

November 15, 2022

Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street, 2<sup>nd</sup> Floor  
Harrisburg, PA 17120

**VIA ELECTRONIC FILING**

**Re: Advance Notice of Proposed Rulemaking Order Re: Use of Fully Projected Future Test Year, 52 Pa. Code Chapter 53; Docket No. L-2012-2317273**

Dear Secretary Chiavetta:

Please find enclosed for filing with the Pennsylvania Public Utility Commission ("PUC" or "Commission") the Initial Comments of Industrial Energy Consumers of Pennsylvania ("IECPA"), in the above-referenced matter.

This document was filed electronically with the Commission on this date. All parties are being served a copy of this document in accordance with the enclosed Certificate of Service.

Please contact me if you have any questions concerning this filing.

Sincerely,

SPILMAN THOMAS & BATTLE, PLLC

By



Derrick Price Williamson  
Barry A. Naum

BAN/sds  
Enclosures

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Certificate of Service

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Advance Notice of Proposed Rulemaking :  
Order Re: Use of Fully Projected Future : Docket No. L-2012-2317273  
Test Year, 52 Pa. Code Chapter 53 :

**CERTIFICATE OF SERVICE**

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

**VIA E-MAIL**

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Barry A. Naum

Dated: November 15, 2022

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**Use of Fully Projected Future** : **Docket No. L-2012-2317273**  
**Test Year, 52 Pa. Code Chapter** :  
**53.54-53.56a** :

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**INITIAL COMMENTS OF  
INDUSTRIAL ENERGY CONSUMERS OF PENNSYLVANIA**

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On October 1, 2022, the Pennsylvania Public Utility Commission's ("PUC" or "Commission") Clarified Notice of Proposed Rulemaking Order ("CNOPR") in the above-referenced docket was published in the *Pennsylvania Bulletin*. The CNOPR requested interested parties submit Comments on proposed amendments to regulations relating to information furnished with the filing of rate changes for utilities using a fully projected future test year ("FPFTY"). Interested parties were provided 45 days from the CNOPR's publication in the *Pennsylvania Bulletin*, or by November 15, 2022, to submit Comments.

In 2017, the Commission entered an Advance Notice of Proposed Rulemaking Order ("ANOPR") similarly requesting Comments on proposed procedures and filing requirements for utilities using FPFTY in base rate cases. The Industrial Energy Consumers of Pennsylvania ("IECPA") filed an Initial Position Paper in response to the ANOPR addressing certain information to be considered for filing requirements. Since filing its Initial Position Paper, IECPA has further analyzed the application of FPFTY and evaluated filing requirements important for the appropriate evaluation of an FPFTY in a base rate case. Based on that additional analysis, IECPA offers these Comments in response to the CNOPR in the above-referenced matter on issues of particular

importance to its members. The fact that IECPA does not address each and every proposed amendment to the regulations presented in the CNOPR should not be construed as either support or opposition to each proposed amendment as stated in the CNOPR, or as presented by other stakeholders in their Comments, and IECPA reserves the right to respond to other Comments as they pertain to any element of the CNOPR.

IECPA<sup>1</sup> is an association of energy-intensive industrial consumers of electricity taking service from regulated utilities in Pennsylvania, including Duquesne Light Company ("Duquesne"); Metropolitan Edison Company ("Met-Ed"); PECO Energy Company ("PECO"); Pennsylvania Electric Company ("Penelec"); Pennsylvania Power Company ("Penn Power"); PPL Electric Utilities Corporation ("PPL"); and West Penn Power Company ("West Penn").

**A. IECPA Generally Supports the Proposed Amendments with Certain Exceptions.**

IECPA generally supports the proposed amendments to the filing requirements presented in the CNOPR. With that said, IECPA details below specific aspects of the proposed amendments that it either specifically supports or suggests modification. For ease of review, the sections are separated out by section of the proposed code, beginning with those proposed amendments in Clarified Annex A and continuing to those in Clarified Annex B. Proposed revisions by IECPA are emphasized by **bold, bracketed** language.

**1. Clarified Annex A**

*a. Sections 53.56(a) and 53.56a(a)*

IECPA supports the proposed amendments provide for what IECPA refers to as a "building block" approach for test year filing requirements. Specifically, IECPA supports proposed Section

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<sup>1</sup> For the purpose of this matter, IECPA's membership consists of: Air Products & Chemicals, Inc.; Benton Foundry, Inc.; Carpenter Technology Corporation; Cleveland-Cliffs Inc.; East Penn Manufacturing Company; Keystone Cement Company; Knouse Foods Cooperative, Inc.; Linde, Inc.; Marathon Petroleum Corporation; Proctor & Gamble Paper Products Company; and United States Gypsum Company.

