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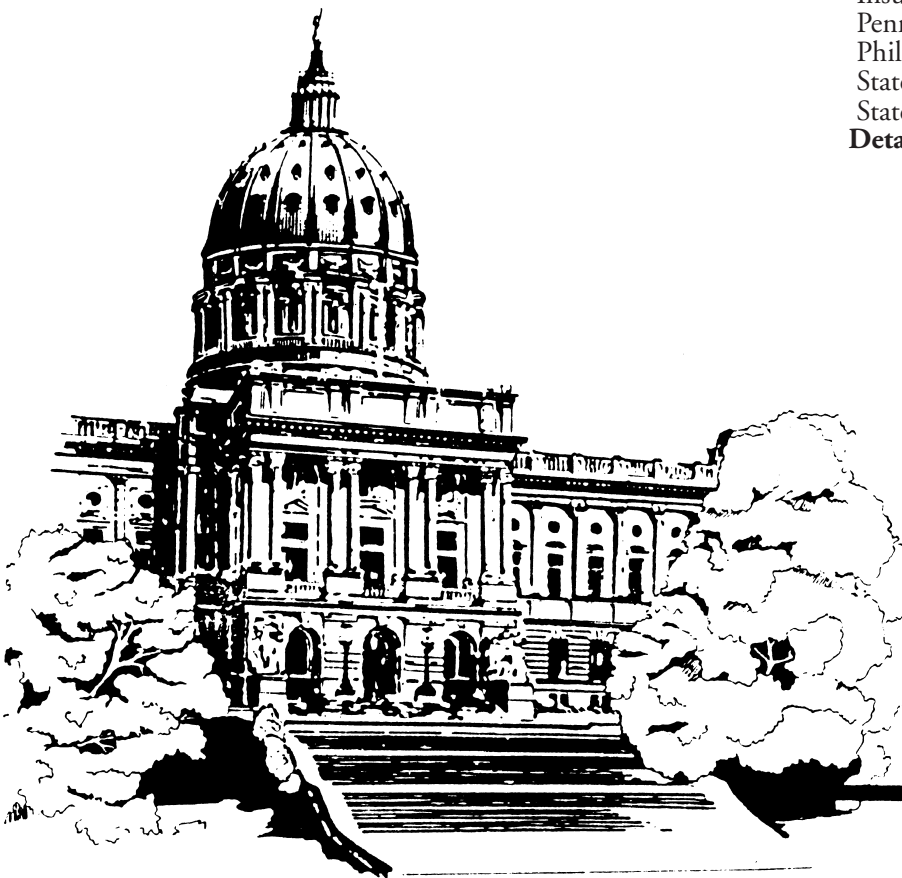
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Catalog of Nonregulatory
Documents Notice

Part I

Agencies in this issue

The Courts
Department of Banking and Securities
Department of Environmental Protection
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Insurance Department
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PROPOSED RULEMAKING

PENNSYLVANIA PUBLIC UTILITY COMMISSION

[52 PA. CODE CH. 65]

Proposed Water Audit Methodology Regulation 52 Pa. Code § 65.20a—Water Conservation Measures

Public Meeting held
November 18, 2021

Commissioners Present: Gladys Brown Dutrieuille, Chairperson; John F. Coleman, Jr., Vice Chairperson; Ralph V. Yanora

*Proposed Water Audit Methodology Regulation
52 Pa. Code § 65.20a—Water conservation measures;
L-2020-3021932*

Notice of Proposed Rulemaking Order

By the Commission:

The Pennsylvania Public Utility Commission (PUC) adopts this Notice of Proposed Rulemaking (NOPR) Order¹ and seeks comments on proposed language for a regulation at 52 Pa. Code § 65.20a, relating to water conservation measures.

Background

The General Assembly has empowered the PUC to enact regulations governing public utilities. Section 501 of the Public Utility Code, 66 Pa.C.S. § 501(b), provides in relevant part that:

[T]he commission shall have general administrative power and authority to supervise and regulate all public utilities doing business within this Commonwealth. The commission may make such regulations, not inconsistent with law, as may be necessary or proper in the exercise of its powers or for the performance of its duties.

