



An Exelon Company

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November 19, 2018

VIA eFILING

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17105-3265

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

Dear Secretary Chiavetta:

Please find the **Reply Comments of PECO Energy Company on the Implementation of Act 58 of 2018 Alternative Ratemaking for Utilities** for filing in the above-referenced proceeding.

If you have any questions, please do not hesitate to contact me at 215-841-5974.

Very truly yours,

A handwritten signature in black ink, appearing to read "Craig Williams", with a long horizontal line extending to the right.

W. Craig Williams

Enclosure

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

IMPLEMENTATION OF ACT 58 OF :
2018 ALTERNATIVE RATEMAKING : **DOCKET NO. M-2018-3003269**
FOR UTILITIES :

REPLY COMMENTS OF PECO ENERGY COMPANY

I. INTRODUCTION

On August 23, 2018, the Pennsylvania Public Utility Commission (“Commission”) issued a Tentative Implementation Order (the “TIO”) seeking comments on its proposed interpretation of Act 58 of 2018¹ (“Act 58”) which provides a new framework for Commission approval of alternative rates and rate mechanisms in fixed utility base rate proceedings.

On October 9, 2018, PECO Energy Company (“PECO” or the “Company”) filed comments (the “Initial Comments”) in response to the TIO. Sixteen other parties submitted comments to the Commission. Most commenters, including PECO, were generally supportive of the Commission’s efforts to implement Act 58. There is general recognition that alternative ratemaking mechanisms may offer new opportunities to utilities and customers, and that a shared understanding among the Commission and stakeholders of the substance and procedure of Act 58 is fundamental to its success.

PECO’s Reply Comments are focused on the need to ensure that the final Implementation Order in this proceeding is consistent with Act 58 and avoids ambiguity regarding the treatment of lost revenues and the appropriate Commission proceedings for the initial approval of alternative rate mechanisms.

¹ See Act 58 of 2018, P.L. 417 (June 28, 2018).

II. REPLY COMMENTS

A. **The Commission Should Preserve the Flexible, Individualized Process for Alternative Ratemaking Expressed in Act 58**

Act 58 is intended to give utilities the opportunity to implement innovative alternative rate mechanisms, with Commission approval. Notwithstanding the flexibility built into Act 58, several commenters suggested that the Commission revise the TIO to include prescriptive requirements regarding the approval and content of alternative rate methodologies.² The Office of Consumer Advocate (“OCA”), for example, recommended that seven additional filing requirements be required by the Commission when a utility seeks approval of an alternative ratemaking mechanism.³ The Pennsylvania Energy Consumers Alliance et al. (the “Industrials”) urged the Commission to codify various restrictions on alternative rate mechanisms, such as limiting the amount of time a mechanism can be in place before a new base rate proceeding and requiring the inclusion of earning-sharing mechanisms and reductions to authorized return on equity.⁴

PECO opposes the inclusion of such restrictions in the TIO because they are not consistent with the plain language and intent of Act 58. The Legislature did not specify mandatory components of alternative rate mechanisms or the approval process, save for the requirement that alternative rate mechanisms be initially proposed by utilities and approved by the Commission in a “base rate proceeding.”⁵ The Commission should maintain the flexibility provided in Act 58 for utilities to propose rate mechanisms and rate designs that fit their

² See, e.g., Comments of Advanced Energy Economy Institute (October 9, 2018), p. 1 (stating it wanted more guidance, and that the Commission should elaborate its policy goals in Section 1330(a)); Comments of Keystone Energy Efficiency Alliance et al. (October 8, 2018), pp. 2-3 (urging the Commission to adopt additional policy goals and consumer protections).

³ Comments of OCA (October 9, 2018) (“OCA Comments”), pp. 10-11.

⁴ Comments of the Industrials (October 9, 2018), pp. 3-7.

⁵ Section 1330(b)(1).

individual financial and operational needs.⁶ The Commission’s existing regulations and procedures for base rate proceedings will ensure there is a thorough review of alternative rate proposals.

B. The Commission Should Clarify That Utilities May Recover Lost Revenue Through Alternative Rates Or Rate Mechanisms

Section 1330(b)(2) states that the Commission may approve an alternative rate in a base rate proceeding notwithstanding any other provision of law, including Sections 2806.1(k)(2) and 2807(f)(4).⁷ The Commission’s discussion of the “notwithstanding” provision in the TIO does not explicitly address whether utilities may recover lost revenues from reduced consumption or shifting demand pursuant to an alternative rate or rate mechanism approved by the Commission under Section 1330(b), including Section 1307 reconcilable adjustment mechanisms.

