Energy Association of Pennsylvania
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December 21, 2015

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

RE: COMMENTS OF THE ENERGY ASSOCIATION OF PENNSYVANIA TO THE COMMISSION'S TENTATIVE SUPPLEMENTAL IMPLEMENTATION ORDER RE: IMPLEMENTATION OF ACT 11 of 2012, DOCKET No. M-2012-2293611

Dear Secretary Chiavetta:

Enclosed for filing please find the Comments of the Energy Association of Pennsylvania in the above-referenced docket regarding Implementation of Act 11 of 2012.

Sincerely,

Donna M. J. Clark

Donna M. J. Clark
Vice President and General Counsel

Enc.

Cc: David Screven, Law Bureau, Pennsylvania Public Utility Commission
Erin Laudenslager, Bureau of Technical Utility Services, Pennsylvania Public Utility Commission
Lori Burger, Bureau of Audits, Pennsylvania Public Utility Commission

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Implementation of Act 11 of 2012	:	M-2012-2293611

Comments of the
Energy Association of Pennsylvania
To the Tentative Supplemental Implementation Order Entered November 5, 2015

I. INTRODUCTION

On November 5, 2015, the Pennsylvania Public Utility Commission ("PUC" or "Commission") entered a *Tentative Supplemental Implementation Order Re: Implementation of Act 11 of 2012*, Docket M-2012-2293611 ("TSIO") stating that since the passage of Act 11 in February of 2012 discrete issues regarding the implementation of the distribution system improvement charge ("DSIC") have arisen which were not fully addressed in an earlier *Final Implementation Order* at this docket issued on August 2, 2012. The Commission is now considering whether to establish additional final procedures and guidelines regarding the implementation, operation and computation of the DSIC. Specifically, the Commission seeks comments on a number of specific issues encountered by the Commission's Bureau of Audits as it reviewed utility filings required either under Act 11 or the earlier Final Implementation Order. The Energy Association of Pennsylvania ("EAP") files these comments on behalf of both its natural gas distribution company ("NGDC") and its electric distribution company ("EDC") members.[1]

[1] Citizens' Electric Company; Columbia Gas of PA; Duquesne Light Company; Metropolitan Edison Company; National Fuel Gas Distribution Corp.; PECO Energy Company; Peoples – Equitable Division; Peoples Natural Gas Company; Peoples TWP, LLC; Pennsylvania Electric Company; Pennsylvania Power Company; Philadelphia Gas Works; Pike County Light & Power Company;

Initially, EAP suggests and requests that, prior to issuing a supplemental final implementation order, the Commission consider convening a round table meeting with stakeholders to discuss the specifics of the proposals outlined in the TSIO and the comments offered in response to the TSIO to provide the opportunity for interested parties and the Commission to achieve the best and most clear resolution of these very specific, technical, and detailed questions concerning the operation and computation of the DSIC. As part of this round table meeting, EAP suggests that it may be instructive to determine whether these same issues arose as DSIC was applied in the water industry and, if so, how they were resolved.

II. COMMENTS

A. Uniform Financial Earnings Report Requirement

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 – should be directed to file quarterly earnings reports with the Commission. The Commission is also seeking comment on whether or not to eliminate the quarterly earnings report exemption under § 71.4(c) which exempts a utility from filing a quarterly financial report when the utility has pending before the Commission a general rate investigation under 66 Pa. C.S. §§ 1308(d), 1309 or 1310 (relating to voluntary changes in rates; rates fixed on complaint; investigation of costs of production; and temporary rates).

EAP and its member companies do not support eliminating the exemption under 52 Pa Code § 71.4(c). Further, EAP and its members are not in favor of permanently waiving existing Commission regulations via a generic order process. If the Commission determines that a waiver is necessary, the Commission should seek to revise its existing regulations

PPL Electric Utilities Corp.; UGI Central Penn Gas, Inc.; UGI Penn Natural Gas, Inc.; UGI Utilities, Inc. (Gas & Electric); Valley Energy, Inc.; Wellsboro Electric Company; and, West Penn Power Company.

through a formal rulemaking process, which would provide adequate opportunity for public comment and review by administrative and legislative bodies.

Turning to the question of whether a quarterly earnings report should be required during the pendency of a base rate case, EAP notes that companies' quarterly earnings reports provide a "high-level" overview of financial information. These reports do not offer the level of detail provided and reviewed by interested parties and the Commission during base rate proceedings. In practice, base rate proceedings involve an in-depth review of a utility's financial information. Eliminating the exemption provided under Section 71.4(c) would require that the utility personnel, who are already fully engaged in a complex and time consuming litigation, undertake the preparation of an extra report which does not provide the same level of detail. Such a requirement is unnecessary and only serves to create more work but not necessarily more information during a process which is designed to examine multiple facets of utility finances and operations.

