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May 31, 2016

Rosemary Chiavetta, Esq., Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
Harrisburg, Pennsylvania 17120

**Re: Proposed Policy Statement on Combined Heat and Power (CHP)
Docket No. M-2016-2530484**

Dear Secretary Chiavetta:

Enclosed for filing please find the comments of the Energy Association of Pennsylvania to the Commission's above-referenced docket.

Sincerely,

A handwritten signature in black ink, appearing to read "Donna M.J. Clark".

Donna M.J. Clark
Vice President and General Counsel

Enclosure

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Proposed Policy Statement on
Combined Heat and Power

:

M-2016-2530484

**COMMENTS OF THE
ENERGY ASSOCIATION OF PENNSYLVANIA
TO PROPOSED POLICY STATEMENT**

I. INTRODUCTION

On March 9, 2016, the Pennsylvania Public Utility Commission (“PUC” or “Commission”) entered a Proposed Policy Statement to advance the continued development of Combined Heat and Power (“CHP”) in Pennsylvania through the establishment of a biennial reporting requirement for electric and natural gas distribution companies (“EDCs” and “NGDCs”). The proposed biennial filing would require EDCs and NGDCs to provide specific information detailing “their efforts to eliminate obstacles to the development of CHP in the Commonwealth.” Proposed Policy Statement at p. 2.

Issuance of the Proposed Policy Statement follows two *En Banc* hearings held by the Commission at Drexel University and the University of Pittsburgh in the spring and fall of 2014, respectively. Witnesses at the hearings, including those of EDCs and NGDCs, provided testimony which affirmed the Commission’s belief that “a coordinated approach to CHP can provide real benefits to the economy, environment, and the security of residents and businesses within the Commonwealth.” *Id.* Testimony offered highlighted potential benefits, identified

barriers, and noted the lack of a specific mechanism for investment of state (taxpayer) dollars in Pennsylvania. *Id.* at pp. 3 – 4. The Commission concluded that it “should facilitate efforts to make Pennsylvania a leader in CHP deployment to more fully realize the benefits provided by CHP and the enhanced utilization of our [the Commonwealth’s] indigenous shale gas resources.” *Id.* at p. 4. The Commission intends that the Proposed Policy Statement and the biennial report will serve as the platform to:

- Promote CHP investments;
- Encourage EDCs and NGDCs to make CHP an integral party of their energy efficiency and resiliency plans, as well as their marketing and outreach efforts;
- Encourage these companies to design interconnection and standby rates for owners and operators of CHP facilities; and
- Promote the consideration of special natural gas rates for owners and operators of CHP facilities.

Id. at p. 2.

CHP systems generate electricity and thermal energy in a single, integrated system. Heat that is normally wasted in conventional generation is captured and reused in a CHP system to heat or cool a building or to power a manufacturing process. CHP is not a form of technology, but rather an approach to applying technology. Typical owner/operators for a CHP system include, among others, manufacturing companies, hotels, hospitals, college campuses, and nursing homes. And, as outlined in the Proposed Policy Statement, the barriers faced by those entities looking to deploy CHP are frequently financial in nature, i.e. difficulty in obtaining and justifying the capital investment, in part due to the long payback requirements for CHP; the initial costs and procedures related to interconnection with the electric grid; and the costs to

maintain a connection to the electric grid as an alternate power source during planned and unplanned downtime of CHP. *Accord*, Proposed Policy Statement at pp. 3 – 4. As such, the ability of the Commission and the state regulated energy utilities to advance CHP beyond its current ranking as tied for 7th place in the nation may be constrained by the ability and willingness of potential owner/operators to obtain the necessary financing and by the paucity of support in the form of grants or low-interest government backed loans, at either the state or federal level.