Section 504 of the Public Utility Code, 66 Pa.C.S. § 504, provides in pertinent part that the PUC:

[M]ay require any public utility to file periodical reports, at such times, and in such form, and of such content, as the commission may prescribe, and special reports concerning any matter whatsoever about which the commission is authorized to inquire, or to keep itself informed, or which it is required to enforce.

The PUC's existing policy statement on water conservation measures, 52 Pa. Code § 65.20 (Water Conservation Policy Statement), provides guidance to water utilities in encouraging cost-effective water conservation by their customers. It was issued under the Public Utility Code, 66 Pa.C.S. § 523(b) relating to performance factor consideration. The Water Conservation Policy Statement was adopted on April 7, 1989, and became effective on April 8, 1989, when it was published at 19 Pa.B. 1575.

On November 10, 2008, the PUC entered a Tentative Order at Docket No. M-2008-2062697 regarding a pilot program to implement the American Water Works Association Water Audit Methodology (AWWA Methodology). The November 10, 2008, Order became final on December

10, 2008, as evidenced by a Secretarial Letter issued on January 13, 2009, and is referred to herein as the "December 10, 2008 Order." The AWWA Methodology quantifies non-revenue water by volume, cost and data quality using a standard water audit spreadsheet provided at no charge by AWWA. The AWWA Methodology characterizes non-revenue water standing through performance indicators that independently assess apparent losses, real losses, costs, and data validity. The AWWA Methodology is an effective means for loss control target setting and measurable performance improvement. By way of the December 10, 2008, Order, the PUC invited all jurisdictional water utilities to voluntarily participate in a pilot program to implement the AWWA Methodology. Aqua Pennsylvania, Inc., Pennsylvania-American Water Company, Superior Water Company, York Water Company, and United Water Company, Inc., chose to participate in the program.

On November 10, 2011, the PUC entered a Tentative Order at Docket No. M-2008-2062697 wherein the PUC ordered all Class A water utilities to implement the AWWA Methodology.² The November 10, 2011, Order became final on January 27, 2012, as evidenced by a Secretarial Letter issued on January 27, 2012, and is referred to herein as the "January 27, 2012, Order." The January 27, 2012, Order also directed preparation of proposed regulations implementing the AWWA Methodology as a best management practice in water loss control in Pennsylvania.

On September 17, 2020, the PUC entered an Advanced Notice of Proposed Rulemaking Order (ANOPR Order) at this docket, which was published in the *Pennsylvania Bulletin* on October 10, 2020, 50 Pa.B. 5657.³ In the ANOPR Order, the PUC invited comments from the regulated community and other interested parties within 45 days of publication which would include proposed regulatory language, experienced benefits and costs of the proposed methodology, and the suggested scope of the regulation. The ANOPR Order did not contain draft language of a proposed regulation.

Comments were received from the Office of Consumer Advocate (OCA). Joint comments were received from the Pennsylvania Chapter of National Association of Water Companies⁴ and Aqua Pennsylvania, Inc. (collectively NAWC-PA and Aqua); and from AWWA Water Loss Control Committee Members George Kunkel, David Sayers, Edward Osann, Steve Cavanaugh, Will Jernigan, and Drew Blackwell (collectively AWWA Committee).

With the many challenges facing the water industry, including, rising costs to rehabilitate aging infrastructure, increased energy costs, increased costs of chemicals and other treatment necessary to meet the more stringent requirements of the Pennsylvania Safe Drinking Water Act, 35 P.S. §§ 721.1—721.17, and the limited availability and higher costs for developing new sources of supply, this NOPR Order reflects the PUC's effort to develop a

² The January 27, 2012 Order, *inter alia*, noted that that our "comprehensive Policy Statement on Conservation calls for an ongoing leak detection and repair program as an integral part of maintaining low levels of UFW." January 27, 2012 Order at 3.

