monthly customer counts and usage.	2 years immediately preceding the HTY	10 years immediately preceding the HTY	8 years
III.H.13	Provide sales from all customer classes by unit per month.	3 years immediately preceding the HTY	10 years immediately preceding the HTY	7 years
J. Payroll, Employee Benefits & Retiree Costs				
III.J.2	Provide payroll expense by union, nonunion and temporary employee categories.	2 years immediately preceding the HTY	5 years immediately preceding the HTY	3 years

Much of this information is provided on a Uniform System of Accounts (“USoA”) basis in the annual utility reports filed pursuant to 52 Pa. Code § 48 (regarding the filing of annual financial reports). Including voluminous, more detailed, historic information in Rate Filings comes at a cost. All of this data needs to be gathered, tabulated, reviewed, discussed and explained. Such an effort wholly thwarts the Commission’s goal to streamline the initial Rate Filing process and reduce filing costs, which are borne by ratepayers. Being that the annual financial reports already contain much of this data, a more efficient process would have

stakeholders use the rate case discovery process to ask questions about this previously filed information.

Additionally, CAUSE-PA proposed adding many provisions to 52 Pa. Code § 53.53(a) regarding the impact that rate increases would have on low-income customers. Most importantly, CAUSE-PA seeks the raw data that constitutes the Commission’s annual Universal Services Programs and Collection Performance Reports (“Reports”). (CAUSE-PA Comments at 10). Combining the additional historic low-income data proposed by CAUSE-PA with IECPA’s proposals is more burdensome to utilities and costly to customers.

Finally, UGI reiterates its support for EAP’s proposal to standardize the period in which utilities must submit data prior to the HTY to a two year look back. UGI Comments at 4. Doing so furthers the Commission’s goal of streamlining the filing process and reducing regulatory burdens and costs. To the extent that parties wish to see older relevant data, they can request it in discovery and submit more narrowly tailored requests that are relevant to their specific issues.

2) Just and Reasonable Rate Review Proceeding

In its comments, IECPA recommended that after utilities submit data evidencing the accuracy of its Rate Filing estimates when using a FTY or FPFTY (pursuant to Section 315(e)), the Commission shall “initiate a ‘Just and Reasonable Rate Review Proceeding’ to assess the accuracy of the utility’s projections for the FTY or FPFTY.” IECPA Comments at 4-5. IECPA believes that an additional rate case proceeding (after the conclusion of the FTY or FPFTY) is warranted to ensure that utilities do not over-recover against their rate case estimates. Moreover, IECPA poses revisions to §§ 53.56(c) and 53.56a(c) that would allow for refunds if a utility were found to be over-recovering, but not collections if the utility under-recovered. IECPA does not

believe that rates should be increased if utilities were in a state of under-recovering their costs. IECPA Comments at 5.

UGI agrees with EAP's strong opposition to re-litigating base rate cases as suggested by IECPA. EAP Reply Comments at 4. UGI also agrees with EAP's reasoning that 66 Pa. C.S. § 315 provides the Commission with the authority and discretion to review the accuracy of FPFTY costs without the need for a second rate case hearing. *Id.* Moreover, IECPA seeks a more stringent legal standard than the plain language of Section 315(e) provides. Pursuant to Section 315(e), utilities are required to provide data evidencing the accuracy of FTY or FPFTY estimates when the FTY or FPFTY forms a substantive basis for the final rate determination made by the Commission. Thereafter, the Commission "may after reasonable notice and hearing, in its discretion, adjust the utility's rates on the basis of such data." [Emphasis added]. Ignoring the discretionary aspect of the Commission's review authority, IECPA proposes revisions to §§ 53.56(c) and 53.56a(c) such that the Commission "shall" conduct a hearing to determine if a utility is over-recovering based on its FTY or FPFTY estimates. IECPA Comments at 5. Section 315(e) does not envision a hearing in each instance a FTY or FPFTY is used. Instead, it is within the Commission's discretion to determine if a hearing should occur to review and compare actuals to FTY or FPFTY estimates. Similarly, the Commission should reject IECPA's attempt to insert a strict refund provision in §§ 53.56(c) and 53.56a(c) where no such language exists in 66 Pa. C.S. § 315(e).

Additionally, the above language from Section 315(e) has been in effect since October 7, 1976 when use of a FTY was permitted. See *Re: Pennsylvania Gas Association*, Docket No. P-910520 (Opinion and Order entered Jan. 13, 1994). ("PGA Case"). In the PGA Case, PGA attempted to eliminate the requirement in Section 53.56 (b) that utilities, using a FTY, submit

actual results during that FTY period. In the PGA Case, the Office of Small Business Advocate (“OSBA”) countered PGA’s position arguing in part that:

“...(4) the PGA’s position would lead to the absurd result of not one, but two rounds of litigation for the Commission to develop new base rates; and (5) the PGA’s interpretation may create a conflict with subsection 1310(a) of the Code because the new rates would be only temporary until the Commission adjusted those rates based on the utility’s later submission of experienced data after the Commission’s final order.”