53.56(a), requiring that if a public utility uses a Future Test Year ("FTY"), the filing information will be in addition to, not in lieu of, other data and material required to be submitted for the Historic Test Year ("HTY"). Building on that, the proposed regulations require that if a public utility uses an FPFTY, it would also be required to submit information and data from the filing requirements for the HTY and FTY.<sup>2</sup> IECPA supports this building block approach to filing requirements depending on which type of test year a public utility chooses to use.<sup>3</sup> By requiring additional information for an FTY and FPFTY, the Commission can insure that utilities' proposed rates are as accurate, and in turn, just and reasonable as possible. This requirement will also reduce discovery and make the review process more efficient since the information will all be provided with the filing. This supports the Commission's stated goals in the CNOPR.

To expand on this, however, IECPA is concerned that, in the case of an FPFTY, the sole use of an end of test year rate base could encourage utilities to invest in plant beyond the cost of providing service in order to meet their future rate base projections. To avoid this discordant incentive, IECPA recommends that utilities also be required to include a projected monthly average test year rate base with their FPFTY filing. By providing an average test year rate base, utilities will be more appropriately incentivized to truly project their average rate base over the course of an FPFTY.

***b. Sections 53.56(c) and 53.56a(c)***

While IECPA appreciates that both FTY and FPFTY mechanisms were introduced to reduce regulatory lag and encourage future plant investment, from a consumer perspective, it is critically important that utilities only receive just and reasonable rates and do not over-recover for

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<sup>2</sup> See Proposed Section 53.56a(a).

<sup>3</sup> The building block approach is also provided for in Section 53.53(a.1).

costs not incurred, keeping in mind the Commission's observation that the cost of service remains the "polestar" principle of ratemaking.<sup>4</sup> The Public Utility Code ("Code") gives the Commission broad authority and responsibility to ensure that the rates charged by public utilities are just and reasonable and not unduly discriminatory.<sup>5</sup> The burden of proving the justness and reasonableness of a rate is placed on the public utility.<sup>6</sup> IECPA therefore supports the PUC's conclusion that Section 315(e) authorizes the Commission to require a public utility to provide "appropriate data evidencing the accuracy of the estimates" used to calculate its cost of service components in a FTY or a FPFTY and to adjust a public utility's rates based on such data after reasonable notice and a hearing.<sup>7</sup>

Keeping these principles in mind, and due to the greater risk being placed on customers when a utility uses an FTY or FPFTY, IECPA fully supports Sections 53.56(c) and 53.56a(c), both of which require a utility to publicly file "appropriate data evidencing the accuracy of its estimates contained in the [FTY or FPFTY]." IECPA agrees that such filing requirements are necessary to safeguard against utility over-recovery for inaccurate projections resulting from an FTP or FPFTY. As a part of that data, IECPA would support inclusion of an update on the plant projected to be in service by the end of the test year providing a comparison of what has been projected by date and an indication if it is indeed in service. Furthermore, as with IECPA's proposed requirement that utilities provide a projected monthly average cost estimate with an FPFTY filing, IECPA also

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<sup>4</sup> *Pa. PUC, et al. v. Columbia Gas of Pennsylvania, Inc.*, Docket No. R-2020-3018835, et al., Order (entered Feb. 19, 2021) ("Columbia Order") at 46, n.17 (citing *Lloyd v. Pa. PUC*, 904 A.2d 1010, 1019-21 (Pa. Cmwlth. 2006) ("Lloyd")).

<sup>5</sup> 66 Pa.C.S. §§ 1301, 1304 (relating to rates to be just and reasonable; and discrimination in rates).

<sup>6</sup> 66 Pa.C.S. § 315(a).

<sup>7</sup> 66 Pa.C.S. § 315(e).

recommends that utilities employing the FPFTY approach should report actual test year monthly results to provide additional clarity on the accuracy of those FPFTY projections.

