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October 9, 2018

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

VIA ELECTRONIC FILING

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

Dear Secretary Chiavetta:

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

All parties of record are being served a copy of this letter in accordance with the enclosed Certificate of Service.

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

Sincerely,

SPILMAN THOMAS & BATTLE, PLLC

By 

Derrick Price Williamson
Barry A. Naum

BAN/sds

Enclosures

c: Kriss Brown, Esquire, Law Bureau (via E-mail and First-Class Mail)
Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

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 FIRST-CLASS MAIL

Bureau of Investigation & Enforcement
Pennsylvania Public Utility Commission
400 North Street, 2nd Floor
P.O. Box 3265
Harrisburg, PA 17105-3265

Office of Small Business Advocate
300 North Second Street
Suite 202
Harrisburg, PA 17101

Office of Consumer Advocate
5th Floor, Forum Place
555 Walnut Street
Harrisburg, PA 17101



Barry A. Naum

Dated: October 9, 2018

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

COMMENTS OF
INDUSTRIAL ENERGY CONSUMERS OF PENNSYLVANIA

On September 8, 2018, the Pennsylvania Public Utility Commission's ("PUC" or "Commission") Tentative Implementation Order in the above-referenced docket was published in the *Pennsylvania Bulletin*. The Tentative Implementation Order addresses Act 58 of 2018 ("Act 58"), which was signed into law by Governor Wolf on June 28, 2018, and adds Section 1330 to the Pennsylvania Public Utility Code ("Code"), 66 Pa. C.S. § 1330, relating to alternative ratemaking for utilities. The Tentative Implementation Order requested that interested parties submit Comments on the Commission's proposed implementation of Act 58 within 30 days of its publication in the *Pennsylvania Bulletin*, or by October 8, 2018.

The Industrial Energy Consumers of Pennsylvania ("IECPA")¹ is an association of energy-intensive industrial consumers of electricity and natural gas taking service from a variety of regulated utilities in Pennsylvania, including Columbia Gas of Pennsylvania, Inc., Duquesne Light Company, Metropolitan Edison Company, PECO Energy Company, Pennsylvania Electric

¹ For the purpose of this matter, IECPA's membership consists of: Air Products & Chemicals, Inc.; AK Steel Corporation; Arconic, Inc.; ArcelorMittal USA LLC; Benton Foundry, Inc.; Carpenter Technology Corporation; East Penn Manufacturing Company; Knouse Foods Cooperative, Inc.; Praxair, Inc.; Proctor & Gamble Paper Products Company; and United States Gypsum Company.

Company, Pennsylvania Power Company, Peoples Gas Company, LLC, Peoples Natural Gas Company LLC, PPL Electric Utilities Corporation, UGI Penn Natural Gas, Inc., UGI Utilities, Inc. – Gas Division, and West Penn Power Company. IECPA offers these Comments in response to the Tentative Implementation Order in the above-referenced matter and the Commission's interpretation and planned implementation of the Section 1330 provisions to the Code.

A. Section 1330(a) – Declaration of Policy

IECPA concurs with the Tentative Implementation Order's declaration of policy in Section 1330(a). To that end, IECPA further believes that it is warranted to highlight the significance of the specific statement, contained in Section 1330(a)(1), that it is in the public interest to "ensur[e] that utility infrastructure costs are reasonably allocated to and recovered from customers and market participants consistent with the use of the infrastructure." 66 Pa. CS § 1330(a). This declaration of policy reinforces the long-standing principle that ratepayers should only be required to pay for utility services based upon an individual utility's cost-to-serve that customer or class of customers. Furthermore, IECPA believes that the reference to the "use of the infrastructure" indicates that the General Assembly intends for ratepayers to continue to pay only for utility plant that is "used and useful" to the public, even though financed through alternative ratemaking methodologies. Indeed, this is consistent with Act 58's express inclusion in Section 1330(b)(3) of language stating that "[c]apital costs and expenses recovered through alternative rates and rate mechanisms shall be reasonable and prudently incurred and used and useful in providing service,"² as well as the Commission's finding in that section that this is "a fundamental principle of public utility law in Pennsylvania." Tentative Implementation Order, p.

² 66 Pa. C.S. § 1330(b)(3).

5. Both of these principles remain absolutely necessary for the development of just and reasonable rates. As the PUC begins to review potential alternative ratemaking proposals from utilities, IECPA urges the Commission to maintain these traditional "cost-to-serve" and "used and useful" principles as polestars of utility regulation and approval of customer rates.

Additionally, in the Tentative Implementation Order on this section, the Commission notes that it has recognized and proposed similar policy goals in Docket No. M-2015-2518883 regarding its *Fixed Utility Distribution Rates Policy Statement*. Tentative Implementation Order, p. 2. IECPA submitted Comments in Docket No. M-2015-2518883 on August 16, 2018, addressing general policy issues pertaining to alternative ratemaking methodologies, and would further direct the Commission and interested parties to review those Comments for more information on IECPA's general policy position in this regard.

B. Section 1330(b) – Alternative Rate Mechanisms

Regarding the implementation of Section 1330(b) as discussed in the Tentative Implementation Order, IECPA offers the following observations and concerns.

