



COMMONWEALTH OF PENNSYLVANIA

December 21, 2015

E-FILED

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

**Re: Implementation of Act 11 of 2012
Docket No. M-2012-2293611**

Dear Secretary Chiavetta:

I am delivering for filing today the Comments of the Office of Small Business Advocate on the Tentative Supplemental Implementation Order, in the above-captioned proceeding. Copies have been served today as required in said Order.

If you have any questions, please do not hesitate to contact me.

Sincerely,

A handwritten signature in cursive script that reads "Elizabeth Rose Triscari".

Elizabeth Rose Triscari
Deputy Small Business Advocate
Attorney ID No. 306921

Enclosure

cc: Commission Act 11 Resource Account (ra-Act11@pa.gov)
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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Implementation of Act 11 of 2012 : Docket No. M-2012-2293611

**COMMENTS OF THE OFFICE OF SMALL BUSINESS ADVOCATE
ON THE TENTATIVE SUPPLEMENTAL IMPLEMENTATION ORDER**

I. INTRODUCTION

On November 5, 2015, the Pennsylvania Public Utility Commission (“Commission”) issued a Tentative Supplemental Implementation Order (“Order”) in the above-captioned proceeding, which seeks to address various issues regarding the implementation of the DSIC surcharge mechanism that were not fully addressed in the August 2, 2012 Final Implementation Order at the same docket number. The Order solicits comments on these issues to be filed within 30 days of its publication in the *Pennsylvania Bulletin*. On November 21, 2015, the Order was published accordingly. The Office of Small Business Advocate (“OSBA”) submits the following comments pursuant to the Order.

II. COMMENTS

1. On page 7 of the Order, the Commission proposes that all jurisdictional utilities that have implemented a DSIC mechanism, including those utilities that are not required to file earnings reports under 52 Pa. Code § 71.3 because their annual revenues do not exceed \$1 million, should be directed to file quarterly earnings reports with the Commission. The OSBA supports this proposal and finds it to be reasonable to ensure that the utility is not overearning. The OSBA also submits that the quarterly earnings report exemption under 52 Pa. Code § 71.4(c) during the pendency of a base rate case for companies with a positive DSIC charge

should be eliminated. While it is unlikely that utilities in a base rates proceeding will exhibit overearnings, the Commission correctly notes that waiving the exemption will treat all utilities with DSIC mechanisms equitably. Moreover, the reporting gaps that result from the exemption only add confusion, without providing any material cost savings to utilities or ratepayers.

2. The Order on page 8 proposes that a utility should incorporate a reference to resetting its DSIC rate to zero within the tariff supplement requesting a general rate increase to avoid the need to file a second tariff supplement resetting its DSIC rate to zero upon the effective date of the new base rates. This is a common sense approach for reducing administrative burden that the OSBA supports.

3. The Order on page 9 addresses the timing issue of the tariff supplement to reset the DSIC rate to zero when a utility experiences overearnings. The OSBA seeks clarification regarding this issue, and its proposed resolution. Is the problem that the utility does not always know of overearnings before it files its DSIC quarterly update (not its quarterly financial earnings report)? If that is the case, the DSIC would not be reset to zero until the subsequent DSIC filing, implying that the utility was collecting DSIC revenues despite overearning. If a utility inadvertently collects a DSIC during a quarter when it should not have (because it did not know of overearnings before the quarterly DSIC filing), then the DSIC revenue collected during that period should be treated as an over-collection and refunded to ratepayers.

4. On pages 10-11 of the Order, the Commission seeks comment on what should be the criterion to determine whether the prospective recovery amount has been surpassed, thereby allowing the utility to begin to recover the fixed costs of eligible property reflected in the quarterly DSIC update. The Commission proposes that in each base rates case, the Commission will specify a "total aggregate dollar amount associated with the prospective eligible property

placed in service” for the forecast test year. The OSBA thinks this is reasonable, but requests that the Commission specify whether the aggregate dollar amount refers to gross plant or net plant totals. The OSBA assumes, but would like to clarify, that the Commission means net plant, rather than gross plant, and notes that any settlement of a base rate case will need to specify that amount.

5. The OSBA agrees with the Commission’s proposal on page 12 of the Order that utilities should continue to file quarterly DSIC updates reflecting eligible property placed into service during the stay-out period even though they are unable to recover those costs. This will help all interested parties to verify when the stay-out period is over and will avoid any confusion from reporting gaps.

6. On page 14 of the Order, if the OSBA is interpreting it correctly, the Commission proposes that, when a DSIC is set to zero after an overearning quarter, but subsequently goes back into effect due to underearning, the new DSIC rate will include a return of and on the *investment* made during the period when it was set to zero, but it will not include the unrecovered *costs* incurred during that period. The OSBA supports this proposal as described above. However, once the DSIC goes back into effect, any previous inadvertent DSIC recovery should then be credited to ratepayers.

7. Page 14 of the Order refers to a utility experiencing successive quarters of overearning and continuing to utilize its DSIC mechanism. The Commission’s concern is not clear to OSBA. In general, the OSBA submits that a utility should never collect a DSIC over successive quarters of overearnings. Only one inadvertent quarter of DSIC collection should be permitted or excused and should be treated as an over-collection to be refunded to ratepayers. If the Commission is asking whether the utility should be permitted to continue to allow DSIC-

eligible investments to continue to accrue during successive quarters of overearnings and thereby allow costs associated with those investments to be recovered when the utility is no longer overearning, the OSBA submits that it would be reasonable to require the utility to make a Section 1308 submission justifying the need to continue to accrue DSIC-eligible plant during a long period of overearnings. It would appear to be inequitable to ratepayers to allow a utility to overearn for an extended period of time, and then retain the ability to impose large DSIC charges as soon as the earnings drop below target.

8. The OSBA supports the Commission's proposal on page 16 that utilities can still collect or credit the residual over/under collection balance when the DSIC is set to zero. Setting the DSIC to zero should essentially mean that the going-forward or C-Factor component of the DSIC is set to zero. Prior period over- or under-collections, for periods when a positive DSIC was in effect, should continue to be passed through to ratepayers.

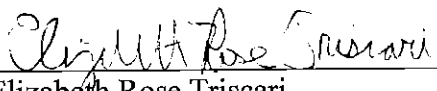
9. On page 17 of the Order, the Commission seeks comments on whether it is feasible and in the public interest to exclude the E-factor annual reconciliation component from the computation of the DSIC rate cap and whether it has the statutory authority to do so. The OSBA argues it is most definitely not in the public interest and so does not address the statutory authority question. Excluding the E-factor component from the DSIC rate cap would create an incentive for utilities to inflate load forecasts so that they can recover more costs than permissible under a 5% DSIC cap. For example, inflating load forecasts would cause costs to be unrecovered, but such costs could simply be recovered later by adding them to a subsequent (uncapped) E-Factor. In other words, an uncapped E-Factor would allow utilities to "game" their DSIC filings to ensure under-collection in order to circumvent the 5% DSIC cap. The 5% DSIC

rate cap is a basic consumer protection. Any waiver of that protection should only be granted in extreme circumstances. A waiver for the E-Factor does not qualify as such.

III. CONCLUSION

In view of the foregoing, the OSBA respectfully requests that the Commission enter a Final Supplemental Implementation Order consistent with the OSBA's comments above.

Respectfully submitted,


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For:

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Dated: December 21, 2015