Additionally, as supported by 66 Pa.C.S. § 315(e), IECPA also recommends that after a utility submits its results the Commission initiate a "Just and Reasonable Rate Review Proceeding" to assess the accuracy of the utility's projections for the FTY or FPFTY, as IECPA believes is contemplated in Section 315. Such a proceeding would not only allow for the Commission to adjust the utility's rates according to the accuracy of its costs, again supporting the cost-to-serve "polestar" advanced by the PUC, but it would also allow for feedback from all parties involved in the initial proceeding and would serve to improve the utility's projection analysis for future FTY or FPFTY filings. Therefore, Sections 53.56(c) and 53.56a(c) should be further augmented to state:

. . . if the public utility's [FTY/FPFTY] data forms a substantive basis for the Commission's final rate determination, the public utility shall file with the Commission and serve on the parties of record in the same docketed proceeding in which the final rate determination was entered, the public utility's actual results experienced in the [FTY/FPFTY], **[which shall be subject to a just and reasonable rate review proceeding by the Commission, including a refund to customers and a going forward adjustment of the utility's rates for any over-collection of costs.]**

This language is fully consistent with the purpose of Section 315(e) and, reflecting the increased risk that an FTY and FPFTY imposes on ratepayers, adds clarity regarding the expectation of rate adjustments that Section 315(e) plainly contemplates.

To insure timely review of a utility's actual results, however, IECPA further recommends reducing the reporting deadline from "within 30 days of the end of the last quarter of the [FTY or FPFTY]"<sup>8</sup> to "within **[15]** days of the end of the last quarter" This will afford the Commission and

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<sup>8</sup> Sections 53.56(b) and 53.56a(c).



all parties sufficient time in closer proximity to the end of the FTY or FPFTY to fully evaluate the accuracy of the utility's projections and initiate a Just and Reasonable Rate Review Proceeding.

**2. Clarified Annex B – Section 53.53**

***a. Exhibit E – Subsection III.A.5***

IECPA supports the test year filing requirements provided for in Subsection III.A.5 that require a utility to provide comparisons and corresponding explanations between the proposed rate case and the rate case preceding it. As with many of the test year filing requirements proposed, this will assist in achieving the goal of reducing discovery and will also help make the analysis of the rate case much more straightforward. This will also assist the Commission and interested parties with identifying the specific parts of operations that have seen increases in cost of service.

***b. Exhibit E – Subsection III.B.1***

IECPA supports the requirement of Subsection III.B.1 that a utility must include the revenue requirement value of the major items generating the requested rate change. As with many other test year filing requirements, inclusion of these values and items will limit discovery and streamline the review process.

***c. Exhibit E – Subsections III.B.3 and III.B.4***

IECPA supports both of these subsections as providing a straightforward set of data by which the Commission and parties can clearly review and assess the pro forma adjustments as compared to present rates.

IECPA does, however, recommend that in these Subsections, as well as any other Subsections that request two years of preceding data, the requirement be expanded to five years. For instance, in Subsection III.B.3.d.i, the revised provision would instead provide: "Actual amounts for each of the [five] years immediately preceding the HTY." By providing actual amounts for the preceding five years, the Commission and interested parties will have enough data

to conduct a fully informed analysis that also avoids the potential for skewed data from outlier events (such as 2020-2021). As such, throughout Section 53.53, where two years of historical data is requested in any context, IECPA recommends that this term be expanded to **[five]** years of historical data. This would also advance the Commission's stated goals of reducing party discovery and lessening the regulatory burden of costs associated with litigating a utility's rate filing.

***d. Exhibit E – Subsection III.B.11***

IECPA supports the requirement that each public utility provide revenues and expenses by account classifications for the applicable industry's Uniform System of Accounts ("USoA"). As a more general note applicable to this Subsection and others, IECPA supports strict adherence to USoA where required by the proposed amendments.

***e. Exhibit E – Subsection III.D.5***

IECPA supports the requirement that in the event of any claim for cash working capital, each public utility provides a lead-lag study of working capital with its filing. Based on experience, IECPA believes that a lead-lag study is an accurate measure that should always be required when cash working capital is requested.

***f. Exhibit E – Subsection III.D.11***

IECPA supports the requirement that utilities file a schedule showing a breakdown of plant additions and retirements by plant account for the FTY and FPFTY, including:

- a. Account number;
- b. Project number of each addition and each retirement;
- c. Completion date of each addition and each retirement;
- d. Description of the addition;
- e. Addition amount of each addition;
- f. Description of retirement;

- g. Retirement amount of each retirement; and
- h. Totals of additions and retirements.

