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January 31, 2023

Via Electronic Filing

Rosemary Chiavetta, Secretary
Secretary's Bureau
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, Second Floor
Harrisburg, PA 17120

RE: Use of Fully Projected Future Test Year 52 Pa. Code Chapter 53.51-53.56a; Docket No. L-2012-2317273; **REPLY COMMENTS OF COLUMBIA WATER COMPANY AND COMMUNITY UTILITIES OF PENNSYLVANIA INC.**

Dear Secretary Chiavetta,

Enclosed for filing are the Reply Comments of Columbia Water Company and Community Utilities of Pennsylvania Inc.

Thank you for your attention to this matter. If you have any questions, please feel free to contact me at (717) 236-1300.

Respectfully submitted,

/s/ Whitney E. Snyder

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WES/das
Enclosure

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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Use of Fully Projected Future Test Year : Docket No. L-2012-2317273
52 Pa. Code Chapter 53.51-53.56a :

**REPLY COMMENTS OF
COLUMBIA WATER COMPANY
AND
COMMUNITY UTILITIES OF PENNSYLVANIA INC.**

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Dated: January 31, 2023

I. INTRODUCTION

On June 17, 2021, the Pennsylvania Public Utility Commission (“Commission” or “PUC”) entered a Notice of Proposed Rulemaking Order (“NOPR”) seeking to adopt rules and regulations regarding the information and data to be filed in general rate increase filings when utilities use a fully projected future test year (“FPFTY”).¹

Columbia Water Company (“Columbia Water” or “CWC”) and Community Utilities of Pennsylvania Inc. (“CUPA”) have reviewed the Comments filed² and provides the following Reply Comments, which are summarized here and discussed in detail in Section II.³

- Most importantly, and consistent with the Commission’s stated objective to reduce the regulatory burden and costs associated with preparing and litigating general rate increases, the Commission should increase the monetary threshold associated with the extensive Section 53.53 filing requirements from its current \$1 million threshold to between \$3.5 million or \$5 million. This change is necessary to maintain parity with general economic

¹ The NOPR, as clarified, was published in the Pennsylvania Bulletin on October 1, 2022, with Comments due 45 days after publication. 52 Pa. Bull. 6160 (Oct. 1, 2022). Subsequently, a Secretarial Letter was issued on October 14, 2022, extending the period for Reply Comments from December 30, 2022, to January 31, 2023.

² The following parties submitted Comments: (1) Veolia Water Pennsylvania (“Veolia”), (2) Duquesne Light Company (“Duquesne”), (3) Citizens’ Electric Co. of Lewisburg, Pa., Wellsboro Electric Co. and Valley Energy, Inc. (collectively, “C&T Companies”), (4) the Energy Association of Pennsylvania (“EAP”), (5) PPL Electric Utilities Corp. (“PPL”), (6) Industrial Energy Consumers of Pennsylvania (“IECPA”), (7) Pennsylvania-American Water Co. (“PAWC”), (8) the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (“CAUSE-PA”), (9) the Office of Small Business Advocate (“OSBA”), (10) the National Association of Water Companies – Pennsylvania Chapter (“NAWC”), (11) the Office of Consumer Advocate (“OCA”), (12) UGI Utilities, Inc. (“UGI”), (13) Aqua Pennsylvania, Inc. (“Aqua”), (14) Metropolitan Edison Co., Pennsylvania Electric Co., West Penn Power Co., and Pennsylvania Power Co. (collectively, “FirstEnergy”), and (15) Peoples Natural Gas Co., LLC and Peoples Gas Co., LLC (collectively, “Peoples”).

³ Columbia Water and CUPA do not address at length every specific edit or recommendation made by the Commenters. It’s silence on certain matters should not be considered approval of any certain position on an issue, unless specified otherwise in the Reply Comments below.

inflation. Likewise, periodic updates should occur every five years to reflect future economic inflation.