³ The caption of this rulemaking proceeding referenced Section 65.20 in the ANOPR. This regulation would, however, be codified at 52 Pa. Code § 65.20a rather than Section 65.20 pursuant to directions from the Legislative Reference Bureau.

⁴ NAWC-PA is a trade organization whose members are investor-owned jurisdictional water public utilities in the Commonwealth. The members are Columbia Water Company, Newtown Artesian Water Company, Pennsylvania American Water Company, SUEZ Water Pennsylvania Inc., and The York Water Company. NAWC-PA provides its members with a vehicle for expressing their position on legislative and regulatory developments before the General Assembly, regulatory agencies, and the courts. NAWC-PA and Aqua Joint Comments at 1-2.

¹ This Order serves as the PUC's "preamble" for this proposed regulatory process. See 1 Pa. Code § 301.1, regarding definitions.

more comprehensive codified water audit method as a tool to increase the efficiency of a water public utility's efforts to conserve water, account for lost water, increase water supply sustainability, remediate infrastructure, and improve overall service reliability.⁵

Discussion

A. Summary of Comments

1. Office of Consumer Advocate

OCA submitted Comments on November 24, 2020. OCA recommended that the water loss audit reports be available for stakeholders to review and be easy to find on the PUC's website. (OCA Comments at 2). OCA further proposed that the water audit submissions be reviewed for consistency and that the data be validated on a regular basis. (OCA Comments at 2-3). OCA asserted that the data should be verified by the utility and that the PUC's Bureau of Technical Utility Services (TUS), the PUC's Bureau of Audits, or both review the submissions to ensure that the data are validated on a regular basis. (OCA Comments at 3). OCA did not take a position on whether the Class B or Class C water public utilities should be required to use the AWWA Methodology or comparable water audit methodology. (OCA Comments at 3).

2. National Association of Water Companies—Pennsylvania Chapter & Aqua Pennsylvania, Inc.

NAWC-PA and Aqua submitted joint comments on November 24, 2020. NAWC-PA and Aqua enumerated the strengths of the AWWA Methodology. (NAWC-PA and Aqua Comments at 3).

NAWC-PA and Aqua asserted that a regulation is premature at this time and that there is no adequate empirical foundation for establishing a benchmark. (NAWC-PA and Aqua Comments at 5-7). NAWC-PA and Aqua submitted that the PUC needs to analyze the information currently filed by Class A water public utilities prior to drafting the regulation. (NAWC-PA and Aqua Comments at 5-7). If, however, a regulation is to be promulgated, NAWC-PA and Aqua asserted that the regulation should include a benchmark for non-revenue water and consequences in the event that a particular system exceeds the benchmark. (NAWC-PA and Aqua Comments at 8). NAWC-PA and Aqua encouraged the PUC to favor bringing a public water utility into compliance with the benchmark rather than imposing penalties on non-compliant utilities. (NAWC-PA and Aqua Comments at 8-9). NAWC-PA and Aqua requested that a working group of stakeholders be convened to review and draft the subject regulation. (NAWC-PA and Aqua Comments at 9).

NAWC-PA and Aqua further asserted that, if a regulation is to be promulgated at this time, all jurisdictional public water utilities should be required to submit at least one water audit using the AWWA Methodology. (NAWC-PA and Aqua Comments at 4). NAWC-PA and Aqua suggested that medium and large water public utilities (i.e., those with more than 10,000 customers) should complete annual water loss audits while smaller utilities should complete a water loss audit every five (5) years. (NAWC-PA and Aqua Comments at 7-8). NAWC-PA and Aqua submitted that a water public utility should complete a water audit using the AWWA Methodology for

all their systems but be permitted to submit a single document to the Commission. (NAWC-PA and Aqua Comments at 7).