The Energy Association of Pennsylvania (“EAP” or “Association”) is a trade association that represents and promotes the interests of regulated electric and natural gas distribution companies operating in the Commonwealth. EAP respectfully submits these comments to supplement those filed individually by its member companies.¹ As discussed below and evidenced by its place in the 2015 American Council for an Energy-Efficient Economy CHP Scorecard (“ACEEE CHP Scorecard”), Pennsylvania strongly advocates for and encourages the development of CHP. EDCs and NGDCs generally support the concept of a biennial report to better understand the ongoing development of CHP in the Commonwealth with certain suggested modifications as outlined in these comments. EAP also believes that while the keys to achieving the Commission’s stated policy goal of improving CHP deployment are not wholly within the control of regulated energy utilities to either influence or determine, consideration and approval by the Commission of specific utility CHP proposals can positively impact customer consideration of these systems.

¹ Electric Distribution Company Members: Citizens’ Electric Company; Duquesne Light Company; Metropolitan Edison Company; PECO Energy Company; Pennsylvania Electric Company; Pennsylvania Power Company; Pike County Light & Power Company; PPL Electric Utilities; UGI Utilities, Inc.-Electric Division; Wellsboro Electric Company; and West Penn Power Company. Natural Gas Distribution Company Members: Columbia Gas of Pennsylvania, Inc.; Pike County Light & Power Company; National Fuel Gas Distribution Corp.; PECO Energy Company; Peoples Natural Gas Company LLC; Peoples TWP LLC; Philadelphia Gas Works; UGI Central Penn Gas, Inc.; UGI Penn Natural Gas, Inc.; UGI Utilities Inc.; and, Valley Energy Inc.

II. COMMENTS

A. Pennsylvania Utilities Currently Assist Customers to Deploy CHP Systems

As evidenced by the *En Banc* testimony provided by select EDCs and NGDCs, utilities continue to build on their CHP programs' success. PECO Energy Company currently has thirteen (13) projects completed via its Act 129 Phase 1 and Phase 2 programs, another four (4) expected to complete before the end of Phase 2, and it has identified an additional eight (8) Phase 3 CHP project leads in its service territory. Their active and completed CHP project incentives total over eleven million dollars and are based on a combination of capacity and net energy generated; incentives can be up to fifty percent of the total project cost (capped at \$1 million). Likewise Duquesne Light Company, which supports existing CHP projects with Duquesne University, assisted two additional customers that have qualified for incentives under its Act 129 energy conservation program.

Other Pennsylvania EDCs have also encouraged the successful deployment of CHP projects in the Commonwealth. PPL Electric Utilities provided Act 129 energy efficiency and conservation ("EE&C") incentives of approximately \$2.05 million for CHP through its custom programs in Phase 1 and Phase 2, and will again provide incentives for CHP through its custom program in Phase 3. There are nine (9) existing CHP systems in the PPL service territory and applications for incentives have been submitted for another eight (8) systems. Customers interested in Act 129 incentives to develop CHP systems are primarily from the manufacturing, health care, education, financial, and government sectors.

In addition to the EDC support of CHP projects, NGDCs are actively pursuing the use of CHP technology to take full advantage of the benefits of Marcellus and Utica shale in powering Pennsylvania businesses. In the Peoples Natural Gas Company service territory, universities and

customers in the food processing business are currently using CHP systems in the city of Pittsburgh. Additionally, Peoples is actively marketing to design CHP solutions for universities, school districts, nursing homes, hospitals, apartment buildings, hotels and industrial cleaners and is planning to submit a tariff proposal in the near future to further the development of CHP on its systems.

National Fuel Gas Distribution Corp. (“NFG”) has recently contracted with the Gas Technology Institute (“GTI”) to implement a CHP assessment and demonstration program. The initial phase of the GTI contract includes a market assessment specific to NFG’s Pennsylvania service territory. Next steps include the development of customized prospecting tools to assist account representatives in the identification, data collection and preliminary screening of potential CHP projects. In the final phase of the GTI contract, a limited number of customer-specific CHP project analyses would be conducted using the expertise of a consulting engineer with specialized knowledge of CHP applications.