Inclusion of each of these details provides the Commission and interested parties with a complete picture of the projected plant additions and retirements for either the FTY or FPFTY. Not only will the inclusion of this information in the initial filing reduce discovery, it will also provide a basis for the Commission and interested parties to evaluate the plant additions and retirements and track progress towards in-service completion.

***g. Exhibit E – Subsection III.E.11***

IECPA supports the requirement that an allowance for funds during construction ("AFUDC") schedule is included as a test year filing requirement. IECPA, recommends, however, that the AFUDC rate should be calculated pursuant the formula provided in the USoA. Requiring a public utility to follow the USoA aligns with the Commission's adoption of the USoA and will produce consistent, comparable results between rate cases and across utilities.

***h. Exhibit E – Subsection III.G.4***

IECPA supports the proposed requirement that a utility provide explanations for variances that are greater than 15% of the summary level account type. This requirement will insure that the utility is tracking the reasons for cost increases and will assist the Commission and interested parties in understanding any increased (or decreased) costs. Providing such explanations in the initial test year filing will also reduce the need for discovery on these issues, consistent with the purpose of this CNOPR. Additionally, as explained earlier in these Comments, IECPA recommends that a utility be required to provide comparative income statements for the HTY and the **[five]** years immediately preceding the HTY.

*i. Exhibit E – Subsection III.H.6*

For the same reasons that IECPA broadly recommends expanding two-year historical data requirements to five years, IECPA also recommends expanding the reporting requirements for monthly customer counts and monthly customer usage. Specifically, IECPA recommends the time period be expanded from the proposed five-year data to "the **[ten]** years immediately preceding the HTY." Discovery on this topic often requests ten years of data so that the requesting party may fully appreciate customer counts and usage per customer on a longitudinal basis. Requiring this ten-year data will reduce this discovery burden and regulatory expense for all parties.

*j. Exhibit E – Subsection III.H.13*

IECPA generally supports the test year filing requirement for three years of monthly data for sales from customer classes by unit immediately preceding the HTY. IECPA, however, recommends that the information provided be expanded to also include **[ten years of average annual]** customer counts and annual usage. This would provide ten years of annual data with an overlapping three years of more specific monthly data, thereby providing more clarity and transparency for the Commission's and parties' review.

*k. Exhibit E – Subsection III.I.5*

IECPA supports the required listing by applicable industry's USoA of charges by affiliates. IECPA recommends, however, that the utility also provide **[total affiliate charges and the specific charges allocated or assigned to the utility]**. This will allow the Commission and interested parties to evaluate the reasonableness of these utility cost assignments.

*l. Exhibit E – Subsection III.I.11*

IECPA supports the requirement for submission of costs claimed for recovery in the FPFTY associated with cancelled construction projects or obsolete inventory. IECPA recommends, however, that a utility be required to also include this information for the HTY and

FTY filings. As with other recommendations, IECPA believes that this will reduce the discovery and regulatory burden on parties.

*m. Exhibit E – Subsection III.J.2*

IECPA recommends that additional test year filing requirements be added to this subsection. Specifically, IECPA recommends the following additional language: **[h. If the public utility is including any severance payments in the cost of service, it shall identify those costs and provide five years of historical severance payment data.]**

Additionally, in Subsection III.J.2.g., regarding incentive compensation, IECPA recommends that the utility be required to include the specific metrics applicable for triggering the payments of any incentive compensation. For example, the Commission and parties should be able to understand the basis for such incentive compensation (*e.g.*, X% earnings per share performance; X% safety record; X% reliability performance; X% cost control; etc.). The proposed language should state: "g. Copy of incentive compensation and bonus compensation plan documents[, **including the specific metrics applicable for the incentive compensation and bonus compensation plan.**]" This will allow the PUC and interested parties to fully evaluate those particular costs and the factors that influence those costs.

*n. Exhibit E – Subsection III.K.8*


IECPA supports the reporting requirements listed for accumulated depreciation reserve contemplated in Subsection III.K.8. This information will allow for the Commission to trace the growth in accumulated depreciation reserve and will also serve as a tool to assess the assumptions in plant growth during an FTY or FPFTY. IECPA does, however, recommend that the term "Depreciated original cost" be replaced throughout with the term "**Net Plant**" for the purpose of clarity.

*o. Exhibit E – Subsection III.M.34*

In addition to requirements already set forth in this subsection, IECPA recommends that the following requirement also be included: **[If a consolidated tax agreement is in force with the public utility's parent company, the public utility must identify and provide the agreement.]**

Respectfully submitted,

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