

**PENNSYLVANIA  
PUBLIC UTILITY COMMISSION  
Harrisburg, PA 17105-3265**

Public Meeting held May 12, 2022

Commissioners Present:

Gladys Brown Dutrieuille, Chairman  
John F. Coleman, Jr., Vice Chairman  
Ralph V. Yanora

Use of Fully Projected Future Test Year,  
52 Pa. Code Chapter 53.51-53.56a

L-2012-2317273

**Order Clarifying  
NOTICE OF PROPOSED RULEMAKING ORDER**

**BY THE COMMISSION:**

The Pennsylvania Public Utility Commission (PUC) entered a Notice of Proposed Rulemaking Order (NOPR consisting of a Preamble<sup>1</sup> and two Annexes) on June 17, 2021, and hereby clarifies 13 items in the June 2021 NOPR. After entry of this Clarification Order, the Annexes in the June 2021 NOPR will be replaced by new Annexes consistent with this Clarification Order, and a page in the Preamble will be corrected consistent with this Clarification Order. Thereafter, the regulatory packet will be delivered to the PUC's Legislative Standing Committees,<sup>2</sup> to the Legislative Reference Bureau (LRB) for publication in the *Pennsylvania Bulletin*, and to the Independent Regulatory Review Commission (IRRC). The public comment period relative to the proposed amendments to

---

<sup>1</sup> In rulemakings, the preamble is the "part of the proposed and final regulatory package that includes the purpose and explanation for the regulation, effective date, statutory authority, a description of any amendments, fiscal impact, public comment period, and agency contact person." *2019 The Regulatory Review Process in Pennsylvania* at 39. See

[http://www.irrc.state.pa.us/resources/docs/Regulatory\\_Review\\_Process\\_Manual.PDF](http://www.irrc.state.pa.us/resources/docs/Regulatory_Review_Process_Manual.PDF). For PUC rulemakings, the Commission order entered as part of a NOPR or a final rulemaking are preambles.

<sup>2</sup> The PUC's Legislative Standing Committees are the Senate Committee on Consumer Protection and Professional Licensure and the House Consumer Affairs Committee. Regulatory packets are delivered to the majority and minority chairs of each committee. 71 P.S. §§ 745.1–745.15.

our regulations at 52 Pa. Code §§ 53.51-53.56a (relating to information to be furnished with the filing of rate changes) will open upon publication of the NOPR, as clarified by this Order, in the *Pennsylvania Bulletin*.

## **BACKGROUND**

As background, the PUC's proposed regulation seeks to implement certain provisions of Act 11 of 2012 (Act 11), which, *inter alia*, amended the Public Utility Code at 66 Pa.C.S. § 315(e). The amendment authorized the use of a fully projected future test year (FPFTY) in public utility rate change filings and required the PUC to adopt rules and regulations regarding the information and data to be filed and served when a public utility files a proposed rate change using a FPFTY. 66 Pa.C.S. § 315(e) (regarding burden of proof).

After entry of the June 2021 NOPR, the regulatory packet was submitted to the Office of Attorney General (OAG) for review<sup>3</sup> as to form and legality and to the Governor's Office of the Budget.<sup>4</sup> The Budget Office provided a fiscal note on July 29, 2021. On August 12, 2021, the OAG tolled approval of the June 2022 NOPR (Preamble and Annexes A and B) with 13 questions. The PUC responded to the OAG's tolling memo on April 25, 2022. The OAG provided its conditional approval of the June 2022 NOPR on May 2, 2022.

The OAG's approval of the June 2022 NOPR is conditioned upon the PUC's responses to the tolling memo. The PUC provided the responses explained herein to the OAG and indicated that clarifications would be made either before submitting the NOPR to the PUC's Legislative Standing Committees, the LRB for publication, and IRRC or before submitting the final-form regulation to the Legislative Standing Committees and

---

<sup>3</sup> The Civil Law Division of the OAG reviews Commonwealth proposed and final regulations for form and legality. 71 P.S. §§ 732-101-732-506.