The financial data supplied during a base rate case will verify that the utility is under-earning and support the request to increase rates, i.e. the future test year return on equity ("ROE") which covers the effective period of the quarterly earnings report which would have been filed during the rate case. At best the information supplied in an earnings report would be redundant and could actually be confusing inasmuch as the information would change following the conclusion of the rate case. For these reasons, EAP does not support eliminating the current exemption under Section 71.4(c), Chapter 52 of the Pennsylvania Code .

B. Customer Protections – DSIC Rate Reset to Zero

The Commission is seeking comment on the rules and procedures it should establish when a utility is required to reset its DSIC rate to zero. As the TSIO states, "the DSIC rate is reset to zero on the effective date of new base rates that provide for prospective recovery of the fixed annual costs previously recovered under the utility's DSIC mechanism…[and] for investorowned utilities, a 'reset' of the DSIC rate is also required if, in any quarter, data filed...in the utility's most recent quarterly or annual earnings financial report shows that the utility will earn a ROR [rate of return] that would exceed the allowable ROR used to calculate its fixed costs under the DSIC." *See*, TSIO at pp 7 -8, *citations omitted*.

1. Proposed Tariff Supplement to Reset DSIC Rate to Zero

The Commission initially proposes that the utility should incorporate a reference to resetting its DSIC rate to zero within its tariff supplement requesting a general rate increase under Section 1308(d) of the Public Utility Code, 66 Pa. C.S. §1308(d). *TSIO* at p. 8. The Commission believes this would remove the need for the utility to file a subsequent second tariff supplement under Section 1308(a) resetting the DSIC rate to zero upon the effective date of the new base rates. EAP agrees that the tariff supplement for the § 1308(d) rate case should state that the DSIC will be set to zero upon the effective date of the new rates. However, EAP is unclear as to why the Commission believes that a "subsequent second tariff supplement" is necessary under the circumstances described in the TSIO and believes that there would be value in discussing the Commission's concerns at the proposed round table.

The Commission further identifies a timing concern with the filing of the tariff supplement to reset the DSIC rate to zero when a utility experiences overearnings. The concern is described as the "lag time" which may occur between the time of filing a quarterly earnings report and the timing of the "next Act 11 quarterly DSIC updates." *TSIO* at p. 9.[2] The solution proposed by the Commission is to require that the utilities "file their tariff supplement reflecting a zero DSIC rate simultaneously with the filing of their next quarterly DSIC update, effective upon ten-day's notice". *Id.*

EAP believes that the proposal is confusing unless it is interpreted such that the utility would be required to file the tariff supplement at the same time as the quarterly earnings

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[2] EAP notes that the same lag period occurs when ROE drops below the threshold for DSIC recovery.

report rather than the quarterly DSIC update. EAP notes that, apart from 4th quarter reporting where the earnings report is filed after the quarterly DSIC filing, in all other quarters the earnings report is filed in advance of the DSIC update. Therefore, any "lag time" in those quarters would last approximately twenty days. EAP questions whether the concern being addressed here is only applicable to 4th quarter reporting where the "lag time" is closer to ninety days. EAP believes that there may be several ways to address that timing concern if its interpretation is correct and notes that this is another proposal that would benefit from a meeting prior to the issuance of any additional procedures and guidelines.

2. DSIC Rate Reset to Zero Upon Effective Date of New Base Rates

The Commission proposes "that if a utility has surpassed the prospective recovery amount associated with the eligible plant placed in service and which was previously reflected in the utility's base rates as a result of using a future test year or FPFTY [fully projected future test year], it is then eligible to begin to recover again the fixed costs associated with any new repair, replacement, or improvement of eligible property reflected in a quarterly DSIC update". *TSIO* at p. 11. The Commission asks for comments concerning what the criterion should be to determine whether the prospective recovery amount has been surpassed, "which would indicate when the stay out period has elapsed and a utility may again continue to recover fixed costs of eligible property reflected in the quarterly DSIC update". *Id.* The Commission suggests a criterion based upon the total aggregate dollar amount associated with the prospective eligible property placed in service as determined and set forth in the final order establishing new base rates and also proposes that utilities continue to file quarterly DSIC updates reflecting the eligible property placed into service that was associated with a repair, replacement, or improvement during the stay-out period even though they are unable to recover those costs. *Id.* at p. 12. The continuous filing of DSIC updates will help the Commission to monitor and verify when the criterion has been met and the stay out period has elapsed so as to avoid "double-recovery" of the fixed costs of eligible property under utility DSIC mechanisms. *Id.*

Typically, the settlement in a base rate case and/or the Commission final order approving the settlement define the amount of DSIC-eligible investment included in the fully projected future test year. The level of DSIC-eligible investment identified in the fully projected future test year establishes when the stay-out period would then end. That is, the stay-out period ends once the utility's investment in DSIC-eligible plant exceeds the level identified in the base rate case settlement and/or Commission final order. Thus, EAP would support the criterion as outlined in the TSIO. With respect to providing the Commission with information during the stay-out period concerning the level of DSIC-eligible investment that occurred during the stay-out period, EAP notes none of its members seeks to "double-recover" costs. EAP believes that what, if any, type of information is needed is better understood and discussed at the round table meeting suggested by the Association in the introduction to these comments.

