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PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Implementation of Act 11 of 2012

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M-2012-2293611

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**Comments of the  
Energy Association of Pennsylvania  
To the Tentative Implementation Order Entered May 11, 2012**

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**I. INTRODUCTION**

On May 11, 2012, the Commission entered a Tentative Implementation Order (Tentative Order) initiating the instant proceeding. As the Commission stated on page one of the Tentative Order, the purpose of the Order was to set forth proposed "procedures and guidelines to carry out the ratemaking provisions of Act 11." The Tentative Order provided that comments would be due within 20 days, or by May 31, 2012. The Energy Association of Pennsylvania (EAP) files these comments on behalf of its electric distribution company (EDC) and natural gas distribution company (NGDC) members.<sup>1</sup>

At the outset, EAP wishes to express its appreciation to the Commission, and its staff, for the fair and open process it has begun to gather input from stakeholders on the implementation of Act 11. This process is appropriately designed to resolve issues up front, leading to a smoother implementation of the Act so that the purposes of this important law can be achieved.

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<sup>1</sup> Citizens' Electric Company; Columbia Gas of PA; Duquesne Light Company; Equitable Gas Company, LLC; Metropolitan Edison Company; National Fuel Gas Distribution Corp.; PECO Energy Company; Peoples Natural Gas Company; Peoples TWP, LLC; Pennsylvania Electric Company; Pennsylvania Power Company; Philadelphia Gas Works; Pike County Light & Power Company; PPL Electric Utilities Corp.; UGI Central Penn Gas, Inc.; UGI Penn Natural Gas, Inc.; UGI Utilities, Inc. (Gas & Electric); Valley Energy, Inc.; Wellsboro Electric Company; and, West Penn Power Company.

## II. COMMENTS

### **A. Under the express language of Act 11, the focus of long-term infrastructure plans should be on “eligible property” rather than all distribution plant.**

As the Commission notes in the Order (pp. 7-10), Act 11 requires utilities to submit a long-term infrastructure plan in order to qualify for a distribution system improvement charge (DSIC). 66 Pa.C.S. § 1352. The Act sets out information that must be included in the plan, including “[i]dentification of the types and age of eligible property owned or operated by the utility for which the utility would seek recovery under this subchapter.” 66 Pa.C.S. § 1352 (a) (1).

The Tentative Order states (p. 8) that the above language “necessarily includes a review of all distribution plant, including its inventory, age, functionalities, reliability and performance.” . This statement is inconsistent with the plain, unambiguous language of the statute, which specifically requires identification of “eligible property” for which the utility will seek cost recovery via the DSIC. Moreover, limiting the identification to “eligible property” makes sense considering that the filing of a long-term infrastructure plan is required only as a precondition to obtaining a DSIC; it is not a general regulatory requirement applicable to utilities that do not seek a DSIC.

### **B. The Tentative Order appropriately recognizes that utilities that have already increased infrastructure investment should be eligible for DSIC.**

The Tentative Order states (p. 9) that the Commission expects that a long-term infrastructure plan will reflect and maintain an acceleration of infrastructure replacement over historical averages, and that companies that have already increased investment should indicate how the DSIC will maintain or augment such investment. EAP agrees with this language in that it would allow companies that have already increased infrastructure investment to qualify for a DSIC. Any interpretation that precluded these companies from implementing a DSIC would clearly be contrary to the public interest.

While Act 11 was intended to provide incentives for increased investment in infrastructure, it did not impose a rigid requirement for any particular level of investment or infrastructure replacement as a prerequisite for seeking to use the ratemaking tools authorized

by the Act. The language in the Act that controls this issue is the requirement that a utility submit proof "that demonstrates that a distribution system improvement charge is in the public interest and will facilitate utility compliance" with "the provision and maintenance of adequate, efficient, safe, reliable and reasonable service" as required by state and federal law.