- The effective date of these amended regulations should be delayed by at least six months from the date of publication in the Pennsylvania Bulletin and the regulations should not be applied retroactively.
- Consistent with the Commission’s stated purpose of reducing the regulatory burden and costs associated with preparing and litigating general rate increases, the Commission should:
 - take a more balanced approach with small and moderately sized utilities that do not have the resources of a larger utility;
 - allow for a streamlined process to request and receive waiver of information requirements where reasonable;
 - not require bill impact information for unspecified, generalized usage levels, but instead continue to use one average usage level for each customer class; and
 - not adopt suggestions in the Comments of OCA and IECPA calling for more lengthy, complex, and burdensome filing requirements in proposed Exhibit E.
- The Commission should recognize that the increased costs and burdens the rulemaking will impose on utilities are costs that are ultimately borne by consumers.

II. REPLY COMMENTS

A. Effective Date

CWC and CUPA agree with those Commenters discussing the effective date of proposed Annex A and Annex B. *See* NAWC Comments at 6, PAWC Comments at 6, Duquesne Comments

at 7. The effective date of these amended regulations should be delayed by at least six months from the date of publication in the Pennsylvania Bulletin. Furthermore, these requirements should not retroactively apply to general rate cases that are ongoing and were filed prior to the effective date. This will allow utilities to comply with the new requirements in a timely manner while not affecting rate increase filings that are presently being prepared or that have been or will be filed prior to the effective date. This recommendation is reasonable in light of the fact that utilities have been filing rate cases using a FPPTY for over ten years under the existing requirements without issue. *See Aqua Comments at 5.* Thus, additional, timely delay would not cause any undue harm or issues to the Commission's current ratemaking process.

B. Reduced Filing Requirements for Small to Moderate-Sized Utilities and/or Allowance for Waiver

Generally, CWC and CUPA support the Comments of NAWC, EAP, and FirstEnergy, among others, regarding the extensive filing requirements associated with proposed Exhibit E. Proposed Exhibit E substantially increases the preliminary filing and information requirements associated with general rate increases greater than \$1 million, requiring utilities to spend significant time and expense to comply. *See, e.g., FirstEnergy Comments at 7-8, EAP Comments at 4-5, 23, Duquesne Comments at 4.* This can have a considerable impact on smaller utility companies seeking a general rate increase greater than \$1 million. Accordingly, the Commission should keep in mind that these requirements apply to a range of utilities, both large and small. Thus, the Commission should take a more balanced approach with moderately sized utilities that do not have the resources of a larger utility. For example, as NAWC suggested, utilities should have the ability to seek waiver of a portion of the information requirements where such waiver is reasonable. *NAWC Comments at 5-6.* Allowing for a streamlined and straightforward waiver process for certain rate increase filings would also not be detrimental to the truth-seeking process,

as parties would still have the ability to issue interrogatories during the rate case proceeding to obtain information that is reasonably calculated to lead to the discovery of admissible evidence. *See* 52 Pa. Code §§ 5.321, 5.341. This is also consistent with the Commission’s stated objective of this NOPR, which is to reduce the regulatory burden and costs associated with preparing and litigating general rate increase cases. NOPR at 10.

C. Section 5.51(d) - Mandatory Service to Low-Income Advocates

In its Comments, FirstEnergy stated that it is unreasonable to require service to the ‘low-income advocates’ when filing a general rate increase. FirstEnergy Comments at 12. FirstEnergy reasoned, *inter alia*, that the specific organizations or associations that seek party status as low-income advocates differ from one utility’s service area to another and, in some cases, more than one such organization or association may intervene in private, non-governmental capacities. *Id.* As such, FirstEnergy recommended removing the mandatory service requirement to the low-income advocates as set forth in proposed Section 53.51(d). *Id.* Duquesne made a similar recommendation in its comments. Duquesne Comments at 6.

CWC and CUPA agree with FirstEnergy and Duquesne. Unlike the other parties listed in Section 53.51, the term ‘low-income advocates’ is not defined, nor does it refer to a specific party. As such, it is unclear who Columbia Water is supposed to serve in this scenario. For example, in Columbia Water’s previous base rate proceeding and in CUPA’s previous base rate proceeding, no ‘low-income advocate’ participated. For that reason, the requirement to serve the low-income advocates is vague, unduly burdensome and may not be applicable for certain public utilities. *See Watkins v. State Bd. of Dentistry*, 740 A.2d 760, 765 (Pa. Cmwlth. 1999) (holding that a statute or regulation is vague and unenforceable where terms are not defined or there is no reasonable standard by which the regulated party is supposed to act). In addition, it inappropriately grants private low-income advocates preferential and prejudicial treatment over other private parties that

may have an interest in the proceeding. *See* EAP Comments at 7. Rather, the general notice requirements set forth in 52 Pa. Code § 53.45 are sufficient to notify non-statutory advocacy groups of a general rate increase filing.

