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PHONE: (717) 783-5417  
FAX: (717) 783-2664  
irrc@irrc.state.pa.us  
http://www.irrc.state.pa.us

## INDEPENDENT REGULATORY REVIEW COMMISSION

333 MARKET STREET, 14TH FLOOR, HARRISBURG, PA 17101

March 2, 2023

Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
Keystone Building, 400 North Street  
2nd Floor, North Wing  
Harrisburg, PA 17120

L-2012-2317273

Re: Regulation #57-334 (IRRC #3355)  
Pennsylvania Public Utility Commission  
Use of Fully Projected Future Test Year, 52 Pa. Code Chapter 53.51-53.56a

Dear Secretary Chiavetta:

Enclosed are the Commission's comments for consideration when you prepare the final version of this regulation. These comments are not a formal approval or disapproval of the regulation. However, they specify the regulatory review criteria that have not been met.

The comments will be available on our website at [www.irrc.state.pa.us](http://www.irrc.state.pa.us). We will send a copy to the new Standing Committees when they are designated.

If you would like to discuss them, please contact me.

Very truly yours,

David Sumner  
Executive Director  
MKB  
Enclosure

cc: Amy Elliott, Esq., Office of Attorney General

## Comments of the Independent Regulatory Review Commission



### **Pennsylvania Public Utility Commission Regulation #57-334 (IRRC #3355)**

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

**March 2, 2023**

We submit for your consideration the following comments on the proposed rulemaking published in the October 1, 2022 *Pennsylvania Bulletin*. Our comments are based on criteria in Section 5.2 of the Regulatory Review Act (RRA) (71 P.S. § 745.5b). Section 5.1(a) of the RRA (71 P.S. § 745.5a(a)) directs the Pennsylvania Public Utility Commission (PUC) to respond to all comments received from us or any other source.

#### **1. Compliance with the provisions of the RRA or the regulations of this Commission in promulgating the regulation.**

The PUC explained this proposed regulation is intended to implement the requirement in the act of February 14, 2012 (P.L. 72, No. 11) to adopt rules and regulations requiring the information and data to be submitted when a public utility utilizes a future test year (FTY) or a fully projected future test year (FPFTY) in a rate proceeding. This proposed regulation is also intended to standardize and streamline the filing requirements in these proceedings.

Section 5.2 of the RRA directs this Commission to determine whether a regulation is in the public interest. When making this determination, the Commission considers criteria such as economic or fiscal impact and reasonableness. To make that determination, the Commission analyzes the text of the proposed rulemaking and the reasons for new or amended language. The Commission also considers the information a promulgating agency is required to provide in the Regulatory Analysis Form (RAF) under Section 5(a) of the RRA, 71 P.S. § 745.5(a). Under 1 Pa. Code § 305.1(b)(1) (relating to delivery of a proposed regulation), an agency is required to submit a complete RAF when it delivers a proposed rulemaking.

Although all questions were answered in the RAF submitted with this proposed regulation, some responses did not provide enough information to determine if the regulation is in the public interest. We ask the PUC to include additional information in the following sections of the RAF when it submits the final-form regulation:

- Questions 14 and 15 relate to the number and types of persons, businesses, small businesses and organizations that provided input and will be affected by the regulation. In the response to Question 14, the PUC states it “does not classify public utilities or municipal entities subject to PUC jurisdiction as small or large according to the number

of employees or their annual revenues as specified in 13 CFR § 121.201 under 71 P.S. § 745.3.” The RRA requires classification under 13 CFR 121.201, which should be included in the RAF submitted with the final-form regulation.

- Questions 19, 20, 21 and 23 relate to specific estimates of costs and/or savings for the regulated community, local government and state government, and how the dollar amounts were derived. The PUC states that it “does not have specific estimates of the costs and/or savings” but expects minimal savings could potentially arise. As addressed in Comment #4, the regulated community explained that the filing requirements will significantly increase costs. The evaluation of costs in the RAF submitted with the final-form regulation should take into consideration the comments received from the regulated community.
- Question 29 asks for the schedule of review of the regulation, including the expected date of delivery of the final-form regulation, the effective date and the expected date by which compliance will be required. In response to these prompts, the PUC replied “[s]pecific dates going forward have not yet been set.” The PUC should include estimates of the requested timelines in the RAF submitted with the final-form regulation, as further addressed in Comment #2.