<sup>4</sup> The Budget Office prepares a fiscal note for proposed and final regulations. 71 P.S. § 232.

IRRC. On May 2, 2022, the OAG provided contingent approval subject to the clarifications being made.

### CLARIFICATIONS

This Order explains the clarifications to the June 2022 NOPR that will be made before the NOPR, as clarified, is delivered to the PUC’s Legislative Standing Committees, the LRB for publication, and IRRC.

**Clarification No. 1.** The PUC is revising the proposed Sections 53.51(a) and 53.51(a.1) in Annex A to clarify that the jurisdictional entities specified in Section 53.51(a.1) are subject to Sections 53.51-53.56a. There will no longer be an “(a.2)” or an “(a.3).” The PUC is making the following edits, as shown in bold:

(a) In order that the Commission may be concurrently advised of the net effect of a proposed change in rates upon the customers and the revenues of a public utility, as well as the *prima facie* reasonableness of the proposed rate changes, the data called for in ~~this chapter §§ 53.51 – 53.56a~~, as appropriate, shall accompany the filing of the proposed rates.

~~(a.1) Consistent with the definition of “public utility” in 66 Pa.C.S. § 102, a public utility is subject to this subchapter through § 53.56a. if it now or hereafter owns or operates in this Commonwealth equipment or facilities for:~~

~~(1) — Producing, generating, transmitting, distributing or furnishing natural or artificial gas, electricity or steam for the production of light, heat or power to or for the public for compensation.~~

~~(2) — Diverting, developing, pumping, impounding, distributing or furnishing water to or for the public for compensation.~~

~~(3) — Wastewater collection, treatment or disposal for the public for compensation.~~

~~(4) — Conveying or transmitting messages or telecommunications, except as a canal, turnpike, tunnel, bridge, wharf company and the like, by telephone or telegraph or domestic public land mobile radio service~~

~~**including, but not limited to, point-to-point microwave radio service for the public for compensation.**~~

~~**(a.2) Consistent with 66 Pa.C.S. § 2212, a city natural gas operation and consistent 66 Pa.C.S. §§ 3201—3209, a water and sewer authority in a second-class city.**~~

~~**(a.3) Consistent with the jurisdiction conveyed to the Commission in 66 Pa.C.S. § 1501 over the public utility services furnished or rendered by a municipal corporation beyond its corporate limits, a municipal corporation operating beyond its corporate limits is subject to this subchapter through § 53.56a. to the extent of its services or facilities furnished, rendered or extended beyond its corporate limits.**~~

**(a.1) Each of the following jurisdictional entities listed in §§ 53.51(a.1)(1) – (a.1)(4) are subject to §§ 53.51 – 53.56a. For purposes of providing the data called for in §§ 53.51 – 53.56a to accompany the filing of proposed rates, each of the entities described in (a.1)(2) – (a.1)(4) are subject to the same filing requirements as a public utility, as such term is used in the singular or plural throughout §§ 53.51 – 53.56a.**

**(1) A public utility, as such term is defined in 66 Pa.C.S. § 102 (relating to definitions), that owns or operates in this Commonwealth equipment or facilities for:**

**(i) Producing, generating, transmitting, distributing or furnishing natural or artificial gas, electricity or steam for the production of light, heat or power to or for the public for compensation.**

**(ii) Diverting, developing, pumping, impounding, distributing or furnishing water to or for the public for compensation.**

**(iii) Wastewater collection, treatment or disposal for the public for compensation.**

**(iv) Conveying or transmitting messages or telecommunications, except as a canal, turnpike, tunnel, bridge, wharf company and the like, by telephone or telegraph or domestic public land mobile radio service including, but not limited to, point-to-point microwave radio service for the public for compensation.**

**(2) A city natural gas operation, as such term is defined in 66 Pa.C.S. § 102 and used in the provision of 66 Pa.C.S. § 2212 (relating to definitions).**