D. Section 53.52 – Bill Impacts

The OCA recommends that Section 53.52(a)(4) be amended to require a public utility to show the impact of its proposed rate changes on residential customers at different usage levels, including typical low, medium, and high usage levels. OCA Comments at 4. The OCA reasons that ‘typical’ usage levels vary across a customer’s service territory making it difficult to discern the impacts the rate increase will have on a certain customer’s bill. *Id.* CAUSE-PA makes similar recommendations stating that Section 53.45 should also be amended to require notice of the bill impacts at multiple specific levels of usage and usage types (e.g., heating vs. non heating), and should appear in both annual and monthly estimates with a standardized table to provide at least three estimated residential rate impacts at different usage levels for each usage type. CAUSE-PA Comments at 15.

Columbia Water and CUPA oppose OCA’s and CAUSE-PA’s recommendations for several reasons. First, the OCA does not specify what would constitute typically ‘low,’ ‘medium,’ or ‘high’ usage levels. Similarly, CAUSE-PA does not provide any additional specificity other than utilities should be required to specify “at least three estimated residential rate impacts at different levels for each usage type.” CAUSE-PA Comments at 15. As recommended, these requirements are vague and subjective. Moreover, providing rate impacts at typically low, medium, or high usage levels does little to resolve their concerns because it would create additional complexity for the customer and still only represent a ‘typical’ usage level, not what the true impact would be to an actual customer.

Additionally, the existing notice requirement set forth under 52 Pa. Code § 53.45(b), which currently requires the public utility to provide the average monthly bill impacts to each customer class at typical usage levels along with a percentage increase, sufficiently informs the public of the potential impacts the rate increase can have on a customer's bill. Furthermore, amendment of Section 53.45 was not considered as part of this NOPR and it should remain as currently written. Should the customer seek more information regarding rate impacts or the rate increase, the customer can always participate in the rate case or reach out to the Company and/or the OCA informally. Lastly, to the extent the Commission agrees with the OCA and CAUSE-PA, which it should not, the Commission should only require this information as part of proposed Exhibit E.

E. Section 53.53 - Monetary Threshold

The C&T Companies and EAP both raised concerns related to the current \$1 million threshold for the applicability of the more extensive filing requirements. In particular, EAP, with which the C&T Companies agreed, recommended that the Commission define "major rate increase filing" as follows:

"a proposed general rate increase that modifies the public utility's annual revenues from base rates subject to regulation under Section 1308 by more than [\$3- \$5] million."

EAP Comments at 8-9. EAP also recommended to include periodic updates every five to ten years to account for inflation. *Id.* As support for their position, both EAP and the C&T Companies recognized that the threshold was adopted in the 1980's (or earlier) and has never been revisited. *Id.*, at 8; *see also* C&T Companies Comments at 4. Indeed, when adjusting for the price of inflation, the C&T Companies state that it would raise the \$1 million threshold to approximately \$3.5 million in today's dollars, depending on which index is used to create the comparison (*e.g.*, Consumer Price Index). C&T Companies Comments at 5. Moreover, the C&T Companies indicated that the costs of operating utility systems have changed dramatically, with recent

economic conditions substantially increasing those costs over the last three years alone. *Id.*, at 4-5.

CWC and CUPA strongly agree with the Comments of the C&T Companies and EAP. In 2017, Columbia Water filed for a general rate increase of approximately \$923,668 per year. *Pa. Pub. Util. Comm'n v. Columbia Water Co.*, Docket No. R-2017-2598203, Supplement No. 86 to Tariff – Water Pa. P.U.C. No. 7 (filed Jun. 27, 2017), available at <https://www.puc.pa.gov/pdocs/1526677.pdf>. At the time, the increase was enough for Columbia Water to earn sufficient revenue to continue providing adequate and sufficient service, while at the same time avoiding the extensive filing requirements associated with Section 53.53. In doing so, Columbia Water lessened the time and expense associated with the rate case filing, which benefited customers by reducing the claimed rate case expense and associated costs that are collected from customers.

