

October 8, 2018

Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street  
Harrisburg, PA 17120

**RE: Implementation of Act 58 of 2018 Alternative Ratemaking for Utilities, Docket No. M-2018-3003269**

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Dear Secretary Chiavetta:

The undersigned organizations (“Commenters”) are pleased to submit these comments in support of the Pennsylvania Public Utility Commission’s (“Commission”) proposed interpretation of Act 58 of 2018, Alternative Ratemaking for Utilities (“Act 58 or “the Act”).<sup>1</sup> Act 58, which amends Chapter 13 of the Pennsylvania Public Utility Code (“Code”), settles important questions of law related to the implementation of alternative ratemaking methodologies such as revenue decoupling, performance-based rates, and multiyear rate plans for electric distribution companies (“EDCs”). The Commission’s interpretation of Act 58 paves the way for the successful implementation of the proposed criteria set forth in the *Fixed Utility Distribution Rates Policy Statement*.<sup>2</sup>

**Background**

Signed into law by Governor Wolf on June 28, 2018, Act 58 amends Chapter 13 of the Pennsylvania Public Utility Code 66 Pa. C.S. § 1301, adding Section 1330, which permits the Commission to approve an application by a utility to establish alternative ratemaking mechanisms. On August 23, 2018, the Commission issued a Tentative Implementation Order (TIO) seeking comment on its proposed interpretation and implementation of Section 1330.

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<sup>1</sup> Act of Jun. 28, 2018, P.L., No. 58, codified at 66 Pa.C.S.A. §1330, *available at* <http://www.legis.state.pa.us/cfdocs/legis/li/uconsCheck.cfm?yr=2018&sessInd=0&act=58>.

<sup>2</sup> *Fixed Utility Distribution Rates Policy Statement*, Proposed Policy Statement Order at Docket No M-2015-2518883.

The TIO complements and supports the Commission’s long-running docket on alternative ratemaking mechanisms.<sup>3</sup> Beginning in 2016 with an *en banc* hearing, the Commission requested testimony from experts on alternative ratemaking methodologies, “. . . that may remove disincentives that might presently exist for energy utilities to pursue aggressive energy conservation and efficiency initiatives.”<sup>4</sup> Next, in March 2017, the Commission issued a Tentative Order seeking additional comments on, “and potential processes to advance, alternative rate methodologies that address issues each utility industry is facing.”<sup>5</sup> Finally, on May 3, 2018, the Commission took “its next step in deliberating the future of utility rates,” by issuing a proposed policy statement on alternative ratemaking that would set forth the Commission’s policy, criteria, and examples of alternative ratemaking methodologies in Pennsylvania.<sup>6</sup> Until the enactment of the Act, the Commission’s docket was dogged by questions about what types of alternative ratemaking methodologies were permitted under the statutes administered by the Commission. The Commission’s proposed interpretation of Act 58 settles this question.

### **Declaration of Policy**

The TIO acknowledges the General Assembly’s declaration of policy in Section 1330(a) of the Act while: (1) Observing that the Commission has articulated similar policy goals in its proposed *Fixed Utility Policy Statement*;<sup>7</sup> and (2) noting that other policy goals concerning utility rates have been previously established by other statutes, regulations, and case law. In light of these policy prescriptions, the TIO states that when the Commission reviews utility base rate proposals, it will consider both the policy goals set forth in section 1330(a) and “other applicable policy goals” established by law.

The Commenters support this approach, and agree both that the policy goals articulated in Section 1330(a) are similar to those in the Commission’s draft *Policy Statement* and that, when the Commission is determining whether a base rate proposal advances these goals, it must also

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<sup>3</sup> Docket No. M-2015-2518883.

<sup>4</sup> Notice of En Banc Hearing on Alternative Ratemaking Methodologies, Docket No. M-2015-2518883 (Dec. 31, 2015).

<sup>5</sup> Alternative Ratemaking Methodologies, Tentative Order, Docket No. M-2015-2518883, at 2 (Mar. 2, 2017).

<sup>6</sup> Statement of Chairman Gladys Brown, Docket No. M-2015-2518883 (May 3, 2018).

<sup>7</sup> *Fixed Utility Distribution Rates Policy Statement*, Proposed Policy Statement Order at Docket No. M-2015-2518883, at 26-27 (May 23, 2018).

consider the proposal's consistency with the policies expressed in the other laws administered by the Commission. However, we believe that the Commission should be more explicit in articulating what these other policy goals are, and should especially emphasize the Commonwealth's clean energy goals and the importance of protecting consumers, especially low-income Pennsylvanians.