66 Pa.C.S. § 1353-(b) (2). EAP submits that this language in the section of the Act dealing with the DSIC is controlling rather than the language in the Act that describes the contents of long-term infrastructure plans. 66 Pa.C.S. § 1352 (A) (6). It is not surprising that the latter language would ask utilities to describe the manner in which replacement of aging infrastructure will be accelerated, since in many cases utilities will be investing more because of these new tools. But the language does not go so far as to state that a DSIC is unavailable unless there is acceleration over some historical investment level, and such an inflexible requirement should not be read into the statute.

It may be the case that some utilities, because of their particular circumstances, are already making the optimum level of investment in distribution infrastructure considering the age of their system and other factors. There may be a number of reasons for this situation, and the public interest would not be served by disqualifying such utilities from utilizing a DSIC. Moreover, the Commission must consider that there will be unintended consequences from interpreting the statute to require acceleration over some historical investment level to qualify for a DSIC. Such an interpretation is likely to provide a fertile ground for litigation. For example, what historical period would the Commission examine to determine the baseline for deciding whether acceleration is taking place? How much additional investment over historical levels would be sufficient to qualify? If a utility steps up investment when it files its initial long-term *infrastructure plan*, will that be sufficient to qualify for a DSIC when the utility files such plans in the future?

For the above reasons, EAP submits that a utility should qualify for a DSIC if it proves that allowing it to use this mechanism would be in the public interest.

**C. The Commission should encourage submission of long-term infrastructure plans before January 1, 2013 and establish a timeframe for processing requests.**

The Tentative Order (p. 10) encourages the filing of long-term infrastructure plans before January 1, 2013, the earliest date by which petitions for a DSIC can be filed, in order to enhance the efficiency of the process for reviewing the DSIC petition once it is filed.

EAP agrees with this approach, and requests that the Commission take a further step to enhance the efficiency of the process by establishing a timeframe of 90 to 120 days for processing the long-term infrastructure plan filings. This period strikes the appropriate balance and is sufficient to allow a meaningful review of the proposed plan.

**D. The Model Tariff provisions for NGDCs should be revised to include other accounts that fall within the jurisdictional rate base of the companies.**

The Tentative Order (p. 11) invites comments on the Model Tariff that was attached as Appendix A to the Order. With respect to the provisions of the Model Tariff applicable to NGDCs, the accounts that are listed do not include many of the accounts that are included within the jurisdictional rate base of the companies. During the workshop meeting on the Model Tariff, the Commission's staff supported including these accounts.

The FERC uniform system of accounts prescribed for natural gas companies is set forth in 18 CFR Part 201. Due to the large number of FERC accounts that would need to be included in the tariff to capture all eligible property under DSIC, EAP suggests that a more reasonable alternative is for the NGDC Model Tariff to include a reference to the FERC uniform system of accounts rather than listing all of the FERC accounts. However, if the Commission prefers NGDCs to include the account numbers, then the complete list of FERC accounts should be included to avoid confusion over what constitutes eligible property under the tariff. (See Appendix A.)

If the model tariff fails to acknowledge all of the related capitalized accounts to be logically included, it will have a net effect of decreasing the effectiveness of the DSIC.

Further, the model tariff lists an incorrect account number for "gas service lines" and "insulated and non-insulated fittings". The correct account number is 380 (not 378).

**E. The customer notice provisions of the Tentative Order should be revised to be consistent with the Model Tariff.**

Act 11 requires notice to customers, via bill inserts or other means, of various actions related to the filing and disposition of a DSIC. 66 Pa.C.S. § 1354. The Model Tariff provides in section 4. D. that customers shall be notified of any changes in the DSIC in their first bill following these changes, and that an explanatory insert shall be included in the first billing.

The discussion of customer notice in the Tentative Order (p. 13) is somewhat unclear. It appears to mix the means of communication with the content of the communications, and the second paragraph of the discussion addresses the effective date of a DSIC tariff. To eliminate any confusion, the Final Order should follow the straightforward language from the Model Tariff which requires a bill insert on the initial filing of the DSIC and a bill message on subsequent changes.

**F. Act 11 does not prohibit use of a stipulated cost-of-equity from a settlement of a rate case for the purpose of calculating a DSIC.**

The Tentative Order (pp. 14-16) provides guidance regarding the DSIC calculation, which is addressed in 66 Pa.C.S. § 1357. The Tentative Order concludes that the cost of equity used in this calculation can only come from a rate proceeding if the proceeding is fully litigated, not if it is subject to a full or partial settlement. However, the Commission invited comments on whether a stipulated cost of equity can be used under the Act.