If the Commission retains the current \$1 million threshold for imposing Section 53.53 of the Commission's regulations, especially during a time of rampant inflation and supply chain restrictions, it puts the utility in a position of having to choose whether to limit its requested rate increase to avoid the additional filing requirements, which can detrimentally impact its ability to earn a fair rate of return and raise the necessary capital, or subject itself to significant additional time and expense to request an appropriate and moderate rate increase. Hence, failing to raise the monetary threshold for application of Section 53.53 not only does a disservice to public utilities, but also harms consumers by substantially increasing the costs of compliance, which will ultimately be recovered from customers.

Moreover, as Aqua indicated in its comments, in September 1977, the Commission adopted the filing requirements at 52 Pa. Code § 53.53 for general rate increases exceeding \$1 million.

Data To Be Filed In Major Rate Cases, Docket No. 77-5, 7 Pa. Bull. 2527-2528 (Special Order entered Sept. 3, 1977) (“Special Order 77-5”). Aqua Comments at 3. Thus, forty-five years have since passed without updating this amount. As such, when performing the same inflation calculation as the C&T Companies, but relying on a date of September 1977, the filing threshold adjusted for inflation equates to approximately \$4.8 million in today’s dollars. See U.S. Bureau of Labor Statistics, CPI Inflation Calculator (last accessed January 11, 2023), available at https://www.bls.gov/data/inflation_calculator.htm. This fact alone demonstrates that an increase to the monetary threshold for the application of Section 53.53 is long overdue.

Increasing the threshold is further warranted because, as evidenced the C&T Companies, operational expenses have indeed increased substantially due to, *inter alia*, economic inflation. C&T Companies Comments at 4-5, Att. A. Columbia Water, in particular, has been significantly affected over the past several years and costs have increased substantially as a result. For example:

Item	Unit	Prices Paid		Percent Increase
		2019	2022	
8" Ductile Pipe	foot	\$18.83	\$44.74	138%
3/4' Copper Pipe	foot	\$2.69	\$6.67	148%
Sodium Hypochlorite	gallon	\$1.18	\$1.97	67%
Delpac Coagulant	pound	\$0.19	\$0.26	37%
Fuel Oil	gallon	\$2.64	\$4.35	65%

CUPA has been impacted similarly by increased prices. CUPA provides the following increased cost data:

Item	Unit	Prices Paid		Percent
		2020	2023	Increase
Variable Frequency Drive Motors	each	\$14,000	\$18,000	28%
Generator (150kW)	each	\$83,000	\$102,500	23%

For these reasons, increasing the \$1 million threshold to reflect inflationary increases since 1977 would better serve smaller utilities whose customers should not be burdened with the additional expense associated with the extensive filing requirements contemplated by the Commission in this rulemaking. Accordingly, it is necessary that the Commission update the \$1 million threshold to be consistent with current economic conditions, maintain parity with general economic inflation, and recognize the pressures created by current supply chain restrictions. Columbia Water and CUPA agree with EAP’s suggestion that the new limit should be between \$3 million and \$5 million, with periodic updates every five years to account for inflation. EAP Comments at 8-9.

Lastly, increasing the threshold will not materially impact the Commission’s or other parties’ ability to investigate and utilize traditional discovery mechanisms to determine the justness and reasonableness of the utility’s rate filing. Rather, it would reduce the upfront burden and costs associated with making a rate filing for those utilities that should not bear this additional burden, as can other larger utilities who can spread the additional costs over a larger customer base.

F. Sections 53.56(a), Section 53.56a(a) – Applying Exhibit E to Rate Cases Less than \$1 million.

FirstEnergy states the following concern in its Comments regarding Sections 53.56(a) and 53.56a(a):

The last sentence of this paragraph suggests that use of a FTY is not available if a public utility files for a rate increase of \$1 million or

less in gross annual revenues. The proposed revision makes clear that a FTY *may be employed to support base rate increases at or below the \$1 million threshold for submitting the additional supporting data required by Exhibit E.* Other minor changes to this paragraph are for clarity and consistency

FirstEnergy Comments at 18 (emphasis added); *see also* FirstEnergy Comments at 20 (making a similar comment regarding rate increases of less than \$1 million relying on an FPFTY). In other words, on its face, FirstEnergy seems to suggest that rate increases below \$1 million should be required to comply with Section 53.53 and Exhibit E. However, in its redlined Annex A, that does not appear to be the case. Rather, FirstEnergy makes the following edits, in relevant part, to Section 53.56(a) and 53.56a(a):

