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**VIA E-FILING**

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

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

Dear Secretary Chiavetta:

Enclosed for filing, please find a copy of the comments of UGI Utilities, Inc. to the Tentative Implementation Order entered at the above docket on August 23, 2018 and published in the September 8<sup>th</sup> edition of the *Pennsylvania Bulletin*.

Very truly yours,

A handwritten signature in blue ink that reads "Mark C. Morrow". The signature is fluid and cursive, with a long horizontal line extending to the right.

Mark C. Morrow

Counsel for UGI Utilities, Inc.

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

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**COMMENTS OF  
UGI UTILITIES, INC.**

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UGI Utilities, Inc. (“UGI”) appreciates this opportunity to submit comments in response to the Commission’s Tentative Implementation Order in the above docket entered on August 23, 2018, and published in the September 8, 2018 edition of the *Pennsylvania Bulletin*. These comments are meant to supplement the comments filed by the Energy Association of Pennsylvania at this docket. UGI, through its two divisions, operates as both a natural gas distribution company (“NGDC”) and as an electric distribution company (“EDC”) in Pennsylvania.

I. INTRODUCTION

NGDCs and EDCs construct, own and operate capital-intensive distribution systems that play the important role of connecting the homes and businesses of the Commonwealth to sources of natural gas and electric supply. Given the capital intensive nature of these systems, NGDCs and EDCs have generally been granted exclusive service territories so system costs can be spread out over the widest possible customer base, and given these exclusive service territories, their rates and terms and conditions of service have been subject to Commission regulation.

The Commission has historically been given broad ratemaking authority under the Public Utility Code, and has exercised this authority in a responsible and predictable manner. This

regulatory certainty has enabled NGDCs and EDCs to raise the capital required to construct their distribution systems in financial markets at reasonable cost to the benefit of their customers. As the Commission was reminded through the comments and data it collected through its *Alternative Ratemaking Methodologies* proceeding at Docket No. M-2015-2518883, NGDCs and EDC recover reasonably incurred expenses, and a return on and of prudently capital investments, through a combination of base rates periodically set under the provisions of Section 1308 of the Public Utility Code, 66 Pa.C.S. §1308; a “sliding scale of rates or other method for the automatic adjustment of rates” authorized under the provisions of Section 1307 of the Public Utility Code, 66 Pa.C.S. §1307; and other statutory rate mechanisms. Often, Section 1307 rate mechanisms have been used to permit the timely recover of expenses incurred by NGDCs and EDCs in performing such functions as acquiring natural gas and electric supplies for retail customers that do not chose to shop for such supplies in retail markets; providing universal service programs; and implementing energy efficiency and conservation programs. These rate mechanisms are often established and reviewed in rate proceedings outside of base rate proceedings under Section 1308.

NGDCs and EDCs have always operated in a dynamic environment and have faced risks resulting from competing energy sources, and the Commission has historically been a leader in permitting creative rate mechanisms offered by NGDCs and EDCs to address the changing dynamics of the environments they operate in. In recent years, such dynamics as the spread of lower-cost distributed generation systems; heightened concerns about climate change; and the dramatic reduction in the costs of natural gas resulting from advances in shale gas recovery technologies, have presented new risks and opportunities for NGDCs and EDCs and has accelerated interest in alternative rate designs to address these often rapidly changing dynamics.

As was clear from comments submitted in response to the Commission’s alternative ratemaking docket, however, many potential alternative rate methods raise substantial legal questions under existing statutory limitations as to the Commission’s rate-making authority – limitations which in certain instances were adopted to address transitory conditions that are no longer present. The resolution of these legal disputes potentially cast a cloud over the Commission’s ability to respond to rapidly changing market and other dynamics.

With the passage of Act 58 of 2018, UGI believes the General Assembly has clearly signaled that it wishes to remove any previous limitations on the Commission’s ability to consider and resolve alternative rate proposals, and thus short-circuit the potential for years of costly and time-consuming litigation.

## II. COMMENTS

### **A. Review and approval of alternative rate mechanisms under Section 1308 should not be limited to Section 1308(d) general rate increases.**

The provisions of Section 1308 of the Public Utility Code, 66 Pa.C.S. §1308, establish rules for voluntary changes in base rates, only a subset of which may constitute a “general rate increase” subject to the special provisions of Section 1308(d). Specifically, the provisions of Section 1308(d) define a general rate increase as a tariff filing which “*affects more than 5% of the customers and amounts to in excess of 3% of the total gross annual intrastate operating revenue of the public utility.*” Base rate filings under Section 1308 that do not meet this standard are still subject to full Commission review and provide interested parties with the same ability to be heard.

The provisions of 66 Pa. C.S. §1330(b) adopted by Act 58 provides:

(b) Alternative rate mechanisms.

(1) 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; or
- (v) rates based on a combination of more than one of the

mechanisms in subparagraphs (i), (ii), (iii) and (iv) or other ratemaking mechanisms as provided under this chapter.

(2) An 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) and may provide for recovery of returns on and return of capital investments or, in the case of city natural gas distribution operations, recovery under the cash flow ratemaking method.