The Act does not prohibit use of a stipulated cost of equity from a rate case settlement. On its face, the Act provides that the cost of equity may come from a fully litigated rate case or from the quarterly earnings report released by the Commission. It does not address what the Commission may or may not do if, instead of being fully litigated, a rate case is settled and the cost of equity is stipulated. To conclude that a stipulated cost of equity may not be used would

encourage litigation and be contrary to public policy and the Commission's policy supporting settlement of disputes and major rate cases. See 52 Pa. Code §§ 69.391 and 69.401.

For these reasons, EAP submits that the Final Order provide that the Commission may use a stipulated cost of equity in calculating a DSIC.

**G. The Tentative Order provides appropriate guidance regarding accumulated deferred income taxes and seasonality in calculating quarterly revenues.**

The Tentative Order (p. 16) points out that the Model Tariff adopts a deduction from original cost for accumulated depreciation associated with the eligible property placed in service during the prior three month period, but does not include a provision for accumulated deferred income taxes. On the latter issue, the Tentative Order explains that attempting to account for accumulated deferred income taxes would add unnecessary complexities because it would require consideration of other adjustments that would also be considered in a base rate proceeding. This interpretation is appropriate because the rationale for a DSIC is to streamline recovery of infrastructure investments and avoid the regulatory lag associated with rate cases.

In addition, the Tentative Order (p. 16) recognizes that some utilities' revenue streams vary significantly depending on the season. To account for this seasonality, the Model Tariff provides these utilities the option of basing quarterly revenues on either the summation of projected revenues for the applicable three month period or one-fourth of the projected annual revenues. In either case, the DSIC recovery will be subject to annual reconciliation and audit. This guidance is appropriate. Nothing in the Act prohibits accounting for seasonality in this way, and such a policy is necessary to avoid adverse impacts on customers and utilities.

**H. The Act does not compel cost recovery via a DSIC from customers who would not be required to bear these costs under other ratemaking provisions of the Public Utility Code.**

The Tentative Order (p. 18) cites the language in the Act that the DSIC rate is to be "applied equally to all customer classes as a percentage of each customers billed revenue." 66 Pa.C.S. § 1358 (d)(1). The Tentative Order goes on to interpret this language in a manner that

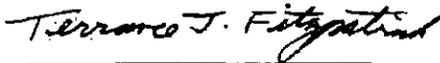
does not permit a utility to have variances in its DSIC rates based on customer class, whether that difference is based on calculation of the DSIC percentage or on the underlying DSIC-eligible property. The Commission has invited comments on this interpretation.

The Commission's tentative conclusion on this issue is not based on a sound interpretation of the Act. Nothing in the language cited above indicates an intention to overturn existing policies such as recovery of costs based upon cost-causation, non-discrimination, or other general ratemaking principles embodied in chapter 13 of the Public Utility Code. The Commission's tentative interpretation could lead to the anomalous result that customer classes could be impacted differently when costs are recovered via a DSIC as opposed to when these costs are rolled into base rates. For these reasons, an unduly rigid interpretation of this language would be contrary to the public interest and should not be adopted by the Commission.

### III. CONCLUSION

EAP respectfully requests that the Commission consider these comments in its Final Order in this proceeding.

Respectfully submitted,



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## APPENDIX A

### 205. UTILITY PLANT IN SERVICE - Account No. 101.0

#### INTANGIBLE PLANT

- 301 Organization
- 302 Franchises & Consents
- 303 Other Plant and Miscellaneous Equipment

#### MANUFACTURED GAS PRODUCTION PLANT

- 304 Land and Land Rights
- 305 Structures and Improvements
- 306 Boiler Plant Equipment
- 307 Other Power Equipment
- 308 Coke Ovens
- 309 Infiltration Galleries and Tunnels
- 310 Producer Gas Equipment
- 311 Liquefied Petroleum Gas Equipment
- 312 Oil Gas Generating Equipment
- 313 Generating Equipment-Other Processes
- 314 Coal, Coke and Ash Handling Equipment
- 315 Catalytic Cracking Equipment
- 316 Other Reforming Equipment
- 317 Purification Equipment
- 318 Residential Refining Equipment
- 319 Gas Mixing Equipment
- 320 Other Equipment