Moreover, the Office of Consumer Advocate (“OCA”) argued, in part, “...the PGA’s proposal would turn every Commission final rate order into a temporary rate order, essentially repealing the Commission-made rate doctrine in Pennsylvania.” While the current rulemaking involves the FPFTY, the concerns raised by OCA and OSBA in the PGA case (as quoted herein) were approved by the Commission and remain valid – use of a FTY or a FPFTY should not: (1) result in two rounds of litigation to establish rates; and (2) disturb the Commission-made rate doctrine.

B. Annex A to the NOPR

1) 52 Pa. Code § 53.52(a)(4)

The OCA proposes that utilities file statements showing the effect of the rate change on customers, including the impact on Residential customers at typical low, medium and high usage levels. UGI believes that this proposal should be rejected for two reasons. First, there is no defined “typical” low, medium, or high use customer, and any attempt to construct what those use levels would look like would require further delineation by the Commission. Second, UGI believes that the requirements will include the data necessary for the OCA to identify the impacts at any and all use levels associated with existing customers.

2) 52 Pa. Code § 53.53 (a.1)

In its comments, OCA questioned if the Commission intended § 53.52(a.1) to require that utilities' initial Rate Filings using a FPFTY also should include projections following the FPFTY. OCA Comments at 4-5. OCA recommended that this section be revised to accurately capture the Commission's intent. UGI reiterates its comments to this section. Specifically, where a utility is basing its proposed rate increase on a FPFTY, there is no need to provide data which falls beyond the FPFTY (in the initial Rate Filing). Requiring utilities to include projected estimates beyond the FPFTY introduces unnecessary data beyond the test year data used to support the first year of new rates. UGI Comments at 5. Moreover, requesting data beyond the FPFTY may not provide a snapshot of time that reflects the typical conditions, revenues, expenses, and capital costs of the utility, and may be beyond the formal budgeting cycle used by a utility. Id at 5-6. Therefore, this future-looking information, which may not be available, would be of little value in determining the reasonableness of the revenue requirements of the utility during the FPFTY and would likely result in FPFTY rates not being supported by FPFTY specific information. Id. at 6. Accordingly, this proposal should be removed from the proposed regulations.

3) 52 Pa. Code § 53.53(c)

OCA proposes that § 53.53(c) be revised to require that utilities file electronic worksheets supporting testimony in their initial Rate Filings with formulas. UGI reiterates its initial comments here stating that it may not be feasible to do so upon filing, especially with the more extensive filing requirements under consideration in these proposed regulations. UGI Comments at 11-12. UGI requests that utilities be given flexibility to either upload these documents to the Commission's secured site or provide parties access to these documents by way of the utility's

secured process. Id. UGI also requests that utilities be given at least seven business days post-filing to upload these documents. Id.

Additionally, some of the underlying Excel spreadsheets supporting specific public elements of the case (for the revenue requirement, rate structure or cost allocation) may include Confidential information that should only be provided to and accessible by parties that have executed a non-disclosure agreement or an approved Motion for Protective Order. Id. To the extent utilities are required to file such Confidential information in the Commission's secured site, access can only be provided to parties under executed non-disclosure agreements or Protective Orders. Id.

4) 52 Pa. Code § 53.56(a)

a. FPFTY Actuals Filings – Proposed Components

According to the OSBA, utilities should be required to file FPFTY actuals for comparison against as-filed rate case projections (pursuant to 66 Pa. C.S. § 315(e)), regardless of whether the rate case resulted in a black box settlement. OSBA Comments at 3. Additionally, OSBA proposes that utilities provide actuals (for the FPFTY) that include all aspects of the estimated revenue requirement, including average and year-end rate base, volumes by rate class, rate revenues by rate class, miscellaneous revenues, operating, maintenance, administrative and depreciation expense – including explanations for material variances. Id.

First, OSBA overlooks relevant language in Section 315(e), which states that FPFTY actuals only need to be filed (1) when the FPFTY forms a substantive basis for the final rate determination; and (2) as specified by the Commission's final order in the rate case. Nothing in Section 315(e) requires FPFTY actuals to be compared against initial estimates contained in a Rate Filing.