Excerpt of FirstEnergy Edit to Section 53.56(a)

For general rate increases of \$1 million or less in gross annual revenues, ~~In all other cases,~~ the public utility shall provide the information and data required ~~for the HTY~~ under § 53.52 ~~for the HTY and for the FTY if the public utility relies upon supporting data for a FTY.~~

Excerpt of FirstEnergy Edit to Section 53.56a(a)

~~In all other cases,~~ For general rate increases of \$1 million or less in gross annual revenues, the public utility shall provide the information and data required ~~for the HTY~~ under § 53.52 ~~for the HTY and, if the public utility relies upon supporting data for a FPFTY, for FTY and FPFTY.~~ ~~and the information and data required for the FTY under § 53.56.~~

FirstEnergy Comments, Att. A at 17-18.

As seen above, it appears that FirstEnergy made a mistake in its Comments when it suggested that utilities filing a rate increase of less than \$1 million should be filing the supporting information as required by Exhibit E. Rather, FirstEnergy's edits to Annex A of the NOPR only require that the utility submit the relevant FTY and FPFTY information as required under Section 53.52 of the Commission's regulations. FirstEnergy's edit as it appears on its Attachment A is

acceptable to Columbia Water and CUPA. However, for the reasons set forth above, Section 53.53 should not apply to utilities filing general rate increases of less than \$1 million. Rather, the Commission should increase that threshold to maintain parity with economic inflation and in recognition of the impacts associated with current supply chain restrictions.

G. Exhibit E

Several of the Commenters made edits to the Commission's proposed Exhibit E. For example, the OCA recommended that public utilities should, *inter alia*, provide projected plant in service for each account by month, OCA Comments at 7, explain major variances in expenses (15% or more) between the HTY and the preceding two years, as well as the FTY and FPFTY, OCA Comments at 10, and that water and wastewater utilities should provide Bill Discount Program data, if applicable. OCA Comments at 12-14. Similarly, IECPA makes several recommendations regarding Exhibit E, such as recommending that public utilities provide five years of balance sheet information preceding the HTY, IECPA Comments at 6, or requesting monthly customer count and usage data for ten years preceding the HTY rather than five years, IECPA Comments at 9.

Columbia Water and CUPA share the concerns with Exhibit E that were raised by NAWC and other Commenters concerning the length, complexity, and burdensome nature of proposed Exhibit E. *See, e.g.*, NAWC Comments at 4-5, FirstEnergy Comments at 7-8, EAP Comments at 4-5, 23, Duquesne Comments at 4. Thus, the additional filing requirements proposed by OCA and IECPA, among others, would only serve to increase the burden and expense associated with Exhibit E. Moreover, the parties advocating for these additional requirements have not shown that the benefits of this information outweigh the costs of providing it.

However, should the Commission adopt any of their proposed modifications or recommendations to Exhibit E, these requirements should not apply to general rate increases that

do not exceed the monetary threshold established by Section 53.53. As currently proposed, Exhibit E only applies to public utilities seeking a general rate increase that exceeds the monetary threshold. It should remain that way. To otherwise impose these requirements on smaller utilities seeking increases below the Section 53.53 monetary threshold would be unduly burdensome, unnecessary, and costly to both the public utility and its customers.

III. CONCLUSION

Columbia Water and CUPA appreciate the opportunity to submit Reply Comments regarding the Commission's Notice of Proposed Rulemaking. Columbia Water and CUPA strongly urge the Commission to delay the effective date associated with these new requirements by a period of at least six months from their publication in the Pennsylvania Bulletin, increase the monetary threshold for the Section 53.53 requirements consistent with the Comments of EAP and the C&T Companies, and consider streamlining and mitigating certain information requirements for small to mid-size utilities that exceed Section 53.53's monetary threshold. Collectively, these changes will reduce the regulatory burden and costs associated with preparing and litigating general rate increase cases consistent with the Commission's stated objectives. Increased costs of filing rate increases are ultimately borne by ratepayers, and the Commission should keep those interests in mind as it considers this rulemaking.

Respectfully Submitted,

/s/ Whitney E. Snyder

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