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October 8, 2018

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

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

Dear Secretary Chiavetta:

Please find enclosed for filing the Comments of the Energy Association of Pennsylvania to the Tentative Implementation Order entered on August 23, 2018 at the above-referenced docket.

Sincerely,

A handwritten signature in black ink that reads "Donna M.J. Clark".

Donna M.J. Clark
Vice President & General Counsel

cc: Kriss Brown, Assistant Counsel, Law Bureau

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Implementation of Act 58 of 2018
Alternative Ratemaking for Utilities

:

M-2018-3003269

**COMMENTS OF THE
ENERGY ASSOCIATION OF PENNSYLVANIA TO THE TENTATIVE
IMPLEMENTATION ORDER**

I. INTRODUCTION

On June 28, 2018, Governor Wolf signed into law Act 58 of 2018 (“Act 58”) which amends Chapter 13 of the Pennsylvania Public Utility Code, 66 Pa. C. S. §§ 1301 *et seq* (relating to rates and distribution systems) by adding a new section 1330, 66 Pa. C. S. § 1330 (relating to alternative ratemaking for utilities). Section 1330 authorizes the Pennsylvania Public Utility Commission (“Commission” or “PUC”) to approve an application by a utility to establish alternative rates and rate mechanisms.

Pursuant to section 1330 (d), the General Assembly directed the PUC to, within six months of the effective date, “prescribe the specific procedures for the approval of an application to establish alternative rates” by regulation or order. 66 Pa. C. S. § 1330 (d). The Commission issued a Tentative Implementation Order (“TIO”) at its Public Meeting on August 23, 2018 to meet this directive. Following the publication of the TIO in the *Pennsylvania Bulletin* on September 8, 2018, interested parties have thirty (30) days to provide comments on the Commission’s plan for implementation of Act 58 and seventy (70) days to file reply comments.

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

II. COMMENTS

A. EAP agrees that Act 58 contemplates that utilities seeking approval of an alternative rate or rate mechanism may do so in a base rate proceeding.

The language in subsection 1330 (b) (1) provides that “the commission may approve an application by a utility in a base rate proceeding to establish alternative rates and rate mechanisms...” 66 Pa. C. S. § 1330 (b) (1), and EAP agrees that a “base rate proceeding” refers to a section 1308 (d) proceeding. A section 1308(d) proceeding is initiated by the utility and contains clearly established requirements, procedures, and protections that include, *inter alia*, affording consumers, statutory advocates, and other interested parties the opportunity to participate in the proceeding. Following intervention, interested parties have a variety of methods to test the utility request and convince the Commission to deny or modify the utility proposal, i.e. conduct discovery, present evidence and witnesses, cross-examine utility witnesses, and file briefs and reply briefs. The criteria for establishing a need for a change in rates or rate design, burden of proof, and the type of information or data that is to be submitted by the utility at the start of the proceeding are all delineated in existing statute and regulation. Base rate proceedings provide a forum to raise, consider, and adopt consumer protections.

By authorizing the Commission to approve an application for an alternative ratemaking proposal within a base rate proceeding, the General Assembly relied upon an existing and well-

¹ The Association’s electric distribution company members include: 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 Corporation; UGI Utilities, Inc.(Electric Division); Wellsboro Electric Company; and, West Penn Power Company. The Association’s natural gas distribution company members include: Columbia Gas of Pennsylvania, Inc.; Pike County Light & Power Company; Leatherstocking Gas Co., LLC, National Fuel 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.

established process that will continue to allow for the consideration of evidence and review of legal arguments by the Commission in its analysis and determination of just and reasonable utility rates. EAP supports the position of the Commission “that at the present time, the established law, rules and procedures for filing and seeking approval of a new rate, including alternative rates and rate mechanisms, under a Section 1308 general base rate proceeding appear to be adequate for the Section 1330 requirements.”²

EAP suggests that prior to considering additional or prescriptive criteria for specific rate designs or mechanisms, all stakeholders and the Commission could benefit and gain experience through the litigation of actual utility proposals for approval of an alternative rate design or mechanism. The Commission, after such consideration and experience, may choose at some future time to consider whether a policy statement or rules are necessary to augment established processes that guide a base rate proceeding.³ Therefore, EAP agrees with the Commission’s proposal to meet its obligations under Section 1330(d) of the Act by applying the existing rules and regulations applicable in a Section 1308(d) base rate proceeding, given that a base rate proceeding allows for various stakeholder input and begins with information furnished by the utility that is “quite comprehensive and far-reaching.”⁴

² TIO at p. 9.