Second, as stated in UGI's initial comments, with black box settlements, the Commission's final order does not necessarily include final rate determinations for all of the items listed above by OSBA. UGI Comments at 7. Third, there is no reason for the Commission to accept OSBA's proposal, because it is always within the Commission's discretionary authority (as specified in Section 315(e)) to decide in final rate case orders if FPFTY results must be reported and, if so, what results must be reported. Accordingly, FPFTY actuals only need to be filed when the FPFTY forms a substantive basis for the final rate determination (i.e., in non black-box settlement situations); and as specified by final Commission order in the subject rate case.

b. FPFTY Actuals Filings – Proposed Filing Deadline

As previously stated IECPA, like OSBA, proposes that utilities be made to file FPFTY actuals to determine the appropriateness of as-filed FPFTY estimates in rate cases. As proposed by the Commission, § 53.56a.(c), would require any FPFTY actuals (if required under Section 315(e)), to be filed within 30 days of the end of the last quarter of the FPFTY. If the actuals are not then available, the utility would file a status report indicating when the results would be ready for filing. IECPA proposed reducing the 30 day deadline to 15 days. IECPA Comments at 5.

IECPA's proposal would have the Commission adopt more stringent requirements than those already used by the Commission in other similar filings. UGI notes that the Commission uses a 60 day filing period for utility Annual Asset Optimization Plans ("AAOP"), which report on a portion of the prior year's plant placed in service. The Commission should not use a shorter deadline for the more complicated end of test year reporting than it uses for the AAOP.

UGI supports EAP's proposed deletion of this filing requirement and in the alternative a 90 day period to file such information after the end of the last quarter of the applicable test year. EAP Comments at 10. This deadline would ensure that utilities have adequate time to close their books for the applicable test year and perform the appropriate comparisons. Accordingly, a 90 day period is reasonable, if the Commission determines in a final rate case order that such information must be filed.

5) 52 Pa. Code § 53.45

While not contemplated in this Clarified NOPR, CAUSE-PA seeks to amend 52 Pa. Code § 53.45 (Notice of new tariffs and tariff changes), to better inform customers about the reasons for and impact of proposed rate increases. CAUSE-PA Comments at 14. UGI agrees with the EAP's reply comments that this CAUSE-PA proposal is outside the scope of the Clarified NOPR. EAP Reply Comments at 13.

C. Annex B to the NOPR

1) Section III.I.5

IECPA requested provisions in III.I.5 related to the inclusion of affiliate charges in initial Rate Filings. IECPA proposed reporting total affiliate charges and individual affiliate charges allocated or assigned to the utility. IECPA Comments at 9. OCA similarly proposed reporting the components and amounts of affiliate charges, including details of the initial sources and reasons thereof. OCA Comments at 9-10.

The requested level of detail for this information is already adequately addressed in Rate Filings. For UGI Gas, this information currently is provided in response to current III.A.2 and

SDR-RR-51. For UGI Electric, this information currently is provided in response to current II-D-8. In each instance, the Company provides total affiliate charges by year for the 3 test years and 2 years immediately preceding the HTY. This level of information is adequate for Rate Filings considering that the support for the charging structures are set forth in Commission-approved affiliate agreements, the agreements and charges are subject to regular audit by the Commission's Bureau of Audits in Management and Operations Audits, and if an affiliate charge is of interest to a particular party, it can obtain additional detail through discovery.

2) Section III.M.34

IECPA proposes that utilities provide in their initial Rate Filings copies of consolidated tax agreements with their Parent. IECPA Comments at 11. The requested agreements include Confidential information that should only be provided to and accessible by parties that have executed a non-disclosure agreement or an approved Motion for Protective Order. To the extent utilities are required to file such Confidential information in the Commission's secured site, access can only be provided to parties under executed non-disclosure agreements or Protective Orders.

3) Other Information

OCA requests the inclusion of other materials (customer surveys per § 54.153, USECPs per § 54.75, and funding for USECPs per § 62.5) not contemplated in the existing or proposed filing requirements. Specifically, OCA requests that utilities be made to file the same data in two different Commission proceedings. Regarding § 54.153's Customer Service Performance Report data (i.e., customer telephone access, billings not rendered, meter no reads, and dispute responses), utilities report this information to the Commission and an annual industry report is

published by the Commission. Regarding § 54.75's requirement that utilities file USECPs, these plans are publicly reported and interested parties have an opportunity to intervene in USECP proceedings to raise any issues or concerns. Regarding § 62.5's requirement for gas utilities to report the extent to which USECPs are appropriately funded, this data is submitted annually to the Commission. Utilities should not be made to double report on these data points. Nor should they have to litigate these issues in different proceedings.

III. CONCLUSION

The Company appreciates the opportunity to provide reply comments to the Clarified Notice of Proposed Rulemaking Order and asks that the Commission favorably consider its reply comments to this rulemaking.

Respectfully submitted,

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