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November 19, 2018

VIA ELECTRONIC FILING

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

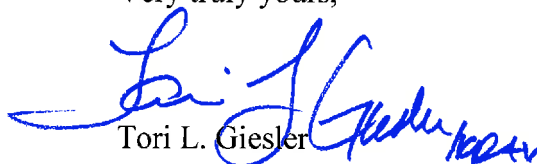
Re: *Implementation of Act 58 of 2018 Alternative Ratemaking for Utilities*
Docket No. M-2018-3003269

Dear Secretary Chiavetta:

Pursuant to the Pennsylvania Public Utility Commission's Tentative Order dated August 23, 2018 in the above-captioned proceeding, enclosed herewith for filing are the Reply Comments of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company.

Please contact me if you have any questions regarding this matter.

Very truly yours,


Tori L. Giesler

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Enclosures

c: As Per Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**REPLY COMMENTS OF METROPOLITAN EDISON COMPANY,
PENNSYLVANIA ELECTRIC COMPANY, PENNSYLVANIA POWER
COMPANY AND WEST PENN POWER COMPANY**

I. INTRODUCTION

On June 28, 2018, Governor Tom Wolf signed into law Act 58 of 2018 (“Act 58”) authorizing public utilities to implement alternative rates and rate mechanisms in base rate proceedings before the Commission.¹ On August 23, 2018, the Pennsylvania Public Utility Commission (“Commission”) issued a Tentative Implementation Order for the Implementation of Act 58 of 2018 Alternative Ratemaking for Utilities (“Tentative Order”), outlining its interpretation of Act 58 and detailing its intent in implementing the new statutory provisions, calling for interested parties to file comments in response to this proposed implementation. On October 9, 2018, various parties filed comments in response, including Metropolitan Edison Company (“Met-Ed”), Pennsylvania Electric Company (“Penelec”), Pennsylvania Power Company (“Penn Power”) and West Penn Power Company (“West Penn”) (collectively, the “Companies”). Having reviewed the comments filed by all parties, the Companies submit the following reply comments.

¹ House Bill 1782, codified at 66 Pa.C.S. § 1330.

II. COMMENTS

On the whole, many parties took the same position as the Companies in generally supporting the Commission's interpretation and proposed implementation with minor exception. However, there were several items raised in comments that the Companies either did not consider in their initial comments and agree with, or that the Companies oppose. The Companies have limited their reply comments to address only those three discrete topics in the sections which follow. These topics include: 1) the process for ongoing adjustments to alternative rate mechanisms; 2) lost distribution revenues; and 3) limitations proposed by the Industrial Energy Consumers of Pennsylvania ("IECPA") to the use of an alternative rate mechanism.

Ongoing Adjustments

The Commission has interpreted Act 58 as requiring any utility seeking to implement an alternative rate mechanism to do so *initially* through a general rate proceeding under the provisions of Section 1308(d) of the Pennsylvania Public Utility Code, including those that may be subject to adjustment under Section 1307 mechanisms.² In their comments filed on October 9, 2018, the Companies supported the Commission's interpretation. However, having reviewed the comments filed by other interested parties, the Companies agree with the recommendation of both PPL Electric Utilities ("PPL") and UGI Utilities, Inc. ("UGI") that this interpretation be further clarified. Specifically, PPL takes the position that the statute's reference to Section 1308 refers to "any Section 1308 base rate proceeding and should not be limited to Section 1308(d) proceedings. Establishing a Section 1307 mechanism in the context of an initial Section 1308 proceeding is consistent with other established 1307 mechanisms."³ In support of this position, PPL provides

² The Companies note that the first full paragraph of p. 4 of the Tentative Order appears to incorrectly reference Section 1308 where it is intended to reference Section 1307.

³ PPL Electric Implementation of Act 58 of 2018 Alternative Ratemaking for Utilities, Docket No. M-2018-3003269, p.3.

two examples of such mechanisms subject to adjustment under Section 1307 that were initially approved in a Section 1308 base rate case proceeding. Meanwhile, UGI notes that Section 1330(b) "... 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."⁴ The Companies agree with PPL and UGI that the Commission's interpretation of Section 1330(b)(1) should be clarified to include any 1308 base rate proceeding - not only those under subsection (d).

Lost Distribution Revenues

The Commission has interpreted the language outlined in Section 1330(b)(1) as authorizing it to approve mechanisms proposed by electric distribution companies ("EDCs") designed to recover lost revenues resulting from reduced electricity consumption or shifting demand due to the implementation of energy efficiency and conservation plans or the deployment of smart meter technology under Act 129.⁵ The Companies fully support this interpretation, which is consistent with not only the plain language of the statutory provision, but also the Companies' understanding of the intent of the legislation. However, the Office of Consumer Advocate ("OCA") and the and the IECPA offered comments to the contrary. Specifically, the OCA states that:

...the prohibitions contained within Section 2806.1(k)(2) and 2807(f)(4) still operate to preclude an EDC from recovering decreased revenues that are *solely* attributable to reduced energy consumption or changes in energy demand through a separate automatic adjustment mechanism, such as lost revenue adjustment clauses, that would be specifically designed to recover only such revenues.⁶

This position ignores the clear and concise language of Section 1330(b)(1), which provides:

(b) Alternative rate mechanisms.

