

**PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17105-3265**

Public Meeting held July 13, 2023

Commissioners Present:

Gladys Brown Dutrieuille, Chairman
Stephen M. DeFrank, Vice Chairman
Ralph V. Yanora
Kathryn L. Zerfuss
John F. Coleman, Jr.

Proposed Water Audit Methodology Regulation
52 Pa. Code § 65.20a – Water conservation
measures

L-2020-3021932

ORDER

BY THE COMMISSION:

This Order will serve to reopen the public comment period for the Notice of Proposed Rulemaking (NOPR) in the water audit methodology rulemaking at 52 Pa. Code § 65.20a (relating to water conservation measures). The Public Utility Commission (PUC) takes this action to more fully examine the issues raised in comments filed by the Independent Regulatory Review Commission (IRRC). The reopened public comment period will close 30 days after this Order is published in the *Pennsylvania Bulletin*.

HISTORY

The PUC's existing policy statement on water conservation measures provides guidance to water public utilities in encouraging cost-effective water conservation by their customers. 52 Pa. Code § 65.20 (relating to water conservation measures—statement of policy). By tentative Order entered on November 10, 2011, which became final on

January 27, 2012,¹ the PUC ordered all Class A water public utilities to implement the American Water Works Association Methodology (AWWA Methodology) and directed the preparation of proposed regulations implementing the AWWA Methodology as a best management practice in water loss control in Pennsylvania. *In Re: Pilot Project to Implement The International Water Association/ American Water Works Association Water Audit Methodology*, Docket No. M-2008-2062697 (order entered November 10, 2011). An Advance Notice of Proposed Rulemaking Order was subsequently entered on January 24, 2013. *Advance Notice of Proposed Rulemaking for Revision of the Commission's Regulations on Water Conservation Measures at 52 Pa. Code § 65.20*, L-2012-2319361 (order entered January 24, 2013); 43 Pa.B. 870 (2/9/13).

On September 17, 2020, the PUC entered an Advance Notice of Proposed Rulemaking Order (ANOPR Order) at the above-captioned docket in order to solicit comments regarding the replacement of the Policy Statement at 52 Pa. Code § 65.20 with a PUC regulation to implement the International Water Association (IWA)/American Water Works Association (AWWA) Water Audit Methodology (Water Audit Methodology) as a best management practice in water loss control in Pennsylvania as directed by PUC Order.² Comments were received from the Office of Consumer Advocate (OCA), the Pennsylvania Chapter of the National Association of Water Companies (NAWC-PA) and Aqua Pennsylvania, Inc. (Aqua), and the AWWA Water Loss Control Committee Members (AWWA Committee).

Subsequently, after a review of the filed comments to the ANOPR Order, the PUC entered a Notice of Proposed Rulemaking Order (NOPR Order) on November 18, 2021, seeking comments on proposed language for a regulation at 52 Pa. Code § 65.20a (relating to water conservation measures). The NOPR Order was published in the

¹ A Secretarial Letter finalizing the 2011 Tentative Order was issued on January 27, 2012, at Docket No. M-2008-2062697, after the only comments filed to the 2011 Tentative Order was withdrawn.

² An errata order was released on October 27, 2020, to adjust the proposed numbering within the proposed § 63.20a. It bears the adopted and entry dates of the original ANOPR.

Pennsylvania Bulletin at 52 Pa.B. 4406 (8/6/2022). The original public comment period for the proposed regulation closed on November 3, 2022.³ Comments were received from the Susquehanna River Basin Commission (SRBC), the AWWA Committee, NAWC-PA, and OCA. IRRC filed its comments on the proposed regulation on December 5, 2022.

The comments received from IRRC on the proposed Water Audit Methodology regulations are extensive and touch on some new issues that require further input and consideration. Specifically, IRRC has requested additional information from the regulated community as to the costs required to comply with the proposed regulation as well as additional information from the PUC to clarify certain provisions of proposed regulation to determine if the provisions are reasonable and in the public interest. Consistent with the concerns raised by IRRC, the public comments and reply comments also indicate a need for additional input by interested parties to further define the benchmarks to be imposed by the proposed regulation. Accordingly, the PUC finds it to be in the public interest to reopen the comment period for this rulemaking so that these issues may be fully considered.