**(3) An Authority, as such term is defined in 66 Pa.C.S. § 3201 (relating to definitions) and used in the provisions of 66 Pa.C.S. §§ 3202-3209.**

**(4) A municipal authority furnishing or rendering public utility services or facilities beyond its corporate limits, but only to the extent of its services or facilities furnished, rendered, or extended beyond its corporate limits, consistent with the jurisdiction conveyed to the Commission in 66 Pa.C.S. § 1501 (relating to character of service and facilities).**

The PUC is also clarifying the definition of “public utility” in Exhibit E, II. Definitions, in Annex B, as shown in bold:

***Public utility*—~~A public utility, as defined in 66 Pa.C.S. § 102 (relating to definitions) and for~~ For purposes of this Exhibit E, ~~the a~~ a filing entity using a FPPTY pursuant to this subchapter ~~(relating to rates)~~ **seeking a general rate increase greater than \$1 million in gross annual revenues.****

**Clarification No. 2.** Consistent with the revisions above for the proposed Section 53.51(a.1), the PUC is proposing a new Section 53.51(a.1)(3) to refer specifically to an “**Authority**” as such term is defined in the Public Utility Code. The PUC will replace “water and sewer authority” in the proposed regulations with “**Authority.**” The term “Authority” is defined in the Public Utility Code as including water, wastewater, and stormwater utilities; hence a reference to stormwater authorities will be included by using the statutory term “Authority.” The PUC will make the following edits, as shown in bold in Annex A:

**(a.1)(3) An Authority, as such term is defined in 66 Pa.C.S. § 3201 and used in the provisions of 66 Pa.C.S. §§ 3202-3209.**

**Clarification No. 3.** The PUC is clarifying the definition of “FPFTY” in the proposed Section 53.51a in Annex A by removing part (2) of the proposed definition of “FPFTY.” The revised definition of “FPFTY” will read as follows, as shown in bold:

*FPFTY—Fully projected future test year—A 12-consecutive-month period corresponding to one of the following time frames: (1) For a public utility not eligible for (2): Beginning* beginning with the first full month that the new rates will be in effect after the application of the full suspension period permitted under § 1308(d) of the Public Utility Code, 66 Pa.C.S. § 1308 (relating to voluntary changes in rates) and reflecting estimated results of operations of the public utility.

*(2)— For a city natural gas operations under 66 Pa.C.S. § 2212(c): Beginning with the first full month that the new rates will be in effect after the application of the full suspension period permitted under section 1308(d) of the Public Utility Code, 66 Pa.C.S. § 1308 (relating to voluntary changes in rates) and reflecting estimated results of operations of the public utility as adjusted to reflect its fiscal year with no further adjustment for regulatory lag.*

Additionally, the PUC is clarifying the Preamble on page 14 to provide that while a waiver under the 66 Pa.C.S. §§ 2212(c) or statute is available upon request, there is no presumptive waiver of Title 66. The PUC will make the following edits to the Preamble, as shown in bold below:

The proposed definition for “FPFTY” tracks the statutory provisions in 66 Pa.C.S. §§ 315(e) and 2212(c) while clarifying that a FPFTY would reflect a public utility’s *estimated* results of operations. The proposed definition does not expand or contract the meaning of “FPFTY” as established by §§ 315(e) or 2212(c). **Further, the proposed definition is consistent with We fully recognize that a city natural gas operation may file to request a waiver relative to the start of a FPFTY pursuant to 66 Pa.C.S. § 2212(c). See Pa. PUC, et al. v. PGW, Docket No. R-2020-3017206, et al. (order entered on November 19, 2020) at 6. A similar option for waiver is available under 66 Pa.C.S. § 3029(b) for an Authority as such term is defined in 66 Pa.C.S. § 3201 and used in the provisions of 66 Pa.C.S. §§ 3202-3209. water and sewer authorities of second class cities under 66 Pa.C.S. § 3202(b).**

**Clarification No. 4.** The PUC is deleting the phrase “as defined in § 53.53(b)(2)” from the proposed Section 53.52(c) in Annex A because the proposed new definition of “HTY” and the proposed definitions section speak for themselves.