Several commenters joined PECO in asking the Commission to clarify the recovery of lost revenues in the final implementation order.⁸ EAP and the FirstEnergy Utilities further agreed with PECO that permitting the recovery of lost revenues through Commission-approved alternative rate mechanisms, including Section 1307 surcharges, is consistent with the plain language of Section 1330(b) and the Commission’s general discussion in the TIO.⁹

⁶ While PECO does not believe that any specific criteria are necessary, if the Commission decides criteria are necessary, PECO supports the Energy Association of Pennsylvania’s (“EAP’s”) comment that the Commission and stakeholders would benefit from the litigation of actual alternative rate proposals prior to considering additional criteria for specific rate designs or mechanisms. *See* Comments of EAP (October 8, 2018) (“EAP Comments”), p. 3.

⁷ Section 2806.1(k)(2) relates to cost recovery for electric utilities, stating that decreased revenue due to reduced energy consumption or energy demand shall not be recoverable under an automatic adjustment clause. Section 2807(f)(4) relates to electric utility cost recovery for Act 129 smart meters and provides that reduced revenues due to reduced electricity consumption or shifting energy demand are not a recoverable cost of smart meter technology or a recoverable cost.

⁸ *See* OCA Comments, pp. 6-7; EAP Comments, p. 4; Comments of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company, and West Penn Power Company (collectively, the “FirstEnergy Utilities”) (October 9, 2018) (“FirstEnergy Utilities Comments”), p. 4; Comments of Industrial Energy Consumers of Pennsylvania (“IECPA”) (October 9, 2018) (“IECPA Comments”), pp. 4-5.

⁹ EAP Comments, p. 4; FirstEnergy Utilities Comments, p. 4; PECO Initial Comments, pp. 2-3.

OCA and IECPA urged the Commission to find that utilities are precluded from recovering such lost revenues through separate adjustment mechanisms.¹⁰ They contend that the “notwithstanding” language of the statute relates only to the Commission’s ability to approve alternative rate applications and that Sections 2806.1(k)(2) and 2807(f)(4) still control with respect to the recovery of lost revenue.¹¹

Consistent with PECO’s Initial Comments, PECO continues to believe that the plain language of Section 1330(b)(2) effectively removes the prohibition against the recovery of certain lost revenue in the context of alternative ratemaking. The Commission should make clear that the lost revenue restrictions in Sections 2806.1(k)(2) and 2807(f)(4) do not apply to alternative mechanisms approved under Section 1330(b), including Section 1307 surcharges.

C. An Alternative Ratemaking Mechanism Can Be Reviewed and Approved in Any Section 1308 Proceeding

Act 58 states that alternative rates and rate mechanisms can be approved by the Commission in a “base rate proceeding.”¹² In the TIO, the Commission interpreted “base rate proceeding” to mean a Section 1308(d) proceeding, and some commenters specifically agreed with that interpretation.¹³ Both PPL Electric Utilities Corporation (“PPL”) and UGI Utilities, Inc. (“UGI”), however, recommended that the Commission permit approval of alternative rate mechanisms in *any* Section 1308 proceeding, not just Section 1308(d) proceedings.¹⁴ They note that Act 58 does not restrict approval to Section 1308(d) proceedings, that other Section 1308 proceedings are subject to full Commission review, and that certain alternative rate mechanisms

¹⁰ See OCA Comments; pp. 6-7; IECPA Comments, pp. 4-5.

¹¹ *Id.*

¹² Section 1330(b)(1).

¹³ TIO, p. 8.; OCA Comments, p. 5; IECPA Comments, p. 3.

¹⁴ See Comments of PPL (October 9, 2018), pp. 3-4, 7-8; Comments of UGI (October 9, 2018), pp. 3-5 (review and approval of alternative rate mechanisms to Section 1308(d) as other Section 1308 filings are still subject to full Commission review and allow for the participation of interested parties).

may not meet the requirements of a general rate increase (i.e., a tariff filing which affects more than 5% of a utility's customers and is in excess of 3% of the total gross annual intrastate operating revenues of the utility).¹⁵

PECO agrees with PPL and UGI that the Commission should preserve the flexibility provided in Act 58 and interpret "base rate proceeding" to mean any Section 1308 proceeding. If utility applications are only permitted in Section 1308(d) proceedings, then utilities will be limited to proposing mechanisms only as part of comparatively larger rate increases. Such a limitation is inconsistent with the plain language of Act 58 and would unduly restrict a utility's ability to propose and implement alternative rates.

III. CONCLUSION

PECO appreciates the opportunity to provide these Reply Comments on the Tentative Implementation Order and looks forward to continuing to work with the Commission and interested stakeholders on this important initiative.

Respectfully submitted,



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¹⁵ 66 Pa.C.S. § 1308(d).