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VIA E-FILING

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

Re: Proposed Revisions to Water Audit Methodology; 52 Pa. Code § 65.20; Water Conservation Measures – Statement of Policy; Docket No. L-2020-3021932

Comments of National Association of Water Companies – Pennsylvania Chapter and Aqua Pennsylvania, Inc. on Advance Notice of Proposed Rulemaking Order

Dear Secretary Chiavetta:

Enclosed for filing with the Pennsylvania Public Utility Commission (“Commission”) in the above-referenced matter are the comments of the National Association of Water Companies – Pennsylvania Chapter and Aqua Pennsylvania, Inc. (the “NAWC Commenters”).

If you have any question or concern about this filing, please contact me. Thank you.

Sincerely,

COZEN O'CONNOR

By: David P. Zambito
Counsel for *National Association of Water Companies – Pennsylvania Chapter*

DPZ
Enclosure

cc: James A. Mullins, Esq. (Law Bureau)
Stephanie A. Wilson, Esq. (Law Bureau)
Andrew Clarkson, National Association of Water Companies – Pennsylvania Chapter
Alexander Stahl, Esq., Aqua Pennsylvania, Inc.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Proposed Revisions to Water Audit Methodology; Water : L-2020-3021932
Conservation Measures – Statement of Policy :

COMMENTS OF THE NATIONAL ASSOCIATION OF WATER
COMPANIES – PENNSYLVANIA CHAPTER AND AQUA PENNSYLVANIA, INC.
ON THE ADVANCED NOTICE OF PROPOSED RULEMAKING ORDER

AND NOW COMES the National Association of Water Companies – Pennsylvania Chapter (“NAWC”) and Aqua Pennsylvania, Inc. (“Aqua”) (together, the “NAWC Commenters”), pursuant to the Advanced Notice of Proposed Rulemaking Order (“Order”) published in the Pennsylvania Bulletin on October 10, 2020, to file these comments with the Pennsylvania Public Utility Commission (“Commission”). The Order proposes “the replacement of the Policy Statement at 52 Pa. Code § 65.20 with a Commission regulation to implement the International Water Association (IWA)/American Water Works Association (AWWA) Water Audit Methodology (Water Audit Methodology) as a best management practice in water loss control in Pennsylvania.” 50 Pa. B. 5657 (October 10, 2020).

I. INTRODUCTION

NAWC is a trade organization whose members are investor-owned water utilities in Pennsylvania¹ that are regulated by the Commission. Among other functions, NAWC provides

¹ The members of NAWC are: Columbia Water Company, Newtown Artesian Water Company, Pennsylvania-American Water Company, SUEZ Water Pennsylvania Inc., and The York Water Company. In addition to water operations, several of the members operate Commission-regulated wastewater systems throughout the Commonwealth.

members with a vehicle for expressing their position on legislative and regulatory developments before the General Assembly, regulatory agencies, and the courts.

Aqua is a Class A water utility, duly organized and existing under the laws of the Commonwealth of Pennsylvania, operating under Commission issued certificates of public convenience. Aqua serves approximately 443,000 water customers in various counties throughout Pennsylvania.

The NAWC Commenters are supportive of water conservation measures and they strongly believe that they should be good stewards of this precious resource. The NAWC Commenters commend the Commission for studying the issue of public utility water loss in the Commonwealth and thank the Commission for this opportunity to express their views on the Order.

II. BACKGROUND

As noted in the Order, the Commission created a pilot program to implement the Water Audit Methodology (the “Methodology”) in 2008. *In Re: Pilot Project to Implement the International Water Association/American Water Works Association Water Audit Methodology*, Docket No. M-2008-2062697 (Tentative Opinion and Order entered November 10, 2008, which became final on December 10, 2008) (“2008 Order”). In 2011, the Commission concluded that the Methodology is preferable to the pre-existing method of calculating unaccounted for water (“UFW”) and directed the Law Bureau to prepare proposed regulations implementing the Methodology. *In Re: Pilot Project to Implement the International Water Association/American Water Works Association Water Audit Methodology*, Docket No. M-2008-2062697 (Tentative Opinion and Order entered November 10, 2011, which became final on January 27, 2012) (“2012 Order”).

Together, the NAWC Commenters have extensive experience implementing the Methodology. They concur with the Commission that the Methodology is a better tool than the prior method of calculating UFW. The Methodology's strengths include:

- Factoring in the customer density by accounting for the number of customers and miles of pipe for each system;
- Factoring in system pressure;
- Acknowledging that there is some level of unavoidable loss inherent in each system;
- Factoring in the asset renewal rate (i.e., pipe replacement);
- Standardizing the industry and allowing for better comparisons of systems;
- Using better key performance indicators ("KPIs") than the percentages used in calculating UFW; and
- Monetizing losses for each system.

III. COMMISSION QUESTIONS

The Order specifically asked commenters to address certain questions. These questions are considered separately below.