The pending base rate case filing of UGI Utilities Inc. – Gas Division (“UGI Gas”) includes a proposal for an EE&C plan as well as a Technology and Economic Development (“TED”) Rider.² The proposed UGI Gas EE&C plan includes a CHP program to promote CHP projects over a five-year period by providing incentives – \$750 per kW, with a cap of \$250,000 per project – for CHP plants that have net primary energy savings and are cost-effective. The CHP program will target large commercial and industrial customers with high thermal and electric loads, such as hospitals, college campuses and multi-shift industrial customers. In addition to the UGI Gas EE&C plan filed in the rate case, CHP is also offered as part of the commercial and industrial custom program within UGI Utilities Inc. – Electric Division EE&C

² Docket No. R-2015-2518438

plan that was launched in 2012. Both divisions of UGI Utilities, Inc. are committed to continually canvassing its service territory for CHP opportunities and to engaging with customers who express interest in pursuing CHP systems.

In Philadelphia, Philadelphia Gas Works (“PGW”) has fifteen (15) CHP systems already in service and several new projects are under consideration by current customers. PGW operates a CHP system at its headquarters that provides electricity and uses the waste heat for both heating and cooling. PGW uses its own CHP unit as an educational and promotional tool to demonstrate to interested customers the myriad benefits of CHP. PGW also offers an incentive program on a limited basis to provide financial assistance to customers for CHP installation costs. In addition, PGW’s pending petition for approval of its DSM Phase II Plan³ includes a proposal for prescriptive rebates for micro-CHP units of 30 kW and smaller (incentive of \$750 per kW capacity, capped at 50% of projects’ incremental costs).

EAP’s member utility companies further encourage potential customers to invest capital in CHP highlighting benefits such as:

- Increased reliability
 - Lowers susceptibility to power outages
- Lower building operations costs
 - Businesses can spend less on energy costs and more on core business functions
- Fuel price stability
- Increased property value
- Reduced carbon footprint

³ PA PUC Docket No. P-2014-2459362

- Encourages natural gas utilization keeping more PA-produced gas in the region benefiting the local economy.
- Increases job opportunities and business investment
(<http://www.cleanjobspa.com/>)

As demonstrated above, Pennsylvania EDCs and NGDCs work with customers to develop CHP systems and will continue to encourage CHP investment in their service territories via marketing and outreach efforts. CHP systems are an integral part of existing energy efficiency and resiliency programs and will continue to be so into the future.

B. Current Pennsylvania Law and Utility Efforts Address Specific Barriers to CHP Development Identified in the ACEEE CHP Scorecard

While the chief barriers to even more robust deployment of CHP systems in Pennsylvania include the size of the initial capital investment and availability of financing alternatives⁴, the Proposed Policy Statement also lists a number of non-financial factors identified in the ACEEE CHP Scorecard which may impact development of CHP systems. These include interconnection standards, the presence of a program designed to acquire CHP energy, and state supported production goals for acquiring a defined amount of energy savings from CHP. In general, EAP maintains that existing regulations as well as current EDC initiatives and programs appropriately address these concerns within the context of state laws, i.e., Act 129 of 2008 and the Alternative Energy Portfolio Standards Act of 2004 (“AEPS”). EAP supports the proposed policy goal of further encouraging deployment of CHP systems in Pennsylvania, but notes that the use of the ACEEE CHP Scorecard is just one way to benchmark the success or failure of state efforts in

⁴ See, Proposed Policy Statement at p. 4 stating that “investment in CHP, in the absence of state, federal and other investment subsidies, is largely driven by the cost of electricity.”

this area. Other benchmarks could include the number of CHP specific initiatives and programs offered or tariff provisions supporting CHP development.