NAWC-PA and Aqua detailed the costs and savings associated with the AWWA Methodology. They submitted that preparing a water audit is significantly more costly than calculating unaccounted-for water. (NAWC-PA and Aqua Comments at 3). In order to collect data and file an annual report for each system, NAWC-PA and Aqua estimated that a water public utility will consume fifty (50) hours of time or more throughout the year. (NAWC-PA and Aqua Comments at 3). NAWC-PA and Aqua estimated the cost to be \$2,500 per report. (NAWC-PA and Aqua Comments at 3-4). NAWC-PA and Aqua were also concerned with costs a water public utility may incur if water loss is too high and corrective action is needed. (NAWC-PA and Aqua Comments at 4). NAWC-PA and Aqua provided that reducing the avoidable loss of water will save a water public utility on production costs of roughly \$500 per million gallons for surface water systems and \$250 per million gallons for well systems. (NAWC-PA and Aqua Comments at 4).

3. AWWA Water Loss Control Committee Members

The AWWA Committee submitted comments on November 24, 2020, and supplemental comments on November 25, 2020. The AWWA Committee also set forth the many benefits of the AWWA Methodology and provided the background and an explanation of the AWWA Methodology. (AWWA Committee Comments at 3-26). The AWWA Committee suggested training for water public utility staff, PUC staff, and other stakeholders on the AWWA Methodology, data collection and self-assessment of water supply operations. (AWWA Committee Comments at 4). The AWWA Committee suggested that water loss audits be submitted for individual systems in electronic MS Excel format with an attestation by a senior executive of the water public utility to confirm the accuracy and completeness of the water loss audit submittal. (AWWA Committee Comments at 4). AWWA Committee also submitted that validation of the assembled water audit loss data is an essential quality control check. (AWWA Committee Comments at 4).

The AWWA Committee asserted that the water loss audit data should be compiled into a summary and posted on the PUC's website annually. (AWWA Committee Comments at 21). The AWWA Committee also provided suggested regulatory language. (AWWA Committee Comments at 27-29; AWWA Committee Supplemental Comments at 1-3).

B. Summary of the Proposed Water Conservation Measures Regulation as Set Forth in Annex A

The proposed regulation as set forth in Annex A would replace and supersede the current Water Conservation Policy Statement at 52 Pa. Code § 65.20. In addition to proposing a methodology, this NOPR also proposes to promulgate as regulations the other recommendations in the Water Conservation Policy Statement.

Subsection 65.20a(a)—General

This new regulation would establish as regulatory obligations the water conservation measures currently enshrined as recommendations in the Water Conservation Policy Statement for all water public utilities and establish a water loss audit obligation for Class A water public utilities. The PUC would review a water public utility's compliance or lack thereof with the new regulation when determining just and reasonable rates and could consider non-compliance in any other proceedings. Subsections

⁵ The proposed regulation does not address water that is lost prior to being treated (i.e., raw water). Raw water loss tends to be a limited quantity and does not have the same value as treated water.

65.20a(a), 65.20a(b), and 65.20a(d)—65.20a(k) would be applicable to all water public utilities. Subsection 65.20a(c) would be applicable to Class A water public utilities.

Subsection 65.20a(b)—Definitions

This subsection would define terms used in this section that are not defined elsewhere in the Title 52.

Subsection 65.20a(c)—Water loss audit for a Class A water public utility

This proposed subsection is predicated on the December 10, 2008, Order that established the voluntary pilot program for Class A water public utilities and on the January 27, 2012 Order in which the PUC ordered all Class A water utilities to implement the AWWA Methodology and indicated that a rulemaking would be commenced.

Pursuant to the proposed regulation, each Class A water public utility would be required to conduct an annual water loss audit with results reported to the PUC by April 30th of the following year. The results would have to be verified and provided in a working electronic format to the PUC. The annual water loss report would be completed for each discrete water system.

Class A water utilities would have to use a water audit methodology that, at a minimum, would quantify and address the following metrics and report criterion: (i) Water supplied, in gallons; (ii) Authorized consumption, in gallons; (iii) Water losses, in gallons; (iv) Non-revenue water, in gallons; (v) Distribution system characteristics; (vi) Operational cost data; (vii) Performance indicators, including financial indicators and operational efficiency indicators; (viii) Comment on any reported metric value that varied greater than 10% in either direction from the previous year's reported value and has not improved over three years of reporting; (ix) Indication of the confidence in the validity and accuracy of the value reported for each metric and a summation of the overall validity and accuracy of the data reported; (x) Description of priority areas the utility intends to address to reduce future water loss.