(3) Capital costs and expenses recovered through alternative rates and rate mechanisms shall be reasonable and prudently incurred and used and useful in providing service. Nothing in this paragraph shall be construed to prohibit or limit the recovery of revenue, as appropriate, under a commission-approved performance-based rate plan.

(Emphasis added.)

On page 3 of the Tentative Implementation Order the Commission proposes “ to interpret Section 1330(b)(1) as requiring utilities seeking to obtain Commission approval of an alternative rate or rate mechanism to do so initially through a Section 1308(d), 66 Pa. C.S. § 1308(d) (relating to voluntary changes in rates), general rate proceeding.” Since many alternative rates and rate mechanisms, including those that would utilize Section 1307 rate adjustment

mechanisms, might not meet the definition of a general rate increase,<sup>1</sup> UGI does not believe the Commission should limit the approval of such mechanisms to the subset of base rate cases that constitute a general rate increase under Section 1308(d). Moreover, such an interpretation is inconsistent with the plain wording of Section 1330(b) that does not limit the approval of alternative rates or rate mechanisms to the base rate cases constituting a general rate increase under subsection (d) of Section 1308.

UGI would also note that requiring approval in general rate cases is not required to fulfil the Commission's obligation under Section 1330(d) to "prescribe the specific procedures for the approval of an application to establish alternative rates" as the Commission already has established procedures applicable to base rate cases which do not constitute a general rate increase.

**B. The Commission should clarify that Section 1307 alternative rate mechanisms approved in base rate proceedings, can be adjusted and reviewed outside of Section 1308 base rate cases.**

On page 4 of the Tentative Implementation Order the Commission states:

While subsection 1330(b)(2) states that "[a]n alternative rate mechanism established under this section may include rates under Section 1307...or 1308," the Commission interprets this as permitting rate adjustments in accordance with Section 1307 under parameters established through the initial Section 1308 proceeding approving the alternative rate mechanism.

Furthermore, the Commission interprets the reference to Section 1308 as simply permitting subsequent changes or adjustments to a previously approved alternative rate mechanism through a subsequent Section 1308 proceeding. The Commission notes that this interpretation does not preclude or restrict in any way the ability of any party or the

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<sup>1</sup> UGI would note that its innovative Growth Extension Tariff ("GET Gas") was approved in a Section 1308 base rate proceeding that did not constitute a general rate increase falling under the provisions of Section 1308(d). See *Joint Petition of UGI*, Docket No. P-2013-2356232, Order entered February 20, 2014.

Commission from fully reviewing, in accordance with applicable statutory, regulatory and case law, a utility's subsequent Section 1308 rate filing.

(Emphasis added.)

It is clear that alternative rate mechanisms can include rates subject to automatic adjustment authorized under Section 1307 of the Public Utility Code, and it seems clear that Act 58 requires such alternative rate mechanism to be the context of base rate cases. However, Section 1307 rate mechanisms, once established, should be able to operate and be reviewed in Section 1307 proceedings, and Section 1308 base rate proceedings as suggested in the language quoted above.

For example, if a NGDC were to proposed an alternative rate mechanism for the recovery of purchased gas costs, and that mechanism was approved in a Section 1308 base rate case, UGI presumes it would be the Commission's intent to permit the operation of the alternative purchased gas cost recovery mechanism to be subject to review in Section 1307 filings required under the alternative rate mechanism, and not necessarily in base rate proceedings.

**C. The Commission should clarify that Section 1307 alternative rate mechanisms approved in base rate proceedings, can be adjusted and reviewed outside of Section 1308 base rate cases.**

66 Pa.C.S. §1330(c) provides:

(c) Customer notice.--

- (1) A utility shall notify a customer of all of the following:
  - (i) The filing of an application under subsection (b)(1).
  - (ii) The commission's decision on the application.
  - (iii) A summary and, if applicable, a schedule of the rate adjustments that will occur as a result of the commission's approval of a utility application under subsection (b) and the effective date of the adjustments.
  - (iv) Any other information required by the commission by regulation or order.

(2) Notice shall be provided through customer bill inserts and posted on the utility's publicly accessible Internet website.

Page 7 of the Tentative Implementation Order provides “[r]egarding the requirements of subsection 1330(c)(2), the Commission proposes that the utility distribute the tariff pages containing the list of modifications to customers through a bill insert.”

UGI believes that circulating proposed tariff pages could be both costly and confusing to customers, and that instead the revised customer notice provided on page 6 of the tentative Implementation Order should be provided in the bill insert. Moreover, to the extent the Commission believes customers should have access to proposed tariff language, such access can be provided through its public available website.

### III. CONCLUSION

UGI believes the General Assembly has appropriately clarified the Commission’s authority to approve alternative rate mechanisms, and has provided guidance as to notice and due process standards required for approval of such mechanisms. UGI appreciates the Commission’s prompt action to address implementation of Act 58, and appreciates this opportunity to submit comments.

Respectfully submitted,



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Mark C. Morrow

Counsel for UGI Utilities, Inc.