Under 1 Pa. Code § 305.3(b) (relating to [IRRC] comments), an agency may extend or reopen the public comment period by delivering notice to IRRC and the agency's Legislative Committees and by publishing notice in the *Pennsylvania Bulletin*. We expect that those parties who have previously commented on the proposed regulation will participate in this process and be ready to assist the PUC in the examination of these subjects. We also expect to receive additional input from municipal water authorities and smaller water systems or Class B and Class C water systems.

³ The PUC must either withdraw the proposed regulation or deliver a final-form regulation to IRRC within two years of the close of the public comment period or by November 3, 2024. *See* 73 P.S. § 745.5a.

At a minimum, stakeholders are being asked to consider the following questions. We request that commenters follow the numbering pattern when they answer the questions below. We also request that commenters provide specific rationales for each of their responses to the questions and do not merely respond “yes” or “no” to them. Additionally, we ask that commenters include suggested regulatory language. If commenters have additional points to make, do so after having answered the PUC’s questions. The PUC requests commenters to address the following questions during the reopening of the public comment period:

- 1) What are the expected benefits of the proposed regulation? What are the possible adverse effects of the proposed regulation? What alternative do you recommend?

- 2) A commentor recommended that the PUC require all jurisdictional water utilities to complete at least one water loss audit. If the PUC were to require all jurisdictional water utilities to complete one water loss audit, please identify the timeline and reporting schedule that would be feasible for Class B and Class C water public utilities to complete and submit the water loss audit to the PUC. Why or why not? If not, what proposal would be feasible?

- 3) Section 65.20a(c)(2)(viii), 52 Pa. Code § 65.20a(c)(2)(viii), requires an explanation for each reported metric value that varied greater than 10% in either direction from the previous year’s reported value and that has not improved over three years of reporting. If stakeholders believe this provision is infeasible or unreasonable, please explain why, and identify an alternative method(s) to require water public utilities to identify significant deviations in year-to-year values reported in the annual water loss reports.

4) For municipal water authorities, what are the costs and/or savings associated with complying with the regulation, including any legal, accounting, or consulting procedures which may be required? How are those dollar estimates derived?

5) For Class B and Class C water public utilities, what are the costs or savings, or both, associated with complying with the proposed regulation, including any legal, accounting, or consulting procedures which may be required? How are those dollar estimates derived?

6) A commenter believes that it is “wholly inappropriate” for the PUC to continue to employ the unaccounted-for water (UFW) approach in the proposed regulation. The commenter asserts that the proposed UFW approach under proposed Section 65.20a(d), 52 Pa. Code § 65.20a(d), is “outdated and archaic” and, further, “lacks empirical and scientific legitimacy.” Provide responses to the following:

a. What are the advantages and disadvantages of reporting UFW?

b. Can this approach be used by the water utility industry to improve system performance and reduce water loss on a discrete system basis? If so, how is UFW specifically used to identify the most deficient systems and system processes to be improved to achieve measurable results?

c. Is there a reliable correlation between UFW and the condition of a system as quantified by other performance indicators? If so, explain the correlation.

7) A commenter indicated that the proposed regulations would be improved if performance indicators were defined along with how priority areas are to be determined for a water public utility to address reducing future water loss.

Provide responses to the following:

- a. What industry-recognized performance indicators would best characterize the current financial and operational condition of a discrete water system on an annual basis? Why?
- b. How should measurable benchmarks be established for each discrete water system using both operational and financial performance indicators (e.g., AWWA's Real Loss and Loss Cost Rate)?
- c. Quantify the proposed targets or goals for any proposed performance indicator and provide a justification for the proposed targets or goals and the timeframe for each proposed target or goal to be achieved.
- d. How should the identified specific targets or goals for each performance indicator be utilized by a water public utility in developing its annual or long-term capital improvement plan(s)?