**Clarification No. 5.** The PUC will use an Editor’s Note upon publication of the Clarified NOPR in the *Pennsylvania Bulletin* to reflect the proposed deletion of Exhibits A, C, and D in Section 53.53 rather than publish the full text of the Exhibits in deletion font. The LRB will provide the Editor’s Note.

**Clarification No. 6.** Section 53.54(a)(3) in Annex A cross-references Section 53.45(a)(2), but Section 53.45 does not contain a Subsection (a)(2). The cross-reference is being corrected to refer to “§ 53.45(b)(2).”

**Clarification No. 7.** Section 53.54(a)(4) refers to the “Commission Order described in § 53.54(a)(5).” Section 53.54(a)(5) does not contain a “Commission Order.” The PUC will change the capitalized word “Order” to a lower case “**order**” in the proposed Section 53.54(a)(4) and indicate that it is “**as**” described in the proposed Section 53.54(a)(5). In addition, in the proposed Section 53.54(a)(5), the PUC will replace the word “suspend” with “**enter an order suspending**” to clarify the reference in Section 53.54(a)(4).

**Clarification No. 8.** Proposed Subsections 53.54(d)(1), (3) and (4) and (e)(2) contain references to “public utility.” In order to be consistent with the rest of proposed Section 53.54, “public utility” requires the modifier “**small water or small wastewater.**” The PUC will revise the proposed Sections 53.54(d)(1), 53.54(d)(3), and 53.54(e)(2) by adding “**small water or small wastewater**” to modify “public utility.” As originally proposed, Annex A already proposes to modify “public utility” in Section 53.54(d)(4) by adding “small water or small wastewater.”

**Clarification No. 9.** The PUC is modifying the proposed definition of “EMOF—Emergency maintenance and operation fund” in Section 53.51a in Annex A to keep it purely definitional and is moving proposed operative language restricting the uses of an EMOF to Section 53.54(d)(1). As shown in bold, the proposed new definition of “EMOF” in Section 53.51a and the proposed new language of Section 53.54(d)(1) will be as follows:

**EMOF—Emergency maintenance and operation fund—An expense claim, by a small water public utility or a small wastewater public utility, in lieu of a cash working capital claim which may be allowable in anticipation of emergencies as a restricted reserve account.**

§ 53.54(d)(1) *EMOF **burden of proof.*** [An expense claim in lieu of a cash working capital claim which may be allowable] A small water or small wastewater public utility may submit a claim for an EMOF in anticipation of emergencies such as extraordinary repairs and maintenance, drought conditions, extraordinary environmental and physical damages to sources of supply, floods, storms, freeze-ups, or other health and welfare-threatening situations. The burden of demonstrating that actual or proposed disbursements from the **[fund] EMOF** are reasonable and in the public interest shall be borne by the **small water or small wastewater public** utility.

**Clarification No. 10.** Exhibit E, Section E.7, in Annex B, proposes to refer to “the nominal cost schedule under E.4.” Section E.4 is not the correct cross reference. The PUC will correct the reference from “E.4” to “E.6.”

**Clarification No. 11.** Exhibit E, Section E.19, in Annex B, proposes to require a “schedule in the same format as the schedule provided in Filing Requirement E.16 above, except for the omission of the descriptive statement.” E.16 is not the correct cross reference. The PUC will correct the cross reference from “E.16” to “E.18.”

**Clarification No. 12.** Exhibit E, Section I.1, in Annex B, proposes the public utilities “provide a list of operating expenses *by for* the HTY....” The PUC will remove the word “by” since it is a typographical error.