## **2. Implementation procedures and timetables for compliance by the public and private sectors.**

As addressed in Comment #1, the PUC did not provide specific effective and compliance dates in RAF Question 29, thereby not providing an anticipated timetable for compliance. Commentators stressed the need for ample notice of the effective and compliance dates of the final-form regulation. They explained it takes a significant amount of time to prepare rate cases, and compiling data and information may begin more than one year before the rate case is filed. Further, a commentator requested that the compliance date should be set for a period far enough in advance so that public utilities may file rate cases under the current regulation, while also updating their preparation processes and practices to conform to the additional requirements in Section 53.53 (relating to information to be furnished with proposed general rate increase filings in excess of \$1 million).

We concur with the concerns expressed by public utilities regarding the timetables for compliance with the final-form regulation. To this end, commentators suggested a compliance date ranging from six months to one year after the adoption of the final-form regulation. The PUC should work with the regulated community to establish a reasonable timetable for compliance.

## **3. RRA Section 2 – Reaching of consensus.**

We acknowledge the efforts of the PUC in developing this proposed regulation, including an Advance Notice of Proposed Rulemaking Order in 2017. At the request of stakeholders, including advocacy groups and public utilities, the PUC suspended the comment period and instead held meetings in 2018 and 2019. As explained by the PUC, the process included

exchanges of written positions and extensive in-person discussions of procedural and substantive issues regarding filing requirements.

Stakeholders have submitted a significant number of comments on Section 53.53, Exhibit E. They raised concerns regarding unnecessary and redundant data requests, unreasonable, unnecessary and burdensome requirements, the inclusion of data formerly requested through discovery, duplicative requests, inconsistent timeframes and lack of thresholds. These concerns are addressed in Comment #8.

In light of these comments, we draw attention to a key component of the regulatory review process as stated in Section 2(a) of the RRA: “To the greatest extent possible, this act is intended to encourage the resolution of objections to a regulation and the reaching of a consensus among the commission, the standing committees, interested parties and the agency.” 71 P.S. § 745.2(a).

We urge the PUC to continue seeking input from all interested parties to build consensus on streamlining filing requirements. As the PUC develops the final-form regulation, we encourage further discussions with the stakeholders who have provided input on this rulemaking, and we request the PUC provide a description in the RAF and Preamble to the final-form regulation of the efforts made in this regard.

#### **4. Economic or fiscal impacts of the regulation.**

The PUC stated the new standardized and streamlined filing requirements in this regulation are “expected to reduce the regulatory burden and costs associated with preparing and litigating general rate increase cases.” However, the PUC also stated there is an “additional burden to regulated public utilities in providing the required information and data in a standardized format at the time of filing the rate case.”

Commentators calculated that there is up to a 160% increase in data requests in Section 53.53, which is in opposition to streamlining filing requirements. They explained that every data and information request in Section 53.53, Exhibit E imposes costs on public utilities, and they advocate for a reduction in these requests in order to reduce regulatory burdens and costs. The Office of Small Business Advocate opined that the discovery process is better suited to addressing issues that may arise in specific proceedings and recommended that filing requirements should be limited to issues that are common to rate cases.

We ask the PUC to analyze the fiscal impact of unnecessary, duplicative and burdensome requirements highlighted by commentators as detailed in Comment #8. Further, as addressed in Comment #1, the PUC should revise responses to RAF Questions 19 and 23 to account for increased costs to public utilities to compile rate cases under Section 53.53, Exhibit E.

#### **5. Section 53.51. General. – Implementation procedures; Clarity; Need; Protection of the public health, safety and welfare.**

Subsection (d) requires a public utility to file a proposed rate change with the Office of Consumer Advocate, the Office of Small Business Advocate, the PUC’s Bureau of Investigation

and Enforcement and Bureau of Technical Utility Services, and low-income advocates for the service territory.

Public utility commentators raised concerns with the addition of low-income advocates for the service territory. They explained that this broad reference to advocates includes a significant number of governmental, non-profit and charitable organizations who work on behalf of low-income populations. This leads to implementation issues, as public utilities are neither provided with direction on selecting advocacy groups to receive service of a proposed rate change, nor is the number of advocates specified. A commentator explained that an advocacy group may contend its due process rights were violated because it was not properly served with the proposed rate filing. This was of particular concern to commentators who have large service areas.

Advocacy commentators supported this subsection and the inclusion of serving low-income advocates with proposed rate changes. In reply comments, an advocacy organization suggested narrowing the scope of service to organizations likely to intervene, including statewide organizations and those who have previously intervened.