Pennsylvania currently addresses interconnection standards and fees; standards are set forth in regulations found at 52 Pa. Code §§ 75.21 – 75.51 whereas application fees for interconnection to the grid are addressed in guidelines found at 52 Pa. Code §§ 69.2101-2104. EAP contends that its EDC member utilities abide by these regulations and guidelines and have in place the necessary tariff provisions to implement these sections of the Pennsylvania Code. Moreover, the interconnection regulations are part of an ongoing, extensive rulemaking proceeding aimed at, *inter alia*, codifying a number of processes and standards established in a 2009 Commission Order that implemented the AEPS related provisions enacted in Act 129 of 2008.⁵ While ACEEE might require that an interconnection standard *explicitly* establish parameters and procedures for the interconnection of CHP systems in order to gain points in its Scorecard analysis,⁶ EAP believes that the current regulations and guidelines concerning interconnection standards and fees, respectively, while not *specifically* addressing CHP by name, apply to CHP systems. In fact, the interconnection application and fee schedule established via regulation and guidelines has a tiered structure as advocated by ACEEE in its report.⁷

Pennsylvania law also provides some avenues for utilities to incentivize CHP deployment and the filing of a biennial report will not and cannot directly expand the tools permitted under the existing statutory and regulatory framework. In other states, the presence of a program designed to encourage acquisition of CHP systems is typically through an incentive program for

⁵ See, *Final Rulemaking Order Re: Implementation of the Alternative Energy Portfolio Standards Act of 2004*, Docket No. L- 2014-2404361 (February 11, 2016). These amended regulations are not yet effective with the legislative oversight committees having deemed the regulations approved while the Independent Regulatory Review Commission voted to disapprove the regulations.

⁶ The 2015 State Energy Efficiency Scorecard, October 2015, Report U1509. p. 75
<http://database.aceee.org/state-scorecard-rank>

⁷ See, 52 Pa Code §§ 69.2104 and 75.36 – 75.40.

customer-owned CHP. These utility-provided incentives are recoverable as is the total cost of energy efficiency programming through specific mechanisms, such as in Massachusetts⁸ where utilities can earn performance incentives in surpassing their energy efficiency goals with regard to CHP. Other state programs may be analogous to energy efficiency incentives offered by Pennsylvania EDCs under Act 129 or by NGDCs in the context of either energy efficiency programs or those aimed specifically at promoting deployment of CHP systems. As detailed above, a number of Pennsylvania energy utilities have programs in place that encourage CHP. Moreover, the Commission is exploring the impact of alternative ratemaking methodologies, such as performance incentives, in a separate proceeding. Current initiatives and programs as well as future utility proposals supporting CHP should be recognized by ACEEE and may help to boost the Commonwealth's ranking in future ACEEE CHP Scorecards. And, as stated earlier, while the Scorecard is informative, it does not create a compliance standard to benchmark statewide efforts concerning the deployment of CHP systems.

Any state-prescribed production goals requiring a specific amount of energy savings from CHP (as opposed to a policy statement encouraging deployment) would necessarily have to come through a legislative amendment to current law. At the present time, Act 129 is not structured to favor one type of energy efficiency program or measure over another. EAP maintains that this statutory design promotes the inclusion of a myriad of measures within an EDC's EE&C plan that, in turn, is tailored to the specific needs of customers in a specific utility service territory. At the same time, the statute encourages the adoption of new measures and programs as markets mature and technology advances. Prescriptive requirements, as used in the ACEEE CHP Scorecard, cannot account for rapid changes in technology and do not provide the

⁸ Chittum, Anna. "How Electric Utilities Can Find Value in CHP." An ACEE White Paper. July 2013. p. 11

flexibility needed to adapt to customer demand and a changing marketplace. Moreover, while state-prescribed production goals might encourage deployment of a specific technology, it is also true that the approach favored by the Pennsylvania General Assembly in Act 129 has not precluded the promotion of CHP systems. For example, while the only EDC to include a CHP specific incentive program in its Act 129 Phase II EE&C Plan may have been PECO, each of the remaining EDCs provided incentives for CHP systems in their custom incentive programs.⁹

As evidenced by its 7th place ranking and detailed above, Pennsylvania encourages deployment of CHP systems throughout the Commonwealth and the biennial report required under the Proposed Policy Statement would arguably provide a means to capture that information on a regular basis by the Commission. The biennial report can also serve as a tool to share information among the utilities concerning current and future CHP program offerings and to increase awareness and adoption of the technology by customers.