A. What are the Costs/Savings Associated with the Methodology?

The Order asked commenters for information regarding the "specific costs and/or savings associated with implementation of the Water Audit Methodology, including legal, accounting or consulting procedures which may be required." 50 Pa. B. 5660.

In terms of the costs associated with implementation of the Methodology, in the experience of the NAWC Commenters, preparing a water audit is significantly more costly than calculating UFW. Data must be collected for each system to properly calculate a water audit with input coming from the finance and rates groups, maintenance, engineering, GIS and operations. The combined effort to collect the data and file the report for each system is estimated to require 50 hours or more throughout the year and cost around \$2,500 per report (roughly \$50 per hour in

wages and benefits on average). To contract out this task to an engineering firm would likely be double this amount and still require some time from the utility.

In addition, the NAWC Commenters urge the Commission to consider the costs for a utility to take corrective action if the water loss is considered to be too high. These costs include hiring additional staff to look for and repair water leaks, hiring consultants to investigate and engineer solutions, and investing in system renewal projects that were not anticipated prior to the audit.

In terms of the savings associated with the implementation of the Methodology, the NAWC Commenters estimate that reducing the avoidable loss of water will save utilities on production costs of roughly \$500 per million gallons for surface water systems and \$250 per million gallons for well systems.

B. Who should be Subject to the Methodology?

The Order invited comments “as to whether the Water Audit Methodology should be extended to the other jurisdictional water utilities.” 50 *Pa. B.* 5660. As discussed in the Order, Class A water utilities are currently required to conduct a water audit annually, using the Methodology, and to submit an annual summary to the Commission.

The NAWC Commenters believe that the loss of water by utilities is an industry-wide issue. Additionally, the NAWC Commenters encourage a level playing field in the regulation of utilities. The NAWC Commenters therefore encourage the Commission to coordinate its actions in this area with those of the Pennsylvania Department of Environmental Protection (“DEP”), so that all public water supply systems in the Commonwealth, whether investor-owned or publicly owned, ultimately will be required to submit at least one water audit using the Methodology. Additionally, coordinated action between regulatory agencies is desirable to ensure that regulatory requirements are consistent among agencies.

IV. REPLACEMENT OF THE STATEMENT OF POLICY WITH A REGULATION

The Order explicitly requested comments “regarding the replacement of its Policy Statement at § 65.20 with a Commission regulation which will enable the Commission to more comprehensively address public utility water loss in the Commonwealth.” 50 Pa. B. 5660.

A. The NAWC Commenters’ Primary Recommendation: Treat the Existing Requirement for Class A Utilities to Use the Methodology as a Pilot Program

The NAWC Commenters do not oppose the promulgation of a regulation addressing public utility water loss in the future. However, the NAWC Commenters believe it is premature to adopt such a regulation at this time. The 2008 Order created a pilot program in which certain Class A utilities would complete water audits using the Methodology and file reports with the Commission. All Class A utilities were subsequently ordered to complete water audits using the Methodology. Unfortunately, the NAWC Commenters have been unable to locate any publication analyzing the data that has been submitted to the Commission. Such data would be helpful for addressing many of the issues that should be addressed in the regulation.

A regulation (like the present statement of policy) should include a benchmark for utilities. At this time, the NAWC Commenters do not believe there is an adequate empirical foundation for establishing a benchmark. The Delaware River Basin Commission (“DRBC”) has published several analyses of the water audits filed with the DRBC using the Methodology.² The DRBC’s report on the data for 2016 states that 15% of non-revenue water has historically been used as a benchmark for regulatory action, but 155 of 277 systems (or 56%) had levels of non-revenue water

² Analyses of the data submitted to the DRBC during calendar years 2012, 2014 and 2016 can be found at <https://www.state.nj.us/drbc/programs/supply/water-audit-program.html>.

greater than or equal to 15%.³ Under these circumstances, the NAWC Commenters question whether another benchmark (such as the infrastructure leak index (“ILI”), gallons per day lost per customer, or normalized water losses) would be more useful than the percentage of non-revenue water.

As discussed above, the regulation should also state which jurisdictional systems are required to complete a water audit using the Methodology. This decision should be informed by empirical considerations as well as public policy considerations. For example, the Methodology’s calculation of unavoidable real losses (“UARL”) is not valid for systems with fewer than 3,000 connections.

In this regard, the NAWC Commenters believe it is important for the Commission to note that the Methodology:

- Does not factor in the range of pressures and the number of times water is pumped to/through pressure zones, which can contribute to pressure spikes that contribute to main breaks;
- Does not differentiate between very large complex systems and small systems;
- Does not factor in the relative age of the system (i.e., the overall age of the pipe);
- Relies on estimates for some inputs (e.g., the length of services to the customer’s building), which can skew the results; and
- Does not include any method for verifying the data.

Additional empirical information on the constraints of the Methodology would be helpful in deciding how to draft the regulation.