We ask the PUC to explain why this provision is needed, how public utilities are expected to implement this requirement, and the standard the PUC will use to determine that the intent of this subsection has been accomplished. The PUC should consider defining the term “low-income advocates” or otherwise providing direction on appropriate advocates. Further, we ask the PUC to clarify this subsection to provide an implementation procedure that protects the public health, safety and welfare of low-income populations.

**6. Section 53.51a. Definitions. – Statutory authority; Consistency with statute; Clarity; Need; Reasonableness.**

*FPFTY – Fully projected future test year*

A FPFTY is defined as the “12-consecutive-month period beginning with the first **full** month that the new rates will be in effect . . .” [Emphasis added.] The PUC explained this definition tracks 66 Pa.C.S. § 315(e) (relating to burden of proof) while clarifying that a FPFTY would reflect a public utility’s estimated results of operations. It also stated the proposed definition does not expand or contract the meaning of a FPFTY as established by 66 Pa.C.S. § 315(e). Commentators opposed the addition of “full” in this definition, stating it is not consistent with 66 Pa.C.S. § 315(e). They explained the effective date of a new FPFTY rate may be a time period other than on a full month basis. A commentator provided that the PUC has approved the interpretation of “first month” as the first calendar month during which new rates would be in effect for an entire month. Another commentator asked the PUC to maintain flexibility by allowing public utilities to file data based on a FPFTY that concludes earlier than the first full month. We ask the PUC to explain its statutory authority to expand the time period of a FPFTY and how this definition is consistent with 66 Pa.C.S. § 315(e). We also ask the PUC why it is necessary and reasonable to specify that the FPFTY begins on the first full month of the new rate. Finally, the PUC should consider clarifying this definition or explain why it is not necessary to do so.

**7. Section 53.53. Information to be furnished with proposed general rate increase filings in excess of \$1 million. – Reasonableness; Need; Clarity.**

Under subsection (a.1), a public utility is directed to select either a FTY or a FPFTY in discharging its burden of proof and responding to data requests in Exhibit E. The public utility is required to provide data and information for specified years preceding or following the chosen test year. The PUC explained it expects data and information for the historic test year (HTY) and FTY “would be provided in proximity and association with the data and support provided for the FPFTY.” Commentators opposed the request to submit data and information for years following a FPFTY, as the details for the HTY, FTY and FPFTY “should be deemed adequate to determine the reasonableness of the proposed increase without further need to provide data which falls beyond the FPFTY.” They contend this requirement should be deleted, as it requests unnecessary data. We ask the PUC to explain the need for and reasonableness of data and information beyond the FPFTY. The PUC should consider eliminating this requirement if responses to the data requests for FPFTY will provide sufficient data to discharge the burden of proof.

**8. Section 53.53, Exhibit E. – Fiscal impact; Implementation procedures; Clarity; Reasonableness; Need; Timetables for compliance; Statutory authority.**

Under Section 53.53(a), when a public utility files a proposed general rate increase in excess of \$1 million, it shall respond to data requests in Exhibit E, which replaces current industry-specific Exhibits A, C and D. The PUC explained that Exhibit E is an “overall improvement upon the existing data requirements” that standardizes, updates, streamlines and supplements the filing requirements in Exhibits A, C and D, and eliminates the filing of unnecessary information. In addition, the PUC included in Exhibit E information commonly sought through discovery.

Detailed responses were received from commentators addressing data and information requests. We ask the PUC to consider revising Exhibit E to ensure reasonable and necessary requests, less burdensome implementation and fiscal impact, improved clarity, and clear and reasonable timetables for compliance. Following is a synopsis of their concerns. We will review the PUC’s responses to the commentators’ concerns when determining if the regulation is in the public interest.

*Unnecessary, redundant and burdensome data requests*

Commentators cited sections throughout Exhibit E that include unnecessary, redundant and burdensome data requests. They stated the submission of unnecessary and duplicative data will increase the time and cost of rate filings, along with producing an overwhelming volume of information. To meet the intent of streamlining the regulation, they asked for elimination of certain filing requirements and contended that the discovery process can be utilized when more information is needed. The comments included the following:

- The requests for distribution system improvement charge (DSIC) data in Sections III.D.2.d, III.K.1 and III.K.7 are unnecessary given that these issues are separate cases, and if a project will be included in a DSIC is not always known during a rate proceeding;

- Section III.D.11 requires a schedule showing additions and retirements by plant account, which does not provide value in determining rates or meeting the burden of proof;
- Section III.H.5 requests explanations for variances in miscellaneous revenues, which duplicates information requested in Section III.G.4;
- Sections III.I.4 and III.I.6 require actual billings or invoices and copies of contracts, which is burdensome and unnecessary;
- Sections IV.A.1(b) and IV.A.2 require detailed information regarding sprinkler systems and public fire hydrants, which is not germane to rate cases; and
- Sections IV.B.1 – IV.B.7 require information a natural gas distribution is already including in annual Section 1307(f) Purchased Gas Cost proceedings.

