



November 4, 2022

**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 Water Audit Methodology Regulation 52 Pa. Code § 65.20a – Water Conservation Measures; Docket No. L-2020-3021932**

**Reply Comments of National Association of Water Companies – Pennsylvania Chapter**

Dear Secretary Chiavetta:

Enclosed for filing with the Pennsylvania Public Utility Commission (“Commission”) in the above-referenced matter are the Reply Comments of the National Association of Water Companies – Pennsylvania Chapter. Copies are being served as shown on the attached Certificate of Service.

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/kmg  
Enclosure

cc: James A. Mullins, Esq. (*Law Bureau*)  
Stephanie Wilson, Esq. (*Law Bureau*)  
Karen Thorne (*Law Bureau*)  
Per Certificate of Service  
JT Hand, President, NAWC

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Proposed Water Audit Methodology Regulation 52 : Docket No. L-2020-3021932  
Pa. Code § 65.20a – Water Conservation Measures :

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served a true copy of the foregoing **Reply Comments of the National Association of Water Companies – Pennsylvania Chapter**, upon the parties of record in this proceeding in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant), in the manner and upon the persons listed below:

**Service by E-mail and First Class Mail:**

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Respectfully,



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David P. Zambito, Esq.  
Counsel for *National Association of Water  
Companies – Pennsylvania Chapter*

Date: November 4, 2022

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Proposed Water Audit Methodology Regulation :  
52 Pa. Code § 65.20a – Water Conservation Measures : Docket No. L-2020-3021932

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**REPLY COMMENTS OF THE NATIONAL ASSOCIATION OF WATER  
COMPANIES – PENNSYLVANIA CHAPTER**

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AND NOW COMES the National Association of Water Companies – Pennsylvania Chapter (“NAWC”), in response to the Notice of Proposed Rulemaking Order (“NOPR”) that the Pennsylvania Public Utility Commission (“Commission”) entered on November 18, 2021 and published in the *Pennsylvania Bulletin* on August 6, 2022, 52 Pa.B. 4926. NAWC appreciates the opportunity to submit these Reply Comments

**I. INTRODUCTION**

NAWC is a trade organization whose members are investor-owned water utilities in Pennsylvania that are regulated by the Commission.<sup>1</sup> Among other functions, NAWC provides members with a vehicle for expressing their position on legislative and regulatory developments before the General Assembly, the Commission and other regulatory agencies, as well as the courts. NAWC commends the Commission for studying water loss in the Commonwealth. This topic is a matter of great importance for the industry due to the cost of treating water that is ultimately lost or unaccounted for. In addition, water utilities have an interest in preserving supplies of this precious resource, especially during periods of drought.

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<sup>1</sup> The members of NAWC are: Aqua Pennsylvania, Inc.; Columbia Water Company; Newtown Artesian Water Company; Pennsylvania-American Water Company; The York Water Company; and, Veolia Water Pennsylvania, Inc. (f/k/a SUEZ Water Pennsylvania Inc.). Newtown Artesian Water Company is a Class B water utility; the remaining members of NAWC are Class A water utilities. In addition to water operations, several members operate Commission-regulated wastewater systems.

On September 17, 2020, the Commission entered an Advanced Notice of Proposed Rulemaking Order (“ANOPR Order”) at this docket, published in the *Pennsylvania Bulletin* on October 10, 2020, 50 *Pa.B.* 5657. In the ANOPR Order, the PUC invited comments, to include proposed regulatory language, benefits and costs of the proposed methodology, and the scope of the regulation. The ANOPR Order did not contain draft language of a proposed regulation. NAWC provided comments together with Aqua Pennsylvania, Inc.

The November 18, 2021 NOPR stated:

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.

NOPR at 7.

NAWC filed comments on September 20, 2022. The Susquehanna River Basin Commission (“SRBC”) and a committee of the American Water Works Association (“AWWA”) also filed comments. NAWC offers this brief reply to the comments submitted by the SRBC and the AWWA.