Consequently, the NAWC Commenters’ primary recommendation is that the Commission not proceed with a rulemaking implementing the Methodology at this time. Instead, the NAWC Commenters recommend that the Commission treat the existing requirement for Class A utilities to implement the Methodology as a pilot program. The Commission should gather the information

³ Delaware River Basin Commission, Analysis of Calendar Year 2016 Water Audit Data from Public Water Supply Systems in the Delaware River Basin (February 2018), pp. 9-10.

filed with the Commission, analyze it, and publish the results. This would give the Commission, as well as the regulated community, a better empirical foundation for drafting the regulation.

B. The NAWC Commenters' Secondary Recommendation: If the Commission Promulgates a Regulation at this Time, the Regulation Should Address Several Key Points

If, however, the Commission proceeds with the proposal to promulgate a regulation at this time, the NAWC Commenters believe that the regulation should address several key points. First, the regulation should specify what Methodology must be used. The NAWC Commenters recommend that the regulation adopt the Methodology as it exists at the time the regulation is approved by the Commission because the Commission arguably lacks authority to promulgate a regulation that adopts versions of the Methodology that the IWA/AWWA may develop in the future. *Cf., Protz v. Worker's Compensation Appeal Bd. (Derry Area School District)*, 639 Pa. 645, 664, 161 A.3d 827, 838-839 (Pa. 2017) (“[T]he non-delegation doctrine prohibits the General Assembly from incorporating, sight unseen, subsequent modifications to such standards without also providing adequate criteria to guide and restrain the exercise of the delegated authority.”). If the Methodology is updated in the future, the Commission can consider whether to adopt that revision.

Second, the regulation should specify who must complete a water audit using the Methodology and how often they must complete it. The NAWC Commenters recommend that the Commission require all jurisdictional water utilities to complete at least one such audit.⁴ Medium and large utilities (*i.e.*, utilities with more than 10,000 customers) should be required to complete water audits using the Methodology annually. Smaller utilities should be permitted to complete

⁴ As discussed above, the NAWC Commenters recommend that the Commission work together with DEP, so that all Pennsylvania public water supply systems are required to complete a water audit using the Methodology.

such audits less frequently, perhaps once every five years, so long as the audit yields acceptable results.

Third, the regulation should include a reporting requirement. Among other things, the Commission should address how the data should be reported. Many utilities own multiple water systems, some of which are quite small. Reporting the results for each system separately would be unduly burdensome and costly. The NAWC Commenters recommend that utilities be required to complete a water audit using the Methodology for all their systems, but they should be permitted to submit a single document to the Commission that includes (a) reports of the audits completed for each large system, together with (b) reports of the audits completed for collections of systems that are proximately located and operate under the same management structure or unit.

Fourth, as discussed above, the regulation should specify a benchmark. The regulation, like the existing statement of policy, should also address the consequences in the event that a particular system exceeds the benchmark. The NAWC Commenters do not believe that exceeding the benchmark in a single year should give rise to a complaint proceeding and a possible civil penalty. The Commission should consider trends over time, rather than initiating a proceeding based on a single data point. Moreover, consistent with the management discretion doctrine,⁵ utility management should have an opportunity to investigate and address the situation based on that particular system's own specific facts and circumstances. Utilities have competing needs for capital, such as addressing lead service lines and emerging contaminants as well as leak detection and prevention efforts. Some utilities charge a distribution system improvement charge ("DSIC") based on a Long-Term Infrastructure Improvement Plan focused on replacing distribution pipe. Other utilities do not have such a mechanism for financing infrastructure improvements. Finally,

⁵ See, e.g., *Metropolitan Edison Company v. Pa. Pub. Util. Comm'n*, 437 A.2d 76 (Pa Cmwlth. 1981).

for some systems (particularly small systems), it may not be cost effective to make improvements suggested by the model (the costs of the infrastructure upgrades would not justify the savings from making those upgrades).

The NAWC Commenters recommend that the regulation include language similar to the existing statement of policy, to the effect that the results of the water audit will be considered in rate proceedings and other Commission proceedings (such as management audits completed by Commission staff). By using the Methodology in this manner, the Commission would consider the result of a water audit in the context of the other facts and circumstances pertaining to each particular system owned by the utility. Additionally, the NAWC Commenters encourage the Commission to favor bringing utilities into compliance with the benchmark, rather than imposing penalties on non-compliant utilities.

C. REQUEST FOR A WORKING GROUP

The NAWC Commenters anticipate that the Commission will receive a wide variety of comments in response to its Order. If the Commission decides to promulgate a regulation at this time, the NAWC Commenters suggest that the Commission not rely exclusively on these comments. Instead, the Commission should convene a working group of stakeholders to review the Statement of Policy and draft an appropriate regulation regarding water loss by public utilities.

V. CONCLUSION

The NAWC Commenters thank the Commission for the opportunity to submit these comments on the Order. The NAWC Commenters look forward to working with the Commission and other stakeholders on the issues raised in the Order.

Respectfully submitted,



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