The declaration of policy in section 1330(a) notes that new utility operations and information technologies create new opportunities for customers, and that "it is in the public interest for the Commission to approve just and reasonable rate and rate mechanisms to facilitate customer access to these new opportunities . . ." <sup>8</sup> While the Act does not explicitly state what these new opportunities are, let alone prioritize their importance, the Commenters believe that the most important opportunities before the Commonwealth are those that it has and will have to expand the use of clean energy technologies, such as energy efficiency and distributed generation resources, in accordance with policy goals of Act 129 of 2008 and the Competition Act of 1996. These technologies facilitate greater control by customers over their energy bills, while facilitating new ways to interact with the grid through net metering or time-varying rates. The best venue for the Commission to articulate these policy goals in greater detail remains the ongoing alternative ratemaking docket, where the Commission's proposed *Fixed Utility Distribution Rates Policy Statement* is currently open for comment.

### **Alternative Rate Mechanisms**

The Commenters strongly agree with the Commission's proposed interpretation of the language contained in subsection 1330(b)(1), which describes the types of alternative ratemaking mechanisms the Commission may approve and resolves potential conflicts of law between this subsection and other sections of the Public Utility Code. We believe that, as interpreted by the Commission, subsection 1330(b)(1) conclusively settles an important question of whether alternative ratemaking mechanisms that rely on 1307 automatic adjustment mechanisms are prohibited for EDCs by sections 2806.1(k)(2) and section 2807(f)(4) of the Code.

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<sup>8</sup> Implementation of Act 58 of 2018 Alternative Ratemaking for Utilities, Tentative Implementation Order, at 2 (Aug. 28, 2018).

Prior to the enactment of Act 58, section 2806.1(k)(2) had been read by some stakeholders as prohibiting those ratemaking methodologies that would rely on an automatic adjustment mechanism through section 1307, and the Commission’s proposed *Fixed Utility Distribution Rates Policy Statement* reflects this uncertainty regarding the Commission’s legal authority. For example, in its Proposed Order concerning the *Statement*, the Commission stated that revenue decoupling “may not be authorized by the Public Utility Code for certain fixed utilities in certain circumstances.”<sup>9</sup> The Order raised similar concerns regarding multi-year rate plans and performance incentives.<sup>10</sup>

Fortunately, the text of Act 58, as well as the Commission’s proposed interpretation, conclusively settle questions around the Commission’s legal authority to approve ratemaking mechanisms that rely on automatic adjustment mechanisms. Section 1330(b)(1) of Act 58 states:

Notwithstanding any other provision of law, including, but not limited to, sections 2806.1(k)(2) (relating to energy efficiency and conservation program) and 2807(f)(4) (relating to duties of electric distribution companies), the commission may approve an application by a utility in a base rate proceeding to establish alternative rates and rate mechanisms, including but not limited to, the following mechanisms:

- (i) decoupling mechanisms;
- (ii) performance-based rates;
- (iii) formula rates;
- (iv) multiyear rate plans; . . .

The Commission proposes to interpret the term “notwithstanding” as meaning “in spite of,” and therefore to construe subsection 1330(b)(1) as allowing the approval alternative ratemaking mechanisms “in spite of” the purported limitations contained in 2806.1(k)(2) and section 2807(f)(4), or any other provision of law. We agree that this is the only reasonable interpretation of this subsection, and note further that the Commission’s interpretation is supported by section

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<sup>9</sup> Proposed Policy Statement Order, 48 Pa.Bull. No. 25 at 3742.

<sup>10</sup> *Id.* 3744, 3745.

1330(b)(2), which states that “[a]n alternative rate mechanisms established under this section may include rates under section 1307 (relating to sliding scale of rates; adjustments) or 1308 (relating to voluntary changes in rates) . . .” Consequently, under subsection 1330(b)(1), the Commission may approve applications by utilities that include revenue decoupling, performance-based rates, and multiyear rate plans.

**Establishment Through a Base Rate Proceeding**

The Commenters agree with the Commission’s proposed interpretation of section 1330(d), whereby a utility seeking to use or employ an alternative rate or rate mechanisms must do so through a Section 1308(d) base rate proceeding.<sup>11</sup> Such an interpretation is consistent with Pennsylvania jurisprudence that places the burden on utilities to show that tariff proposals are just and reasonable. Base rate cases allow for interested stakeholders to participate in an in-depth examination of a utility’s financial status, as well as proposed policies, ratemaking, and rate-design structures that would impact ratepayers’ monthly bills and ability to avail themselves of clean energy technologies.

**Conclusion**

For the reasons stated above, the Commenters support the Commission’s proposed interpretation of Act 58.

Sincerely,  
Eric Miller  
Policy Counsel  
Keystone Energy Efficiency Alliance

Tom Schuster  
Sr. Campaign Representative  
Sierra Club

Mark Szybist  
Senior Attorney & Pennsylvania Advocate  
Natural Resources Defense Council

Liz Robinson  
Executive Director  
Philadelphia Solar Energy Association

Rob Altenburg  
Director, Energy Center  
Citizens for Pennsylvania’s Future

Ron Celentano  
President  
PA Solar Energy Industries Assoc.

Logan Welde  
Staff Attorney  
Clean Air Council

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<sup>11</sup> Tentative Order at 8, citing 66 Pa. C.S. § 1308(d).