IECPA concurs with the Commission's interpretation of this section as "permitting rate adjustments in accordance with Section 1307 under parameters established through the initial Section 1308 proceeding approving the alternative rate mechanism." *Id.* at 4. To that end, IECPA agrees and asserts that the Section 1308 base rate proceeding is the only appropriate procedure under which a utility should be permitted to seek approval to implement or modify any alternative rate mechanism, including a Section 1307 "automatic adjustment clause," as is clearly delineated in Section 1330(b)(1). As the Commission notes, these base rate proceedings provide for "extensive examination of a utility's total revenues, expenses, taxes, capital costs and rate structure," and therefore provide the best opportunity for the Commission and stakeholders

to fully assess the impact of potential alternative rate structures on customers and to make a full determination as to whether those alternative rates may be just, reasonable, and in the public interest.

IECPA, however, has concerns regarding the Commission's discussion of the "notwithstanding" clause in Section 1330(b)(1) as it pertains to "lost or decreased revenues" and the prohibitions contained in Sections 2806.1(k)(2) and 2807(f)(4) against these "lost or decreased revenues" being considered to be a "recoverable cost." Specifically, the Tentative Implementation Order states that the PUC proposes to interpret this "notwithstanding" clause as "permitting the Commission to approve an application by any utility, included EDCs, to establish alternative rates and rate mechanisms, in spite of the prohibitions in Sections 2806.1(k)(2) and 2807(f)(4) of the Code." *Id.* at 5. Based on this statement, IECPA is concerned that the Commission interprets this clause to mean that an alternative rate mechanism *for the purpose of awarding a utility lost or decreased revenue adjustments* is now appropriate and permissible. To the extent that this is indeed the Commission's intent, IECPA disagrees.

The prohibitions in Sections 2806.1(k)(2) and 2807(f)(4) are not prohibitions against alternative rate mechanisms. Rather, these are expressly prohibitions against the consideration of particular utility accounting items, specifically "lost or decreased revenues," as "recoverable costs." A prohibition of a category of "costs" is not the same as prohibition of an alternative rate mechanism. The determination of allowable costs is just one element of the ratemaking process and does not comprise a ratemaking methodology in and of itself. Based on the plain reading of Section 1330(b), it appears that the Legislature intended to address and supersede existing prohibitions of the latter (*i.e.*, alternative ratemaking structures) and not the former (*i.e.*, inclusion of lost or decreased revenues as "recoverable costs"). Similarly, based on the plain

reading of both Sections 2806.1(k) and 2807(f)(4), the intent of these prohibitions is to insure that lost or decreased revenues are not recovered from ratepayers in *any* utility charges, irrespective of whether those charges are created through "traditional" or "alternative" ratemaking structures, except to the extent that they may be "reflected in revenue and sales data used to calculate rates" in a Section 1308 base rate proceeding. 66 Pa. CS §§ 2806.1(k)(3) and 2807(f)(4)(i). IECPA therefore does not believe that anything within Section 1330(b) supersedes, or is intended to supersede, the provisions of Sections 2806.1(k)(2) and 2807(f)(4).

On this point, then, IECPA would seek to better understand the Commission's discussion in the Tentative Implementation Order of the "self-explanatory direction" in Section 1330(b)(2) "as to what capital costs and expenses may be recovered through alternative rates and rate mechanisms." Tentative Implementation Order, p. 5. Certainly, as previously stated, IECPA agrees with the Commission that all of these costs must be "reasonable and prudently incurred and used and useful in providing service." *Id.* IECPA also concurs that Section 1330(b)(2) provides a self-explanatory direction of permissible costs, *but only if* the prohibitions of Sections 2806.1(k)(2) and 2807(f)(4) against the consideration of lost or decreased revenues as "recoverable costs" also retain their self-explanatory interpretations. If, however, the Commission's interpretation of the "notwithstanding" clause in Section 1330(b)(1) means that lost or decreased revenues may now appropriately be considered as "recoverable costs" for the purpose of alternative rate structures, then IECPA, as discussed above, disagrees. IECPA urges the Commission to adopt IECPA's interpretation of these sections, or to at least confirm that the Tentative Implementation Order does not intend to carve out lost or decreased revenues as "recoverable costs" under the self-explanatory direction of costs in Section 1330(b)(2).

C. Section 1330(c) – Customer Notice

IECPA offers no Comment on this section of the Tentative Implementation Order but reserves the right to respond to other parties' Comments, as necessary.

D. Section 1330(d) – Commission


In the Tentative Implementation Order under Section 1330(d), the Commission states that it will not propose any additional specific procedures for the filing and seeking approval of either new alternative rate structures or the parameters of adjustments and reconciliation of particular alternative rates. *Id.* at 9-10. Regarding new requests for alternative rates, the Tentative Implementation Order finds 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." *Id.* at 9. As for the timing and process for adjustments or reconciliations of such rates (including whether interest will be applied), the Tentative Implementation Order states that these parameters "are to be established initially in the Section 1308(d) base rate proceeding and subsequently made in accordance with Section 1307 of the Code." *Id.* at 10. IECPA believes that the Commission's interpretation of Section 1330(d) is reasonable and therefore concurs.

The Tentative Implementation Order also discusses the Commission's proposed policy statement at Docket No. M-2015-2518883 insofar as that policy statement provides guidance for utilities and stakeholders on what the PUC will consider when investigating alternative rate methodologies under Section 1330. *Id.* at 10 n.4. As stated previously, IECPA submitted Comments in Docket No. M-2015-2518883 on August 16, 2018, and would direct the Commission and interested parties to review those Comments for more information on IECPA's general policy position and recommendations in this regard.

E. Section 1330(f) – Definitions

IECPA offers no Comment on this section of the Tentative Implementation Order but reserves the right to respond to other parties' Comments, as necessary.

Respectfully submitted,

By 
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