While supporting the intent behind the Proposed Policy Statement, however, EAP seeks clarification in any final order in this proceeding that first, as with all policy statements, no binding norm or obligations are being created to provide information that may not be readily available to EDCs or NGDCs or that may be considered to be confidential either by customers or by the utilities themselves; and that second, no compliance requirements arise from the filing of the proposed biennial report. *See, Borough of Bedford v. Com., Dept. of Environmental Protection*, 972 A.2d 53, 61 (Pa. Cmwlth. 2014) providing that "...[a] statement of policy, expresses at most, an agency's interpretation of the law, as that law is expressed in a statute or regulation. Accordingly, a person may be charged with a violation of a statute or regulation, but not with a violation of a statement of policy."

⁹ Proposed Policy Statement at fn.4.

C. Biennial Report Required under the Proposed Policy Statement

Turning to the required biennial filing envisioned under the Proposed Policy Statement, EAP and its members support the intent behind the request and do not object to the filing of a report. EDCs and NGDCs are certainly willing to compile and share with the Commission and the general public otherwise publicly available, known information concerning current operating CHP systems, promotion and marketing of CHP, incentives for CHP offered under energy efficiency or other utility programs and, with respect to EDCs, the specifics of tariff provisions relating to interconnection terms and procedures and fee structures.

EDCs and NGDCs are willing to provide the information requested at Annex A to the Proposed Policy Statement to the extent it is factual, readily available, not confidential or subject to privacy concerns and not speculative. For example, providing information concerning future CHP projects or utility strategies to market to specific potential owner/operators may be considered confidential by both the utility and the customer and data recounting actual electric generation delivered to all customers with CHP on an hourly basis for the preceding 24 month period may not be readily available. EAP looks to its individual members to provide additional details with respect to what categories of information identified in Annex A may be difficult or impossible to provide and respectfully asks the Commission to consider those concerns. EAP also asks the Commission to consider making available to the public the staff report identified at proposed §69.3203 and allowing for input regarding any recommendations prior to any formal Commission action.

Finally, EAP again notes that while the required biennial report provides information that may influence or assist in further deployment of CHP in the Commonwealth it does not address

the major barriers to adoption, i.e. the ability of customers to obtain and commit capital resources to CHP systems, which may not be within the purview of utilities to control. As such, EAP understands that the finalization of the Proposed Policy Statement and the subsequent filing of biennial reports does not create a compliance obligation. *Accord, Eastwood Nursing v. Department of Public Welfare*, 910 A.2d 134, 141 (Pa. Cmwlth. 2006); *Pennsylvania Human Relations Commission v. Norristown Area School District*, 374 A.2d 671, 679 (1977); and *Cash America Net of Nevada, LLC v. Department of Banking*, 978 A.2d 1028, 1033 (Pa. Cmwlth. 2009).

III. CONCLUSION

EAP and its member companies support the intent of the Proposed Policy Statement to encourage the deployment of CHP systems across the Commonwealth and appreciate the efforts of the Commission to support utility efforts in this area. EDCs and NGDCs today have programs in place (or under consideration by the Commission) to promote and incentivize customers to invest in CHP within the existing statutory and regulatory framework under the Public Utility Code and in the context of AEPS and Act 129. A number of member companies, as set forth in individual comments, are considering additional CHP focused efforts to increase the deployment of this technology throughout the Commonwealth. EAP contends that a number of the barriers identified in either the ACEEE CHP Scorecard or discussed in the Proposed Policy Statement are addressed by existing and proposed utility programs under current law and that financial barriers to CHP adoption by customers are more difficult to address in a regulatory proceeding.

Finally, while the biennial report envisioned under the Proposed Policy Statement will undoubtedly provide education and information that convinces customers to invest capital and

resources in a CHP system and may encourage utilities to propose new ways to incentivize CHP systems, it cannot create a binding norm or metric which subjects Pennsylvania's energy utilities to future compliance proceedings in the event deployment of CHP does not develop as anticipated.

Respectfully submitted,


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