## **II. REPLY COMMENTS**

### **A. Replies to the SRBC**

The SRBC recommends that the Commission define Class A, Class B and Class C water utilities in Subsection 65.20a(b) because a Class A public utility is currently defined differently in different regulations. *Compare* 52 Pa. Code § 65.16 (defining a Class A water utility as a water utility with an annual operating revenue of \$750,000 or more) and 52 Pa. Code § 56.2 (defining a Class A water utility as a water utility with annual revenues greater than \$1,000,000). Although the SRBC’s comment accurately reflects existing law, the Commission has proposed modifying Section 65.16 to resolve this inconsistency. *Application of 52 Pa. Code § 3.501 to Certificated*

*Water and Wastewater Utility Acquisitions, Mergers and Transfers*, Docket No. L-2020-3017232 (Notice of Proposed Rulemaking Order entered December 16, 2021). In order to avoid future instances of inconsistent regulations, NAWC recommends that the Commission incorporate by reference the definition of Class A, Class B and Class C water utilities as set forth in 52 Pa. Code § 65.16.

The SRBC also recommends that the Commission simplify its proposal regarding unaccounted-for water (“UFW”) to read: “Levels of UFW shall not exceed 20% of the total volume of water produced or purchased.” SRBC Comments p. 3. NAWC opposes this proposal because such mandatory language could result in civil penalties for a water utility with UFW exceeding 20% -- regardless of the facts and circumstances of the particular case and the progress being made by the water utility. Moreover, the SRBC’s proposed language could have the adverse consequence of discouraging qualified water utilities from acquiring troubled systems with high levels of UFW. The acquiring water utility could be in immediate non-compliance with the UFW requirement upon closing of the transaction. In order to avoid such results, NAWC reiterates its proposal that the Commission’s regulation state “Water public utilities should strive to reduce [UFW] levels to below 20%.” NAWC Comments, p. 7.

The SRBC also recommends that the Commission adopt the proposed language in Subsection 65.20a(f) (“Metering”). The SRBC further recommends that the Commission consider developing metering requirements specifically for sources of supply. AWWA Comments p. 3. For the reasons set forth in NAWC’s Comments, p. 8, NAWC disagrees with these proposals. Procedurally, it is improper to amend Section 65.8 by adopting a new regulation at Section 65.20a. Additionally, this rulemaking focuses on the loss of water after it has been treated. The

Commission provides no justification for requiring the metering of sources of supply. NAWC recommends that the Commission delete the reference to metering sources of supply.

**B. Replies to the AWWA**

The AWWA recommends that the Commission convene a working group of stakeholders to draft improved language to offer to the Commission. AWWA Comments p. 2. NAWC supports this recommendation in order to obtain greater public input on the proposal. If the Commission convenes such a working group, NAWC asks to be invited to participate in it.

In addition, the AWWA recommends that water loss reports be completed for each discrete water system with a discrete Public Water System Identification (“PWSID”) number. AWWA Comments p. 4. This comment seems to be advocating a change in the Commission’s proposed definition of a “discrete system.” NAWC does not believe such a change is necessary and it would impose unreasonable burdens and costs upon the water utility. NAWC reiterates its Comments, p. 4, supporting the Commission’s proposed definition of a “discrete system,” with minor clarifications, as well as NAWC’s Comments p. 6, advocating that utilities have the flexibility to determine what constitutes a “discrete system” within their operations, which could include a large interconnected system with multiple water sources or a division consisting of multiple public water systems.

The Commission proposes retaining the language currently found in the Commission’s Water conservation measures – statement of policy, 52 Pa. Code § 65.20(4), stating that unaccounted-for water levels above 20% have been considered by the Commission to be excessive. The AWWA recommends rejecting the 20% UFW benchmark and instead recommends analyzing AWWA performance factors.

The AWWA's proposal is too vague to be adopted at the present time. The Commission is proposing the adoption of a regulation, which carries the force and effect of law. Public utilities can be subjected to civil penalties for failing to comply with a regulation. Consequently, they need to know exactly what is required of them.

NAWC would like additional details about AWWA's proposal before taking a position on its merits. For example, NAWC would like information about the specific performance indicators that AWWA believes the Commission should use for benchmarking purposes, and what standards the AWWA believes a utility should be required to meet. Accordingly, AWWA's performance indicators should not be adopted at this time but, instead, should be discussed in the context of the stakeholder working group that is being proposed by AWWA.

### **III. CONCLUSION**

NAWC thanks the Commission for the opportunity to submit these reply comments on the important topic of water conservation. NAWC looks forward to continuing to work with the Commission on this issue.

Respectfully submitted,



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