**Clarification No. 13.** Exhibit E, section M.1.v., in Annex B, would require the “grand total showing total sales and revenues as adjusted and the various increases and decreases and percent effects as described in M.1 above.” The proposed requirement relates to the grand total revenue requirement, showing both total sales and revenues, as adjusted. The PUC will revise the proposed language with new language as shown in bold:

Provide the grand total **revenue requirement** showing **both** total sales and revenues, as adjusted, and the various increases and decreases **in rates, including percentage effects, at present and proposed rates.**

### CONCLUSION

The clarifications herein do not make any substantive changes to the proposed regulations at Sections 53.1-53.56a (relating to information furnished with the filing of rate changes) when a public utility files a proposed rate change using a historic test year, a future test year, or a fully projected future test year. 66 Pa.C.S. § 315 (regarding burden of proof). The clarifications herein are necessary to allow a full understanding of the proposed changes to the PUC’s regulations by stakeholders. These clarifications do not affect the fiscal impact of the proposed regulations. Thus, we are making these clarifications without further notice or specific opportunity to respond at this time. All interested persons will have the opportunity to comment on these clarifications in the context of the entirety of the Clarified NOPR when it is published in the *Pennsylvania Bulletin*.

After entry of this Clarifying Order, the Clarified NOPR (*i.e.*, the Clarified Preamble and Clarified Annexes) will be posted to the PUC’s website at this docket number. Thereafter, the regulatory packet will be delivered to the PUC’s Legislative Standing Committees, the LRB, and IRRC. The public comment period, consisting of a

45-day comment period and a 45-day reply comment period, will commence upon publication in the *Pennsylvania Bulletin*.

The PUC contacts for this NOPR are Melanie El Atieh, Law Bureau, [melatieh@pa.gov](mailto:melatieh@pa.gov); Erin Laudenslager, Bureau of Technical Services, [elaudenslag@pa.gov](mailto:elaudenslag@pa.gov); Louise Fink Smith, Law Bureau, [finksmith@pa.gov](mailto:finksmith@pa.gov); and Karen Thorne, Law Bureau, [kathorne@pa.gov](mailto:kathorne@pa.gov).

This Clarifying Order will be served on all parties to this proceeding, made public on the Commission's website, and provided to the Governor's Budget Office and the Office of the Attorney General; **THEREFORE**,

**IT IS ORDERED:**

1. That the Commission's Law Bureau and Office of the Secretary make the appropriate clarifications to the June 17, 2021 Notice of Proposed Rulemaking (Preamble and Annexes) and post, serve, and deliver the clarified documents accordingly.

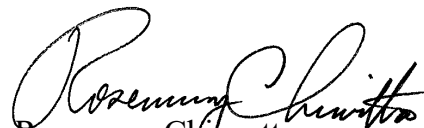
2. That interested parties may file written comments referencing Docket No. L-2012-2317273 within 45 days of publication of the Notice of Proposed Rulemaking, as clarified by this Order, in the *Pennsylvania Bulletin*, and may file written reply comments within 45 days of the deadline for comments. Comments and Reply Comments are to be filed electronically through the Commission's e-File System. *See* <https://efiling.puc.pa.gov/> for instructions. Confidential materials should be clearly marked as such and be emailed to Rosemary Chiavetta, Commission Secretary, [rchiavetta@pa.gov](mailto:rchiavetta@pa.gov), in lieu of being eFiled.

3. That the Public Utility Commission contacts for this Notice of Proposed Rulemaking are Melanie El Atieh, Law Bureau, [melatieh@pa.gov](mailto:melatieh@pa.gov); Erin Laudenslager,

Bureau of Technical Services, [elaudenslag@pa.gov](mailto:elaudenslag@pa.gov); Louise Fink Smith, Law Bureau, [finksmith@pa.gov](mailto:finksmith@pa.gov); and Karen Thorne, Law Bureau, [kathorne@pa.gov](mailto:kathorne@pa.gov).

4. That this Clarifying Order will be served on all parties to this proceeding, made public on the Commission's website, and provided to the Governor's Budget Office and the Office of the Attorney General.

**BY THE COMMISSION**

  
Rosemary Chavetta  
Secretary

(SEAL)

ORDER ADOPTED: May 12, 2022

ORDER ENTERED: May 12, 2022