³ EAP understands that the Commission intends to proceed with its pending Proposed Fixed Rates Policy Statement Order at Docket No. M-2015-2518883, entered May 23, 2018 regarding alternative ratemaking methodologies. While EAP will provide additional comment under that docket at the appropriate time, it remains the position of the Association that any such policy statement is premature in light of the broad nature of Act 58. EAP recommends the Commission wait until such time as it and other stakeholders have gained experience in reviewing utility alternative ratemaking proposals before codifying any policies relating thereto. In the alternative, the Commission must align the concepts contained in the Proposed Fixed Rates Policy Statement with Act 58 and eliminate the contradictions and inflexibility inherent in its proposal.

⁴ TIO at p. 9.

B. EAP generally supports the Commission proposed interpretation of the “notwithstanding” phrase in subsection 1330(b)(1) but seeks clarification specifically with respect to the use of an adjustment mechanism under section 1307 of the Public Utility Code to recover lost revenues resulting from Act 129.

EAP notes that the language in subsection 1330 (b) (1) reads, in part, that

“[n]otwithstanding any other provision of law, including, but not limited to, sections 2806.1 (k)(2)...and 2807 (f)(4)...the commission may approve an application by a utility in a base rate proceeding to establish alternative rates and rate mechanisms....” 66 Pa. C. S. § 1330 (b)(1) (emphasis added). Additionally, subsection 1330 (b) (2) provides, in part, that “[a]n alternative rate mechanism 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)....” 66 Pa. C. S. § 1330 (b) (2). Thus, while EAP agrees that the language in subsection 1330 (b) authorizes the Commission to approve an application by certain utilities to establish an alternative rate in a base rate proceeding and that includes electric distribution companies, in spite of the language found at sections 2806.1(k)(2) and 2807(f)(4) of the Public Utility Code; it more specifically at subsection 1330 (b)(2) authorizes the Commission to allow the recovery of decreased revenues resulting from the reduction of energy consumption or reduction of demand under Act 129 via a reconcilable adjustment charge consistent with section 1307 of the Public Utility Code. EAP asks that the Commission clarify and expand its statement at page 4 of the TIO to avoid any future argument that section 1307 mechanisms or adjustment charges are not available to recover lost revenues attributable to Act 129 in the context of a request in a base rate proceeding consistent with section 1330(b) of the Public Utility Code.

C. EAP generally agrees with the Commission proposal regarding customer notice as required under section 1330 (c) except with regard to the provision of utility tariff pages in bill inserts.

Section 1330(c) establishes requirements for utilities to provide additional notice to their customers regarding alternative ratemaking mechanisms. These requirements state the utility must notify customers that they have filed an application for an alternative rate; of the Commission's decision on the application; a summary and effective date of the adjustment to the rate schedule; and any other information as required by the Commission. Specifically, Section 1330(c) states that the notices "shall be provided through customer bill inserts and posted on the utility's publicly accessible Internet website."

Initially, EAP generally agrees with the Commission's proposal to require utilities to include revisions to the notice language currently contained in 52 Pa. Code §53.45(b) (1) (i) (relating to notice of proposed rate changes). The Commission's revisions to the notice language as proposed in the TIO clearly state that the company's rate filing includes a request for approval of an alternative rate mechanism and provides space for the company to provide a summary of the rate impacts of that mechanism by customer class. This open-ended language allows for flexibility between and among utilities to outline for their customers the general impact of the proposed mechanism(s).

EAP also agrees with the Commission's proposed requirement that the utility provide a link to the notice sent via bill insert on its customer home page as well. This additional avenue will ensure availability of the message to those customers who may receive e-bills, pay their utility bill via automatic payment, or would otherwise miss the insert.

EAP does not believe, however, that it is good practice or necessary to include copies of the tariff pages listing modifications following the approval of an alternative ratemaking

mechanism as part of the bill insert. Such a requirement to distribute hard copies of tariff pages in the bill insert would increase the cost of company bill inserts generally and is not currently mandated for other tariff revisions that may be proposed as part of a base rate proceeding.

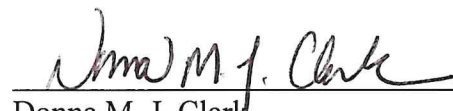
EAP instead suggests that the Commission consider allowing utilities to include in those bill inserts providing the information set forth at subsection 1330 (c)(1) an explanation of how to access the tariff pages via electronic means. The suggested modification would include language directing customers to the utility's publicly available website and, more specifically, to a link on the website that would lead to the relevant tariff pages.

III. CONCLUSION

EAP appreciates the opportunity to provide comments regarding the Tentative Implementation Order issued by the Commission. And, noting the clarification and the exception detailed above, EAP agrees that implementation of Act 58 is met by application of existing Commission rules, regulations, and procedures that govern base rate proceedings to any future request by a utility to establish alternative rates or rate mechanisms under section 1330 of the Public Utility Code.

Respectfully submitted,


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