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February 28, 2023

VIA ELECTRONIC FILING

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

RE: Policy Statement on Public and Private Fire Protection; Docket No. M-2022-3033054;
JOINT COMMENTS OF COLUMBIA WATER COMPANY, COMMUNITY UTILITIES OF PENNSYLVANIA INC., AND AUDUBON WATER COMPANY

Dear Secretary Chiavetta:

Enclosed for filing in the above-captioned proceeding is the Joint Comments of Columbia Water Company, Community Utilities of Pennsylvania Inc., and Audubon Water Company in the above captioned docket.

Thank you for your attention to this matter. If you have any questions, please contact me.

Very truly yours,

/s/ Whitney E. Snyder

Thomas J. Sniscak
Whitney E. Snyder
Phillip D. Demanchick Jr.

Counsel for Columbia Water Company, Community Utilities of Pennsylvania, Inc., and Audubon Water Company

WES/das
Enclosure

cc: Stephanie Wilson, Law Bureau (via email – stepwilson@pa.gov)
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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Policy Statement on Public and Private Fire : Docket No. M-2022-3033054
Protection :

**JOINT COMMENTS OF
COLUMBIA WATER COMPANY,
COMMUNITY UTILITIES OF PENNSYLVANIA INC.,
AND AUDUBON WATER COMPANY**

Columbia Water Company (“Columbia Water”), Community Utilities of Pennsylvania Inc. (“CUPA”), and Audubon Water Company (“Audubon”) have reviewed the Pennsylvania Public Utility Commission (“Commission”)’s proposed policy regarding fire protection (“Proposed Policy”) and offer the following comments.

First, Columbia Water, CUPA, and Audubon thank the Commission for its careful attention to the prior Comments and Reply Comments submitted in this proceeding. The Proposed Policy demonstrates the Commission understands that a one-size fits all policy is not appropriate and has left significant discretion to utilities to implement procedures and best practices consistent with the Commission’s stated goals of ensuring safe, reasonable, adequate regulated fire protection service offerings.

Going forward, the Commission should be mindful that the policy statement cannot be enforced as a binding norm. Where a so-called statement of policy functions as a regulation through the agency’s application of the policy statement (such as never deviating from the policy statement regardless of whether the text of the policy statement retains the agency’s discretion to

do so), the policy statement is illegally implemented as a binding norm.¹ *Eastwood Nursing and Rehabilitation Center v. Department of Public Welfare*, 910 A.2d 134 (Pa. Cmwlth. 2006).

For example, while the Commission’s policy statement states Class A water public utilities “should develop and implement a plan to use and maintain computerized hydraulic models for each discrete water system” and that utility compliance with the Proposed Policy will be considered in granting base rate increases; to the extent a public utility’s present rates do not include funds for design and implementation of such a plan and the public utility as part of a future base rate case requests funds to be able to implement such a plan, the fact that the public utility does not yet have a plan should not be considered as a reason to deny any portion of a requested rate increase. Such implementation will work at cross-purposes with the policy statement for

¹ In *Pennsylvania Human Relations Commission v. Norristown Area School District*, 473 Pa. 334, 374 A.2d 671 (1977), the Supreme Court explained:

An agency may establish binding policy through rulemaking procedures by which it promulgates substantive rules, or through adjudications which constitute binding precedents. *A general statement of policy is the outcome of neither a rulemaking nor an adjudication; it is neither a rule nor a precedent but is merely an announcement to the public of the policy which the agency hopes to implement in future rulemakings or adjudications. A general statement of policy, like a press release, presages an upcoming rulemaking or announces the course which the agency intends to follow in future adjudications.*

The critical distinction between a substantive rule and a general statement of policy is the different practical effect that these two types of pronouncements have in subsequent administrative proceedings.... A properly adopted substantive rule establishes a standard of conduct which has the force of law

A general statement of policy, on the other hand, does not establish a ‘binding norm’.... A policy statement announces the agency's tentative intentions for the future. When the agency applies the policy in a particular situation, it must be prepared to support the policy just as if the policy statement had never been issued.

Id. at 349–350, 374 A.2d at 679 (quoting *Pacific Gas & Electric Co. v. Federal Power Commission*, 506 F.2d 33, 38 (1974)) (emphasis added).

utilities that do not yet have such a plan and computerized hydraulic model, such as Audubon and CUPA.

The Commission should also be clear when it adjudicates rate cases that include increases for implementing the Commission's policy statement regarding fire protection that the increased costs to ratepayers are consistent with the Commission's policy on fire protection, so ratepayers understand that utilities are expending funds to further the Commission's policy.

Further, to the extent a Class A public utility does not currently use hydraulic modeling software or does not already consistently perform updates to the model, the prior Comments and Reply Comments in this proceeding demonstrate that there is significant expense associated with implementation of hydraulic modeling and consistent updates. The Commission should ensure in adjudicating future rate proceedings that costs associated with implementation of the policy statement are fully recoverable in rates.

The same ratemaking principles should also be applied in a circumstance where older systems were not designed to or are otherwise not capable of meeting fire flow guidance standards promulgated by other agencies. Some systems would require significant, costly upgrades. If a utility requests funds in a base rate case for system upgrades, the Commission should ensure such increases are granted and explain in its rate adjudications that such expenditures are necessary for promoting the Commission's policy.

As to systems that are not presently capable of providing fire protection consistent with other agency guidance, the Commission should make clear that utilities have the discretion to otherwise assist local fire departments in ensuring reasonable fire service is available. For example, some utilities have a plan in place with local fire departments to provide reasonable fire service to properties that are not served by a system capable of providing flows adequate for fire

protection through hydrants. Demonstration that such a plan exists and provides reasonable fire protection should be considered compliant with the Commission's policy, particularly given the expense to ratepayers of the types of upgrades that would be required to bring some systems or portions thereof into compliance.

Columbia Water, CUPA, and Audubon appreciate the Commission providing opportunity for comment and the Commission's consideration of these comments as it moves forward with the Proposed Policy.

Respectfully submitted,

/s/ Whitney E. Snyder

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Dated: February 28, 2023

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing document upon the parties, listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party).

VIA EMAIL ONLY

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/s/ Whitney E. Snyder

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Dated: February 28, 2023