8) A commenter urged the PUC to include a formal validation process in the proposed regulation and indicated that without data validation, data from "self-reported" water audits can have questionable validity. Provide responses to the following:

- a. What process should a water public utility be required to complete in order to ensure the data provided to the PUC eliminates, to the extent

feasible, inaccurate information (e.g., by using the American Water Works Association Level 1 validation process)?

b. What are the advantages and disadvantages of requiring each water utility to validate its annual water loss audits?

c. What would be the additional annual expense required to complete a validation process on water loss audits?

9) Separately identify, describe, and quantify the average annual cost for each component of the water utility's current leak detection, meter testing and replacement, and customer education efforts regarding water loss.

10) Are you a "small business" as defined⁴ in Section 3 of the Regulatory Review Act, Act 76 of 2012, 71 P.S. § 745.3?

Comments will be due on or before 30 days after publication of this Order in the *Pennsylvania Bulletin*. Comments filed with the PUC prior to the date of publication in the *Pennsylvania Bulletin* will be deemed premature and may not be considered by the PUC. Comments timely filed will be forwarded to the Legislative Committees and to IRRC; **THEREFORE,**

IT IS ORDERED:

1. That the public comment period for the rulemaking proceeding at Docket No. L-2020-3021932 is reopened consistent with this Order.

⁴ "Small business." As defined in accordance with the size standards described by the United States Small Business Administration's Small Business Size Regulations under 13 CFR Ch. 1 Part 121 (relating to Small Business Size Regulations) or its successor regulation.

2. That this Order be served on all jurisdictional water public utilities, the Office of the Consumer Advocate, the Office of Small Business Advocate, the Bureau of Investigation and Enforcement, the National Association of Water Companies – Pennsylvania Chapter, the Department of Environmental Protection, the Delaware River Basin Commission, the Susquehanna River Basin Commission, the American Water Works Association – Pennsylvania Chapter, and all entities that filed comments or reply comments to the November 18, 2021 Notice of Proposed Rulemaking at this docket, 52 Pa.B. 4406 (8/6/2022).

3. That the Law Bureau shall submit this Notice of Reopened Public Comment Period to the Legislative Committees, to the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*, and to the Independent Regulatory Review Commission.

4. That interested persons may file written comments during this reopened Public Comment Period in response to this Notice, as published in the *Pennsylvania Bulletin*, during the 30-day Public Comment Period following publication in the *Pennsylvania Bulletin*. Comments filed during the Public Comment Period will be forwarded by the Public Utility Commission to the Legislative Committees and the Independent Regulatory Review Commission.

5. That comments may be filed electronically through the Public Utility Commission’s efilings system,⁵ in which case no paper copy needs to be filed with the Secretary of the Public Utility Commission provided that the filing is less than 250 pages.⁶ Certain items such as confidential or proprietary material cannot be efiled.⁷ If you do not efile, then you are required to mail, preferable by overnight delivery, one

⁵ <https://www.puc.pa.gov/efiling/default.aspx>

⁶ If your filing is 250 pages or more, then you are required to mail one copy of the filing to the Secretary.

⁷ See <https://www.puc.pa.gov/filing-resources/efiling/> for instructions regarding materials that cannot be efiled.

original filing, signed and dated, with the Public Utility Commission's Secretary at: Pennsylvania Public Utility Commission, Commonwealth Keystone Building 2nd Floor, 400 North Street, Harrisburg, PA 17120. Comments must reference Docket No. L-2020-3021932. All pages of filed comments and reply comments, with the exception of a cover letter, must be numbered.

6. That the contact persons for this matter are Stephanie A. Wilson, Assistant Counsel, Law Bureau, 717-787-1859, stepwilson@pa.gov; Colin W. Scott, Assistant Counsel, Law Bureau, 717-787-5949, colinsscott@pa.gov; and Karen Thorne, Regulatory Review Assistant, Law Bureau, kathorne@pa.gov.

7. That parties shall email electronic copies in Microsoft Word®-compatible format of their filings at this docket to the contact persons and to ra-pcpcregreview@pa.gov.

BY THE COMMISSION



Rosemary Chiavetta
Secretary

(SEAL)

ORDER ADOPTED: July 13, 2023

ORDER ENTERED: July 13, 2023