⁴ UGI Implementation of Act 58 of 2018 Alternative Ratemaking for Utilities, Docket No. M-2018-3003269, p.5.

⁵ 66 Pa.C.S. § 2807 *et seq.* The Commission has interpreted this provision as serving as an exception to the prohibitions against such EDC-specific mechanisms which preexisted Act 58 in Sections 2806.1(k)(2) and 2807(f)(4) of the Code.

⁶ Comments of the Office of Consumer Advocate, *Implementation of Act 58 of 2018 Alternative Ratemaking for Utilities*, Docket No. M-2018-3003269, p.6.

(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...*⁷

The Pennsylvania Statutory Construction Act of 1972 (“Construction Act”) was passed to address this very conflict. In particular, Section 1921 addresses how a statutory provision is to be interpreted where there may be disagreement, requiring that “[w]hen the words of a statute are clear and free from all ambiguity, the letter of it is not to be disregarded...”.⁸ The Construction Act goes on to require that, even if the words are considered to not be explicit (as they are in Act 58 on this point), the object of all interpretation and construction of statutes is to ascertain and effectuate the intention of the General Assembly.⁹ Here, the pre-existing restrictions on recovery of lost distribution revenues contained within Act 129 is explicitly acknowledged by Act 58, yet an exception is clearly established to allow that, in circumstances where an alternative ratemaking mechanism is proposed, in the context of a base rate proceeding, under Section 1308 of the Public Utility Code. From the Companies’ standpoint, while an EDC admittedly could not propose and be granted a mechanism for such recovery through its EE&C or other such proceeding filed under Act 129, this exception allows for establishment of a mechanism under certain discrete instances that will offer the Commission further scrutiny of the proposal – a concern the General Assembly was affirmatively intending to address by including this revision to the bill in the course of its passage. For this reason, the Companies agree with the recommendation made by PECO Energy Company that the Commission clearly state its position on this point to avoid any future confusion or conflict with respect to the recovery of lost distribution revenues resulting from lower usage or

⁷ 66 Pa.C.S. § 1330(b)(1).

⁸ 66 Pa.C.S. § 1921(b).

⁹ 66 Pa.C.S. § 1921(a).

demand under Act 129 via a Section 1307 adjustment mechanism to the extent that charge is approved as part of a 1308 proceeding.¹⁰

Limitations on Alternative Rate Mechanisms

Regarding Section 1330(d), the Companies support the Commission's proposal to utilize the standards and protections in a 1308 proceeding to evaluate and approve a utility's request to implement an alternative rate mechanism. However, comments provided by the Pennsylvania Energy Consumers Alliance, Met-Ed Industrial Users Group, Penelec Industrial Customer Alliance, Philadelphia Area Industrial Energy Users Group, PP&L Industrial Customer Alliance, and West Penn Power Industrial Intervenors (collectively, the "Industrials") addressing Section 1330(d) urge the Commission to immediately implement, through a formal rulemaking, several additional provisions associated with alternative ratemaking mechanisms. These provisions would include: mandatory time limits of three to five years for alternative rate mechanisms; a requirement for shared earnings and a reduction to the utility's return on equity ("ROE"); and a requirement that mechanisms be limited to a single customer class in order to prevent shifting of costs between or within classes. These proposed requirements are not supported by the plain language of Act 58 and are likely to create hurdles that will discourage utilities from proposing alternative rate mechanisms. Furthermore, any party to a base rate proceeding is permitted to advocate its position – unique to the facts of that individual utility's proposals – that it sees appropriate. As such, it is not only unnecessary, but in fact outside the bounds of the statutory provisions enabling the Commission's consideration of, and utilities' right to propose, alternative rate mechanisms to establish rules as suggested by the Industrials. For this reason, the Companies strongly support

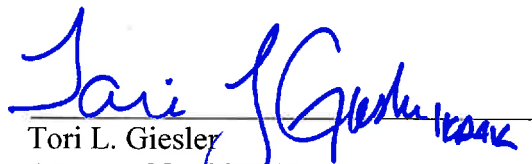
¹⁰ Comments of PECO Energy Company, *Implementation of Act 58 of 2018 Alternative Ratemaking for Utilities*, Docket No. M-2018-3003269, pp. 2-3.

the Commission's proposed interpretation that a 1308 proceeding includes a comprehensive and in-depth analysis of a utility's operations and financial position as written, without modification.

III. CONCLUSION

Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company appreciate the opportunity to provide comments in response on the Commission's proposed implementation of Act 58. The Companies look forward to further collaboration and discussion with the Commission and interested stakeholders on this important topic.

Respectfully submitted,



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Dated: November 19, 2018

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West Penn Power Company

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PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true and correct copy of the foregoing document upon the individuals listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

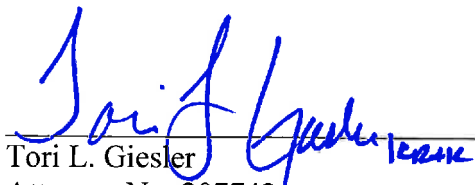
Service by first class mail, as follows:

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Dated: November 19, 2018


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