3. Resetting DSIC Rate to Zero Due to Overearnings

The Commission raises a concern regarding "how the cumulative nature of the DSIC mechanism is impacted if overearnings persist for two or more successive quarters going forward". *TSIO* at p. 13. As a possible resolution, the Commission seeks comment on a proposal that, during an overearnings period lasting for two or more successive quarters, a utility with a DSIC mechanism would be prohibited from recovering the current fixed costs of the eligible property that it had placed into service prior to the time that the overearnings period began. *Id.* The Commission suggests that, under such circumstances, the utility should be "required" to file a tariff supplement under Section 1308 of the Code to address overearnings so that the utility can continue to use the DSIC to recover fixed costs of eligible property it has placed in service. *Id.* at p. 14.

Initially, the decision of when and why to file a rate case generally rests with the utility. However, the Public Utility Code provides a means for the Commission to initiate a proceeding if the Commission believes the company is consistently over-earning. Suggesting that the Commission should "require" a utility to file a rate case whenever the DSIC earnings test is not met creates an appearance that the Commission can circumvent the rules which already exist to evaluate a potential over-earnings situation. Moreover, Act 11 already prevents the utility from using the DSIC mechanism during periods of over-earning and allows the utility to begin to use the mechanism again once the over-earning period ceases. Thus, EAP believes Act 11 itself provides a solution to the question raised in the TSIO by prohibiting the use of the DSIC mechanism during periods of overearning.[3]

Moreover, the solution proposed in the TSIO, initiating a base rate case to lower rates, would not provide an incentive to invest in infrastructure improvements which is the stated goal of Act 11 and one which all of EAP's members support. The availability of the DSIC mechanism encourages investment in infrastructure as demonstrated in the water industry over the past decade. Further, under Act 11 whether or not a DSIC is being collected, a utility is making investments in DSIC eligible property pursuant to its approved Long Term Infrastructure Improvement Plan.

4. Residual E-Factor Portion of the DSIC Rate Upon a Reset of the DSIC Rate

The Commission proposes that utilities with ongoing DSIC mechanisms should file a tariff supplement to incorporate language allowing the utility to file interim revisions to resolve the residual over/under collection or E-factor amount after the DSIC rate is reset to zero. *TSIO* at p. 16. Additionally, the tariff should clearly indicate whether the utility has the option to recover an under-collection or refund an over-collection in a single quarter for the quarterly period beginning April 1.

EAP agrees that the utility tariff should clearly provide that the recovery/refund of any over/under collections will continue even if the DSIC rate has been reset to zero either because the utility is over-earning or new base rates have been established. The DSIC is a reconcilable

[3] EAP notes that it does agree with the PUC proposal to the extent it would include the cumulative investment after an over-earning period ends when calculating the DSIC.

charge and without the continuation of the refund/collection, the charge becomes irreconcilable under Section 1307(e). As acknowledged by the Commission, neither over-collections nor under-collections are related to the current period in which they are refunded or recovered, so logically the refund/recovery continues. Additionally, EAP agrees that, as of the effective date of new base rates or in the event the utility begins over-earning, the E-Factor would be set at zero. *See, TSIO* at p. 15.

C. Computation of the DSIC Rate Cap

The Commission is seeking comment on whether or not it has the authority to exclude the E-Factor annual reconciliation component from the computation of the 5% rate cap. If it does, the Commission would further like input on whether it is feasible and in the public interest to do so.

EAP does not believe that the legal issue of whether the Commission possesses the authority to exclude the E-Factor component from the DSIC rate cap is ripe for resolution in this generic order proceeding. Resolution of the Commission's authority is more appropriately addressed in the context of a litigated proceeding where a full presentation of relevant facts are part of the record under consideration rather than in the context of a generic order where the Commission seeks general public input.

III. CONCLUSION

EAP supports the Commission's efforts to establish straightforward guidelines for the implementation, operation, and computation of the DSIC and would welcome an opportunity to participate in a round table discussion of the points raised and solutions offered both in the instant Tentative Supplemental Implementation Order and in the comments filed by stakeholders. Noting that the DSIC has been in use in the water industry for over a decade, a round table may provide an opportunity to understand and utilize the experience and best practices established in that setting to shape the implementation of the DSIC in its expanded application under Act 11. Such efforts would help assure that any additional procedures or guidelines established under a supplemental final order adequately meet the concerns raised by the Commission in this generic implementation proceeding.

Respectfully submitted,

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