We acknowledge the concerns of NAWC-PA and Aqua that the AWWA Free Water Audit Software may be revised from time to time by AWWA. We also acknowledge that we cannot incorporate into regulations a directive that a regulated entity use the "most current" version as may be on offer in the future. Information regarding the permissive use of later versions will be addressed by the PUC as may be required.

Use of the AWWA Free Water Audit Software Version 6.0 (2020) would satisfy the annual water loss reporting requirements. If a water public utility seeks to use an alternative water audit methodology or a version other than the AWWA Free Water Audit Software Version 6.0 (2020), the water public utility would need to file, for review by the PUC at least 60 days prior to the end of the calendar year, all the technical and engineering formulas and metrics needed to substantiate how the alternative methodology or alternate version meets or exceeds the requisite metrics. Upon approval by the PUC of the alternate formulas and metrics or alternate version of the AWWA Free Water Audit Software, the water public utility would then proceed to file its annual water loss report using the approved alternate water audit loss methodology with the PUC by April 30th of the following year.

The PUC agrees with NAWC-PA and Aqua that there is not an adequate empirical foundation for establishing a

benchmark using the water audit methodology as the information currently filed by Class A utilities has not always been reported on a discrete system basis but instead, in many instances, was reported on a composite basis for numerous non-interconnected water systems. As such, the purpose of the proposed regulation is to standardize the water audit methodology's use and reporting to improve the quality and value of the information filed. Further, until there is an adequate empirical foundation for a benchmark to be established, the PUC will continue to require a Class A water public utility to report its unaccounted-for water using Schedule 500 of the utility's Annual Financial Report to the PUC.

Subsection 65.20a(d)—Unaccounted-for water

This proposed subsection is predicated on Subsection 65.20(4) relating to unaccounted-for water. Class A, Class B, and Class C water public utilities would have to report unaccounted-for water using Schedule 500 of the public utility's Annual Financial Report to the PUC. Levels of unaccounted for water would have to be kept within reasonable amounts. Levels above 20% have been considered by the PUC to be excessive. By continuing to monitor unaccounted-for water and comparing it to the water loss information, we can evaluate the two measurements. Until we have a benchmark for water loss, the unaccounted-for metric provides continuity in evaluating performance without jeopardizing the reliability of systems.

Subsection 65.20a(e)—Leak detection

This proposed subsection is predicated on Subsection 65.20(5) relating to leak detection. The proposed regulation would require a water public utility to use a system of leak detection on a regular basis with leaks being repaired as expeditiously and economically as possible. Leaks increase customer costs, decrease shareholder profits, decrease reliability and quality of the water supplies, negatively impact the environment, and compromise the safety of persons and properties near the leak. Undetected leaks exacerbate the negative impacts and risk unplanned outages for repairs.

Subsection 65.20a(f)—Metering

This proposed subsection is predicated on Subsection 65.20(6) relating to metering. The proposed subsection would require a comprehensive metering program reflecting a water public utilities obligations under Section 65.8 relating to metering that includes metering sources of supply, metering service to customers, and regular testing and maintenance of meters in service. The water public utility would be required to provide documentation of the program to the Commission upon request. However, in light of Section 65.8, parties should comment on whether the proposed Subsection 65.20a(f) is warranted.

Subsection 65.20a(g)—Mandatory conservation contingency plan

This proposed subsection is predicated on Subsection 65.20(7) relating to conservation plans and Section 65.11 relating to mandatory conservation measures. The proposed regulation would require each water public utility to incorporate its mandatory conservation contingency plan in its tariff in order to document its mandatory conservation measures obligations under Section 65.11. However, in light of Section 65.11, parties should comment on whether the proposed Subsection 65.20a(g) is warranted.