### *Clarity*

Commentators asked for clarification of data requests, citing language that was vague, confusing and broad. They requested revisions to improve clarity and accurately describe the information sought. The comments included the following:

- The definitions of “billing determinant,” “customer class,” “rate schedule,” “tariff” and “USoA – Uniform System of Accounts” in Section II are incomplete, inaccurate or unclear;
- Section III.A.8, requiring a working electronic copy of filing schedules in electronic spreadsheets, should be clarified to provide context regarding types of schedules;
- The request for identification of a “major” addition to a plant or facility in Section III.B.10 does not establish criteria used to determine a major addition and lacks a specific timeframe;
- Sections III.D.4, III.D.5, III.H.5 and III.H.6 should be clarified by establishing monetary thresholds;
- Sections III.D.14, III.E.8, III.E.27 and III.E.30 should be clarified by specifying the data being requested; and
- Section III.M.1 should be revised to improve clarity regarding tariff supplements, revenue and taxes.

### *Timetables for compliance*

Commentators drew attention to varied reporting periods – monthly, annual, multiple years and multiple rate cases – throughout Exhibit E. In some cases, timeframes are not specified. They

explained that inconsistent time periods and timeframes outside the scope of a rate case will increase the difficulty of compliance. The reporting periods may be particularly burdensome depending on a public utility's most recent rate case, which may require data for several years. Another commentator questioned the need for and relevancy of data, such as three years prior to a HTY, given that this information is obsolete, and the usefulness of projections as far as five years after the FPFTY, which can be unreliable and lack relevancy. They suggested a more uniform approach for data requests before the HTY and after the FTY and FPFTY. Their concerns included the following:

- Sections III.E.1 and III.E.8 require five years of historic data while other sections, including Section III.H, require two years of historic data, which is an adequate timeframe;
- Section III.E.17 does not state a timeframe for information on reacquired debt;
- Section III.H.6(a) and (b) requests monthly customer counts and usage, which cannot be projected; and
- Section III.I.4(d) and (e) requires data for the immediately preceding three base rate cases which could be difficult to obtain and may not be relevant.

#### *Statutory authority*

Section III.N includes data requests relating to a public utility's Long-Term Infrastructure Improvement Plan (LTIIIP) and Annual Asset Optimization Plan (AAOP). A commentator expressed concern that to the extent the PUC intends to require information that is not included in existing LTIIIP or AAOP filings the PUC is creating a new reporting requirement not authorized by statute or regulation. Commentators suggest Section III.N should be deleted. We ask the PUC to explain how the requested information regarding an LTIIIP and an AAOP does not exceed its statutory authority.

#### **9. Section 53.56. Supporting data required if using a FTY. – Consistency with statute; Clarity; Implementation procedures.**

Following the rate proceeding, subsection (c) requires a public utility to file the actual results experienced in the FTY within 30 days of the end of the last quarter of the FTY, or as soon thereafter as available. The PUC explained this filing requirement is consistent with 66 Pa.C.S. § 315(e), which requires a public utility to provide, "as specified by the [PUC] in its final order, appropriate data evidencing the accuracy of the estimates" in the FTY. Commentators opposed this provision, stating it is inconsistent with the statute and classifies these requirements as retroactive. Regarding the 30-day filing requirement, commentators requested extending this time period to 90 days. We ask the PUC to explain how this subsection is consistent with 66 Pa.C.S. § 315(e). In addition, we ask the PUC to consider extending the timeframe as requested by commentators.



This comment also applies to Section 53.56a(c) (relating to supporting data required if using a FPPTY).

**10. Miscellaneous clarity.**

- In Section 53.53(c)(2), the term “reasonably informed party” is vague. We ask the PUC to clarify this term to establish a clear standard for implementation.
- The last sentence of Section 53.56a(c) should be revised for consistency with the provisions in Section 53.56(c) regarding service on parties of record.