#### NATURAL GAS PRODUCTION & GATHERING PLANT

- 325.1 Producing Lands
- 325.2 Producing Leaseholds
- 325.3 Gas Rights
- 325.4 Rights of Way
- 325.5 Other Land and Land Rights
- 326 Other Plant and Miscellaneous Equipment
- 327 Field Compressor Station Structures
- 328 Field Measuring & Regulating Station Structures
- 329 Other Structures
- 330 Producing Gas Wells-Well Construction
- 331 Producing Gas Wells-Well Equipment
- 332 Field Lines
- 333 Field Compressor Station Equipment

- 334 Field Measuring & Regulating Station Equipment
- 335 Drilling & Cleaning Equipment
- 336 Purification Equipment
- 337 Other Equipment
- 338 Unsuccessful Exploration & Development Costs

**PRODUCTS EXTRACTION PLANT**

- 340 Land and Land Rights
- 341 Other Plant and Miscellaneous Equipment
- 342 Extraction & Refining Equipment
- 343 Pipe Lines
- 344 Extracted Product Storage Equipment
- 345 Compressor Equipment
- 346 Gas Measuring and Regulating Equipment
- 347 Other Equipment

**NATURAL GAS PRODUCTION & PROCESSING PLANT**

- 350.1 Land
- 350.2 Rights of Way
  - 351 Structures and Improvements
  - 352 Wells
- 352.1 Storage Leaseholds and Rights
- 352.2 Reservoirs
- 352.3 Nonrecoverable Natural Gas
  - 353 Lines
  - 354 Compressor Station Equipment
  - 355 Measuring and Regulating Equipment
  - 356 Purification Equipment
  - 357 Other Equipment

**OTHER STORAGE PLANT**

- 360 Land & Land Rights
- 361 Structures and Improvements
- 362 Gas Holders
- 363 Purification Equipment
  - 363.1 Liquefaction Equipment
  - 363.2 Vaporizing Equipment
  - 363.3 Compressor Equipment
  - 363.4 Measuring and Regulating Equipment
  - 363.5 Other Equipment

**BASE LOAD LIQUEFIED NATURAL GAS  
TERMINATING AND PROCESSING PLANT**

- 364.1 Land and Land Rights
- 364.2 Structures and Improvements
- 364.3 LNG Processing Terminal Equipment
- 364.4 LNG Transportation Equipment
- 364.5 Measuring and Regulating Equipment
- 364.6 Compressor Station Equipment
- 364.7 Communication Equipment
- 364.8 Other Equipment

**TRANSMISSION PLANT**

- 365.1 Land and Land Rights
- 365.2 Rights of Way
- 366 Structures and Improvements
- 367 Mains
- 368 Compressor Station Equipment
- 369 Measuring and Regulating Station Equipment
- 370 Communication Equipment
- 371 Other Equipment

**DISTRIBUTION PLANT**

- 374 Land & Land Rights
- 375 Structures and Improvements
- 376 Mains
- 377 Compressor Station Equipment
- 378 Measuring & Regulating Station Equipment-General
- 379 Measuring & Regulating Station Equipment-City Gate C. St.
- 380 Services
- 381 Meters
- 382 Meter Installations
- 383 House Regulators
- 384 House Regulatory Installations
- 385 Industrial Measuring and Regulating Station Equipment
- 386 Other Property on Customers' Premises
- 387 Other Equipment

**GENERAL PLANT**

- 389 Land & Land Rights
- 390 Structures and Improvements
- 391 Office Furniture & Equipment

- 392 Transportation Equipment
- 393 Stores Equipment
- 394 Tools & Garage Equipment
- 395 Laboratory Equipment
- 396 Power Operated Equipment
- 397 Communication Equipment
- 398 Miscellaneous Equipment
- 399 Other Tangible Property