



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
COMMONWEALTH KEYSTONE BUILDING
400 NORTH STREET
HARRISBURG, PENNSYLVANIA 17120

IN REPLY PLEASE
REFER TO OUR FILE
M-2012-2293611

April 22, 2022

- To: All Jurisdictional Water and Wastewater Utilities, Electric Distribution Companies, Natural Gas Distribution Companies and City Natural Gas Distribution Operations, the Bureau of Investigation and Enforcement, the Office of Consumer Advocate, and the Office of Small Business Advocate**
- Re: Distribution System Improvement Charge - Implementation Order to address all issues pertaining to the distribution system improvement charge calculations required in the Pennsylvania Supreme Court's decision in McCloskey v. Pa. PUC, 255 A.3d 416 (Pa. 2021).**

This letter is to address the Pennsylvania Public Utility Commission's (Commission) Order at docket numbers P-2015-2508942, P-2015-2508936, P-2015-2508931 and P-2015-2508948, and C-2016-2531040, *et al.* The Commission has affirmed the Petition for Interlocutory Review and Answer to Material Question filed by the Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company, and West Penn Power Company (collectively, the Companies) on January 31, 2022:

In order to provide all interested parties notice and an opportunity to be heard, as due process requires, should the Commission initiate a generic proceeding within 60 days from a determination on this material question at Docket No. M-2012-2293611 for the purpose of revising the Model Tariff adopted in its Implementation Order entered at that docket number on August 2, 2012, to comply with Section 1301.1(a) of the Pennsylvania Public Utility Code as interpreted by the Pennsylvania Supreme Court in McCloskey v. Pa. PUC, 255 A.3d 416 (Pa. 2021)?

Additionally, the Commission ordered:

That the Commission's Secretary's Bureau in consultation with the Bureau of Technical Utility Services within sixty (60) days of entry of this Opinion and Order issue a secretarial letter with appropriate notices to all jurisdictional water and wastewater utilities, electric distribution companies, natural gas distribution companies and city natural gas distribution operations and all appropriate stakeholders establishing a generic proceeding at

Docket No. M-2012-2293611 to address all issues pertaining to the distribution system improvement charge calculations required in the Pennsylvania Supreme Court's decision in McCloskey v. Pa. PUC, 255 A.3d 416 (Pa. 2021).

This matter concerns the Commission's approval of the Distribution System Improvement Charge (DSIC) Riders of the Companies and the subsequent decision of the Pennsylvania Supreme Court in *McCloskey v. Pa. PUC, 255 A.3d 416 (Pa. 2021)* (*McCloskey/FirstEnergy*), remanded for further proceedings.¹

On June 12, 2016, Act 40 was signed into law, effective in sixty days or on August 11, 2016. Act 40 added Section 1301.1 to the Code and states as follows:

1301.1. Computation of income tax expense for rate-making purposes.

(a) Computation. —If an expense or investment is allowed to be included in a public utility's rates for ratemaking purposes, the related income tax deductions and credits shall also be included in the computation of current or deferred income tax expense to reduce rates. If an expense or investment is not allowed to be included in a public utility's rates, the related income tax deductions and credits, including tax losses of the public utility's parent or affiliated companies, shall not be included in the computation of income tax expense to reduce rates. The deferred income taxes used to determine the rate base of a public utility for ratemaking purposes shall be based solely on the tax deductions and credits received by the public utility and shall not include any deductions or credits generated by the expenses or investments of a public utility's parent or any affiliated entity. The income tax expense shall be computed using the applicable statutory income tax rates.

(b) Revenue use. —If a differential accrues to a public utility resulting from applying the ratemaking methods employed by the commission prior to the effective date of subsection (a) for ratemaking purposes, the differential shall be used as follows:

(1) Fifty percent to support reliability or infrastructure related to the rate base eligible capital investment as determined by the commission; and

(2) Fifty percent for general corporate purposes.

(c) Application. —The following shall apply:

(1) Subsection (b) shall no longer apply after December 31, 2025.

¹ For the complete procedural history of this proceeding see the Commission's January 31, 2022 Order at P-2015-2508931 *et al.* pages 3 – 8.

(2) This section shall apply to all cases where the final order is entered after the effective date of this section.

66 Pa. C.S. § 1301.1(a)-(c).

In order to provide a forum for discussion and feedback from stakeholders as the Commission begins its implementation of DSIC calculations in accordance with Section 1301.1(a) of the Public Utility Code, 66 Pa. C.S. § 1301.1, *McCloskey/FirstEnergy*, 255 A.3d at 437, the Commission invites interested persons to provide comments and to address the following key topics prior to having a working group meeting:

- Changes to be made to the current model DSIC tariff, including the necessary computation, reconciliation and other language to implement the directive of the Court to recognize incremental Accumulate Deferred Income Taxes (ADIT) and state tax depreciation deductions for accelerated depreciation in quarterly calculations of DSIC charges.
- Elements of the formula required for calculating quarterly DSIC updates needed to determine: (1) the state income tax effects of book-tax timing differences created by placing in service eligible property included in the DSIC calculation; and (2) ADIT that reflects the book-tax timing differences created by placing in service eligible property included in the DSIC, and to do so that such revisions to the formula for calculating the DSIC do not require unduly complicated computations but permit reasonable review and audit of DSIC charges and their supporting calculations;
- Determination of the revisions to the DSIC calculations and the potential refund/recoupment of overcharges dated back to August 2016, the date that Act 40 added Section 1301.1 to the Code:
 - Should a refund/recoupment be required;
 - Timing of any required refund/recoupment (When should the recoupment begin?)
 - Amortization period of any refund/recoupment;
 - Impact of the refund/recoupment on the utilities DSIC cap for each utility;
 - Should interest be applied, and if so, at what rate and the weighting for when interest is to be applied; and
- Standards to establish a reconciliation process for timing differences and issues for determining the proper level of ADIT and state income taxes for book-tax timing issues created by placing in service eligible property included in the DSIC.

Accordingly, comments² will be due in thirty (30) days. Filed comments and other documents pertinent to this proceeding may be accessed through the Commission's

² E-filing instructions are at: <https://www.puc.pa.gov/efiling/default.aspx>. Browser compatibility is discussed at <https://www.puc.pa.gov/efiling/eFilingTechSupport.aspx>. Hard-copy filing instructions are at: http://www.puc.pa.gov/filing_resources/obtain/file_information.aspx.

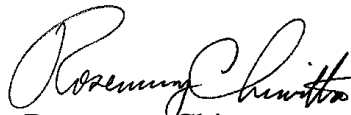
website using the docket number for this proceeding and the search feature at http://www.puc.pa.gov/about_puc/search_results.aspx.

In addition to filing their comments with the Commission's Secretary, parties are directed to provide WORD-compatible versions to Commission staff using RA-PCDSICTAXES@pa.gov.

Once comments are received and reviewed, the Commission will invite interested parties to a working group meeting to further discuss these comments.

If there are any questions, contact Erin Laudenslager, elaudensla@pa.gov, or David Huff, dhuff@pa.gov. Parties are directed to provide, to Ms. Laudenslager and Mr. Huff, the contact names, telephone numbers, and email addresses for persons in their organizations to be used for the informal exchange of information related to this proceeding.

BY THE COMMISSION,


Rosemary Chiavetta
Secretary

Cc: